

GORGONIO CUBACUB, COMPLAINANT, VS. MUNICIPAL JUDGE VIR-GILIO J. TAMAYO OF CAINTA, RIZAL, RESPONDENT.

Adm. Matter No. 24-MJ. November 14, 1973

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

In a letter dated May 24, 1972, addressed to the Honorable Secretary of Justice Vicente Abad Santos, Gorgonio Cubacub charged Judge Virgilio J. Tamayo of the Municipal Court of Cainta, Rizal, and Atty. Romulo A. Abarcar, with IGNORANCE OF THE LAW alleged to have been committed as follows:

"x x x for conspiring, confederating and help-ing one another in deliberately, maliciously and intentionally issuing and/or causing the issuance of a Warrant of Arrest under Civil Case No. 300 of his Court against the undersigned and involving no less than 300 persons without bail, fully knowing that the issuance thereof is not only improper but unlawful, contrary to law, vindictive and oppressive, resulting to the arrest last May 12, 1972 and illegal confinement of the undersigned together with the no less than 300 persons last May 12, 1972 at the Munic-ipal Building of Cainta, Rizal, and the continuous detention and confinement of the undersigned at the Provincial Jail of Rizal up to May 18, 1972. x x x".

Judge Tamayo to whom we shall refer henceforth as the respondent, was asked by the Judicial Superintendent acting for the Secretary of Justice, to comment on the above-mentioned complaint.

In his answer, respondent stated thus:

"x x x Complainant is a leader of the Squatters numbering about 300 persons, who are members of the Silahis ng Pagasa Inc., on the lot belonging to the Archbishop of Manila on Valley Golf Road, Ca-inta, Rizal, whose houses were ordered demolished after due process of law. x x x.

"After repeated demolitions by the sheriff, and repeated re-building by the squatters of their houses on the premises in question, Atty. Abarcar, lawyer for the Archbishop of Manila, after an ocular ins-pection on a jeep, finding the squatters hostile, de-fiant and arrogant, on May 10, 1972 made representa-tions for the issuance of a Warrant of Arrest for Di-rect Contempt. On May 12, 1972, P.C. soldiers from the 222nd PC Co. in Antipolo, Rizal, served said War-rant of Arrest on the person of Gorgonio Cubacub, who was taken to the provincial jail, Pasig, Rizal to pre-clude any untoward incident, as the squatters were in a very defiant and angry mood. x x x.

"However, after reflection, the undersigned real-ized that this was a case of indirect contempt under Rule 71 of the Rules of Court, and not of direct con-tempt. Immediately an order was forthwith issued, ordering the release of all persons detained by virtue of said Warrant of Arrest. (See Order dtd. 5/17/72). It appears that the only person arrested by virtue of said Warrant was Gorgonio Cubacub, as far as known to the undersigned. x x x".

Executive Judge Pedro C. Navarro conducted an in-vestigation of the complaint, and on July 11, 1972, he submitted a report with the following findings:

“x x x It is shown therefore that respondent had:

“1. issued the warrant of arrest against the complainant in violation of Section 3 of Rule 71 of the Rules of Court.

“2. as a result of such issuance of the War-rant of arrest the complainant was incarcerated on May 12, 1972 and remained in jail until the respondent issued his corrective order of May 17, 1972 ordering the release of the complainant, af-ter realizing the error in having the complainant arrested without a written charge and hearing, thereby depriving the complainant of his consti-tutional right to due process of law.

"3. no written charge or charges were filed against the complainant and his companions which alone could be the only basis for investigation and hearing. x x x".

On October 31, 1972, the Secretary of Justice forwarded to the President the report of Judge Navarro, adopting the findings of the latter and recommending the suspension of respondent for six months without pay.

Pursuant to Letter of Instruction No. 11 of President Ferdinand E. Marcos which required all officers of the national government whose appointments were vested in the President of the Philippines to submit their resignations, respondent resigned as municipal judge, and his resignation was accepted by the President on June 21, 1973.

WHEREFORE, considering that respondent voluntarily resigned from his position as municipal judge of Cainta, Rizal, and his resignation was accepted by the President of the Republic, and there being no necessity for continuing further with this administrative complaint as the same is now moot and academic, for as this Court said in Adminis-trative Case No. 116, entitled *Ambrosio Diamalon alias Ampuang Diamalon, complainant, vs. Hon. Jesus Quintillan, respondent."[1] an administrative proceeding is predicated on the holding of an office or position in the Government, we hereby dismiss the complaint and order this proceed-ing closed.

Makalintal, C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, Antonio, Esguerra, Fernandez, and Aquino, JJ., concur.

[1] 29 SCRA 347 (August 29, 1969)

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