

THIRD DIVISION

[A.M. No. RTJ-96-1356, August 21, 1996]

**EDMELINDA L. FERNANDEZ, COMPLAINANT, VS. JUDGE FAUSTO
H. IMBING, RESPONDENT.**

R E S O L U T I O N

MELO, J.:

In her affidavit-complaint dated November 9, 1995, Edmelinda L. Fernandez charged Judge Fausto H. Imbing, Acting Presiding Judge of Branch 29 of the Regional Trial Court of the 9th Judicial Region stationed in San Miguel, Zamboanga del Sur, with grave abuse of authority, serious misconduct, dishonesty, incompetence, and violation of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019), relative to an order issued in Criminal Cases No. 9962 and 9963, entitled "People of the Philippines vs. Edgardo Domingo, Alias 'Gado'" for Murder, and Frustrated Parricide.

In her affidavit, complainant alleged: that she was the private complainant in the aforementioned criminal cases; that on May 3, 1995, respondent called the cases for trial although they were not calendared on that day and no notices had been sent to the parties as certified to by the Acting Clerk of Court and by the Chief of Police of Margosatubig, Zamboanga del Sur; that on said date, respondent, with unusual haste, ordered the provisional dismissal of the criminal cases without notice to and consent of the offended parties; that after the issuance of the order dated May 3, 1995, the accused was immediately released from custody; and that a motion for reconsideration filed by the private prosecutor was granted by respondent judge after realizing his mistake and he forthwith issued an Alias Warrant of Arrest but the accused was nowhere to be found.

In his comment dated February 11, 1996 submitted in compliance with the Court's Resolution dated January 17, 1996, respondent averred that: the criminal cases were filed on April 21, 1992 and raffled to Regional Trial Court, Branch 21, Pagadian City; after a series of scheduled hearings, an order was issued directing the transfer of the cases to Branch 29 (San Miguel, Zamboanga del Sur), which has jurisdiction over the Municipality of Margosatubig, pursuant to Administrative Circular No. 3-94; on April 28, 1995, the accused, escorted by the Assistant Provincial Warden, went to see him and requested that the cases be calendared because he had been in detention for three (3) years already; seeing the predicament of the accused, respondent granted the request and had the cases calendared on May 3, 1995 by giving oral instructions to the clerk in-charge of the criminal cases; on May 2, 1995, Clerk III Nestor Silos proceeded to calendar the cases and prepared the notice of hearing set on May 3, 1995, but realizing that the Acting Clerk of Court was not around to sign the notices, he (Nestor Silos) merely attached the unsigned notice of hearing to the record of the cases and erased the cases from the temporary calendar; on the scheduled hearing, the cases were called but the public prosecutor

handling them was not present, as was the private prosecutor; upon the insistence of the counsel for the accused and upon the honest belief that notices were sent, the cases were dismissed; on July 4, 1995, a motion for reconsideration was filed by the prosecution and on July 29, 1995, the motion was granted and the cases reinstated; and, on August 3, 1995, after receiving information that the victim was a relative, he inhibited himself from trying the cases.

The Court, in its Resolution dated March 11, 1996, noted respondent judge's comment and referred the matter to the Office of the Court Administrator for evaluation, report, and recommendation. Thereafter, on May 10, 1996, said Office, submitted its Memorandum with the following findings and recommendation:

As culled from the records on file in this case, the Order dated May 3, 1995 for the provisional dismissal of the cases was uncalled for considering that the cases were not set for hearing on that day. Respondent on page 4 of his comment stated, "the clerk merely attached the unsigned notices of hearing to the record of the case and erased the cases from his temporary calendar". An affidavit of the Clerk was submitted and marked Annex "R" of the comment.

It is true that the criminal cases were reinstated upon motion of the private prosecution, but contrary to the contention of the respondent that no irreparable injury was caused, the result of the hasty dismissal of the cases paved the way for the accused to release himself from the strong arms of the law and evade the would be penalty imposable under the circumstances.

From the facts narrated by the respondent in his comment, it shows his untactfulness when he did not even verify the receipt or non-receipt of the notice of hearing. We cannot subscribe to his averment that he committed an honest mistake when he relied on the competence of the clerk in-charge of criminal cases. Also, it is noted that the lawyer who moved for the dismissal of the cases, Atty. Pacifico T. Cimafranca, Jr., is a Public Attorney and not the counsel of record for the accused. Respondent's cognizance of the motion to dismiss is a flagrant display of abuse of authority (See Annex "V" of comment, p.98, rollo).

While the charges of dishonesty and violation of the anti-graft and corrupt practices are not substantiated, we, however, find him liable for grave abuse of authority and gross negligence. Inefficiency implies negligence, incompetence, ignorance and carelessness. A judge would be inexcusably negligent if he failed to observe in the performance of his duties that diligence, prudence and circumspection which the law requires in the rendition of any public service (Serroza vs. Honrado, 110 SCRA 388).

ACCORDINGLY, it is respectfully recommended that respondent Judge be held liable for grave abuse of authority and negligence and a FINE of TEN THOUSAND PESOS (P 10,000.00) be imposed upon him with STERN WARNING that a repetition of the same or similar act(s) will be dealt with more severely.