

## SECOND DIVISION

[ A.M. No. MTJ-01-1377 (Formerly OCA-IPI-99-650-MTJ), June 17, 2004 ]

**MERIAM BALAGTAS, COMPLAINANT, VS. OLEGARIO R. SARMIENTO, JR. JUDGE, MTCC, BRANCH 2 CEBU CITY, RESPONDENT.**

### D E C I S I O N

**TINGA, J.:**

The essence of due process is the right to be heard. Therefore, every motion which may prejudice the rights of a party should be set for hearing. The intendment of the law will never be achieved if notice is not served, such as in this case.

On November 27, 1998, the Office of the Court Administrator (OCA) received the sworn Letter-Complaint<sup>[1]</sup> of Ms. Meriam Balagtas (Balagtas) dated November 11, 1998 accusing Judge Olegario R. Sarmiento, Jr., MTCC, Branch 2, Cebu City, of knowingly rendering an unjust interlocutory order, gross ignorance of the law and serious irregularities in the performance of judicial duties in connection with Criminal Cases Nos. 82863-R and 83186-R, entitled "*People of the Philippines versus Hermann Peith*," for violation of B.P. 22.

Balagtas was the private complainant in the aforementioned criminal cases.

In the *Letter-Complaint* she submitted, Balagtas alleges that on May 25, 1998, accused Hermann Peith (Peith) filed an *Urgent Ex-Parte Motion to Leave for Abroad*<sup>[2]</sup> which was granted by the respondent judge on the same day it was filed without notice to her or the prosecution.<sup>[3]</sup> Moreover, as shown in the Order<sup>[4]</sup> dated May 25, 1998, the respondent judge granted the motion simply because Peith executed a *Deed of Real Estate Mortgage* covering the value of the bounced checks.

Consequently, Balagtas filed an *Urgent Motion for Reconsideration of the Order Dated May 25, 1998* dated May 26, 1998, arguing that the fact that Peith executed a *Deed of Real Estate Mortgage* to secure the payment of the checks is of no consequence, the cases being criminal in nature.<sup>[5]</sup> Besides, Peith cannot own real properties in the Philippines since he is a foreigner.<sup>[6]</sup>

The respondent judge denied the motion for reconsideration in his Order<sup>[7]</sup> dated May 28, 1998.

Balagtas then filed a *Motion for the Inhibition of Judge Olegario Sarmiento*<sup>[8]</sup> dated August 24, 1998 on grounds of bias and partiality. She claimed therein that she filed a *Motion for the Issuance of a Hold Departure Order* against Peith which the respondent judge did not act upon. However, in a move evincing bias in favor of

Peith, the respondent judge granted his *Urgent Ex-Parte Motion to Leave for Abroad*.

The respondent judge granted the motion for inhibition in his *Order*<sup>[9]</sup> dated August 31, 1998. In the same *Order*, he stated that he cannot act upon Balagtas' *Motion for the Issuance of a Hold Departure Order* against Peith since he is prohibited from doing so by Circular No. 39-97 of the Supreme Court which limits such authority to criminal cases within the jurisdiction of second level courts. Moreover, Balagtas had already foreclosed Peith's property and the value of the bounced checks had already been satisfied. He further remarked that "[H]erein judge is responsibly informed that the herein parties have had a special personal relationship only that accused married another woman. This Court does not want to be an instrument of the misgivings, sourgrappings and importunings of complainant."<sup>[10]</sup>

Balagtas now asserts that the respondent judge's *Orders* dated May 25, 1998 and August 31, 1998 are unjust and amount to gross ignorance of the law. She also claims that the respondent judge committed serious irregularities in the performance of his duties.

Balagtas essentially contends that the respondent judge should not have allowed Peith to leave the country since, as the accused in two criminal cases, he is not only liable for the amount of the checks that bounced but also for the imposable penalty for violation of the Bouncing Checks Law. She likewise objects to what she claims to be derogatory remarks made by the respondent judge against her in his *Order* of August 31, 1998.

In his *Letter-Comment*<sup>[11]</sup> dated May 24, 1999, the respondent judge explains that he allowed Peith to leave the country for one month to avail of his retirement benefits in Switzerland for the following reasons: (a) Peith has properties, family and a reputation to maintain in Cebu City; (b) he was appreciative of Peith's gesture of asking permission to travel because Peith need not have done so; (c) he was hoping that Peith can bring in money to pay his obligation under the checks; (d) Peith had already been arraigned; hence, he may be tried in *absentia*; and (e) Peith executed a *Deed of Real Estate Mortgage* in favor of Balagtas to secure the payment of his obligation. Besides, Balagtas had allegedly already foreclosed Peith's property and the value of the bounced checks had already been satisfied.

