

**EDDIE BABOR, PETITIONER, VS. VITO P. GARCHITORENA, DEPUTY SHERIFF, RTC-OCC, PILI, CAMARINES SUR, RESPONDENTS.***A.M. No. P-94-1070. April 08, 1997*

Ponente: DAVIDE, JR., J.

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In a sworn complaint dated 31 May 1994 and addressed to then Court Administrator Ernani Cruz Paño, complainant Eddie Babor charged respondent Vito P. Garchitorena, Deputy Sheriff of the Regional Trial Court of Pili, Camarines Sur with grave abuse of authority, serious misconduct and conduct prejudicial to the best interest of the service for having arbitrarily and oppressively disregarded procedural rules in implementing the writ of execution in Civil Case Nos. 573 and 574 of the Municipal Trial Court of Bula, Camarines Sur. Complainant alleged that while only 10 hectares were involved in the decision in said cases, respondent enforced it on the entire property of 38.9494 hectares despite the fact that the “Service of the Writ of Execution and Notice to Vacate” referred only to Civil Case No. 573 and specifically involved only 7 hectares of the plaintiff’s property of 9.2 hectares covered by said case. Moreover, respondent forced him out of the property, through threats, before the lapse of the 3-day period the former gave the latter within which to do.

In our 28 September 1994 resolution we required respondent to comment on the complaint. Since he did not comply despite the extension of time given him, we resolved on 22 February 1995 to consider respondent as having waived the filing of the comment and to have this case submitted for decision; and on 14 June 1995, we referred this case to Executive Judge Benjamin Panga of the Regional Trial Court of Pili, Camarines Sur for investigation, report and recommendation, and impose upon respondent a fine of P500.00 for failure to file his comment.

However, in his order of 6 July 1995 Judge Panga, allowed respondent to file a sworn answer to the complaint. As was the case before us, respondent asked for an extension of time to file his answer, which Judge Panga granted.

Judge Panga then asked, via his letter of 11 July 1995, to be relieved as investigating judge in view of his pending application for optional retirement.

On 17 July 1995 respondent filed his sworn answer wherein he denied the charges of grave abuse of authority, serious misconduct and conduct prejudicial to the best interest of the service, which he characterize as baseless, malicious and distorted. According to him, the judgment in question was a joint decision rendered on 4 February 1994 in Civil Case No. 573 (entitled August Manjon v. Eddie Babor, et al.) and Civil Case No. 574 (entitled Teresa Gonzales Lao v. Eddie Babor, et al.) both for forcible entry, filed in the Municipal Trial Court of Bula, Camarines Sur, which was to be executed pending appeal pursuant to the order of 14 March 1994. To implement the writ of execution, he prepared a “Service of Writ of Execution and Notice to Vacate,” dated 29 March 1994, wherein he gave the defendants a 3-day period within which to voluntarily vacate the premises; nevertheless, he did not even strictly implement it for, as stated in his “Sheriff’s Partial Report” of 11 April 1994, he would still have “to follow up with the defendants and oust them and their agents from the premises and to insinuate to them

to comply with the writ in order to avoid costly demolition of the houses constructed therein.” As to the barbed wire fence, respondent claimed that it was plaintiff Manjon who constructed it without his (respondent’s) instigation, cooperation or prior knowledge. Finally, respondent alleged that this complaint was “only one of a string of baseless and malicious complaints filed by complainant against him; the other complaints were filed with the Ombudsman, the Provincial Prosecutor and the Commission on Human Rights.

Respondent attached to his Answer copies of his “Service of Writ of Execution and Notice to Vacate” and Sheriff’s Partial Report which showed that he served the writ on 4 April 1994, and the affidavit of Augusto Manjon, plaintiff in Civil Case No. 573, wherein Manjon claimed full responsibility for erecting the barbed wire fence around the property in question and the putting up the “No trespassing” signs from 6 to 8 April 1995, which were done in the presence of the sheriff and his police detail since previous attempts to fence the property had failed because of the threats and harassment employed by Eddie Babor and his cohorts. Also attached to the answer was the affidavit of Romulo Soresta, the overseer of Mr. Manjon, who hired farm laborers to dig the holes along the perimeter of the property in question and to fence the property from 6 to 8 April 1995 in the presence of the sheriff and the latter’s police detail.

