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with a warning that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Melo (Chairman), Vitug, Panganiban, and *Gonzaga-Reyes, JJ.,* concur.

SECOND DIVISION

[A.M. No. RTJ-97-1376. July 20, 2000]

RAFAEL J. DIZON, JR., *complainant, vs.* **JUDGE LORENZO B. VENERACION, Regional Trial Court, Manila, Branch 47,** *respondent.*

SYNOPSIS

Sometime in 1989, the Taxi Operators of Metro Manila, Inc. (TOMMI) imported 100 units of Datsun Cedric cars from a Singaporean company, Hua Kok Realty, Ltd. The Bureau of Customs seized those vehicles since the importation was without the required SGS Clean Report of Findings. Later, TOMMI assigned those vehicles to Manila Taxi Transport Service Cooperative, Inc. (MTTSCI) and were released tax-and duty-free. Afterwards, MTTSCI mortgaged those vehicles to 7-R Port Services, Inc. As MTTSCI failed to pay its obligation, 7-R foreclosed the said vehicles after it obtained approval from the Department of Finance and the Cooperative Development Authority (CDA) and paid the prescribed duties and taxes under Article 62 (1) of R.A. 6938 and Joint Circular No. 1-90. On March 4, 1994, SPO4 Romualdo Cruz, a member of the Presidential Anti-Crime Commission (PACC), and Sylvia Tongco, representing Hua Kok, applied for a search warrant allegedly for violation of Article 62(1) of R.A. 6938 and Joint Circular No. 1-90. On March 7, 1994, the respondent judge issued the corresponding search warrant, and pursuant thereto the members of PACC seized those vehicles. 7-R moved to quash the

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search warrant, but it was denied by the respondent judge. When this case was raised to the Court of Appeals, the appellate court found respondent judge to have acted with grave abuse of discretion in having issued the assailed search warrant despite the absence of probable cause. Consequently, Rafael J. Dizon, Jr. as chairman and managing director of 7-R, filed the instant complaint charging the respondent judge of incompetence and intentional disregard for the law. In his answer, respondent insisted that the search warrant had been properly issued because the supplier of the subject vehicles had not been paid.

The Court ruled that while the application for a search warrant invoked an alleged violation of Art. 62 (1), R.A. No. 6938, and Joint Circular No. 1-90 of the DOF and the CDA, the statement of Tongco zeroed in on the alleged non-payment of the purchase price of the cars. Clearly, respondent issued the search warrant on the ground that complainant allegedly failed to pay the purchase price of the vehicles, contrary to the averment in the application for search warrant which cited violations of law and regulations involving tax exemption privileges.

It is elementary that a judge must be conversant with basic legal principles. He is required to have more than a cursory acquaintance with the law and procedural rules, and expected to be the embodiment of competence. Respondent judge fell short of these ideals. In the Court's view, there was failure on his part to observe the rules governing determination of probable cause.

Respondent Judge Lorenzo B. Veneracion was found guilty of incompetence and gross ignorance of the law, and was sentenced to pay a fine of ₱15,000.00.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; ISSUANCE OF SEARCH WARRANT; REQUISITES.**— Rule 126 of the Rules of Court provides: 'SEC. 3. *Requisite for issuing search warrant.*– A search warrant shall not issue but upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized. SEC. 4. *Examination of complainant; record.* – The judge must, before issuing the warrant, personally examine in the form of

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searching questions and answers, in writing and under oath the complainant and any witnesses he may produce on facts personally known to them and attach to the record their sworn statements together with any affidavits submitted.'

2. **ID.; ID.; ID.; ID.; NOT COMPLIED IN CASE AT BAR.**— [R]espondent judge does not appear to have thoroughly examined the complainant and her witnesses, in a manner that would sufficiently establish probable cause for the issuance of a search warrant as required by the rules. While the application for a search warrant invoked an alleged violation of Art. 62(1), R.A. No. 6938, and Joint Circular No. 1-90 of the DOF and the CDA, the statements of Tongco zeroed in on the alleged non-payment of the purchase price of the cars. During the hearing of the motion to quash filed by 7-R, respondent flatly stated that he issued the search warrant based on non-payment of the purchase price. Clearly, respondent issued the search warrant on the ground that complainant allegedly failed to pay the purchase price of the vehicles, contrary to the averment in the application for a search warrant which cited violation of a law and regulations involving tax exemption privileges.

3. **JUDICIAL ETHICS; CODE OF JUDICIAL CONDUCT; A JUDGE SHOULD BE THE EMBODIMENT OF COMPETENCE; NOT PRESENT IN CASE AT BAR.**— It is elementary that a judge must be conversant with basic legal principles. He is required to have more than a cursory acquaintance with the law and procedural rules, and is expected to be the embodiment of competence. Respondent judge fell short of these ideals. In our view, there was failure on his part to observe the rules governing determination of probable cause.

