

ALIPIO T. RUIZ, JR., COMPLAINANT, VS. JUDGE FELIFRANCO AVENIDO, MUNICIPAL JUDGE OF PLACER, MASBATE,RESPONDENT.

A.M. No. 415-MJ. September 09, 1977

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Letter-request of Alipio T. Ruiz, Jr., for the investigation of Judge Feiifranco Avenido of the Municipal Court of Placer, Masbate, for allegedly being unfair and biased in the disposition of Civil Case No. 141 of said municipal court.

The matter was referred to the Executive Judge of the Court of First Instance of Masbate, for investigation, report and recommendation,[1] who, after due hearing, absolved the respondent judge from the charges against him, but found him remiss in the performance of his official duties and recommended that the respondent judge be admonished to be more diligent in the exercise of his duties.[2]

The Judicial Consultant, after reviewing the records of the case, agrees with the findings of the Investigator and recommends the reprimand of the respondent judge.

it appears that on March 1, 1968, Felicitas Diano, assisted by her husband Hermogenes Diano, filed a complaint with the municipal court of Placer, Masbate, against her younger sister, ErlindaTupaz, then single and now the wife of herein complainant Alipio T. Ruiz, Jr., and one Julio Tabor, for the delivery (replevin) of a female carabao, valued at P200.00. An affidavit and bond accompanied the complaint, as required by Sec. 2, Rule 60 of the Revised Rules of Court. The complaint was entered in the Docket as Civil Case No. 141.[3] Summons were issued and defendants filed their answer on March 28, 1969. On April 23, 1969, the respondent Judge Felifranco Avenido issued an order, commanding the Provincial Sheriff of Masbate to take possession of the caraballa from the defendants Erlinda Tupaz and Julio Tabor, the plaintiffs having posted a bond in the amount of P400..00.[4]

The pre-trial of the case was conducted on October 13,1973. No record was made of the proceedings, but the respondent claimed that on said occasion, the defendant had consented to give the large cattle in question to the plaintiff, but that no agreement was reached between them when the defendant refused to accede to the request of the plaintiff for her to pay half of the expenses of litigation. In view thereof, the pre-trial was continued to November 9, 1973.[5]

On October 17, 1973, the caraballa was seized by the Sheriff by virtue of an alias writ issued by the respondent judge on September 27, 1973. Thereafter, the respondent judge ordered the delivery of the said caraballa to the plaintiffs who acknowledged receipt thereof on October 9, 1973.[6]

On November 9, 1973, the pre-trial of the case was resumed and, again, no agreement was reached between the parties as the defendant now insisted on getting back the carabao in question.[7]

On November 11, 1973, the respondent judge issued a handwritten certification to the effect that the plaintiff. Felicitas Tupaz Diano, has the right to have the carabao in question registered in her name.[8] Upon learning of

said certificate, the defendants, on February 26, 1974, filed a counterbond in the amount of P400.00, to recover possession of the caraballa. No action, however, was taken by the respondent judge on this counterbond so that on June 15, 1974, the defendants filed a motion for the approval of said counterbond.[9] Again, no action was taken thereon by the respondent judge.[10]

Consequently, on October 29, 1974, Alipio T. Ruiz, Jr., husband of the defendant Eriinda Tupaz, requested the investigation of Judge Felifranco Avenido for being partial and biased in the disposition of Civil Case No. 141.

After due investigation, it was determined that the respondent judge, while at fault on certain occasions, did not have malice nor bias in his actuations. Nevertheless, it was recommended that the respondent judge be disciplined for having been remiss in the performance of his judicial functions, in that: (a) the respondent judge failed to take action on Civil Case No. 141 for a period of more than four (4) years, from April 23, 1969, when he issued an order for the seizure of the carabao, up to September 27, 1973, when an alias order of seizure was issued; (b) the respondent judge failed to act on the motion to approve the defendants' counterbond; (c) the proceedings held during the pre-trial of the case was not recorded; and (d) the respondent judge had issued a handwritten note, certifying that the plaintiff, Mrs. Felicitas Tupaz Diano, has the right to have the carabao in question registered in her name, inside the cockpit of Placer, Masbate.

The respondent judge explained that no action was taken on the case for more than four (4) years because the Provincial Sheriff and his deputies failed to execute his order of seizure dated April 23, 1969 and it was only after he had issued an alias order on September 27, 1973 that the seizure was effected. But, as aptly observed by the Investigating Judge, cases are not too many in a court like the municipal court of Placer, Masbate, as to make it difficult to keep track of them. Within a brief period of time, a municipal judge can pinpoint any case that is lagging in the Court's docket. Had the respondent judge been more assiduous, he could have easily avoided this irregularity. Such shortcomings of judges add to the clogging of court dockets and are reprehensible.

With respect to the respondent's failure to act on the defendants' motion to approve the counterbond, it appears that a copy of said motion was not furnished the adverse party as required by the Rules so that the respondent judge treated it a mere scrap of paper.[11] The respondent judge cannot be faulted for having done so. But, in the interest of justice, the respondent judge should have resolved the motion by denying it for such fatal defect in order that the movant can take the necessary and proper measures.

The claim of the respondent judge that no record was made of the pre-trial in this case because the court was handicapped by the absence of a regular stenographer cannot be sustained. The absence of a regular stenographer in the court is no excuse for the failure of the respondent judge to issue the pre-trial order required by Section 4, Rule 20 of the Revised Rules of Court. Said section reads, as follows:

"Sec. 4. Record of pre-trial results. — After the pre-trial the court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered. Such order shall limit the issues for trial to those not disposed of by admissions or agreements of counsel and when entered controls the subsequent course of the action, unless modified before trial to prevent manifest injustice."

Finally, the issuance of the handwritten note, certifying that the plaintiff, Mrs. Felicitas Tupaz Diano, has the right to register the carabao in question in her name, is also deplorable. According to the respondent judge, this certificate was issued by him inside the cockpit of the town during a religious and public holiday.[12] In the words of the Judicial Consultant, "this is an unwholesome reflection on the attitude of a Municipal Judge, not only to his person but to the office he holds. The certification involved something which had a direct bearing on a case pending before him. The matter merited a more prudent consideration than the trivial manner that it was acted

upon. There was readily no haste in registering the animal.

There is need, it seems, to enjoin anew judges of inferior courts to exhibit more diligence in the discharge of their judicial duties and erudition in the law as to avoid unnecessary expense and loss of faith in the administration of justice.

WHEREFORE, the respondent Judge Felifranco Avenido of the Municipal Court of Placer, Masbate, is hereby reprimanded and warned that the commission of a similar offense will be dealt with more severely.

SO ORDERED.

Barredo (Acting Chairman), Antonio, Aquino, and Santos, JJ.. concur.

[1] Rallo, p. 80.

[2] Id., p. 258.

[3] Id., p. 64.

[4] Id., p. 261.

[5] Id., p. 74; see also t.s.n. pp. 34-36.

[6] Id., p. 260.

[7] Id.p. 74.

[8] Id., p. 238.

[9] Id., p. 260. See also t.s.n., p. 11.

[10] TSN, p. 12.

[11] TSN. p. 67.

[12] TSN. p. 117.

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