

MATEA EVA, COMPLAINANT, VS. FLORENTINO R. CALAYAG, CLERK OF COURT, CFI NORTHERN SAMAR, BRANCH IV, RESPONDENT.

A.M. No. P-232. July 29, 1977

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

In a sworn letter-complaint dated January 22, 1974, complainant Matea Eva charged respondent Florentino R. Calayag, Clerk of Court of the Court of First Instance of Northern Samar, Branch IV, at Catarman, for dereliction and neglect in the performance of his duties in not heeding her repeated requests for the execution of the judgment in Criminal Case No. C-98 (1605) against the accused Gavino de los Reyes (now deceased), Juanito de los Reyes and Jose de los Reyes.[1]

By way of comment to the above complaint, respondent in a 2nd Indorsement dated March 2, 1974 averred that the complaint "is devoid of the true facts x x x" and explained that the decision was promulgated on December 4, 1962, acquitting two of the accused and convicting three others, namely, Gavino, Jose and Jacinto, all surnamed de los Reyes, who were committed to jail; that the decision having been appealed to the Court of Appeals, the appellants were released on bail; that subsequently the appeal was dismissed and the records were received by respondent's office on December 3, 1964; that the first notice of the execution of the judgment was issued by respondent on December 9, 1964, or six days after receipt of the records; that this notice was returned without having been served upon the accused and their bondsmen; that the second notice for execution of the judgment was issued on May 3, 1965; that the return of the notification showed that the accused were not notified and only two out of nine bondsmen signed the notification; that a third notice was subsequently sent out on August 13, 1965 and the same was received by the Chief of Police of Bobon, Northern Samar, through Pat. Celespara on August 14, 1965; that again the return showed that the accused and the bondsmen were not served; that on June 11, 1966, the fourth notice was issued for the appearance of the accused and their bondsmen on July 2, 1966 for the execution of the judgment; that this was received by the Chief of Police of Bobon on the same day; that the return stated that the accused were not contacted while only some of the bondsmen were served the notice; that the fifth notice was issued on June 5, 1967, the same having been received by the Chief of Police, through Pat. Ben Esquillo on the same day; that no return had been received by the Office of the Clerk of Court since then up to the present, despite personal reminder to the Bobon Police Force, whenever a member thereof would be in the court or within the Capitol premises; that on December 28, 1973, another notification was issued for the execution of the judgment through the Chief of Police of Biri, the newly created municipality of Northern Samar with respect to the accused and another notice through the Chief of Police of Bobon of the same province as regards the bondsmen and that up to the time of the writing of the 2nd Indorsement on March 2, 1974, no return had as yet been received regarding these two sets of notices.

Respondent denied in the same comment that the complainant had repeatedly requested for the issuance of a warrant of arrest, the truth being that she came to see him only in 1968 and on this occasion complainant was shown the unserved fifth notice and that the respondent explained to her that the Provincial Fiscal could not yet

file the motion for the arrest of the accused and the confiscation of their bonds in the absence of proof of service of the notification.[2]

There is no need for a formal investigation because the respondent admits the allegation in the complaint that he failed to perform his duty to serve the notice of execution of the judgment upon the bondsmen. He tries, however, to excuse himself totally from blame by pointing to the circumstances of the continuing changes in the chief of police of the municipality of Bobon, Northern Samar and the conversion of Barrio Biri of the same municipality into a town.

(The explanation of the respondent Clerk of Court of the Court of First Instance of Northern Samar, Branch IV, that the delay in the execution of the judgment cannot be attributed to him is not satisfactory. Section 15, Rule 114 of the Revised Rules of Court[3] does not require that service be made upon the defendant or to all of the bondsmen at the same time. In this particular case, there are nine bondsmen and those upon whom service had been effected could have been proceeded against and their respective undertakings confiscated had the herein respondent not been remiss in the discharge of his duties. The confiscation of the bond could have expedited the issuance of warrants of arrest and thus expedited the execution of the judgment in Criminal Case No. C-98 (1605))

WHEREFORE, the respondent, Florentino R. Calayag, Clerk of Court of the Court of First Instance of Northern Samar, Branch IV, at Catarman, is hereby fined in an amount equivalent to one (1) month's salary payable within sixty (60) days from notice, with a warning that a repetition of the same offense or commission of other infractions will be dealt with severely.

Teehankee, (Chairman), Makasiar, Muñoz Palma, Martin, and Guerrero, JJ., concur.

[1] Letter-complaint of Matea Eva addressed to the Chief Justice, Supreme Court, dated Jan. 22, 1974, Folder p. 1;

[2] 2nd Indorsement, March 2, 1974 as Annex "A-2" to respondent's letter to Hon. Lorenzo Relova, Acting Asst. Judicial Consultant dated Feb. 16, 1977, Folder, Adm. Mat. p. 232;

[3] Section 15, Rule 114, Revised Rules of Court:

"When the appearance of the defendant is required by the court, his sureties shall be notified to produce him before the court on a given date. If the defendant fails to appear as required, the bond is declared forfeited and the bondsmen are given thirty (30) days within which to produce their principal and to show cause why judgment should not be rendered against them for the amount of their bond. x x x"

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