

ABUNDIO SIASICO, COMPLAINANT, VS. MUNICIPAL JUDGE FORTUNATO F. SALES, RESPONDENT.

A.M. Nos. 687-MJ & 703-MJ. May 31, 1976

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

Respondent Municipal Judge Fortunato F. Sales of Siayan, Zamboanga del Norte is charged with (1) absenteeism (AM 687-MJ), (2) extortion (AM 703-MJ), and (3) misappropriation (AM 132-MJ) in these three separate administrative complaints.

ADMINISTRATIVE MATTER NO. 687-MJ

This case was initiated by Municipal Mayor Abundio Siasico of Siayan, Zamboanga del Norte who in a letter dated July 3, 1973 addressed to the Provincial Governor reported the frequent absence from office of certain national officials assigned to Siayan among whom was Municipal Judge Fortunato F. Sales.[1]

The Provincial Governor endorsed the letter of Mayor Siasico to the Secretary of Justice who required Judge Sales to comment thereon.[2]

In his comment respondent denied the charge and assailed the report of the Chief of Police which was the basis of the complaint as "not only malicious but also unfair. A clear case of political persecution and harassment."[3]

The complaint was referred to the District Judge, Court of First Instance of Zamboanga del Norte sitting in Dipolog City, for investigation, report and recommendation.[4]

The records of the case together with the report and recommendation of the Hon. Investigating Judge Rafael T. Mendoza were forwarded to this Court pursuant to Section 7, Article X of the 1973 Constitution.[5]

The testimonial and documentary evidence of the complainant as reflected in the Report of the Investigating Judge show the following:

Respondent took his oath as Municipal Judge of Siayan, Zamboanga del Norte on June 2, 1969.[6] When he reported for duty, he was provided with office space in the municipal building which was then temporarily quartered in a private house. In January of 1972, the Municipal Government moved the offices of its local and national officials including that of respondent to a newly built dispensary building. The Municipal Mayor, having noticed the frequent absences of the national officials assigned to Siayan, instructed the Chief of Police to record in the municipal police blotter said absences including those of Judge Sales.

On June 30, 1972, Chief of Police Montano A. Antero submitted to Mayor Siasico a report on the absences of Judge Sales stating the specific dates as recorded on the police blotter from January to June 1972, to wit:

"From January, 16, 17, 18, 19, 20, 21, 22, 23, 1972, (Eight days absent)

From February 15, 16, 17, 18, 19, 1972 (Five days absent)

From March, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30, 31, 1972, (Eighteen days absent)

From April, 1, 2, 13, 14, 15, 16, 17, 18, 19, 27, 28 and 29, 1972, (Fourteen days absent)

From the month of May, 8, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 1972, (Twenty-two days absent)

From the month of June, 22, 23, 24, 25, 26, 27, 28, 29, 30, 1972, (Nine days absent)" (Exhibit C, p. 21, rollo)

The report of the Chief of Police noted further the following: (1) on May 26, 1972, a hearing was calendared and the private prosecutor as well as the witness and the accused appeared but Judge Sales was not present; (2) on May 27, 1972, criminal case No. 46 was scheduled for hearing and the parties appeared but Judge Sales was absent; and (3) on May 28, 1972, a hearing in an "election protest" was in the calendar but neither the parties nor Judge Sales appeared.

Because of the absences of Judge Sales, the Municipal Mayor was called upon on various occasions to administer the oath to witnesses, or to the Chief of Police, or the latter's officer-in-charge in connection with the filing of criminal complaints before the Municipal Court of Siayan, viz: complaint in Criminal Case No. 61, "People of the Philippines vs. Inocencio Aquino" for "murder" sworn before the Mayor on February 29, 1972 (Exhs. D & E, pp. 22-23, rollo); complaint in Criminal Case No. 32, for frustrated murder, filed on June 1, 1970, against Gaudencio Ramirez and others; and complaint in Criminal Case No. 64 for theft sworn on March 30, 1972.[7]

Respondent's defense in turn follows:

