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evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[28]

The case at bar discloses no evident and unmistakable demonstration that public respondent capriciously exercised his judgment or that he exercised his power in an arbitrary and despotic manner by reason of passion, prejudice or personal animosity. Various evidence were presented before public respondent and he appropriately acted, as a quasi-judicial officer, within the ambit of his discretion when he ruled on the adequacy or inadequacy of these evidence. As defined, discretion is a faculty of a court or an official by which he may decide a question either way, and *still be right.*[29]

IN VIEW WHEREOF, the instant petition is *DISMISSED.* Costs against petitioner.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and *Buena, JJ.,* concur.

EN BANC

[A.M. No. MTJ-99-1178. March 3, 1999]

COMMISSION ON ELECTIONS, *complainant, vs.* **JUDGE BUCO R. DATU-IMAN, Municipal Circuit Trial Court, Bayang, Lanao del Sur,** *respondent.*

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[28] *Pure Foods Corp. vs NLRC, et al.,* G.R. No. 78591, March 21, 1989, 171 SCRA 415.

[29] *Go Uan, et al. vs. Galang,* G.R. No. L-20413, December 23, 1964, 12 SCRA 580.

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SYNOPSIS

On March 29 and 31, 1994 the Commission on Elections (COMELEC) sent telegrams to election officials in Lanao del Sur ordering them to delete a certain Barangay Sumbago from the list of barangays in the Municipality of Bayang on the ground that it had not been legally created. Barangay officials seeking reelection filed a case in the Fifth Municipal Circuit Trial Court of Bayang to stop the implementation of the COMELEC directive. Respondent, who had been designated acting judge of that court, issued a temporary restraining order (TRO), and after hearing, rendered a decision on May 2, 1994 granting injunction. He held that a mere telegram order of the COMELEC cannot prevail over Executive Order No. 108, dated December 24, 1986, of then President Corazon C. Aquino which listed Sumbago among the barangays duly created in Region XII. Upon being informed of the issuance of the restraining order, the COMELEC issued a resolution directing election officials to disregard the temporary restraining order and to proceed with the implementation of the previous order. The COMELEC referred the present case to the Supreme Court for appropriate disciplinary action against respondent. The COMELEC contended that respondent showed patent ignorance of the law because he had no power to issue an injunction against the COMELEC.

The Supreme Court found respondent judge guilty of gross ignorance of the law. However, his liability was mitigated by the fact that he acted on the basis of the documentary evidence presented before him which he considered valid justification in taking cognizance of the case. The COMELEC could have filed an opposition to the TRO and thereby save respondent from committing the error of issuing an injunction. It could have also instituted *certiorari* proceedings in the Supreme Court to annul the proceedings conducted by respondent and thus forestalled the rendition of judgment against it. Although respondent was presumed to know the constitutional limits of his authority, parties too have a responsibility to bring before him arguments and evidence for his consideration in the decision of the case. For failure of the COMELEC to do so, respondent judge was deprived of the benefit of an adversary proceeding.