Investigating Judge Panga of Branch 33 of the RTC in Pili, Camarines Sur, then set the case for “pre-trial” on 21 July 1995 which, however, was postponed to 7 August 1995.

On 7 August 1995, the pre-trial of the case was ordered reset to 17 August 1995 by Judge Martin P. Badong, Jr., the pairing Judge of Judge Panga. Upon motion of respondent, Judge Badong reset the hearing on 23 August 1995.

On 18 August 1995 Clerk of Court V Tomas Reyes, Jr., of Branch 33 of the RTC transmitted the record of this case to the Officer-in-Charge of the Office of the Clerk of Court of Branch 31 “for further proceedings in that Court.”

On 23 August 1995, Judge Badong of Branch 31 issued an order resetting the hearing to 30 August 1995.

On 30 August 1995, complainant manifested that he was submitting his case for resolution on the basis of his complaint and the annexes thereto. Upon knowing that complainant was not furnished with a copy of the answer, Judge Badong required counsel for respondent to so furnish complainant and directed the latter to file a reply thereto within ten days after receipt, otherwise, he he would be deemed to waive the filing of the reply. Counsel for respondent likewise manifested his willingness to submit the case for resolution on the basis of the Answer and its annexes, but was required by Judge Badong to file his memorandum.

In his manifestation of 7 September 1995, complainant stated that he was not filing a reply and prayed that this case be resolved on the basis of the complaint, and prayed that the investigating Judge should make a report and recommendation on the basis thereof, disregarding the answer and the annexes thereto submitted by respondent in view of our resolution of 22 February 1995.

On 18 September 1995, respondent’s counsel filed a motion to admit respondent’s Memorandum. Judge Badong granted the motion and admitted the memorandum on 26 September 1995.

On 4 October 1995, Judge Badong submitted a Partial Report with Request for Extension stating therein the procedural antecedents of the case and asking for 30 days from 4 October 1995 within which to submit his final report and recommendation.

On 4 October 1995 we resolved to refer this case to Judge Badong for investigation, report and recommendation, “it appearing that Judge Benjamin Panga who previously handled this case had retired on July 31, 1995.”

On 9 November 1995 Judge Badong transmitted to us his Final Report and Recommendation wherein he summarized the evidence of the parties, based on the complaint and the answer to both and the following findings and conclusions:

1. The writ of execution implemented by respondent for the execution pending appeal of the entirety of the joint decision in Civil Cases Nos. 573 and 574 was clearly evident from the dispositive portion of the writ issued by the Clerk of court. It commanded the Provincial Sheriff or his deputies to cause the execution of said judgment for the defendants to vacate the premises of the land in question and to restore peaceful possession thereof to plaintiffs Manjon and Lao, and the other portion of the judgment on payment of the sums therein indicated “came later and which was necessarily included in the said decision to be executed.”

2. The execution was made pursuant to Section 13 of Rule 39, which provides as follows:

“Section 13. How execution for the delivery or restitution or property enforced. The officer must enforce an execution for the delivery or restitution of property by ousting therefrom the person against whom the judgment is rendered and placing the judgment creditor in possession of such property, and by levying as hereinafter provided upon so much of the property of the judgment debtor as will satisfy the amount of the judgment and costs included in the writ of execution.”

The section does not mention any period for the delivery or restitution of property and for ousting therefrom the persons against whom the judgment is rendered. The act then of the respondent in giving complainant and his co-defendants three days within which to vacate was merely a discretionary act on his part and in accordance with certain established procedures and practices in their office. Despite the grace period, no forcible ouster was effected by respondent and his fellow sheriffs, as evidenced by the need for plaintiffs to procure alias writs of execution.

