

SECOND DIVISION

A.M. No. SCC-13-18-J – BAGUAN M. MAMISCAL, Complainant, v.
CLERK OF COURT MACALINOG S. ABDULLAH, SHARI'A
CIRCUIT COURT, MARAWI CITY, Respondent.

Promulgated:

01 JUL 2015

Macalino S. Abdullah

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CONCURRING OPINION

LEONEN, J.:

I join the ponencia in holding that the complaint against respondent Macalinog S. Abdullah must be dismissed. I write separately to draw emphasis on how this dismissal stems from the fundamental principle of separation of powers.

Separation of powers is basic in our constitutional design. As explained by this court in the landmark case of *Angara v. Electoral Commission*:¹

The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government.²

The doctrine of separation of powers was also discussed in *United States v. Ang Tang Ho*,³ a case which was decided when the Philippines was still under American rule:

By the organic law of the Philippine Islands and the Constitution of the United States all powers are vested in the Legislative, Executive and Judiciary. It is the duty of the Legislature to make the law; of the Executive to execute the law; and of the Judiciary to construe the law. The Legislature has no authority to execute or construe the law, the Executive has no authority to make or construe the law, and the Judiciary

¹ 63 Phil. 139 (1936). [Per J. Laurel, En Banc].

² Id. at 156.

³ 43 Phil. 1 (1922). [Per J. Johns, En Banc].

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has no power to make or execute the law. Subject to the Constitution only, the power of each branch is supreme within its own jurisdiction, and it is for the Judiciary only to say when any Act of the Legislature is or is not constitutional.⁴

Justice Antonio Carpio, quoting Justice Presbitero Velasco's dissent in *Province of North Cotabato, et al. v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain, et al.*⁵ noted in his own dissenting opinion in *Metro Manila Development Authority v. Concerned Residents of Manila Bay*⁶ that separation of powers entails ensuring that no branch of government shall be controlled or subjected to the influence of another:

Now then, if it be important to restrict the great departments of government to the exercise of their appointed powers, it follows, as a logical corollary, equally important, that one branch should be left completely independent of the others, independent not in the sense that the three shall not cooperate in the common end of carrying into effect the purposes of the constitution, but *in the sense that the acts of each shall never be controlled by or subjected to the influence of either of the branches.*⁷ [Emphasis supplied]

More to the point, our recent decision in *Gonzales III v. Office of the President*⁸ noted that the principle of separation of powers extends to the authority to discipline public officers and employees:

While the manner and cause of removal are left to congressional determination, this must still be consistent with constitutional guarantees and principles, namely: the right to procedural and substantive due process; the constitutional guarantee of security of tenure; *the principle of separation of powers*; and the principle of checks and balances.⁹ (Emphasis supplied)

This is a point I echoed in my concurring and dissenting opinion in *Gonzales*:

I agree with the positions of Justice Brion and Justice Abad in their dissenting opinions on the September 4, 2012 decision that the independence of the Office of the Ombudsman is of such a fundamental and unequivocal nature. This independence is essential to carry out the functions and duties of the Office of the Ombudsman. I agree with their position that since those in the Executive branch are also subject to the disciplinary authority of the Office of the Ombudsman, providing the

⁴ Id. at 6.

⁵ 589 Phil. 387 (2008) [Per J. Carpio-Morales, En Banc].

⁶ G.R. Nos. 171947–48, February 15, 2011, 643 SCRA 90 [Per J. Velasco, Jr., En Banc].

⁷ Id. at 126–127.

⁸ G.R. No. 196231, January 28, 2014, 714 SCRA 611 [Per J. Brion, En Banc].

⁹ Id. at 655.

Office of the President with the power to remove would be an impediment to the fundamental independence of the Ombudsman.

We cannot allow a circumvention of the separation of powers by construing Article XI, Section 2 of the Constitution¹⁰ as delegating plenary and unbounded power to Congress. The exclusive power of the Ombudsman to discipline her own ranks is fundamental to the independence of her office.¹¹

The complaint subject of the present administrative matter charges respondent Macalinog S. Abdullah with partiality, violation of due process, dishonesty, and conduct unbecoming of a court employee. Article VIII, Section 6 of the 1987 Constitution provides for this court's "administrative supervision over all courts and the personnel thereof." However, a careful consideration of the complaint reveals that Abdullah is being held to account for acts committed in the course of his performance of functions, not as clerk of court but as a circuit (or civil) registrar. He is therefore being charged, not in his capacity as an officer performing judicial functions, but as an officer performing executive functions. In accordance with the principle of separation of powers thus, the task of disciplining Abdulla does not fall upon this court.

As ably pointed out by Justice Jose C. Mendoza, Article 81 of Presidential Decree No. 1083, otherwise known as the Code of Muslim Personal Laws¹² provides that clerks of court of Shari'a Circuit Courts shall also acts as circuit registrars. In Justice Mendoza's language thus, clerks of court of Shari'a Circuit Courts wear "two hats":¹³ a judicial hat, in respect of their being clerks of court; and an executive one, in respect of their being registrars. Indeed, disciplining civil registrars is well beyond the power of this court.

The Code of Muslim Personal Laws, making reference to Commonwealth Act No. 3753,¹⁴ itself recognizes that the power to discipline registrars is not lodged with this court:

¹⁰ Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

¹¹ J. Leonen, Dissenting in *Gonzales III v. Office of the President*, G.R. No. 196231, January 28, 2014, 714 SCRA 611, 693 [Per J. Brion, En Banc].

¹² Art. 81. District Registrar. — The Clerk of Court of the Shari'a District Court shall, in addition to his regular functions, act as District Registrar of Muslim Marriages, Divorces, Revocations of Divorces, and Conversions within the territorial jurisdiction of said court. The Clerk of Court of the Shari'a Circuit Court shall act as Circuit Registrar of Muslim Marriages, Divorces, Revocations of Divorces, and Conversions within his jurisdiction.

¹³ Draft ponencia, p. 7.

¹⁴ Com. Act No. 3753 (1930), Law on Registry of Civil Status.

Art. 185. Neglect of duty by registrars. — Any district registrar or circuit registrar who fails to perform properly his duties in accordance with this Code shall be penalized in accordance with Section 18 of Act No. 3753.

Section 18 of Commonwealth Act No. 3753 provides:

Section 18. Neglect of duty with reference to the provisions of this Act. — Any local registrar who fails properly to perform his duties in accordance with the provisions of this Act and of the regulations issued hereunder, shall be punished for the first offense, by an administrative fine in a sum equal to his salary for not less than fifteen days nor more than three months, and for a second or repeated offense, by removal from the service.

Moreover, Section 2 of Commonwealth Act No. 3753 provides for the proper disciplining authority for civil registrars:

Section 2. Civil Registrar-General his duties and powers. — The director of the National Library shall be Civil Registrar-General and shall enforce the provisions of this Act. The Director of the National Library, in his capacity as Civil Registrar-General, is hereby authorized to prepare and issue, with the approval of the Secretary of Justice, regulations for carrying out the purposes of this Act, and to prepare and order printed the necessary forms for its proper compliance. In the exercise of his functions as Civil Registrar-General, the Director of the National Library shall have the power to give orders and instructions to the local Civil registrars with reference to the performance of their duties as such. It shall be the duty of the Director of the National Library to report any violation of the provisions of this Act and all irregularities, negligence or incompetency on the part of the officers designated as local civil registrars to the (Chief of the Executive Bureau or the Director of the Non-Christian Tribes) Secretary of the Interior, as the case may be, who shall take the proper disciplinary action against the offenders.

Moreover, as noted by Justice Mendoza:


[T]he subject complaint should have been filed with the Regional government of the Autonomous Region in Muslim Mindanao (ARMM), for it is empowered by Republic Act no. 6734 to exercise supervisory power over “all line agencies and offices of the National Government” which are not otherwise excluded therein.¹⁵ (Citation omitted)

Clearly, the statutory provisions which vest executive functions in clerks of court of the Shari’a Circuit Courts dangerously transgress the fundamental constitutional boundaries between departments. It creates an

¹⁵ Draft Ponencia, p. 9.

enclave within the judiciary that is not subject to the disciplinary power of this court but of executive bodies.¹⁶ Had it been raised as an issue in this case, I would have had no hesitation to vote that they be declared unconstitutional. But, this is not the *lis mota* of the present case.

I concur in the ponencia. The complaint subject of this administrative matter must be dismissed without prejudice. A copy of our disposition should be served on the Department of Justice, the Senate President, the Speaker of the House of Representatives, and the Secretary of the National Commission on Muslim Filipinos.



MARVIC M.V.F. LEONEN
Associate Justice

¹⁶ Pursuant to Executive Order No. 121, January 30, 1987, the Administrator of the National Statistics Office has the over-all technical supervision over local civil registrars.