

EXCERPTS FROM THE MINUTES OF THE 15th REGULAR SESSION OF THE SANGGUNIANG BAYAN OF GUBAT, SORSOGON, HELD ON MONDAY, APRIL 24, 2017 AT THE SANGGUNIANG BAYAN SESSION HALL.

PRESENT:

Hon. Sixto F. Estareja	- Municipal Vice Mayor, P.O.
Hon. John Paul E. Erlano	- Member, Sanggunian Bayan
Hon. Cesar D. Esperida, Jr.	- Member, Sanggunian Bayan
Hon. Danilo E. Enaje	- Member, Sanggunian Bayan
Hon. Anthony C. Callos	- Member, Sanggunian Bayan
Hon. Kenneth D. Escandor	- Member, Sanggunian Bayan
Hon. Valentin A. Pura IV	- Member, Sanggunian Bayan
Hon. Ramon E. Entico	- Member, Sanggunian Bayan
Hon. Aiza E. Encinares	- Member, Sanggunian Bayan
Hon. Nelson E. Quiñones	- Liga ng mga Barangay President

ABSENT: N O N E

RESOLUTION NO. 63 S-2017

A RESOLUTION TO CONCUR THE DECISION PRESENTED BY THE COMMITTEE OF THE WHOLE ON ADMINISTRATIVE CASE NO. 2017-01, RENATO G. DIMEN VS. BRGY. CAPT. ELSIE R. DOGILLO AND BRGY. SECRETARY MARLON ESTABAYA BOTH OF COGON, GUBAT, SORSOGON FOR DERELICTION OF DUTY AND MISCONDUCT IN OFFICE

WHEREAS, the Republic Act 7160 otherwise known as the Local Government Code of 1991 provides that, “ A complaint against any elective barangay official shall be filed before the Sangguniang Panglungsod or Sanggunian Bayan concerned whose decision is final and executory”;

WHEREAS, as a general rule, the sangguniang bayan as a whole shall conduct the hearing, unless the same sangguniang delegated its power to hold hearing to somebody or committee as a matter of practical administrative procedure;

WHEREAS, after a series of hearing, the Committee of the Whole came up with a report which was favorably adopted by the body, thence, this resolution;

NOW THEREFORE, on motion of Hon. Ramon E. Entico and unanimously seconded, it was;

RESOLVED, to concur the hereunder decision as follows, to wit:

THE CASE

Before this office is an Administrative Case No. 2017-01 filed by one Renato Dimen of Manook St., Brgy. Cota na Daco on January 16, 2017 against Elsie R. Dogillo and Marlon Estabaya, incumbent Barangay Captain and Barangay Secretary, respectively, both of Brgy. Cogon, Gubat, Sorsogon for Dereliction of Duty and Misconduct in Office under Chapter Four, Section 60 of the LGC of 1991.

DERELICTION OF DUTY - means a wilful negligence or failure to act when under an obligation to do so; a refusal (without sufficient excuse) to do that which it is your legal duty to do. (Ballentine's Law Dictionary).

MISCONDUCT IN OFFICE - means a wrong or improper conduct. Grave misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character.

Section 60 of the Local Government Code of 1991 provides that "An elective local officials may be removed from office on the grounds enumerated above by order of the proper court".

The Sangguniang Bayan in the exercise of its quasi-judicial function, is empowered to hear and decide administrative cases that are limited only to the acts and omission enumerated, defined and penalized under the Local Government Code of 1991 and any other laws which are applicable in supplementary.

The purpose of administrative proceeding is to protect the public service, based on the time-honored principle that a public office is a public trust.

THE FACTS OF THE CASE

The complainant is a private individual and a resident of Manook St., Brgy. Cota na Daco while the respondents are incumbent Barangay Captain and Barangay Secretary of Cogon, Gubat, Sorsogon, this municipality.

