REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **14 October 2019** *which reads as follows*:

"**A.M. No. RTJ-19-2569 [formerly OCA IPI No. 17-4746-RTJ] — ROMEO P. LAYNO, REPRESENTED BY BRANDINO A. LABIRAN,** *complainant*, ***versus*** **JUDGE KIMAL M. SALACOP, REGIONAL TRIAL COURT (RTC), BRANCH 6, PROSPERIDAD, AGUSAN DEL SUR,** *respondent*.

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Before the Court is a Joint Affidavit Complaint[1] dated August 22, 2017 signed by Brandino A. Labiran (Labiran), as complainant and attorney-in-fact of Romeo P. Layno (Layno), charging respondent Judge Kimal M. Salacop (respondent Judge Salacop), Regional Trial Court (RTC), Branch 6, Prosperidad, Agusan del Sur with "negligence in the performance of duty and gross ignorance of the law" relative to Crim. Case No. 8891. In the said case, Layno is one of the accused for arson under the following Information[2] dated February 26, 2016:

INFORMATION

> The UNDERSIGNED PROSECUTOR I (PPO Sub-Office, Bayugan City Agusan del Sur) hereby accuses **RICARIDO C. LAYNO, ROMEO B. LAYNO, MARIO B. LAGRANTE and DIVINA L. LAGRANTE**, of the crime of **ARSON**, committed as follows:
>
> That on or about 12:00 o'clock noon of January 26, 2016 in the premises and vicinity particularly at Purok 1, Brgy. La Union, Prosperidad, Agusan del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and helping one another, did then and there willfully, unlawfully, and feloniously and maliciously, set on fire [seventy-five] (75) durian, fifteen (15) coconut trees, one hundred (100) falcata trees, eighty (80) banana, which has a total market value of **[SEVENTY-EIGHT] THOUSAND FOUR HUNDRED [TWENTY-THREE] AND FIFTY CENTAVOS (Php. 78,423.50)** to the damage and prejudice of consisting of (*sic*) actual and compensatory damages.
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> CONTRARY TO LAW. **Article 320, Revised Penal Code**[3]
> (Emphasis in the original)

Relative thereto, respondent Judge Salacop issued the following Order[4] dated March 14, 2016 (first Order):

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1 *Rollo*, pp. 2-17.
2 Id. at 18.
3 Id.
4 Id. at 20.

ORDER

A review of the Information filed showed that there is no offended party, which is required by Section 6, in relation to Sec. 12 of Rule 110 of the Revised Rules on Criminal Procedure.

WHEREFORE, Prosecutor Genesis E. Efren is directed to amend the Information by complying with Sections 6 and 12 of Rule 110, within 10 days after receiving this order.[5]

In compliance thereto, the prosecutor filed the following Amended Information:

AMENDED INFORMATION

The UNDERSIGNED PROSECUTOR I (PPO Sub-Office, Bayugan City, Agusan del Sur) hereby accuses **RICARIDO C. LAYNO, ROMEO B. LAYNO, MARIO B. LAGRANTE and DIVINA L. LAGRANTE**, of the crime of **ARSON**, committed as follows:

That on or about 12:00 o'clock noon of January 26, 2016 in the premises and vicinity particularly at Purok 1, Brgy. La Union, Prosperidad, Agusan del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and helping one another, did then and there willfully, unlawfully, and feloniously and maliciously, set on fire seventy five (75) durian, fifteen (15) coconut trees, one hundred (100) falcata trees, eighty (80) bananas, which has a total market value of **[SEVENTY-EIGHT] THOUSAND FOUR HUNDRED [TWENTY-THREE] AND FIFTY CENTAVOS (Php.78,423.50)** to the damage and prejudice of **JUANITO MUTIA BENIGA** consisting of actual and compensatory damages.

CONTRARY TO LAW. **Article 320, Revised Penal Code**.[6]
(Emphasis and underscoring in the original)

Subsequently, respondent Judge Salacop issued another Order[7] dated May 18, 2016 (second Order):

ORDER

After a review of the resolution, Information and the affidavits of witnesses for the prosecution, this Court is of view that while there is probable cause for the commission of Arson, but this cannot be under Article 320 of the Revised Penal Code, because what was burned was not a building, but a farm with plants. Thus, Article 321(2c) other forms of arson, is more appropriate. It provided reclusion temporal as penalty.

WHEREFORE, the OIC Provincial Prosecutor is directed to recommend a penalty within fifteen (15) days after receiving this Order.[8]
(Underscoring omitted)

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5 Id.
6 Id. at 21.
7 Id. at 23.
8 Id.

