

SECOND DIVISION

[A.M. No. MTJ-02-1417, May 27, 2004]

**PETER BEJARASCO, JR. AND ISABELITA BEJARASCO,
COMPLAINANTS, VS. JUDGE ALFREDO D. BUENCONSEJO,
MUNICIPAL TRIAL COURT, DALAGUETE, CEBU, SECUNDINO
PIEDAD, CLERK OF COURT, AND LEONISA GONZALES, COURT
STENOGRAPHER, MUNICIPAL TRIAL COURT, ARGAO, CEBU,
RESPONDENTS.**

DECISION

CALLEJO, SR., J.:

The instant administrative complaint stemmed from a Letter-Complaint dated January 22, 2001 filed by Peter Bejarasco, Jr. and Isabelita Bejarasco charging Judge Alfredo Buenconsejo, Clerk of Court Secundino Piedad, and Court Stenographer Leonisa Gonzales of the Municipal Trial Court of Dalaguete, Cebu, with dereliction of duty, ignorance of the law, grave misconduct and serious irregularity relative to Criminal Cases Nos. R-04171 and R-4172.^[1]

The complainants alleged that they were charged by a certain Dr. Edwin Fonghe with grave threats and grave oral defamation before the Municipal Trial Court of Dalaguete, Cebu. According to the complainants, the respondent judge inhibited himself from the said cases on the ground of delicadeza and that Executive Judge Epifanio Llanos of the Regional Trial Court of Argao, Cebu, Branch 26, designated Judge Palmacio Calderon of the MTC of Argao, Cebu, to hear and try the said cases. ^[2] Judge Calderon conducted continuous and simultaneous trials, and the cases were submitted for decision on June 29, 1999. Unfortunately, Judge Calderon died on December 31, 1999 without having rendered judgment on the said cases.

The complainants alleged that they were surprised to receive a notice from the MTC of Argao, Cebu, that Criminal Cases Nos. R-4171 and R-4172 had been set for promulgation on May 15, 2000 by the respondent judge, who was then designated as presiding judge of the said court.

The complainants alleged, thus:

9. That after I (affiant husband) received the notice, I immediately proceeded to the house of Judge Buenconsejo at Poblacion, Dalaguete, Cebu, and told him about my late receipt of notice, but Judge Buenconsejo told me that the promulgation was reset by the lawyer;

10. That I (affiant husband) then inquired from Judge Buenconsejo why would he promulgate the decision he had already inhibited himself from (trying) my cases, and why would the promulgation be only on two (2) criminal cases instead of five (5) cases which were all submitted for

decision;

11. That Judge Buenconsejo answered me (affiant husband) in the following manner: "***Tikboy, miadto mi kuyog sa akong mga clerks sa ilang Judge Calderon. Wala koy mahimo, order ni sa akong superior Judge Llanos. Huwata lang ang sunod nga notice.***" which in English means: "***Tikboy, my clerks and I went to the house of Judge Calderon. There is nothing I can do, this is the order of my superior Judge Llanos. Just wait for the next notice.***";

12. That on May 16, 2000, at about 10:00 A.M., I (affiant husband) went to the MTC of Argao, Cebu, passed by the office of my PAO lawyer Atty. Quindala, and we both went to Secundino Piedad of the MTC, and upon inquiry by Atty. Quindala, Mr. Piedad informed us that I was convicted in the decision to be promulgated;...^[3]

The complainants, thereafter, received another notice of promulgation at 10:00 a.m. of May 29, 2000. On the said date, the complainants' counsel argued that the respondent judge could not promulgate the decision since he had earlier inhibited himself from trying the said cases, and that the judge who actually heard the case had already died. The respondent judge, however, ignored these arguments and proceeded with the promulgation of the Decision^[4] dated November 19, 1999, convicting both complainants.

Thereafter, the complainants' counsel filed a motion to nullify the decision. The respondent judge denied the motion, and ordered the arrest of the complainants. The latter's counsel filed a petition for certiorari with the Regional Trial Court of Argao, Cebu, Branch 26, questioning the validity of the decision in Criminal Cases Nos. R-4171 and R-4172 and its promulgation.

During the pendency of their petition for certiorari, the complainants requested for an expert examination of the signatures of the late Judge Calderon in his decisions with the PNP Crime Laboratory.^[5] The complainants submitted a copy of Questioned Document Report No. 098-2000^[6] where the document examiner of the PNP Crime Laboratory made the following findings:

FINDINGS: Comparative examination and (sic) analysis of the questioned signatures marked "Q-1" to "Q-3" inclusive and the standard signatures marked "S-1" and "S-14" inclusive reveal significant differences in formation, construction and other individual handwriting characteristics.

