

MALACANANG
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 44

REMOVING MR. FERNANDO B. FUENTES, JR. AS MUNICIPAL JUDGE
OF NUNUNGAN, LANA DEL NORTE.

This is an administrative case against Municipal Judge Fernando B. Fuentes, Jr. of Nunungan, Lanao del Norte, for dishonesty arising out of his acts as a practising lawyer.

This case arose from a traffic accident involving a jeep owned by Lucio Macalam, wherein Lemuel Holmas, son of Jose Holmas, complainant herein, lost his life and wherein Nicetas Salaan, co-passenger of Lemuel Holmas in the jeep, was slightly injured. In his complaint, Jose Holmas alleges that respondent misappropriated ₱1,300 paid to him (respondent) by Lucio Macalam, the owner of the jeep, for the amicable settlement of Holmas' claim for damages.

Respondent centers his defense on the thesis that out of the sum of ₱3,000 paid to him by the jeep owner for payment of all damages arising out of the accident, complainant Jose Holmas and his daughter-in-law, Salvacion Vda. de Holmas, widow of Lemuel Holmas, agreed to receive ₱1,500 in full satisfaction of their claim; that Nicetas Salaan, the injured co-passenger of the deceased Lemuel Holmas, was paid ₱1,300; and that he, respondent got ₱200 for his services in effecting the amicable settlement.

Complainant admits his signature on a document submitted by respondent (Exh. 2) wherein he and his daughter-in-law agreed that should their case against the jeep owner be settled amicably, they would receive not less than ₱1,500 as satisfaction of their claim. This document was executed on December 1, 1961, and was not intended to bind the parties thereto to the jeep owner but to herein respondent as their lawyer. The document in effect stated that complainant and his daughter-in-law would have respondent represent them in their claim for damages against Macalam; that if the claim be settled they shall get not less than ₱1,500; that they shall not effect any settlement by themselves and should they

do so, they shall be liable to respondent for damages.

On December 2, 1961, complainant and the widow of his son executed an amicable settlement in which they agreed to settle their claim for ₱2,800. The document (Exh. B for complainant and Exh. 4 for respondent) was prepared and notarized by respondent himself and witnessed by Nicetas Salaan. On this occasion, according to Vitaliana Macalam, wife of Lucio Macalam, the jeep owner, she delivered to respondent ₱3,000 in the presence of complainant, of which ₱2,800 was intended for complainant and his daughter-in-law as damages for the death of Lemuel Holmas. The balance of ₱200 was for respondent's services for effecting the settlement. Respondent and Nicetas Salaan, on the other hand, testified that the former, in complainant's presence, paid ₱1,500 to the widow of Lemuel Holmas and ₱1,300 to Nicetas Salaan, for the latter's injuries.

Respondent's version could not be given weight and credit. As the Investigating Judge aptly stated:

"The respondent relied much on his witness Nicetas Salaan, but there are certain features in his testimony that make him unworthy of credit.

"For instance, he testified that a previous agreement was reached upon between him and Jose Holmas with respect to the distribution of the amount of ₱2,800.00 and he contended that out of this he was to receive ₱1,300.00 and Jose Holmas was to receive the remaining ₱1,500.00. It is hard to believe that Jose Holmas would have readily agreed to an almost fifty-fifty sharing basis considering the disparity in the injury suffered by one and the other. Nicetas Salaan suffered a minor injury in the leg that necessitated only two days medical attendance while Lemuel Holmas lost his life. There is no proportion in the share of each and the undersigned is of the opinion that Jose Holmas is not so stupid as to agree to the sharing basis claimed by the respondent.

"Furthermore, if the amount of ₱2,800.00 was intended to cover the indemnity for both Nicetas Salaan and Lemuel Holmas, the same should have been made to appear in plain terms in Exhibit "B" to clear Lucio Macalam once for all of his liability. Nicetas Salaan should have also

waived like Jose Holmas and Salvacion Holmas, as heirs of the deceased, Lemuel Holmas, to claim for damages in the same document or in a separate paper."

The above observations are certainly logical. Moreover, the agreement signed by complainant and his daughter-in-law wherein they agreed to receive not less than ₱1,500 in settlement of their claim (Exh. 2) was intended to bind them to respondent rather than the jeep owner Macalam. This document was in effect a retainer contract, and totally unknown to Macalam, the owner of the jeep, as to make him reconsider his intended offer of ₱2,800 to complainant.

Respondent's last defense is to the effect that no disciplinary action may be taken against him as municipal judge because his acts complained of were not performed as such official but as a practising lawyer.

It is undisputed that the actuations of respondent complained against in this case took place when he was already a justice of the peace. Equally undisputed is that assumption of the office of judge, in accordance with the Canons of Judicial Ethics, casts upon the incumbent duties in respect to his personal conduct. A judge's behavior not only while on the bench performing judicial functions, but also in his everyday life, must be beyond reproach, for in the eyes of the common people with whom he deals, he is no less a judge when performing private functions than when discharging official duties. Familiar is the canon that dishonesty, as in this case, is a ground for disciplinary action and need not be related to the performance of official duty.

"x x x If a Government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not connected with his office, they affect his right to continue in office. The Government cannot well tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the Government other than the office where he is employed; and by reason of his office, he enjoys and possesses a certain influence and power which renders the victims of his grave misconduct, oppression and dishonesty less disposed and prepared to resist

