

**VICENTE T. TAN, COMPLAINANT, VS. JUDGE JOB B. MADAYAG AND
SERVILLANO E. BANAYAD, JR., RESPONDENTS.***A.M. No. RTJ-93-995. March 11, 1994*

Ponente: REGALADO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/818373158808/>**REGALADO, J.:**

In a sworn letter-complaint dated April 27, 1993, Vicente T. Tan charged Judge Job B. Madayag of the Regional Trial Court of Makati, Branch 145, and Servillano E. Banayad, Jr., then acting officer-in-charge of the branch, with neglect of duty. Specifically, complainant alleged that respondents "deliberately and maliciously failed to give notice to the movant-intervenors of the denial of their motion for intervention (where complainant is co-movant) and have acted with manifest partiality, evident bad faith or gross inexcusable negligence by either hiding or concealing and refusing to give movants a copy of the said order of denial,"[1] thus allegedly depriving them of the opportunity to take the necessary legal action to prevent the original parties in Civil Case No. 92-2198 from entering into a settlement which was executed without their (movants') knowledge.

Complainant was one of the movants for intervention in Civil Case No. 92-2198 entitled "Aboitiz and Co., Inc., et al. vs. American Express Bank, Ltd.," before the Regional Trial Court of Makati, Branch 145, presided over by respondent judge. The case involved the recovery of certain shares of stock of the defunct Continental Bank (which later became the International Corporate Bank [INTERBANK]) allegedly issued in the name of complainant and four other corporations wherein the former is an officer and a stockholder. These shareholdings were allegedly part of the shares of stock sequestered by the Government right after the EDSA revolution of 1986 and which thereafter became part of the capital stock of INTERBANK.

On September 8, 1992, complainant filed a motion to intervene in the said civil case. The motion was set for hearing on September 18, 1992. On December 22, 1992, respondent judge issued an order denying the aforesaid motion for intervention for lack of merit. However, it was only on April 15, 1993 when complainant's counsel received a notice of the aforesaid order of denial. This was preceded by a letter of complainant, dated April 5, 1993, requesting a certification that neither he nor his lawyers had been furnished a copy of the order of December 22, 1992 denying the motion for intervention. The trial court, through respondent Banayad, Jr., issued a certification[2] on the same date to the effect that movants Vicente T. Tan, et al. were indeed not furnished a copy of the said order.

Complainant claims that he had previously caused several persons to go to the Office of the Clerk of Court of Branch 145 to verify the status of the said motion which was then pending resolution, only to be informed that the same had not yet been acted upon. Furthermore, complainant avers that there were at least two occasions when the expediente of the case could not be located, hence the real status of the motion for intervention could not then be determined.

These incidents led complainant to deduce that the failure to send the required notice of the order denying intervention was deliberate, in order to enable the original parties in the aforesaid civil case "to enter into all kinds

of settlements causing undue injury to complainant and to the other stockholders who have actual and material interest in the subject matter of the litigation." [3] In other words, with the settlement of the case between the original parties thereto, the legal remedies that could have been available to complainant, had he been properly and timely informed of the denial of his motion for intervention, had been effectively foreclosed by the time the court furnished him with its notice of denial of the motion for intervention.

In a resolution dated June 23, 1993, the Court, acting on the recommendation of Deputy Court Administrator Juanito A. Bernad, resolved to require respondents to file their comments.

In his comment dated July 27, 1993, respondent Banayad, Jr. stated that he was on leave for the purpose of taking the 1992 Bar examinations when the motion for intervention was filed on September 18, 1992. Consequently, the representatives of complainant tasked to follow up the status of the motion from December 22, 1992 onwards could not have approached him. However, he admitted that he furnished complainant's counsel a copy of the order denying the motion only in April, 1993, after he had verified from the records that indeed only the other intervenor in the case was furnished the required notice, while none had been sent to complainant. He asserted that it was not his duty to release or mail copies of the order to the parties concerned. That duty, he averred, devolved upon the clerk-in-charge and not upon him as the officer-in-charge of the branch.

Respondent judge, for his part, adopted the comment he had filed with the Office of the Ombudsman in Case No. OMB-0-93-0974, as the instant complaint is allegedly identical to that case. In his said comment, respondent judge alleged that after signing the questioned order of December 22, 1992, he sent the records of the case and the pertinent order to respondent Banayad, Jr. for the corresponding notifications to be sent to all parties in the case. He averred that, as a matter of procedure, it is respondent Banayad, Jr., as officer-in-charge, who instructs the mailing clerk to send out copies of orders to the parties by mail and that it is not a duty of the presiding judge to personally send out copies of his orders to the parties.

In his consolidated reply dated October 13, 1993, complainant reiterates that the delay in the resolution of his motion for intervention had in fact resulted in a denial of justice and that, by reason of respondent judge's neglect of duty, he was deprived of his property without due process of law. Furthermore, according to complainant, respondents cannot invoke the neglect of their staff as a legitimate excuse for the delay in sending him copy of the order denying the motion for intervention, and both respondents must be held liable for failing to exercise close supervision over their personnel.

By resolution of the Court dated November 3, 1993, the matter was referred to the Office of the Court Administrator for evaluation, report and recommendation. On January 10, 1994, the Office of the Court Administrator submitted its report with the following findings:

"We find the complaint meritorious. It is evident from the records and from the admission of the respondents themselves that indeed the counsel for the complainant (movant in the case) was furnished a copy of the Order dated December 22, 1992 only sometime in April, 1993 or more than three (3) months after its issuance. It is also settled that the duty of sending out copies of the Orders issued by the Court devolve(s) upon the Clerk-in-Charge. Be that as it may, respondents may not be absolved from any liability for the said inadvertence which allegedly prejudiced the complainant. Their respective defenses that it is not their duty to send out notices to the parties concerned is not tenable. Respondent Banayad, as Officer-in-Charge of that Court during the period in question, may not invoke (the fact) that he was on leave in September, 1992 as the questioned Order was issued when he had already reported back for work. He should have instructed the personnel in charge to mail copies of the Order to the parties concerned with utmost dispatch. Respondent Judge, for his part, also failed to exercise close supervision over his personnel in violation of Rule 3.09, Canon 3 of the Code of Judicial Conduct which states:

'A judge should organize and supervise the Court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity.'

"However, we are not convinced that the delay was tainted with malice or was done deliberately to prejudice complainant. Upon knowing that complainant was not sent a copy of the Order, respondent Banayad immediately instructed the clerk-in-charge to send a copy thereof to complainant's counsel." [4]

The Court agrees with the above findings and opinion of the Court Administrator. Respondents' neglect of duty is a matter of record. A judge cannot simply take refuge behind the inefficiency or mismanagement of his court personnel. Proper and efficient court management is definitely his responsibility. He is directly responsible for the proper discharge of their official functions. "Court personnel are not the guardians of a Judge's responsibilities." [5] The efficient administration of justice cannot accept as an excuse the shifting of blame from one court personnel to another. In this case, the delay complained of could have been avoided had the respondents adopted the system of maintaining even a simple checklist of all matters submitted for resolution, and that definitely includes the prompt sending out of notices of court orders to all the parties in the case to satisfy the requirements of due process.

WHEREFORE, respondent Judge Job B. Madayag is hereby SEVERELY REPRIMANDED for the delay in the service to the counsel for complainant of a copy of the order dated December 22, 1992 issued in Civil Case No. 92-2198, with a STERN WARNING that a repetition of the same or similar act or acts in the future will be dealt with more severely.

Respondent Servillano B. Banayad, Jr. is hereby ORDERED to pay a fine of P1,000.00, likewise with the same warning of more severe sanctions in the event of a repetition of the same or similar act or acts.

SO ORDERED.

Narvasa, C.J., (Chairman), no part.
Padilla, Nocon, and Puno, JJ., concur.

[1] Rollo, 5.

[2] Rollo, 15.

[3] Ibid., 5.

[4] Rollo, 55-56.

[5] *Nidua vs. Lazaro*, A.M. No. R-465 MTJ, June 29, 1989, 174 SCRA 581, citing *Secretary of Justice vs. Legaspi*, A.C. No. 269-J, September 10, 1981, 107 SCRA 233.

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