

## FIRST DIVISION

**[ A.M. No. RTJ-04-1885 (OCA-IPI No. 03-1687-RTJ), November 17, 2004 ]**

**STATE PROSECUTOR PABLO FORMARAN III, ATTY. FELINO M. GANAL AND KANEMITSU YAMAOKA, COMPLAINANTS, VS. JUDGE MARIVIC TRABAJO-DARAY, REGIONAL TRIAL COURT, BRANCH 36, GENERAL SANTOS CITY, RESPONDENT.**

### ***DECISION***

**YNARES-SATIAGO, J.:**

This administrative complaint arose in connection with Criminal Case No. 13280<sup>[1]</sup> which is a case for estafa through falsification of public document filed against Tetsuo Adachi, Eiji Kawai, Richard Friend, Gari Ocampo, Ma. Lynn Gesmundo and Atty. Raul Josefino Miguel.

In a verified-complaint dated February 17, 2003 filed before the Office of the Court Administrator, State Prosecutor Pablo Formaran III, Atty. Felino M. Ganal, and Kanemitsu Yamaoka charged respondent judge with patent injustice, partiality and gross ignorance of the law bordering on incompetence relative to her conduct in Criminal Case No. 13280.<sup>[2]</sup> Complainants aver that the said criminal case was initially raffled to RTC Branch 23, General Santos City, then presided by Judge Jose Majaducon. Because of said criminal case, Judge Majaducon issued a hold departure order against Tetsuo Adachi and Eiji Kawai, prohibiting them from leaving the country until the case is terminated.<sup>[3]</sup> When Judge Majaducon subsequently inhibited himself, the criminal case was re-raffled to Branch 36, presided by Acting Presiding Judge Antonio Lubao.

On June 6, 2002, Judge Lubao also issued a hold departure order against the other accused, namely: Richard Friend, Gari Ocampo, and Ma. Lynn Gesmundo, with the exception of Atty. Raul Josefino Miguel. Thereafter, accused Friend and Ocampo filed a motion for reconsideration praying for the lifting of the hold departure order. Complainant Yamaoka, through counsel, filed his opposition thereto. On December 4, 2003, the two-named accused filed an Addendum to the Motion for Reconsideration,<sup>[4]</sup> to which a Comment/Opposition was also filed by the prosecution.

On December 15, 2002, an Urgent Motion to Lift Hold Departure Order (or to allow Friend to travel to the United States)<sup>[5]</sup> was filed by Friend alleging that he had no intention to become a fugitive from justice considering that upon the filing of the information, he voluntarily submitted himself to the court's jurisdiction, posted bail and signed a waiver of appearance. On December 23, 2003, Friend filed a 2nd Urgent Motion to Resolve Pending Motion for Reconsideration to Lift Hold Departure alleging therein that Presiding Judge Lubao went on leave without resolving his

pending motion to lift hold departure order; that there is an urgent necessity for him to return to California, USA, not only for business reasons but for the medical treatment of his youngest son who is suffering from serious developmental delays due to seizure.<sup>[6]</sup>

Meanwhile, respondent Judge Daray, in her capacity as Acting Executive Judge of the RTC of General Santos City and Pairing Judge of Acting Presiding Judge Lubao who was on leave of absence, issued an Order dated December 26, 2002, the dispositive portion of which reads:

WHEREFORE, by way of reiteration and considering the discussion above, the Motion for Reconsideration submitted by accused Richard Friend and Gari Ocampo for the lifting of the Hold Departure Order is hereby DENIED. However, on the alternative prayer of accused Richard Friend, said accused Richard Friend is hereby GIVEN PERMISSION to travel on December 27, 2002 to the United States of America subject to the conditions above-mentioned.

SO ORDERED.<sup>[7]</sup>

Aggrieved by the issuance of the Order dated December 26, 2002, complainants filed the instant administrative complaint against respondent judge alleging that: (1) the 2<sup>nd</sup> Urgent Motion to Resolve Pending Motion for Reconsideration to Lift Hold Departure Order is a litigious motion; (2) there was no notice of hearing addressed to the opposing parties and said motion was not heard at all; (3) the motion is not supported by appropriate medical certificate and respondent judge did not bother to check the veracity of the allegations therein; (4) Criminal Case No. 13280 is assigned to Judge Lubao and respondent judge took advantage of the former's absence by acting on the pending motions although she was in Digos City; (5) respondent judge failed to institute safeguards to insure the subjection to legal process of Friend, who appears to be a permanent resident of the United States by requiring him to post an additional bond as he had no known address in the Philippines; and (6) the hold departure order was practically lifted without any hearing.<sup>[8]</sup>

In her Comment, respondent judge vehemently denied that she committed any infraction of law and the rules in issuing the assailed order. She explained that the order was issued in the exercise of her judicial functions as pairing judge of Judge Lubao who was then on leave of absence when the 2<sup>nd</sup> Urgent Motion To Resolve Pending Motion For Reconsideration To Lift Hold Departure Order was filed by the accused. She insisted that she studied the records, not "with unseemly haste" as the complainants insinuated, because she even brought the records of the case to her house on Christmas day.<sup>[9]</sup>

Respondent judge also asserted that she did not commit gross ignorance of the law in acting on the subject motion without a hearing. She argued that the motion was not litigious as it merely contained the same allegations found in the motion for reconsideration earlier filed by the accused; that it was her assessment that the alternative prayer to allow Friend to travel was urgent because of the immediate medical attention needed by his son; that the alternative prayer would not prejudice the rights of the prosecution since Friend was not a flight risk after having

previously traveled to the United States and returning to the Philippines to attend the hearing of his case.

