

REMEDIOS A. ANTONINO, COMPLAINANT, VS. JUDGE FRANCISCO X. VELEZ, REGIONAL TRIAL COURT OF MAKATI, BRANCH 57, RESPONDENT.

Adm. Matter No. RTJ-92-789. March 07, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In the resolution of 1 September 1992, this Court approved the recommendation of the Office of the Court Administrator and resolved to "(a) DISMISS the aforesaid complaint against respondent Judges Zosimo Angeles and Francisco Velez for lack of merit, and (b) ADMONISH respondent Judge Francisco Velez to act on the motions promptly and to decide cases without any further delay." [1]

The complainant filed a motion for its reconsideration [2] wherein she categorically alleges for the first time that she had given to respondent Judge Velez, upon his demand, the sum of P30,000.00 in consideration of an immediate ocular inspection, a matter which she only "discreetly exposed in par. 11(a) p. 3 of her Reply to Comment of 28 June 1992"; that respondent Judge Angeles "surprisingly denied the injunction ruling 'fait accompli' out of the clear blue sky when there were nothing in the evidence pictorial or otherwise stating that the building was finished"; and asserts, inter alia, that the resolution was prematurely handed down thereby, in effect, depriving her of "her day in court."

We required the respondents to comment on the motion for reconsideration, which respondent Judge Angeles complied with on 11 January 1993 [3] and respondent Judge Velez, on 19 January 1993. [4]

In the meantime, respondent Judge Angeles was compulsorily retired from government service on 4 April 1993. On 13 May 1993, this Court granted his request that he be allowed to receive his retirement benefits subject to the withholding of P50,000.00 thereof pending the resolution of this case. [5]

On 9 December 1993, this Court resolved:

to (a) GRANT the aforesaid motion for reconsideration and (b) MODIFY the said resolution of September 1, 1992 by (1) dismissing the charge against respondent Judge Zosimo Angeles only and (2) referring the charges against respondent Judge Francisco Velez, Regional Trial Court, Branch 57, Makati, Metro Manila to Associate Justice Consuelo Ynares Santiago of the Court of Appeals for investigation, report and recommendation thereon within ninety (90) days from receipt of the records thereof.

In her letter [6] received by this Court on 11 January 1994, Justice Santiago requested that she be allowed to inhibit herself to avoid public suspicion of partiality considering that respondent Judge Velez was her colleague at the Regional Trial Court of Makati from 1986 to 1990. This request was granted on 27 January 1994, and Associate Justice Quirino Abad Santos, Jr. of the Court of Appeals was designated to replace Justice Santiago. [7]

On 26 April 1994, respondent Judge Velez filed a motion to inhibit Justice Abad Santos on the ground of bias and partiality for the complainant. [8]

On 2 May 1994, Justice Abad Santos inhibited himself. [9]

On 9 June 1994, this Court re-assigned this case to Associate Justice Godardo G. Jacinto of the Court of Appeals for investigation, report, and recommendation within ninety days from receipt of the records.

On 27 January 1995, Justice Godardo G. Jacinto submitted his sealed report. Relevant portions thereof read as follows:

II. Recapitulation of Charges/Defenses

A. Respondent Velez is charged under the original complaint with:

- grave misconduct, which encompasses the other charge of favoring one party to the prejudice of another;
- knowingly rendering an unjust judgment, which must have reference to the dismissal of Civil Cases Nos. 90-350 and 90-2517 (Art. 204, RPC);
- knowingly rendering unjust interlocutory orders, such as the Order of June 20, 1990 denying the Motion for Reconsideration of the March 7, 1990 Order and the Order of February 22, 1991 directing the Building Official of Makati to issue a Certificate of Electrical Inspection to defendant L.A. Family Tree, etc. (Art. 206, RPC);
- malicious delay in the administration of justice (Art. 207, RPC) for his failure to resolve the three incidents or Motions in Civil Cases Nos. 90--350 and 90-2517 up to the time both cases were dismissed, as well as his neglect to resolve the Motions of Reconsideration of the July 3, 1991 Order of dismissal of said cases; and
- dereliction of duty in the prosecution of an offense, in having dismissed Criminal Case No. 90— 2202 against the proprietor of defendant L.A. Family Tree, etc. (Art. 208, RPC).

