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Atty. Paita-Moya is **DIRECTED** to inform the Court of the date of her receipt of this Decision, to determine the reckoning point when her suspension shall take effect.

This Decision is immediately executory.

SO ORDERED.

Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Villarama, Jr., Perez, Mendoza, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Carpio, Brion, Reyes, and *Jardeleza, JJ.,* on leave.

EN BANC

[A.M. No. CA-15-53-J. July 14, 2015]
(Formerly OCA I.P.I. No. 15-230-CA-J)

RE: COMPLAINT DATED JANUARY 28, 2015 OF CATHERINE DAMAYO, REPRESENTED BY HER MOTHER, VENIRANDA DAMAYO, AGAINST HON. MARILYN LAGURA-YAP, ASSOCIATE JUSTICE, COURT OF APPEALS-VISAYAS, CEBU CITY, CEBU.

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; RENDERING A SPURIOUS JUDGMENT, NOT A CASE OF; NOT EVERY ERROR THAT A JUDGE COMMITS IN THE PERFORMANCE OF HIS DUTIES RENDERS HIM LIABLE.—** It is well settled that in administrative proceedings, the burden of proof that respondents committed the acts complained of rests on the complainant. In the instant case, we find the allegations of spurious judgment and the failure to promulgate judgment to be bereft of factual or legal basis. It is not enough that

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complainant made an allegation of fraud; there should be a clear and convincing evidence to prove it. Extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to the palpable error that may be inferred from the decision or order itself. It should be emphasized that as a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous. He cannot be subjected to liability - civil, criminal or administrative - for any of his official acts, no matter how erroneous, as long as he acts in good faith. In such a case, the remedy of the aggrieved party is not to file an administrative complaint against the judge but to elevate the error to the higher court for review and correction. The Court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded with the stigma of being biased and partial. Thus, not every error or mistake that a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice. Good faith and absence of malice, corrupt motives or improper considerations are sufficient defenses in which a judge charged with ignorance of the law can find refuge. In this case, other than the complainant's bare allegation of fraud, there was no showing that respondent was motivated by bad faith or ill motives in the alleged erroneous judgment. From a perusal of the disputed Judgment dated November 3, 2011, it appears that indeed it is erroneously stated in the first page that accused pleaded "guilty" of the charge of estafa against her. However, in the body of the said judgment, it can be inferred from the discussion of the defense's arguments and stipulation that complainant was actually pleading not guilty to the charge against her. Noteworthy to mention is that in the Order dated November 23, 2006, it was categorically stated that accused-complainant pleaded "not guilty" to the charge of estafa against her. Thus, as noted by the appellate court, the error of stating in the judgment that complainant pleaded "guilty" instead of "not guilty" was merely due to inadvertence of omitting the word "not."

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2. ID.; ID.; ID.; PROMULGATION OF THE JUDGMENT *IN ABSENTIA* IS ALLOWED BY THE RULES.— It is, likewise, shown that the trial court sent out notice to the complainant for the promulgation of the judgment on October 10, 2011; however, despite notice, complainant failed to appear at the promulgation on November 24, 2011. Thus, the trial court proceeded with the promulgation by recording the dispositive portion in the criminal docket of the court, pursuant to Section 6, Rule 120 of the Rules of Court, x x x Indeed, Section 6 as above-quoted authorizes the promulgation of judgment *in absentia* in view of respondent's failure to appear despite notice. It bears stressing that the rule authorizing promulgation *in absentia* is intended to obviate the situation where the judicial process could be subverted by the accused jumping bail to frustrate the promulgation of judgment.

D E C I S I O N

PERALTA, *J.*:

Before this Court is an administrative complaint filed by Catherine Damayo (*complainant*), represented by her mother, Veniranda Damayo against Justice Marilyn Lagura-Yap (*respondent*), Associate Justice of the Court of Appeals-Visayas, Cebu City for allegedly rendering false decision and judicial fraud, in relation to Criminal Case No. DU-14740.

The facts are as follows:

On October 2, 2006, an Information for Estafa docketed as Criminal Case No. DU-14740 was filed against complainant, Catherine Damayo, before the Regional Trial Court of Mandaue City, Branch 28, then presided by Judge Marilyn Lagura-Yap[1] (respondent). Complainant was arraigned on November 23, 2006. Pre-trial was conducted on February 8, 2007 and, consequently, on April 10, 2007, trial began.

