

ATTY. FELIXBERTO BAYANI, COMPLAINANT, VS. MARCELO BUENAVENTURA AND FRANCISCO EVANGELISTA, SPECIAL DEPUTY CLERK OF COURT AND DEPUTY CLERK OF COURT, RESPECTIVELY, CFI, PASIG, RIZA...

A.M. No. P-116. September 30, 1976

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is a letter-complaint dated April 28, 1973 of Atty. Felixberto Bayani, the Clerk of Court of the Court of Agrarian Relations, Pasig, Rizal, addressed to District Judge Carolina Griño-Aquino of the Court of First Instance, Pasig, Rizal, alleging the commission of an anomaly by the "Court Personnel" in the CFI, Pasig, Rizal, in that in connection with the raffle of criminal cases conducted on April 27, 1973, there was "uninitialed alteration" of the original raffle sheet, to wit:

"1. The number 13 appearing opposite Criminal Case No. 8089 was altered by superimposing thereon number 21 which is noticeable.

"2. The number 21 appearing opposite Criminal Case No. 8089 was also altered by drawing a curb to the right of figure '1' to make it '0' and by doing this, number 21 became No. 20.

"3. To justify and camouflage the irregularity in changing the numbers, the handwritten Roman No. XX appearing at the bottom of Crim. Case No. 8089 was also altered to read as Roman No. XIII.

"Fortunately, I was able to take hold of the copies of the April 27, 1973 raffle result of Branches I, XIII and XXII. These copies are untampered (with). They have no erasures and that all of them bear your signature. In these copies of the raffle results of the Branches aforementioned, Criminal Case No. 8089 goes to Branch XIII and Criminal Case No. 8096 goes to Branch XXI. Clearly, therefore, the original copy was tampered (with).

"From this tampering, it is apparent that someone with ulterior motive was successful in enlisting the connivance of the Court personnel. Whoever he is, he may be forced to come out if proper investigation will be conducted and those responsible for this alteration amounting to 'Falsification of a Public Document' need be punished if only to assure the public of just and equitable dispensation of justice equally for all, rich and poor alike.

"I have no objection to whomever my case is assigned as long as the regular and legal process is observed which you have been doing since you became the Executive Judge and this is of my own personal knowledge because your sala happens to be adjacent to ours where I am the Clerk of Court. But in this Crim. Case No. 8089, someone or some violated the result of the raffle proceedings by consigning said case to Branch XXI thru unauthorized alteration.

"Your Honor, may I now request that Messrs. Evangelista and Marcelo Buena-ventura of the Clerk of Court's office be directed to send Criminal Case No. 8089 to Branch XIII where it properly belongs as a result of the raffle conducted in your presence on April 27, 1973, and further request that the person or persons who

participated in the tampering of (sic) the results of the raffle be severely dealt with accordingly."

By 1st Indorsement dated May 2, 1973, Judge Griño-Aquino referred the matter to Messrs Marcelo Buenaventura and Francisco Evangelista (Mr. Evangelista was dismissed from the service in Adm. Matter No. P-25, entitled "Omadto vs. Evangelista" promulgated Nov. 28, 1975), through the Clerk of Court, Atty. Nicanor Salaysay. Both submitted their comment dated May 3 and May 4, 1973, respectively, claiming that they have no knowledge of the perpetrator of the act complained of.

By a resolution of the First Division of this Court dated February 23, 1976, this administrative matter was referred to District Judge Pedro Revilla of the Court of First Instance, Pasig, Rizal for investigation, report and recommendation. The Inquest Judge submitted his report dated June 18, 1976, pertinent portions of which read:

"In the raffle of criminal cases held in the morning of April 27, 1973, the record shows that Crim. Case No. 8089 was raffled to Branch XIII of this Court and this was recorded not only in the original list of criminal cases raffled on said date but also in the copies distributed to the other branches of this Court. The evidence shows that the assignment to Branch XIII of Crim. Case No. 8089 appearing in the original of said list and the copy furnished the Deputy Clerk of Branch XIX presided by the then Executive Judge were super-imposed with the figure '21' thereby making it appear that Crim. Case No. 8089 had been raffled to Branch XXI. The superimpositions made were not initialed by the author of said alteration.

