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FIRST DIVISION

[A.M. No. RTJ-00-1575. September 17, 2001]

ISAGANI RIZON, *complainant, vs.* **JUDGE OSCAR E. ZERNA,** *respondent.*

SYNOPSIS

Complainant filed an election protest before the RTC presided by respondent judge with the parties submitting the case for decision on November 22, 1998. Three months has elapsed without respondent rendering a decision when complainant filed a motion to render early decision but which remained unacted upon even after the filing of the instant administrative complaint against respondent for willful, deliberate, and malicious delay in rendering the decision. Respondent did not deny the delay but attributed the same to his going over the questioned ballots one by one. He alleged that he subsequently rendered a decision "a week or two" after the complaint was filed. The Office of the Court Administrator (OCA) submitted a report to the effect that respondent who has a history of delay again failed to render a decision within the prescribed period, in this case at least three and a half months beyond the thirty (30) day period provided by Section 258 of the Omnibus Election Code. Meanwhile, complainant filed an affidavit of desistance.

It has been held that unjustified delay in the disposition of cases constitute gross inefficiency and that the desistance of complainant cannot absolve respondent judge from administrative liability. Respondent judge was fined ₱5,000.00

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; DELAY IN DISPOSITION OF ELECTION CASE CONSTITUTES GROSS INEFFICIENCY.**— Upon evaluation of the complaint and respondent Judge's comment thereto, the OCA submitted a report to this Court finding the judge guilty of gross inefficiency, the delay in the disposition of the case being inexcusable. The Court agrees with this finding. The Court notes that respondent Judge did not deny in his comment that there was delay in the disposition of the election protest. Indeed, he implicitly admitted the delay

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when he stated that the decision was rendered "one or two weeks after [complainant] filed his complaint" with this Court on March 29, 1999. (Upon further query by the OCA, respondent judge failed to inform it of the exact date of the rendition of judgment.) In other words, the judge came out with the decision at least three and a half months beyond the 30-day period prescribed by Section 258 of the Omnibus Election Code. That there was delay, therefore, is beyond dispute.

2. **ID.; ID.; ID.; WHEN DELAY UNJUSTIFIED; CASE AT BAR.**— "Judge Zerna did not contest the allegation of delay. He however ascribed it to the process of going over each of the questioned ballot. This is a flimsy excuse considering that the thirty-day period provided him under Sec. 258 of the Omnibus Election Code is more than sufficient to examine a little over a hundred questioned ballots, and that he could have asked the Court for an extension of time to render decision if he was having problems with the "examination" of the contested ballots such that he could not be able to decide the case on time. As the Court have held in Española vs. Panay (248 SCRA 684) cited in Bolalin vs. Occiano (266 SCRA 203), asking for an extension of time to dispose a case is to avoid or dispel any suspicion that something sinister or corrupt is going on."

3. **ID.; ID.; ID.; ID.; PENALTY THEREFOR; CASE AT BAR.**— The OCA recommends that the Court impose upon respondent a fine of Five Thousand Pesos (₱5,000) with a warning that future similar acts shall be dealt with more severely. While ordinarily a fine of Three Thousand Pesos (₱3,000) is imposed in a single case involving delay, the OCA submits that election cases involve public interest and delay in the disposition thereof should warrant a higher fine. In Bolalin vs. Occiano, it was held that: xxx. The period provided by [election] law[s] [in the disposition of cases] must be observed faithfully because an election case, unlike ordinary actions, involves public interest. Time is of the essence in its disposition since the uncertainty as to who is the real choice of the people for the position must soonest be dispelled. It is neither fair nor just that one whose right to the office is in doubt should remain in that office for an uncertain period. x x x. Moreover, records of the OCA disclose that respondent had a "propensity [for] delay in the disposition of his cases." The Court also concurs with this rationalization, and metes upon respondent a fine of ₱5,000, with a warning that similar acts shall be dealt with more severely.

