

## FIRST DIVISION

[ **A.M. No. RTJ-00-1573 (Formerly A.M. No. OCA-IPI-97-300-RTJ), August 02, 2000** ]

**LEOPOLDO G. DACERA, JR., COMPLAINANT, VS. JUDGE TEODORO A. DIZON, JR., RTC, BRANCH 37, GENERAL SANTOS CITY, RESPONDENT.**

### R E S O L U T I O N

**YNARES-SANTIAGO, J.:**

For allegedly persuading complainant to execute an affidavit of desistance, a "Verified Motion to Disqualify Trial Judge"<sup>[1]</sup> was filed in Criminal Case No. 11298 pending before Judge Teodoro A. Dizon, Jr. A copy of the motion was furnished the Office of the Court Administrator (OCA), who recommended that the case be investigated by an Associate Justice of the Court of Appeals.

In a Resolution dated June 23, 1997,<sup>[2]</sup> the Court designated Associate Justice Delilah Vidallon-Magtolis to investigate the charges against the respondent.

After investigating the matter, Justice Delilah Vidallon-Magtolis made the following factual findings:

- 1.) The herein complainant, Leopoldo Dacera, Jr. is also the private complainant in Criminal Case No. 11982 for Qualified Theft against accused GARYO TOLOMONG, NILDA TOLOMONG, NILO APAD, BAIN APAD, MINA COLONG, ROSITA COLONG, and TAWAYA GIBAN. Said case was initially assigned to the sala of respondent judge (Branch 37, RTC, General Santos City). The said accused, members of the B'laan tribe plus one (1) Indonesian, were suspected of stealing coconuts from the Dacera plantation formerly belonging to the estate of the father of Leopoldo Dacera, Jr. the case was filed on August 29, 1996.
- 2.) Bail was set at P40,000.00 for each of the accused. The accused were arrested on September 18, 1996, they filed a Joint Motion for Reduction of Bail from P40,000.00 to P10,000 (Exhibit "C").
- 3.) On October 1, 1996, Judge Dizon issued an order granting the motion for reduction of bail to P10,000.00.
- 4.) On October 3, 1996, the accused filed a Joint Motion to Admit Property Bond in lieu of cash bond. The motion was granted by Judge Dizon on October 7, 1996, whereby he authorized the accused to file a property bond with a market value of no less than P50,000.00 and registered with the Register of Deeds of General Santos City (Exhibit "D").

5.) On October 10, 1996, a Motion to Dismiss (Exhibit "2") was filed by 3rd Assistant City Prosecutor Edilberto L. Jamora of General Santos City, based on an affidavit of desistance (Exhibit "2-C") purportedly executed by Leopoldo Dacera, Jr.

6.) On October 11, 1996, an Urgent Verified *Ex Parte* Motion to Withdraw Motion To Dismiss (Exhibits "3" to "3-B") was filed by State Prosecutor Leo B. Dacera III, with the approval of City Prosecutor Franklin G. Galal, praying for the withdrawal of the Motion to Dismiss on the ground that the affidavit of desistance upon which it was based was the "outcome of undue influence applied by certain quarters upon Leopoldo Dacera, Jr. who was persuaded to execute the same without being appraised of the full import and consequences of such relinquishment of legal right." The said motion likewise alleged *inter alia* that the private complainant who was then unaided by counsel, was not made aware that his grant of concessions in such case cannot be binding upon his co-heirs who are not parties to the case and who have not been fully informed of the proceedings; and neither was he made aware that he could be liable for a counter-suit for damages and/or malicious prosecution, considering the tenor in his affidavit, *i.e.* "after a sole (*sic*) searching on my part...".

From the foregoing factual findings, Justice Delilah Vidallon-Magtolis recommended that respondent judge be exonerated of the charge of bias and partiality in connection with Criminal Case No. 11982. She, however, further recommended that respondent judge be admonished to refrain from making calls to any party-litigant or counsel who have pending cases before him to avoid any suspicion of personal interest in any case pending in his sala on the basis of the following evaluation:

After a close scrutiny of the evidence on both sides, the undersigned investigator finds no conclusive evidence showing that respondent judge is personally biased in favor of the accused in Criminal Case No. 11982, it appearing that he did not actually dismiss the case despite the prosecutor's filing of a Motion to Dismiss based on the private complainant's affidavit of desistance. As a matter of fact, he (respondent Judge) voluntarily inhibited himself from trying the said case as soon as the private complainant filed a motion to disqualify him.

However, from the very own testimony of the said judge, it is obvious that he called the complainant by phone, asking him to come to his chambers, purportedly to verify the truth of the affidavit of desistance he (complainant) signed on October 9, 1996 (Exhibit "2-C"). Privately calling any party even just to verify something is suspicious and does not speak well of the cold neutrality of a judge. Moreover, if it were true that Dacera had previously seen him (Judge Dizon) in chambers to "beg" him to dismiss the case (Criminal Case No. 11982), it is no longer necessary for the judge to call or see Dacera to verify whether or not he indeed signed the affidavit of desistance. He (respondent) should have known already that that was Dacera's desire. What he (respondent) should have done – if he really wanted to still verify – was to immediately set the Motion to Dismiss for hearing, and make an official verification in open court in the presence of all parties concerned. The voluntary admission of the judge that he did call up the complainant could be an indication that he indeed

called him (Dacera) to his chambers to talk about the case – as testified to by the complainant.

At any rate, the complainant appeared to be candid and truthful when he testified. It is obvious that he could not have concocted the information narrated in his affidavit of October 24, 1996 (Exhibit "6") and testified to by him in a straightforward and convincing manner. Anyway, any private complainant who has lost interest in the prosecution of a criminal case – if indeed this was what happened in Criminal Case No. 11982 – need not see the judge in chambers. All that he needs to do is to tell the prosecutor or the judge handling the case at the next setting.

In this connection it must be pointed out that Prosecutor Jamora, who is the prosecutor assigned to the sala of the respondent Judge, alleged that the affidavit of desistance and Motion to Dismiss were already prepared when Dacera and his companions came to him. Since Dacera was not assisted by any private prosecutor and he could not have prepared such documents, both written in English, by himself (as in fact, he even had to testify in the Cebuano dialect during investigation), there is only one conclusion that could be made, *i.e.* that the preparation thereof was as narrated by the complainant.

Of course, this investigator notes that there is a discrepancy in the complainant's allegation that he signed the affidavit in the judge's chambers on the one hand, and the testimony of Prosecutor Jamora that the said affidavit was signed before him. In weighing these two conflicting statements, this investigator gives more credence to the testimony of the complainant for the reason that a prosecutor attends to so many cases, and it is possible that he may not remember all the particular details of a case. On the other hand, the circumstances narrated by the complainant in a straightforward manner appear to be very vivid in his mind. It is possible that when he went to Prosecutor Jamora, the affidavit was already signed. In any case, the complainant has nothing to gain and everything to lose by testifying falsely against a judge.

It is also to be noted that the complainant was a reluctant witness. He did not appear at the initial hearing set by this investigator and just sent word that he had already desisted, and he was standing by his affidavit of desistance (Exhibit "14"). It was only when this investigator sent word through the complainant's brother, Prosecutor Leo Dacera III (who appeared for his brother-complainant) that he (complainant) should come or face the consequences for wasting the time and resources of the Court and of this investigator, that the said complainant made an appearance. When he did, he reiterated his desire to withdraw from the case. However, his testimony on the substantive matters was still an affirmance of his allegations in his affidavit of October 23, 1996 which was treated as his complaint-affidavit.

Be that as it may, the circumstances that transpired thereafter, *i.e.*, the respondent's "setting aside" of the motion to dismiss, and his voluntary withdrawal from the case, thus enabling another judge to take over, negates the allegation of personal interest or bias in Criminal Case No.