

REPUBLIKA NG PILIPINAS
SANGGUNIANG PANLUNGSOD
LUNGSOD NG ORMOC



EXCERPT FROM THE MINUTES OF THE REGULAR SESSION OF THE
FOURTEENTH SANGGUNIANG PANLUNGSOD NG ORMOC HELD
AT THE SANGGUNIANG PANLUNGSOD SESSION HALL,
ORMOC CITY HALL BUILDING
ON MARCH 15, 2018

PRESENT:

Leo Carmelo L. Locsin, Jr.,	Vice Mayor & Presiding Officer
Rolando M. Villasencio,	SP Member, Majority Floor Leader
Vincent L. Rama,	SP Member, Asst. Majority Floor Leader
Mario M. Rodriguez,	SP Member, Presiding Officer "Pro-Tempore"
Tomas R. Serafica,	SP Member
Benjamin S. Pongos, Jr.,	SP Member
Eusebio Gerardo S. Penserga,	SP Member
Nolito M. Quilang,	SP Member
John Eulalio Nepomuceno O. Aparis II,	SP Member
Lea Doris C. Villar,	Minority Floor Leader
Mariano Y. Corro,	SP Member, Asst. Minority Floor Leader
	Ex-Officio SP Member
	Chapter President, Liga ng mga Barangay ng Ormoc

ON LEAVE:

Gregorio G. Yrastorza III,	SP Member
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RESOLUTION NO. 2018-074

A RESOLUTION FINDING THE RESPONDENT NOT LIABLE OF GROSS NEGLIGENCE OR DERELICTION OF DUTY AND COMMISSION OF ANY OFFENSE INVOLVING MORAL TURPITUDE AND ABSOLVING HER OF ANY ADMINISTRATIVE LIABILITY IN ADMINISTRATIVE CASE NO. 2016-07 FILED BEFORE THE 14TH SANGGUNIANG PANLUNGSOD OF ORMOC CITY ENTITLED: JASON GESTOSO AS COMPLAINANT -VERSUS- JUANITA DICDICAN AS RESPONDENT.

WHEREAS, this august Body was in receipt of an administrative complaint filed by Complainant Jason Gestoso against Juanita Dicdican, Barangay Kagawad, Barangay Camp Downes, Ormoc City, seeking to hold respondent administratively liable for gross negligence or dereliction of duty and commission of any offense involving moral turpitude;

WHEREAS, said administrative complaint was filed pursuant to the authority and powers vested of this Sanggunian by Section 61 (c) of the Local Government Code of 1991 to hear and decide administrative cases filed before it against elected barangay officials within its jurisdiction as well as mandate under the City Ordinance No. 2016-001 which prescribes the processes and procedures for the filing of administrative cases;

WHEREAS, the complaint was found to be proper and in order and thereby given due course, and the consequent administrative case was docketed as Administrative Case 2016-07, entitled: "Jason Gestoso, Complainant vs. Juanita Dicdican, Respondent, after which an administrative investigation was conducted by this Sanggunian through the Committee of the Whole with utmost impartiality and due regard to the rights of the parties to be afforded due process of law in accordance with established law and rules of procedure;

WHEREAS, after a thorough and objective evaluation of said administrative case by this Sanggunian through the Committee of the Whole, on the basis of testimonies of the witnesses and evidence adduced by the parties, a fair, just and objective decision was finally arrived at by the said Committee with a vote of 11-0 finding the respondent not liable of gross negligence or dereliction of duty and commission of any offense involving moral turpitude and absolving her of any administrative liability under the case filed, a copy of said decision is attached herein and made an integral part hereof;

WHEREAS, this Resolution affirms the said decision without any note of reservation or expression of dissent to the findings and, likewise, it effectively formalizes the same as the judgment of the Sanggunian for that matter;

WHEREFORE, on motion of SP Member Nolito M. Quilang, Chairman, Committee on Good Government, severally seconded by SP Members Vincent L. Rama, Mario M. Rodriguez, Tomas R. Serafica, Benjamin S. Pongos, Jr., Eusebio Gerardo S. Penserga and Mariano Y. Corro; be it

RESOLVED, AS IT IS HEREBY RESOLVED, to pass A RESOLUTION FINDING THE RESPONDENT NOT LIABLE OF GROSS NEGLIGENCE OR DERELICTION OF DUTY AND COMMISSION OF ANY OFFENSE INVOLVING MORAL TURPITUDE AND ABSOLVING HER OF ANY ADMINISTRATIVE LIABILITY IN ADMINISTRATIVE CASE NO. 2016-07 FILED BEFORE THE 14TH SANGGUNIANG PANLUNGSOD OF ORMOC CITY ENTITLED: JASON GESTOSO AS COMPLAINANT -VERSUS- JUANITA DICDICAN AS RESPONDENT;

ADOPTED, March 15, 2018.

