

PROSECUTOR IVY A. TEJANO, COMPLAINANT, VS. PRESIDING JUDGE ANTONIO D. MARIGOMEN AND UTILITY WORKER EMELIANO C. CAMAY, JR., BOTH OF REGIONAL TRIAL COURT (RTC), BRANCH 61, BOGO CI...

A.M. No. RTJ-17-2492 [Formerly OCA IPI No. 13-4103-RTJ]. September 26, 2017

Ponente: LEONEN, J.

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LEONEN, J.:

Without a standing warrant of arrest, a judge not assigned to the province, city, or municipality where the case is pending has no authority to grant bail. To do so would be gross ignorance of the law.

This resolves the Affidavit-Complaint[2] filed by Prosecutor Ivy A. Tejano (Tejano) against Presiding Judge Antonio D. Marigomen (Judge Marigomen) and Utility Worker Emeliano C. Camay, Jr. (Camay), both of Branch 61, Regional Trial Court, Bogu City, Cebu. Tejano charged Judge Marigomen with grave abuse of authority and gross ignorance of the law, and Camay with violating the Anti-Red Tape Act.

Pending before Branch 61, Regional Trial Court, Bogu City was a civil case[3] for declaration of absolute nullity of deed of absolute sale filed against Tejano by Jose Andrino (Andrino). This civil case was assigned to then Assisting Judge of Branch 61, Judge James Stewart Ramon E. Himalaloan (Judge Himalaloan),[4] pursuant to Administrative Order No. 113-2011.[5]

On July 19, 2012, Andrino moved[6] that Presiding Judge Marigomen instead try the civil case because hearings had been repeatedly postponed by Judge Himalaloan. Judge Marigomen granted the Motion in an Order[7] dated July 30, 2012.

On September 17, 2012, Administrative Order No. 137-2012[8] was issued where Judge Mario O. Trinidad (Judge Trinidad) of Branch 64, Regional Trial Court, Guihulngan City, Negros Oriental was designated as the new Assisting Judge of Branch 61, Regional Trial Court, Bogu City, Cebu. As Assisting Judge, Judge Trinidad was directed to take cognizance of all the cases handled by the former Assisting Judge, Judge Himalaloan. Judge Trinidad was likewise directed to take cognizance of cases where Presiding Judge Marigomen inhibited, those newly filed, and those where trial had not yet begun, i.e., where "the accused or any of the accused in a criminal case ha[d] not yet been arraigned," and civil cases where pre-trial had yet to be conducted or terminated.[9]

In 2013 and during the pendency of the civil case, Tejano filed a criminal complaint for violation of the Anti-Violence Against Women and Children Act against Andrino.[10] This criminal case was raffled to Branch 20 of the Regional Trial Court of Cebu City presided by Judge Bienvenido R. Sanial, Jr. (Judge Sanial).[11]

On May 9, 2013 and with no standing warrant of arrest against him, Andrino posted bail before Branch 61, Regional Trial Court, Bogu City,[12] not before Branch 20 in Cebu City where the criminal case was pending. In posting bail, Andrino was assisted by Camay, who was assigned to Branch 61.[13]

On the same day that Andrino posted bail, Judge Marigomen ordered Andrino's release.[14]

Tejano filed before this Court an Affidavit-Complaint[15] against Judge Marigomen and Camay on June 21, 2013.

On her charge of grave abuse of authority, Tejano contended that Judge Marigomen refused to transfer the civil case to Judge Trinidad, the newly designated Assisting Judge of Branch 61, in violation of Administrative Order No. 137-2012. When this Administrative Order was issued on September 17, 2012,[16] trial in the civil case had not yet begun, with the pre-trial allegedly conducted only on January 7, 2013.[17]

On her charge of gross ignorance of the law, Tejano alleged that Judge Marigomen issued the Order of Release on May 9, 2013 with no standing warrant of arrest against Andrino, in violation of Rule 114, Section 1 of the Rules of Court. The Warrant of Arrest was issued by Judge Sanial only on May 30, 2013.[18]

As for Camay, Tejano charged him with violating the Anti-Red Tape Act for allegedly fixing Andrino's bail application and facilitating police assistance to Andrino.[19] It was also Camay who allegedly convinced Andrino to file the civil case against her.[20]

Judge Marigomen and Camay filed their respective Comments[21] on September 17, 2013.

