

FIRST DIVISION

[A.M. No. RTJ-96-1363, October 12, 1998]

TOMAS CABULISAN, COMPLAINANT, VS. JUDGE ADRIAN N. PAGALILAUAN, RESPONDENT.

D E C I S I O N

BELLOSILLO, J.:

A certain Tomas Cabulisan filed an administrative complaint dated 4 April 1995 against respondent Judge Adrian N. Pagalilauan, RTC-Br. 12, Sanchez Mira, Cagayan, for grave misconduct committed as follows: (1) peeping into the bathroom where Marilyn C. Dumayas, a public health nurse of the Sanchez Mira School of Arts and Trade, and daughter of the owner of the house where he was boarding, was then taking a bath; (2) having a mistress in the neighboring town of Pamplona where he would pass the night now and then; and (3) allowing local practitioners to write decisions for him.

In the First Indorsement of then Deputy Court Administrator Juanito A. Bernad, the complaint was referred to the National Bureau of Investigation (NBI) which procured statements from Marilyn C. Dumayas, alleged victim of the peeping incident, and Gemma C. Cabading, Court Interpreter, RTC-Br. 12, Sanchez Mira, Cagayan.

In her sworn statement executed on 1 August 1995 before NBI Agent Norman A. Toloza at the Administration Building of the SMSAT, Barangay Santor, Sanchez Mira, Marilyn C. Dumayas, married to Orlando T. Dumayas a process server in the sala of respondent, narrated that one morning in February 1995 (specific day was not mentioned) while she was taking a bath in the bathroom she noticed someone enter the adjacent comfort room. After she finished and was about to take her towel, she saw the face of respondent Judge Adrian N. Pagalilauan over the concrete dividing wall with his eyes looking at her naked body so she hurriedly wrapped herself with her towel and went out of the bathroom immediately.^[1]

One morning a week after, a similar incident happened again. While she was taking a bath in a squatting position in the same bathroom, and sensing that respondent would peep again, she instinctively glanced at the mirror in the bathroom and saw respondent from his chest up staring at her. Again, she immediately wrapped herself up with her robe and screamed as she fled from the bathroom.^[2] A few days after the second incident, respondent voluntarily left her place and transferred to a neighbor's house.^[3]

Gemma C. Cabading, in her sworn statement dated 11 August 1995, stated that she had no knowledge that respondent was maintaining a *querida*.^[4] But she recalled that a certain Divina Calaycay frequented the sala of respondent but explained that Divina was the widow of Judge Infante S. Calaycay, a friend of respondent and his

predecessor in office.^[5] Cabading denied having any knowledge of practicing lawyers preparing decisions for respondent.^[6]

In his undated letter-comment, respondent denied the charges but admitted that while presiding judge of the Regional Trial Court of Sanchez Mira, Cagayan, he boarded in the house of Isabelo P. Castillo, father of Marilyn C. Dumayas and his former sheriff. Respondent explained that since he was not accustomed to sitting on the toilet bowl in the comfort room, he would squat on the bowl with his feet and not his buttocks resting on it. Respondent claimed that under that circumstance, he had to balance himself by placing one hand on the divider while mounting the bowl and dismounting from it. One morning in February 1995, while using the toilet bowl, he had to hold the top of the divider with his left hand to balance himself. His left hand almost dislodged the clothes of Marilyn which were draped on the divider. He held on to them to prevent them from falling on the floor. He concluded that Marilyn who was at the adjacent bathroom must have interpreted the movement of her hanging clothes as a deliberate and malicious act on his part thus giving rise to her suspicion that he was actually peeping at her.

With regard to the charge that he had a mistress, respondent surmised that the woman alluded to was Divina Calaycay, widow of Infante S. Calaycay, his predecessor in the Regional Trial Court. He insisted that he and Divina Calaycay were merely friends, as he and her late husband were former classmates. There were even instances after the death of Judge Calaycay when she would visit him to ask help in connection with her husband's death benefits from the Employees Compensation Commission considering that he was formerly Executive Labor Arbiter of the National Labor Relations Commission before becoming a judge.