RESOLVED, FINALLY, that copies of this resolution be furnished each to the Honorable City Mayor Richard I. Gomez; the City Legal Officer, Atty. Jasper Lucero; Office of the Ombudsman-Visayas, Cebu City; the OIC-City Director, DILG, Engr. Jesus D. Jeremy Bagares; the Office of the Liga ng mga Barangay ng Ormoc; the Complainant; the Respondent, and their respective counsels, and other offices concerned.

CARRIED UNANIMOUSLY.

I HEREBY CERTIFY to the correctness of the foregoing resolution.

Jason Gestoso
Complainant
3/20/18

Juanita Dicdican
Respondent
3-20-18

Corro
MARIA ANTONIETA G. CO HAT
(OIC - SP Secretary)
Supervising Administrative Officer

Angina 3/20/18
Atty. Randolph P. Baquiano
counsel for Complainant

ATTESTED:

LL
LEO CARMELO L. LOCSIN, JR.
Vice Mayor & Presiding Officer

Uos 3/20/18
Atty. Philip Albeas II
counsel for Respondent

REPUBLIC OF THE PHILIPPINES
14th Sangguniang Panglungsod
Ormoc City

HON. JASON M. GESTOSO
Complainant,

-versus-

ADMIN CASE NO. 2016- 07
FOR: Gross Negligence

HON. JUANITA F. DICDICAN,
Respondent,
X-----x

DECISION

This is an administrative complaint initiated by complainant Jason M. Gestoso who seeks to hold the respondent Juanita F. Dicdican, an incumbent Barangay Kagawad of Barangay Camp Downes, Ormoc City, administratively liable for gross negligence or dereliction of duty commission of any offense involving moral turpitude.

The complaint was filed on October 12, 2016, and was referred to the Committee on Good Government on October 14, 2016. In an Order dated October 17, 2016, the complainant was directed to file a verified complaint in accordance with pertinent rules. Complainant filed a verified Complaint on November 4, 2016 and respondent filed a verified Answer on December 2, 2016. Preliminary Conference was held and completed on March 16, 2017.

During the Preliminary Conference, the following facts were stipulated on and agreed upon by the parties:

- a. That the respondent is the incumbent barangay kagawad of Brgy. Camp Downes, Ormoc City; and
- b. That in the year 2013, the respondent was the Chairperson of the Committee on Women.

Hearing on the merits ensued and the parties presented their respective testimonial evidences. The following testified for the complainant: complainant himself, Una Marie Delima and Florentino Lacsa. On the other hand, the respondent offered the following witnesses in support of her defense: Fermin Labra, Mikaela Palomo and respondent herself. All the parties were subject to direct, cross and clarificatory examination.

The lone documentary evidence was offered by the complainant: Exhibit "A" and series: Brgy. Resolution No. 026, Series of 2016.

The following are the issues identified by the parties:

- a. Whether or not the respondent should be preventive suspended pending the administrative proceedings, as provided under Section 63 of the Local Government Code;
- b. Whether or not the respondent committed Gross Negligence or Dereliction of Duty;
- c. Whether or not the respondent committed any offense involving moral turpitude;
- d. Whether or not the respondent committed gross negligence;
- e. Whether or not the complainant committed gross misconduct;
- f. Whether or not the complainant has a cause of action against the respondent.

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Only the respondent submitted a Position Paper.

Complainant alleges that: a minor was alleged to have been raped in 2012 and in 2016. The incident was relayed to the respondent by the victim herself who also divulged that one of the perpetrators was Marino Quiachon. Respondent supposedly convinced the minor not to name Quiachon and even assisted her transfer from NOCNHS in Ormoc City to another school, the INHS also in Ormoc City. Complainant asserts that the respondent is close to Quiachon and submits that the latter "actively intervened in the matter and used her position and influence to cover the incident."

