

## EN BANC

**[ A.M. No. P-11-2927 [Formerly A.M. OCA IPI No. 10-3532-P], December 13, 2011 ]**

**LEAVE DIVISION, OFFICE OF ADMINISTRATIVE SERVICES-  
OFFICE OF THE COURT ADMINISTRATOR (OCA), COMPLAINANT,  
VS. WILMA SALVACION P. HEUSDENS, CLERK IV MUNICIPAL  
TRIAL COURT IN CITIES, TAGUM CITY, RESPONDENT.**

## D E C I S I O N

**MENDOZA, J.:**

This case stemmed from the leave application for foreign travel<sup>[1]</sup> sent through mail by Wilma Salvacion P. Heusdens (*respondent*), Staff Clerk IV of the Municipal Trial Court in Cities, Tagum City, Davao del Norte.

Records disclose that on July 10, 2009, the Employees Leave Division, Office of Administrative Services, Office of the Court Administrator (OCA), received respondent's leave application for foreign travel from September 11, 2009 to October 11, 2009. Respondent left for abroad without waiting for the result of her application. It turned out that no travel authority was issued in her favor because she was not cleared of all her accountabilities as evidenced by the Supreme Court Certificate of Clearance. Respondent reported back to work on October 19, 2009.<sup>[2]</sup>

The OCA, in its Memorandum<sup>[3]</sup> dated November 26, 2009, recommended the disapproval of respondent's leave application. It further advised that respondent be directed to make a written explanation of her failure to secure authority to travel abroad in violation of OCA Circular No. 49-2003. On December 7, 2009, then Chief Justice Reynato S. Puno approved the OCA recommendation.

Accordingly, in a letter<sup>[4]</sup> dated January 6, 2010, OCA Deputy Court Administrator Nimfa C. Vilches informed respondent that her leave application was disapproved and her travel was considered unauthorized. Respondent was likewise directed to explain within fifteen (15) days from notice her failure to comply with the OCA circular.

In her Comment<sup>[5]</sup> dated February 2, 2010, respondent admitted having travelled overseas without the required travel authority. She explained that it was not her intention to violate the rules as she, in fact, mailed her leave application which was approved by her superior, Judge Arlene Lirag-Palabrica, as early as June 26, 2009. She honestly believed that her leave application would be eventually approved by the Court.

The OCA, in its Report<sup>[6]</sup> dated March 8, 2011, found respondent to have violated OCA Circular No. 49-2003 for failing to secure the approval of her application for

travel authority.

Hence, the OCA recommended that the administrative complaint be re-docketed as a regular administrative matter and that respondent be deemed guilty for violation of OCA Circular No. 49-2003 and be reprimanded with a warning that a repetition of the same or similar offense in the future would be dealt with more severely.

OCA Circular No. 49-2003 (B) specifically requires that:

B. Vacation Leave to be Spent Abroad.

Pursuant to the resolution in A.M. No. 99-12-08-SC dated 6 November 2000,<sup>[7]</sup> all foreign travels of judges and court personnel, regardless of the number of days, must be with prior permission from the Supreme Court through the Chief Justice and the Chairmen of the Divisions.

1. Judges and court personnel who wish to travel abroad must secure a travel authority from the Office of the Court Administrator. The judge or court personnel must submit the following:

(a) For Judges

x x x

(b) For Court Personnel:

- application or letter-request addressed to the Court Administrator stating the purpose of the travel abroad;
- application for leave covering the period of the travel abroad, favorably recommended by the Presiding Judge or Executive Judge;
- clearance as to money and property accountability;
- clearance as to pending criminal and administrative case filed against him/her, if any;
- for court stenographer, clearance as to pending stenographic notes for transcription from his/her court and from the Court of Appeals; and
- Supreme Court clearance.

2. Complete requirements should be submitted to and received by the Office of the Court Administrator at least two weeks before the intended period. No action shall be taken on requests for travel authority with incomplete requirements. Likewise, applications for travel abroad received less than two weeks of the intended travel shall not be favorably acted upon. [Underscoring supplied]

Paragraph 4 of the said circular also provides that "judges and personnel who shall

leave the country without travel authority issued by the Office of the Court Administrator *shall be subject to disciplinary action.*" In addition, Section 67 of the Civil Service Omnibus Rules on Leave<sup>[8]</sup> expressly provides that "any violation of the leave laws, rules or regulations, or any misrepresentation or deception in connection with an application for leave, shall be a *ground for disciplinary action.*" In fact, every government employee who files an application for leave of absence for at least thirty (30) calendar days is instructed to submit a clearance as to money and property accountabilities.<sup>[9]</sup>

In this case, respondent knew that she had to secure the appropriate clearance as to money and property accountability to support her application for travel authority. She cannot feign ignorance of this requirement because she had her application for clearance circulated through the various divisions. She, however, failed to secure clearance from the Supreme Court Savings and Loan Association (SCSLA) where she had an outstanding loan.

There is no dispute, therefore, that although respondent submitted her leave application for foreign travel, she failed to comply with the clearance and accountability requirements. As the OCA Circular specifically cautions that "no action shall be taken on requests for travel authority with incomplete requirements," it was expected that her leave application would, as a consequence, be disapproved by the OCA.

Considering that respondent was aware that she was not able to complete the requirements, her explanation that she honestly believed that her application would be approved is unacceptable. Thus, her leaving the country, without first awaiting the approval or non-approval of her application to travel abroad from the OCA, was violative of the rules.