"From the testimony of Atty. Felixberto Bayani, the undersigned gathers that in the morning of April 27, 1973, shortly after the raffle of cases had been concluded, he was informed that Crim. Case No. 8089 had been assigned to Branch XIII. In the afternoon of the same date, he went to the office of Mr. Evangelista to inquire from the latter where his case (Crim. Case No. 8089) had been assigned. Mr. Evangelista showed Atty. Bayani the original of the raffle list where he noted that the original figure '13' opposite Crim. Case No. 8089 had been super-imposed with the figure '21'. Atty. Bayani flared up upon discovering this irregularity. As Mr. Evangelista had not yet docketed Crim. Case No. 8089, he suspended the entry of the assignment corresponding to said case in his docket book. Mr. Evangelista claimed that when the original list of criminal cases raffled on April 27, 1973 was delivered to him by Mr. Buenaventura, he failed to notice the intercalation made thereon.

"Not satisfied with the explanation of Mr. Evangelista, Atty. Bayani went around the other branches of the Court the next morning to verify from the copies of the raffle lists furnished the other branches where his case had really been assigned. He was able to procure the copies furnished Branch XIII, Branch XXII and Branch I wherein the assignment of his case to Branch XIII had not been changed. Atty. Bayani also interviewed the personnel of Branch XIX to seek enlightenment regarding the result of the raffle but the personnel of said branch informed him that they did not have their copy of the raffle list at that moment. Later, he was shown their copy which was also tampered (with) like the original but all of them disclaimed any knowledge about said superimposition. Armed with the untampered copies which Atty. Bayani had secured from Branch XIII, Branch XII and Branch I, he had a confrontation with Mr. Buenaventura to whom he was referred (to) by Mr. Evangelista who gave back to Mr. Buenaventura the original copy of the list of criminal cases raffled on April 27, 1973. Mr. Buenaventura then took the initiative of correcting said irregularity by superimposing again with a pentel pen the figure '13' over the superimposed figure '21'. Subsequently, Mr. Buenaventura was required by the Executive Judge to shed light on the complaint of Atty. Bayani as Atty. Bayani had previously addressed a letter-complaint to the Executive Judge. The original raffle list of criminal cases held on April 27, 1973 now bears the initials of Mr. Buenaventura and the Executive Judge in the corrected figure '13' opposite Crim. Case No. 8089. Prior to the discovery of this irregularity, the Executive Judge left the original copies of the lists of raffled cases to Mr. Buenaventura but after the complaint lodged by Atty. Bayani, the original lists were already retained by the Executive Judge.

"Both Messrs. Buenaventura and Evangelista disclaimed any knowledge of the tampering complained of. Mr. Buenaventura alleged that the original copy of the raffle lists (civil, criminal, special proceedings, land

registration cases and petitions after decree) after the raffle were made available to the representatives of the different branches who were present so that they can reproduce in their copies the result of the raffle as annotated by him in the original copies. He also alleged that when he got back the original copies together with the duplicates thereof pertaining to the branches which had no representative during the raffle, he did not notice the intercalation made on the assignment of Crim. Case No. 8089 when he brought back said documents to his office. The original copy of the raffle sheet pertaining to criminal cases was delivered by him to Mr. Evangelista without noticing the alteration made thereon.

"It is doubtful whether the attempt to transfer the hearing of Crim. Case No. 8089 to Branch XXI could have been successfully carried out in view of the fact that the list of the raffled cases in the possession of Branch XIII had not been tampered with. This branch would not have accepted any other case in connection with this raffle of April 27, 1973 except Crim. Case No. 8089 appearing in the list delivered to its representative whose signature or initial appears in all the other copies of said list. What had been tampered with are only the original and the copy delivered to the Clerk of Court of Branch XIX obviously made after the Presiding Judge of said branch had already signed the original of the raffle list.

