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# FIRST DIVISION

# [ A.M. NO. MTJ-05-1608 (FORMERLY OCA I.P.I. NO. 00-910-MTJ), February 28, 2006 ]

## BERNARDO P. BETOY, SR.[*], COMPLAINANT, JUDGE MAMERTO Y. COLIFLORES, PROMULGATED: RESPONDENT.

**AUSTRIA-MARTINEZ, J.:**

In a Letter-Complaint dated July 12, 2000, signed by Bernardo Betoy, Sr. (complainant) charges Judge Mamerto Y. Coliflores (respondent) with Grave Abuse of Discretion and Authority, Conduct Unbecoming as a Judge and Gross Negligence Resulting to Procedural Lapses (Dereliction of Duty).[1] Complainant attached to the Letter-Complaint an Affidavit executed by his wife Lucia Betoy citing paragraphs Nos. 30. 32, 35 and 36 thereof to wit:

> 30. That the statements on page 4 of the said RESOLUTION dated December 8, 1999 of the Honorable Prosecutor RUSTICO D. PADERANGA is unfounded and arbitrary and perjured himself, (sic) the fact that the Honorable Judge MAMERTO Y. COLIFLORES have erred in issuing the SEARCH & SIEZURE ORDER dated September 17, 1999 for not conforming to the strict compliance with legal requirements (sic) on issuance and not even bother to think and wonder how in reality my residence was regarded as armory by the applicant and his witnesses for Search Warrant but instead issued such warrant solely basing on the affidavits of deponents police officers wherein during the search, none from among the property seized in our residence can provide proof of the allegations on the face of the Deposition and Application for SEARCH WARRANT of which Police Inspector CESAR KYAMCO ARQUILLANO, SPO2 REX LOMUSAD CABRERA and SPO1 JESUS CORTUNA ROJAS are liable for PERJURY. x x x
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> 32. That the SEARCH & SEIZURE ORDER (S/W #0854) dated September 17, 1999 by the Honorable Judge MAMERTO Y. COLIFLORES should be declared NULL & VOID because it violates the CONSTITUTION, the fact issuance of it solely relies (sic) on the mere affidavits of deponents police officers which should be considered hearsay and not information personally known to the responding (sic) judge as required by settled jurisprudence through examination with probing and exhaustive questions of witnesses in determining probable cause in order for the Honorable Judge to prevent arbitrary and indiscriminate use of the WARRANT and therefore hold liable for PERJURY the herein respondent police officers, CESAR KYAMKO ARQUILLANO et al. for false declaration.

x x x x

35. That almost nine months had passed reckoned from September 21, 1999 to date, but the Honorable Judge MAMERTO Y. COLIFLORES did not even upheld (sic) his Search & Seizure Order (S/W #0854) by not conducting a judicial inquiry from the implementing law enforcement officers (Police of CCPO-PNP/Agents of NBI Region 7) as to the whereabouts of the contraband items (assorted high powered firearms) as alleged, which is 48 hours upon served. x x x

36. That the Honorable Judge MAMERTO Y. COLIFLORES appears being not responsible of (sic) his issuance of Search & Seizure Order (S/W #0854) by his inaction and therefore clearly shows his gesture of consent on the arbitrary and indiscriminate use of the said Warrant. x x x [2]

as his bases in filing the present administrative complaint.

On September 5, 2000, respondent filed his Comment, portions of which read as follows:

> With respect to Item No. 30 of the letter complaint of Bernardo Padilla Betoy, Sr., by virtue of the affidavit complaint of and executed by affiant-wife Lucia Udasco Betoy, that there was no proof from the allegations on the face of the deposition of the applicant Police Inspector Cesar Kyamko Arquillano, and its (sic) witnesses, that said residence is an armory.
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> It should be noted that the Judge issuing the Search Warrant could not go beyond what is not alleged in the application, considering that what is nexessary (sic) is the existence of a probable cause; and that they are probably guilty thereof, and that the investigation on the application for Search Warrant was made personally by the Presiding Judge thru searching questions and answers in writing and sworn to before him complying [with] statutory and constitutional requirements of the law.
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> With respect to item No. 32 of the Affidavit that the said Search Warrant be declared null and void for it solely relies on the Affidavit of the applicant and their witnesses, it should be remembered that the same could only be declared null and void if a motion is filed in Court and a hearing be conducted to that effect.
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> It should be noted that there was filed a Motion to Release Shotgun dated September 24, 1999 by Atty. Cornelius Gonzalez and Atty. Vicente Fernandez II which was granted by the undersigned-respondent per Order dated September 27, 1999, machine copy of which is hereto attached and made an integral part of this rejoinder, and another Urgent Motion for Release of Air Rifle filed by the same counsel, Atty. Vicente Fernandez II dated June 5, 2000 which was also granted by the undersigned per maching (sic) copy hereto attached.
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> With respect to Item No. 36 that the issuing judge, by his inaction clearly appears to have consented in the arbitrary and indiscriminate use of the

> Search Warrant. It should be remembered that the issuing judge has no physical control on the manner the Search Warrant was being implemented and conducted; what the issuing judge did emphasixed (sic) and applied (sic) was the statutory and constitutional requirements of the law in the issuance of the Search Warrant.[3]

On August 28, 2002, the Court issued a Resolution referring the instant case to Hon. Rosabella M. Tormis, Executive Judge, MTCC, Cebu City, for investigation, report and recommendation.[4] In her Report dated December 2, 2004, Executive Judge Tormis found that respondent judge is not guilty of the charges filed against him relative to the issuance of the subject search warrant.[5]

Meanwhile, respondent judge compulsorily retired on August 17, 2003.

On July 14, 2005, the Office of the Court Administrator (OCA) submitted to the Court a Memorandum[6] wherein it found that respondent judge was able to establish probable cause for the issuance of the questioned search warrant; that however, respondent judge is guilty of gross ignorance of the law for having failed to conduct a judicial inquiry as to the whereabouts of the seized firearms and ammunitions, in violation of Section 12(b), Rule 126 of the Revised Rules of Criminal Procedure. The OCA recommended that respondent judge be fined in the amount of P20,000.00, to be deducted from his retirement benefits.

In support of its findings, the OCA states in its Memorandum, thus:

> Records show that respondent judge personally conducted the examination of the applicant for search warrant, P/Inspector Cesar Kyamko Arquillano, and his two witnesses, SPO2 Rex Lomusand (sic) Cabrera and SPO1 Jesus Cortuna Rojas. However, the questions propounded by the respondent judge were not as probing and exhaustive as the Rules require. As stressed in *Roan v. Gonzales*, the examination must be probing and exhaustive, not merely routinary or proforma, if the claimed probable cause is to be established. The examining magistrate must not simply rehash the contents of the affidavits but must take his own inquiry on the intent and justification of the application. In this case, respondent judge failed to ask follow-up questions on the circumstances surrounding the possession of illegal firearms and ammunition by complainants and two others during the examination. In fact, he failed to elicit information as to said circumstances from the applicant himself since the latter merely narrated that after their asset reported the presence of persons armed with some short and long firearms and ammunitions in the house of the complainants, they conducted a surveillance and casing operation on 30 August 1999 by renting a room in one of the neighboring houses of the complainants where they visibly saw the suspects. Despite the failure of P/Inspector Arquillano to categorically state that he saw the firearms, which were the subject of the search warrant, inside the house of the complainants, respondent judge did not ask questions that could have elicited such information. Nonetheless, while P/Inspector Arquillano cannot be said to have gained personal knowledge of the fact of possession of firearms by the complainants and two others, his two witnesses, SPO2 Cabrera and SPO1 Rojas, ably established said fact of possession, having sworn before

respondent judge that they personally saw the suspects in possession of the firearms. These circumstances belie the claim of complainants that the declarations of the police officers in their affidavits are mere hearsay and do not constitute personal knowledge that would have otherwise made the issuance of Search Warrant No. 0894 (sic) irregular. With the first hand information on the fact of possession of firearms by the complainants and two others coming from the deponents themselves, particularly SPO2 Cabrera and SPO1 Rojas, respondent judge rightly established probable cause for the issuance of the questioned search warrant.

On the failure of respondent judge to conduct a judicial inquiry as to the whereabouts of the seized firearms and ammunitions, it appears that respondent judge failed to abide by the Rules in this respect. Paragraph (b), Section 12, Rule 126 of the Revised Rules of Criminal Procedure requires the issuing judge to ascertain ten days after the issuance of the search warrant if the return has been made, and if none, shall summon the person to whom the warrant was issued and require him to explain why no return was made. Nothing in the records shows that a return of the questioned search warrant was made by the police officers. Neither did respondent judge claim in his comment that he complied with the above Rule. His lame excuse that the issuing judge has no physical control on the manner the Search Warrant was being implemented and conducted as his primordial concern only is the compliance with the statutory and constitutional requirements for the issuance of the search warrant betrays his ignorance of the Rules. The Rule heretofore mentioned requires the issuing judge, in case the return has been made, (a) to see to it that the officer forthwith deliver to him the property seized, together with a true inventory thereof duly verified under oath; and (b) to ascertain whether Section 11 of Rule 126 has been complied with. Should the issuing judge ascertain that the officers seizing the property under the warrant failed to follow the procedures mandated by the Rules, he may cite them in contempt of court. It appears that despite the absence of a return of the questioned search warrant, respondent judge failed to summon and require P/Inspector Arquillano to explain why no return was made.

This is not the first time that respondent judge was taken to task by the Court for gross ignorance of the law and procedure. In *Tugot v. Judge Coliflores,* the Court established that he did not observe the period within which to conduct the preliminary conference, as what he applied in an ejectment case was Rule 18 on pre-trial, instead of the provisions of the Rule on Summary Procedure. In imposing a fine in the amount of P20,000.00 upon respondent judge, the Court reminded him the judicial competence demands that judges should be proficient in both procedural and substantive aspects of the law. They have to exhibit more than just cursory acquaintance with statutes and procedural rules and be conversant, as well, with basic legal principles and well-settled authoritative doctrines. To the end that they be the personification of justice and rule of law, they should strive for a level of excellence exceeded only by their passion for truth. Anything less than this strict

> standard would subject them to administrative sanction. Respondent judge failed to take heed of this exhortation.[7]

The Court does not fully agree with the findings of the OCA.

The Court finds that there is much to be desired in respondent judge's examination of the applicant for the search warrant, P/Insp. Cesar Kyamko Arquillano (P/Insp. Arquillano) and his witnesses namely, SPO2 Rex Lomusad Cabrera (SPO2 Cabrera) and SPO1 Jesus Cortuna Rojas (SPO1 Rojas). Respondent judge failed to thoroughly examine the applicant and his witnesses in a manner that would sufficiently establish the existence of a probable cause to justify the issuance of a search warrant.

In *Nala v. Judge Barroso, Jr.*[8], this Court had occasion to explain and discuss the definition of "probable cause" in relation to the issuance of a search warrant, to wit:

> The "probable cause" for a valid search warrant has been defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed, and that objects sought in connection with the offense are in the place sought to be searched. This probable cause must be shown to be within the personal knowledge of the complainant or the witnesses he may produce and not based on mere hearsay. In determining its existence, the examining magistrate must make a probing and exhaustive, not merely routine or pro forma examination of the applicant and the witnesses. Probable cause must be shown by the best evidence that could be obtained under the circumstances. On the part of the applicant and witnesses, the introduction of such evidence is necessary especially where the issue is the existence of a negative ingredient of the offense charged, e.g., the absence of a license required by law. On the other hand, the judge must not simply rehash the contents of the affidavits but must make his own extensive inquiry on the existence of such license, as well as on whether the applicant and the witnesses have personal knowledge thereof.
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> In *Paper Industries Corporation of the Philippines (PICOP) v. Asuncion*, we declared as void the search warrant issued by the trial court in connection with the offense of illegal possession of firearms, ammunitions and explosives, on the ground, *inter alia,* of failure to prove the requisite probable cause. The applicant and the witness presented for the issuance of the warrant were found to be without personal knowledge of the lack of license to possess firearms of the management of PICOP and its security agency. They likewise did not testify as to the absence of license and failed to attach to the application a "no license certification" from the Firearms and Explosives Office of the Philippine National Police.
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> In the case at bar, the search and seizure warrant was issued in connection with the offense of illegal possession of firearms, the elements of which are – (1) the existence of the subject firearm; and (2) the fact that the accused who owned or possessed it does not have the