

**RODOLFO T. BAQUERFO, COMPLAINANT, VS. GERRY C. SANCHEZ,
LEGAL RESEARCHER II, REGIONAL TRIAL COURT, BRANCH 28,
LIANGA, SURIGAO DEL SUR, RESPONDENT.**

A.M. NO. P-05-1974. April 06, 2005

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PER CURIAM:

The Court cannot overemphasize the need for honesty and integrity on the part of all those who are in the service of the judiciary.[1] We have often stressed that the conduct required of court personnel, from the presiding judge to the lowliest clerk of court must always be beyond reproach and circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the judiciary. The Court condemns and would never countenance any conduct, act or commission on the part of all those involved in the administration of justice, which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary.[2]

The pilferage and sale of court property, albeit deemed unserviceable, is an act of impropriety warranting the imposition of the proper sanctions.

Complainant Rodolfo T. Baquerfo, Court Stenographer III and Officer-in-Charge, accuses respondent Gerry C. Sanchez, Legal Researcher II, both of the Regional Trial Court, Branch 28, Lianga, Surigao del Sur, with grave misconduct for the theft of two (2) unserviceable desk fans and one (1) unserviceable electric stove.[3] Attached to the complaint were the affidavit of Alejandro Tan-Querolgico,[4] the security guard on-duty, and the investigation report of Armando M. Toledo,[5] their team leader.

The complaint alleged that on April 10, 2003 at 3 o'clock in the afternoon, respondent sold to Eddie Sanchez, a scrap iron buyer, two (2) unserviceable desk fans which are judiciary properties and one (1) unserviceable electric stove owned by the provincial government of Surigao del Sur.

When the complaint was referred by the Office of the Court Administrator[6] to respondent for comment,[7] he labeled the accusations therein as unfounded, inconsistent and speculative. He claimed that some personalities were behind the filing of the case against him and that complainant Baquerfo was merely used as a dummy. He also alleged that complainant's witnesses had no knowledge of the alleged incident.[8]

He explained that on June 12, 2002, all the scrap and rusty materials found in the court premises, including empty bottles of Tanduay rum which complainant's group allegedly consumed, were placed outside the court premises and were eventually picked up by the garbage truck in compliance with the mayor's office Clean and Green Project.[9]

Respondent insisted that the instant administrative complaint was filed to preempt the filing of an administrative complaint against complainant's group for their corrupt activities while discharging their governmental functions.[10] He averred that Security Guard Tan-Querolgico could not have seen the three (3) children who allegedly assisted him in hauling the desk fans and the stove as the former was not yet on duty at that time.[11]

Respondent observed that while the complaint mentioned two (2) unserviceable desk fans and one (1) unserviceable electric stove, only the latter item was mentioned in the affidavit of Tan-Querolgico. The investigation report of Toledo which mentioned three (3) electric stoves did not also jibe with the incident report of Tan-Querolgico which only adverted to scrap iron. He likewise noted that the complaint, unlike the affidavit of Tan-Querolgico and Toledo's investigation report, did not advert to the empty bottles.

In a letter dated June 9, 2003,[12] Judge Alfredo P. Jalad, Executive Judge of the same court, copy furnished the OCA with the Information[13] filed by Prosecutor I Teofilo B. Manuel, Jr. before the MCTC of Barobo-Lianga, Barobo, Surigao del Sur, charging respondent with theft.

On the same occasion, Judge Jalad called OCA's attention to Section 13 of R.A. No. 3019, which provided for the suspension, pending investigation, of any incumbent public officer charged with offenses under said statute, or Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property.

The OCA, however, denied Judge Jalad's recommendation for respondent's preventive suspension on the ground that as a legal researcher, respondent was not capable of harassing, molesting or intimidating witnesses which would hamper the administration of justice. The OCA recommended that a formal investigation be conducted and that the complaint be referred to Executive Judge Ermelindo G. Andal, RTC, Branch 27, Tandag, Surigao del Sur, for investigation.[14]

Judge Andal submitted his report on February 10, 2005. The investigating judge found respondent culpable for Grave Misconduct, thus:

After a careful study and evaluation of the evidence, the Undersigned is convinced that respondent took and sold subject two (2) units of "unserviceable" desk fans, Hitachi Brand, which are Supreme court properties, and one (1) unit "unserviceable" stove, Chief Mate brand, which is the property of the Provincial Government of Surigao del Sur, along with undetermined empty bottles. Declared "unserviceable," subject electric fans and stove were on top of the junk cabinet behind the store room of the Regional Trial Court, Branch 28, Lianga, Surigao del Sur, before they were taken by respondent on April 10, 2003, at about 3:00 o'clock in the afternoon, and later sold by him with the help of three (3) young children, namely, Ryan Jason Moseclar, Gerson Sanchez and Daniel Tiongson, to scrap iron buyer Eddie Sanchez. The Undersigned had no reason to doubt the testimony of Ryan Jason Moseclar, which he found candid, positive and straightforward. Ryan Jason testified that, together with Gerson Sanchez and Daniel Tiongson, he delivered the items to the shop of Eddie Sanchez upon the instruction of respondent, who himself gave the items to them, and that respondent followed later to collect the proceeds. Ryan Jason's testimony was corroborated by Ernesto Sanchez alias Eddie Sanchez, who admitted the delivery and sale to him of the items. Eddie Sanchez' vacillation on the witness stand is understandable. It was instinctive on his part to try to avoid being held liable for buying stolen items. Ryan Jason's testimony was further corroborated by HOJ Security Guard Alejandro Tan Querolgico, who declared that he allowed the three (3) children to enter the HOJ premises upon the representation of respondent that they would clean the area, that it was respondent who gave to the children the electric stove, saying it was junk, and that the children also gathered scraps and assorted empty bottles; and likewise corroborated by security guard Armando Magno Toledo, who was presented by respondent as his witness, but who declared that at 1:00 o'clock in the afternoon of April 10, 2003, before his relief by co-guard Alejandro Tan Querolgico, Eddie Sanchez was at the gate of the HOJ with children as companions, and told him that he would buy the scraps and had already an agreement with respondent, but nonetheless Armando Toledo did not allow him to enter because there was no order from the Judge and that when he conducted an investigation of the incident and went to the residence of Eddie Sanchez to inquire what was sold to him, Eddie Sanchez answered electric stove and assorted empty bottles. Ryan Jason's testimony was also corroborated by Rustico Tumalon, Court Utility I, who testified that on April 10, 2003, at about 2:00 o'clock in the afternoon, while he and respondent

were at the extension room of the Court record section, the latter suggested to him that they sell the scraps; that he told respondent "to ask permission from the Acting Clerk of Court Boy Baquerfo because the Auditor might come and conduct an inventory of those scraps," referring to "electric fans and electric stove"; and that thereafter, respondent went outside and, as testified by Ryan Jason Moseclar and Alejandro Tan Queroligico, took the subject property and gave the same to the children who, in turn and upon his instruction, delivered them to the shop of Eddie Sanchez.

Premises considered, it is submitted that the act committed by the respondent constitutes, at least, GRAVE MISCONDUCT under Section 22(c) of Rule XIV of the Implementing Rules of the Revised Administrative Code of 1987 on the Civil Service Commission, for which the penalty prescribed is DISMISSAL from the service...

However, even as the records of the case were being readied for transmission, respondent's father furnished Judge Andal a machine copy of the Court's acceptance of respondent's resignation from the service effective October 17, 2004. Thus, he recommended that respondent "be considered resigned but with prejudice."

