ABDULMAID K. MUIN, PETITIONER, VS. SAMUEL A. AVESTRUZ, JR., BRION, AND INTERPRETER AND FORMER OFFICER-IN- PERALTA, JJ. CHARGE, REGIONAL TRIAL COURT, BRANCH 5, BONGAO, TAWI-TAWI,...

A.M. No. P-04-1831 (Formerly OCA IPI No. 03-1690-P). February 02, 2009

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PER CURIAM:

> 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.[1]

These were the words of the Court when it dismissed from the service Carmelita S. Mongcupa, whose position respondent assumed.[2] Instead of rectifying his predecessor's errors however, respondent committed the same odious acts for which he, too, must face the same penalty.

Court Interpreter Samuel A. Avestruz (respondent) was designated by Executive Judge Carlito A. Eisma, through Administrative Order No. 01-94, as Officer-in-Charge (OIC), Clerk of Court, Regional Trial Court (RTC), Branch 5, Bongao, Tawi-Tawi effective August 3, 1994, to replace Carmelita S. Mongcupa who was relieved of her duties due to her failure to submit the required reports and present the bankbook of the court's collections.[3]

In January of 2002, Judge Abdulmaid Muin (Judge Muin),[4] who took over Branch 5 after Judge Eisma retired, directed respondent to turn over the bankbook, money and other properties of the court under his custody to the new OIC-Clerk of Court Abu B. Talipan (Talipan). On January 7, 2002, however, before respondent could make the necessary turn over, respondent and his family left Tawi-Tawi without informing any court personnel, and has not reported for work since.[5] Judge Muin, in a letter dated January 21, 2002, then recommended to the Office of the Court Administrator (OCA), that respondent be considered on Absence Without Official Leave (AWOL) and requested an immediate audit and investigation on the matter.[6]

In a letter of the same date, Judge Muin also requested the National Bureau of Investigation (NBI), Region 9, Zamboanga City,[7] to investigate the anomaly, and it was discovered that respondent, with the aid of Federico Flores, a document examiner of the Land Bank of the Philippines, Bongao Branch, was able to make withdrawals on four different occasions from October 9, 2001 to January 7, 2002, without the necessary court orders and signatures of the presiding judge.[8] The NBI through a letter dated January 4, 2002 then recommended to the Ombudsman for Mindanao that respondent and Flores be indicted for Malversation of Public Funds.[9] The Ombudsman thereafter forwarded the NBI letter and all its attachments to the Court on May 29, 2003.[10]

In a 1[st] Indorsement dated July 29, 2003, the OCA[11] referred the case to respondent for his comment.[12] The Indorsement however could not be served on respondent since his whereabouts was unknown.[13]

In a Resolution dated January 21, 2004, the Court's Second Division, in A.M. No. 03-11-655-RTC (Re: Absence Without Official Leave [AWOL] of Mr. Samuel A. Avestruz Jr.), ordered that respondent be dropped from the rolls for having been absent without official leave since December 3, 2001, without prejudice to the outcome of his administrative case.[14]

The fact that respondent has been dropped from the rolls per Resolution dated January 21, 2004[15] does not deprive the Court of its authority to resolve the instant administrative case, since the complaint was filed long before such dropping.[16]

On July 5, 2004, the Court issued a Resolution requiring respondent anew to file a comment on the complaint; requesting the NBI Zamboanga City to serve a copy of the Resolution on respondent at RTC Branch 5 and at respondent's last known residential address, and to make a return of service thereon; and directing the OCA to form a team to conduct a special fiscal audit on the books and accounts of RTC Branch 5 and submit a report thereon.[17]

On September 15, 2004,[18] the NBI informed the Court that respondent was no longer residing at his last known address, and that he and his family left after having gone on AWOL. A copy of the resolution was received, however, by respondent's brother Rainier A. Avestruz and Sharif A. Sahial, Court Stenographer of RTC Branch 5.[19]

In the Memorandum dated May 25, 2005, the OCA[20] reported that it was unable to come up with the final figure of respondent's accountability for all the funds collected since there were no records found in the court except for the few gathered by the investigating team. Nevertheless, the audit team found that there was a shortage of P8,473.00 in the Judiciary Development Fund (JDF) and a shortage of P1,738,579.00 in the Fiduciary Fund (FF).[21]

