

## FIRST DIVISION

[ **A.M. No. P-08-2574 (Formerly A.M. OCA IPI No. 08-2748-P), January 22, 2014** ]

**RAUL K. SAN BUENAVENTURA, COMPLAINANT, VS. TIMOTEO A. MIGRIÑO, CLERK OF COURT III, METROPOLITAN TRIAL COURT, BRANCH 69, PASIG CITY, RESPONDENT.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

This administrative case originates from a complaint for gross neglect of duty, undue interference on a case, and violation of the Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713) filed by complainant Raul K. San Buenaventura against respondent Timoteo A. Migriño, Clerk of Court III of the Metropolitan Trial Court (MeTC), Branch 69 of Pasig City, relative to Civil Case No. 6798 entitled, "*Lourdes K. San Buenaventura, represented by Teresita K. San Buenaventura and/or Raul K. San Buenaventura v. Johnny Josefa,*" for unlawful detainer.

In a verified Complaint-Affidavit<sup>[1]</sup> dated February 22, 2008, complainant San Buenaventura narrated that after the decision of this Court in Civil Case No. 6798 became final and executory on April 3, 2006, he filed a Motion for Issuance of Writ of Execution on August 17, 2006, requesting that the said motion be heard on August 22, 2006. According to complainant San Buenaventura, respondent Migriño set the hearing on October 13, 2006 and refused to grant his request for an earlier setting. Complainant San Buenaventura further narrated that on October 30, 2006, the MeTC issued an order informing the parties that the said motion had already been submitted for resolution. However, on December 18, 2006, the MeTC issued another order deferring the resolution of the said motion since the records of the case had been elevated to the Regional Trial Court as defendant Josefa had filed an Annulment of the Judgment and Partition on the decision of the Supreme Court which was sought to be executed.

Complainant San Buenaventura added that he and his counsel asked respondent Migriño if the MeTC had already received a copy of the Supreme Court decision and entry of judgment, emphasizing upon respondent Migriño that there was no need for the records of the case and that under prevailing jurisprudence, a certified true copy of the decision and its entry of judgment were sufficient for the issuance of a writ of execution. According to complainant San Buenaventura, respondent Migriño claimed that the MeTC was not yet served a copy of the Supreme Court decision and entry of judgment, yet when complainant San Buenaventura made further inquiries, he discovered that the MeTC had already received its copies as early as August 7, 2006.

Complainant San Buenaventura further alleged that he and his counsel requested

respondent Migriño on several occasions to inform the MeTC Presiding Judge of the Supreme Court decision and the entry of judgment so that their pending motion could be resolved. These requests, however, were not acted upon by respondent Migriño, forcing complainant San Buenaventura to file a Motion with Leave of Court for the Immediate Resolution of Plaintiff's Motion for the Issuance of Writ of Execution on April 13, 2007. It was only on July 20, 2007 when the said motion for the issuance of a writ of execution was finally resolved, or after almost a year from the date of filing of said motion. With regard to the issuance of the writ of execution, complainant San Buenaventura also stated that despite repeated follow-ups and requests, respondent Migriño belatedly issued the said writ only on November 14, 2007, or after almost four months from the time the order of its issuance was given.

As reported in the Sheriff's Return dated December 4, 2007, defendant Josefa refused to leave the subject premises when he was served the Notice to Vacate dated November 19, 2007. On January 25, 2008, the Order dated January 8, 2008 directing the issuance of a writ of demolition was released. Complainant San Buenaventura further alleged that respondent Migriño informed him that the said writ could not yet be issued since an alleged third-party claimant filed a motion for reconsideration and a motion to suspend implementation of the demolition order, among others, was filed on January 28, 2008. Said motions were set to be heard on February 22, 2008 which complainant San Buenaventura asserted was violative of Section 5, Rule 15 of the Rules of Court as it has been mandated therein that the time and date of the hearing of motions must not be later than 10 days after the filing of the motion. Complainant San Buenaventura also claimed that it was respondent Migriño who filled in, or at the least, facilitated the setting of the hearing of the motion at a very late date, on February 22, 2008.

Complainant San Buenaventura maintained that respondent Migriño should be administratively sanctioned for setting the hearings of various motions in their case over long periods of time and for unduly interfering in Civil Case No. 6798.

In a Comment<sup>[2]</sup> dated March 27, 2008, respondent Migriño denied the accusations hurled against him. Respondent Migriño clarified that the Acting Presiding Judge only conducted hearings every Monday, Wednesday and Friday, and that August 22, 2006 was a Tuesday, a non-hearing day, which was the reason why the setting of the hearing was rescheduled to October 13, 2006 without any objections from the counsels of both parties as evidenced by the minutes of the August 22, 2006 hearing. Respondent Migriño maintained that he had nothing to do with the resetting of the hearing schedules. According to him, the counsel for complainant San Buenaventura should have raised her objections on the resetting of the hearing in the minutes, or should have filed a motion for an earlier setting if they found the belated setting objectionable.

Anent the alleged inaction for the issuance of the writ of execution, respondent Migriño contended that it was the court sheriff who prepared the writ and that he merely checked or corrected the draft of the writ before it would be sent to the Presiding Judge for signature.

