

HERMINIGILDO CUTAD, COMPLAINANT, VS. DIONISIO ABAD, RESPONDENT.

A.M. No. P-118. September 30, 1975

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

In a letter-complaint addressed to President Ferdinand E. Marcos, dated October 4, 1972, a certain Herminigildo Cutad who described himself as a "civic spirited citizen for New Society," charged Dionisio E. Abad, Deputy Clerk of Court in the Court of First Instance of Lanao del Sur, Branch I, with (1) rendering service outside of his station without proper authorization, (2) non-accounting of collection during his incumbency as Acting Clerk of Court and Ex-Officio Provincial Sheriff, and (3) using spurious collateral to secure a loan from the Development Bank of the Philippines, (p. 9, rollo).

Respondent Dionisio Abad specifically denied the charges in an answer addressed to Presidential Assistant Guillermo C. De Vega through the Secretary of Justice, dated January 2, 1973. to which were attached supporting documents, (pp. 10-11, *ibid.*).

The complaint was then referred to the Department of Justice, and Executive Judge Eduardo C. Tutaan of the Court of First Instance of Lanao del Norte was directed to conduct an investigation of the case and submit a report and recommendation thereon, (p. 8, *ibid.*)

On June 13, 1973, Judge Eduardo Tutaan submitted a report to the Department of Justice recommending dismissal of the charges against respondent Dionisio Abad. (pp. 2-6, *ibid.*)

On June 26, 1973, the Department of Justice sent the records of the case to the Supreme Court pursuant to Presidential Decree No. 185 which provided, among others, for the transfer from that Department to this Court of powers relating to the administration of courts and discipline of court personnel.[1]

The report of the Investigating Judge shows that on the date set for hearing, respondent Abad appeared but complainant Cutad was absent. The Sheriffs Return of Service of the notice of hearing states that complainant could not be located nor information as to his whereabouts could be had. (back of page 7, *ibid.*) Nonetheless, the hearing was held as scheduled.

The following facts are not disputed:

Respondent is the duly appointed Deputy Clerk of Court, Court of First Instance of Lanao del Sur, Branch I, with official station at Marawi City (formerly Dansalan City) since November 2, 1955 (p. 206, 120 file). In June 1970, Judge Teodulo C. Tandayag who was then presiding the court in Marawi City was assigned to the Court of First Instance of Lanao del Norte, Branch IV, at Iligan City (p. 28, *ibid.*) and he brought along with him herein respondent and designated him officer-in-charge of Branch IV because at that time, the Clerk of Court, Atty. Macatanong T. Abdullah, was set to resume his new position as Third Assistant Provincial Fiscal of Lanao del Norte, and Deputy Clerk of Court Monica Liwanag-Bliss of Branch IV was on leave, (pp. 12-13, *ibid.*) A

telegram was sent by Judge Tandayag to then Secretary of Justice Felix V. Makasiar informing the latter that Deputy Clerk Abad was on duty with Branch IV due to lack of personnel, (p. 18, *ibid.*) Per request of Judge Tandayag (p. 20, *ibid.*) respondent started receiving his pay check in Iligan City. (p. 37, *ibid.*)

Later that year when Judge Tandayag was assigned to Branch II of the Court of First Instance of Lanao del Norte, he designated respondent Abad officer-in-charge of Branch II in view of the absence of the regular Deputy Clerk of Court, Simbano Balas. (p. 14, *ibid.*) Since his designation on October 12, 1970, up to the time the complaint was filed against him, respondent has been performing the duties of Deputy Clerk of said branch, (p. 34, *ibid.*)

By way of exculpation, respondent declared at the hearing that the Department of Justice was aware of his assignment to Iligan City and offered no objection thereto as shown by the fact that his detail was noted in his personal record in the Department of Justice, while his daily time record submitted to the Department was always included among those of the employees of Branch II. Moreover, he was receiving his pay check in Iligan City. (pp. 38-39, *ibid.*).