4. **ID.; CHARGES AGAINST JUDGES; INCOMPETENCE; PENALTY.**— The OCA's observation that respondent judge's shortcomings are inexcusable is well-taken. It recommends that we impose a ₱10,000.00 fine on respondent judge. However, in the earlier case of *Parada v. Veneracion*, which also involved respondent, we imposed on him a ₱10,000.00 fine for gross ignorance of the law, after he was found to have conducted an invalid trial *in absentia.* In that case, we warned respondent judge that a repetition of the same or similar offense would be dealt with more severely. More recently, on June 21, 2000, in A.M. No. RTJ-99-1432, *OCA vs. Judge Lorenzo B. Veneracion, et al.*, the Court *en banc* imposed on herein respondent three months suspension

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from office and ₱50,000.00 fine for grave misconduct in office. We are, thus, constrained to impose upon respondent judge a stiffer penalty, by increasing the fine recommended to ₱15,000.00, in the present case.

APPEARANCES OF COUNSEL

Rivera Santos & Maranan for complainant.

RESOLUTION

QUISUMBING, *J.*:

In a letter dated May 13, 1996, complainant Rafael J. Dizon, Jr., chairman and managing director of 7-R Port Services, Inc., charged respondent Judge Lorenzo B. Veneracion of the Regional Trial Court, Manila, Branch 47, of incompetence and "intentional disregard for the law" on the ground that he earlier issued a search warrant against 7-R that resulted in the seizure of 100 motor vehicles owned by the company. Complainant seeks respondent's dismissal from the service.

The factual antecedent of this administrative matter is summarized thus:

Sometime in 1989, the Taxi Operators of Metro Manila, Inc. (TOMMI) imported 100 units of Datsun Cedric cars from Hua Kok Realty, Ltd. (Hua Kok), a Singaporean company. The Bureau of Customs seized the vehicles since the importation was without the required SGS Clean Report of Findings. During the pendency of the seizure proceedings, TOMMI requested the Department of Finance (DOF) and the Cooperative Development Authority (CDA) for approval of the assignment of the vehicles to the Manila Taxi Transport Service Cooperative, Inc. (MTTSCI). It also requested that the vehicles be released tax- and duty-free, pursuant to Article 62(1) of R.A. No. 6938, the Cooperative Code of the Philippines.[1]

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[1] ART. 62. Tax and Other Exemptions. — x x x

(1) Cooperatives with accumulated reserves and undivided net savings of not more than Ten million pesos (₱10,000,000.00) shall be exempt from all national, city, provincial, municipal or *barangay* taxes of whatever name and

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The DOF and the CDA approved the assignment, and the Bureau of Customs released the vehicles subject only to the payment of a penalty.

The subject vehicles were then sold to MTTSCI. Afterwards, MTTSCI mortgaged the same to 7-R Port Services, Inc. (hereafter 7-R, for brevity) as security for its obligation to the latter.

As MTTSCI failed to pay its obligation, 7-R obtained approval of the DOF and the CDA to foreclose the vehicles subject to the payment of duties and taxes under Article 62(1) of R.A. No. 6938 and Joint Circular No. 1-90 of the DOF and the CDA.[2] 7-R paid the duties and taxes.

On March 4, 1994, SPO4 Romualdo B. Cruz, a member of the Presidential Anti-Crime Commission, and Sylvia Tongco, representing Hua Kok, applied for a search warrant alleging violation of Article 62(1), R.A. No. 6938 and Joint Circular No. 1-90. Respondent judge issued the search warrant on March 7, 1994. On the same day, members of the PACC seized the vehicles.

Promptly, 7-R moved to quash the search warrant on the principal ground that there had not been any violation of law. Respondent judge denied the motion, explaining that the amount of taxes paid for the vehicles was improperly computed and that the seller of the vehicles had not been paid. 7-R's motion for reconsideration was also denied.

Aggrieved, 7-R filed a petition for certiorari with the Court of Appeals, which found respondent judge to have acted with grave abuse of discretion in having issued the assailed search warrant

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nature. Such cooperatives shall be exempt from customs duties, advance sales or compensating taxes on their importation of machineries, equipment and spare parts used by them and which are not available locally as certified by the Department of Trade and Industry. All tax-free importations shall not be transferred to any person until after five (5) years, otherwise, the cooperative and the transferee or assignee shall be solidarily liable to pay twice the amount of the tax and/or duties thereon.

[2] Re: Procedural Guidelines in the Availment of Tax Exemption Privileges Under Article 62(1) of R.A. No. 6938 Otherwise Known as the "Cooperative Code of the Philippines."

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despite the absence of probable cause. The appellate court noted that no competent proof was presented concerning the violations complained of, which were supposed to have been the basis for the issuance of the search warrant. Moreover, the Court of Appeals noted that respondent judge claimed that he issued the search warrant because the seller of the subject vehicles had not been paid, and not because of a violation of R.A. No. 6938. This decision of the Court of Appeals became final on February 26, 1996.

In the instant complaint, complainant asserts that respondent judge intentionally disregarded the law in issuing the search warrant, citing the Court of Appeals' decision on the matter. According to complainant, respondent is neither fit nor worthy to hold his office and should be dismissed from the service.