In defense, the respondent states that she was able to talk with the minor only on a later date. She was first told of the rape incident by the relatives of the minor, who also asked that she help facilitate the transfer of the minor to another school.

As defined by the Supreme Court, "Gross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable." (Civil Service Commission vs. Arlic Almojuela, G.R. No. 194368, April 2, 2013.)

The evidence fails to show that there was breach of duty on the part of the respondent. The complaint has implied that there was flagrant and culpable refusal or unwillingness to perform a duty, maliciously motivated by personal interests. However, the respondent was not the Kagawad expected to perform the obligation in the situation complained of because she is not the one in-charge of VAWC. The complainant failed to point out which tasks of being VAWC in-charge were not performed because there was also failure to present the said tasks. There was insinuation that the respondent was in-charge of the Committee on Women but it was not clearly pointed out if being a chairperson of the Committee on Women will automatically result to being the in charge of the VAWC desk.

The testimony of rape victim AAA could not also establish that the respondent is the one liable being chairperson of VAWC. Pertinent to the discussion was the portion of the testimony quoted below:

"xxx

Q: Aside from your Teacher/Guidance Counselor in your school, who else you confess your situation?

A: Our Kagawad and VAWC in-charge in Barangay Camp Downes, Ormoc City.

xxx

(Excerpts from AAA Judicial Affidavit (Question No. 23) dated August 12, 2016)

"ATTY ALBEOS: Could you please tell us Madam Witness, where is the name Kagawad Dicdican in your Judicial Affidavit?

Xxx

THE PRESIDING OFFICER: So, we request the counsel to help the witness go through the affidavit so that she can pinpoint the name Kagawad Dicdican?

ATTY BACQUIANO: It was not mentioned specifically your Honor the name Kagawad Dicdican in her Judicial Affidavit your Honor.

THE PRESIDING OFFICER: Do you accept that counsel or you want the answer from the witness.

ATTY. ALBEOS: I want the answer from the witness your Honor.

THE PRESIDING OFFICER: Ma'am Nene, pangutan-a ang bata kung unsa'y iya tubag.

Xxx

AAA: Wala nabutangi.

Xxx"

(Excerpts from page 7 of AAA's testimony dated June 1, 2017)

On the other hand, the Respondent denied that she was the one in charge of VAWC. In her judicial affidavit (Q9 and Q10 of judicial affidavit) and pointed out during her testimony, she made it clear that she was not the VAWC in-charge but it was Kagawad Moquia. The respondent presented Kagawad Fermin Labra to support her denial. Quoted below is portion of the testimony of Kagawad Labra:

“SP MEMBER PONGOS: So, para nimo Kagawad, Labra, ang kaning mga accusations nga guipasaka ni Kapitan ngadto ni Kagawad Dicdican mahitungod sa wala siya’y guibuhat sa mga reklamo kaning allegedly rape victim nga si AAA. Wa gyod ni siya’y basihan, di gyod ni sya tinood?”

KAGAWAD LABRA: x x x Pero kanang ila gui file ni Kagawad Dicdican nga kaso wa gyod na’y basihan para niya kay naa man na’y ginikanan ang bata, naa man nay iyaan ug igsoon. Unya kana sad si Dicdican di na siya ang in-charge sa VAWC Desk – Violence Against Women and Children and in-charge ana si Kagawad Moquia ang dapat unta ana si Kagawad Moqui ang mo atiman ana kay naa man mi Committee didto nga assignment di man si Dicdican VAWC Desk ug ngano siya ma’y kasuhan ana nga kana siya na mga kaso.”

(Excerpts from page 18 of Kagawad Labra’s testimony dated January 11, 2018)

One important question to consider is that if the respondent is not the Kagawad in-charge of VAWC desk, will her being a barangay kagawad make her liable of gross negligence for not rendering assistance to minor AAA? To answer the question, it is important to check if the respondent was indeed approached by the victim and she refused to give assistance or never bothered to help. During the presentation of the witness of the respondent, the following transpired:

“THE PRESIDING OFFICER: So, mi ingon ka sa imong affidavit nga familiar ka ani nga kaso?”

MS. PALOMO: Yes Sir.

