

## SECOND DIVISION

**[ A.M. No. RTJ-04-1837, March 23, 2004 ]**

**VISITACION L. ESTODILLO, ET AL., COMPLAINANTS, VS. JUDGE  
TEOFILO D. BALUMA, RESPONDENT.**

### DECISION

**AUSTRIA-MARTINEZ, J.:**

In a verified complaint dated December 26, 2002, Jovelyn Estudillo (Jovelyn) assisted by her mother, Visitacion L. Estodillo, charges Judge Teofilo D. Baluma with Gross and Inexcusable Ignorance of the Law.

Complainant alleges that her administrative complaint arose from the dismissal of Criminal Case No. 11627 for Other Acts of Child Abuse<sup>[1]</sup> entitled "*People of the Philippines, Plaintiff vs. Freddie Cirilo Nocos y Urot*" by respondent Judge of the Regional Trial Court of Bohol, Branch 1, a Family Court.

The criminal case was originally filed for preliminary investigation with the 2<sup>nd</sup> Municipal Circuit Trial Court of Tubigon-Clarin, Bohol. After the requisite preliminary investigation, Judge James Stewart E. Himalaloan found that there was sufficient ground to hold the herein accused for trial for the offense of Other Acts of Child Abuse defined in Sec. 10 (1), Article VI of Republic Act No. 7610.<sup>[2]</sup> The record of the case was transmitted to the Office of the Provincial Prosecutor where, after a review by Third Assistant Provincial Prosecutor, Macario I. Delusa, he failed an Information dated October 28, 2002<sup>[3]</sup>.

Respondent dismissed the Information in an Order dated November 21, 2002<sup>[4]</sup> ratiocinating, thus:

EXAMINING the Information, the two (2) copies of the same forming parts of the Records in this case appearing in pages 28 and 30, the court finds that the same is not subscribed and sworn to by the prosecutor.

A CAREFUL EXAMINATION on the four corners of the Information will readily show that the information had not been subscribed by the prosecutor and this will militate against the validity of the information and towards nullity and total worthlessness of the same. Since the Information is defective, the Court is left without any alternative except to dismiss this case. Any other act by the Court will tantamount to validating the defective information. The Court can act in this case only when a correct information is filed, which is beyond procedure for the Court to order.

The prosecution through Prosecutor Delusa filed a Motion for Reconsideration and Revival<sup>[5]</sup> on December 12, 2002 alleging that there was no necessity for the Information to be under oath since he merely concurred with the resolution of the investigating judge and that he "has properly subscribed and signed the Information with the approval of the Provincial Prosecutor".

On January 10, 2003, respondent issued an Order<sup>[6]</sup> granting the motion for reconsideration, reinstating and reviving the case but at the same time requiring the public prosecutor to file a new information "incorporating the formalities called for under Rule 112, Section 4 and the circular of its department implementing the pertinent laws on the matter, within ten (10) days from notice hereof."

On January 30, 2003, the prosecution filed an *ex parte* motion to increase the bail bond of the accused<sup>[7]</sup> but respondent refused to act on it because the prosecution had not yet complied with his order to file a new information.<sup>[1]</sup>

On January 31, 2003, the prosecution filed a "Manifestation"<sup>[9]</sup> stating that it "will not file a new information as ordered, the same being contrary to law and jurisprudence and is unprocedural."

Complainant, therefore, seeks the assistance of the Court to investigate this impasse considering that the bond of the accused had been cancelled earlier.

Complainant also alleges that previously, respondent judge had dismissed Criminal Case No. 11514 against a certain Eduardo Vedra for Unjust Vexation on the same ground. The prosecution, in a motion for reconsideration, explained that what is required to be under oath is a complaint, not an information where the Rules merely require that it be subscribed. Respondent granted the motion and revived the case without requiring the filing of a new information.

Complainant wonders why respondent did not require the filing of a new information in the Vedra case, but insisted on the filing of such new information in the present case. This, according to the complainant, is clearly gross ignorance of the law.

In his Comment, respondent avers: The complaint did not comply with Rule 7, Section 5, Rules of Civil Procedure, as amended, which required a certification of non-forum shopping. He denies that he stood pat on his original order because he had already issued an Order dated 27 February 2003 which found probable cause to warrant the placing of the accused, Freddie Cirilo Nocos, under custody in order to stand trial and fixed his bond at P60,000.00. The complainant, including Prosecutor Eric M. Ucat, the trial prosecutor who instigated the filing of herein administrative complaint and Atty. Esther Gertrude Biliran, who notarized and obviously prepared the complaint, were mentally dishonest for not mentioning the fact that before herein complaint was filed on March 8, 2003, he had already issued the aforesaid Order dated February 27, 2003. Prosecutor Ucat and Atty. Biliran had evil motives when they instigated the filing of the complaint against him even before he had issued the new order and for continuing with it after he issued the Order of 27 February 2003.

Respondent maintains that he had efficiently discharged his duties as judge although his Branch is one of the most heavily burdened branches in the Tagbilaran City area and that to cope with this heavy load, he works even at night and on Sundays and holidays, writing decisions and drafting orders.

Respondent included in his Comment a "Counter-complaint" against Prosecutor Eric M. Ucat and Atty. Esther Gertrude D. Biliran an administrative case for disbarment or for disciplinary sanction for gross violation of the canons under the Code of Professional conduct and for deceit, dishonesty, failure to exercise candor, fairness, good faith, doing falsehood or consenting to its doing and abuse of procedures.

Prosecutor Eric M. Ucat filed a "Rejoinder"<sup>[10]</sup> stating that he is in quandary why the respondent tagged him as the trial prosecutor when in fact the record shows that Prosecutor Helen T. Cabatos was the one who handled the subject criminal case (Criminal Case No. 11627) and Prosecutor Macario I. Delusa was the one who filed the Information. He asserts that the only thing he did was to administer the oath of the complainant in the original letter-complaint subject matter of the herein administrative case. He points out that it was in another case, Criminal Case No. 11514 for Unjust Vexation entitled "*The People of the Philippines vs. Eduardo Vedra, a.k.a. Eddie*" that he acted as the prosecutor. That case was dismissed by respondent in an Order dated November 25, 2002 on the same ground that the Information was not subscribed by the prosecutor. Upon a Motion for Reconsideration with Prayer For Revival of the Case, respondent granted it in an Order<sup>[11]</sup> dated January 2, 2003. He likewise answered point by point all the accusations hurled by respondent in the latter's counter-complaint.

Atty. Esther Gertrude D. Biliran also filed a "Rejoinder"<sup>[12]</sup> wherein she denied having participated in the filing of the complaint except to take the oath of the complainant. She avers that at the time herein administrative case was filed on March 8, 2003, complainants have not yet received the February 27, 2003 Order issued by respondent judge which found probable cause to warrant the placing of the accused, Freddie Cirilo Nocos under custody in order to stand trial and fixed his bond at P60,000.00. Likewise, she denied the accusations of the respondent judge and proffered her defenses against it.

Court Administrator Presbitero J. Velasco, Jr. recommends that: 1) this case be re-docketed as a regular administrative matter; and 2) respondent be reprimanded with a stern warning that a repetition of the offense will merit a more drastic action of the Court.

Section 4, Rule 110 of the Revised Rules of Criminal Procedure provides:

*Sec. 4. Information defined.* — An information is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court.

There is no requirement that the information be sworn to. Otherwise, the rules would have so provided as it does in a complaint which is defined as a "*sworn* written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated".<sup>[13]</sup> In a case, we ruled that the information need not be under oath, the reason therefore being principally that the prosecuting officer filing it is charged with the special duty in regard thereto and is acting under the special responsibility of his oath of office.<sup>[14]</sup> Clearly, respondent had confused an information from a complaint.

A perusal of the subject Information shows that it was subscribed or signed by Prosecutor Macario I. Delusa. It is thus clear that respondent erred in dismissing the subject Information on the ground that it was not under oath.

As aptly observed by the Court Administrator in the evaluation submitted by him:

It is clear that respondent erred in dismissing the information filed by Prosecutor Eric M. Ucat on the ground that it was not sworn to. The Rules