In his Comment, Summary of Defenses and Counter-Affidavits respondent Velez controverted the charges and justified the issuance of the assailed Orders in the following manner:

- He denied the Motion for Reconsideration of Judge Angeles' March 7, 1990 [order] upon being satisfied during the ocular inspection that the construction of the 4th floor and roof deck which plaintiff sought to be enjoined was already complete and there was then nothing more to enjoin.
- The Order of February 22, 1991 directing the building official to issue a Certificate of Electrical Inspection was based on L.A. Family Tree's Motion, which was not opposed by complainant, and which Motion he found to be meritorious;
- He ordered the dismissal of Civil Cases Nos. 90-350 and 90-2517 when the plaintiffs did not take steps to prosecute the same for a considerable period of time. He further claims that movants did not appear on the dates set for the hearing of the three pending motions, for which reason, he deferred consideration thereof until such time that plaintiffs would move in the premises, which they did not. Finally, respondent contends that the dismissal was without prejudice and motions for reconsideration of such dismissal had been filed; that he delayed action on said motions when he was informed that efforts to settle the cases amicably were being pursued by the parties; that on April 7, 1992 he granted the motions for reconsideration, set aside the Order of dismissal and the cases were then reinstated;
- The dismissal of the criminal case was based on a Motion to Dismiss filed by the accused, to which the prosecution was given time to comment. He granted the Motion since it was meritorious, as shown by the issuance of a Certificate of Occupancy by the proper official who inspected the building and found it to have complied with the National Building Code and Its Implementing Rules and Regulations, and that it was constructed in accordance with the approved plans and specifications. Even the public prosecutor, in his late Comment, conformed to the dismissal of the case.

B. In complainant's Motion for Reconsideration, respondent is additionally charged with bribery, for having demanded and received P30,000.00 from complainant and her daughter in consideration of conducting an ocular inspection of defendant's building, and for falsification of his monthly reports as required by Sec. 5 of RA 296. The alleged bribery incident is narrated in the affidavits of complainant and that of her daughter, Angelita A. Antonino (pp 98-118, Record, Vol. II).

Respondent Velez vehemently denied the accusation in his counter-affidavits (pp 128-145; 146-150, Record, Vol. II).

III. Evaluation

Upon careful study of the evidence submitted by the parties, which consist of affidavits, counter-affidavits and other pertinent pleadings filed by them, the herein investigator finds that respondent Velez may be faulted for:

- a) precipitately dismissing Civil Cases Nos. 90-350 and 90-2517;
- b) neglecting to act promptly on three (3) incidents pending in both cases; and
- c) failing to resolve on time the Motions for Reconsideration of his July 3, 1992 Order of dismissal of said cases.

The reason cited by respondent for the dismissal of both cases, which is plaintiff's alleged failure to take steps to prosecute them, hardly merits acceptance. A judge does not sit as mere moderator in his court. He governs or controls the proceedings and it is his duty to see to it that the cases filed in his court are actively and promptly pursued and/or defended by the parties. It was even inappropriate for respondent to blame plaintiffs for neglecting to prosecute their cause, when he himself failed to resolve on time at least three (3) pending incidents therein. Respondent's excuse for deferring action on the pending motions, which is movants' failure to appear on the dates set for their consideration, is equally unavailing. Since it was apparently demanded by the situation, respondent should have adopted a more firm and decisive stance by either rejecting the motions on account of movants' failure to appear or granting them if these were meritorious. But certainly, keeping them unresolved for a considerable period of time, or allowing the parties to control or dictate on what should be done to their motions bespeaks of poor court management.

The same may be said of the Motions for Reconsideration of the July 3, 1992 Order of dismissal. Respondent Velez' explanation that he refrained from resolving them so as not to jeopardize the parties' attempt to settle the controversy is far from persuasive. In the first place, efforts at settlement could be pursued even if the Order of dismissal had been set aside. In the second place, vacating the said Order of dismissal should even take precedence because a compromise agreement would be out of place if the cases had not been reinstated.