"The raffle list reflecting the result of the raffle of cases held on April 27, 1973 was approved by the Executive Judge, a public official. It was also witnessed by representatives of the different branches who were present during said raffle. This document, therefore, is an official document. The alteration of the result of the raffle with respect to Crim. Case No. 8089 affected the integrity of the document in that the alteration made the document speak something false. The act falls squarely under par. 6 of Art. 176 of the Revised Penal Code.

"The finger of suspicion points strongly at Mr. Marcelo Buenaventura because of certain circumstances mentioned above. Mr. Buenaventura had control of all the raffle lists including the originals of the list of criminal and civil cases raffled on April 27, 1973 as Mr. Evangelista did not attend the raffle conducted on said date. The entries appearing in the original of the list of criminal cases raffled on April 27, 1973 were written by Mr. Buenaventura. This may be gathered from the admission of Mr. Buenaventura himself and the identification of his penmanship by Mr. Evangelista. The correction of the entry opposite Crim. Case No. 8089 in the raffle list at issue was made by Mr. Buenaventura. Said correction bears his initial and that of the Executive Judge after Mr. Buenaventura had called the attention of the Executive Judge to said correction. After furnishing the representatives of the different branches present at the raffle with their copies of the same, it was Mr. Buenaventura who retained the original thereof together with the copies of the other branches which had not sent any representative during the raffle. It was Mr. Buenaventura who delivered the original of said list of criminal cases raffled to Mr. Evangelista. When the irregularity was discovered by Atty. Bayani, the matter was referred by Mr. Evangelista to Mr. Buenaventura who took the initiative of correcting the wrong assignment.

"In spite of the efforts of the undersigned to locate an eyewitness to the commission of the anomaly, none could be located. The implication of the defense interposed by Mr. Buenaventura is that the original copy of the tampered list had been passed around to the different representatives of the other branches before the original was returned to him and that consequently, the intercalation could have been made by anyone of those present during the raffle. Mr. Buenaventura also claimed not to have noticed the alteration made thereon. Mr. Agoncillo also claimed not to have noticed the alteration made in the copy furnished their branch.

"In the absence of any eyewitness, it is the opinion of the undersigned that the circumstantial evidence cited above are not conclusive enough to warrant criminal prosecution of Mr. Buenaventura. In spite of the suspicion aroused in the mind of the undersigned by the foregoing facts, however, the undersigned cannot help but entertain some doubts regarding the guilt of Mr. Buenaventura. First, because there are no eyewitnesses who testified having seen Mr. Buenaventura altering the result of the raffle. Second, whoever made the attempt to subvert the result of the raffle of Crim. Case No. 8089 by tampering (with) the original of the raffle list, by making it appear that the same was assigned to Branch XXI must have been a person unfamiliar with the procedure followed by the Executive Judge at that time in the raffle of cases as the copies furnished the

different branches, particularly the copy of Branch XIII, where Crim. Case No. 8089 was assigned, were not altered. The Clerk of Court of Branch XIII would certainly have demanded the record of Crim. Case No. 8089. Mr. Buenaventura as one of the most experienced employees in the Office of the Clerk of Court and who is very familiar with the mechanics followed in the raffling of cases, would have known that the plan to transfer said criminal case to another branch could not have succeeded by altering only the original of said list. Furthermore, because of the correction made by Mr. Buenaventura which appears to have been made with a pentel pen, the undersigned believes that it is now hard even for a handwriting expert to detect in whose handwriting the superimposition of the figure '21' was made. It may be added also in this connection that the case of Atty. Bayani docketed as Crim. Case No. 8089 was tried and terminated before Branch XIII where the case was originally raffled to the satisfaction both of the complainant as well as the accused in this case.

