

SECOND DIVISION

[A.M. No. P-94-1043, February 28, 1996]

**CLERK OF COURT ARTURO Q. BAUTISTA, COMPLAINANT, VS.
DEPUTY SHERIFF MARGARITO C. COSTELO, JR., RESPONDENT.**

DECISION

MENDOZA, J.:

This concerns an administrative complaint filed by Arturo Bautista, Clerk of Court of Branch 11 of the Regional Trial Court of Calubian, Leyte, charging Margarito Costelo, Jr., deputy sheriff, with malversation, insubordination, grave misconduct and violation of Supreme Court Circular 3-92, which prohibits the use of Halls of Justice for residential or commercial purposes.

It appears that in 1991, upon the request of then Judge Octavio Astilla of Branch 11 of the RTC, the court was allowed by the Philippine National Police at Calubian, Leyte the use of two vacant buildings belonging to the PNP. The buildings were the former enlisted personnel's barracks and the Bachelor Officers' Quarters (BOQ) of the 354th PC Company. The enlisted personnel's barracks was renovated and converted into a courtroom, chambers and office of the clerk of court, while the BOQ was used as living quarters of Judge Astilla. Respondent Margarito Costelo, Jr., who is deputy sheriff, was invited by Judge Astilla to stay at the BOQ. After the transfer of Judge Astilla to Manila, the respondent continued to live at the BOQ, allegedly with the permission of the new judge, Judge Bonifacio Sanz Maceda.

In a letter dated April 6, 1994, the complainant Arturo Bautista charged that respondent Costelo, Jr. built a house and a chicken coop and made a bed using materials taken from the renovated barracks; that the respondent gathered fruits from the growing trees in the court grounds and appropriated them for his use; that he raised turkeys and goats just outside the backdoor of the Bachelor Officers' Quarters which is now a courthouse; that he occupied a room of the courthouse which he used for his living quarters; that he was required by complainant to remove the chicken coop, but respondent did not comply and merely transferred the chicken coop to the nearby septic vault.

Respondent denied that he ever built the house referred to by complainant; that the house, which was made of bamboo, straw and coco leaves, actually belonged to a certain Leonilo Plaza. He claimed that this fact was reported to the complainant by Miguel Torlao, legal researcher of RTC, Branch 11.^[1] On the other hand, the coop, according to the respondent, was built by enlisted personnel of the 354th PC Company when they were still in the place. With regard to the bed, respondent claimed that he purchased it from Manuel Naagas, a carpenter in Calubian, in August of 1990, and denied that the materials used in making it were taken from the barracks when it was renovated, which was done in January 1992. With respect to the allegations that he had been staying in a room of the courthouse in violation

of Circular No. 3-92 of this Court, respondent says that he had been residing in the Bachelor Officers' Quarters (BOQ) since middle of 1991 and not in the courthouse, which is a different building.

Respondent also denied that he appropriated the fruits of the trees in the court grounds, particularly the coconut trees. He claimed that in fact other court personnel, including the complainant himself, had been gathering the coconuts.

On the charge of grave misconduct and irresponsible behavior constituting violation of Circular 3-92, the respondent admitted that the turkeys in the chicken coop were his, but he claimed that he raised the birds for consumption and not for business.

Finally, answering the charge that he made only a half-hearted compliance with the complainant's directive for him to remove the coop, the respondent contended that there was no basis for the charge because he complied with the clerk's order by submitting his explanation and removing the chicken coop.

Upon recommendation of the Office of the Court Administrator, the case was referred to Judge Bonifacio Sanz Maceda, acting executive judge of the RTC of Calubian, Leyte, for investigation, report and recommendation. Judge Maceda set the case for hearing for two days but complainant failed to appear despite due notice given to him. Nonetheless, respondent presented three witnesses and, in addition, testified in his behalf.

On July 25, 1995 Judge Maceda rendered a report, finding the complaint without any basis and recommending instead that appropriate sanctions be imposed on the complainant. The pertinent portion of his report states:

The evidence adduced by respondent Costelo is uncontradicted. The evidence consists of the testimonies of SPO3 Levi Cosmiano, Mr. Errol Ching, OIC Miguel C. Torlao and that of the respondent himself together with Exhibits "1", "2", "3", "4", "5", "6" and "7" inclusive of their submarkings. The evidence for the respondent belies any malversation, insubordination, grave misconduct or irresponsible behavior.

The cockhouse complained of is an old issue. This has already been investigated by the Office of the Governor of Leyte thru Atty. Leo Giron upon an anonymous complaint sent to the Governor, which was found to [be] concocted.

The cockhouse was shown to be the cockhouse of Sgt. Roberto Gomez of the 354th PC Company. It was constructed for Sgt. Gomez by Alejandro Bastida, a CAFGU member who knew carpentry. Sgt. Gomez bought the materials for the cockhouse and caged therein three (3) fighting cocks. This cockhouse was then placed at the back of the comfort room of the barracks. The subject cockhouse was left behind in July, 1991 when the unit of Sgt. Gomez transferred to San Jose, Tacloban City.

In March, 1994 respondent bought five (5) baby turkeys for his own consumption. He made use of the abandoned and dilapidated cockhouse and caged his five (5) baby turkeys therein for one day meantime that he

was constructing a new chicken coop for his five baby turkeys. Whichever way the undersigned investigator looks at the situation he finds nothing wrong with this. For one thing respondent used his own money to buy the baby turkeys. And, even if respondent kept them for a while beside the BOQ, respondent was permitted to do so. Besides, raising turkey in one's backyard to augment income is in line with the government's policy to encourage backyard farming.

Complainant's claim that respondent Costelo harvested coconut products within the court premises and appropriated them for the benefit of respondent is not true. It was complainant Bautista who required the harvesting of young coconuts or "buko" for his own consumption and also for the consumption of the court personnel.

The claim by complainant Bautista that respondent constructed a house on the hill behind the court building with materials from the renovated building was found earlier by OIC Miguel Torlao to be untrue. The house referred to by complainant Bautista was constructed by a certain Leonilo Plaza with permission from Sgt. Aniano Lecera. Mr. Plaza was made the overseer of the banana plantation, including the coconut trees in the area.

As early as March 23, 1993 Mr. Torlao had written (Exh. "1") a narrative report thereon. The house referred to by complainant was a small hut with bamboo slots for flooring, straw for roofing and coconut leaves for its walls. There was no lumber used in the construction of this hut. And, the fruits from the farm and banana plants were shared by Mr. Plaza and Sgt. Lecera.

It is noted that Branch 11 occupies only a part of the camp of the defunct 354th PC Company. It was Judge Octavio Astilla who negotiated in July, 1991 with the PC Regional Director Vicente Garcia, Jr. for the use of the Bachelor Officers' Quarters (BOQ) and the barracks of the 354th by RTC Branch 11. The vacated BOQ was [to] accommodate Judge Astilla while the barracks was to house the courtroom, Judge's chambers and the Office of the Clerk of Court. Judge Astilla assigned the outer room of the BOQ to respondent.

When undersigned assumed Branch 11 in December, 1992, respondent Costelo was allowed to continue using the outer room of the BOQ with the obligation to maintain the premises. He complied with his obligation.

The turkeys and the goats raised by respondent Costelo were transferred later to another area because respondent did not want to exacerbate the conflict with his Clerk of Court. In fact respondent transferred elsewhere when he got married sometime ago. These turkeys and goats are no longer found in the area.

When undersigned assumed Branch 11 he observed that chicken, turkeys, goats, carabaos, cows and horses were a common sight in the area. They were raised by neighbors and allowed to stray. Some goats would enter the courtroom even when the court was in session. Why