



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

ZAHARA PENDATUN  
MAULANA,

*Complainant,*

A.M. No. RTJ-21-006  
[Formerly OCA IPI-18-4802-RTJ]

Present:

LEONEN, J.,  
*Chairperson,*

HERNANDO,  
INTING,  
DELOS SANTOS, and  
LOPEZ, J. Y., JJ.

- versus -

JUDGE OSCAR P. NOEL, JR.,  
Regional Trial Court, Branch 35,  
General Santos City, South  
Cotobato,

*Respondent.*

Promulgated:

March 15, 2021

~~Misra DC Bait~~

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DECISION

**HERNANDO, J.:**

This resolves the Complaint<sup>1</sup> filed by Zahara Pendatun Maulana (complainant) against respondent Judge Oscar P. Noel, Jr. (respondent) of the Regional Trial Court (RTC), Branch 35, General Santos City, South Cotobato.

Complainant alleged that she is one of the respondents in the case entitled “*People of the Philippines v. Misuari Matabalo Brahim and Fatima Zahara [Pendatun] Maulana*,” where she was charged with violation of Republic Act No. 10591 (RA 10591), or An Act Providing for a Comprehensive Law on Firearms and Ammunition and Providing Penalties

<sup>1</sup> Rollo, pp. 3-20.

for Violations.<sup>2</sup> The firearms involved in the case were seized by virtue of Search Warrant Nos. 17-98<sup>3</sup> and 17-99<sup>4</sup> by the law enforcers, which were issued by respondent Judge on July 11, 2017.

While searching the house of complainant located at Block 2, Lot 19, Phase I, Doña Soledad Subdivision, Barangay Labangal, General Santos City, the following seized firearms were identified: one (1) unit caliber 40 pistol HS with SN W50706; one (1) unit MS Parabellum 9mm caliber pistol with SN R59108; one (1) unit caliber 380 (Pietro beretta) Italy made with SN E48994Y; several live ammunition for M14 rifles; and several magazines containing live ammunition for M16 rifles.<sup>5</sup>

On September 25, 2017, the Office of the Prosecutor (OCP) of General Santos City issued a Resolution<sup>6</sup> dismissing the complaint for violation of RA 10591 against complainant “for Lack of Evidence and/or Probable Cause”<sup>7</sup> citing the Certification<sup>8</sup> dated September 14, 2017 obtained by the OCP from the Firearms and Explosive Office (FEO) which indicated that complainant is the licensed/registered holder of one (1) unit caliber 40 pistol HS with SN W50706, while Misuri Matabalao Brahim (Brahim), complainant’s co-respondent in the above-cited criminal case, is the licensed/registered holder of one (1) unit MS Parabellum 9mm caliber pistol with SN R59108.

As for the one (1) unit caliber 380 (Pietro beretta) Italy-made with SN E48994Y, the prosecutor found that although the said firearm was covered by a mere Letter Order and Acknowledgment Receipt of Equipment (ARE),<sup>9</sup> it was not one of the items stated in Search Warrant Nos. 17-98 and 17-99.

With respect to the live ammunition for M14 rifles and magazines containing live ammunition for M16 rifles, the prosecutor found reasonable ground to believe that they were “government issued properties under the custody of Corporal Danny K. Mingka in the performance of his duties as member of the Philippine Army and who was a detailed security”<sup>10</sup> of complainant.

Complainant’s counsel thus filed a *Motion to Release Seized Items*<sup>11</sup> dated September 29, 2017 praying for the release of the seized firearms to their respective owners. Prior to the scheduled hearing of the said motion on

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<sup>2</sup> Id. at 43.

<sup>3</sup> Id. at 21.

<sup>4</sup> Id. at 25.

<sup>5</sup> Id. at 271.

<sup>6</sup> Id. at 7-14.

<sup>7</sup> Id. at 13.

<sup>8</sup> Id. at 35.

