

RE: WITHHOLDING OF ALL THE SALARIES AND ALLOWANCES OF MR. DATU ASHARY M. ALAUYA, CLERK OF COURT, 4TH SHARI'A DISTRICT COURT, MARAWI CITY.

A.M. No. 02-4-03-SDC. May 27, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

The case before us is a consolidation of two administrative matters filed against Datu Ashary M. Alauya, Clerk of Court, Shari'a District Court of Marawi City.

In A.M. No. 02-4-03-SDC, Alauya was charged with failure to submit to the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator, the actual records of collections and deposits for the Judiciary Development Fund and Clerk of Court General Fund needed for audit examination.[1] Upon further examination by Deputy Court Administrator Christopher Lock, it was found that though there were neither shortages nor overages found in the accounts, there was deliberate delay in the remittance of the collections. More importantly, it was discovered that the actual official receipts issued were not reflected in the cashbook or in the Monthly Report of Collections and Deposits. The Office of the Court Administrator conducted an inventory and found that several official receipt booklets supposedly in the possession of Alauya, both used or unused, were not accounted for. Thus, in a letter dated March 20, 2002, Deputy Court Administrator Lock directed Alauya to produce and submit the missing official receipts and explain why he should not be charged administratively and criminally for falsifying records of collections and deposits for Judiciary Development Fund and Clerk of Court General Fund and for passing the blame on his predecessors. Deputy Court Administrator Lock further recommended the withholding of Alauya's salaries and other allowances pending the submission of all the unaccounted receipts.[2]

In the Resolution dated April 30, 2002, this Court ordered Alauya to show cause why his salaries and allowances should not be withheld in accordance with Administrative Circular No. 2-2000.[3] By way of compliance, Alauya submitted his letter dated May 20, 2002, wherein he alleged that after he assumed office of Clerk of Court on March 9, 1992, the former OIC-Clerk of Court, Ali P. Guro, failed to formally turnover to him the records and other properties of the court much less inform him of the actual number of official receipt booklets which were issued to the court. Thus, the only official receipts Alauya obtained were those he found kept in the office of the judge when he assumed office. He did not request or receive from the Supreme Court any of the booklets in question. He also claimed that some of the missing official receipt booklets were stolen by a dismissed court employee.[4]

The Court, in its Resolution dated July 2, 2002, referred the matter to the Office of the Court Administrator for evaluation, report and recommendation.[5]

On the other hand, A.M. No. SDC-03-4-P arose from two letter-complaints dated August 10, 2001 and August 27, 2001 filed by Ms. Minombao M. Abubacar, Court Process Server of the Shari'a District Court of Marawi City,[6]

charging Alauya with the following: (1) falsification of monthly reports and deposits; (2) falsification of cash remittances; (3) issuing two official receipts – O.R. Nos. 2344451 and 2344380 – for a single transaction accruing to a single fund; (4) non-submission of Sheriff Trust Fund Report; (5) holding office and discharging of official functions at his place of residence; (6) bringing office equipment, particularly a typewriter, to his house; and (7) unlawful encashment of Ms. Abubacar’s JDF and salary checks.[7] Ms. Hedeliza F. Alacaraz, Chief of the Accounting Division of the Supreme Court, recommended the immediate investigation of Alauya.[8] On October 15, 2001, Alauya filed his Comment to the letter-complaints, denying the allegations leveled against him, which he classified as mere attempts to malign his reputation. In fact, Ms. Abubacar and her husband were the ones engaged in anomalous activities such as stealing court properties and encashing of salary checks which Ms. Abubacar was not entitled to as she has been absent from work without official leave (AWOL) for several months.[9]

On November 20, 2002, Deputy Court Administrator Lock, acting on the two Administrative Matters, made the following recommendations, which the Court En Banc adopted on January 14, 2003, to wit:

a)

INFORM Clerk of Court Datu Ashary M. Alauya that the resolution of his request to dismiss A.M. Nos. 02-4-03-SDC and SDC-03-4-P and the release of the withheld RATA for the months of May to December 2003 depend on the final outcome of the administrative charges against him; and

b) DENY the request of Clerk of Court Alauya for the revocation of his detail, considering that he has yet to explain the loss of the six (6) booklets, with serial nos. 2344251-2344300; 2344301-2344350; 2344351-2344400; 2344501-2344550; 2344551-2344600; and 2344651-2344700 and the records in Sp. Proc. No. 18-98.