The Court then issued on September 12, 2005 a Resolution: (1) directing respondent to pay and deposit to the Fiduciary Fund Account the total sum of P1,738,579.00, and to the Judiciary Development Fund the total amount of P8,473.00; (2) directing Judge Muin to open a new and interest- bearing savings account with the Land Bank of the Philippines under the name of RTC Bongao, Tawi-Tawi, with him and OIC Talipan as authorized signatories; (3) directing the OCA to determine and report on the liability of the judge concerned; (4) directing the Legal Office of the OCA to file the appropriate criminal charges against respondent; (5) directing the NBI to locate the whereabouts of respondent, serve a copy of the resolution on him, and issue a hold-departure order against respondent to prevent him from leaving the country.[22]

In a Memorandum dated October 7, 2008, the OCA reported that it had filed on October 10, 2007 a criminal complaint for malversation and infidelity in the custody of public documents against respondent before the Office of the Ombudsman. It also did not find fault with the judges who presided over Branch 5 during the tenure of respondent, since there was no evidence that Judge Eisma had anything to do with the shortages in the court collections or in the disappearance of the court's financial records, and in the falsification of court orders and withdrawal slips that allowed respondent to unlawfully withdraw court funds. It was also primarily through the efforts of Judge Muin that the anomalies committed by respondent and Flores were discovered.[23]

The OCA then recommended that

> x x x Mr. Samuel A. Avestruz, Jr. be FOUND GUILTY of a grave offense and that he be DISMISSED FROM THE SERVICE with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from reemployment in the government service, including government owned and controlled corporations.[24]

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The Court finds the OCA recommendation to be proper.

Custodians of court's funds perform very delicate functions and are liable for any loss, shortage or impairment thereof.[25] In this case, respondent was designated as OIC-Clerk of Court of RTC Branch 5 on August 4, 1994 through Administrative Order No. 01-94 issued by Judge Eisma, giving respondent the authority to issue official receipts for all monies intended for the court, to deposit the same in the official depository bank, to remit the amounts to the proper governmental agencies, to regularly submit the required reports to the Supreme Court, and to effect withdrawals of monies from the bank when authorized by a court order and countersigned by the presiding judge.[26]

Respondent failed to perform his duties. He left Tawi-Tawi with his family, without properly turning over the funds of the court as well as the books of account when Judge Muin asked him to make the necessary turn over to his successor. He also left a shortage of P8,473.00 in the Judiciary Development Fund and P1,738,579.00 in the Fiduciary Fund.

The Court has held that an accountable officer may be convicted of malversation even in the absence of direct proof of misappropriation for as long as there is evidence of shortage in his accounts which he is unable to explain.[27] The Court also ruled that the failure of a clerk of court, who is designated as custodian of the court's funds, revenues and properties shall be liable for any loss or shortage thereof, and his failure to account for the shortage in the funds he was handling and to turn over the money deposited with him constitutes dishonesty, grave misconduct and malversation, which are grave offenses punished by dismissal even for the first offense.[28]

Respondent was given several opportunities to clear his name. The Court even sought the aid of the NBI to locate his whereabouts in order to afford him the opportunity to come to Court and explain the anomalies. Respondent, however, has failed up to this date has failed to submit any comment and has left Tawi-Tawi, with his present whereabouts unknown. Such behavior is contrary to that of an innocent man whose first impulse is to express his innocence at the first opportune time. Indeed, flight is an indicium of guilt and an implied admission of one's liability for the shortages.[29]

The NBI investigation also yielded the finding that respondent was able to make unauthorized withdrawals of court funds without the necessary court orders and signatures of the presiding judge and with the aid of a bank employee. These findings, together with his flight, invariably point to his culpability.

The fact that respondent discharged his functions only in an acting capacity, or as an officer-in-charge, also cannot absolve him from liability, as the expectation for him to perform all the duties and responsibilities of a Clerk of Court is not diminished.[30]

Considering the foregoing, the Court has no choice but to impose on respondent the penalty of dismissal from the service.

The Court has repeatedly pronounced, and respondent is not unaware, that the conduct and behavior of everyone connected with the judiciary, from the presiding judge to the lowest clerk, is circumscribed with a heavy burden of responsibility. And the Court will not hesitate to impose the ultimate penalty of dismissal from the service, for the Court has never and will never condone any conduct that would violate the norms of public accountability and diminish or even tend to diminish the faith of the people in the justice system.[31]

WHEREFORE, Court Interpreter and former Officer-in-Charge Samuel A. Avestruz, Jr. of the Regional Trial Court, Branch 5, Bongao, Tawi-Tawi is found guilty of dishonesty, grave misconduct and malversation and is ordered DISMISSED from the service effective immediately with forfeiture of retirement benefits, except accrued leave credits, with prejudice to re-employment in any branch, instrumentality or agency of the government,

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including government owned or controlled corporations. He is further ordered to RESTITUTE the shortages incurred in the Judiciary Development Fund and Fiduciary Fund amounting to P8,473.00 and P1,738,579.00 respectively.

The Finance Division, Financial Management Office of the Office of the Court Administrator is DIRECTED to compute the monetary value of respondent's accrued leave credits and to apply the same as part of the restitution of the shortage.

The Office of the Court Administrator is directed to cause the filing of appropriate criminal charges against Samuel A. Avestruz, Jr.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Nachura, and Leonardo-De Castro, JJ., concur.
Carpio[*], J., on official leave.
Velasco, Jr., J., no part due to prior action in OCA.
Brion, and Peralta, JJ., on leave.

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[*]On official leave, per Special Order No. 548 dated January 15, 2009.

[1] Sy v. Mongcupa, 335 Phil. 182, 187 (1997).

[2] Rollo, p. 4. See also Sy v. Mongcupa, supra note 1.

[3] Rollo, p. 4. In Sy v. Mongcupa, supra note 1, Mongcupa was dismissed from the service for serious misconduct for her failure to explain the shortage in the court's funds in the amount of P237,084.99.

[4] Judge Muin was appointed as presiding judge of Branch 5 on August 20, 2001 and assumed office on September 3, 2001, rollo, p. 11.

[5] Id. at 9, 11, 14, 27.

[6] Id. at 22.

[7] Through a letter dated January 21, 2002, id. at 18.

[8] Rollo, p. 2.

[9] Id.

[10] Id. at 1-18.

[11] Through then Court Administrator Presbitero J. Velasco, Jr.

[12] Rollo, p. 19.

[13] Id. at 20.

[14] OCA Report dated April 23, 2004. In a Resolution dated September 25, 2002 relative to A.M. No. 02-8-497, respondent's salaries and benefits were withheld in line with Section 50, Rule XVI, CSC MC No. 41, s. 1998 on the Omnibus Rules on Leave, rollo, p. 28.

[15] In A.M. No. 03-11-655-RTC (Re: Absence Without Official Leave [AWOL] of Mr. Samuel A. Avestruz Jr.),

id. at 28.

[16] Commission on Audit -Region VI v. Pamposa, A.M. No. P-07-2291, June 25, 2007, 525 SCRA 471, 475.

[17] Rollo, p. 31, The Court in the same Resolution ordered the Fiscal Management Office (FMO) to withhold or suspend the processing of papers of respondent if ever he would attempt to collect his accrued leaves or any other monetary benefits from the Court.

[18] Through a 1[st] Indorsement from NBI Regional Director Carlos Saunar addressed to the Court's Second Division Clerk of Court Ludichi Yasay-Nunag, rollo, p. 37.

[19] Id.

[20] Through Court Administrator Presbitero J. Velasco, Jr, Deputy Court Administrator Christopher O. Lock and Chief of the Court Management Office Thelma C. Bahia.

[21] Rollo, pp. 41-44.

[22] Rollo, pp. 62-68.

[23] Id. at 126-127.

[24] Id. at 128.

[25] See Office of the Court Administrator v. Bernardino, A.M. No. P-97-1258, January 31, 2005, 450 SCRA 88, 113.

[26] Rollo, p. 4.

[27] Re: Report on the Financial Audit Conducted in the MTCC-OCC, Angeles City, A.M. No. P-06-2140, June 26, 2006, 492 SCRA 469, 482.

[28] Office of the Court Administrator v. Varela, A.M. No. P-06-2113, February 6, 2008, 544 SCRA 10, 20; Office of the Court Administrator v. Bernardino, supra note 25, at 115. See also Section 52 (A), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service.

[29] Commission on Audit v. Pamposa, supra note 16, at 474; Office of the Court Administrator v. Nacuray, A.M. No. P-03-1739, April 7, 2006, 486 SCRA 532, 542.

[30] Office of the Court Administrator v. Varela, supra note 28, at 22.

[31] Office of the Court Administrator v. Bernardino, supra note 25, at 120-121.

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