As to the charge of non-accounting of sheriff's collections, respondent testified that he was designated acting clerk of court in the Court of First Instance of Lanao del Sur, Branch I, at Marawi City on February 15, 1962; that in November 1962, upon the appointment of Atty. Maded Batara as clerk of court, he (respondent) turned over to the new appointee all the records and made the proper accounting (pp. 40-41, *ibid.*); that he is cleared of all money and property accountabilities and has no pending criminal, civil, or administrative case as shown by certificates issued by clerk of court Maded Batara in 1969 and 1970 (pp. 15 and 19, *ibid.*); and that his account had been regularly audited by a representative of the Provincial Auditor's office, (p. 44, *ibid.*).

On the allegation of use of spurious collateral in obtaining an agricultural loan, respondent Abad declared that the land mortgaged to the Development Bank of the Philippines, Ozamis City Branch, was covered by a reconstituted certificate of title at the time he purchased the same; that before his application for loan was approved, the Assistant Manager, Chief Accountant, Inspector, and Appraiser conducted the necessary investigation; that later after he had secured the loan, the DBP informed him that the title of the land was spurious, to which he said that he was a buyer in good faith; and that the title to the land is still in his name and that no one had disturbed his possession ever since, (pp. 44-47, *ibid.*) Admitting that he has not yet fully paid the loan, respondent said that he was not able to gather the fruits of the land since the peace and order situation in the province deteriorated. He added that shortly before that, some children of his tenants had died during an epidemic that swept that place prompting the tenants to abandon the farm. (p. 49-51. *ibid.*).

Finally, respondent Abad presented evidence to show that complainant was a fictitious person. Respondent had earlier alleged in his answer that complainant was most probably an employee also in the Court of First Instance at Marawi City interested in his position and now trying to destroy his unblemished 30-year service in the government, (pp. 10-11, *ibid.*)

Elias Anacleto, Deputy Provincial Sheriff of Lanao del Norte, testified for respondent to the effect that in the performance of his duties he had covered practically every place in Iligan City and the whole province of Lanao del Norte, yet he had not come across or heard of the family name, "Cutad." (pp. 53-54, *ibid.*)

Going over the facts on record, We concur with the Honorable Investigator that the charges of non-accounting of collections and use of spurious collateral in securing a government loan are to be dismissed. No evidence was presented to sustain the charge of non-accounting of collections as complainant failed to appear during hearing. On the contrary, it was shown by documentary evidence that as of June 15, 1970 respondent had been cleared of all money and property accountabilities and had no pending criminal, civil, or administrative case. (p. 19, *ibid.*)

Neither could respondent be held liable for alleged use of spurious collateral in obtaining an agricultural loan from the Development Bank of the Philippines. From the start, respondent knew of no circumstance which would ordinarily give him notice of a possible flaw in his title to the land which he subsequently mortgaged to the bank. The person from whom respondent bought the land had a certificate of title in his name and although the certificate was a reconstituted one, there were no other indications that the title might be defective, (p. 45, *ibid.*) The deed of sale was registered and a certificate of title issued in the name of respondent (p. 47, *ibid.*), and since then he had been in possession of the land undisturbed by any adverse claims or litigation, (p. 48, *ibid.*).

Even assuming that the title was spurious, the above facts suffice to spare respondent from any legal blame. Significantly, respondent submitted the land and the certificate of title to an investigation by the DBP men before his application for loan was approved and released, (p. 46-47, *ibid.*).

With respect, however, to the charge that respondent is rendering service outside of his station without proper authority, We hold that disciplinary action is warranted.

The record shows that respondent Abad's supposed detail first to Branch IV and later to Branch II of the Court of First Instance of Lanao del Norte was effected without the authorization, nay, against the written instruction of the Department Head.

The personal file of respondent shows that in a letter dated August 26, 1970, he requested the Department of Justice that he be detailed in Branch II for the "climate of Marawi City which is very cold is not fitted" for his health, (p. 453, 120 file) The request which was favorably endorsed by Judge Tandayag (p. 458, *ibid.*) was referred to District Judge Emeterio Cui of Marawi City (p. 460, *ibid.*) who by 2nd indorsement dated October 27, 1971, replied, however, that the services of respondent "cannot be dispensed with. . ." (p. 461, *ibid.*). In a 3rd indorsement dated November 16, 1971, the Department of Justice informed respondent that his request "cannot be granted. " (p. 462, *ibid.*)

Notwithstanding the action of the Secretary of Justice on his request, respondent herein, with the active cooperation of Judge Tandayag,[2] succeeded in circumventing the directive of the Department of Justice for him to remain at his official station in Marawi City; that to Our mind is an act of insubordination.

