

SECOND DIVISION

[A.M. No. MTJ-00-1294 (Formerly OCA IPI No. 00-859-MTJ), July 31, 2000]

HORST FRANZ ELLERT, COMPLAINANT, VS. JUDGE VICTORIO GALAPON, JR., MUNICIPAL TRIAL COURT, DULAG, LEYTE, RESPONDENT.

DECISION

BUENA, J.:

Before us is a letter-complaint dated January 8, 2000^[1] and an affidavit-complaint dated January 10, 2000,^[2] both filed by Horst Franz Ellert, charging Judge Victorio L. Galapon, Jr. of the Municipal Trial Court at Dulag, Leyte with grave misconduct, abuse of judicial authority, ignorance of the law, unlawful notarization, perjury, and false testimony.

This case originated from two (2) cases, namely: DARAB Case No. VIII-169-L-91 entitled "*Lualhati V. Ellert vs. Marina Roca, et al.*" and Criminal Case No. 97-07-CR-161 entitled "*People of the Philippines vs. Horst Franz Ellert.*"

I. Re: DARAB Case No. VIII-169-L-91 entitled "*Lualhati V. Ellert vs. Marina Roca and Odeth Roca.*"

Complainant alleged that in the "Answer"^[3] filed by Marina Roca and Odeth Roca with the Department of Agrarian Reform Adjudication Board (DARAB), the signature of Judge Victorio L. Galapon, Jr., herein respondent, was affixed in the jurat.

In his complaint, Horst Franz Ellert avers that "a Municipal Trial Court judge is only authorized to administer oaths, or sign jurats to documents only for submission before his court, in cases pending before his court, such as complaints for filing with his court, sworn statements of witnesses in cases pending or to be filed with his court, affidavits of all kinds, provided that they are for filing/submission to his court, but definitely, not all other documents. Even as an *Ex-Officio* Notary Public, he is authorized to notarize (sign acknowledgments) documents, conveyances of very limited nature, ..." ^[4]

It is the understanding of the complainant that not all kinds of documents can be notarized (acknowledged before) by a Municipal Trial Court judge, like herein respondent. But, despite the fact that Judge Galapon is not duly authorized even by the Notarial Law to sign a document such as the aforementioned Answer, respondent knowingly, wilfully, unlawfully, and feloniously subscribed to, and administered the oaths of Marina Roca and Odeth Roca by signing the jurat at the bottom of the Verification of the Answer.

He points out that by unlawfully and illegally doing so, respondent judge committed grave misconduct, abuse of judicial authority, and exhibited his ignorance of the law.

II. Re: Criminal Case No. 97-07-CR-161 entitled "*People of the Philippines vs. Horst Franz Ellert for Light Threats*."

Complainant Ellert made the following allegations and rationalizes why it is his opinion that respondent judge gave a false testimony as well as perjured himself:

1. He knows respondent Judge as the latter is the complainant in Criminal Case No. 97-07-CR-161 filed with the Municipal Trial Court in Cities at Tacloban City, Branch I;
2. In the course of the trial conducted by the said court and presided by Judge Romulo Casiber, herein respondent falsely stated in his Affidavit-Complaint that Horst Franz Ellert is a resident of Barangay Tabu, Dulag, Leyte. — In other documentary and testimonial evidence, respondent testified and admitted that Ellert was indeed actually residing at Sitio Payapay, Barangay 90, San Jose, Tacloban City.
3. Respondent judge, in the course of his testimony given in open court and under oath, said that he helped Ellert by writing to the manager of the Development Bank of the Philippines concerning Ellert's problem on a piece of land, and also said that it was because of this letter that the bank returned the amount in the deed of sale. — There is a Certification made by the DBP manager that no such letter was sent to and/or ever received by his office;
4. In the same judicial proceedings, respondent judge falsely testified under oath that he first came to know Ellert when Lualhati V. Ellert (wife of herein complainant) filed a case against her own brother Domingo Villaronte in his (Judge Galapon) court prior to March 23, 1997 or sometime between 1994 to 1996. — When the case between complainant's late wife and her brother was filed and pending, complainant Ellert was still out of the country as he was working overseas and only came to the country occasionally for brief vacations;
5. Judge Galapon falsely testified and declared in open court that a property involving the DBP came to his knowledge and attention because it was the subject of a civil case before his court. — That property was never the subject of any civil case before his court or before any other court;
6. Respondent judge falsely declared and testified that he does not know Barangay Tabu, Cabatuan, or any other *barangay* in Dulag, Leyte. — The *Barangay* Captain of Barangay Tabu is the "*compadre*" of the respondent and, as a judge of the Municipal Trial Court of Dulag, Leyte, he was even the one who notarized the Application for Locational Clearance of the *Barangay* Chairman/Captain of Barangay Tabu. This was not however submitted to the HLURB because there was no building permit applied for and issued.

