

**RE: REPORT ON THE SHORTAGE OF THE ACCOUNTABILITIES OF
CLERK OF COURT CARLITO U. ALVIZO.***A.M. No. 818-TEL. April 18, 1979*

Ponente: ANTONIO, J.

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On November 10, 1978, this Court received, thru the Chief Justice, a letter of Acting Chairman of the Commission on Audit dated October 18, 1978, informing Us that after an investigation of the accounts of respondent Carlito U. Alvizo, Clerk of Court of the Court of First Instance, Lianga, Surigao del Sur, the Provincial Auditor, Mr. Miguel Peñalosa, found his accounts short of P31,612.50. Consequently, on November 14, 1978, the Chief Justice directed the Executive Judge of the Court of First Instance at Lianga, Surigao del Sur, Hon. Otilio G. Abaya, to "investigate and submit a report immediately" on the matter, and if the relief of the Clerk of Court is warranted, to submit the name of one of his employees as temporary replacement.

In the meantime, this Court resolved: (1) to suspend Clerk of Court Alvizo from the discharge of his duties and functions as such, pending final disposition of the case; (2) to require him to file his answer to the charge of shortage of accountabilities against him; (3) to direct, within ten (10) days from notice, Judge Abaya to continue the investigation of Clerk of Court Alvizo; and (4) to designate Atty. Domingo de Castro as Officer-in-Charge of the Office of the Clerk of Court, Court of First Instance of Surigao del Sur at Lianga, in addition to his present duties, but without additional compensation.

On December 19, 1978, this Court received the complete records of the investigation conducted by the Executive Judge of Lianga, Surigao del Sur, regarding the shortage of the accountable funds of Clerk of Court Carlito U. Alvizo, confirming the shortage, the subsequent restitution of the amount by respondent, and his recommendation on the matter. According to his report, the aforementioned administrative case was set for hearing, after due notice to respondent, on November 27, 1978 at which proceedings Mr. Miguel Peñalosa, Provincial Auditor of Surigao del Sur and Mr. Nerio Sales, Chief of Auditing Division of the same office, testified that on August 22, 1978, they examined and audited the cash and accounts of respondent Clerk of Court Carlito U. Alvizo and found him short of P31,612.50 (Exhibits "A", "B", "B-1" to "B-3"), consisting of the following:

A. Collections:

- (1) As Clerk of Court P20,751.55
- (2) Fiduciary fund 5,440.00
- (3) Legal Research fund 1,059.55
- (4) Provincial Sheriff's fund 2,656.40
- B.. Cash advance 1,705 00
- TOTAL (Exhibit "F") P31,612.50

Demand was made of respondent to refund or restitute such shortage of P31,612.50 on August 23, 1978 and again on October 5, 1978 (Exhibit "C"). The respondent sent a telegram to Nerio Sales on November 9, 1978, informing the latter that he would be remitting the amount corresponding to his shortage thru PNB, San Francisco, Agusan del Sur (Exhibit "D"). On November 16, 1978 and November 17, 1978, respondent deposited with the Philippine National Bank at San Francisco, Agusan del Sur, the total amount of P31,612.50 (Exhibits "W", "W-1"; "X", "X-1"; "Y", "Y-1"; "Z", "Z-1"; "AA", "AA-1") in full payment of his shortage.

In the meantime, due to the failure of the respondent to refund or restitute his shortage within the time granted him by the Provincial Auditor's Office (Exhibit "C"), the Provincial Auditor sent a telegram on October 7, 1978 to the Regional Director, Commission on Audit, Region XI, Davao City, informing said official that upon examination of respondent's accounts he was found short of P31,612.50 (Exhibit "E"). On November 18, 1978, the Provincial Auditor submitted to the same Regional Director his findings and recommendations with respect to respondent's shortage of his cash and accounts (Exhibit "F").

