

CHRISTOPHER V. AGUILAR, COMPLAINANT, VS. JUDGE ROLANDO C. HOW, BRANCH CLERK OF COURT MA. TERESITA C. OBEDIENCIA AND PROCESS SERVER RENATO T. BUTALON, RTC (BRANCH 257), PARAÑAQUE...

A.M. No. RTJ-03-1783 (Formerly AM OCA IPI No. 00-955-RTJ). July 31, 2003

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is an administrative matter which stemmed from a complaint filed on May 23, 2000 by Christopher V. Aguilar with the Office of the Court Administrator (OCA) against Judge Rolando C. How, Branch Clerk of Court Ma. Teresita C. Obediencia and Process Server Renato T. Butalon, all of Branch 257, Regional Trial Court, Parañaque City, for dereliction of duty and partiality.

Complainant is the plaintiff in a civil action for damages entitled Christopher V. Aguilar vs. Dionisio Sungcuan, docketed as Civil Case No. CV-00-0075, filed with the RTC of Parañaque City. The case was eventually raffled off to Branch 257 presided over by respondent Judge.

Complainant alleges that: Branch 257 received the records of the civil case on February 24, 2000; since his counsel did not receive any information regarding the service of summons to the defendant, a staff from said counsel's office followed up the status of the case on March 15, 2000; the staff was informed that no summons was yet served upon the defendant; complainant then filed a motion for the issuance of an alias summons on March 20, 2000; since complainant did not receive any notice regarding the court's action on the said motion, a staff from his counsel's office again made a follow-up of the said case during the last week of April 2000; complainant and his counsel were then informed that an order for the issuance of an alias summons was already issued by the trial court on April 13, 2000; despite the issuance of the said order, no alias summons was served on the defendant; complainant's counsel later learned that in the return of service executed by respondent process server Butalon which was attached to the records of the case, it was alleged that the summons and complaint were not served upon defendant due to the latter's incomplete address appearing in the said summons; when his (complainant's) counsel went to defendant's given address, he easily located the given address; as of May 20, 2000, summons has not yet been served upon the person of the defendant; consequently, he filed the present complaint.

Complainant claims that respondents Judge and the Branch Clerk of Court failed to comply with the mandatory provisions of Sections 4 and 5, Rule 14 of the Rules of Court^[1] and that there seems to be a complicity to deliberately shield defendant from court processes and to derail the proceedings therein.

In his Comment dated August 1, 2000, respondent Judge explains: On March 1, 2000, summons for defendant Dionisio Sungcuan in Civil Case No. CV-00-0075 was issued by the trial court. However, on March 7, 2000, respondent process server Butalon returned the summons unserved because the defendant "cannot be found at his place due to incomplete address." On March 20, 2000, complainant filed a motion for the issuance of an alias

summons. On April 13, 2000, the trial court issued an order granting the motion. On May 22, 2000, the trial court issued an alias summons. On May 26, 2000, respondent Butalon submitted a return of service stating that the summons was personally served upon defendant Dionisio Sungcuan at his given address. Assuming that the process server failed to serve summons on defendant Sungcuan, herein complainant should have notified the court so that it can act on the matter immediately. While the process server is his subordinate and any omission made by the latter may be deemed his own, such a rule is applicable only if the court directly sees the action or omission of his subordinate. It is impossible for the court to know every act and omission of his subordinates.

In her Comment dated August 1, 2000, respondent Obediencia counters: She could not properly perform her duties as Branch Clerk of Court because as early as November 1999, she was unreasonably and unjustly stripped of her duties and responsibilities which is the subject-matter of A.M. No. RTJ-00-1558. She used to have access to the records of cases including newly raffled ones, sign summonses and alias summonses and monitor and supervise the preparation of orders and other court processes. In the present set-up in their office, it is respondent Judge who signs summonses and a stenographer is assigned to monitor the service of court processes. Said arrangement is subject of A.M. No. RTJ-00-1558, entitled, "Paulo Jose Cusi, et al. vs. Judge Rolando How". With the said set-up in their office, it would be impossible for her to connive with the other respondents to deliberately derail the proceedings in complainant's case.

Process Server Butalon, in his Comment dated August 2, 2000, explicates: On March 6, 2000, he tried to serve the summons on defendant Sungcuan. However, he failed to serve the said summons due to the incomplete address stated therein. It was only on May 17, 2000 that he came to know of the existence of an order granting the issuance of an alias summons when the matter was brought to his attention by respondent Obediencia. He was able to serve the alias summons on May 26, 2000. Any delay that he might have committed in the service of the first summons could be attributed to the fact that since October 1999, he is the only person in their office tasked to serve all summons and other court processes.

In its Report dated October 16, 2001, The Office of the Court Administrator recommends that the administrative complaint against respondents Judge and Branch Clerk of Court be dismissed while respondent process server be admonished to be more circumspect in the future performance of his judicial and administrative duties.

On November 26, 2001, this Court issued a resolution requiring the respondents to manifest within ten days from notice thereof whether they are willing to submit the case for resolution based on the pleadings filed. Complainant and respondents manifested their willingness to submit the instant administrative case for resolution.