Nonetheless, even as respondent Velez clearly erred in dismissing the cases and in sitting on the pending motions for an unreasonable length of time, the herein investigator cannot go along with complainant's proposition that respondent is guilty of grave misconduct and of the other charges levelled at him, since the record is bereft of evidence as would satisfactorily show that his acts were visited by malice or bad faith. At least, analyzing the assailed orders by themselves, or taking them in the context of relevant circumstances surrounding their issuance, the application of the *res ipsa loquitor* doctrine which complainant has harped on would be uncalled for. If at all, complainant's submission that respondent Velez acted with malice in dismissing the cases, or that he issued the questioned orders knowing them to be unjust, does not go beyond the level of speculation. Respondent Velez may have been wrong or negligent in acting as he did, or he may have exhibited lack of prudence as the Court Administrator and his deputy had put it, and yet his actuations may not be categorized as malicious in the absence of conclusive proof thereof. Parenthetically, the record shows that the parties themselves had agreed to defer

consideration of the pending motions, as shown in the series of orders issued to that effect (Annexes 5, 6 & 7, Velez' Comment pp 46-98, Record, Vol I), and further, there is no showing that they protested over the orders of deferment or pressed for the early disposition of said incidents.

With respect to the other Orders (upholding Judge Angeles' March 7, 1990 Order denying the application for a preliminary injunctive writ, directing the building official to issue a Certificate of Electrical Inspection and dismissing Criminal Case No. 90-2202), the herein investigator finds that respondent's action thereon cannot be questioned in this administrative proceeding. The Order of March 7, 1990 was sustained by respondent on the basis of his own finding during the ocular inspection that the construction of the 4th floor and roof deck, which plaintiffs sought to enjoin, was already completed. While complainant is entitled to her own assessment of the facts, she must acknowledge that the authority to determine the propriety of the writ's issuance is lodged with respondent, and that she has no right to substitute her judgment for that of respondent's. At any rate, complainant should have resorted to the proper judicial recourse from said order. Anent the dismissal of the criminal action, the issuance by the proper official of a Certificate of Occupancy rendered the criminal action against the proprietor of the building untenable. In fact, even the public prosecutor, in his late Comment, conformed to such dismissal.

Coming now to the charge of bribery, it is noteworthy that complainant did not raise this in her sworn complaint dated January 2, 1992. The first time she hinted about it was in her Reply to respondent's Comment filed on July 27, 1992, copy of which respondent claims he was never furnished. It appears that complainant brought out the charge of bribery only in her Motion for Reconsideration of the dismissal of her complaint for lack of merit.

To substantiate the said accusation complainant and her daughter, Angelita R. Antonino, submitted affidavits (pp. 100-106 Record, Vol. II) wherein it is alleged that respondent Velez who had at first expressed reluctance to conduct an ocular inspection called them to his chambers on March 28, 1990 and demanded for the amount, which they delivered at his house in the evening of that day.

It may be noted that the ocular inspection of defendant's building was solicited by complainant and her co-plaintiff to support their Motion for Reconsideration of Judge Angeles' Order of March 7, 1990 which denied their application for a preliminary injunctive writ. As alleged in complainant's and her daughter's affidavits, respondent Velez agreed to make an ocular inspection only after he demanded and was given by them the sum of P30,000 on March 28, 1990. The record shows that respondent Velez did conduct the desired inspection on April 2, 1990, although it did not work to complainant's advantage since respondent Velez subsequently denied the Motion for Reconsideration and refused to grant the desired injunctive writ.