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4. ADMINISTRATIVE LAW; ADMINISTRATIVE COMPLAINT; DESISTANCE OF COMPLAINANT CANNOT ABSOLVE RESPONDENT JUDGE FROM LIABILITY.— Complainant's desistance cannot absolve respondent from liability. In Enojas, Jr. vs. Gacott, Jr., we said: To begin with, withdrawal of a complaint or subsequent desistance by the complainant in an administrative case does not necessarily warrant its dismissal. Administrative actions cannot depend on the will or pleasure of the complainant who may, for reasons of his own, condone what may be detestable. Neither can the Court be bound by the unilateral act of the complainant in a matter relating to its disciplinary power. The Court does not dismiss administrative cases against members of the Bench merely on the basis of withdrawal of the charges. Desistance cannot divest the Court of its jurisdiction to investigate and decide the complaint against the respondent. To be sure, public interest is at stake in the conduct and actuations of officials and employees of the judiciary. And the program and efforts of this Court in improving the delivery of justice to the people should not be frustrated and put to naught by private arrangements between the parties.

RESOLUTION

KAPUNAN, *J.*:

The delay in the resolution of an election protest by respondent Judge prompted the protestant to institute these administrative proceedings.

Complainant Isagani B. Rizon filed an election protest before the Regional Trial Court of Tubod, Lanao del Norte, Branch VII, presided by respondent Judge Oscar Zerna. Complainant contested the election of protestee William P. Ong for the position of Mayor of the Municipality of Baroy, Lanao del Norte, the latter having been proclaimed as winner in the May 11, 1998 elections. On November 22, 1998, the parties submitted the case for decision but the case had remained undecided within three (3) months after its submission. On February 26, 1998 complainant filed a "Motion to Render Early Decision," which according to complainant, fell on "deaf ears." Complainant thus filed an affidavit-complaint before this Court charging respondent with

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"willful, deliberate, and malicious delay in rendering the decision."

Responding to these charges, respondent judge attributes the delay to the time consumed in going over the questioned ballots one by one, the appreciation of the ballots being the grounds for the protest. Thereafter, he had to draft a decision, which was subsequently rendered a week or two after the complaint before this Court was filed. Respondent judge asserts that complainant is merely looking for a scapegoat for his loss in the elections, judgment in the election protest having been rendered against him.

Upon evaluation of the complaint and respondent Judge's comment thereto, the OCA submitted a report to this Court finding the judge guilty of gross inefficiency, the delay in the disposition of the case being inexcusable. The report stated, among other things, that:

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Judge Zema has a history of delay in deciding cases. In a Resolution dated November 25, 1977, the Court *en banc*, acting on a report of the Judicial Audit Team that conducted judicial audit on Judge Zema's court, directed the said judge to explain why he failed to render decision within the ninety (90) day period and to accordingly render decision in twenty two (22) criminal cases, seventeen (17) civil cases, five (5) criminal and nine (9) civil cases appealed from the lower courts, and other pending matters in four (4) cases; to take appropriate action for the early resolution of twenty eight (28) other cases; to take further action on thirty two (32) others which he failed to act on or set in the court calendar after the lapse of considerable length of time; and to act on twenty three (23) other cases that could already be archived.

Moreover, in respondent judge's 201 Personnel File are copies of twelve (12) various indorsements from the Office of the Court Administrator, referring to him letters and complaints of party-litigants asking for the early disposition of their cases pending before him. The indorsements involve at least twenty (20) cases.

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The Court agrees with this finding.

Section 258 of the Omnibus Election Code provides:

Sec. 258. *Preferential disposition of contests in courts.* – The courts, in their respective cases, shall give preference to election contests over

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all other cases, except those of *habeas corpus*, and shall without delay, hear and, within thirty days from the date of their submission for decision, but in every case within six months after filing, decide the same.

The Court notes that respondent Judge did not deny in his comment that there was delay in the disposition of the election protest. Indeed, he implicitly admitted the delay when he stated that the decision was rendered "one or two weeks after [complainant] filed his complaint" with this Court on March 29, 1999. (Upon further query by the OCA, respondent judge failed to inform it of the exact date of the rendition of judgment.) In other words, the judge came out with the decision at least three and a half months beyond the 30-day period prescribed by Section 258 of the Omnibus Election Code. That there was delay, therefore, is beyond dispute.

Whether the delay was justified is the next question. The OCA found it was not, and the Court quotes with favor the OCA's reasoning:

Judge Zerna did not contest the allegation of delay. He however ascribed it to the process of going over each of the questioned ballot. This is a flimsy excuse considering that the thirty-day period provided him under Sec. 258 of the Omnibus Election Code is more than sufficient to examine a little over a hundred questioned ballots, and that he could have asked the Court for an extension of time to render decision if he was having problems with the "examination" of the contested ballots such that he could not be able to decide the case on time. As the Court have held in *Española vs. Panay (248 SCRA 684)* cited in *Bolalin vs. Occiano (266 SCRA 203)*, asking for an extension of time to dispose a case is to avoid or dispel any suspicion that something sinister or corrupt is going on.

