

JUDGE ROBERTO S. CHIONGSON, PETITIONER, VS. DEPUTY SHERIFF MATEO MAGBANUA, RESPONDENT.

Adm. Matter No. P-88-181. January 31, 1989

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PER CURIAM:

In a complaint[1] filed by Judge Roberto Chiongson, MTCC, Branch 3, of Bacolod City, herein respondent Deputy Sheriff Mateo Magbanua, is charged with violation of Republic Act 3019, otherwise known as the Anti-Graft and Corrupt Practices Act for Dishonesty.

Judge Chiongson averred that on July 3, 1987, an order for the delivery of personal property was issued in Civil Case No. 17055 entitled "Philacor Credit Corporation vs. Spouses Carlos and Luisa Javelona." On August 10, 1987, the writ together with the summons and the complaint were served upon defendants by respondent. The latter did not immediately make a return of service and it was only after he was threatened with sanctions that he submitted a return[2] on January 15, 1988. Because the writ was returned unsatisfied, an alias writ was issued upon plaintiff's request and the same was served by another sheriff. It was then when defendant Luisa Javelona complained that she had paid plaintiff Philacor, thru respondent the sum of P1,800.00. Apparently, this amount was not turned over to plaintiff Philacor nor reported by respondent in his return.

Judge Chiongson incorporated in his complaint the affidavit[3] of Mrs. Luisa Javelona stating that on the date respondent served the summons and the complaint, the latter demanded the amount of P2,000.00 for payment to plaintiff Philacor. She then gave P1,000.00, receipt of which was acknowledged by respondent.[4] A week after, respondent went to see her to collect the balance. Again, she gave P1,000.00 to respondent but told him to deduct P200.00 therefrom as payment for his services. Respondent acknowledged receipt of the P800.00 at the back of the same receipt he issued for the first P1,000.00 he earlier received. However, in acknowledging receipt of the P800.00, Mrs. Javelona noticed that respondent wrote the words "three hundred pesos" but the amount in figures was P800.00. She also claimed that when respondent went to see her in connection with the aforementioned civil case, respondent always asked for reimbursement of his expenses and that all in all she had given him the amount of P800.00.

In a resolution dated May 16, 1988, this Court resolved to require respondent to submit his answer and in the meantime suspended him from office, effective immediately and continuing until further orders from this Court.

In his answer,[5] respondent admitted that he served the summons and the complaint to defendants. He asserted that, he did not make the return immediately because the writ of replevin was not complied with as the subject thereof could not be located. He also admitted that he received P1,000.00 from Mrs. Javelona for payment to plaintiff Philacor. However, he countered that since plaintiff Philacor refused to accept said amount, Mrs. Javelona requested him to safely keep the same until she could raise the required amount of P3,000.00 which was fifty percent of the amount due and collectible.

Considering that the records sufficiently provide a basis for determination of respondent's administrative liability, there is no need to conduct a further investigation of the charges.

At the outset, it must be emphasized that respondent was authorized ONLY to enforce the writ of replevin and to serve upon defendants, copy of the summons and the complaint. It is surprising why respondent accepted the amount in lieu of the property subject of the replevin. This act is definitely beyond his ministerial duty as a sheriff. Secondly, respondent's contention that the amount of P1,000.00 which he allegedly received from Mrs. Javelona was entrusted to him for safekeeping until the alleged amount required by plaintiff Philacor could be raised, does not inspire belief and defies reason. This contention is patently a mere devious excuse for the unauthorized act of collecting the amount, and thereafter keeping the same to the damage of Mrs. Javelona.

In addition, respondent failed to account for the amount of P800.00 or P300.00, as the case maybe, receipt of which he acknowledged at the back of the receipt for the P1,000.00 he first received from Mrs. Javelona. This Court is of the belief that he intentionally wrote the words "three hundred pesos" and the figures P800.00 purposely to deceive defendants into conceding later that he only received P300.00 having in mind that in interpreting the receipt, the amount stated in words will be controlling. However, since he did not specifically deny having collected from Mrs. Javelona for the second time, he is deemed to have admitted this allegation of Mrs. Javelona that she gave him P1,000.00, P800.00 of which is to be applied to her account with Philacor while the remaining P200.00 may be applied for his expenses.

There is no doubt that respondent's actuations constitute gross dishonesty which renders him unfit to hold a responsible position in the judicial branch of government. His acts are characterized by lack of truth, honesty and probity that make him an untrustworthy public servant. He acted beyond the scope of his ministerial duty to enforce a writ of replevin when instead of taking the property subject of the writ of replevin, he collected amounts purportedly in payment of fifty percent of the amount due and demandable. Not only that, he likewise collected amounts totalling P800.00 for his services. Then, it took him more than five months to make a return. Such delay is indicative of the malicious intent on the part of respondent to misappropriate the amount. Noteworthy, too, is the failure of respondent to manifest an intention to return the same now that defendant had complained.

In *Ganaden vs. Bolasco*, A.M. P-124, May 16, 1975, 64 SCRA 50, respondent Deputy Provincial Sheriff received certain amounts in connection with the performance of his duties as deputy Sheriff without issuing the corresponding official receipts therefor and gave only his private receipt. The Court therein held that respondent committed illegal exaction penalized by paragraph 2(b) of Article 213 of the Revised Penal Code for failure to issue receipts for money collected by him officially, and violation of Sec. 113 of Art. III, Chapter V of the National Accounting and Auditing Manual. The total amount received by respondent for Sheriff's fee for service of complaint and for service of a writ of execution was P62.60. Respondent therein was likewise found guilty of dishonesty or conduct prejudicial to the best interest of the service and was ordered dismissed from the service.

In *Abdulwahid vs. Reyes*, A.M. P-902 and P-906, January 31, 1978, 81 SCRA 213, the Court dismissed from the service the respondent Deputy Sheriff for serious misconduct, and one of the acts committed by him was the misappropriation of certain amounts he received in his official capacity for which he issued only his private receipts and which amounts he returned only after the filing of the administrative case.

In *Abejaron vs. Panes*, A.M. P-1158, August 1, 1978, 84 SCRA 494, this Court held that the conduct of respondent sheriff in misappropriating amount received by him from the judgment debtor to the damage and prejudice of the judgment creditor and failure to levy on the property of the judgment debtor and his wife to satisfy the judgment against them constitute malicious nonfeasance in office and gross dishonesty which render him unfit to hold a public office. He was ordered dismissed from the service with forfeiture of retirement benefits.

ACCORDINGLY, respondent Deputy Sheriff Mateo Magbanua is found guilty of gross dishonesty and is hereby DISMISSED from the service with forfeiture of his retirement benefits except his accrued leave, if any, and with

prejudice to reinstatement in the government.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Grino-Aquino, Medialdea, and Regalado, JJ., concur.

[1] Page 1, Rollo.

[2] Page 3, Rollo.

[3] Pages 4-5, Rollo.

[4] Page 6, Rollo.

[5] Page 12, Rollo.

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