

SECOND DIVISION

[A.M. NO. P-03-1669, October 05, 2005]

**JONOLITO S. ORASA, COMPLAINANT, VS. MANUEL S. SEVA,
CLERK OF COURT II, MCTC POLANGUI, ALBAY, RESPONDENT.**

R E S O L U T I O N

AUSTRIA-MARTINEZ, J.:

Jonolito S. Orasa comes before this Court accusing respondent Manuel S. Seva, Clerk of Court II of the Municipal Circuit Trial Court of Polangui-Libon, Albay, of nonpayment of just debt and gross misconduct in the performance of official duties.

In a complaint dated April 15, 2002, Orasa claims that: sometime in April of 2000, respondent and his wife Nimfa obtained a loan from him in the amount of P25,000.00 payable in five (5) installments from May 29, 2000 to September 29, 2000; when the loan matured, verbal and written demands were made but respondent refused to pay the loan; as a consequence, Orasa filed a complaint in court, where respondent happens to hold the position of Clerk of Court; on October 25, 2001, complainant and respondent entered into a compromise agreement which was submitted to and approved by the trial court on the same day; the agreement provided that complainant shall be entitled to a writ of execution upon failure of respondent to pay two or more installments; in spite of said agreement respondent still refused to pay his obligation to complainant; on January 26, 2002, complainant's lawyer filed a motion for the issuance of writ of execution but when complainant and his counsel arrived at the court on February 8, 2002, they found out that their motion was not calendared for hearing that day; when asked about the matter, respondent said that complainant's motion did not contain a date for setting; this was belied by complainant's lawyer by pointing to the second page of said motion; respondent either did not read the pleadings on his desk or deliberately did not calendar the motion to avoid the writ; to save respondent from further embarrassment the lady clerk reading the day's calendar inserted the motion at the bottom of the calendar and the same was approved by the judge; respondent, however, as clerk of court, has, up to the date of filing of the instant complaint, still failed to prepare a writ of execution; this offense dwells on taking advantage of respondent's position to make the wheels of justice turn in his favor, thus eroding the confidence of the people in the justice system.^[1]

Complainant prayed that respondent be found guilty of both charges, be dismissed with forfeiture of all benefits, and be preventively suspended pending the investigation of this case so that he will not be able to tamper with the evidence and influence fellow employees who may testify against him.^[2]

Attached to the complaint are the following: promissory note showing the signatures of respondent and his wife stating that they shall pay the amount of P25,000.00 plus interest in five installments;^[3] a copy of a demand letter dated June 25, 2001;

[4] a copy of the complaint dated August 13, 2001 claiming that respondent has not paid the loan or any part thereof despite complainant's repeated verbal and written demands; [5] a copy of the Compromise Agreement dated October 25, 2001; [6] a copy of the decision approving the said agreement; [7] and a copy of the motion for the issuance of a writ of execution dated January 26, 2002. [8]

In his Comment dated July 1, 2002, respondent explained that: he has fully settled his indebtedness to complainant; he was financially hard-pressed due to the expenses of his children's education; he never refused to pay his debt to complainant and in fact immediately signed the compromise agreement and tendered advance payment in the amount of P3,000.00; he requested, however, for sufficient time to settle his account with complainant; the motion for the issuance of writ of execution sent by complainant through mail was received by his office on February 5, 2002; such motion was not signed by the complainant's counsel thus it was not calendared for hearing; when complainant's counsel arrived in court on February 8, 2002, however, his attention was called by the Court Interpreter and he was asked to sign the said motion while the court was already in session, thereafter the motion was granted; he did not fail in submitting complainant's case for resolution even though their court has almost 400 pending cases; he never thought of taking advantage of his position as Clerk of Court against any person especially against court litigants; complainant collected 3.5% per month interest which he paid without any complaint thus there is no reason why complainant should bring a case like this before this Court; and he never had any intention to defraud complainant. [9]

In support thereof, respondent attached photocopies of three receipts as follows: Annex "1" evidencing that respondent has given complainant the amount of P7,000.00 on May 10, 2002 as partial payment of the amount subject of Civil Case No. 1343-L entitled "Jonolito S. Orasa vs. Sps. Manuel and Nimfa Seva"; [10] Annex "1-A" showing that respondent has given complainant the amount of P5,000.00 on May 19, 2002 again as partial payment of the amount in the said case; [11] Annex "1-B" stating that respondent has given complainant the amount of P43,812.00 on June 8, 2002 as full/complete payment for the amount subject of the abovementioned case; [12] and a copy of the motion for the issuance of writ of execution filed by complainant with the handwritten note dated February 2, 2002, that the same was "received with no signature of lawyer." [13]

On October 14, 2002, Court Administrator Presbitero J. Velasco, Jr. submitted his Report with the following evaluation and recommendation, thus:

EVALUATION: It may be true that respondent's failure to pay his indebtedness on time was not intentional but rather the consequence of his being financially hard-up. On the other hand, there appears no valid reason why respondent was unable to issue the writ of execution in the subject case. As the branch clerk of court, it is his ministerial duty to issue the writ. For his failure to calendar complainants' motion, respondent's excuse was not supported by any convincing proof. Obviously, there had been lapses on the part of the respondent.

RECOMMENDATION: Respectfully submitted for the consideration of the

Honorable Court with the recommendations that the respondent be ADVISED to be more prudent in handling his financial obligations and to be more circumspect in the performance of his functions. He should also be WARNED that a repetition of the same act and lapses will be dealt with more severely.^[14]

On December 16, 2002, the Court issued a Resolution requiring the parties to manifest whether they are willing to submit the case for resolution based on the pleadings filed.^[15]

In a Manifestation dated March 27, 2003, respondent expressed that he is not willing to submit the case for resolution based on the pleadings and that he would like to submit additional evidence.^[16] Complainant, meanwhile, expressed that he is willing to have the case submitted for resolution based on the pleadings.^[17]

In a "Compliance" dated September 8, 2003, respondent manifested that: he never intended to disregard the lawful orders of the court much less taint the dignity of the courts and adversely compromise his duties and obligations as a career public employee of the court when he failed to act with dispatch in the implementation of the writ of execution; whatever lapses he may have committed was only due to human frailty; the accusations being hurled against him by complainant are causing him agony, anxiety and social embarrassment; and he is a 60-year old family man with ten children, with more than 37 years of service with the judiciary.^[18]

In a Manifestation dated January 22, 2004, respondent further averred that: his indebtedness in favor of complainant has already been paid in full as of June 8, 2002; while it may be true that it took some time to fully pay the loan in question, the partial payments of the respondent, indicated in the Statement of Account signed by complainant, shows his willingness to settle his obligation; he even paid in kind, i.e., two piglets valued at P2,400.00 as second payment in the month of November 2000; what made the loan burdensome was the high interest rate charged which is 3.5% a month or 42% a year; if ever respondent failed to pay his obligation as each installment fell due, it was because, as a father of ten, the pressure on his finances was difficult to bear; respondent's inability to pay on time is also brought about by bad weather conditions which affected their family's harvest; respondent's explanation in his answer that the reason why the motion for the issuance of a writ of execution filed by complainant was not calendared on February 8, 2002 was because of the failure of the complainant's counsel to sign the same was not denied by complainant, therefore it is impliedly admitted; in support of this allegation, he attached an affidavit executed by Court Interpreter Pacita C. Salvante stating that complainant's allegation on this point has no factual basis; considering that respondent has already paid his debt and that there is no basis for the charge of gross misconduct in the performance of official duties, the present complaint must therefore be dismissed; respondent has served the judiciary for 38 years and this is the only administrative charge that has been filed against him; and respondent is about to file his optional retirement in 2004 and it is his hope that he will be able to collect his benefits in full considering that his numerous tasks in the office have affected his health.^[19]

Attached is a Statement of Account which reads:

SPOUSES MANUEL S. SEVA &
NIMFA S. SEVA - Borrower

AMOUNT OF PRINCIPAL - P25, 000.00 at 3.5% per month.

TOTAL AMOUNT OF COMPROMISE AGREEMENT IN
CIVIL CASE NO. 1353-I "Jonolito Orasa vs.
Spouses Manuel S. Seva & Nimfa S. Seva"
Inclusive of Principal; interest, attorney's
Fees and other litigation expenses.....P59,812.48
(dated October 25, 2001)

PAYMENTS: -

<u>Date</u>		<u>Amount</u>	
February, 2000	P	1,600.00	
March, 2000		1,500.00	
May, 2000		1,000.00	
August, 2000		2,000.00	
November, 2000		3,000.00	
November, 2000		(22,400.00	
		piglets)	
Oct. 25, 2001	(Signing & submission of Compromise Agreement thru Atty. Prudencio V. Rañola, Jr.	3,000.00	
May 10, 2002		7,000.00	
May 19, 2002		5,000.00	
June 9, 2002		<u>43,812.00</u>	<u>P70,312.00</u>
	TOTAL		P70,312.00
	PAYMENT.....		

WE HEREBY CERTIFY that Spouses Manuel S. Seva and Nimfa S. Seva of Del Rosario St., Libon, Albay, have completely and/or fully paid the undersigned the total sum of P70,312.00 even prior to the implementation of the Writ of Execution in Civil Case No. 1353-L, as above-stated.

Bololo-Libon, Albay November 17, 2003.

(sgd)
JONOLITO S.
ORASA

(sgd)
NELLIE R.
ORASA^[20]

On February 9, 2004, the Court required the complainant to file his comment on respondent's manifestation dated January 22, 2004 as well as the compliance dated