

FIRST DIVISION

[A.M. No. RTJ-02-1715, September 03, 2002]

ATTY. DIOSDADO CABRERA, COMPLAINANT, VS. JUDGE OSCAR E. ZERNA AND GLORIA Z. MARTINEZ, STENOGRAPHER, REGIONAL TRIAL COURT, BRANCH 7, TUBOD, LANA O DEL NORTE, RESPONDENTS.

R E S O L U T I O N

YNARES-SANTIAGO, J.:

A verified letter-complaint^[1] for Immorality and Grave Misconduct was filed by Atty. Diosdado Cabrera against Presiding Judge Oscar Zerna, Sr. of the Regional Trial Court of Tubod, Lanao del Norte, Branch 7 and Gloria Z. Martinez, stenographer.

Complainant alleged that both respondents have been living together as husband and wife despite the fact that they are both lawfully married to their respective spouses who are still living; that both respondents live in a newly built house located in Poblacion, Tubod, Lanao del Norte; that the house is equipped with an air conditioning unit and a garage intended only for the service-type jeep of respondent judge; that he acquired the said jeep from a litigant in whose favor he issued an injunctive writ; that the house was built with construction materials acquired from a litigant in two civil cases pending at respondent judge's sala and from another litigant who obtained a favorable judgment in a case.

Complainant likewise charged respondent judge with grave misconduct in connection with several criminal cases pending in his sala, to wit:

1. Criminal Case No. 07-542, where complainant charged respondent judge with rendering a patently erroneous judgment;
2. Criminal Cases Nos. 07-982, 889 and 890, which are drug related cases, where complainant charged the respondent judge with having approved the bonds of supposed bondsmen who did not submit their 2 x 2 I.D. photos or who are either already dead or are out of the country; and
3. Criminal Cases Nos. 07-993, 07-995, 07-996 and 07-997 against five accused therein, in connection with which complainant charges the respondent judge of:
 - a) granting recognizance to two of the accused without legal basis, right upon the filing of their motions for recognizance and without giving the prosecution the opportunity to comment or oppose thereon. There was also an absence of any recommendation from the DSWD for the release of the two alleged "minor" accused. Respondent judge released on

recognizance two accused on the mere basis of questionable Certificate of Live Births furnished by the latter; and

b) illegally dismissing these four criminal cases upon motion of a lawyer who was not the counsel of record, without giving the prosecution a chance to be heard, as the Orders of dismissal were issued on the very same day that the motion to dismiss was filed. The dismissals were based only on the Affidavits of Desistance executed for all the four criminal cases by one Georgia Sy, who was the private complainant in only two out of the four cases.

As regards respondent Martinez, complainant alleged that she has acquired real and personal properties in amounts that far exceeded her earning capacity.

Respondent Martinez submitted her Counter-Affidavit^[2] where she specifically denied the allegations in the complaint a) relative to the house allegedly used by them for their adulterous relationship; b) pertaining to the referral to her as the wife of respondent judge; c) relative to her alleged immoral relationships with other parties prior to her illicit relationship with respondent judge; and d) on her alleged acquisition of real and personal properties in amounts which far exceeded her salary.

Respondent judge, on the other hand, failed to file his comment despite two motions for extension of time to file comment.

Upon evaluation, the OCA recommended the referral of the case to an Associate Justice of the Court of Appeals for formal investigation, report and recommendation.^[3] Subsequently, the case was referred to Associate Justice Delilah Vidallon Magtolis of the Court of Appeals.^[4]

Stripped of other incidental matters, the investigating Justice found that both parties failed to present their respective supporting evidence.^[5]

During the investigation, complainant failed to appear. Instead, he wrote a letter^[6] informing the investigating Justice that he was no longer interested in pursuing his complaint because his witnesses have disappeared, or otherwise have turned indifferent and hostile. He also manifested that in view of the 2-year period that elapsed since he filed the complaint, he thought that his complaint was not given due course. Thus, he withdrew his participation in the investigation.

Despite several notices for him to appear and defend himself, respondent judge failed to answer the complaint or deny the charges against him.

However, the investigating Justice proceeded to resolve the case on the basis of the available records on hand.

On January 19, 2001, a report and recommendation was submitted by the investigating Justice, the dispositive portion of which states:

In view of the foregoing, we hereby recommend that the respondent judge be declared guilty of grave misconduct and be meted a ***FINE OF AT LEAST P20,000.00.***

The charges against respondent Martinez may be ***DISMISSED for lack of evidence.***

The investigating Justice recommended the dismissal of the charge of immorality because of complainant's failure to appear at the hearings to prove the same by substantial evidence.

As to Criminal Case No. 07-542 for frustrated murder, the investigating justice found that the assailed decision has been affirmed by the Court of Appeals. Accordingly, the charge of complainant against the respondent judge of rendering a patently erroneous judgment has been rendered moot and academic.

With regard to Criminal Cases Nos. 07-982, 889 and 890, under Rule 114, Section 2 of the Rules of Court, only the passport size photos of the accused should be attached in the applications for bail. Thus, the submission of the 2 x 2 photographs by bondsmen is not required. Likewise, no evidence was found to substantiate the alleged demise or departure for the USA of the bondsmen in the said criminal cases.

Regarding Criminal Cases Nos. 07-993, 07-995, 07-996 and 07-997, the complainant alleged that the respondent judge was precipitate in 1) ordering the release on recognizance of the two accused, and 2) ordering the dismissal of the four criminal cases without a hearing on the basis of the affidavits of desistance of Gregoria Sy.

We agree with the investigating Justice that the respondent judge was precipitate in ordering the release on recognizance of Wahab Alom and Saro Ganda, two of the five accused in Criminal Cases Nos. 07-993, 07-995, 07-996 and 07-997. Not only did respondent judge fail to observe the requirement of a hearing before the accused could be released on bail, he also failed to observe the procedure for the release of a youthful offender under Section 191 of P.D. 603.

Like any application for bail, a motion to be released on recognizance has the objective of sparing an accused from imprisonment until his conviction and yet secure his appearance at the trial of a pending criminal case.^[7] Jurisprudence dictates that a hearing is required in granting bail whether it is a matter of right or discretion and the notice of hearing is required to be given to the prosecutor or fiscal, or at least he must be asked on his recommendation.^[8] To do away with the requisite hearing is to dispense with this time-tested safeguard against arbitrariness.^[9] Perforce, respondent judge should have given the prosecution the opportunity to be heard or at least be allowed to comment or submit its opposition on the application for bail by recognizance.

We also note that when accused Alom and Ganda applied for bail by recognizance, both of them made reference, among others, to the applicability of the Child and Youth Welfare Code (P.D. 603), Section 191, which provides:

Article 191. *Care of Youthful Offender Held for Examination or Trial.* – A youthful offender held for x x x trial x x x, if unable to furnish bail, shall from the time of his arrest be committed to the care of the Department of Social Welfare and Development or the local rehabilitation center or detention home in the province or city which shall be responsible for his appearance in court whenever required: Provided, that in the absence of any such center or agency within a reasonable distance from the venue