Cessation from office of respondent by resignation^[15] or retirement^[16] neither warrants the dismissal of the administrative complaint filed against him while he was still in the service^[17] nor does it render said administrative case moot and academic.^[18] The jurisdiction that was this Court's at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case.^[19] Respondent's resignation does not preclude the finding of any administrative liability to which he shall still be answerable.^[20]

Since the complaint was filed on June 17, 2003, long before respondent was deemed resigned on October 17, 2004, jurisdiction had already attached and was not lost by respondent's resignation from office during the pendency of the case.^[21] Thus, the Court retains the authority to resolve the administrative complaint against him.^[22] Indeed -

... To deprive the Court of authority to pronounce his innocence or guilt of the charges against him is undoubtedly fraught with injustice and pregnant with dreadful and dangerous implications. For, what remedy would the people have against a civil servant who resorts to wrongful and illegal conduct during his last days in office? What would prevent a corrupt and unscrupulous government employee from committing abuses and other condemnable acts knowing fully well that he would soon be beyond the pale of the law and immune to all administrative penalties? As we held in *Perez v. Abiera*,^[23] "[if] only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public. If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation."^[24]

The Court agrees with the foregoing findings of the investigating judge except as to the recommended penalty.

To constitute grave misconduct, the acts complained of should be corrupt or inspired by an intention to violate the law, or constitute a flagrant disregard of well-known legal rules.^[25] It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character and implies wrongful intent and not a mere error in judgment.

Needless to state, respondent irreparably tarnished the image of the judiciary with his disgraceful acts. He descended to the level of a scavenger scrounging for and dealing in scraps. His unauthorized act of selling government property, albeit deemed unserviceable, as well as pocketing the proceeds thereof, was no less reprehensible than the pilferage of items still utile. Thievery, no matter how petty, has no place in the judiciary.

We are not inclined to be sympathetic to respondent because he cannot plead his lack of knowledge or ignorance as an excuse.[26] As a legal researcher, he should know that the custodian of the court's properties is the branch clerk of court. His functions never involve the custody or disposal of court properties. He was even advised by Rustico Tumalon, Court Utility I, to seek prior permission from the acting clerk of court as certain procedures must be complied for the management and disposal of unnecessary court properties. But respondent did not heed the advice and proceeded instead to sell the items. In this sense, respondent's act was deliberate and intentional.

At the outset, we declared that the pilferage and sale of court property, albeit deemed unserviceable, is an act of impropriety. In this case, not only did respondent sell the court properties without authority, he also used the proceeds for himself. What made the act more disgraceful was the fact that for a pittance, respondent willingly, deliberately and knowingly put his job on the line.

We are aware that a meager amount was involved in this case. This, however, is not the core of the issue. What is more important is the deliberate and intentional sale of the court properties by the respondent without proper authorization. Perhaps, the realization of his folly was what prompted his precipitate resignation from office effective October 17, 2004.

We fully agree with the observation of the investigating judge, to wit:

... The fact that subject property taken and sold by respondent has been classified as "unserviceable" and perhaps good only as junks is of no moment and does not detract from the seriousness of the act committed by him. Needless to state, court personnel are charged with the duty and responsibility of safeguarding and protecting court property in whatever condition or state it may be found. One should not, and never, even attempt to pilfer or steal, dissipate or destroy the same. But what makes respondent's act detestable is the idea that he is part of the institution that is in the forefront in the campaign against the commission of the crime. He is thus the least expected to do an act that can cast doubt on the institution's sincerity in the performance of its role.

Nevertheless, we cannot subscribe to the recommendation of the investigating judge that respondent be considered "resigned with prejudice." Resignation is not a way out to evade administrative responsibility when a court employee is facing administrative sanction.[27] It is not even among the penalties which may be imposed on the erring public official.

Under the Civil Service Law and its implementing rules,[28] grave misconduct is punishable by dismissal[29] from the service with forfeiture of all benefits, excluding leave credits, if any, and with prejudice to re-employment in any branch or agency of the government, including government-owned or controlled corporations.[30]

Although dismissal from the service is no longer feasible in view of respondent's resignation on October 17, 2004, his retirement and all other benefits, except accrued leave credits, may still be ordered forfeited. He is further disqualified from re-employment in any branch of the government or any of its agencies or instrumentalities, including government owned and controlled corporations.[31]

WHEREFORE, respondent Gerry C. Sanchez, Legal Researcher II, Regional Trial Court, Branch 28, Lianga, Surigao del Sur, is found guilty of GRAVE MISCONDUCT. His retirement and all benefits, except earned leave credits, are hereby FORFEITED, with prejudice to re-employment in any branch, agency, instrumentality or agency of the government, including government-owned and controlled corporations.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

- [1] Re: Jovelita Olivas and Antonio Cuyco, A.M. No. CA-02-12-P, 431 Phil. 379, 391 (2002).
- [2] Pamintuan v. Ente-Alcantara, et al., A.M. No. P-04-1912, 17 December 2004.
- [3] Rollo, pp. 1-2.
- [4] Id. at 3-4.
- [5] Id. at 5.
- [6] Id. at 7.
- [7] Id. at 16-22.
- [8] Id. at 18-19.
- [9] Id. at 19.
- [10] Id. at 20.
- [11] Id.
- [12] Id. at 12.
- [13] Id. at 14.
- [14] Id. at 37-41.
- [15] Reyes v. Cristi, A.M. No. P-04-1801, 2 April 2004, 427 SCRA 8.
- [16] See Re: Complaint Filed by Atty. Francis Allan A. Rubio on the Alleged Falsification of Public Documents and Malversation of Public Funds, A.M. No. 2004-17-SC, 27 September 2004; Caja v. Nanquil, A.M. No. P-04-1885, 13 September 2004.
- [17] Tuliao v. Ramos, A.M. No. MTJ-95-1065, 348 Phil. 404, 416 (1998), citing Perez v. Abiera, A.C. No. 223-J, 11 June 1975, 64 SCRA 302; Secretary of Justice v. Marcos, A.C. No. 207-J, 22 April 1977, 76 SCRA 301.
- [18] Sy Bang v. Mendez, 350 Phil. 524, 533 (1998).
- [19] Flores v. Sumaljag, 353 Phil. 10, 21 (1998).
- [20] OCA v. Fernandez, A.M. No. MTJ-03-1511, 20 August 2004.
- [21] Reyes v. Cristi, *supra*.
- [22] Ilagan v. Amar, A.M. No. P-04-1858, 16 August 2004, citing Cabarloc v. Cabusora, A.M. No. MTJ-00-1256, 15 December 2000, 348 SCRA 217.
- [23] *Supra*.
- [24] Villanueva v. Milan, 438 Phil. 560, 567-568 (2002).
- [25] Aquino, Jr. v. Miranda, A.M. No. P-01-1453, 27 May 2004, 429 SCRA 230, 240, citing Amoco v. Magro,

A.M. No. 439-MTJ, 30 September 1976, 73 SCRA 107.

[26] Toribio v. Ofilas, A.M. No. P-03-1714, 13 February 2004, 422 SCRA 534, 540.

[27] Marbas-Vizcarra v. Florendo, 369 Phil. 840 [1999]; Cajot v. Cledera, 349 Phil. 907 [1998].

[28] Civil Service Law, Subtitle A, Title I, Book V of E.O. No. 292, otherwise known as the Administrative Code of 1987, Omnibus Civil Service Rules and Regulations dated 27 December 1991, amended by the Uniform Rules on Administrative Cases in the Civil Service dated 31 August 1999.

[29] See Court Administrator v. Sevillo, 336 Phil. 931 (1997); Re: Pilferage of Supplies in the Stockroom of the Property Division, 389 Phil. 45 (2000).

[30] Re: Jovelita Olivas and Antonio Cuyco, see note 1 at 392.

[31] Id.

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