

## EN BANC

**[ A.M. No. RTJ-15-2426 [Formerly A.M. No. 05-3-83-MTC], June 16, 2015 ]**

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.  
JUDGE ALEXANDER BALUT, RESPONDENT.**

### RESOLUTION

#### PER CURIAM:

On October 9, 2007, the Court partially resolved this case by disposing it as follows:

WHEREFORE the Court finds and declares:

1. Judge Alexander S. Balut **GUILTY** of undue delay in deciding 33 cases submitted for decision and in failing to resolve 101 motions within the 90-day reglementary period. He is **FINED** twenty thousand pesos (P20,000.00), with a stern warning that a repetition of the same shall be dealt with more severely.

2. Judith En. Salimpade **GUILTY** of gross neglect of duty, dishonesty and grave misconduct. She is **DISMISSED** from the service. She is **DIRECTED** to **RESTITUTE** the amount of P1,817,378.59 representing the amount of shortages in her collections. Her withheld salaries are to be applied to her accountabilities. The Office of Administrative Services, OCA is **DIRECTED** to compute Ms. Salimpade's leave credits and forward the same to the Finance Division, Fiscal Management Office-OCA which shall compute the money value of the same, the amount to be deducted from the shortages to be restituted.

3. Eduardo Esconde **GUILTY** of gross neglect of duty. He is **DISMISSED** from the service. He is also **ORDERED** to retribute his accountabilities in the amount of P58,100.00

4. Lydia O. Ramos **GUILTY** of neglect of duty. She is **FINED** P5,000, which should be deducted from her retirement benefits.

The Office of the Court Administrator Legal Office is **DIRECTED** to file appropriate criminal charges against Judge Alexander Balut, Judith En. Salimpade and Eduardo Esconde.

#### SO ORDERED.

As stated in the October 9, 2007 Resolution, the facts of the case are as follows:

On May 3, 2003, the Office of the Court Administrator (OCA) conducted a judicial audit and physical inventory of cases at the Municipal Trial Courts

(MTCs) of Bayombong and Solano, Nueva Vizcaya. Judge Alexander S. Balut was the acting presiding judge in both courts.

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Aside from the judicial audit, a financial audit was also conducted in the MTCs of Bayombong and Solano as well as the MCTC of Aritao-Sta. Fe.

In the MTC, Bayombong, where Judith En. Salimpade was Clerk of Court II, the audit team found an unremitted amount of P18,702.00 representing the court's collection from August 3, 2003 to August 18, 2003. Said amount was deposited only on August 18, 2003, upon advise by the audit team, in the Land Bank of the Philippines account. Furthermore, 31 booklets of accountable forms issued to Ms. Salimpade by the Property Division, SC and OCA were not accounted for. Also, the court had a total Judiciary Development Fund (JDF) collection of P348,993.60 from January 1990 to August 2003. However, only P186,330.98 was remitted by Ms. Salimpade leaving a balance of P162,662.62; the total Clerk of Court General Fund (CCGF) collections from January 1996 to August 2003 (audit scope) showed an unremitted amount of P30,411.70; and as of August 31, 2003 the Fiduciary Fund had a total cash shortage of P1,864,304.27 which covered the collections from 1995 to August 2003.

In sum, the shortages in the various funds incurred by Salimpade as of August 31, 2003 totalled P2,057,378.59.

**Salimpade**, when asked about the shortages, **explained that Judge Balut, since 1995 had been getting money from the JDF collections.** She had given in to the requests of Judge Balut out of fear of him. She also admitted that she lent her co-employees money which she took from her collections.

Parenthetically, in September 2003, **Judge Balut turned over P240,000.00 to Salimpade and the latter issued a certification stating that the former had completely settled his monetary accountability** to the MTC, Bayombong. Judge Balut delivered to the Fiscal Monitoring Division, Court Management Office (CMO) OCA the certification and deposit slip evidencing the turnover of the P240,000.00.

The audit team also found that Salimpade failed to regularly submit her monthly report of collections, as required in Supreme Court Circular No. 32-93. Consequently, Salimpade's salaries were withheld effective August 2003 to the present.

In the MTC, Solano, the spot cash count on the court's collection disclosed that Eduardo Esconde, Clerk of Court, had an unremitted/undeposited cash on hand amounting to P59,545.00. However, the Official Receipts issued to cover said amounts were not accounted for. The said cash amount was deposited on August 21, 2003 to Land Bank JDF Account No. 0591-0116-34.