The respondent judge also claims that the case is already before another judge since he inhibited himself from hearing the cases in his *Order* dated August 31, 1998. Lastly, the respondent judge avers that Balagtas "can push through with her personal agenda of vendetta without unnecessarily dragging" him into it once Peith sets foot on Philippine soil.<sup>[12]</sup> He further states that he "cannot act as '*Berdugo*' for complainant's personal ill motive and selfish interest."<sup>[13]</sup>

In her *Letter-Reply*<sup>[14]</sup> dated June 26, 1999, Balagtas insists that had she been notified of Peith's motion, she could have opposed the motion with the following points, to wit: Peith has no legal wife but only a live-in-partner in Cebu; as a foreigner, Peith cannot own real property anywhere in the Philippines; and the value of the mortgaged real estate is not sufficient to satisfy Peith's monetary obligation. She adds that the respondent judge delved into irrelevant issues when he stated in his August 31, 1998 *Order* that he was "informed that the herein parties have had a

special personal relationship only that the accused married another woman.”<sup>[15]</sup>

In a *Resolution*<sup>[16]</sup> dated September 17, 2001, the Court referred the complaint to Executive Judge Galicano C. Arriesgado of RTC, Cebu City for investigation, report and recommendation. During the pendency of the investigation, Judge Pampio A. Abarintos took over from Judge Arriesgado as Executive Judge. Thus, Judges Abarintos and Arriesgado conducted the investigation with 1<sup>st</sup> Vice Executive Judge Isaias P. Dicdican.

The investigating judges submitted their report and recommendation<sup>[17]</sup> dated August 1, 2003 to the OCA finding as follows: (1) as a first level court judge, the respondent is not authorized to issue hold departure orders as this power is vested in a Regional Trial Court judge; (2) Balagtas erred in filing her *Motion for the Issuance of a Hold Departure Order* against Peith before the respondent judge’s court, hence, she is not entirely blameless; (3) upon the inhibition of the respondent judge, the cases were transferred to MTCC, Branch 5, Cebu City, presided over by Judge Oscar D. Andrino, who rendered a judgment on the cases on November 11, 2002; and (4) Peith was acquitted but was ordered to indemnify Balagtas for the face value of the checks with interest thereon. In view of these findings, the investigating judges recommend that the charges against the respondent judge be dismissed and the case considered closed and terminated.

In its *Memorandum*<sup>[18]</sup> dated March 16, 2004, the OCA sustains with modification the findings and recommendation of the investigating judges. The OCA notes that since Peith was charged with two counts of violation of B.P. 22, which is under the exclusive jurisdiction of first level courts and not among the criminal cases covered by Circular No. 39-97 dated June 19, 1997 of this Court where hold departure orders may be issued, the respondent judge may not deny his *Urgent Ex-parte Motion to Leave for Abroad or grant Balagtas’ Motion for Issuance of a Hold Departure Order* against him. The OCA, therefore, recommends the dismissal of the case against the respondent judge but admonishes him to refrain from resorting to insulting and offensive language in his future judicial actions.

The Court agrees that the remark of the respondent judge in his *Order* dated August 31, 1998, aside from being totally irrelevant, was improper, offensive and uncalled for. He insinuated that the reason for Balagtas’ filing of criminal cases against Peith was she was incensed for being dumped by the latter in favor of another woman. The respondent judge repeated his tirade against Balagtas in his Letter-Comment<sup>[19]</sup> dated May 24, 1999 where he stated that Balagtas has a “personal agenda of vendetta” against Peith and that she was motivated by “personal ill motive and selfish interest.”

The respondent judge deserves the sternest reproof for making these remarks. Judges should refrain from expressing irrelevant opinions in their decisions which may only reflect unfavorably upon their competence and the propriety of their judicial actuations.<sup>[20]</sup> Moreover, intemperate speech detracts from the equanimity and judiciousness that should be the constant hallmarks of a dispenser of justice.<sup>[21]</sup>

The Court, however, deviates from the conclusion of both the OCA and the