

SECOND DIVISION

[A.M. No. MTJ-02-1398, February 27, 2002]

JOSELITO R. ENRIQUEZ, COMPLAINANT, VS. JUDGE PLACIDO B. VALLARTA, MUNICIPAL CIRCUIT TRIAL COURT (MCTC), CABIAO-SAN ISIDRO, NUEVA ECIJA, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

This is a complaint against Judge Placido B. Vallarta, Presiding Judge of the Municipal Circuit Trial Court (MCTC), Cabiao-San Isidro, Nueva Ecija, for falsification of certificates of service, gross ignorance of the law, and grave abuse of authority and discretion, in connection with his handling of Criminal Case No. 215-98, entitled "People of the Philippines vs. Venancio Santos." The complainant, Atty. Joselito R. Enriquez, was counsel for the accused in Criminal Case No. 215-98 for malicious mischief, before the court of respondent judge. The criminal case involved the alleged malicious cutting by the accused Venancio Santos of the branches of a tamarind tree worth P20,000.00. Since the penalty for the crime under Art. 329 (1) of the Revised Penal Code is *arresto mayor*, or from one (1) month and one (1) day to six (6) months, the case is governed by the Revised Rule on Summary Procedure.

Complainant claims in the case at bar that respondent judge allowed the prosecution of the case to be conducted by a private prosecutor without the participation of a public prosecutor. He further alleges that upon the conclusion of the case, respondent judge ordered the parties to submit memoranda, which is prohibited under §19(f) of the Revised Rule on Summary Procedure. It appears that complainant complied with the submission of the memorandum, but the private prosecutor did not. On March 28, 2000, noting the failure of the prosecution to file a memorandum, respondent judge considered the case submitted for decision.

Respondent judge subsequently found complainant's client guilty of the crime charged and sentenced him to 25 days of imprisonment without costs. The decision, dated April 27, 2002, was actually promulgated on September 26, 2000. Complainant claims that respondent judge might have falsified his Certificate of Service for the period covering June to September 2000 by not stating that the case in question was still pending decision despite the lapse of the 90-day period prescribed in Art. VIII, §15(1) of the Constitution. The case is now before the Regional Trial Court of Gapan, Nueva Ecija in view of the appeal of the accused.

In his comment, respondent judge argues that the appearance and intervention of a private prosecutor in the criminal case is authorized by Rule 110, §5 of the 1985 Rules of Criminal Procedure (now Revised Rules of Criminal Procedure), as held in *People v. Beriales*.^[1] As for his order requiring the parties to submit their memoranda, respondent judge says that what he actually meant was for them to submit a "position paper." Respondent judge explained that such lapse was due to

the fact that he had so many things to do, having been assigned to three courts and holding daily hearings. Finally, he maintains that the decision, dated April 27, 2000, was rendered within 30 days counted from the order, dated March 28, 2000, as provided in the Revised Rule on Summary Procedure.

The Office of the Court Administrator found the explanation of respondent judge on the use of "memorandum" as merely a lapse in language and agreed that the intervention of a private prosecutor was authorized under the Rules of Criminal Procedure. However, it found respondent liable for his failure to timely decide the case within 30 days from the date it was submitted for decision and recommended that respondent be ordered to pay a fine of P1,000.00 with warning that a repetition of the same offense will be dealt with more severely.

First. We agree with the Office of the Court Administrator that respondent judge cannot be faulted for allowing the intervention of a private prosecutor in the trial of Criminal Case No. 215-98.

Rule 110, §5 of the Revised Rules of Criminal Procedure (2000) provides:

All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. However, in Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer or public officer charged with the enforcement of the law violated may prosecute the case. This authority shall cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court. . . . (emphasis supplied)

Absent any showing to the contrary, it will be presumed that official duty was regularly performed. This presumption is reinforced in this case by the fact that complainant, as counsel for the accused, failed to object to the absence of the public prosecutor, giving rise to the presumption that the intervention of a private prosecutor was due to the unavailability of the public prosecutor. By failing to make a timely objection, complainant must be deemed to have waived his objection to the proceedings before respondent judge.

Second. The Revised Rule on Summary Procedure provides in pertinent parts:

Section 1. *Scope.* – This rule shall govern the summary procedure in the Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, and the Municipal Circuit Trial Courts in the following cases falling within their jurisdiction:

. . . .

B. Criminal Cases:

. . . .

(4) All other criminal cases where the penalty prescribed by law for the offense charged is imprisonment not exceeding six months or a fine not exceeding one thousand pesos (P1,000.00), or both, irrespective of other imposable penalties, accessory or otherwise, or of the civil liability arising