

ATTY. J. BAUTISTA RABAGO, COMPLAINANT, VS. HON. ALFONSO CALSEÑA, MUNICIPAL JUDGE OF VICTORIAS, NEGROS OCCIDENTAL, RESPONDENT.

Adm. Matter No. 43-MJ. November 29, 1973

Ponente: ANTONIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/023f87308eae/>

ANTONIO, J.:

Respondent Alfonso Calseña, Municipal Judge of Victorias, Negros Occidental, is charged with gross ignorance of the law, incompetence, gross partiality and evasion of duty, in connection with three complaints for qualified trespass to dwelling filed with the Municipal Court of Victorias on September 5, 1972 by herein complainant Atty. J. Bautista Rabago in behalf of Albina de la Peña (Criminal Case No. 2353), Meliza Diamante (Criminal Case No. 2354) and Soledad Hilado (Criminal Case No. 2355) against Mario Ditching, Leticia J. Ditching, Juan de la Peña, Maximo Ferrer, Jr., Godofredo Le-desma, Serafin Dimatugue, Narsanito Seduco y Jostiliana, Alberto Lagrimas and one John Doe. The witnesses listed in the three complaints were: Marciano Ditching, Juan Ditching, Jose Ramon Ditching, Vicente Ditching, Jr., Albina de la Peña, Melita Diamante, Patrolman Eddie Parcon, Ga, Jesena, Gonzales and Flores of the police force of Victorias and a PC soldier named Torre.

The complaint specifies four charges, all based on a single act attributed to respondent Judge, which are summarized as follows:

- Gross ignorance of the law and incompetence for his failure to issue warrants of arrest against the accused after his preliminary examination of the complainant and her witnesses, and instead issued an order for the reception of further evidence to determine the existence of a prima facie case against the accused.
- Gross partiality for his refusal to issue warrants of arrest, after the cases had been received and docketed by his court.
- Evasion of duty, by his refusal to act on said cases but instead, without notice to the complainants, referred said cases to Judge Sixto Guanzon of the Municipal Court of Manapla, Negros Occidental, who, instead of issuing warrants of arrest, dismissed them.
- In three other cases pending before his court, namely, Criminal Cases Nos. 2413, 2414 and 2415, respondent Judge did not require the reception of further evidence to determine the existence of probable cause, as he did in Criminal Cases Nos. 2353, 2354 and 2355, because the accused in the first-mentioned group of cases were not as close to him and as wealthy as those in the latter cases.

In his answer respondent Judge alleged that six prosecution witnesses, all members of the police force of Victorias, except one who was a soldier assigned to the PC detachment in said town, did not submit affidavits or give testimony in support of the complaints which testimony he considered material for the purpose of establishing the existence of a prima facie case against the accused and for this reason he had to issue an order on September 5, 1970 (Exh. "A") setting for September 21, 1970 the further reception of evidence for the said purpose; that respondent Judge's purpose in issuing Exhibit "A" was to comply with the mandatory

requirements of Section 87, paragraph 3, of the Judiciary Act of 1948, as amended by Republic Act No. 3828, which requires that:

"No warrant of arrest shall be issued by any justice of the peace (now municipal judge) in any criminal case filed with him unless he first examines the witness or witnesses personally and his examination shall be under oath and reduced to writing in a form of searching questions and answers."

Respondent further averred that Atty. Mario A. Ditching, one of the accused in the three criminal cases, is a brother of respondent Judge's wife, while four of the prosecution witnesses listed in the complaints, namely, Marciano, Jose Ramon, Juan and Vicente, Jr., all surnamed Ditching, are the younger brothers of Atty. Ditching, and therefore pursuant to the provisions of Section 1, Rule 137 of the Rules of Court, he had to inhibit himself, said inhibition having been approved by Executive Judge Cesar A. Kintanar of the Court of First Instance of Negros Occidental, who thereupon designated Municipal Judge Sixto Guanzon to take over the aforesaid three criminal cases; that the cases were finally set for hearing on October 29, 1970 for reception of evidence to determine the existence of a prima facie case, but on said date the prosecution, represented by private prosecutor J. Bautista Rabago, the herein complainant, failed to pre-sent additional evidence as required, so Municipal Judge Sixto Guanzon dismissed them without prejudice in an order dated the same day, "[t]he private prosecutor Atty. J. B. Rabago having (so) informed the Honorable Court that they are not in a position to present additional evidence * * *;" that after Judge Guanzon had dismissed the cases, herein complainant Rabago filed a motion for reconsideration (Annex "2" of the Complaint) stating that "we are amenable to the presentation of additional evidence as required by the Honorable Court thru Judge Calseña, hence move and pray that the order of dismissal be set aside and pray that said cases be set as soon as possible," which shows that complainant recognized the validity of respondent Judge's order (Exhibit "A"); and that, as embodied in the subsequent order of Judge Guanzon dated November 18, 1970, herein complainant agreed that "the preliminary investigation of these cases" be "endorsed to the Provincial Fiscal."