(1) Respondent admits that he was given a space in the municipal building where he could hold trials but because the place was not safe for the records of the court, he transferred his office to his residence which is about 200 meters away from the municipal building. Consequently, according to respondent, on those dates when there were no trials he was not seen in the municipal building neither by the Municipal Mayor nor by the Chief of Police because he was in his house working, such as preparing his calendar, subpoenas, summons, monthly reports, and so forth. In fact, he reported to the Executive Judge about this transfer of his office on October 31, 1972.[8] (2) On the specific dates mentioned in the police report for the months of January and February, respondent alleges that he was not absent because he was in his house as there were no scheduled hearings. (3) As regards his alleged absence from March 15 to 28, 1972, respondent claims that he left his station on March 12 to attend the 7th Municipal Judges Conference and Seminar held in Baguio City from March 15 to 28; he returned to Siayan on March 30 and held office as usual in his house on said date and on March 31. To substantiate this fact respondent offered in evidence a carbon copy of his certificate of service for March, 1972 as Exhibit 6.[9] (4) On April 1 and 2, 1972, respondent went to the municipality of Sindangan to get his mail as there is no post office in Siayan, whereas on the other dates mentioned in the police report respondent claims that he held office in his house as proof of which he notarized two documents on April 17 which are marked as Exhibits 7 and 8.[10] (5) For the month of May, 1972, respondent declares that he was on sick leave from May 8 to 20, and from May 21 to 22 he was on an extended leave of absence as shown by a copy of his certificate of service for said month.[11] As regards the scheduled hearings on May 26 and 27 mentioned in the police report, respondent asserts that he was not present in court because he was still on a leave of absence, while the hearing of the "election protests" set on May 28 was postponed at the request of the counsel of the protestant. On the other dates in the month of May, respondent alleges that he stayed in his residence as usual and performed his routine work. (6) Lastly, respondent states that he did not schedule hearings on the last week of the month of June as noted in the police report because there was continuous rain and so he held office in his house as usual.[12]

On the basis of the evidence thus adduced during the investigation, the Investigating Judge found sufficient basis for recommending the dismissal of respondent from the service for gross violation of existing laws on the

observance of office hours in the regular place of business of the municipal court.

We concur with the Honorable Investigator.

The municipal court is an essential integral unit of the local governmental structure of a municipality. It is the place where justice is administered and dispensed to the local residents, where functions of the municipal judge other than holding trials are performed, such as: receiving and docketing of complaints, civil as well as criminal in nature (Rule 5, Sec. 3; Rule 110, Sec. 2, Rules of Court), holding of preliminary examination or investigations (Rule 112, Secs. 1 & 2, *ibid.*), solemnization of marriages, authentication of merchant books, administering oaths, taking depositions and acknowledgements, and performing such other acts in his capacity as notary public *ex-officio*. (Sec. 76, Judiciary Act of 1948), preparation and/or issuance of civil writs, civil and criminal processes, and orders, etc., reports and keeping of records of all proceedings of the court (Sec. 79, *ibid.*).

Thus, Section 74 of the Judiciary Act of 1948 as amended provides:

"Courtroom and supplies. The Municipal Judge shall be provided with a room in the tribunal, or elsewhere in the center of population, suitable for holding court and shall be supplied with the necessary office supplies, furniture, lights and janitor service therefor..." (*italics supplied*)

Complying with the above provision, the Mayor of Siayan provided respondent with a suitable space in the municipal building to be used as a courtroom and office at the same time, equipped with a table and a cabinet with keys for the records and other important documents of the court. It is in this office provided by the Mayor of Siayan and not in his residence where respondent is duly responsible to exercise his functions as a municipal judge; it is here where he has to observe office hours and be available to the residents of the municipality whenever his services are needed. Apropos to the situation created by the respondent is the statement of this Court through Justice, now Chief Justice, Fred Ruiz Castro in *Jakosalem vs. Municipal Judge Cordovez* to the effect that the provisions of law and regulations prescribing definite office hours for judges are to be strictly observed so that all parties who have official business to transact with judges, especially municipal judges who are magistrates of direct citizen exposure, would always know where and when to locate them.[13]

In *Suan vs. Municipal Judge Resuello*, the Court emphatically declared that municipal judges are required to observe office hours just like other officers and employees of the government and to submit a daily time record, the same as civil service form 48, containing a "true and correct report of hours of work performed, record of which was made daily at the time of arrival at and departure from office." [14] (*italics supplied*) Undoubtedly, that cannot be accomplished if respondent were to keep office in his own house.

Reasons of public policy, the preservation of the good image of the judiciary, and avoidance of all appearances of impropriety, require that a judge should hold office at the regular place of business of the court and not at his residence. A judge holding office in his house makes himself open to suspicion and possible criticism that his official actuations cannot bear public scrutiny, more particularly of his co-officials in the local government. All these would have deterred respondent from the course of action he had taken had he possessed some sense of decorum and good judgment.

