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2. That where such application is seasonably made to the Appellate Court, the latter must either proceed to hear and decide the application or refer the application to the trial court and allow it to hear and decide the same. Application for damages sustained during the proceeding of the appeal may similarly be filed with the Appellate Court, which may hear the application or refer it to the trial court for the said court to hear and decide.

3. The hearing is summary and will be limited to such new defense not previously set up by the principal, as the surety may allege and offer to prove. While the previous testimony by the claimant on the damages may be reproduced, the surety should be given an opportunity to cross-examine the witness or witnesses, if it so desires.

In the case at bar, there was a timely application for damages in the Court of Appeals on May 27, 1974, where the case was then pending, and in its 1977 decision, the Appellate Court ordered that the claim against the surety be heard before the trial court. *This circumstance apparently brings it out of the ambit of the* rule that the application to recover damages cannot be the subject of separate action, in order to avoid multiplicity of suits, since the hearing before the trial court is just an implementation of the judgment of the Appellate Court.

SECOND DIVISION

[A.M. No. 243-MJ. May 28, 1979]

LT. ROBERTO LASTIMOSO, *complainant, vs.* **MUNICIPAL JUDGE IGNACIO LAMBO OF MABINI, DAVAO DEL NORTE,** *respondent.*

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SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; ADMINISTRATIVE COMPLAINTS; DISMISSAL; PROPER IN CASE OF FAILURE OF COMPLAINANT TO PROVE CHARGES.** — An administrative case against a Judge will be dismissed where the Court gave complainant every opportunity to prove his charge but he failed to do so and indicated he was "not interested in filing an *administrative case against respondent Judge.*"

2. **ID.; ID.; CONDUCT; REQUIRES IMPARTIALITY.** — It is not inappropriate as a reminder to every occupant of the bench that random remarks could be misinterpreted. Every efforts should, therefore, be made so that the least doubt as to one's impartiality should not arise.

RESOLUTION

FERNANDO, ***Actg, C.J.:***

It was the appearance of bias arising from a remark imputed to respondent Judge Ignacio Lambo that led to this administrative complaint. It was alleged by complainant Roberto T. Lastimoso, then commanding officer of a Philippine Constabulary Company stationed at Tagum, Davao del Norte, that respondent Judge vouched for the character of an accused for illegal possession of firearms and expressed surprise why such a case was being filed. It was further stated in such complaint: "He did not of course reject the complaint, but we feel that he would not be able to prosecute the case successfully with this outburst. We requested him to issue that Warrant of Arrest against David Pailog as there is a *prima facie* case, but he denied this and *said that he will conduct another preliminary investigation* before issuing the Warrant of Arrest."[1]

When asked to comment, respondent Judge denied the allegation that he blamed the Philippine Constabulary for filing the complaint or that he "advised the complainant to desist

[1] Complaint, 1.

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from charging any violation of our laws."[2] By way of further explanation, he added: "The truth of the matter is that on July 5, 1972, Sgt. German Riogelon of the PC filed a criminal complaint signed by him and docketed as Criminal Case No. 811 of this Court for Illegal Possession of Firearms and Ammunitions against one David Pailog. When I went over the records, one of the sworn statements supporting the complaint was executed last June 26, 1972 and the other supporting affidavit, on the date the complaint was filed. Both were brief sworn statements. Upon seeing that the incident of the confiscation of the firearm and ammunitions was on June 11, 1972, I immediately asked the complainant Sergeant why the filing of the case was delayed. He said that the witnesses were on mission, so they could not file the case sooner. I asked that question precisely because I expected the filing of the complaint immediately after June 26, 1972, when the first affidavit was executed. Right then and there, I accepted and docketed the case, without much ado."[3]

Respondent Judge likewise denied the alleged delay in the issuance of the warrant of arrest. Thus: "After docketing the case and observing that the complainant Sgt. Riogelon expected that I issue immediately the warrant of arrest although he did not say so, I explained to him the necessity of conducting a preliminary examination to determine the probable cause before I issue the warrant of arrest. I told him it is a constitutional requirement and that the same was necessary in this case because the Court cannot just adopt the brief questions and answers given in the sworn statements of the witnesses supporting the complaint as they were not searching enough and were prepared by the PC in Tagum, Davao del Norte. He told the undersigned that there was already a *prima facie* case against the accused and for that matter the warrant of arrest can issue immediately. I insisted and told him that unless I have personally examined the complainant and his witnesses myself and is satisfied that there is probable cause, I cannot issue the warrant."[4]

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[2] Comment of Respondent Judge, 1.

[3] *Ibid*, 2.

[4] *Ibid*, 3.

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The matter was referred to Judge Felix L. Moya for investigation. Complainant, Lt. Lastimoso, was required to submit a verified complaint, but instead of doing so, there was a communication from Lt. Col. Pedro R. Martinez, the Officer-In-Charge of the Davao del Norte Constabulary Command at Tagum, to the effect that complainant was "not interested in filing an administrative case against respondent Judge Ignacio Lambo."[5] It was his recommendation, therefore, that the case be dismissed. With such a recommendation, the Office of the Judicial Consultant of this Court was in agreement.

This Court is likewise of the view that no further action need be taken on the matter and that the complaint be dismissed. The probabilities were that the Sergeant who sought the issuance of a warrant of arrest, unable to understand the procedure to be followed and fearful that the superior officer might consider it a mark of inefficiency, exaggerated matters. At any rate, this Court gave complainant every opportunity to prove his charge, but he failed to do so. Respondent Judge is thus entitled to be cleared. Nonetheless, it is not inappropriate as a reminder to every occupant of the bench that random remarks could be misinterpreted. Every effort should, therefore, be made so that the least doubt as to one's impartiality should not arise. So it has been from *Gutierrez v. Santos*,[6] a 1962 decision, to *Ignacio v. Villaluz*,[7] promulgated earlier this month.

WHEREFORE, this administrative complaint is dismissed. Let a copy of this resolution be entered on the record of respondent Judge Ignacio C. Lambo.

Antonio (Actg. Chairman), Aquino, Santos, and *Abad Santos, JJ.*, concur.

Barredo and *Concepcion Jr., JJ.*, on leave.

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[5] Recommendation, 1.

[6] 112 Phil. 184.

[7] L-37527-52. May 5, 1979.