Supreme Court E-Library

SECOND DIVISION

[A.M. No. MTJ-00-1294. July 31, 2000]
(Formerly OCA IPI No. 00-859-MTJ)

HORST FRANZ ELLERT, *complainant, vs.* **JUDGE VICTORIO GALAPON, JR., Municipal Trial Court, Dulag, Leyte,** *respondent.*

SYNOPSIS

In a letter-complaint dated January 8, 2000 and an affidavit-complaint dated January 10, 2000, Horst Franz Ellert charged Judge Victorio L. Galapon, Jr. with grave misconduct, abuse of judicial authority, ignorance of the law, unlawful notarization, perjury and false testimony. The Office of the Court Administrator, after due investigation found respondent judge to have notarized a pleading in a case not pending before his sala and recommended that respondent be fined for this act.

Judges of the Municipal Trial Courts or Municipal Circuit Trial Courts may perform their functions as Notaries Public Ex-Oficio only in the notarization of documents connected with the exercise of their official functions. They may not undertake the preparation and acknowledgment of documents which bears no relation to the performance of their functions as judges, such as the Answer filed with the DARAB that was notarized by respondent judge. As to the charge of False Testimony and Perjury, the complainant is advised to institute a criminal case with the proper trial court.

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES OF THE MUNICIPAL TRIAL COURTS OR MUNICIPAL CIRCUIT TRIAL COURTS MAY NOT UNDERTAKE THE PREPARATION AND ACKNOWLEDGMENT OF DOCUMENTS WHICH BEAR NO RELATION TO THE PERFORMANCE OF THEIR FUNCTIONS AS JUDGES.**— Judges of the Municipal Trial Courts or Municipal Circuit Trial Courts may perform their functions as notaries public *ex-officio* only in the notarization of documents connected with the exercise of their official functions. They may not undertake the preparation and acknowledgment of

Supreme Court E-Library

documents which bear no relation to the performance of their functions as judges. Undoubtedly, the Answer filed with the DARAB that was notarized by respondent judge is a perfect example of a document which bears no relation to the performance of Judge Galapon's functions as a judge. Since respondent's actuation of notarizing the aforestated pleading is not in connection with the exercise of his official duties, consequently, he acted beyond the scope of his authority as notary public *ex-officio*.

2. **ID.; ID.; EXCEPTION.**— Circular No. 1-90 clearly provides that it is only when there are no lawyers or notaries public in the municipality or circuit that an MTC and MCTC judge may act as a notary public provided that, the notarial fees are turned over to the government and a certification is made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit.

3. **SUPREME COURT; OFFICE OF THE COURT ADMINISTRATOR; DEALS MAINLY WITH THE ADMINISTRATIVE FUNCTIONS OF THE COURTS.**— The Office of the Court Administrator, as the name suggests, deals mainly with administrative functions of the courts. It can act on matters concerning the judicial discipline of judges of the MTC, among others. Criminal cases are out of its hands.

DECISION

BUENA, *J.*:

Before us is a letter-complaint dated January 8, 2000[1] and an affidavit-complaint dated January 10, 2000,[2] both filed by Horst Franz Ellert, charging Judge Victorio L. Galapon, Jr. of the Municipal Trial Court at Dulag, Leyte with grave misconduct, abuse of judicial authority, ignorance of the law, unlawful notarization, perjury, and false testimony.

This case originated from two (2) cases, namely: DARAB Case No. VIII-169-L-91 entitled "*Lualhati V. Ellert vs. Marina Roca, et*

[1] *Rollo*, p. 42.

[2] *Ibid.*, p. 9.

Supreme Court E-Library

al." and Criminal Case No. 97-07-CR-161 entitled "*People of the Philippines vs. Horst Franz Ellert.*"

I. Re: DARAB Case No. VIII-169-L-91 entitled "*Lualhati V. Ellert vs. Marina Roca and Odeth Roca.*"

Complainant alleged that in the "Answer"[3] filed by Marina Roca and Odeth Roca with the Department of Agrarian Reform Adjudication Board (DARAB), the signature of Judge Victorio L. Galapon, Jr., herein respondent, was affixed in the jurat.

