

**MELENCIO S. SY, PROVINCIAL AUDITOR, TAWI-TAWI,
COMPLAINANT, VS. CARMELITA S. MONGCUPA, STENO CLERK III,
OIC, RTC, BRANCH 5, BONGAO, TAWI-TAWI, RESPONDENT.**

A.M. No. P-94-1110. February 06, 1997

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PER CURIAM:

This court is both alarmed and saddened by the increasing frequency in its exercise of its supervisory power over employees of the judiciary who fail to meet the exacting standards of honesty, integrity and uprightness. This is another such case.

In a letter dated November 18, 1994[1] addressed to the Chief Justice, the Honorable Carlito A. Eisma, who is the Acting Presiding Judge of the Regional Trial Court, Branch 5, Bongao, Tawi-tawi, complained of certain anomalies in the handling of court funds by the Officer-In-Charge (OIC) of the Office of the Clerk of Court in the person of one Carmelita S. Mongcupa.

On September 6, 1994, Judge Eisma wrote to Mr. Abduladi Y. Usman, the Provincial Auditor of the Province of Tawi-tawi, requesting that he formally conduct an audit of the accountabilities of Mongcupa from the time that she was appointed as OIC in March, 1991 to August 3, 1994 when she was relieved by one Samuel A. Avestruz, Jr. The latter took over Mongcupa's duties in accordance with Administrative Order No. 01-94 which was issued by Judge Eisma as Acting Executive Judge.

The request was granted, and Mongcupa was audited. The audit team was headed by one Melecio S. Sy, the Assistant Provincial Auditor of Tawi-tawi.

In a Certification dated October 17, 1994, prepared and signed by Assistant Provincial Auditor Sy, there was found a shortage in the amount of P237, 084.99 which had remained unaccounted for and unrestituted.[2] Consequently, in a letter of even date,[3] Sy demanded that Mongcupa immediately produce the missing funds and submit a written explanation within seventy two (72) hours, as to why the shortage occurred.

We treated the report of Sy as an administrative complaint against Mongcupa and required Mongcupa to file her answer thereto within a ten-day period. At the same time, we placed Mongcupa under preventive suspension.[4]

On February 23, 1995, Mongcupa requested for an extension of thirty (30) days for her to file her answer to the complaint. The extension was granted in our Resolution dated March 29, 1995.[5]

In a letter dated April 10, 1995[6] addressed to the Clerk of Court of the Second Division, Mongcupa expressed willingness "to replenish the shortage of the funds, placed in her possession or control, which occurred during her term as the Officer-in-Charge/Acting Clerk of Court, Regional Trial Court, Br. 5, Bongao, Tawi-tawi. "She also requested that her unreleased salaries and other benefits be applied on and considered partial payment of, her obligation.

In a resolution dated October 14, 1996,[7] we suspended Mongcupa, effective immediately, pending the

completion of the investigation and submission of report by the Office of the Court Administrator.

On November 14, 1996, the Office of the Court Administrator completed its report.

To date, no comment or answer has been filed by Mongcupa.

We cannot wait indefinitely for Mongcupa's answer. Significantly, in her letter, dated April 10, 1995, Mongcupa admitted the shortage and expressed willingness to return the missing court funds.

In its report, the Office of the Court Administrator recommended that Mongcupa be dismissed from the service with the corresponding forfeiture of all retirement benefits and accrued leave credits, if any, and disqualification from any future government employment.

We agree.

The foregoing are facts. Given the opportunity to rebut the overwhelming evidence of her malversation of public funds, Mongcupa chose to admit the shortage in the court funds in her custody and pleaded for time to pay the amount that she has failed to account for. As such, the recommendation of dismissal and forfeiture of benefits by the Office of the Court Administrator is not without formidable basis:

"Based on the foregoing, there is no doubt respondent committed serious misconduct in the handling of funds. The above-stated letter, coupled with the uncontroverted audit findings of the Provincial Auditor serves as clear and convincing evidence to expose respondent's misdeed. Despite a letter of Demand from the Provincial Auditor, requiring respondent to submit a letter of explanation on the shortage within seventy-two (72) [hours], we noted respondent's failure to comply with the same. In effect, this would constitute as prima facie evidence of malversation, as held in the last par. of Art. 217 of the Revised Penal Code, as amended by RA 1060, which provides:

'The failure of a public officer to have duly forthcoming any public fund or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing fund or property to personal uses.'

In *De Guzman vs. People*, it was held:

'In malversation, all that is necessary to prove is that the defendant received in his possession public funds, that he could not account for them and did not have them in his possession and that he could not give a reasonable excuse for the disappearance of the same. An accountable officer may be convicted of Malversation even if there is no direct evidence of misappropriation and the only evidence is that there is a shortage in his accounts which he has not been able to explain satisfactorily.'" [8]

The evidence against Mongcupa, according to the Office of the Court Administrator, so eloquently speaks of her criminal misdeed as to justify the application of the doctrine of *res ipsa loquitur*:

"x x x [F]or several years now, 'the Supreme Court applies the *res ipsa loquitur* [sic] principle in removing judicial officers and personnel from office x x x.' As can be gathered from the cases decided in this jurisdiction, *res ipsa loquitur* [sic] has been defined as the [sic] 'the thing speaks for itself' and 'the fact speaks for itself' (*People vs. Valenzuela*, 135 SCRA 712 and *Padilla vs. Dizon*, 158 SCRA 127) . It is even asserted that in cases like the one at bar, there is no more need for any further investigation." [9]

Finally, we rule that, as the Office of the Court Administrator recommended, Mongcupa's request that her unreleased salaries and benefits, be applied to her shortage, ought to be denied.

"To rule otherwise would be tantamount to awarding her benefits which should have been forfeited in the first place, in view of her misdeed. The disciplinary action taken in the case at bar should be swift and devised in

such a way as to give a STERN WARNING and GRIM REMINDER to accountable officers of the horrible consequences and repercussions of respondent's actions." [10]

The court is concerned about the propensity of accountable officers in the judiciary to yield to the temptation to use public funds for personal interests. But, as it tries to devise the appropriate action to strengthen the moral fiber and strength of character of the employees and officers that constitute the judiciary, this court shall never be less strict in applying only the highest standards of propriety, decorum, integrity, uprightness and honesty from the highest judicial officer of the land to the humblest court employee, for the ultimate power of this court lies in its incorruptibility.

WHEREFORE, premises considered, respondent CARMELITA S. MONGCUPA is hereby DISMISSED from the service with forfeiture of all retirement benefits and accrued leave credits, if any, with disqualification for re-employment in any branch or instrumentality of the Government, including government-owned or controlled corporations, without prejudice to the filing of the appropriate criminal and/or civil charges against her that may be warranted under the circumstances.

SO ORDERED.

Narvasa, C. J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr., Panganiban and Torres, JJ., concur.

[1] Rollo, pp. 1-2. [2] Rollo, p. 3. [3] Rollo, p. 4.

[4] Resolution of the Second Division dated January 23, 1995, Rollo, pp. 19-20.

[5] Rollo, p. 23.

[6] Rollo, p. 35. [7] Rollo, p. 37. [8] Memorandum dated September 4, 1996, pp. 4-5, Rollo, pp. 32-33.

[9] Memorandum dated November 14, 1996, p. 4, Rollo, p. 41. [10] Memorandum dated September 4, 1996, p. 5, Rollo, p. 33.

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