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FIRST DIVISION

[A.M. No. MTJ-01-1384. April 11, 2002]

RASMIA U. TABAO, *complainant, vs.* **ACTING PRESIDING JUDGE ACMAD T. BARATAMAN, MTCC, BRANCH 1, MARAWI CITY,** *respondent.*

SYNOPSIS

The present administrative case stemmed from an affidavit-complaint filed by herein complainant charging respondent judge with gross ignorance of the law and grave abuse of discretion. Complainant Tabao was the private complainant in a criminal case for abandonment of minor. She claimed that the respondent judge granted the motion for bail on recognizance of the accused in the above-mentioned case despite several defects in the motion. Among the defects therein mentioned were as follows: the motion and its supporting affidavit were signed by the father of the accused; the prosecutor was not furnished a copy of the motion and there was no hearing conducted; the motion was filed not by the accused but by his father and it lacked the sworn statement of the accused signed in the presence of two witnesses. The Court Administrator submitted a memorandum finding respondent judge guilty of gross ignorance of the law for releasing the accused on recognizance before it could acquire jurisdiction over his person. The accused was still at large when the motion for bail was filed.

The Supreme Court agreed with the Office of the Court Administrator that respondent judge was liable in granting the motion for bail on recognizance in clear violation of R.A. No. 6036. In the case at bar, respondent judge was fully cognizant that the court had not yet acquired jurisdiction over the person of the accused who was still at large and yet, he entertained and granted his motion for bail. In doing so, respondent judge violated a tenet in criminal procedure which is too basic as to constitute gross ignorance of the law. When the law violated is elementary, a judge is subject to disciplinary action. The Court imposed upon him a fine of ₱20,000.00, with a stern warning that a repetition of the same or similar acts shall be dealt with more severely.

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SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; ALTERNATE THEREOF UNDER R.A. NO. 6036 REQUIRES AN AFFIDAVIT TO BE SIGNED BY THE ACCUSED HIMSELF; VIOLATION IN CASE AT BAR.** — Section 1 of R.A. No. 6036 provides that "any provision of law to the contrary notwithstanding, bail shall not be required of a person charged with violation of a criminal offense the prescribed penalty for which is not higher than six months imprisonment and/or a fine of two thousand pesos, or both." Instead of bail, Section 2 states that the person charged "shall be required to sign in the presence of two witnesses of good standing in the community a sworn statement binding himself, pending final decision of his case, to report to the Clerk of Court hearing his case periodically every two weeks. The Court may, in its discretion and with the consent of the person charged, require further that he be placed under the custody and subject to the authority of a responsible citizen in the community who may be willing to accept the responsibility. In such a case the affidavit herein mentioned shall include a statement of the person charged that he binds himself to accept the authority of the citizen so appointed by the Court." In the present case, it is not disputed that the sworn statement supporting the motion for bail filed before respondent judge was signed, not by the accused but by his father. The failure of the accused to sign the sworn statement is in clear contravention of the express mandate of the law that the person charged shall sign a sworn statement binding himself to report to the Clerk of Court. This is a personal obligation imposed by R.A. No. 6036 on the accused and cannot be assumed by the custodian or responsible citizen who may be appointed by the court. It is different from Section 15, Rule 114 of the Rules of Criminal Procedure which allows the release of the accused on his own recognizance or that of a responsible person. R.A. No. 6036 applies to criminal cases where the prescribed penalty is not higher than six months imprisonment and/or a fine of ₱2,000.00, or both. In the case at bar, accused stands charged with abandonment of a minor which carries with it the imposable penalty of *arresto mayor* and/or a fine of ₱500.00. Hence, it was erroneous for respondent judge to have granted the motion for bail on the basis of the affidavit of the father of the accused.

