

## EN BANC

[ A.M. No. P-01-1472, June 26, 2003 ]

**ADRIANO V. ALBIOR, COMPLAINANT, VS. DONATO A. AUGUIS,  
CLERK OF COURT II, 4TH MUNICIPAL CIRCUIT TRIAL COURT  
(MCTC), TALIBON-GETAFE, BOHOL, RESPONDENT.**

### RESOLUTION

#### PER CURIAM:

Respondent Donato Auguis, Clerk of Court II of the Municipal Circuit Trial Court, Branch 4, Talibon-Getafe<sup>[1]</sup>, Talibon, Bohol, is charged by Adriano Albior, of usurpation of judicial function and negligence in the performance of official duties. According to complainant, respondent usurped judicial functions when he issued the order for the detention of one Edilberto Albior, the son of complainant. Further, complainant alleged that respondent committed negligence when he failed to inform Acting Presiding Judge Avelino N. Puracan of that court regarding the filing of cases that necessitated issuance of the detention order.

The antecedent facts of this administrative matter are as follows:

On January 25, 1999, two complaints for rape<sup>[2]</sup> were filed against Edilberto Albior before the MCTC, Branch 4 in Talibon-Getafe, Talibon, Bohol. As clerk of court of the said court, respondent Auguis received and filed the complaints which were docketed as Criminal Case Nos. 9144 and 9145. The following day, respondent issued a detention order<sup>[3]</sup> to the Bureau of Jail Management and Penology (BJMP) in San Jose, Talibon, Bohol, for the commitment of the accused Edilberto Albior. On January 27, 1999, the BJMP duly issued a receipt of detainee<sup>[4]</sup> for the person of the accused.

According to complainant, said order was issued without a prior preliminary investigation and without a warrant of arrest. Neither was there any record in the Police Blotter of the accused's apprehension, or of his surrender. Nor was there proof that he signed a waiver for his detention. What's more, the respondent failed to inform Acting Municipal Judge Avelino Puracan regarding the filing of the complaints for rape before his sala.<sup>[5]</sup>

On February 23, 1999, counsel for the accused then filed an urgent motion to release the accused.<sup>[6]</sup> Two days later, respondent issued a subpoena, directing the accused to submit counter-affidavits for the preliminary investigation of the charges of rape. But no further action was taken by the court. Accused through counsel filed a second motion<sup>[7]</sup> on March 1, 1999. Again, the motion was not acted upon.

Having no other recourse to regain his liberty, the accused filed a petition for *habeas corpus* on March 15, 1999, with the Regional Trial Court of Bohol, Branch 52. During

the *habeas corpus* proceedings,<sup>[8]</sup> the respondent testified that this was not the first time he issued a detention order without a warrant of arrest. He testified that he has done this action "many times already"<sup>[9]</sup> in the past, upon the request of the Chief of Police of the Philippine National Police in Talibon. He reasoned out that it was in the best interest of the detainees to be transferred from the PNP jail to the BJMP because the former did not have meal provisions for detainees.

After due hearing, the RTC Judge Zeta V. Villamayor issued an order<sup>[10]</sup> on March 25, 1999, finding that the accused was being illegally restrained of his liberty and ordering his immediate release from confinement. On the same day, the MCTC conducted a preliminary examination of the prosecution's witnesses and issued an Omnibus Order<sup>[11]</sup> confirming the arrest of the accused.

On April 12, 1999, counsel for the accused filed a motion for reinvestigation<sup>[12]</sup> with the Department of Justice, assailing the validity of the Omnibus Order. He maintained that no warrant of arrest was ever issued against his client and as such, no confirmation of such arrest may be undertaken.

On June 2, 1999, the father of the accused, herein complainant Adriano Albior, filed a letter-complaint<sup>[13]</sup> with the Deputy Ombudsman for the Visayas. Complainant charged respondent of usurpation of judicial functions and negligence in the performance of duties, in connection with the detention of his son, Edilberto Albior.

In a resolution dated June 3, 1999,<sup>[14]</sup> the Deputy Ombudsman referred the letter-complaint to the Office of the Court Administrator (OCA) for appropriate action. On May 8, 2000, the Ombudsman issued a resolution<sup>[15]</sup> dismissing the criminal complaint for usurpation of judicial function as defined under Article 241 of the Revised Penal Code.<sup>[16]</sup> However, he recommended the filing of an information with the proper court for violation of Section 3 (e) of the Anti-Graft and Corrupt Practices Act.<sup>[17]</sup>

Acting on the letter-complaint, the OCA required respondent to file a comment to the complaint. Respondent filed his counter-affidavit.<sup>[18]</sup> Respondent claims that he issued the detention order only after the PNP Chief and PNP Trial Officer of Talibon repeatedly requested him to do so. The respondent asserts that it was out of honest conviction that he was only helping the accused and his relatives. He was merely sparing them the trouble of having to bring meals to the accused, as the municipal jail where the latter was detained did not serve food to its prisoners.

Respondent also appended the affidavit<sup>[19]</sup> of Police Senior Inspector Lecarion P. Torrefiel, the PNP Chief of Police of Talibon. In it the Police Chief stated that he personally requested the respondent to immediately issue a detention order in order to transfer the accused to the BJMP jail, where he is ensured of three square meals a day. The Chief explained that the municipality did not have a budget for meals of detainees at the PNP jail, hence, it is alleged that respondent's action was intended purely for humanitarian reasons. Nothing is said, however, why the local government unit allows this inhumane practice. The Chief of Police himself appears blissfully ignorant of the human rights aspects of the matter for which his command could be held accountable.

On January 29, 2001, the OCA issued its report.<sup>[20]</sup> It found respondent's defense unconvincing and held him administratively liable for issuing the said detention order prior to a preliminary investigation conducted by a judge and before a warrant of arrest was issued against the accused. It recommended that the case be re-docketed as an administrative matter and that a fine in the amount of P3,000.00 be imposed upon respondent with a warning that the commission of the same or similar act in the future shall be dealt with more severely.

We then required the parties to manifest if they were willing to submit the case for decision on the basis of the pleadings filed.<sup>[21]</sup> The respondent subsequently manifested his conformity.<sup>[22]</sup>

The main issue for our resolution is whether the respondent should be held administratively liable for the issuance of a detention order resulting in the actual detention of the accused under the abovementioned circumstances.

The OCA report stresses that respondent clerk of court is not empowered to issue the questioned detention order. The duties of a clerk of court in the absence of the judge are defined under Section 5, Rule 136 of the Rules of Court:

*SEC. 5. Duties of the clerk in the absence or by direction of the judge. —* In the absence of the judge, the clerk may perform all the duties of the judge in receiving applications, petitions, inventories, reports, and the issuance of all orders and notices that follow as a matter of course under these rules, and may also, when directed so to do by the judge, receive the accounts of executors, administrators, guardians, trustees, and receivers, and all evidence relating to them, or to the settlement of the estates of deceased persons, or to guardianships, trusteeships, or receiverships, and forthwith transmit such reports, accounts, and evidence to the judge, together with his findings in relation to the same, if the judge shall direct him to make findings and include the same in his report.

Indeed nowhere in the Rules is the clerk of court authorized to issue an order of detention, as such function is purely judicial. In fact, we already had occasion to rule that a clerk of court, unlike a judicial authority, has no power to order the commitment of a person charged with a penal offense.<sup>[23]</sup>

The Deputy Ombudsman for the Visayas aptly pointed out that where a judge is not available, the arresting officer is duty-bound to release a detained person, if the maximum hours for detention provided under Article 125 of the Revised Penal Code had already expired. Failure to cause the release may result in an offense under the Code, to wit:

*ART. 125. Delay in the delivery of detained persons to the proper judicial authorities. —* The penalties provided in the next preceding articles shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of: twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional

penalties, or their equivalent; and thirty-six (36) hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.

Respondent might have been motivated by a sincere desire to help the accused and his relatives. But as an officer of the court, he should be aware that by issuing such detention order, he trampled upon a fundamental human right of the accused. Because of the unauthorized order issued by respondent, the accused Edilberto Albior was deprived of liberty without due process of law for a total of 56 days, counted from his unlawful detention on January 27, 1999 until the issuance of the appropriate order of commitment by the municipal judge on March 25, 1999.

Thus, the Court cannot condone nor take lightly the serious violation committed by the respondent. Article III, Section 1 of the Constitution mandates:

No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws. (Underscoring ours)

Once again, it bears emphasizing that the behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the clerk of lowest rank, should be circumscribed with a high degree of responsibility.<sup>[24]</sup> Their conduct at all times must not only be characterized by propriety and decorum, but above all else must be in accordance with the Constitution and the law. A clerk of court, such as herein respondent, is a ranking and essential officer in the judicial system. His office is the hub of activities. He performs delicate administrative functions essential to the prompt and proper administration of justice.<sup>[25]</sup>

Respondent needs no reminder that as an important officer in the dispensation of justice, one of his primary duties is to uphold the fundamental law of the land. His defense that he is not a lawyer or law graduate and so is excusably ignorant of the legal implications of his detention order, deserves scant consideration. Ignorance of the law excuses no one from compliance therewith, especially a clerk of court who ought to know better than an ordinary layman.

This Court has assiduously condemned any omission or act which tends to undermine the faith and trust of the people in the judiciary.<sup>[26]</sup> The Court cannot countenance any act or omission on the part of all those involved in the administration of justice which would violate the norms of public accountability and diminish or tend to diminish the faith of the people in the judiciary.<sup>[27]</sup>

The respondent's issuance of the detention order not only deprived the accused of liberty, it also considerably diminished the people's faith in the judiciary. For the very officer of the court on whom they depended to safeguard their human and constitutional rights was also the one who violated these rights. Respondent should be mindful of his ineluctable duty, as a ranking officer in the judicial system, to ensure that basic rights are protected.

In conclusion, we agree with the findings of the OCA that respondent is liable as charged administratively. But we disagree with its recommendation that respondent be merely meted out the penalty of a fine. We cannot treat lightly the actions of the respondent for he has admitted doing them repeatedly, in fact many times in the past. The implication of his action as an official of the court is not only disturbing but