

## FIRST DIVISION

[ A.M. NO. RTJ-06-2005, July 14, 2006 ]

**JOSEFINA CRUZ-AREVALO, COMPLAINANT, VS. REGIONAL TRIAL COURT, BRANCH 217, QUEZON CITY, RESPONDENT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

This administrative Complaint<sup>[1]</sup> filed by Josefina Cruz-Arevalo charges Judge Lydia Querubin-Layosa<sup>[2]</sup> with manifest bias and partiality and ignorance of the law relative to Civil Case No. Q-03-50379, entitled *Josefina Cruz-Arevalo and Conrado R. Cruz v. Home Development Mutual Fund and Federico S. Quimbo*.

Complainant narrates that Conrado R. Cruz executed an authorization letter<sup>[3]</sup> and a special power of attorney (SPA)<sup>[4]</sup> in her favor to represent him in Civil Case No. Q-03-50379 while he undergoes medical treatment in the United States of America (USA). Notwithstanding the presentation of the authorization letter and SPA during the pre-trial, respondent judge declared Cruz non-suited due to his absence. She also refused to issue an order to that effect thus depriving Cruz the right to challenge her order by way of petition for certiorari. Complainant also assails the order of respondent judge to exclude several paragraphs in the Affidavit which was adopted as the direct testimony of her witness without giving her counsel a chance to comment on the objections raised by the defendants. Moreover, she refused to issue a written order excluding certain paragraphs thus depriving complainant the opportunity to file certiorari proceedings.

Complainant likewise accuses respondent judge of inaction, indifference or collusion by silence<sup>[5]</sup> with the defendants for not acting on her Motions for Writs of Subpoena *Duces Tecum* and *Ad Testificandum*<sup>[6]</sup> thus providing opportunity for defendant Quimbo to avoid compliance therewith. Complainant prays for the re-raffling of the case to ensure impartiality and proper dispensation of justice.<sup>[7]</sup>

On November 14, 2004, respondent judge made the following ruling in Civil Case No. Q-03-50379:

Considering that plaintiff Josefina Cruz-Arevalo had filed a Complaint against undersigned Presiding Judge with the Office of the Court Administrator and considering further that she had also filed with said Office a motion for re-raffle of this case, on grounds of partiality and bias on the part of said Judge, while such grounds for re-raffle are unfounded and while there is no legal basis for inhibition, if only to assuage her fears of not obtaining a fair and impartial trial, and having already entertained serious doubt on her objectivity in trying and eventually deciding the case, the undersigned Presiding Judge deems it wise to

voluntarily inhibit herself from trying the case.

Accordingly, undersigned Presiding Judge hereby inhibits herself from trying this case.

Let the entire record be forwarded to the Office of the Executive Judge through the Clerk of Court of this Court for re-raffle.<sup>[8]</sup>

In her Comment<sup>[9]</sup> dated January 12, 2005, respondent judge explains that the letter presented by complainant allegedly authorizing her to represent Cruz in the pre-trial of Civil Case No. Q-03-50379 is defective because it was not duly notarized and authenticated. She likewise found the SPA defective as it pertains to complainant's authority to receive Cruz's contribution to the PAG-IBIG Provident Fund and not to represent him in the pre-trial of the civil case. Thus, finding the absence of Cruz during the pre-trial inexcusable and without any proper representation in his behalf, respondent judge dismissed the complaint insofar as he is concerned.

As regards the exclusion of several paragraphs in the Affidavit constituting as the direct testimony of Atty. Cecilio Y. Arevalo, Jr., respondent judge points out that she gave the other party the chance to go over the affidavit and make objections thereto like any direct testimonial evidence. She claims that no written order is necessary as demanded by complainant's counsel because her rulings were made in open court during the course of trial and are already reflected in the transcript of the stenographic notes. With regard to complainant's Motions for Writs of Subpoena *Duces Tecum* and *Ad Testificandum*, respondent judge avers that they were not given due course because the legal fees for said motions were unpaid and the person alleged to have possession or control of the documents sought to be produced is not named or specified therein.<sup>[10]</sup>

In its Report<sup>[11]</sup> dated October 18, 2005, the Office of the Court Administrator (OCA) found complainant's accusations unmeritorious and recommended the dismissal of the administrative case for lack of merit.<sup>[12]</sup>

We agree with the findings and recommendation of the OCA.

The records clearly show that Conrado R. Cruz was absent during the pre-trial of Civil Case No. Q-03-50379, despite the specific mandate of the Rules of Court for parties and their counsel to personally appear therein.<sup>[13]</sup> While non-appearance of a party may be excused if a duly authorized representative shall appear in his behalf,<sup>[14]</sup> however Cruz failed to validly constitute complainant because his authorization letter and SPA were not respectively authenticated and specific as to its purpose. Without any authorized representative, the failure of Cruz to appear at the pre-trial made him non-suited. Respondent judge thus correctly dismissed the complaint in so far as he is concerned. <sup>[15]</sup>

As regards the exclusion of certain paragraphs in the affidavit of complainant's witness, the rule is that evidence formally offered by a party may be admitted or excluded by the court. If a party's offered documentary or object evidence is excluded, he may move or request that it be attached to form part of the record of