

ALEJANDRO VILLEGAS, COMPLAINANT, VS. MUNICIPAL JUDGE LOURDES V. DIAMA OF RONDA, CEBU, RESPONDENT.

A.M. No. 614-MJ. August 29, 1974

Ponente: ANTONIO, J.

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ANTONIO, J.:

In an administrative complaint, dated August 24, 1966, of Alejandro Villegas, filed with the Secretary of Justice, Municipal Judge Lourdes V. Diama of Ronda, Cebu, is charged with (1) gross ignorance of the law and incompetence; and (2) manifest partiality in the performance of her duties in connection with her actuaciones in Civil Case No. 15-R, Alejandro Villegas, et al., vs. Roberto Vergara, et al., for forcible entry with preliminary mandatory injunction and Criminal Case No. 258, for slight physical injuries, against Pompeyo Vergara, wherein Basilia R. Villegas, the offended party, is the wife of complainant.

On the first charge of gross ignorance of the law and incompetence, complainant alleged that in Civil Case No. 15-R – (a) respondent reportedly rendered decision in December 1965 dismissing the complaint for lack of interest on the part of the plaintiffs despite the fact that plaintiffs had already restored their case after presentation of their evidence and fourteen (14) exhibits were admitted, while the defendants had never introduced any evidence nor even moved for the dismissal of the complaint; (b) respondent had not furnished the plaintiffs or their lawyers with any copy of her order of dismissal and (c) that the delay in the early termination of the case was due to the fault of the respondent who failed to set the case for hearing in accordance with the Rules of Court.

In connection with Criminal Case No. 258, complainant averred that (1) respondent failed to furnish a copy of her order dismissing the complaint despite his formal request and it was only after the lapse of one (1) year, or sometime in July, 1966, that he was furnished by respondent a copy of her order, when she was required to do so by the Secretary of Justice; and (2) that while respondent dismissed the criminal case purportedly on the ground of lack of interest on the part of the prosecution, in fact and in truth, any delay on the matter was the fault of respondent by reason of her failure to calendar the case for hearing.

On the charge of manifest partiality complainant assigned three (3) specifications, to wit: (a) that in civil case 15-R, defendants in their answer relied upon a lease contract which was prepared and notarized by the respondent herself in her capacity as notary public ex-officio and respondent was naturally interested in defending the integrity or genuineness of the aforesaid document, and, therefore, her dismissal of the case was the result of respondent's bias in favor of defendants; (b) that in Criminal Case No. 258, the accused Pompeyo Vergara, as well as Roberto Vergara (father of Pompeyo) one of the defendants in Civil Case No. 15-R, are relatives of the respondent, and all belonged to the same political party which they had actively supported in the recent 1965 elections; and (c) that when respondent was a practicing lawyer, one of her clients was Roberto Vergara, a complainant in Criminal Case No. 144 for theft of buri palms, and acted as private prosecutor in said case, and therefore such relationship must have unduly influenced respondent in dismissing the aforementioned cases.

These allegations were denied in the answer of the respondent dated December 1, 1966 wherein she submitted her

explanation in connection with her actuation in the aforementioned cases.

The case was thereafter referred to District Judge Alfredo Marigomen for investigation, and on December 4, 1973 the investigator submitted his report recommending the dismissal of the complaint. His findings are as follows:

"It is believed that the charge of gross ignorance of law and incompetence against the respondent is untenable.

"The Civil Case No. 15-R was last set for hearing on July 18, 1964 with due notice by registered mail to plaintiffs' counsel, Atty. Dominador Flores (Exhibit '2'). Despite said notice, the plaintiffs and their counsel failed to appear on July 18, 1964. Moreover, after July 18, 1964 the plaintiffs did not make any move to reset the case for hearing. Consequently, the respondent rendered the decision dated December 29, 1965 dismissing the case, without prejudice.

"In Criminal Case No. 258, a motion dated June 30, 1965 was filed by Atty. Dominador Flores (private prosecutor) with the conformity of PC Sergeant Gumersindo Ibalan, praying to set the case for trial on July 19, 1965 (Exhibit 'LL'). The said motion was received by the respondent on July 2, 1965. On the same date, the motion was granted, but instead of July 19, 1965 the respondent set the trial for either July 17, 1965 or July 24, 1965 (Exhibit 'LL' bottom portions). The following day, July 3, 1965 the respondent wrote a letter to Atty. Dominador Flores (Exhibit '5') which reads as follows:

'Atty. Dominador Flores
Cebu City

S i r:

The trial of Criminal Case No. 258 is set by the court not on the date you requested (July 19, 1965) but either on the 17th of this month, or on the 24th, or even on the last day due to a previous request of defense counsel, Atty. Arturo Raboy, that trial be held on any Saturday of the month.