In his complaint, Horst Franz Ellert avers that "a Municipal Trial Court judge is only authorized to administer oaths, or sign jurats to documents only for submission before his court, in cases pending before his court, such as complaints for filing with his court, sworn statements of witnesses in cases pending or to be filed with his court, affidavits of all kinds, provided that they are for filing/submission to his court, but definitely, not all other documents. Even as an *Ex-oficio* Notary Public, he is authorized to notarize (sign acknowledgments) documents, conveyances of very limited nature, . . ."[4]

It is the understanding of the complainant that not all kinds of documents can be notarized (acknowledged before) by a Municipal Trial Court judge, like herein respondent. But, despite the fact that Judge Galapon is not duly authorized even by the Notarial Law to sign a document such as the aforementioned Answer, respondent knowingly, wilfully, unlawfully, and feloniously subscribed to, and administered the oaths of Marina Roca and Odeth Roca by signing the jurat at the bottom of the Verification of the Answer.

He points out that by unlawfully and illegally doing so, respondent judge committed grave misconduct, abuse of judicial authority, and exhibited his ignorance of the law.

---

[3] *Ibid.*, p. 44.

[4] *Ibid.*, p. 42.

Supreme Court E-Library

II. Re: Criminal Case No. 97-07-CR-161 entitled "People of the *Philippines vs. Horst Franz Ellert for Light Threats*.

Complainant Ellert made the following allegations and rationalizes why it is his opinion that respondent judge gave a false testimony as well as perjured himself:

1. He knows respondent Judge as the latter is the complainant in Criminal Case No. 97-07-CR-161 filed with the Municipal Trial Court in Cities at Tacloban City, Branch I;

2. In the course of the trial conducted by the said court and presided by Judge Romulo Casiber, herein respondent falsely stated in his Affidavit-Complaint that Horst Franz Ellert is a resident of Barangay Tabu, Dulag, Leyte. — In other documentary and testimonial evidence, respondent testified and admitted that Ellert was indeed actually residing at Sitio Payapay, Barangay 90, San Jose, Tacloban City.

3. Respondent judge, in the course of his testimony given in open court and under oath, said that he helped Ellert by writing to the manager of the Development Bank of the Philippines concerning Ellert's problem on a piece of land, and also said that it was because of this letter that the bank returned the amount in the deed of sale. — There is a Certification made by the DBP manager that no such letter was sent to and/or ever received by his office;

4. In the same judicial proceedings, respondent judge falsely testified under oath that he first came to know Ellert when Lualhati V. Ellert (wife of herein complainant) filed a case against her own brother Domingo Villaronte in his (Judge Galapon) court prior to March 23, 1997 or sometime between 1994 to 1996. — When the case between complainant's late wife and her brother was filed and pending, complainant Ellert was still out of the country as he was working overseas and only came to the country occasionally for brief vacations;

5. Judge Galapon falsely testified and declared in open court that a property involving the DBP came to his knowledge and attention because it was the subject of a civil case before his court.

Supreme Court E-Library

— That property was never the subject of any civil case before his court or before any other court;

6. Respondent judge falsely declared and testified that he does not know Barangay Tabu, Cabatuan, or any other *barangay* in Dulag, Leyte. — The *Barangay* Captain of Barangay Tabu is the "*compadre*" of the respondent and, as a judge of the Municipal Trial Court of Dulag, Leyte, he was even the one who notarized the Application for Locational Clearance of the *Barangay* Chairman/Captain of Barangay Tabu. This was not however submitted to the HLURB because there was no building permit applied for and issued.