3. As proven by the affidavits of Manjon and Soreta, respondent had nothing to do with the fencing of the property. The former and their hired laborers did it, although they took advantage of the presence of respondent and other sheriffs and a “contingent of police authority.” Besides, the pictures of the fenced premises and the fence itself did not show that the fence actually prevented any person from going in or out of the property.

4. The only charge which can be validly sustained would be respondent’s “over-acting or going to the property in question with unnecessary show of force, not only himself, but also with other deputy sheriffs including a police detail and which would really cause fear and apprehension on the part of herein defendants and other occupants of the property in question.” He “should have shown more humaneness and circumspection in carrying out his official duties and not immediately enforce the writ in the manner that he did and for which to illiterate, uneducated and marginalized farmers would appear overbearing and oppressive and for which he should therefore be merely admonished and warned to be more careful and prudent next time he enforces lawful writs and process of the courts.”

Judge Badong denied the prayer of complainant that respondents answer and the annexes thereto should not be taken into account in resolving this case in view of our resolution of 22 February 1995. The former ratiocinated thus:

Finally, the claim and manifestation of complainant that this administrative matter be resolved and the recommendation be made based only on his own letter-complaint and attachments or annexes and in total disregard of the Answer, etc. of respondent cannot also be granted since this would clearly be violative of due process and the right of any respondent to be heard and present in his own behalf whatever defense he may have. In the first place, although this Honorable Supreme Court has declared respondent as having waived the filing of

his comment to the complaint and considered the case as submitted for resolution in its resolution of February 22, 1995, yet, in another resolution thereafter or on June 14, 1995, this Honorable Court declared the referral of this case to the then Executive Judge of this Court at Pili, Camarines Sur for investigation, report and recommendation within ninety (90) days from notice and also imposed a fine of FIVE HUNDRED PESOS (P500.00) upon respondent thereby impliedly amending and superseding its previous resolution declaring the case submitted for resolution. Although complainant was furnished copy of this later Supreme Court resolution of June 14, 1995, he never complained or protested.

In like manner, although then Executive Judge Benjamin V. Panga directed respondent to file his answer within five (5) days from his receipt of the order on July 6, 1995 and again extending the period to file such Answer on July 17, 1995, complainant never objected or complained, thus expressing his implied conformity thereto. It was only after he was furnished [a] copy of the Answer, etc. of the respondent that he filed his "Manifestation" of September 7, 1995 praying that the investigation be conducted on the basis of his complaint alone and the report and recommendation be made without regard to the Answer, etc. of respondent. This cannot be, and this case has therefore to be resolved and recommendation based on the investigation conducted by this undersigned investigator upon the entire record now existing including the Answer, etc. of respondent herein.

Judge Badong then recommended that respondent "be admonished and warned to carry out his official duties in enforcing writs of execution, etc. in a more circumspect, prudent and careful manner next time and be exonerated from the other charges against him."

We referred the report and recommendation of Judge Badong to the Office of the Court Administrator on 11 December 1995 for evaluation, report and recommendation. Said office submitted its Memorandum containing the following evaluation and recommendation on 3 February 1997, viz.:

We do not fully subscribe with the findings of the Investigating Judge. Even if the claim of respondent were true that personally it was plaintiff Manjon with his overseer and some hired laborers who fenced the entire property of 39.9494 hectares, respondent still cannot be exonerated from his liability. His admission that he was present at that time only aggravated the situation as his presence when the act complained of was being done by the plaintiffs gave a semblance of authority. To our mind respondent fell short in performing his duty in enforcing writs of execution. Considering the ministerial nature of his duty it is incumbent upon him to ensure that only that portion of a decision ordained or decreed in the dispositive part should be the subject of execution. No more no less (Cruz vs. Dalisay, A.M. No. R-181P, 152 SCRA 485). It is of no moment that the complainant deserves to be ejected as he (she) had long lost his (her) right to stay in the subject premises. The point is that the respondent is well aware of the rules on execution of judgments, particularly the proper procedure in ejectment and yet he ignore[d] them (Cunanan vs. Cruz, A.M. No. R-89-P, 167 SCRA 678).

