

THELMA ALMONTE, COMPLAINANT, VS. JUDGE FRED A. BIEN, RESPONDENT.

A.M. NO. MTJ-04-1532. June 27, 2005

Ponente: GARCIA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/603afc57a6c/>

GARCIA, J.:

In a verified, sworn administrative complaint[1] directly filed with this Court, herein complainant, Thelma Almonte, charges herein respondent, Judge Fred A. Bien, incumbent Acting Presiding Judge of the 8th Municipal Circuit Trial Court (MCTC) of San Jacinto-Monreal, 5th Judicial Region, San Jacinto, Masbate with gross ignorance of the law in connection with respondent's preliminary investigation of Criminal Case No. 4598, a prosecution for robbery filed with respondent's court at the instance of Isauro Lique against the complainant and her husband, Jaime Almonte.

Complainant alleges that after conducting a "semblance of a preliminary investigation" by an ex-parte inquiry on Isauro Lique, the respondent judge, in his order of April 24, 2002,[2] directed the arrest of complainant and her husband and fixed their bail for provisional liberty at P40,000 each.

Complainant avers that respondent judge disregarded the procedure for preliminary investigation, as provided under Section 3(b) and (c), Rule 112, of the Revised Rules of Court. She claims that she and her husband were deprived of their right to due process because they were not given copies of the complaint for robbery, nor were they summoned by the respondent judge to appear before him and present their counter-affidavits and other supporting documents.

On May 20, 2002, complainant, through counsel, filed in Criminal Case No. 4598 a Motion To Quash Or Cancel The Order Dated April 24, 2004 Directing The Issuance Of The Warrant Of Arrest Of Accused Herein And Fixing The Bail Bond For Their Provisional Liberty And The Warrant Of Arrest Itself.[3] However, in his order of June 25, 2002,[4] the respondent judge denied the motion, relying on the ruling of this Court in Rolito Go vs. Court of Appeals[5] that once an accused posted his bail bond, he thereby waived his right to question any defect in the issuance of the warrant of arrest.

Complainant asserts that the respondent's denial of their aforementioned motion is another manifestation of the latter's ignorance of the rules of procedure, arguing that Section 26, Rule 114 of the Rules of Court provides that admission to bail shall not bar the accused from challenging the validity of his arrest or the legality of the warrant issued therefor, provided that he raised them before entering his plea. Not having been arraigned yet, complainant argues that she has all the right to question the validity of the warrants of arrest issued against her and her husband.

In the same administrative complaint, complainant further avers that prior to the filing of the robbery case against her and her husband by Isauro Lique, they had caused the filing against Lique of a criminal case for acts of lasciviousness for molesting their 9-year old daughter, Brenda Almonte, which case is still pending with the Regional Trial Court at Masbate, Branch 48 (Family Court). Complainant asserts that Lique maliciously filed the

complaint for robbery in order to compel her and her husband to drop the earlier criminal case for act of lasciviousness they filed against him.

In his COMMENT[6] dated March 10, 2003, respondent judge wants it placed on record that he is: (1) the Acting Presiding Judge of the MCTC of both San Jacinto and San Fernando, Masbate; (2) the Judge-Designate of some of inhibited cases in the MTCC, Masbate and MCTC of Aroroy, Masbate; and (3) the Presiding Judge of the MCTC of Dimasalang, Masbate, his permanent station.

In the same COMMENT, respondent admits having conducted on April 24, 2002 the preliminary investigation in Criminal Case No. 4598; that after finding the existence of a probable cause, he issued the warrant of arrest against complainant and her husband and fixed a bail bond of P40,000 each for their provisional liberty, as required under the first stage of preliminary investigation; that although no subpoenas were issued to the accused, such an omission was an honest mistake on his part in the performance of his duties, and not due to his ignorance of the law or procedure, adding that he had been extra-careful and diligent in the discharge of his duties, dispensing justice without delay, fear or favor; that in fact, his April 24, 2002 order was even affirmed by the Office of the Provincial Prosecutor, Masbate City which eventually filed an information for Robbery against complainant and her husband before the Regional Trial Court at San Jacinto, Masbate.

As regards his denial of the Motion To Quash Or Cancel The Order dated April 24, 2002, etc., (supra) filed by complainant and her husband, thru counsel, in Criminal Case No. 4598, respondent, by way of explanation, reproduced in his COMMENT the full text of his denial Order of June 25, 2002,[7] to wit:

This is a Motion to Quash or Cancel the Order dated April 24, 2004 Directing the Issuance of the Warrant of Arrest Herein and Fixing the Bail Bond for their Provisional Liberty and the Warrant of Arrest Itself, filed by accused thru counsel Atty. Ruben Joel A. Puertollano in the above-entitled case.

Accused alleged that this Court did not observe the provisions of Sections 3, 5 and 6 (b) of Rule 112 of the Revised Rules on Criminal Procedure, as amended relative to the conduct of the preliminary investigation and before the issuance of a warrant of arrest.

