

**ELPIDIO P. DE LA VICTORIA AND PO1 TEMISTOCLES R. AMBOS, JR.,
COMPLAINANT, VS. INTERPRETER HELEN B. MONGAYA AND
PROCESS SERVER NELSON C. MANLOSA (MTCC-BRANCH 4, CEBU
CITY), RESPO...**

A.M. No. P-00-1436. February 19, 2001

Ponente: BUENA, J.

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BUENA, J.:

This administrative matter stems from a joint sworn affidavit-complaint[1] dated 28 July 1998, filed by herein complainants Elpidio P. De la Victoria and PO1 Temistocles R. Ambos, Jr. charging, in effect, respondents Helen B. Mongaya and Nelson C. Manlosa, both court employees of Metropolitan Trial Court in Cities (MTCC)-Cebu City, Branch 4, with violation of Section 3(e)[2] of Republic Act 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, relative to the dismissal of Criminal Case No. 83539-R on the ground of non-prosequitur.[3]

As borne by the records, complainants Elpidio Dela Victoria and PO1 Temistocles Ambos, Jr. are the Program Director and member, respectively, of the Bantay Dagat Commission and Bantay Dagat Task Force, while herein respondents Helen B. Mongaya and Nelson C. Manlosa, are the Court Interpreter and Process Server, respectively, of MTCC-Cebu City, Branch 4.

On 25 June 1998, herein complainants Dela Victoria and Ambos went to MTCC-Cebu City, Branch 4, to inquire about the status of Criminal Case No. 83539-R, entitled "People of the Philippines vs. Rogelio A. Enqueg, et. al.", for violation of Section 78, P.D. 705, filed by the Bantay Dagat Task Force. Complainants alleged that respondent Court Interpreter Mongaya deliberately withheld from them the information that a subpoena ad testificandum[4] dated 25 June 1998 was signed and issued by the latter, without any authority, directing the accused and the prosecution witnesses in the aforementioned criminal case, to appear and testify on a hearing scheduled on the 13[th], 15[th] and 22[nd] of July 1998.

On 07 July 1998, respondent Process Server Manlosa proceeded to the Office of the Bantay Dagat Task Force located in Pasil, Cebu City, for the purpose of serving the aforesaid subpoena to the prosecution witnesses. However, the subpoena was returned "unserved" with the notation by respondent Manlosa that "SPO2 Vicente Lim and others was (sic) duly assigned at Talisay, Bantay Dagat, 7/7/98."[5]

In their joint sworn affidavit-complaint, herein complainants submit that owing to the foregoing actuation of respondents, the prosecution witnesses failed to attend the scheduled hearings causing, in effect, the "dismissal of the (criminal) case to the prejudice of the state" and damage to the reputation of the Bantay Dagat Commission.[6]

In a letter[7] dated 29 July 1998, the Office of the Ombudsman for the Visayas acknowledged receipt of the joint sworn affidavit-complaint dated 28 July 1998, together with its supporting documents. The case was then docketed as OMB-VIS-CRIM-98-0611 and OMB-VIS-ADM-98-0453.

In a Joint Evaluation Report dated 30 July 1998, Graft Investigation Officer II Glenda C. Go recommended that "the administrative case be indorsed to the Supreme Court for administrative adjudication."

In a Resolution[8] dated 25 March 1999, the Office of the Ombudsman for the Visayas, finding no probable cause to indict respondent Mongaya for the offense charged, recommended that the criminal charge against the latter be dismissed. Nonetheless, in the same Resolution, the Office of the Ombudsman recommended that an information be filed against respondent Manlosa for violation of Section 3(e) of R.A. 3019.

As to the administrative case filed before the Office of the Court Administrator (OCA), the OCA, in a 1[st] Indorsement dated 12 February 1999, required herein respondents Mongaya and Manlosa to submit their respective Comments within ten days from receipt thereof.

In her Comment dated 12 April 1999, respondent Mongaya denied the charges arguing that there is "absolutely no color or iota of truth to the allegation(s) that (she) misinformed and/or concealed from Mr. Dela Victoria the true status of Criminal Case No. 83569", considering that "court records are public instruments"[9] which any interested party may gain access to. Further, respondent Mongaya averred that in the morning of 25 June 1998, she was in fact at the MTCC-Cebu City, Branch 2 assisting in cases scheduled for hearing.[10]

In a separate case docketed as OCA IPI No. 99-731-P, Judge Leopoldo Canete of MTCC-Cebu City, Branch 4, filed a complaint for Gross Neglect of Duty against respondent Manlosa relative to the service of subpoena and other court processes, and for reporting for work only once or twice a week.[11]

In a Memorandum dated 09 August 2000, the OCA recommended the dismissal of the charge against respondent Mongaya for lack of merit. On the contrary, the OCA found respondent Manlosa administratively liable and recommended that said respondent be suspended for three (3) months without pay.

