

## SECOND DIVISION

**[ A.M. No. MTJ-13-1837 [formerly OCA IPI No. 12-2463-MTJ], September 24, 2014 ]**

**CONRADO ABE LOPEZ, REPRESENTED BY ATTY. ROMUALDO JUBAY, COMPLAINANT, VS. JUDGE ROGELIO S. LUCMAYON, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 1, MANDAUE CITY, CEBU, RESPONDENT.**

### DECISION

**BRION, J.:**

We resolve the administrative complaint<sup>[1]</sup> filed by Conrado Abe Lopez (*complainant*) charging Judge Rogelio S. Lucmayon (*respondent*), Municipal Trial Court in Cities, Branch 1, Mandaue City, Cebu, with Dishonesty, Corruption and Malpractice relative to a land dispute involving their families.

#### The Antecedent Facts

In a verified complaint-affidavit dated December 12, 2011, the complainant, through his counsel Arty. Romualdo M. Jubay, alleged that when he was eight years old, he inherited from his adoptive father Restituto Lopez one-half (1/2) of Lot No. 1718 with an area of 355 square meters located in Balamban, Cebu, evidenced by a document entitled "Katapusan Panugon" (*Testamente*). He claimed that while the document mentioned Lot No. 1718, he ended up receiving a portion of Lot No. 1696 with a total land area of 49,817 square meters, that became the object of an extrajudicial settlement involving him, his adoptive mother Honorata Lopez, and the relatives of the respondent in December 1978. Half of Lot No. 1696 was cultivated by his adoptive mother until the latter's death in 1982. He took over the cultivation of the land after he retired as a seafarer in 1988.

The complainant alleged that sometime in October 2004, he and the respondent met in a waiting shed located in front of the house of the latter's grandmother in Buanoy, Balamban, Cebu. At that meeting, the respondent allegedly deceived him into signing a Special Power of Attorney (SPA) to process the sale of Lot No. 1696 to the prospective buyer, Aboitiz Group of Company. Unknown to the complainant, the said SPA contained at the bottom portion, a so-called "Waiver of Rights" that the respondent had deceptively inserted in order to strip him of his ownership of Lot No. 1696. After signing the document (notarized by a certain Atty. Arturo C. Mata (*Atty. Mata*) without the complainant's presence), the respondent allegedly told the complainant that he no longer had any right over the property. In March 2005, the father of the respondent, Pedro Lucmayon (*Pedro*), ordered him to cease cultivating the land because of the Waiver of Rights in the SPA he signed.

The complainant also asserted that the respondent had caused Pedro and his siblings to execute a document entitled "Supplemental Extrajudicial Settlement of

the Estate of Moises Legaspino and Victoria Lopez" to the damage and prejudice of the complainant and his adoptive mother. He alleged that in the extrajudicial settlement, his name and the name of his adoptive mother were excluded. They claimed that as legal heirs of the late Restituto Lopez (*Restituto*) who, in turn, had inherited the property from his late mother Victoria Lopez (the co-owner of the property), their exclusion from the extrajudicial settlement was an act of dishonesty to which the respondent should be held administratively liable.

In his comment<sup>[2]</sup> dated March 8, 2012, the respondent vehemently denied that he convinced the complainant to sell his shares in the property; he claimed that it was the complainant who was interested in selling his shares after he got tired of cultivating the land. He also denied that he deceived the complainant into signing the Waiver of Rights. He contended that the filing of the administrative case against him was intended to embarrass and harass him.

The respondent further stated that the signing of the Waiver of Rights was done after he discovered that the complainant was not legally adopted. He added that since there had been no legal adoption, the complainant could not be considered as a legal heir and was not entitled to any portion of the land. He stated, too, that his participation in the sale transaction was limited to informing his parents and relatives that the complainant is not a legal heir of Resituto.