THE PRESIDING OFFICER: Ngano kabalo man ka ani nga kaso?

MS. PALOMO: Bali kadtong time nakahibawo ko ato, ang bata mi sulti namo. Mao diay to sa una Sir morag wa na sa kaugalingon ang bata and then kadtong pag-abang namo sa Ipil ni larga naman ako mama ato pagkahuman ato naa mi step father, pagkahuman mi ingon tong ako step father nga naa kono’y problema ang ako manghud. Paghuman mi sulti siya nga guilabtan kono siya sa ako igsoon and then di mi kato kay di man magbuhat ang amo igsoon, part sa amoa kay mao pa man mi kahibawo ana. And then nagpuyo ang ako manghud sa amoa then mi sulti siya sa ako mi tug-an na guilabtan sab kono siya sa amo step father since pag 8 years old hangtod ni high school ang bata.

X x x x

THE PRESIDING OFFICER: Ngano man konong guikasukan ni Kapitan si Dicdican sa imong nahibaw-an?

MS. PALOMO: Kay mi sulti kono ang bata sa iyaha bisag wa. Kami ra gyoy nakahibawo.

THE PRESIDING OFFICER: So, ikaw mo ingon ka karon nga wa kahibawo si Kagawad Dicdican sa nahitabo sa imohang manghod?

MS. PALOMO: Ako siya gui-texan ato.

THE PRESIDING OFFICER: Kinsa?

MS. PALOMO: Si Dicdican.

THE PRESIDING OFFICER: Unya?

MS. PALOMO: Ako gui-sultian ang bata nga isulti ang imong problema unya kadtong time wa man mi sulti ang bata.

THE PRESIDING OFFICER: Ni kinsa?

MS. PALOMO: Ni Dicdican.

THE PRESIDING OFFICER: So, kung baga wa gyoy nahibaw-an si Kagawad Dicdican sa bata.

MS. PALOMO: Wala gyod Sir.

X x x x x

SP MEMBER RAMA: Sa ako nasabtan ani si Dicdican being the Brgy. Official morag iya konohay ning responsibilidad ang kaning mga ingon ani nga kaso.

Unya ang bata lagi mo konektar man sa iyang gui-sulti, naka-estorya ni Dicdican. So, the barangay was expecting nga ang bata mi sulti sa iya kaso but according to Dicdican sa iyang katapusang testigo diri ug wa ko masayop nagka-storya sila sa bata pero wa mo sulti ang bata sa nahitabo niya.

MS. PALOMO: Ako gui-sultian si Dicdican ana through the text. Then ni sulti si Dicdican sa VAWC ni Moquia mao nang nakahibawo ang barangay.

THE PRESIDING OFFICER: Ni sulti si Kagawad Dicdican sa Kagawad in-charge nga si Moquia.

MS. PALOMO: Yes Sir.

X x x x

SP MEMBER PONGOS: So, Ma'am sa imong nasabtan wala gyod mi dool si Kagawad Dicdican sa bata?

MS. PALOMO: Wala gyod Sir kay wa man gyod mi tug-an ang bata kay mahadlok man siya.

SP MEMBER PONGOS: Suma god sa nakabutang diri, mi dool kono si Dicdican sa bata ug nagka-estorya sila. Sa imong nahibaw-an, nagka-estorya ba si Dicdican ug ang bata o wala?

MS. PALOMO: Kadtong time guipangutana ni Dicdican ang bata about sa rape pero ang bata wa mo tug-an.

SP MEMBER PONGOS: So, nagka-estorya gyod sila pero wala mo tug-an ang bata.

MS. PALOMO: Wa.

SP MEMBER PONGOS: Wa mo tug-an ang bata ngacto ni Dicdican about sa allegedly rape?

MS. PALOMO: Wa.

SP MEMBER PONGOS: Ngano naka-ingon man ka nga wa mo tug-an ang bata, naa ka sa pag-estorya nila?

MS. PALOMO: Yes Sir.

SP MEMBER PONGOS: Diha ka. Kadtong pag-estorya ni Dicdican ug sa bata diha ka, naminaw ka?

MS. PALOMO: Kadtong time Sir ako gui-textsan si Dicdican about sa rape, sa problema sa akong manghud. Unya kadtong time nga nagkita sila wa mi tug-an ang bata. Pagpangutana ni Dicdican unsa'y imo problema, wa man mi tug-an ang bata."