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SYLLABUS

JUDICIAL ETHICS; CODE OF JUDICIAL CONDUCT; ADJUDICATIVE RESPONSIBILITIES; JUDGES SHOULD BE FAITHFUL TO THE LAW AND MAINTAIN PROFESSIONAL COMPETENCE; RESPONDENT JUDGE'S LIABILITY FOR GROSS IGNORANCE OF THE LAW IS MITIGATED BY THE FACT THAT HE ACTED ON THE BASIS OF THE DOCUMENTARY EVIDENCE PRESENTED BEFORE HIM WHICH HE CONSIDERED VALID JUSTIFICATION IN TAKING COGNIZANCE OF THE CASE. — It is imperative that judges be conversant with basic legal principles. Indeed, the Code of Judicial Conduct enjoins judges to "be faithful to the law and maintain professional competence." However, respondent's liability is somewhat mitigated by the fact that, as found by the OCA, "Respondent judge acted on the basis of the documentary evidence presented before him which he considered valid justification in taking cognizance of the case. These documents are Executive Order No. 108 retaining Sumbago as a barangay, and records from the DILG/ARMM, Provincial DILG, Municipal DILG and DBM showing that barangay Sumbago is an existing barangay. In fact, it has been funded by the DBM since 1993 with Bank Account No. 1262-1043-18." Nor was the COMELEC without fault. As respondent pointed out in his decision, dated May 2, 1994, no representative of the COMELEC (the Provincial Election Officer and the Municipal Election Officer of Bayang, Lanao del Sur, who were named respondents in the case) appeared at any of the hearings set on April 21, 1994, April 26, 1994, and April 29, 1994 despite notice. It appears that no opposition to the petition for injunction was ever filed by the COMELEC. With respect to the first hearing on April 21, 1994, the record shows that the local election officers notified the COMELEC head office in Manila only on April 25, 1994. Upon being advised of the issuance of the TRO and the hearing on the writ of injunction, the COMELEC apparently did nothing except to tell its provincial officials to disregard the TRO and to delete Sumbago from the masterlist of barangays as previously ordered. The COMELEC could have filed an opposition and thereby save respondent from committing the error of issuing an injunction. It could have instituted *certiorari* proceedings in this Court to annul the proceedings conducted by respondent in Civil Case No. 08-BA and thus forestall the rendition of judgment

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against it. For, although respondent was presumed to know the constitutional limits of his authority, parties too have a responsibility to bring before him arguments and evidence for his consideration in the decision of the case. For the failure of the COMELEC to do so, respondent judge was deprived of the benefit of an adversary proceeding. Jeremy Bentham in effect described the relationship between the judge and counsel when he insisted that the law is not made by judge alone but by "Judge and Company."

DECISION

MENDOZA, *J.*:

This complaint was filed by the Commission on Elections (COMELEC) against respondent Judge Buco R. Datu-Imam of the Fifth Municipal Circuit Trial Court of Bayang-Tubaran-Binidiyan-Butig-Lambatan-Marogong-Lumbayanagui (hereinafter referred to as Municipal Circuit Trial Court of Bayang), Lanao del Sur,[1] for gross ignorance of the law for enjoining enforcement of a COMELEC directive issued in connection with the *barangay* elections of May 9, 1994 in Bayang, Lanao del Sur.

It appears that, on March 29 and 31, 1994, the Commission on Elections sent telegrams to election officials in Lanao del Sur ordering them to delete Barangay Sumbago from the list of *barangays* in the Municipality of Bayang on the ground that it had not been legally created. Accordingly, the officials refused to accept for filing certificates of candidacy of those seeking office in Barangay Sumbago in the May 9, 1994 barangay elections. However, *barangay* officials seeking reelection brought suit (Civil Case No. 08-BA, Monadi, et al. *v.* Commission on Elections) in the Fifth Municipal Circuit Trial Court of Bayang to stop implementation of the COMELEC directive.

Respondent, who had been designated acting judge of that court, issued a temporary restraining order on April 9, 1994 and,

[1] Designated as acting presiding judge thereof per Administrative Order No. 170-92, dated October 16, 1992. Respondent's regular station is at the 7th Municipal Circuit Trial Court of Ditsaan-Ramain-Bubong-Buadiposo-Buntong, Lanao del Sur.

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after hearing, rendered a decision on May 2, 1994 granting injunction. He held that a mere telegram order of the COMELEC cannot prevail over Executive Order No. 108, dated December 24, 1986, of then President Corazon C. Aquino which listed Sumbago among the barangays duly created in Region XII.