Alauya submitted his Comment[11] dated February 5, 2003 where he denied the charges of falsifications and reiterated that the complaints were part of a plot to cause his removal from the service. He requested that his case be referred instead to Executive Judge Amer R. Ibrahim of the Regional Trial Court of Marawi City, alleging that he can only have fair, just and equitable justice if his case was investigated by a fellow Muslim. This Court noted the Comment submitted by Alauya and referred these cases to Executive Judge Salazar.

On June 25, 2003, the Court re-docketed Ms. Abubacar’s letter-complaint as a separate administrative matter and ordered its consolidation with A.M. No. 02-4-03-SDC.

Meanwhile, Judge Salazar, after conducting separate investigations on the two cases, submitted his Report and Recommendation as regards A.M. No. 02-4-03-SDC. He found that Alauya assumed office on March 9, 1992 as OIC-Clerk of Court, Shari’a District Court of Marawi City; that no formal turnover was made to Alauya by the former OIC-Clerk of Court, Ali P. Guro; that the fifteen booklets of official receipts bearing serial numbers 2344251-2345000 were mailed by the Property Division to the Shari’a District Court on 16 March 1992;[12] that on September 15, 1992, a letter was received by the Property Division acknowledging receipt of the booklets with the information that one booklet was taken by a former employee of the court; that according to Mr. Tribiana of the Property Division, a copy of such letter could no longer be found as their storage room was flooded in 1999; that when the booklets were sent, Alauya had already assumed office and is the accountable officer for such matters; that Alauya, in his comment, admitted that he had in his possession nine out of the fifteen booklets of official receipts sent by the Property Division; that one of the receipts illegally issued, Official Receipt No. 2344451, is part of one of the booklets which Alauya admitted was with him but which he claims was already incomplete when it came into his possession; that the other receipt, Official Receipt No. 2344380, was taken from one of the booklets which cannot be accounted for; that it was Alauya who received the petition in Sp. Proc. No.

18-98 for filing and for which the questioned receipts were issued; that, as testified to by Alejandra Guro, the current OIC-Clerk of Court of the Shari'a District Court of Marawi City, the records of Sp. Proc. No. 18-98 were discovered lost after a physical inventory was conducted while all the other records remained intact; and that notwithstanding the foregoing, the evidence is insufficient to prove that it was indeed Alauya who issued the questioned receipts. Hence, he recommended that the charges against Alauya on the matter of having issued two sets of receipts in Sp. Proc. No. 18-98 and reporting lesser amounts be dismissed, but Alauya should be made to explain the loss of the records of Sp. Proc. No. 18-98 and the six booklets of official receipts for which he is accountable.[13]

On September 25, 2003, Judge Salazar submitted his Report and Recommendation, as regards A.M. No. SDC-03-4-P. He stated that despite several notices, Ms. Abubacar and her witness, Minang Magadapa Abubacar, failed to appear and testify at the investigation. Judge Salazar concluded that the apparent lack of resolve of Ms. Abubacar to present evidence to substantiate her letter-complaints indicates that the charges were merely intended to harass, annoy and inconvenience Alauya. Thus, he recommended the dismissal of the charges against Alauya for failure of Ms. Abubacar to prosecute.

Upon receipt of the two reports, Deputy Court Administrator Lock recommended that:

1)

Respondent Datu Ashary M. Alauya be **SUSPENDED** for a period of **ONE (1) MONTH WITHOUT PAY** for negligence in the custody of court property;

2)

Respondent be required to explain in writing the loss of the six (6) booklets to wit: 2344251-2344300; 2344301-2344350; 2344351-2344400; 2344501-2344550; 2344551-2344600; and 2344651-2344700 and the records in Sp. Proc. No. 18-98; and

3)

Letter-Complaints dated 10 August 2001 and 27 August 2001 of Minambao M. Abubacar be **DISMISSED** for apparent lack of interest on the part of the complainant to prosecute said complaint.[14]

On January 5, 2004, Alauya wrote to the Court praying for the immediate dismissal of the cases against him for lack of merit, for his immediate reinstatement to his position as Clerk of Court of the Shari'a District Court of Marawi City and the release of his RATA from May to December 2003.[15] The Court, upon recommendation of the Office of the Court Administrator, resolved to:[16]

a)

