



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**CONRADO ABE LOPEZ, represented
by ATTY. ROMUALDO JUBAY,**
Complainant,

A.M. No. MTJ-13-1837
[formerly OCA IPI No. 12-2463-MTJ]

Present:

CARPIO, J., Chairperson,
BRION,
DEL CASTILLO,
MENDOZA, and
LEONEN, JJ.

- versus -

JUDGE ROGELIO S. LUCMAYON,
Municipal Trial Court in Cities, Branch
1, Mandaue City, Cebu,
Respondent.

Promulgated:

SEP 24 2014 *Handwritten signature*

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DECISION

BRION, J.:

We resolve the administrative complaint¹ filed by Conrado Abe Lopez (*complainant*) charging Judge Rogelio S. Lucmayon (*respondent*), Municipal Trial Court in Cities, Branch 1, Mandaue City, Cebu, with Dishonesty, Corruption and Malpractice relative to a land dispute involving their families.

The Antecedent Facts

In a verified complaint-affidavit dated December 12, 2011, the complainant, through his counsel Atty. Romualdo M. Jubay, alleged that when he was eight years old, he inherited from his adoptive father Restituto Lopez one-half (1/2) of Lot No. 1718 with an area of 355 square meters located in Balamban, Cebu, evidenced by a document entitled "Katapusan Panugon" (*Testamente*). He claimed that while the document mentioned Lot No. 1718, he ended up receiving a portion of Lot No. 1696 with a total land area of 49,817 square meters, that became the object of an extrajudicial settlement involving him, his adoptive mother Honorata Lopez, and the

¹ Rollo, pp. 2-11.

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relatives of the respondent in December 1978. Half of Lot No. 1696 was cultivated by his adoptive mother until the latter's death in 1982. He took over the cultivation of the land after he retired as a seafarer in 1988.

The complainant alleged that sometime in October 2004, he and the respondent met in a waiting shed located in front of the house of the latter's grandmother in Buanoy, Balamban, Cebu. At that meeting, the respondent allegedly deceived him into signing a Special Power of Attorney (*SPA*) to process the sale of Lot No. 1696 to the prospective buyer, Aboitiz Group of Company. Unknown to the complainant, the said *SPA* contained at the bottom portion, a so-called "Waiver of Rights" that the respondent had deceptively inserted in order to strip him of his ownership of Lot No. 1696. After signing the document (notarized by a certain Atty. Arturo C. Mata (*Atty. Mata*) without the complainant's presence), the respondent allegedly told the complainant that he no longer had any right over the property. In March 2005, the father of the respondent, Pedro Lucmayon (*Pedro*), ordered him to cease cultivating the land because of the Waiver of Rights in the *SPA* he signed.

The complainant also asserted that the respondent had caused Pedro and his siblings to execute a document entitled "Supplemental Extrajudicial Settlement of the Estate of Moises Legaspino and Victoria Lopez" to the damage and prejudice of the complainant and his adoptive mother. He alleged that in the extrajudicial settlement, his name and the name of his adoptive mother were excluded. They claimed that as legal heirs of the late Restituto Lopez (*Restituto*) who, in turn, had inherited the property from his late mother Victoria Lopez (the co-owner of the property), their exclusion from the extrajudicial settlement was an act of dishonesty to which the respondent should be held administratively liable.

In his comment² dated March 8, 2012, the respondent vehemently denied that he convinced the complainant to sell his shares in the property; he claimed that it was the complainant who was interested in selling his shares after he got tired of cultivating the land. He also denied that he deceived the complainant into signing the Waiver of Rights. He contended that the filing of the administrative case against him was intended to embarrass and harass him.

The respondent further stated that the signing of the Waiver of Rights was done after he discovered that the complainant was not legally adopted. He added that since there had been no legal adoption, the complainant could not be considered as a legal heir and was not entitled to any portion of the land. He stated, too, that his participation in the sale transaction was limited to informing his parents and relatives that the complainant is not a legal heir of *Resitituto*.

² Id. at 95-103.

The Report and Recommendation of the OCA

In its evaluation report³ dated October 23, 2012, the Office of the Court Administrator (OCA) noted that the allegations in the administrative complaint are basically the same allegations the complainant raised in the criminal complaint for falsification of public documents he filed against the respondent, which complaint the Office of the City Prosecutor of Cebu City dismissed. The City Prosecutor found that the complainant's allegations lacked merit and evidentiary proof. It also found that the complainant failed to discharge the burden of proving the respondents' administrative liability and recommended the dismissal of the administrative complaint for lack of merit. The recommendation reads:

“RECOMMENDATION: It is therefore respectfully recommended for the consideration of the Honorable Court that the administrative complaint against Judge Rogelio S. Lucmayon, Branch 1, Municipal Trial Court in Cities, Mandaue City, Cebu, be DISMISSED for lack of merit.”