<sup>9</sup> Id. at 39.

<sup>10</sup> Id. at 12.

<sup>11</sup> Id. at 15-20.

November 16, 2017, respondent Judge allegedly directed complainant to proceed to his chambers and asked her to shoulder the amount of ₱300,000.00 representing the expenses that will be incurred which he, his court personnel, and the government prosecutor will incur when they travel to Camp Crame, Manila, to personally verify licenses for the subject firearms.<sup>12</sup> During the actual hearing, complainant's counsel, instead, moved for the withdrawal of the Motion to Release Seized Items.<sup>13</sup>

In open court, however, respondent Judge allegedly made it appear that it was complainant who moved for respondent Judge and his court personnel to have the licenses personally verified, and offered to shoulder their travel expenses. Thus, in an Order<sup>14</sup> dated November 16, 2017, respondent Judge granted the supposed prayer of complainant, thus:

x x x x movant prayed that the Court as well as his personnel and the government prosecutor in order to expedite the proceedings of the case to go to Camp Crame and personally verify the records of the movant with the said office as well as the authenticity of their license, with the undertaking to shoulder the expenses of the same. There being no objection on the part of the government prosecutor, the motion is hereby GRANTED. x x x x<sup>15</sup>

In his Comment<sup>16</sup> dated May 11, 2018, respondent Judge clarified that he issued the November 16, 2017 Order based on the manifestation of complainant's counsel during the hearing of the Motion to Release Seized Items. In particular, he maintained that during the hearing, complainant's counsel requested the court and court personnel, including the government prosecutor, to personally verify the authenticity of the seized firearms and their licenses at complainant's expense.<sup>17</sup> Respondent judge presented the transcript of stenographic notes (TSN) taken during the hearing. He also pointed out that complainant did not file any motion for reconsideration or amendment of the November 16, 2017 Order.<sup>18</sup>

Respondent also emphasized that complainant failed to submit to the court a copy of the License to Own and Possess Firearm (LTOPF) with respect to one (1) unit caliber 380 (Pietro beretta) Italy-made with SN E48994Y, and that the ARE pertaining to the said seized firearm was not the LTOPF which would thus warrant its release to complainant. Respondent judge disclaimed any fault in the delay of the release of the seized firearms, claiming that any such delay is attributable to complainant's failure to submit the proper documents requested by the court.<sup>19</sup>

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<sup>12</sup> Id. at 3.

<sup>13</sup> Id.

<sup>14</sup> Id. at 25.

<sup>15</sup> Id.

<sup>16</sup> Id. at 23-24.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id. at 23-24.

In his Supplemental Comment<sup>20</sup> dated June 8, 2018, respondent further clarified that complainant presented a mere photocopy of the September 14, 2017 Certification from the FEO. However, when the original was submitted, several inconsistencies were observed in the signatures therein, including the brand of firearm it referred to.<sup>21</sup> Anent the allegation that he demanded PhP300,000.00 from complainant prior to the November 16, 2017 hearing, respondent vehemently denied the same, claiming that he could not possibly make such a demand in his chambers when the conversations could be easily overheard by the court staff.<sup>22</sup>

On August 16, 2018, the Office of the Court Administrator (OCA) received an *Affidavit of Desistance* dated August 9, 2018 allegedly executed by complainant where she manifested that she completely and absolutely exonerates respondent of any liability.<sup>23</sup> In particular, complainant claimed in her affidavit that “she was greatly mistaken in her perception of the facts and the surrounding circumstances that led her to believe that respondent committed the acts she complained of.”<sup>24</sup>

Complainant also admitted in her affidavit that she, in fact, personally asked her counsel to pray in open court that she was willing to pay PhP300,000.00 for the personal verification of the authenticity of licenses relative to the seized firearms. To verify the authenticity of the affidavit, the OCA contacted complainant to confirm if she, in fact, executed the same, to which she replied in the negative.<sup>25</sup>

Due to the varying factual accounts of complainant and respondent prior and during the hearing on November 16, 2017, and complainant’s Affidavit of Desistance dated August 9, 2018, the OCA, in its Report<sup>26</sup> dated May 22, 2019, recommended to this Court that the instant complaint be referred to the Executive Justice of the Court of Appeals, Cagayan de Oro City Station for further investigation.

In a Resolution<sup>27</sup> dated July 31, 2019, this Court, upon recommendation of the OCA, referred the administrative complaint to the Executive Justice of the Court of Appeals, Cagayan de Oro Station, for investigation, report, and recommendation. The complaint was eventually raffled to Associate Justice Angelene Mary W. Quimpo-Sale as Investigating Justice.

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<sup>20</sup> Id. at 31-34.

<sup>21</sup> Id.

<sup>22</sup> Id. at 32.

<sup>23</sup> Id. at 46.

<sup>24</sup> Id. at 272-273.

<sup>25</sup> Id.

<sup>26</sup> Id. at 43-50.

<sup>27</sup> Id. at 52-56.

**Findings of the Investigating Justice:**

Notably, during the January 13, 2020 hearing before the Investigating Justice, complainant confirmed the filing of her affidavit stating her desistance in the administrative charge against respondent.<sup>28</sup> In this regard, the Investigating Justice, in her Report<sup>29</sup> dated January 24, 2020, found that:

From the foregoing, it is clearly shown that complainant freely and voluntarily executed her affidavit of desistance. Her conscience bothered her when things got out of hand because she merely wanted to secure the release of her two firearms. When asked twice about the effect of her desistance, she stated that she wants the court to dismiss the administrative complaint against respondent.<sup>30</sup>

During the January 13, 2020 hearing before the Investigating Justice, complainant attested to the veracity of the contents of her affidavit and confirmed all statements therein. After ascertaining that complainant freely executed the *Affidavit of Desistance*, the Investigating Justice recommended posthaste the dismissal of the administrative charge against respondent.<sup>31</sup> In a Resolution<sup>32</sup> dated June 10, 2020, this Court referred the January 24, 2020 Report of the Investigating Justice to the OCA for evaluation, report and recommendation.

**Report and Recommendation of the OCA:**

In its Memorandum<sup>33</sup> dated November 19, 2020, the OCA disagreed with the recommendation of the Investigating Justice. The OCA explained that the desistance of complainant did not necessarily warrant the dismissal of the administrative complaint against respondent.

The OCA then found that respondent breached the norms and standards of the court, and committed gross ignorance of the rules when he issued his November 16, 2017 Order.<sup>34</sup> The OCA stressed that it is not the duty of respondent to personally verify the authenticity of the certification submitted to him, and that respondent only had to rely on the Certification of the FEO and the ARE submitted by complainant in deciding the issue of possession or non-possession of valid licenses for the seized firearms.<sup>35</sup>

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<sup>28</sup> Id. at 241.

<sup>29</sup> Id. at 239-246.

<sup>30</sup> Id. at 246.

<sup>31</sup> Id.

<sup>32</sup> Id. at 268.

<sup>33</sup> Id. at 270-277.

<sup>34</sup> Id. at 275.

<sup>35</sup> Id.

The OCA thus found respondent liable for gross ignorance of the law, and recommended that he be “fined Twenty Thousand Pesos (₱20,000.000 [with warning] that a commission of any of the same or similar act shall be dealt with more severely.”<sup>36</sup>

### Our Ruling

We agree with the findings of the OCA but with modification as to the recommended penalty.

**The complaint should not be dismissed solely on the basis of complainant’s affidavit of desistance.**

The recommendation of the Investigating Justice to dismiss the complaint was solely grounded on the complainant’s affidavit of desistance and her predisposition to have the administrative case against respondent dismissed as testified by her during the January 13, 2020 hearing before the Investigating Justice. Unfortunately, the Investigating Justice’s Report contained no discussion whatsoever on the facts and issues presented for investigation and evaluation.

On this score, we agree with the OCA that the complaint against respondent should not be dismissed on the basis of the affidavit of desistance alone. This Court has always held that the withdrawal of a complaint or the desistance of a complainant does not necessarily warrant the dismissal of an administrative complaint.<sup>37</sup> Thus, in *Escalona v. Padillo*,<sup>38</sup> we held that:

No affidavit of desistance can divest this Court of its jurisdiction under Section 6, Article VIII of the Constitution to investigate and decide complaints against erring officials and employees of the judiciary. The issue in an administrative case is not whether the complainant has a cause of action against the respondent, but whether the employee has breached the norms and standards of the courts. Neither can the disciplinary power of this Court be made to depend on a complainant’s whims. To rule otherwise would undermine the discipline of court officials and personnel. The people, whose faith and confidence in their government and its instrumentalities need to be maintained, should not be made to depend upon the whims and caprices of complainants who, in a real sense, are only witnesses. Administrative actions are not made to depend upon the will of every complainant who may, for one reason or another, condone a detestable act. Such unilateral act does not bind this Court on a matter relating to its disciplinary power.<sup>39</sup>

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<sup>36</sup> Id. at 277.

<sup>37</sup> *Escalona v. Padillo*, 645 Phil. 263-267 (2010).

<sup>38</sup> Id.

<sup>39</sup> Id. at 267-268.

Thus, the fact that herein complainant manifested before the Investigating Justice that she is no longer interested in pursuing the case does not, as a matter of course, warrant the automatic dismissal of an administrative case against respondent, more so in the instant case where respondent appears to have admitted certain material allegations in the complaint filed against him.

**Respondent committed gross ignorance of procedural rules when he issued the November 16, 2017 Order.**

After careful evaluation of the facts presented, this Court finds merit in the administrative complaint filed against respondent notwithstanding the subsequent desistance of complainant.

There is no question at this point that despite complainant's submission of the ARE and Certification dated September 14, 2017 from the FEO certifying that complainant and Brahim are the licensed/registered holders of the seized firearms,<sup>40</sup> herein respondent did not grant complainant's *Motion to Release Seized Items*.

Respondent, instead, issued the November 16, 2017 Order, thereby authorizing himself, the court personnel and the government prosecutor to personally verify the authenticity of the firearm licenses at Camp Crame at the expense of complainant. To justify the propriety of the November 16, 2017 Order, respondent asserts his doubts on the authenticity of the September 14, 2017 Certification of the FEO, and the inadequacy of the ARE submitted by complainant.

OCA Circular No. 11-2011,<sup>41</sup> citing *Del Rosario vs. People*,<sup>42</sup> provides that certifications issued by the FEO Records Section are sufficient proof of the fact of possession or non-possession of a valid license to own or possess firearms or explosives in the offense of Illegal Possession of Firearms. OCA Circular No. 11-2011 further states that personal appearances of FEO records personnel is not required in order to establish the authenticity of FEO-issued certifications.

This only means that FEO-issued certifications are sufficient evidence, and thus, should be accepted by the courts in determining the presence or absence of a valid license or permit to own or possess firearms.

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<sup>40</sup> Particularly, one (1) unit caliber 40 pistol HS with SN W50706, and one (1) unit MS Parabellum 9mm caliber pistol with SN R59108, respectively.

<sup>41</sup> Amendment of OCA Circular 1-98 on the Issuance of Court Processes Relative to Records on Firearms and Explosives, OCA Circular No. 11-11, (January 18, 2011).

<sup>42</sup> 410 Phil. 642 (2001).

Accordingly, it is not the duty of respondent to personally verify the authenticity of the September 14, 2017 Certification of the FEO, or the firearm licenses of complainant and Brahim. Neither is respondent enjoined by the rules to travel from General Santos City to Camp Crame, Quezon City to do the same.

Anent the ARE submitted by complainant pertaining to the caliber .380 Pietro beretta, it has already been established that the seized firearm was not one of the items particularly stated in Search Warrant Nos. 17-98 and 17-99.

It was thus highly irregular, if not anomalous, for respondent to issue the November 16, 2017 Order. If indeed respondent found the ARE inadequate, or doubted the authenticity of the September 14, 2017 Certification of the FEO on the basis of the alleged unusual signature of the Chief of its Records Section, or that it indicated a different firearm, respondent could have simply required complainant to submit another and/or original FEO certification for the seized firearms.

At this point, there is no definitive finding that respondent himself urged complainant to shoulder the expenses for verification of the firearm licenses in the amount of ₱300,000.00.

However, even granting, without admitting, that it was complainant's counsel who requested the court to personally verify the authenticity of the seized firearms and their licenses at complainant's expense, it should have been denied by respondent as there was no ground for him to grant such motion and issue his November 16, 2017 Order. Not only does the issuance thereof demonstrate his gross ignorance of the rules, this also casts doubt on his integrity and probity as a member of the Judiciary.

As regards the recommended penalty, we deem it appropriate to impose a penalty of suspension from office without salary and any benefits for three (3) months instead of a fine of ₱20,000.00 as recommended by the OCA, with stern warning that a commission of the same or similar infraction will merit a harsher penalty.

Time and time again, this Court emphasized that a Judge is at all times duty bound to render just, correct and impartial decisions in a manner free of any suspicion as to their fairness, impartiality and integrity.<sup>43</sup>

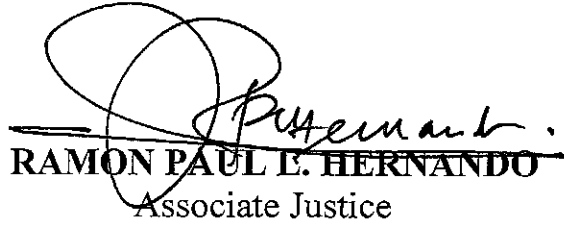
**WHEREFORE**, Judge Oscar P. Noel, Jr. of the Regional Trial Court, Branch 35, General Santos City, South Cotabato is hereby **SUSPENDED** from office for three (3) months without salary and any benefits, with **STERN WARNING** that a repetition of the same offense shall be dealt with more severely.

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<sup>43</sup> *Angping v. Ros*, 700 Phil. 503, 510 (2012).

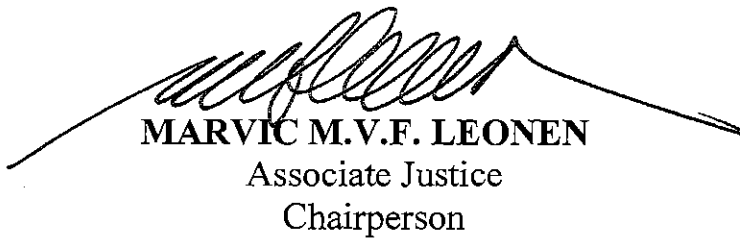


**SO ORDERED.**

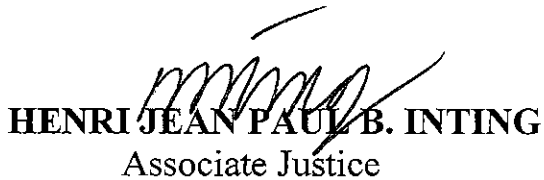


**RAMON PAUL E. HERNANDO**  
Associate Justice

WE CONCUR:



**MARVIC M.V.F. LEONEN**  
Associate Justice  
Chairperson



**HENRI JEAN PAUL B. INTING**  
Associate Justice



**EDGARDO L. DELOS SANTOS**  
Associate Justice



**JHOSEP Y. LOPEZ**  
Associate Justice