

TRINIDAD CABAUG, COMPLAINANT, VS. JUDGE JASPER JESSE G. DACANAY, MUNICIPAL TRIAL COURT, CONSOLACION, CEBU, RESPONDENT.

A.M. No. MTJ-03-1480. September 10, 2003

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

This is another occasion to reiterate our injunction that every judge should dispose of his court's business promptly. Delay in resolving pending motions or incidents is inexcusable and impermissible.

In her affidavit-complaint dated June 3, 2002 filed with the Office of the Court Administrator (OCA), Trinidad Cabahug charged respondent Judge Jasper Jesse G. Dacanay, pairing judge at the Municipal Trial Court (MTC), Consolacion, Metro Cebu, with undue delay in resolving her motion for reconsideration dated September 18, 2001 in Civil Case No. 217, entitled "Cirilo Cabahug, plaintiff, versus Remegio Cabahug, defendant," for recovery of possession of real property and damages.

Complainant alleged that her husband Cirilo Cabahug (now deceased) obtained a favorable judgment in said civil case. On appeal, both the Regional Trial Court, Branch 55, Mandaue City and the Court of Appeals affirmed the MTC Decision. The Decision of the Court of Appeals became final and executory on February 17, 2000.[1]

On November 3, 2000, upon plaintiff's motion, the MTC issued a writ of execution. The sheriff then ejected defendant Remegio Cabahug from the property.

Complainant further averred that, despite the full implementation of the MTC judgment, Rosalinda Cabahug, defendant's wife, caused the survey of the property and again encroached thereon.

Thus, on July 24, 2001, complainant, who substituted her deceased husband as plaintiff, filed with the MTC a "Motion To Cite Defendant-Wife (Rosalinda) In Contempt Of Court." [2] The MTC denied the motion in an Order dated August 24, 2001.

On September 19, 2001, complainant filed a motion for reconsideration [3] which was opposed by the defendant on November 22, 2001.

Complainant claimed that from the time she filed her motion for reconsideration on September 19, 2001, it has remained unresolved.

In his comment [4] dated August 9, 2002, respondent Judge Jasper Jesse G. Dacanay alleged that sometime in December 2001, complainant approached him about her unresolved motion. He advised her to see the Clerk of Court of the MTC, Consolacion, Cebu to inquire when her motion could be heard. The Clerk of Court gave her a list of tentative dates of hearing and told her to ask her counsel when he would be available to avoid unnecessary postponements. The Clerk of Court waited for her but she did not return. Instead, on April 22, 2002, her counsel filed a "Motion To Withdraw Appearance." She then requested the Clerk of Court for the deferment of the hearing

of her motion as she will look for a new counsel. Thus, it was only on June 19, 2002 that respondent judge issued an Order setting the hearing of the motion on July 12, 2002 at 8:30 AM. On July 1, 2002, complainant, by herself and on her behalf, filed a "Motion For Inhibition." During the scheduled hearing of her motion for reconsideration on July 12, 2002, she failed to appear. Consequently, her motion for reconsideration and motion for inhibition were denied.

On November 29, 2002, Court Administrator Presbitero J. Velasco, Jr. submitted his Report and Recommendation[5] finding respondent judge guilty of gross inefficiency and recommended that a fine of P5,000.00 be imposed on him. The pertinent portions of the Report read:

"Respondent Judge failed to resolve the subject motion (for reconsideration of the Order denying complainant's motion for contempt) within the 90-day reglementary period. Records reveal that the subject motion was filed on July 24, 2001.[6] The same was deemed submitted for resolution on November 22, 2001 when defendant filed his Comment/Opposition thereto. However, it was only after the lapse of 231 days[7] that respondent Judge issued an Order denying the motion.

"His explanation that the delay was attributable to the complainant because she failed to choose a date for the hearing of the subject motion will not exculpate him from administrative liability. In the first place, there was no more need to set the motion for reconsideration for hearing because the motion could be acted upon by the respondent judge without prejudging the rights of the defendant as the latter has already filed an opposition thereto. Moreover, the Order dated 19 June 2002 (Annex `3') of respondent judge failed to state clearly what motion filed by the plaintiff was being set for hearing. If the said order refers to the motion for reconsideration, then it can be inferred that it was merely issued to cover-up for respondent's delay in resolving the subject motion. Lastly, if respondent judge had already resolved the motion, then he should have attached a copy of the same to his Comment to substantiate his claim."

In our Resolution dated January 20, 2003, we required the parties to manifest whether they are submitting the case for decision on the basis of the pleadings/records already filed and submitted. Respondent judge was likewise required to furnish us with a copy of his Order dated July 12, 2002 denying complainant's motion for reconsideration. In compliance, he filed on March 14, 2003 his "Manifestation" that he is submitting the case for resolution, attaching therewith a copy of his July 12, 2002 Order.

We agree with the findings of the Court Administrator that respondent judge committed gross inefficiency. It is undisputed that he failed to resolve complainant's motion within the reglementary period of ninety (90) days from the time it was submitted for resolution on November 22, 2001 upon the filing of defendant Remegio Cabahug's opposition thereto. It was only on July 12, 2002, or after an undue delay of 231 days, that respondent judge resolved the motion by denying it. His Order partly reads:

x x x x x x x x

"The Motion for Reconsideration is hereby Ordered denied there being no new matters/issues not aptly taken up by the Court in its Order denying the Motion to Cite Defendant-Wife in Contempt of Court dated August 24, 2001, as well as the Motion for Inhibition which is deemed treated as a mere scrap of paper (for failure to indicate therein the date of hearing of the motion).

"SO ORDERED." (Emphasis supplied)

Clearly, respondent judge could have immediately resolved the motion even without an opposition thereto since there are no new matters/issues raised by complainant. There was, therefore, no need for him to conduct a hearing. Verily, his reasons why he failed to resolve the motion promptly are utterly bereft of merit.

In Prosecutor Robert M. Visbal vs. Judge Marino S. Buban,[8] we held that failure to decide cases and other

matters within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring magistrate.[9] Delay in resolving motions and incidents pending before a judge within the reglementary period of ninety (90) days fixed by the Constitution and the law is not excusable and constitutes gross inefficiency.[10] Further, such delay constitutes a violation of Rule 3.05, Canon 3 of the Code of Judicial Conduct which mandates that a judge should dispose of the court's business promptly and decide cases within the required periods.[11] As a trial judge, respondent is a frontline official of the judiciary and should at all times act with efficiency and with probity.[12]

We, however, cannot agree with the Court Administrator's recommendation that respondent "be ordered to pay a fine of Five Thousand Pesos (P5,000.00)" only. Under Section 9, Rule 140,[13] as amended, of the Revised Rules of Court, undue delay in rendering a decision or order is considered a less serious offense. Pursuant to Section 11(b) of the same Rule, such offense is punishable by:

"1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

"2. A fine of more than P10,000.00 but not exceeding P20,000.00."

WHEREFORE, respondent Judge Jasper Jesse G. Dacanay is found GUILTY of undue delay in resolving a motion and is FINED in the amount of Eleven Thousand (P11,000.00) Pesos and warned that a repetition of the same offense will be dealt with more severely.

SO ORDERED.

Panganiban, (Acting Chairman), Corona, and Carpio-Morales, JJ., concur.
Puno, J., on official leave.

[1] Annex "E", Affidavit-Complaint, Rollo at 29.

[2] Annex "G", id. at 43.

[3] Annex "H", Rollo at 45.

[4] Id. at 53.

[5] Rollo at 60-63.

[6] Erroneously stated in the Report as September 26, 2001.

[7] Erroneously stated in the Report as 209 days.

[8] A.M. No. MTJ-03-1471, January 22, 2003.

[9] Echaves vs. Fernandez, A.M. No. RTJ-001596, February 19, 2002; Gallego vs. Doronila, A.M. No. MTJ-00-1278, June 26, 2000, 334 SCRA 339, 346; Seña vs. Villarin, A.M. No. 00-1258-MTJ, March 22, 2000, 328 SCRA 644, 648; Hilario vs. Concepcion, A.M. No. RTJ-99-1454, March 2, 2000, 327 SCRA 96, 104; Report on the Judicial Audit Conducted in RTC, Branches 29, 53 & 57, Libmanan, Camarines Sur, A.M. No. 98-1-11-RTC, October 7, 1999, 316 SCRA 272, 280.

[10] Rivera vs. Lamorena, A.M. No. RTJ-97-1391, October 16, 1997, 280 SCRA 633, 635; Guintu vs. Lucero, A.M. No. MTJ-93-794, August 23, 1996, 261 SCRA 1, 7.

[11] Martin vs. Guerrero, A.M. No. RTJ-99-1499, October 22, 1999, 317 SCRA 166, 175.

[12] Ng vs. Ulibari, A.M. No. MTJ-98-1158, July 30, 1998, 293 SCRA 342, 348.

[13] See A.M. No. 01-8-10-SC.

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