



Republic of the Philippines
Province of Oriental Mindoro
MUNICIPALITY OF ROXAS

OFFICE OF THE SANGGUNIANG BAYAN

EXCERPTS FROM THE MINUTES OF THE 60th REGULAR SESSION OF THE 8TH SANGGUNIANG BAYAN OF ROXAS, ORIENTAL MINDORO HELD ON 07 OCTOBER, 2014, 1:00 P. M. AT THE SANGGUNIANG SESSION HALL.

Present:

Vice Mayor Violeta L. Dimapilis	- Presiding Officer
Councilor Eduardo K. Soriano	- Member
Councilor Johnell C. Sifel	- Member
Councilor Gualberto V. Magno	- Member
Councilor David D. Dela Cruz	- Member
Councilor Ramil O. Dimapilis	- Member
Councilor Juan S. Advincula	- Member
Councilor Elsie F. Galaran	- Member
Councilor Juanito A. Bucay, Jr.	- Member
Councilor Joseph M. Galicia	- Liga ng Barangay President

Absent:

NONE

RESOLUTION NO. 115
Series of 2014

RESOLUTION ADOPTING THE JOINT COMMITTEE REPORT NO. 51-2014 OF THE COMMITTEE ON LAWS, LEGAL MATTERS AND ORDINANCES AND COMMITTEE ON BARANGAY AFFAIRS EMBODYING ITS DECISION TO THE ADMINISTRATIVE CASE FILED AGAINST BARANGAY RAMEL S. EMONO BY SPOUSES ARISTEO E. ROJAS AND MARICEL C. ROJAS.

NOW THEREFORE, on motion of Councilor Ramil O. Dimapilis duly seconded by Councilors David D. Dela Cruz and Juan S. Advincula

BE IT RESOLVED to adopt as it hereby adopts the Joint Committee Report No. 51-2014 of the Committee on Laws, Legal Matters and Ordinances and Committee on Barangay Affairs Embodying Its Decision to the Administrative Case Filed Against Barangay Ramel S. Emono by Spouses Aristeo E. Rojas and Maricel C. Rojas

DECISION

Brought before this august body by spouses Aristeo Rojas and Maricel Rojas is an administrative case for abuse of authority and misconduct in office against Hon. Ramil S. Emono, the incumbent Barangay Captain of San Mariano, Roxas, Oriental Mindoro. The complaint was received on April 11, 2014 by the Office of the Secretary to the Sangguniang Bayan.

Prior thereto, or on January 29, 2014, the said office of the Secretary to the Sangguniang Bayan actually received a copy of a complaint which was addressed to the Municipal Mayor of Roxas, Oriental Mindoro. The Sangguniang Bayan deferred immediate action to the said complaint as it was already addressed by the Office of the Municipal Mayor, and most especially because it was insufficient in form having been non-compliant with the formal requirements laid down in Article 125, Rule XIX of Republic Act No. 7160 which provides guidelines in the initiation of administrative cases against elective local officials. So, in a letter dated February 5, 2014 the Sangguniang Bayan, through the Secretary, already forewarned the complainants that the body will entertain or act upon complaints only if they are "verified" as enjoined by the Local Government

Code. According to Section 4, Rule 7 of the Rules of Court and in long line of cases decided by the Supreme Court like in *LDP Marketing, Inc. vs Montor* (480 SCRA 137), "a pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records."

Notwithstanding that caution the letter-complaint received by the Sangguniang Bayan on April 11, 2014 was not only unverified, but in fact unnotarized. Guided however by the principle enunciated in *Salmihiden, Jr. vs Office of the Ombudsman* (619 SCRA 315), that "the lack or absence of verification is subject to the discretion of the court to allow the deficiency to be remedied", complainants were informed through an April 15, 2014 letter that their complaint is being remanded to them to make necessary corrections pursuant to the prescriptions set by the rules and procedures relative to the investigation of administrative disciplinary cases against elective officials. But when the complaint was re-filed, it only bore *jurat* as an additional content. Certainly, the fact that it was only subscribed, sworn to or notarized is again short of the formal requirements. Accordingly, as ruled in *Antone vs Beranilla* (637 SCRA 615), the unverified complaint "shall be treated as an unsigned pleading and thus produces no legal effect." On that ground alone, the Sangguniang Bayan can already outrightly dismiss this complaint, but it decided to give due course to the complaint dispensing strict compliance with the rules and to decide this case base on merits in order that the ends of justice may be served. Eventually, a meeting between the parties was initiated by the Committee on Laws, Legal Matters and Ordinances and the Committee on Barangay Affairs with efforts towards amicable settlement of this case. When efforts for reconciliation failed, the body required the respondent to file his answer or counter-affidavit after which formal investigation ensued. To save time and to make this case less burdensome and less adversarial to the parties, it was agreed that in lieu of formal presentation of evidences the parties would rather be required to submit their respective position papers embodying their respective claims and defenses. Both parties complied and submitted their respective position papers, which now leads to the final determination or resolution of this case.