Thereafter, respondent Judge Salacop issued another Order[9] dated August 30, 2016 (third Order):

ORDER

> The Order dated May 18, 2016 has to be corrected by requiring the OIC Provincial Prosecutor to recommend a bail bond instead of penalty.
>
> WHEREFORE, handling Public Prosecutor Genesis Efren is directed, within five (5) days after receiving this Order, to recommend a bail bond before the Court shall fix the bail for the temporary liberty of the accused.[10]

The prosecutor filed a Compliance[11] dated October 5, 2016, stating that the recommended bail bond is ₱40,000.00. Thus, on October 13, 2016, respondent Judge Salacop issued an Order,[12] granting the issuance of the warrant of arrest against all accused and fixing the bail at ₱40,000.00 each, to wit:

> The resolution of the OIC Provincial Prosecutor, supported by the affidavits of Juanito Mutia Beniga, Lilia Agnes Ramon, Dalie Lumogda, and other related documents have convinced this court that there is probable cause that a crime of Arson, penalized under Art. 321 (2c) was committed, and that the accused are probably guilty thereof; hence, trial is necessary.
>
> WHEREFORE, let a warrant of arrest be issued. The bail bond is fixed in the amount of P40,000.00 each accused.[13]

It was also alleged in the present complaint that, on April 26, 2017, Divina and Mario Lagrante (who are also charged in the foregoing Information), without the assistance of counsel, filed a "Motion for Reconsideration to Order dated October 13, 2016 and with Motion to Dismiss and/or Motion to Quash the Complaint or Information."[14] Portions of this subject motion are quoted below:

> 5. **Clear from the wordings of the INFORMATION itself – that it was ill-prepared and defective. The PROSECUTION – to move for its correction would certainly be IMPROPER. Any move to amend the INFORMATION without *ex-pressed leave of court* - - - - is VIOLATIVE to the Rules of Court.** x x x Settled is the rule that: **INFORMATION and/or the COMPLAINT can not just be amended without *expressed leave of court* and without written motion to that effect**. Besides, **the fact remains that the arraignment to all the Accused was ordered already by the Honorable Presiding Judge; which was set on May 16, 2017**.
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> x x x x

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9 Id. at 24.
10 Id.
11 Id. at 25. Compliance of the Order.
12 Id. at 27.
13 Id.
14 Id. at 7-8.

> 9. **Moreover, this Honorable Court allowed the Handling Prosecutor to correct aforesaid defect in the INFORMATION not just ONCE (Section 2, Rule 10), but THRICE.** x x x
>
> x x x x
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> **24. Before closing, herein Accuseds wish to remind the Honorable Presiding Judge of this Court NOT feed the mouth of the Honorable Handling Prosecutors of this case.**
>
> **PRAYER**
>
> **WHEREFORE, PREMISES CONSIDERED, it is most respectfully prayed of this Honorable Court that: the above-entitled case be dismissed for insufficiency of evidence; and at best the complaint and/or INFORMATION BE QUASED based on the above-legal grounds; and for the very simple reason that the ACQUITAL issue is in placed.**[15] (Spelling, grammatical and typographical errors in the original)

The complainant also alleged that the said Motion was filed before the scheduled arraignment on May 16, 2017 (which was then re-set to July 11, 2017).[16] The complainant further alleged that respondent Judge Salacop proceeded with the arraignment of all accused instead of acting on the said Motion.[17]

In a 1st Indorsement[18] dated September 26, 2017, the Office of the Court Administrator (OCA) required respondent Judge Salacop to comment on the said complaint. In his letter-comment[19] dated December 8, 2017, respondent Judge Salacop alleged that Layno has no personal knowledge of the criminal case proceedings since he evaded the warrant of arrest and remained at large. Only the two other accused, Divina and Mario Lagrante were arrested.[20] Respondent Judge Salacop posited that Labiran, the alleged attorney-in-fact of Layno, is not a lawyer and cannot represent Layno in court.[21] Respondent Judge Salacop further explained that:

> x x x On April 26, 2017, the two accused, Divina Lagrante and Mario Lagrante[,] signing their names as movants, not assisted by a lawyer, filed a "Motion for Reconsideration to Order dated October 13, 2016 and with Motion to Dismiss and/or Motion to Quash the Complaint or Information". Since the two accused were not represented by a counsel, the court assigned Atty. Germiniano A. Demecillo, Jr., a practicing lawyer for the province of Agusan del Sur to assist the two accused. Atty. Demecillo allowed the two accused to be arraigned on July 11, 2017.
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> As to the motion filed, even if this was not prepared by a lawyer, and is very difficult to understand, in the interest of due process, the court

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15 Id. at 31-38.
16 Id. at 7.
17 Id. at 8.
18 Id. at 56.
19 Id. at 57-58.
20 Id.
21 Id.