#### *On the Constitutional Right to Travel*

It has been argued that OCA Circular No. 49-2003 (B) on vacation leave to be spent abroad unduly restricts a citizen's right to travel guaranteed by Section 6, Article III of the 1987 Constitution.<sup>[10]</sup> Section 6 reads:

Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the **right to travel** be impaired except in the interest of **national security, public safety, or public health, as may be provided by law.** [Emphases supplied]

Let there be no doubt that the Court recognizes a citizen's constitutional right to travel. It is, however, **not the issue in this case.** The only issue in this case is the non-compliance with the Court's rules and regulations. It should be noted that respondent, in her Comment, *did not raise any constitutional concerns.* In fact, she was apologetic and openly admitted that she went abroad without the required travel authority. Hence, this is not the proper vehicle to thresh out issues on one's constitutional right to travel.

Nonetheless, granting that it is an issue, the exercise of one's right to travel or the

freedom to move from one place to another,<sup>[11]</sup> as assured by the Constitution, is **not absolute**. There are constitutional, statutory and inherent limitations regulating the right to travel. Section 6 itself provides that “neither shall the right to travel be impaired except in the interest of national security, public safety or public health, as may be provided by law.” Some of these statutory limitations are the following:

1] *The Human Security Act of 2010 or Republic Act (R.A.) No. 9372*. The law restricts the right to travel of an individual charged with the crime of terrorism even though such person is out on bail.

2] *The Philippine Passport Act of 1996 or R.A. No. 8239*. Pursuant to said law, the Secretary of Foreign Affairs or his authorized consular officer may refuse the issuance of, restrict the use of, or withdraw, a passport of a Filipino citizen.

3] *The “Anti- Trafficking in Persons Act of 2003” or R.A. No. 9208*. Pursuant to the provisions thereof, the Bureau of Immigration, in order to manage migration and curb trafficking in persons, issued Memorandum Order Radjr No. 2011-011,<sup>[12]</sup> allowing its Travel Control and Enforcement Unit to “offload passengers with fraudulent travel documents, doubtful purpose of travel, including possible victims of human trafficking” from our ports.

4] *The Migrant Workers and Overseas Filipinos Act of 1995 or R. A. No. 8042, as amended by R.A. No. 10022*. In enforcement of said law, the Philippine Overseas Employment Administration (POEA) may refuse to issue deployment permit to a specific country that effectively prevents our migrant workers to enter such country.

5] *The Act on Violence against Women and Children or R.A. No. 9262*. The law restricts movement of an individual against whom the protection order is intended.

6] *Inter-Country Adoption Act of 1995 or R.A. No. 8043*. Pursuant thereto, the Inter-Country Adoption Board may issue rules restrictive of an adoptee’s right to travel “to protect the Filipino child from abuse, exploitation, trafficking and/or sale or any other practice in connection with adoption which is harmful, detrimental, or prejudicial to the child.”

Inherent limitations on the right to travel are those that naturally emanate from the source. These are very basic and are built-in with the power. An example of such inherent limitation is the power of the trial courts to prohibit persons charged with a crime to leave the country.<sup>[13]</sup> In such a case, permission of the court is necessary. Another is the inherent power of the legislative department to conduct a congressional inquiry in aid of legislation. In the exercise of legislative inquiry, Congress has the power to issue a *subpoena* and *subpoena duces tecum* to a witness in any part of the country, signed by the chairperson or acting chairperson and the Speaker or acting Speaker of the House,<sup>[14]</sup> or in the case of the Senate, signed by its Chairman or in his absence by the Acting Chairman, and approved by

the Senate President.<sup>[15]</sup>

*Supreme Court has administrative supervision  
over all courts and the personnel thereof*

With respect to the power of the Court, Section 5 (6), Article VIII of the 1987 Constitution provides that the “**Supreme Court shall have administrative supervision over all courts and the personnel thereof.**” This provision empowers the Court to oversee all matters relating to the effective supervision and management of all courts and personnel under it. Recognizing this mandate, Memorandum Circular No. 26 of the Office of the President, dated July 31, 1986,<sup>[16]</sup> considers the Supreme Court exempt and with authority to promulgate its own rules and regulations on foreign travels. Thus, the Court came out with OCA Circular No. 49-2003 (B).

Where a person joins the Judiciary or the government in general, he or she swears to faithfully adhere to, and abide with, the law and the corresponding office rules and regulations. These rules and regulations, to which one submits himself or herself, have been issued to guide the government officers and employees in the efficient performance of their obligations. When one becomes a public servant, he or she assumes certain duties with their concomitant responsibilities and gives up some rights like the absolute right to travel so that public service would not be prejudiced.

As earlier stated, with respect to members and employees of the Judiciary, the Court issued OCA Circular No. 49-2003 to regulate their foreign travel in an unofficial capacity. Such regulation is necessary for the orderly administration of justice. If judges and court personnel can go on leave and travel abroad at will and without restrictions or regulations, there could be a disruption in the administration of justice. A situation where the employees go on mass leave and travel together, despite the fact that their invaluable services are urgently needed, could possibly arise. For said reason, members and employees of the Judiciary cannot just invoke and demand their right to travel.

To permit such unrestricted freedom can result in disorder, if not chaos, in the Judiciary and the society as well. In a situation where there is a delay in the dispensation of justice, litigants can get disappointed and disheartened. If their expectations are frustrated, they may take the law into their own hands which results in public disorder undermining public safety. In this limited sense, it can even be considered that the restriction or regulation of a court personnel’s right to travel is a concern for public safety, one of the exceptions to the non-impairment of one’s constitutional right to travel.

Given the exacting standard expected from each individual called upon to serve in the Judiciary, it is imperative that every court employee comply with the travel notification and authority requirements as mandated by OCA Circular No. 49-2003. A court employee who plans to travel abroad must file his leave application prior to his intended date of travel with sufficient time allotted for his application to be processed and approved first by the Court. He cannot leave the country without his application being approved, much less assume that his leave application would be favorably acted upon. In the case at bench, respondent should have exercised