The antecedent facts are as follows:

The case was filed on January 16, 2017 by the herein complainant alleging that the above-named respondents committed dereliction of duty and misconduct in office by adversely treating him with disrespect and uncourteous manner while he was reporting his incident of being bitten by a dog owned by one Cristina Gumatay last November 2, 2016.

Complainant also averred that his right was violated when respondents conspired with the dog owner in refusing to extend financial assistance to him due to the incident

of dog biting of which he himself was the victim. He further claimed that he suffered distress and oppression when respondents Brgy. Capt. Elsie R. Dogillo and Brgy. Secretary Marlon Estabaya treated him with disrespect and discourteous manner in attending to his request for assistance while on their official duties. Respondents according to the complainant failed to perform their obligation to the public with honesty and dedication as mandated to a public officials.

In support of the claim of the complainant, copy of his Sinumpaang Salaysay is hereto attached as Exhibit "A" to "A-1" and his signature thereat as Exhibit "A-2".

Documentary evidences presented and/or annexed to the complaint includes Certification issued by the Municipal Agriculturist and Rabies Post-Exposure Prophylaxis Card issued by the Animal Bite Treatment Center/ Salvador Encinas District Hospital marked as Exhibit "B" and "C", respectively.

Acting on the complaint, the Sangguniang Bayan constituting as the Committee of the Whole set its preliminary hearing on January 23, 2017 to determine compliance as to proper form and substance of the complaint, and to find probable cause if the offense being charged to the respondents has its basis under the circumstances. Finding that there is probable cause in the instant complaint, the committee hereby ordered to issue summon to the respondents.

On the same day of January 23, 2017, respondents were issued summon informing them that an administrative complaint was filed against them with an attached copy of the complaint and ordering them to file their respective answer within fifteen (15) days from receipt thereof.

On January 30, 2017, respondents Brgy. Capt. Elsie R. Dogillo and Brgy. Sec. Marlon Estabaya filed their separate answer.

On her answer, respondent Elsie R. Dogillo vehemently denied the allegations made by the complainant on his "Sinumpaang Salaysay" for being false, malicious and untrue, the truth of the matter is that she had attended to all the concern of the complainant as soon as he reported the incident to her that he was bitten by a dog owned by the Gumatay family, copy of her answer was attached to the answer and marked as Exhibit "1" to "1-2".

First, on November 04, 2017 at around 5:00 o'clock in the afternoon when he was brought to my house by Brgy. Secretary Marlon Estabaya after complaining that he was bitten by a dog owned by the Gumatay family. I summoned Mrs. Cristina Gumatay to attend her obligation as the dog owner. Mrs. Gumatay asked of his forgiveness and understanding due to the incident and after being given the amount of P500.00 which according to the complainant is more than enough for the settlement.

Second, on November 16, 2017, I again meet the complainant at the barangay hall informing me that he was told by the hospital authorities to report the incident to the barangay authorities to have the dog observed. He told me also that he was informed by a witness that the dog that bit him was intentionally killed, however, when I asked Mrs. Gumatay who was also there, she told me that the dog was hit by a motor vehicle and was not intentionally killed.

Respondent Dogillo further averred that he advice the complainant to present his witness to prove that the dog was indeed intentionally killed in order for her Office to

conduct an investigation on his allegation with the dog owner. However, complainant refused as he does not want to involve his witness to the problem.

Contrary to the complainant's claim, respondent Dogillo claim that she never disrespected him nor did she ganged up upon him. I together with Brgy. Kagawad Policarpio and Brgy. Secretary Estabaya attended to him the very moment he was brought to our house by summoning Mrs. Gumatay and told her to assist the complainant of which she did by giving him money, copy of the affidavit of Mrs. Christina Gumatay was attached to the answer and marked as Exhibit "3".

