

## FIRST DIVISION

**[ A.M. No. MTJ-16-1877 (Formerly OCA IPI No. 13-2635-MTJ), June 13, 2016 ]**

**MOAMAR PANGANDAG, COMPLAINANT, VS. PRESIDING JUDGE OTTOWA B. ABINAL, 8<sup>TH</sup> MUNICIPAL CIRCUIT TRIAL COURT IN MULONDO, MAGUING, LUMBA-BAYABAO, AND TARAKA, LANA DEL SUR, RESPONDENT.**

### DECISION

**SERENO, C.J.:**

This administrative case concerns the complaint filed against Municipal Circuit Trial Court (MCTC) Judge Ottawa 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 *reclusion 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 charged<sup>[1]</sup> 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.<sup>[2]</sup> The case was eventually transferred to the presiding judge of the Marawi City MTCC.<sup>[3]</sup> 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.<sup>[4]</sup>

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 *reclusion 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,<sup>[5]</sup> 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.

### 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 recommendation<sup>[6]</sup> 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:  
<sup>[7]</sup>

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.<sup>[8]</sup> Since Section 32(2) of the Judiciary Reorganization Act<sup>[9]</sup> 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 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