> set a hearing on July 25, 2017. Handling Public Prosecutor Genesis E. Efren commented and opposed the motion being a mere scrap of paper not prepared and filed by a lawyer. Another hearing was set on August 29, 2017, where another lawyer, Atty. Gerardo Labastilla was assigned under the IBP Legal Aid Program. The said counsel, after a review of the motion manifested that he will no longer pursue the motion, and instead he will file another motion, a motion for Reinvestigation, which he filed on August 29, 2017. Having been assisted by a lawyer the two accused did not take part in the filing of the complaint against me. After the pretrial, trial is set on January 23, 2017 (*sic*), for the two accused in Crim. Case 8891.[22] (Notation ours)

In a Report[23] dated July 4, 2019, the OCA recommended that: (a) the present administrative complaint be re-docketed as a regular administrative matter; and (b) respondent Judge Salacop be found guilty of gross ignorance of the law and undue delay in rendering a decision and be fined ₱20,000.00 with a stern warning that a repetition of the same offense shall be dealt with more severely. The OCA ratiocinated that the complaint is meritorious, to wit:

> On the issue of downgrading the crime charged from arson to other forms of arsons, respondent Judge has displayed his ignorance of the rule. When a preliminary investigation was conducted by the prosecutor, the judge has three (3) options after the filing of the Informations, and upon evaluation of the prosecutor's resolution and its supporting evidence. He/she may (a) dismiss the case, (b) issue a warrant of arrest or a commitment order, as the case may be, against the accused, or (c) require the prosecution to submit additional evidence to support the existence of probable cause. Nowhere in the rule is the judge authorized to determine the proper crime that the accused should be charged with. The options given to the judge are exclusive, and preclude him/her from interfering with the discretion of the public prosecutor in evaluating the offense charged.
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> In the instant administrative complaint, respondent Judge was given the opportunity to refute the allegations against him but instead of directly answering the charges of issuing an order directing the prosecutor to amend the Information, he merely assailed the personality of complainant to file the instant complaint. Moreover, it must be noted that the motion was filed on 26 April 2017. Even if it was a mere scrap of paper as pointed out by the opposing prosecutor, respondent Judge should have immediately ordered the denial of the same. But it took him more than three (3) months to act on the same.
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> Rules prescribing time within which certain acts must be done, or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial business. By their very nature, these rules are regarded as mandatory.
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> Section 15(1), Article VIII of the Constitution mandates that cases or matters filed with the lower courts must be decided or resolved within three (3) months from the date they are submitted for decision or resolution. Moreover, Rule 3.05, Canon 3 of the Code of Judicial Conduct, directs judges to "dispose of the court's business promptly and decide cases within

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22 Id. at 57-58.
23 Id. at 59-62.

the required periods." Judges must closely adhere to the Code of Judicial Conduct in order to preserve the integrity, competence and independence of the judiciary and make the administration of justice more efficient.

Section 8, Rule 140 of the Rules of Court, classifies gross ignorance of the law and procedure as a serious charge punishable by either dismissal from service, suspension from office without salary and other benefits for more than three (3) months but not exceeding six (6) months, or a fine of more than P20,000.00 but not exceeding P40,000.00. In the instant case, the penalty of a fine of P20,000.00 is proper.[24]

The Court disagrees with the findings and recommendation of the OCA.

Under Section 14, Rule 110 of the Rules of Court, a complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. In this case, respondent Judge Salacop issued the first Order, directing the prosecutor to amend the Information to include the name of the offended party. After the prosecutor amended the Information, respondent Judge Salacop issued the second Order, stating that based on the allegations (*i.e.*, in the premises and vicinity x x x accused x x x set on fire seventy five (75) durian, x x x), the crime committed falls under Article 321(2c)[25] and not Article 320[26] of the Revised Penal Code (RPC) since what was burned was not a building, but a "farm with plants." Lastly, respondent Judge Salacop issued the third Order, correcting the second Order by requiring the prosecutor to recommend a bail bond instead of penalty.

