

CLARA BEEGAN, COMPLAINANT, VS. TEOTIMO BORJA, CLERK OF COURT AND ARNULFO BALANO, CLERK II, MUNICIPAL TRIAL COURT, LEYTE, RESPONDENTS.

A.M. No. P-95-1171. September 06, 1996

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

In these consolidated cases the only issue is the propriety of respondent's act of allowing a party to an election case to machine copy certain ballots subject of the case which was being heard in the Municipal Trial Court (MTC) of Tanauan, Leyte.

The pertinent facts as culled from the records are simple and undisputed:

In May, 1994, after barangay elections were conducted in Bislig, Tanauan, Leyte, an election contest, docketed as Barangay Election Protest No. 18, was filed with the MTC of Tanauan, Leyte, by Arnulfo Santillano, as Protestant, against Juan Egonio, as Protestee, with complainant Clara Beegan as Intervenor. The election case required the revision of three (3) ballot boxes, for which reason a Revision Committee was appointed, composed of respondent Arnulfo Balano, as Chairman, and Mr. Prudente Torres and Atty. Luz Polistico, as Members. Mr. Torres represented the Protestant and the Intervenor, while Atty. Polistico represented the Protestee.

It is important to emphasize that revision involving the aforesaid three ballot boxes was completed in October, 1994, and the Revision Committee presented its report to the Court on November 3, 1994[1]

On November 25, 1994, a letter-complaint was submitted to the Office of the Ombudsman for the Visayas, docketed as Omb-Vis-Adm-94-0381, wherein complainant Beegan charged that respondents, Clerk of Court Teotimo Borja and Clerk II Arnulfo Balano, allowed the reopening of the ballot boxes subject of the revision case on November 17, 1994 by one party without leave of court in order to machine-copy the questioned ballots.[2]

The letter-complaint was indorsed by the Office of the Ombudsman (Visayas) to the Office of the Court Administrator which docketed the same as A.M. No. P-95-1171.

On February 24, 1995, Deputy Court Administrator Bernardo P. Abesamis referred Beegan's complaint to the Executive Judge of the Regional Trial Court of Tacloban, Leyte for investigation, report and recommendation.

After hearing, the Investigating Judge absolved the respondents inasmuch as the complainant was not prejudiced in any manner by the "xeroxing" of the questioned ballots. However, both respondents were admonished by him to be more circumspect in the future in the performance of their duties in order to avoid sanctions from the Court.[3]

The Investigating Judge based his recommendation on the following findings of facts: (a) on November 17, 1994, Atty. Polistico requested respondent Balano as Chairman of the Revision Committee to reopen the ballot boxes subject of the Revision in order that she can xerox the questioned ballots so that, as the new counsel for the

protestee, she could prepare her client's case; (b) when the request was referred to respondent Borja, Clerk of Court of MTC, Tanauan, Leyte, respondent Borja told respondent Balano to determine whether or not the request was proper; (c) respondent Balano asked Mr. Torres, complainant's revisor, who was then at the court's lobby to accompany them to and from Tacloban City where the questioned ballots were to be xeroxed so that the protestant could be duly represented as respondent Balano acted favorably on Atty. Polistico's request; (d) all three appointed Chairman and Members of the Revision Committee were present from the time the questioned ballots were taken out of the ballot boxes; they were likewise present during the copying thereof in Tacloban City and when the said ballots were returned to their respective boxes at MTC, Tanauan, Leyte.[4]

On December 1, 1995, Deputy Court Administrator Abesamis, after studying the Report and Recommendation of the Investigating Judge, decided differently, he having found respondents "to have violated the rules". He recommended that the respondents be reprimanded for misconduct, with the warning that the commission of the same or similar offense shall be dealt with a stiffer penalty.[5]

The Office of the Court Administrator viewed the acts of the respondents in effecting the reopening of the ballot boxes and the copying of the questioned ballots to be tantamount to misconduct in office and stated thus:

"Undoubtedly, misconduct in office was committed by both respondents no matter how well-meaning their intention was. They cannot justify their actuations by pointing out that complainants' revisor, a law graduate was present, for while he (complainant's revisor) was present, her counsel, the one duly authorized to make concessions in her behalf, was not. The presiding judge was likewise not around. It is to be noted that the rules and the mandate of propriety cannot be dispensed with on account of expediency."[6]

While the OCA's recommendation was being considered by this Court, respondent Borja, on December 28, 1995, applied for disability benefits under RA 1616, as amended by RA 4968. This matter was docketed as A.M. No. 8733-Ret.

In our Resolution, dated February 13, 1996, we approved respondent Borja's application for disability retirement effective on July 1, 1995 as per Report and Recommendation of our Clinic Services indorsed to OCA.[7] However, we further directed the Fiscal Management and Budget Officer of this Court to hold in abeyance the retirement benefits of respondent Borja pending resolution of A.M. No. P-95-1171.

