

## SECOND DIVISION

**[ A.M. No. MTJ-06-1651 (Formerly OCA IPI No. 04-1576-MTJ), April 07, 2009 ]**

**PROSECUTOR ROBERT M. VISBAL, COMPLAINANT, VS. JUDGE WENCESLAO B. VANILLA, MTCC - BR. 2, TACLOBAN CITY, RESPONDENT.**

### DECISION

**BRION, J.:**

For resolution is the present administrative matter involving Prosecutor Robert M. Visbal (*complainant*) of Tacloban City and Judge Wenceslao B. Vanilla (*respondent*) of the Municipal Trial Court in Cities (MTCC), Branch 2, Tacloban City.

#### The Factual Background

The case arose from the letter the complainant sent to then Court Administrator Presbitero J. Velasco, Jr., charging the respondent with grave misconduct and gross ignorance of the law for ordering Criminal Case No. 2000-08-OD-01 (entitled "*People of the Philippines v. Rodelio Abayon y Benter*," herein referred to as "*criminal case*") archived.<sup>[1]</sup> The complainant in this criminal case is with the Leyte Provincial Prosecution Office.

The complainant alleged that at the time the respondent judge ordered the criminal case archived, the witnesses for the Prosecution were able, ready, and willing to testify, with due notice to the accused after he had been arraigned.<sup>[2]</sup> The first witness, the complainant himself, had already testified.<sup>[3]</sup> He maintained that the respondent's act seriously violated Paragraph 2, Sections 14 and 16 Article III of the Constitution and Section 2, Rule 119 of the Revised Rules on Criminal Procedure. Attached to the complaint were: (1) Order of Arraignment dated January 28, 2003 setting the case for pre-trial on April 3, 2003;<sup>[4]</sup> (2) Certificate of Arraignment;<sup>[5]</sup> (3) Transcript of stenographic notes (TSN);<sup>[6]</sup> and (4) Order dated October 9, 2003 to archive the case.

The Office of the Court Administrator (OCA) referred the complaint to the respondent and required him to comment on the complaint within ten (10) days from receipt of the indorsement.<sup>[7]</sup>

The respondent submitted his comment by way of a letter dated June 19, 2004.<sup>[8]</sup> He explained that: in an order dated June 23, 2003,<sup>[9]</sup> the court reset the hearing to August 27, 2003 on motion of the public prosecutor because of the absence of the second witness and of the accused himself; at the hearing on August 27, 2003, the return of the subpoena served on the accused showed that he had not been properly notified; the prosecution did not present another witness or inform

the court of its desire to summon other witnesses; upon motion of the prosecution, the case was reset to October 9, 2003 and another subpoena was sent to the accused;<sup>[10]</sup> at the hearing on October 9, 2003, the return of the subpoena indicated that the accused changed address without informing the court; this time the court issued a warrant for the arrest of the accused for his failure to appear; thus, *"there was no setting of the hearing in the meantime, for it was not known when the accused would be arrested and, for practical purposes, he ordered that the case be archived to be revived upon the arrest of the accused."*<sup>[11]</sup>

In a Resolution dated August 9, 2006, we required the parties to manifest, within 10 days from notice, if they were willing to submit the present administrative matter for resolution based on the pleadings. The complainant complied with a manifestation dated September 13, 2006. The respondent, on his part, explained on May 31, 2007, that he failed to comply because he did not receive a copy of the August 9, 2006 Resolution of the Court. The explanation was prompted by a subsequent Resolution from the Court dated March 21, 2007, directing the respondent to show cause why he should not be held in contempt of court for his failure to comply with the Resolution of August 9, 2006.

### **The OCA Report and Recommendation**

In a memorandum dated May 8, 2006, the OCA submitted its report/recommendation on the present administrative matter. The salient portion of the report/recommendation states:<sup>[12]</sup>

Respondent's order archiving the case is patently erroneous. Administrative Circular No. 7-A-92 provides that a criminal case can be archived if after the issuance of the warrant of arrest, the accused remains at large for six (6) months from delivery of the warrant to the proper peace officer. However, the court may *motu proprio* or upon motion of any party, archive a criminal case when proceedings therein are ordered suspended for an indefinite period because of the following reasons:

- a. the accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to plead intelligently, or to undergo trial, and he has to be committed to a mental hospital;
- b. a valid prejudicial question in a civil action is invoked during the pendency of the criminal case unless the civil and criminal cases are consolidated;
- c. an interlocutory order or incident in the criminal case is elevated to and is pending resolution/decision for an indefinite period before a higher court which has issued a temporary restraining or a writ of preliminary injunction; and
- d. when the accused has jumped bail before arraignment and cannot be arrested by his bondsman.