



Republic of the Philippines  
SUPREME COURT  
Baguio City

THIRD DIVISION

**JOHNWELL W. TIGGANGAY,**  
Complainant,

**A.M. OCA IPI No. 09-3243-RTJ**

Present:

- versus -

VELASCO, JR., J., Chairperson,  
PERALTA,  
ABAD,  
MENDOZA, and  
LEONEN, JJ.

**JUDGE MARCELINO K.  
WACAS, Regional Trial Court,  
Branch 25, Tabuk City, Kalinga,**  
Respondent.

Promulgated:

April 1, 2013

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**RESOLUTION**

**VELASCO, JR., J.:**

Before Us is a letter-complaint charging respondent Judge Marcelino K. Wacas (Judge Wacas) with Impropiety and Partiality for not inhibiting himself, in violation of the Code of Judicial Conduct, from hearing an electoral protest case pending before him and for attending the victory party of a party-litigant in said electoral case.

Judge Wacas is the Presiding Judge of the Regional Trial Court (RTC), Branch 25 in Tabuk City, Kalinga. Complainant Johnwell W. Tiggangay (Tiggangay) was the losing protestant in an electoral protest case before the sala of Judge Wacas, docketed as Election Case No. 40, entitled *Johnwell W. Tiggangay v. Rhustom L. Dagadag*.

Tiggangay ran for the mayoralty position of Tanudan, Kalinga in the May 14, 2007 election but lost to Rhustom L. Dagadag (Dagadag) by a slim margin of 158 votes. Following Dagadag's proclamation, Tiggangay filed an electoral protest which was raffled to the sala of Judge Wacas.

On August 8, 2008, Judge Wacas rendered a Decision finding Dagadag to have won the protested election but at a reduced winning margin of 97 votes. Tiggangay appealed the RTC Decision before the Commission

on Elections (COMELEC) Second Division which dismissed the appeal through an Order issued on November 4, 2008. Tiggangay's motion for reconsideration of the COMELEC Second Division's dismissal of his appeal was likewise rejected by the COMELEC *En Banc* on January 12, 2011 on the ground of mootness.

On July 31, 2009, Tiggangay filed his verified letter-complaint charging Judge Wacas with Impropiety and Partiality. Tiggangay alleged that, during the course of the proceedings in Election Case No. 40, he learned that Judge Wacas is Dagadag's second cousin by affinity, the former's aunt is married to an uncle of Dagadag. The relationship notwithstanding, Judge Wacas did not inhibit himself from hearing said electoral case in violation of the New Code of Judicial Conduct and Rule 137 of the Revised Rules of Court. Moreover, after ruling in favor of Dagadag, so Tiggangay alleged, Judge Wacas and his wife attended the victory party of Dagadag held on August 23, 2008 at Dagadag's ranch in Spring, Tabuk City. To bolster his allegation, Tiggangay submitted the affidavit of his driver, Fidel Gayudan (Gayudan),<sup>1</sup> who attested Judge Wacas and wife were fetched by a red Toyota Surf owned by Dagadag and were brought to the victory party. Further, Tiggangay alleged—citing the affidavit of Corazon Somera<sup>2</sup> (Somera), an alleged close friend of Judge Wacas and his spouse—that Judge Wacas' sister-in-law, Rebecca Magwaki Alunday (Alunday), allegedly said in the presence of Somera and Judge Wacas and wife that Tiggangay will win the protest if he has much money. Tiggangay stated that "Judge Wacas never bothered x x x to rebuke his sister-in-law for such 'uncalled for' statement, or to outrightly deny or affirm such statement x x x."<sup>3</sup>

In his Comment, Judge Wacas denied being related by affinity to Dagadag, adding that Tiggangay made the allegation on the basis of "some reliable sources," not from his personal knowledge. Moreover, Judge Wacas maintained, Tiggangay never moved for his inhibition during the entire proceedings in Election Case No. 40 if, indeed, Tiggangay doubted his fairness, integrity and independence. Judge Wacas vehemently denied his alleged attendance in the victory party of Dagadag on August 23, 2008 and asserted that he was with his family in a clan gathering on that day in the house of Rafael Maduli at Purok 5, Bulanao, Tabuk City, Kalinga, where he stayed from about 8:00 a.m. until about 3:00 p.m. Thus, he submitted the affidavits of Blezilda Maduli Palicpic<sup>4</sup> (Palicpic) and Alunday<sup>5</sup> attesting to such fact aside from his own affidavit<sup>6</sup> and the affidavit of his wife, Rosalina Magwaki Wacas (Mrs. Wacas).<sup>7</sup>

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<sup>1</sup> *Rollo*, p. 6.

<sup>2</sup> *Id.* at 7.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.* at 25-26.

<sup>5</sup> *Id.* at 27-28.

<sup>6</sup> *Id.* at 29-30.

<sup>7</sup> *Id.* at 31-32.

On June 13, 2011, acting on the recommendation<sup>8</sup> of the Court Administrator, the Court referred the matter to the Court of Appeals (CA), through Associate Justice Socorro B. Inting (Justice Inting), for investigation and report with appropriate recommendations.

