

## FIRST DIVISION

[ A.M. No. MTJ-06-1646, July 16, 2008 ]

**ANTONIETA LAO, COMPLAINANT, VS. JUDGE ODELON S. MABUTIN AND ACTING CLERK OF COURT AND INTERPRETER EFREN F. VARELA, BOTH OF MUNICIPAL TRIAL COURT, CATBALOGAN SAMAR, RESPONDENTS.**

### R E S O L U T I O N

**CARPIO, J.:**

This is a complaint for (1) simple neglect of duty filed by Antonieta Lao (Lao) against acting clerk of court Efren F. Varela (Varela), Municipal Trial Court (MTC), Judicial Region VIII, Catbalogan, Samar; and (2) undue delay in transmitting the records of a case filed by Lao against Judge Odelon S. Mabutin (Judge Mabutin) of the MTC.

Lao was the plaintiff in a civil case<sup>[1]</sup> for forcible entry against a certain Nimfa Rosal (Rosal). The case was docketed as Civil Case No. 789 and was pending before Judge Mabutin. On 17 June 2002, Judge Mabutin decided Civil Case No. 789 in favor of Rosal and, on 16 July 2002, Lao received a copy of the decision.

Feeling aggrieved, Lao filed a notice of appeal<sup>[2]</sup> with Judge Mabutin on 29 July 2002. In an order<sup>[3]</sup> dated 12 August 2002, Judge Mabutin gave due course to the appeal:

Considering that the notice has been filed within the reglementary period, the appeal sought for is hereby given due course. Let the entire records of [the] case with its pages numbered together with the transcript of stenographic notes and the exhibits be forwarded to the Regional Trial Court of Catbalogan, Samar for purposes of the appeal.

Despite follow-ups from Lao, Varela and Judge Mabutin failed to transmit the records of Civil Case No. 789 to the Regional Trial Court (RTC) for more than one year and four months. Lao alleged that every time she made a follow-up, Varela told her that the records of the case were still to be retrieved from the files.

In an affidavit-complaint<sup>[4]</sup> dated 17 March 2004 and filed with the Office of the Court Administrator (OCA), Lao charged Varela and Judge Mabutin with simple neglect of duty and undue delay in transmitting the records of a case, respectively. In its 1<sup>st</sup> Indorsement<sup>[5]</sup> dated 2 June 2004, the OCA directed Varela and Judge Mabutin to comment on the affidavit-complaint.

In his comment<sup>[6]</sup> dated 15 July 2004, Varela stated that (1) his workload was heavy; (2) Lao made the follow-ups only during the latter part of 2003; and (3) the

oversight was unintentional. In his comment<sup>[7]</sup> dated 15 July 2004, Judge Mabutin stated that (1) the follow-ups were not made to him; (2) the MTC lacked manpower; (3) the oversight was unintentional; (4) he was not lacking in his supervision over Varela; and (5) he rendered work even on days he was on leave.

In its Report<sup>[8]</sup> dated 14 June 2006, the OCA found Varela and Judge Mabutin liable for the unjustified and long delay in the transmittal of the records of Civil Case No. 789. The OCA recommended that (1) the case be re-docketed as a regular administrative matter; (2) Varela be suspended for one month and one day; and (3) Judge Mabutin be fined P11,000.

In a Resolution dated 7 August 2006, the Court re-docketed the case as a regular administrative matter and directed Varela and Judge Mabutin to manifest if they were willing to submit the case for decision based on the pleadings already filed. In his letter dated 20 July 2007, Varela adopted his 15 July 2004 comment as his manifestation. In his manifestation dated 18 September 2006, Judge Mabutin stated his willingness to submit the case for decision based on the pleadings already filed and reiterated that he was not lacking in his supervision over Varela and that he rendered work even on days he was on leave.

The Court agrees with the OCA.

Varela is liable for simple neglect of duty. Section 6, Rule 40 of the Rules of Court provides:

SEC. 6. *Duty of the clerk of court.* -- Within **fifteen (15) days** from the perfection of the appeal, the clerk of court or the branch clerk of court of the lower court shall transmit the original record or the record on appeal, together with the transcripts and exhibits, which he shall certify as complete, to the proper Regional Trial Court. A copy of his letter of transmittal of the records to the appellate court shall be furnished the parties. (Emphasis ours)

Lao's appeal was perfected when she filed the notice of appeal on 29 July 2002.<sup>[9]</sup> Following Section 6, Varela should have transmitted the records of Civil Case No. 789 to the RTC *within 15 days* from 29 July 2002. Varela transmitted the records of Civil Case No. 789 to the RTC only on 4 December 2003 and only after Lao made follow-ups. Had Lao not made any follow-up, Varela would have failed to transmit the records of the case to the RTC indefinitely.

Even granting that (1) he had a heavy workload; (2) Lao only made the follow-ups during the latter part of 2003; and (3) the oversight was unintentional, Varela would still be liable. First, having a heavy workload is not a valid excuse. Otherwise, every government employee charged with dereliction of duty would proffer such a convenient excuse to escape liability, to the great prejudice of the public.<sup>[10]</sup> Second, Rule 40 of the Rules of Court does not require litigants to make any follow-up with the clerk of court. As acting clerk of court, Varela should have transmitted the records of Civil Case No. 789 to the RTC within 15 days from 29 July 2002 even without any follow-up from Lao. Third, good faith or lack of intention to be negligent is a lame, invalid, and unacceptable excuse.<sup>[11]</sup> Good faith, at most, is only a mitigating circumstance.<sup>[12]</sup>