

EN BANC

[**A.M. No. RTJ-97-1390, August 05, 1998**]

CESAR B. MERIS, COMPLAINANT, VS. JUDGE CARLOS C. OFILADA, RESPONDENT. FRANCISCO R. HERNANDEZ, COMPLAINANT, VS. JUDGE CARLOS C. OFILADA, RESPONDENT.

DECISION

PER CURIAM

JUDGE CARLOS C. OFILADA of the Regional Trial Court, Branch 15, Malolos, Bulacan, was charged with various administrative offenses contained in two (2) separate complaints, in addition to several others previously filed against him, as will be discussed hereunder.

A.M. No. RTJ-1390

On 16 May 1996 respondent Judge issued Search Warrant No. 20-M-96 against a certain Thomas Jay of Lalakhan, Sta. Maria, Bulacan, for illegal possession of 3,000 board feet of narra lumber valued more or less at P360,000.00 in violation of Sec. 68, PD 705, as amended by EO 277, otherwise known as the *Revised Forestry Code of the Philippines*. The warrant was served immediately the following day. On 20 May 1996 EIIB Operation Officer Baltazar B. Dulalia filed a Return, Compliance and Inventory (re search warrant).

On 21 May 1996 Thomas Jay filed a *Motion to Quash Search Warrant* No. 20-M-96 on the ground that the facts charged did not constitute an offense and that the warrant contained averments which if true would make up legal excuses or justifications. Appended to the motion were photocopies of the following documents: (a) *Certificate of Transport Agreement* issued by CENRO, Bayombong, Nueva Viscaya, dated 22 January 1996, re conveyance of the narra lumber (Annex "4");^[1] (b) *Certificate of Lumber Origin* issued by CENRO, Bayombong, Nueva Viscaya, in favor of Remitans Enterprises, 12 Agueda St., Project 8, Q.C., for 11,754 bd. ft. = 27.71 cu. M. under Auxiliary Invoice No. 180795 and Official Receipt No. 4529171 dated 22 January 1996 issued by DENR-CENRO, Bayongbong, Nueva Voscaya (annexes "5" and "5-1");^[2] (c) *Certificate of Registration of Business Name* No. 0298450 issued by the Department of Trade and industry, NCR, on 26 September 1955, for TJ Furniture owned by Tomas Jay (Annex "1");^[3] (d) *Mayor's Permit* No. 16840 issued by the Office of the City Mayor of Manila on 18 January 1996 (Annex "2");^[4] (e) *Delivery Receipt for narra lumber* dated 21 March 1996 issued by Remitans Enterprises to TJ Furniture (Annex "3");^[5] and, (f) *Tally Sheets of narra lumber* (Annexes "7", "7-1", "7-2" and "7-3").^[6]

The motion to quash was set for hearing on 31 May 1996 at 8:30 in the morning. However, on 21 May 1996 Jay, through his counsel, Atty. Romeo Y. De Jesus, moved

to have the hearing advanced to 28 May 1996 on the ground that, according to him, he was informed that "the calendar of the Court is not available;" consequently, he requested for 28 May 1996 at 8:30 in the morning, undertaking at the same time to "notify the parties concerned." But counsel for respondent, despite his undertaking, failed to notify complainant Cesar B. Meris, Regional Director, EIIB, who as a result failed to appear on 28 May 1996.

On 27 May 1996 Atty. Salome T. Cansino, Special Counsel of the Department of Justice, filed an opposition to the motion to quash the search warrant contending that (a) the pieces of narra lumber seized were not covered by any legal documents required by the *Revised Forestry Code of the Philippines*; (b) the documents submitted by Jay did not cover the lumber seized; and, (c) a criminal complaint had already been filed against Jay by the DENR for Illegal Possession of Forest Products in violation of Sec. 68, PD 705, as amended by EO 277.

On 28 May 1996, despite the opposition of the special counsel of the Department of Justice, respondent Judge granted the motion to quash and ordered the immediate release of the narra lumber seized from Thomas Jay. The explanation of respondent was that the pieces of lumber seized were owned by a legitimate enterprise and covered by proper documents, emphasizing that he took into consideration not only the opposition of the Department of Justice but also the deteriorating condition of the pieces of lumber which were already long exposed to the elements.

On 5 June 1996 complainant, in his capacity as Regional Director for Region III of EIIB, wrote a letter to Chief Justice Andres R. Narvasa which is textually quoted hereunder -

THE HONORABLE ANDRES R. NARVASA
Chief Justice
Supreme Court
Sir:

I wish to report to HIS HONOR about the actuation of Honorable Judge Carlos Ofilada, regional trial Court, Branch 15, Malolos, Bulacan which is prejudicial to the interest of the government by issuing an Order of Release of Seized/Confiscated Narra Lumber with a commercial value of P150,000.00 by virtue of Search Warrant No. 20-M-96 for violation of Section 68, PD 705 as amended by Executive Order No. 277 without hearing of the case on the merits.

Records show that respondent/owner of seized narra lumber thru Counsel filed a Motion to Quash Search Warrant before the Court and set the case for hearing on May 31, 1996 at 8:30 in the morning.

It is sad to note, however, Honorable Judge Carlos Ofilada quashed the Search Warrant on May 28, 1996 *motu proprio* and ordered the release of seized narra lumber to the respondent herein, which is two (2) days prior to the scheduled hearing, May 31, 1996.

That Economic intelligence and Investigation Bureau (EIIB) Region III represented by the Regional Director ATTY. CESAR B. MERIS as Counsel attended the scheduled hearing of the Motion to Quash on May 31, 1996

but sad to note Judge Ofilada already quashed to Search Warrant No. 20-M-96 on May 28, 1996 without affording a day in Court on the part of the Government. Attached hereto are xerox copies of Search Warrant No. 20-M-96, application for Search Warrant, marked as Annex "A" and "B," Motion to Quash filed by respondent thru counsel marked as ANNEX "C," Court Order Quashing Search Warrant No. 20-M-96 dated May 28, 1996 marked as ANNEX "D," Motion for reconsideration marked as ANNEX "E."

May I request your Honor to look into the matter with the aim in view to enhance the good image of the Judiciary. Likewise, to encourage the public to report erring Judges to Supreme Court and not to the media
xxxx

Very respectfully yours,

ATTY. CESAR B. MERIS
Regional Director, Counsel for EIIB3
Cabanatuan City

On 3 July 1996 Regional Director Cesar B. Meris, who was also acting as counsel for EIIB, filed an Answer (actually an opposition to the motion to quash search warrant). On 10 July 1996 he filed his motion for reconsideration (of the order quashing the search warrant) where he claimed that he attended the hearing on the motion to quash previously scheduled on 31 May 1996 only to be informed that respondent Judge had already quashed the search warrant on 28 May 1996 even without the presence of either the complainant EIIB Regional Director or the Special Counsel representing the Government. His motion for reconsideration and that of Special Counsel Salome T. Cansino, who protested the hearing of the motion without proper service and notice, were denied by respondent Judge.

Complainant claims that by ordering the release of the confiscated narra lumber without hearing the case on the merits and without affording the prosecution a day in court, respondent Judge committed grave abuse of authority prejudicial to the interest of the Government. Section 5, Rule 15, of the Rules of Court states-

Sec. 5. Contents of notice. - The notice shall directed to the parties concerned, and shall state the time and place for the hearing of the motion.^[7]

A perusal of the request for advanced resetting of the motion to quash search warrant would show that although it stated the time and date of hearing, it failed to comply with Sec. 5 of Rule 15 as the notice was addressed only to the *clerk of court and not to the parties concerned* as required.^[8] Neither was there proof of service of the motion on the adverse party despite the undertaking of counsel for movant to notify the public prosecutor of the request as required by Sec. 6 of Rule 15 -

Sec. 6. Proof of service, to filed with motion. - No motion shall be acted upon by the court, without proof of service of the notice thereof, except when the court is satisfied that the rights of the adverse party or parties are not affected.^[9]

In *Manakil v. Revilla*^[10] we held that the court will not act on the motion if there is no proper notice and/or proof of service of the notice on the adverse party. It is nothing but a useless piece of paper filed with the court. It is not motion. It presents no question which the court could decide. The court has no reason to consider it and the clerk had no right to receive it without that compliance with the rules. Harsh as they may seem, these rules were introduced to avoid a capricious change of mind in order to provide due process to both parties and ensure impartiality in the trial.

Due process demands proper obedience to procedural rules especially when the subject matter of motion to quash is search warrant. Since searches are in derogation of the inviolable right of the people to be secure in their persons, houses, papers and effects,^[11] it necessarily follows that the applicant should rely on the strength of his evidence to support the application or the subsequent legal custody of the seized articles. Otherwise, upon prima facie proof that the movant for the quashal of the warrant was the owner of the seized lumber and that he lawfully acquired them, he is entitled to the quashal of the search warrant and the restoration to him of the seized articles.^[12] It is clear therefore that the exception in Sec. 6, Rule 15, of the Rules of Court cannot apply in a motion to quash search warrant. For without the proper notice of hearing and proof of service thereof, the rights of either party will be adversely affected. Moreover, the ground invoked by movant was that the warrant charged no offense. The fundamental test in considering motion to quash on this ground is whether the facts alleged, if hypothetically admitted, will establish the essential elements of the offense as defined by the law.^[13]

A cursory examination of the search warrant will disclose that the essential elements of the offense charge are sufficiently alleged. It is not right; therefore, to resolve the charges at the very outset without any notice of hearing, or to hear the motion *ex parte*. The issues require a fuller examination especially since a criminal complaint had already been filed in court. The prosecution, too, must be given its day in court - the burden of proof thereof being placed squarely on its shoulders. A prudent judge would, in the absence of the opposing party in the hearing of a motion as pivotal as a motion to quash, inquire from the other party or verify from the records the proof of service of notice rather than proceed with the hearing. This is but an elementary notion of fair play. He should not rely on a party's undertaking to notify the adverse party of a scheduled hearing. The judge must demand what the rule requires, i.e., proof of such notice on the adverse party, otherwise, a contentious motion, as the motion to quash in the case before respondent Judge, should be considered a mere scrap of paper which should not have even been received for filing.

Respondent's culpability is further compounded by his misrepresentation in the order he issued on 14 August 1996 (denying the motion of the public prosecutor for reconsideration) that he was on extended leave of absence from 29 May 1996 to 22 July 1996 when the records show that he actually applied for leave only from 29 May 1996 to 3 July 1996 (not up to 22 July 1996).

A.M. No. RTJ-981411

On 18 April 1994 an Information for murder was filed with the Regional Trial Court of Bulacan against four (4) accused, namely, Rolando Garcia, Lopito Gumasing, Eric