

THIRD DIVISION

[**A. M. No. MTJ-03-1485 (formerly A.M. No. 00-920-MTJ), April 01, 2003**]

FIDEL ISIP, JR., COMPLAINANT, VS. JUDGE VALENTINO B. NOGOY, RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

Before this Court is the **COMPLAINT-AFFIDAVIT**^[1] of July 31, 2000 addressed to then Supreme Court Administrator Alfredo L. Benipayo by Fidel L. Isip, Jr. (complainant) charging Macabebe-Masantol, Pampanga Municipal Circuit Trial Court (MCTC) Judge Valentino B. Nogoy (respondent) with **gross ignorance of the law, gross inefficiency** and **gross misconduct**.

The following facts which spawned the filing of the complaint are not disputed:

Complainant filed on May 14, 1998 before the Commission on Elections (COMELEC) a petition, "Fidel L. Isip, Jr., petitioner v. Pedro Yabut, Jr., et al., respondents," docketed as SPC No. 98-014, for the confirmation of his election as Vice Mayor during the just concluded local elections, his rival Pedro Yabut having represented that he too was proclaimed as Vice-Mayor by the Municipal Board of Canvassers of Macabebe.

The Second Division of the COMELEC, by Order of **May 25, 1998**, affirmed complainant's proclamation as the duly elected Vice Mayor in this wise:

[T]his Commission [SECOND DIVISION] **RESOLVED**, as It hereby RESOLVES to **AFFIRM** the proclamation of petitioner Fidel L. Isip, Jr. as the duly elected Vice-Mayor of Macabebe, Pampanga as evidenced by the Certificate of Canvass of Votes and Proclamation of the Winning Candidates for Municipal Offices [CE Form No. 25], with Serial No. 03540368 dated 13 May 1998.

Accordingly, the proclamation of Pedro Yabut secured through coercion and intimidation of Election Officer and Chairman of the Municipal Board of Canvassers of Macabebe, Pampanga, Mr. Joselito T. Matias[,] and superimposition of his name over that of the declared winner in the COCPWC is hereby **ANNULLED** and **SET ASIDE**. (Emphasis and italics in the original)

Complainant thus assumed office as Vice-Mayor commencing on June 30, 1998.

On Yabut's Motion for Reconsideration of the above-said COMELEC Second Division Order of May 25, 1998, the COMELEC *en banc*, by Resolution of December 16, 1999, vacated said order, disposing as follows:

WHEREFORE, premises considered, the Omnibus Motion for Reconsideration of [Yabut] is hereby GRANTED. The assailed Order of the Second Division dated 25 May 1998 is VACATED. A new Municipal Board of Canvassers for the Municipality of Macabebe is hereby constituted . . . Thereafter, they shall add up the votes and announce the true winner for the position of Vice Mayor in Macabebe, Pampanga x x x. (Underscoring supplied)

On December 23, 1999, complainant filed a Very Urgent Motion to Defer Execution of the COMELEC *en banc* December 16, 1999 Resolution in view of, so he claimed, newly discovered manifest errors in the election returns of precinct Nos. 8-A and 24A/25A. The motion was granted by the COMELEC *en banc*, hence, the reconvening of the new Municipal Board of Canvassers was suspended.

In the meantime, Yabut filed on January 10, 2000, a **criminal complaint before the MCTC**, of which respondent is the Presiding Judge, against complainant for Usurpation of Authority in support of which he executed an affidavit dated January 10, 2000 wherein he, among other things, invited attention to the COMELEC *en banc* Resolution of December 16, 1999 which vacated the proclamation of complainant.

By **Order of January 10, 2000**, respondent found probable cause for Usurpation of Authority against complainant and issued on even date a warrant for his arrest.

On **February 8, 2000**, complainant filed a Motion to Dismiss the criminal complaint against him on the ground that it does not charge an offense.

In the meantime, the COMELEC *en banc* issued a Resolution of April 25, 2000 lifting the suspension of the convening of the new Municipal Board of Canvassers. Thus it disposed:

WHEREFORE, in view of the foregoing, the Commission *en banc* **resolves to lift the suspension** for the new Municipal Board of Canvassers of Macabebe, Pampanga as duly constituted in its 16 December 1999 resolution to convene. Atty. Zoilo Pers . . . are thus directed to **convene**, with due regard to the proper procedure and notice as to the date and venue thereof to the affected candidates, **to effect the necessary corrections not only in the election returns in Precincts 159A/160A but also in Precincts 8A and 24A/25A and the corresponding Statement of Votes**. Thereafter, they shall add up the votes and announce the true winner for the position of Vice-Mayor of Macabebe, Pampanga.

x x x (Emphasis in the original)

Complainant thereupon filed on **May 29, 2000** a "Manifestation with Motion" before the MCTC praying for the resolution of his Motion to Dismiss the criminal complaint against him.

On June 8, 2000, the newly constituted Municipal Board of Canvassers proclaimed complainant as the winner in the 1998 Vice Mayoralty race. On the strength of his proclamation, complainant filed on **June 28, 2000** a "Second Motion to Resolve" his Motion to Dismiss the criminal case, despite which respondent failed to resolve it,

hence, the filing of complainant's Complaint-Affidavit of July 31, 2000 charging respondent with

"gross ignorance of the law for issuing the Order dated 10 January 2000 . . . , gross inefficiency for failing to act on [his] case despite the lapse of more than five (5) months and gross misconduct for giving undue advantage to Pedro Yabut, a private individual,"

and alleging that, *inter alia*, during the preliminary investigation of the criminal complaint against him conducted by respondent, the Secretary to the Mayor of Macabebe who belongs to Yabut's political party was present; and that respondent has been receiving allowance from the Office of the Mayor.

In his **Comment**,^[2] respondent alleged as follows: Immediately after he read complainant's complaint-affidavit, he showed complainant's lawyer Atty. Ma. Paz Duque, who was then inside his chambers, his draft of his Order/Resolution of complainant's "Second Motion to Dismiss (sic)." While there was indeed delay in resolving the Motion to Dismiss, it was brought about by, among other things, the ravages of typhoons, very heavy rains, the opening of "a certain DAM," and the submerging in flood waters of portions of his hometown (San Luis) and many other municipalities and cities which prevented him from going to his official station. His situation became more difficult as he had to attend to the many cases at the MCTC Apalit-San Simon of which he was designated Presiding Judge, in addition to the numerous cases which had remained pending for years at the MCTC Macabebe-Masantol.

With respect to complainant's allegation of seeing the secretary to the Mayor during the preliminary investigation of the criminal complaint against complainant, respondent informed that the courtroom and his chambers are government offices, but that in any event he did not notice the presence of the Mayor's secretary.

As for the allegation that Yabut and the Mayor belong to the same political party, respondent denied awareness thereof.

Regarding the "allowance" complainant claimed respondent has been receiving from the municipality, respondent alleged that the same comes from the "municipal fund."

In his **Reply**,^[3] to respondent's Comment, petitioner countered, among other things, as follows: What his counsel Atty. Duque filed was not a "Second Motion to Dismiss" but a "Second Motion to Resolve" the Motion to Dismiss, it having been unresolved and as of the filing of the present complaint dated July 31, 2000, the motion to dismiss had been pending for almost six (6) months. Complainant added that an order denying or granting a motion to dismiss could be made merely on the basis of the pleadings and other documents submitted to the court.

On May 28, 2002, petitioner filed an Affidavit of Desistance wherein he manifested that he was no longer interested in the prosecution of the present administrative case and prayed for its dismissal.

By Resolution of September 11, 2002,^[4] this Court noted petitioner's Affidavit of Desistance and referred the complaint to Executive Judge Herminio Z. Canlas of the Regional Trial Court of Macabebe, Pampanga for investigation, report and

recommendation.

After conducting hearings on October 16, 21 and 28, 2002, the Investigating Judge submitted a **REPORT**^[5] on November 21, 2002 recommending the a) dismissal of the charge for gross ignorance of the law; b) faulting of respondent for inefficiency for which he should be fined P5,000.00; and 3) dismissal of the charge for "[g]iving undue advantage to . . . Yabut, a private individual."

The pertinent portions of the investigating Judge's Report are quoted as follows:

X X X

A. As to Charge No. I: Gross Ignorance of Law.

X X X

The question that arose was whether the Comelec Resolution on December 23, 1999 which ordered the suspension of the reconvening of the new Municipal Board of Canvassers has the effect of setting aside the Comelec's (sic) resolution of December 16, 1999 which "vacated" complainant's earlier proclamation on May 13, 1998. The resolution dated December 16, 1999 has two parts to wit: (a) the order dated May 25, 1998 confirming the proclamation of Fidel Isip on May 23, 1998 was vacated; and (b) a new Municipal Board of canvasser was created and should convene to effect necessary corrections in the election returns of precinct 159A/160A and Statement of Votes. It appears clear therefore that what was ordered suspended in the order of Comelec on December 23, 1999 was only the reconvening of the new Municipal Board of Canvassers. But the setting aside of complainant's proclamation has remained in force. The Comelec in its resolution dated April 25, 2000 stated that "in ordering for the suspension of the convening of Municipal Board of Canvasser last 23 December 1999, the Commission *en banc* did not amend or reverse its 16 December 1999 resolution." Hence, the only logical conclusion is that complainant appeared to have unlawfully assumed office and illegally discharged the duties and functions of the office of the Vice mayor; consequently, respondent was correct in giving due course to the criminal complaint for usurpation of authority. Respondent's finding of a probable cause that the crime as charged in the complaint has been committed and that complainant was probably guilty of the said crime stood on solid ground. Most importantly, respondent does not appear to have acted in bad faith.

X X X

On the question of whether or not respondent acted correctly in ordering the arrest of the complainant, there is no doubt respondent acted within the scope of his authority.

X X X

It is therefore recommended that Charge No. I be dismissed for lack of factual and legal bases.