

## THIRD DIVISION

**[ A.M. NO. RTJ-08-2127 (FORMERLY OCA IPI NO. 07-2697-RTJ), September 25, 2008 ]**

**CITA BORROMEIO-GARCIA, COMPLAINANT, VS. JUDGE ERNESTO P. PAGAYATAN, EXECUTIVE JUDGE, REGIONAL TRIAL COURT, BRANCH 46, SAN JOSE, OCCIDENTAL MINDORO, RESPONDENT.**

### R E S O L U T I O N

**AUSTRIA-MARTINEZ, J.:**

Cita Borrromeo-Garcia (complainant) filed a Complaint before the Court dated June 14, 2007 charging Judge Ernesto P. Pagayatan (respondent), Executive Judge of the Regional Trial Court (RTC), Branch 46, San Jose, Occidental Mindoro with falsification, partiality, dishonesty, gross incompetence, evident bad faith, immorality and grave misconduct.

Complainant avers: Respondent committed falsification when, serving as Register of Deeds (RD) of San Jose, Occidental Mindoro, he cooperated with Soledad Ulayao (Ulayao) and Soledad Ortega Olano (Olano) in transferring 165 titles from the name of her father's mistress Blandina Garcia (Blandina) to her father Salvador S. Borrromeo, Sr. (Borrromeo, Sr.), even though respondent was fully aware that the signature appearing thereon was falsified. As payment for their services, Borrromeo, Sr. gave Ulayao, Olano and respondent, 20 of the 165 titles which Ulayao kept until a judge from another branch, pursuant to another case, ordered to have said titles kept in *custodia legis*.<sup>[1]</sup>

Complainant further claims that: respondent was guilty of falsification and perjury when he granted the petition of her half-brother, Salvador G. Borrromeo, Jr. (Borrromeo, Jr.) for the issuance of owner's duplicate copies of 62 Transfer Certificate of Title (TCTs) knowing that Borrromeo, Jr., illegitimate son of Borrromeo, Sr. with Blandina, was not the owner of the same; respondent hastily ruled for a commissioner's hearing, decided for the issuance of new owner's certificates of titles, without requiring the production of certified true copies of all the titles being petitioned or requiring the Officer in Charge (OIC) Registrar to produce the book of titles; respondent also keeps a mistress, Elsa Aguirre (Elsa), Borrromeo, Jr.'s former wife, which could explain the swift decision in favor of Borrromeo, Jr.; Elsa wielded power in the RTC, as acting clerk of court and sheriff, even though she is not a lawyer; Elsa together with Asst. Prosecutor Luduvico Salcedo, also acted as respondent's bagman.<sup>[2]</sup>

The Office of the Court Administrator (OCA) referred the Complaint to respondent for his Comment in a 1<sup>st</sup> Indorsement dated June 29, 2007.<sup>[3]</sup>

In his Comment<sup>[4]</sup> dated July 30, 2007, respondent denied the charges against him, claiming the same to be unfounded, hearsay and malicious. He avers that: he does

not know complainant and that the latter is not a resident of San Jose, Occidental Mindoro; at the time the first falsification allegedly took place, respondent was an Asst. Provincial Prosecutor who acted as an Ex-Officio Registrar of Deeds, putting in extra hours to perform his added assignment; the documents allegedly falsified were "sales" leading to the registration and transfer of TCTs from Blandina to Borromeo, Sr.; he affixed his signatures to the TCTs after all pertinent documents were evaluated by Land Examiner Ulayao and were found to be complete and in order; if indeed signatures were falsified, respondent had nothing to do with the falsification or had any knowledge of the same; respondent never conspired with Olano and Ulayao and there was no agreement for them to split the 20 titles among themselves; as to the second charge of falsification, he rendered the decision on the petition of Borromeo, Jr. after due notice and hearing and all jurisdictional requirements were complied with; contrary to complainant's assertion, certified true copies of the 62 TCTs to be reconstituted were attached to the petition; Borromeo, Jr. also submitted a certification from the RD stating that the original copies of the TCTs were intact in said office; there was also no opposition during the hearing, hence, it was subject to an *ex-parte* hearing before the Clerk of Court as commissioner; he did not declare Borromeo, Jr. to be the owner of the properties but merely quoted Borromeo, Jr.'s testimony; moreover, the reconstituted titles are still in the name of Borromeo, Sr.; the allegation that Elsa is his mistress is false; whatever dealings he has with Elsa, who is the Acting Clerk of Court of the RTC, is strictly related to their respective official duties; it is also not true that Elsa and Prosecutor Salcedo are respondent's bagmen; in all his years as prosecutor and later as judge, respondent never asked anyone to be his bagman and neither has he resolved or decided any case for any consideration; he has no unexplained or hidden wealth and is living a simple and modest life.<sup>[5]</sup>

Upon recommendation of the OCA, the Court in the Resolution dated January 23, 2008 referred the instant case to Associate Justice Jose C. Reyes, Jr. of the Court of Appeals (CA), Manila, for investigation, report and recommendation.<sup>[6]</sup>

Hearings were conducted and in his Report dated July 31, 2008, Investigating Justice Reyes found that complainant failed to substantiate her allegations. As stated in his Report:

x x x [T]he investigating justice finds that aside from bare assertion complainant failed to present any evidence to substantiate her charges. She even admitted during her testimony that she had no direct knowledge of the facts constituting her allegations but that she derived her knowledge from other persons, that is, she had no direct knowledge of the facts constituting the alleged irregularities.

x x x x

As to the charges of immorality and grave misconduct which stemmed from the alleged illicit affair of respondent judge with Ms. Aguirre, the undersigned finds that complainant's own testimony showed that she based her allegation on what someone else had told her.

