

## EN BANC

**[ A.M. No. RTJ-17-2492 [Formerly OCA IPI No. 13-4103-RTJ], September 26, 2017 ]**

**PROSECUTOR IVY A. TEJANO, COMPLAINANT, VS. PRESIDING JUDGE ANTONIO D. MARIGOMEN AND UTILITY WORKER EMELIANO C. CAMAY, JR.,<sup>[1]</sup> BOTH OF REGIONAL TRIAL COURT (RTC), BRANCH 61, BOGO CITY, CEBU, RESPONDENTS.**

### RESOLUTION

**LEONEN, J.:**

Without a standing warrant of arrest, a judge not assigned to the province, city, or municipality where the case is pending has no authority to grant bail. To do so would be gross ignorance of the law.

This resolves the Affidavit-Complaint<sup>[2]</sup> filed by Prosecutor Ivy A. Tejano (Tejano) against Presiding Judge Antonio D. Marigomen (Judge Marigomen) and Utility Worker Emeliano C. Camay, Jr. (Camay), both of Branch 61, Regional Trial Court, Bogo City, Cebu. Tejano charged Judge Marigomen with grave abuse of authority and gross ignorance of the law, and Camay with violating the Anti-Red Tape Act.

Pending before Branch 61, Regional Trial Court, Bogo City was a civil case<sup>[3]</sup> for declaration of absolute nullity of deed of absolute sale filed against Tejano by Jose Andrino (Andrino). This civil case was assigned to then Assisting Judge of Branch 61, Judge James Stewart Ramon E. Himalaloan (Judge Himalaloan),<sup>[4]</sup> pursuant to Administrative Order No. 113-2011.<sup>[5]</sup>

On July 19, 2012, Andrino moved<sup>[6]</sup> that Presiding Judge Marigomen instead try the civil case because hearings had been repeatedly postponed by Judge Himalaloan. Judge Marigomen granted the Motion in an Order<sup>[7]</sup> dated July 30, 2012.

On September 17, 2012, Administrative Order No. 137-2012<sup>[8]</sup> was issued where Judge Mario O. Trinidad (Judge Trinidad) of Branch 64, Regional Trial Court, Guihulngan City, Negros Oriental was designated as the new Assisting Judge of Branch 61, Regional Trial Court, Bogo City, Cebu. As Assisting Judge, Judge Trinidad was directed to take cognizance of all the cases handled by the former Assisting Judge, Judge Himalaloan. Judge Trinidad was likewise directed to take cognizance of cases where Presiding Judge Marigomen inhibited, those newly filed, and those where trial had not yet begun, i.e., where "the accused or any of the accused in a criminal case ha[d] not yet been arraigned," and civil cases where pre-trial had yet to be conducted or terminated.<sup>[9]</sup>

In 2013 and during the pendency of the civil case, Tejano filed a criminal complaint

for violation of the Anti-Violence Against Women and Children Act against Andrino.<sup>[10]</sup> This criminal case was raffled to Branch 20 of the Regional Trial Court of Cebu City presided by Judge Bienvenido R. Saniel, Jr. (Judge Saniel).<sup>[11]</sup>

On May 9, 2013 and with no standing warrant of arrest against him, Andrino posted bail before Branch 61, Regional Trial Court, Bogu City,<sup>[12]</sup> not before Branch 20 in Cebu City where the criminal case was pending. In posting bail, Andrino was assisted by Camay, who was assigned to Branch 61.<sup>[13]</sup>

On the same day that Andrino posted bail, Judge Marigomen ordered Andrino's release.<sup>[14]</sup>

Tejano filed before this Court an Affidavit-Complaint<sup>[15]</sup> against Judge Marigomen and Camay on June 21, 2013.

On her charge of grave abuse of authority, Tejano contended that Judge Marigomen refused to transfer the civil case to Judge Trinidad, the newly designated Assisting Judge of Branch 61, in violation of Administrative Order No. 137-2012. When this Administrative Order was issued on September 17, 2012,<sup>[16]</sup> trial in the civil case had not yet begun, with the pre-trial allegedly conducted only on January 7, 2013.<sup>[17]</sup>

On her charge of gross ignorance of the law, Tejano alleged that Judge Marigomen issued the Order of Release on May 9, 2013 with no standing warrant of arrest against Andrino, in violation of Rule 114, Section 1 of the Rules of Court. The Warrant of Arrest was issued by Judge Saniel only on May 30, 2013.<sup>[18]</sup>

As for Camay, Tejano charged him with violating the Anti-Red Tape Act for allegedly fixing Andrino's bail application and facilitating police assistance to Andrino.<sup>[19]</sup> It was also Camay who allegedly convinced Andrino to file the civil case against her.<sup>[20]</sup>

Judge Marigomen and Camay filed their respective Comments<sup>[21]</sup> on September 17, 2013.

According to Judge Marigomen, he granted Andrino's Motion to try the civil case because the former Assisting Judge, Judge Himalaloo, had not been conducting hearings since 2012. He also did not anticipate that a new Assisting Judge would be assigned to Branch 61. Therefore, he continued on hearing the civil case.<sup>[22]</sup>

As to Andrino's bail bond, Judge Marigomen approved it in the exercise of his sound discretion. He argued that in applications for bail, the stringent application of the Rules of Court may be relaxed in favor of the accused.<sup>[23]</sup>

For his part, Camay admitted that he assisted Andrino in posting bail but only because he was a public employee obliged to do so. He denied that he was a fixer<sup>[24]</sup> and claimed that he had no personal interest in the outcome of the civil case filed by Andrino against Tejano.<sup>[25]</sup>

The Office of the Court Administrator found Judge Marigomen guilty of gross ignorance of the law and of violating Supreme Court rules, directives, and circulars. However, it dismissed the complaint for violation of the Anti-Red Tape Act against Camay.<sup>[26]</sup>

According to the Office of the Court Administrator, Judge Marigomen violated Administrative Order Nos. 113-2011 and 137-2012 by taking cognizance of the civil case for declaration of absolute nullity of deed of sale cognizable only by Assisting Judge Himalaloan and, subsequently, by Judge Trinidad. That Judge Himalaloan had not been hearing cases since 2012 was not an excuse for granting Andrino's Motion to handle and try the case. The Office of the Court Administrator stated that Judge Marigomen could have sought guidance from this Court on how to remedy the continued delay in the proceedings. Furthermore upon the designation of Judge Trinidad as the new Assisting Judge, Judge Marigomen should have transferred the civil case, considering that it was still at its pre-trial stage.<sup>[27]</sup>

For violating Supreme Court Administrative Order Nos. 113-2011 and 137-2012, Judge Marigomen was found guilty of an offense considered a less serious charge.<sup>[28]</sup> The Office of the Court Administrator recommended that Judge Marigomen be fined the amount of P10,000.00.<sup>[29]</sup>

In addition, Judge Marigomen was found guilty of improperly applying the rules on bail bond applications. Under Rule 114, Section 17(a)<sup>[30]</sup> of the Revised Rules of Criminal Procedure, bail may be posted in another court only if the judge where the case is pending is absent or unavailable. The Office of the Court Administrator found that Judge Marigomen failed to prove that Judge Saniel, the judge of the court where the criminal case against Andrino was pending, was absent or unavailable. In addition, there was no standing warrant of arrest against Andrino at the time he posted bail on May 9, 2013. The Warrant of Arrest was issued only on May 30, 2013.<sup>[31]</sup>

For granting Andrino's bail despite the absence of a warrant of arrest, Judge Marigomen was found guilty of gross ignorance of the law. Considering that it was his second offense,<sup>[32]</sup> Judge Marigomen was fined with the maximum amount allowable, specifically, P40,000.00 and was sternly warned that repeating the same or similar offense shall be dealt with more severely.<sup>[33]</sup>

Without discussing the reasons for its finding, the Office of the Court Administrator found no merit in the Complaint against Camay, and hence, recommended its dismissal.<sup>[34]</sup>

In sum, the Office of the Court Administrator made the following recommendations in its Report<sup>[35]</sup> dated April 4, 2016:

**RECOMMENDATION:** It is respectfully recommended for the consideration of the Honorable Court that:

1. the instant administrative complaint against Hon. Antonio D. Marigomen, Presiding Judge, Branch 61, Regional Trial Court, Bogo

City, Cebu, be **RE-DOCKETED** as a regular administrative matter;

2. respondent Judge Marigomen be found **GUILTY** of Violation of Supreme Court rules, directives, and circulars and Gross Ignorance of the Law and Procedure, and be meted the penalty of **FINE** in the amounts of Ten Thousand Pesos (Php 10,000.00) and Forty Thousand Pesos (Php 40,000.00), respectively, with a **STERN WARNING** that a repetition of the same or any similar offense shall be dealt with more severely; and
3. 3. the instant administrative complaint against Mr. Emiliano C. Camay, Jr., Utility Worker, Branch 61, Regional Trial Court, Bogo City, Cebu, be **DISMISSED** for lack of merit.<sup>[36]</sup>

On June 14, 2017, Tezano filed an Affidavit<sup>[37]</sup> before this Court, stating that her filing of the Complaint is "only a product of miscommunication."<sup>[38]</sup> Thus, "in order to move on,"<sup>[39]</sup> she declared that she was withdrawing the Complaint she had filed against Judge Marigomen.

This Court notes the Office of the Court Administrator's Report dated April 4, 2016 and Tezano's Affidavit withdrawing her Complaint. The findings of fact and conclusions of law of the Office of the Court Administrator are adopted with modification that the fine for gross ignorance of the law is increased from P40,000.00 to P100,000.00.

## I

The civil case filed by Andrino against Tezano was assigned to Judge Himalaloan pursuant to Administrative Order No. 113-2011. However, Judge Marigomen granted Andrino's Motion to try the civil case, in violation of this Administrative Order.

Assuming that Judge Himalaloan had repeatedly postponed hearings, Judge Marigomen should have instead sought the guidance of this Court on how to address the delay in the proceedings. After all, the Constitution grants this Court the power of administrative supervision over all courts and their personnel.<sup>[40]</sup>

Worse, despite the designation of Judge Trinidad as Assisting Judge under Administrative Order No. 137-2012, Judge Marigomen usurped Judge Trinidad's authority by failing to transfer the civil case to him.

For violating Administrative Order Nos. 113-2011 and 137-2012, Judge Marigomen is guilty of violating Supreme Court rules, directives, and circulars, a less serious charge<sup>[41]</sup> punishable by either suspension for not less

than one (1) month but not more than three (3) months, or fine of more than P10,000.00 but not exceeding P20,000.00.<sup>[42]</sup> Under the circumstances, the fine of P20,000.00 is proper.

## II

The charge of gross ignorance of the law against Judge Marigomen merits a more

serious sanction.

Bail, as defined in Rule 114, Section 1 of the Rules of Court, is "the security given for the release of a person in custody of the law, furnished by him [or her] or a bondsman, to guarantee his [or her] appearance before any court as required under the conditions hereinafter specified." Based on this definition, the accused must be in custody of the law or otherwise deprived of his or her liberty to be able to post bail.

Generally, bail is filed before the court where the case is pending. However, if bail cannot be filed before the court where the case is pending as when the judge handling the case is absent or unavailable, or if the accused is arrested in a province, city, or municipality other than where the case is pending-Rule 114, Section 17(a) of the Rules of Court provides:

Section 17. *Bail, Where Filed.* - (a) Bail in the amount fixed may be filed with the court where the case is pending, or in the absence or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge, or municipal circuit trial judge in the province, city, or municipality. If the accused is arrested in a province, city, or municipality other than where the case is pending, bail may also be filed with any regional trial court of said place, or if no judge thereof is available, with any metropolitan trial judge, municipal trial judge, or municipal circuit trial judge therein. (Emphasis supplied)

The text of Rule 114, Section 17(a) of the Rules of Court shows that there is an order of preference with respect to where bail may be filed. In the absence or unavailability of the judge where the case is pending, the accused must first go to a judge *in the province, city, or municipality where the case is pending*. Furthermore, a judge of another province, city, or municipality may grant bail *only if* the accused has been *arrested* in a province, city, or municipality other than where the case is pending.

A judge not assigned to the province, city, or municipality where the case is pending but approves an application for bail filed by an accused not arrested is guilty of gross ignorance of the law. The last sentence of Rule 114, Section 17(a) is clear that for purposes of determining whether or not the accused is in custody of the law, the mode required is arrest, not voluntary surrender,<sup>[43]</sup> before a judge of another province, city, or municipality may grant a bail application. In the same vein, it is gross ignorance of the law if a judge grants an application for bail in a criminal case outside of his or her jurisdiction without ascertaining the absence or unavailability of the judge of the court where the criminal case is pending.<sup>[44]</sup>

Judge Marigomen was *not* a judge in the province, city, or municipality where the case was pending. Neither was Andrino *arrested* in a province, city, or municipality other than where the case was pending precisely because no warrant of arrest had yet been issued when he posted bail on May 9, 2013. Judge Marigomen violated Rule 114, Section 17(a) and is guilty of gross ignorance of the law.

Moreover, Judge Marigomen did not ascertain the absence or unavailability of Judge Saniel. This duty to ascertain is a consequence of Judge Marigomen not being the judge of the place where the criminal case was pending and could have been