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No pronouncement as to costs.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Buena, and *De Leon, Jr., JJ.,* concur.

THIRD DIVISION

[A.M. No. MTJ-97-1132. October 24, 2000]

MARIO CACAYOREN, *complainant, vs.* **JUDGE HILARION A. SULLER, 7th MCTC, ASINGAN-SAN MANUEL, PANGASINAN,** *respondent.*

[A.M. No. MTJ-97-1133. October 24, 2000]

TEODORO B. CACAYOREN, *complainant, vs.* **JUDGE HILARION A. SULLER, 7th MCTC, ASINGAN-SAN MANUEL, PANGASINAN,** *respondent.*

SYNOPSIS

Complainants charged respondent MCTC judge with Ignorance of the Law, Dishonesty, Oppression and Violation of the Anti-Graft and Corrupt Practices Act.

Anent the charge of Oppression, the Supreme Court held that respondent Judge acted in accordance with the rules when he declared complainant in default because they failed to file their answers within the reglementary period. The Court, however, held respondent Judge liable for Ignorance of the Law when he awarded damages in the civil case based on malicious prosecution since there was yet no acquittial nor final dismissal rendered by the court in the criminal cases for Frustrated Murder and Theft of Large Cattle.

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The Supreme Court reduced the fine recommended by the Court Administrator from Ten Thousand Pesos (₱10,000.00) to Three Thousand Pesos (₱3,000.00) for each case.

SYLLABUS

LEGAL AND JUDICIAL ETHICS; JUDGES; COMPLAINT AGAINST JUDGES; IGNORANCE OF THE LAW; AWARDING DAMAGES BASED ON MALICIOUS PROSECUTION OF A CRIMINAL CASE NOT YET FINALLY DISMISSED, A CASE OF. — As regards the charge of ignorance of the law, respondent Judge cited the case of *Ventura vs. Bernabe* in justifying the award of damages for malicious prosecution against herein complainants. From the facts enumerated by respondent Judge in his decisions, there is no question that the criminal complaints for Frustrated Murder and Theft of Large Cattle separately lodged by herein complainants were dismissed by the Prosecutor's Office. The same cases were re-filed with the MCTC-General Natividad-Llanera, Nueva Ecija but there was no acquittal or dismissal yet by the said court when respondent Judge entertained the civil actions for damages based on malicious prosecution. This Court has ruled that the mere act of submitting a case to the authorities for prosecution does not make one liable for malicious prosecution. . . . A judge should be the embodiment of competence, integrity and independence. It is a pressing responsibility of judges to keep abreast with the law and changes therein for ignorance of the law, which everyone is bound to know, excuses no one — not even judges.

D E C I S I O N

GONZAGA-REYES, *J.*:

Complainants Teodoro Cacayoren and Mario Cacayoren charge respondent Judge Hilarion A. Suller of the 7th MCTC, Asingan-San Manuel, Pangasinan with Ignorance of the Law, Dishonesty, Oppression and Violation of the Anti-Graft and Corrupt Practices Act.

In Administrative Matter No. MTJ-97-1132, complainant Mario Cacayoren alleges that on March 19, 1994, he filed a complaint

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for Frustrated Murder against Atty. Felix Tacadena before the Office of the Provincial Prosecutor of Nueva Ecija. The Investigating Provincial Prosecutor of Nueva Ecija dismissed the case on the ground that "there is not enough evidence to warrant a finding of probable cause." On November 10, 1994, complainant Mario re-filed the case before the 2nd MCTC, General Natividad-Llanera, Nueva Ecija where said case is presently pending and was docketed as Criminal Case No. 2238-L. While the criminal case was pending, respondent Judge Suller allegedly entertained the action for damages based on malicious prosecution in Civil Case No. SM-647 filed by Felix Tacadena against herein complainant Mario wherein a decision was rendered on December 15, 1995 against herein complainant. Said decision was appealed to the RTC-Pangasinan. Complainant alleges that respondent Judge should not have entertained nor acted on the case for damages on the ground that the action filed by complainant against Tacadena had not yet been finally terminated with an acquittal; hence there is no basis for the claim of damages. Complainant further avers that respondent Judge should have refrained from trying the case since he and Felix Tacadena are close relatives.

In Administrative Matter No. MTJ-97-1133, complainant Teodoro Cacayoren alleges that on May 25, 1994, the Nueva Ecija Provincial Prosecutor's Office dismissed the criminal case for Theft of Large Cattle filed by him against Victoria Mangilin, Donato Bustamante, Marfel Tacadena and Jayson Cacayoren for insufficiency of evidence to warrant a finding of probable cause. In November 1994, the same case of Theft of Large Cattle was re-filed before the 2nd MCTC, General Natividad-Llanera, Nueva Ecija and was docketed as Criminal Case No. 223-N. Complainant Teodoro Cacayoren alleges that respondent Judge entertained and decided the case for damages based on malicious prosecution docketed as Civil Case No. SM-648 filed against him by Marfel Tacadena and Jayson Cacayoren. Herein complainant Teodoro Cacayoren claims that respondent Judge should not have entertained nor acted on the case for malicious prosecution and damages on the ground that the action filed by complainant against Tacadena had not yet been finally terminated

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with an acquittal hence, there is no basis for the claim of damages. Complainant further avers that respondent Judge had shown dishonesty and ignorance of the law when he cited the case of *Ventura vs. Bernabe* in his decision when in fact said case was superseded by the case of *Ponce vs. Legazpi* wherein it was enunciated therein that for a suit for malicious prosecution to prosper, there must have been a final termination with an acquittal. Complainant likewise discovered that respondent Judge is a close relative of Marfel Tacadena and should have refrained from trying the civil case.

It appears from the records that herein complainants filed Notices of Appeal from the Decision dated December 15, 1995 rendered by respondent Judge but the latter denied due course the appeal in his Order dated March 8, 1996 for having been filed beyond the reglementary period. The motions for reconsideration thereto were likewise denied.[1]

In his Comment,[2] respondent Judge is of the view that the criminal complaints filed by Teodoro and Mario Cacayoren, father and son, respectively, before the Office of the Provincial Prosecutor have been finally terminated and although they re-filed their complaints with the MCTC of General Natividad-Llanera, the re-filing is null and void because they were not filed by either the Chief of Police, Public Prosecutor or any other officer authorized to file the said complaints considering that the crimes charged, *i.e.*, Frustrated Murder and Theft of Large Cattle, are public crimes. Respondent Judge likewise argues that the re-filing of the complaints with the said court is a violation of the rule against forum shopping and should be dismissed. In finding complainants liable for malicious prosecution, respondent Judge is of the view that herein complainants acted with malice in making false criminal charges against Felix Tacadena, Marfel Tacadena and Jayson Cacayoren. It is his

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[1] pp. 49-53, *Rollo* of A.M. No. MTJ-97-1132; pp. 41-45, *Rollo* of A.M. No. MTJ-97-1133.

[2] pp. 24-32, *Rollo* of A.M. No. MTJ-97-1132; pp. 49-58, Rollo of A.M. No. MTJ-97-1133.

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opinion that herein complainants were "embittered when Atty. Felix S. Tacadena opposed their claim over the land claimed by them." He further noted that there was actually no evidence for the defendants (herein complainants) in the civil cases for damages based on malicious prosecution since they were declared in default and their motion for reconsideration and motion to dismiss were subsequently denied. Finally, respondent Judge alleges that he is not, in any way, related to counsel Felix Tacadena.

The issues raised in these two (2) administrative complaints are basically the same; hence these cases were consolidated per Resolution dated July 8, 1996.[3]

In the Resolution dated August 4, 1999, the cases were referred to Executive Judge Joven F. Costales of the Regional Trial Court of Urdaneta, Pangasinan for investigation, report and recommendation. Investigating Judge Costales recommended the dismissal of the cases for failure on the part of the complainants to present evidence as the latter failed to appear on the scheduled hearings showing their lack of interest in further pursuing the cases.

In the Resolution dated January 19, 2000, this Court referred the cases to the Court Administrator for evaluation, report and recommendation.

On April 12, 2000, the Court Administrator submitted his Memorandum recommending that respondent Judge Suller be fined in the amount of ₱10,000.00 for each of the two (2) administrative cases for Gross Ignorance of the Law, with a warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

The fact that the complainants failed to appear at the scheduled hearings before Investigating Judge Costales will not justify an outright dismissal of the case. Administrative actions cannot be made to depend on the will of every complainant who may,

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[3] p. 16, *Rollo* of A.M. No. MTJ-97-1133.

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for one reason or another, condone a detestable act. The Supreme Court does not, as a matter of course, dismiss administrative cases against members of the Bench on account of withdrawal of charges[4] or mere desistance on the part of the complainants.[5] With more reason, in this case, where complainants did not withdraw their complaints but merely failed to appear at the hearings before the Investigating Judge. Furthermore, the fact that complainants may have lost interest in prosecuting the administrative case against respondent Judge will not necessarily warrant a dismissal thereof.[6] As pointed out by the Court Administrator, the records and other documents on hand are sufficient to reach a fair and factual determination of the case.

It should be noted that in the respondent Judge's Decision[7] dated December 15, 1995 in Civil Case No. SM-647 in the case for damages based on malicious prosecution filed against complainant Mario Cacayoren, respondent Judge erroneously cited the date when the case of *Ventura vs. Bernabe* was promulgated as "April 30, *1991*" and the page number in the SCRA where the case may be found as "38 SCRA *387*." In the Decision dated December 15, 1995 in Civil Case No. SM-648 filed against complainant Teodoro Cacayoren, the date of promulgation of the Ventura case was also written as "April 30, *1991*." The correct date of promulgation of said case is April 30, *1971* and it is found in volume 38 of SCRA at page 587. The charge of Dishonesty against respondent Judge for allegedly misleading the Court, cannot be sustained. The error, at most, can be deemed as a mere typographical error. Besides, the case may be verified by referring to the volume number in SCRA which was correctly cited by respondent Judge.

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[4] *Sandoval vs. Manalo*, 260 SCRA 611; *Garciano vs. Sebastian*, 231 SCRA 588.

[5] *Marcelino vs. Singson, Jr.*, 243 SCRA 685; *Dela Cruz vs. Curso*, 221 SCRA 66.

[6] *Moreno vs. Bernabe*, 246 SCRA 120.

[7] pp. 37-42, *Rollo*, of A.M. No. MTJ-97-1132; pp. 63-72, *Rollo* of A.M. No. MTJ-97-1133.

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Anent the charge of Oppression, the records show that summons in Civil Cases Nos. SM-647 and SM-648 were received by herein complainants on September 17 and 19, 1994 but they failed to file their respective answers within the reglementary period. Respondent Judge declared them in default. Complainants' Motion for Reconsideration with Motion to Dismiss was denied for being filed out of time. Their appeal was likewise filed late as complainants received the respondent judge's decisions in the civil cases on February 16, 1996 and filed their Notices of Appeal only on March 8, 1996 or six (6) days late. Clearly, the respondent Judge acted in accordance with the rules, thus negating the charge of oppression.

The charge of graft and corruption alleging that respondent Judge is a close relative of Atty. Felix Tacadena cannot likewise be sustained for no evidence exists to prove the allegation. Partiality and bad faith cannot be presumed but must be proved by clear and convincing evidence.[8]

As regards the charge of ignorance of the law, respondent Judge cited the case of *Ventura vs. Bernabe*[9] in justifying the award of damages for malicious prosecution against herein complainants. From the facts enumerated by respondent Judge in his decisions, there is no question that the criminal complaints for Frustrated Murder and Theft of Large Cattle[10] separately lodged by herein complainants were dismissed by the Prosecutors' Office. The same cases were re-filed with the MCTC-General Natividad-Llanera, Nueva Ecija[11] but there was no acquittal or dismissal yet by the said court when respondent Judge entertained the civil actions for damages based on malicious prosecution.

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[8] *Zamudio vs. Peñas, Jr.*, 286 SCRA 367; Abad vs. Belen, 240 SCRA 733.

[9] 38 SCRA 587 (1971).

[10] Docketed as I.S. Nos. 0944-94 (for Frustrated Murder) and 0957-94 (for Theft of Large Cattle).

[11] Docketed as Criminal Cases Nos. 2237-N (for Theft of Large Cattle) and 2238-L (for Frustrated Murder).

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This Court has ruled that the mere act of submitting a case to the authorities for prosecution does not make one liable for malicious prosecution.[12] The very purpose of a preliminary investigation before the fiscal is to avoid baseless and malicious prosecutions.[13]

The *Ventura* case cited by respondent Judge to justify the award of damages was not in point. In said case, there was a decision of acquittal in the criminal case. In the instant cases, the criminal cases reached the preliminary investigation before the fiscals and were subsequently dismissed. However, the same criminal complaints were re-filed and were still pending when the civil cases for damages were decided by the respondent Judge.