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2. **ID.; ID.; ID.; R.A. NO. 6036 ALLOWS RELEASE OF ACCUSED ON HIS OWN RECOGNIZANCE WHERE IT HAS BEEN ESTABLISHED THAT HE IS UNABLE TO POST CASH OR BAIL BOND; NOT PRESENT IN CASE AT BAR.** — Moreover, R.A. No. 6036 allows the release of the accused on his own recognizance only where it has been established that he is unable to post the required cash or bail bond. The accused in this case is a CPA who is engaged in the transport business. We reject the contention of respondent judge that the law does not distinguish whether the accused is rich or poor. The distinction is all to clear for the law explicitly provides that the accused can be released on his own recognizance only if he is able to clearly establish that he is unable to post cash or bail bond.

3. **ID.; ID.; ID.; DEFINED; CANNOT BE GRANTED BEFORE CUSTODY OF AN ACCUSED HAS BEEN ACQUIRED; EFFECT OF DEFIANCE THEREOF IN CASE AT BAR.** — Bail is the security given for the release of a person in custody of the law. Section 15, Rule 114 of the Revised Rules of Criminal Procedure provides that the court may release a person in custody on his own recognizance or that of a responsible person. It is a basic principle that bail is intended to obtain provisional liberty and cannot be granted before custody of an accused has been acquired by the judicial authorities by his arrest or voluntary surrender. It is self-evident that a court cannot grant provisional liberty to one who is actually in the enjoyment of his liberty for it would be incongruous to give freedom to one who is free. Thus, we have held that it is premature to file a motion for bail for someone whose liberty has yet to be curtailed. In the case at bar, respondent judge was fully cognizant that the court had not yet acquired jurisdiction over the person of the accused who was still at large and yet, he entertained and granted his motion for bail. In doing so, respondent judge violated a tenet in criminal procedure which is too basic as to constitute gross ignorance of the law. When the law violated is elementary, a judge is subject to disciplinary action.

4. **LEGAL AND JUDICIAL ETHICS; CODE OF JUDICIAL CONDUCT; ENJOINS JUDGES TO BE FAITHFUL TO THE LAW AND MAINTAIN PROFESSIONAL COMPETENCE.** — We reiterate the rule that although a judge

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may not be subjected to disciplinary action for every erroneous order or decision he renders, that relative immunity is not a license to be negligent or abusive and arbitrary in performing his adjudicatory prerogatives. Judges who wantonly misuse the powers vested in them by law cannot render fair and impartial justice. The Code of Judicial Conduct enjoins judges to be faithful to the law and maintain professional competence. A judge is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules; it is imperative that he be conversant with basic legal principles and be aware of well-settled authoritative doctrines. He should strive for excellence exceeded only by his passion for truth, to the end that he be the personification of justice and the Rule of Law.

D E C I S I O N

PUNO, *J.*:

The present administrative case stems from an affidavit-complaint[1] filed by complainant Rasmia U. Tabao charging respondent Judge Acmad Barataman, in his capacity as acting presiding judge of MTCC, Branch 1, Marawi City, with gross ignorance of the law and grave abuse of discretion.

Complainant Rasmia Tabao is the private complainant in Criminal Case No. 9106 entitled "*People vs. Samsodin M. Tabao*" for abandonment of minor. It appears that on July 16, 1998, respondent judge issued an Order[2] granting the motion for bail on recognizance filed by the father of the accused pursuant to R.A. No. 6036. The motion of the prosecution to cancel bail on the ground that accused is a certified public accountant and can afford to post cash bond was denied by respondent judge in an Order dated June 30, 1999,[3] stating that the law, in allowing bail on recognizance, does not distinguish whether an accused is rich or poor.

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[1] *Rollo*, p.2.

[2] Annex B, Affidavit-Complaint; *Ibid.*, p. 5.

[3] Annex A, *id.; Ibid.*, p. 4.

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Complainant avers that respondent committed grave abuse of discretion in granting the motion for bail on recognizance because (1) it was filed not by the accused but by his father, Hadji Yusoph Tabao; (2) the prosecutor was not furnished a copy of the motion and there was no hearing conducted; (3) it lacked the sworn statement of the accused signed in the presence of two witnesses; and (4) the motion and its supporting affidavit were signed by the father of the accused. Complainant also contends that the accused is not poor but is a certified public accountant and operates a transport business in Metro Manila. Thus, it is urged that he should not have been released on recognizance since he could put up a cash bond.

In his comment, respondent judge alleges that the crime of abandonment of a minor is covered by the Rules on Summary Procedure and hence bail on recognizance is not required as the court can immediately arraign and try the accused, pursuant to Section 13 of the Rules; that if he were the acting judge when the criminal case was filed, he would not issue a warrant of arrest but order the immediate arraignment and trial of the case and there would be no need to discuss the matter of bail; and, that the court can appoint as custodian of the accused his father, a former City Councilor of Marawi City, who qualifies as a responsible person under Section 15, Rule 144 of the Rules of Court.

On November 6, 2001, Court Administrator Presbitero J. Velasco, Jr. submitted a Memorandum[4] finding respondent judge guilty of gross ignorance of the law for releasing the accused on recognizance before it could acquire jurisdiction over his person. The accused was still at large when the motion for bail was filed. He likewise found the respondent judge to have violated R.A. No. 6036. He ratiocinated: first, the law requires that the accused sign in the presence of two witnesses of good standing in the community a sworn statement binding himself, pending final decision of his case, to report to the Clerk of Court hearing the case periodically every two weeks. No such sworn statement was executed by the accused and; second, in

[4] *Ibid.*, pp. 30-32.

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order to be released on recognizance, the accused must be unable to post bail bond. The accused is a CPA and can afford to post bond. The Court Administrator recommends that respondent judge be ordered to pay a fine of ₱20,000.00, considering that it is his first offense, with a warning that a repetition of the same or similar offense shall be dealt with more severely.

We agree with the finding of the Office of the Court Administrator. The respondent judge is liable in granting the motion for bail on recognizance in clear violation of R.A. No. 6036, for the following reasons:

First. Section 1 of R.A. No. 6036 provides that "any provision of law to the contrary notwithstanding, bail shall not be required of a person charged with violation of a criminal offense the prescribed penalty for which is not higher than six months imprisonment and/or a fine of two thousand pesos, or both." Instead of bail, Section 2 states that the person charged "shall be required to sign in the presence of two witnesses of good standing in the community a sworn statement binding himself, pending final decision of his case, to report to the Clerk of Court hearing his case periodically every two weeks. The Court may, in its discretion and with the consent of the person charged, require further that he be placed under the custody and subject to the authority of a responsible citizen in the community who may be willing to accept the responsibility. In such a case the affidavit herein mentioned shall include a statement of the person charged that he binds himself to accept the authority of the citizen so appointed by the Court."

In the present case, it is not disputed that the sworn statement supporting the motion for bail filed before respondent judge was signed, not by the accused but by his father. The failure of the accused to sign the sworn statement is in clear contravention of the express mandate of the law that the person charged shall sign a sworn statement binding himself to report to the Clerk of Court. This is a personal obligation imposed by R.A. No. 6036 on the accused and cannot be assumed by the custodian or responsible citizen who may be appointed by the court. It is different from Section 15, Rule 114 of the Rules of

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Criminal Procedure which allows the release of the accused on his own recognizance or that of a responsible person. R.A. No. 6036 applies to criminal cases where the prescribed penalty is not higher than six months imprisonment and/or a fine of ₱2,000.00, or both. In the case at bar, accused stands charged with abandonment of a minor which carries with it the imposable penalty of *arresto mayor* and/or a fine of ₱500.00. Hence, it was erroneous for respondent judge to have granted the motion for bail on the basis of the affidavit of the father of the accused.

Moreover, R.A. No. 6036 allows the release of the accused on his own recognizance only where it has been established that he is unable to post the required cash or bail bond. The accused in this case is a CPA who is engaged in the transport business. We reject the contention of respondent judge that the law does not distinguish whether the accused is rich or poor. The distinction is all to clear for the law explicitly provides that the accused can be released on his own recognizance only if he is able to clearly establish that he is unable to post cash or bail bond.