Respondent, as the implementing officer in the execution of writs, should have enforced his authority and stopped the plaintiffs from performing acts deemed clearly excessive of the terms of the judgment. In his explanation, nothing can be inferred that he made any attempt to dissuade the plaintiffs from doing what they did giving rise to the impression that he was in cohort (sic) with the plaintiffs in committing the oppressive acts against the defendants. His lackadaisical attitude betrays his inefficiency and incompetence which is a ground to for disciplinary action in accordance with Section 46 (b) (8) of the Civil Service Law.

The Court cannot countenance any act or omission which diminishes the faith of the people in the judiciary. Every employee in the judiciary should be an example of integrity, honesty and uprightness. He must always be above and beyond suspicion. Sheriffs, in particular must show a high degree of professionalism in the performance of their duties given the delicate task they're reposed with. (Borja v. Angeles, A.M. No. P-94-1057, 244 SCRA 706). Sheriffs are thus required to conduct themselves with propriety and decorum. Their action must be beyond reproach.

With regard to the claim that complainant and his co-defendants were ejected even before the 3 day notice to vacate, records show that the writ of execution and notice to vacate was served upon defendants on April 4, 1994. On April 6, 1994 or two days thereafter, respondent implemented the writ of execution. (Affidavits of Augusto E. Manjon and Romulo Soreta both dated July 14, 1995, rollo, pp. 66 and 72). Under the Rules of Court the immediate enforcement of a writ of ejectment execution [sic] is carried out by giving the defendant notice of such writ and making a demand that defendant comply therewith within a reasonable period, normally from 3 to 5 days, at it is only after such period that the sheriff enforces the writ by the bodily removal of the defendant and his personal belongings (*City of Manila v. CA*, 204 SCRA 363). We do not therefore agree with the conclusion of the Investigating Judge that the 3 days grace period given to the complainant within which to vacate the premises is merely discretionary on the part of the respondent Sheriff. Hence respondent Sheriff acted arbitrarily in enforcing the writ of execution even before the lapse of 3 days which he himself gave within which to so vacate the premises.

The Office of the Court Administrator then recommended:

PREMISES CONSIDERED, it is most respectfully recommended that respondent Deputy Sheriff Vito P. Garchitorena be found guilty of grave abuse of authority[,] inefficiency and incompetence and conduct prejudicial to the best interest of the service and be meted a penalty of six (6) months SUSPENSION from office without pay (Memorandum Circular No. 3, S. 1989, Civil Service Commission and Section 46 [b] [8] of the Civil Service Law) with STERN WARNING that a repetition of similar offense in the future will be dealt with more severely.

Before proceeding further, several matters must first be addressed.

Judges Panga and Badong entirely forgot that this case was referred to them for investigation, report and recommendation after respondent was considered to have waived the filing of his comment. Their authority was thus explicitly limited. They could not, therefore, allow respondent to file his comment without prior leave from this Court. These judges likewise forgot that this case is not an ordinary civil action, but an administrative case, which was to be forthwith investigated. The case should not have been set for pre-trial, whose postponements merely delayed the investigation.

Until he was duly authorized by us on 23 October 1995 to conduct the investigation in this case and to submit his report and recommendation, Judge Badong had no authority even as a “pairing Judge” to act on this case. The matter was compounded when, without our knowledge, this case was transferred from Branch 33 to Branch 31 of the RTC in Pili, Camarines Sur by the Clerk of Court of the former to the OIC of the Office of the Clerk of Court of the latter.

Judges commissioned by us to investigate administrative cases and to make their corresponding reports and recommendations thereon should always be aware that their powers, duties and functions as such cannot be delegated to other judges. Relief of the former and designation of another can only be done by us.

The most then that could have been allowed in this case in view of its referral for investigation, report and recommendation, was to admit the comment and the annexes only as respondent’s evidence offered during the investigation.

