



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

EN BANC

**RE: REPORT OF ATTY. MARIA
CONSUELO AISSA P. WONG-
RUSTE, ASSISTANT CLERK
OF COURT, COURT OF
APPEALS, VISAYAS STATION,
CEBU CITY “RE: MISSING
ORIGINAL RECORDS OF CA-
G.R. CV No. 01293, SOFIA
TABUADA, ET AL. vs.
ELEANOR TABUADA, ET AL.”**

A.M. No. 19-08-19-CA

Present:

BERSAMIN, *Chief Justice*,
CARPIO,
PERALTA,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
REYES, A., JR.,
GESMUNDO,
REYES, J., JR.,*
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING, and
ZALAMEDA, *JJ.*

Promulgated:

October 15, 2019

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DECISION

INTING, J.:

This refers to the Report and Recommendation¹ dated June 27, 2019 of Atty. Maria Consuelo Aissa P. Wong-Ruste, Assistant Clerk of Court and Investigating Officer, pursuant to an investigation conducted on the Incident Report of Mr. Fernando C. Prieto (Prieto), Chief of the

* On leave.

¹ Record, pp. 410-435.

Judicial Records Division, regarding the missing records of CA-G.R. CV No. 01293 entitled "*Sofia Tabuada, et al. v. Eleanor Tabuada, et al.*" (Tabuada case).

The Antecedents

It appears that on September 30, 2009, the Court of Appeals, Visayas Station (CA-Visayas) rendered a Decision penned by Associate Justice Samuel H. Gaerlan with the concurrence of Associate Justice Franchito N. Diamante and Associate Justice Edgardo L. Delos Santos which granted the appeal in the Tabuada case.²

On January 9, 2010, at 2:45 p.m., the original records of the Tabuada case were turned over by the Office of the *Ponente* to the Archives Unit of the Judicial Records Section (JRS) of CA-Visayas.³ Rossie A. Maceda (Maceda), a stenographer detailed in the Archives Unit, who was tasked to receive all pleadings, *rollos*, and original records from different offices, received the original records of the Tabuada case.⁴ She listed the received documents then turned them over to Voltaire Matildo (Matildo), Clerk II of the Archives Unit, who was assigned to docket all received original records and *rollos* and to encode them according to their specific locations in the bodega. Afterwhich, Matildo gave the records to Eleazer "Randy" Canoneo (Canoneo), a contractual employee assigned at the Archives Unit, for safekeeping in the bodega.

Canoneo then prepared an index card with the following details⁵:

CASE NO:	01293 CV
PARTIES:	SOFIA TABOADA, ET AL. VS. ELEANOR TABUADA ET AL.
PONENTE:	GAERLAN
SHELF:	15
ROW:	5

² *Id.* at 412; as culled from the Report and Recommendation dated June 27, 2019.

³ *Id.* at 166; as appearing in the Logbook. However, this was corrected to February 9, 2010 as claimed by Rossie A. Maceda and Voltaire Matildo in their Comment dated July 26, 2016, *id.* at 143-145.

⁴ *Id.* at 144.

⁵ *Id.* at 167.

COLUMN:	COLUMN Right
REMARKS:	

Subsequently, a Resolution dated March 7, 2011 of CA-Visayas denied the motion for reconsideration filed in the Tabuada case.⁶

Sometime in January 2014, Anthony F. Delima III (Delima), then Court Aid II, who was assigned to assist the Archives Unit in the recording of all the movements of original records and holds office inside the safekeeping area, was instructed by Mario C. Agura (Agura), Head of the Archives Unit, to conduct an inventory of all remanded and elevated original records. It was during the conduct of the inventory that Delima discovered that the original records of the Tabuada case was no longer in its assigned shelf. He then immediately informed Agura about the missing records.⁷

Years later, while the Tabuada case was already pending before this Court, a litigant's representative therein requested for a copy of its original records *via* phone call made to Ricarose E. Pedaria (Pedaria), then Clerk II of the Archives Unit, sometime in June 2016. Pedaria then relayed the request to Agura, who instructed her to inform the caller to call again. She then wrote the case number in a piece of paper and gave it to Delima for retrieval in the safekeeping area.⁸ However, Delima could not locate the records. When the requesting party made a return call and demanded to speak with the head of the office, Pedaria referred her to Abdul M. Amer (Amer), JRS Head. It was then that Pedaria overheard Agura confirming to Delima that the requested records are the ones which they were already trying to locate at the outset.⁹

Amer was able to talk to the requesting party while he was at the Office of the Archives Section of CA-Visayas supervising the inventory of cases. He instructed Delima, who was already a Clerk III of the Archives Unit, to produce a copy of the records of the Tabuada case. After several follow-ups, Amer received an information that there was no favorable action on the request. He then ordered Agura to locate the requested records and to submit his corresponding report.¹⁰

⁶ *Id.* at 413.