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CONCLUSION: The questioned signatures of Judge Palmacio L. Calderon appearing in the three copies of page 6 of the Decision in Criminal Cases Nos. 4171 and 4172 all dated 19 November 1999 marked "Q-1" to "Q-3" inclusive are forged.^[7]

On January 3, 2001, Judge Raphael B. Yrastorza, Sr. rendered his Resolution on the petition for certiorari, the dispositive portion of which reads:

WHEREFORE, all the foregoing premises considering, this Court resolves to GRANT the Petition MODIFIED as follows:

1. Issuing a preliminary mandatory injunction in favor of the petitioners herein ordering public respondent Hon. ALFREDO D. BUENCONSEJO from having the warrant of arrest he earlier issued enforced; the said warrant of arrest is, thus, ordered QUASHED, UNTIL and UNLESS a new decision/judgment is rendered and promulgated;
2. Ordering the Hon. EMILIO T. REYES, Presiding Judge of the Municipal Trial Court of Sibonga, Cebu, to take over these cases from Hon. ALFREDO D. BUENCONSEJO and render a decision/judgment on these cases and have the same promulgated without further delay.
3. Ordering public respondent Hon. ALFREDO D. BUENCONSEJO to make available and turn over the records of these cases, including the stenographic notes duly transcribed unto the Clerk of Court of Hon. EMILIO T. REYES.
4. Ordering the Clerk of Court of this Court to return the records of these cases to the court of origin.

IT IS SO RESOLVED.^[8]

The complainants contended that the respondent judge is guilty of ignorance of the law, grave misconduct and serious irregularity, and is presumed to be the author of the forged signature of Judge Palmacio Calderon. The favorable resolution of their petition for certiorari in the RTC further showed the respondent judge's ignorance of the law and misconduct. They, thus, prayed that the respondent judge be dismissed from the service with forfeiture of all benefits.

In his comment, the respondent judge denied the charges and accusations against him. He averred, thus:

- a) The Decision dated November 19, 1999 in Criminal Cases Nos. R-4171 and R-4172 was personally and directly prepared and signed by the late Judge Palmacio Calderon during his lifetime;
- b) The said decision was left and deposited by Judge Calderon with his Clerk of Court of MTC Argao, Cebu;
- c) Unfortunately, however, Judge Calderon fell ill and was hospitalized for sometime until his demise on December 31, 1999, and for which reason the subject questioned decision was not promulgated during his lifetime;
- d) When I assumed office as Acting Judge Designate of the MTC of Argao, Cebu, the Clerk of Court informed me about the decision which was left and entrusted to him by Judge Calderon, and consequently, I directed the Clerk of Court to set the same for promulgation which was actually made in open court in the presence of the complainants as the accused therein and their counsel in the morning of May 29, 2001;

e) Under the above circumstances, I honestly believe in good faith that there was no irregularity in the promulgation of the questioned subject decision as my only participation on this matter was merely an exercise of a ministerial duty to enforce the said decision which was already long rendered by the judge who actually and completely heard the above-mentioned criminal cases on the merits, basing my actuation on the express pertinent provision of Section 6, Rule 120 of the Revised Rules of Criminal Procedure which states as follows: "The Judgment is promulgated by reading it in the presence of the accused and the judge of the court in which it was rendered (Underlining ours);

f) At any rate, if there was ever an error on my part, it was never done with malice in order to prejudice the substantial rights of the complainant.^[9]

The respondent alleged that he denied the complainants' motion to nullify the decision in Criminal Cases Nos. R-4171 and R-4172 as the same was not the proper remedy available under the particular circumstances of the case, but rather an appeal, or a motion for new trial as the case may be. Consequently, the said decision became final and executory after the lapse of the reglementary period within which the complainants might have availed of any of the said legal remedies. Thus, according to the respondent, he issued an order of arrest against the complainants so that they could serve their sentence.

The respondent also pointed out that the complainants had already filed a complaint^[10] before the Office of the Ombudsman, docketed as OMB-VIS-CRIM-98-0166, and that such complaint was dismissed.^[11] The respondent averred that the instant complaint was in the nature of a harassment suit in order to exact leverage on him and antagonize him, which has been frowned upon by the Court.

For her part, Court Stenographer Leonisa Gonzales alleged that the late Judge Calderon directed her to submit all the transcripts of stenographic notes within a period of fifteen days from the time the case was submitted for decision. She denied having conversed with the parties in Criminal Cases Nos. R-4171 and R-4172. She could not, however, attest to the correctness or erroneousness of the charges against the respondent judge. She also averred that she did not witness the signing of the questioned decision, whether by the late Judge Calderon or the respondent judge.^[12]

Clerk of Court Secundino Piedad attested^[13] that sometime in April 2000, he visited the residence of the late Judge Calderon in La Paloma, Labangon, Cebu City, to verify the serial number of a typewriter assigned to the late Judge Calderon for clearance purposes. The wife of the late Judge Calderon, Alicia T. Calderon, thereafter, handed to him the records of Criminal Cases Nos. R-4171 and R-4172, including a decision thereon duly signed by the late judge. Consequently, he informed the respondent, then acting presiding judge, about the decision and the latter set the same for promulgation. He was then ordered to issue a subpoena to the complainants (accused therein) for the promulgation of judgment, but for the latter's failure to receive the said subpoena on time, another was issued setting the promulgation of the said judgment on May 29, 2000. Piedad averred he merely