

## SECOND DIVISION

**[ A.M. No. RTJ-03-1760 (Formerly OCA IPI No. 02-1537-RTJ), January 15, 2004 ]**

**FELICIDAD B. DADIZON, COMPLAINANT, VS. JUDGE ENRIQUE C. ASIS, RESPONDENT.**

### RESOLUTION

**QUISUMBING, J.:**

In a letter-complaint<sup>[1]</sup> dated July 29, 2002, complainant Felicidad B. Dadizon charged respondent Judge Enrique C. Asis, presiding judge of the Regional Trial Court of Naval, Biliran, Branch 16, of grave misconduct, bias and partiality, and oppression.

Complainant alleges that respondent committed an act of oppression and willfully intended to cause her undue harm when respondent dismissed on appeal Criminal Case No. N-2019, entitled "*People v. Maria Suzon and Pablo Suzon*" for falsification of public document, based on the sworn affidavit<sup>[2]</sup> of the private complainant, Socorro Bernadas. Complainant claims that the sworn affidavit of Socorro M. Bernadas in Criminal Case No. N-2019 was not presented in court and the affiant was not examined as to its contents and due execution. She adds that neither complainant, as an affected party, nor her counsel was served copies of the said affidavit.<sup>[3]</sup>

Complainant also charges respondent judge of oppression, for having acted with grave abuse of authority, and of violating the Rules of Court in issuing a preliminary injunction in Civil Case No. B-1165, entitled "*Wilma Bernadas-Cariaga, et al. v. Sps. Felicidad Bernadas-Dadizon and Nestor Dadizon,*" without giving complainant and her co-defendant a chance to oppose the application for preliminary injunction. Respondent also allegedly prevented her from presenting evidence during the cross-examination of Wilma Bernadas-Cariaga. Complainant also states that with bias and manifest partiality, respondent granted reliefs not included in application and subsequently issued a Supplemental Order on July 25, 2002, a day before the scheduled date of hearing appearing in the notice included in the motion for the issuance of said order. She laments the absence of a prior hearing on the motion, and contests the Supplemental Order as having been issued in bad faith and for corrupt motives, since it gave to the Sps. Armando Garcia and Imelda Bernadas-Garcia and Ma. Jeanette Bernadas - strangers to the case - the right to stay and occupy the house and lot subject of Civil Case No. B-1165.<sup>[4]</sup>

Furthermore, according to complainant, respondent decided Civil Case No. B-1165 and three other cases - Civil Case No. B-1091 for annulment of sale, Civil Case No. B-1066, a partition case, and SP Proc. No. P-160 for the probate of the will of Eustaquia Bernadas - all without any hearing. In Civil Case No. B-1043, entitled "*Perla B. Matiga v. Municipality of Naval,*" respondent decided in favor of the

Municipality of Naval. Complainant claims that respondent awarded an area of land in excess of what the plaintiffs therein owned and dismissed without trial a related case, Civil Case No. B-1160, entitled "*Felicidad B. Dadizon, as Administrator of the Estate of the Late Eustaquia and Diosdado Bernadas v. Perla B. Matiga, et al.*"<sup>[5]</sup>

On September 18, 2002, respondent filed his Comment<sup>[6]</sup> denying that he relied on the private complainant's affidavit of recantation when he acquitted the accused in Criminal Case No. N-2019. He states that the reason for the acquittal was the failure of the prosecution to prove the guilt of the accused beyond reasonable doubt. He points out that the sole basis for the MTC's judgment of conviction was the doubtful and generally inconclusive findings of the NBI dactyloscopy expert. Respondent adds that the dismissal of complainant's appeal to the Court of Appeals questioning the denial of her motion for reconsideration of the decision was elevated to this Court on appeal by certiorari.<sup>[7]</sup> However, in a Resolution dated October 8, 2001, this Court dismissed her petition.