On December 4, 1978, respondent submitted his manifestation, alleging the following:

"1. That it is true that the cash and accounts of the undersigned as Clerk of Court of this Honorable Court were examined by the representative of the Provincial Auditor's Office, this Province, on August 22, 1978;

"2. That after the examination of the undersigned's cash and accounts on August 22, 1978, there was found a balance of Thirty Thousand Nine Hundred Thirty Six Pesos and Fifty Centavos (P30,936.50);

"3. That the undersigned requested after the examination of his cash and accounts made on August 22, 1978 for re-examination of his cash and accounts which was granted;

"4. That after the request for re-examination of undersigned's cash and accounts was granted, Mr. Nerio A. Sales, Provincial Auditor's representative, Commission on Audit, this province, brought to Tandag, Surigao del Sur undersigned's record books for Clerk of Court collections, Provincial Sheriff Ex-Officio collections, Fiduciary Fund collections, Legal Research Fund collections and Cash advance from Supreme Court record book, for the purpose of re-examination (Attached hereto is the receipt marked as Annex 1 showing receipt by Mr. Nerio A. Sales from the undersigned of the record books mentioned);

"5. That on October 19, 1978, the undersigned received the results of the re-examination of the cash and accounts of the undersigned by the Auditor's Office, Tandag, Surigao del Sur, dated October 5, 1978, showing a balance of Thirty One Thousand Six Hundred Twelve Pesos and Fifty Centavos (P31,612.50) as of August 22, 1978;

"6. That as a result of the re-examination of the undersigned's cash and accounts a difference of Six Hundred Seventy Six (P676.00 Pesos appeared;

"7. That after receipt of the results of the re-examination of the undersigned's cash and accounts, the undersigned remitted the full balance in the sum of Thirty One Thousand Six Hundred Twelve (P31,612.50) and Fifty Centavos thru the Philippine National Bank, San Francisco, Agusan del Sur, as evidenced by Official Receipts Nos. 968132 J dated November 16, 1978 for P1,059.55 representing collections for Legal Research Fund; 968133 J dated November 16, 1978 for P1,705.00 representing the balance of the cash advance received by the undersigned from the Supreme Court; 968134 J dated November 16, 1978 for P20,751.55 representing collections for Clerk of Court; 943934 L dated November 17, 1978 Philippine National Bank, Tandag, Surigao del Sur, representing collections for Fiduciary Fund (Deposit) and 943935 L dated November 17, 1978 for P2,656.40 representing collections for Provincial Sheriff Ex-Officio, all marked as Annexes 2, 3, 4, 5 and 6, respectively, and all contained in Remittance Advice No. 78-1, in the total sum of P31,612.50;

"8. That the aforementioned remittance were only made on November 16 and 17, 1978 because the undersigned was on official leave of absence for fifteen (15) days effective October 23 to November 10, 1978;

"9. That it was only on October 19, 1978 that the undersigned received the results of the re-examination of his cash and accounts." (Rollo, pp. 14-16).

According to the report, it has been sufficiently established that -

"* * respondent was short in his cash and accounts as Clerk of Court in the total amount of P31,612.50 when he was examined by Nerio Sales of the Provincial Auditor's office of Surigao del Sur, and this examination was found to be correct by Provincial Auditor Miguel Peñalosa after his review of Sales' findings. This shortage was also confirmed by the acts of respondent in sending a telegram (Exh. D) informing Nerio Sales that he would be remitting said amount of shortage thru PNB, San Francisco, Agusan del Sur, and his actual payments of his shortage of P31,612.50 thru the same bank on November 16 and 17, 1978 (Exhs. W, W-1, X, X-1, Y, Y-1, Z, Z-1, AA, AA-1), after he was already found short of his cash and accounts by the Provincial Auditor's Office." (Rollo, p. 12).

On the basis thereof, the Investigator concurred in the recommendation of the Provincial Auditor that respondent Carlito U. Alvizo be separated from the service for dishonesty and neglect of duty.

We are in accord with the recommendation of the Provincial Auditor as adopted by the Investigating Judge.

WHEREFORE, in view of the foregoing, the Court finds respondent Carlito U. Alvizo guilty of dishonesty and neglect of duty (Rule XVIII, Section 19 (c & g) of the Civil Service Rules and Regulations, and Section 1 (a & d), Presidential Decree No. 6), and hereby orders his DISMISSAL from the service, effective from the date of his suspension, with forfeiture of retirement gratuity, if any with prejudice to reinstatement, and without prejudice to criminal prosecution.

Fernando, Acting C.J., Teehankee, Barredo, Aquino, Concepcion, Jr., Santos, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Makasiar, J., concurs in a separate opinion.

Fernandez, J., on leave.

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