⁷ *Id.* at 170; Explanation Letter of Anthony F. Delima III.

⁸ TSN, December 13, 2018, p. 4.

⁹ *Id.* at 10.

¹⁰ Record, p. 98; Inter-Office Memorandum of Abdul M. Amer dated June 15, 2016.

In compliance therewith, Agura submitted his explanation wherein he alleged that their logbook data revealed that on February 9, 2010, the Archives Unit received the records of the Tabuada case. Agura confirmed that when a litigant requested for a copy of the records thereof, Delima tried to locate them in the bodega; but was surprised that they were no longer there. Agura concluded that the records could have been inadvertently moved or transferred to another location, but undertook to continue efforts to retrieve them.¹¹

On April 17, 2018, Prieto directed Agura and other concerned personnel of the Archives Unit to submit their respective explanations on the circumstances surrounding the loss of the records in the Tabuada case.¹² Prieto further required Amer, as the Head of the JRS of CA-Visayas, to conduct his own investigation concerning the missing records and to submit his recommendation.¹³

Consequently, Agura submitted his explanation wherein he recalled that after the case records were transferred to the bodega, in Shelf 15, Row 5, Right Column as the assigned locator—there were no recorded transfers or possible transactions that would have resulted to the relocation of the records until the discovery of loss in 2016. He recounted that despite annual inventories conducted by CA-Visayas and Court of Appeals, Manila (CA-Manila), the records could not be located. He further disclosed that he already inquired with the different lower courts as to the possibility of the inadvertent transmittal to them of the missing records, but the efforts proved futile.¹⁴

In another Explanation¹⁵ dated July 16, 2018, Agura clarified that Canoneo prepared the locator index as the personnel-in-charge with the filing and retrieval of cases, together with Delima. He added that there were no inquiries from litigants nor requests for a copy of the Tabuada case which led him to the conclusion that the records remained in the same location until they were discovered missing. Lastly, he justified that his personal visit to the Regional Trial Court of Iloilo City, which is the court of origin of the Tabuada case, was with the approval of Justice

¹¹ *Id.* at 119; Report of Mario C. Agura dated July 15, 2016.

¹² *Id.* at 116, 125; Inter-Office Memorandum dated April 17, 2018 and May 28, 2018.

¹³ *Id.*

¹⁴ Record, pp. 119, 161-164; Report of Mario C. Agura dated June 4, 2018 and Amended Explanation dated June 26, 2018.

¹⁵ *Id.* at 119, 161-164; Explanation dated July 16, 2018.

Gabriel Ingles, Justice Marilyn Lagura-Yap, and some Judicial Records Division personnel.

Hence, on September 4, 2018, Prieto filed an Incident Report with the Clerk of Court of CA-Manila¹⁶ which was thereafter indorsed to Atty. Ma. Consuelo Aissa P. Wong-Ruste (Atty. Wong-Ruste), Assistant Clerk of Court of CA-Visayas, for investigation, report, and recommendation.¹⁷

The Investigator's Recommendation

In her Report and Recommendation dated June 27, 2019, Atty. Wong-Ruste was convinced that Agura was negligent in failing to institute a secure, efficient, and effective process work flow with respect to the custodianship and safekeeping of original records. It was concluded that, while there was an index card maintained for each original record for the purpose of recording any movement thereof, it was not updated and the pulling out of records could be done by any employee in charge for the remand of original records. Further, the safekeeping area was not even secured and was also made easily accessible, without any logbook with respect to the use of its designated keys. There was also no periodic inventory of original records under the custodianship of the Archives Unit. Worse, there were instances when original *rollos* were remanded to the wrong court.

She also found Agura liable for his failure to immediately report to his supervisor, in the person of Amer, that the original records of the Tabuada case were missing. It was only when his supervisor called his attention as to the missing records when he began to send tracers to the lower courts within the Visayas region. He even failed to monitor the replies to these tracers, if any. This delay, his lack of proper supervision over the JRS, and his indifference to his duty caused the failure to timely reconstitute the missing records.

