

ALEJANDRO C. ABEJARON, COMPLAINANT, PHILIPPINE NATIONAL BANK, COMPLAINANT-INTERVENOR, VS. ATTY. JOSE V. PANES, CLERK OF COURT AND EX-OFFICIO PROVINCIAL SHERIFF, COURT OF FIRST I...

A.M. No. P-1158. August 01, 1978

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

Respondent Jose V. Panes is the clerk of court of the Court of First Instance of South Cotabato, Branch I, with station at General Santos City. He is now facing charges in this administrative case for gross dishonesty and grave misconduct in the performance of his duties as ex-officio provincial sheriff.

This complaint was initiated by Alejandro C. Abejaron who later on was joined by the Philippine National Bank as complainant-intervenor.

In Our Resolution of July 27, 1976, the charges were referred to Judge Filomeno S. Gapultos, Executive Judge, for investigation, report and recommendation. Judge Gapultos conducted a hearing during which the complainants and respondent submitted their respective documentary and testimonial evidence.

In his Report dated January 24, 1977, Judge Gapultos recommended the dismissal from the service of respondent Panes based on his findings as follows:

" xxx xxx xxx

"Petitioner-Complainant, ALEJANDRO ABEJARON is the grandson of the Spouses GUILLERMO CRISOSTOMO and JULIA CRLSOSTOMO, both deceased, his mother Matilde Crisostomo is the daughter of Guillermo and Julia Crisostomo. Petitioner-Intervenor Philippine National Bank of General Santos City is the judgment creditor in Civil Case No. 1377 entitled Philippine National Bank, plaintiff, versus Spouses Conrado Crisostomo and Thelma Crisostomo, defendants, for Deficiency Claim After Sale of Mortgaged Properties, decided by the Court of First Instance, Branch I, 16th Judicial District, General Santos City. Respondent Jose V. Panes is the Clerk of Court of the Court of First Instance of South Cotabato, Branch I, General Santos City, and Ex-Officio Provincial Sheriff of said Province.

"This Administrative Case came about on an execution of judgment in Civil Case No. 1377 filed by judgment creditor PNB against the spouses Conrado Crisostomo and Thelma Crisostomo for a deficiency claim of P85,441.05 (Exh. 'D-1'). On a writ of execution of said judgment in Civil Case No. 1377, said Conrado Crisostomo delivered to the respondent Jose V. Panes the total sum of P15,000.00 in trust intended for the

petitioner-intervenor PNB (Affidavit-Exh. 'H') but which amount respondent made it appear to have received only the total sum of P10,000.00 as receipted by him dated October 19 and 29, 1973, respectively, (Exh. 'B' and 'B-1' for Complainant and Complainant-Intervenor) (Exh. '2' & '3' Respondent) as partial satisfaction of the writ of execution in Civil Case No. 1377.

"The amount of P15,000.00 never reached its intended receiver - the judgment creditor now petitioner-intervenor PNB because as alleged by respondent, he returned same to judgment debtor Conrado Crisostomo as shown in a private receipt dated December 6, 1973 signed by Crisostomo (Exh '5') without a court order or the knowledge and consent of Complainant Intervenor PNB. The Complainant and Complainant-Intervenor belied respondent's allegation and both claimed that the money was never returned to Conrado Crisostomo by respondent Panes but instead it was appropriated by said respondent for his own benefit as shown in an affidavit executed by judgment debtor Conrado Crisostomo stating that he had never taken nor withdrawn the P15,000.00 from respondent and the same is still in respondent's hand (Please see Exh. 'H'). The sum of P15,000.00 given by judgment debtor Conrado Crisostomo to respondent Atty. Jose V. Panes intended to pay partially to the petitioner-intervenor PNB for Deficiency Claim After Sale of Mortgaged Properties (Exh. 'L') was never paid to said petitioner-intervenor PNB. The respondent never informed petitioner-intervenor PNB of his receipt of the amount of P15,000.00 given to him by judgment debtor Conrado Crisostomo as partial satisfaction of the writ of execution and neither was it informed of the return to the judgment debtor Conrado Crisostomo as alleged by respondent but denied by the said Conrado Crisostomo to have received same (Exh 'H').