There is no merit to the allegation of respondent that he had to transfer his office to his house because the records of the court were not safe in the municipal building and that as a matter of fact certain records have been lost. He claims that the cabinet or "cupboard" given to him was not locked. If there was no lock, the simple remedy was for him to secure a key for his cabinet, and if there had been loss of records, that fact should have been reported either to the Mayor or the Chief of Police, but the truth is that, as testified by Mayor Siasico, Judge Sales never informed him nor complained that there was no lock to the cabinet or that he lost any of his records in the municipal building. (*tsn. p. 16*)

Respondent's explanation concerning his long absence in March of 1972 is unsatisfactory as he did not present any certificate of attendance at the alleged Conference and Seminar of Municipal Judges in Baguio City. With respect to his supposed sick leave and extended leave of absence in the month of May, the same is likewise unsupported by the official approval of such sick leave and/or leave of absence by the Secretary of Justice who at the time exercised administrative supervision over municipal judges. And as regards respondent's claim that in the last week of the month of June he did not schedule hearings because it was raining most of the time, such action was absolutely unwarranted; it simply betrayed his lack of industry and dedication which are indispensable to his office as a judge.

Time and again this Court stated that Judges should be imbued with a lofty sense of responsibility in the discharge of their duties for a proper administration of justice.[15] To paraphrase Justice Salvador Esguerra of this Court in *Municipal Council of Casiguran, Quezon vs. Municipal Judge Virgilio Morales*,[16] respondent herein totally ignored the demands of his official duties which require sacrifice of one's personal interest and convenience for the public good. In the case of Judge Morales, the Court found him neglectful of his duties to the residents of Casiguran, Quezon, who were from time to time deprived of the services of the local court, and We ordered him removed from the service. In the case of herein respondent it was shown through the testimony of Mayor Siasico that the latter was forced on several occasions to act on complaints filed by the Chief of Police for serious crimes committed in the municipality in view of the absence of the municipal judge.[16a]

Finally, respondent comes up with the defense that he sent a letter to the Executive Judge informing him that he transferred his office to his residence commencing January 1972. This alleged letter however was sent only on October 31, 1972, presumably because respondent became aware of the report of his absences to the Provincial Governor and eventually to the Secretary of Justice. The truth of the matter is that there was no approval by the Executive Judge of such transfer of respondent's office to his house.

ADMINISTRATIVE MATTER NO. 703-MJ

This case is an offshoot of the above-discussed complaint of absenteeism and is filed likewise by Mayor Siasico of Siayan.

Mayor Siasico alleges in his complaint that the true reason respondent Judge is holding office in his house is to cover up his acts of extortion from litigants. The Mayor attached to his complaint the following: (a) sworn statement of Pentawan Baguisan that he was one of the accused in Criminal Case No. 50 entitled "*People of the Philippines vs. Amenta Simbulan, et al.*", for Robbery with Homicide which was pending preliminary investigation before respondent and that the latter demanded and received one carabao from him as consideration for his release (p. 21, rollo, AM 703-MJ); (b) sworn statement of Amenta Simbulan that respondent demanded and received from him the sum of P400.00 and chicken and eggs worth P100.00 in consideration for his release in Criminal Case No. 50 (p. 22, *ibid*); (c) sworn statement of Constantino Lacay that respondent demanded and actually received from Taday Idias, complainant in the aforementioned criminal case, a carabao worth P500.00 plus the sums of P90.00 and P15.00, after threatening to acquit all the accused if his demand was not met (pp. 23-24, *ibid*); (d) sworn statement of Zosimo Silva who alleged that his sons were accused in a robbery case pending before respondent and the latter demanded and received P100.00 after assuring him that he (respondent) would take charge of the lawyer, but the case was however amicably settled without the intervention of any lawyer (p. 25, *ibid*); and (e) sworn statement of Cornelio Agosto, an accused in Criminal Case No. 68 for Parricide which was pending preliminary investigation before respondent, that the latter demanded and received P200.00 promising that he would do his best for the accused in said case (p. 26, *ibid*).

Respondent denied all the charges, questioned the veracity of the affidavits and claimed that the affiants were just

forced by the Mayor to sign their respective statements. He admitted however that he received from Constantino Lacay the amounts of P90.00 and P15.00 which were in payment of the services of the typist who assisted during the preliminary investigation. (pp. 3-6, *ibid*)

The complaint was referred to Judge Dimalanes B. Buissan for investigation. On October 22, 1974, the Court received Judge Buissan's report wherein the latter stated that at the hearing of this case complainant appeared but prayed for the dismissal of his complaint because his witnesses who were all present at the hearing "had turned hostile"; that respondent when asked to comment on the manifestation of the complainant offered no objection to the dismissal and opted not to present any evidence in his behalf.

