

COURT OF APPEALS, COMPLAINANT, VS. JESUS C. BANAWA, RESPONDENT.

A.M. No. P-176. September 04, 1975

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

This administrative case against respondent Jesus C. Banawa, Deputy Clerk of Court of the Court of First Instance of San Fernando, Pampanga, Branch I, arose out of a Resolution of the Court of Appeals, (Special Sixth Division) dated April 24, 1973, which is quoted hereunder:

"CONSIDERING the RESOLUTION of March 9, 1973, requiring the Clerk of Court, CFI, Pampanga to SHOW CAUSE for failure to comply with the requirement to inform this Court of the status and action in this case, the records of which were remanded since December 9, 1960, thereto for retaking of the testimony of witnesses taken down by stenographer Maglalang whose stenographic notes have been lost, and the letter-explanation of April 5, 1973, of the Clerk of Court, CFI, Pampanga informing this Court that the records of this case were received by a certain Mr. Jesus C. Banawa, deputy clerk in charge of civil cases who failed to submit to the court the whole records for the retaking of the testimonies of the witnesses; that since then the records were kept in the vault until said records were among those inundated during the last floods, the Clerk of Court returning the records as proof for the scrutiny of this Court, and CONSIDERING FURTHER that the records were remanded as early as December 9, 1960, hence, the negligence of Deputy Clerk JESUS BANAWA, is not only inexcusable but bordering on gross negligence, and that the Clerk of Court, instead of having the case brought to the attention of the Court below, sent the records to this Court, (SAID RECORDS VERIFIED TO BE STILL LEGIBLE) thus delaying the case further, the Court RESOLVED that;

1. The Clerk of Court, CFI Pampanga be directed to take immediate steps for the said retaking with the admonition that further delay therein will subject him to drastic disciplinary action.
2. Deputy Clerk of Court JESUS BANAWA be charged with GROSS NEGLIGENCE and recommend to Department of Justice for proper administrative action."

The case was indorsed to this Court on July 10, 1973, by the Department of Justice by reason of the resolution of the Court of Appeals after the administrative supervision over inferior courts had been transferred to this Court by the New Constitution.

On August 21, 1973, respondent was required to comment on the above charge. On July 18, 1974, after considering respondent's comment, this Court referred the case to the Hxecutive Judge of the Court of First Instance of Pampanga, at San Fernando, for investigation, report and recommendation.

The crux of the instant case revolves around the question whether or not respondent Banawa committed gross negligence in the custody of the records of Civil Case No. 369, Branch II, of the Court of First Instance of Pampanga, entitled "Lourdes Cununan vs. Vicente A. Hizon," which was misplaced and badly damaged by the flood in 1972.

As found by the investigating Judge —

"x x x prior to the construction of the new Hall of Justice of Pampanga which is located at the back of the Capitol Building, Branches I and II of this court stationed at San Fernando, Pampanga, the office of the Clerk of Court, and the office of the Provincial Fiscal were housed in the 1st floor of the Old Building, and the ground floor of said building is up to the present the Provincial Jail. The vault where the court records of terminated cases are archived is still located on the ground floor of the Old Building, but it is too small to contain all the records of terminated cases, for even at present, the office of the Clerk of Court and even the alley of the first floor of the old Court building are piled with court records of terminated cases, and undoubtedly are fire hazards. In 1972, because of the July-August flood, the vault with the records of terminated cases went underwater, and after the water had receded, the vault had to be opened and all the records had to be brought out to be dried. Branches I and III of this Court transferred to the new Hall of Justice, and they now occupy the 1st floor of the building. The offices of the Clerk of Court, Provincial Fiscal, and the Register of Deeds were also transferred and are now occupying the ground floor of said building.

"The evidence shows that in the year 1958, Branch I of this Court was still located in the Old Court Building and its Deputy Clerk of Court then was Miss Irene Galura, its clerk in charge of civil cases was the respondent Jesus C. Banawa, and one of its stenographers was then Mr. Romeo Maglalang, who took stenographic notes during the trials of cases. It was in Branch I of this Court that Civil Case No. 369, entitled "Lourdes Cimanan versus Vicente A. Hizon, et al.," was assigned, tried and decided in 1958. The respective counsels of the parties were Attorneys Silva and Ocera for the defendants and Atty. Jose Feliciano for the plaintiff. The Decision of Branch I of this Court was appealed to the Honorable Court of Appeals, and the Records on Appeal, together with the transcribed stenographic notes taken by the other stenographers, but without the transcribed stenographic notes taken by Mr. Romeo Maglalang, were sent by the respondent Jesus C. Banawa through the Office of the Clerk of Court to the Honorable Court of Appeals. The original record of said civil case remained with the Court, and must have been placed with the records of terminated cases. There is no evidence to show whether the original record remained with Branch I of this Court and continued to be in the custody of respondent Jesus C. Banawa, the clerk in charge of civil cases, because Miss Lagrimas Nunga, now Mrs. Pineda, who was appointed in 1960 as a Janitor in the Office of the Clerk of Court, but was assigned to do clerical work, like helping and assisting the respondent Jesus Banawa, entered in the docket book for archiving, Civil Case No. 369 on March 16, 1963, allegedly upon order of Atty. Marcelo D. Mendiola, who was appointed as Clerk of Court in 1960, and after she entered it in the docket book, she gave it to Mr. Juan Umangay, the clerk in charge of the vault. Atty. Marcelo D. Mendiola, however, testified that he cannot recall having seen, much more handled the record of said civil case, but it can be taken that the record of civil case No. 369 was given to the Office of the Clerk of Court after the Record on Appeal was sent to the Honorable Court of Appeals. Atty. Mendiola also testified that after he assumed his position as Clerk of Court, he had appealed to the provincial government to provide a bigger space or vault so that all the court records of terminated cases could be deposited properly and systematically, but up to the present, his appeal remained unheeded.