A review of the receipts on file from May 2001 to July 2003 also showed a total cash shortage of P106,527.80. However, on August 29, 2003, Esconde deposited in the CCGF and JDF bank accounts sums corresponding to the said shortage. **Esconde explained to the audit team that Judge Balut borrowed various amounts from the collections.** He stated that Judge Balut started borrowing funds when the former was still the Clerk of Court of MCTC, Aritao-Sta. Fe. **He transferred to MTC, Solano, to get out of the shadow of Judge Balut. But, much to his dismay, Judge Balut was designated Acting Presiding Judge of MTC, Solano and continued the practice of borrowing money from the collections of the court.**

In the MCTC, Aritao-Sta. Fe, the audit team found that Lydia Ramos, Clerk of Court, succeeded Eduardo S. Esconde on July 16, 2000, without proper turnover of accountabilities. The team also found that the amount of P540.00, part of the JDF collections from August 1, 2003 to August 21, 2003, remained undeposited at the time of audit. Said amount was remitted to the Chief Accountant, Supreme Court on September 10, 2003. Also, Mrs. Ramos opened an account at the Rural Bank of Aritao, Inc. for the Fiduciary Fund of the court instead of maintaining an account with Landbank. Said account was closed on September 11, 2003 and an account was opened at Landbank, Bambang, on the same date. A comparison of the court's CCGF collections and remittances for the period of November 1995 to July 2003 revealed a shortage of P510.00. Mr. Esconde incurred during his incumbency a cash shortage of P430.00 while Mrs. Ramos incurred a shortage of P80.00 as of July 31, 2003. From August 2003 to June 5, 2004, Mrs. Ramos incurred a shortage of P430.00. She deposited the amount of P400.00 on August 23, 2004 leaving a shortage of P30.00. Withdrawals from the Fiduciary Fund account on various dates, totalling P243,900.00 for the refund and return of cash bonds to 20 litigants, were not supported by any official court orders. Of the 20 litigants 15 did not acknowledge receipt of the amount refunded. The Fiduciary Fund collection of the court from April 1996 to August 31, 2003 amounted to P2,064,978.00. As of August 31, 2003, however, the amount of P846,710.00 was unaccounted for by Mr. Esconde and Mrs. Ramos. Both denied that the shortages incurred were of their own doing and they instead pointed to Judge Balut as the offender.

**Ramos related to the audit team the constant requests/orders of Judge Balut to hand over to him money from the Fiduciary Fund collections.** In these instances, she requested Judge Balut to **affix his signature** at the back portion of the withdrawal slips as the cash recipient. However, not all of the transactions were evidenced by an acknowledgement receipt. Ramos further stated that **Judge Balut also collected the money through Salvador Briones**, Court Interpreter of MCTC-Aritao-Sta. Fe, whose signature also appeared at the back portion of withdrawal slips as cash recipient. The **total withdrawals from the Fiduciary Fund Account given to Judge Balut, as evidenced by withdrawal slips bearing the signatures of Judge Balut and Briones, for the benefit of the former, as cash recipients, amounted to P193,500.00.**

Aside from these, withdrawals from the Fiduciary Fund account totalling P90,500.00 were also **given to Judge Balut**. On the face of the slips of this class of withdrawals were notations such as "**Judge**," "**for Judge**," "**taken by Judge xxx**" and "**given to Judge**" written by Ramos.

On May 9, 2002, **Judge Balut issued a Certification stating that his accountability with the Fiduciary Fund collection of MCTC Aritao-Sta. Fe as of April 2002 amounted to P207,774.42.**

However, before the final report on the court's shortages was completed, various amounts totalling P802,299.82 were **deposited by Judge Balut**, Esconde and Ramos in the court's LBP Account No. 3251-0544-51, as **restitution/payment** of part of the shortage of P846,710.00.

As of August, 2004, Ramos had fully settled the balance of her accountability. On the other hand, Esconde still had a balance of accountability in MCTC, Aritao-Sta. Fe of P58,100.00 which, as of the time this case was submitted by the OCA for the Court's consideration, has remained unsettled. (Emphases supplied)

In its Resolution,<sup>[1]</sup> the Court ordered Respondent Judge Alexander Balut (*Judge Balut*) to pay a fine for his failure to decide 33 cases and 101 motions without properly requesting for an extension. The Court, however, did not rule on the administrative liability of Judge Balut with respect to the result of the financial audit for the reason that he was not given a chance to present his side on the matter.

