

THIRD DIVISION

[A.M. No. RTJ-98-1418, September 25, 1998]

EMMANUEL D. SANTOS, COMPLAINANT, VS. JUDGE JOSE L. ORLINO (RETIRED), REGIONAL TRIAL COURT, BRANCH 23, GENERAL SANTOS CITY, RESPONDENT.

R E S O L U T I O N

NARVASA, C.J.:

Emmanuel P. Santos was indicted for estafa, allegedly committed against Berringer Marketing, Inc., in Criminal Case No. 10961 of Branch 23 of the Regional Trial Court of General Santos City, The Hon. Jose L. Orlino was the Presiding Judge of Branch 23 prior to his compulsory retirement on November 11, 1996.

On November 9, 1995, Emmanuel's father, Atty. Jose S. Santos, fired in his behalf a "MOTION TO STRIKE OFF FROM THE RECORDS ENTIRE TESTIMONY OF EX-JUDGE ANDRES O. LORENZO, SR. TAKEN ON MARCH 29, 1995 BEING VIOLATIVE OF SECTION 24 (B) OF RULE I RULES OF COURT." The testimony had been given nine (9) months earlier by Judge Lorenzo (retired) as witness for the prosecution, and been subjected to rigorous cross-examination by counsel for the accused, Atty. Edwin Torres. The motion to strike was not filed until after the exhibits for the prosecution had been admitted (on November 8, 1995) and the prosecution had rested its case.

Judge Lorenzo's testimony concerned a conference at his law office in the second week of June, 1994 attended by accused Emmanuel Santos, his brother, Narcilieto Santos, and officers of Berringer Marketing, Inc., namely: Jameson Lim, Henry Cu, and Robert Tamtanco. His testimony, essentially, was that these persons had gone to his law office to ask him to draw up an affidavit for Emmanuel Santos "about the defalcation of some stocks of beer" from Berringer of which he was then the warehouseman; that to this end, Judge Lorenzo addressed some questions to Emmanuel Santos, and took note of his answers for later incorporation in the affidavit; that it appeared, however, that Emmanuel had not made up his mind to execute the affidavit; and that Judge Lorenzo had thus advised the parties that he would hold preparation of the affidavit in abeyance until Emmanuel had decided to execute the sworn statement, but Emmanuel never came back to do so.

It is this testimony that Emmanuel Santos moved to strike, on the theory that the conference had created the relation of attorney and client between Judge Lorenzo and him, resulting in the former's disqualification under Section 24 (b), Rule 130 of the Rules of Court.

At the conclusion of the hearing of the case on November 13, 1995, Presiding Judge Orlino issued an Order giving the prosecution a period of ten (10) days to file an opposition to the motion to strike, and the accused as similar period of ten (10)

days from receipt of copy of the opposition within which to reply.

The prosecution filed its opposition on December 6, 1995. It pointed out that, actually, Judge Lorenzo's client was Robert Tamtanco, the dealer of Berringer Marketing, Inc., and that Emmanuel Santos had never executed the contemplated affidavit; hence, he (Judge Lorenzo did) "not have to ask ** the consent of the accused before giving his testimony **; " that moreover, the objection to Judge Lorenzo's testimony had been waived because never seasonably asserted; and that, contrarily, counsel for the accused had undertaken "a thorough exhaustive and rigid cross examination of ** Judge Lorenzo."

Judge Orlino found merit in the opposition, and on the grounds therein set out, handed down an Order dated December 7, 1995 denying Emmanuel Santos' motion to strike.

Santos thereupon filed, through counsel, a pleading dated December 21, 1995, entitled "REPLY/REJOINDER TO PROSECUTION'S OPPOSITION TO ACCUSED'S MOTION TO STRIKE OFF FROM THE RECORDS THE TESTIMONY OF EX-JUDGE ANDRES LORENZO, SR. AND MOTION FOR RECONSIDERATION OF COURT ORDER DATED DECEMBER 7, 1995." He lamented Judge Orlino's "hasty action" on his motion to strike without awaiting his reply -- to file which he had been given 10 days by the Order of November 13, 1995 -- and, insisting on his theory that the attorney-client relation has been created between him and Judge Lorenzo at the conference referred to, thus disqualifying the latter to testify on communications between them, prayed that the Order of December 7, 1995 be reconsidered and Judge Lorenzo's testimony stricken from the record.

Thereafter, Emmanuel Santos filed another motion, dated February 15, 1996, for the inhibition of Judge Orlino on the ground of his "presumptive, PARTIALITY and BIAS in favor of the prosecution" evidenced by the hasty denial of the motion to strike. On March 15, 1996 Judge Orlino issued an "Order of Disqualification" granting the motion, " no matter how groundless," and ordering the transmission of the record to the Executive Judge for re-raffle. In due course, the case was transferred to Branch 35.

On April 25, 1996, Emmanuel Santos signed and swore to the administrative complaint at bar which he filed with this Court on May 17, 1996 -- six (6) months or so before the compulsory retirement of Judge Orlino. The complaint is founded basically on the foregoing facts, and the claim of "a confidential 'unholy relationship between the offended party (Berringer Marketing, Inc.) and Atty. Edwin Torres" (his former counsel).

The Court required respondent judge to comment on the complaint. He did so on October 2, 1996. In his comment, Judge Orlino condemned the complaint as harassment, considering that he had already inhibited himself and the case had been re-assigned to another Branch of the RTC. He stated that he had denied the motion to strike without awaiting Emmanuel Santos reply to the opposition because he considered Judge Lorenzo testimony to have "no probative value whatsoever for the prosecution Emmanuel Santos not having executed any affidavit at all, aside form the fact that the prosecution had long since rested its case, and would not therefore cause any prejudice to the accused.