

THIRD DIVISION

[A.M. No. 03-10-250-MCTC, September 30, 2004]

REPORT ON THE JUDICIAL AUDIT CONDUCTED IN THE MCTC- DAPA, SURIGAO DEL NORTE,

D E C I S I O N

CARPIO MORALES, J.:

From the September 11, 2002 Report on the Judicial Audit Conducted by members of the Audit Team of the Court Management Office in the Municipal Circuit Trial Court (MCTC), Dapa-Socorro, Surigao del Norte presided by Judge Rolando T. Literato whose official station is at the MCTC Sison-Taganaan, Surigao del Norte where he has a caseload of One Hundred Forty Five (145) and holds office for three days a month, he having been designated as Acting Presiding Judge of the following MCTCs:^[1]

	A. O. NO.	DATE OF EFFECTIVITY	NO. OF OFFICE DAY PER MONTH
1. Dapa-Socorro	55-98	31 March 1998	10 days
2. Gen Luna-Pilar	68-99	29 July 1999	3 days
3. Sta. Monica-Burgos	68-99	29 July 1999	1 day
4. Del Carmen-San Isidro-San Benito	55-98	31 March 98	3 days

the following Comments/Observations^[2] are proffered:

Entries in the docket books for both civil and criminal cases are updated only insofar as dismissed/archived/decided cases are concerned.

Clerk of Court Evernaldo D. Galanida impressed the audit team to be ignorant of the Rules in Civil Procedures.

In the resetting of cases, wanting are court orders for the same and instead attached to the records are copies of subpoenas sent to the parties.

In Criminal Case No. 318 (Pp. vs. Oscar Mandana, et al.), accused Mandana posted a cash bond in the amount of ten thousand pesos (P

10,000.00) for his release. Attached to the records are merely photocopies of O.R. No. 848001 dated 6 September 2001. Upon inquiry to the Clerk in Charge, the team was informed that the Clerk of Court of MCTC Cantillan-Carrascal, Surigao del Sur, kept the original copies of the receipts of cash bond, the same having posted in said court. Arraignment of Mandana was set on 21 May 2002. No alias warrant of arrest was issued by the Court for the other eight co-accused which are still-at-large.

In Civil Case No. 256, summons were served on defendants on 10 July 2000. The defendants were declared in default only on 18 March 2002 and set the reception of evidence ex-parte on 16 May 2002. However, in the Order of the Court dated 24 June 2002, again the defendants were declared in default and the reception of evidence ex-parte set on 26 July 2002.

When the audit team informed Judge Literato of the findings and observation of the audit team, he candidly informed us that as Acting Presiding Judge of said Court and considering that he only holds office in said court for a limited period, the movement of cases is under the control of the Clerk of Court. He intimated that there are instances that pleadings filed were not immediately acted upon because it was given to him belatedly. That despite his repeated orders to the Clerk of Court to inform him immediately of the pleadings filed, it only fell to deaf ears. As to the resetting of cases, it was the Clerk of Court who has the privilege to set the date of the hearing.

The team called the Clerk of Court to verify his allegations and when asked why the pleadings were not immediately given to the Judge for immediate action and why the resetting of cases have no court orders, he just kept mum and silent about it. (Underscoring supplied)

Acting on the Report, the Office of the Court Administrator (OCA), by Memorandum of October 22, 2002,^[3] issued the following directives to Judge Literato, Clerk of Court Galinada, and Clerk of Court of the MCTC Cantillan-Carrascal:^[4]

1. Judge Rolando T. Literato, Municipal Circuit Trial Court-Dapa-Socorro, Surigao del Norte, to:

A. EXPLAIN within ten (10) days from notice hereof why no disciplinary action should be taken against him for:

(a-1) declaring the defendants in default and setting the case for reception of evidence ex-parte twice in Civil Case No. 256;

(a-2) his inaction for a considerable length of time in Election Case No. 209, the last setting of trial having been on 8 July 1999 and on the plaintiff's manifestation and motion to set the case for pre-trial filed on 12 April 1995 in Civil Case No. 081;

B. TAKE APPROPRIATE ACTION on Election Case No. 209, Civil Cases Nos. 273, 249, 237, 246, 081, 087, 225, 211, 228, 226, 115, 313, and Crim. Cases Nos. 320, 279, 277, 266, 114, 113, 329, 327, 326 and 243 which have no further setting/action for a considerable length of time.

C. INFORM this Office within ten (10) days from notice whether the following cases are decided within the reglementary period and furnish copies of the decisions, to wit: Civil Case[s] No[s]. 106, 902, 861, 857, 859, and 278.