Thus, Atty. Wong-Ruste recommended that Agura be charged with the less grave offense of simple neglect of duty, with a penalty of one month and one day suspension, or a fine in lieu of suspension since Agura is discharging front line functions, aside from the insufficiency of personnel complement of the Archives Unit in CA-Visayas.

¹⁶ *Id.* at 342-346.

¹⁷ *Id.* at 341.

The Issue

The essential issue in this case is whether or not Agura should be held administratively liable for simple neglect of duty for the loss of the original records of the Tabuada case.

The Ruling of this Court

This Court finds the Report and Recommendation of the Investigating Officer well-taken, except for the penalty.

Agura is the Head of the Archives Unit of CA-Visayas and as such, he occupies a highly sensitive position as the designated custodian of all court records elevated to the appellate court in Cebu. His primary task is to safekeep all original records and *rollos* placed under his custody, as well as to monitor and maintain a record of these documents. In addition, under the mantle of the Judicial Records Division is the issuance of certified true copies of documents or exhibits under the custody of his office.¹⁸

Section 1, Canon IV of A.M. No. 03-06-13-SC, otherwise known as the Code of Conduct for Court Personnel, mandates that “[c]ourt personnel shall at all times perform official duties properly and with diligence.” Judicial machinery can only function if every employee performs his task with the highest degree of professionalism.¹⁹ All court personnel are obligated to perform their duties properly and with diligence.²⁰ Any task given to an employee of the judiciary, however menial it may be, must be performed in the most prompt and diligent way.²¹

In this case, Agura failed to properly account for the loss of the original records under his custody. As defense, he merely surmised that the records were misplaced or possibly relocated because of inactivity or the absence of requests with respect to access over it. Aside from its

¹⁸ 2002 Revised Manual for Clerks of Court, A.M. No. 02-5-07-SC, May 21, 2002.

¹⁹ A.M. No. 2014-07-SC, July 8, 2015, Re: Report of Atty. Pabello, Chief of Office, Office of Administrative Services-Office of the Court Administrator, 763 Phil. 196, 203.

²⁰ *Id.*

²¹ *Contreras v. Monge*, 617 Phil. 30, 35 (2009).

trivial nature, this excuse is not compelling enough to justify failure to perform one's duties properly.

Agura, as head of the Archives Unit, was evidently remiss and negligent in the discharge of his duties. The loss of the original records reflects an inefficient and disorderly system of keeping case records and his lack of close supervision in the performance by his subordinate personnel of their duties. Worse, Agura's failure to take appropriate action within a reasonable period of time after discovery of the missing records in 2016, manifests his carelessness and indifference. As head of the Archives Unit, Agura should have exercised diligence, informed the head of the JRS and the *ponente* about the missing records upon knowledge thereof, and resorted to safety measures to ensure that all original records are accounted for as to avoid similar occurrences in the future.

Neither does the lack of proper orientation and training exculpate Agura from liability. CA-Visayas opened its office to the public in October 2004. Agura assumed office in November 2004 and conceded that he was not oriented about the duties and task of his office as head of the Archives Unit as he merely relied on Lolita Espinosa, who was then the JRS Head. However, it should be noted that, when Agura assumed the position of Archives Unit Head, it was understood that he was willing, ready, and capable to do his job with utmost devotion, professionalism, and efficiency. Hence, his lack of proper training, orientation or the necessary manpower are unavailing defenses.

Indubitably, court records are confidential documents and Agura should have adopted measures to safeguard and ensure their confidentiality and integrity.²² It is unfortunate that, prior to the loss of the case records and within Agura's watch, the safekeeping area or bodega where the case records were kept was open and without any partition to separate it from the maintenance personnel.²³ Its keys were merely left hanging near his table for anyone's access.²⁴ Agura further detailed that a utility personnel named Michael Mendez was even allowed to hold office inside the bodega.²⁵ On the basis of the foregoing circumstances, Agura positively failed to meet the requirement expected

²² *OCA v. OIC and Legal Researcher Cinco*, 610 Phil. 40, 45 (2009).

²³ TSN, November 28, 2018, pp. 19-22.

²⁴ *Id.* at 22-24.

²⁵ *Id.* at 25-26.

of him as a custodian. The fact that he allowed and tolerated the aforementioned system, which compromised the integrity of the safekeeping area or bodega is a manifestation of his utter lack of diligence and his carelessness in performing his duty as a custodian.