The other respondent Marlon Estabaya, on his answer, also alleged that he did not remiss his duty as barangay secretary, he has done everything to attend to his concern contrary to his outrageous claims. We have never disrespected him, the truth of the matter is that we listened to all of his complaints on the following occasions, to wit:

On November 02, 2016 at around 4:05 in the afternoon complainant proceeded to our barangay hall seeking to put on blotter the incident he had when he was bitten by a dog owned by the Gumatay family. I easily acceded to his request and wrote on the blotter his version of event, copy of the blotter report was attached to the answer and marked as Exhibit "4". With me, on the said day is Kagawad Susana E. Enaje who with her advice the complainant to go to hospital so that he can be treated already and come back afterwards so that if he incurred expenses we can make the owner of the dog pay for it. I waited the complainant until 8:00 in the evening but he did not come back.

On November 04, 2016 at 5:00 o'clock in the afternoon and I am about to close the office, complainant came back and this time, I brought him to Brgy. Capt. Elsie R. Dogillo whom she instructed Brgy. Kagawad Policarpio to call Mrs. Gumatay to report in our location of which the latter immediately complied. Brgy. Capt. Elsie Dogillo then advice Mrs. Gumatay to attend to her obligation on the victim (complainant).

Complainant again went back to our office on November 09, 2016 and told us that he receive information that the dog who bit him was intentionally killed, so I told him that I will contact Mrs. Gumatay and later I was informed by her that the dog was killed due to vehicular accident.

A letter dated November 27, 2016 was personally sent to us by complainant, copy alleging therein the advice of PCI Jimmy Pintor, Chief of Police of Gubat PNP to him to ask for assistance to the dog owner, and if there is no settlement between them, the issue should be submitted to the Lupon for conciliation. I went to the Gubat Municipal Station and showed them the letter, the Police Chief told us that in truth and in fact he did not meet this individual (complainant), copy of the letter was attached to the answer and marked as Exhibit "5".

Despite of the above confirmation given to me by PCI Jimmy Pintor, I still manage to schedule a mediation conference between the complainant and the dog owner on the following day, however, only Mrs. Gumatay appeared in the barangay hall.

Sometimes on December 2016, complainant again went to the office alleging that the dog of Mrs. Gumatay was intentionally killed as he has witness to prove. I told him that we will have it recorded in the blotter but he refused because he did not want to involve his witness. I again asked the complainant what he really want so we can have it settle with the dog owner but complainant did not bother to answer me.

The last time I saw the complainant was when he was brought by Mrs. Gumatay in the office to have another conference before our barangay authorities to give him an additional financial assistance in the amount of five hundred (500) pesos.

On February 17, 2017, a hearing was conducted by the Committee of the Whole with the appearances of complainant Renato Dimen, respondents Brgy. Capt. Elsie R. Dogillo and Brgy. Sec. Marlon Estabaya, and Brgy. Kagawad Susan Enaje, Brgy. Kagawad Fernando Policarpio and Mrs. Cristina Gumatay, all witnesses for the respondents.

RULING

On careful evaluation of the complaint and the answers filed by the opposing parties, the Committee of the Whole hereby recommended declaring respondent Brgy. Capt. Elsie R. Dogillo not guilty of the above administrative case and the dismissal of the charges against Brgy. Secretary Marlon Estabaya on the following grounds, to wit:

For respondent Marlon Estabaya:

For lack of jurisdiction over the person of respondent Marlon Estabaya. Par. (c), Section 61, of the Local Government Code of 1991 clearly provides that “a complaint against any elective barangay official shall be filed before the sangguniang panglungsod or sangguniang bayan concerned”. Respondent being a barangay secretary and not an elective barangay official, said provisions finds no application to his case. A barangay secretary may be removed only upon withdrawal of appointment by the punong barangay and this implies that appropriate disciplinary actions should be filed before the Office of the Punong Barangay (Section 400 of the Local Government Code of 1991) and not within the competent jurisdiction of this Sangguniang Bayan. However, for purposes of investigation and to substantiate facts and conclusion of this administrative proceedings, respondent’s statement made on his answer as well as his testimony on the hearing has been taken into account, and shall only stand for the said particular purpose. Thus, the administrative case filed against him is hereby dismissed.

