

SECOND DIVISION

[A.M. No. P-11-2919 (Formerly OCA I.P.I. No. 08-2699-P), May 31, 2011]

JUDGE ROWENA NIEVES A. TAN, COMPLAINANT, VS. ERNESTO C. QUITORIO, LEGAL RESEARCHER, REGIONAL TRIAL COURT, BRANCH 2, BORONGAN, EEASTERN SAMAR, RESPONDENT.

DECISION

MENDOZA, J.:

This is a complaint for Grave Misconduct filed by Judge Rowena Nieves A. Tan (*Judge Tan*) against respondent Ernesto Qutorio (*Qutorio*), then the Legal Researcher of Branch 2, Regional Trial Court, Borongan, Eastern Samar (*RTC Branch 2*), for drafting a resolution of a motion to dismiss in a case which was not assigned to him and for informing the favored movant of the submission of the draft to her, with instructions to follow it up with her.

Records show that on January 11, 2008, Judge Tan filed an unsworn letter-complaint^[1] requesting for an investigation on Qutorio's alleged misconduct. In the said letter, Judge Tan averred that: she was the Acting Presiding Judge of RTC Branch 2 from March to October 2007; at that time, there was a pending motion to dismiss filed by Angeles Gomez (*Gomez*), respondent in Civil Case No. 4052, which was an original case for recovery of ownership and annulment of title; on November 21, 2007, upon her return to her original court station in RTC, Branch 42, Balangiga, Eastern Samar, she received a text message from Corazon Dadulla (*Dadulla*), Gomez's errand girl, which read "Good am! Maam c cora ito. Pwede kmada ha balangiga importante la kan mana angie papakiana. Tanx a Int." ("Good am! Maam this is Cora. May I go to Balangiga? Mana Angie has something important to ask you. Thanks a lot"); she knew Dadulla to have a pending case in RTC Branch 2 for Large Scale Illegal Recruitment but she did not know where and how Dadulla got her mobile phone number; sensing that Dadulla wanted to see her about Gomez's case, she informed her that she had left RTC Branch 2 and had nothing more to do with the cases there; despite that, Dadulla, as ordered by Gomez, still came to see her on November 27, 2007, regarding the draft resolution of Qutorio granting Gomez's motion to dismiss; Civil Case No. 4052 was never assigned to Qutorio, to whom she only assigned appealed cases; and she had not even read the said draft which she left in RTC Branch 2.

Judge Tan added that she had been previously warned about Qutorio's reputation in RTC Branch 2, so she made it a policy to make the Clerk of Court, Atty. Crisolito Tavera (*Atty. Tavera*), privy to the cases assigned to Qutorio; the said motion to dismiss had yet to be scheduled for hearing at the time Qutorio drafted the resolution; and on December 3, 2007, she confronted Qutorio in the presence of Executive Judge Elvie P. Lim (*Executive Judge*) and the RTC Branch 2 staff, and Qutorio insisted that she assigned the case to him for resolution, and he admitted

drafting the resolution and informing Gomez that he already submitted it to her.

In its January 18, 2008 Indorsement, the Office of the Court Administrator (OCA) referred the complaint to Quitariorio for his comment within ten (10) days from receipt. Quitariorio, in his Comment^[2] dated March 19, 2008 denied the charges of Judge Tan and claimed that he had been a public servant for over 25 years. He insisted that Judge Tan, knowingly or unknowingly, did assign the case to him as it was one of the records he received to be worked on, and no one called his attention or bothered to take the expediente and case records from him. He drafted the resolution in the honest belief that it had been assigned to him. In August 2007, when he prepared the draft resolution and personally handed it to Judge Tan, she even thanked him for his work. He wondered why Judge Tan only confronted him in December 2007 when he had submitted the draft resolution almost four months earlier.

Quitorio further denied having informed Gomez about the draft resolution. He, however, admitted that he conveyed to Dadulla that he had already submitted the draft resolution to Judge Tan and "it was up for *[sic]* them to do whatever they desired under the circumstances."^[3]

He also advised Dadulla, who was a familiar figure in court being the wife of one of the deputy sheriffs, "to just follow it up with the judge in her sala in Balangiga, Eastern Samar."^[4]

He also refuted Judge Tan's assertion that only appealed cases were assigned to him. He claimed that he was also assigned special proceedings cases and an original case, namely, Criminal Case No. 11151, entitled "*People v. Tito Ejada*," for murder. With respect to the criminal case, Judge Tan even instructed him to draft a decision in favor of the prosecution after her father, Atty. Rufilo Tan, as the private prosecutor in the said case, withdrew his appearance. He declined because he was of the opinion that the records showed no direct evidence of guilt, and he refused to be a part of any corrupt or anomalous activity.

Quitorio also contended that contrary to due process and the confidentiality required of a proper investigation, Judge Tan berated, verbally abused, insulted, and grievously humiliated him in the presence of his officemates and the Executive Judge, and was not afforded the opportunity to explain himself. He only received a copy of the letter- complaint three months later when he was already out of the service, after having applied for his optional retirement in October 2007, which took effect on December 31, 2007.

