



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
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**SECOND DIVISION**

**JESSIE TAGASTASON,  
ROGELIO TAGASTASON, JR.,  
ANNIE BACALA-TAGASTASON,  
and JERSON TAGASTASON,**  
Petitioners,

**G.R. No. 222870**

Present:

CARPIO, *J.*, Chairperson,  
PERLAS-BERNABE,  
CAGUIOA,  
REYES, *J., JR.*, and  
LAZARO-JAVIER, *JJ.*

- versus -

**PEOPLE OF THE PHILIPPINES,  
OFFICE OF THE SPECIAL  
PROSECUTOR OF BUTUAN  
CITY, SUŠANO BACALA, and  
BELINDA BACALA,**  
Respondents.

Promulgated:

08 JUL 2019  
*[Signature]*

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**DECISION**

**CARPIO, *J.*:**

**The Case**

Before the Court is a petition for review on certiorari<sup>1</sup> assailing the 22 January 2015 Decision<sup>2</sup> and the 6 November 2015 Resolution<sup>3</sup> of the Court of Appeals Cagayan de Oro City in CA-G.R. SP No. 04924-MIN. The Court of Appeals denied the petition assailing the Order of the Regional Trial Court of Butuan City, Branch 3, which denied petitioners' Motion to Hold in Abeyance the Issuance of Warrants of Arrest.

<sup>1</sup> Under Rule 45 of the Revised Rules of Civil Procedure. Denominated as petition for certiorari under Rule 45.

<sup>2</sup> *Rollo*, pp. 102-114. Penned by Associate Justice Henri Jean Paul B. Inting (now a member of this Court), with Associate Justices Edgardo A. Camello and Pablito A. Perez concurring.

<sup>3</sup> *Id.* at 123-126.

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### **The Antecedent Facts**

In March 2012, Susano Bacala and Emalyn Bacala, together with their witnesses, filed a Complaint-Affidavit for Murder and Frustrated Murder against Jessie Tagastason, Rogelio Tagastason, Jr., Marlon Tagastason, Jerson Tagastason, Elias Tagastason<sup>4</sup>, Annie Bacala-Tagastason, Gil Ugacho,<sup>5</sup> and Merlyn Bacala-Ugacho<sup>6</sup> (collectively referred to as the accused). The accused, through their counsel, filed a Motion for Extension of Time to File their Counter-Affidavits. The City Prosecutor partially granted the motion by giving the accused an extension until 4 April 2012 instead of 10 April 2012, which was the date prayed for by the accused. On 4 April 2012, the City Prosecutor issued an Omnibus Motion finding probable cause for Murder and Frustrated Murder. Accordingly, the City Prosecutor filed the Informations on the same date. On 10 April 2012, the cases were raffled to the *sala* of Executive Judge Francisco F. Maclang (Judge Maclang) who was also the same judge handling all the other cases pending between the parties. On the same day, Judge Maclang issued the Warrants of Arrest against the accused.

The accused learned about the partial grant of their motion for extension to file their counter-affidavits, the City Prosecutor's Omnibus Motion, the filing of the Informations, and the issuance of the warrants of arrest only on 10 April 2012. The accused then filed the following: (1) Petition for Review before the Department of Justice (DOJ); (2) Administrative Complaint against the City Prosecutor; and (3) Motion for Inhibition and Holding in Abeyance the Issuance of Warrants of Arrest before the trial court.

Judge Maclang denied the Motion to Hold in Abeyance the Issuance of Warrants of Arrest but set the Motion for Inhibition for hearing. The accused filed a motion for reconsideration of the denial of their Motion to Hold in Abeyance the Issuance of Warrants of Arrest. During the pendency of their motion for reconsideration, the accused filed a Petition for Certiorari and Prohibition before the Court of Appeals, citing extreme urgency as a ground because the cases involved the deprivation of their liberty.

### **The Decision of the Court of Appeals**

In its 22 January 2015 Decision, the Court of Appeals denied the petition.

The Court of Appeals noted that the City Prosecutor issued an Order dated 23 March 2012, giving the accused until 4 April 2012 to file their

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<sup>4</sup> Also referred to in the records as Elias Tagastason, Jr.

<sup>5</sup> Also referred to in the records as Gil Ugatso and Gil Ogacho.