The result of our re-evaluation of the administrative complaint against the respondent Clerk II and appointed Chairman of the Revision Committee and The Clerk of Court of MTC, Tanauan, Leyte whose application for disability retirement merited our approval discloses a far incongruous approach from the OCA and the Investigating Judge's Report and Recommendation.

As regards respondent Borja, it bears stressing at this point that the Clerk of Court, both in Single Sala Courts and Multi-Sala Courts, is the administrative officer of the Court, subject to the control and supervision of the Presiding Judge and/or Executive Judge as the case maybe. As such, he or she has control and supervision over all court records, exhibits, documents, properties and supplies.[8]

Moreover, it is clearly provided under the Comelec Rules and Procedure that election documents and paraphernalia involved in election contests before courts of general jurisdiction shall be kept and held secure in a place to be designated by the Court in the care and custody of the Clerk of Court.[9]

We are not unaware of the common practice in the courts with respect to the photocopying or xeroxing of portions of case records as long as the same are not confidential or disallowed by the rules to be reproduced. The judge need not be bothered as long as the permission of the Clerk of Court has been sought and as long as a duly authorized representative of the court takes charge of the reproduction within the court premises if warranted or if

not, the said court representative must bring along the case records where reproduction takes place and return the same intact to the Clerk of Court.

In the instant case of respondents Balano and Borja, the above practice was evident. Although, initially, the request for xeroxing of the questioned ballots was directed to respondent Balano as Chairman of the Revision Committee, Atty. Polistico and Mr. Balano referred the matter to the respondent Clerk of Court who, together with respondent Balano, found the request proper.

On his part, respondent Balano allowed the xeroxing of the questioned ballots in the honest belief that it was well within his authority as the duly appointed Chairman of the Revision Committee. After all, Atty. Polistico presented a valid ground for making the request, i.e., to prepare the objections to the protestants ballots and the manifestations necessary for the ballots being claimed by the protestee, her client. Respondent Balano made sure that the other party was duly represented by asking Mr. Torres, revisor for the protestant and intervenor to accompany him and Atty. Polistico to Tacloban City where the xeroxing was to be done.

Anyway, the revision of the ballots had already been completed. The task of the Revision Committee in the instant case, did not end after actual revision of the ballots concerned. The term of the Revision Committee shall end only after its Revision Report shall have been duly submitted for the court's approval simultaneous with the submission of the padlocked ballot boxes to the Presiding Judge.[10] The records of this case clearly show that when the request for xeroxing was made on November 17, 1994, the required Revision Report was yet to be formally submitted the following day, November 18, 1994, the scheduled hearing date for purposes of identification and authentication of the said report by the Revision Committee so appointed by the Court.[11]

We are in accord with the Investigating Judge in absolving both the accused in the absence of any prejudice on the part of the complainant caused by the respondents' acts of effecting the photocopying of the questioned ballots. It is this Court's observation that the presiding judge before whom the election contest was assigned found nothing highly irregular in the photocopying of the questioned ballots inasmuch as no drastic measures were taken against the respondents after the said judge learned about the said xeroxing. This reinforces our earlier discussion on the matter of procedure in most courts with respect to the reproduction of court records when so allowed by the rules. Thus, as long as no tampering or alteration was manifest in the xeroxing/photocopying of court records, no liability attaches to anyone.

We cannot, however, adopt the Investigating Judge's recommendation for admonition considering that the circumstances of the case at bar do not warrant that the respondents be admonished inasmuch as we find them to have regularly performed their duties.

WHEREFORE, in view of the foregoing, the respondents Clerk II and Clerk of Court of MTC, Tanauan, Leyte in A.M. No. P-95-1171 are hereby EXONERATED. Accordingly, the RELEASE of the DISABILITY RETIREMENT BENEFITS of Mr. Teotimo D. Borja in A.M. No. 8733-Ret. is hereby ORDERED.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Panganiban and Torres, Jr., JJ., concur.

[1] Report and Recommendation of Hon. Getulio M. Francisco, Executive Judge of RTC, Tacloban City as contained in the 2nd Indorsement dated October 27, 1995 addressed to Hon. Bernardo P. Abesamis, Deputy Court Administrator, pp. 1-2.

[2] Exhibit "A" of the Complainant.

- [3] Report and Recommendation, *supra*, p. 3.
- [4] *Id.*, pp. 2-3.
- [5] Rollo, A.M. No. P-95-1171, p.2.
- [6] *Ibid.*
- [7] Rollo, A.M. No. 8733-Ret., p.1.
- [8] Manual for Clerks of Court, pp.26 and 32.
- [9] Part VI, Rule 35, Section 12 of the Comelec Rules of Procedure.
- [10] Exhibit "6"; Guidelines on the Revision of Ballots.
- [11] Exhibit "C"; Barangay Protest No. 18: TSN, November 18, 1994, pp. 1-38.

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