

PROVINCIAL AUDITOR EFREN L. DIZON, COMPLAINANT, VS. ATTY. JOSE R. BAWALAN, CLERK OF COURT, REGIONAL TRIAL COURT, BRANCH 23, TRECE MARTIRES CITY, RESPONDENT.

A.M. No. P-94-1031. July 01, 2003

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PER CURIAM:

On December 1, 1993, Provincial Auditor Efren L. Dizon furnished the Office of the Court Administrator (OCA) with a copy of the report[1] on the examination of the cash and accounts of Atty. Jose R. Bawalan, Clerk of Court, Regional Trial Court, Branch XXIII, Trece Martires City, conducted on June 28, 1993, and review of transactions from December 18, 1992 to June 28, 1993. The audit allegedly revealed some deficiencies in handling the operations of the Office of the Clerk of Court. A cash shortage in the amount of P3,599.96 was also discovered. Upon receipt of a demand letter from the Office of the Provincial Auditor dated July 1, 1993, Atty. Bawalan, on July 9, 1993, restituted the amount. The auditors made the following observations:

- Collections for all funds from January 1, 1993 to June 28, 1993 in the amount of P12,785.99 were not remitted/deposited to the Bureau of Treasury and/or depository bank in violation of Section III of the Government Accounting and Auditing Manual and Joint Circular No. 1-81 of the Commission on Audit and Department of Finance which states that: "Collecting officers shall deposit their national collections intact to the Bureau of the Treasury or to any authorized government depository bank x x x as soon as collections reach P2,000.00."

- Legal fees for certified transcript of stenographic notes appear not have been paid to the court but only to the stenographers concerned in violation of Section 10 of Administrative Circular No. 31-90 dated October 15, 1990 issued by the Supreme Court of the Philippines which provides that: "Stenographers shall give certified transcript of notes taken by them to every persons (sic) requesting the same upon payment of (a) five (P5.00) pesos for each page of not less than two hundred fifty words before the appeal is taken and (b) three (P3.00) pesos for the same page, after the filing of the appeal, provided however that one half of the total charges shall be paid to the court and the other half to the stenographer concerned."

- Legal fees on civil cases filed by several persons with the Office of the Clerk of Court as shown by the respective docket number assigned, were not collected in violation of Section (f) of the Supreme Court Administrative Circular No. 31 -90.

- Legal Research Fee as required by Law, was not collected on civil cases filed by several persons with the Office of the Clerk of Court.

- Cash bond collected from Ms. Lourdes Vicedo in the amount of P6,000.00 per O.R. No. 8793451 dated March 18, 1993 was not deposited to the bank up to the time the said cash bond was allegedly withdrawn by Ms. Vicedo on April 22, 1993 and there was no evidence that the said bail bond was withdrawn by the said person. Likewise, cash bond collected from Andres Aribal in the amount of P10,000.00 on March 18, 1993 per O.R. No. 8703452 dated March 18, 1993 was not deposited up to the time that it was allegedly withdrawn by the said person in violation of Circular No. 8-93 dated February 12, 1993 of the Office of the Court Administrator, Supreme Court of the Philippines, which requires that (sic) "Clerk of Courts to deposit all

collections from bail bonds, rental deposits and other fiduciary collections with the Land Bank of the Philippines (LBP) or with the Rural for localities where LBP has no branches."

- Collections for Cash Bond and General Fund (Judiciary) were recorded in a Record Book and not in the prescribed cashbook in violation of Section 36 of the National Accounting and Auditing Manual which states that "Collecting and disbursing officers shall record their transactions involving money handled by them in the prescribed cashbooks."

- Transactions were not recorded daily in the cashbooks in violation of Section 36 of the National Accounting and Auditing Manual which states that "Cashbook entries should be written in ink at the time the transactions occur." At the time of cash count on June 28, 1993, transactions recorded in the cashbook were as of December 31, 1992 only, except those of the JDF whose transactions were recorded up to February 28, 1993.

- The Clerk of Court and the Clerk III assigned to receive collections were not bonded in violation of Section 66 of the Government Accounting and Auditing Manual and Section 101 of PD 1445 which states that "Every Officer of any government agency whose duties permit or require the possession or custody of government funds or property shall be accountable therefore for the safekeeping thereof in conformity with law and shall be properly bonded in accordance with law." In addition to this, the accountable officer has no vault or safe where to (sic) his undeposited collections as required under COA Circular No. 77-48 dated January 31, 1977 which requires "safe and other facilities should be provided to insure protection of cash and unused accountable forms."

