

FEDERICO ADVINCULA, COMPLAINANT, VS. HONORABLE MARIANO MALICUDIO, RESPONDENT.*A.M. No. 1610-MJ. September 12, 1980*

Ponente: MAKASIAR, J.

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Federico Advincula, of the Office of the Municipal Mayor of Dumarao, Capiz, in a sworn complaint dated March 29, 1977 (pp. 1-2, rec.) charged Municipal Judge Mariano M. Malicudio of the same municipality with neglect of duty and partiality (bias) in connection with a criminal case pending in his court against Pedro Catalan for qualified theft. The complaint alleged that the said criminal case was not even docketed nor given a case number. And when reminded of such omission, respondent Judge explained that he referred the case to the Department of Agrarian Reform (DAR) in Iloilo City; but complainant alleged that upon verification no such referral was made by respondent.

Respondent submitted his comment dated May 26, 1977 (pp. 8-9, rec.) wherein he explained that his failure to docket and to assign a case number to said case is due to his policy "not to docket in the permanent docket and not to number cases unless a preliminary examination of a case is completed" (par. f, p. 9, rec.).

In a resolution dated September 8, 1978 (p. 12, rec.), this Court's First Division referred the case to Executive Judge Agapito I. Cruz of the Court of First Instance of Capiz at Mambusao for investigation, report and recommendation.

Judge Cruz immediately set the case for hearing on October 21, 1978 (p. 14, rec.). The hearing was, however, reset to November 23, 1978 upon motion of respondent (p. 15, rec.) and further reset for at least four other instances upon motion of both or either of the parties (pp. 22, 26, 29 & 34, rec.).

At the scheduled hearing on February 26, 1979, the complainant appeared with the respondent and filed a motion to dismiss (p. 36, rec.) on the ground that his evidence, if any, was insufficient to prove his allegations against the respondent, pursuant to which the investigating Judge recommended the dismissal of the case (pp. 39-40, rec.).

In a long line of administrative cases, WE held that complainant's desistance or loss of interest does not warrant the dismissal of the case if the charge can be sufficiently established (*Beduya vs. Alpuerto*, A.M. No. 1762-CTJ, March 31, 1980; *Espayos vs. Lee*, 89 SCRA 478, 483; *De la Cruz vs. Mudlong*, 84 SCRA 281, 288).

In his comments dated May 26, 1977 (pp. 8-9, rec.), the respondent virtually admitted that he did not enter in his docket book nor assign a case number to the criminal case against Pedro Catalan, thereby revealing that he had not performed his duties properly as required by Section 18, Rule 136 of the Rules of Court. This declared "policy" of not docketing and numbering a case unless a preliminary examination thereon is completed, runs contrary to the provisions of said rule, for which he must be administratively responsible.

WHEREFORE, RESPONDENT IS HEREBY REPRIMANDED AND ADMONISHED THAT A REPETITION OF THE SAME OR SIMILAR NEGLECT WILL BE DEALT WITH MORE SEVERELY.

LET A COPY OF THIS DECISION BE ATTACHED TO THIS COURT'S PERSONAL RECORDS OF RESPONDENT JUDGE.

Teehankee, (Chairman), Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

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