As to the charge of incompetence, respondent judge stressed that she studied and evaluated the records of the case and the applicable jurisprudence before issuing the assailed order. She stated that her competence as a judge was recognized by the Supreme Court when she was named the acting presiding judge of two courts in General Santos City and as acting executive judge of the same city.

On June 12, 2003, Atty. Ganal filed a Supplemental Complaint<sup>[10]</sup> on the ground that respondent judge exhibited manifest partiality and patent injustice against his client Kanemitsu Yamaoka in handling 3 cases filed by his client against the group of Friend and Kawai, namely: (1) Criminal Case No. 16151 for perjury pending before RTC, Branch 35; (2) Criminal Case No. 13280 for estafa pending before RTC, Branch 36; and, (3) Corporate Case No. 1 pending before RTC, Branch 23.

In Criminal Case No. 16151 which resulted in a judgment of conviction for perjury of the accused who appealed the judgment to branch 35 which was presided by respondent judge, complainant Ganal averred that respondent judge showed partiality when she denied the prosecution's first and only extension of time to file appellee's brief, but granted a similar motion for extension to the accused. Complainant further alleged that respondent, without resolving the motion for inhibition earlier filed by the prosecution, resolved the appealed decision by rendering a highly dubious judgment of acquittal of accused Kawai "despite the presence of all the elements of the crime and the existence of overwhelming evidence supporting Kawai's guilt."<sup>[11]</sup>

As regards Criminal Case No. 13280 for estafa, the letter-complaint reiterated the averments contained in the February 17, 2003 complaint. Specifically, it alleged that respondent judge took advantage of Judge Lubao's absence when she hastily granted *ex parte* on December 26, 2002 a motion filed on December 23, 2002 which allowed accused Friend to stay indefinitely in the United States.

The letter-complaint also charged respondent judge of partiality in keeping Corporate Case No. 1 archived since August 2002 resulting in the delay in the enforcement of SEC Order of Injunction and Appointment of a Management Committee which was later affirmed by the Supreme Court and Court of Appeals in G.R. No. 146079 and CA-G.R. SP No. 59356 respectively. According to complainant Ganal, respondent not only sat on the motion for reconsideration to reactivate the case but also failed to act on the motion for inhibition, both filed by Yamaoka. Complainant stated that respondent, in acting the way she did, had no other intention than to allow Kawai and Adachi to continue with the control of the company and dissipate its assets to the prejudice of his client Yamaoka.

In answer to the Supplemental Complaint, respondent judge gave the following justifications:

- (1) In Criminal Case No. 16151 which was an appeal filed by accused Kawai who was convicted for perjury by the municipal court, Branch 1, General Santos City, respondent judge averred that upon the receipt of the notice of appeal on August 1, 2002, she gave the appellant until October 12, 2002

to submit the appeal brief and for appellee to submit their own appeal brief within 15 days from receipt of the copy of appellant's brief. She denied appellee's request for a 30-day extension to submit its memorandum. Although the said memorandum was received only on December 16, 2002, yet she considered it in her decision of acquittal on January 10, 2003.

- (2) As to Criminal Case No. 13280, respondent judge argued that assuming she had erred in granting accused Friend permission to travel, the same could not be a basis for any administrative liability in the absence of fraud, dishonesty or corruption.
- (3) As to Corporate Case No. 1, respondent judge explained that the said case, which was originally docketed as SEC Case No. 11-95-5199 DV-200, was transferred to RTC, Branch 23, General Santos City by virtue of R.A. 8779 and A.M. No. 00-11-03-SC. SEC Hearing Officer, in an Order dated July 21, 1999, denied Yamaoka's prayer for the appointment of a management committee and for preliminary injunction. Thereafter, Yamaoka filed a petition for certiorari before the SEC *en banc*, which reversed the decision of the Hearing Officer and ordered the creation of a management committee of the Yamaoka Nippon Corporation (now Pescarich). Pescarich filed a petition with the Court of Appeals which reversed the decision of the SEC. On appeal, the Supreme Court again reversed the decision of the Court of Appeals. However on Pescarich's motion for reconsideration, the Supreme Court remanded the case to the Court of Appeals for the resolution of certain factual issues. This decision by the Supreme Court brought about the "motion to archive" filed by Pescarich before RTC, Branch 23. Respondent judge averred that she could not have been incompetent just because she granted the motion to archive the case while the Court of Appeals was resolving the issues of fact. Moreover, the Supreme Court would not have appointed her Acting Presiding Judge of RTC Branches 23 and 35, both of General Santos City or Acting Executive Judge had she been incompetent and remiss in her responsibilities.

On December 16, 2003, the OCA made the following recommendations:<sup>[12]</sup>

- (1) As regards her action in Criminal Case No. 16151, respondent be found guilty for failing to decide the motion to disqualify her before she rendered her decision acquitting Eiji Kawai. For this she should be fined P5,000.00.
- (2) As regards her failure or refusal to rule on the motion to reactivate Corporate Case No. 1, we believe that the private complainant has a judicial remedy, that of elevating the matter on appeal. As held in *Pagayanan vs. de la Victoria, supra*, respondent can not be held answerable for her refusal to re-activate the case as prayed for by complainant Yamaoka. However, it has not been denied that Yamaoka had filed, as early as September 2002, motions for reconsideration with the end in view to re-activate the case, respondent should be held