In his Comment dated February 7, 2000,^[5] Judge Victorio L. Galapon, Jr. reveals that the present complaint is perhaps the tenth in a series of continuous and relentless harassment cases filed against him by Horst Franz Ellert.

He avers that the reason why complainant Ellert unceasingly vilifies and harasses him is because of the criminal case he has filed against the latter (Criminal Case No. 97-07-CR-161 entitled "*People of the Philippines vs. Horst Franz Ellert*") for Light Threats, wherein Ellert was duly convicted and sentenced by the court to suffer

imprisonment ranging from five (5) months and eleven (11) days as minimum, to six (6) months as maximum of *Arresto Mayor*, and to pay the cost.^[6]

To refute each and every allegation made in the complaints, respondent judge points out that insofar as the residence issue is concerned, he believed that, at the time the Information in Criminal Case No. 97-07-CR-161 was filed in court, Ellert's residence was at Barangay Tabu, Dulag, Leyte; thus it was the same address he wrote when he executed his affidavit-complaint to support the criminal case against herein complainant. He did not know that the complainant has already settled elsewhere. In fact, this issue of residence was made the basis of another complaint against him.

Respondent judge states that it is highly incredible for him to state in open court during the hearing of the aforementioned criminal case that he did not know Barangay Tabu, Dulag, Leyte. There was an error in the transcription of his testimony, for what he said and meant was that he did not know the exact place in the *barangay* where complainant's house was situated. While respondent does know the *Barangay* Chairman of Tabu, Dulag, Leyte, this person is not his "*compadre*" as claimed by Ellert.

Ellert, in his complaint, alleges that during the hearing of the criminal case, respondent judge stated that it was because of his (Judge Galapon) letter that the bank returned the amount in the Deed of Sale. In refutation, Ellert presented a Certification by the Development Bank of the Philippines to the effect that respondent never appeared before the DBP nor wrote a letter relative to the property acquired by a Mrs. Carlota Cabacang.

Respondent judge thus contends that as will be noticed in the transcript, he did not mention the property of Mrs. Carlota Cabacang. This is because he was not referring to her land, as he did not know if Mrs. Cabacang owns a piece of land. Instead, he was referring to a land subject of Civil Case No. 230 entitled "*Development Bank of the Philippines, represented by Manuel G. Braseleno and Lualhati Ellert vs. Salvador Corsino*" pending before the Municipal Trial Court at Dulag, Leyte.

According to the respondent, it is not important whether or not the DBP received the letter adverted to. The fact is the bank returned the money to Lualhati Ellert as shown in the Order dated February 26, 1990. As admitted by the DBP, thru its lawyer, the sale was indeed rescinded. This is a clear case of misinformation resorted to by Ellert.

In all the complaints wherein complainant Ellert mentioned Criminal Case No. 97-07-CR-161, he never stated that respondent judge was the private complainant therein nor that he was convicted by the court.

As to the charge that respondent judge administered the oath in the Verification portion of the Answer of respondents Marina Roca and Odeth Roca in DARAB Case No. VIII-159-L-91, respondent judge candidly admits it. He believes that there was nothing wrong nor was there any abuse of authority in administering such oath. There never was any malice or bad faith attending such act. He honestly believes that merely administering an oath in the jurat is not actionable by any administrative sanction.

Judge Galapon declares that the series of complaints are the rantings of a depraved mind of a person who is now in serious jeopardy of going to prison, and who faces