Records of the case would readily show that when this instant motion was filed on May 20, 2002, the Court also received an Order of Release issued by the Hon. Cristobal M. Bailon of the Regional Trial Court, Branch 50, San Jacinto, Masbate commanding the Jailer of the Bureau of Jail Management and Penology, San Jacinto, Masbate to release from custody accused Thelma Almonte for having posted the required bail bond.

In the case of *People vs. Rolito Go*, the Supreme Court held that once an accused has posted his bail bond, he waives his right to question any defect in the issuance of the warrant of arrest. For this reason, the instant Motion to Quash the Warrant of Arrest issued by this Court has now become moot and academic.

As to the allegation that the Court did not observe the provisions in the conduct of the preliminary investigation and the issuance of warrant of arrest, it is worth recalling that basically the preliminary examination has two phrases or stages. The first is the preliminary examination. It is here where the Court conducts an ex parte inquiry on the prosecution witnesses based on their sworn statements in the form of searching questions and answers. After this, if the Court believes that there is a probable cause that the crime has been committed and that the accused is probably guilty thereof, then the Court will issue a warrant of arrest in order not to frustrate the ends of justice.

When the accused has already been arrested on the basis of the warrant of arrest issued by the Court, and has been committed for detention, the Court immediately issues a subpoena to the accused requiring him to submit his counter-affidavit and other controverting evidence for the evaluation of the Court. This is the second stage of the preliminary investigation.

It is submitted that the Court has correctly applied the rules on the conduct of the preliminary investigation and the issuance of the warrant of arrest, and it finds no justifiable reason to quash or cancel the order dated April 24, 2002 and the warrant of arrest itself.

WHEREFORE, premises considered, the Court hereby resolves to DENY the instant Motion to Quash or Cancel the Order dated April 24, 2002 and the Warrant of Arrest.

SO ORDERED. (Underscoring by respondent himself).

Respondent judge submits that the aforementioned Order is in accordance with law and with what he honestly believed as correct and proper, and not on his alleged ignorance of the law and procedure, as charged by complainant.

In her Reply to Comment,[8] complainant expresses the belief that respondent judge issued the warrants of arrest in Criminal Case No. 4598 without giving her and her husband notice and chance to file their counter-affidavits to favor Isauro Lique. Elaborating thereon, complainant asserts that if respondent judge is truly not ignorant of the law, as he claims, then it could well be that his intention in forthwith issuing the warrants is for her and her husband to be immediately arrested and detained, such that if they could not post bail, Lique would have a bargaining leverage for the dropping of the case for acts of lasciviousness then pending against him. Complainant also points out that Lique's complaint for robbery was directly filed by the latter with the Municipal Trial Court of San Jacinto, Masbate without reporting the alleged robbery incident with the local barangay authorities or with the Philippine National Police of San Jacinto, Masbate.

Complainant also contends that respondent judge's argument to the effect that a preliminary investigation has two stages or phases is misplaced. She asserts that respondent judge obviously applied Section 6, Rule 112 of the old Rules on Criminal Procedure which has been already amended by the Revised Rules on Criminal Procedure which took effect on December 1, 2000. She posits that under the new rules, respondent judge cannot take cognizance of the crime of robbery since it is not within the jurisdiction of the MTC or the MCTC, hence improper for him to issue a warrant of arrest without waiting for the conclusion of the preliminary investigation, explaining that only when the offense charged is within the original jurisdiction of the MTC or MCTC that a judge thereof may issue warrant of arrest without waiting for the termination of the preliminary investigation if he finds after examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice.

On the basis of its evaluation, the Office of the Court Administrator (OCA) which initially acted on the subject administrative complaint recommended that: (1) the same be re-docketed as a regular administrative matter; (2) respondent judge be fined in the amount of P10,000 for gross ignorance of the law; (3) he be reprimanded in his capacity as a member of the Philippine Bar for violation of the Code of Professional Responsibility and this be reflected in his record at the Office of the Bar Confidant; and (4) respondent judge be sternly warned that repetition of the same or similar act shall be dealt with more severely.

In separate resolutions both dated February 23, 2004,[9] we redocketed the present case as a regular administrative matter and required both parties to manifest whether they are amenable to submit the case for resolution based on the pleadings filed. In their respective manifestations, complainant and respondent judge expressed their willingness to submit the case based on the pleadings filed, which manifestations were noted by us in our Resolution of July 19, 2004.[10]

After a thorough examination of the OCA's evaluation report and the records on hand, the Court finds merit in the recommendation of the Court Administrator.

Doubtless, the root of the controversy is respondent judge's unfamiliarity with the rules applicable in cases requiring preliminary investigation.

It is the stance of respondent that there are two stages or phases of preliminary investigation; that he was only in the first or the preliminary examination stage when he issued the warrants of arrest against the Almonte spouses after examining the complaining witness Isauro Lique and after finding the existence of probable cause that a crime had been committed; and that the issuance of subpoenas to the accused requiring them to submit their counter-affidavits and other evidence would only be after they shall have been arrested (the second stage or the preliminary investigation proper).