On the accusation that respondent allowed local practitioners to write decisions for him, respondent maintained that it was baseless and merely fabricated.

In the resolution of 2 October 1996 the Court noted the complaint as well as respondent's comment and referred the case to Associate Justice Hilarion L. Aquino of the Court of Appeals for investigation, report and recommendation. Justice Aquino however filed a motion to be relieved as investigator on the ground that respondent was a friend and townmate and in fact consulted him once regarding this case.

On 15 January 1997 the Court granted the motion of Justice Aquino and designated Justice Portia Aliño-Hormachuelos of the Court of Appeals to replace him. In her Report and Recommendation dated 18 March 1997 Justice Aliño-Hormachuelos recommended the dismissal of the complaint on the ground that the identity of the complainant could not be verified. Summons issued to complainant Tomas Cabulisan was returned with the notation "RTS-unknown." According to the Officer's Return of Service, there was no Tomas Cabulisan known to be residing in the address on record. Furthermore, in the report of NBI Agent Norman Taloza it was mentioned that complainant Tomas Cabulisan was a non-existing person.

In the resolution of 17 September 1997 the case was referred back to Justice Portia Aliño-Hormachuelos for a more thorough investigation on the ground that the alleged non-existence of the complainant was insufficient basis for dismissal since witnesses mentioned in the complaint could still be subpoenaed and required to testify. As a result, Marilyn C. Dumayas appeared in the formal investigation. She

testified that respondent was a boarder in her family's house where she was also staying in 1995.^[7] Their house had only one bathroom which adjoined the comfort room.^[8] The two rooms were separated by a concrete divider about 2-1/2 meters in height which did not go all the way to the ceiling, such that there was an open space between the ceiling and the top of the divider.^[9] This time however she claimed that she did not exactly see respondent looking at her; that she only saw his forehead and that she "simply suspected" that he peeped at her. She also declared that she did not remember if the peeping incident really happened twice.^[10]

There appears to be a conflict between Dumayas' sworn statement executed 1 August 1995 and her testimony before the investigating justice on 7 November 1997. As a rule, affidavits are generally considered to be inferior to the testimony given in open court.^[11] However, in the instant administrative case, the sworn statement of Marilyn C. Dumayas contains a detailed account of the two peeping incidents which is so persuasive as to convince us that it was what actually transpired, and not the version of respondent which is practically a mere denial. Marilyn previously stated-

Q Will you please state what Judge Pagalilauan did something wrong to you?

A Sometime in the month of February this year while I was taking a bath in the morning inside our bathroom I noticed someone entered the adjacent comfort room and after I finished taking a bath and I was about to take my towel I saw the face of Judge Pagalilauan over the dividing wall with his eyes looking towards my naked body and I hurriedly wrapped myself with my towel and went out immediately and banged the door.

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Q Did Judge Pagalilauan do the same wrong again to you?

A Yes, sir.

Q When was that second incident happened?

A A week after, sir.

Q How did it happen?

A One morning a week after when I took a bath in the bathroom in a squatting position and being aware that the Judge might do it again I happened to glance at the mirror inside the bathroom and I saw at the mirror a part of his body from chest to head looking at me so I again immediately wrapped myself with my bathrobe and hurriedly left the place screaming: "Bastos ka nga lalakayan, maysa ka nga Judge ngem awan ti sursurom, pumanaw ka dito balay, diak kayat nga agian ka dito, addada judge nga kas kenka nga naggigian dito balay ngem saan da nga bastos nga kas kenka" (You foolish old man, you are a Judge but you have no manners, leave the house and I don't want you to stay longer here, there were other Judges who stayed here but they were not as foolish as you) as I went upstairs."^[12]