In her reply^[5] to Quitorio's comment, Judge Tan averred that it was not only full of lies but it was also libelous. She countered that the real reason why Quitorio had not been reporting for work was not his optional retirement but his suspension from office for three months without pay and with stern warning after having been found guilty of simple misconduct in an *en banc* decision of this Court in A.M. No. 06-6-340-RTC.^[6] In another administrative case, namely, A.M. No. 06-4-220-RTC,^[7] Quitorio was found guilty of simple neglect of duty. He was fined P3,000.00 and warned that a repetition of the same offense would be dealt with more severely.

Judge Tan also contended that when Quitorio admittedly "conveyed" to Dadulla that

he "already had handed a draft Resolution in said case to Judge Tan and that it was up for *[sic]* them to do whatever they desired under the circumstances," he violated Section 1, Canon II of the New Code of Judicial Conduct for Court Personnel regarding confidentiality.^[8]

Judge Tan, however, denied any wrongdoing concerning Criminal Case No. 11151. She claimed that while sitting as the Acting Presiding Judge of RTC Branch 2, she deliberately did not decide on the case because her father was the former private prosecutor therein. She only granted her father's Motion to Withdraw with Prayer for Relief, and ordered the case submitted for decision after the defense rested its case. She believed that there was nothing irregular in granting her father's motion.

With regard to this, Judge Tan later manifested that contrary to Qutorio's allegation that the criminal case was dismissible for lack of evidence, the incumbent Presiding Judge of RTC Branch 2, Judge Leandro Catalo, found otherwise and convicted the accused of the crime charged. As attested to by Atty. Tavera, the transcripts of stenographic notes for said case were not even complete at the time her designation as Acting Presiding Judge ended. She, thus, could not have yet assigned the case to Qutorio for research and drafting at that time.^[9]

Judge Tan stated that it was not her practice to confront court employees in front of other people, but in Qutorio's case she did so to ensure that their conversation would be witnessed by others because of his propensity for lying and twisting the truth.

In its Report^[10] dated May 21, 2008, the Office of the Court Administrator (OCA), confirmed that Qutorio was indeed fined and suspended in two separate administrative cases and verified that he had indeed applied for optional retirement on August 11, 2007 effective December 31, 2007, which application, however, was still under evaluation and processing. Then, OCA made the following recommendations:

- (1) The case be referred to the Executive Judge of RTC, Borongan, Eastern Samar, for Investigation, Report and Recommendation within sixty (60) days from notice and
- (2) The respondent be made to explain why he should not be further charged with dishonesty for the false statement in his Comment that he is no longer in the service.

In its July 7, 2008 Resolution,^[11] the Court adopted the OCA recommendations.

In the hearing before the Executive Judge on November 3, 2008, the parties agreed that instead of resetting the hearing, Qutorio would just answer the affidavit-complaint^[12] filed by Judge Tan within ten days. The parties were likewise enjoined to submit their respective memoranda/position papers, after which, the case would be deemed submitted for resolution.

In his Explanation^[13] dated November 12, 2008, Qutorio explained that there was

no malice, falsehood or dishonesty on his part in stating that he was already out of the service. He honestly considered himself out of the service as he was no longer reporting to work pending the effectivity of his optional retirement.

On November 13, 2008, Atty. Wilfredo M. Bolito (*Atty. Bolito*) entered his appearance as counsel for Qutorio, and moved for the conduct of a formal investigation, which was later denied by the Executive Judge in the Order^[14] dated January 7, 2009.

In her position paper,^[15] Judge Tan reiterated her contentions and arguments in her complaint.

The Memorandum^[16] of Qutorio, on the other hand, reiterated the defenses stated in his Comment, along with additional matters. He insisted that a trial type hearing may not be dispensed with in administrative proceedings. He added that he was not instructed to consult and inform the Clerk of Court regarding the assignment of his cases. Atty. Tavera's affidavits could not be considered best evidence within administrative proceedings, considering that the affiant was available to testify. Furthermore, the affidavits were barren of details as to which specific cases were assigned to him, and did not even state that Civil Case No. 4052 was not assigned to him. He blamed Atty. Tavera for failing in his duty to control and supervise the safekeeping of court records in accordance with Section 7, Rule 136 of the Rules of Court and for failing to account how the records of the case came into his possession.

Qutorio further made the following contentions: that the claim that Civil Case No. 4052 was unripe for resolution was misleading because the motion had already been submitted for resolution by Gomez's counsel after the plaintiff filed her comment; that the statements of Dadulla could not prejudice him because he was not a party to the conversation or privy to the offer of compromise between the parties, in accordance with the rule on *res inter alios acta*; and that Judge Tan should be considered estopped from questioning his preparation of the draft resolution when she did not question him about any irregularity right after she had received it from him.

He also surmised that Judge Tan filed a case against him out of resentment, for his refusal to draft a decision in favor of the prosecution in Criminal Case No. 11152. In support of his good faith, he pointed out that the draft resolution of the motion to dismiss in Civil Case No. 4052 was adopted by Judge Leandro C. Catalo, the current Presiding Judge of RTC Branch 2.

As regards the charge of Grave Misconduct, Qutorio contended that the elements of corruption, clear intent to violate the law or flagrant disregard of established rule were absent as he acted upon the order of Judge Tan in good faith in accordance with the office's long-practiced procedure. He argued that he never informed Dadulla about the contents of the draft resolution and, therefore, did not divulge any confidential information.

He also insisted that he was innocent of the charges for which he was found guilty by this Court in the two separate administrative cases.