In his Comment dated February 7, 2000,[5] Judge Victorio L. Galapon, Jr. reveals that the present complaint is perhaps the tenth in a series of continuous and relentless harassment cases filed against him by Horst Franz Ellert.

He avers that the reason why complainant Ellert unceasingly vilifies and harasses him is because of the criminal case he has filed against the latter (Criminal Case No. 97-07-CR-161 entitled "*People of the Philippines vs. Horst Franz Ellert*") for Light Threats, wherein Ellert was duly convicted and sentenced by the court to suffer imprisonment ranging from five (5) months and eleven (11) days as minimum, to six (6) months as maximum of *Arresto Mayor*, and to pay the cost.[6]

To refute each and every allegation made in the complaints, respondent judge points out that insofar as the residence issue is concerned, he believed that, at the time the Information in Criminal Case No. 97-07-CR-161 was filed in court, Ellert's residence was at Barangay Tabu, Dulag, Leyte; thus it was the same address he wrote when he executed his affidavit-complaint to support the criminal case against herein complainant. He did not know that the complainant has already settled elsewhere. In fact, this issue of residence was made the basis of another complaint against him.

---

[5] *Ibid.*, p. 29.

[6] See p. 55.

Supreme Court E-Library

Respondent judge states that it is highly incredible for him to state in open court during the hearing of the aforementioned criminal case that he did not know Barangay Tabu, Dulag, Leyte. There was an error in the transcription of his testimony, for what he said and meant was that he did not know the exact place in the *barangay* where complainant's house was situated. While respondent does know the *Barangay* Chairman of Tabu, Dulag, Leyte, this person is not his "*compadre*" as claimed by Ellert.

Ellert, in his complaint, alleges that during the hearing of the criminal case, respondent judge stated that it was because of his (Judge Galapon) letter that the bank returned the amount in the Deed of Sale. In refutation, Ellert presented a Certification by the Development Bank of the Philippines to the effect that respondent never appeared before the DBP nor wrote a letter relative to the property acquired by a Mrs. Carlota Cabacang.

Respondent judge thus contends that as will be noticed in the transcript, he did not mention the property of Mrs. Carlota Cabacang. This is because he was not referring to her land, as he did not know if Mrs. Cabacang owns a piece of land. Instead, he was referring to a land subject of Civil Case No. 230 entitled "*Development Bank of the Philippines, represented by Manuel G. Braseleno and Lualhati Ellert vs. Salvador Corsino*" pending before the Municipal Trial Court at Dulag, Leyte.

According to the respondent, it is not important whether or not the DBP received the letter adverted to. The fact is the bank returned the money to Lualhati Ellert as shown in the Order dated February 26, 1990. As admitted by the DBP, thru its lawyer, the sale was indeed rescinded. This is a clear case of misinformation resorted to by Ellert.

In all the complaints wherein complainant Ellert mentioned Criminal Case No. 97-07-CR-161, he never stated that respondent judge was the private complainant therein nor that he was convicted by the court.

As to the charge that respondent judge administered the oath in the Verification portion of the Answer of respondents Marina Roca and Odeth Roca in DARAB Case No. VIII-159-L-91, respondent

Supreme Court E-Library

judge candidly admits it. He believes that there was nothing wrong nor was there any abuse of authority in administering such oath. There never was any malice or bad faith attending such act. He honestly believes that merely administering an oath in the jurat is not actionable by any administrative sanction.

Judge Galapon declares that the series of complaints are the rantings of a depraved mind of a person who is now in serious jeopardy of going to prison, and who faces deportation as he is now a convicted felon. Although complainant Ellert appealed his conviction, there is the danger that his conviction will be sustained.

Respondent judge furthermore says that Ellert is an alien, whom the country can do without. He has abused all the laws from which he seeks protection by continuously and relentlessly harassing not only respondent judge, but also public officials who disagree with him and do not give in to his demands.

Judge Galapon hopes that the complainant would be condemned by this Court in the strongest words possible that he will no longer pose a threat and can no longer continue the ceaseless vilification and harassment against him. Likewise, respondent hopes that the lawyer helping the complainant in the harassment campaign against him would be sanctioned. After all, this lawyer, being an officer of the court, should shield the courts from fabricated and malicious harassment.

Respondent laments that the time, effort and money devoted to answering the numerous malicious and fabricated complaints diminished, to a great extent, the time he could have devoted fruitfully to studying and deciding cases, especially since he has, for the past three and a half years, been the Acting Judge of the Municipal Trial Court at Tolosa, Leyte.

Judge Victorio L. Galapon, Jr. prays for the dismissal of the complaints filed by complainant Horst Franz Ellert.

The act of notarizing a pleading in a case which is not pending before the sala of Judge Victorio L. Galapon, Jr. constitutes an unlawful practice of law. Deputy Court Administrator Bernardo T. Ponferrada, in his memorandum dated March 13, 2000,[7] thus recommended that the respondent be ordered to pay the fine of

Supreme Court E-Library

Five Thousand Pesos (₱5,000.00) with a warning that repetition of similar acts in the future will be dealt with more severely.

We find respondent guilty of the charge against him, that he engaged in unauthorized notarial work.

Circular No. I-90 specifically delineates the power of Municipal Trial Court Judges and Municipal Circuit Trial Court Judges to act as notaries public *ex oficio*, thus:

"Municipal trial court (MTC) and municipal circuit trial court (MCTC) judges are empowered to perform the functions of notaries public *ex oficio* under Section 76 of Republic Act No. 296, as amended (otherwise known as the Judiciary Act of 1948) and Section 242 of the Revised Administrative Code. But the Court hereby lays down the following qualifications on the scope of this power:

"MTC and MCTC judges may act as notaries public *ex oficio* in the notarization of documents connected only with the exercise of their official functions and duties [*Borre v. Mayo*, Adm. Matter No. 1765-CFI, October 17, 1980, 100 SCRA 314; *Penera v. Dalocanog*, Adm. Matter No. 2113-MJ, April 22, 1981, 104 SCRA 193.] They may not, as notaries public *ex oficio*, undertake the preparation and acknowledgment of private documents, contracts and other acts of conveyances which bear no direct relation to the performance of their functions as judges. The 1989 Code of Judicial Conduct not only enjoins judges to regulate their extra-judicial activities in order to minimize the risk of conflict with their judicial duties, but also prohibits them from engaging in the private practice of law (Canon 5 and Rule 5.07).

"However, the Court, taking judicial notice of the fact that there are still municipalities which have neither lawyers nor notaries public, rules that MTC and MCTC judges assigned to municipalities or circuits with no lawyers or notaries public may, in the capacity as notaries public *ex oficio*, perform any act within the competency of a regular notary public, provided that: (1) all notarial fees charged be for the account of the Government and turned over to the municipal treasurer (*Lapena, Jr. vs. Marcos*, Adm. Matter No. 1969-MJ, June 29, 1982, 114 SCRA 572); and, (2) certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit."[8]

---

[7] *Ibid.*, p. 7.

[8] Cited in *Doughlas vs. Hon. Lopez, Jr.*, A.M. No. MTJ-96-1076, February 9, 2000.

Supreme Court E-Library

Judges of the Municipal Trial Courts or Municipal Circuit Trial Courts may perform their functions as notaries public *ex-oficio* only in the notarization of documents connected with the exercise of their official functions. They may not undertake the preparation and acknowledgment of *documents which bear no relation to the performance of their functions as judges.*

Undoubtedly, the Answer filed with the DARAB that was notarized by respondent judge is a perfect example of a document which bears no relation to the performance of Judge Galapon's functions as a judge. Since respondent's actuation of notarizing the aforestated pleading is not in connection with the exercise of his official duties, consequently, he acted beyond the scope of his authority as notary public *ex-oficio*.