By virtue of the temporary restraining order of respondent judge, the Election Officer of Bayang, Lanao del Sur allowed the filing of certificates of candidacy for barangay positions in Sumbago. However, upon being informed of the issuance of the order, the COMELEC issued Resolution No. 94-2947, dated May 17, 1994, directing election officials to disregard the temporary restraining order and delete Barangay Sumbago from the list of *barangays* in the Municipality of Bayang, Lanao del Sur, as previously ordered. At the same time, the COMELEC referred the present case to this Court for "appropriate [disciplinary] action" against respondent. The COMELEC contended that, in taking cognizance of the case, respondent showed "patent ignorance of the law" because he had no power to issue an injunction against the COMELEC, especially "considering the status and rank of the issuing court in relation to that of the COMELEC."[2]

On the other hand, respondent claimed in his comment that he issued the temporary restraining order in good faith on the basis of certifications that Barangay Sumbago had been given internal revenue allotments by the Department of Budget and Management and had been recognized by the DILG ARMM, Provincial DILG, Municipal DILG, and DBM Cotabato City. He claimed that he issued the injunction in question lest the residents of Barangay Sumbago be deprived of their right of self-government considering that it was the last day for the filing of certificates of candidacy and that there were "ill-motivated persons who attempted to sow confusion and disorder in the barangay using the [COMELEC] telegram as a tool."

In its memorandum, dated January 26, 1999, the Office of the Court Administrator (OCA) recommends that the complaint against

[2] The COMELEC cited as its basis *Macud v. COMELEC,* 23 SCRA 224, 229 (1968).

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respondent judge be dismissed and that instead he simply be admonished to be more circumspect in the performance of his duties.

It appears that respondent compulsorily retired on December 7, 1998 from the service. He prays that a clearance be issued to him so that he can collect his retirement benefits, less any amount which "the Court may deem just, right, equitable, and reasonable." He states that he is in dire need of the money for his medical care and for the educational expenses of his family.

The issue in this case is whether respondent judge is liable for gross ignorance of the law for issuing an injunction against the COMELEC. We think he is, although, as will presently be explained, there are mitigating factors which should be considered in his favor.

First of all, as already pointed out in a 1968 dictum,[3] because of their subordinate status and rank *vis-a-vis* the COMELEC, lower courts cannot issue writs of injunction enforceable against the COMELEC. More importantly, respondent ought to have known that, since its creation, the COMELEC has been accorded full discretion given its constitutional mandate to enforce and administer all laws relative to the conduct of election, plebiscite, initiative, referendum, and recall.[4] This was stressed in the decision of this Court in *Zaldivar v. Estenzo.*[5] Quoting from its prior decisions, this Court held:

> In the discharge of its functions, it should not be hampered with restrictions that would be fully warranted in the case of a less responsible organization. The Commission may err, so may this court also. It should be allowed considerable latitude in devising means and methods that will insure the accomplishment of the great objective for which it was created—free, orderly and honest elections.
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[3] *Macud v. COMELEC,* 23 SCRA 224 (1968).

[4] CONST., Art. IX-C, §2(1).

[5] 23 SCRA 533 (1968).

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[I]t is easy to understand why no interference whatsoever with the performance of the Commission on Elections of its functions should be allowed unless emanating from this Court. The observation of Acting Chief Justice J.B.L. Reyes in *Albano v. Arranz* [4 SCRA 386 (1962)], while not precisely in point, indicates the proper approach. Thus: "It is easy to realize the chaos that would ensue if the Court of First Instance of each and every province were to arrogate unto itself the power to disregard, suspend, or contradict any order of the Commission on Elections; that constitutional body would be speedily reduced to impotence."[6]

It is imperative that judges be conversant with basic legal principles.[7] Indeed, the Code of Judicial Conduct enjoins judges to "be faithful to the law and maintain professional competence."[8]

However, respondent's liability is somewhat mitigated by the fact that, as found by the OCA,

Respondent judge acted on the basis of the documentary evidence presented before him which he considered valid justification in taking cognizance of the case. These documents are Executive Order No. 108 retaining Sumbago as a *barangay,* and records from the DILG/ARMM, Provincial DILG, Municipal DILG and DBM showing that barangay Sumbago is an existing *barangay.* In fact, it has been funded by the DBM since 1993 with Bank Account No. 1262-1043-18.