On December 5, 2012, the Court issued a Resolution⁴ adopting and approving the OCA's findings of fact, conclusions of law and recommendation, and dismissed the complaint against the respondent.

The complainant sought reconsideration⁵ contending that the OCA's findings of fact were clearly erroneous. He pointed out the OCA failed to appreciate and consider the other circumstances that clearly showed the respondent's dishonesty, corruption and malpractice. He reiterated that the respondent made him sign three (3) SPAs and deceived him into signing the Waiver of Rights at the bottom portion of the third SPA, which SPA was allegedly notarized by Atty. Mata without his presence. He also stated that the respondent's allegation that he was not a legally adopted son of Restituto is baseless; since as shown in Restituto's Testamento, he had been adopted and considered as Restituto's true child.

The Court referred back the complainant's Motion for Reconsideration to the OCA for evaluation, report and recommendation.

In its Memorandum⁶ dated July 23, 2013, addressed to Associate Justice Antonio T. Carpio, the OCA recommended that the administrative case be re-docketed as a regular administrative matter and that the respondent be held administratively liable for acts of impropriety. The OCA held that while the respondent's act of asking the complainant to sign the SPAs may not constitute dishonesty, corruption or misconduct, his other actions (*specifically requiring the complainant to sign the SPAs and allowing Atty. Mata to notarize the Waiver of Rights without each other's presence*) as well as his appointment

³ Id. at 154-158.

⁴ Id. at 159-160.

⁵ Id. at 161-168.

⁶ Id. at 179-184.

as the complainant's attorney-in-fact, violate Rule 5.06 of the Code of Judicial Conduct⁷ and amount to impropriety.

Asked to comment, the respondent insisted that the complainant still failed to adduce substantial evidence establishing his administrative liability. He pointed out that contrary to the complainant's contention, Atty. Mata never admitted that he notarized the Waiver of Rights outside the complainant's presence. He also alleged that the mere fact that the complainant appointed him as attorney-in-fact does not *ipso facto* taint his actions with impropriety.

The Court's Ruling

Based on the allegations of the complaint, the respondent's comment, and the findings of the OCA, we find that the respondent is liable for violation of Rule 5.06 of the Code of Judicial Conduct ("Code") and Impropriety.

Respondent Violated Rule 5.06 of the Code

As a general rule, a judge is prohibited from serving as executor, administrator, trustee, guardian or other fiduciary. The intent of the rule is to limit a judge's involvement in the affairs and interests of private individuals to minimize the risk of conflict with his judicial duties and to allow him to devote his undivided attention to the performance of his official functions. When a member of the bench serves as administrator of the properties of private individuals, he runs the risk of losing his neutrality and impartiality, especially when the interests of his principal conflicts with those of the litigant who comes before his court.⁸

The only exception to this rule as set forth in Rule 5.06 is when the estate or trust belongs to, or the ward is a **member of his immediate family**, and only if his service as executor, administrator, trustee, guardian or fiduciary will not interfere with the proper performance of his judicial duties. The Code defines "immediate family" as being limited to the spouse and relatives within the second degree of consanguinity.⁹

In this case, since complainant clearly does not fall under respondent's "immediate family" as herein defined, the latter's appointment as the former's attorney-in-fact is not a valid exception to the rule.

⁷ Rule 5.06 of the Code of Judicial Conduct provides: "A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trusts, or person of a member of the immediate family, and then only if such service will not interfere with the proper performance of judicial duties. "Member of immediate family" shall be limited to the spouse and relatives within the second degree of consanguinity. As a family, a judge shall not:

(a) serve in proceedings that might come before the court of said judge; or

(b) act as such contrary to Rule 5.02 to 5.05"

⁸ Id.

⁹ *Carual v. Brusola*, A.M. No. RTJ-99-1500, October 20, 1999, 317 SCRA 54, 60-64.

Furthermore, by serving as attorney-in-fact, the respondent not only allowed himself to be distracted from the performance of his judicial duties; he also undertook to perform all acts necessary to protect the complainant's interest. In effect, the respondent acted as the complainant's fiduciary, in direct and patent violation of the prohibition against judges.

As held in *Ramos v. Barot*:¹⁰

Being and serving as an attorney-in-fact is within the purview of "other fiduciary" as used in Rule 5.06. As a noun, "fiduciary" means "a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires." A fiduciary primarily acts for another's benefit, pursuant to his undertaking as such fiduciary, in matters connected with said undertaking x x x. (Emphasis Supplied)

As a judge who is expected to observe the ethical rules that govern judicial conduct both in public and private affairs, the respondent should have been more circumspect in accepting the appointment as an attorney-in-fact of the complainant. He should be reminded that the Code of Judicial Conduct – *which, among others, prohibits members of the bench from engaging in extra-judicial activities that tends to create a conflict with their judicial duties* – must be strictly complied with.¹¹ We conclude that for violation of the rules, the respondent should be sanctioned.