THE COURT'S RULING

We are in accord with the findings of the OCA, with certain modifications on the penalty to be imposed on respondent Manlosa. Adjudging respondent Manlosa to be liable for simple neglect of duty[12] as will be further discussed hereunder, this Court considers the recommendation of suspension for three (3) months a bit stiff in view of the nature of the offense committed, effects of said act on government service[13] and the attendant circumstances in the instant case. Contrarily, we find the dismissal of the charge against respondent Mongaya to be in order.

First, as to the charge against respondent Manlosa, we find him administratively liable for simple neglect of duty, and not for violation of Section 3(e) of Republic Act 3019. Under the Uniform Rules on Administrative Cases in the Civil Service,[14] simple neglect of duty is classified as a less grave offense and carries the corresponding penalty of suspension for one (1) month and one (1) day to six (6) months, for the first (1[st]) Offense. A circumspect perusal of the records furnishes credible substantiation to this finding of administrative liability for simple neglect of duty on the part of respondent Manlosa.

Evidently, respondent Manlosa was - to say the least -remiss and unmindful of his duties as Court Process Server; he was neglectful of the consequences of his actuation particularly when respondent made the subject notation on the subpoena without even ascertaining the veracity of the information that the prosecution witnesses were assigned or transferred to "Talisay, Bantay Dagat". To aggravate the matter, records belie the allegation that the Bantay Dagat Task Force maintains an office in Talisay, Cebu,[15] contrary to the information culled by respondent Manlosa.

Under these circumstances, had respondent Manlosa exhibited more prudence and earnestly endeavored in

verifying raw information relative to the alleged transfer and assignment of the prosecution witnesses to "Talisay, Bantay Dagat," he would have easily unearthed the falsity and untruth behind such unverified information and in particular, discovered the inexistence of the Talisay office.

As an employee of the judiciary tasked, among other things, to serve subpoena and other court processes, respondent Manlosa indubitably failed to perform his assigned duties with dedication, efficiency, and utmost responsibility--ideals which men and women in public service ought to cherish and dutifully observe. On the whole, respondent Manlosa as a Court Process Server, should be fully cognizant not only of the nature and responsibilities of his task but its impact as well in the speedy administration of justice.

By liberal analogy, this Court in *Reyes vs. Anosa*[16], decreed that a utility worker's failure to deliver the notices of hearing and subpoenas to litigants and witnesses amounts to an utter disregard of the duty as a court employee. To be sure, the wheels of justice will not run without the cooperation of the staff of judges composed of clerks of court, staff assistants, legal researchers, sheriffs, process servers, court stenographers, interpreters, bailiffs and court aides or utility workers.[17] True enough, the conduct and behavior of everyone connected with the office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should be circumscribed with heavy burden of responsibility,[18] in order to maintain public confidence in the judiciary.[19]

Nonetheless, it is our considered view that the actuation of respondent Manlosa does not constitute "gross inexcusable negligence" so as to render him administratively liable under Section 3(e) of Republic Act 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. By definition, gross negligence refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.[20] In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.[21]

To our mind, respondent Manlosa although guilty of neglect in the performance of official duties, may not be held liable for "gross inexcusable negligence" as contemplated and punishable under Section 3(e) of R.A. 3019. From our standpoint, the negligence displayed by said respondent and the breach of duty committed were not of such nature and degree so as to be considered brazen, flagrant, and palpable. Stated differently, respondent Manlosa is still liable for neglect in the performance of official duties, albeit not of such kind constitutive of that punishable under R.A. 3019, specifically Section 3(e) thereof.

On this matter, records[22] show that respondent Manlosa, upon discovering that the Bantay Dagat Office in Pasil was closed, attempted to cull information regarding the presence and whereabouts of the members of the task force summoned to court to testify. Nonetheless, as pointed earlier, respondent should not have, at first instance, recognized and immediately accepted as gospel truth such raw information; Manlosa should have confirmed the information by further proceeding to Talisay where supposedly the Bantay Dagat Office was located and where the prosecution witnesses were reportedly present and available, for the purpose of serving the subpoena ad testificandum. To us, this is the prudent course of action to take.

Second, with respect to the charge against respondent Mongaya, the same must necessarily fail considering that her explanation is sufficient and satisfactory so as to exonerate her from administrative liability. By and large, complainants assail respondent Mongaya's acts of signing and issuing, allegedly without authority, the subpoena ad testificandum dated 25 June 1998, and deliberately withholding from herein complainants the fact that the aforesaid subpoena was issued requiring the prosecution witnesses to testify on the scheduled dates of hearing.

