

EN BANC

A.M. No. RTJ-17-2486 – RE: INVESTIGATION REPORT ON THE ALLEGED EXTORTION ACTIVITIES OF PRESIDING JUDGE GODOFREDO B. ABUL, JR., BRANCH 4, REGIONAL TRIAL COURT, BUTUAN CITY, AGUSAN DEL NORTE.

Promulgated:

September 8, 2020

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DISSENTING OPINION

CARANDANG, J.:

I dissent.

In the Decision dated September 3, 2019, the Court adopted the findings of the Office of the Court Administrator (OCA) holding Judge Godofredo Abul, Jr. (Judge Abul) guilty for violating Canon 2 (Integrity), Canon 3 (Impartiality), and Canon 4 (Propriety) of the New Code of Judicial Conduct for the Philippine Judiciary (Code of Judicial Conduct) amounting to grave misconduct despite his death on August 5, 2017. However, the recommendation of the OCA was modified. Applying the Court's ruling in *Gonzales v. Escalona*,¹ it was held that Judge Abul's death should not result in the dismissal of the administrative complaint as the Court is not ousted of its jurisdiction by the mere fact that the respondent public official had ceased to hold office.² We ruled that death of respondent judge during the pendency of his administrative case shall not terminate the proceedings against him, much less absolve him, or cause the dismissal of the complaint if the investigation was completed prior to his demise. If death intervenes before he has been dismissed from service, the appropriate penalty is forfeiture of all retirement and other benefits, except accrued leaves.³

Considering that the Court had previously warned Judge Abul in *Calo v. Judge Abul, Jr.*⁴ "to be more circumspect in issuing orders which must truly reflect the actual facts they represent to obviate engendering views of partiality x x x,"⁵ We imposed the stiffer penalty of dismissal from the service, forfeiture of all benefits including retirement gratuity, exclusive of his accrued leaves, which shall be released to his legal heirs.⁶

¹ 587 Phil. 448 (2008).
² A.M. No. RTJ-17-2486, September 3, 2019.
³ Id.
⁴ 528 Phil. 827 (2006).
⁵ Id. at 832.
⁶ *Calo v. Judge Abul, Jr.*, supra note 2.

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In the present Motion for Reconsideration, Bernardita Abul (Mrs. Abul), surviving spouse of Judge Abul, points out that Judge Abul's death preceded the release of the judgment finding him guilty of the offense charged against him. Mrs. Abul posits that Judge Abul was already dead when the OCA concluded its investigation on the charge against him and that his death necessitates the dismissal of the administrative case.⁷ In the alternative, if the administrative case cannot be dismissed, Mrs. Abul proposes that Judge Abul's retirement benefits should not be forfeited for humanitarian reasons. Instead of forfeiture, Mrs. Abul suggests that a reasonable amount of fine be imposed and deducted from his retirement benefits.⁸

The Motion for Reconsideration should be denied.

This is not the first time that the Court addressed the implications of imposing a penalty on an erring court employee who died during the pendency of an administrative case against him. As early as 1975, a similar issue was raised in *Hermosa v. Paraiso*,⁹ where the respondent branch clerk of court died after the Investigating Judge recommended that he be exonerated of the charges for lack of sufficient evidence but while the case remained pending before the Court. The Court resolved the case so that the heirs of the respondent may receive any retirement benefits due to them and ordered the dismissal of the case for lack of substantial evidence.¹⁰

In *Manozca v. Judge Domagas*,¹¹ the erring judge charged with gross ignorance of the law died while the case was being evaluated by the OCA for appropriate action. Nonetheless, the Court resolved to impose a fine of ₱5,000.00 based on the record which was not disputed.

In *Baikong Akong Camsa v. Rendon*,¹² the Court deemed the case against the late judge closed and terminated because no investigation had been conducted at the time of his demise. The Court explained that to "allow an investigation to proceed against him who could no longer be in any position to defend himself would be a denial of his right to be heard, our most basic understanding of due process."¹³ However, it must be clarified that the Court terminated the case in *Baikong Akong Camsa*,¹⁴ because no investigation at all had been conducted at the time of the demise of the erring court employee. This is not applicable to the present case because an investigation was already concluded at the time of Judge Abul's demise and he was given an opportunity to be heard.

⁷ Temporary *rollo* (A.M No. RTJ-17-2486), p. 4.

⁸ Id. at 4-5.

⁹ 159 Phil. 417 (1975).

¹⁰ Id. at 419.

¹¹ 318 Phil. 744 (1995).

¹² 448 Phil. 1 (2002).

¹³ Id.

¹⁴ Id.

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In *Loyao, Jr. v. Caube*,¹⁵ the Court declared that the death or retirement of any judicial officer from service does not preclude the finding of any administrative liability to which he shall still be answerable. In highlighting the necessity of retaining jurisdiction over an erring judicial officer's administrative case beyond his death, the Court quoted its ruling in *Gallo v. Cordero*,¹⁶ to wit:

[T]he jurisdiction that was ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent public official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications . . . If innocent, respondent public official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.¹⁷

The Court similarly ruled in *Sexton v. Casida*,¹⁸ *Gonzales v. Escalona*,¹⁹ and *Mercado v. Salcedo*²⁰ that the death of the respondent in an administrative case does not preclude a finding of administrative liability. In both cases, the Court imposed fines on the erring respondents who died during the pendency of their respective administrative cases.

More recently, in *Agloro v. Burgos*,²¹ which was decided *En Banc*, the Court upheld its ruling in *Gonzales* that the death of a respondent does not preclude a finding of administrative liability except for certain exceptional circumstances. To determine the necessity of dismissing the case, the Court recognized the following factors to be considered:

x x x [*F*irst, if the respondent's right to due process was not observed; *second*, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and *third*, the kind of penalty imposed.²² (Italics in the original)

In *Agloro*, the Court did not dismiss the administrative case merely on account of the respondent's death since she was afforded her right to due process when she answered the charges against her and was even able to file her comment before the OCA.

¹⁵ 450 Phil. 38 (2003).
¹⁶ 315 Phil. 210 (1995).
¹⁷ Id. at 220.
¹⁸ 508 Phil. 166 (2005).
¹⁹ Supra note 1.
²⁰ 619 Phil. 3 (2009).
²¹ 804 Phil. 621 (2017).
²² Id. at 635.

Based on the foregoing, the prevailing rule is that the Court is not ousted of its jurisdiction over an administrative matter by the mere fact that the respondent public official ceases to hold office during the pendency of respondent's case.²³ Nevertheless, the Court recognizes the following exceptions: (1) if the respondent's right to due process was not observed; (2) in exceptional circumstances on the grounds of equitable and humanitarian reasons; and (3) the kind of penalty imposed would render the proceedings useless.

Notwithstanding the death of Judge Abul, the Court may impose the appropriate administrative penalties such as forfeiture of all his benefits, including retirement gratuity, as he was afforded an opportunity to be heard. Records reveal that the investigation had already been concluded at the time of his demise. The Investigation Report²⁴ of the OCA was issued on February 10, 2017. Judge Abul even managed to file his Comment/Answer²⁵ on April 19, 2017. Judge Abul's death, by itself, is insufficient to justify the dismissal of the administrative case and bar the imposition of the corresponding penalties. The penalties arising from his administrative liability survive his death.

Furthermore, the Court cannot simply equate the consequences of the death of a respondent during the pendency of an administrative case to the legal implications of a defendant's demise in a pending criminal or civil case. It is worthy to highlight the marked differences between the nature of these proceedings and their concomitant liabilities as discussed by the Court in *Gonzales*:

From another perspective, administrative liability is separate and distinct from criminal and civil liability which are governed by a different set of rules. In *Fletcher v. Grinnel Bros., et al.*, the United States District Court of Michigan held that whether a cause of action survives the death of the person depends on the substance of the cause of action and not on the form of the proceeding to enforce it. Thus, **unlike in a criminal case where the death of the accused extinguishes his liability arising thereon under Article 89 of the Revised Penal Code, or otherwise relieves him of both criminal and civil liability (arising from the offense) if death occurs before final judgment, the dismissal of an administrative case is not automatically terminated upon the respondent's death. The reason is one of law and public interest; a public office is a public trust that needs to be protected and safeguarded at all cost and even beyond the death of the public officer who has tarnished its integrity.** Accordingly, we rule that the administrative proceedings is, by its very nature, not strictly personal so that the proceedings can proceed beyond the employee's death, subject to the exceptional considerations we have mentioned

²³ *Re: Audit Report on Attendance of Court Personnel of RTC, Br. 32, Manila*, 532 Phil. 51 (2006); *Gonzales v. Escalona*, supra note 1.

²⁴ *Rollo* (A.M. No. RTJ-17-2486), pp. 2-12.

²⁵ *Id.* at 61-75.

above. This, conclusion is bolstered up by *Sexton v. Casida*, where the respondent, who in the meantime died, was found guilty of act unbecoming a public official and acts prejudicial to the best interest of the service, and fined Five Thousand Pesos (P5,000.00), deductible from his terminal leave pay.²⁶ (Emphasis and underscoring supplied; citations omitted)

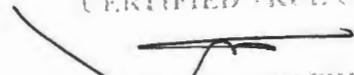
The Court has utmost interest in ensuring that only those who possess and carry out the core values enshrined in the Code of Judicial Conduct are permitted to serve in the judiciary. This paramount concern prevails notwithstanding the death of erring officers of the Court due to the significant responsibilities entrusted to them.

It must be emphasized that Judge Abul had already been previously embroiled in a controversy in the exercise of his judicial functions and reprimanded by the Court. In *Calo v. Judge Abul*,²⁷ Judge Abul was sternly warned “to be more circumspect in issuing orders which must truly reflect the actual facts they represent to obviate engendering views of partiality among others.”²⁸ The gravity and seriousness of the offense of Judge Abul is undeniable. An officer of the Court who continued to defy exacting standards established to preserve the honor and integrity of the judiciary, after having been previously sanctioned, does not deserve the Court’s consideration. In my view, Mrs. Abul failed to present any compelling reason to convince Us to exercise discretion on equitable or humanitarian grounds.

Accordingly, I respectfully submit that the Motion for Reconsideration should be denied. The ruling of the Court dated September 3, 2019 finding Judge Abul guilty of grave misconduct and imposing the corresponding penalty should be upheld for the reasons herein explained.


ROSMARI D. CARANDANG
Associate Justice

²⁶ *Gonzales v. Escalona*, supra note 1 at 464-465.
²⁷ Supra note 4.
²⁸ Id. at 832.

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Supreme Court