

## SECOND DIVISION

[ A.M. No. MTJ-00-1265, April 06, 2000 ]

**VALENCIDES VERCIDE, COMPLAINANT, VS. JUDGE PRISCILLA T. HERNANDEZ, FIFTH MUNICIPAL CIRCUIT TRIAL COURT, CLARIN AND TUDELA, MISAMIS OCCIDENTAL, RESPONDENT.**

### DECISION

**MENDOZA, J.:**

This is a complaint filed against Judge Priscilla T. Hernandez of the Fifth Municipal Circuit Trial Court, Clarin and Tudela, Misamis Occidental, charging her with grave abuse of authority and ignorance of the law for her dismissal of a case which complainant Valencides Vercide and his wife had filed against Daria Lagas Galleros for recovery of possession of a piece of land. The land is located in Upper Centro, Tudela, Misamis Occidental. Defendant Galleros is a resident of the same municipality, while complainant and his wife are residents of Dipolog City. Because of this fact, the case was filed in court without prior referral to the Lupong Tagapamayapa.

However, this matter was raised by defendant in her answer as an affirmative defense, and respondent, in her order of July 15, 1997, ordered the dismissal of the case without prejudice to the prosecution of the counterclaim pleaded by the defendant in her answer. In support of her order, respondent cited P.D. No. 1508, §3 of which provides:

Venue. - Disputes between or among persons actually residing in the same barangay shall be brought for amicable settlement before the Lupon of said barangay. Those involving actual residents of different barangays within the same city or municipality shall be brought in the barangay where the respondent or any of the respondents actually resides, at the election of the complainant. However, all disputes which involve real property or any interest therein shall be brought in the barangay where the real property or any part thereof is situated. (Emphasis added).

Complainant and his wife moved for a reconsideration, citing the following provisions of R.A. 7160, "The Local Government Code of 1991":

SEC. 408.

Subject matter for Amicable Settlement; Exception Thereto

. - The lupon of each barangay shall have authority to bring together the parties actually residing in the same city or municipality for amicable settlement of all disputes except:

(a) Where one party is the government of any subdivision or

instrumentality thereof;

(b) Where one party is a public officer or employee, and the dispute relates to the performance of his official functions;

(c) Offenses punishable by imprisonment exceeding one (1) year or a fine exceeding Five Thousand pesos (P5,000.00);

(d) Offenses where there is no private offended party;

(e) Where the dispute involves real property located in different cities or municipalities unless the parties thereto agree to submit their differences to amicable settlement by an appropriate lupon;

(f) Disputes involving parties who actually reside in barangays of different cities or municipalities, except where such barangay units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate lupon;

(g) Such other classes of disputes which the President may determine in the interest of justice or upon recommendation of the Secretary of Justice.

The court in which the non-criminal cases not falling within the authority of the lupon under this Code are filed may, at any time before trial, *motu proprio* refer the case to the lupon concerned for amicable settlement.

SEC. 409. *Venue*. - (a) Disputes between persons actually residing in the same barangay shall be brought for amicable settlement before the lupon of said barangay.

(b) Those involving actual residents of different barangays within the same city or municipality shall be brought in the barangay where the respondent or any of the respondents actually resides, at the election of the complainant.

(c) All disputes involving real property or any interest therein shall be brought in the barangay where the real property or the larger portion thereof is situated.

(d) Those arising at the workplace where the contending parties are employed or at the institution where such parties are enrolled for study shall be brought in the barangay where such workplace or institution is located.

Objections to venue shall be raised in the mediation proceedings before the punong barangay; otherwise, the same shall be deemed waived. Any legal question which may confront the punong barangay in resolving objections to venue herein referred to may be submitted to the Secretary of Justice or his duly designated representative whose ruling thereon shall be binding.

They argued that under §408(f), in relation to §409(c), where the parties to a dispute involving real property or any interest therein are not actual residents of the same city or municipality or of adjoining barangays, prior resort to barangay conciliation is not required.

However, respondent denied the motion. In her order dated September 9, 1997, respondent stated:

The Court after taking into consideration the Motion for Reconsideration and the ground relied upon by the counsel finds that counsel for the plaintiffs failed to correlate Sections 408 and 409 of Republic Act No. 7160 and to consider Rule VIII, paragraph (a) of the Katarungang Pambarangay Rules, the rules and regulations [of] which were promulgated to implement Sections 399 to 422, Chapter 7, Title One Book III and Section 515, Book IV of R.A. No. 7160, otherwise known as the Katarungang Pambarangay Law, to wit:

"RULE VIII - PRE-CONDITION FOR FORMAL ADJUDICATION

Conciliation, pre-condition for filing of complaint in court or government office. novero

(a) No individual may go directly to court or to any government office for adjudication of his dispute with another individual upon any matter falling within the authority of the Punong Barangay or Pangkat ng Tagapagkasundo to settle under these Rules, unless, after personal confrontation of the parties before them earnest efforts to conciliate have failed to result in a settlement or such settlement has been effectively repudiated."

and also Rule VI, Section 3 paragraph (c) of the same Katarungang Pambarangay Rules which provides:

"Rule VI - Amicable Settlement of Disputes

Section 3. Venue. The place of settlement shall be subject to the following rules:

. . . .

(c) Dispute involving real property shall be brought for settlement in the Barangay where the real property or larger portion thereof is situated.

From the provisions of the above-cited Rules it was very clear that parties whose disputes involved real property should first bring the said dispute before the barangay where the property was located, and that [because of] failure to bring the dispute before the Barangay for conciliation no action may be filed in court for final adjudication of the said dispute.

That parties should first comply with the provisions of the Katarungang

Pambarangay Law before the Court can acquire jurisdiction over the complaint. That non-compliance of the plaintiff to the requirement of the Katarungang Pambarangay Law was admitted by her in paragraph 3 of the complaint. Her allegation of non-compliance with the mandatory requirement of Lupon Conciliation before the filing of the complaint, in a way divest[s] the Court of its jurisdiction over the case. In the 1997 Rules of Civil Procedure, Rule 16, Section 1, paragraph (j) provides:

"That a condition precedent for filing the claim has not been complied with"

WHEREFORE, in view of the foregoing, the Motion for Reconsideration is hereby denied.

Complainant alleges that in dismissing Civil Case No. 295, respondent judge committed "(a) Grave abuse of authority by knowingly rendering an unjust and unlawful order; (b) Ignorance of the law in its highest order, she being a judge; (c) Grave disobedience to the jurisprudence laid down by the Supreme Court of the Philippines on the matter of exemption of lupon conciliation of contending parties who are not residen[ts] of the same city or municipality." He states that respondent "practically threw several decisions of the Supreme Court on the matter out of the window and obviously followed hook, line and sinker the arguments of the [defendant] Daria Galleros."

In answer, respondent judge claims that she merely followed the law in dismissing the case. She prays that the complaint against her be dismissed and that complainant be ordered to stop harassing her just because he had not been able to obtain the relief he wanted in Civil Case No. 295.

In its memorandum dated February 29, 2000, the Office of the Court Administrator recommends the dismissal of this case on the ground that the "issue [raised] is purely judicial and is best resolved by a court of competent jurisdiction" and that, even if respondent had erred, she should not be held administratively liable since there is no allegation that she acted in bad faith or knowingly rendered an unjust judgment.

In *Tavora v. Veloso*,<sup>[1]</sup> this Court already ruled that where parties do not reside in the same city or municipality or in adjoining barangays, there is no requirement for them to submit their dispute involving real property to the Lupon Tagapamayapa. As explained in that case:

The sole issue raised is one of law: Under the given facts, is the respondent judge barred from taking cognizance of the ejectment case pursuant to Sec. 6 of PD 1508 establishing a system of amicably settling disputes at the barangay level? The section reads:

"SECTION. 6. Conciliation, precondition to filing of complaint. - No complaint, petition, action or proceeding involving any matter *within the authority of the Lupon* as provided in Section 2 hereof shall be filed or instituted in court or any other government office for adjudication unless there has been a confrontation of the parties before the Lupon Chairman or the Pangkat and no conciliation or settlement has been reached as