In his answer, respondent insists that the search warrant had been properly issued because the supplier of the subject vehicles had not been paid. According to respondent, any disposition of the vehicles without the supplier being paid is a violation of penal law and justifies the issuance of the search warrant.

The Office of the Court Administrator, in a memorandum report dated April 16, 1997, stated that respondent judge is administratively liable for having issued a search warrant on the ground of non-payment of the purchase price of the vehicles in question. This, according to the OCA, is incompetence and gross ignorance of the law. The OCA recommended that respondent judge be fined in the amount of ₱10,000.00.

Rule 126 of the Rules of Court provides:

"SECTION 3. *Requisite for issuing search warrant.* — A search warrant shall not issue but upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized.

"SECTION 4. *Examination of complainant; record.* — The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath the complainant and any witnesses he may produce on facts personally known

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to them and attach to the record their sworn statements together with any affidavits submitted."

Indeed, respondent judge does not appear to have thoroughly examined the complainant and her witnesses, in a manner that would sufficiently establish probable cause for the issuance of a search warrant as required by the rules.

The following exchange between respondent and Sylvia Tongco is worthy of note:

"Q: x x x Do you have proof to show that said importation has not been paid by said Taxicab Operators of Metro [M]anila?

A: Yes, sir.

Q: What is your evidence?

A: Evidence from the shipper that the said units have not been paid up to this date, your Honor.

Q: x x x Do you have any information as to the whereabout of these 100 units of Datsun cars?

A: Yes, your Honor. I even went there. x x x

Q: You don't have personal knowledge about the whereabout of these 100 units?

A: I have personal knowledge, your Honor.

Q: You just said your driver told me about that, I went there personally pretending I am a buyer of the car, so they showed me the cars . x x x"[3]

While the application for a search warrant invoked an alleged violation of Art. 62(1), R.A. No. 6938, and Joint Circular No. 1-90 of the DOF and the CDA, the statements of Tongco zeroed in on the alleged non-payment of the purchase price of the cars. During the hearing of the motion to quash filed by 7-R, respondent flatly stated that he issued the search warrant based on non-payment of the purchase price.

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[3] *Rollo*, pp. 68-69.

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"Atty. Mendiola: x x x the point here, your Honor, is that the search warrant is in violation of R.A. 6938 . . .

COURT: No. My order, as you can see, is not based on the . . . its based on non-payment because there was no such payment as shown by the record. The fact that the supplier have not been paid . . .

x x x x x x x x x

Atty. Mendiola: Do we understand that the search warrant was issued pursuant to the crime of estafa?

COURT: I don't know. The fact is the court finds the supplier has not been paid . . .

Atty. Mendiola: Do we understand that the search warrant was issued for the commission of the crime of estafa and not for violation of RA 6938?

COURT: No, but I said I granted the search warrant because of non-payment . . ."[4]

Clearly, respondent issued the search warrant on the ground that complainant allegedly failed to pay the purchase price of the vehicles, contrary to the averment in the application for a search warrant which cited violation of a law and regulations involving tax exemption privileges. The issue now is whether he failed to comply with the requirement, both constitutional and statutory, that there must first be a determination of probable cause, by an examination of the complainant and his witnesses through searching questions and answers, before a search warrant may be issued.[5] If so, the next issue for consideration is whether such failure merits disciplinary sanctions.

It is elementary that a judge must be conversant with basic legal principles. He is required to have more than a cursory acquaintance with the law and procedural rules,[6] and is expected to be the embodiment of competence.[7] Respondent judge fell short of these

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[4] *Id.* at 70.

[5] *Silva v. Presiding Judge, RTC of Negros Oriental, Br. XXXIII,* 203 SCRA 140, 147 (1991).

[6] *Naldoza v. Lavilles, Jr.,* 254 SCRA 286, 293 (1996).

[7] Rule 1.01, Canon 1, Code of Judicial Conduct.

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ideals. In our view, there was failure on his part to observe the rules governing determination of probable cause.

The OCA's observation that respondent judge's shortcomings are inexcusable is well-taken. It recommends that we impose a ₱10,000.00 fine on respondent judge. However, in the earlier case of *Parada v. Veneracion*,[8] which also involved respondent, we imposed on him a ₱10,000.00 fine for gross ignorance of the law, after he was found to have conducted an invalid trial *in absentia.* In that case, we warned respondent judge that a repetition of the same or similar offense would be dealt with more severely. More recently, on June 21, 2000, in A.M. No. RTJ-99-1432, *OCA vs. Judge Lorenzo B. Veneracion, et al.,* the Court *en banc* imposed on herein respondent three months suspension from office and ₱50,000.00 fine for grave misconduct in office. We are, thus, constrained to impose upon respondent judge a stiffer penalty, by increasing the fine recommended to ₱15,000.00, in the present case.

WHEREFORE, respondent Judge Lorenzo B. Veneracion, Regional Trial Court, Manila, Branch 47, is hereby found *GUILTY* of incompetence and gross ignorance of the law, and is sentenced to pay a *FINE* of ₱15,000.00.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Buena, and *De Leon, Jr., JJ .,* concur.

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[8] 269 SCRA 371, 379 (1997).