As regards Civil Case No. B-1165, respondent denies that the hearing on the application for a writ of preliminary injunction held on June 19, 2002 was the only hearing conducted. He says that the main case is still pending. He adds that a perusal of the Order dated August 8, 2002, would reveal that the co-heirs Sps. Armando Garcia and Imelda Bernadas-Garcia and Ma. Jeanette Bernadas—the alleged strangers to the case—occupied the ancestral house prior to the issuance of the writ of preliminary injunction. This being the case, another hearing to amend the writ was no longer necessary. In any case, the application for a writ of preliminary injunction and the Supplemental Order ordering complainant to restore them in possession of some of the rooms of the ancestral house became moot when a co-heir by the name of Merope Bernadas Floether, acting for complainant, left the keys to the house making the entire ancestral house available to the other co-heirs.<sup>[8]</sup>

According to respondent, Civil Case No. B-1043 was appealed and decided by the Court of Appeals in favor of the Municipality of Naval on the ground of prescription. Civil Case Nos. B-1091 and B-1066 are still pending appeal with the Court of Appeals, while the appeal of SP Proc. No. P-160 with the Court of Appeals, docketed as CA-G.R. CV No. 73624, was dismissed on September 4, 2002.<sup>[9]</sup>

On February 24, 2003,<sup>[10]</sup> this Court referred the case to the Presiding Justice of the Court of Appeals for raffle among the Associate Justices of that court for investigation, report, and recommendation. On even date, this Court also resolved to re-docket this case as a regular administrative case.<sup>[11]</sup>

On March 3, 2003, complainant filed a Reply<sup>[12]</sup> insisting that the affidavit of recantation was the sole basis of the dismissal of the appeal and maintains that the dismissal of Criminal Case No. N-2019 was void. She also reiterated the other allegations in her complaint.

In his report, Justice Eliezer R. de los Santos, to whom the case was raffled, recommended the dismissal of the case for lack of merit.

We find his recommendation well-taken.

Misconduct is defined as any unlawful conduct on the part of a person concerned in the administration of justice prejudicial to the rights of parties or to the right determination of the cause.<sup>[13]</sup> It generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose.<sup>[14]</sup> To justify the taking of drastic disciplinary action, the law requires that the error or mistake must be gross or patent, malicious, deliberate or in bad faith.<sup>[15]</sup>

For respondent to be liable for misconduct, the assailed order, decision or actuation of the judge in the performance of official duty must not only be found to be erroneous but, most importantly, it must be established that he was moved by bad faith, dishonesty, hatred or some other like motive.<sup>[16]</sup> Bad faith is the ground for liability in misconduct.<sup>[17]</sup> Here, this ground is inapplicable, since there is no showing of any wrongful, improper or unlawful conduct on respondent's part. Complainant failed to substantiate her allegations with credible proof, for she only relied on presumptions as evidence of bad faith.<sup>[18]</sup>

The acquittal of the accused in Criminal Case No. N-2019, in our view, is not without lawful basis. Respondent acquitted the accused not on account of the sworn affidavit of desistance of Socorro Bernadas but because the prosecution failed to present evidence to establish the guilt of the accused beyond reasonable doubt. As respondent pointed out, although available for presentation in court, the person whose signature was allegedly falsified never testified.<sup>[19]</sup> As respondent observed, the judgment of conviction in the MTC was based on speculations and the inconclusive findings of the NBI dactyloscopy expert. In the absence of sufficient evidence to the contrary, we find that the issue involves a judicial matter. Moreover, here could prevail the presumption that the respondent regularly performed his duties in good faith.<sup>[20]</sup>

Complainant alleges that in Civil Case No. B-1165, herein respondent failed to comply with the twin requirements of notice and hearing as provided in Section 5<sup>[21]</sup> of Rule 58 of the Rules of Court before issuing the writ of preliminary injunction. However, the records show that there was a hearing on June 19, 2002. Both parties were represented at the said hearing. Complainant's counsel presented arguments, opposing issuance of said writ. Thus, in this connection, we find her complaint baseless.

Issuance of said writ is entirely within the discretion of the trial court. The only limitation is that this discretion should be exercised based upon the grounds and in the manner provided by law.<sup>[22]</sup> The requisites for injunctive relief are (1) there must be a right *in esse* or the existence of a right to be protected; and (2) the act against which the injunction is to be directed is a violation of such right.<sup>[23]</sup> Respondent was able to show that petitioners in said case were entitled to the writ because there existed in favor of the petitioners a clear and unmistakable right therefor, and the facts clearly showed an urgent and paramount necessity for its issuance to prevent serious damage. There, the petitioners adequately proved their status as co-owners of the subject ancestral house and lot, and that they were forced out of the ancestral house preparatory to their intended sale.

That respondent ruled against complainant in several cases filed before his sala