

## THIRD DIVISION

**[ A.M. NO. MTJ-06-1636 (FORMERLY OCA IPI NO. 05-1662-MTJ), March 12, 2007 ]**

**JULIO B. VERZOSA, COMPLAINANT, VS. JUDGE MANUEL E. CONTRERAS, MUNICIPAL TRIAL COURT, OCAMPO, CAMARINES SUR, RESPONDENT.**

### RESOLUTION

**AUSTRIA-MARTINEZ, J.:**

Before us is a Verified Complaint<sup>[1]</sup> dated December 30, 2004 of Julio B. Verzosa (complainant) charging Judge Manuel E. Contreras (respondent), Municipal Trial Court (MTC), Ocampo, Camarines Sur with Grave Abuse of Authority, Grave Misconduct (Harassment and Oppression), and Violation of the Code of Judicial Conduct, relative to Criminal Case No. 2071, entitled "*People of the Philippines v. Rodrigo E. Candelaria.*"

Complainant alleges: he is a forest ranger of the Department of Environment and Natural Resources (DENR) Protected Area Office. On April 14, 2004, while conducting surveillance on treasure hunting activities in Mt. Isarog Natural Park, Ocampo, Camarines Sur, he and his co-forest rangers discovered an open pit left in damaged condition, allegedly in violation of Republic Act No. 7586. They likewise found and confiscated in favor of the Government two metal chains used to overturn huge stones in the treasure hunting site. He found out later that the alleged treasure hunters were led by a certain Jose Credo (Credo) *a.k.a.* "Labaw" and Basilio Sumalde (Sumalde) *a.k.a.* "Moren". The Executive Director of the DENR Region V Office thereafter ordered the complainant to continue monitoring the said treasure hunting site. Because of his involvement in the treasure hunting activities and on the basis of the testimony of Credo, he was implicated as an accessory in Criminal Case No. 2071 against Rodrigo Candelaria (Candelaria), *et al.* for robbery. The said case arose from the alleged information relayed by respondent to the Philippine National Police (PNP) Officers of Ocampo, Camarines Sur in the morning of April 18, 2004, which led to the arrest of the principal accused. Respondent did not inhibit himself from conducting the preliminary investigation despite his proven bias against all of the accused, in apparent violation of the guiding principles of Judicial Ethics and Responsibilities. Complainant was not among the persons on board the truck when the same was apprehended by members of the PNP on April 18, 2004. On the basis of the affidavit executed by Credo, respondent hastily issued an order for complainant's arrest. After the information reducing the charge from robbery to simple theft was filed before the Regional Trial Court (RTC), Branch 32, Pili, Camarines Sur, Judge Nilo Malanyaon, in an Order dated September 13, 2004 dismissed the case due to lack of probable cause. Respondent is the mastermind behind the treasure hunting activities in Ocampo, Camarines Sur and the robbery case for which complainant was implicated as an accessory was a way of harassing anybody who opposes the activities.

In his Comment,<sup>[2]</sup> respondent contends: on the latter part of March 2004, he went on mountain hiking at Mt. Isarog with the Tinablanan River as his destination. While at Mt. Isarog, he received an information that Candelaria, known confidant of the personnel of the DENR and by the CARE Philippines, was looting by dismantling the tower antennae of the Philippine Long Distance and Telephone Company (PLDT) used as a relay station but already inoperational. The PLDT Tower is already a government property and declared by the provincial government as a tourist attraction and destination being strategically located at the towering heights of Mt. Isarog. The activity of looting the steel trusses and bars of the PLDT Tower had been going on since January 2004. He directed the police of Ocampo, Camarines Sur to investigate the looting of the steel trusses and bars of the PLDT Tower. The second time that he went on mountain hiking at Tinablanan River on April 18, 2004, he was again informed that the steel trusses and bars of the PLDT Tower were already being loaded in a truck bound for the junkshop in Naga City. With the use of a binocular, he was able to personally confirm the report. He immediately called the PNP Regional Intelligence Group and in a checkpoint set up by the police, the truck was apprehended with Candelaria and several men aboard. On April 19, 2004, the OIC-Chief of Police of Ocampo, Camarines Sur filed a criminal complaint for robbery before the MTC of Ocampo, Camarines Sur docketed as Criminal Case No. 2071 for preliminary investigation. Upon conclusion of the preliminary investigation and finding probable cause against the accused for robbery, respondent forwarded the records to the Provincial Prosecutor of Camarines Sur for appropriate action. However, the provincial prosecutor modified the charge of robbery to theft, and the corresponding information was filed with the RTC, Branch 32, Pili, Camarines Sur, docketed as Criminal Case No. P-3647, presided by Judge Malanyaon. The latter, finding no probable cause, dismissed the case against complainant and likewise ordered the arresting officer to adduce additional evidence against the remaining accused for determination of judicial probable cause. Having failed to do so, Judge Malanyaon dismissed Criminal Case No. P-3647. Persons motivated with ill-will against him were just making a failed and porous connection to the alleged treasure hunting activity. If respondent was subsequently seen at Zone 2, Del Rosario, Ocampo, Camarines Sur after the apprehension of those involved in the looting at the PLDT Tower, it was because he was then conducting the preliminary investigation in Criminal Case No. 2071 having inquisitorial authority to extend his investigation on the area. The complainant's surmise that he is the mastermind of the alleged treasure hunting of the group of Sumalde was based on the alleged information relayed to complainant by Myrna Dacer, Daisy Moran, Salvacion Candelaria, Analiza Candelaria, and Mary Ann Candelaria. Complainant imputed bias against him when he did not inhibit from conducting the preliminary investigation in Criminal Case No. 2071 despite prior knowledge of the looting at the PLDT Tower. Prior knowledge of the commission of a crime is not a mandatory ground for a first level court judge to recuse himself from conducting preliminary investigation. It was just incidental that he caused the apprehension of the truck loaded with stolen trusses and bars of the PLDT Tower. Preliminary investigation is a quasi-judicial function of an MTC judge. The matter of issuance of a warrant of arrest is discretionary and judicial in nature which is authorized under the rules. If ever complainant perceived that irregularities attended the issuance of a warrant of arrest against him, he has all available judicial remedies, such as filing a motion to quash warrant of arrest, *habeas corpus* proceedings, or *certiorari*, but none was availed of by complainant despite being represented and assisted by a retained counsel. Under the Rules, the result/recommendation of the investigating judge during the preliminary

investigation is subject to review or appropriate action by the provincial prosecutor. The finding of probable cause against the accused in Criminal Case No. 2071 was sustained by the provincial prosecutor of Camarines Sur upon review, although the recommended charge of robbery was modified to theft. The dismissal by Judge Malanyaon of the information for theft finding that no probable cause exists should not militate or be taken against him. He discharged his duties as investigating judge regularly with faithful adherence to the law and the rules, and he acted in good faith and without malice in his conduct of the preliminary investigation. The *Sangguniang Bayan* of Ocampo, Camarines Sur, rendered a committee report stating that an ocular inspection had been conducted on the alleged site of treasure hunting and they were able to confirm that it was indeed a fishpond loaded with so many growing fish and not a site of treasure hunting.

In the Agenda Report,<sup>[3]</sup> the Office of the Court Administrator (OCA) submitted its evaluation and recommendation, to wit:

**EVALUATION:**

x x x x

The complainant, in branding the respondent Judge as the mastermind of the alleged treasure hunting activities in Ocampo, Camarines Sur, relied heavily on the narrations of and affidavits executed by Myrna Dacer, Daisy Moran, Salvacion Candelaria, Analiza and Mary Ann Candelaria. Clearly, these narrations/affidavits are not based on the complainant's own personal knowledge but rather on the personal knowledge of the said persons. The same are, thus, considered hearsay because their probative force depends, in whole or in part, on the competency and credibility of some persons other than the complainant. (*Estrada vs. Desierto, G.R. Nos. 146710-15, April 3, 2001*). For being hearsay, the same are insufficient and inconclusive to determine the participation of the respondent Judge in the alleged treasure hunting activities in Ocampo, Camarines Sur. In this light, the complainant failed to submit substantial evidence to support his imputation that the respondent Judge is the mastermind behind the treasure hunting activities in Ocampo, Camarines Sur.

With respect to the issuance of warrant of arrest, such issue is judicial and may be best resolved through judicial adjudication. As correctly pointed out by the respondent Judge, if there are irregularities in the issuance of warrant against the complainant, the latter has all available judicial remedies, such as filing a motion to quash, an action for habeas corpus, or a special civil action for certiorari. However, the complainant chose not to avail of any judicial remedy.

To merit disciplinary sanction, the error or mistake committed by a judge should be patent, gross, malicious, deliberate, or done in bad faith and absent a clear showing that the judge has acted errantly; the issue becomes judicial in character and would not properly warrant the imposition of administrative punishment (*Godinez vs. Alano, 303 SCRA 259*).

At any rate, the respondent Judge followed the letter of the law, specifically Rule 112, *Section 6, paragraph b*, when, prior to the issuance of warrant of arrest against the complainant, he personally conducted preliminary examination in the form of searching questions and answers on witness Jose Credo and upon finding probable cause and the necessity to place the complainant under custody in order [not] to frustrate the ends of justice.

Anent the respondent Judge's failure to inhibit himself in conducting the preliminary investigation in Criminal Case No. 2071, he violated Rule 3.12 of the Code of Judicial Conduct (now Canon 3, Section 5 of the New Code of Judicial Conduct) for taking part in a proceeding where he has personal knowledge of the disputed evidentiary facts. Respondent Judge admitted having prior knowledge of the looting and dismantling of the PLDT Tower in Ocampo, Camarines Sur. As a matter of fact, he was able to visually confirm the said activities which he later relayed to the local PNP and led to the arrest of the principal accused in the said case. [The] Judge still conducted the preliminary investigation.

It should be noted, however, that while no motion for inhibition of respondent judge was filed by the complainant during the preliminary investigation stage of the case, this does not mean that respondent can freely act on the same despite the lingering doubt created in the minds of the parties that he would not be impartial in his judgment.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above. While the first paragraph of Article 137 provides for the specific grounds for disqualification and gives the judicial officer no discretion to sit in a case, the second paragraph leaves the matter of inhibition to the sound discretion of the judge (*People vs. Serrano*, 203 SCRA 17).

It does not explicitly enumerate the specific grounds for inhibition but provides a broad policy-oriented ground for disqualification of judges for just and valid reasons other than those enumerated in the first paragraph (*Geotina vs. Gonzales*, 41 SCRA 66).

The judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case for just and valid reasons (*Parayno vs. Meneses*, 231 SCRA 807) other than those mentioned in Rule 137, Section 1. The ultimate test in determining the validity of the court's inhibition is whether or not the petitioner is deprived of fair and impartial trial (*Asociacion de Agricultores de Talisay-Silay, Inc. vs. Talisay-Silay Milling Co., Inc.*, 88 SCRA 294) and the cold neutrality of an impartial judge.

**RECOMMENDATION:** Respectfully submitted for the consideration of the Honorable Court are our recommendations that:

1. The instant matter be re-docketed as a regular administrative case;