The Investigating Judge ended his report with the following comments:

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"While the proceedings to impeach judges before Courts are by their nature highly penal in character and are governed by the rules of law applicable to criminal cases (In Re: Horilleno, 43 Phil. 43 Phil. 215), but considering that the sworn statements of the witnesses against him forming part of the record of this case, have not been rebutted by the respondent despite opportunity to do so at the hearing, if only to cleanse himself from the charges which to the mind of this investigator, are very serious, and in consonance with the efforts of our government to restore the faith and confidence of our people in the judiciary which is personified by municipal judges in their respective municipalities, this investigator finds that the respondent has not lived up to the highest moral standards of a judge, especially that he has in his answer admitted having received money (P90.00 and P15.00) allegedly for the typist who took down the proceedings but which is unbelievable for such amounts should have been delivered to the typist himself." (p. 56, rollo, AM 703-MJ)

We find the above-quoted observations of the Hon. Investigator with reason and consider them relevant in the imposition of the proper penalty upon respondent Judge for the two other cases.

ADMINISTRATIVE MATTER NO. 132-MJ

This third complaint was commenced by Ines R. Bandivas of Sindangan, Zamboanga del Norte, who accused respondent of misappropriating and converting for his own personal use and benefit 18 cavans of corn and 1-1/2 cavans of palay which she had deposited with respondent at the latter's residence in Siayan.

This case was referred to Hon. Dimalanes Buissan for investigation. Upon receipt of the report of the Investigating Judge, the case was heard by the Court en banc on March 6, 1975, after which parties were given time to file their respective memorandum.

The findings of the Investigator based on the testimonial evidence adduced by the complainant show the following: on October 6, 1971, the complainant Ines Bandivas was caught by bad weather in Siayan and she thought of depositing with Judge Sales her 18 cavans of corn and 1-1/2 cavans of palay which she had harvested from her farm; sometime later, Ines heard rumors that her corn was being sold at small stores by respondent Judge and so she requested the Chief of Police of Siayan to investigate; while the matter was under investigation it was reported by the household of Judge Sales that during the absence of the latter 15 cavans of corn were stolen from the house. Upon being informed of the loss, respondent promised to indemnify Ines with the harvest from his own farm; notwithstanding, however, the lapse of time respondent failed to comply with his commitment and because she needed money to pay an outstanding loan of P2,000.00 with the Development Bank of the Philippines, Ines filed the instant complaint on March 16, 1973.[17]

In his defense respondent admitted that complainant deposited in his house 18 cavans of corn and 1-1/2 cavans of palay; he claims, however, that while he was in Manila on vacation leave from November 12 to December 15,

1971, fifteen cavans were stolen from his house and this fact was reported by the members of his household to the local police as shown by an entry in the municipal police blotter on November 20, 1971.

After an appraisal of the evidence, Judge Buissan recommends the separation of respondent from the service based on his findings which We quote:

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"2. While the respondent admitted having received on deposit 18 cavans of corn, only 15 cavans were reported to have been allegedly stolen in the evening of November 19, 1971. Where are the three other cavans? This confirms the testimony of the complainant that a certain Baray Hamolod told her that the respondent disposed of some three (3) cavans of corn, leaving, therefore, 15 cavans in his house.

"3. It was impossible for the 15 or 18 cavans of corn and 1-1/2 cavans of palay to be stolen in one night (November 19, 1971) from the house of the Municipal Judge, respondent herein, especially that his house is situated in the poblacion of the municipality and is only 50 fathoms away from the house of Patrolman Oliver Atay. Also, Dading Sales and Flor Sales, relatives of the respondent were staying in his house. This is confirmed when they reported the alleged incident of November 19, 1971 early in the morning of November 20, 1971. The alleged hauling of the 18 cavans of corn would be impossible without the connivance of the occupants of the house of respondent.

"4. Also, while the respondent Judge was on leave of absence as shown by Exhs. "2" and "3", it is not proof that he was somewhere else on November 19, 1971.

"5. The report appearing in the police blotter has not been investigated by the office of the Chief of Police in the municipality. No attempt was made to solve the alleged theft committed in the house of no less than the respondent judge.

"There has been no sufficient explanation where the three cavans of corn and the 1-1/2 cavans of palay are. According to the police blotter only 15 cavans of corn were stolen. The inevitable conclusion is that the respondent appropriated and converted to his own use at least the 3 cavans of corn and the 1-1/2 cavans of palay which obviously were not stolen.

"6. Coupled with these is his own promise to pay the cereals when called to the office of the Chief of Police as testified to by complainant.

"With the foregoing observations, the Court doubts the veracity of the respondent's defense that the deposited cereals were stolen on the night of November 19, 1971, shifting the responsibility on him alone.

"It is true that the deposit of the cereals was not for any consideration, but merely a favor, but it does not mean that because the deposit was for free the depositary would not just care for its safety, especially that such deposit was necessary due to the bad weather. The depositary could not just claim that the same were stolen by unknown persons.

"It is evident, therefore, that the respondent does not possess the necessary and indispensable quality of honesty required of a judge, not only in the performance of his official duties, but also in his relation with the community where he is stationed." (pp. 50-52, rollo, AM 132-MJ)

We are in accord with the above quoted findings and observations of the Investigating Judge. The alleged theft of 15 cavans of corn from the house of respondent is indeed incredible.

There is no question that as a depositary of the 18 cavans of corn and 1-1/2 cavans of palay of complainant, respondent was obliged to keep the thing safely, to take care of it with the proper diligence of a good father of a family, and to return the same when required.[18] The fact that respondent accepted the deposit as an act of pure

service without compensation is beside the point. Respondent Judge is legally and morally bound to be true to the trust and confidence reposed on him by the complainant, more so, as he is holding an office of which the highest degree of honesty and integrity are expected by the public. If respondent can be dishonest in his private dealings with third persons, how can We expect uprightness from him in the administration of justice?

In *Dia-Anonuevo vs. Bercacio*, supra, the Court considered as highly reproachable the conduct of a judge who failed to return promptly the money deposited with him by a third person, and We said which We here repeat, that a magistrate of the law must comport himself at all times in such a manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice.

Yes, as stated by this Court in *Jugueta vs. Boncaros*,^[19] one who occupies an exalted position in the administration of justice must pay a high price for the honor bestowed upon him, for his private as well as his official conduct must at all times be free from the appearance of impropriety.

IN CONCLUSION, We find and hold respondent Judge Fortunato F. Sales guilty as charged in AM-687-MJ and AM-132-MJ, and order him removed from the service immediately upon finality of this Decision. In view of the dismissal of respondent, and no evidence having been adduced in AM-703-MJ, the same is considered closed.

The removal of respondent Judge is with prejudice to reinstatement in the government service, whether pertaining to the national government, local political subdivisions, or other governmental instrumentalities and agencies, including government-owned or controlled corporations or entities and with forfeiture of retirement benefits.[*]

SO ORDERED.

Castro, C.J., Fernando, Teehankee, Barredo, Makasiar, Antonio, Esguerra, Aquino, and Martin, JJ., concur.

[1] p. 19, rollo of AM 687-MJ

[2] p. 1, 3 & 4, *ibid.*

[3] pp. 5-6, *ibid.*

[4] p. 13, *ibid.*

[5] p. 86-a, *ibid.* The Court heard the case en banc on August 15, 1974, p. 88, *ibid.*

[6] Personal file of respondent.

[7] *tsn.*, January 29, 1973, pp. 2-11.

[8] see p. 18, rollo.

[9] see p. 7, *ibid.*

[10] see pp. 8-9, *ibid.*

[11] Exh. 9, p. 10, *ibid.*

[12] *tsn.*, Jan. 30, 1973, pp. 36-57.

[13] Adm. Matter No. 13-MJ, July 18, 1974, First Division, 58 SCRA 11.

[14] Adm. Case No. 610-MJ, July 25, 1975 per Felix Q. Antonio, J., Second Division, 65 SCRA 301.

[15] *Dia-Añonuevo vs. Bercacio*, AM No. 177-MJ, Nov. 27, 1975, Court En Banc, per Muñoz Palma, J. *Jugueta*

vs. Boncaros, Adm. Matter No. 440-CFI, Sept. 30, 1974, citing Lague vs. Kayanan, L-26826, Aug. 29, 1969, 29 SCRA 165, 183; Conde vs. Superable, Adm. Case 812, Sept. 30, 1969, 29 SCRA 727; Otero vs. Esguerra, Adm. Matter No. 653-MJ, May 23, 1974; Jakosalem vs. Judge Cordovez, Adm. Matter No. 13-MJ, July 18, 1974

[16] AM Nos. 81-MJ and 559-MJ, Nov. 13, 1974, 61 SCRA 13

[26] 16a T.s.n. January 29, 1973, pp. 9-11.

[17] Tsn. witness Apilan Badia-on, Sept. 2, 1974, pp. 8-9; tsn. Ines Bandivas, Sept. 3, 1974, pp. 17-54

[18] Articles 1163, 1972, Civil Code of the Philippines

[19] Adm. Matter 440-CFI, Sept. 30, 1974, per Muñoz Palma, J., 60 SCRA 28.

[*] Adm. Mat. No. P-195, Pedro D. Dioquino vs. Rodolfo J. Martinez, May 10, 1976.

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