The adverse result of the ocular inspection which culminated in the denial of complainant's Motion for Reconsideration would greatly help in the assessment of the merit — or lack of it — of the bribery charge. As previously mentioned, complainant had insisted on an ocular inspection in order to facilitate respondent Velez' grant of her Motion for Reconsideration. According to complainant and her daughter Angelita, respondent Velez asked for and was given the sum of P30,000 in return for such inspection. If this were true, respondent Velez would have disposed of the incident favorably to complainant from whom he demanded and received the bribe money. On the other hand, if respondent Velez did receive the amount, but later ruled against complainant's interest, that would have set off an angry reaction from complainant who, so to speak, was virtually taken for a ride. Given such a situation, it would have been highly improbable on [sic] even absurd that complainant should omit such bribery incident from her original complaint against respondent Velez. But as may be seen from her 5-page complaint with 17 annexes, while complainant had practically conjured up all sorts of charges against respondent Velez, including those that are clearly trivial, she strangely left out the alleged bribery which would have easily been the most damaging of all. Needless to state, complainant's unexplained failure to bring forward

in the first instance such a serious indictment and only to advance it later when her complaint was dismissed for lack of merit, strongly argues against or detracts from the truth and sincerely of such an accusation.

In the light of the foregoing discussion, the herein investigator believes that the charge of bribery occurred to complainant only as an afterthought and as a means of resurrecting her original complaint which was previously dismissed for lack of merit.

Finally, the herein investigator finds no necessity in dwelling on the charges of falsification and respondent Velez' acquisition of a vehicle. No evidence was presented to prove the first. The second appears to be based on pure suspicion and speculation.

Justice Jacinto then recommends as follows:

IV. Recommendation

FOREGOING PREMISES CONSIDERED, the herein investigator respectfully adopts the recommendation of DCA Juanito A. Bernad as contained in his Memorandum of March 5, 1993 which was duly approved by Court Administrator Ernani Cruz Paño (pp 262-264, Record, Vol. 1), for the imposition of a fine of One Thousand Pesos (P1,000.00) on respondent Judge Francisco Velez for his improvident dismissal of Civil Case Nos. 90-356 [sic] and 90-2517 and his inaction or unwarranted delay in the resolution of certain motions or incidents then pending in his court, as treated in Title II of his Report.

The Court adopts the sound and persuasive report of Justice Jacinto. However, the recommended penalty is too light. The respondent's precipitate or improvident dismissal of Civil Cases Nos. 90-350 and 90-2517 despite the fact that he had yet to resolve therein three pending incidents which he himself had failed to do so within a reasonable period amounted to abuse of authority. On the other hand, his failure to resolve the motion for the reconsideration of the order of dismissal within a reasonable period or, in the language of Justice Jacinto, his "sitting on the pending motion for an unreasonable length of time," amounted to inexcusable neglect of duty or inefficiency. Such conduct necessarily raises suspicion on the respondent's integrity and impartiality and, ultimately, affects the public confidence on the integrity and impartiality of the judiciary.

Canon 3 of the Canons of Judicial Ethics provides that a judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach. Rule 2.01 of the Code of Judicial Conduct provides that a judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary. This Court has consistently demanded faithful compliance with these canons and imposed administrative sanctions against erring judges. [10]

A fine of P2,000.00 is reasonable under the circumstances.

WHEREFORE, for abuse of authority and for inexcusable neglect of duty or inefficiency, respondent Judge FRANCISCO X. VELEZ is hereby FINED in the amount of Two Thousand Pesos (P2,000.00) and WARNED that a repetition of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Bidin, Regalado, Romero, Bellosillo, Melo, Quiason, Puno, Vitug, Kapunan, Mendoza, and Francisco, JJ., concur.

[1] Rollo , vol. 1, 156.

[2] Rollo , vol. 1, 169.

[3] Id., 175.

[4] Id., 184.

[5] Id., 372.

[6] Rollo , vol. 1, 633.

[7] Id., 639.

[8] Id., 724.

[9] Id., 803.

[10] National Intelligence and Security Authority vs. Tablang, 199 SCRA 766 [1991]; In re: Judge Benjamin H. Virrey, 202 SCRA 628 [1991]; Pico vs. Combong, 215 SCRA 421 [1992]; Alfonso vs. Juanson, 228 SCRA 239 [1993].

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