Circular No. 1-90 clearly provides that it is only when there are no lawyers or notaries public in the municipality or circuit that an MTC and MCTC judge may act as a notary public provided that, the notarial fees are turned over to the government and a certification is made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit.

In the case at bar, there is no showing that there was no lawyer or notary public in Dulag, Leyte. Therefore, respondent judge's action as a notary public cannot qualify as an exception to Circular No. 1-90.

The defense interposed by the respondent that he sees nothing wrong with what he has done, nor that he abused his authority when he notarized the subject pleading, is unmeritorious. Judge Galapon should know what the duties of a judge acting as an *ex-oficio* notary public are, and, if he was uncertain of what they are, he should have first verified from the Office of the Court Administrator the extent of his authority to notarize documents.

As to the charge of False Testimony and Perjury, the complainant is advised to institute a criminal case with the proper trial court.

In Circular No. 30-91 which outlined the Guidelines on the Functions of the Office of the Court Administrator, we read:

Supreme Court E-Library

I. *General Considerations*

A. The Supreme Court exercises administrative supervision over all lower courts. In the discharge of its administrative functions, the Court is assisted by the Court Administrator and the Deputy Court Administrators (P.D. No. 828, as amended by P.D. No. 842). The Court thus acts through the court administrators in the exercise of its administrative functions. (See A.M. No. 343-RTJ In Re: Regional Trial Court Judge of Balanga, Bataan).

xxx xxx xxx

C. The work attended to by the Office of the Court Administrator, either on its responsibility or with the approval of the Court *En Banc*, may be classified into the following categories:

1. Judicial discipline of lower court justices, judges and personnel;

xxx xxx xxx

II. *Matters to be attended by the Court En Banc*

A. Disciplinary Matters

1. *Justices and Judges* — Judicial discipline matters involving the *justices and judges* of all lower courts (Court of Appeals, Sandiganbayan, Court of Tax Appeals, Regional Trial Courts, Metropolitan Trial Courts, MTCC, MTC, Shari'a Courts) filed with the Office of the Court Administrator or the lower courts shall be immediately referred to the Court *En Banc* for appropriate action.

The Office of the Court Administrator, as the name suggests, deals mainly with administrative functions of the courts. It can act on matters concerning the judicial discipline of judges of the MTC, among others. Criminal cases are out of its hands.

WHEREFORE, for unauthorized notarization which constitutes an unlawful practice of law, respondent Judge Victorio L. Galapon, Jr. of the Municipal Trial Court at Dulag, Leyte is hereby ordered to pay a FINE of Five Thousand Pesos (₱5,000.00).

Supreme Court E-Library

He is further warned that a repetition of the same or similar infractions will be dealt with more severely.

SO ORDERED.

Mendoza (Acting Chairman), Quisumbing, and *De Leon, Jr., JJ.*, concur.

Bellosillo (Chairman), J., on official leave.

EN BANC

[A.M. No. MTJ-95-1062. July 31, 2000]

MS. ALICE DAVILA, *complainant, vs.* **JUDGE JOSELITO S.D. GENEROSO,** *respondent.*

[A.M. No. MTJ-00-1260. July 31, 2000]
(Formerly A.M. OCA IPI No. 97-251-MTJ)

DR. LETICIA S. SANTOS, *complainant, vs.* **JUDGE JOSELITO S.D. GENEROSO,** *respondent.*

SYNOPSIS

Two letter-complaints were sent to the Office of the Court Administrator complaining of undue delay in the disposition of their respective cases before the sala of respondent Judge Joselito S.D. Generoso Presiding Judge of Branch 34 of the Metropolitan Trial Court of Quezon City. The Court issued several resolutions requiring respondent judge to comment on the complaints against him, but respondent repeatedly failed to comply with the said resolutions. The Court Administrator recommended the dismissal from the service of respondent judge, with forfeiture of all benefits