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THIRD DIVISION

[A.M. No. MTJ-99-1177. February 8, 1999]

Spouses GREGORIO LORENA and TERESITA LORENA, *complainants, vs.* **JUDGE ADOLFO V. ENCOMIENDA, Municipal Trial Court of Pagbilao, Quezon,** *respondent.*

SYNOPSIS

In a sworn letter-complaint received by the Office of the Court Administrator (OCA) on August 5, 1997, Spouses Gregorio and Teresita Lorena charged Judge Adolfo V. Encomienda of the Municipal Trial Court of Pagbilao, Quezon with grave abuse of authority by helping his nephew, Tadito Encomienda, in an ejectment case filed before the Municipal Trial Court of Pagbilao, Quezon. Additionally, complainants accused herein respondent for being responsible for their illegal arrest and subsequent detention which lasted for three days. After the respondent submitted his comment, the OCA, in its report, recommended that the charge of grave abuse of authority against the respondent be dismissed, but advised that he should be more prudent and more circumspect in his actions and utterances.

The Supreme Court found merit to the instant complaint. The Court ruled that although the charge of grave abuse of authority was not proven, respondent should be reprimanded for his failure to exercise greater circumspection in dealing with the complainants. In the present case, respondent should have avoided talking to the complainants, especially in the tone and in the manner reported by the complainants. In doing so, respondent steered away from the heavy responsibility of judges to be circumspect in their public and private dealings. In light of the foregoing, the Court reprimanded the respondent for failing to exercise greater care and circumspection in his action and warned that a repetition of this or similar acts will be dealt with more severely.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; IN ADMINISTRATIVE PROCEEDINGS, THE COMPLAINANT HAS THE BURDEN OF PROVING BY SUBSTANTIAL

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EVIDENCE, THE ALLEGATIONS IN THE COMPLAINT; CASE AT BAR.— In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint. In the present case, we believe that the complainants were not able to do so. There is no showing that respondent judge used the powers and influence of his office in an arbitrary and opprobrious manner. From the documents presented, it is apparent that he had no hand in bringing the Lorenas to the police station. Likewise, it cannot be said that he had any participation in the conflict between his brother's family and the Lorenas. The complainants may have surmised otherwise, but mere suspicion without proof cannot be the basis of conviction.

2. **LEGAL AND JUDICIAL ETHICS; CANON OF JUDICIAL ETHICS; A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES; CASE AT BAR.**— Although the charge of grave abuse of authority was not proven, the respondent judge cannot be completely exonerated. He himself admitted having spoken to Gregorio on the phone in order to assist the family of Herminio Encomienda, the judge's brother. The circumstances surrounding the controversy clearly show the impropriety of respondent's act. The Lorenas had just lost their home; considering the perceived power and exalted position of the respondent judge, as well as his relationship with Tadito and Dolores Encomienda, it was not surprising that the complainants were disconcerted and overwhelmed by the gravity of their situation. They cannot be blamed if they believed at the time that Judge Encomienda was somehow responsible for their arrest and detention. Whatever his intentions were, he should have avoided talking to Gregorio, especially in the tone and in the manner reported by the latter. In doing so, respondent steered away from the heavy responsibility of judges to be circumspect in their public and private dealings. As the Court has stated, "a judge is human, but he is expected to rise above human frailties. At the very least, there must be an earnest and sincere effort on his part to do so." Canon 2 of the Canons of Judicial Ethics mandates that "a judge should avoid impropriety and the appearance of impropriety in all activities." Considering that a judge is the visible representation of the law and, more important, of justice, his official conduct, as well as his personal behavior, should always be beyond reproach. In light of the foregoing, the Court believes that Judge Encomienda

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should be reprimanded. Applicable to the present case is *Conde v. Superable*, in which the Court dismissed the charge for grave misconduct, but held: "Still, [respondent judge] should have taken greater pains to avoid the impression that his personal feelings were not kept under control, as rightfully expected of a judge. That is an added responsibility of the most serious character assumed by a member of the bar honored with an appointment to the bench. He should on that account be admonished. He must take pains to assure that thereafter his conduct would not be thus tainted."

RESOLUTION

PANGANIBAN, *J.*:

The serious nature of the tasks of judges requires them to be circumspect in both their public *and* their private dealings. As they are "expected to rise above human frailties," they must, in all of their activities, avoid not only impropriety but even the appearance of impropriety.

The Facts

Spouses Gregorio and Teresita Lorena, in a sworn letter-complaint[1] received by the Office of the Court Administrator on August 5, 1997, charged Judge Adolfo V. Encomienda of the Municipal Trial Court of Pagbilao, Quezon, with grave abuse of authority. The letter-complaint reads as follows:

"Kami pong mag-asawa, Gregorio at Teresita Lorena, ay magalang na sumulat sa inyo upang ipaalam ang mga sumusunod na pangyayari at tuloy humingi sa inyo ng inyong mahalagang tulong:

"Kami po ay ikinulong sa pamamagitan ng pagsasabwatan simula alas 9:00 ng umaga ng Julio 4 hanggang 7, 1997 ng umaga nang wala pong habla sa amin o "warrant of arrest" sa piitan ng pulisya sa Lungsod ng Lucena.

"Ang mga tao po na nagtulong-tulong o nagkaisa na kami ay isuot sa kalabos o piitan ay sina Judge Adolfo V. Encomienda, Municipal Trial Judge ng Pagbilao, Quezon, at kasalukuyan ay Assisting Judge ng Lucena City, ang pulis po ng Lucena City na si Alex Nuyda, ang

[1] Dated July 22, 1997.

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mag-ina po na si Dolores Encomienda na ikalawang asawa ng namatay na si Herminio Encomienda na kapatid ni Judge Encomienda, at ang anak ng namatay na si Herminio Encomienda na ang pangalan ay si Tadito Encomienda.

"Kami po ay tumira sa lupa nila na katabi ng kanilang bahay (Erminio at Dolores) dahil sa kanilang anyaya sa amin, sapagkat ako, Gregorio Lorena, ay kanyang utusan, bodyguard at marami pang iba.

"Ang dahilan po ay n[an]g kunin niya sa akin ang lupa nila na nilinis ko at tinamnan ng 680 saging at marami pang iba ay inihabla ko sila sa DARAB at noong hinihingi nila na iurong ko ang habla ay hindi po ako pumayag at ako ay inihabla nila ng "ejectment" at dahil po sa kami ay natalo ay giniba po ng sheriff ang aming bahay noong Julio 3, 1997.

"Nang kami po ay [gum]awa ng kanlungan ng aming kagamitan para huwag mabasa ng ulan noong alas (9:00 ng umaga ng Julio 4, 1997, ay dumating po si SPO3 Alex Nuyda at sinabi sa amin na gusto raw kaming makausap ni Mayor Ramon Talaga ng Lucena City;

"Na pagdating namin sa munisipyo ay wala si Mayor Talaga at ang naruruon ay si Dolores at Tadito Encomienda at kami ay pinipilit na pumirma sa isang kasulatan, at ang sabi naming mag-asawa ay hindi kami pipirma sapagkat wala ang aming abogado na si Atty. Antonio Robles. Ang sabi nila sa amin ay pumirma lamang kayo at tapos na ang lahat, at kung hindi ay kami ay ikakalabos at kami nga ay ikinulong sa piitan ng Lucena City.

"Bago po kami ikinulong ay may tumawag sa telepono at ako (Gregorio) ay tinawag at nang kunin ko ang telepono ay ang sabi po sa akin ay kilala mo ba ako, ang sagot ko po, "Opo, kayo si Judge Adolfo Encomienda. Ang sabi po sa amin, pumirma na kayo at tapos na ang lahat. Ang sabi ko po kay Judge, hindi po kami pipirma at wala ang aming abogado, at ang sabi po ni Judge, mga tarantado, mabulok kayo sa kalabos sabay bagsak ng telepono.

"Dahil po dito, kami pong mag-asawa ay humihingi sa inyo ng katarungan at naisip namin na kayo lamang po ang malalapitan sa aming kaapihan na isang mahirap na tao. Bigyan mo po kami ng kaunting halaga sa mundong ito.

"Maawa na po kayo sa amin na aping-api na sa buhay at naway pagpalain kayo ng maykapal sa pagtulong ninyo sa isang mahirap sa buhay at pinagsamantalahan ng mga may influencia at mayaman.

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"Kahit po ipangutang namin ang pagpunta sa Maynila, kami po ay nahahandang humarap sa investigasyon, at upang patunayan ang sinabi sa sulat na ito ay katunayan po ay aming pinanumpaan ang nilalaman ng sulat na ito."[2]

In his Answer,[3] Respondent Judge Encomienda denied the charge against him and averred:

"The dispute over the residential lot owned by the deceased brother of the undersigned, Herminio V. Encomienda, was between said Herminio V. Encomienda and herein complainants. And said dispute was the subject of an ejectment case filed by the owner, Herminio Encomienda and spouse against Spouses Gregorio and Teresita Lorena, herein complainants, under Civil Case No. 1681-94 before Branch I, MTCC, Lucena City on February 21, 1994 (Annex A[-]complaint dated February 17, 1994).

"And on December 16, 1994, a Decision in said case was handed down by the then Judge Jose V. Habalo in favor of the plaintiffs ordering, among other things, the ejectment of the defendants, Spouses Gregorio and Teresita Lorena, herein complainants (Annex B Decision, dated December 16, 1994). The Decision was appealed by the defendants which was given due course, and the records forwarded to the Regional Trial Court, Lucena City. The case was assigned to Branch 59, then presided over by Judge Ismael T. Portes, but was taken over upon his retirement by Judge Jose V. Hernandez who rendered the Decision on October 9, 1995 affirming *en toto* the Decision of MTCC, Branch I, Lucena City (Annex C[-]Decision, dated October 9, 1995).

"Subsequently, a Motion for Issuance of Writ of Execution was filed by the plaintiffs on November 20, 1995 and on February 7, 1996, a Writ of Execution was ordered issued by MTCC Branch I, Lucena City (Annex D Order, dated February 7, 1996).

"Consequently, a Writ of Execution was issued on March 21, 1996 (Annex E Writ of Execution, dated March 21, 1996) but the same was returned unsatisfied because of the refusal of the defendants, Spouses Gregorio and Teresita Lorena to vacate the premises despite the grace period given them (Annex F[-]Officer's Return, dated May 3, 1996).

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[2] *Rollo*, p. 1.

[3] Dated November 14, 1997 and received by the Court on November 19, 1997.

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"A motion for [the] issuance of [the] Writ of Demolition was filed by the plaintiffs Herminio Encomienda and spouse on February 27, 1997, and which motion after hearing the Court granted[,] ordering the demolition of any structure/s, building/s or edifice/s and other improvements erected by the defendants on the property of the plaintiffs (Exhibit G[-]Order, dated June 24, 1997).

"xxx [F]iled by the defendants, spouses Gregorio and Teresita Lorena [was a Motion for Reconsideration] of the Order of Demolition but said motion was denied in the Order of the Court of July 3, 1997 (Exhibit H[-]Order, dated July 3, 1997).

"And on July 4, 1997, the Sheriff submitted his report informing the Court that the Writ of Demolition was already implemented with the demolition of the house of defendants, but defendants still refused to vacate the premises (Exhibit I, Compliance, dated July 4, 1997).

"The complainants in the Sworn Letter Complaint claim that the undersigned together with his sister-in-law Dolores Encomienda, nephew Tadito Encomienda and one police officer Alex Nuyda helped and conspired with one another in placing them in jail beginning July 4 up to July 7, 1997.

"In refuting this claim of the defendants, undersigned has this to say:

"On July 4, 1997, the undersigned was at the MTCC, Branch II, Lucena City, performing his duties as Assisting Judge. At about 10:00 in the morning, his nephew, Tadito Encomienda, called up, informing him that he (Tadito Encomienda) together with Spouses Gregorio and Teresita Lorena, were at the Lucena City Police Station. According to him (Tadito Encomienda), he saw Gregorio Lorena starting to build another structure on the lot subject of the ejectment case. And so he (Tadito Encomienda) sought police assistance thru the Mayor for them to settle things in the presence of a police officer. Gregorio Lorena then asked to be allowed to stay for a few days on the premises and which request he (nephew of the undersigned) was amenable provided that Spouses Gregorio and Teresita Lorena would sign a written promise that they would leave the premises after the expiration of the period granted them.

"During the same telephone call, the undersigned's nephew sought advice whether it was indeed appropriate for him to require the spouses to sign the said written promise and to which query undersigned told his nephew that there was nothing wrong [with] it.

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"After the first telephone call, again undersigned's nephew called up informing undersigned that Spouses Gregorio and Teresita Lorena refused to sign claiming that they did not understand the content of the note and that if they would be forced to do so they would rather continue staying in jail.

"It was at this point that undersigned told his nephew that he would talk with Gregorio Lorena having in mind that said Gregorio Lorena would listen to him regarding the nature of the papers he would sign, the Decision ordering their ejectment and the Demolition order which had already been effected.

"During the conversation with Gregorio Lorena, the undersigned informed him that there was nothing wrong with him and his spouse signing a written promise to vacate, after all, they were requesting xxx their extended stay in the premises, and the Writ of Demolition ha[d] already been enforced. However, Gregorio Lorena insisted that he and his wife would not sign any written promise to vacate and if forced to do so, they would rather stay in jail. Undersigned told him that they were not being forced to sign, but since they were asking for an extended stay in the premises, it was but natural that the owner be given assurance that they would leave upon expiration of the period given them.

"The undersigned even told Gregorio Lorena that he could request his sister-in-law and nephew to allow them to stay even for a month provided that they would sign a written promise to vacate — but he refused the offer.

"The undersigned respectfully submits that there was no abuse of authority on his part as he had no hand at all [I]n what transpired on July 4, 1997, and that even under the circumstances aforestated there was no such unlawful detention as claimed by Spouses Gregorio and Teresita Lorena.

"As adverted to above, the undersigned only came to know that complainants were at the police station when he received a phone call from his nephew (Tadito Encomienda) on July 4, 1997. And this fact was attested [to] by PO3 Alex Nuyda who responded to the call for police assistance (Annex J - affidavit of PO3 Nuyda).

"And according to the nephew (Tadito Encomienda) of the undersigned, the complainant themselves, Spouses Gregorio and Teresita Lorena after their talk before the police investigator SPO Noel Diocos, xxx refused to leave the police station and insisted that they would

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just stay in jail as their house had already been demolished. This finds support in the affidavit of PO3 Diocos (Annex K, affidavit of PO3 Diocos) and the entry in the police blotter (Annex L) showing the refusal of the said complainants Spouses Gregorio and Teresita Lorena to leave the police station.

"On the ejectment case filed against Spouses Gregorio and Teresita Lorena, the judges who handled the case can attest to the fact that the undersigned at any stage of the proceedings had never interfered in the case — not even asking for its status during their social and official gatherings.

"On the basis of all the foregoing, the undersigned respectfully rests his case, praying that he be cleared of the unfounded and malicious charge soonest."[4]

The Court Administrator's Recommendation

In his Report, Court Administrator Alfredo L. Benipayo recommended that the charge of grave abuse of authority be dismissed and that the respondent judge "be advised to be more prudent and more circumspect in his actions and utterances," *viz.*:

xxx xxx xxx

"*EVALUATION*: A careful review of the records shows that the complainants have not substantiated their charges in the face of respondent judge's denials which were corroborated by independent witnesses.

"Complainants' claim that they were imprisoned without any formal charge [or] a warrant of arrest issued against them was satisfactorily refuted by respondent Judge in his Answer. The latter's claim is supported by the affidavits of the two (2) police officers who were present during the incident at the Lucena City Police Station.

"Complainants' bare assertions were satisfactorily controverted by respondent Judge, not only with his denial of the charges but by reason of the evidence submitted to substantiate the same. This consisted in the affidavits executed by PO3 Alex Nuyda and PO3 Noel Diocos showing that complainant spouses voluntarily went to the police station to confer with the Encomiendas. This negotiation later on resulted in complainant spouses' refusal to sign the document allowing them

[4] Answer of Judge Adolfo V. Encomienda, *rollo*, pp. 7-12.

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to stay in the premises within the grace period requested. Instead, they insisted [on] stay[ing] in jail claiming that their house had already been demolished and they had nowhere to go.

"The undersigned is inclined to believe respondent judge's explanation that he conferred with complainant Gregorio on the phone simply to assure him that there was nothing wrong in signing the document containing his personal request to be allowed to stay in the premises but subject to the condition imposed by the Encomiendas that the same will be vacated once the grace period requested expires.

"Respondent Judge's explanation is bereft of any showing of abuse of authority either as a magistrate or as a private individual. Moreover, there is nothing in the complaint to indicate any wrong doing on the part of the respondent Judge with respect to the ejectment case or any attempt on the part of the latter to influence the final disposition of the case already decided by the MTCC, Lucena City in favor of the Encomienda spouses, which decision was affirmed by the RTC, Branch 59, Lucena City on appeal.

"Notwithstanding the foregoing facts, it would have been prudent on the part of respondent Judge to have refrained from acts or utterances which could be misconstrued by complainant spouses Lorena, considering the former's family ties with the spouses Encomienda. As held by this Court in the case of *Legaspi v. Garrets,* 242 SCRA 679, 'Respondent forgets that a judge should be prudent and more circumspect in his utterances, remembering that his conduct in and outside the courtroom is under constant observation.'

"*RECOMMENDATION*: Respectfully submitted for the consideration of the Honorable Court are our recommendations that the instant case be DISMISSED for lack of merit, and that respondent Judge be ADVISED to be more prudent and more circumspect in his actions and utterances, remembering that his conduct in and outside the courtroom is under constant observation."[5]

The Court's Ruling

Instead of dismissing the charge as recommended by the Court Administrator, we are REPRIMANDING respondent judge for his failure to exercise greater circumspection in dealing with the complainants.

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[5] Memorandum of the Court Administrator, pp. 2-3.

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In charging Judge Adolfo V. Encomienda with grave abuse of authority, Spouses Gregorio and Teresita Lorena contend that their illegal arrest and subsequent detention which lasted three days, from July 4 to 7, 1997, was due to his machination and influence. They point to the fact that respondent judge is a brother of the deceased Herminio Encomienda and an uncle of Tadito Encomienda, the plaintiffs in the ejectment case filed against them.

To support this allegation, complainants aver that on July 4, 1997, Judge Encomienda spoke to Gregorio on the telephone while the latter was at the police station, urging him to heed Tadito Encomienda's demand for the spouses to sign certain papers. When Gregorio refused, Judge Encomienda allegedly said, "*Tarantado, mabulok kayo sa kalabos!*" and then slammed the phone down.

In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint.[6] In the present case, we believe that the complainants were not able to do so. There is no showing that respondent judge used the powers and influence of his office in an arbitrary and opprobrious manner. From the documents presented, it is apparent that he had no hand in bringing the Lorenas to the police station. Likewise, it cannot be said that he had any participation in the conflict between his brother's family and the Lorenas. The complainants may have surmised otherwise, but mere suspicion without proof cannot be the basis of conviction.[7]

Although the charge of grave abuse of authority was not proven, the respondent judge cannot be completely exonerated. He himself admitted having spoken to Gregorio on the phone in order to assist the family of Herminio Encomienda, the judge's brother. The circumstances surrounding the controversy clearly show the impropriety of respondent's act. The Lorenas had just lost their home; considering the perceived power and exalted position of the respondent judge, as well as his relationship with Tadito and Dolores Encomienda, it was not surprising

[6] *Cortes v. Agcaoili*, AM No. RTJ-98-1414, August 20, 1998.

[7] *Balayon, Jr. v. Ocampo*, 218 SCRA 13, January 29, 1993.

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that the complainants were disconcerted and overwhelmed by the gravity of their situation. They cannot be blamed if they believed at the time that Judge Encomienda was somehow responsible for their arrest and detention. Whatever his intentions were, he should have avoided talking to Gregorio, especially in the tone and in the manner reported by the latter. In doing so, respondent steered away from the heavy responsibility of judges to be circumspect in their public and private dealings. As the Court has stated, "a judge is human, but he is expected to rise above human frailties. At the very least, there must be an earnest and sincere effort on his part to do so."[8]

Canon 2 of the Canons of Judicial Ethics mandates that "a judge should avoid impropriety and the appearance of impropriety in all activities." Considering that a judge is the visible representation of the law and, more important, of justice,[9] his official conduct, as well as his personal behavior, should always be beyond reproach.

In light of the foregoing, the Court believes that Judge Encomienda should be reprimanded. Applicable to the present case is *Conde v. Superable,*[10] in which the Court dismissed the charge for grave misconduct, but held:

"Still, [respondent judge] should have taken greater pains to avoid the impression that his personal feelings were not kept under control, as rightfully expected of a judge. That is an added responsibility of the most serious character assumed by a member of the bar honored with an appointment to the bench. He should on that account be admonished. He must take pains to assure that thereafter his conduct would not be thus tainted."

WHEREFORE, Respondent Judge Adolfo V. Encomienda is hereby *REPRIMANDED* for failing to exercise greater care and circumspection in his actions. He is *WARNED* that a repetition of this or similar acts will be dealt with more severely.

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[8] *Conde v. Superable,* 29 SCRA 727, September 30, 1969, per Fernando, *CJ.*

[9] *Caamic v. Galapon,* 237 SCRA 391, October 7, 1994.

[10] *Supra.*

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SO ORDERED.

Romero (Chairman), Vitug, Purisima, and *Gonzaga-Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 116281. February 8, 1999]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SPO1 ROMULO GUTIERREZ, JR.,** *accused-appellant.*

SYNOPSIS

Appellant, a police officer, charged with murder for the death of Antonio Mercene, Jr., first pleaded not guilty and later withdrew his plea on ground of self-defense. He moved for the modification of the order of trial pursuant to Rule 119, Section 3(e) of the Rules on Criminal Procedure, but the same was denied by the trial court. The prosecution presented several witnesses, two of whom positively identified appellant to have shot the deceased who was then trying to get up from the ground after being kicked and boxed by appellant. Appellant claimed self-defense and alleged that the deceased threatened to kill him, grabbed his service revolver which was tucked at his waist, and suddenly went off while they both grappled for its possession, hitting the deceased on the left nape below the ear. It was disclosed that appellant who reported the matter to his station commander was placed inside the jail to protect him from relatives of the deceased. Judgment of conviction was rendered by the trial court. In this appeal, he raised as issue the denial of the trial court of his motion for an inverted order of trial and also questioned the credibility of witnesses.

In situations where the plea of self-defense is raised, the prosecution is still required to present all its proof in the first instance before the accused is required to substantiate his defense. Rule 119, Section 3(e) does not require a change in the order of trial but only allows it in the discretion of the court.