EN BANC

[A.M. No. RTJ-10-2257, July 17, 2012]

CRISELDA C. GACAD, COMPLAINANT, VS. JUDGE HILARION P. CLAPIS, JR., REGIONAL TRIAL COURT, BRANCH 3, NABUNTURAN, COMPOSTELA VALLEY, RESPONDENT.

D E C I S I O N

PER CURIAM:

Criselda C. Gacad (Gacad) filed a Verified Complaint[1] dated 9 June 2010 against Judge Hilarion P. Clapis, Jr. (Judge Clapis), Presiding Judge of the Regional Trial Court (RTC), Branch 3, Nabunturan, Compostela Valley, for Grave Misconduct and Corrupt Practices, Crave Abuse of Discretion, Gross Ignorance of the Law, and violations of Canon 1 (Rule 1.01, 1.02), Canon 2 (Rule 2.01), and Canon 3 (Rule 3.05) of the Code of Judicial Conduct relative to Criminal Case No. 6898 entitled "*People of the Philippines v. Rodolfo Comania*."

According to Gacad, on 3 November 2009, she went, together with her father Jovenciano Cardenas and sister-in-law Agriculita Vda. De Cardenas, to the Office of the Provincial Prosecutor in Nabunturan, Compostela Valley, to file criminal charges against the suspect who gunned down her brother Gregorio Cardenas. They met provincial prosecutor Graciano Arafol, Jr. (Arafol), who advised them not to hire a private counsel.

The following day, Arafol informed Gacad that he filed a complaint for murder against the suspect but the Provincial Governor kept on pressuring him about her brother's case. Arafol suggested that they see Judge Clapis so he would deny the Motion for Reinvestigation to be filed by the accused Rodolfo Comania (accused). Arafol, further, told Gacad to prepare an amount of P50,000 for Judge Clapis.

On 23 November 2009, Arafol told Gacad that they would meet Judge Clapis at the Golden Palace Hotel in Tagum City. Thus, Gacad, together with her husband Rene Gacad and their family driver Jojo Baylosis (Baylosis), proceeded to the Golden Palace Hotel. Inside the hotel, Gacad joined Arafol and his wife at their table. After a while, Judge Clapis joined them. Arafol told Judge Clapis, "*Judge sya yong sinasabi kong kapitbahay ko may problema*." Judge Clapis replied, "*So, what do you want me to do*?" Afarol answered, "*Kailangang madeny ang reinvestigation ni Atty. Gonzaga and we proceed to trial kasi palaging tumatawag si Governor.*" Arafol paused, and continued, "*Wag kang mag-alala judge, mayron syang inihanda para sa iyo*." Gacad felt terrified because she had not yet agreed to Arafol's demands. Hence, when Arafol asked her, "*Day, kanus a nimo mahatag ang kwarta?*" (When can you give the money?), Gacad could only mumble, "*Paningkamutan na ko makakita ko ug kwarta... basin makakita ko sir.*" (I will try to look for money, maybe I can find, sir.) Judge Clapis excitedly nodded and said, "*Sige, kay ako na bahala, gamuson nato ni sila.*" (Okay, leave it all to me, we shall crush them.)

The following day, Arafol instructed his nephew Baldomero Arafol (Baldomero) to go to Gacad's house to accompany Baylosis. In Gacad's house, Gacad gave P50,000 to Baylosis in the presence of Baldomero. Baylosis then drove with Baldomero to Jollibee in Tagum City. Upon their arrival, Baldomero alighted and Arafol got into the passenger seat. Arafol directed Baylosis to drive to Mikos Coffee Bar. Along the way, Arafol took the money from Baylosis. At Mikos Coffee Bar, Arafol alighted, telling Baylosis to wait for him. Then, Arafol went inside Mikos Coffee Bar to join Judge Clapis.

In his Sworn Affidavit dated 8 April 2010, Baylosis stated that he went out of the vehicle and saw, through the full window glass of the Mikos Coffee Bar, Arafol sitting at a table together with Judge Clapis. After Arafol left Mikos Coffee Bar, he told Baylosis to bring him back to Jollibee in Tagum City.

On the second week of January 2010, Arafol showed to Gacad a copy of Judge Clapis' Order dated 4 January 2010 denying the Motion for Reinvestigation filed by the accused. Subsequently, Arafol told Gacad that Judge Clapis was borrowing P50,000 from her for his mother's hospitalization. Arafol handed to Gacad a postdated BPI check allegedly issued by Judge Clapis as assurance of payment. However, Gacad failed to produce the P50,000.

Gacad alleged that, from then on, Arafol and Judge Clapis began to "play different hideous schemes" to prejudice their case.[2] Judge Clapis set hearings on 4 February 2010, 8 February 2010, and 1 March 2010. However, the Notices for Hearings were mailed only on 1 March 2010 and were received by Gacad only on 3 March 2010.