Close scrutiny of the letter-complaint together with its attached evidences and the answer filed by the respondent along with his own documentary evidences would point out that this controversy evolved from the efforts of the Sangguniang Barangay of San Mariano, not only by the respondent Barangay Captain, to develop their existing Pamilihang Barangay. Incidentally, within the premises is a structure owned by the complainants. But this structure catering to their business, as personally admitted by complainant Aristeo Rojas before the Barangay Council on January 14, 2014, is built or situated in a barangay property which the barangay may recover. In the same meeting, complainant professes that he is willing to dismantle his structure when required. Complainant further reasoned out that their stay in or occupation of that barangay property is by virtue of mere tolerance extended to them by former Barangay Captain Calaton, who is his brother-in-law. Aside from their alleged unlawful possession of that barangay property, the Sangguniang Barangay also imputes against the complainant that they destroyed the artesian well built on that lot in 1996 by then Barangay Captain Jovito Estrada. The elected barangay kagawad during the term of Brgy. Captain Calaton executed *Pagpapatunay* wherein they asserted that they did not authorize Mr. and Mrs. Rojas to cut or destroy the water pump. Furthermore, people living near the premises attested that in fact that well is barangay-owned having been built during the incumbency of Brgy. Captain Estrada.

Eventually, when the Sangguniang Barangay through respondent Emono was requiring complainants to remove their structure in that barangay lot, they did not comply. Instead, they forwarded their grievance to the Municipal Mayor. Unfortunately, that controversy evolved to include respondent's alleged malicious imputation that complainants were illegally tapping electric wirings and also that alleged criminal act committed by respondent on the night of

February 6, 2017 wherein he allegedly unlawfully fired or discharged a firearm, stoned complainants' house and gave threats against them.

It is now our duty to decide whether or not the alleged acts mentioned above constitute misconduct in office or abuse of authority.

To hold the respondent guilty or not guilty of the accusation of misconduct in office and abuse of authority, reference has to be made to the general principle that *in administrative cases, the requisite proof is substantial evidence, i.e., that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion* (Dien vs Doe 626 SCRA 519).

Abuse of authority has been defined as "a misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment, or other injury; it is an act of cruelty, severity, or excessive use of authority" (Rafael vs Sualog, 554 SCRA 278). On the other hand, misconduct in office is defined as "the commission of an unlawful act, done in official capacity, which affects the performance of official duties." Hence, the question to be answered is whether there is substantial evidence to support complainants' allegations that respondent used his position of power in an abusive way or did the respondent breached his duties as a barangay captain?

Act of using one's position of power in an abusive way

At the onset, this body wishes to emphasize that there is no question to the fact that the property involved in this controversy is truly barangay-owned. The insistence of the respondent, consistent with the desire of the whole Sangguniang Barangay, to recover the barangay property is not in violation of any law but instead a valid act on behalf of the common good. Hence, their effort to recover that public property and develop it to a more useful public utility is absolutely neither abusive nor an act of mismanagement or misbehaviour in office. Plainly, the respondent did not exceed his power. On the contrary, respondent's conduct as well as of their whole Sangguniang Barangay is absolutely commendable. They did not act arbitrarily, but instead observed the requirements of due process as records would show that they called persons involved in their regular session, and before finally dismantling the illegal structure written notice was given to the complainants on February 15, 2014. Moreover, in response to complainants' challenge that barangay officials should lead by example, they even voluntarily removed their own structures that might have intruded into public property. Contrary to this allegation against Barangay Captain Emano, the municipal council even found out and is convinced that complainants are the erring party due to their illegal occupation of a government property aggravated by their refusal to vacate the same and surrender possession to the barangay when already required to the detriment and prejudice of envisioned development.

Ancient the issue that respondent maliciously imputed that the complainants are illegally tapping electric wires, this body found that accusation baseless. First, the document attached to the complaint which is OUMBUO Service Memorandum on alleged doubtful consumption does not prove that the suspicion of illegal connection came from the respondent. The said document even clearly stated that the report comes from a barangay councilor, not from the respondent. Besides, even complainant's letter to the barangay dated February 8, 2014 states "*kamitad nito sir, inong si Rojas na ito, baka nga naka-tap ito sa linya ng kuryente ng Barangay eh.*" The statement was clearly speculative and does not make a direct assertion of wrongdoing.

Finally, as to the allegation that respondent fired his gun and stoned complainants' house, we are hardly convinced that such act, assuming it is true, would qualify as an abuse of authority or misconduct in office based on the definitions given above. We understand that this allegation is now covered by a separate criminal complaint. In this regard, again assuming the accusation is true, the firing or stoning is not done under the color of authority but of a person's

private capacity. It is neither a misconduct in office, because even if it is true, the firing or ~~stoning~~ was not done in official capacity that could affect the performance of respondent's official duties as a barangay captain.

IN VIEW OF THE FOREGOING, it is ruled that there *is* no substantial evidence to support the guilt of the respondent. Hence, this administrative case against Brgy. Captain Ramel Emono is **DISMISSED**.

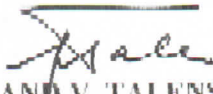
So ordered.

Roxas, Oriental Mindoro, October 07, 2014.

RESOLVED FURTHER to send copies of this decision the Spouses Aristeo and Maricel Rojas, Barangay Captain Ramel S. Emono, both of San Mariano, Roxas, Oriental Mindoro and Mrs. Ma. Victoria J. Del Rosario, CESE, DILG Provincial Director, Department of the Interior and Local Government, Camindul, Calapan City, Oriental Mindoro for their information and reference.

Adopted: 07 October 2014.

CERTIFIED CORRECT:


FERDINAND V. TALENS, MPA
Secretary to the Sangguniang Bayan

ATTESTED:


VIOLETA L. DIMAPILIS
Municipal Vice Mayor
Presiding Officer