"One of the duties of an Ex-Officio Provincial Sheriff is to execute writs of execution, garnishments, levys and other orders of the court. The respondent, as provincial sheriff is in duty bound to execute the writ of execution ordered by the Court of First Instance, Branch I at General Santos City in Civil Case No. 1377 for Deficiency Claim After Sale of Mortgaged Properties directing defendants in that case who are the spouses Conrado Crisostomo and Thelma Crisostomo to pay the plaintiff in same case now the Complainant-Intervenor Philippine National Bank the sum of P85,441.05 (Exh. 'D-2'). The respondent, in compliance with the writ of execution succeeded in collecting the sum of P15,000.00 from the judgment debtor to partially satisfy the deficiency claim. While he actually received P15,000.00 from Conrado Crisostomo (Exh. 'H') the respondent only receipted the amount of P10,000.00 in two separate receipts and dates (Exh. 'B' and 'B-1'). This an act of sheer dishonesty and clever way to hide the real amount he received in trust which would hold and mark him unfit to hold the position he now occupies. If it were not for the affidavit voluntarily executed by judgment debtor Conrado Crisostomo (Exh. 'H') the real amount he gave in trust to respondent could never have been revealed or discovered." (pp. 257-260, rollo)

From the above findings of the Investigating Judge and the evidence on hand, it is clearly established that respondent committed the following:

- 1) he misappropriated for his own use the sum of P15,000.00 which he received from Conrado Crisostomo, judgment debtor in Civil Case No. 1377, and which he was under obligation to deliver to the judgment creditor, Philippine National Bank, which is a criminal offense under Art. 315, par. 1(b) of the Revised Penal Code;
- 2) he secured from Conrado Crisostomo various amounts by way of loan totalling P15,200.00 during the period that the writ of execution in Civil Case No. 1377 was supposed to be served (t.s.n. pp. 126-133); and
- 3) he did not levy on a fishing boat owned by Conrado Crisostomo as well as on a piece of land belonging to Crisostomo's wife which was mentioned in Crisostomo's letter of October 16, 1973, as one of the properties the latter was expecting to sell so as to settle his obligation with the PNB.

The conduct of respondent Panes constitutes gross dishonesty which renders him unfit to hold a responsible position in the judicial branch of the government. Not only did he misappropriate the amount received by him from the judgment debtor to the damage and prejudice of the judgment creditor, PNB, but he took advantage of the situation by securing sums of money by way of loan from the judgment debtor who was interested in delaying the execution of the judgment against him. Furthermore, his failure to levy on the property of the judgment debtor and the latter's wife to satisfy the judgment against them constitutes a malicious nonfeasance in office.

In *Abdulwahid vs. Reyes*,^[1] the Court dismissed from the service the respondent deputy sheriff for serious misconduct, and one of the acts committed by him was the misappropriation of certain amounts he received in his official capacity for which he issued only his private receipts, and which amounts he returned only after the filing of the administrative case.

In *Ganaden vs. Bolasco*,^[2] respondent deputy provincial sheriff Gregorio N. Bolasco received certain amounts in connection with the performance of his duties as deputy sheriff without issuing the corresponding official receipts therefor and gave only his private receipt. The Court speaking through Justice Makasiar held that respondent committed illegal exaction penalized by paragraph 2(b) of Article 213 of the Revised Penal Code for failure to issue receipts for money collected by him officially, and violation of Sec. 113 of Art. III, Chapter V of the National Accounting and Auditing Manual. The total amount received by respondent for sheriff's fee for service of complaint and for service of a writ of execution was P62.60. Respondent was found guilty of dishonesty or conduct prejudicial to the best interest of the service and was ordered dismissed from the service.

It bears repeating what this Court said in *Ganaden vs. Bolasco*:

"The acts and/or omissions of respondent are patent violation of law. They disturb the ethics of public life and vitiate the integrity of the court personnel as well as the court itself. Public service requires utmost integrity and strictest discipline. A public servant must exhibit at all times the highest sense of honesty and integrity. This yardstick has been imprinted in the New Constitution under Section 1 of Article XIII which stressed that 'Public office is a public trust. Public officers and employees shall observe with the highest degree of responsibility, integrity, loyalty and efficiency and shall remain accountable to the people.'" (64 SCRA 50, 53)

Respondent Panes was appointed Clerk of Court on August 10, 1968. His personal record on file shows that in Administrative Matter No. P-222, entitled "*Teodora Danila vs. Jose V. Panes, Clerk of Court, et al.*", he was found guilty by this Court on January 31, 1975, of negligence in the performance of his duties as administrative head of the Court and was ordered suspended from office for one (1) month without pay. This fact adds weight to the recommendation of the Investigating Judge that respondent herein be dismissed from office.

IN VIEW OF THE FOREGOING, We find and hold Jose V. Panes, Clerk of Court, guilty of gross dishonesty and grave misconduct in the performance of his duties as ex-officio provincial sheriff of the Court of First Instance of South Cotabato, and We order his dismissal and separation from office effective upon receipt hereof, with forfeiture of retirement benefits if any, and with prejudice to re-employment 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.

SO ORDERED.

Castro, C.J., Fernando, Teehankee, Barredo, Makasiar, Antonio, Aquino, Concepcion, Jr., Santos, Fernandez, and Guerrero, JJ., concur.

[1] Adm. Matter Nos. P-902 and P-926, January 31, 1978, per Antonio, Felix, J.

[2] Adm. Matter No. P-124, May 16, 1975, 64 SCRA 50.

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