Thereafter, Judge Clapis set a hearing for a petition for bail on 29 March 2010, which Gacad came to know only inadvertently since she received no notice for the hearing. During the 29 March 2010 hearing, Public Prosecutor Alona Labtic moved that the petition for bail be put in writing. However, the counsel for the accused manifested that he was not prepared for a written petition because it was only right before the hearing that the accused informed him of Arafol's agreement to bail. Thus, Judge Clapis calendared the case for speedy trial. He set a continuous hearing for the petition for bail on 12 April 2010, 13 April 2010, and 14 April 2010.

On 8 April 2010, the accused filed a Petition For Bail while Gacad filed a Motion For Inhibition of Judge Clapis. On 18 May 2010, Judge Clapis granted the accused's Petition For Bail. On 24 May 2010, Judge Clapis issued a Notice of Preliminary Conference set on 2 December 2010. On 1 June 2010, Judge Clapis inhibited himself.

To bolster her case of corruption against Judge Clapis, Gacad recounted her previous encounter with Judge Clapis and Arafol in Criminal Case No. 6251 against her brother. According to Gacad, Arafol suggested that they give Judge Clapis the P80,000 cash bond posted in the case so that her brother's case could be dismissed. After conceding to Arafol's proposal, Judge Clapis indeed dismissed the case despite the strong evidence against her brother.

In an Indorsement letter dated 21 June 2010, the Office of the Court Administrator (OCA) required Judge Clapis to comment. In his Comment[3] dated 26 July 2010,

Judge Clapis narrated the events regarding Criminal Case No. 6898, beginning with the arraignment set on 17 December 2009 up to his inhibition on 1 June 2010. Judge Clapis did not attach any documents to support his narration. Judge Clapis claimed that notices were made verbally because of time constraints. Nevertheless, he stressed that both sides were given the opportunity to be heard since in almost all proceedings, Gacad was in court and the orders were done in open court. He admitted that his personnel inadvertently scheduled the preliminary conference of the case to 2 December 2010. Finally, he denied owning an account in BPI.

In its Resolution[4] dated 15 December 2010, this Court's Second Division noted the recommendation of the OCA dated 3 November 2010 and resolved to: (1) re-docket the instant administrative complaint OCA-IPI No. 10-3440-RTJ as regular administrative matter A.M. No. RTJ-10-2257; and (2) refer the matter to the Executive Justice of the Court of Appeals, Cagayan de Oro City, for raffle among its Justices, and direct the Justice to whom the case is assigned to conduct an investigation on the matter and to submit a report and recommendation within 60 days from receipt of the records of the case.

Pursuant to the Resolution of 15 December 2010, the records of the case were forwarded to Justice Romulo V. Borja, the Executive Justice of the Court of Appeals, Mindanao Station, and then to the Raffle Committee. On 10 May 2011, the case was raffled to Justice Zenaida T. Galapate-Laguilles (Investigating Justice) for investigation. Thereafter, the Investigating Justice ordered the parties to submit their respective evidence, and set the case for hearing on 14 June 2011, 21 June 2011, and 28 June 2011. The 28 June 2011 hearing was subsequently reset to 28 July 2011.

In its Resolution dated 6 July 2011, this Court's Second Division granted the Investigating Justice an extension of 60 days or until 9 September 2011 to terminate her investigation and submit her recommendation.

In her undated Report and Recommendation, the Investigating Justice ruled that Judge Clapis committed grave misconduct for acting contrary to the prescribed standard of conduct for judges. Although the Investigating Justice was not convinced that Judge Clapis received P50,000, and then tried to borrow another P50,000, from Gacad, she found Gacad's narration of her meeting with Judge Clapis in Golden Palace Hotel as credible. The Investigating Justice stated:

> x x x In a provincial setting such as the place where the parties come from, it is not difficult to imagine the considerable power that persons of the respondent's calibre could wield in the mind of a litigant such as the complainant herein. The substance and tenor of the complainant's testimony and element of possible motivation on the part of the respondent given his unrefuted closeness with Prosecutor Arafol convince this Justice that the complainant is telling the truth.
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> x x x x
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> x x x Respondent judge merely offered a flat denial when he could have presented Prosecutor Arafol to buttress his disavowal of any imputed misconduct on his part. x x x Respondent's reaction, however, is

> regrettably lackadaisical, if not abnormal, for one whose integrity was shred to pieces by no less than the Trial Prosecutor who is his partner, in an almost daily basis, in the task of dispensing justice. There is simply no showing indeed that respondent herein took umbrage at Prosecutor Arafol's alleged brazenness and daring to sully his name.[5]

Furthermore, the Investigating Justice found Judge Clapis liable for gross ignorance of the law. Judge Clapis was partial in granting bail to the accused and in failing to set the case for hearing within a reasonable time. Accordingly, the Investigating Justice recommended the penalties of: (1) suspension for one year without salary and other benefits for gross misconduct; (2) a fine of P20,000.00 for gross ignorance of the law; and (3) reprimand for neglect of duty.