In finding respondent Judge Salacop guilty of gross ignorance of the law, the OCA stated that a judge cannot interfere with the discretion of the prosecutor in determining the crime. The Court disagrees with the OCA. As shown above, respondent Judge Salacop merely directed the prosecutor to put the correct provision of the RPC, (which is Article 321(2c) and not Article 320) based on the allegation in the Information which is the burning of durian trees, coconut trees, falcata trees and banana plants. The Court has always ruled that what controls is not the designation of the offense charged or the particular law or part thereof allegedly violated but the description of the offense claimed to have been committed.[27] It is well-settled that the real nature of the criminal charge is determined not from the caption or preamble of the

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[24] Id. at 60-61.

[25] ARTICLE 321. *Other Forms of Arson.* — When the arson consists in the burning of other property and under the circumstances given hereunder, the offender shall be punishable:
x x x x
2. By *reclusión temporal*:
x x x x
(c) If a farm, sugar mill, cane mill, mill central, bamboo groves or any similar plantation is set on fire and the damage caused exceeds 6,000 pesos; and

[26] Article 320. *Destructive Arson.* — The penalty of *reclusion perpetua* to death shall be imposed upon any person who shall burn:
1. One (1) or more buildings or edifices, consequent to one single act of burning, or as result of simultaneous burnings, or committed on several or different occasions.
x x x x

[27] *Dychioco v. People*, G.R. No. 242138 (Notice), February 6, 2019, citing *People v. Escosio, et al.*, 292-A Phil. 606, 620 (1993).

Information nor from the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the actual recital of facts in the complaint or information.[28] It is not the technical name given by the public prosecutor appearing in the title of the Information that determines the character of the crime but the facts alleged in the body of the Information.[29]

Moreover, the OCA also found respondent Judge Salacop guilty of undue delay in acting on the subject motion. The OCA stated that if the subject motion was a mere scrap of paper, respondent Judge Salacop should have immediately denied the same. In his letter-comment, respondent Judge Salacop alleged that, even though the subject motion was a mere scrap of paper since it was filed on April 26, 2017 by the accused without assistance of counsel, he set it for hearing on July 25, 2017 in the interest of due process (after the accused were arraigned on July 17, 2017).

To determine whether respondent is guilty of undue delay in rendering a decision or order, the Court hereby examines the subject motion which contains the following Notice of Hearing:

> Please be informed that Undersigned Accused/Movant shall request the Honorable Clerk of Court – to present the foregoing Motion for Reconsideration – for the kind consideration and approval of the Honorable Presiding Judge, the same be scheduled for hearing at the convenient time and/or at the sound discretion of the Honorable Court.[30]

Section 5[31] of the Rules of Court provides that the notice of hearing shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion. As shown above, the notice of hearing of the subject motion did not comply with the requirements of Section 5 of the Rules of Court, since it did not specify a date and time therein. Therefore, the subject motion is a mere scrap of paper.

In the similar 2011 case of *Alcaraz v. Gonzales-Asdala*,[32] (*Alcaraz*) the Court held that the respondent judge therein is not liable for undue delay in resolving a motion after more than five (5) months since it is a mere scrap of paper for failure to specify a date and time in the notice of hearing. Portions of *Alcaraz* are quoted below:

> NOTICE OF HEARING
>
> **The BRANCH CLERK OF COURT**
> RTC QUEZON CITY
> BRANCH 87

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28 *People v. Mendoza*, 256 Phil. 1136, 1144 (1989), citing *Matilde, Jr. v. Jabson*, 160-A Phil. 1098 (1975), *People v. Cosare*, 95 Phil. 656 (1954), *People v. Arnault*, 92 Phil. 252 (1952), *People v. Oliveria*, 67 Phil. 427 (1939).

29 Id. at 1144-1145.

30 *Rollo*, p. 39.

31 SECTION 5. *Notice of hearing.* — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

32 658 Phil. 543 (2011).

Greetings:

> **Kindly submit the foregoing MOTION for the consideration and approval of the Honorable Court immediately upon receipt hereof, or at any time convenient to the Honorable Court.**
>
> x x x x

The substance of a notice of hearing is, in turn, laid out in Section 5 of Rule 15 of the *Rules of Court*. x x x

x x x x

In the case at bench, it is clear that the notice of hearing in Emelita's motion for execution pending appeal did not comply with the foregoing standards.

First. Rather than being addressed to the adverse party, the notice of hearing in Emelita"s motion was directed to the Branch Clerk of Court. Such gaffe actually contradicts a basic purpose of the notice requirement — *i.e.*, to inform an adverse party of the date and time of the proposed hearing.

Second. The notice of hearing did not specify a date and time of hearing. In fact, there was nothing in the notice that even suggests that the proponent intended to set a hearing with the trial court in the first place. As may be observed, the notice is merely an instruction for the clerk of court to submit the motion "*for the consideration and approval*" of the trial court "*immediately upon receipt*" or "*at any time convenient*" with the said court. The notice of hearing in Emelita's motion does not, in reality, give any kind of notice.

Jurisprudence had been categorical in treating a litigious motion without a valid notice of hearing as a mere scrap of paper. In the classic formulation of *Manakil v. Revilla*,[33] such a motion was condemned as:

> x x x [n]othing but a piece of paper filed with the court. It presented no question which the court could decide. The court had no right to consider it, nor had the clerk any right to receive it without a compliance with Rule 10 [now Sections 4 and 5 of Rule 15]. It was not, in fact, a motion. It did not comply with the rules of the court. It did not become a motion until . . . the petitioners herein fixed a time for hearing of said alleged motion. (Emphasis supplied).

An important aspect of the above judicial pronouncement is the absence of any duty on the part of the court to take action on a motion wanting a valid notice of hearing. After all, the Rules of Court places upon the movant, and not with the court, the obligations both to secure a particular date and time for the hearing of his motion and to give a proper notice thereof on the other party. It is precisely the failure of the movant to comply with these obligations, which reduces an otherwise actionable motion to a "mere scrap of paper" not deserving of any judicial acknowledgment.

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[33] 42 Phil. 81, 82 (1921).

> Accordingly, a judge may not be held administratively accountable for not acting upon a "mere scrap of paper." To impose upon judges a positive duty to recognize and resolve motions with defective notices of hearing would encourage litigants to an unbridled disregard of a simple but necessary rule of a fair judicial proceeding. x x x
>
> x x x x
>
> Verily, We find the respondent free from any administrative liability in not taking action on Emelita's motion for execution pending appeal. The motion itself is not entitled to judicial cognizance — the reason for which is imputable to the fault of the movant herself and not to an apparent breach of the respondent of her duties as a member of the bench. Notably, the respondent did act on the matter of the execution of the MeTC judgment pending appeal when the issue was properly scheduled for hearing in the 8 February 2006 Urgent Motion.[34] (Bold in the original; citations omitted; notations ours)

In view of the foregoing, respondent cannot be found guilty of gross ignorance of the law and of undue delay in rendering a decision or order since the subject motion is a mere scrap of paper for failure to specify a date and time in the notice of hearing. As shown above, since a mere scrap of paper does not merit judicial recognition, there is no duty on the part of the court to act on it. Without such duty, no undue delay can be imputed to the respondent.

Moreover, as the respondent stated in his Comment, upon seeing that the two accused, who filed the subject motion, have no counsel, the court assigned Atty. Demecillo, Jr. to assist them in the interest of justice and due process. Atty. Demecillo, Jr. allowed them to be arraigned on July 11, 2017. Again, in the interest of justice and due process, the respondent even set the subject motion for a hearing on July 25, 2017. The public prosecutor opposed the same and another hearing was set on August 29, 2017. Another lawyer, Atty. Labastilla, was assigned to the two accused and, after a review of the subject motion, he manifested that he would no longer pursue the same. Clearly, no fault could be attributed to the respondent and he did his best to dispense justice for the accused.

WHEREFORE, the complaint against respondent is hereby **DISMISSED**.

SO ORDERED.

Very truly yours,

TERESITA AQUINO TUAZON
Deputy Division Clerk of Court

0 3 DEC 2019

[34] Id. at 550-553.

HON. COURT ADMINISTRATOR
Jose Midas P. Marquez (x)
HON. DEPUTY COURT ADMINISTRATOR
Raul B. Villanueva (x)
Jenny Lind Aldecoa-Delorino (x)
Leo T. Madrazo (x)
ASSISTANT COURT ADMINISTRATOR
Hon. Lilian C. Baribal-Co (x)
Hon. Maria Regina Adoracion
Filomena M. Ignacio (x)
Legal Office (x)
Court Management Office (x)
Financial Management Office (x)
Docket & Clearance Division (x)
Office of Administrative Services (x)
Office of the Court Administrator
Supreme Court, Manila

ROMEO P. LAYNO, ET. AL (reg)
Rep. by Brandino A. Labiran
c/o Ernan Layno
Brgy. Lucena, Prosperidad, Agusan del Sur

HON. KIMAL M. SALACOP (reg)
Presiding Judge
Regional Trial Court, Branch 6
Prosperidad, Agusan del Sur

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