Furthermore, a simple exercise of diligence should have alerted Agura to inform his superiors as to the lack of the necessary personnel. Aside from his failure to acknowledge accountability as custodian of court records, the lack of system in his office was also demonstrated by the practice of allowing contractual employees, Delima and Canoneo, to have access to the safekeeping area as temporary record custodians who were tasked with the highly confidential and sensitive duty of monitoring the movements of the original records, including its pulling out from its assigned shelf. While the office utilizes the use of logbook and index cards to monitor the original records submitted to their office, Agura acknowledged that these were not updated by his personnel. Nonetheless, Agura should not be allowed to pass the blame to his subordinates. Being the administrative officer and having control and supervision over court records, he should have seen to it that his subordinates performed their functions well.²⁶

Verily, the transgression committed herein by Agura exhibited a clear disregard of his duty as custodian of the original records of cases transferred to his unit and his indifference in failing to implement an effective and efficient system in monitoring the movement of original records and *rollos* under his custody. Being the custodian of court records, Agura is expected to discharge his duty of safekeeping them with diligence, efficiency, and professionalism. Consonant to this duty of safekeeping the records of cases is his bounden duty to see to it that these are kept in a secure place.²⁷ It is his task to plan, coordinate and evaluate work programs for a systematic management of judicial records placed under his custody in the Archives unit. His indifference therefore demonstrates a lack of any sense of accountability in performing the tasks assigned to him.

Indeed, Agura should be held liable for simple neglect of duty which is defined as “the failure to give attention to a task or the disregard of a duty due to carelessness or indifference.”²⁸ Section 46(D)

²⁶ *Rivera v. Buena*, 569 Phil. 551, 558 (2008).

²⁷ *OCA v. OIC and Legal Researcher Cinco*, *supra* note 22 at 45.

²⁸ *Id.* at 47.

(1), Rule 10 of Civil Service Commission (CSC) Resolution No. 1101502 dated November 8, 2011, otherwise known as the Revised Uniform Rules on Administrative Cases in the Civil Service, classifies simple neglect of duty as a less grave offense punishable by one month and one day to six months suspension, for the first offense.

In *Report on the Audit and Inventory of Cases in the RTC, Br. 11, Balayan, Batangas*,²⁹ a judge was found liable for the missing records of several cases, as well as delay in the disposition of his cases, and was meted out with a fine of ₱5,000.00. In this case, this Court found that Judge Gorospe has not offered a sufficiently plausible explanation for his apparent mismanagement as there were missing records of some of the cases pending in his *sala*, and the non-availability of the docket book when required for inspection. Also in *Atty. Ala v. Judge Ramos, Jr.*,³⁰ a judge was fined in the amount of ₱10,000.00 for losing the records of one civil case and thereby unduly delaying the resolution thereof.

In the case of *OCA v. OIC and Legal Researcher Cinco*,³¹ where it was discovered that the records of five cases were missing, the Branch Clerk of Court was found guilty of simple neglect of duty and was suspended for one month and one day without pay for her failure to exercise diligence in the discharge of her duty as records custodian. This Court remarked:

Clerks of court are ranking officers who perform vital functions in the administration of justice. They are the designated custodians of, and have control over, court records. Section 7, Rule 136 of the Rules of Court states that clerks of court shall safely keep all the records, papers, files, and exhibits committed to their charge. The 2002 Revised Manual for Clerks of Court states that the duties of clerks of court include receiving and keeping the necessary papers of cases. In *Office of the Court Administrator v. Carriedo*, the Court held that clerks of court are duty-bound to safely keep court records and have them readily available upon request. They must be diligent and vigilant in managing the records. In *Office of the Court Administrator v. Ramirez*, the Court held that clerks of court are liable for the loss of court records.³² (Underscoring in the original.)

²⁹ 304 Phil. 668 (1994).

³⁰ 431 Phil. 275 (2002).

³¹ 610 Phil. 40 (2009).

³² *Id.* at 46-47.