x x x x

The charges of partiality, dishonesty, and gross incompetence are all tied

up to the petition for re-issuance of owner's duplicate certificate of titles filed by Salvador, Jr. From the same petition arose the allegation of falsification. Complainant claimed that respondent judge was partial, dishonest and had acted in bad faith because he granted Salvador, Jr.'s petition knowing that he was not the registered owner. She also claimed that this decision showed that respondent judge was grossly incompetent because the decision was not supported by facts and the law. By the same token she claimed that respondent judge was guilty of falsification.

x x x x

[Based on Sec. 109 of Pres. Dec. No. 1529] it is clear that not only the registered owner but any person in interest may file a petition for re-issuance of the owner's duplicate title. In the present case, petitioner Salvador, Jr. is admittedly the illegitimate son of the deceased Salvador, Sr. and as such is an heir. As explained by respondent judge he believed that an heir has the right to file the petition. Other than the fact that the case was granted, complainant failed to adduce any concrete evidence of partiality, dishonesty or bad faith on the part of the respondent judge. It should be remembered that good faith is always presumed and complainant's bare testimony failed to rebut this presumption.

As to the charge of falsification, complainant herself admitted that the misrepresentation was done by Salvador, Jr. and not by the respondent judge. He cannot, therefore, by any stretch of imagination be held responsible for such falsification.

The only remaining charge against respondent judge is the falsification regarding the twenty (20) TCTs held by Ms. Ulayao and now in *custodia legis* in Branch 45 of the RTC of San Jose, Occidental Mindoro. Again, the undersigned finds that aside from complainant's bare testimony that she was informed by Ms. Ulayao of the falsification she utterly failed to present any evidence to buttress her assertion. She does not even have a copy of the alleged forged deed of sale allegedly used to transfer said titles in the name of Salvador, Sr.<sup>[7]</sup>

While Justice Reyes found the complaint to be without merit, he still found respondent liable however for failing to prevent any appearance of impartiality on his part. Justice Reyes held in his report:

x x x the investigating justice finds it necessary to deal on another matter which the respondent judge himself testified on. The reception of evidence for Spec. Proc. No. R-936 was performed by Ms. Aguirre. Although the fact that Ms. Aguirre was the former wife of the petitioner, this fact alone should be considered unprocedural. However, what the investigating justice finds disturbing is that Ms. Aguirre was not the OIC Branch Clerk of Court of Branch 46 but rather she was the OIC Clerk of Court. Respondent judge explained that his OIC Branch Clerk of Court Asuncion Pabellano was busy, hence, unable to conduct the *ex-parte* reception of evidence. Under the circumstances what respondent judge should have done was to dispense with the *ex-parte* reception of evidence and to conduct the hearing himself instead of appointing the

OIC Clerk of Court. This would have avoided any appearance of partiality. However, the undersigned does not find this infraction grave enough to warrant a severe penalty. Considering that respondent had already filed his application for optional retirement and only to stress that all judges should at all times be circumspect especially in their official functions, the investigating justice deems it appropriate to recommend the imposition of a fine of P5,000.00 on respondent judge.<sup>[8]</sup>

Justice Reyes then recommended that:

x x x the complaint against respondent Judge Ernesto P. Pagayatan be DISMISSED. However, in view of the finding that Judge Pagayatan failed to prevent any appearance of impartiality on his part, it is recommended that he be FINED in the amount of P5,000.00.<sup>[9]</sup>

The Court agrees with the report of the Investigating Justice but finds that the recommended fine should be modified.

Administrative complaints leveled against judges must always be examined with a discriminating eye for its consequential effects are, by their nature, highly penal, such that respondents stand to face the sanction of dismissal and/or disbarment.<sup>[10]</sup> While the Court will not shirk from its responsibility of imposing discipline upon its magistrates, neither will it hesitate to shield them from unfounded suits that disrupt rather than promote the orderly administration of justice.<sup>[11]</sup> When the complainant relies on mere conjectures and suppositions and fails to substantiate her claim, such as in the case at bar, the administrative complaint against the judge must be dismissed for lack of merit.<sup>[12]</sup>

In this case, complainant charged respondent with two acts of falsification. First, for allegedly authorizing the transfer of titles from the name of Blandina to that of Borromeo, Sr. based on forged signatures, when respondent was still Register of Deeds of Occidental Mindoro; and second, for granting Borromeo, Jr.'s petition for issuance of owner's duplicate copy of 62 TCTs, knowing that Borromeo, Jr. was not the owner thereof. She also charged respondent with having an illicit relationship with Elsa, Acting Clerk of Court and ex-wife of Borromeo, Jr., allowing her to exert influence over the decisions of the court, and for keeping Elsa and Prosecutor Salcedo as respondent's 'bagmen.'

Complainant however was not able present proof of her allegations. As to the first charge of falsification, she claims that it was Ulayao, former OIC Registrar of Deeds of Occidental Mindoro, who told her about the circumstances surrounding the transfer of titles from the name of Blandina to that of Borromeo, Sr. and the supposed agreement among Borromeo, Sr., Ulayao, Olano and respondent regarding the said transfer.<sup>[13]</sup> Ulayao however died on July 31, 2007<sup>[14]</sup> and could neither refute nor corroborate complainant's story. When asked by the Investigating Justice, complainant also could not present copies of the alleged falsified deeds of sale which, according to her, were the basis for the issuance of the titles in favor of Borromeo, Sr.<sup>[15]</sup>

Anent the second charge of falsification, complainant claims that respondent granted Borromeo, Jr.'s petition even though he knew that Borromeo, Jr. was not the owner