



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE
RECEIVED
 DEC 01 2021
 BY: J. JALTIAGO
 TIME: 3:48

THIRD DIVISION

**OFFICE OF THE COURT
 ADMINISTRATOR,**
Complainant,

A.M. No. P-18-3902
 (Formerly A.M. No. 18-09-86-MTCC)

Present:

- versus -

LEONEN, J.,
 Chairperson,
 HERNANDO,
 INTING,
 DELOS SANTOS, and
 LOPEZ, J., JJ.

**MS. MAXIMA Z. BORJA, Clerk
 of Court IV; and MS.
 MARRIANE D. TUYA, Sheriff
 III/Former Cash Clerk, both of
 the Municipal Trial Court in
 Cities (MTCC), Koronadal City,
 South Cotabato,**

Promulgated:

Respondents.

June 28, 2021

MisdeBatt

X-----X

DECISION

DELOS SANTOS, J.:

Before the Court is an administrative matter against Maxima Z. Borja (Borja), Clerk of Court IV, for simple neglect of duty, and Marriane D. Tuya (Tuya), Sheriff III/former Cash Clerk, for failure to deposit the Court's trust fund collections and appropriating the same for her personal use and benefits, both of the Municipal Trial Court in Cities (MTCC), Koronadal City, South Cotabato.

Antecedent Facts

This case stems from a Letter¹ submitted by Presiding Judge Edwin L. Diez (Judge Diez) of MTCC, Koronadal City, South Cotabato, to the Office of the Court Administrator (OCA), requesting for the immediate conduct of

¹ Rollo, p. 4.

a judicial and financial audit of the books of accounts in his *sala*, considering that the court was audited 15 years ago.

Thus, a team from the Fiscal Monitoring Division (FMD), Court Management Office (CMO) of the OCA conducted a financial audit in said MTCC from April 22 to May 4, 2018.² The examination covers the period of accountabilities of: (1) Borja as Clerk of Court IV (August 1, 2002 to March 31, 2018); (2) Tuya, as Cash Clerk III (March 14, 2007 to December 31, 2012) and as Sheriff III (January 28, 2013 to October 13, 2016); and (3) Anna Marie G. Soriano (Soriano) as Legal Researcher I (from March 12, 2018 up to present).³

After the examination of the books of accounts of the Court, the FMD-CMO audit team submitted its Memorandum⁴ on August 23, 2018, with the following findings/observations:

I. CASH EXAMINATION:

During the cash examination on 23 April 2018, the audit team found out that all collections were already deposited; thus, no cash on hand was examined.

The last remittances made by Ms. Borja on 20 April 2018 reconciled with her judiciary collections covering the period 18 to 20 April 2018.

II. INVENTORY OF OFFICIAL RECEIPT:

All Official Receipts (ORs) requisitioned from the Property Division, Office of the Administrative Services, OCA, were duly accounted for. Of the eight hundred fifteen (815) booklets presented for examination, six hundred eighty-six (686) booklets have been used, leaving one hundred twenty-nine (129) booklets of Official Receipts remain unused as of the audit cut-off date, 31 March 2018, to wit:

Inventory of Used Official Receipts as of 31 March 2018

Fund	Inclusive Serial Nos.			No. of Pieces	No of Booklets
FF	see Schedule 1			31	35
STF	see Schedule 1			28	30
JDF	see Schedule 1			38	130
SAJF	see Schedule 1			13	119
MF	see Schedule 1			9	63
GF-Old	13041201	-	13041250		1
	5707951	-	5708000		1
GF-New	1281701	-	1281750		1
	1281951	-	1281965	15	
Total				134	380

² Id. at 3; Travel Order No. 53-2018.

³ Id. at 69-70.

⁴ Id. at 69-82.

