

BERNARDO P. BETOY, SR.[], COMPLAINANT, JUDGE MAMERTO Y. COLIFLORES, PROMULGATED: RESPONDENT.

A.M. NO. MTJ-05-1608 (FORMERLY OCA I.P.I. NO. 00-910-MTJ). February 28, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

In a Letter-Complaint dated July 12, 2000, signed by Bernardo Betoy, Sr. (complainant) charges Judge Mamerto Y. Coliflores (respondent) with Grave Abuse of Discretion and Authority, Conduct Unbecoming as a Judge and Gross Negligence Resulting to Procedural Lapses (Dereliction of Duty).[1] Complainant attached to the Letter-Complaint an Affidavit executed by his wife Lucia Betoy citing paragraphs Nos. 30, 32, 35 and 36 thereof to wit:

- That the statements on page 4 of the said RESOLUTION dated December 8, 1999 of the Honorable Prosecutor RUSTICO D. PADERANGA is unfounded and arbitrary and perjured himself, (sic) the fact that the Honorable Judge MAMERTO Y. COLIFLORES have erred in issuing the SEARCH & SIEZURE ORDER dated September 17, 1999 for not conforming to the strict compliance with legal requirements (sic) on issuance and not even bother to think and wonder how in reality my residence was regarded as armory by the applicant and his witnesses for Search Warrant but instead issued such warrant solely basing on the affidavits of deponents police officers wherein during the search, none from among the property seized in our residence can provide proof of the allegations on the face of the Deposition and Application for SEARCH WARRANT of which Police Inspector CESAR KYAMCO ARQUILLANO, SPO2 REX LOMUSAD CABRERA and SPO1 JESUS CORTUNA ROJAS are liable for PERJURY. x x x

x x x x

- That the SEARCH & SEIZURE ORDER (S/W #0854) dated September 17, 1999 by the Honorable Judge MAMERTO Y. COLIFLORES should be declared NULL & VOID because it violates the CONSTITUTION, the fact issuance of it solely relies (sic) on the mere affidavits of deponents police officers which should be considered hearsay and not information personally known to the responding (sic) judge as required by settled jurisprudence through examination with probing and exhaustive questions of witnesses in determining probable cause in order for the Honorable Judge to prevent arbitrary and indiscriminate use of the WARRANT and therefore hold liable for PERJURY the herein respondent police officers, CESAR KYAMKO ARQUILLANO et al. for false declaration.

x x x x

- That almost nine months had passed reckoned from September 21, 1999 to date, but the Honorable Judge MAMERTO Y. COLIFLORES did not even upheld (sic) his Search & Seizure Order (S/W #0854) by not conducting a judicial inquiry from the implementing law enforcement officers (Police of CCPO-PNP/Agents of NBI Region 7) as to the whereabouts of the contraband items (assorted high powered firearms) as alleged, which is 48 hours upon served. x x x

- That the Honorable Judge MAMERTO Y. COLIFLORES appears being not responsible of (sic) his issuance

of Search & Seizure Order (S/W #0854) by his inaction and therefore clearly shows his gesture of consent on the arbitrary and indiscriminate use of the said Warrant. x x x [2]

as his bases in filing the present administrative complaint.

On September 5, 2000, respondent filed his Comment, portions of which read as follows:

With respect to Item No. 30 of the letter complaint of Bernardo Padilla Beto, Sr., by virtue of the affidavit complaint of and executed by affiant-wife Lucia Udasco Beto, that there was no proof from the allegations on the face of the deposition of the applicant Police Inspector Cesar Kyamko Arquillano, and its (sic) witnesses, that said residence is an armory.

It should be noted that the Judge issuing the Search Warrant could not go beyond what is not alleged in the application, considering that what is necessary (sic) is the existence of a probable cause; and that they are probably guilty thereof, and that the investigation on the application for Search Warrant was made personally by the Presiding Judge thru searching questions and answers in writing and sworn to before him complying [with] statutory and constitutional requirements of the law.

With respect to item No. 32 of the Affidavit that the said Search Warrant be declared null and void for it solely relies on the Affidavit of the applicant and their witnesses, it should be remembered that the same could only be declared null and void if a motion is filed in Court and a hearing be conducted to that effect.

It should be noted that there was filed a Motion to Release Shotgun dated September 24, 1999 by Atty. Cornelius Gonzalez and Atty. Vicente Fernandez II which was granted by the undersigned-respondent per Order dated September 27, 1999, machine copy of which is hereto attached and made an integral part of this rejoinder, and another Urgent Motion for Release of Air Rifle filed by the same counsel, Atty. Vicente Fernandez II dated June 5, 2000 which was also granted by the undersigned per maching (sic) copy hereto attached.

With respect to Item No. 36 that the issuing judge, by his inaction clearly appears to have consented in the arbitrary and indiscriminate use of the Search Warrant. It should be remembered that the issuing judge has no physical control on the manner the Search Warrant was being implemented and conducted; what the issuing judge did emphasixed (sic) and applied (sic) was the statutory and constitutional requirements of the law in the issuance of the Search Warrant.[3]

On August 28, 2002, the Court issued a Resolution referring the instant case to Hon. Rosabella M. Tormis, Executive Judge, MTCC, Cebu City, for investigation, report and recommendation.[4] In her Report dated December 2, 2004, Executive Judge Tormis found that respondent judge is not guilty of the charges filed against him relative to the issuance of the subject search warrant.[5]

Meanwhile, respondent judge compulsorily retired on August 17, 2003.

On July 14, 2005, the Office of the Court Administrator (OCA) submitted to the Court a Memorandum[6] wherein it found that respondent judge was able to establish probable cause for the issuance of the questioned search warrant; that however, respondent judge is guilty of gross ignorance of the law for having failed to conduct a judicial inquiry as to the whereabouts of the seized firearms and ammunitions, in violation of Section 12(b), Rule 126 of the Revised Rules of Criminal Procedure. The OCA recommended that respondent judge be fined in the amount of P20,000.00, to be deducted from his retirement benefits.

In support of its findings, the OCA states in its Memorandum, thus:

Records show that respondent judge personally conducted the examination of the applicant for search warrant, P/Inspector Cesar Kyamko Arquillano, and his two witnesses, SPO2 Rex Lomusand (sic) Cabrera and SPO1 Jesus Cortuna Rojas. However, the questions propounded by the respondent judge were not as probing and

exhaustive as the Rules require. As stressed in *Roan v. Gonzales*, the examination must be probing and exhaustive, not merely routinary or proforma, if the claimed probable cause is to be established. The examining magistrate must not simply rehash the contents of the affidavits but must take his own inquiry on the intent and justification of the application. In this case, respondent judge failed to ask follow-up questions on the circumstances surrounding the possession of illegal firearms and ammunition by complainants and two others during the examination. In fact, he failed to elicit information as to said circumstances from the applicant himself since the latter merely narrated that after their asset reported the presence of persons armed with some short and long firearms and ammunitions in the house of the complainants, they conducted a surveillance and casing operation on 30 August 1999 by renting a room in one of the neighboring houses of the complainants where they visibly saw the suspects. Despite the failure of P/Inspector Arquillano to categorically state that he saw the firearms, which were the subject of the search warrant, inside the house of the complainants, respondent judge did not ask questions that could have elicited such information. Nonetheless, while P/Inspector Arquillano cannot be said to have gained personal knowledge of the fact of possession of firearms by the complainants and two others, his two witnesses, SPO2 Cabrera and SPO1 Rojas, ably established said fact of possession, having sworn before respondent judge that they personally saw the suspects in possession of the firearms. These circumstances belie the claim of complainants that the declarations of the police officers in their affidavits are mere hearsay and do not constitute personal knowledge that would have otherwise made the issuance of Search Warrant No. 0894 (sic) irregular. With the first hand information on the fact of possession of firearms by the complainants and two others coming from the deponents themselves, particularly SPO2 Cabrera and SPO1 Rojas, respondent judge rightly established probable cause for the issuance of the questioned search warrant.

On the failure of respondent judge to conduct a judicial inquiry as to the whereabouts of the seized firearms and ammunitions, it appears that respondent judge failed to abide by the Rules in this respect. Paragraph (b), Section 12, Rule 126 of the Revised Rules of Criminal Procedure requires the issuing judge to ascertain ten days after the issuance of the search warrant if the return has been made, and if none, shall summon the person to whom the warrant was issued and require him to explain why no return was made. Nothing in the records shows that a return of the questioned search warrant was made by the police officers. Neither did respondent judge claim in his comment that he complied with the above Rule. His lame excuse that the issuing judge has no physical control on the manner the Search Warrant was being implemented and conducted as his primordial concern only is the compliance with the statutory and constitutional requirements for the issuance of the search warrant betrays his ignorance of the Rules. The Rule heretofore mentioned requires the issuing judge, in case the return has been made, (a) to see to it that the officer forthwith deliver to him the property seized, together with a true inventory thereof duly verified under oath; and (b) to ascertain whether Section 11 of Rule 126 has been complied with. Should the issuing judge ascertain that the officers seizing the property under the warrant failed to follow the procedures mandated by the Rules, he may cite them in contempt of court. It appears that despite the absence of a return of the questioned search warrant, respondent judge failed to summon and require P/Inspector Arquillano to explain why no return was made.