### **The Report and Recommendation of the OCA**

In its evaluation report<sup>[3]</sup> dated October 23, 2012, the Office of the Court Administrator (OCA) noted that the allegations in the administrative complaint are basically the same allegations the complainant raised in the criminal complaint for falsification of public documents he filed against the respondent, which complaint the Office of the City Prosecutor of Cebu City dismissed. The City Prosecutor found that the complainant's allegations lacked merit and evidentiary proof. It also found that the complainant failed to discharge the burden of proving the respondents' administrative liability and recommended the dismissal of the administrative complaint for lack of merit. The recommendation reads:

"RECOMMENDATION: It is therefore respectfully recommended for the consideration of the Honorable Court that the administrative complaint against Judge Rogelio S. Lucmayon, Branch 1, Municipal Trial Court in Cities, Mandaue City, Cebu, be DISMISSED for lack of merit."

On December 5, 2012, the Court issued a Resolution<sup>[4]</sup> adopting and approving the OCA's findings of fact, conclusions of law and recommendation, and dismissed the complaint against the respondent.

The complainant sought reconsideration<sup>[5]</sup> contending that the OCA's findings of fact were clearly erroneous. He pointed out the OCA failed to appreciate and consider the other circumstances that clearly showed the respondent's dishonesty, corruption and malpractice. He reiterated that the respondent made him sign three (3) SPAs and deceived him into signing the Waiver of Rights at the bottom portion of the third SPA, which SPA was allegedly notarized by Atty. Mata without his presence. He also stated that the respondent's allegation that he was not a legally adopted son of

Restituto is baseless; since as shown in Restituto's Testamento, he had been adopted and considered as Restituto's true child.

The Court referred back the complainant's Motion for Reconsideration to the OCA for evaluation, report and recommendation.

In its Memorandum<sup>[6]</sup> dated July 23, 2013, addressed to Associate Justice Antonio T. Carpio, the OCA recommended that the administrative case be re-docketed as a regular administrative matter and that the respondent be held administratively liable for acts of impropriety. The OCA held that while the respondent's act of asking the complainant to sign the SPAs may not constitute dishonesty, corruption or misconduct, his other actions (*specifically requiring the complainant to sign the SPAs and allowing Atty. Mata to notarize the Waiver of Rights without each other's presence*) as well as his appointment as the complainant's attorney-in-fact, violate Rule 5.06 of the Code of Judicial Conduct<sup>[7]</sup> and amount to impropriety.

Asked to comment, the respondent insisted that the complainant still failed to adduce substantial evidence establishing his administrative liability. He pointed out that contrary to the complainant's contention, Atty. Mata never admitted that he notarized the Waiver of Rights outside the complainant's presence. He also alleged that the mere fact that the complainant appointed him as attorney-in-fact does not *ipso facto* taint his actions with impropriety.

### **The Court's Ruling**

Based on the allegations of the complaint, the respondent's comment, and the findings of the OCA, we find that the respondent is liable for violation of Rule 5.06 of the Code of Judicial Conduct ("Code") and Impropriety.

### ***Respondent Violated Rule 5. 06 of the Code***

As a general rule, a judge is prohibited from serving as executor, administrator, trustee, guardian or other fiduciary. The intent of the rule is to limit a judge's involvement in the affairs and interests of private individuals to minimize the risk of conflict with his judicial duties and to allow him to devote his undivided attention to the performance of his official functions. When a member of the bench serves as administrator of the properties of private individuals, he runs the risk of losing his neutrality and impartiality, especially when the interests of his principal conflicts with those of the litigant who comes before his court.<sup>[8]</sup>

The only exception to this rule as set forth in Rule 5.06 is when the estate or trust belongs to, or the ward is a **member of his immediate family**, and only if his service as executor, administrator, trustee, guardian or fiduciary will not interfere with the proper performance of his judicial duties. The Code defines "immediate family" as being limited to the spouse and relatives within the second degree of consanguinity.<sup>[9]</sup>

In this case, since complainant clearly does not fall under respondent's "immediate family" as herein defined, the latter's appointment as the former's attorney-in-fact is not a valid exception to the rule.