Inventory of Unused Official Receipts as of 31 March 2018

Fund	Inclusive Serial Nos.			No. of Pieces	No. of Booklets
FF	409282	-	409300	19	1 4
	409201	-	409250		
	409301	-	409500		
STF	408429	-	408450	22	9
	408551	-	409000		
JDF	408539	-	408550	12	4
	409601	-	409800		
SAJF	407664	-	407700	37	4
	409801	-	410000		
MF	407560	-	407600	41	6
	407701	-	408000		
GF-New	1281966	-	1282000	35	1
	1281701	-	1281750		
Unallocated	7790001	-	7795000		100
Total				166	129

III. FOR THE FIDUCIARY FUND (FF):

Total Unwithdrawn Fiduciary Fund, 31 December 2001	PHP	1,020,957.22
Add: Total Collections (1 January 2002 – 31 March 2018)		<u>18,603,197.15</u>
Total Collections Available for Withdrawals	PHP	19,624,154.37
Less: Total Withdrawals (same period)		<u>12,452,931.15</u>
Total Unwithdrawn Fiduciary Fund as of 31 March 2018	PHP	<u>7,171,223.22</u>
Bank Balance as of 31 March 2018	PHP	7,036,683.80
Less: Unwithdrawn Interest as of 31 March 2018		6,588.58
STF Collections Deposited in FF Account		<u>13,792.00</u>
Adjusted Bank Balance as of 31 March 2018	PHP	<u>7,016,303.22</u>
Unwithdrawn Fiduciary Fund as of 31 March 2018	PHP	7,171,223.22
Less: Adjusted Bank Balance as of 31 March 2018		<u>7,016,303.22</u>
LBP S/A No. 0751-1849-05		
Balance of Accountability – shortage	PHP	<u>154,920.00</u>

The computed shortage of One Hundred Fifty-Four Thousand Nine Hundred Twenty Pesos (PHP 154,920.00) resulted from the following:

1. Balance of Undeposited Collections:			
Total Undeposited Collections	PHP	469,000.00	
Less: Restitutions Made on –			
26 September 2016		140,000.00	
4 November 2016		50,000.00	
8 November 2016		100,000.00	
10 November 2016		<u>29,000.00</u>	
Total Restitution	PHP	<u>319,000.00</u>	PHP 150,000.00

2. Total Costs of Checkbooks:

16 June 2003	PHP	345.00	
1 December 2005		330.00	
26 April 2007		330.00	
8 June 2007		330.00	
22 April 2010		700.00	
14 March 2012		700.00	
7 July 2014		<u>1,400.00</u>	4,135.00

3. Total Bank Charges for Bank Certification/Snap Shots:

24 March 2008	PHP	100.00	
Year 2010		40.00	
Year 2011		260.00	
Year 2012		100.00	
Year 2013		80.00	
Year 2014		80.00	
Year 2015		160.00	
Year 2016		<u>200.00</u>	1,020.00

4. Unidentified Deposits Made on –

24 May 2002	PHP	(200.00)	
16 May 2006		<u>(35.00)</u>	<u>(235.00)</u>

TOTAL SHORTAGE**PHP 154,920.00**
=====

The above computed shortage was restituted as follows:

4 May 2018	PHP	4,920.00	
7 May 2018		<u>150,000.00</u>	
Total	PHP	<u>154,920.00</u>	

IV. FOR THE SHERIFF'S TRUST FUND (STF)

Total Unwithdrawn Sheriff's Trust Fund, Beginning	PHP	0.00	
Add: Total Collections 1 July 2005 to 31 March 2018		<u>1,730,200.00</u>	
Total Collections Available for Withdrawals	PHP	1,730,200.00	
Less: Valid Withdrawals (same period)		<u>620,339.00</u>	
Total Unwithdrawn Sheriff's Trust Fund as of 31 March 2018	PHP	<u>1,109,861.00</u>	

Bank Balance as of 31 March 2018	PHP	1,092,630.20	
Add: STF Collections Deposited in FF Account		13,792.00	
Less: Unwithdrawn Interest as of 31 March 2018		<u>4,446.20</u>	
Adjusted Bank Balance as of 31 March 2018	PHP	<u>1,101,976.00</u>	

Unwithdrawn STF as of 31 March 2018	PHP	1,109,630.20	
Less: Adjusted Bank Balance as of 31 March 2018 LBP S/A No. 0751-1623-59		<u>1,101,976.00</u>	
Balance of Accountability – shortage	PHP	<u>7,885.00</u>	

The computed shortage of Seven Thousand Six Hundred Fifty Four Pesos and 20/100 (PHP 7,654.20) resulted from the following:

1.	Unauthorized Withdrawals (No STF Collection)	PHP	2,026.00
2.	Over-Withdrawal of Collections		5,103.00
3.	Unidentified STF Withdrawals		1,756.00
4.	Over-Deposit of February 2016 STF Collections		(2,000.00)
5.	Under-Deposit of June 2016 STF Collections		<u>1,000.00</u>
	TOTAL SHORTAGE	PHP	<u>7,885.00</u>

On 7 May 2018, Ms. Borja submitted an Itinerary of Travel of Ms. Marriane D. Tuya, Sheriff III, MTCC, Koronadal City, South Cotabato, and the audit team found the same to be in order and the total amount of Four Thousand Sixty Pesos (PHP 4,060.00) was deducted from the total initial STF shortage of Ms. Borja, thus, the final accountability of Seven Thousand Eight Hundred Eighty-Five Pesos (PHP 7,885.00).

Clerk of Court Borja restituted the amount of Eleven Thousand Nine Hundred Forty-Five Pesos (PHP 11,945.00) on 4 May 2018, which is the audit team's initial computed shortage. With the said restitution, the court's STF account disclosed an overage (excess) amount of Four Thousand Sixty Pesos (PHP 4,060.00). The said overage should be refunded/returned to Ms. Borja, as the same was properly liquidated.

V. FOR THE JUDICIARY DEVELOPMENT FUND (JDF):

Total Collections	PHP	2,644,072.41
Total Deposits		<u>2,626,277.21</u>
Balance	PHP	17,795.20
Add/(Deduct):		
Deposit in Transit made on 2 April 2018		(165.20)
SAJF Collections erroneously deposited to JDF		15,220.00
JDF Collections erroneously deposited to MF		(9.60)
JDF Collections erroneously deposited to SAJF		<u>(33,292.00)</u>
Balance of Accountability – overage	(PHP)	<u>451.60</u>

VI. FOR THE SPECIAL ALLOWANCE FOR THE JUDICIARY FUND (SAJF):

Total Collections	PHP	3,079,483.81
Total Deposits		<u>3,112,859.81</u>
Balance	(PHP)	33,376.00
Add/(Deduct):		
Deposit in Transit made on 2 April 2018		(234.80)
SAJF Collections erroneously deposited to JDF		(15,220.00)
SAJF Collections erroneously deposited to MF		(75.40)
JDF Collections erroneously deposited to SAJF		<u>33,292.00</u>
Balance of Accountability – overage	(PHP)	<u>15,614.20</u>

VII. FOR THE GENERAL FUND – OLD (GF-OLD)

Total Collections	PHP	43,332.50
Total Deposits		<u>29,394.00</u>
Balance of Accountability – shortage	PHP	<u>13,398.50</u>

The computed shortage of Thirteen Thousand Three Hundred Ninety-Eight Pesos and Fifty Centavos (PHP 13,398.50) was due to the non-presentation of deposit slip for the period November 2002 to August 2003.

The said shortage was restituted by Ms. Borja on 4 May 2018.

VIII. FOR THE MEDIATION FUND (MF):

Total Collections	PHP	1,800,000.00
Total Deposits		<u>1,799,585.00</u>
Balance	PHP	415.00
Add/(Deduct):		
Deposit in Transit made on 2 April 2018		(500.00)
SAJF Collections erroneously deposited to MF		75.40
JDF Collections erroneously deposited to MF		9.60
Balance of Accountability	PHP	<u>0.00</u>

Neither shortage nor overage was found on this fund.

IX. FOR THE GENERAL FUND – NEW (GF-New):

Total Collections	PHP	200,200.66
Total Deposits		<u>200,200.66</u>
Balance of Accountability	PHP	<u>0.00</u>

Neither shortage nor overage was found on this fund.

x x x x

In summary, the financial accountabilities of Ms. Maxima Z. Borja disclosed the following:

Fund	Shortages/ (Overages)		Restitution		Balance of Accountability	
			Date	Amount		
FF	PHP	154,920.00	4 May 2018	PHP 4,920.00	PHP	0.00
			7 May 2018	150,000.00		
STF		7,885.00	4 May 2018	11,945.00		(4,060.00)
JDF		(451.60)				(451.60)
SAJF		(15,614.20)				(15,614.20)
GF-Old		13,938.50	4 May 2018	13,938.50		0.00
MF		0.00				0.00
GF-New		0.00				0.00
TOTAL	PHP	<u>160,677.70</u>		PHP 180,803.50	PHP	<u>(20,125.80)⁵</u>

⁵ Id. at 70-75; citations omitted.

