

SECOND DIVISION

[A.M. No. MTJ-01-1355, April 20, 2001]

**REGINO AND CONCESO BARBARONA, COMPLAINANTS, VS.
JUDGE ALEJANDRO T. CANDA, PRESIDING JUDGE OF THE
MUNICIPAL CIRCUIT TRIAL COURT OF LILOY-TAMPILISAN,
ZAMBOANGA DEL NORTE, RESPONDENT.**

D E C I S I O N

MENDOZA, J.:

This administrative complaint^[1] was filed by Regino and Conceso Barbarona against Judge Alejandro T. Canda of the Municipal Circuit Trial Court of Liloy-Tampilisan, Zamboanga del Norte, for allegedly knowingly rendering an unjust judgment, ignorance of the law, incompetence, grave abuse of discretion, and grave misconduct.

Complainants Regino and Conceso Barbarona are brothers. Conceso and complainants' father, Hermogenes Barbarona, were the defendants in a case for quieting of title and damages, docketed as Civil Case No. 356, in respondent judge's court. Gerardo Magallanes, the plaintiff in that case, alleged that he was the true and lawful owner and possessor of two parcels of land registered under TCT Nos. T-44256, ZN and T-44257, ZN in Barrio Pias, Municipality of Liloy, Zamboanga del Norte, having purchased them from Felipa R. Gorla who had assured him that the parcels of land were no longer tenanted as the tenants thereon had executed affidavits of voluntary surrender of landholdings. However, Magallanes alleged he and his workers were prevented from cutting the bamboo thickets on the parcels of land by complainant Conceso Barbarona and Hermogenes Barbarona who claimed ownership of the bamboos thickets. (It appears that at the instance of complainants, the Municipal Agrarian Reform Officer set a pre-litigation conference between the parties.) Magallanes therefor prayed that respondent judge declare his titles to the properties clear from any cloud of doubt and order the Barbaronas to respect his ownership and possession and to pay damages.

The Barbaronas moved for the dismissal of the case on the ground of lack of jurisdiction of the court. They alleged that they were tenants and that the case involved a landlord-tenant relationship. In addition, they contended that the case involved a cause of action which was incapable of pecuniary estimation.^[2] However, in his order,^[3] dated May 16, 1995, respondent judge denied the Barbaronas' motion and declared them in default. The order was based on the fact that the motion to dismiss lacked proof of service and was thus considered a mere scrap of paper which did not toll the running of the reglementary period to file an answer.

Accordingly, Magallanes presented his evidence *ex parte*, after which respondent judge rendered judgment on June 13, 1995 in favor of Magallanes, declaring "[his] titles to and interest in the subject properties as clear from clouds" even as it held

the Barbaronas' "claim on the bamboo groves to be unfounded and unconstitutional." Respondent judge ordered the Barbaronas to pay Magallanes P5,000.00 as moral damages, P2,000.00 as attorney's fees, and P1,000.00 as refund for actual expenses in the preparation and filing of the complaint.^[4] On appeal, the Regional Trial Court of Sidanga, Zamboanga del Norte, affirmed respondent judge's decision and later denied the Barbaronas' motion for reconsideration.^[5] Upon the finality of his decision, respondent judge issued a writ of execution on November 25, 1996. Accordingly, a parcel of land, Lot No. 1081, Pls-65, situated at San Francisco, Liloy, Zamboanga del Norte, declared in the name of Hermogenes Barbarona, was levied upon and sold at public auction to satisfy the award of damages to Gerardo Magallanes, who had made the highest bid of P8,000.00. As the Barbaronas failed to redeem the property within one (1) year, on June 10, 1998, a final deed of sale was executed in favor of Magallanes.^[6]

Complainants Regino and Conceso Barbarona then filed the instant complaint against respondent judge, alleging the following:

- (1) Respondent judge in ignorance of P.D. Nos. 316 and 1038 failed to make a preliminary determination as to whether a tenancy relationship exists between the parties, which fact is apparent in the pleadings in this case. Had he done so or at least referred the case to the Department of Agrarian Reform for certification of a tenancy relationship between the parties, he would have realized that he should not have taken cognizance of Civil Case No. 356.
- (2) Respondent judge connived with the plaintiff and the latter's predecessor-in-interest to eject complainants' family from their landholdings.
- (3) Respondent judge is incompetent and grossly inefficient. Complainants had received information that he had failed to dispose of his cases either in accordance with the law or within the reglementary period; hence the need to conduct an audit of his docket.
- (4) Respondent judge is guilty of grave misconduct because instead of doing his job, he is busy in his copra and trucking business and personally attends to his copra store.
- (5) As a notary public ex officio, respondent judge undertakes the preparation and acknowledgment of private documents, contracts, and other conveyances which bear no direct relation to his functions and charges notarial fees at the same rate as private practitioners despite the presence of several notaries in the area. As proof, complainants presented a Deed of Absolute Sale, dated July 9, 1993, notarized by respondent judge.^[7]

Respondent judge denies the charges against him. He alleges that he had no personal interest whatsoever in the outcome of Civil Case No. 356. He contends that the motion to dismiss filed by the Barbaronas in Civil Case No. 356 did not show proof of service, and for that reason the motion was a mere scrap of paper which did not suspend the running of the period to file an answer. As no answer had been filed by the Barbaronas within the reglementary period, respondent judge says

he had no other alternative but to declare them in default and allow Magallanes to present his evidence *ex parte*.

