

SECOND DIVISION

[A.M. No. P-15-3347 [Formerly OCA IPI No. 13-4067-P], July 29, 2015]

AMADEL C. ABOS, COMPLAINANT, VS. SALVADOR A. BORROMEO IV, CLERK III, REGIONAL TRIAL COURT, BR. 45, SAN JOSE, OCCIDENTAL MINDORO, RESPONDENT.

RESOLUTION

LEONEN, J.:

Conduct unbecoming a public officer and conduct prejudicial to the best interest of service, while similar in nature, are defined and penalized as two distinct offenses under law and Civil Service regulations.

This is an administrative complaint for grave misconduct and "conduct unbecoming a public employee" against Salvador A. Borromeo IV, Clerk III, Branch 45, Regional Trial Court of San Jose, Occidental Mindoro.

Amadel C. Abos (Abos), a resident of Barangay Rumbang, Rizal, Occidental Mindoro, filed a *Sinumpaang Salaysay ng Pagdedemanda* (Complaint-Affidavit)^[1] dated January 29, 2013 before the Office of the Court Administrator. The Complaint-Affidavit, written in the vernacular, alleged that Abos was the daughter of Letecia Cadut Abos, the shared tenant of an eight-hectare agricultural land in Barangay Rumbang, Rizal, Occidental Mindoro. The property was previously owned by Rafael Mondofiedo and was allegedly entrusted to Abos' grandfather, Vicente Cadut, Sr., and was under the tenancy of her mother, Letecia Cadut Abos, and sister, Jocelyn.^[2]

When the ownership of the property was transferred to Rafael Mondofiedo's stepdaughter, Elsa Aguirre, she allegedly refused to recognize Abos or the members of her family as tenants of the land.^[3]

Abos alleged that on January 19, 2013 at around 1:30 p.m., Salvador A. Borromeo IV (Borromeo), Clerk III, Branch 45, Regional Trial Court of San Jose, Occidental Mindoro, together with a member of the Philippine Army known only as "July," and one Elvie Magbanua, arrived in the property and uprooted 150 coconut seedlings.^[4] She also alleged that July threatened to kill her and her family if they did not leave the property.^[5]

In his Comment dated June 6, 2014, Borromeo alleged that his mother, Elsa Aguirre, was the absolute owner of the property and that he was only exercising his mother's legal right over it. He insisted that Rafael Mondofiedo only had paid laborers, not tenants, before he transferred ownership of the land to Elsa Aguirre.^[6]

Borromeo alleged that on June 6, 2012, Abos' sister, Jocelyn, and her husband,

Ryan Dazo, illegally entered the property and constructed a house. He alleged that Elsa Aguirre brought the matter to the *barangay* where the parties mutually agreed to settle the case. The Dazo spouses allegedly asked for additional time to vacate the premises. He alleged that the Dazo spouses reneged on their promise and refused to vacate the property.^[7]

Borrromeo alleged that when his family visited the farm on November 30, 2012, they saw the Dazo spouses illegally hauling two truckloads of coconuts from the property. As a consequence, he filed a criminal complaint for theft before the Office of the Prosecutor in San Jose, Occidental Mindoro.^[8]

Borrromeo also alleged that the Dazo spouses planted coconut trees in the middle of the private road to prevent vehicles from entering the property, with Borrromeo admitting that these were the coconut trees he uprooted. He argues that if he used force or spoke bad words, he only did so to assert his family's ownership over the property.^[9]

The Office of the Court Administrator submitted its Report^[10] dated May 4, 2015 recommending that the case be re-docketed as a regular administrative matter and that Borrromeo be found guilty only of conduct unbecoming a public official.

The Office of the Court Administrator found that Borrromeo should not have acted in a scandalous manner but instead should have sought judicial remedies to assert his right over the property. It also found that while Borrromeo admitted to uprooting the coconut seedlings, there was no evidence presented to prove that he threatened to kill Abos or her family.^[11]

According to the Office of the Court Administrator, where the misconduct committed was not in connection to the performance of duty, the proper offense is *conduct prejudicial to the best interest of service*, not grave misconduct. It further recommended that the proper penalty should only be one (1) month and one (1) day since Borrromeo has not been previously charged with an offense of this nature.^[12]

While the findings of fact by the Office of the Court Administrator are adopted, the recommended penalty must be modified.

In its Report, the Office of the Court Administrator refers interchangeably to conduct unbecoming a public officer and conduct prejudicial to the best interest of service. While these offenses are similar, law and jurisprudence, however, impose a different penalty for each.

"Public service is a public trust."^[13] In line with the constitutional mandate for accountability in public servants, Republic Act No. 6713, or the Code of Conduct and Ethical Standards for Public Officials and Employees, was enacted "to promote a high standard of ethics in public service."^[14] Section 4(A)^[15] of the law outlines the norm of conduct expected of public officials and employees, namely, commitment to public interest, professionalism, justness and sincerity, political neutrality, responsiveness to the public, nationalism and patriotism, commitment to democracy, and simple living.

Any violation of these norms of conduct holds the offender liable for conduct unbecoming a public officer and is punishable by the penalties provided for under Section 11 (a) of the law.^[16] Section 11 (a) states:

Section 11. Penalties. - (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished with a fine not exceeding the equivalent of six (6) months' salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. ...

Conduct prejudicial to the best interest of service, on the other hand, is defined by *Largo v. Court of Appeals*^[17] as any misconduct "which need not be related or connected to the public officers['] official functions [but tends to tarnish] the image and integrity of his/her public office."^[18]

The penalty for conduct prejudicial to the best interest of service is provided for under Rule 10, Section 46(B)(8) of the Revised Rules on Administrative Cases in the Civil Service. As a grave offense, it is punishable by a suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from service for the second offense.

While there is no specific list of acts that may constitute the offense, this court has previously characterized certain acts as conduct prejudicial to the best interest of service: seeking the assistance of an elite police force for a purely personal matter;^[19] changing the internet protocol (IP) address on a work computer to gain access to restricted websites;^[20] and fencing in a litigated property in order to assert ownership.^[21]

Here, Borrromeo admitted to uprooting Abos' coconut seedlings. He argues that even assuming that he did utter threats to Abos, he only did so in order to assert his family's rights over the disputed property.

Borrromeo carried with him the title and status of his office as he supported and defended one of the parties in a dispute that had not yet even been resolved in the proper manner. There was no advice given to avail themselves of the provisions of the Local Government Code on *Katarungang Pambarangay*. As a court employee, he should have been aware that there was a judicial remedy. Least of all, he should have accorded each of the parties a modicum of fairness. He works for an institution that is founded on due process, the opportunity to be heard in a civil and dispassionate manner. Even Abos, an ordinary coconut farmer, was aware that judicial and quasi-judicial remedies were available, which was why she filed a Petition for Injunction with a Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction^[22] before the Regional Trial Court and a Complaint for Execution of Leasehold Contract^[23] before the Office of the Provincial Adjudicator against Borrromeo and his mother.