During the exit conference on May 3, 2018, the audit team discussed with Borja and Soriano the team's initial audit findings and observations.

The audit team called the attention of Borja as to the delay in the deposits of the Court's Fiduciary Fund and Sheriff's Trust Fund.⁶

The audit team noted that the Fiduciary Fund collections for the periods of December 2001 to December 2006 and February 2011 to December 2013 were oftentimes deposited 10 days or more after the same were collected. Likewise, STF collections covering the period of October 2008 to November 2013 were also deposited 10 days or more beyond the reglementary period prescribed in depositing collections.⁷

In addition, the audit team found out that several trust fund collections were not deposited. In fact, prior to September 26, 2016, the total undeposited collections restituted by Tuya amounted to ₱469,000.00 and ₱60,000.00 for FF and STF, respectively.⁸

In Borja's May 7, 2018 explanation,⁹ she requested that Tuya be designated as Cash Clerk on January 28, 2013 since she was the former Cash Clerk III of the MTCC, Koronadal City from March 14, 2007 to December 2012. She only discovered Tuya's alleged misappropriation of the trust fund collections on April 6, 2018 when she was directed by Judge Diez to conduct an inventory of the Unwithdrawn Fiduciary Fund.

However, the audit team found Borja's explanation unacceptable. The undeposited collections for the Fiduciary Fund occurred for the period August 2011 to December 2013 while for the Sheriff's Trust Fund happened in April to November 2013. Also, an examination of the Monthly Reports of Collections, Deposits and Withdrawals (MRCDW) for Fiduciary Fund and Sheriff's Trust Fund for the period August 2011 to August 2016 showed that the outstanding balance of the undeposited collections were regularly reported and labeled as "Undeposited Collections" in the MRCDW which Borja herself prepared and certified as correct.¹⁰

Tuya was unavailable to explain to the audit team her alleged involvement in the undeposited collections in the Court's trust fund collections because she was on indefinite leave during the audit. Tuya's accountability on the undeposited collections was primarily based on her

⁶ Id. at 74-76.

⁷ Id. at 76.

⁸ Id.

⁹ Id. at 25-28.

¹⁰ Id. at 77.

Letter¹¹ dated April 29, 2018 to Borja. In the said letter, Tuya claims full responsibility in taking the total amount of ₱529,000.00 from the Court's funds to which she has already refunded an aggregate amount of ₱379,000.00. She also promised to turnover the remaining amount of ₱150,000.00 on or before May 3, 2018.

The audit team opines that Tuya is not solely responsible for the undeposited collections, and that Borja should also be held liable for the same since she has direct supervision over the former. The audit team is of the belief that Borja has knowledge of Tuya's misdeeds because it is Borja who signs and certifies that the Monthly Report of Collections, Deposits and Withdrawals for Fiduciary Fund and Sheriff's Trust Fund submitted are true and correct.¹²

The audit team also notes that Borja incurred delay in the remittances of her Fiduciary Fund collections for the years 2001 to 2006 and the Sheriff's Trust Fund for the period October 2008 to April 2013. It was also observed that the delay in the deposits of the Fiduciary Fund were incurred prior to the designation of Tuya as Cash Clerk, while the delay for the STF, happened during Tuya's time as Cash Clerk.¹³

Lastly, the audit team recommended that the following measures be implemented to enhance the Court's internal control system in the handling of the Court's judiciary collections, to wit:

1. Use a Disbursement Voucher in lieu of an Acknowledgement Receipt in refunding cash bonds to party litigants and other disbursement from trust fund collections;
2. Examine thoroughly the fund account number entered in the deposit slip to avoid erroneous remittances of judiciary collections from one fund to another;
3. Before leaving the bank, check the bank machine validated deposit slip whether the amount deposited was correctly entered and properly credited to the fund account; and
4. Use the proposed STF Forms for Cash Advances, Reimbursement and Liquidation to account and monitor the court's STF transactions.¹⁴

The Court issued a Resolution¹⁵ on November 19, 2018, directing respondents Borja and Tuya to explain why no administrative case should be

¹¹ Id. at 41.

¹² Id. at 78.

¹³ Id. at 78-79.

¹⁴ Id. at 80.

¹⁵ Id. at 84-87.

filed against them for the undeposited and delayed remittances of the Court's Trust Fund collections in violation of Circular No. 13-92 dated March 1, 1992 and Amended Administrative Circular No. 35-2004 dated August 20, 2004 and to jointly and solidarily pay to the Judiciary Development Fund the amount of ₱151,322.90 representing unearned interest computed at 6% per annum for the undeposited Trust Fund collections.

In her Explanation with Compliance¹⁶ dated March 11, 2019, Borja prayed that she be exonerated from any administrative liability. She humbly states that on February 22, 2019, she has deposited the ₱151,322.90 representing unearned interest to the Trust Fund account with the Land Bank of the Philippines (LBP) taken from Tuya and exerted diligent efforts to collect from her co-respondent Tuya the remaining amount of ₱150,000.00 which was deposited on May 7, 2018 to the fiduciary account of the Court with the LBP. The total amount restituted is ₱529,000.00.

Borja further explains that she entrusted Tuya since she was the former Cash Clerk. It was only after the month-long vacation due to Tuya's supposed traumatic experience of being kidnapped that Borja had the former's drawer forcibly opened and discovered the anomalies and reported the matter to the judge. She most humbly pleads that her immediate actions, to wit: her discovery of anomalous transactions upon conducting an inventory and reporting the matter immediately to her presiding judge; her lack of intention to the lost court funds; and her promptness to make all the records, receipts and money in proper order and accounted for, be considered as extenuating circumstances in her favor, in the interest of justice and equity.¹⁷

The Court issued a Resolution¹⁸ dated June 3, 2019, taking note of Borja's explanation with compliance and resolves to await Tuya's compliance. Tuya failed to submit her compliance. Thus, the Court issued another Resolution¹⁹ dated November 20, 2019, requiring Tuya to show cause why she should not be disciplinary dealt with or held in contempt and to comply with the Resolution dated November 19, 2018, within 10 days from notice.

In the Comment/Letter²⁰ of Tuya on December 9, 2019, she states that during the said period, she has no intention of not responding to the order of the Court. She states that she encountered financial distress because her house was ransacked on November 11, 2010 and the amount of ₱350,000.00 that she was keeping for a friend to pay for a land, along with their personal

¹⁶ Id. at 88-93.

¹⁷ Id.

¹⁸ Id. at 106-107.

¹⁹ Id. at 108-109.

²⁰ Id. at 110-111.

money, were stolen. She admits to misappropriating the money she was entrusted to as Cash Clerk in 2011.

Tuya further states that she was determined to return everything until that unfortunate day of February 6, 2018 when she was abducted and threatened while at work as a Sheriff. She voluntarily left the Judiciary on April 30, 2018 and fully settled her remaining obligation on May 4, 2018. She maintains that for the last five (5) years of her employment, she was dedicated to her task as a Process Server for almost four (4) years while doing her job as the Court Sheriff and still continuing her other functions as Cash Clerk.²¹

Tuya asks for the Court's consideration since she is the breadwinner and still supports her children and other family members.

The Action and Recommendation of the OCA

In a Memorandum²² dated September 6, 2018, the OCA adopts the findings and the recommendations of the audit team, to wit:

- (1) **DOCKET** this report as a regular administrative complaint against:
 - (a) Ms. Maxima Z. Borja, Clerk of Court IV, MTCC, Koronadal City, South Cotabato, for simple Neglect of Duty for failure to supervise the court designated cash clerk that resulted in the delayed remittances of the court's trust fund collections in violation of OCA Circular No. 13-92 dated March 1, 1992 and Amended Administrative Circular No. 35-2004 dated August 20, 2004; and
 - (b) Ms. Marriane D. Tuya, Sheriff III/Former Cash Clerk, MTCC Koronadal City, South Cotabato, for failure to deposit the court's Trust Fund collections and appropriating the same for her personal use and benefits in violation of OCA Circular No. 13-92 dated March 1, 1992 and Amended Administrative Circular No. 35-2004 August 20, 2004;
- (2) **DIRECT** Ms. Maxima Z. Borja and Ms. Marriane D. Tuya to **EXPLAIN** why no administrative case should be filed against them for the undeposited and delayed remittances of the Court's Trust Fund collections in violation of Circular No. 13-92 dated March 1, 1992 and Amended Administrative Circular No. 35-2004 dated August 20, 2004;

²¹ Id.