Since Saturdays are part of our regular office days, the choice remains with you to notify the court as soon as possible so the defense can be duly apprised. We may even hold trial for the whole day if it is convenient with you.

I hope you can arrange your schedule accordingly without too much inconvenience on your part.

Sincerely yours,
(Sgd.) LOURDES V. DIAMA
Municipal Judge'

Atty. Flores did not bother to answer the letter. Neither did he and his clients appear before the respondent on July 17 or July 24, 1965. It may be noted that in the same letter the respondent told Atty. Flores that he could choose to have the trial also on July 31, 1965 if convenient to him. Still, Atty. Flores and his clients did not appear before the respondent on July 31, 1965. On this last date, the respondent rendered the decision (Exhibit '6') dismissing Criminal Case No. 258.

"The respondent in dismissing the two (2) cases applied Section 3 of Rule 17 of the Rules of Court which provides as follows:

'If the plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion.'

"It is believed that the aforequoted rule was correctly applied by the respondent. In Civil Case No. 15-R, there

was failure on the part of the plaintiffs to appear at the time of the trial that was set on July 18, 1964. There was also the failure of the plaintiffs to prosecute their action for an unreasonable length of time. From July 18, 1964 when the case was last set for hearing up to the time the respondent rendered the decision dated December 29, 1965 dismissing the case, the period covered is around one (1) year and five (5) months. During the said period the plaintiffs did not take any step to set the case for trial. It has been held that "what would constitute 'unreasonable length of time' depends upon the circumstances of each particular case and the sound discretion of the court will not be disturbed in the absence of patent abuse" (Smith Bell & Co., vs. American President Lines Ltd., 94 Phil. 879; Brandt vs. Behn, Mayor & Co., 38 Phil. 351; cited in Masiglat vs. Mayor of Pasay City, et al., 104 Phil. 322).

"In view of the aforementioned circumstances and with the consideration that Civil Case No. 15-R is a forcible entry case and the same had been pending in court since December 14, 1962, it would be difficult to conclude that the respondent abused her discretion in ordering the dismissal of the case.

"In Criminal Case No. 258, there was the failure of the prosecution to appear at the time of the trial that was set on July 17, 24, and 31, 1965. Moreover, it may be considered that there was also the failure of the prosecution to comply with the order of the court as embodied in the letter of the respondent addressed to Atty. Dominador Flores dated July 5, 1965 (Exhibit '5'). In the said letter, the respondent granted Atty. Flores the special favor to have the choice as to which of the three dates he would be available for the trial of the case with the requirement that he should notify the court of his choice 'as soon as possible so the defense can be duly apprised.' Atty. Flores did not answer the said letter in order to notify the court of his choice or disposition.

"In this connection, it may be mentioned that about one month after the respondent rendered the decision dated July 31, 1965 (Exhibit '6') dismissing the criminal case, Atty. Flores filed a written motion to set case for hearing dated September 10, 1965 (Exhibit 'MM'). In this motion Atty. Flores impliedly admitted having received the letter of the respondent dated July 3, 1965, Exhibit '5', and he explained therein his reason for his non--appearance before the respondent on the dates mentioned therein, to wit:

'1. That, the instant criminal case had been dragging on for a long, long time already;

'2. That, the last time we prayed for an early trial, this Court set it for a date which, upon due appearance for said trial, this humble representation found out that the Presiding Judge who set it for the trial was in Masbate and had assigned the case to the Acting Judge, Hon. Gavino Malgar, who then courteously requested that we better wait for the Presiding Judge as he was only assigned temporarily for that day and that he could not possibly finish the whole case so that it will then have to go back to the permanent Presiding Judge of this Court, to which we did not object, being reasonable;'

Atty. Flores was wrong in assuming that the respondent would reset the case for trial. The respondent clearly required him to notify the Court, and this he did not comply. What is worse, Atty. Flores, his clients and Sgt. Ibalan did not appear before the respondent on the dates set for trial. As stated in the decision Exhibit '6' –

'On July 24, 1965, only the son of the complainant came to explain that their lawyer – meaning the private prosecutor – was still in Manila. On the other hand, on these dates – July 17, 1965 and July 24, 1965, the accused and his counsel came and were ready for continuation of the trial.'

"Accordingly, under the aforementioned circumstances and considering that Criminal Case No. 258 which involved a slight offense had been pending since April 10, 1964 and with the right of the accused to a speedy trial, it seems to be in order that the respondent decided to dismiss the case.

