

EDUARDO ESTILLEN, COMPLAINANT VS. JUDGE OSTER-VALDO Z. EMILIA, RESPONDENT.

A.M. No. 1892-CFI. January 27, 1981

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This complaint is based on an affidavit dated April 18, 1978 of Eduardo Estillena which was originally filed with the Office of the President but referred to this Court by Mr. Francisco A. Robles, Senior Executive Assistant II, Office of the President, on April 27, 1978.

The pertinent portion of said affidavit reads:

"That on February 21, 1975, my daughter Marivic, age, one year and seven months met a vehicular accident resulting in her fatal death at Barangay San Jose, Binalbagan, Negros Occidental;

"That as a consequence thereof, we filed a civil case against (he owner of the vehicle, one Mr. Gerardo Yusay of Isabels. Negros Occidental tor indemnification resulting from the death of our daughter;

"That for sometime, our above-mentioned case was tried at the local court of justice in Binalbagan, after which the same was later transferred to the court of first instance branch at Himamaylan, Negros Occidental;

"That we have been spending quite a lot for our attorney's and other incidental fees for the last three (3) consecutive years without any apparent evidence that our case may eventually be resolved by our local court of justice in the CFI branch;

"That I personally believe and have faith in the axiom which has grown very common and popular under the New Society era wherein 'justice is supposed to be for everyone';¹

"That I am accordingly executing this affidavit with the end in view that the corresponding supreme authorities of oar land may extend this matter their utmost preferential attention as to cause a speedy disposition of our' case, which has long been held pending unreasonably by the local CFI branch, the fact that everytime a hearing is set, the same is always postpone ed for a much later date to the detriment of my family and myself;

"That by these presents I am personally registering my complaint against the erring Judge of the Court of First Instance of Himamaylan, handling our case, the fact that they seem to have an understanding and connivance with the attorneys-at-law handling the case;

..."

By a First Indorsement dated May 2, 1978, respondent Judge was required to comment on the complaint in compliance with which he submitted his comments dated June 6, 1978, which may be summarized as follows:

The complaint of Eduardo Estillena (Civil Case No. 893) for damages based on quasi-delict for the death of his daughter finally came up for pre-trial on September 1, 1976. There are two sets of defendants, each represented by a different counsel, namely, Atty. Romeo Sabig for Roberto Abaiio and Teodorico Abalunan, Jr., and Atty. Lailab Fernandez of Cebu City for Rolando Genal and Gerardo Yusay. On Sept. 1, 1976, the parties agreed to explore the possibility of amicable settlement and to reset the pre-trial to December 8, 1976.

On December 8, 1976, the parties requested for an extension of time to further explore the possibility of amicable settlement, for which reason the pre-trial was reset to February 7, 1977.

On February 7, 1977, the issue came up whether this case could proceed independently of the criminal case. A favorable ruling was issued by the court on March 2, 1977. At the instance of Atty. Infante (presumably counsel for complainant), the pre-trial was reset on June 6, 1977.

On June 6, 1977, the pre-trial was terminated upon agreement of the parties although they were still willing to explore the possibility of amicable settlement. The court required the parties to submit a stipulation of facts and a list of witnesses and exhibits. The trial on the merits was set on August 1, 1977.

On August 1, 1977, Atty. Sabig was given five (5) days to reply to the proposed stipulation of facts filed by Atty. Infante. Upon agreement of the parties, the trial was reset to September 14, 1977.

On September 14, 1977, all parties appeared except Atty. Fernandez and the defendants he represents. Since the records showed that they were not duly notified, the court directed that another notice be sent to said counsel at his known address in Cebu City, while ordering defendant Yusay to contact personally his counsel and in case of the latter's failure to appear at the next hearing, to engage the services of a new counsel. The trial was reset to February 7, 1978.

On February 7, 1978, the judge had to attend a conference called by then Chief Justice Fred Ruiz Castro in Cebu City, so the hearing was reset to April 12, 1978.

On April 12, 1978, the judge was busy with urgent cases in the morning so he suggested to hold the hearing in

the afternoon. But since Atty. Virgilio Lopez, the new counsel for defendants Yusay and Genal, had to catch the afternoon plane for Cebu City in Bacolod, the hearing was again reset to June 19, 1978.

The respondent judge explained further that the proceedings on the case have been proper and aboveboard, and the settings were upon agreement of the parties consistent with the case load in the daily calendar of the court.

The written explanation of the respondent indicates that the complainant and his lawyer were furnished copies thereof. However, the records do not show any reply filed by either the complainant or his lawyer to said comment. Considering the length of time that has elapsed since then, and the continued silence of the complainant, it could only be surmised that the respondent's comment met with the complainant's approval or satisfaction.

But it is never superfluous to remind respondent that judges are duty-bound to observe promptness in disposing of all matters submitted to them, for justice delayed is often justice denied (Canon 8, Canons of Judicial Ethics). Since delay in the administration of justice is a common cause of complaint among litigants, judges should be able to steer the wheels of justice in a steady onward pace.

Postponements and resettings of cases should be allowed only within reasonable limits. Too many resettings and too long intervals of calendaring cases, even with the consent of the parties, run contrary to the constitutional mandate of speedy dispensation of justice, and could work to erode the people's confidence in the judiciary. Resettings should probably be limited to three consecutive times. The system of calendaring cases should be re-examined and improved so that only those that can possibly be heard in a particular day will be included in the calendar of cases. In so doing, parties-litigants need not wait in vain for the calling of their cases which cannot be tried for lack of material time.

Of course the parties' counsel are equally responsible for the smooth flow of the judicial machinery. But judges, without being arbitrary or forcing cases unreasonably or unjustly to trial when unprepared, to the detriment of the parties, may well endeavor to hold counsel to a proper appreciation of their duties so as to enforce due diligence in the dispatch of business before the court (Canon 18, Canons of Judicial Ethics).

WHEREFORE, the respondent is hereby admonished to discharge his judicial functions more promptly and expeditiously.

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

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