

**ARTEMIO T. VICTORIA, COMPLAINANT, VS. HON. SEGUNDO M. ZOSA,
PRESIDING JUDGE OF THE CFI-RIZAL, SEVENTH JUDICIAL DISTRICT
BRANCH XXXVI, MAKATI, METRO MANILA, RESPONDENT.**

A.M. No. 2691-CFI. July 20, 1982

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

In a complaint filed January 16, 1982, Atty. Artemio T. Victoria charged the Hon. Segundo M. Zosa, Presiding Judge of the Court of First Instance of Rizal, Seventh Judicial District, Branch XXXVI, Makati, Metro Manila, with "ignorance and/or intentional disregard of applicable rules, laws and court rulings, and bias, inefficiency and/or neglect of duty - equivalent to serious misconduct", for failing to decide a motion for reconsideration for more than eight (8) months.

The records show that on September 2, 1976, the complainant filed with the Court of First Instance of Makati, Rizal, Branch XXXVI, presided over by then Judge Leo D. Medialdea, an amended complaint for damages in the sum of P500 ,000.00 against Emmanuel, Leocadio and Leonor, all surnamed Victoria. The case was docketed therein as Civil Case No. 24165.

Defendants, through counsel, filed a Motion to Dismiss on the ground that the complaint states no cause of action. After hearing and consideration of the motion, Judge Medialdea denied the same as the "reasons alleged in said motion are not well-taken."

On January 19, 1980, defendants, through counsel, filed a second Motion to Dismiss on the ground that "the cause of action is absolutely privileged communication."

On July 17, 1980, respondent Judge Segundo M. Zosa, who took over the sala of Judge Medialdea upon the latter's appointment as Deputy Court Administrator of the Supreme Court, granted the second Motion for Reconsideration in an order which, among others, reads:

"Premises considered, the Court holds that plaintiff did not make out in his complaint a sufficient cause of action against the defendants for the reason that the basis upon which his cause of action is based, viz., the alleged libelous or scurrilous statements under paragraph 13 of the affidavit of Emmanuel G. Victoria, Annex E are absolutely privileged, hence not actionable due to plaintiff's failure to prove that the affiant was motivated with malice, ill-will or personal spite. Consequently, there is no delict to speak of and which is an essential element to constitute a cause of action. Furthermore, malice is also an essential requisite in an action for damages based on malicious prosecution.

WHEREFORE, finding the motion to dismiss filed by the defendants to be well-taken, the same is hereby granted. Let this case be dismissed with costs against plaintiff."

On August 8, 1980, the complainant (plaintiff in said case) filed a motion for reconsideration of the foregoing order. The defendants filed their opposition on September 5, 1980; and the complainant his reply, on September

29, 1980.

After hearing both parties who also submitted their respective memoranda, the respondent Judge issued an order dated May 18, 1981 considering the motion for reconsideration submitted for resolution. Up to the time of the filing of this complaint on January 16, 1982, respondent had not as yet resolved the motion.

Respondent Judge would impress upon this Court that:

"(He) felt that he was not bound to observe the provisions of Section 4, Rule 15, of the Rules of Court with respect to 'Notice' and service of the said motion for the reason that the required three (3) days notice before hearing had been more than complied with.

On the ground that there was no proof of service of the said motion to dismiss, the undersigned has already opined that since the issues involved were pure questions of law, there was no necessity for a hearing of the case and therefore the undersigned could resolved the said issues involved motu-proprio.

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Ordinarily, it has been the practice of the undersigned that cases submitted for decision or resolution are placed on his table chronologically arranged. When the undersigned issued its order of May 18, 1981, the Clerk-in-Charge took the records for stitching the said order and for entry thereof by the docket clerk in the docket book. After all of these matters have been done, the records are to be returned to the undersigned for action. Unfortunately in the present case this was not done, so the resolution of the pending motion could not be acted upon.

The undersigned has 1,260 cases with an average of not less than 100 resolutions and decisions a week. So that if a case is not submitted for an early resolution or decision, it is in likelihood that the same is relegated to the files. True, it is the responsibility of the undersigned to promptly dispose of pending cases, yet inspite of the fact that the undersigned works on Saturdays from 8:00 a.m. to 1:00 p.m. and brings home cases for Saturdays and Sundays work, due to the volume of work it is impossible to cope up with it."

A formal investigation is not necessary as respondent Judge admitted the delay in the resolution of the motion for reconsideration.

As a rule, delay in resolving a motion within the reglementary ninety-day period fixed in Section II(1) Article X of the Constitution is not excusable (Raval v. Romero, 72 SCRA 172; Serra v. Belarmino, 103 SCRA 421; Penera v. Dalocanog, 104 SCRA 193.)

The facts of this case, however, are more closely similar to the circumstances in Secretary of Justice v. Bidin (41 SCRA 742) where We stated:

"According to the monthly report of his clerk of court, as of October 30, 1970, his docket had a total of 1,123 pending cases which number includes 576 criminal cases, about 159 of which involve detention prisoners, which ordinarily need prior attention' (Annex "A", p. 3, rec.). While the same Annex 'A' discloses that in the month of October, 1970, respondent decided twelve (12) criminal cases and two guardianship cases, neither said Annex 'A' nor the records of the investigation of this administrative case reveal the number of resolutions issued by the Judge during the period from January to August, 1970, much less the nature of the incidents involve, whether or not they relate to novel legal questions, with need deep and extensive study. The incidents which might have been resolved by him in said cases might have required more time for determination than the merits of the main cases themselves, like motions to quash or to dismiss or motions for reconsiderations or motions to annul execution. That the respondent heard and decided other cases during the period from January to August, 1970, disclosed that he was never idle. And because he filed and resolved cases during those months, he is entitled under the law to his compensation on which he and his family depend so that they will

not be rendered necessitous and become easy victims of extraneous influences and pressures that subvert his independence and dignity. The function of a Judge is not limited to rendering judgment or promulgating resolutions, but includes the hearing of the cases and their inevitable incidents, which try his patience and temper especially when the witnesses and counsels are contumacious or uncooperative. The Judge who does not receive his salary regularly, although he has tried, heard and resolved cases, petitions, motions submitted to him, will not be physically, emotionally, and mentally prepared to devote the requisite time and effort in the study and analysis of the evidence and law governing the cases and incidents that arise in the course of the proceedings, harassed as he and his family are with the lack of financial resources with which to maintain themselves as befit his position and social standing.

"The respondent Judge therefore deserves compassion and understanding."

The respondent Judge has a heavier caseload than the Honorable Abdulwahid Bidin of the Court of First Instance of Zamboanga City.

We have also taken into account the generally more complex nature of the litigation, both civil and criminal, in the highly urbanized area within the jurisdiction of the CFI branch at Makati, Metro Manila not to mention the unusual concentration of well-known lawyers in the big law firms of that municipality whose pleadings, motions, arguments, etc. would ordinarily raise issues and incidents calling for more research and greater expenditure of effort and time on the part of the Judge. The compassionate and understanding approach in the Bidin case is even more applicable.

WHEREFORE, the respondent is hereby exonerated of the charges with the admonition, however, that henceforth, he should be more careful, punctual, and observant in the performance of his functions.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Concepcion, Jr., Guerrero, De Castro, Melencio-Herrera, Plana, and Vasquez, JJ., concur.

Barredo, Aquino, Escolin, and Relova, JJ., no part.

Abad Santos, J., votes for a fine equivalent to five (5) days salary.

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