(Excerpts from the testimony of Respondent's witness Mikaela Palomo dated January 11, 2018).

The testimony showed that minor victim AAA never approached the respondent. She knew about the matter long after the incident and when she was informed by Ms. Palomo. When the respondent had the chance to talk to the minor victim, the latter never revealed anything to her. The obligation could never be imputed on the respondent since she did not have the knowledge on the incident and the minor victim did not reveal anything to her. Hence, the respondent likewise cannot be made liable of dereliction of duty.

We note that after the alleged rape victim told her teacher/ guidance counselor of the alleged rape incident, the latter acted so that a criminal case be filed against perpetrators. The criminal case was filed in August 2016 while the present case in November 2016. The timelines show that a criminal case had been filed long before complainant decided to file this case.

The respondent could not also be made liable on commission of an offense involving moral turpitude under Section 60 of RA 7160. *Zari v. Flores* (Adm. No. (2170-MC) P-1356, November 21, 1979), provided for list of crimes involving moral turpitude, namely: adultery, concubinage, rape, arson, evasion of income tax, barratry, bigamy, blackmail, bribery, criminal conspiracy to smuggle opium, dueling, embezzlement, extortion, forgery, libel, making fraudulent proof of loss on insurance contract, murder, mutilation of public records, fabrication of evidence, offenses against pension laws, perjury, seduction under the promise of marriage, estafa, falsification of public document, and estafa thru falsification of public document.

None in this list comes close to the charges levelled against the respondent. Essentially, moral turpitude as defined by, Bouvier's Law Dictionary, cited by numerous courts, "includes everything which is done contrary to justice, honesty, modesty, or good morals." Clearly there is no positive proof that respondent acted or omitted to act unlawfully and with such depravity and utter lack of moral compass.

As to the allegation of grave misconduct, the Supreme Court has defined misconduct as follows:

"Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. Xxx" (Office of the OMBUDSMAN vs. Avelino De Zosa and Bartolome dela Cruz, G.R. No. 205433, January 21, 2015)

The records of this case lack any showing that respondent took advantage of his position to intentionally and maliciously violate the law or some established and definite rule of action. Further, it has been established that to constitute an administrative offense, misconduct should be related to the official functions and duties of a public officer. As already discussed, the evidence bereft of any showing that matter complaint pertained to an official obligation of the respondent.

As a final point. This body is not unmindful of the fact that the complainant has not submitted a Position Paper and participated, either through counsel or personally, in the hearings of January 11, 2018 and February 2, 2018. These have shown a disinterest and lack of resolve to pursue the present controversy. And while this body recognizes that the active participation to the case, or lack thereof, is a prerogative available to the complainant, it would be well to advise the former that an important part of the discharge of his civil duty is to ensure that actions commenced at one's instance be at least completed and terminated.

That the witnesses have presented assertions based on hearsay and without personal knowledge of the facts contained therein further serves the findings of want of evidence presented by the complainant.

In sum, we find the respondent is not liable for Gross Negligence or Dereliction of Duty, commission of an offense involving moral turpitude and grave misconduct and hereby absolves her of any administrative liability.

Let a copy of this Decision be furnished to the Department of Interior and Local Government, Ormoc City, the Office of the City Mayor of Ormoc City, the complainant and the respondent, for their reference, information and appropriate action.

SO ORDERED.

City of Ormoc, Philippines, March 1, 2018.


ATTY. NOLITO M. QUILANG
Presiding Chairman


Concurred by:



ATTY. BENJAMIN S. PONGOS JR.
Vice-Chairman, Committee on Good Government

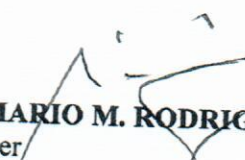

ENGR. ROLANDO VILLASENCIO
Member


VINCENT RAMA
Member


TOMAS SERAFICA
Member


DR. GREGORIO G. YRASTORZA III
Member


LEADORIS VILLAR
Member


DR. MARIO M. RODRIGUEZ
Member


DR. EUSEBIO GERARDO PENSERGA
Member


JOHN EULALIO NEPOMUCENO APARIS II
Member


ATTY. MARIANO CORRO
Member

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