We reiterate the rule that although a judge may not be subjected to disciplinary action for every erroneous order or decision he renders, that relative immunity is not a license to be negligent or abusive and arbitrary in performing his adjudicatory prerogatives. Judges who wantonly misuse the powers vested in them by law cannot render fair and impartial justice.

Second. Respondent judge does not deny that the accused in Criminal Case No. 9106 was at large when the motion for bail on recognizance was filed and subsequently granted. Bail is the security given for the release of a person in custody of the law.[5] Section 15, Rule 114 of the Revised Rules of Criminal Procedure provides that the court may release a person in custody on his own recognizance or that of a responsible person. It is a basic principle that bail is intended to obtain provisional liberty and cannot be granted before custody of an accused has been acquired by the judicial authorities by his arrest or voluntary

[5] Section 1, Rule 114, Revised Rules of Criminal Procedure.

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surrender. It is self-evident that a court cannot grant provisional liberty to one who is actually in the enjoyment of his liberty for it would be incongruous to give freedom to one who is free. Thus, we have held that it is premature to file a motion for bail for someone whose liberty has yet to be curtailed.[6]

In the case at bar, respondent judge was fully cognizant that the court had not yet acquired jurisdiction over the person of the accused who was still at large and yet, he entertained and granted his motion for bail. In doing so, respondent judge violated a tenet in criminal procedure which is too basic as to constitute gross ignorance of the law. When the law violated is elementary, a judge is subject to disciplinary action.[7]

Indeed, the Code of Judicial Conduct enjoins judges to be faithful to the law and maintain professional competence. A judge is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules; it is imperative that he be conversant with basic legal principles and be aware of well-settled authoritative doctrines. He should strive for excellence exceeded only by his passion for truth, to the end that he be the personification of justice and the Rule of Law.[8]

In the case of *Comia vs. Antona*,[9] we found respondent judge liable for gross ignorance of the law for entertaining an application for bail even though the court had not yet acquired jurisdiction over the accused. He was fined ₱20,000.00 with a stern warning that a repetition of the same or similar acts shall be dealt with more severely.

WHEREFORE, the Court finds respondent Judge Acmad T. Barataman liable for gross ignorance of the law and imposes upon him a fine of ₱20,000.00 with a stern warning that a repetition of the same or similar acts shall be dealt with more severely.

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[6] *Comia vs. Antona,* 337 SCRA 656 (2000).

[7] *Tolentino, etc. vs. Cabral, etc.*, 329 SCRA 1 (2000).

[8] *Marzan-Gelacio vs. Flores*, 334 SCRA 1 (2000).

[9] *Supra* note 6.

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SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, and *Ynares-Santiago, JJ.,* concur.

FIRST DIVISION

[A.M. No. MTJ-02-1390. April 11, 2002]
(Formerly IPI No. 01-1049-MTJ)

MERCEDITA MATA ARAÑES, *petitioner, vs.* **JUDGE SALVADOR M. OCCIANO,** *respondent.*

SYNOPSIS

Petitioner charged respondent judge with gross ignorance of the law. Petitioner alleged that the respondent judge of the Municipal Trial Court of Balatan, Camarines Sur, solemnized her marriage to her late groom Dominador B. Orobia without the requisite marriage license and at the place outside of his jurisdiction. The Office of the Court Administrator, in its report and recommendation, found the respondent judge guilty of the charges made. He was recommended to be fined in the amount of ₱5,000.00.

According to the Supreme Court, the territorial jurisdiction of respondent judge was limited to Balatan, Camarines Sur. His act of solemnizing the marriage of petitioner and Orobia in Nabua, Camarines Sur was contrary to law and should subject him to administrative liability. His act may not amount to gross ignorance of the law for he allegedly solemnized the marriage out of human compassion but nonetheless, he cannot avoid liability for violating the law on marriage. Respondent should also be faulted for solemnizing marriage without the requisite marriage license. The respondent judge was fined by the Supreme Court in the amount of ₱5,000.00, with stern warning