

## SECOND DIVISION

[ A.M. No. RTJ-99-1477, September 09, 1999 ]

**MAXIMINO BALAYO, COMPLAINANT, VS. JUDGE MAMERTO M. BUBAN, JR., REGIONAL TRIAL COURT, BRANCH 18, TABACO, ALBAY, RESPONDENT.**

### D E C I S I O N

**MENDOZA, J.:**

This refers to a complaint filed by Maximino Balayo against Judge Mamerto M. Buban of the Regional Trial Court, Branch 18, Tabaco, Albay for failure to decide a case within the reglementary period, falsification of public documents, violation of the Anti-Graft and Corrupt Practices Act, and gross ignorance of the law.

Complainant is the defendant in Civil Case No. T-1577 for *accion publiciana* assigned to the sala of the respondent judge. He alleges that said case was submitted for decision to respondent judge sometime in November 1995 but it was decided by respondent judge only on March 24, 1997.

With respect to the other charges, complainant alleges:

In said Civil Case No. T-1577, the plaintiffs presented only two (2) witnesses and no other, namely, Arleen Azada, the Barangay Secretary of Quinala, Tabaco, Albay and Reynaldo Martinez, who claims to be an heir of the plaintiffs.

But in the said decision, Judge Mamerto Buban relied heavily on the alleged testimony of a certain Nelson Carritas<sup>[1]</sup> who allegedly appeared pursuant to a subpoena duces tecum and allegedly presented a salvage lists showing that Lot 7493 and Lot 206 in question in Civil Case No. T-1577 were covered with certificates of titles when in truth and in fact, Nelson Carritas never testified in said Civil Case No. T-1577, he was never subpoenaed in this case and neither did he present any documentary evidence in this case as evidenced by a certification of Amalia B. Beraquit, OIC & Court Stenographer hereto attached as Annex "B".

Judge Mamerto Buban also referred to certain certificates of title and documentary evidence in favor of the plaintiff in his decision as covering the lots in question. When in truth and in fact, no such certificate of title or documentary evidence were ever shown or presented in court, much less marked in evidence.

Judge Mamerto Buban considered a purely hearsay and self serving evidence by relying on the testimony of Arleen Azada about my alleged

admission at the office of the Barangay Captain of Quinale, Tabaco, Albay as shown by the proceedings, when no such proceedings were had and I have not signed any minutes of any proceedings.

Again, while Judge Mamerto Buban repeatedly referred to numbers of original certificates of title issued way back in [the] 1930's to the lots in question in the plaintiff's name, yet he also considered that the said lots were issued certificates of title pursuant to an original land registration proceedings filed in the 1970's before Judge Jose C. Razo of the then Court of First Instance of Albay, Branch 6, Tabaco, hence, how could the lots have been titled in the 1930's if these lots were issued titles pursuant to land registration proceedings in the 1970's.

Judge Mamerto Buban in making untruthful narration of facts in his decision in favor of the plaintiffs committed falsification and obviously caused undue injury to me as defendant in said Civil Case No. T-1577 and in the discharge of his official judicial functions as a judge, gave unwarranted benefits and advantage to the plaintiffs through manifest partiality, evident bad faith or gross inexcusable negligence.

In view of the foregoing, I respectfully pray that Judge Mamerto Buban be dealt with criminally and administratively and pending investigation he be suspended from office.

Judge Buban admits that Civil Case No. T-1577 was decided beyond the reglementary period. He explains, however, that the delay was due to his designation as acting presiding judge of another sala which had been vacant. He offers his apology to the Court and promises not to commit the same infraction in the future.

As to the other charges respondent alleges:

The complainant also claims that the undersigned "relied heavily on the alleged testimony of one Nelson Carretas who appeared pursuant to a subpoena duces tecum and presented the salvaged list of Original Certificates of Titles issued for the Municipality of Tabaco, Albay," when said person never testified in Civil Case No. T-1577. The said finding of the court is found on pages 13 and 14 of the decision which runs, thus:

Again, with respect to Lot 7493 and Lot 206, Mr. Nelson Carretas to whom subpoena duces tecum was issued, brought before this Court the Pre-War Salvaged List of Original Certificates of Titles issued for the Municipality of Tabaco before the war. From the said list, it appears that Lot No. 7493 is covered by Title No. 24252 in the name of Sy Yoco, and Lot No. 206 is likewise covered by Title No. 24304 in the name of Sy Yoco; the two lots are at present subject matters of a Petition for Reconstitution of Titles before Branch 17 of this Court."

The aforequoted paragraph of the decision which states that Nelson Carretas testified in the case at issue is an error in phraseology, committed through inadvertence and without malice or bad faith on the part of the undersigned. It needs stating that Nelson Carretas really testified as a witness in Cadastral Case No. T-163, a Petition for

Reconstitution of Title with the Heirs of Sy Yoco as petitioners, on 15 September 1995 at the time when the undersigned was the Acting Presiding Judge of Branch 17 of the Regional Trial Court, at Tabaco, Albay, during which said witness presented to the court the aforementioned salvaged list of titles. And this fact explains the last clause of the above-quoted paragraph in the decision which states: "the two lots" (referring to Lots Nos. 7493 and 206) "are at present subject matters of a Petition for Reconstitution of Titles before Branch 17 of this Court." Attached hereto are certified xerox copies of the subpoenas addressed to the Register of Deeds of Albay or his duly authorized representative and the minutes of the hearing where Nelson Carretas brought the Salvaged List of Original Certificates of Titles for the Municipality of Tabaco, Albay, certified xerox copy of the Salvaged List is likewise hereto attached.

On the claim by complainant, Maximo Balayo that the undersigned relied on the testimony of Arleen Azada, Barangay Captain of Quinale, Tabaco, Albay, about his alleged admissions before the office of the barangay captain as shown by the proceedings when no such proceedings were had and that he had not signed any proceedings. To this, the undersigned hereby attaches xerox copy of Exhibit "A" for the plaintiff in Civil Case No. T-1577 which xerox copy the undersigned failed to have the same certified before the Court of Appeals as the case had been elevated on appeal to the Court of Appeals.

Likewise, the undersigned cannot be held liable for alleged Falsification of Public Document since when he mentioned Nelson Carretas as witness in Civil Case No. T-1577, he was actually referring to Cadastral Case No. T-163 where said witness testified while he was the Acting Presiding Judge of Branch 17 of the same court. The error, to repeat, which is explained by the last clause of the above-quoted part of the decision, was an honest mistake, committed in utmost good faith and without any malice on the part of the undersigned.

Similarly, the charge that the Decision rendered by the undersigned in Civil Case No. T-1577, "gave unwarranted benefits and advantage to the plaintiffs through manifest partiality, evident bad faith or gross inexcusable negligence" on the part of the undersigned is untenable and without basis.

The decision itself and the record do not disclose any act of "manifest partiality" on the part of the undersigned. The complaint and the annexes thereto fail to establish the fact that in rendering the decision at issue the undersigned committed manifest or patent partiality to the plaintiffs, or that there was a clear, notorious or plain inclination or predilection on the part of the undersigned to favor the plaintiffs rather than the defendant (herein complainant).

Furthermore, the charge for "gross inexcusable negligence" against the undersigned arising from the same decision is unwarranted. There is no showing whatsoever that the undersigned had acted in a wantonly careless manner to the prejudice of the complainant in rendering the