Complainant Rabago filed a reply to respondent Judge's answer.

The present administrative complaint was referred to the Executive District Judge of the Court of First Instance in Bacolod City for investigation, report and recommendation. The hearing of the case was commenced before Judge Kintanar on November 11, 1971, but in an order dated April 6, 1972, Judge Kintanar, believing that he would not be able to finish the investigation as he was due to retire on April 25, 1972, re-referred the case to Judge Oscar R. Victoriano, Presiding Judge of Branch II, who forthwith proceeded with the investigation.

Before Us now is the report of Judge Victoriano, in which he finds "that specifications Nos. 1, 2, 3 and 4 of the administrative complaint against the respondent Alfonso Calseña have not been established by sufficient and convincing evidence," and recommends "that the said administrative complaint be dismissed, but with the admonition to the respondent to exercise greater care in the observance of the specific procedure prescribed by the Rules of Court in the matter of preliminary examinations as this investigator has found as duly established that he did not comply strictly with Section 4, Rule 112 of the Rules of Court by causing to be issued the corresponding subpoena pursuant to the request of complainant (Exh. 'P') which was respondent's legal obligation even without such a request."

We are of the view that respondent should be exonerated of the charges.

- The crime of qualified trespass to dwelling falls within the concurrent jurisdiction of the municipal courts and the courts of first instance.[1] It is true, as asserted by complainant, that when a case is clearly within the original jurisdiction of the municipal court the accused "shall not be entitled as a matter of right to a preliminary investigation * * *" (Section 10, Rule 112, Rules of Court). However, preliminary investigation should not be confused with preliminary examination. Upon the filing of a criminal complaint, it is the duty of

the municipal judge to conduct a preliminary examination of the complainant and his witnesses by taking under oath, either in the presence or absence of the accused, the testimony of the complainant and his witnesses for the purpose of determining whether or not there is reasonable ground to believe that the accused has committed the offense charged. (Section 5, Rule 112, *Ibid.*) It is only when the judge is satisfied after such examination that a probable cause exists that a warrant of arrest against the accused may be issued. (Section 6, Rule 112, *Ibid.*)

In conducting a preliminary examination, the municipal judge must be guided by Section 87, paragraph 3, of the Judiciary Act of 1948, as amended by Republic Act No. 3828, quoted above, which, it will be noted, requires the municipal judge, before he can issue a warrant of arrest, to see to it that the following requirements are complied with: (1) he must examine the witnesses personally; (2) the examination must be under oath; and (3) the examination must be reduced to writing in the form of searching questions and answers. The record shows that the affidavits submitted in support of the three criminal complaints are not in the form of questions and answers. Assuming that respondent Judge might have asked the witnesses questions in the course of his partial examination on the afternoon of September 5, 1970, still he realized that Republic Act No. 3828 required him to conduct the examination in writing in the form of searching questions and answers. If, as respondent Judge claims, he was not yet satisfied of the existence of a probable cause on the basis alone of the affidavits and excerpts of the police blotter submitted in support of the complaint, and therefore desired to examine the police officers and the PC soldier listed as witnesses in the complaints but whose affidavits were not submitted, his refusal to issue immediately the warrants of arrest must be considered as an act of prudence, rather than a manifestation of partiality or ignorance. These are but in accord with the explicit requirement of the Constitution that "no warrant shall issue but upon probable cause to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce."^[2] The question whether "probable cause" exists or not must depend upon the judgment or discretion of the judge issuing the warrant.

- The circumstance that respondent Judge had administered the oath to the witnesses whose affidavits had been submitted to the court in support of the complaint, did not foreclose the duty of said respondent to satisfy himself whether or not probable cause existed before issuing the warrants of arrest. In one case^[3] We had occasion to explain the purpose of Republic Act No. 3828, which is to do away with the pernicious practice of some municipal judges of relying solely on affidavits accompanying the complaint in the ascertainment of the existence of a probable case, thus:

"We wish to stress, however, that what has been stated in this opinion is certainly not intended to sanction the return to the former practice of the municipal judges of simply relying upon affidavits or sworn statements that are made to accompany the complaint that are filed before them, in determining whether there is probable cause for the issuance of a warrant of arrest. That practice is precisely what is sought to be avoided by the amendment of Section 87(c) of Republic Act 296 (Judiciary Act of 1948) which requires that before a Municipal Judge issues a warrant of arrest he should first satisfy himself that there is a probable cause by examining the witnesses personally, and that the examination must be under oath and reduced to writing in the form of searching questions and answers. It is obvious that the purpose of this amendment is to prevent the issuance of a warrant of arrest against a person based simply upon affidavits of witnesses who made, and swore to, their statements before a person or persons other than the Judge before whom the criminal complaint is filed. We wish to emphasize strict compliance by the municipal or city judges of the provisions of Section 87(c) of the Judiciary Act of 1948, as amended by Republic Act 3828, in order to avoid malicious and/or unfounded criminal prosecution of persons."

