



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MOAMAR PANGANDAG,
Complainant,

A.M. No. MTJ-16-1877
(Formerly OCA IPI No. 13-2635-MTJ)

Present:

- versus -

SERENO, *CJ*,
LEONARDO-DE CASTRO,
BERSAMIN,
PERLAS-BERNABE,
CAGUIOA, *JJ*.

PRESIDING JUDGE OTTOWA B. ABINAL, 8th Municipal Circuit Trial Court in Mulondo, Maguing, Lumba-Bayabao, and Taraka, Lanao del Sur,

Promulgated:

JUN 13 2016

Respondent.

x ----- x

DECISION

SERENO, *CJ*:

This administrative case concerns the complaint filed against Municipal Circuit Trial Court (MCTC) Judge Ottowa B. Abinal for gross ignorance of the law, abuse and usurpation of jurisdiction, conduct prejudicial to the interest of public service, and bias. The complaint alleges that he did not have jurisdiction to take cognizance of a criminal complaint for grave threats, since the offense carried the penalty of *reclusión temporal*. The complaint further asserts that Judge Abinal issued a warrant of arrest despite knowing that the private complainant therein was his niece.

FACTS

Complainant Moamar Pangandag was criminally charged¹ with grave threats for allegedly threatening to commit the crime of murder against a certain Monaoray “Nahara” Abdullah and her companions. The Information was filed before the *sala* of Presiding Judge Abinal of the Mulondo, Maguing, Lumba-Bayabao, and Taraka MCTC in Lanao del Sur. Upon finding the existence of probable cause, he issued a warrant of arrest against Pangandag and two others. However, 15 days later, Judge Abinal voluntarily inhibited himself from hearing the case because of his relationship to Abdullah, who was his niece.² The case was eventually transferred to the presiding judge of the Marawi City MTCC.³ The criminal complaint was later on dismissed in light of the prosecution’s Motion to Withdraw Information based on the Affidavit of Desistance executed by the private complainant.⁴

Pangandag is now before this Court to complain against the actions of Judge Abinal. He insists that the MCTC did not have jurisdiction over the case, since the crime he was charged with carried the penalty of *reclusión temporal*, a prison term that exceeded six years. Further, it is argued that Judge Abinal should have disqualified himself from hearing the case in light of his relationship to the private complainant, who was his third-degree relative by consanguinity.

In his Comment,⁵ Judge Abinal explained that the MCTC had jurisdiction over the subject matter of the criminal case, since the Information did not contain any allegation that the accused demanded money or imposed a condition. Because of the absence of this assertion, he was of the opinion that Pangandag was only being charged with the second form of grave threats, which merely carried the penalty of *arresto mayor*. With regard to the second issue, while Judge Abinal admits that private complainant was indeed his niece, he stresses that this relationship was the reason why he voluntarily inhibited from the case immediately after issuing the warrant. He argues that he did not have to inhibit himself from deciding whether to issue a warrant of arrest, as it was his ministerial duty to do so.


¹ Information (*People v. Gamama*, Crim. Case No. 13-694-MG, Mulondo MCTC) (filed 11 June 2013), *rollo*, pp. 10-11.

² Order of Inhibition (*People v. Gamama*, Crim. Case No. 13-694-MG, Mulondo MCTC, 3 July 2013), *rollo*, p. 19.

³ Memorandum of Executive Judge Wenida B.M. Papandayan, *rollo*, p. 20.

⁴ Order of Dismissal (*People v. Gamama*, Crim. Case No. 13-694-MG, Mulondo MCTC, 30 Sep. 2013), *rollo*, p. 21.

⁵ Comment of Judge Abinal, *rollo*, pp. 16-18.



ISSUES

The issues to be resolved by the Court are whether Judge Abinal is administratively liable for taking cognizance of the criminal complaint for grave threats against Pangandag even if (a) the MCTC has limited jurisdiction over criminal offenses; and (b) the private complainant was his niece.

RULING

We adopt the recommendation⁶ of the Office of the Court Administrator and rule that Judge Abinal was not administratively liable when he took cognizance of the criminal complaint. He merely relied on the words of the Information, which do not appear to accuse Pangandag of committing grave threats accompanied by a demand for money or an imposition of any other condition. The Information reads as follows:⁷

x x x accused conspiring, confederating and mutually helping each other **moved by their personal and political resentment** which they entertained against Monaoray “Nahara” Abdullah and her companions with an **infliction upon them of a wrong amounting to a crime**, when they were on their way to Balintao Elementary School to cast their votes, the said accused did then and there willfully, unlawfully and feloniously **threatened them by shouting and firing their guns saying that they will kill the latter** and her companions but the offenders failed to attain the purpose. (Emphases supplied)

The absence of an allegation pertaining to a demand for money or an imposition of any other condition would be relevant to the jurisdiction of the MCTC. Article 282 of the Revised Penal Code clearly provides that the penalty for grave threats without a condition shall be *arresto mayor*, that is, imprisonment for the maximum period of six months.⁸ Since Section 32(2) of the Judiciary Reorganization Act⁹ expressly grants MCTCs exclusive original jurisdiction “over all offenses punishable with imprisonment not exceeding six (6) years,” we cannot fault Judge Abinal for believing that the MCTC could take cognizance of the criminal case. Without ultimately deciding on the merits of the criminal complaint in this administrative

⁶ *Rollo*, pp. 22-24.

⁷ Information, *supra* note 1, *rollo*, p. 10.

⁸ Article 282 of the Revised Penal Code reads: “Any person who shall threaten another with the infliction upon the person, honor or property of the latter or of his family of any wrong amounting to a crime, shall suffer: 1. The penalty next lower in degree than that prescribed by law for the crime he threatened to commit, if the offender shall have made the threat demanding money or imposing any other condition, even though not unlawful, and said offender shall have attained his purpose. If the offender shall not have attained his purpose, the penalty lower by two degrees shall be imposed. x x x. 2. The penalty of *arresto mayor* and a fine not exceeding 500 pesos, if the threat shall not have been made subject to a condition.” See, e.g.: *Caluag v. People*, 599 Phil. 717 (2009); *Spouses Dizon v. Calimag*, 417 Phil. 778 (2001); *Reyes v. People*, 137 Phil. 112 (1969).

⁹ Batas Pambansa Blg. 129, as amended by Republic Act No. 7691.

proceeding, we rule that there is no basis to hold Judge Abinal administratively liable for this charge.

We find, however, that Judge Abinal indeed violated the New Code of Judicial Conduct in relation to the Rules of Court by acting on the criminal complaint and issuing a warrant of arrest despite his relationship to the private complainant. Rule 137 of the Rules of Court clearly disqualifies judges from hearing cases if they are related to one of the parties within the sixth degree of consanguinity or affinity. As expressed in Section 5(c), Canon 3 of the New Code of Judicial Conduct, judges should not take part in proceedings in which their impartiality might reasonably be questioned, including those in which a party litigant is related to them by consanguinity or affinity. We stress that this disqualification rule was put into place to preserve the people's faith and confidence in the courts of justice.¹⁰ Thus, judges should not preside over a case in which they are not wholly free, disinterested, impartial, and independent.¹¹

The rule on disqualification remains even if the present case merely involves the determination of probable cause and the eventual issuance of a warrant of arrest. Contrary to the insistence of Judge Abinal, the issuance of a warrant of arrest is not merely ministerial in nature. Pursuant to Section 6(b), Rule 112 of the Rules of Court,¹² judges are required to personally examine private complainants and witnesses, as well as any supporting documents that they may produce. The purpose is to determine whether there is probable cause to believe that the persons being prosecuted are guilty of the crime charged. Afterwards, judges would again be required to exercise judicial discretion to ascertain if there is a necessity to place the accused in custody so that the ends of justice would not be frustrated.¹³ MCTC judges may even choose to merely issue a summons, instead of a warrant of arrest, if they do not find it necessary to place the accused under custody even after the determination of the existence of probable cause.

By issuing a warrant of arrest, Judge Abinal is assumed to have applied Section 6(b), Rule 112 of the Rules of Court, which required the examination of his own niece to determine the existence of probable cause. Further, he is also deemed to have relied on her testimony to determine whether the ends of justice necessitated that Pangandag be placed in

¹⁰ *Perez v. Suller*, 320 Phil. 1 (1995) (citing *Pimentel v. Salanga*, 128 Phil. 176 [1967]).

¹¹ See: *Perez v. Suller*, supra (citing *Garcia v. De La Peña*, A.M. No. MTJ-92-687 (Resolution), 9 February 1994, 229 SCRA 766; *Gutierrez v. Santos*, 112 Phil. 184 [1961]; *Geotina v. Gonzalez*, 148-B Phil. 556 [1971]; *Umale v. Villaluz*, 151-A Phil. 563 [1973]).

¹² The Rules state: "[W]ithout waiting for the conclusion of the investigation, the [Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court] judge may issue a warrant of arrest if he finds after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice."

¹³ See: *Sesbreño v. Aglugub*, 492 Phil. 461 (2005); *Flores v. Sumaljag*, 353 Phil. 10 (1998) (citing *Samulde v. Salvani*, 248 Phil. 179 [1988]; *Mantaring v. Roman*, 324 Phil. 387 [1996]); *Perez v. Suller*, supra note 10.

custody, instead of merely issuing summons to compel him to appear before the court. Clearly, Judge Abinal should not have participated in any of these courses of action, as he might have appeared biased in issuing the warrant of arrest that would ensure that the accused in the case filed by the judge's own niece would stand trial. Judge Abinal should have disqualified himself the moment he read the criminal complaint containing the name of his relative. He committed an administrative offense once he took cognizance of the case and issued a warrant of arrest.

In similar cases,¹⁴ We have imposed a fine on judges who failed to inhibit themselves from sitting in cases – even as early as the preliminary investigation stage – in which one of the parties was their relative within the sixth degree of consanguinity or affinity. In *Paderanga v. Paderanga*,¹⁵ We ruled that the gross ignorance and disregard of the rule on compulsory disqualification constitutes a serious charge pursuant to Section 8(9), Rule 140 of the Rules of Court. Under Section 11 thereof, a fine of “more than ₱20,000.00 but not exceeding ₱40,000.00” may be imposed if the respondent is guilty of a serious charge. Since in *Paderanga* this Court found an aggravating circumstance that impelled Us to impose a fine of ₱40,000, We rule in this case that a fine of ₱25,000 would be more appropriate in view of the absence of any mitigating or aggravating circumstance.

WHEREFORE, Judge Ottowa B. Abinal, Municipal Circuit Trial Court, Mulondo, Maguing, Lumba-Bayabao, and Taraka, Lanao del Sur, is found **GUILTY** of **GROSS IGNORANCE OF THE LAW OR PROCEDURE** for failing to immediately inhibit himself in *People v. Gamama*, Criminal Case No. 13-694-MG. Accordingly, the Court imposes the penalty of **FINE** in the amount of ₱25,000 with a **STERN WARNING** that a repetition of the same or a similar infraction shall be penalized more severely.

This case is hereby ordered **RE-DOCKETED** as a regular administrative matter.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

¹⁴ *Paderanga v. Paderanga*, A.M. Nos. RTJ-14-2383 & RTJ-07-2033, 17 August 2015; *Sales v. Calvin*, 428 Phil. 1 (2002); *Villaluz v. Mijares*, 351 Phil. 836 (1998); *Perez v. Suller*, supra note 10. See generally: *Ortiz v. Jaculbe*, 500 Phil. 142 (2005); *Oktubre v. Velasco*, 478 Phil. 803 (2004). But see: *Garcia v. De La Peña*, supra note 11.

¹⁵ *Paderanga v. Paderanga*, supra.

WE CONCUR:

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice