

## THIRD DIVISION

**[ A.M. No. RTJ-96-1355, September 04, 1997 ]**

**RENE UY GOLANGCO, COMPLAINANT VS. JUDGE CANDIDO P.VILLANUEVA, REGIONAL TRIAL COURT, BRANCH 144, MAKATI CITY, RESPONDENT.**

### DECISION

**DAVIDE, JR., J.:**

In a Complaint-Affidavit subscribed and sworn to on 7 December 1995 before an Ombudsman Graft Investigation Officer, complainant Rene Uy Golangco charges respondent Judge with violation of paragraphs (e) and (f) of Section 3 of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended.<sup>[1]</sup> A copy of the complaint was transmitted to the Office of the Court Administrator (OCA) by the Office of the Ombudsman on 7 February 1996.

On 8 January 1996, the complainant filed with the OCA a supporting affidavit of his counsel.

The undisputed facts are as follows:

Sometime in December 1992, the complainant's estranged wife, Mrs. Ma Lucia C. Golangco, filed a petition for annulment of marriage with a prayer for the custody pendente lite of her two minor children. The case was docketed as Civil Case No. 92-3647.

On 21 July 1994, respondent Judge issued an order awarding in favor of Mrs. Golangco the custody pendente lite of the two children, Justin Rene and Stephen Raphael, who were then nine and six years old, respectively. Complainant Rene Golangco was therein given "a right of visitation and reasonable access towards these two children during weekends" and "at least one week custody in a month."

On 26 August 1994, the respondent issued another order reiterating the 21 July 1994 Order.

The complainant challenged both orders before the Court of Appeals by way of a petition for certiorari, which was, however, denied. His petition with this Court questioning the denial was likewise dismissed for failure to show that grave abuse of discretion had been committed by the appellate court.

Mrs. Golangco, on other hand, filed with respondent Judge on 15 August 1995 a motion for the reconsideration of the 21 July 1994 Order with a prayer for a writ of preliminary injunction.

On 16 August 1995, respondent Judge issued a temporary restraining order (TRO)

enjoining the complainant from harassing, intimidating, and threatening his minor children, as well as the officials or the schools or institutions where the children were on may be enrolled and other persons who may be looking after the welfare of the said minors.

After the expiration of the TRO, or on 14 September 1995, the respondent, upon motion by Mrs. Golangco, issued another TRO containing the same restraints.

Earlier, or on 5 September 1995, the respondent issued an order designating Dr. Cecilia C. Villegas, a psychiatrist and Chief of the Medical and Dental Services of this Court, to conduct a psychological examination or evaluation of the two children with respect to the pending prayer for a writ of preliminary injunction.

In a letter dated 23 September 1995 and addressed to respondent Judge, Dr. Villegas recommended, among other things, that "the parents must be given equal time associate and enjoy their children before psychological evaluation is done."

The complainant then filed a motion for the immediate implementation of the said recommendation. This motion was, however, denied for lack of time in view of the impending expiration of the second TRO. The judge forthwith deemed the application for a writ of preliminary injunction submitted for resolution.

On 6 October 1995, the respondent issued a writ of preliminary injunction restraining the complainant, his counsel, representative, or agents from harassing, intimidating, and threatening the minor children, the officials of the International School and International Montessori School, and other persons looking after the welfare of the two children.

The complainant alleges that respondent Judge acted with evident bad faith, manifest bias and partiality, grave abuse of authority, gross inexcusable negligence, or ignorance of the law in

(1) refusing to implement his 21 July 1994 Order despite the absence of any restraining order or injunction from the appellate court;

(2) failing to act on his several motions to cite Mrs. Golangco in contempt of court for her refusal to respect his custodial and visitatorial rights over their children.;

(3) lifting the hold departure order sustained by this Court;

(4) issuing a second TRO after the first expired;

(5) decreeing the division between the spouses the excess proceeds of the sale of complainant's car notwithstanding the absence of a final order of annulment of marriage and liquidation of the conjugal partnership;

(6) ignoring his motion to implement Dr. Villegas' recommendation in her 23 September 1995 letter;

(7) issuing a writ of preliminary injunction even before the termination of the presentation of complainant's evidence; and

(8) failing to implement the 5 September 1995 Order, which allowed Dr. Villegas to conduct a psychological examination on the two minor children.

In his 2 April 1996 letter, the complaint also accuses the respondent of "witness tampering" by dictating the manner his counsel was to present his witnesses.

In refutation, respondent Judge submits that he cannot be faulted for failing to implement the 21 July 1994 and 26 August 1994 Orders and to cite Mrs. Golangco in contempt of court because the said orders were questioned by the complainant before the Court of Appeals and, later, before this Court. Besides, the complainant moved to respondent's inhibition from the case.

Anent the writ of preliminary injunction, the respondent claims that he issued the same based on the verified allegations of Mrs. Golangco, the testimonies of her 9-year old son and of expert witnesses, and the documentary evidence in support of the application for the said writ. The complainants failed to present any controverting evidence despite opportunities to do so. At any rate, the Court of Appeals dismissed complainant's petition assailing the writ.

Respondent Judge denies having neglected to send complainant's children to Dr. Villegas for evaluation. He submits that this issue has even become moot and academic, since Dr. Villegas and the Golangco spouses had already made arrangement for the interview of the children.

On 2 September 1996, we required the parties to manifest whether they are submitting the case for decision on the basis of the pleadings already filed. Only the respondent manifested in the affirmative.

Copy of the resolution of 2 September 1996 sent by registered mail was returned to sender for the reason that it was UNCLAIMED by the addressee. We deemed it served, and considered the complaint to likewise submit this case for decision on the basis of the pleadings already filed. In any event, the pleadings of the parties and annexes thereto provide more than enough basis for a resolution of this case on its merits.

In its evaluation, report, and recommendation, the OCA resolved the issue in this wise:

On the first issue. A pending petition for certiorari alone does not operate to suspend the implementation of the challenged orders in the absence of an injunctive writ or restraining order. Otherwise stated, "to restrain or suspend the enforcement of the orders it is necessary that an injunctive writ must be prayed for. An injunction restrains or prohibits; certiorari does neither, but rather annuls. (14 C.J.S. 125 as cited in Oscar B. Bernardo's *The Law of Certiorari, Prohibition, Mandamus, Restraining Order and Injunction*, p. 5)

On the second issue. Respondent should have resolved or acted one way or the other on the pending motions files before him consistent with the promptings of the Supreme Court for speedy and efficient disposition of the court's business.