

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA CRIM. CASE NOS.
O-555 AND O-556

-versus-

Members:

UY, Chairperson, and
RINGPIS-LIBAN, JJ.

ALFREDO RAMON M. HERRERA-
PRES ALTERNATIVE BEVERAGES
CO. INC.,

Accused.

Promulgated:

DEC 18 2018

11:38 a.m.

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RESOLUTION

During the Pre-trial proceedings of these cases, the prosecution manifested that it will present three witnesses, namely, Revenue Officers Jonathan Gaspar and Renel Erano Cruz and/or Atty. Geraldine Llaguno.

The initial presentation of evidence for the plaintiff was set on May 23, 2018.

On May 17, 2018, plaintiff filed an "Urgent Motion to Reset and Cancel Hearing" stating that despite best efforts to locate its intended witnesses, it will not be able to present any of them since the witnesses are no longer connected with Revenue Region No. 7 – Quezon City.

In the Resolution dated May 23, 2018, the Court granted plaintiff's motion. Hence, the hearing was cancelled and reset to June 20, 2018.

On June 18, 2018, plaintiff again filed an "Urgent Motion to Reset and Cancel Hearing" praying that the hearing set on June 20, 2018 be cancelled and

reset to July 18, 2018 because the plaintiff will not be able to present any of its intended witnesses. Atty. Geraldine Llaguno has already retired from service, while Revenue Officers Jonathan Gaspar and Renel Cruz were transferred to another Revenue Region because of administrative cases filed against them.

In the Resolution dated June 22, 2018, the Court granted plaintiff's motion. Hence, the hearing was reset to July 18, 2018. However, in the Resolution dated August 2, 2018, the hearing set on July 18, 2018 was cancelled due to inclement weather arising from continuous rains and persistent threats of flooding. The hearing was reset to August 15, 2018.

On July 13, 2018, the plaintiff filed a "Motion for the Issuance of Subpoena ad Testificandum with Motion to Reset and Cancel Hearing" stating that efforts to locate Atty. Geraldine Llaguno, and Revenue Officers Jonathan Gaspar and Renel Erano Cruz remained futile.

Meanwhile, on July 20, 2018, the Court received accused's "Opposition to Plaintiff's 'Motion for Issuance of Subpoena ad Testificandum with Motion to Reset and Cancel Hearing' and Motion to Dismiss for Failure of Plaintiff to adduce evidence against accused."

Accused alleged in his Motion to Dismiss that the repeated cancellation and resetting of previously scheduled and agreed upon trial dates on motion of plaintiff and its failure to submit the Judicial Affidavits of its witnesses five working days before the scheduled hearing dates show that plaintiff has no witnesses to support the indictments against him. Accused invoked his right to speedy trial and speedy disposition of cases pursuant to the provisions of the 1987 Philippine Constitution. Thus, accused moves that the instant cases be dismissed.

On August 10, 2018, the Court issued a Resolution denying plaintiff's Request for issuance of Subpoena ad Testificandum on the ground that the plaintiff's motion did not indicate the addresses of the intended witnesses and the dates when the witnesses will testify. The Court stated that it is the plaintiff's duty to supply the said information regarding its witnesses. The hearing set on August 15, 2018 was cancelled and reset to September 26, 2018.

In the Order dated September 20, 2018, the hearing set on September 26, 2018 was cancelled in view of CTA Administrative Circular No. 02-2018, reorganizing the 3 Divisions of the Court.

On October 10, 2018, the Court issued a Resolution setting the cases for hearing on the Motion to Dismiss to hear the parties' respective arguments and

to give the plaintiff a last chance to convince the Court that it has a meritorious case against accused.

During the hearing, Special Prosecutor, Atty. Cheryl Hernandez manifested that the proposed witness, Atty. Geraldine Llaguno has resigned from the BIR and is currently a Kagawad in Paoay, Ilocos Norte. Atty. Hernandez moved that the plaintiff be given opportunity to present Atty. Llaguno. However, upon objection of accused, the Court denied plaintiff's motion to present Atty. Llaguno as witness. Thereafter, the Court ruled that accused's Motion to Dismiss be deemed submitted for resolution of the Court.

Hence, we resolve.

Sections 14 and 16, Article III of the 1987 Philippine Constitution states:

"Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable."

"Section 16. All persons shall have the right to a speedy disposition of their cases before all judgment, quasi-judicial, or administrative bodies."

After consideration, the Court finds that the instant Motion to Dismiss be granted.

A perusal of the record shows that plaintiff filed several motions for postponement of hearing since it cannot locate its intended witnesses. The plaintiff's statements that its witnesses are no longer connected with the Revenue Region that investigated and examined the records of herein accused, are self-serving statements without proof. The Court will not tolerate these lame excuses of the plaintiff. As previously stated by the Court in its Resolution dated August 10, 2018, it is not the duty of the Court to provide information as regards the whereabouts of the plaintiff's intended witnesses who will testify

against the accused. The instant cases were filed before this Court on May 18, 2018, and up to present, plaintiff's counsel did not bother to locate the present whereabouts of the Revenue Officers who investigated on accused's tax liabilities. The testimonies of the revenue officers who executed the complaint affidavit are material to the plaintiff's case. This action of the plaintiff in delaying the proceedings by repeatedly filing motions for cancellation of hearing and asking for issuance of subpoena ad testificandum on the same witnesses without specific addresses of the intended witnesses, tantamount to violation of accused's constitutional rights to speedy trial and disposition of cases.

In the case of *Ramon S. Paulin, Angela F. Paulin and Jose BAcho vs. Hon. Celso M. Gimenez (In his capacity as Presiding Judge of RTC, Cebu City, Branch 5), Hon. Mamerto Y. Coliflores (In his capacity as Judge of the MTC of Talisay, Branch IX, Cebu), Castro Belme, and the People of the Philippines*,¹ the Supreme Court held that there are "exceptional instances when the dismissal may be held to be final, disposing of the case once and for all even if the dismissal was made on motion of the accused himself, to wit:

1. Where the dismissal is based on a demurrer to evidence filed by the accused after the prosecution has rested, which has the effect of a judgment on the merits and operates as an acquittal.

2. Where the dismissal is made, also on motion of the accused, because of the denial of his right to a speedy trial which is in effect a failure to prosecute. (Caes v. IAC, 179 SCRA 54 [1989] at pp. 60-61.)"

IN VIEW HEREOF, the "Motion to Dismiss for Failure of Plaintiff to Adduce Evidence Against the Accused" is **GRANTED**. Hence, CTA CRIM CASE NOS. O-555 and O-556 are **DISMISSED** for failure to prosecute.

SO ORDERED.


ERLINDA P. UY
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

¹ GR No. 103323, January 21, 1993.