2. Clerk of Court Evernaldo D. Galinada to:

(2.1) EXPLAIN within ten (10) days from notice hereof why no disciplinary action should be taken against him for:

- a. serving the summons on defendants through registered mail in Civil Cases Nos. 258, 859, 857, 861, 084, 083 and 888 in gross violation of the Rules on Civil Procedure;
- b. resetting the case without the appropriate Court orders; and
- c. his failure to present the records of Civil Cases Nos. 899, 113, 859 and 060 and Criminal Cases Nos. 337, 306 and 330 during the conduct of the audit; and

(2.2) TAKE APPROPRIATE ACTION to **UPDATE** the entries in the docket books with **WARNING** that a similar infraction in the future will be dealt with more severely; and

3. The Clerk of Court, Municipal Circuit Trial Court, Cantillan-Carrascal, to **EXPLAIN** within ten (10) days from notice hereof why he is keeping the original copy of Receipt No. 848001 dated 6 Sept. 2001 of the cash bond in the amount of ten thousand pesos (P10,000.00) posted by accused Oscar Mandana for his release in Criminal Case No. 318 (Pp. vs. Oscar Mandana, et al) and attaching merely photo copies of the same to the records. (Emphasis and italics in the original; underscoring supplied)

In compliance with the OCA directive, Judge Literato proffered his Explanation^[5] which the OCA, in its Memorandum of October 23, 2003 for the Chief Justice,^[6] tabulated as follows:^[7]

CASE NUMBER	AUDIT FINDINGS	EXPLANATION
CV No. 256	Defendants were twice declared in default and setting the case for reception of	The reception of evidence for the plaintiff on 16 May 02 was reset to June 24, 02. <u>Judge was misled by the oral manifestation of counsel to</u>

	evidence <i>ex-parte</i> per Orders dated 16 May 2002 and 24 June 2002	<u>declared def in default.</u> Per Order 25 Oct. 2002 case reset to 15 Nov. 2002 for possible settlement
Elec. Case No. 209	Failure to set the case for a considerable length of time. Last setting of trial was on 8 July 1999	Case was filed on 16 May 1997. When he was designated APJ in Apr. 1998, he ordered the Comelec to deliver the ballot boxes which was complied on 07 June 1999. He alleged that he cannot be faulted for not acting on the said case since 12 May 1999, considering that <u>it is the Clerk of Court who has direct control over the personnel of MCTC.</u> Case was dismissed on 26 July 2002 for being moot and academic
CV No. 081	Failure to set the case for pre-trial despite Plaintiff's manifestation and motion to set the case for pre-trial filed on 12 April 1995	Motion is for continuation of pre-trial, having conducted the PT last March 2002
CV No. 273	No further action/setting	Parties filed Compromise Agreement on 15 Feb. 2002
CV No. 249	- do -	<u>Case cannot be submitted for resolution because Exh. G which was reserved by the plaintiff has not been filed before the Court despite the Order dated 25 March 2002</u>
CV No. 237	- do -	Defs. Motion to Dismiss and Opposition submitted for resolution on 24 Sept. 2002
CV No. 246	-do -	Case Dismissed on 14 October 2002, def. fully settled its obligation
CV No. 081 (087)	- do -	Copy of the complaint has not been served to the def. <u>Plaintiff failed to inform the court of the last known address of def.</u>
CV No. 225	- do -	<u>Plaintiff given 15 days to file their FOE per Order 24 Oct.</u>

		<u>2002 but plaintiff failed to comply</u>
CV No. 211	- do -	Set for Trial on 09 January 2003
CV No. 228	- do -	<u>Def. declared in default on June 26, 2002. Presentation of evidence ex-parte reset to 13 January 2003</u>
CV No. 226	- do -	Hearing on 27 Nov. 2002 reset to 6 Feb. 2003. Counsel for plaintiff moved for resetting
CV No. 115	- do -	Dismissed on 27 June 2002
CV No. 313	- do -	Accused arraigned and hearing reset to 17 Oct. 2002 per Order 17 Sept. 2002
CR No. 320	- do -	<u>Accused arraigned on 20 March 2002. Postponements were asked by the Prosecutor's Office reset to 14 February 2003</u>
CR No. 279	- do -	<u>Accused has not been arrested, no longer residing at given address</u> per return dated Sept. 2002
CR No. 277	- do -	Cases dismissed on based on Affidavit of Desistance
CR No. 266	- do -	Accused arraigned on 7 January 2003
CR No. 114	- do -	Accused arraigned on 18 Sept. 2002 and set hearing on 13 Oct. 2002. <u>Parties failed to appear reset it on 7 January 2003</u>
CR No. 113	- do -	Dismissed provisionally on 18 Sept. 2002
CR No. 329	- do -	Accused convicted per decision of 24 Sept. 2002
CR No. 327 CR No. 326	- do -	Dismissed per Resolution of 5 November 2002
CR No. 243	- do -	<u>Accused no longer residing in given address</u>

(Underscoring supplied).