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Assisted by:

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The resolutions in this case, dated March 16, 1977 and May 17, 1977, are hereby set aside and, as prayed for, the foregoing Compromise Agreement is hereby APPROVED.

Fernando (Chairman), Barredo, Aquino, Concepcion, Jr., and *Santos, JJ.*, concur.

SECOND DIVISION

[A.M. No. 23-MJ. July 29, 1977]

LORENZO FORMOSO, JR., *complainant, vs.* **FRANCISCO ANTE, Municipal Judge of Vigan, Ilocos Sur**, *respondent.*

SYLLABUS

REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; ASCERTAINMENT OF SUFFICIENCY OF BAILBOND LODGED UPON JUDGE; CASE AT BAR.— To prevent the commission of frauds in connection with the posting of personal bails bonds and protect the interest of the government, judges are required by Circular No. 44, dated July 30, 1958, of the Department of Justice, to exercise utmost care in the scrutiny of the qualifications of sureties and in the approval of bail bonds. To eliminate or minimize anomalies on the matter, in doubtful cases, it is suggested therein that judges should examine the sureties under oath concerning their sufficiency as provided for in Section 10, Rule 110, of the Old Rules of

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Court (now Section 10, Rule 114, Revised Rules of Court), and that bail bonds consisting of real properties which are not covered by certificates of title should not be accepted unless they have been declared for taxation purposes in favor of the person offering the property as bond for a period of at least five (5) years. Contrary, therefore, to the pretensions of the respondent, the responsibility for ascertaining the sufficiency of the sureties is lodged exclusively upon the judge. This responsibility he cannot abdicate. In the present case, respondent judge failed to discharge faithfully such duty and responsibility when he accepted and approved the bail bonds in question, solely on the basis of plain and simple copies of tax declarations and tax receipts as supporting papers, which were not certified by any competent authority and without examining under oath the sureties pursuant to Section 10 of the Rules. Had respondent Judge been more circumspect in ascertaining the qualifications of the bondsmen, he would have been able to ascertain that the assessed value of the real properties submitted as bond in Criminal Cases Nos. 3692 and 3695 were unduly inflated when compared with the genuine tax declarations.

RESOLUTION

ANTONIO, *J.*:

Administrative complaint, filed by Lorenzo Formoso, Jr., dated December 7, 1972, charging respondent Municipal Judge Francisco Ante with: (1) knowingly consenting to the use, and acceptance of falsified documents as bail bonds, and/or knowingly and actively participating in the falsification of said documents; (2) evident and notorious partiality and leniency in his treatment of the accused in Criminal Cases Nos. 3692 and 3695, and in other cases against the same accused; and (3) usurping the powers of the Executive Judge of the Court of First Instance of Ilocos Sur. Required to comment on the charges by the Secretary of Justice, respondent Judge submitted his answer on December 26, 1972, alleging that:

On the first charge, bail bonds of the accused, Lucio Fabillaran, in Criminal Cases Nos. 3692 and 3695 of the Court of First

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Instance of Ilocos Sur had prepared by the Office of the Clerk of Court of the Court of First Instance, as the Clerk of Court himself, his deputy, or any of their subordinate employees "accomplished those bail bonds in question, by verifying all the supporting papers, such as the tax declaration, tax receipts, and the residence certificates of the bondsmen; that he carefully examined the said bail bonds when it was presented to him, as well as the supporting papers thereof, like the tax declarations, tax receipts, and residence certificates of the bondsmen, and found everything in order. He admitted, however, that the tax declarations and tax receipts submitted and attached to the bail bonds in question "were not duly certified copies of the same, but simple copies." He, however, contends that the actual verification of the genuineness of a supporting paper to the bail bond is "a clerical job, and not that of the judge who qualifies or approves the same" and any error or defect of the bail bond must be attributed to the clerk who processed them.

