

## SECOND DIVISION

**[ A.M. No. MTJ-08-1709 [Formerly A.M. OCA IPI No. 02-1225-MTJ], July 31, 2009 ]**

**LANIE CERVANTES, COMPLAINANT, VS. JUDGE HERIBERTO M. PANGILINAN AND CLERK OF COURT III CARMENCHITA P. BALOCO, BOTH OF MUNICIPAL CIRCUIT TRIAL COURT, CUYO-AGUTAYA-MAGSAYSAY, PALAWAN, RESPONDENTS.**

### D E C I S I O N

**CARPIO MORALES, J.:**

By letter-complaint<sup>[1]</sup> of March 11, 2002, Lanie Cervantes (complainant) charged Judge Heriberto M. Pangilinan (Judge Pangilinan) and Clerk of Court III Carmenchita<sup>[2]</sup> P. Baloco (Carmenchita) of the Municipal Circuit Trial Court (MCTC), Cuyo-Agutaya-Magsaysay, Palawan, with Conduct Prejudicial to the Best Interest of the Service and Ignorance of the Law.

Respondent Judge Pangilinan issued on December 5, 2001 a warrant of arrest<sup>[3]</sup> in a criminal case for Slander against the therein accused-herein complainant who subsequently posted bail fixed at P2,000. On arraignment on December 18, 2001, complainant pleaded not guilty. She later filed on January 22, 2002 a Motion to Admit Counter-Affidavit<sup>[4]</sup> with her *Ganting Salaysay*<sup>[5]</sup> (Motion). Respondent Clerk of Court Carmenchita refused to accept the Motion, however, in the absence of Judge Pangilinan, being apprehensive that he might scold her.

On June 28, 2002, as instructed by Carmenchita, complainant returned during which Carmenchita told her not to see the judge that day as he was still tired from his trip. The following day or on January 29, 2002, Judge Pangilinan advised complainant that he could not accept her belatedly filed Motion because she had already been arraigned. Hence, spawned the filing of the present complaint.

By separate Indorsements of April 19, 2002,<sup>[6]</sup> the Office of the Court Administrator (OCA) directed both respondents to comment on complainant's letter-complaint within 10 days from notice.

By Comment<sup>[7]</sup> of May 22, 2002, respondent Carmenchita explained that she refused to receive the Motion because there was no proper proof of service, but she advised complainant to serve a copy thereof on the Chief of Police of Cuyo, the designated prosecutor, at the police station across the street.

By Comment<sup>[8]</sup> of May 23, 2002, Judge Pangilinan justified the non-receipt of complainant's motion for lack of proper proof of service, and complainant, instead of heeding the advice to comply therewith, went to Puerto Princesa City to air her grievance over a local radio station.

The Court, by Resolution of April 30, 2003,<sup>[9]</sup> referred the complaint to Executive Judge Nelia Fernandez for investigation, report and recommendation. This Resolution was later set aside by Resolution of January 17, 2007<sup>[10]</sup> which directed Executive Judge Perfecto Pe of the Regional Trial Court of Puerto Princesa City to investigate the complaint.

By Order of January 4, 2008,<sup>[11]</sup> Judge Pe came up with the following evaluation:

This matter could not have gone this far had the respondent **Judge Heriberto Pangilinan** diligently observed the Rules on Summary Procedure in criminal cases. The case of simple slander is punishable by arresto menor with a fine of not more than P200.00 which is covered by the Rules of Summary Procedure. Warrant of Arrest should not have been issued against Lanie Cervantes which fact during the cross-examination was admitted by respondent judge to be lapses of judgment. He could have ordered Lanie Cervantes to file her Counter-Affidavit within ten (10) days as provided by [t]he Rules before arraignment. What the respondent judge did in this case was that the accused was caused to be arraigned without ordering her to file her Counter-Affidavit which later when Lanie Cervantes had known that she could not put up her defense without a Counter-Affidavit in Summary Procedure, she filed that Counter-Affidavit with the motion to admit the same. Had the motion been admitted, then this administrative case could not have reached this far. On the part of respondent Baloco, her appointment in court is stenographer reporter and she was just designated as acting clerk of court by the Honorable Judge Pangilinan. She was instructed by the honorable judge not to receive any pleading without proof of service to the party to which she complied in this case. ...Due to the position of respondent Carmenchita Baloco being an acting clerk of court designated by the presiding judge of that court and through the order of the Court not to receive pleading without proof of service to the other party, the Court could not consider that the refusal of respondent Carmenchita Baloco to receive the motion to admit Counter-Affidavit is excusable negligence or misapprehension and misinterpretation of facts on her part. However, Cuyo[,] Palawan is a small municipality without lawyers, the court, including its employees must observe and practice courteousness, diligence and helpfulness to the service of the people. **Respondent Carmenchita Baloco should have received or accepted the Motion to Admit Counter-Affidavit as it was shown in the face of the Motion that the private complainant was furnished through mail.** This is a criminal case wherein the Rules can be liberally construed so that the end of justice can be served. It is the findings of this undersigned investigator and his recommendation to the Honorable Supreme Court through the Court Administrator that **respondent Carmenchita Baloco be admonished to be more circumspect in dealing with litigants** who appear before their court so that justice can be fully served to these people who are less fortunate in life and who are not knowledgeable with the Rules and procedure.

