

MERCEDITA G. LORENZO, COMPLAINANT, VS. JUDGE PRIMO L. MARQUEZ, RESPONDENT.*Adm. Matter No. MTJ-87-123. June 27, 1988*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/57abe2cf2295/>**PER CURIAM:**

In a sworn statement dated October 11, 1987 executed by Mercedita G. Lorenzo and in an endorsement of December 2, 1987 of the Chief State Prosecutor transmitting the report of the National Bureau of Investigation dated November 5, 1987, the herein respondent Judge Primo L. Marquez of the Municipal Trial Court (MTC) of Sariaya, Quezon is charged on three counts, namely: (1) harassment in failing to indorse the reappointment of complainant Mercedita G. Lorenzo as Municipal Trial Court Aide; (2) for violation of Section 1; Rule 137 of the Rules of Court in deciding Civil Case No. 1202 entitled *Kilusang Bayan Pampananalapi ng Sariaya vs. Gilda Balid, et al.*, when he was the former counsel of the plaintiff; and (3) for issuing a subpoena for the appearance of Jose D. Obosa, a prison inmate of the National Bilibid Prisons (NBP) to appear before him when said person has no case pending before him nor is he a witness in any pending case therein.

The respondent was required to file an answer to said complaint and after his answer was filed a formal investigation was conducted by the Deputy Court Administrator, Meynardo A. Tiro, by authority of the Court, wherein evidence was adduced by the complainant and respondent. On May 27, 1988, said official submitted his report and recommendation to the Court.

On the first charge of harassment, the respondent explained that he did not recommend the reappointment of complainant Mercedita G. Lorenzo because she was inefficient. Such reluctance of the respondent must be because she was a protegee of the respondent's predecessor, former Judge Jose Parentela, Jr., who reportedly exposed the illegal issuance of the subpoena to Obosa by the respondent. Nevertheless, it is the privilege of the respondent as presiding judge of his court to recommend the employee with whom he will work. If he did not choose to have said complainant reappointed, he cannot thereby be held administratively liable.

Under the second charge, there is no question that the respondent was the counsel for the plaintiff in Civil Case No. 1202 entitled "*Kilusang Bayan Pampananalapi ng Sariaya (KBPS) vs. Gilda Balid, et al.*" filed in the Municipal Trial Court of Sariaya, Quezon. The complaint was filed by Crisostomo L. Luna, president and board chairman of the plaintiff, who is his uncle.[1] The respondent was then a member of the board of directors of the plaintiff.[2] In an order of November 28, 1986, Judge Parentela declared defendants in default for failure to file their answer. When the respondent assumed office he issued an order on February 10, 1987 requiring plaintiff to secure the services of another counsel in his place and he set the case for hearing. On March 9, 1987, he issued an order considering the case submitted for decision, on April 2, 1987, he rendered a decision favorable to the plaintiff, the dispositive part of which reads as follows:

"Judgment is hereby rendered in favor of the above-named plaintiff and against the above-named defendants, whereby defendants are hereby directed to pay jointly and severally plaintiff the following, to wit:

- Principal amount of P4,676.00 plus one (1%) percent interest on the unpaid balance and the two (2%) percent

penalty interest per month until the entire obligation is fully paid;

- Attorney's fees equivalent to ten (10%) percent the total amount due and collectible, plus litigation expenses in the amount of P460.00 and cost of suit."

An appeal therefrom was interposed by the defendants to the Regional Trial Court of Lucena City.

Section 1. Rule 137 of the Rules of Court provides as follows:

"Section 1. Disqualification of judges. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

"A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above."

From the foregoing provision of the rules, a judge cannot sit in any case in which he was a counsel without the written consent of all the parties in interest, signed by them and entered upon the record. The respondent alleged that since there was no objection from any of the parties, he proceeded to preside over the case and to decide it. This is a clear violation of the law. The rule is explicit that he must secure the written consent of all the parties, not a mere verbal consent much less a tacit acquiescence. More than this, said written consent must be signed by them and entered upon the record.

The failure of the respondent to observe these elementary rules of conduct betrays his unusual personal interest in the case which prevailed over and above his sworn duty to administer the law impartially and without any fear or favor.

The third charge is even more serious. The record of Criminal Case No. 8924, entitled "People of the Philippines vs. Cesar Sitlamat" for violation of B.P. Big. 22, shows that on July 24, 1987, the respondent issued a subpoena, addressed to prison inmate Jose Obosa, who was then a convict in the NBP at Muntinlupa. Rizal, requiring him to appear before his court on July 27, 28 and 29, 1987 at 8:30 A.M. and then and there to testify in the above entitled case. There is a notation at the top thereof "For Conference." [3]

On August 18, 1987, the respondent issued an order and on the basis thereof issued another subpoena for Obosa to appear for a conference on August 28, 1987 at 8:30 A.M. [4] There was no reason for respondent to subpoena Obosa to testify in said case as the accused had not yet been arrested and thus the case could not be set for hearing.

Respondent, however, explained that the reason he subpoenaed Obosa was due to his interest in having the accused Salamat arrested as he was still at large. He stated that during one of his speaking engagements in San Narciso, Quezon, he met a certain Rivera who told him that Obosa was a friend of Salamat who may be able to tell the respondent about the whereabouts of Salamat. Respondent added that it was the complainant Maximino Torres who requested the issuance of said subpoena for Obosa.