"However, the undersigned believes that the lack of vigilance on the part of Mr. Buenaventura who was in charge of the raffle of cases to notice the person responsible for the alteration made in the assignment of Crim. Case No. 8089 makes him liable for negligence in the supervision and custody of the documents relative to the raffle.

"With reference to respondent Francisco Evangelista, the evidence is sufficient to establish the fact that he was not present during the raffle. The copy furnished the Clerk of Court of Branch XIX where the raffle was conducted in the sala of said branch was found to have been also tampered (with). This copy having been delivered immediately after the raffle to said Deputy Clerk, it is safe to conclude that when the original of the list was delivered by Mr. Buenaventura to Mr. Evangelista, the tampering had already been made. The charge against Mr. Evangelista should, therefore, be dismissed."

On the basis of the thorough and exhaustive report of District Judge Revilla, this Court finds respondent Marcelo Buenaventura administratively liable for negligence in the performance of his official duties as Special Deputy Clerk of Court of the Court of First Instance of Rizal. As the representative of the clerk of said court, respondent Buenaventura is primarily responsible for the control and supervision of the raffle of criminal and civil cases as well as the custodian of pertinent papers and documents relative thereto. In the report of Judge Revilla, respondent Buenaventura has control over all the raffle lists including the original of the list of criminal and civil cases raffled on April 27, 1973. The entries appearing in the original of the list of criminal cases raffled on that date were written by him as well as the correction of the entry opposite criminal case No. 8089 which bears his initial. After furnishing the representatives of the different branches of the CFI of Rizal who were present at the raffle, he retained the original thereof together with the copies of the other branches which have not sent any representative during the raffle.

Thus, as correctly found by the Inquest Judge, there was "lack of vigilance on the part of Mr. Buena-ventura who was in-charge of the raffle of cases to notify the person responsible for the alteration made in the assignment of criminal case No. 8089." And this is borne by his candid admission that "all persons in the sala during and immediately after the raffle had access to the original of the certificate of raffle and a number of them had their hands on that paper," which proved his laxity in safeguarding the papers and documents relative to the raffle, and, more importantly, in keeping inviolate the integrity of the result of the raffle as envisaged in Justice Department Circular No. 26 dated June 16, 1951 as well as of this Court's Circular No. 7 dated September 23, 1974, to avoid any suspicion that parties litigants or interested parties could select the judges to try their cases and to insure and safeguard the impartial disposition of cases. Negligence tends to frustrate such a laudable objective. Diligence, integrity and intelligent exercise of discretion in the discharge of their duties are imperatives for public employees. Obligation to the public is not discharged by a mere perfunctory performance. Therefore, for such negligent act which tends to erode the faith and confidence of the people in our courts of justice, respondent Buenaventura must have to answer.

Negligence or neglect in the performance of official duties is one of the grounds for disciplinary action against public officials and employees under Presidential Decree No. 6. It falls under the classification of a less grave offense (Civil Service Commissions Memorandum Circular No. 8, series of 1970). Considering the circumstances obtaining in this case, for respondent Buenaventura's negligence, the appropriate imposable penalty is suspension from office for one (1) month without pay.

WE deem it unnecessary to make any finding or conclusion insofar as respondent Francisco G. Evangelista is concerned, although the Inquest Judge recommends, not without reason, that he be absolved of the charge, because he has already been separated from the service on November 28, 1975 (A.M. No. P-25, Omadto vs. Evangelista, En Banc).

ACCORDINGLY, RESPONDENT MARCELO BUENAVENTURA, SPECIAL DEPUTY CLERK OF COURT, COURT OF FIRST INSTANCE, PASIG, RIZAL IS FOUND GUILTY OF NEGLIGENCE AND IS HEREBY SUSPENDED FROM OFFICE FOR ONE (1) MONTH WITHOUT PAY, EFFECTIVE ON THE DATE HE RECEIVES A COPY OF THIS RESOLUTION.

Teehankee, (Chairman), Aquino, Concepcion, Jr., and Martin, JJ., concur.

Muñoz Palma, J., reserves her vote.

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