Consequently, the Office of the Court Administrator (OCA), in its Memorandum,<sup>[2]</sup> sought reconsideration of the Court's decision stating that although Judge Balut was not formally required to comment on the findings of the audit team regarding the shortage in the court collections, he was not denied due process of law. The OCA explained that Judge Balut was able to present his side in his Letter<sup>[3]</sup> to OCA, dated December 9, 2006. The OCA, thus, asked for the re-opening of the case or in the alternative, that Judge Balut be required to comment on the findings of the financial audit.

In its Resolution,<sup>[4]</sup> dated December 16, 2008, the Court directed Judge Balut to comment on the audit report and, upon the recommendation<sup>[5]</sup> of the OCA, referred the matter to the Court of Appeals (CA) for investigation, report and recommendation.<sup>[6]</sup>

Thereafter, the CA, in its Report and Recommendation, recommended the dismissal of the charges against Judge Balut for failure of the OCA to clearly substantiate and prove the participation of Judge Balut in the financial transactions of the courts. On his admission that he borrowed money from the judiciary fund, the CA opined that Judge Balut could no longer be penalized as he was previously fined by the Court in its October 9, 2007 Resolution.

The Court finds itself unable to agree with the recommendation of the CA.

In administrative cases, the quantum of proof necessary is substantial evidence or

such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.<sup>[7]</sup> The standard of substantial evidence is justified when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence is not overwhelming or even preponderant.<sup>[8]</sup>

A review of the records shows that Judge Balut actually messed with the court collections. The **three clerks of court** of MTC Bayombong, MTC Solano and MCTC Aritao-Sta Fe categorically stated that **Judge Balut borrowed money from the court funds and executed certifications to that effect**. They separately reported that Judge Balut had been **borrowing** money from the various funds of the court collections. In fact, Lydia Ramos (*Ramos*), the Clerk of Court of MCTC-Antao-Sta. Fe, presented **several withdrawal slips<sup>[9]</sup> where the back portions were signed either by Judge Balut or his court interpreter, Salvador Briones**, as the recipient of the cash withdrawn from the funds of the court. These withdrawal slips likewise bore the notations of Ramos such as "Judge," "for Judge," "taken by Judge," and "given to Judge" to serve as her reminder that the money withdrawn were given to Judge Balut.

Significantly, **Judge Balut himself issued the Certification<sup>[10]</sup> stating that his cash accountability as of April 2002 with the Fiduciary Fund was P207,774.42 and there were certifications issued by the clerks of court attesting that he had settled his accountabilities with the court funds.**

The CA opinion that Judge Balut could no longer be penalized for his admission that he had borrowed money from the judiciary fund because the Court already fined him in its October 9, 2007 resolution is **erroneous**. In the said resolution, the Court categorically stated that Judge Balut was fined **for undue delay** in deciding 33 cases submitted for decision and for failing to resolve 101 motions within the 90-day reglementary period.

Once again, the Court stresses that judges must adhere to the highest tenets of judicial conduct.<sup>[11]</sup> Because of the sensitivity of his position, a judge is required to exhibit, at all times, the highest degree of honesty and integrity and to observe exacting standards of morality, decency and competence.<sup>[12]</sup> He should adhere to the highest standards of public accountability lest his action erode the public faith in the Judiciary.<sup>[13]</sup>

Judge Balut fell short of this standard for borrowing money from the collections of the court. He knowingly and deliberately made the clerks of court violate the circulars on the proper administration of court funds.<sup>[14]</sup> He miserably failed to become a role model of his staff and other court personnel in the observance of the standards of morality and decency, both in his official and personal conduct.

The act of misappropriating court funds constitutes dishonesty and grave misconduct, punishable by dismissal from the service even on the first offense.<sup>[15]</sup> For said reason, the respondent deserves a penalty no lighter than dismissal. This Court has never tolerated and will never condone any conduct which violates the norms of public accountability, and diminish, or even tend to diminish, the faith of the people in the justice system.<sup>[16]</sup>