

SECOND DIVISION

[A.M. No. MTJ-04-1551, May 21, 2004]

**ATTY. ALBERTO P. QUINTO, COMPLAINANT, VS. JUDGE
GREGORIO S. VIOS, MUNICIPAL TRIAL COURT, KAPATAGAN,
LANAO DEL NORTE, RESPONDENT.**

R E S O L U T I O N

CALLEJO, SR., J.:

The instant administrative complaint arose when Atty. Alberto P. Quinto charged Judge Gregorio S. Vios, Municipal Trial Court, Lanao del Norte, with grave abuse of authority and ignorance of the law relative to Criminal Case No. 2713 entitled *People of the Philippines v. Andres Bolando and John Doe* for grave threats.

The complainant was the defense counsel in the said case. In his verified Complaint^[1] dated December 19, 2001, he alleged that during the trial, the prosecution presented two witnesses whose testimonies were based on the accounts of another eyewitness; hence, hearsay. On cross-examination, Prosecutor Jaime Umpa stipulated and admitted that both witnesses did not actually hear the accused utter the threatening words. After the prosecution rested its case, the defense filed a Motion for Leave of Court to File Demurrer to Evidence, which, however, the respondent denied.

During the hearing of August 15, 2001, the complainant manifested that he was waiving the presentation of his evidence. The respondent then allegedly got angry, shouted and scolded the complainant, stating that the defense had no right to waive the presentation of evidence. The complainant could hardly finish his every manifestation as he was repeatedly cut short by the respondent. The respondent did not listen to the complainant's explanation and, thereafter, compelled the latter to withdraw his appearance as counsel of the accused, under pain of contempt. In the presence of the complainant, the respondent appointed a counsel *de oficio*.

According to the complainant, the actuations of the respondent judge showed his arrogance and ignorance of the law, and that compelling him (the complainant) to withdraw as counsel of the accused under pain of contempt amounted to grave abuse of authority.

In his comment,^[2] the respondent denied the complainant's allegations and explained that what actually transpired during the hearing of Criminal Case No. 2713 was a difference of opinion on the application of the Revised Rules on Summary Procedure in relation to Section 23, Rule 119 of the Revised Rules of Court. The respondent clarified that when the complainant manifested in open court that he was waiving the presentation of evidence for the accused, the respondent merely informed the complainant that he would be violating Sec. 23, Rule 119 of the Revised Rules of Court. Moreover, to do so would be prejudicial to the rights of the

accused. The respondent also alleged that he warned the complainant that the accused may be convicted if he would not present evidence on his behalf.

The respondent pointed out that it is for the court to assess and evaluate the evidence. He asserted that the complainant must have lost sight of the provision of Article 282 of the Revised Penal Code and the pronouncement of the Court in several cases that grave threats can be committed indirectly. According to the respondent, the hearsay evidence rule would not apply in this case, as the testimonies of the witnesses for the prosecution can be considered as independently relevant statements or utterances which are facts in issue or circumstantial evidence of the facts in issue. Even if such opinion is erroneous, the respondent judge maintained that the same cannot be the basis of an administrative action on the ground of abuse of authority or ignorance of the law.

Finally, the respondent claimed that after several exchanges between the complainant, the prosecutor and the court, he and the prosecutor sincerely advised the complainant to withdraw as defense counsel. The complainant readily and voluntarily withdrew his appearance with the consent of the accused and a counsel *de oficio* was, thereafter, appointed in his stead. The respondent insisted that he did not abuse his authority when he advised the complainant to withdraw as defense counsel because it was made in the exercise of sound judicial discretion, in order to protect the rights of the accused.

In his reply,^[3] the complainant insisted that what transpired during the hearing of August 15, 2001 was not a matter of difference in opinion, but a manifestation of grave abuse of authority and ignorance of the law. According to the complainant, the denial of the motion to file demurrer to evidence was akin to a denial of the demurrer itself; hence, the accused may adduce evidence in his defense, in accordance with Section 23, Rule 119 of the Revised Rules on Criminal Procedure. As the said Rules are merely directory and permissive, the respondent had no right to compel him (the complainant) to present evidence for the defense, or force him to withdraw as counsel on pain of contempt of court.

The case was assigned to Executive Judge Valerio M. Salazar of the Regional Trial Court of Lanao Del Norte, Branch 6, for investigation, report and recommendation.

^[4] In his Report dated December 12, 2003, the Executive Judge concluded that the respondent believed that the accused in the criminal case must present evidence to avoid prejudice. When the complainant insisted on waiving this right on behalf of the accused, the respondent repeatedly told complainant to withdraw as the only way to procure the presentation of evidence for the accused. In effect, the respondent virtually compelled the complainant to withdraw as counsel for the accused.

According to the Executive Judge, the respondent's insistence that the accused may not waive the right to present evidence was clearly erroneous. The respondent failed to understand the plain and unmistakable language of Section 23, Rule 119 of the Revised Rules on Criminal Procedure. However, the Executive Judge opined that it was a simple error of interpretation and application of rules, and concluded that the respondent was not moved by malice, dishonesty or corrupt motive. As the respondent did not actually cite the complainant for contempt and eventually acquitted the accused in the criminal case, no grave injury or undue prejudice was caused on any party. It was then recommended that the instant complaint against