Justice Inting held a preliminary conference on October 3, 2011, where the parties stipulated, *inter alia*, that:

- 11) During the proceedings of the protest case, complainant did not file a motion to inhibit Judge Marcelino Wacas.
- 12) No written Motion to Inhibit was filed in Court during the proceedings of the protest case.
- 13) The letter-complaint dated February 19, 2009 was filed only after the decision dated August 8, 2008 was rendered by the RTC and after the Comelec in its Order dated November 4, 2008 dismissed the appeal.
- 14) That Fidel Gayudan, one of the witnesses, is a constant companion of the complainant.
- 15) That Corazon Somera is the sister of the mother of the complainant.<sup>9</sup>

Thereafter, Justice Inting conducted hearings on December 9, 2011,<sup>10</sup> January 27, 2012,<sup>11</sup> March 2, 2012,<sup>12</sup> and June 22, 2012.<sup>13</sup> For the prosecution of the instant case, only Tiggangay and Gayudan testified on December 9, 2011. As Somera did not appear to testify, her affidavit appended to the complaint was expunged from the records. On the other hand, for the defense, Palicpic testified on March 12, 2012, while Sarado Aggal (Aggal), Mrs. Wacas and Judge Wacas testified on June 22, 2012.

Submission of Memoranda followed.

On October 18, 2012, Justice Inting transmitted to the Court her Report, recommending the dismissal of the instant complaint for lack of substantial evidence.<sup>14</sup>

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<sup>8</sup> Id. at 35.

<sup>9</sup> Id. at 46-47, CA Order dated October 10, 2011.

<sup>10</sup> Id. at 81-97, TSN, December 9, 2011, with the testimonies of Tiggangay and Gayudan.

<sup>11</sup> Id. at 80, CA Order dated February 16, 2012.

<sup>12</sup> Id. at 201-262, TSN, March 12, 2012, with the testimony of Palicpic.

<sup>13</sup> Id. at 388-414, TSN, June 22, 2012, with the testimony of Aggal, Mrs. Wacas and Judge Wacas.

<sup>14</sup> Justice Inting recommended:

WHEREFORE, in view of the foregoing, it is hereby recommended to the Third Division of the Honorable Supreme Court that the administrative complaint against respondent Judge Marcelino K. Wacas be DISMISSED for lack of merit. (Report, p. 16.)

We adopt the findings of Justice Inting supportive of her recommendations and accordingly dismiss the instant administrative complaint.

When the issue is administrative liability, the quantum of proof required is only substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion.<sup>15</sup> In administrative proceedings, the burden of proof that respondent committed the acts complained of rests on the complainant.<sup>16</sup> In the instant case, Tiggangay failed to present substantial evidence to prove his allegations. One who alleges a fact has the burden of proof and mere allegation is not evidence.<sup>17</sup>

The supposed relationship between Judge Wacas and Dagadag, unsubstantiated as it were by the required substantial relevant evidence, remains a mere allegation of Tiggangay. In his testimony on December 9, 2011, Tiggangay tried to assert that Judge Wacas and Dagadag are related within the sixth degree by affinity in that the aunt of Judge Wacas is married to the uncle of Dagadag. Tiggangay even drew a sketch to show the affinity. The fact, however, is that no substantial evidence was presented to prove the relationship angle.

We can grant *arguendo* that the aunt of Judge Wacas is married to the uncle of Dagadag. But such reality is not a ground for the mandatory inhibition of a Judge as required under Sec. 1<sup>18</sup> of Rule 137, Revised Rules of Procedure, since there is actually no relation of affinity between Judge Wacas and Dagadag.

Affinity denotes “the relation that one spouse has to the blood relatives of the other spouse.”<sup>19</sup> It is a relationship by marriage or a familial relation resulting from marriage. It is a fictive kinship, a fiction created by law in connection with the institution of marriage and family relations.<sup>20</sup> Relationship by affinity refers to a relation by virtue of a legal bond such as marriage. Relatives by affinity, therefore, are those commonly referred to as

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<sup>15</sup> *Velasco v. Angeles*, A.M. No. RTJ-05-1908, August 15, 2007, 530 SCRA 204, 224.

<sup>16</sup> *Re: Letter-Complaint of Atty. Ariel Samson C. Cayetuna, et al., All Employees of Asso. Justice Michael P. Elbinias against Asso. Justice Michael P. Elbinias, CA-Mindanao Station*, A.M. OCA IPI No. 08-127-CA-J, January 11, 2011, 639 SCRA 220, 234.

<sup>17</sup> *Heirs of Cipriano Reyes v. Calumpang*, G.R. No. 138463, October 30, 2006, 506 SCRA 56, 72; citing *Luxuria Homes, Inc. v. Court of Appeals*, G.R. No. 125986, January 28, 1999, 302 SCRA 315, 325.

<sup>18</sup> SECTION 1. *Disqualification of Judges*. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity or to counsel within the fourth degree, computed according to the rules of civil law, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all the parties in interest, signed by them and entered upon the record.

A Judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just and valid reasons other than those mentioned above.

<sup>19</sup> B.A. Garner, BLACK'S LAW DICTIONARY 67 (9<sup>th</sup> ed., 2009).

<sup>20</sup> *Intestate Estate of Manolita Gonzales Vda. de Carungcong v. People*, G.R. No. 181409, February 11, 2010, 612 SCRA 272, 285.

“in-laws,” or stepfather, stepmother, stepchild and the like.<sup>21</sup>

Affinity may also be defined as “the relation which one spouse because of marriage has to blood relatives of the other. The connection existing, in consequence of marriage between each of the married persons and the kindred of the other. The doctrine of affinity grows out of the canonical maxim that marriage makes husband and wife one. The husband has the same relation by affinity to his wife’s blood relatives as she has by consanguinity and vice versa.”<sup>22</sup>

Indeed, “there is no affinity between the blood relatives of one spouse and the blood relatives of the other. A husband is related by affinity to his wife’s brother, but not to the wife of his wife’s brother. There is no affinity between the husband’s brother and the wife’s sister; this is called *affinitas affinitatis*.”<sup>23</sup>

In the instant case, considering that Judge Wacas is related to his aunt by consanguinity in the third degree, it follows by virtue of the marriage of his aunt to the uncle of Dagadag that Judge Wacas is the nephew-in-law of the uncle of Dagadag, i.e., a relationship by affinity in the third degree. But Judge Wacas is not related by affinity to the blood relatives of the uncle of Dagadag as they are not his in-laws and, thus, are not related in any way to Dagadag. In like manner, Dagadag is the nephew-in-law of the aunt of Judge Wacas but is not related by affinity to the blood relatives of Judge Wacas’ aunt, like Judge Wacas. In short, there is no relationship by affinity between Judge Wacas and Dagadag as they are not in-laws of each other. Thus, Judge Wacas is not disqualified under Sec. 1 of Rule 137 to hear Election Case No. 40.

It cannot be overemphasized that Tiggangay, for all his protestations against Judge Wacas’ impartiality arising out of the perceived relationship by affinity between Dagadag and Judge Wacas, never moved for the inhibition of Judge Wacas from hearing Election Case No. 40. We view this fact as a belated attempt by Tiggangay to get back at Judge Wacas for the latter’s adverse ruling in Tiggangay’s electoral protest. Besides, as aptly put by Justice Inting, “a litigant cannot be permitted to speculate upon the action of the court and to raise objections only after an unfavorable decision has already been rendered.”<sup>24</sup>

We find no reason to disturb Justice Inting’s succinct observation that the affidavit and uncorroborated testimony of Tiggangay’s driver, Gayudan, is incredulous and not worthy of credence. Gayudan supposedly followed Judge Wacas and wife to the ranch of Dagadag where the alleged victory

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<sup>21</sup> *People v. Atop*, G.R. Nos. 124303-05, February 10, 1998, 286 SCRA 157, 169.

<sup>22</sup> *People v. Berana*, G.R. No. 123544, July 29, 1999, 311 SCRA 664, 675-676.

<sup>23</sup> BLACK’S LAW DICTIONARY, *supra* note 19.

<sup>24</sup> Report, p. 9.

party was celebrated on August 23, 2008 and observed for four hours the comings and goings of the people attending the party. Yet, Gayudan could not even name one attendee, aside from Judge Wacas and his wife, despite admitting that the people who allegedly attended the party are from his place.

Notably, the affidavit and testimony of Aggal belies and demolishes the affidavit and testimony of Gayudan. Aggal was the driver of Congressman Tagayo from 2007 to 2011 and was staying in the place of said Congressman which is just beside the ranch of Dagadag in Spring, Tabuk City, Kalinga. Aggal attested and testified that there was no party in the place of Dagadag on August 23, 2008. Besides, the unrebutted testimony of Palicpic places the whereabouts of Judge Wacas and his wife on August 23, 2008 not in Dagadag's place but in the place of their relative, which is just walking distance from their residence, to attend a clan gathering.

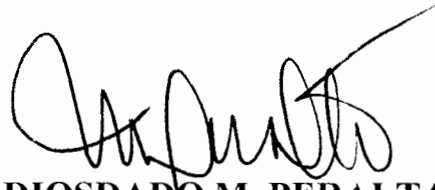
In sum, We find nothing in the records to support a case of impropriety, much less manifest bias and partiality against Tiggangay.

**WHEREFORE**, the instant administrative complaint against Judge Marcelino K. Wacas, Presiding Judge of the RTC, Branch 25 in Tabuk City, Kalinga, is hereby **DISMISSED** for lack of merit.


**SO ORDERED.**

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice

WE CONCUR:



**DIOSDADO M. PERALTA**  
Associate Justice



**ROBERTO A. ABAD**  
Associate Justice



**JOSE CATRAL MENDOZA**  
Associate Justice



**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice