

## SECOND DIVISION

[ G.R. No. 173081, December 15, 2010 ]

**ERNESTO MARCELO, JR. AND LAURO LLAMES, PETITIONERS, VS.  
RAFAEL R. VILLORDON, ASSISTANT CITY PROSECUTOR OF  
QUEZON CITY, RESPONDENT.**

### DECISION

**CARPIO, J.:**

#### The Case

Before the Court is a petition for review on certiorari<sup>[1]</sup> assailing the Orders dated 5 January 2006<sup>[2]</sup> and 30 May 2006<sup>[3]</sup> of the Regional Trial Court (RTC) of Quezon City, Branch 105, in Civil Case No. Q-05-56367.

#### The Facts

On 2 April 2004, petitioners Ernesto Marcelo, Jr. and Lauro Llames, together with two others, filed with the Office of the City Prosecutor of Quezon City a criminal complaint<sup>[4]</sup> against their former employer Eduardo R. Dee, Sr. (Dee). The criminal complaint stemmed from Dee's non-payment of their wages as President and General Manager of New Sampaguita Builders Construction Incorporated.<sup>[5]</sup>

On 28 April 2004, respondent Assistant City Prosecutor of Quezon City Rafael R. Villordon (Villordon) issued a subpoena against Dee to appear at the preliminary investigation of the case set on 18 May 2004. Dee failed to appear. The case was again set for preliminary investigation on several dates but Dee failed to appear in all of them. Each time the case was reset, petitioners asked that the case be declared submitted for resolution.

On 29 July 2004, Villordon declared the case submitted for resolution.

On 5 November 2004, Dee filed a motion to reopen the case and attached his Counter-Affidavit. Assistant City Prosecutor Rogelio Velasco, Villordon's Division Chief, approved the motion on 8 December 2004. Villordon then called the parties to a hearing on 28 December 2004. At the hearing, Dee failed to appear but petitioners were present and signed the minutes of the hearing confirming that they would appear and submit their Reply-Affidavit on 18 January 2005. Another hearing was also scheduled on 3 February 2005. On both dates, Dee failed to appear and petitioners did not submit their Reply-Affidavit.

On 22 March 2005, petitioners filed a proceeding for grievance/request for assistance with the Office of the Ombudsman (OMB). After several follow-ups for the early resolution of the case without receiving any action on the matter, petitioners

later filed a case for violation of Section 3(f)<sup>[6]</sup> of Republic Act No. 3019<sup>[7]</sup> against Villordon with the OMB.<sup>[8]</sup> On 31 July 2007, the OMB dismissed the case.

Meanwhile, on 19 September 2005, petitioners filed a petition for mandamus<sup>[9]</sup> against Villordon with the Regional Trial Court (RTC) of Quezon City, Branch 105. Petitioners prayed that Villordon be ordered to resolve the criminal complaint and pay petitioners (1) moral damages in the amount of P25,000 each; (2) exemplary damages in the amount of P25,000; (3) attorney's fees in the amount of P10,000, plus P2,000 per court appearance; and (4) cost of suit.<sup>[10]</sup>

In an Order dated 5 January 2006, the RTC dismissed the case for lack of merit. The RTC explained that petitioners failed to exhaust available administrative remedies before resorting to the court. The RTC stated that petitioners should have first referred the matter to the Chief City Prosecutor, being Villordon's superior, to correct Villordon's error, if any. The RTC added that petitioners filed an administrative charge against Villordon with the OMB for neglect of duty without waiting for the final determination of the case.<sup>[11]</sup> The RTC explained further:

While the rule on exhaustion of administrative remedies is not an iron clad rule, the circumstances availing in this case does not categorized as an exception. The pending case for Estafa and violation of Article 116 of the Labor Code before the respondent, assuming they raise only legal questions, will not justify the petitioners to compel the former to make an immediate resolution of the same. As the record of preliminary investigation will show, a Motion to Re-open Case was granted as per notation of his Division Chief and was scheduled for preliminary investigation on 18 January 2005 and 3 February 2005, respectively, which the petitioners themselves conformed with. On [the] 18 January 2005 hearing, petitioners appeared and signed the *minutes* giving [chance] for the last time to Eduardo Dee, Sr. to show up on the next hearing which was 3 February 2005. However, came the 3 February 2005 hearing, none of the parties appeared. This development has led the respondent to wait for the petitioners to file any pleading on account of the Counter-Affidavit filed by Eduardo Dee, Sr., a copy of which was furnished the petitioners. As respondent reasoned out, he waited for a move from the petitioners to enable him to dispose [of] the cases accordingly. Until and after the case is submitted for resolution, any motion asking for immediate resolution to that sort is still unavailing. Thus, from the foregoing circumstances, the petitioners have not shown [any] legal right to compel the respondent to perform the relief they are suing for.

WHEREFORE, in the light of the foregoing considerations, the petition is DISMISSED for lack of merit.

SO ORDERED.<sup>[12]</sup>

Petitioners filed a motion for reconsideration which the RTC denied for lack of merit in an Order dated 30 May 2006.

Hence, this petition.

### **The Issue**

The main issue is whether petitioners are entitled to the extraordinary writ of mandamus.

### **The Court's Ruling**

The petition lacks merit.

Petitioners submit that the petition for mandamus was not prematurely filed with the RTC. Petitioners insist that under the Rules of Court it is the assistant city prosecutor's function as investigating prosecutor in a preliminary investigation to make his resolution, while it is the chief city prosecutor's function to either approve or disapprove the same. The chief city prosecutor then will get the chance to correct the errors committed by the investigating prosecutor only after the latter's resolution is submitted to him. In the present case, Villordon, as the investigating prosecutor, has not yet made any resolution. Thus, petitioners assert that Villordon committed grave abuse of discretion by unreasonably refusing to file an information despite the fact that the evidence clearly warrants such action.

On the other hand, respondent Villordon maintains that mandamus is a premature remedy since the case was not yet submitted for resolution when petitioners filed an action with the RTC. Villordon contends that after the hearing on 3 February 2005 which none of the parties attended, he was left hanging as to whether the case should be submitted for resolution. Petitioners failed to submit a Reply-Affidavit which should have rebutted the Counter-Affidavit filed by Dee. Villordon states that petitioners opted to just engage in forum-shopping and filed several cases against him in the RTC and the OMB.

Sections 1 and 2 of Rule 112 of the Revised Rules of Criminal Procedure state:

*Section 1. Preliminary investigation defined; when required.* - Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial. x x x

*Sec. 2. Officers authorized to conduct preliminary investigations.* - The following may conduct preliminary investigations:

(a) Provincial or City Prosecutors and their assistants; x x x

A preliminary investigation is conducted before an accused is placed on trial to secure the innocent against hasty, malicious, and oppressive prosecution; to protect him from an open and public accusation of a crime, as well as from the trouble, expenses, and anxiety of a public trial. It is also intended to protect the State from having to conduct useless and expensive trials. Thus, a preliminary investigation is