According to Judge Marigomen, he granted Andrino's Motion to try the civil case because the former Assisting Judge, Judge Himalalalan, had not been conducting hearings since 2012. He also did not anticipate that a new Assisting Judge would be assigned to Branch 61. Therefore, he continued on hearing the civil case.[22]

As to Andrino's bail bond, Judge Marigomen approved it in the exercise of his sound discretion. He argued that in applications for bail, the stringent application of the Rules of Court may be relaxed in favor of the accused.[23]

For his part, Camay admitted that he assisted Andrino in posting bail but only because he was a public employee obliged to do so. He denied that he was a fixer[24] and claimed that he had no personal interest in the outcome of the civil case filed by Andrino against Tejano.[25]

The Office of the Court Administrator found Judge Marigomen guilty of gross ignorance of the law and of violating Supreme Court rules, directives, and circulars. However, it dismissed the complaint for violation of the Anti-Red Tape Act against Camay.[26]

According to the Office of the Court Administrator, Judge Marigomen violated Administrative Order Nos. 113-2011 and 137-2012 by taking cognizance of the civil case for declaration of absolute nullity of deed of sale cognizable only by Assisting Judge Himalalalan and, subsequently, by Judge Trinidad. That Judge Himalalalan had not been hearing cases since 2012 was not an excuse for granting Andrino's Motion to handle and try the case. The Office of the Court Administrator stated that Judge Marigomen could have sought guidance from this Court on how to remedy the continued delay in the proceedings. Furthermore upon the designation of Judge Trinidad as the new Assisting Judge, Judge Marigomen should have transferred the civil case, considering that it was still at its pre-trial stage.[27]

For violating Supreme Court Administrative Order Nos. 113-2011 and 137-2012, Judge Marigomen was found guilty of an offense considered a less serious charge.[28] The Office of the Court Administrator recommended that Judge Marigomen be fined the amount of P10,000.00.[29]

In addition, Judge Marigomen was found guilty of improperly applying the rules on bail bond applications. Under Rule 114, Section 17(a)[30] of the Revised Rules of Criminal Procedure, bail may be posted in another court only if the judge where the case is pending is absent or unavailable. The Office of the Court Administrator found that Judge Marigomen failed to prove that Judge Sanial, the judge of the court where the criminal case against Andrino was pending, was absent or unavailable. In addition, there was no standing warrant of arrest against

Andrino at the time he posted bail on May 9, 2013. The Warrant of Arrest was issued only on May 30, 2013.[31]

For granting Andrino's bail despite the absence of a warrant of arrest, Judge Marigomen was found guilty of gross ignorance of the law. Considering that it was his second offense,[32] Judge Marigomen was fined with the maximum amount allowable, specifically, P40,000.00 and was sternly warned that repeating the same or similar offense shall be dealt with more severely.[33]

Without discussing the reasons for its finding, the Office of the Court Administrator found no merit in the Complaint against Camay, and hence, recommended its dismissal.[34]

In sum, the Office of the Court Administrator made the following recommendations in its Report[35] dated April 4, 2016:

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that:

- the instant administrative complaint against Hon. Antonio D. Marigomen, Presiding Judge, Branch 61, Regional Trial Court, Bogu City, Cebu, be RE-DOCKETED as a regular administrative matter;
- respondent Judge Marigomen be found GUILTY of Violation of Supreme Court rules, directives, and circulars and Gross Ignorance of the Law and Procedure, and be meted the penalty of FINE in the amounts of Ten Thousand Pesos (Php 10,000.00) and Forty Thousand Pesos (Php 40,000.00), respectively, with a STERN WARNING that a repetition of the same or any similar offense shall be dealt with more severely; and
- 3. the instant administrative complaint against Mr. Emiliano C. Camay, Jr., Utility Worker, Branch 61, Regional Trial Court, Bogu City, Cebu, be DISMISSED for lack of merit.[36]

On June 14, 2017, Tejano filed an Affidavit[37] before this Court, stating that her filing of the Complaint is "only a product of miscommunication."[38] Thus, "in order to move on,"[39] she declared that she was withdrawing the Complaint she had filed against Judge Marigomen.

This Court notes the Office of the Court Administrator's Report dated April 4, 2016 and Tejano's Affidavit withdrawing her Complaint. The findings of fact and conclusions of law of the Office of the Court Administrator are adopted with modification that the fine for gross ignorance of the law is increased from P40,000.00 to P100,000.00.