For respondent Elsie R. Dogillo:

While the law and justice abhor all forms of abuse committed by public officials whose sworn duty is to discharge their duties with utmost responsibility, integrity, competence, accountability, and loyalty, in the same manner, the law also protect them against unsubstantiated charges that tend to adversely affect, rather than encourage, the effective performance of their duties and functions.

An act to constitute dereliction of duty, a complaint must state that the element of intent and consciousness to abandon or neglect one’s duty is clearly manifested by a public official. Likewise, in misconduct in office one has to prove the existence of malicious intent and wilful character of transgression for some established and definite rule of action in the performance of their official duties and functions.

Perusal of the instant complaint, the allegation made by Renato Dimen on his complaint focuses on his demand against Mrs. Christina Gumatay, owner of the dog, for financial assistance for which the latter has already attended as evidenced of her sworn statement marked as Exhibit “3”.

Moreover, complainant's claim that his right was violated and had suffered distress and oppression when respondents Brgy. Capt. Elsie R. Dogillo and Brgy. Secretary Marlon Estabaya treated him with disrespect and discourteous manner in attending to his request for assistance while on their official duties were not collaborated by any documentary and testimonial evidences. Thus, by conclusion complainant's claim is just a mere assumption and/or conjectures.

On the strength of documentary and testimonial evidences adduced during investigation/hearing by the parties, the administrative case imputed against respondent Elsie R. Dogillo has no leg to stand. The investigating committee was convinced that respondent Dogillo did not remiss his duty in attending to complainant's concern neither did she violated his right by adversely treating him with disrespect in attending to his complain. In fact, respondent Dogillo responded to complainant's request even on her house when barangay secretary Marlon Estabaya brought the complainant to her house to report his problem and to have the matter settle with the owner of the dog.

Respondent cannot be faulted if the complainant is dissatisfied with the services she has rendered, absent a showing of wilful abandonment and neglect of her assigned duties and responsibilities. Thus, complainant failed to substantiate with certainty that dereliction of duty and misconduct in office was indeed committed by respondent Elsie R. Dogillo under the circumstances.

WHEREFORE, in the light of the foregoing, Brgy. Captain Elsie R. Dogillo is found not guilty on the administrative complaint charged against her, while the administrative case against Brgy. Secretary Marlon Estabaya is hereby dismissed, without prejudice however, to the filing of appropriate civil and criminal actions against them if warranted by the attendant circumstances.

SO ORDERED.

RESOLVED FURTHER, that copies of this resolution be furnished the complainant, respondents and all other concerned for their information and guidance;

RESOLVED FURTHERMORE, that copy of this decision is endorsed to Hon. Sharon Rose G. Escoto, Municipal Mayor, for proper and immediate implementation, informing this body of the action taken thereon within ten (10) days upon receipt hereof.

RESOLVED FINALLY, that copies of this resolution be furnished Brgy. Captain Elsie R. Dogillo and Marlon Estabaya, respondents, Cogon, Gubat, Sorsogon; Mr. Renato G. Dimen, complainant, Manook St., Cota na Daco, Gubat, Sorsogon; Ms. Shirley Del Valle, DILG-MLGOO, Gubat, Sorsogon and Office of the Liga ng mga Barangay, ABC Hall, Gubat, Sorsogon; and other offices concerned for their information and guidance.

UNANIMOUSLY APPROVED.

I HEREBY CERTIFY TO THE
CORRECTNESS OF THE FOREGOING:

(Sgd) JOEY P. ENAJE
Secretary to the Sangguniang Bayan

Attested by:

(Sgd) HON. SIXTO F. ESTAREJA
Municipal Vice Mayor, Presiding Officer