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[1] Now Associate Justice of the Court of Appeals-Visayas, Cebu City.

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On November 3, 2011, the trial court found complainant guilty of the crime charged, the dispositive portion of which read:

> WHEREFORE, this judgment is hereby rendered finding the accused Catherine Damayo guilty beyond reasonable doubt of Estafa. Based on the amount that has been misappropriated and converted which is ₱17,274.35, the court imposes upon the said accused the indeterminate penalty of 4 years and 2 months of prision correccional as the minimum term to 6 years and one day of prision mayor as the maximum term, together with the accessory penalties provided by law.
>
> The accused is held civilly liable to complainant Karen Cañete in the amount of ₱17,274.35 with interest of 12% per annum from the date the demand was made upon her on February 24, 2006.
>
> IT IS ORDERED.[2]

Due to accused-complainant's failure to attend the promulgation, the judgment convicting accused-complainant was promulgated by recording the above-quoted dispositive portion in the criminal docket on November 24, 2011.[3]

On December 6, 2011, complainant, through counsel, filed a Notice of Appeal.[4] The appeal was given due course; thus, the entire records of the case and the transcripts of the hearings were then brought to the Court of Appeals.

However, on January 18, 2013, the Court of Appeals dismissed the appeal because instead of filing the Appellant's brief, complainant submitted a petition for review under Rule 42, in violation of Section 3, Rule 122 of the Rules of Court. It explained that accused/complainant availed of a wrong mode of appeal considering that the judgment of the trial court in Criminal Case No. DU-14740 for estafa was rendered in the exercise of its original jurisdiction, thus, when accused-

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[2] *Rollo,* pp. 31-32.

[3] *Id.* at 90.

[4] *Id.* at 91.

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complainant filed a petition for review under Rule 42, it should be dismissed as the said mode of appeal is only applicable in cases decided by the RTC in the exercise of its appellate jurisdiction.[5]

On November 21, 2014, upon motion for reconsideration, the appellate court maintained that indeed accused-complainant pursued the wrong mode of appeal and thus her motion for reconsideration was denied for lack of merit.[6]

Aggrieved, accused-complainant filed the instant complaint against respondent. She alleged that her conviction was fraudulent. Complainant pointed out that the opening statement of the Judgment in Criminal Case No. DU-14740 stated that she pleaded "guilty" when in fact she pleaded "not guilty." Complainant claimed that respondent purportedly made a detailed narration of the case to sustain the alleged plea of guilt. She further averred that the judgment against complainant was not promulgated and that they only knew of the spurious judgment when they went to the trial court to inquire about the status of the case.

In a Resolution[7] dated March 24, 2015, the Court required respondent to comment on the complaint filed against her.

In her Comment[8] dated May 8, 2015, respondent denied the allegations against her.

Respondent explained that while it is true that on the first page of the judgment dated November 3, 2011 in Criminal Case No. DU-14740, there appeared a statement that "*Catherine Damayo pleaded 'guilty' when she was arraigned on November 23, 2006 on the aforequoted charge";* the reference that she pleaded "guilty" was caused by mere inadvertence

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[5] *Id.* at 94-98.

[6] *Id.* at 100-102.

[7] *Id.* at 67.

[8] *Id.* at 70-76.

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because the records would show that complainant's plea during arraignment was in fact "not guilty." Respondent insists that there was no fraudulent intent to such slip up because the case was decided on the merits and not on the basis that accused-complainant purportedly entered a plea of guilt.[9]

Respondent maintained that the erroneous reference of the actual plea of complainant was not deliberate or malicious and it could not have affected the evidence presented to prove her guilt. The detailed narration of the case made in the judgment was necessary because of the evidence presented by the prosecution and the defense and not for the purpose of sustaining the alleged plea of guilt. Respondent stressed that the conviction was based on proof of accused's guilt beyond reasonable doubt.[10]

Respondent further disputes complainant's allegation that the judgment was spurious as she personally prepared and signed said judgment. She likewise pointed out that, under Section 6, Rule 120 of the Rules of Criminal Procedure, in case the accused failed to appear at the scheduled date of promulgation of judgment despite notice, as what happened in this case, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel. Respondent surmised that the instant complaint against her was instituted as a substitute for a lost appeal which was entirely due to complainant's fault.[11]

RULING

It is well settled that in administrative proceedings, the burden of proof that respondents committed the acts complained of rests on the complainant.[12] In the instant case,

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[9] *Id.* at 73.