²² Id. at 67-68.

- (3) **DIRECT** Ms. Maxima Z. Borja and Ms. Marriane D. Tuya to **JOINTLY** and **SOLIDARILY PAY** to the Judiciary Development Fund the amount of One Hundred Fifty-One Thousand Three Hundred Twenty-Two Pesos and Ninety centavos (₱151,322.90) representing unearned interest computed at 6% per annum for the following undeposited Trust Fund collections, to wit:

Sheriff's Trust Fund (STF)	PHP	12,893.83
Fiduciary Fund (FF)		138,429.07
Total Interest	PHP	151,322.90

- (4) **DIRECT** Hon. Edwin L. Diez, Presiding Judge, MTCC, Koronadal City, South Cotabato, to:
- (a) **CONTINUOUSLY** and **STRICTLY MONITOR** all financial transactions of the court and **ENSURE** that the Clerk of Court religiously complies with the directives/circulars issued by the Court, particularly in the proper handling of all judiciary funds to avoid repetition of the infractions committed by the Clerk of Court and designated Cash Clerk; and
- (b) **STUDY** and **IMPLEMENT** procedures that shall strengthen the internal control system over the financial transactions of the court and **SUBMIT** to the Fiscal Monitoring Division, Court Management, OCA the procedures to be implemented within fifteen (15) days from receipt of notice.²³

The Issue

The issue for the Court's resolution is whether respondent Borja and Tuya should be held administratively liable.

The Court's Ruling

We affirm the recommendations of the OCA with modification.

Time and again, the Court has stressed that the behavior of all employees and officials involved in the administration of justice — from judges to the most junior clerks — is circumscribed with a heavy responsibility. Their conduct must be guided by strict propriety and decorum at all times.²⁴

²³ Id.

²⁴ Re: Final Report on the Financial Audit Conducted in the Municipal Circuit Trial Court, Valladolid-San Enrique Pulpandan, Negros Occidental, A.M. No. 20-06-18-MCTC, September 29, 2020.

SC Circular No. 13-92 dated March 1, 1992 clearly states that “all fiduciary collections shall be deposited immediately by the Clerk of Court concerned upon receipt thereof, with an authorized depository bank.” In SC Circular No. 5-93 dated October 22, 1993, the LBP was designated as the authorized government depository.

Moreover, Administrative Circular No. 35-2004, as amended, dated August 20, 2004 requires that the daily collections of funds in the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, MCTC, Shari’a District Court and Shari’a Circuit Court should be deposited everyday with the nearest LBP branch, or if depositing daily is not possible, deposits for the fund shall be at the end of every month, provided, however, that whenever collections for the fund reach ₱500.00, it shall be deposited immediately even before the period above-mentioned.²⁵

Clearly, based on the audit report, both respondents failed to do their duty as employees of the court. The delayed deposits are a clear violation of existing Court issued circulars and deprived the Court of the supposed interest it should have earned from such deposits.

The Court in *Re: Report on the Judicial and Financial Audit Conducted in the MTCs of Bayombong and Solano and the MCTC, Aritao-Sta. Fe, Nueva Ecija*,²⁶ ruled that the failure to remit judiciary collections on time deprives the court of interest that may be earned if the amounts are deposited in a bank.

Time and again, the Court held in *Re: Report on the Financial Audit Conducted in the MTCC-OCC, Angeles City*,²⁷ that court personnel tasked with collections of court funds, such as clerks of courts and cash clerks, are reminded to deposit immediately with authorized government depositories the various funds they have collected because they are not authorized to keep funds in their custody.