INFORM Clerk of Court Datu Ashary M. Alauya that the resolution of his request to dismiss A.M. Nos. 02-4-03-SDC and SDC-03-4-P and the release of the withheld RATA for the months of May to December 2003 depend on the final outcome of the administrative charges against him; and

b)

DENY the request of Clerk of Court Alauya for the revocation of his detail, considering that he has yet to explain the loss of the six (6) booklets, with serial nos. 2344251-2344300; 2344301-2344350; 2344351-2344400; 2344501-2344550; 2344551-2344600; and 2344651-2344700 and the records in Sp. Proc. No. 18-98.

We agree with the findings of the Deputy Court Administrator Christopher Lock that, based on the evidence

gathered, Clerk of Court Datu Ashary M. Alauya incurred culpability for his negligence in the custody of court records and properties. However, we find that the recommended penalty is not commensurate to the gravity of his offense.

It is clear that a clerk of court and the administrative functions he performs are vital to the prompt and proper administration of justice. Section A, Chapter II (3) of the 1991 Manual for Clerks of Court provides that it is the clerk of court's duty to safely keep all records, papers, files, exhibits and public property committed to his charge, including the library of the court and the seal and furniture belonging to his office. As court custodian, a clerk of court has the responsibility to ensure that records are safely kept and the same are readily available upon the request of the parties or order of the court. He must be diligent and vigilant in performing his official duties and in supervising and managing court dockets and records.[17] Section C, Chapter VII also provides that the clerk of court is in charge of allocating and distributing court properties and supplies and exercises control and supervision over the possession, custody and safekeeping of court properties and supplies.[18]

It appears from the records that Alauya was appointed as Clerk of Court on March 2, 1992 and assumed office on March 9, 1992. The Property Division of the Supreme Court sent the booklets of official receipts to the Shari'a District Court of Marawi City on March 16, 1992, well within the effectivity of Alauya's term as clerk of court. Granting for the sake of argument that Alauya was not the one who received the booklets, the tracer letter sent by the Property Division of the Supreme Court, which the Shari'a District Court of Marawi City responded to on September 15, 1992, should have alerted Alauya on the booklets of official receipts that were sent to his court. Had he been more circumspect in his duties, Alauya would have discovered the missing booklets and reported the incident to this Court. Moreover, while the evidence does not categorically show that Alauya issued O.R. Nos. 2344451 and 2344380, the similarity of Alauya's handwriting to the one appearing on the receipts, coupled with his own admission that one of said receipts came from a booklet in his possession cast a shadow of doubt to his claimed innocence. Alauya is presumed to have knowledge of the court's acceptance of the delivered booklets, and his negligence in the custody of these court properties is palpable in the illegal issuance of said receipts.

Alauya's negligence is more pronounced in light of the missing records of Sp. Proc. No. 18-98. When he testified before Judge Salazar, he admitted that he was the one who received the case when it was filed.[19] The sheer coincidence that the missing court records pertain to the very same case for which O.R. Nos. 2344451 and 2344380 were issued does not escape us. However, no evidence was presented which points to Alauya as the mastermind behind the disappearance of the records. Nonetheless, it is Alauya's duty as clerk of court to safely keep all records, papers, files, exhibits and public property committed to his charge. As custodian of judicial records, it is incumbent upon him to ensure an orderly and efficient record management system in the court and to supervise the personnel under his office to function effectively.[20] A clerk of court plays a key role in the complement of the court and cannot be permitted to slacken on his job under one pretext or another. He must be assiduous in performing his official duties and in supervising and managing court dockets and records.[21]

We have said time and again that persons involved in the administration of justice, from the highest official to the lowest clerk, must live up to the strictest standards of honesty and integrity in the public service, especially since the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the personnel who work thereat.[22] As an officer of the court, Alauya was duty-bound to use reasonable skill and diligence in the performance of his officially designated duties as clerk of court. He fell short of this standard.

Therefore, respondent is guilty of gross neglect of duty. While his offense is punishable by dismissal from the service,[23] we believe that penalty of suspension for eighteen months without pay is more appropriate in the circumstances.