[10] *Id.* at 73-74.

[11] *Id.* at 74.

[12] *Rivera v. Judge Mendoza*, 529 Phil. 600, 606 (2006).

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we find the allegations of spurious judgment and the failure to promulgate judgment to be bereft of factual or legal basis. It is not enough that complainant made an allegation of fraud; there should be a clear and convincing evidence to prove it. Extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to the palpable error that may be inferred from the decision or order itself.[13]

It should be emphasized that as a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous. He cannot be subjected to liability - civil, criminal or administrative - for any of his official acts, no matter how erroneous, as long as he acts in good faith. In such a case, the remedy of the aggrieved party is not to file an administrative complaint against the judge but to elevate the error to the higher court for review and correction. The Court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded with the stigma of being biased and partial. Thus, not every error or mistake that a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice. Good faith and absence of malice, corrupt motives or improper considerations are sufficient defenses in which a judge charged with ignorance of the law can find refuge.[14]

In this case, other than the complainant's bare allegation of fraud, there was no showing that respondent was motivated by bad faith or ill motives in the alleged erroneous judgment.

From a perusal of the disputed Judgment dated November 3, 2011, it appears that indeed it is erroneously stated in the

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[13] *Id*.

[14] *Salvador v. Judge Limsiaco, Jr.,* 519 Phil. 683, 687-688 (2006), citing *Balsamo v. Suan,* 458 Phil. 11, 24 (2003).

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first page that accused pleaded "guilty" of the charge of estafa against her. However, in the body of the said judgment, it can be inferred from the discussion of the defense's arguments and stipulation that complainant was actually pleading not guilty to the charge against her.

Noteworthy to mention is that in the Order[15] dated November 23, 2006, it was categorically stated that accused-complainant pleaded "not guilty" to the charge of estafa against her. Thus, as noted by the appellate court, the error of stating in the judgment that complainant pleaded "guilty" instead of "not guilty" was merely due to inadvertence of omitting the word "not."

It is, likewise, shown that the trial court sent out notice to the complainant for the promulgation of the judgment on October 10, 2011; however, despite notice, complainant failed to appear at the promulgation on November 24, 2011. Thus, the trial court proceeded with the promulgation by recording the dispositive portion in the criminal docket of the court, pursuant to Section 6, Rule 120 of the Rules of Court, to wit:

> Section 6. *Promulgation of judgment.* – The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.
>
> x x x x x x x x x
>
> ***In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel.*** (Emphasis ours)

[15] *Rollo*, p. 77.

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Indeed, Section 6 as above-quoted authorizes the promulgation of judgment *in absentia* in view of respondent's failure to appear despite notice. It bears stressing that the rule authorizing promulgation *in absentia* is intended to obviate the situation where the judicial process could be subverted by the accused jumping bail to frustrate the promulgation of judgment.[16]

This Court will not hesitate to protect Judges or court personnel against any groundless accusation that trifles with judicial processes when an administrative charge against them has no basis whatsoever in fact or in law. This Court will not shirk from its responsibility of imposing discipline upon all employees of the judiciary, but neither will it hesitate to shield them from unfounded suits that only serve to disrupt rather than promote the orderly administration of justice.[17]

Hence, the Complainant is sternly warned against filing unsubstantiated complaints against judges and justices which serve no other purpose than to harass them.

WHEREFORE, the instant administrative complaint against respondent Associate Justice Marilyn Lagura-Yap of the Court of Appeals-Visayas, Cebu City is hereby **DISMISSED** for failure of complainant to substantiate the charges.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Villarama, Jr., Perez, Mendoza, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Carpio, Brion, Reyes, and *Jardeleza, JJ.,* on leave.

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[16] See *People v. Chiok,* 534 Phil. 538, 543 (2006).

[17] See *Tan Tiac Chiong v. Cosico*, 434 Phil. 753, 764 (2002).