This is not the first time that respondent judge was taken to task by the Court for gross ignorance of the law and procedure. In *Tugot v. Judge Coliflores*, the Court established that he did not observe the period within which to conduct the preliminary conference, as what he applied in an ejectment case was Rule 18 on pre-trial, instead of the provisions of the Rule on Summary Procedure. In imposing a fine in the amount of P20,000.00 upon respondent judge, the Court reminded him the judicial competence demands that judges should be proficient in both procedural and substantive aspects of the law. They have to exhibit more than just cursory acquaintance with statutes and procedural rules and be conversant, as well, with basic legal principles and well-settled authoritative doctrines. To the end that they be the personification of justice and rule of law, they should strive for a level of excellence exceeded only by their passion for truth. Anything less than this strict standard would subject them to administrative sanction. Respondent judge failed to take heed of this exhortation.[7]

The Court does not fully agree with the findings of the OCA.

The Court finds that there is much to be desired in respondent judge's examination of the applicant for the search warrant, P/Insp. Cesar Kyamko Arquillano (P/Insp. Arquillano) and his witnesses namely, SPO2 Rex Lomusad Cabrera (SPO2 Cabrera) and SPO1 Jesus Cortuna Rojas (SPO1 Rojas). Respondent judge failed to thoroughly examine the applicant and his witnesses in a manner that would sufficiently establish the existence of a probable cause to justify the issuance of a search warrant.

In *Nala v. Judge Barroso, Jr.*[8], this Court had occasion to explain and discuss the definition of "probable cause" in relation to the issuance of a search warrant, to wit:

The "probable cause" for a valid search warrant has been defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed, and that objects sought in connection with the offense are in the place sought to be searched. This probable cause must be shown to be within the personal knowledge of the complainant or the witnesses he may produce and not based on mere hearsay. In determining its existence, the examining magistrate must make a probing and exhaustive, not merely routine or pro forma examination of the applicant and the witnesses. Probable cause must be shown by the best evidence that could be obtained under the circumstances. On the part of the applicant and witnesses, the introduction of such evidence is necessary especially where the issue is the existence of a negative ingredient of the offense charged, e.g., the absence of a license required by law. On the other hand, the judge must not simply rehash the contents of the affidavits but must make his own extensive inquiry on the existence of such license, as well as on whether the applicant and the witnesses have personal knowledge thereof.

In *Paper Industries Corporation of the Philippines (PICOP) v. Asuncion*, we declared as void the search warrant issued by the trial court in connection with the offense of illegal possession of firearms, ammunitions and explosives, on the ground, inter alia, of failure to prove the requisite probable cause. The applicant and the witness presented for the issuance of the warrant were found to be without personal knowledge of the lack of license to possess firearms of the management of PICOP and its security agency. They likewise did not testify as to the absence of license and failed to attach to the application a "no license certification" from the Firearms and Explosives Office of the Philippine National Police.

x x x x

In the case at bar, the search and seizure warrant was issued in connection with the offense of illegal possession of firearms, the elements of which are – (1) the existence of the subject firearm; and (2) the fact that the accused who owned or possessed it does not have the license or permit to possess the same. Probable cause as applied to illegal possession of firearms would therefore be such facts and circumstances which would lead a reasonably discreet and prudent man to believe that a person is in possession of a firearm and that he does not have the license or permit to possess the same. Nowhere, however, in the affidavit and testimony of witness Ruel Nalagon nor in PO3 Macrino L. Alcoser's application for the issuance of a search warrant was it mentioned that petitioner had no license to possess a firearm. While Alcoser testified before the respondent judge that the firearms in the possession of petitioner are not licensed, this does not qualify as "personal knowledge" but only "personal belief" because neither he nor Nalagon verified, much more secured, a certification from the appropriate government agency that petitioner was not licensed to possess a firearm. This could have been the best evidence obtainable to prove that petitioner had no license to possess firearms and ammunitions, but the police officers failed to present the same.[9]

As in the *Nala* case, the search warrant in the present case was issued in connection with the alleged illegal possession of firearms and ammunition by the present complainants.[10] However, the Court finds nothing in the depositions of P/Insp. Arquillano, SPO2 Cabrera and SPO1 Rojas to indicate that they had personal knowledge that herein complainant and his companions mentioned in the search warrant had no license or permit to possess

firearms and ammunition.[11] Despite the glaring insufficiency of the allegations in their respective depositions, respondent judge still failed to elicit the necessary information during his examination of the said applicant and his witnesses to establish that complainant and his companions are indeed guilty of illegally possessing firearms and ammunition. During the taking of the depositions of the applicant and his two witnesses, respondent judge asked them if they have personal knowledge of facts that complainant and his companions are illegally possessing firearms. In response to respondent's question P/Insp. Arquillano answered:

A – Yes, your Honor. Our "asset" went to our office and reported the presence of persons armed with One (1) pc. Cal. 357 rev; Two (2) pcs. M16 rifle; Four (4) pcs. Cal. 38 rev; Three (3) pcs. Cal. 45 pistol; Four (4) pcs. Shotguns and Assorted Ammunitions, that these suspects are seen by him visibly going in and out of their house. Our asset is one of the neighbors of the suspects. Through this information and together with my operatives we conducted surveillance and casing operation on August 30, 1999 and we rented a room in one of the houses in the neighborhood and thereat we can visibly saw (sic) the suspects.[12]

SPO2 Cabrera and SPO1 Rojas also answered in the same manner, thus:

A – Yes, your Honor. Through the information given by our "asset", we started casing and surveillance of the said area sometime on August 30, 1999 and we decided to rent a room in the (sic) one of the houses in the neighborhood and we saw personally the firearms they illegally possess.[13]

Judging from the succeeding questions propounded by respondent judge, it appears that he was satisfied with the answers of the applicant and his witnesses. However, the fact alone that complainant and his companions were seen wielding guns does not confirm nor verify that they illegally possess such weapons. The statement of SPO2 Cabrera and SPO1 Rojas in their deposition that they personally saw the firearms illegally possessed by complainant and his companions does not constitute "personal knowledge" of the illegality of such possession; instead, it merely qualifies as "personal belief." However, this belief was partly proven wrong when it was later found out that one of the seized firearms, a Shooter 12-gauge shotgun with Serial No. Sam 01109, is duly licensed. In fact, this compelled the respondent judge to release the same, together with 50 rounds of shotgun ammunition, in favor of complainant.[14] Hence, respondent judge should not have simply relied on the statements of the applicant and his witnesses. He should have probed further. Respondent judge could have directly asked the applicant and his witnesses if they have personal knowledge of the particular fact that the complainant and his companions do not have the necessary license or permit to possess the firearms which are in their custody. In the alternative, he could have inquired if the applicant, or the office which he represents, was able to secure a certification from the appropriate government agency to the effect that complainant and his companions are, in fact, not given a license or permit to possess firearms. As the Court held in Nala[15] case, this certification is the best evidence obtainable to prove that complainant and his companions, indeed, have no license or permit to possess a firearm. Unfortunately, respondent judge failed to ask any of these questions. Thus, respondent judge fell short of the standard of competence required of magistrates in the performance of their functions. Specifically, he failed to observe Rule 1.01, Canon 1 and Rule 3.01, Canon 3 of the Code of Judicial Conduct, to wit:

Rule 1.01.— A judge should be the embodiment of competence, integrity, and independence.

Rule 3.01. – A judge shall be faithful to the law and maintain professional competence.

which exhorts judges to be the embodiment of professional competence.

As to respondent judge's failure to conduct a judicial inquiry as to the whereabouts of the seized firearms and ammunitions, this Court agrees with the OCA that respondent judge was remiss in his duty of ascertaining if a return of the warrant has been made, and if there is none, to summon the person to whom the warrant was issued

and require him to explain why no return was made.

However, what has been violated by respondent judge is not Section 12(b), Rule 126 of the Revised Rules of Criminal Procedure, as amended, considering that the questioned warrant was issued on September 17, 1999 while the amendments which incorporated the present Section 12, Rule 126 took effect only on December 1, 2000. Actually, the procedural rule violated by respondent judge was Guideline No. 5(g) of Administrative Circular No. 13[16], issued by this Court on October 1, 1985, to wit:

x x x x

g. The search warrant shall be valid for ten (10) days from date of issuance, and after which the issuing judge should ascertain if the return has been made, and if there was none, should summon the person to whom the warrant was issued and require him to explain why no return was made. If the return has been made, the judge should ascertain from the officer who seized the property under the warrant if a detailed receipt of the property seized was left with the lawful occupants of the premises in whose presence the search and seizure were made, or in the absence of such occupants, whether he left a receipt in the place in which he found the seized property in the presence of at least two witnesses of sufficient age and discretion residing in the same locality, and should require that the property seized by virtue of the warrant shall be delivered to the judge who issued the warrant. The judge should see to it that an accurate and true inventory of the property seized duly verified under oath is attached to the return and filed with the court; x x x

Respondent judge should know that his duty as a magistrate does not end when he issued the search warrant. While the Order of Search and Seizure issued by respondent judge directed the peace officers implementing the warrant to bring to him the property seized, respondent judge did not refute complainant's allegation that he failed to inquire from the law-enforcement officers implementing the subject warrant as to the whereabouts of the seized firearms. Moreover, there is no evidence to show that respondent judge required the concerned law-enforcement officers to make an accurate and complete inventory of the seized firearms and submit the same to him. From the foregoing, it is clear that respondent judge failed to comply with the rules relative to the issuance and implementation of a search warrant.

Verily, this Court agrees with the OCA in holding that a judge is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules.[17] It is imperative that he be conversant with basic legal principles and be aware of well-settled authoritative doctrines.[18] He should strive for excellence exceeded only by his passion for truth, to the end that he be the personification of justice and the rule of law.[19] To be able to render substantial justice and maintain public confidence in the legal system, they are expected to keep abreast of all laws, legal principles and prevailing jurisprudence and to remain conversant with them.[20] Everyone, especially a judge, is presumed to know the laws and apply them properly in all good faith.[21] Judicial competence requires no less. Ignorance of the law excuses no one -- least of all, a judge.[22] When the law is sufficiently basic, a judge owes it to his office to simply apply it; anything less than that would be gross ignorance of the law.[23] In *Dizon, Jr. v. Judge Veneracion*,[24] the respondent judge therein was found guilty of gross ignorance of the law for his failure to observe the rules governing determination of probable cause. Thus, for failing to observe the rules governing determination of probable cause and for non-compliance with the directives of Administrative Circular No. 13, the Court finds herein respondent guilty of gross ignorance of the law or procedure.

Under Section 8(9), Rule 140 of the Rules of Court, as amended, gross ignorance of the law or procedure is classified as a serious charge. Section 11(A) of the same Rule provides that the penalty to be imposed if a respondent is found guilty of a serious charge is either a fine of more than P20,000.00 but not more than P40,000.00, suspension from office without salary and other benefits for more than three (3) but not exceeding six

(6) months, or dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations.

The OCA recommendation of fine of P20,000.00 is deemed just and reasonable.

WHEREFORE, respondent retired Judge Mamerto Y. Coliflores is found guilty of gross ignorance of the law. He is FINED P20,000.00 to be deducted from his retirement benefits.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

[*] Lucia U. Betoy was erroneously included as a complainant in the original title of the case.

[1] Rollo, Vol. I, p. 1.

[2] Id. at pp. 18-19.

[3] Id., at p. 172.

[4] Id., at p. 314.

[5] Rollo, Vol. II, p. 699.

[6] Rollo, Vol. I, pp. 318-322.

[7] Id. at pp. 320-322.

[8] 455 Phil. 999 (2003).

[9] Id., at pp 1008-1011.

[10] Rollo, Vol. I, p. 42.

[11] Id., at pp. 45-48.

[12] Id., at p. 45.

[13] Id., at p. 47.

[14] Id., at p. 50.

[15] Supra.

[16] Guidelines and Procedures in the Issuance of Search Warrants.

[17] Marzan-Gelacio v. Judge Flores, 389 Phil. 372, 380 (2000).

[18] Id.

[19] Id

[20] Jaucian v. Judge Espinas, 431 Phil. 597, 608 (2002).

[21] Id.

[22] Id., at p. 609.

[23] Judge De los Santos v. Judge Mangino, 453 Phil. 467, 476 (2003).

[24] 391 Phil. 126 (2000).

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