<sup>6</sup> Also referred to in the records as Merlyn Bacala-Ugatso and Merlyn Bacala-Ogacho.



counter-affidavits. However, the mailing envelope of the Order was stamped "registered 4/4/12" which was the deadline for the filing of the counter-affidavits. The Court of Appeals also noted that the Informations were filed on 4 April 2012 at 12:00 noon, before the end of the deadline at the end of office hours on even date. Nevertheless, the Court of Appeals ruled that there was no denial of due process because lawyers should not assume that their motions for extension would be granted as a matter of course. The Court of Appeals ruled that the grant or denial of the motion for reconsideration rests with the sound discretion of the City Prosecutor and that the accused's lawyer should have followed-up their motion.

As regards the allegation that the accused were denied due process and that there was no preliminary investigation, the Court of Appeals ruled that the accused may still file their motion for reconsideration or an appeal, and noted that the accused actually filed an appeal before the DOJ Secretary.

The Court of Appeals ruled that there was no prohibition for Judge Maclang from issuing the warrants of arrest on the day the cases were raffled to him. The Court of Appeals stated that the resolution of the City Prosecutor pertains only to the positive identification of the accused as the perpetrators of the crime. The Court of Appeals further ruled that the motion for inhibition of Judge Maclang was set for hearing and has not yet been resolved when the accused filed the petition for certiorari and prohibition. Yet, the accused wanted the Court of Appeals to rule on the motion for inhibition whose resolution is anchored upon the sound discretion of Judge Maclang. According to the Court of Appeals, the accused alleged partiality against Judge Maclang without presenting evidence to support their allegation.

The accused filed a motion for reconsideration. In its 6 November 2015 Resolution, the Court of Appeals denied the motion.

Jessie Tagastason, Rogelio Tagastason, Jr., Annie Bacala-Tagastason, and Jerson Tagastason (petitioners) assailed the Court of Appeals' decision *via* a petition for review filed before this Court.

### **The Issues**

The following issues are now before this Court:

- (1) Whether the Court of Appeals committed a reversible error in sustaining the warrants of arrest issued by Judge Maclang; and
- (2) Whether the Court of Appeals committed a reversible error in ruling that petitioners were not deprived of due process.



### **The Ruling of this Court**

The petition has no merit.

Petitioners assail the issuance of the warrants of arrest against them by Judge Maclang. However, the issuance of a warrant of arrest is within the discretion of the issuing judge upon determination of the existence of probable cause.

In *Mendoza v. People*,<sup>7</sup> the Court distinguished between the two kinds of determination of probable cause. Citing *People v. Castillo and Mejia*,<sup>8</sup> the Court stated:

There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.

The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.

The difference is clear: The executive determination of probable cause concerns itself with whether there is enough evidence to support an Information being filed. The judicial determination of probable cause, on the other hand, determines whether a warrant of arrest should be issued.  
x x x.<sup>9</sup>

The Court further stated:

While it is within the trial court's discretion to make an independent assessment of the evidence on hand, it is only for the purpose of determining whether a warrant of arrest should be issued. The judge does not act as an appellate court of the prosecutor and has no capacity to review the prosecutor's determination of probable cause; rather, the judge makes a determination of probable cause independent of the prosecutor's finding.<sup>10</sup>

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<sup>7</sup> 733 Phil. 603 (2014).

<sup>8</sup> 607 Phil. 754 (2009).

<sup>9</sup> Supra note 7, at 610.

<sup>10</sup> Supra note 7, at 611.

We stress that the function of the judge to issue a warrant of arrest upon the determination of probable cause is exclusive and cannot be deferred pending the resolution of a petition for review by the Secretary of Justice as to the finding of probable cause, which is a function that is executive in nature.<sup>11</sup> To defer the implementation of the warrant of arrest would be an encroachment on the exclusive prerogative of the judge to issue a warrant of arrest.<sup>12</sup>

Further, as correctly argued by the Office of the Solicitor General (OSG), an appeal before the DOJ Secretary does not hold in abeyance the proceeding before the trial court pursuant to the 2000 NPS Rule on Appeal<sup>13</sup> which provides:

SECTION 5. Contents of petition. - The petition shall contain or state: (a) the names and addresses of the parties; (b) the Investigation Slip number (I.S. No.) and criminal case number, if any, and title of the case, including the offense charged in the complaint; (c) the venue of the preliminary investigation; (d) the specific material dates showing that it was filed on time; (e) a clear and concise statement of the facts, the assignment of errors, and the reasons or arguments relied upon for the allowance of the appeal; and (f) proof of service of a copy of the petition to the adverse party and the Prosecution Office concerned.