Also, in *Alenio v. Cunting*,²⁸ the Court ruled that Clerks of Court are presumed to know their duty to immediately deposit with the authorized government depositories the various funds they receive for they are not supposed to keep funds in their personal possession. Even undue delay in the remittances of the amount they collect at the very least constitutes misfeasance.

²⁵ Id.

²⁶ 561 Phil. 349, 367 (2007).

²⁷ 525 Phil. 549, 560 (2006).

²⁸ 535 Phil. 146, 153-154 (2007).

Liability of Borja

Borja is guilty of Simple Neglect of Duty.

Simple neglect of duty means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a “disregard of a duty resulting from carelessness or indifference.”²⁹ Under the 2017 Rules on Administrative Cases in the Civil Service (RACCS), simple neglect of duty is punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense; and dismissal from the service for the second offense.

In determining the applicable penalty, the Court had, in the past, mitigated the administrative penalties imposed on erring judicial officers and employees.³⁰ This is consistent with the precedent where the Court refrained from imposing the actual administrative penalty prescribed by law or regulation in the presence of mitigating factors.

In *Office of the Court Administrator v. Former Clerk of Court Jamora*,³¹ Clerk of Court Angelita A. Jamora was found liable for her failure to timely deposit her judiciary collections. She explained that the delay in the restitution of her shortages in the sum of ₱124,267.60 were caused by financial difficulties. She explained that she was the sole income earner of her family because her husband had a disability, and that they had four children who were still studying. Observing that it was her first administrative case; that she fully restituted the amounts involved; and that she held two positions at the same time, the Court tempered its decision and reduced her penalty to a fine of ₱10,000.00.

Likewise, in *Office of the Court Administrator v. Viesca*,³² Clerk of Court II Remedios R. Viesca was found guilty for Gross Neglect of Duty, Grave Misconduct and Serious Dishonesty after admitting that she misappropriated her judiciary collections in the aggregate amount of ₱529,738.50, and that she failed to submit the monthly financial reports. Notably, the Court, upon motion for reconsideration, reduced the penalty from dismissal to a fine of ₱50,000.00 through the application of the following mitigating circumstances: (1) 34 years of government service; (2) that she was already 68 years old; (3) remorse by fully cooperating with the audit team during the investigation of her infractions; and (4) full restitution of the total amount of shortage.³³

²⁹ *Office of the Court Administrator v. Del Rosario*, A.M. No. P-20-4071, September 15, 2020.

³⁰ *Office of the Court Administrator v. Former Clerk of Court Jamora*, 698 Phil. 610, 614 (2012).

³¹ *Id.*

³² 819 Phil. 582 (2017).

³³ *Id.* at 584.

Indeed, while the Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, the Court also has the discretion to temper the harshness of its judgment with mercy, especially in this time where employment and the economy face catastrophe because of the pandemic.³⁴

In this case, the Court takes into consideration Borja's remorse by fully cooperating with the audit team during the investigation and the full restitution of the total amount of the shortage. These acts may be duly appreciated in imposing the proper penalty.

Liability of Tuya

Tuya is guilty of Grave Misconduct and Serious Dishonesty.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence.³⁵

Dishonesty has been defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth.³⁶

Although dishonesty covers a broad spectrum of conduct, Civil Service Commission (CSC) Resolution No. 06-0538 sets the criteria for determining the severity of dishonest acts. According to Section 3 of CSC Resolution No. 06-0538, for dishonesty to be considered serious, any of the following circumstances must be present:

1. The dishonest act caused serious damage and grave prejudice to the government;
2. The respondent gravely abused his authority in order to commit the dishonest act;
3. Where the respondent is an accountable officer, the dishonest act directly involves property; accountable forms or money for which he is directly accountable; and respondent shows intent to commit material gain, graft and corruption;

³⁴ Id. at 585.

³⁵ *Valdez v. Alviar*, A.M. No. P-20-4042, January 28, 2020.

³⁶ *Alfonon v. Delos Santos*, 789 Phil. 462, 473 (2016).

4. The dishonest act exhibits moral depravity on the part of the respondent;

5. The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment;

6. The dishonest act was committed several times or on various occasions;

7. The dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to, impersonation, cheating and use of crib sheets;

8. Other analogous circumstances.³⁷

Under the 2017 RACCS, Grave Misconduct and Serious Dishonesty are classified as grave offenses is that shall be punishable by dismissal from the service.

In her Letter³⁸ and Comment/Reply³⁹ Tuya fully admitted to misappropriating the funds entrusted to her as Cash Clerk of MTCC, Koronadal City, South Cotabato when she experienced financial difficulties. There was willful intent to take the funds entrusted to her, for her personal benefit due to financial distress. This also caused her failure to deposit to the Court's Trust Fund collections in violation of OCA Circular No. 13-92 dated March 1, 1992 and Amended Administrative Circular No. 35-2004 August 20, 2004.

Tuya's act of misappropriating court funds, as evidenced by the shortages in her accounts and by delaying or not remitting the Court collections within the prescribed period, constitutes dishonesty which is definitely an act unbecoming of a court personnel. The failure of Tuya to remit funds upon demand by an authorized officer without any justifiable reason constitutes a *prima facie* evidence that she has put the missing funds or property to personal use.

However, Tuya voluntarily resigned from her position on April 30, 2018.

³⁷ Re: Samuel R. Ruñez, Jr., A.M. No. 2019-18-SC, January 28, 2020.

³⁸ Rollo, p. 104.

³⁹ Id. at 120-121.

The Court's disciplinary powers must always be read alongside the guarantee of any respondent's fundamental rights. Any attempt to exercise Our disciplinary powers must always take into account the provisions of the Constitution, from which these disciplinary powers are derived.

It is a settled doctrine that a disciplinary case against a court official or employee may continue, even if the officer has ceased to hold office during the pendency of the case.⁴⁰

Cessation from office may either be voluntary or involuntary. Thus, the doctrinal safeguard against the dismissal of disciplinary cases prevents erring officers and employees from escaping liability by voluntarily ceasing to hold office, either through resignation or optional retirement.⁴¹

Under Section 52(a) of the 2017 RRACS, the penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examinations.

WHEREFORE, the Court:

1. **FINDS** respondent Maxima Z. Borja, Clerk of Court IV, Municipal Trial Court in Cities, Koronadal City, South Cotabato, **GUILTY** of simple neglect of duty and imposes upon her the penalty of **SUSPENSION** for a period of three (3) months without pay, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely;

2. **FINDS** respondent Marriane D. Tuya, Sheriff III/Former Cash Clerk, Municipal Trial Court in Cities, Koronadal City, South Cotabato, **GUILTY** of grave misconduct and serious dishonesty. Accordingly, her retirement and other benefits, except accrued leave credits, are **FORFEITED**, and she is **PERPETUALLY DISQUALIFIED** from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution, as penalty for her offense, in lieu of dismissal which the Court can no longer impose;

3. **DIRECTS** respondents Maxima Z. Borja and Marriane D. Tuya to jointly and solidarily **PAY** to the Judiciary Development Fund the

⁴⁰ *Flores-Concepcion v. Castañeda*, A.M. No. RTJ-15-2438, September 15, 2020.


⁴¹ *Id.*

amount of ₱151,322.90, representing unearned interest computed at six percent (6%) per *annum*;⁴² and

4. **DIRECTS** Presiding Judge Edwin L. Diez, Municipal Trial Court in Cities, Koronadal City, South Cotabato, to:


- a. **CONTINUOUSLY** and **STRICTLY MONITOR** all financial transactions of the court and **ENSURE** that the Clerk of Court religiously complies with the directives/circulars issued by the Court, particularly in the proper handling of all judiciary funds to avoid repetition of the same infractions; and
- b. **STUDY** and **IMPLEMENT** procedures that shall strengthen the internal control system over the financial transactions of the court and **SUBMIT** the same to the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator, the procedures to be implemented with fifteen (15) days from receipt of notice.

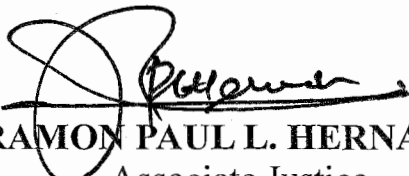
SO ORDERED.



EDGARDO L. DELOS SANTOS
Associate Justice


⁴² *Nacar v. Gallery Frames*, 716 Phil. 267 (2013)

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson


RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


JHOSEP V. LOPEZ
Associate Justice