Nor was the COMELEC without fault. As respondent pointed out in his decision, dated May 2, 1994, no representative of the COMELEC (the Provincial Election Officer and the Municipal Election Officer of Bayang, Lanao del Sur, who were named respondents in the case) appeared at any of the hearings set on April 21, 1994, April 26, 1994, and April 29, 1994 despite notice. It appears that no opposition to the petition for injunction was ever filed by the COMELEC. With respect to the first hearing on April 21, 1994, the record shows that the local election officers notified the COMELEC head office in Manila only on April 25, 1994. Upon being advised of the issuance of the TRO and the

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[6] *Id.*, pp. 539-541.

[7] *Guieb v. Fontanilla,* 247 SCRA 348 (1995).

[8] Canon 3, Rule 3.01.

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hearing on the writ of injunction, the COMELEC apparently did nothing except to tell its provincial officials to disregard the TRO and to delete Sumbago from the masterlist of *barangays* as previously ordered. The COMELEC could have filed an opposition and thereby save respondent from committing the error of issuing an injunction. It could have instituted *certiorari* proceedings in this Court to annul the proceedings conducted by respondent in Civil Case No. 08-BA and thus forestall the rendition of judgment against it.

For, although respondent was presumed to know the constitutional limits of his authority, parties too have a responsibility to bring before him arguments and evidence for his consideration in the decision of the case. For the failure of the COMELEC to do so, respondent judge was deprived of the benefit of an adversary proceeding. Jeremy Bentham in effect described the relationship between the judge and counsel when he insisted that the law is not made by judge alone but by "Judge and Company."

Finally, in assessing the liability of respondent, account should be made of the fact that this appears to be his first administrative case in his entire judicial career which spanned thirteen years.[9]

The Office of the Court Administrator recommends that respondent be simply admonished. We would agree with this recommendation in light of the mitigating factors above-stated. However, inasmuch as respondent is now retired, an admonition would have no practical effect. A fine of P1,000.00 would seem to be the more appropriate penalty under the circumstances.[10]

WHEREFORE, the Court finds respondent Judge Buco R. Datu-Imam of the Fifth Municipal Circuit Trial Court of Bayang-Tubaran-Binidiyan-Butig-Lambatan-Marogong-Lumbayanagui, Lanao del Sur GUILTY of gross ignorance of the law and *IMPOSES* on him a FINE of P1,000.00 to be deducted from retirement benefits due him.

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[9] From May 3, 1985, when he was appointed, to December 7, 1998, when he retired.

[10] *Cf. Amatan v. Aujero,* 248 SCRA 511 (1995).

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SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Kapunan, Quisumbing, Purisima, Pardo, Buena, and *Gonzaga-Reyes.*, JJ., concur.

Vitug, J., abroad on official leave.

Panganiban, J., on leave.

SECOND DIVISION

[A.M. No. P-94-1107. March 3, 1999]

ATTY. CARMELINA CENIZA-GUEVARRA, BRANCH CLERK OF COURT, Branch-48, REGIONAL TRIAL COURT, PUERTO PRINCESA CITY, *complainant, vs.* **CELERINA R. MAGBANUA, COURT STENOGRAPHER, Branch-48, REGIONAL TRIAL COURT, PUERTO PRINCESA CITY,** *respondent.*

SYNOPSIS

Respondent, Court Stenographer of Branch 48, RTC-Puerto Princesa City, was charged, among others, with failure to transcribe her stenographic notes despite several directives to do so. Aside from this case, respondent, in AM No. 95-10-322-RTC, was dropped from the service for having gone on absence without leave from December 1, 1994 to October 24, 1995. She was also ordered arrested by this Court for continued failure to transcribe her stenographic notes in 18 cases despite being ordered by different judges. Respondent moved for the reconsideration of the order of arrest claiming that although she had started reconstructing her notes, the same could no longer be retrieved because they were destroyed by water caused by a faucet left open overnight in the sala. However, in a hearing conducted by the investigating Judge, complainant admitted her offense. Her allegation that her notes were destroyed by water was belied by Judge Amor Reyes who