The petition shall be accompanied by legible duplicate original or certified true copy of the resolution appealed from together with legible true copies of the complaint, affidavits/sworn statements and other evidence submitted by the parties during the preliminary investigation/reinvestigation.

If an information has been filed in court pursuant to the appealed resolution, a copy of the motion to defer proceedings filed in court must also accompany the petition. The investigating/reviewing/approving prosecutor shall not be impleaded as party respondent in the petition. The party taking the appeal shall be referred to in the petition as either "Complainant-Appellant" or "Respondent-Appellant."

In this case, no motion to defer proceedings has been filed in the trial court.

On the denial of due process, which is anchored on the validity of the filing of the Informations, we note that the petition for review is still pending before the DOJ Secretary. It is premature for this Court to preempt the DOJ Secretary in resolving the issue. We also agree with the Court of Appeals that while petitioners filed a motion for extension of time to file their counter-affidavits, they should not assume that their motion would be granted. The 2008 Revised Manual for Prosecutors also provides that extensions of time to submit a counter-affidavit for any reason should not

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<sup>11</sup> *Viudez II v. Court of Appeals*, 606 Phil. 337 (2009).

<sup>12</sup> *Id.*

<sup>13</sup> Department Circular No. 70 dated 3 July 2000.



exceed ten days. In this case, the OSG pointed out that the petitioners asked for an extension of 15 days and the City Prosecutor acted accordingly in granting them an extension of only ten days.

As regards the motion for inhibition filed by petitioners, we agree with the Court of Appeals that its resolution is within the discretion of Judge Maclang. In addition, the accused, who included herein petitioners, filed the petition for certiorari and prohibition before the Court of Appeals without waiting for Judge Maclang, who set the motion for inhibition for hearing, to resolve it. Finally, petitioners did not present sufficient evidence to support the alleged prejudice committed by Judge Maclang against them.

**WHEREFORE**, we **DENY** the petition.

**SO ORDERED.**

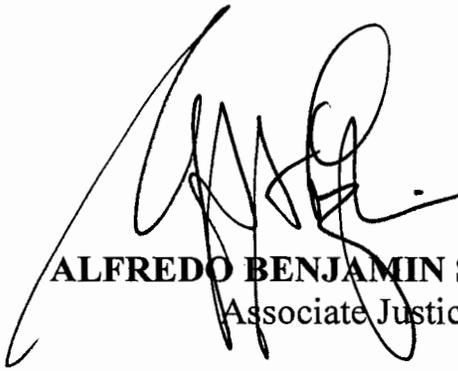


**ANTONIO T. CARPIO**  
Associate Justice

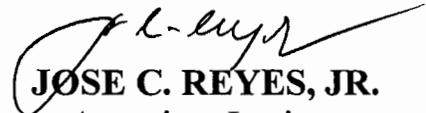
**WE CONCUR:**



**ESTELA M. PERLAS-BERNABE**  
Associate Justice



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



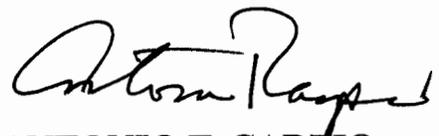
**JOSE C. REYES, JR.**  
Associate Justice



**AMY C. LAZARO-JAVIER**  
Associate Justice

**ATTESTATION**

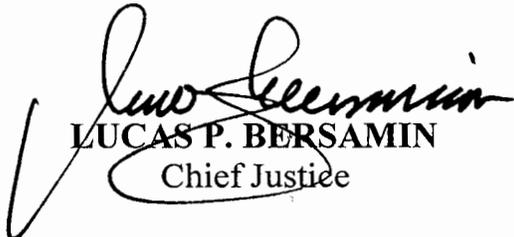
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CAPIO**  
Associate Justice  
Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



LUCAS P. BERSAMIN  
Chief Justice