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SECOND DIVISION

[Adm. Matter No. R-299-MTJ. February 10, 1986]

ERNESTO G. MALFERRARI, *complainant, vs.* **The Honorable GREGORIO PANTANOSAS, Presiding Judge of the Municipal Trial Court of Cagayan de Oro City, Branch II**, *respondent.*

SYLLABUS

JUDICIAL ETHICS; JUDGES; MUST DECIDE CASES WITHIN THE PRESCRIBED PERIOD.— The respondent attributes the delay in the decision of the cases to the filing of the *mandamus* case and the fact that he was on leave from February 4 to 8, 1985. We find the respondent's explanation to be flimsy. There would have been no delay if he had immediately ruled on the applicability of the Rule on summary Procedure to the ejectment cases. The Rule had been in effect since August 1, 1983 and it was his obstinacy that compelled the complainant to go to a higher court to make him do what he should have done. The respondent's leave of absence is too brief as to justify the delay of the resolution of the ejectment cases.

DECISION

ABAD SANTOS, *J.*:

Judge Gregorio Pantanosas of the Municipal Trial Court, Cagayan de Oro City, is the respondent in this administrative case. According to the complainant, Ernesto G. Malferrari, the judge should be "removed from office by reason of his manifest bias and partiality which makes him incompetent to properly perform the functions of his court."

The record shows that the complainant was the counsel in two ejectment cases filed in the court presided by the respondent. Complainant expected the respondents to apply the Rule on Summary Procedure in Special Cases which took effect on

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August 1, 1983 but the latter did not for which reason the former filed a petition for *mandamus* before the Regional Trial Court of Misamis Oriental on August 15, 1984 to compel application of the rule.

On December 28, 1984, the respondent issued an order stating that the ejectment cases were covered by the Rule on Summary Procedure for which reason the *mandamus* case was dismissed by the Regional Trial Court on January 9, 1985.

On February 18, 1985, when the instant complaint was filed, the ejectment cases had not yet been decided.

The addendum to the complaint filed on March 4, 1985, states that the ejectment cases were decided on February 19, 1985. In the decision the respondent found the defendants to be in arrears in the payment of monthly rentals the amount of which had not been specified by the parties and on the basis of an aborted compromise agreement fixed the rentals at P1,300.00 a month but deducted from the amounts due to the plaintiffs their back accounts to the defendant's restaurant. The decision closed with the following judgment: "In the event that defendants will fail to pay the unpaid rentals within the period of 30 days, to immediately vacate the premises and returned the respective properties of plaintiffs; to pay plaintiffs the reasonable amount of P2,000.00 representing attorney's fees and to pay the cost of this suits."

This decision will not touch on the merits of the decision in the ejectment cases which may have been appealed by either party. It will be confined to the delay in their disposition.

The respondent attributes the delay in the decision of the cases to the filing of the *mandamus* case and the fat that he was on leave from February 4 to 8, 1985.

We find the respondent's explanation to be flimsy. There would have been no delay if he had immediately ruled on the applicability of the Rule on summary Procedure to the ejectment cases. The Rule had been in effect since August 1, 1983 and it was his obstinacy that compelled the complainant to go to a higher court to make him do what he should have done. The

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respondent's leave of absence is too brief as to justify the delay of the resolution of the ejectment cases.

WHEREFORE, the respondent is hereby reprimanded and admonished to be more conscientious in the performance of his duties.

SO ORDERED.

Concepcion, Jr. (Chairman), Escolin, Cuevas, and *Alampay, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-31013. February 10, 1986]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RUBEN EBORA Y FELICIANO and ILDEFONSO DE LOS REYES Y EBORA,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ALIBI; CANNOT OVERCOME THE DYING DECLARATION OF THE VICTIM AND THE POSITIVE TESTIMONIES OF WITNESSES.—** The alibis of the accused cannot overcome the dying declaration of the victim and the testimonies of eyewitnesses Juana E. Saguros and Librado S. Enriquez.

2. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; WHEN APPRECIATED.—** The crime is murder because of the presence of treachery. The sudden and unexpected stabbing of Ebora while being held by Balbastro, insured the killing without any risk to the assailants.

3. **ID.; CONSPIRACY; WHEN APPRECIATED.—** Conspiracy may be implied from the concerted action of the assailants in confronting the victim. As to De los Reyes, there being no