- Monthly report of accountability for accountable forms were not prepared by the accountable officer in violation of Section 98 of Government Accounting and Auditing Manual which states that "The accountable officers shall render a report to COA Unit Auditor on their accountability for accountable forms at least once a month in the prescribed form. Such report shall also be prepared in case of transfer of office or accountability of the accountable officer. The report shall include, among others, the name/type quantity and serial number and/or values of the accountable forms as of last month/period, the forms received and issued during the month/period and the balance as of end of month/period." Likewise, obsolete, spoiled and cancelled official receipts were not submitted to the Auditor for inspection and destruction in violation of Section 99 of General Accounting and Auditing Manual which provides that "Accountable Officers shall submit to the COA Unit Auditor all obsolete, spoiled and cancelled official receipts and other accountable forms for inspection and destruction. Under no circumstances shall accountable officers destroy on their own accountable forms of any description, then be relieved from responsibility."

It appeared from the records that as of April 12, 1994, respondent had a pending application for resignation which the Court had not acted upon in view of the pendency of another administrative complaint against him.[2]

On June 15, 1994, the Court required respondent to comment on the complaint. The Court also resolved, among others, to "hold in abeyance the approval of the resignation of said respondent pending resolution of the administrative case" and "direct Atty. Bawalan to go on leave pending the resolution of the (instant) administrative matter." [3]

The copy of the Court's resolution addressed to Atty. Bawalan, however, was returned to this Court with notation "No longer at; Resigned". Thus, a copy of the resolution was served personally on Atty. Bawalan.[4]

On September 18, 1994, respondent filed a motion for extension of time to file comment. He reasoned that he had been very busy attending to his new job as a small time businessman and to other personal matters affecting the livelihood of his family.[5] The Court granted the motion.[6]

On November 25, 1994, respondent filed a second motion for extension of time to file comment[7] which was likewise granted by the Court.[8]

On March 13, 1996, it appearing that respondent still has not filed his comment on the complaint, the Court required respondent to show cause why he should not be disciplinarily dealt with or held in contempt for such failure and to submit to the Court his comment within ten days from notice.[9]

Respondent filed his explanation on May 8, 1996, together with a third motion for extension of time to file comment. He stated that since he left government service, he had been busy going to different provinces practicing his profession as lawyer and as real estate agent that he was unaware that copy of the complaint has already been sent to his residence by the Office of the Provincial Auditor.[10] Thus, he sought a thirty-day extension to file his comment which was again granted by the Court.[11]

Still, respondent did not file his comment.

On January 27, 1997, the Court imposed on him a fine of P500.00 and required him to submit his comment within ten days from notice.[12]

Respondent paid the fine on August 11, 1997 but still failed to file his comment. Neither did he offer an explanation for such failure.[13]

Thus, on September 1, 1997, the Court again imposed on him an increased fine of P1,500.00.[14]

As respondent failed to comply with the resolution of September 1, 1997, the Court once again increased his fine to P2,000.00. The Court further ordered him to comply with the resolution of June 15, 1994 by submitting his comment on the administrative complaint within ten days from notice, with warning that in case of his failure to file the required comment within the prescribed period, the case shall be resolved based on the complaint and its annexes.[15]

On December 15, 1999, the Court again noted that respondent still has not paid his fine nor filed his comment on the administrative complaint. The Court again increased his fine to P5,000.00 and warned him that his failure to file a comment within ten days from notice will be considered as waiver of his right to comment on the complaint and the case will be decided based on the records.[16]

On September 3, 2001, respondent having failed to file the required comment, the Court resolved to consider the filing of respondent's comment as waived.[17]

On January 31, 2003, the OCA submitted its report[18] with the following observation:

After a careful study of the records of the case, it appears that respondent indeed misappropriated the amount of P3,599.95 which the provincial auditors found to be missing after they conducted an examination of the cash and accounts of respondent on June 28, 1993. The demand letter dated July 1, 1993 to produce the missing funds was received by respondent on July 7, 1993. This cash shortage was restituted by respondent on July 9, 1993 per O.R. Nos. 8793454 in the amount of P3,160.00 and 8793645 in the amount of P439.36, both dated July 9, 1993. No explanation was submitted by respondent as to the circumstances of the cash shortage at the time of audit. In the case of Jose Feliciano, 15 Phil. 142, it was held that the failure of an accountable public officer to produce public funds upon demand of the auditor is a prima facie evidence that the missing funds or property had been utilized for personal uses and were therefore misappropriated. Consequently, the subsequent act of reimbursement cannot in any way affect the existence of the crime of malversation already committed.

