

SECOND DIVISION

[A.M. No. P-04-1797 (Formerly A.M. OCA IPI No. 03-1725-P), March 25, 2004]

ELSA C. BECINA, COMPLAINANT, VS. JOSE A. VIVERO, CLERK OF COURT, MUNICIPAL TRIAL COURT, AURORA ZAMBOANGA DEL SUR, RESPONDENT.

DECISION

CALLEJO, SR., J.:

The instant administrative case arose when Elsa C. Becina filed an Affidavit-Complaint dated July 3, 2003 charging Jose Vivero, Clerk of Court, Municipal Trial Court, Aurora, Zamboanga del Sur, with gross negligence in the performance of official function and dereliction of duty relative to Civil Cases Nos. 61, 62, 63 and 64.

The complainant alleged that she was one of the plaintiffs in the aforesaid cases, and that they were able to obtain a favorable judgment which was upheld by this Court. After entry of judgment was received in the court of origin, the plaintiffs filed a motion for execution of judgment on November 13, 2002. The motion was not resolved until the untimely demise of Presiding Judge Celestino Dicon. The motion was then calendared for hearing on May 7, 2003, one month after Judge Ramon Daomilas, Jr. assumed office.

On the said date, Judge Daomilas, Jr. issued an order giving counsel for the defendant fifteen (15) days to file his opposition to the motion and the plaintiff's counsel the same period of time to file his comment on the opposition. The respondent did not release the said order; nor were the parties informed about it. After the lapse of about two months, the complainant discovered that the Order of May 7, 2003 had not yet been released.

The complainant believes that the delay in the execution of judgment was caused by the respondent's gross negligence in the performance of official function and dereliction of duty, which brought prejudice to them and to the administration of justice. The complainant prays that because the decision, albeit favorable, was not duly and promptly executed, the respondent, the one who caused the delay, should be investigated and dealt with accordingly.

In his Comment,^[1] the respondent admitted that indeed, the court issued an Order dated May 7, 2003, anent the hearing of the motion for issuance of writ of execution in Civil Cases Nos. 61-64. The respondent, however, made the following averments to justify the delay:

That on May 7, 2003, I was not around because I was on leave of absence due to severe pain in my waist and hip cause[d] by a vehicular

accident which happened on May 2, 2003 (application for leave attached hereto as Annex "A");

That upon my reinstatement I was not informed by my co-personnel regarding the status of the case of Elsa Becina thus, I was not aware of the said Order;

That on June 10, 11 and 12, 2003, I was on leave of absence for a medical check-up on my injured waist and hip (application for leave hereto attached as Annex "B");

That on June 18, 19, and 20, 2003, I was on leave again purposely to attend to the funeral of my uncle at Merida, Leyte (mourning leave hereto attached as Annex "C");

That on July 2, 2003, the date when Mrs. Elsa Becina appeared in court to follow up the said Order, I was not around, I was on leave for a follow up check-up on my injuries (application for leave hereto attached as Annex "D");^[2]

In a Report dated November 17, 2003, the Court Administrator opined that the respondent be admonished to be more circumspect in the performance of his official duty and warned that repetition of the same or similar administrative lapses in the future would be more severely dealt with. The following findings were pointed out:

Respondent Clerk of Court Vivero does not deny that there was delay in furnishing [a] copy of the Order dated 07 May 2003 to the parties that resulted in delaying the execution of the judgment in Civil Cases Nos. 61-64 of the MTC, Aurora, Zamboanga del Sur. He does not deny either his culpability for the delay, in fact, he comes to the Court begging for forgiveness.

Indeed, he cannot plead total exculpation from responsibility by alluding to his series of leaves of absence from duty occasioned by injuries he suffered from a vehicular accident. From May 9 to June 10, 2003, he reported for duty and he had ample time to find out and examine the orders issued by the court during his absence and see to it that they had been properly attended to by the other concerned personnel of the court.

...

On the other hand, we do not view the offense of respondent Clerk of Court Vivero as amounting to gross negligence [...] ... There was no doubt a delay in the release of the Order dated 07 May 2003 but it could not be attributed to the respondent's willful or intentional design to either favor or prejudice any of the parties in the case. The sequence of events that transpired from May 7, 2003, when he was absent from office owing to injuries he incurred in a vehicular accident and the series of leaves of absence he underwent to recuperate from his injuries could have greatly contributed to his failure to cause the early release of the order. We submit that respondent should be held culpable only for simple negligence. This being his first offense and with his show of repentance