A complaint for damages based on malicious prosecution will prosper only if the following elements are shown to exist: (1) that fact of the prosecution and the further fact that the defendant was himself the prosecutor, and that the action was finally terminated with an acquittal; (2) that in bringing the action, the prosecutor acted without probable cause; and (3) the prosecutor was actuated or impelled by legal malice.[14] These elements were mentioned in the *Ventura* case[15] and respondent Judge admitted that he "did not bother anymore to read the complete text of the decision."[16] Had he read the whole text of the decision in the *Ventura* case, he would have known that the first element, *i.e.*, that the action was finally terminated with an acquittal, was a requisite to warrant an action for damages based on malicious prosecution, but that requisite was not present in the cases at bar.

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[12] *Albenson Enterprises Corp. vs. CA*, 217 SCRA 16; *Manila Gas Corporation vs. CA*, 100 SCRA 602.

[13] *Ventura vs. Bernabe*, 38 SCRA 587 at p. 600.

[14] *Lao vs. CA*, 199 SCRA 58; *Ponce vs. Legaspi*, 208 SCRA 377.

[15] citing, *Martinez vs. United Finance Corporation*, 34 SCRA 524.

[16] p. 3 of respondent's Supplemental Comment, p. (111) 118, *Rollo* of A.M. No. MTJ-97-1132.

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It should likewise be noted that complainants called the attention of respondent Judge when they filed an Urgent Motion for reconsideration with Motion to Dismiss[17] that the action for damages based on malicious prosecution cannot prosper since there was yet no acquittal nor final dismissal rendered by the court in the criminal cases, citing therein several cases.

A judge should be the embodiment of competence, integrity and independence.[18] It is a pressing responsibility of judges to keep abreast with the law and changes therein for ignorance of the law, which everyone is bound to know, excuses no one — not even judges.[19] And while judges should not be disciplined for inefficiency on account merely of occasional mistakes or errors of judgment, yet it is highly imperative that they should be conversant with fundamental and basic legal principles in order to merit the confidence of the citizenry.[20] Respondent Judge has shown lack of familiarity with our laws, rules and regulations as to undermine the public confidence in the integrity of our courts. He has persistently misapplied the rulings of this Court.

The Court further notes that respondent Judge was previously charged in A.M. No. MTJ-94-936 (*Perez vs. Suller*) where he was fined in the amount of One Thousand Pesos (₱1,000.00) for not inhibiting himself in the preliminary investigation of Criminal Case No. SM-7962. However, in the instant cases, the Court Administrator's recommendation imposing a fine in the amount of Ten Thousand Pesos (₱10,000.00) for each of these administrative cases is too harsh. The fine should be reduced to Three Thousand Pesos (₱3,000.00) for each case.

WHEREFORE, respondent Judge Hilarion A. Suller is hereby found guilty of Ignorance of the Law and is *FINED* in the

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[17] Annex "D" of the Complaint, p. 18, *Rollo* of A.M. No. MTJ-97-1132; Annex "C" of the Complaint, p. 11, A.M. No. MTJ-97-1133.

[18] *Mumolo, Sr. vs. Narisma*, 252 SCRA 613.

[19] *Aurillo, Jr. vs. Francisco*, 235 SCRA 283.

[20] *Galan Realty Co., Inc. vs. Arranz*, 237 SCRA 770.

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amount of Three Thousand Pesos (₱3,000.00) *EACH* for the two (2) administrative cases. He is further warned that a repetition of the same or similar acts shall be dealt with more severely by this Court.

SO ORDERED.

Melo (Chairman), Panganiban and *Purisima, JJ.*, concur.

Vitug, J., took no part; close friendship with a party.

THIRD DIVISION

[A.M. No. P-00-1396. October 24, 2000]
(formerly OCA IPI No. 97-375-P)

ROBERTO R. IGNACIO, *complainant, vs.* **RODOLFO PAYUMO, DEPUTY SHERIFF, REGIONAL TRIAL COURT, QUEZON CITY, BRANCH 93,** *respondent.*

SYNOPSIS

Complainant charged respondent deputy sheriff with Grave Misconduct relative to an LRC case, alleging that respondent refused to implement a writ of demolition for purposes of which said respondent had received the amount of ₱40,000.00.

Respondent claimed that he failed to demolish the structures due to violent resistance of the occupants and that he spent the money in connection with the implementation of the writ.

Agreeing with the Office of the Court Administrator, the Supreme Court found respondent guilty of Misconduct in Office and ordered him to pay a fine of Five Thousand Pesos. The Sheriff must comply with the procedure prescribed in Section 9, Rule 141 of the Rules of Court in serving processes, thus: he should submit a full report of the estimated expenses to be incurred and upon the approval of the estimated expenses, the interested party has to deposit the amount with the Clerk of Court and *Ex-Oficio* Sheriff.