Further to the cash shortage discovered by the provincial auditors, respondent was found to have incurred numerous violations of the Government Accounting and Auditing Manual, Commission on Audit and Department of Finance circulars as well as circulars issued by this Court. These violations consists (sic) of failure to deposit cash collections with the official depository bank, failure to collect the prescribed legal fees

on various cases filed with the court, improper recording of collection for cash bond and general funds and failure to record daily transactions in the cash books. All these violations proved that respondent has been remiss in the performance of his duties as Branch Clerk of Court.[19]

The OCA recommended, among others, that respondent be dismissed from the service with forfeiture of retirement benefits and leave credits to which he may be entitled, if any, with prejudice to his re-employment in any branch of the Government, including government-owned or controlled corporations.

On March 24, 2003, we issued a resolution holding respondent in contempt for failure to comply with the orders and processes of this Court and imposing on him the penalty of imprisonment of five days. Accordingly, the Court ordered the National Bureau of Investigation (NBI) to arrest the respondent and detain him for five days.[20] It appears, however, from the report of the NBI dated May 7, 2003 that they were unsuccessful in enforcing the Court's order. Atty. Dennis S. Siyhian, Investigation Agent II, Anti-Graft Division, NBI, stated in his report that he and some operatives of the NBI-Anti-Graft Division went to respondent's last station at RTC, Branch 23, Trece Martires City on May 6, 2003 but they learned from the personnel that respondent had ceased reporting to said office since 1992 and they are not aware of respondent's present employment or residence.

We agree with the findings and recommendation of the OCA with respect to the Provincial Auditor's charges against respondent.

The Court has given the respondent more than enough opportunity to explain his side. He, however, chose to ignore the numerous orders issued by this Court requiring him to file his comment on the charges against him, and even managed to cause this case to drag on for a very long period of time by filing several motions for extension of time to file comment which he never fulfilled. Under this circumstance, we have no other option but to base our conclusions and decision on what is found in the records.[21] The various violations of respondent are very clear from the records.

We have often emphasized that the Clerk of Court is an essential officer in any judicial system. His office is the nucleus of activities, adjudicative and administrative. His administrative functions are just as vital to the prompt and proper administration of justice as his judicial functions. As a public servant and as an officer of the court, the Clerk of Court must exhibit at all times the highest sense of honesty and integrity. Respondent's numerous violations of the government auditing rules constitute grave misconduct and make him unworthy of the public trust reposed on him.[22]

IN VIEW WHEREOF, respondent Atty. Jose R. Bawalan is DISMISSED from the service with forfeiture of retirement benefits and leave credits to which he may be entitled, if any, with prejudice to his re-employment in any branch of the Government, including government-owned or controlled corporations. Furthermore, the Court reiterates its resolution of March 24, 2003 and directs the NBI to exert utmost effort in locating the present whereabouts of respondent to enforce said resolution.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.

Quisumbing, J., on leave.

Austria-Martinez, J., on official leave.

[1] Rollo, pp. 6-9.

[2] Memorandum of Deputy Court Administrator Reynaldo L. Suarez dated April 12, 1994, Rollo, pp. 1-3.

[3] Rollo, p. 20.

[4] Id. at 32.

[5] Id. at 33.

[6] Id. at 35.

[7] Id. at 36-37.

[8] Id. at 38.

[9] Id. at 45.

[10] Id. at 46-48.

[11] Id. at 49.

[12] Id. at 52.

[13] Id. at 54.

[14] Id. at 55.

[15] Id. at 57.

[16] Id. at 63.

[17] Id. at 68.

[18] Id. at 70-77.

[19] Id. at 74-75.

[20] Id. at 79.

[21] See *Saura, Jr. vs. Agdeppa*, 325 SCRA 682 (2000).

[22] *Re: Report on the Judicial and Financial Audit of RTC-Br. 4, Panabo, Davao del Norte*, 287 SCRA 510 (1998); *Re: Report on the Judicial Audit Conducted in RTC, Branches 29 and 59, Toledo City*, 292 SCRA 8 (1998).

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