"It is contended by the complainant that there was fault on the part of the respondent for she failed to set the case for hearing in accordance with the Rules of Court. It is believed that this contention is untenable. The plaintiffs in

the civil case, as well as in the criminal case, are not relieved from their obligation to exert reasonable diligence in seeing to it that the case be set for hearing (E.E. Elser Inc., et al., vs. Macondray & Co., et al., 96 Phil. 395; Adorable vs. Bonifacio, Inc., No. L--10698, April 22, 1959, cited in Volume VI, Velayo's Digest 87-88). It is a well known policy of the Courts to expedite the disposal of cases to prevent their dockets from becoming clogged, and it is incumbent upon the parties, especially the plaintiffs, to take the initiative in the prompt disposal of cases as a duty to themselves, to the Courts and to the public in general (Masiglat vs. Mayor of Pasay City, 104 Phil. 319).

"It is further contended by the complainant that respondent should not have dismissed the complaint in Civil Case No. 15-R in view of the fact that the plaintiffs in the said case have already rested their case with the presentation and admission of the testimonies of two witnesses and 14 exhibits. This contention, too, is untenable. The municipal court of Ronda was not a court of record then during the pendency of the said Civil Case No. 15-R. The plaintiffs had rested the presentation of their evidence before Judge Numeriano Carreon, the former presiding judge of the municipal court of Ronda. The testimonies of the two witnesses who were presented by the plaintiffs were not recorded. Hence, the respondent was not in a position to render a just appraisal of the plaintiffs' version of the facts of the case. Under such situation, the respondent could have required the plaintiffs to present their evidence anew had said plaintiffs appeared before the respondent when the case was called for trial on July 1964. Besides, the plaintiffs failed to make any move to set the case for trial for a period of more than one year and a half after July 18, 1964, which not only shows lack of interest but also gives ground for the respondent to believe that the plaintiffs themselves do not believe in their alleged cause of action.

"The complainant also contended that the defendants in the civil case did not even move for the dismissal of the case. This contention is without merit. Section 3 of Rule 17 of the Rules of Court expressly provides that the dismissal of an action for failure to prosecute may be made 'upon the court's own motion.'

"Furthermore, it is claimed by complainant that the plaintiffs in the two cases were not furnished a copy of the decisions. According to him he was furnished the copies of the decisions only when the respondent was required to do so by virtue of an order from the Secretary of Justice. This claim of the complainant is without basis. The original of the decision was sent to the plaintiffs thru ordinary mail on January 5, 1966 (Exhibit '1- C'). Likewise, the original of the decision in the record of the criminal case shows that a copy of the same was received by PC Sergeant Gumersindo Ibalan, the official government prosecutor, on August 15, 1965 (Exhibit '6-C'). The notation evidencing the receipt of the copy of the decision by PC Sergeant Ibalan bears his signature.

"Finally, it is believed that the second charge against the respondent for partiality in the performance of her duty is untenable. The complainant has failed to prove in evidence his alleged claim that the respondent and Roberto Vergara, one of the defendants in the civil case, and Pompeyo Vergara, the accused in the criminal case, are relatives. He also failed to prove in evidence that the said persons belong to the same political party. As to the fact that the defendant Roberto Vergara in the civil case was a former client of the respondent, the respondent testified that the said relationship happened a long time ago and that she was not aware of the same at the time the cases involved herein were pending before her. As to the fact that the respondent was the one who notarized the contract of lease which was attached to the answer of the defendants in Civil Case No. 15-R as Annex 'A', it seems difficult to infer therefrom the alleged partiality of the respondent in the light of the circumstances surrounding the actuations of the respondent in the two cases.

"For one reason, it can be gleaned from the letter of the respondent to Atty. Dominador Flores marked Exhibit '5', that said respondent even went out of her way to accommodate Atty. Flores by allowing him to choose any of the dates therein mentioned for the trial of the case as may be convenient to him. On this actuation of the respondent he tried to give a special favor to Atty. Flores in his capacity as the lawyer for the complainant herein who was

one of the plaintiffs in the civil case and the husband of the offended party in the criminal case. Another reason is that when the plaintiffs failed to appear at the time of the trial that was set on July 18, 1964, the respondent did not cause the outright dismissal of the case. There was a period of one year and a half that had elapsed since July 18, 1964 before the respondent rendered her decision dated December 29, 1965 dismissing the civil case. Another thing is that despite the fact that the two cases had been pending for about one year and a half since the time the respondent assumed the judgeship of the municipal court of Ronda, the complainant herein did not file any motion to disqualify the respondent from hearing the said two cases. Moreover, the action of the respondent in dismissing the two cases appear to be well grounded in law."

WHEREFORE, it appearing that the recommendation of the Investigator, District Judge Alfredo Marigomen, for the dismissal of the instant administrative complaint is duly supported by the evidence of record, and is concurred in by Judicial Consultant Manuel B. Barcelona, the same is hereby approved. Case dismissed.

Zaldivar, (Chairman), Fernando, Barredo, Fernandez, and Aquino, JJ., concur.

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