Also, in *Re: Report on the Judicial Audit Conducted in the RTC, Br. 2, Borongan, Eastern Samar*,³³ the clerk in charge of civil cases was found guilty of simple neglect of duty since she was directly accountable for the loss of the records of one civil case, and was meted out with the fine of ₱2,000.00. This Court ratiocinated therein that, “as an officer of the court, she was expected to discharge her duty of ensuring the safekeeping of court records with diligence, efficiency, and professionalism. Consonant with this duty, she should have seen to it that the records were kept in a secure place.”³⁴

In *Atty. Jacinto v. Judge Layosa*,³⁵ a judge and her Clerk III were found liable for simple misconduct for the missing records of one civil case. This Court discussed that, it is the duty of the judge to closely monitor the flow of cases as well as to direct the personnel, especially those in charge of safekeeping the records to be diligent in the performance of their duties. On the part of the Clerk III, as the clerk in charge of civil cases, this Court elucidated that her duties include conducting periodic docket inventory and ensuring that the records of each case are accounted for. This Court was not convinced that the missing records were kept inside the filing cabinet and that it was handled with due care as it was shown that as the clerk in charge of civil cases, she failed to take appropriate steps and to devise means to keep the records, taking into consideration the defective condition of the filing cabinet. The Judge was fined in the sum of ₱5,000.00, while the clerk was ordered suspended for 21 days without pay.

In the same case, this Court had the occasion to differentiate grave misconduct from simple misconduct stating that a misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be proved by substantial evidence. Otherwise, the misconduct is only simple.³⁶

As distinguished from simple neglect of duty, gross neglect of duty is defined, *viz.*:

[N]egligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a

³³ 535 Phil. 719 (2006).

³⁴ *Id.* at 728.

³⁵ 527 Phil. 35 (2006).

³⁶ *Id.* at 44.

duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property. It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.³⁷

There is no doubt that the loss of the records in this case is by reason of Agura's lack of diligence in the discharge of his tasks. Although Agura is guilty of neglect in the performance of his official duties, he could only be held liable for simple neglect of duty since his omission is not as repulsive or of such nature to be considered brazen, flagrant, and palpable as would amount to a gross neglect of duty. It must be considered that he assumed office as head of the Archives Unit in November 2004, merely a month after the CA-Visayas opened its office to the public, and that, since then, this was his first reported offense which involved only one civil case with missing records. There was no indication that Agura's transgression showcased a flagrant disregard of established rule nor was it shown that he had the propensity to ignore the rules. There is also absence of proof that it was motivated by corruption or that Agura intentionally and deliberately caused the loss of the records to secure benefits for himself or for some other person.

Accordingly, the Court holds that Agura's disregard of his duty as Head of the Archives Unit in CA-Visayas and his carelessness or indifference to his task which resulted in the loss of the subject records herein, merits the imposition of the penalty of suspension from office for three months, without pay, as commensurate thereto. Pursuant to Section 47(1) of the Revised Rules on Administrative Cases in the Civil Service and the submission of Atty. Wong-Ruste that Agura is actually discharging frontline functions and that the personnel complement of the office is insufficient to perform such function, the alternative penalty of fine equivalent to his salary for three months shall be imposed instead.

WHEREFORE, Mario C. Agura, Records Officer II of the Archives and Receiving Section of the Court of Appeals, Visayas Station is found **GUILTY** of **SIMPLE NEGLIGENCE OF DUTY** and **METED OUT** the penalty of **FINE** equivalent to his salary for three (3) months,

³⁷ *Office of the Ombudsman v. Delos Reyes, Jr.*, 745 Phil. 366, 381 (2014) citing *Office of the Ombudsman v. De Leon*, 692 SCRA 27, 38 (2013).

with a stern warning that a repetition of the same or similar acts would warrant a more severe penalty.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

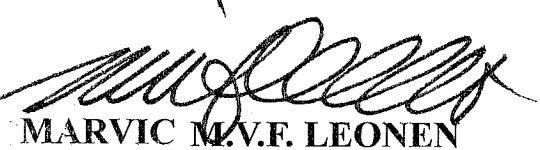
WE CONCUR:


LUCAS P. BERSAMIN
Chief Justice


ANTONIO T. CARPIO
Associate Justice


DIOSDADO M. PERALTA
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

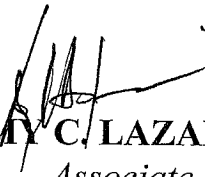

ANDRES B. REYES, JR.
Associate Justice

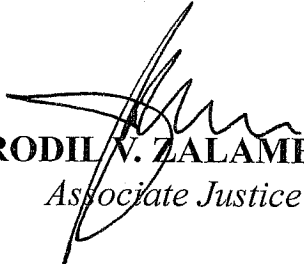

ALEXANDER G. GESMUNDO
Associate Justice

(On leave)
JOSE C. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


ROSMARID D. CARANDANG
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


RODIL V. ZALAMEDA
Associate Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court