On this particular score, the records bear that respondent Mongaya, as Court Interpreter, signed and issued the

aforementioned subpoena for and on behalf of the Branch Clerk of Court Miguela Dinglasa. While it is admitted that respondent Mongaya has not shown any written authority to issue subpoena and other court processes, the records nevertheless reveal that respondent signed and issued the aforesaid subpoena for and on behalf [23] of the Branch Clerk of Court who, at that time, was on "indefinite leave" due to illness.[24] Moreover, in the absence of evidence to the contrary and considering the peculiar facts attendant to the instant case, we are inclined to believe that Branch Clerk of Court Dinglasa gave respondent Mongaya "prior verbal instruction"[25] to "sign judicial processes" in the former's "incapacity or absence", for the purpose of facilitating and expediting court proceedings.

In the same vein, we find convincing respondent Mongaya's explanation belying, in effect, allegations that she concealed from complainants the fact that a subpoena was issued requiring the prosecution witnesses to appear before the court. Interestingly, herein complainants failed to establish by convincing proof such bare allegation that respondent indeed was guilty of concealment and/or misrepresentation as to the fact of issuance of the subpoena dated 25 June 1998.

On the contrary, respondent Mongaya adduced evidence[26] to the effect that at the time of the alleged act of "concealment," she was in fact present at the MTCC-Cebu City, Branch 2, assisting in cases then scheduled for hearing and trial. Of equal importance is that court records are public records which may be accessed by the citizens, particularly the litigants and parties in a given case, subject to such limitations provided by law.

On the whole, we underscore the paramount importance of sowing seeds of professionalism and responsibility in all ranks and levels of government service. Proceeding from this noble objective, civil servants should then take it upon themselves to inject new blood in the performance of their sworn duties and persistently endeavor to draw the portals of government closer to the people.

Rightly so, for the judiciary offers no haven to the timorous and affords no respite to the lethargic.

WHEREFORE, in light of the foregoing, the Court finds respondent Nelson C. Manlosa guilty of simple neglect of duty and hereby imposes upon him the penalty of suspension for one (1) month without pay. Respondent Manlosa is further sternly warned that a repetition of the same or similar acts shall be dealt with more severely.

As to respondent Helen B. Mongaya, the charge against her is hereby DISMISSED for lack of merit.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

[1] Rollo, p. 4-5.

[2] Section 3(e). Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with grant of licenses, or permits or other concessions."

[3] Order of Dismissal dated 15 July 1998, signed by Judge Olegario R. Sarmiento; Rollo, pp. 33-34.

[4] Annex "A", Rollo, p.15.

[5] Annex "A-1"; Rollo, p. 15.

[6] Rollo, p. 5.

[7] Rollo, p. 9.

[8] Rollo, pp. 37-40.

[9] Rollo, p. 26.

[10] Annex "F", Rollo, p. 35.

[11] Rollo, p. 43.

[12] Section 46, Book V, Executive Order No. 292 provides, " Discipline: General Provisions--

(a)

No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process.

(b)

The following shall be grounds for disciplinary action:

1) Dishonesty;

2) Oppression;

3) Neglect of duty; XXX."

[13] Section 52 (B) (1), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service provides, "Administrative offenses with its corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service of its nature and effects of said acts on the government service. x x x.

x x x

B. The following are less grave offenses with their corresponding penalties:

- Simple neglect of duty

1[st] Offense - Suspension for one (1) month and one (1) day to six months

2[nd] Offense - Dismissal

x x x."

[14] Section 52 (B) (1), Rule IV, Uniform Rules on Administrative Cases in the Civil Service (Uniform Rules published in the Manila Standard on 11 September 1999).

[15] Rollo, p. 40.

[16] 267 SCRA 523 [1997].

[17] Ibid.

[18] TC Makati Movement Against Graft and Corruption vs. Dumlao, 247 SCRA 117 [1995].

[19] Re: Report on the Judicial Audit Conducted in RTC, Br. 82, Odiongan, Romblon, 292 SCRA 1 [1998].

[20] Fonacier vs. Sandiganbayan, 238 SCRA 655 [1994] citing Alejandro vs. People, 170 SCRA 400 [1989].

[21] Quibal vs. Sandiganbayan, 244 SCRA 224 [1995].

[22] Rollo, pp. 39-40.

[23] Rollo, p. 6.

[24] Rollo, p. 8.

[25] Rollo, p. 25.

[26] Annex "F"; Rollo, p. 35.

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