

EN BANC

[A.M. NO. MTJ-02-1421, August 18, 2005]

**PROSECUTOR ANGELITO V. LUMABAS, COMPLAINANT, VS.
JUDGE EMMANUEL G. BANZON, MUNICIPAL TRIAL COURT OF
MARIVELES, BATAAN, RESPONDENT.**

D E C I S I O N

AZCUNA, J.:

This is an administrative complaint filed by Angelito V. Lumabas against Judge Emmanuel G. Banzon.^[1] Lumabas is a prosecutor assigned to the sala of Judge Banzon. In an Affidavit Complaint,^[2] Lumabas alleged the following:

On August 17, 2000, Prosecutor Lumabas was feverish and asked his wife to inform the office and the Clerk of Court of the Municipal Trial Court of Mariveles, Bataan that he would not be able to report for work and to inform Judge Banzon of the same. On the same date, the court in six orders, acknowledged the advice of absence, but in Criminal Case No. 00-6642/43, entitled *People v. Bueno*, it required Prosecutor Lumabas to submit a written explanation for his absence and to submit a medical certificate if he was really sick, within five days from receipt of the order.

On August 24, 2000, Lumabas filed his written explanation, dated August 23, 2000, in compliance with the August 17, 2000 order. Therein, he explained his physical condition on August 17, 2000 and said that he no longer consulted a doctor since his condition improved dramatically the following day. He further said that there was no intention on his part to delay the administration of justice.

At the hearing of August 24, 2000, Lumabas was about ten minutes late and consequently missed the first case called that day, which was *People v. Emerito Niones*. Lumabas claims that upon entering the courtroom he begged the indulgence of the judge and gave the reason for his tardiness. Subsequently, the trial of the other criminal cases went on smoothly. Court session on that date adjourned at around 5:10 p.m. After adjournment, one of the lawyers whispered to the prosecutor that he was cited for contempt of court and required to pay a fine of P500. Surprised, Lumabas approached Judge Banzon in his chambers to explain and apologize for being late that day. Judge Banzon replied that the order had already been issued and required him to pay the fine otherwise he would be imprisoned. Lumabas claims that since he was aware of the rules on indirect contempt, he left the courtroom and expected a formal charge and an opportunity to explain.

On August 26, 2000, Saturday, at about 9:30 a.m., police officers from Mariveles sought Lumabas at his residence to implement a warrant of arrest issued by Judge Banzon. Since Lumabas was not home at that time, it was his wife who talked to the police officers. He was informed by his wife of the incident when he arrived later in the afternoon.

On August 29, 2000, Tuesday, Lumabas filed a Motion for Postponement of the hearings before the Municipal Trial Court of Mariveles scheduled for August 31, 2000 and of the succeeding hearings since he was diagnosed with hypertension and was advised to rest. Subsequently, he submitted himself to the jurisdiction of the Regional Trial Court of Balanga, Bataan, Branch 4, and filed a bail bond in the amount of P500. As a consequence, the Executive Judge issued an order recalling the warrant of arrest issued by Judge Banzon. On the same day Lumabas filed a Notice of Appeal before the Municipal Trial Court of Mariveles, Bataan.

On August 31, 2000, Judge Banzon acted on the Motion for Postponement filed on August 29, 2000 through two orders directing the Provincial Prosecutor to assign another prosecuting attorney to attend to the numerous cases pending in his court.

On September 4, 2000, Lumabas made a formal request for his reassignment to another court. His request was approved by the Provincial Prosecutor through an interoffice memorandum dated September 6, 2000.

On September 5, 2000, Lumabas filed a request for another leave of absence which was approved by the Provincial Prosecutor.

In a letter dated September 8, 2000, in compliance with the two orders dated August 31, 2000, the Provincial Prosecutor informed the court in a letter that in view of the request for the replacement of Prosecutor Lumabas, Prosecutor Oscar M. Lasam was already assigned to take his place. However, the latter could not appear before the sala of Judge Banzon until October 1, 2000 since he still had to coordinate and adjust his new assignment with his previous assignments in other courts. This letter was received by Judge Banzon on September 11, 2000.

On September 7, 2000, Judge Banzon issued another order requiring Lumabas to explain within five days from receipt why he should not be held liable for criminal and administrative sanctions for his consistent failure to appear and refusal to abide by the legal orders issued by the court. The order was served on Lumabas on September 13, 2000. Lumabas, in compliance with the above order, prepared an extensive explanation, dated September 18, 2000.

However, even before Lumabas was able to file his explanation within the period granted by the court and despite the letter-compliance by the Provincial Prosecutor stating that Prosecutor Lumabas had already been reassigned and the motion for postponement dated August 29, 2000, Judge Banzon issued a second contempt order against Lumabas, dated September 14, 2000, for his absence without justifiable reason despite notice and for failure to submit a reasonable explanation for his absence.

In compliance with the indorsement by the Office of the Court Administrator, Judge Banzon filed his comment dated January 10, 2001, in which he claims that there is no truth to the accusations and to the allegation that he has personal animosity against Prosecutor Lumabas. The Judge claims that he is merely reacting to the frequent abrupt absences of Lumabas, which has been going on for some time and that the absence of Lumabas on August 17, 2000 was a repetition of his previous practice of abrupt absences. Because of his absence on August 17, 2000, the court was constrained to reset the trial of all the cases scheduled for that day and the

court ordered him to submit a written explanation for his absence and to submit a medical certificate under oath within five days from receipt. The Judge alleged that Lumabas failed to comply with the show cause order.

On August 24, 2000, Prosecutor Lumabas was allegedly fifteen minutes late and had missed the calling of four to five cases. The Judge claims that Lumabas made a "dramatic entrance like a strutting peacock announcing his appearance." The Judge castigated him in open court and informed him of the contempt order he had previously dictated and that a fine was already meted out against him. The Judge also asked him why he did not submit a written explanation for his absence the previous week and he retorted that it was in his car. Lumabas apologized and promised to pay the fine at the end of the hearing. After the session that day, Lumabas entered the chambers to beg leave for the remission of the fine, but the Judge refused and just told him to return the next day to pay the fine.

Lumabas did not return to pay the fine the following day, which brought the Judge to the end of his patience and he issued a bench warrant for his arrest pursuant to the contempt order. After that, Lumabas refused to appear before the court of Judge Banzon. Instead, he contested the contempt order and appealed the same to the Regional Trial Court of Balanga, Bataan, Branch 4.

In response to the Comment of Judge Banzon, Prosecutor Lumabas filed an undated Reply,^[3] in which he reiterated the factual supports for his complaint of gross ignorance of the law and gross misconduct. Lumabas also asserted that the possible motive for Judge Banzon's sudden antagonism towards him is that the Judge's brother-in-law was convicted under the Dangerous Drugs Act of 1972 in the Regional Trial Court of Balanga, Bataan, a case which was prosecuted by Lumabas himself, inspite of the judge's insinuation that he was handling the case of the judge's brother-in-law.

Prosecutor Lumabas also took exception to some of the matters raised in the Judge's comment, as follows:

That the absence of Lumabas on August 17, 2000 caused embarrassment to the court in the presence of opposing lawyers. Lumabas claims that most of the opposing counsels with cases scheduled for that day were informed of the absence of the prosecutor and did not even proceed to the Municipal Trial Court.

That Lumabas missed four to five cases since he arrived late on August 24, 2000. He points out that he was only 10 minutes late and missed only one case, namely *People v. Emerito Niones*.

That Lumabas did not submit a written explanation on the hearing of August 24, 2000 for his absence at the hearing of August 17, 2000. The copy of the order dated August 17, 2000 which required the prosecutor to explain his absence within five days from receipt, was received by him only on August 22, 2000, which, in effect, gave him until August 27, 2000. It was therefore unjust that the judge required him to submit his explanation on August 24.

That Lumabas arrived late and "made a dramatic entrance like a strutting peacock announcing his appearance" and it was at that point that Judge Banzon castigated him in open court and informed him of the contempt order. He points out that he

hurriedly entered the courtroom, aware that he was already late that day. Furthermore, Lumabas said that he was never informed by Judge Banzon of the contempt order and he was only informed of the order after the session by an opposing counsel. And it was only then that he approached the Judge in his chambers to explain and to seek a reconsideration of the contempt order.

That Lumabas admitted and apologized for his fault and promised to pay the fine after the termination of the hearing at 5:00 p.m. He claims that he appealed for a reconsideration of the contempt order. Furthermore, he did not promise to pay the fine the next day.

That Lumabas refused to appear before Judge Banzon despite notices sent to him. This prompted Judge Banzon to refer this dereliction of duty to his superiors at the Department of Justice. Lumabas contends that he informed his superiors of his predicament with Judge Banzon. He said that the Judge was duly informed of his state of health through a Motion for Postponement. In addition, the Provincial Prosecutor replied to the Judge's order for a replacement. Despite all these notifications, Judge Banzon still cited him again for contempt of court on September 14, 2000, imposing a penalty of imprisonment of one day, and ordered that copies of the contempt order be furnished the Bataan Provincial Prosecutor, the Regional State Prosecutor in San Fernando, Pampanga, the Chief State Prosecutor and the Secretary of Justice. Lumabas further discloses that the Department of Justice was duly informed of his predicament in the court of Judge Banzon and that his request for a reassignment to another court was favorably acted upon by the Provincial Prosecutor of Bataan via a radio directive of the Regional State Prosecutor in San Fernando, Pampanga.

On June 6, 2001, Prosecutor Lumabas forwarded to the Office of the Court Administrator a certified true copy of a decision, dated March 8, 2001, of the Regional Trial Court of Balanga, Bataan, Branch 4 in a case entitled *Angelito Lumabas v. Hon. Emmanuel G. Banzon*.^[4] The Regional Trial Court found the contempt order of August 24, 2000 and the warrant of arrest issued by Judge Banzon as "harsh, cruel and grossly disproportionate penalties imposed upon accused appellant issued in violation and disregard of the constitutional mandate of due process and the Rules of Court" and declared complainant not guilty of indirect contempt.

The Office of the Court Administrator made the following evaluation and recommendation, dated February 13, 2002:

EVALUATION: Rule 71, Section 3, 1997 Rules of Civil Procedure specifically outlines the procedural requisites before one may be punished for indirect contempt, namely: (1) the filing of a written charge and (2) opportunity given to the accused to be heard by himself or counsel. Specifically, Section 4 of the same rule provides how the case for indirect contempt may be commenced.

Section 4. - Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.