"The Honorable Court of Appeals, due to the failure of the Clerk of Court to send the transcribed stenographic notes of Mr. Romeo Maglalang, sent a tracerletter dated December 7, 1972, to the Clerk of Court, and the Clerk of Court, Atty. Mendiola testified that he must have given said letter to Miss Galura, the Deputy Clerk of Court of Branch 1. Mr. Romeo Maglalang also testified that he wrote two (2) letters to the Honorable Court of Appeals, which he identified as they were brought by Atty. Juan V. Soliven, asking for an extension of time to transcribe his stenographic notes, not only because of lack of time, as he was then very busy transcribing his other stenographic notes but also because the record of civil case No. 369 could not be located as it was missing, or the record of said case have been misplaced when Branches I and II as well as the Office of the Clerk of Court, transferred to the new Hall of Justice, and due to the great number of court records to be transferred, the prisoners in the Provincial Jail had to be utilized to carry the court records. The parties or their respective counsels, after the Records on Appeal were sent to the Honorable Court of Appeals, did not take any

action whatsoever to expedite the termination of the appeal, but as the appeal has been pending already for more than ten years due to the lack of transcript of the stenographic notes taken by Mr. Maglalang, the Honorable Court of Appeals on December 9, 1960, had to order the retaking of the testimonies of the witnesses. Atty. Abel de Ocera in his manifestation at the first day of the hearing, and the letter of Atty. Feliciano addressed to the Honorable Court of Appeals, presented and marked as Exhibit " 1" for the respondent, attest to the fact that their respective clients are not prejudiced by the delay in the termination of the appeal, but it may be prejudicial to the Honorable Court of Appeals as the case remained pending in its docket for more than ten years. The record of this civil case must have been mixed with the many court records of terminated cases, and after it was docketed, it was one of the records deposited in the vault, for it was only after the 1972 flood when the vault was opened, and all the records were brought out to be dried that the record of Civil Case No. 369 was found, and the stenographic notes of Mr. Maglalang stitched into the record, were detached and given to him. Mr. Maglalang then transcribed his notes and the transcribed notes were already sent to the Honorable Court of Appeals, so that there was no longer a need for the retaking of the testimonies of the witnesses.

"The only possible way to locate the missing record of Civil Case No. 369 after the receipt by the Clerk of Court of the tracer-letter was to assign one of the employees of the Court to go over one by one the records of court cases stock piled in the office of the Clerk of Court, Deputy Clerk of Court, the vault, and on the alley of the old court building, for due to lack of space, it is indeed an impossibility to make a chronological and systematic stock piling of the records of terminated cases. The transfer of the numerous court records pending and terminated to the New Hall of Justice carried by the prisoners in the Provincial Jail; the fact that the counsels of the parties did not take any action to expedite the early termination of the appealed case; and the everyday trials of cases, could be the grounds or reasons why the original record of Civil Case No. 369 could not be located so that it was docketed on March 16, 1963, to be archived and deposited in the vault where it was finally located in 1972 after the flood.

"There is no evidence to prove that respondent Jesus Banawa kept the original record of Civil Case No. 369 after he sent to the Honorable Court of Appeals the Record on Appeal, but assuming that he did, but when the numerous records of cases of the Court were transferred to the New Hall of Justice, the said record must have been mixed with the other records of cases of Branches I and III or with the records deposited with the office of the clerk of court.

"The Deputy Clerk of Court of Branch I, Miss Irene Galura, had direct administrative supervision of the court employees under her, and the Record on Appeal of Civil Case No. 369 should have been sent to the Honorable Court of Appeals with her indorsement or at least with her knowledge and under her administrative supervision, but she testified that she did not have any participation in the sending of the Records on Appeal, for it was respondent Jesus Banawa who was in charge of civil cases, but was under her administrative supervision, however the evidence shows that he was performing his duties independently and beyond the administrative control of the Deputy Clerk of Court, x x x. The misplacement of the record was also due to lack or defective management, and if respondent Jesus Banawa committed any act of negligence, at most it will be excusable negligence, x x x"

We are in full accord with the findings of the investigating Judge. There is no sufficient evidence to warrant the filing of an administrative charge against respondent Banawa. On the other hand, an evaluation of the evidence presented leads Us to accept the recommendation of the investigating Judge, concurred in by the Judicial Consultant, that due to the circumstances then obtaining, respondent Banawa should not be held responsible for the misplacement of the record of Civil Case No. 369 and, therefore, no administrative charge for gross negligence should be filed against him. Respondent Banawa retired from the government service on December 22, 1973, due to failing health, after a faithful and continuous service of more than 30 years.

Considering that payment of respondent's retirement gratuity has been suspended pending resolution of this case,

and considering further the poor physical condition of the respondent, it is hereby ordered that his claim for retirement, if found in order, be paid without delay.

WHEREFORE, the proposed administrative action against respondent Jesus C. Banawa shall not be taken and this matter shall be considered closed.

SO ORDERED.

Castro, C.J. (Chairman), Teehankee, Muñoz Palma, and Martin, JJ., concur.

Makasiar, J., reserved his vote.

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