

SECOND DIVISION

[A.M. No. MTJ-99-1225, April 12, 2000]

**NELFA SAYLO, COMPLAINANT, VS. JUDGE REMIGIO V. ROJO,
MTCC, BRANCH 5, BACOLOD CITY, RESPONDENT.**

R E S O L U T I O N

QUISUMBING, J.:

In a verified complaint dated May 29, 1997, Nelfa Saylo charged Judge Remigio V. Rojo, Municipal Trial Court in Cities, Branch 5, Bacolod City, with Manifest Partiality and Gross Neglect of Duty relative to Civil Case No. 23314, entitled "*Nelfa Saylo vs. Becky Luo Saylo, et al.*", for Replevin.

Nelfa Saylo alleged in her verified complaint that Judge Rojo is guilty of Manifest Partiality and Gross Neglect of Duty for adamantly refusing to issue a writ of replevin despite the lapse of six (6) months after the complaint for replevin was filed and even after her lawyers had already filed a motion to resolve the matter. She claims that the defendants in the aforesaid civil case were still using the subject motor vehicle and that she feared that the vehicle could be accidentally destroyed or lost.

She avers that on December 5, 1996, she filed through her lawyers, Civil Case No. 23314 raffled to Branch 5, presided by Judge Remigio V. Rojo and that she submitted all the requirements mandated by Rule 60, Section 2, of the Rules of Court, ^[1] but inspite of her compliance, the respondent judge has not issued the writ of replevin contrary to Rule 60, Section 3 of the Rules of Court. ^[2] She further alleged that Judge Rojo exhibited manifest partiality towards defendants by his refusal to issue a writ of replevin and his refusal to act on her motion to declare the defendants in default. She asked that Judge Rojo be dismissed from the service.

On October 15, 1997, Judge Rojo submitted his comment and prayed that the instant case be dismissed for lack of merit. Respondent judge stated at the outset that he did not know the parties in said case nor was he related to any of the parties or counsels, nor has he a special interest in the case. He insisted that a review of the orders of the court will show that he did not favor any of the parties. In fact, he had denied defendants' motion to dismiss. If at all he should be accused of favoring any party, that party favored would be the plaintiff. Respondent judge explained that he maintains an impartial attitude on all cases in his sala. In three separate instances he voluntarily inhibited from trying cases where his family has a professional relationship with either party or counsel. In the case of Nelfa Saylo when she filed through counsel a motion for inhibition on June 3, 1997, the undersigned granted the motion.

Anent the charge of gross neglect of duty, quoted hereunder is the explanation of the respondent judge:

"During the January 23, 1997 hearing Atty. Hermilo Pa-oyon was told in open court that the writ cannot be issued because there was a defect in the complaint and the plaintiff's affidavit. That on or about the second week of February 1997, Atty. Pa-oyon went inside the chamber of the undersigned alone without the presence of counsel for the defendant. He asked the undersigned what was the defect in the plaintiff's complaint and affidavit. Although what Atty. Pa-oyon did was unethical the undersigned answered him that he should read once more Section 2, Rule 60, Revised Rules of Court, and compare it with plaintiff's complaint and affidavit. The undersigned cannot point out the specific defect. That would have been unfair and unethical. The undersigned waited for Atty. Pa-oyon to make the necessary corrections on the plaintiff's complaint and affidavit, but none came. Atty. Pa-oyon should have been thankful to the court for giving him an opportunity to correct the work of his office without a written order. But apparently counsels for the plaintiff cannot find a defect. Their minds were set. They did not heed the oral advice of the court to make the necessary corrections. They believed that they are correct and insisted on the immediate issuance of the writ of replevin as shown by paragraph 4 of the verified administrative complaint.

From March 11, 1997 when the court issued the order submitting for resolution the Motion to Resolve dated March 6, 1997 to June 2, 1997 when it issued the order resolving the prayer for the issuance of a writ of replevin is a period of eighty three days. From March 11, 1997 to June 3, 1997 when the court issued the order resolving the Motion to Declare Defendant in Default is a period of eighty four days. The undersigned did not violate Section 5 of the Judiciary Act of 1948, as amended, which requires him to resolve all pending motions within ninety days from the date of their submission for resolution. Furthermore, nowhere in Rule 60, Revised Rules of Court, is the court required to issue a writ of replevin immediately upon application by the plaintiff. The court has to go over the allegations of the affidavit supporting the application for a writ of replevin to determine whether such issuance is proper. In his order dated June 2, 1997 (Annex "13") he explained that compliance by the plaintiff of the requirements was insufficient. Had plaintiff complied with Section 2, Rule 60, Revised Rules of Court, the writ of replevin would have been issued.

The undersigned is not remiss in his duty. He acted timely on the application for a writ of replevin, although at first in the form of an oral order and suggestion." [3]

Respondent judge theorized that the hatred between the plaintiff and defendants, who are members of the same family, spilled over into the court and it was unfortunate for him to be placed between families on the warpath.

In a Memorandum dated August 23, 1999, the Office of the Court Administrator after evaluation, found no clear and convincing proof to support the charge of Manifest Partiality. However, the OCA is convinced that respondent judge was guilty of Gross Neglect of Duty. Accordingly, they recommended an imposition of FINE in the amount of Five Thousand Pesos (P5,000.00), with a warning that a repetition or similar act will be dealt with more severely.