Respondent judge also alleges that he did not refer Civil Case No. 356 to the Department of Agrarian Reform (DAR) for preliminary determination as to whether the case was cognizable by him pursuant to P.D. No. 316 because he had no basis to do so, the Barbaronas having failed to file any responsive pleading. Respondent judge denies having decided cases not in accordance with law or failing to resolve incidents and decide cases within the mandated period and neglecting his judicial duties because of his business. He says he is not engaged in business. Finally, he also denies preparing and acknowledging notarial documents. He admits that he notarized the Deed of Absolute Sale, dated July 9, 1993, attached to the complaint but justifies his action on the ground that there was no available notary in the municipality of Liloy at the time, and that this is allowed under Supreme Court Circular No. 1-90 dated February 26, 1990.

On April 5, 2000, the Court referred the case to the Executive Judge of the Regional Trial Court of Liloy, Zamboanga del Norte, for investigation, report, and recommendation.

On November 10, 2000, Executive Judge Mariano S. Macias filed his report recommending that the instant case be dismissed for lack of merit. Anent the alleged irregularities committed by respondent judge in Civil Case No. 356, Executive Judge Macias opines that the same should be addressed in a judicial proceeding. He finds the charges that respondent judge engaged in business, neglected his judicial duties, acted improperly as a notary public, and charged exorbitant fees therefor to be without any basis in fact.

We will deal with each of the charges against respondent judge.

First. Respondent Judge's Failure to Determine Whether a Tenancy Relationship Existed Between the Parties in Civil Case No. 356

Respondent judge contends that there was no basis for him to refer the case to the DAR for preliminary determination of whether a tenancy relation existed between the parties as required by P.D. Nos. 316^[8] and 1038^[9] or for himself to conduct a "clarificatory hearing" because complainants failed to file any responsive pleadings and for that reason were declared in default.

This is not so. Magallanes alleged in his complaint that defendants (including herein complainant Conceso Barbarona) had referred the dispute to the Municipal Agrarian Officer at Zamboanga del Norte. This is equivalent to an allegation that the defendants were claiming the protection of agrarian laws.^[10]

Be that as it may, we hold that the failure of respondent judge to refer Civil Case No. 356 to the DAR for preliminary consideration cannot be taken against him. At the time Gerardo Magallanes' complaint was filed on February 27, 1995, P.D. Nos. 316 and 1038, which require a preliminary determination of the existence of a tenancy relationship between the parties, have already been expressly repealed in 1988 by R.A. No. 6657, §76 which provides:

Repealing Clause.- Section 35 of Republic Act No. 3844, Presidential Decree No. 316, the last two paragraphs of Section 12 of Presidential Decree No. 946, Presidential Decree 1038, and all other laws, decrees, executive orders, rules and regulations, issuances, or parts thereof inconsistent with this Act are hereby repealed or amended accordingly.

It was thus unnecessary to refer the case to the DAR, and respondent judge correctly proceeded to hear the case.^[11]

That respondent judge went on to declare the Barbaronas in default and eventually decide the case against them does not necessarily mean, as the latter now charge, that he connived with the plaintiff. The fact was that the Barbaronas filed a defective motion to dismiss as a result of which the period for filing an answer expired without them being able to file one. Hence, they were declared in default. Indeed, complainant Regino Barbarona later admitted during the hearing that complainants had no evidence to prove conspiracy between the plaintiff and respondent judge to evict them from the properties in question.^[12]

Second. Respondent Judge's Alleged Pre-occupation with a Lucrative Trucking and Copra Buying and Selling Business Resulting in the Neglect of his Judicial Duties

As shown in the investigation of Executive Judge Mariano S. Macias, the foregoing charge likewise was merely based on conjecture. Complainants admitted that they did not have any evidence that respondent judge was engaged in business. They only knew that respondent judge "had a truck and [that] he was buying copra."^[13] Complainants had the burden of proof to show that the respondent judge committed the acts complained of, and they failed to discharge this burden.^[14] As to the alleged inefficiency of respondent judge, the Court finds no evidence to support this allegation. To the contrary, the monthly accomplishment reports of respondent judge for the year 1998 show that, with the exception of the month of September,^[15] respondent judge has no cases which were ". . . Submitted for Decision but not yet Decided at the End of the Month."

Third. Respondent Judge's Alleged Notarization of a Document which Bears No Relation to his Functions and Charging of Exorbitant Notarial Fees Therefor.

Circular No. 1-90 of the Supreme Court provides:

MTC and MCTC judges may act as notaries public ex officio in the notarization of documents connected only with the exercise of their official functions and duties [*Borre v. Mayo*, Adm. Matter No. 1765-CFI, October 17, 1980, 100 SCRA 314; *Penera v. Dalocanog*, Adm. Matter No. 2113-MJ, April 22, 1981, 104 SCRA 193]. They may not, as notaries public ex officio, undertake the preparation and acknowledgment of private documents, contracts and other acts of conveyances which bear no direct relation to the performance of their functions as judges. The 1989 Code of Judicial Conduct not only enjoins judges to regulate their extra-judicial activities in order to minimize the risk of conflict with their judicial duties, but also prohibits them from engaging in the private