Under the peculiar circumstances in this case, we nevertheless allow the comment of private respondent, together with the annexes thereto and ratify the acts of the investigating judges, but with admonition to Judge Badong that he should never overstep his authority again.

We agree with the Office of the Court Administrator that respondent committed grave abuse of authority and conduct prejudicial to the best interest of the service, but not necessarily of inefficiency and incompetence. If he

were excessively tolerant of the acts of the plaintiffs and their laborers in fencing in the property, thereby effectively forcing out or ousting from the premises the complainants and his co-defendants, such conduct was not caused by inefficiency or incompetence, but by deliberate act of partiality in favor of the plaintiffs, which amounted to oppression or abuse of authority.

After respondent had given the defendants three days within which to vacate the premises, the former was as much bound as the latter to strictly observe the period, to allow defendants to leave the premises with the least inconvenience and peacefully deliver possession thereof to the plaintiffs; and the defendants to take advantage of the grace period to relocate themselves. It must be stressed that if defendant's vacation of the premises included removal of their improvements, respondent then could not even forcibly remove them after the expiration of the 3-day period. Under Section 14 of Rule 39 of the Rules of Court, he had to secure a special order from the court which would fix a reasonable period for defendants to remove these improvements.

In the instant case, respondent, for reasons known only to him, set aside the 3-day period he had fixed, and on the second day thereof, he "together with other sheriffs and a contingent of police authority" ---- according to the investigating Judge ---- witnessed the ouster from the premises of the defendants when plaintiff's laborers fenced the premises with barbed wire. This was an unseemly event which approximated an unnecessary show of force with the respondent, other sheriffs, and policemen acting as plaintiff's hired security guards. They did not so not just for one day, but for three days (6 to 8 of April 1995). Respondent has adduced no credible evidence for his solicitation of the aid of a contingent of policemen. The Sheriff's Partial Report submitted on 11 April 1995 does not indicate that the defendants offered any resistance nor showed a hostile or intimidating attitude. Respondent cannot excuse himself from any responsibility simply because he did not actually physically take part in the fencing by mounting the posts, rolling and nailing the barbed wire, or even directing the laborers. It was precisely his presence and that of other sheriffs and the contingent of policemen which made the fencing possible.

By any yardstick, respondent had committed grave abuse of authority and oppression and conducted himself in a manner highly prejudicial to the best interest of the service. These are acts which could erode the faith of the people in the administration of justice. We have held that the administration of justice is a sacred task, and by the very nature of their duties and responsibilities, all those involved therein must faithfully adhere to, hold inviolate, and invigorate the principle solemnly enshrined in the 1987 Constitution that public office is a public trust. Any act or omission on their part which violates the norms of public accountability or even merely tends to diminish the faith of the people in the Judiciary must be condemned and never countenanced. (*Sy v. Academia*, 198 SCRA 705, 717 [1991]).

The investigating Judge's conclusion that there was, in fact, no forcible ouster because alias writs of execution even had to be obtained by plaintiffs, is unfounded. In the first place, in the Sheriff's Partial Report respondent categorically stated, although incorrectly:

The three (3) days notice to vacate has already complied with the same.

In the second place, the alias writs could not have referred to that portion of the judgment ordering defendants to vacate, but to that portion ordering them to pay certain sums of money to the plaintiffs for attorney's fees, appearance fees and exemplary damages.

We thus find respondent guilty of grave abuse of authority, oppression, and conduct prejudicial to the best interest of the service for which the penalty of suspension from office for six (6) months, as recommended by the Office of the Court Administrator, is deemed sufficient.

WHEREFORE, judgment is hereby rendered finding respondent Deputy Sheriff Vito P. Garchitorena guilty of

grave abuse of authority, oppression and conduct prejudicial to the best interest of the service and sentencing him to suffer the penalty of suspension from office for SIX (6) MONTHS effective upon notice of this decision.

Let copies of this decision be immediately furnished respondent and the Office of the Court Administrator, and attached to the personal record of respondent in this Court.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

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