Respondent is Guilty of Impropriety

On the charge of impropriety, we have repeatedly reminded members of the Judiciary to keep their conduct beyond reproach and suspicion, and to be free from any appearance of impropriety in their personal behavior, both in the discharge of their official duties and in their everyday lives.¹²

Canon II of the Code of Judicial Conduct provides:

Rule 2.00: A judge should avoid impropriety and the appearance of impropriety in all activities.

Rule 2.01: A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

By the very nature of their work, judges should observe an exacting standard of morality and decency. For no position exacts a greater demand on the moral righteousness and uprightness of an individual than a seat in the Judiciary.¹³

¹⁰ A.M. No. MTJ-00-1338, 465 Phil. 347, 353 (2004).

¹¹ The Code of Judicial Conduct. – Compliance with the Code of Judicial Conduct. All judges shall strictly comply with this Code

¹² *Reyes v. Duque*, A.M. No. RTJ-08-2136, September 21, 2010, 631 SCRA 1.

¹³ *Imbing v. Tiongzon*, A.M. No. MTJ-91-595, February 7, 1994, 229 SCRA 690.

In *Vedana v. Valencia*,¹⁴ this Court pointedly stated that:

The Code of Judicial Ethics mandates that the conduct of a judge must be free of a whiff of impropriety not only with respect to his performance of his judicial duties, but also to his behavior outside his sala as a private individual. There is no dichotomy of morality: a public official is also judged by his private morals. The Code dictates that a judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times. As we have recently explained, a judge's official life can not simply be detached or separated from his personal existence. Thus:

Being the subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen.

A judge should personify judicial integrity and exemplify honest public service. The personal behavior of a judge, both in the performance of official duties and in private life should be above suspicion. (Emphasis Supplied).

In the present administrative complaint, we agree with the OCA that the respondent's acts of: (1) making the complainant sign at least two (2) documents – consisting of SPA and Waiver of Rights – without the presence of a counsel; and (2) allowing the notarization of the documents outside the presence of the executor, amount to impropriety. While no evidence directly shows that the respondent had deceived the complainant into signing these documents, this Court cannot ignore the fact that the documents the respondent himself prepared greatly prejudiced the complainant. We also note that the Waiver of Rights benefitted the respondent and his family. As a judge who is more learned in the law than the complainant, the respondent, at the very least should have taken the appropriate steps (*e.g. advise the former to engage the services of a lawyer who could lend him unbiased legal advice regarding the legal effects of the waiver*) to avoid impropriety and the appearance of impropriety in his dealings. This step, the respondent failed to take. In these lights, the Court finds the respondent guilty of impropriety.

The Applicable Penalty

Under Section 11(B), in relation to Section 9(4) of Rule 140, as amended by A.M. No. 01-8-10-SC,¹⁵ violation of Supreme Court rules constitutes a **less serious charge** punishable by any of the following sanctions:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or
2. A fine of more than P10,000.00 but not exceeding P20,000.00.

¹⁴ A.M. No. RTJ-96-1351, 356 Phil. 317, 329-330, (1998).

¹⁵ Effective 1 October 2001.

On the other hand, Impropriety which constitutes as a **light charge** is punishable by:

1. A fine of not less than ₱1,000.00 but not exceeding ₱10,000.00 and/or;
2. Censure;
3. Reprimand;
4. Admonition with warning.

Considering the nature and extent of the respondent's transgressions, we find it proper to impose on him the following penalties: (1) a fine of Twenty Thousand Pesos (₱20,000.00) for violation of Rule 5.06 of the Code; and (2) a fine of Ten Thousand Pesos (₱10,000.00) for impropriety.

WHEREFORE, the respondent Judge Rogelio S. Lucmayon, Municipal Trial Court in Cities, Mandaue City, Cebu is found **GUILTY** of (1) violating Rule 5.06 of the Code of Judicial Conduct; and (2) impropriety. We hereby impose the total fine of **THIRTY THOUSAND PESOS (₱30,000.00)** for these offenses, with a **STERN WARNING** that a repetition of the same or similar acts shall be dealt with more severely.

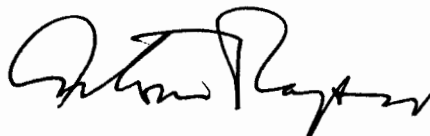
SO ORDERED.



ARTURO D. BRION

Associate Justice

WE CONCUR:



ANTONIO T. CARPIO

Associate Justice

Chairperson



MARIANO C. DEL CASTILLO

Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice