**Republic of the Philippines**
## Supreme Court
**Manila**

### THIRD DIVISION

SPS. ALBERTO AND LILIAN
PACHO,
Complainants,

-versus -

JUDGE AGAPITO S. LU,
Regional Trial Court, Branch 88,
Cavite City,
Respondent.

A.M. No. RTJ-13-2350
(Formerly OCA IPI No. 10-3507-RTJ)

Present:

VELASCO, JR., *J., Chairperson,*
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

Promulgated:

July 23, 2018

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## DECISION

**BERSAMIN, *J.*:**

Complainants Spouses Alberto and Lilian Pacho (Spouses Pacho) brought their administrative complaint charging respondent Judge Agapito S. Lu (Judge Lu), the former Presiding Judge of the Regional Trial Court (RTC), Branch 88, in Cavite City with undue delay in the rendition of the judgment in Civil Case No. N-7675 entitled *Sps. Lilian and Alberto S. Pacho v. Sps. Eric and Roselie Manongsong.*[1]

### Antecedents

The Office of the Court Administrator (OCA) summarized the antecedents and contentions of the parties, as follows:

> Complainant Sps. Pacho alleges that the complaint for ejectment they filed against spouses Eric and Roselie Manongsong on 12 February 2004 was raffled to the Municipal Trial Court in Cities, Branch 1, Cavite City, presided over by Judge Amalia Samaniego-Cuapiaco. On 9 June

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[1]  *Rollo,* pp. 1-3.

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2004, Judge Samaniego-Cuapiaco rendered a Judgment dismissing the complaint for lack of jurisdiction. Complainant Sps. Pacho appealed the judgment to the Regional Trial Court, which was raffled to the court of respondent Judge Lu.

On 30 August 2004, respondent Judge Lu rendered a Decision setting aside the appealed judgment and remanding the case for further proceedings. On 12 August 2005, Judge Samaniego-Cuapiaco rendered a decision dismissing the case for the second time for lack of jurisdiction.

Complainant Sps. Pacho elevated the decision of the lower court to the Regional Trial Court, which case was again raffled to respondent Judge Lu. Although the case was already submitted for decision, the appeal remained unresolved. Two (2) motions for early resolution, 9 July 2007 and on 21 November 2007, respectively, and almost weekly follow-ups thereafter, remained unacted upon.

In a letter-comment dated 14 December 2010, respondent Judge Lu alleged that on 30 August 2004, he rendered a decision setting aside the judgment of the lower court and then remanded the case for further proceedings.

On 26 January 2005, Judge Samaniego-Cuapiaco, by way of 1st Indorsement to respondent Judge Lu, insisted that remanding the case serves no useful purpose for the parties have already presented their evidence. By reason of this, respondent Judge Lu issued an Order on 16 February 2005, directing the former to resolve the issue of possession and all incidental issues.

On 12 August 2005, Judge Samaniego-Cuapiaco rendered a decision, dismissing the ejectment case for the second time for lack of jurisdiction. The appeal was again raffled to respondent Judge Lu who immediately drafted a Decision sometime December 2005. Anticipating Judge Samaniego-Cuapiaco's relentless defiance and the likelihood that the case would again find its way to his *sala* in a "judicial ping-pong", respondent Judge Lu deemed it more prudent not to finalize the draft of the Decision.

Further, respondent Judge Lu explained to Mrs. Lilian Pacho that he cannot give due course to their appeal as the Rules of Court proscribes a second appeal of the same case. He advised Mrs. Pacho to file an administrative complaint against Judge Samaniego-Cuapiaco instead. He also told Mrs. Pacho that he would **"defer action on her second appeal because if [he] immediately deny due course to or dismiss the appeal and the dismissal of the appeal becomes final, she may lose her right and opportunity to seek judicial relief."**

Lastly, respondent Judge Lu adopts his letter-comment as an administrative complaint against Judge Samaniego-Cuapiaco for Gross Ignorance of the Law, Grave Abuse of Discretion and for disregarding the hierarchy of courts."[2]

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[2]    Id. at 66-67.

After hearing, the OCA issued its report and recommendation dated April 15, 2011, and recommended as follows:

> Respectfully submitted for the consideration of the Honorable Court the recommendations that:
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> (a) The instant administrative complaint be **RE-DOCKETED** as a regular administrative complaint;
>
> (b) Hold Judge Agapito S. Lu of Regional Trial Court, Branch 88, Cavite City, be found **GUILTY** for the less serious charge of delay in rendering judgment, for which he should be **FINED** ₱11,000.00; and
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> (c) To APPRISE respondent Judge Lu to file the appropriate **verified** complaint against Judge Amalia Samaniego-Cuapiaco should he decide to pursue his complaint against the latter.[3]

In support of its recommendation, the OCA explained thusly:[4]

> Respondent Judge Lu virtually admitted the delay in rendering a decision in Civil Case No. N-7675 and that he failed to act on complainant Sps. Pacho's appeal within the three (3) month period prescribed in the Constitution. His statement to wit: *"But now that Mrs. Pacho has filed a complaint against me, I will immediately act on her second appeal."* Imparts a mere intention to act in the future thus, reinforcing the fact of delay. From the **later part of 2005** (when the parties have already submitted their respective memorandum thus deeming the appeal submitted for resolution) up to the purported date of his letter-comment on **14 December 2010**, respondent Judge Lu has yet to act on the appeal. Had it not been for the instant complaint, further delay in resolving the case is not too remote a possibility.
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> Presuming that, respondent Judge Lu drafted a Decision on December 2005, such draft Decision did not interrupt the period for rendering a decision. A draft decision is a mere draft, not "the Decision" contemplated in the Constitution. While the draft Decision may entail that Judge Lu did a positive act, [it] had no official bearing on the case as the litigants still remain in limbo for their unsettled differences.
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> While the Court takes note of the heavy caseload of judges, and to ease the burden, grants motions for extension of time to resolve cases, respondent Judge Lu, failed to indicate that he ever filed any. His concern over the probable loss of Mrs. Pacho's right and opportunity to seek judicial relief is commendable but speculative. Besides, complainants Sps. Pacho's efforts to pursue their case as manifested by their two(2) motions for early resolution, the almost monthly follow-ups, and this administrative complaint, negate such situation. Hence, the fact remains that a decision on complainant Sps. Pacho's appeal is long overdue. Passing the blame to Judge Samaniego-Cuapiaco, cannot absolve him from liability.

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[3]  Id. at 68.
[4]  Id. at 67-68.

Section 9 (1) in relation to Section 11 (B), both of Rule 140 of the Rules of Court classify delay in rendering a decision as a less serious offence, penalized with suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; **or** a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. Considering the peculiar circumstances in this case, and the fact that respondent Judge Lu initially acted on the first appeal, not to mention his fast approaching retirement on 27 June 2011, this Office recommends that respondent Judge Lu be fined ₱11,000.00 for delay in rendering a decision.

In the meantime, the respondent Judge compulsorily retired from the service. In its resolution dated June 28, 2017,[5] the Court resolved to withhold a total of ₱40,000.00 from his retirement benefits to answer for any administrative liability arising from this or any other complaint.

## Ruling of the Court

The Court **ADOPTS** the recommendation of the OCA.

Article VIII, Section 15(1) of the 1987 Constitution mandates that the first and second level courts should decide every case within three months from its submission for decision or resolution. "A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the *Rules of Court* or by the court itself."[6]

The *Code of Judicial Conduct* mirrors this constitutional edict by requiring all judges to administer justice impartially and without delay,[7] and to promptly dispose of their courts' business and to decide their cases within the required periods.[8] The demand for impartiality and efficiency is by no means an empty platitude. All too often, the Court has expounded on the pressing need for judicial efficiency, as it has done in *Office of the Court Administrator v. Reyes*,[9] thus:

> The honor and integrity of the judiciary is measured not only by the fairness and correctness of the decisions rendered, but also by the efficiency with which disputes are resolved. Thus, judges must perform their official duties with utmost diligence if public confidence in the judiciary is to be preserved. There is no excuse for mediocrity in the performance of judicial functions. The position of judge exacts nothing

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[5]   Id. at 75.
[6]   Section 15(2), Article VIII, 1987 Constitution.
[7]   Rule 1.02, Canon 1.
[8]   Rule 3.02, Canon 3.
[9]   A.M. No. RTJ-05-1892 [formerly A.M. No. 04-9-494-RTC], January 24, 2008, 542 SCRA 330, 338; citing *Petallar v. Pullos*, A.M. No. MTJ-03-1484, January 15, 2004, 419 SCRA 434, 438.

less than faithful observance of the law and the Constitution in the discharge of official duties.

The period for disposing of judicial matters is mandatory. Yet, the Court recognizes that the extension of the period may sometimes be proper or necessary, but the judge concerned must request the extension in writing, and state therein the meritorious ground for the request. The extension is not loosely granted. The respondent Judge did not request any extension of his period to resolve the second appeal. He also did not tender in his comment on the administrative complaint the ground to justify or explain his inability to resolve the appeal within the period mandated by the Constitution.

Instead, as the OCA correctly observed, the respondent Judge had deliberately not resolved the appeal within the period allowed by the Constitution. A look at the records discloses that the MTCC resolved the ejectment case through its decision dated June 9, 2004,[10] and the complainants appealed the adverse outcome; that the appeal went before the respondent Judge, who disposed of it on August 30, 2004[11] by remanding the case to the MTCC; and that, in turn, the MCTC resolved the case on August 12, 2005[12] by again dismissing the case a second time. This was the point when the whole trouble started. The complainants appealed the second dismissal by the MTCC, and their appeal went up again to the respondent Judge's court. Normally, the respondent Judge could have resolved the second appeal in due course, and let the aggrieved parties take it from there. Even if he sincerely believed that the outcome would not be any different from the previous one, he should not have desisted from complying with the mandatory period for disposing of the second appeal. But he did not comply. After nearly two years from the submission of their second appeal for resolution without its being acted upon, the complainants moved *ex parte* for its early resolution on July 9, 2007, and again on November 21, 2007. All to no avail, as the respondent Judge did not issue any resolution. Thus, they were impelled to commence this administrative case by filing their complaint dated August 31, 2010.

It is clear from the circumstances that the respondent Judge had no excuse for not resolving the second appeal within the mandatory period despite its being already ripe for judicial adjudication and despite the complainants' constant follow-ups. Worse, as the OCA noted, the respondent Judge admitted in his comment that he resolved the appeal only after the administrative complaint had been lodged against him, thus:

> So, when Mrs. Lilian Pacho followed up the case, I informed her that I can no longer entertain, much less, give due course to her second appeal because a second appeal of the same case involving the same issue

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[10] *Rollo,* 29-36.
[11] Id. at 37-45.
[12] Id. at 50-57.

of alleged lack of jurisdiction which has been resolved by me acting as an appellate court in the previous appeal is not allowed by the Rules of Court.

Instead, I advised Mrs. Pacho to file an administrative complaint against Judge Cuapiaco to compel the latter to comply with my decision as an appellate court.

I also informed Mrs. Pacho that I will defer action on her second appeal because if I immediately deny due course to or dismiss her appeal and the dismissal of the appeal becomes final, she may lose her right and opportunity to seek judicial relief.

It is quite surprising therefore that Mrs. Pacho chose to file an administrative complaint against me instead of against Judge Amalia Samaniego-Cuapiaco.

***But now that Mrs. Pacho has filed a complaint against me, I will immediately act on her second appeal.***[13] [Emphasis Supplied]

In not resolving the appeal until this administrative case was brought, the respondent Judge let five years from the time he should have resolved it to elapse. In other words, he would have incurred further delay in the resolution of the appeal were it not for the filing of the complaint.

To evade liability, the respondent Judge attributes the delay to the stand-off between him and MTCC Judge Amalia Samaniego-Cuapiaco, the trial judge who had twice decided the case, on the issue of jurisdiction over the ejectment case.

The attribution of delay to the stand-off was unwarranted. The delay was far from the responsibility or fault of MTCC Judge Samaniego-Cuapiaco; it was the respondent Judge's exclusively. The complaint for forcible entry filed by the complainants in the MTCC was tried under the *1991 Revised Rules on Summary Procedure*, and the parties submitted all the necessary pleadings and papers. Judge Samaniego-Cuapiaco rendered her first decision of dismissal for want of jurisdiction *after trial on the merits*. With the MTCC having already tried the case on the merits and decided to dismiss the complaint for ejectment for lack of jurisdiction, his recourse was to resolve the appeal in due course, which he did by reversing the MTCC and remanding the case to the MTCC with the order to resolve it on the merits, not to dismiss it. That Judge Samaniego-Cuapiaco rendered her second decision to still dismiss the complaint for lack of jurisdiction should not cause the impasse between her court and the RTC as to cause the five-year delay. If he still disagreed with the MTCC's second disposition, his recourse, if he sincerely believed that the MTCC had jurisdiction (contrary to Judge Samaniego-Cuapiaco's persuasion), was to render judgment by stating so and at the same time dismissing the case *for lack of original*

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[13] Id. at 26-27.

*jurisdiction over it.* He should not think of remanding the case again to the MTCC. Remand, already superfluous, was no longer an option. Thereafter, he should just leave it to the complainants, if they would feel aggrieved by the judgment he rendered, to choose their remedies in the usual course. Indeed, the delay was avoidable by him.

Section 9, Rule 140 of the *Rules of Court* classifies undue delay in resolving a case as a less serious charge punishable by suspension from office without salary and other benefits for not less than one nor more than three months; or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[14] Due to his intervening retirement from the service, it is now appropriate to impose a fine of ₱11,000.00, the amount recommended by the OCA, to be charged against the ₱40,000.00 withheld from his retirement benefits.

**WHEREFORE,** the Court **FINDS** and **PRONOUNCES** respondent Judge Agapito S. Lu (retired) **GUILTY** of undue delay in resolving Civil Case No. N-7675; and **IMPOSES** a fine amounting to ₱11,000.00 to be charged against the ₱40,000.00 withheld from his retirement benefits.

**SO ORDERED.**
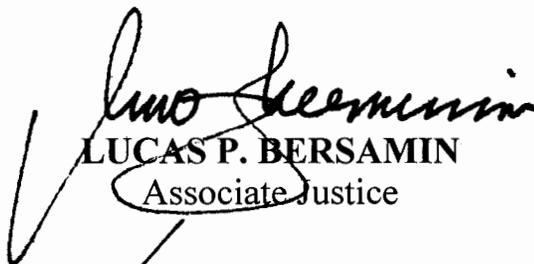
**LUCAS P. BERSAMIN**
Associate Justice

**WE CONCUR:**
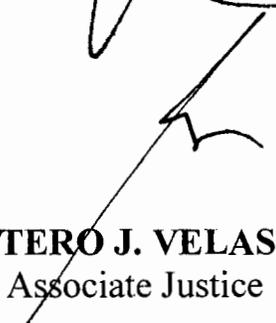
**PRESBITERO J. VELASCO, JR.**
Associate Justice

**MARVIC M.V.F. LEONEN**
Associate Justice

**SAMUEL R. MARTIRES**
Associate Justice
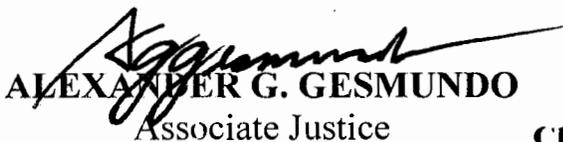
**ALEXANDER G. GESMUNDO**
Associate Justice

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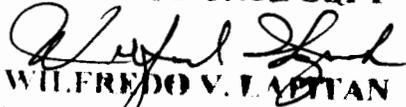
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

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[14]   Section 11 (B), Rule 140, *Rules of Court.*