On the second charge, respondent claims that in Criminal Cases Nos. 3910 and 3922, entitled "*People vs. Eleuterio Peralta, et al.,*" the accused moved for the reduction of the amount of the bail to ₱10,000.00 for each accused and Asst. Fiscal Jose Tabanda gave his conformity thereto; that in Criminal Cases Nos. 3743 and 3810 (*People vs. Emeterio Asistin and Mario Agtutubo*) both accused petitioned for the reduction of their bail bond to ₱20,000 00, to which Asst. Fiscal Jose Tabanda likewise gave his conformity; that in Criminal Cases Nos. 3910 and 3922, the evidence presented was very weak as "Pfc. de la Cruz, one of the supposed victims, refused to testify therein, alleging he could not pinpoint any of the supposed authors of the crime," while in Criminal Cases Nos. 3810 and 3743, "the evidence was strong, especially the latter"; that he had to "respect the recommendation of the Fiscal* * * in the light of the evidence on record."

On the third charge, respondent denied that he usurped the powers of the Executive Judge; that he acted in Criminal Case No. 44-V only after the Clerk of Court of the Court of First Instance of Ilocos Sur had affixed his signature on the bail

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bond and assured him that the Executive Judge was then absent; that the bail bond of the accused in the afore-cited Criminal Case No 44-V was submitted to him for approval as the "Municipal Judge of the Capital, for and in the absence of the Executive Judge" late in the afternoon of June 10, 1970 by the Clerk of Court himself; that although Executive Judge Arciaga of the Court of First Instance of Ilocos Sur was present and held sessions in his branch up to 12:00 o'clock noon on June 10,1970, said judge as already out of his territorial jurisdiction in the afternoon of the above-mentioned date when the bail bond in question was submitted to respondent.

Under 3rd Indorsement dated January 25, 1973 by then Undersecretary of Justice Efren I. Plana, this case was forwarded to this Court pursuant to Section 7, Article X of the Constitution. By Resolution of this Court on August 28, 1974, the records of this administrative case were transmitted to the Executive Judge of the Court of First Instance of Ilocos Sur for investigation, report and recommendation.

On January 20, 1977, the Investigating Judge, Hon. Natividad G. Adduru — Santillan, submitted her report recommending *dismissal* of the case. According to said report, the investigation was set on various dates during the period from September 27, 1974 until September 29, 1976, but the hearing was not held because of the motions for postponement submitted by either the complainant or the respondent. In the meantime, on January 30, 1975, complainant manifested to the Court that he was submitting the case without the presentation of any testimonial evidence. This notwithstanding, the Investigating Judge re-set the hearing for February 7, 1975, but the hearing on said date was postponed. Thereafter, on March 5, 1975, respondent filed a motion to dismiss. The Investigating Judge again re-set the case for hearing on June 21, 1976 and July 9, 1976. No hearing was held on said dates, but on September 29, 1976, both the complainant and the respondent appeared and submitted the case on the basis of the documentary evidence attached to the complaint. Finding that the charges were not proven beyond reasonable doubt," the Investigating Judge recommends the

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dismissal of the charges. We find that the charges of falsification, partiality and usurpation are not substantiated by the documents submitted.

In her report, however, the Investigating Judge made the following significant observations:

"Firstly, respondent Judge's defense that the preparation of bailbonds and verification of supporting papers thereof are clerical in nature and not his job as judge. True it is not properly a judicial duty. However, while a judge need not personally perform this work, it is the better part of prudence to inquire into the correctness and veracity of the bonds he is approving. This latter is his duty and responsibility. He may not blindly sign any paper placed before him by anybody without satisfying himself that everything is in order. Furthermore, clerks are supervised by judges in their work and this duty may not be shirked without opening the door to anomalies which may impinge on a judge's integrity and honor.

"Respondent judge also alleged that he had many cases to attend to. This is not a valid excuse for sloppy work nor haphazard performance. Even the fact that the approval of the particular bail bonds under discussion was not regular work truly belonging to his 'sala' should have alerted him and made him more circumspect in his actuations for the papers brought to him for approval and signature were not prepared by his own staff on whom he could have relied.

