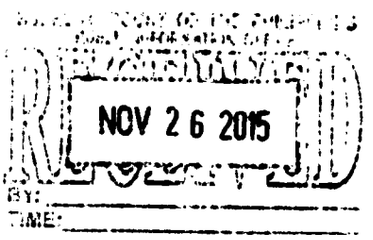
Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION



SUGNI REALTY HOLDINGS AND DEVELOPMENT CORPORATION, REPRESENTED BY ITS CHAIRMAN/PRESIDENT, CYNTHIA CRUZ KHEMANI,
Complainant,

- versus -

JUDGE BERNADETTE S. PAREDES-ENCINAREAL, [THEN IN HER CAPACITY AS ACTING PRESIDING JUDGE, BRANCH 10, REGIONAL TRIAL COURT, IN DIPOLOG CITY], PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 12, OROQUIETA CITY,
Respondent.

A.M. No. RTJ-08-2102
(Formerly A.M. OCA IPI No. 07-2762-RTJ)

Present:

SERENO, *C.J.*,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

OCT 14 2015

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D E C I S I O N

BERSAMIN, *J.*:

This administrative case relates to the action of an appellate judge on the plaintiff's motion for immediate execution filed in an ejectment case. Our disposition herein should remind all trial and appellate judges dealing with ejectment cases about their responsibilities and limitations in acting on the motions for immediate execution of the judgments.

The complainant, represented by its chairman and president, has charged respondent Judge Bernadette S. Paredes-Encinareal, in her capacity as the Acting Presiding Judge of Branch 10 of the Regional Trial Court (RTC) in Dipolog City (respondent Judge) with gross ignorance of the law

or procedure, bias, and prejudice[1] for issuing two orders during the appeal of the decision rendered in its favor as the plaintiff in an ejectment case in contravention of the rule on staying the immediate execution of the judgment[2] and in disregard of the guidelines on the conduct of the proceedings by detailed judges. By her first order, dated September 26, 2005,[3] respondent Judge extended the defendants' periods for posting the *supersedeas* bond and for paying or depositing the monthly rentals despite her lack of authority for doing so. Respondent Judge issued the second order, dated November 8, 2005,[4] despite her having meanwhile been relieved as the Acting Presiding Judge of the issuing court.

The complainant has further charged respondent Judge with bribery for having received large sums of money from one Peter Tan on two occasions prior to issuing the orders in question.[5]

Antecedents

On September 25, 2001, the complainant instituted the action for unlawful detainer against Spouses Rally and Noemi Falame in the Municipal Trial Court in Cities (MTCC), Branch 2, of Dipolog City. On January 15, 2005, the MTCC rendered its decision in favor of the complainant, which promptly filed a *Motion for Execution Pending Appeal*. However, the MTCC did not resolve the *Motion for Execution Pending Appeal*, and instead elevated the records to the RTC in Dipolog City in view of the Falames' filing of their *Notice of Appeal*. In the RTC, the appeal was assigned to Branch 10, where respondent Judge was the Acting Presiding Judge.[6]

On August 19, 2005, the complainant filed an *Urgent Motion to Dismiss Appeal*, averring as grounds for dismissal the Falames' failure to post the *supersedeas* bond, and to deposit the monthly rental of ₱350,000.00.[7] According to the complainant, however, respondent Judge did not resolve its *Urgent Motion to Dismiss Appeal* but instead issued the order dated September 26, 2005, quoted as follows:

> To stay execution of judgment pending appeal, the defendants-appellants may post supersedeas bond within 20 days from the receipt of the copy of this order, in the aggregate amount of THREE HUNDRED FIFTY THOUSAND (₱350,000.00) PESOS per month beginning October 2, 2000 up to this date. The amount fixed is pursuant to the decision rendered by the court a quo in paragraph 2 of the dispositive portion (sic).

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1 *Rollo,* p. 12.
2 Section 19, Rule 70.
3 Id. at 23.
4 Id. at 22.
5 Id. at 14-17.
6 Id. at 1, 10.
7 Id. at 24-31.

> Further pending appeal, the same monthly amount shall be deposited periodically as it falls due every month with the RTC Clerk of Court of Dipolog City.[8]

On October 28, 2005, the complainant, undaunted, filed an *Urgent Motion To Resolve and Grant Immediately*,[9] whereby it reminded respondent Judge to resolve the previous motions. Ignoring the reminder, respondent Judge issued the order of November 8, 2005 whereby she denied the complainant's *Urgent Motion to Dismiss Appeal*, stating:

> This is acting on the Motion to Dismiss filed by the plaintiffs on the ground that defendants-appellants have not filed a supersedeas bond with opposition thereto by the defendants that the motion to dismiss had no proof of service. In open court, however a copy of said motion to dismiss was tendered to the defendants' counsel. Plaintiffs argued in their motion to dismiss citing Sec. 19, Rule 70 of the Revised Rules of Court the immediate execution of the judgment. Attached to the record on appeal is Plaintiff's Motion for Execution addressed to the MTCC, Branch 2, Dipolog City which was not for this court to resolve. Eventually a Motion for Writ of Execution was filed with this court. In the court's Order dated September 26, 2005, the defendants-appellants were directed to post a supersedeas bond within a period of 20 days from receipt of the order in the amount of THREE HUNDRED FIFTY THOUSAND (₱350,000.00) PESOS per month beginning October 2, 2000 up to this time to stay the execution of judgment. The undersigned acting presiding judge had already ceased to hold the position when on October 6, 2005 she received through FAX the order revoking her designation as acting presiding judge of RTC Branch 10, Dipolog City.
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> WHEREFORE, premises considered, the Motion to Dismiss filed by the plaintiff is hereby denied.[10]

The complainant insists that the order of November 8, 2005 was null and void because respondent Judge had by then been relieved as the Acting Presiding Judge of the issuing court.[11]

In her comment,[12] respondent Judge explained that she did not resolve the complainant's *Motion for Execution Pending Appeal* because the motion was addressed to and filed in the MTCC; that belying the allegation of delay, she stressed that she gave to the Falames five days within which to comment on the *Motion for Execution Pending Appeal* in view of the motion having been filed in the MTCC; that she was on vacation in the period from March 31, 2005 to May 3, 2005; that she ultimately denied the motion on May 27, 2005; and that on June 21, 2005, the complainant filed its *Motion*

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8 Supra note 1.
9 *Rollo*, pp. 32-37.
10 Id. at 22.
11 Id. at 13.
12 Id. at 42-45.

for Execution Pending Appeal in the RTC, and set the hearing of the motion on July 4, 5, or 6, at 8:30 in the morning.[13]

The complainant later on submitted its *Manifestation* requesting the simultaneous hearing on July 18, 2005 of its *Motion for Execution Pending Appeal* and *Motion to Suspend Proceedings*. However, respondent Judge cancelled all hearings scheduled on July 18, 2005 in order to observe and celebrate Law Day as directed by the Supreme Court.[14] It was shown that she was to lead the Law Day festivities.

On August 30, 2005, the complainant presented an *Urgent Motion to Dismiss Appeal*,[15] a copy of which the counsel for the Falames denied having received during the scheduled hearing. Accordingly, said counsel was allowed 10 days to file their opposition.[16] The complainant's motions were later resolved through the order of September 26, 2005.[17]

On October 6, 2005, respondent Judge received from the Court via fax a copy of Administrative Order 159-2005 dated October 3, 2005 revoking her designation as the Acting Presiding Judge of Branch 10 of the RTC.

Regarding the order of November 8, 2005, respondent Judge clarified in her comment dated January 12, 2007,[18] as follows:

> While it is true that an Order was issued by the Respondent dated November 8, 2005 after she was relieved as Acting Presiding Judge on October 6, 2005 denying the Urgent Motion to Dismiss Appeal filed by Plaintiff-Appellee, but the same case on appeal was already decided by the lower Court and both parties have finished presenting their respective evidence in a Summary Procedure. The said Motion was heard on September 5, 2006, where after the arguments of the respective counsels of the parties, the Court issued an Order for the Defendants-Appellants to file their Opposition without extension of time after which the Motion shall be resolved (sic) by the Court. The Defendants-Appellants complied with the order of the court when it filed their opposition to the Urgent Motion to Dismiss Appeal on September 12, 2005. The Motion, as it was URGENT, and the outcome being in the nature of disposal, if granted, was treated by the Respondent.[19]

Respondent Judge argued that she had the authority under item 2 of A.M. No. 04-5-19-SC to still issue the order of November 8, 2005, *viz.*:

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13 Id. at 3, 43-44.
14 Id. at 3-4, 44.
15 Id. at 4.
16 Id. at 44.
17 Supra note 1.
18 Id. at 42-45.
19 Id. at 43.

> Except as herein provided, all cases shall remain in the branch to which these have been raffled and assigned. Only cases that have been submitted for decision or those past the trial stage, *i.e.* where all the parties have finished presenting their evidence, prior to the transfer or promotion to the judge to which these are raffled/assigned shall be resolved or disposed by him/her in accordance with the guidelines herein set forth.[20]

Respondent Judge posited that the charges of corruption, bias, and partiality against her were frivolous, despicable and allegations without proof. She observed that if she had really received ₱21,700,000.00 from one Peter Tan, she would not have borrowed ₱200,000.00 in February 2006 from the Supreme Court Savings and Loan Association (SCSLA), and ₱149,000.00 in October 2006 from the Rural Bank of Rizal in Calamba, Misamis Occidental.[21]

In the reply filed on March 9, 2007,[22] the complainant indicated that it did not mention the amount of bribe in its complaint; that it was respondent Judge who mentioned the amount of ₱21,700,000.00 in her comment; that her alleged borrowings were a cover-up in anticipation of the administrative complaint; that it was no coincidence that the total borrowings from SCSLA and the rural bank equaled the ₱350,000.00 awarded as the monthly rentals; and that her reliance on item 2 of A.M. No. 04-5-19-SC to support her issuance of the order of November 8, 2005 was erroneous because the guidelines contained in items 5 and 6 of A.M. No. 04-5-19-SC did not sanction such issuance.[23]

On November 28, 2007, the Office of the Court Administrator recommended the case to be re-docketed as a regular administrative matter, and to refer the case to any of the Justices of the Court of Appeals (CA) in the Cagayan de Oro City Station for investigation, report and recommendation.[24]

Report of the Investigating Justice

The case was assigned to Associate Justice Edgardo T. Lloren of the CA in the Cagayan de Oro Station. He scheduled hearings on May 7 and 8, 2008, both at 9:00 am, and directed the complainant to submit the testimonies of its witnesses in affidavit form.[25] At the scheduled hearings, however, only respondent Judge and her counsel appeared, prompting her to move to dismiss the case subject to her submitting the written motion for that purpose at a later time. On May 13, 2008, she filed her *Motion to*

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20 Id.
21 Id. at 45.
22 Id. at 80-85.
23 Id.
24 Id. at 6.
25 Id. at 89.

Dismiss,[26] wherein she restated the arguments contained in her comment, and added that the complainant, by not appearing at the hearings, failed to substantiate its charges against her.

Justice Lloren subsequently discovered that the order of April 3, 2008 setting the hearings on May 7 and 8, 2008 had not been properly sent to the complainant, which learned of the hearings only upon receiving respondent Judge's *Motion to Dismiss*. On May 21, 2008, therefore, the complainant immediately submitted its opposition to the *Motion to Dismiss*,[27] stating therein that it had not received a copy of the order setting the hearings. Accordingly, Justice Lloren set other hearings on June 17-19, 2008.[28]

The parties and their respective counsel later appeared at the hearings but the complainant's lone witness did not appear despite being served with the *subpoena ad testificandum*.[29] Justice Lloren granted the complainant another chance to present the witness on July 1, 2008, with the instruction to promptly give notice should the appearance of the witness not be ensured.[30] The complainant soon manifested to Justice Lloren the futility of its diligent efforts to locate its witness.[31] With that, the July 1, 2008 hearing was cancelled, and the parties proceeded to submit their respective memoranda. The respondent submitted her memorandum on July 3, 2008,[32] while the complainant, after submitting its *Written Offer of Additional Evidence* on July 16, 2008,[33] sent in its memorandum on July 18, 2008.[34]

On July 24, 2008, this Court received from Justice Lloren the entire records of the case,[35] including his undated report,[36] whereby he recommended as follows:

> **WHEREFORE**, in view of the foregoing, it is respectfully recommended that:
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> 1) respondent be found guilty of violation of Supreme Court circular A.M. No. 04-5-19-SC for the issuance of the November 8, 2005 Order and be imposed a fine of ₱11,000.00;
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> 2) the charge of gross ignorance of the law for the issuance of the September 26, 2005 Order be dismissed for lack of merit; and

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26 Id. at 92-96.
27 Id. at 140-149.
28 Id. at 150-151.
29 Id. at 158.
30 Id. at 160.
31 Id. at 162-164.
32 Id. at 165-175.
33 Id. at 178-181.
34 Id. at 209-231.
35 Id. at 232.
36 Id. at 236-251.

3) the charge of corruption, bias, and partiality be likewise dismissed for insufficiency of evidence.[37]

Ruling of the Court

We **AFFIRM** the findings of Justice Lloren on the matter of the order of September 26, 2005, but differ from his conclusion about the order of November 8, 2005.

We further **AFFIRM** the recommendations to dismiss the charge of unreasonable delay for being unfounded; and the charge of corruption, bias and prejudice for lack of evidence.

I
In issuing the order of September 26, 2005, respondent Judge disregarded the pertinent rule on the filing of the *supersedeas* bond and monthly deposits

Respondent Judge was charged with gross ignorance of the law or procedure, bias and prejudice on the basis that her order of September 26, 2005 had effectively extended the Falames' period for the posting of the *supersedeas* bond and for depositing the monthly rental specified in the decision of the MTCC. In the complainant's view, she had no authority to do so under the law and jurisprudence.

Given the text of the order of September 26, 2005:

> To stay execution of judgment pending appeal, the defendants-appellants may post supersedeas bond within 20 days from the receipt of the copy of this order, in the aggregate amount of THREE HUNDRED FIFTY THOUSAND (₱350,000.00) PESOS per month beginning October 2, 2000 up to this date. The amount fixed is pursuant to the decision rendered by the court a quo in paragraph 2 of the dispositive portion (sic). Further pending appeal, the same monthly amount shall be deposited periodically as it falls due every month with the RTC Clerk of Court of Dipolog City.[38]

Justice Lloren found the charge warranted. He concluded in his report that the issuance of the order of September 26, 2005 did not accord with the law and jurisprudence.

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[37] Id. at 250-251.
[38] Supra note 5.

We concur with Justice Lloren's finding against respondent Judge.

Section 19, Rule 70 of the *Rules of Court* provides:

> Section 19. *Immediate execution of judgment; how to stay same*. - **If judgment is rendered against the defendant, execution shall issue immediately upon motion, unless an appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court.** In the absence of a contract, he shall deposit with the Regional Trial Court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment of the lower court on or before the tenth day of each succeeding month or period. The supersedeas bond shall be transmitted by the Municipal Trial Court, with the other papers, to the clerk of the Regional Trial Court to which the action is appealed. x x x (bold emphasis supplied)

Respondent Judge issued her order of September 26, 2005 to enable the posting of the *supersedeas* bond by the Falames during the pendency of their appeal in her court in order to prevent the immediate execution of the adverse decision of the MTCC. She thereby disregarded Section 19, *supra*, which allowed the filing of the *supersedeas* bond only with the MTCC as the trial court. She should have instead granted the complainant's *Motion for Execution Pending Appeal* filed on June 21, 2005 for it had become her ministerial duty to do so upon the failure of the Falames to move to stay the immediate execution of the decision in accordance with Section 19.

Respondent Judge could not sincerely insist that the order of September 26, 2005 was regular. The actions she could or could not take as an appellate judge in an ejectment case were fully outlined in Section 19, *supra*. A rule as plain and explicit as Section 19 is not liable to be misread or misapplied, but should only be implemented without hesitation or equivocation. Her issuance of the order of September 26, 2005 thus constituted gross ignorance of the law or procedure, for she was not a trial judge bereft of pertinent experience on dealing with issues on immediate execution in ejectment cases.

Gross ignorance of the law or procedure is a serious charge.[39] Such offense may be penalized with dismissal from the service, or suspension from office without pay for more than three months but not exceeding six months, or a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[40] As penalty, therefore, respondent Judge is fined in the amount of

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[39] Section 8(9), Rule 140 of the *Rules of Court*.
[40] Section 11(A), Rule 140 of the *Rules of Court*.

₱21,000.00, and, in addition, she is warned against a similar offense, or else she will be more sternly dealt with.

This case presents the opportune occasion to remind judges of the first level courts to always adhere to the mandate of Section 19, *supra*, by issuing writs of execution upon motion of the plaintiffs in actions for ejectment whenever the defendants have failed to stay execution. They should not leave to the appellate courts the action on the motions for execution because that action would be too late in the context of Section 19. The trial and appellate judges should constantly be mindful of the summary nature of the ejectments actions, and of the purpose underlying the mandate for immediate execution, which is to prevent the plaintiffs from being further deprived of their rightful possession.[41] Otherwise, they stand liable for gross ignorance of the law or procedure.

II
Respondent Judge was not guilty of unreasonable delay in resolving the *Motion for Execution Pending Appeal*

The failure of respondent Judge to resolve in a timely manner the *Motion for Execution Pending Appeal* the complainant had filed on June 21, 2005 constituted delay. However, Justice Lloren did not want her to be held to account for the delay because July 18, 2005, the day on which the motion would be heard, had coincided with Law Day, an event that the Court had required the entire Judiciary to observe. She thus felt constrained to cancel not only the hearing of the complainant's motions but also the hearings in other cases set on said date.

If the delay could not be attributed to respondent Judge on the basis of her plausible explanation, she was not guilty of unreasonable delay.[42]

III
In issuing the order of November 8, 2005, respondent Judge acted without authority; but she could not be held accountable without proof of her malice, bad faith, fraud, dishonesty and corrupt motives

Although respondent Judge supposedly relied on item 2 of A.M. No. 04-5-19-SC to justify her issuance of the order of November 8, 2005 despite

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[41] *Ferrer v. Rabaca*, A.M. No. MTJ-05-1580 [Formerly OCA IPI No. 04-1608-MTJ], October 6, 2010, 632 SCRA 205, 215.

[42] Re: Judicial Credit Conducted in RTC, Br. 14, Davao City, Presided over by Judge William M. Layague, A.M. No. RTJ-07-2039, April 18, 2008, 552 SCRA 1.

her being no longer the Acting Presiding Judge of the issuing court, Justice Lloren recommended that she be fined in the amount of ₱11,000.00 for violating the guidelines for relieved detailed judges set under items 5 and 6 of A.M. No. 04-5-19-SC, to wit:

> 5. Should any case be left undecided by the transferred/detailed/assigned judge, the judge conducting the inventory shall cause the issuance to the parties of a notice of transfer/detail/assignment of the judge to which the case had been assigned, with a directive for the plaintiff/s to manifest, within five (5) days from receipt of such notice, whether or not he/she desires that the transferred judge should decide the case. The desire of the plaintiff, who may opt to have the case decided by the new judge, shall be respected. However, should the defendant oppose the manifestation of the plaintiff, the new judge shall resolve the matter in accordance with these Guidelines. Should the plaintiff fail to submit such manifestation within the said 5-day period, the presumption is that he/she desires that the case be decided by the transferred judge.
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> 6. The manifestation of the plaintiff that the case should be decided by the transferred judge shall be forwarded to the Office of the Court Administrator which, upon receipt thereof, shall issue the proper directive. A directive requiring the transferred judge to decide the case immediately shall state any of these conditions:
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> a) If the new station of the transferred judge is within the province of the judicial region of his/her former station, the case shall be decided in such station by the transferred judge who shall adjust his/her calendar to enable him/her to dispose the undecided case at his/her own expense without sacrificing efficiency in the performance of his/her duties in his/her new station.
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> b) If the new station of the transferred judge is outside of the province in the judicial region of his/her former station, the records of the undecided case shall be delivered either by personal service or by registered mail, to the transferred judge and at his/her own expense.
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> In either case, the Office of the Court Administrator shall furnish the parties to the case with a copy of such directive and the transferred judge shall return to his former branch the records of the case with the decision that the new judge shall promulgate in his stead.

We would readily join the recommendation of Justice Lloren. The basic postulate is for all judges to follow the guidelines set by the Court to ensure the just, speedy and inexpensive administration of justice. The non-observance of the guidelines inevitably results in unfairness and inefficiency. Respondent Judge had been definitely aware of her relief as the detailed Presiding Judge of the issuing court since October 6, 2005, the date she received via fax the copy of Administrative Order 159-2005 dated October 3, 2005 revoking her designation as the Acting Presiding Judge of Branch 10 of the RTC. She actually conceded in the order of November 8,

2005 that she had ceased "to hold the position" of Acting Presiding Judge by October 6, 2005. Under the aforequoted guidelines, she could no longer competently act in the case once relieved as the Acting Presiding Judge. Her correct course of action would have been to desist from taking any further action in the case, including denying the complainant's *Motion to Dismiss Appeal* through the order of November 8, 2005, until the specific guidelines set under items 5 and 6 of A.M. No. 04-5-19-SC were first complied with. But she ignored these guidelines, particularly that which required that –

> x x x **the judge conducting the inventory shall cause the issuance to the parties of a notice of transfer/detail/assignment of the judge to which the case had been assigned, with a directive for the plaintiff/s to manifest, within five (5) days from receipt of such notice, whether or not he/she desires that the transferred judge should decide the case. The desire of the plaintiff, who may opt to have the case decided by the new judge, shall be respected.** However, should the defendant oppose the manifestation of the plaintiff, the new judge shall resolve the matter in accordance with these Guidelines. Should the plaintiff fail to submit such manifestation within the said 5-day period, the presumption is that he/she desires that the case be decided by the transferred judge.

Respondent Judge sought to justify her issuance of the order of November 8, 2005 by citing the guideline under item 2 of A.M. No. 04-5-19-SC. The justification should fail, however, because the guidelines under items 5 and 6, *supra*, were those that were directly applicable.

Nonetheless, respondent Judge's issuance of the order of November 8, 2005 should not be considered as censurable conduct in the absence of the substantial showing of her having done so with malice, or in bad faith, or with fraud or dishonesty, or with a corrupt motive. Considering that her good faith was presumed, the complainant carried the burden to establish her having acted with malice, or bad faith, or with fraud, or with dishonesty, or with a corrupt motive. Yet, the complainant did not discharge its burden. Moreover, her denial of the complainant's *Motion to Dismiss Appeal* through the order of November 8, 2005 could have also been characterized as an error of judgment on her part. That characterization was far from improbable because, after all, she was not an infallible functionary of the Judiciary. Accordingly, she should not be disciplined.

IV
Charges of corruption, bias and partiality were not substantiated

Justice Lloren's report acknowledged that the complainant did not substantiate the charge of corruption against respondent Judge after its lone witness did not appear at the scheduled hearings. The complainant did not

also substantiate its charge of bias and partiality against her. Hence, Justice Lloren recommended the dismissal of such charges.

The recommendation is well-taken. Mere allegation of corruption, bias and partiality is insufficient to establish the accusation. Dismissal of the accusation should follow.

WHEREFORE, the Court: (*a*) **FINDS** and **DECLARES** respondent Judge Bernadette Paredes-Encinareal guilty of gross ignorance of the law or procedure for issuing the order dated September 26, 2005, and, accordingly, **FINES** her in the amount of ₱21,000.00 with a warning that a repetition of the same or similar act would be dealt with more severely; (*b*) **DISMISSES** the charge of unreasonable delay in resolving the complainant's *Motion for Execution Pending Appeal* filed on June 14, 2005 for its lack of merit; and (*c*) **ABSOLVES** respondent Judge Bernadette Paredes-Encinareal of the charges of corruption, bias, and partiality for lack evidence.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice