

JUDGE MAXIMO A. SAVELLANO, JR., COMPLAINANT, VS. ALBERTO D. ALMEIDA, PROCESS SERVER, REGIONAL TRIAL COURT, BRANCH 53, MANILA, RESPONDENT.

A.M. No. P-92-697. March 22, 1993

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PER CURIAM:

Judge Maximo Savellano, Jr., of the Regional Trial Court of Manila, Branch 53, in a letter complaint to the Court Administrator dated March 20, 1992, charged his court Process Server, Alberto D. Almeida, with grave misconduct for his unauthorized taking from the steel cabinet in the custody of Branch Clerk of Court Rita E. Quizon certain exhibits consisting of packets of "shabu" in Crim. Case No. 91-95715 (People vs. Emmanuel Deveza) and in Crim. Case No. 91-95716 (People vs. Carmencita Deveza).

According to Judge Savellano, he called the NBI to investigate the incident. The result of the NBI investigation is contained in its report dated 20 March 1992 showing that respondent Almeida was responsible for the missing quantity of the "shabu" exhibit in the Deveza cases.

On 14 February 1992, Judge Savellano issued a Memorandum to respondent Alberto D. Almeida thus -

"You are hereby given seventy-two hours from your receipt hereof within which to show cause in writing why you should not be dismissed from the service for opening, without permission from the undersigned Presiding Judge or the Branch Clerk of Court, office cabinets and taking out records of cases and evidence on February 7, 1992, at around 4:10 p.m., specifically the cabinets of the Branch Clerk of Court located inside the staff room, containing the records of Criminal Cases Nos. 91--95715 and 91-96716, entitled People of the Philippines vs. Emmanuel Deveza and People of the Philippines vs. Carmencita Deveza and Emmanuel Deveza, respectively, including the evidence consisting of shabu which you took out and placed on top of the table of the undersigned Presiding Judge in the courtroom, when you were left alone in the office, the court aide Ramon Orticio, upon coming back to the office, having seen you alone scanning the records containing the small plastic bag of shabu which was sealed by the Branch Clerk of Court, and which was found by the Branch Clerk to have been already opened and some of its contents strewn outside the plastic container when she reported for work in the morning of February 10, 1992.

"You are further directed to explain why you still have in your possession keys to the door and cabinets in the office enabling you to go in and out of the office anytime and open the cabinets without permission from the undersigned and the Branch Clerk of Court, despite the fact that the undersigned ordered all subordinate employees below the Branch Clerk on November 11, 1991 to surrender all the keys to the doors and cabinets in their respective possessions."

The above Memorandum was received by respondent Almeida on 17 February 1992 as evidenced by his handwritten receipt thereon. Since receipt of such Memorandum, respondent Almeida has not been regularly reporting for work.

On 2 March 1992, respondent Alberto D. Almeida belatedly filed his answer admitting having opened the cabinet containing evidence of pending cases but claimed it was merely out of curiosity.

On 14 April 1992, Judge Savellano placed respondent Alberto D. Almeida on preventive suspension.

These circumstances led Judge Savellano to lose his confidence in Process Server Almeida and to recommend his dismissal from the service.

On 8 June 1992, We referred the case to Judge Bernardo P. Pardo, Executive Judge of the Regional Trial Court of Manila, for investigation, report and recommendation.

On 24 November 1992, Executive Judge Pardo filed his Report and Recommendation dated 6 November 1992 stating that the Branch Clerk of Court concerned whose testimony was needed to complete the investigation of the case left for abroad and her return was not certain; that respondent continued to be under suspension from office since 14 April 1992; that on 19 October 1992 respondent tendered his resignation addressed to the Court Administrator but expressing his desire to avail of all monetary and other benefits arising from his employment; that in the absence of the testimony of the Branch Clerk of Court, it could not be determined with moral certainty whether respondent was responsible for the missing exhibits in the Deveza cases; and, that respondent's resignation was equally an effective mode of termination of his employment with the Court.

The Executive Judge then recommended that: (a) the resignation of respondent be accepted effective 28 February 1993; (b) his preventive suspension be lifted immediately; and, (c) all monetary benefits otherwise due respondent be released to him.

On 7 December 1992, before the Court could act on the report dated 6 November 1992, Branch Clerk of Court Rita E. Quizon arrived from abroad. The Executive Judge then reopened the investigation of the case and heard her testimony in the presence of respondent.

On 14 January 1993, Executive Judge Pardo submitted his Supplemental Report and Recommendation stating that

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“x x x On August 3, 1992, one Ramon Orticio y Rosales, Court Aide, Regional Trial Court, Branch 53, Manila, testified that on February 7, 1992, at about 4:15 p.m., he saw respondent Alberto Almeida inside the courtroom. He (witness) went inside and saw envelopes containing exhibits of the Deveza case for drug pushing, on top of the rostrum. The following working day, February 10, 1992, when he reported for work, the exhibits of the Deveza case(s) were found scattered inside an envelope. The exhibits are packets of shabu powder.

On August 7, 1992, we called for branch clerk of court Atty. Rita Quizon to hear her on the facts of the case but she was out of the country and the date of her return was not known.

Also on August 7, 1992, respondent Almeida testified that on February 7, 1992, he served court processes during the day and returned to the Court at 4:30 p.m. The branch clerk asked him to close the office. He saw the filing cabinet unlocked and he brought out a certain envelope of a case he did not know and placed the envelope in the rostrum. He opened the envelope to check if anything was missing and placed them back in the filing cabinet. At this time, Ramon Orticio arrived. Then he (Almeida) closed the office. The next working day, the branch clerk of court asked him why he interfered with the evidence in bundles in the filing cabinet. He was then subjected to investigation by agents of the National Bureau of investigation.

On November 06, 1992, we submitted a report and recommendation dispensing with the testimony of the branch clerk of court as she was out of the country and recommending acceptance of the resignation of respondent Almeida.

However, Branch Clerk of Court Rita E. Quizon arrived on December 07, 1992. Consequently, pursuant to a resolution of the Supreme Court, we re-opened the investigation and heard the testimony of Atty. Quizon, in the presence of the respondent Almeida. Atty. Quizon testified that on February 10, 1992, early in the morning,

she reported for work at the Regional Trial Court, Branch 53, Manila; that Ramon Orticio y Rosales, Court Aide, told her that on February 7, 1992, at about quarter to 5:00 in the afternoon, when he went back to the office, he saw Alberto Almeida, Process Server, inside the courtroom and that the exhibits in the Deveza case were scattered in the rostrum; that she immediately went to the filing cabinet where the exhibits are kept; that the cabinet was locked; that she opened the filing cabinet and found one bundle of exhibits pertaining to the Deveza case (Crim. Case No. 91--95715-16 for Violation R.A. 6425, Sec. 15 and 16, Dangerous Drugs Act) topsy-turvy; that she examined the envelope and found that the packet containing the shabu was opened with a tear in it; that she confronted respondent Almeida who admitted opening the exhibits but saying it was just for curiosity's sake; that she reported to the presiding judge and the presiding judge called the NBI; that she executed an affidavit before the NBI agent and that the presiding judge ordered the re-weighing of the shabu exhibit.

We find the testimony of Atty. Quizon to be reflective of the truth. Respondent Almeida did not question her and made no further remarks. Thus, it is beyond doubt that respondent Almeida opened the envelope containing the "shabu" constituting evidence in the case of People vs. Deveza, Crim. Case No. 91-95715-16, Regional Trial Court, Manila; he opened the plastic packets of shabu and scattered the substance in the envelopes. After the NBI conducted an examination of the contents of the packets, they weighed less than the original weight of 40.363 grams.

IN VIEW WHEREOF, we find respondent Alberto Almeida, Process Server, Regional Trial Court, Branch 53, Manila, to be guilty of grave misconduct in office, and respectfully recommend that he be DISMISSED from the service effective on the date of his preventive suspension on April 14, 1992."

We find the above Supplemental Report and Recommendation of Executive Judge Pardo duly supported by the evidence on record. Consequently, We agree with him that respondent be dismissed from the service.

In the statement of respondent before the NBI (Rollo, pp. 14-16), he admitted that he was at least an occasional "shabu" user; that he started to use "shabu" in the later months of 1991; that in those occasions, he used about 1/8 gram of "shabu" worth P100.00; that during "shabu" sessions, he and his friends would spend about P400.00; and, that he opened the "shabu" exhibits kept in the filing cabinet of their Branch Clerk of Court out of curiosity, i.e., to look at the crystals because ordinarily he would only use "shabu" in powder form.

In contrast, respondent testified before Executive Judge Pardo that he merely checked the envelopes he had taken out from the cabinet of exhibits to find out if anything was missing therein and placed the envelopes back.

We are not persuaded by the explanation of respondent. As aptly observed by Judge Savellano, "[s]uch explanation is flimsy and incredible and does not merit serious consideration." The detailed circumstances he related to the NBI convince Us that he is indeed a "shabu" user so that he was interested in the exhibits in question. That should explain why of the numerous bundles of exhibits inside the cabinet, he chose to open the envelopes containing the "shabu" exhibits in the Deveza cases. It could not simply be a matter of curiosity on his part. Besides, according to the NBI report, when the contents of the packets of "shabu" were examined "they weighed less than the original weight of 40.363 grams."

Significantly, at the hearing conducted by Executive Judge Pardo, respondent remained silent in the face of the derogatory statements made against him by Branch Clerk of Court Rita E. Quizon. Respondent did not present any evidence to rebut the evidence proffered against him.

It may be worth to mention that on 7 December 1992, Judge Maximo A. Savellano, Jr., wrote Associate Justice Josue N. Belliosillo forwarding to him a copy of his (Judge Savellano) letter to respondent, Process Server Alberto D. Almeida, dated 12 August 1992, copy of which Judge Savellano furnished Executive Judge Pardo, requiring respondent Almeida -

“ x x x to show cause in writing within seventy-two (72) hours from receipt hereof why you should not be charged administratively for grave misconduct or graft for having allegedly collected sometime in April 1990, the amount of Two Thousand Pesos (P2,000.00) from Efren Magsombol, petitioner in Civil Case No. 90-52411, pending before this branch, entitled Efren Magsombol v. NHA and Nicanor Peji, for payment of insurance premium on the P20,000.00 injunction bond required to be put up by the said petitioner pursuant to the Court's Order, dated April 20, 1990 (Rollo, page 68); and the further amount of One Thousand Eight Hundred Pesos (P1,800.00) in cash which you again allegedly collected from Efren Magsombol when you went to his house in connection with the said injunction bond, as per the affidavit of Efren Magsombol, dated August 7, 1992, a xerox copy of which is hereto attached as Annex 'A' and made an integral part hereof; and why up to the present, injunction bond has not been procured for and in the name of Efren Magsombol. These, despite the order of the undersigned Presiding Judge that all the employees of this Branch should never intervene for monetary considerations in the procurement of injunction bonds in any case pending before this Branch.”

Judge Savellano stated that respondent Alberto D. Almeida failed to answer the above Memorandum despite the latter's receipt thereof on 19 August 1992 as evidenced by his signature thereon; that respondent Almeida admitted to him (Judge Savellano) that he collected the amount of P3,800.00 from Magsombol and notwithstanding his (Almeida) promise to reimburse the amount he has not done so, thus compelling Magsombol to secure the bond himself from an insurance company and spending additional money for it.

Verily, the actuations of respondent Process Server, Alberto D. Almeida, constitute grave misconduct or conduct prejudicial to the best interest of the service. As We emphasized in *Tan v. Herras* (Adm. Matter No. P-90-404, 11 March, 1991, 195 SCRA 1), the conduct of judges and court personnel must at all times be characterized not only by propriety and decorum but must also be above suspicion. In this regard, respondent utterly failed to meet this exacting standard. He has gravely abused the confidence reposed in him by Judge Savellano. To a greater degree, he has violated the norm of public accountability set forth in Sec. 7, Art. XI of the Constitution. We cannot countenance any act which would diminish or even just tend to diminish the faith of the people in the administration of justice (see *Annang v. Vda. de Blas*, Adm. Matter No. P-91-602, 15 October 1991, 202 SCRA 635).

WHEREFORE, respondent ALBERTO D. ALMEIDA, Process Server, Regional Trial Court, Branch 53, Manila, is hereby DISMISSED from the service for grave misconduct or conduct prejudicial to the best interest of the judiciary, effective 14 April 1992 when he was suspended, with forfeiture of all benefits otherwise due him except accrued leaves.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Campos, Jr., and Quiason, JJ., concur.

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