I

The civil case filed by Andrino against Tejano was assigned to Judge Himalaloo pursuant to Administrative Order No. 113-2011. However, Judge Marigomen granted Andrino's Motion to try the civil case, in violation of this Administrative Order.

Assuming that Judge Himalaloo had repeatedly postponed hearings, Judge Marigomen should have instead sought the guidance of this Court on how to address the delay in the proceedings. After all, the Constitution grants this Court the power of administrative supervision over all courts and their personnel.[40]

Worse, despite the designation of Judge Trinidad as Assisting Judge under Administrative Order No. 137-2012, Judge Marigomen usurped Judge Trinidad's authority by failing to transfer the civil case to him.

For violating Administrative Order Nos. 113-2011 and 137-2012, Judge Marigomen is guilty of violating Supreme Court rules, directives, and circulars, a less serious charge[41] punishable by either suspension for not less

than one (1) month but not more than three (3) months, or fine of more than P10,000.00 but not exceeding

P20,000.00.[42] Under the circumstances, the fine of P20,000.00 is proper.

II

The charge of gross ignorance of the law against Judge Marigomen merits a more serious sanction.

Bail, as defined in Rule 114, Section 1 of the Rules of Court, is "the security given for the release of a person in custody of the law, furnished by him [or her] or a bondsman, to guarantee his [or her] appearance before any court as required under the conditions hereinafter specified." Based on this definition, the accused must be in custody of the law or otherwise deprived of his or her liberty to be able to post bail.

Generally, bail is filed before the court where the case is pending. However, if bail cannot be filed before the court where the case is pending- as when the judge handling the case is absent or unavailable, or if the accused is arrested in a province, city, or municipality other than where the case is pending-Rule 114, Section 17(a) of the Rules of Court provides:

Section 17. Bail, Where Filed. - (a) Bail in the amount fixed may be filed with the court where the case is pending, or in the absence or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge, or municipal circuit trial judge in the province, city, or municipality. If the accused is arrested in a province, city, or municipality other than where the case is pending, bail may also be filed with any regional trial court of said place, or if no judge thereof is available, with any metropolitan trial judge, municipal trial judge, or municipal circuit trial judge therein. (Emphasis supplied)

The text of Rule 114, Section 17(a) of the Rules of Court shows that there is an order of preference with respect to where bail may be filed. In the absence or unavailability of the judge where the case is pending, the accused must first go to a judge in the province, city, or municipality where the case is pending. Furthermore, a judge of another province, city, or municipality may grant bail only if the accused has been arrested in a province, city, or municipality other than where the case is pending.

A judge not assigned to the province, city, or municipality where the case is pending but approves an application for bail filed by an accused not arrested is guilty of gross ignorance of the law. The last sentence of Rule 114, Section 17(a) is clear that for purposes of determining whether or not the accused is in custody of the law, the mode required is arrest, not voluntary surrender,[43] before a judge of another province, city, or municipality may grant a bail application. In the same vein, it is gross ignorance of the law if a judge grants an application for bail in a criminal case outside of his or her jurisdiction without ascertaining the absence or unavailability of the judge of the court where the criminal case is pending.[44]

Judge Marigomen was not a judge in the province, city, or municipality where the case was pending. Neither was Andrino arrested in a province, city, or municipality other than where the case was pending precisely because no warrant of arrest had yet been issued when he posted bail on May 9, 2013. Judge Marigomen violated Rule 114, Section 17(a) and is guilty of gross ignorance of the law.

Moreover, Judge Marigomen did not ascertain the absence or unavailability of Judge Saniei. This duty to ascertain is a consequence of Judge Marigomen not being the judge of the place where the criminal case was pending and could have been satisfied by inquiring and coordinating with the court personnel belonging to Branch 20, where the criminal case was pending. Had Judge Marigomen done his duty, Judge Saniei would have already been informed of the grant of bail on May 9, 2013, and therefore, would not have superfluously issued a Warrant of Arrest 21 days later. Presumption of regularity in the performance of official duty[45] cannot be appreciated in favor of Judge Marigomen.

Under Rule 140, Section 11(A) of the Rules of Court on the Discipline of Judges of Regular and Special Courts

and Justices of the Court of Appeals and the Sandiganbayan, a serious charge such as gross ignorance of the law[46] is punishable by a fine of more than P20,000.00 but not exceeding P40,000.00.[47] However, considering that this was Judge Marigomen's second offense, as he had been previously found guilty of gross ignorance of the law in *Salazar v. Judge Marigomen*,[48] this Court fines him with an amount more than P40,000.00, specifically, P100,000.00. This is allowed under Rule 140, Section 11(A), which uses the permissive "may" in enumerating the imposable sanctions for serious charges.[49]

While it is true that Tezano filed an Affidavit withdrawing her Complaint against Judge Marigomen, withdrawal of an administrative complaint "does not divest [this Court] of [its] disciplinary authority over court personnel." [50] This Court "cannot be bound by the unilateral decision of a complainant to desist from prosecuting a case involving the discipline of parties subject to its administrative supervision." [51] As elaborated in *Nones v. Ormita*: [52]

[T]he faith and confidence of the people in their government and its agencies and instrumentalities need to be maintained. The people should not be made to depend upon the whims and caprices of complainants who, in a real sense, are only witnesses. To rule otherwise would subvert the fair and prompt administration of justice, as well as undermine the discipline of court personnel. [53]

This doctrine applies especially in this case where respondent is not just any other court personnel. Respondent is a judge, [54] who is supposedly knowledgeable of the law but has been found grossly ignorant of it, not just once but twice.

In sum, the penalty recommended by the Office of the Court Administrator is increased. Instead of fining Judge Marigomen the amount of P40,000.00 for gross ignorance of the law, he is ordered to pay the amount of P100,000.00. Adding the P20,000.00 fine for his violation of Supreme Court rules, directives, and circulars, Judge Marigomen is liable in the total amount of P120,000.00.

III

This Court sustains the dismissal of the administrative charge for violation of the Anti-Red Tape Act against Camay. Tezano failed to allege and prove that he assisted with Andrino's application for bail in consideration of economic gain or any other advantage. [55]

WHEREFORE, this Court NOTES the Office of the Court Administrator's Report dated April 4, 2016 and Prosecutor Ivy A. Tezano's Affidavit withdrawing her Complaint against Presiding Judge Antonio D. Marigomen of Branch 61, Regional Trial Court, Bogu City, Cebu. Despite this Affidavit, this Court finds Presiding Judge Antonio D. Marigomen GUILTY of the less serious charge of violating Supreme Court rules, directives, and circulars, and of the serious charge of gross ignorance of the law. He is meted the penalty of FINE on both charges in the total amount of P120,000.00.

The Complaint against Utility Worker Emeliano C. Camay, Jr. of Branch 61, Regional Trial Court, Bogu City, Cebu is DISMISSED for lack of merit.

SO ORDERED.

Sereno, Velasco, Jr., Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Perlas-Bernabe, Caguioa, Martires, Tijam, Reyes, Jr., and Gesmundo, JJ., concur.

Carpio, J., on official time.

Jardeleza, J., on official leave.

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on September 26, 2017 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled administrative matter, the original of which was received by this Office on December 5, 2017 at 2:40 p.m.

Very truly yours,

(SGD)

FELIPA G. BORLONGAN-ANAMA

Clerk of Court

[1] All pleadings refer to him as "Emiliano C. Camay, Jr." but his signed Comment shows "Emeliano C. Camay, Jr." See Rollo, pp. 56-58.

[2] Rollo, pp. 1-5.

[3] Id. at 26. Docketed as Civil Case No. Bogo-02753.

[4] Id. at 117.

[5] Id at 121. OCA Report dated April 4, 2016.

[6] Id. at 48-49.

[7] Id. at 50.

[8] Id. at 8.

[9] Id.

[10] Id. at 2. Docketed as CBU-99648-49, see rollo, p. 11.

[11] Id. at 3.

[12] Id. at 9.

[13] Id. at 56.

[14] Id. at 10.

[15] Id. at 1-5.

[16] Id at 8.

[17] Id. at 1-2.

[18] Id. at 2-3.

[19] Id. at 3-4.

[20] Id. at 1.

[21] Id at 20-24 and 56-58.

[22] Id. at 21.

[23] Id. at 23-24.

[24] Rep. Act No. 9485, sec. 4(g) provides:

Section 4. Definition of Terms. - As used in this Act, the following terms are defined as follows:

....

(g) "Fixer" refers to any individual whether or not officially involved in the operation of a government office or agency who has access to people working therein, and whether or not in collusion with them, facilitates speedy completion of transactions for pecuniary gain or any other advantage or consideration.

[25] Id at 56-57.

[26] Id. at 123-124.

[27] Id. at 121-122.

[28] RULES OF COURT, Rule 140, as amended by A.M. No. 01-8-10-SC, sec. 9.

[29] RULES OF COURT, Rule 140, as amended by A.M. No. 01-8-10-SC, sec. 11(B).

[30] RULES OF COURT, Rule 114, sec. 17(a) provides;

Section 17. Bail, Where Filed. - (a) Bail in the amount fixed may be filed with the court where the case is pending, or in the absence or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge, or municipal circuit trial judge in the province, city, or municipality. If the accused is arrested in a province, city, or municipality other than where the case is pending, bail may also be filed with any regional trial court of said place, or if no judge thereof is available, with any metropolitan trial judge, municipal trial judge, or municipal circuit trial judge therein.

[31] Rollo, p. 122.

[32] See *Salazar v. Judge Marigomen*, S62 Phil. 620 (2007) [Per J. Carpio-Morales, En Banc].

[33] RULES OF COURT, Rule 140, as amended by A.M. No. 01-8-10-SC, sec. 11(A).

[34] Rollo, p. 124.

[35] Id. at 117-124.

[36] Id. at 123-124.

[37] Id. at 133-134.

[38] Id. at 133.

[39] Id.

[40] CONST., art. VIII, sec. 6.

[41] RULES OF COURT, Rule 140, as amended by A.M. No. 01-8-10-SC, sec. 9.

[42] RULES OF COURT, Rule 140, as amended by A.M. No. 01-8-10-SC, sec. 11(B).

[43] See *Miranda v. Tuliao*, 520 Phil. 907, 919 (2006) [Per J. Chico-Nazario, First Division], citing *Paderanga v. Court of Appeals*, 317 Phil. 862 (1995) [Per J. Regalado, Second Division]; *Dinapol v. Baldado*, 296-A Phil. 81 (1993) [Per Curiam, En Banc].

[44] See *Adapon v. Judge Domagtoy*, 333 Phil. 696 (1996) [Per J. Padilla, First Division].

[45] RULES OF COURT, Rule 131, sec. 3(m).

[46] RULES OF COURT, Rule 140, as amended by A.M. No. 01-8-10-SC, sec. 8.

[47] RULES OF COURT, Rule 140, as amended by A.M. No. 01-8-10-SC, sec. 11.

[48] 562 Phil. 620 (2007) [Per J. Carpio-Morales, En Banc].

[49] RULES OF COURT, Rule 140, sec. 11(A), as amended by A.M. No. 01-8-10-SC, provides:

Section 11. Sanctions. - A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

- 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. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;

- Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

- A fine of more than P20,000.00 but not exceeding P40,000.00.

[50] *Casanova, Jr. v. Cajayon*, 448 Phil. 573, 582 (2003) [Per J. Ynares-Santiago, First Division].

[51] *Lapeña v. Pamarang*, 382 Phil. 325, 330 (2000) [Per J. Mendoza, Second Division] cited in *Casanova, Jr. v. Cajayon*, 448 Phil. 573, 582 (2003) [Per J. Ynares-Santiago, First Division].

[52] 439 Phil. 370 (2002) [Per J. Panganiban, Third Division] cited in *Casanova, Jr. v. Cajayon*, 448 Phil. 573, 582 (2003) [Per J. Ynares-Santiago, First Division].

[53] *Id.* at 379.

[54] See *Dadap-Malinao v. Judge Mijares*, 423 Phil. 350 (2001) [Per J. Ynares-Santiago, First Division]; See also *Vasquez v. Judge Malvar*, 174 Phil. 274 (1978) [Per J. Makasiar, En Banc].

[55] Rep. Act No. 9485, sec. 4(g) provides:

Section 4. Definition of Terms. - As used in this Act, the following terms are defined as follows:

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(g) "Fixer" refers to any individual whether or nor officially involved in the operation of a government office or agency who has access to people working therein, and whether or not in collusion with them, facilitates speedy completion of transactions for pecuniary gain or any other advantage or consideration.

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