Respondents are being faulted for non-compliance with the express provisions of Sections 4 and 5, Rule 14 of the Rules of Court, to wit:

Sec. 4. Return. - When the service has been completed, the server shall, within five (5) days therefrom, serve a copy of the return personally or by registered mail, to the plaintiff's counsel, and shall return the summons to the clerk who issued it, accompanied by proof of service.

Sec. 5. Issuance of alias summons. - If a summons is returned without being served on any or all of the defendants, the server shall also serve a copy of the return on the plaintiff's counsel, stating the reasons for the failure of service, within five (5) days therefrom. In such a case, or if the summons has been lost, the clerk, on demand of the plaintiff, may issue an alias summons.

A perusal of the above-quoted rules readily reveals that these two sections refer to the duties of a process server after service of summons or when the summons is returned without being served.

A review of the records at hand shows that Butalon did not comply with the provisions of Section 5, Rule 14 of

the Rules of Court. No evidence was presented to show that he served on herein complainant's counsel a copy of the return of service when he failed to serve summons upon the defendant on March 6, 2000. Neither did respondent Butalon comply with the provisions of Section 4, Rule 14 of the same Rules. No proof was shown that he served a copy of the return on complainant's counsel when he was finally able to serve the alias summons upon the defendant on May 26, 2000.

In underscoring the duty of a process server, the Court held in *Nery vs. Gamolo*[2] citing *Musni vs. Morales*[3] that:

... a process server is duty-bound to serve summons, writs and other court processes promptly. An unjustified delay in performing this task constitutes neglect of duty, which warrants the imposition of administrative sanctions.

...

It bears emphasizing that the process server's duty is vital in the administration of justice because it is through him that defendants learn of the action brought against them by the complainant. More important, it is also through the service of summons by the process server that the trial court acquires jurisdiction over the defendant. It is therefore crucial that summons, writs and other court processes be served expeditiously, consonant with the mandate of speedy dispensation of justice stressed by the Constitution.

As an employee of the judiciary tasked, among other things, to serve subpoena and other court processes, a process server, like any other employee or officer in public service, must perform his assigned duties with dedication, efficiency and utmost responsibility.[4] Respondent Butalon failed to conform to these standards.

As to respondent Clerk of Court Obediencia, she is chiefly responsible for the shortcomings of subordinates to whom administrative functions normally pertaining to them are delegated.[5] As custodian of judicial records, it is her duty to see to it that court orders and other processes are sent to the litigants with dispatch.[6] The Court is not disposed on upholding her claim that she was stripped of her functions as Branch Clerk of Court, one of which is the monitoring of service of court processes. A.M. No. RTJ-00-1558 referred to by respondent Obediencia was dismissed in a Resolution of the First Division of this Court dated February 19, 2001 in view of the amicable settlement of the parties.

With respect to respondent Judge, he contends that he should not be held responsible for the shortcomings of his co-respondent process server Butalon because he has no knowledge of the failure of the latter to serve the subject summons. This excuse is untenable. It is a long settled rule that a judge cannot take refuge behind the inefficiency or mismanagement of court personnel.[7] Proper and efficient court management is as much his responsibility.[8] Neither should respondent Judge rely on the information that might be given him by the litigants. As an administrative officer of the court, a judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business and require at all times the observance of high standards of public service and fidelity.[9]

Complainant also charged respondents with conspiracy to delay the proceedings in Civil Case No. CV-00-0075; however, he failed to present substantial evidence to prove his allegation. It is settled that in administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in his complaint.[10] Mere allegation is not evidence.[11] Hence, for lack of substantial evidence, respondents may not be held liable under this charge.

With respect to the penalty to be imposed on respondent process server Butalon - In the absence of proof that his failure to serve a copy of the return of service to complainant's counsel was done with malice or that there was considerable damage inflicted on the cause of herein complainant, and considering further that this is his first

infraction of the Rules, we find that a reprimand is commensurate to his neglect of duty.

WHEREFORE, this Court finds Renato T. Butalon liable for neglect of duty. He is REPRIMANDED with a stern warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

Respondents Judge Rolando C. How and Branch Clerk of Court Ma. Teresita C. Obediencia are admonished to be more responsible and efficient in the performance of their respective duties.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Callejo, Sr., and Tinga, JJ., concur.

[1] Sec. 4. Return. - When the service has been completed, the server shall, within five (5) days therefrom, serve a copy of the return personally or by registered mail, to the plaintiff's counsel, and shall return the summons to the clerk who issued it, accompanied by proof of service.

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[2] AM-P-01-1508, February 7, 2003.

[3] 315 SCRA 85.

[4] De la Victoria vs. Mongaya, 352 SCRA 12, 19 (2001).

[5] Ibid.

[6] Odoño vs. Macaraeg, 328 SCRA 239, 245-246(2000).

[7] Hilario vs. Concepcion, 327 SCRA 96, 104 (2000); Cueva vs. Villanueva, 305 SCRA 459, 466 (1999); Abarquez vs. Rebosura, 285 SCRA 109, 120-121 (1998).

[8] Ibid.

[9] Pantaleon vs. Guadiz, Jr. 323 SCRA 147, 152 (2000).

[10] Chiong vs. Cosico, A.M. No. CA-02-33. July 31, 2002.

[11] Ramoran vs. Jardine CMG Life Insurance Co. Inc., 326 SCRA 208, 221 (2000).

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