The OCA recommends that the Court impose upon respondent a fine of Five Thousand Pesos (₱5,000) with a warning that future similar acts shall be dealt with more severely. While ordinarily a fine of Three Thousand Pesos (₱3,000) is imposed in a single case involving delay, the OCA submits that election cases involve public interest and delay in the disposition thereof should warrant a higher fine. In *Bolalin vs. Occiano*,[1] it was held that:

[1] 266 SCRA 203 (1997).

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xxx. The period provided by [election] law[s] [in the disposition of cases] must be observed faithfully because an election case, unlike ordinary actions, involves public interest. Time is of the essence in its disposition since the uncertainty as to who is the real choice of the people for the position must soonest be dispelled. It is neither fair nor just that one whose right to the office is in doubt should remain in that office for an uncertain period. x x x.

Moreover, records of the OCA disclose that respondent had a "propensity [for] delay in the disposition of his cases."

The Court also concurs with this rationalization, and metes upon respondent a fine of ₱5,000, with a warning that similar acts shall be dealt with more severely.

One final matter. Pending resolution of this case, complainant filed before this Court an Affidavit of Desistance, stating that "after careful deliberation," he found that the case "does not merit further prosecution." Complainant informed the Court that he is "no longer interested in pursuing the complaint."

Complainant's desistance cannot absolve respondent from liability. In *Enojas, Jr. vs. Gacott, Jr.*,[2] we said:

To begin with, withdrawal of a complaint or subsequent desistance by the complainant in an administrative case does not necessarily warrant its dismissal. Administrative actions cannot depend on the will or pleasure of the complainant who may, for reasons of his own, condone what may be detestable. Neither can the Court be bound by the unilateral act of the complainant in a matter relating to its disciplinary power. The Court does not dismiss administrative cases against members of the Bench merely on the basis of withdrawal of the charges. Desistance cannot divest the Court of its jurisdiction to investigate and decide the complaint against the respondent. To be sure, public interest is at stake in the conduct and actuations of officials and employees of the judiciary. And the program and efforts of this Court in improving the delivery of justice to the people should not be frustrated and put to naught by private arrangements between the parties.

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[2] 322 SCRA 272 (2000). See also *Young vs. Mapayo*, 332 SCRA 289 (2000); *Farrales vs. Camarista*, 327 SCRA 84 (2000); *Caseñares vs. Almeida, Jr.*, 291 SCRA 474 (1999); *Dagsa-an vs. Conag*, 290 SCRA 12 (1999).

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WHEREFORE, for gross inefficiency, the Court hereby imposes a *FINE* of Five Thousand Pesos (₱5,000) upon respondent Judge Oscar Zerna with a *warning* that future similar acts will be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Pardo, and *Ynares-Santiago, JJ.,* concur.

Puno, J., on leave.

FIRST DIVISION

[A.M. No. RTJ-99-1498. September 17, 2001]

VICENTE P. LIM, SR., *complainant, vs.* **JUDGE JACINTA B. TAMBAGO, Regional Trial Court, Branch 48, Masbate, Masbate, and ROLANDO G. SANDIGAN, Clerk of Court VI and Ex-Officio Provincial Sheriff, RTC-OCC, Masbate, Masbate,** *respondents.*

SYNOPSIS

Complainant was the highest bidder of three (3) parcels of land owned by spouses Orbiso which was sold by the DBP at public auction. The certificate of sale dated November 4, 1997 was registered on November 6, 1997. On November 3, 1998, complainant requested respondent sheriff to issue a certificate of final sale which the latter denied. On November 6, 1998, the Orbisos filed with the office of respondent sheriff a notice of redemption and was allowed, in an order issued by respondent Judge, to pay the redemption money. On the same day, respondent sheriff accepted the redemption money, and their motion for the issuance of certificate of redemption was granted by respondent judge. These became the basis of the administrative complaints against respondents. Complainant mainly alleged that they should have been granted the final certificate of sale as the Orbisos failed to redeem the lots on November 3, 1998.