Torres, however, testified that he did not know Obosa and that it was the respondent who drafted a letter dated August 14, 1987 and caused him to sign the same by going to his house, nine kilometers away from the courtroom. The said letter-request was made long after the first subpoena was issued by respondent on July 24, 1987. This discrepancy reveals the questionable motive of the respondent.

Because of the subpoena issued by the respondent, Obosa appeared at past 12:00 noon on July 28, 1987 in the house of the respondent at Sariaya, Quezon, not in the courtroom, with two prison escorts and yet the respondent did not ask him about the whereabouts of Salamat. Respondent stated Obosa was to appear before him in court but there was no court hearing as yet as the accused had not been apprehended.

Again, on July 29, 1987. Obosa appeared in his house at past noon but likewise respondent did not inquire about the whereabouts of Salamat. The excuse of the respondent is that was the time he had to bring his sick daughter to the hospital.

Atty. Salvador Ranin, the agent of the National Bureau of Investigation (NBI) who investigated the case, testified that from July 28, 1987, up to August 2, 1987, Obosa did not return to his quarters at the NBP although there was an entry in the logbook of the NBP that Obosa returned to his quarters allegedly on August 2, 1987 at 2:10 in the afternoon. The well-publicized murder of Local Government Secretary Jaime Ferrer occurred at 6:45 P.M. of the same day. Ranin stated that during the incident, three (3) school children saw a man with a gun running towards La Huerta, Parahaque. Incidentally, the residence of Obosa is in Paranaque.

Ranin went to Muntinlupa and he photographed Obosa while taking a bath. He blew up the picture and showed it to the witnesses and the children and they positively identified Obosa as the man running away from the scene of the crime. Later fifteen (15) persons were lined up at the NBI headquarters in Manila together with Obosa and the witnesses pointed to Obosa as the one fleeing after the commission of the offense. Ranin emphasized that in their opinion the marginal entry in the logbook of the NBP as to the alleged return of Obosa to his quarters on August 2, 1987 at 2:10 P.M. is a false entry.

There are now two criminal cases pending before the RTC, Makati, Metro Manila, namely: Criminal Case No. 011, entitled People of the Philippines vs. Nieves Constancio, Rue I Villahermosa y Fernandez, Jose Obosa y Tutaan and Victoriano Tutaan, prison superintendent, for the murder of Secretary Ferrer; and Criminal Case No. 012 against the same accused for the murder of Jesus T. Calderon, driver of Secretary Ferrer. The respondent is not accused in the said criminal cases.

No doubt the respondent is guilty of the charge against him. There was no reason for him to require the appearance of Obosa in his court, even for a conference. The criminal case pending before him was not yet ready for trial as the accused was at large. If truly respondent was impelled with the desire to locate the whereabouts of accused Salamat so that he could be arrested, all that he could have done was to have a policeman or court employee go to Muntinlupa for the purpose, or he himself could have done so.

Under Section 3, Rule 23 of the Rules of Court, a subpoena shall be signed by the clerk of court or by the judge, if the court has no clerk, under the seal of the court. The respondent had a clerk of court, Miss Gloria Lorenzo, and yet he himself issued and signed the subpoena. His undue interest to bring out Obosa from his confinement allegedly to appear before him is obvious. .

Respondent did not even consider that Circular No. 6 dated December 5, 1987 of this Court specifically directs that no maximum security prisoner could be taken out of the NBP to serve as witness in a case and testify therein without the permission of this Court and unless the same is absolutely necessary. The respondent failed to secure such authority from this Court before issuing a subpoena for Obosa. His lame excuse is that he has not read said circular.

In causing Jose Obosa to get out of the NBP allegedly to appear before him, the respondent wittingly or unwittingly, furnished Obosa the opportunity to participate in the commission of a crime or crimes. In fact, Obosa is now being held to account as a principal in the murder of Secretary Ferrer and his driver.

The respondent committed grave and serious misconduct in the performance of his duty. He demonstrated his unfitness to be a judge as in fact by his behavior he has placed the judiciary in disrepute.[5] He abused the great powers of his office so that he should not stay a moment longer as a member of the judiciary.

WHEREFORE, while respondent is cleared of the charge of harassment filed by Mercedita G. Lorenzo, he is hereby found guilty of grave and serious misconduct for deciding Civil Case No. 1202, entitled Kilusang Bayan Pampananalapi ng Sariaya (KBPS) vs. Gilda Balid, et al, wherein he was a former counsel for plaintiff in violation of Section 1, Rule 137 of the Rules of Court, and for having illegally issued a subpoena for the appearance of prison inmate Jose T. Obosa of the NBP before him in Criminal Case No. 8924, entitled "People of the Philippines vs. Cesar Salamat"; and as penalty thereof, the respondent is hereby DISMISSED from the service with prejudice to reinstatement in the government and forfeiture of his retirement benefits, if any, but without prejudice to the payment of his accrued leave or salaries already earned.

SO ORDERED.

Yap, C. J., Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, and Medialdea, JJ., concur.

[1] Exhibit 7.

[2] Exhibit K-1.

[3] Exhibit "C" - Exhibit 2.

[4] Exhibit 6-Exhibit "B".

[5] Lim v. Judge Sixto Seguiban, AM Case No. B-612P-MTJ, March 10, 1988.

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