As regards the charges against Alauya arising from the letter-complaints of Ms. Minombao Abubacar, we agree with the view of Executive Judge Salazar that Ms. Abubacar's failure to appear at the investigation proceedings despite repeated notice shows her evident lack of concern for the prosecution of the case. Indeed, it is incumbent upon Ms. Abubacar to present evidence to support the allegations she made in her letters. Ms. Abubacar's absence during the proceedings, which she failed to justify, leads us to conclude that she does not possess any such evidence. We are therefore constrained to order the dismissal of the same.

WHEREFORE, in view of all the foregoing, Clerk of Court Datu Ashary M. Alauya of the Shari'a District Court of Marawi City is found guilty of gross neglect of duty in the custody of court property and is **SUSPENDED** for a period of **EIGHTEEN (18) MONTHS WITHOUT PAY**, effective immediately. Administrative Matter No. SDC-03-4-P arising from the letter-complaints of Minambao Abubacar dated August 10, 2001 and August 27, 2001, is **DISMISSED** for lack of evidence.

SO ORDERED.

Vitug (Acting Chief Justice), Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.
Davide, Jr., C.J., and Puno, J., on official leave.

[1] Based on the notice sent to Alauya on 30 August 2001 and 25 September 2001 by Ms. Verina F. Yap, Chief Judicial Staff Officer of the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator, requesting Alauya to submit the required documents for audit purposes, Administrative Matter No. 02-4-03-SDC Rollo, pp. 60-63.

[2] *Id.*, pp. 3-5.

[3] *Id.*, p. 43.

[4] *Id.*, pp. 44-48.

[5] *Id.*, p. 72.

[6] The letters were addressed to Ms. Hedeliza F. Alacaraz, Chief of the Accounting Division of the Supreme Court, and Justice Zenaida N. Elipaño, Acting Court Administrator.

[7] A.M. No. SDC-03-4-P 1st Rollo, p. 10.

[8] *Id.*, pp. 1-2, 11-12.

[9] *Id.*, pp. 54-58.

[10] Administrative Matter No. 02-4-03-SDC Rollo, pp. 142-147.

[11] *Id.*, p. 148.

[12] Per letter sent by Mr. Gil Tribiana, Chief Judicial Staff Officer of the Property Division, to Executive Judge Valerio Salazar dated 5 May 2003, Administrative Matter No. SDC-03-4-P 2nd Rollo, p. 144.

[13] *Id.*, pp. 267-275.

[14] A.M. No. SDC-03-4-P 1st Rollo, pp. 114-121.

[15] *Id.*, pp. 123-124.

[16] *Id.*, p. 125.

[17] *Bongalos v. Monungolh*, A.M. No. P-01-1502, 4 September 2001, 364 SCRA 311.

[18] The same principles were carried over to the 2002 Revised Manual for Clerks of Court Prepared by the 2001 Ad Hoc Committee for the Revision of the Manual for Clerks of Court. Printed by the Supreme Court Printing Service, Manila, April 2002.

[19] TSN, 10 March 2003, A.M. No. SDC-03-4-P 2nd Rollo, p. 239.

[20] *Odoño v. Macaraeg*, A.M. No. RTJ-00-1542, 16 March 2000, 328 SCRA 239.

[21] Report On The Judicial Audit Conducted In Regional Trial Court, Branch 61, Gumaca, Quezon; Regional Trial Court, Branch 63, Calauag, Quezon; Municipal Trial Court, Calauag, Quezon, And Municipal Trial Court, Tagkawayan, Quezon, A.M. No. 98-8-262-RTC, 21 March 2000, 328 SCRA 543, citing *Lloveras v. Sanchez*, A.M. No. P-93-817, 18 January 1994, 229 SCRA 302; *Office of the Court Administrator v. Banalan*, A.M. No. P-93-945, 24 March 1994, 231 SCRA 408; *RTC Makati Movement Against Graft and Corruption v. Dumlao*, A.M. No. P-93-800, 9 August 1995, 247 SCRA 108; *Nidua v. Lazaro*, A.M. No. R-465 MTJ, 29 May 1989, 174 SCRA 581.

[22] *Bellosillo v. Rivera*, A.M. No. P-00-1424, 25 September 2000, 341 SCRA 1.

[23] Rule IV, Section 52, Uniform Rules on Administrative Cases in the Civil Service Commission.

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