This investigator likewise observed as far as respondent Honorable Judge Heriberto Pangilinan that had it not been to the order of arrest and arraignment of the accused without ordering the respondent therein to file her Counter-Affidavit as the case falls under the Summary Procedure, this administrative case for Conduct Prejudicial to the Best Interest of the Service and Ignorance of the Law had not been filed against him. This investigating officer however believes that **there was a lapse of judgment on the part of Honorable Heriberto Pangilinan in ordering the arrest of the accused in a case covered by Summary Procedure** and the failure to order Lanie Cervantes to file her Counter-Affidavit. It could have been rectified by the honorable judge, had he just admitted the Counter-Affidavit as it appears on the face of the Motion that the private complaining witness was duly furnished with copy by mail. It is **recommended** to the Honorable Court through the Court Administrator that **respondent Honorable Judge Heriberto Pangilinan be reprimanded** and the repetition of the same act be punished accordingly.<sup>[12]</sup> (Emphasis and underscoring supplied)

By Resolution of March 5, 2008,<sup>[13]</sup> the Court referred Judge Pe's Order-evaluation to the OCA for evaluation, report and recommendation with which the OCA complied by Memorandum of May 21, 2008,<sup>[14]</sup> the pertinent portions of which read:

x x x [T]he findings and recommendation of the Investigating Judge are adequately supported by evidence presented during the course of the investigation and [the OCA] hereby adopts the same. However, we take exception to the recommended penalty.

x x x x

In this case, respondent judge manifested **a lack of mastery of the provision of the 1991 Rules on Summary Procedure**. On 05 December 2001, Judge Pangilinan issued a Warrant of Arrest against Lanie Cervantes, fixing the bond of the accused in the amount of Php2,000.00. The requirement for the accused to post bail is part of the regular procedure[, ] not the Revised Rules on Summary Procedure.

While ordinarily, judges may not be administratively sanctioned for mere errors of judgment absent any bad faith or malice, they nonetheless have obligation to keep abreast of all basic laws and principles (*Belga vs. Buban*, 331 SCRA 531). The claim of good faith and absence of malice in glaring instances of incompetence and ineptitude does not abate a judge's consequent liability. When the law is sufficiently basic, a judge owes it to his office to know and to simply apply it; anything less than that would be constitutive of gross ignorance of the law (*Creer vs. Fabillar*, 337 SCRA 632 (2000); *Pacris vs. Pagalilauan*, 337 SCRA 638).

In the case of *Aguilar vs. Judge Dalanao*, A.M No. MTJ-00-1275, June 8, 2000, respondent was fined equivalent to one-half of his salary for one month, with stern warning that repetition of the same or similar acts will be dealt with more severely. x x x

x x x x

As for the complaint against Carmelita Baloco, since she was just an acting clerk of court and merely following the orders of respondent judge, the charges against her should, as recommended by the investigating judge, be dismissed. However, she should be admonished to be more circumspect in dealing with litigants who appear before their court so that justice can be fully served to those who are less fortunate and who are not knowledgeable with the rules and procedure.<sup>[15]</sup> (Italics in the original; emphasis and underscoring supplied, citations omitted)

The OCA thus recommended that this case be re-docketed as a regular administrative matter and that respondent Judge be fined in the amount equivalent to one-half of his monthly salary, with stern warning that repetition of the same or similar acts will be dealt with more severely; and that the complaint against respondent Carmenchita be dismissed with admonition for her to be more circumspect in dealing with litigants.<sup>[16]</sup>

By Resolution of July 21, 2008,<sup>[17]</sup> the Court required the parties to manifest within 10 days from notice whether they were willing to submit the case for resolution on the basis of the pleadings filed. By Manifestation of September 20, 2008,<sup>[18]</sup> Carmenchita expressed her desire to submit another memorandum none of which was received to date. The copy of the July 21, 2008 Resolution sent to Judge Pangilinan was stamped "Return to Sender-deceased." <sup>[19]</sup>

The proceedings in a criminal case for Slander<sup>[20]</sup> are governed by the Revised Rule on Summary Procedure,<sup>[21]</sup> the pertinent provisions of which read:

SEC. 2. *Determination of applicability.* - Upon the filing of a civil or criminal action, the court shall **issue an order** declaring whether or not the case shall be governed by this Rule.

A patently erroneous determination to avoid the application of the Rule of Summary Procedure is a ground for disciplinary action.

x x x x

SEC. 12. *Duty of court.* -

(a) *If commenced by complaint.* - On the basis of the complaint and the affidavits and other evidence accompanying the same, the court may dismiss the case outright for being patently without basis or merit and order the release of the accused if in custody.

(b) *If commenced by information.* - When the case is commenced by information, or is not dismissed pursuant to the next preceding paragraph, the court shall **issue an order** which, together with copies of the affidavits and other evidence submitted by the prosecution, shall