In a Memorandum dated 11 January 2012, the OCA agreed with the findings of the Investigating Justice but disagreed with the recommended penalties. The OCA found that Judge Clapis violated Canon 1 (Rule 1.01 and Rule 1.02) and Canon 2 (Rule 2.01) of the Code of Judicial Conduct. The OCA also found Judge Clapis liable for gross ignorance of the law for failing to observe the rules in hearing the petition for bail and to accord the prosecution due process. Accordingly, the OCA recommended the penalties of: (1) suspension for six months for gross misconduct; and (2) a fine of P40,000 for gross ignorance of the law.

We have ruled that in administrative proceedings, the complainant has the burden to prove his accusations against respondent with substantial evidence or such amount of evidence which a reasonable mind might accept as adequate to support a conclusion.[6] This Court has consistently ruled that charges based on mere suspicion and speculation cannot be given credence.[7]

In the present case, there is indeed no substantial evidence that Judge Clapis received the P50,000 given by Gacad to Arafol, and that Judge Clapis tried to borrow another P50,000 from Gacad secured by a check allegedly signed by Judge Clapis himself. The testimony of Gacad, stating that Judge Clapis received P50,000 and tried to borrow another P50,000 from her, both through Arafol, cannot be given due weight for being hearsay evidence. On the other hand, although Baylosis testified based on his personal knowledge, he did not categorically state that he saw Arafol give the money to Judge Clapis. In addition, the check allegedly issued by Judge Clapis was in the account name of Arafol as attested by the BPI Business Manager's Certification. Hence, Gacad fell short of the required degree of proof needed in an administrative charge of corruption.

We, however, find Judge Clapis liable for gross misconduct. In *Kaw v. Osorio*,[8] the Court held that while the respondent judge, in that case, may not be held liable for extortion and corruption as it was not substantially proven, he should be made accountable for gross misconduct.

In the present case, the Investigating Justice found Gacad's narration, that she met and talked with Judge Clapis in the Golden Palace Hotel, as credible. Gacad categorically and unwaveringly narrated her conversation with Judge Clapis and Arafol. On the other hand, Judge Clapis merely denied Gacad's allegation during the hearing conducted by the Investigating Justice, but not in his Comment, and without

presenting any evidence to support his denial. It is a settled rule that the findings of investigating magistrates are generally given great weight by the Court by reason of their unmatched opportunity to see the deportment of the witnesses as they testified.[9] The rule which concedes due respect, and even finality, to the assessment of credibility of witnesses by trial judges in civil and criminal cases applies a fortiori to administrative cases.[10]

Thus, the acts of Judge Clapis in meeting Gacad, a litigant in a case pending before his sala, and telling her, "*Sige, kay ako na bahala gamuson nato ni sila*" (Okay, leave it all to me, we shall crush them.), both favoring Gacad, constitute gross misconduct.

In *Sevilla v. Lindo,*[11] where the respondent judge tolerated the unreasonable postponements made in a case, the Court held that such conduct proceeded from bias towards the accused, rendering such acts and omissions as gross misconduct.

Misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior in connection with one's performance of official functions and duties.[12] For grave or gross misconduct to exist, the judicial act complained of should be corrupt or inspired by the intention to violate the law, or a persistent disregard of well-known rules.[13] The misconduct must imply wrongful intention and not a mere error of judgment.[14]

Judge Clapis' wrongful intention and lack of judicial reasoning are made overt by the circumstances on record. *First*, the Notices of Hearings were mailed to Gacad only after the hearing. *Second*, Judge Clapis started conducting the bail hearings without an application for bail and granted bail without affording the prosecution the opportunity to prove that the guilt of the accused is strong. *Third*, Judge Clapis set a preliminary conference seven months from the date it was set, patently contrary to his declaration of speedy trial for the case. Judge Clapis cannot escape liability by shifting the blame to his court personnel. He ought to know that judges are ultimately responsible for order and efficiency in their courts, and the subordinates are not the guardians of the judge's responsibility.[15]

The arbitrary actions of respondent judge, taken together, give doubt as to his impartiality, integrity and propriety. His acts amount to gross misconduct constituting violations of the New Code of Judicial Conduct, particularly:

> CANON 2. INTEGRITY IS ESSENTIAL NOT ONLY TO THE PROPER DISCHARGE OF THE JUDICIAL OFFICE BUT ALSO TO THE PERSONAL DEMEANOR OF JUDGES.
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> Section 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.
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> Section 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.