"Respondent judge's presumption that because the use of simple and not duly certified copies of tax declarations and tax receipts in support of bail bonds is acceptable procedure in his own (municipal) court and therefore should be likewise acceptable in courts of first instance, is arrogance beyond our understanding. Law and regulations have required that only certified copies or the owner's own copy of these documents are the only ones acceptable in these matters. Yet, respondent judge adopts a wrong practice and expects that his adoption of it makes the practice right. Nothing could be farther from the truth. A wrong act does not become right because a judge does it."

To prevent the commission of frauds in connection with the posting of personal bail bonds and protect the interest of the government, judges are required by Circular No. 44, dated July

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30, 1958 of the Department of Justice, to exercise utmost care in the scrutiny of the qualifications of sureties and in the approval of bail bonds. To eliminate or minimize anomalies on the matter, in doubtful cases, it is suggested therein that judges should examine the sureties under oath concerning their sufficiency as provided for in Section 10, Rule 110, of the Old Rules of Court (now Section 10, Rule 114, Revised Rules of Court), and that bail bonds consisting of real properties which are not covered by certificates of title should not be accepted unless they have declared for taxation purposes in favor of the person offering the property as bond for a period of at least five (5) years.[1] These suggestions were reiterated in Circular No. 2, dated January 23, 1964, of the Department of Justice, which circular was addressed to Judges of the Court of First Instance, City Fiscals, City and Municipal Judges. It should be noted also that Section 9 of Rule 114 of the Revised Rules of Court provides for the qualifications of sureties.[2] Section 10 of Rule 114 provides that the "sureties must in all cases justify by affidavit taken before the judge, that they each possess the qualifications named in the preceding section, and each may be required to describe in the affidavit the property by which he proposes to justify and the encumbrances thereon, the number and the amount of other bonds and undertaking for bail entered into by him and remaining undischarged, and all his other liabilities." It also states that the "court may further examine the sureties upon

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[1] *Villaseñor v. Abaño*, 21 SCRA 321.

[2] Sec. 9, Rule 114, of the Revised Rules of Court, provides:

"SEC. 9. *Qualifications of sureties.*— The necessary qualifications of sureties to a bail bond shall be as follows:

(a) Each of them must be a resident householder or freeholder within the Philippines;

(b) In case there are only two sureties, each must be worth the amount specified in the undertaking over and above all just debts, obligations and property exempt from execution; but the court may allow two or more sureties to justify severally in amounts less than that expressed in the undertaking, if the entire sum justified to is equivalent to the whole amount of bail demanded."

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oath concerning their sufficiency in such manner as it may deem proper." Contrary, therefore, to the pretensions of the respondent, the responsibility for ascertaining the sufficiency of the sureties is lodged exclusively upon the judge. This responsibility he cannot abdicate. In the present case, respondent judge failed to discharge faithfully such duty and responsibility when he accepted and approved the bail bonds in question, solely on the basis of plain and simple copies of tax declarations and tax receipts as supporting papers, which were not certified by any competent authority and without examining under oath the sureties pursuant to Section 10 of the Rules. Had respondent Judge been more circumspect in ascertaining the qualifications of the bondsmen, he would have been able to ascertain that the assessed value of the real properties submitted as bond in Criminal Cases Nos. 3692 and 3695 were unduly inflated when compared with the genuine tax declarations.

WHEREFORE, in view of the foregoing, respondent Judge Francisco Ante is hereby REPRIMANDED for his failure to comply with the provisions of the afore-cited Circular No. 44, dated July 30, 1958, and Circular No. 2, dated January 23, 1964, of the Department of Justice and he is hereby directed to be thorough and careful in the processing, approval and acceptance of bail bonds and warned that failure to comply faithfully with such requirements will be more severely dealt with.

Fernando (Chairman), Barredo, Aquino, Concepcion, Jr., and *Santos, JJ.*, concur.