As to the receipt of the entry of judgment and the Supreme Court decision in Civil Case No. 6798, respondent Migriño admitted that a copy of the entry of judgment was personally received by the Presiding Judge on August 7, 2006, while the

decision was received at a different date. He reasoned that he could not be blamed if complainant San Buenaventura's motion for the issuance of a writ of execution remained unacted upon or if there was delay in the resolution thereof, since according to him, the issuance of judicial orders was not part of his duties and responsibilities as a Clerk of Court.

Respondent Migriño also dismissed as hearsay the accusation that he was responsible for the insertion of the date of hearing which was allegedly in violation of the Rules of Court. He submitted the affidavit of Ms. Zynex G. Estaras, civil cases in-charge, attesting to the fact that the date was already written on the motion when it was submitted to the court.

Alleging that the administrative charge against him was simply a harassment suit, respondent Migriño believed that he was not remiss of his duties and that he never interfered with the schedule of the hearings for the case.

In a Resolution<sup>[3]</sup> dated November 12, 2008, this Court re-docketed the instant complaint against respondent Migriño as a regular administrative matter and referred the same to the Executive Judge of the MeTC, Pasig City, for investigation, report and recommendation.

In a Report<sup>[4]</sup> dated March 26, 2009, Executive Judge Marina Gaerlan-Mejorada recommended that respondent Migriño be found guilty of simple neglect of duty, for which he should be fined an amount equivalent to his two months salary with a stern warning that a repetition of the same or similar offense in the future shall be dealt with more severely.

Executive Judge Gaerlan-Mejorada reasoned thus:

Any delay in the administration of justice, no matter how brief, deprives the litigant of his right to a speedy disposition of his case. Not only does it magnify the cost of seeking justice. It undermines the people's faith and confidence in the judiciary, lowers its standards and bring it to disrepute. It must be emphasized that the subject writ issued by the Pasig City-MeTC, Branch 69 is a mere administrative enforcement medium of the Order dated July 20, 2007, -- the main order supporting the complainant's motion for the issuance of a writ of execution. The writ itself cannot and does not assume life of its own independent from the order on which it is based. Why it took the Court to issue the subject writ four (4) months after the issuance of the order dated July 20, 2007, truly boggles the mind. Respondent Migriño could not heap the blame on Branch Sheriff Ziganay and feel absolved of any liability for faulty court management. As Clerk of Court, respondent Migriño is the administrative office[r] of the court who must ensure that prompt action on the court's business must be done; failing which, he is deemed guilty of negligence.

The Honorable Supreme Court has stressed time and again that clerks of court are essential judicial officers who perform delicate administrative functions vital to the prompt and proper administration of justice. Their duty is, inter alia, to assist in the management of the calendar of the court and in all matters that do not involve the discretion or judgment properly belonging to the judge. They play a key role in the complement

of the court, as their office is the hut of adjudicative and administrative orders, processes and concerns. As such, they are required to be persons of competence, honesty and probity; they cannot be permitted to slacken on their jobs. Respondent Migriño is guilty of simple neglect of duty.<sup>[5]</sup> (Citation omitted.)

In a Resolution<sup>[6]</sup> dated June 17, 2009, this Court noted the Report dated March 26, 2009 of Executive Judge Gaerlan-Mejorada and required the parties to manifest if they are willing to submit the case for resolution on the basis of the pleadings filed. Only respondent Migriño manifested<sup>[7]</sup> his willingness to submit the instant case for resolution based on the pleadings filed.

In a Resolution<sup>[8]</sup> dated November 16, 2009, this Court dispensed with complainant San Buenaventura's filing of his manifestation and considered the instant case submitted for resolution. Consequently, in a Resolution<sup>[9]</sup> dated July 21, 2010, this Court referred the instant administrative matter to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

On October 6, 2010, the OCA submitted a Report with the following recommendations:

In view of the foregoing, we respectfully submit for the consideration of the Honorable Court the following recommendations:

1. Respondent Timoteo A. Migriño, Clerk of Court III, Metropolitan Trial Court (Branch 69), Pasig City be found **GUILTY** for simple neglect of duty and be **SUSPENDED** for two (2) months without salary and benefits, with a stern warning that the commission of the same or similar offense in the future shall be dealt with more severely;
2. A separate administrative complaint be filed against Judge Jacqueline J. Ongpauco, Acting Presiding Judge, MeTC (Branch 69), Pasig City for undue delay in resolving the motion for the issuance of a writ of execution in Civil Case No. 6798, which complaint shall be re-docketed as a regular administrative matter; [and]
3. Judge Ongpauco be directed to submit her **COMMENT** on the charge against her within fifteen (15) days from receipt of notice.

<sup>[10]</sup>

The OCA modified the penalty recommended by Executive Judge Gaerlan-Mejorada from a fine equivalent to two months salary to suspension of two months without salary and benefits after finding respondent Migriño guilty of simple neglect of duty, a less grave offense punishable by suspension of one (1) month and one (1) day to six (6) months, if committed for the first time, and by dismissal if committed for the second time.

We adopt the findings of fact of the OCA and hold respondent Migriño liable for simple neglect of duty.