The contention of respondent that he believed in good faith that his detail in Iligan City counted with the tacit approval of the Department of Justice because his detail was noted in his personal record and he received his pay check in Iligan City, can only serve to mitigate his liability. Neither the fact that respondent's detail was made by Judge Tandayag nor that subsequently, Judge Cui of Branch I, Marawi City, in a communication dated January 10, 1973, offered no objection to respondent's remaining at Iligan City (p. 21, rollo), will serve as an exonerating factor. Although in the performance of their duties, clerks of court, deputy clerks of court, and all other subordinate employees of courts of first instance are subject to the supervision of the judges of the courts to which they respectively pertain, nevertheless, for administrative purposes which include temporary detail or assignment to other stations, they belonged to the Department of Justice then and now to the Supreme Court.[3]

The authorization of the Secretary of Justice was necessary before respondent's detail or assignment in 1970 to some place other than his official station in Marawi City could be effected. Respondent's defense that he believed his detail was approved by the Department of Justice is an unwarranted presumption of official action. What is required is an express authorization, one which spells in unmistakable terms the intended administrative movement, especially since the temporary transfer was being effected from the court of one province, Lanao del Sur, to a court of another province, Lanao del Norte. Any order or directive short of this and coming from another source is no justification for respondent to perform the duties of his office at some station to which he has not been appointed or designated by the proper authority — the Department head.

The record also shows that respondent continues to be in Iligan City without any authority from the Chief Justice, that is, from the time the Court assumed supervision over all the courts and their personnel, up to the present.

PREMISES CONSIDERED, We find and hold respondent Dionisio Abad guilty of insubordination, and, considering his length of service in the Judicial branch of the government covering a period of almost twenty-seven (27) years and the attendant circumstances of the present case which lead the Court to view his action with leniency, We hereby impose upon respondent a severe reprimand with a warning that a repetition of the same act will be dealt with greater severity. Respondent is directed to proceed immediately, that is, not later than five (5) days from receipt of notice, to his official station in Marawi City, and the proper division of this Court is instructed not to pay respondent his salary and/or other emoluments until he shall have reported for duty with the Court of First Instance of Lanao del Sur, Branch I, Marawi City.

SO ORDERED.

Teehankee, Makasiar, Aquino, and Martin, JJ., concur.

Esguerra J., a regular member of the Division, is out of the country.

[1] On March 14, 1975, an evaluation report on the evidence was submitted to the Court.

[2] Judge Teodulo C. Tandayag is now separated from the service, his courtesy resignation having been accepted by the President of the Republic on October 27, 1972.

[3] Sec. 46. Judiciary Act of 1948 as amended:

Clerks of court, assistant clerks of court, branch clerks of court, deputy clerks, assistants, and other subordinate employees of Courts of First Instance shall, for administrative purposes, belong to the Department of Justice; but in the performance of their duties they shall be subject to the supervision of the judges of the courts to which they respectively pertain.

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Sec. 89. Revised Administrative Code:

Department Head for Supreme Court. — The function of Department Head for Supreme Court and its subordinates shall be exercised by its Chief Justice, or in case of his death, absence, or disability, by the Associate Justice on duty who holds the senior commission.

Sec. 6, Article X, Philippine Constitution of 1973:

The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

Presidential Decree No. 185:

TRANSFERRING FROM THE DEPARTMENT OF JUSTICE TO THE SUPREME COURT CERTAIN ITEMS, FUNDS, PERSONNEL AND POWERS RELATIVE TO COURTS OF FIRST INSTANCE AND OTHER COURTS OF EQUIVALENT RANK AND CITY AND MUNICIPAL COURTS.

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Section 6. Appointment and discipline of court personnel. — the powers conferred by existing laws on the Secretary of Justice to appoint or approve the appointments of court personnel and to discipline and remove them from the service shall hereafter be exercised by the Supreme Court.

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