Obviously, the respondent judge failed to keep track with the developments in law and jurisprudence.

In *Sangguniang Bayan of Batac, Ilocos Norte vs. Judge Efren Albano*[11] and reiterated in *Bagunas vs. Fabillar*,[12] this Court ruled that under the new rules of procedure, preliminary investigation has only one stage, viz:

[U]nder the old rules, the preliminary investigation conducted by a municipal judge had two stages: (1) the preliminary examination stage during which the investigating judge determines whether there is reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof, so that a warrant of arrest may be issued and the accused held for trial; and (2) the preliminary investigation proper where the complaint or information is read to the accused after his arrest and he is informed of the substance of the evidence adduced against him, after which he is allowed to present evidence in his favor if he so desires. Presidential Decree 911, upon which the present rule is based, removed the preliminary examination stage and integrated it into the preliminary investigation proper. Now, the proceedings consist only of one stage.

Section 3, Rule 112 of the Rules of Court outlines the procedure for conducting a preliminary investigation:

Section 3. Procedure. – The preliminary investigation shall be conducted in the following manner:

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

(e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

Here, respondent judge disregarded the procedure for preliminary investigation in Criminal Case No. 4598. As it were, he merely took the statement^[13] of therein complainant Isauro Lique, and, on that very same day, terminated his investigation and issued warrants of arrest^[14] against the couple. The spouses Almonte were not furnished with the copies of the complaint for robbery, thereby denying them the chance to examine the same and the evidence submitted by Lique. Nor were they given the opportunity to submit their counter-affidavits and supporting documents. If anything else, the respondent judge's actuations in the premises only betray his ignorance of procedural rules and reckless disregard of the accused's basic right to due process.

Further demonstrating respondent's deliberate disregard of the law, if not his gross ignorance of the same, is his misplaced reliance in Rolito Go vs. Court of Appeals. According to respondent judge, he denied the Almontes' motion to quash the warrant of arrest because of this Court's ruling in Rolito Go that once an accused has posted bail, he waived his right to question any defect in the issuance of the warrant of arrest.

Under Section 26, Rule 114 of the New Revised Rules on Criminal Procedure, application for bail or the admission to bail is no longer considered as a waiver of the accused's right to assail the warrant issued for his arrest as regards its attendant illegalities or irregularities. The provision reads:

Sec. 26. Bail not a bar to objections on illegal arrest, lack or irregular preliminary investigation. - An application for or admission to bail shall not bar the accused from challenging the validity of his arrest or the legality of the warrant issued therefor, or from assailing the regularity or questioning the absence of a preliminary investigation of the charge against him, provided that he raises them before entering his plea. The court shall resolve the matter as early as practicable but not later than the start of the trial of the case.

We are not unmindful of occasional mistakes or errors of judgment which judges may commit. In the same breath, however, judges are expected to show more than a mere cursory acquaintance with elementary rules of procedure as well as settled authoritative doctrines.

For sure, the Code of Judicial Conduct enjoins judges to be faithful to the law and maintain professional competence.^[15] As advocates of justice and visible representation of the law, they are expected to keep abreast with the developments in law and jurisprudence, and to be proficient in their application and interpretation thereof. When a law or a rule is basic, a judge owes it to his office to simply apply it; anything less than that is gross ignorance of the law.^[16]

The OCA recommends that we impose a fine of P10,000 upon the respondent judge. Given respondent's proven gross violation of the Rules of Court and the Code of Judicial Conduct, we are in full agreement with the recommended penalty.

WHEREFORE, herein respondent Judge Fred A. Bien, incumbent Acting Presiding Judge, MCTC, San Jacinto, Masbate is hereby declared GUILTY of gross violation of Section 3, Rule 112, Section 26, Rule 114, of the Revised Rules of Court, and Rule 3.01, Canon 3, of the Code of Judicial Conduct, and, as recommended, is hereby meted the penalty of fine of ten thousand pesos (P10,000), with a warning that a repetition of the same or similar offense will be dealt with more severely.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.

- [1] Rollo, pp. 1-3.
- [2] Annex “C”, Administrative Complaint; Rollo, p. 7.
- [3] Annex “I”, Administrative Complaint; Rollo, pp. 16-18.
- [4] Annex “J”, Administrative Complaint; Rollo, pp. 19-20.
- [5] G.R. No. 101837, February 11, 1992, 206 SCRA 138.
- [6] Rollo, pp. 28-32.
- [7] Supra.
- [8] Rollo, pp. 33-39.
- [9] Rollo, pp. 50-51.
- [10] Rollo, p. 55.
- [11] 329 Phil. 363 [1996].
- [12] 352 Phil. 206 [1998].
- [13] Annex “B”, Administrative Complaint; Rollo, pp. 5-6.
- [14] Annex “D”, Administrative Complaint; Rollo, p. 8.
- [15] Rule 3.01, Canon 3.
- [16] Victory Liner vs. Bellosillo, A.M. MTJ-00-1321, 10 March 2004, 425 SCRA 79.

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.