- Equally unpersuasive is the charge that in requiring the complainants in the three cases of qualified trespass to dwelling to adduce further evidence, respondent Judge departed from his usual practice, with the intention of favoring the accused. The record shows that in at least ten other criminal cases respondent Judge issued orders requiring the complainants therein to present further evidence to establish the existence of a prima

facie case before he issued warrants of arrest. Respondent Judge followed this procedure in the following cases: Criminal Cases Nos. 2484 (Exh. "15"); 2571 (Exh. "16"); 2538 (Exh. "18"); 2534 (Exh. "19"); 2583 (Exh. "20"); 2493 (Exh. "21"); 2565 (Exh. "22"); 2529 (Exh. "23"); 2528 (Exh. "27-A"); and 2497 (Exh. "28-A").

It is true that in Criminal Cases Nos. 2413, 2414 and 2415 (People v. Parcon, et al.) respondent Judge did not require the reception of further evidence, but in the said cases it appears that after conducting a preliminary examination, and "[f]rom the testimonies of the offended parties," respondent Judge was forthwith convinced of the existence of a prima facie case against the accused. Nevertheless, respondent Judge did not issue warrants of arrest, but merely required the three accused "to present each two (2) witnesses of good standing in the community to guarantee the appearance of the accused during the trial of these cases and the accused to report periodically to the Court every two (2) weeks hereafter" (Order dated March 4, 1971, Annex "11").

- The charge of evasion of duty, in respondent Judge's alleged refusal without just cause to act on three criminal cases for qualified trespass to dwelling, is equally untenable.

The record shows that Atty. Mario A. Ditching, one of the accused in the three criminal cases, was respondent's brother-in-law. He was certainly disqualified therefore to act on these cases (Section 1, Rule 137, Rules). Consequently, on September 7, 1970, respondent Judge wrote a letter to Executive Judge Kintanar of the Court of First Instance in Bacolod City requesting permission to "inhibit myself from trying the above-entitled cases and that the Municipal Judge of Manapla, Negros Occidental be designated to take my place," on the ground that "[t]he undersigned is an in-law of two of the co-accused in the above-entitled cases" (Exh. "8"). In Administrative Order No. 36, Series of 1970, issued by Judge Kintanar on September 8, 1970, respondent Judge's request for inhibition was granted to act on the cases in lieu of respondent Judge (Exh. "9"). It is in view of this that Judge Guanzon took cognizance of the three criminal cases, as shown by the issuance by him of the order dated October 29, 1970 (Exh. "F") dismissing the cases without prejudice after having been informed by herein complainant that he was not in a position to present additional evidence.

We are, consequently, unprepared to hold respondent Judge administratively liable on any of the four charges contained in the present complaint.

We agree however with the recommendation of the Investigating Judge that respondent Judge should be admonished for his failure to issue subpoenas to the police officers and the PC soldier listed in the complaints as witnesses, in spite of the fact that the herein complainant had made a written request to that effect on September 5, 1970 (Exh. "P") in connection with the hearing scheduled for September 21, 1970. Having set the continuation of the preliminary examination for September 21, 1970 before his court, it was certainly incumbent upon him, upon being informed by the person making the complaint of the names and addresses of the witnesses whom said complainant believed to have knowledge of the commission of the offense, to issue the subpoena for such persons, requiring them to attend the hearing on the date designated (Section 4, Rule 112, Rev. Rules of Court).

PREMISES CONSIDERED, respondent Alfonso Calseña, Municipal Judge of Victorias, Negros Occidental, is hereby exonerated of all the charges contained in the present administrative complaint. He is however admonished to exercise greater care in the observance of the procedure prescribed by Section 4, Rule 112 of the Rules of Court. No costs.

Zaldivar, (Chairman), Fernando, Barredo, Fernandez, and Aquino, JJ., concur.

[1] Natividad, et al. v. Robles, etc., 87 Phil., 834, 838.

[2] Article III, Sec. 1(3), 1935 Constitution; Article IV, Sec. 3, New Constitution.

[3] Luna v. Plaza, etc., et al., G.R. No. L-27511, Nov. 29, 1968, 26 SCRA 310, 323.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.