

**ATTYS. RICARDO D. GONZALES & ERNESTO D. ROSALES,
COMPLAINANTS, VS. ARTHUR G. CALO, SHERIFF IV, REGIONAL
TRIAL C, BRANCH 5, BUTUAN CITY RESPONDENT.**

A.M. No. P-12-3028 [Formerly OCA IPI No. 11-3649-P]. April 11, 2012

Ponente: PEREZ, J.

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PEREZ, J.:

In a verified Complaint^[1] dated 2 May 2011, complainants Atty. Ricardo D. Gonzalez and Atty. Ernesto D. Rosales, in their capacity as counsels for the Rural Bank of Cabadbaran (Agusan), Inc., charged Arthur G. Calo, Sheriff IV, Regional Trial Court (RTC), Branch 5, Butuan City, with grave abuse of authority, falsification, arrogance, grave misconduct and gross dishonesty in connection with the implementation of the writ of possession in Special Proceeding No. 4808. The writ of possession^[2] dated 12 January 2011, commanded respondent to “immediately place” the Rural Bank of Cabadbaran in possession of the property subject of the special proceeding case and eject all occupants thereof.

Complainants alleged that instead of coordinating with them, as was the usual practice of sheriffs when implementing writs, respondent never bothered to get in touch with them. Thus, to facilitate matters, complainants delivered P1,000.00 to respondent to answer for whatever expenses the implementation would occasion. When respondent still did not communicate with them, complainant Gonzalez wrote him a letter^[3] dated 25 January 2011, asking for an estimate of the necessary expenses for the implementation of the writ. Since respondent did not reply, complainant Gonzalez reiterated the demand to implement the writ in a letter dated 14 February 2011.^[4] This time, respondent was warned that should he continue to delay implementation of the writ, the Office of the Court Administrator will be informed of the matter. Another letter^[5] dated 3 March 2011, was sent to respondent reminding him that he still had not submitted an estimate of the expenses of implementation as well as a sheriff’s report, as required by the Rules of Court.

On 14 March 2011, complainants learned that respondent had filed his Sheriff’s Report^[6] a copy of which they obtained solely through their own initiative from respondent’s office. Although dated 18 February 2011, the Report was filed only on 4 March 2011 as evidenced by the date of receipt stamped on its first page. Further, while the report stated that plaintiff and counsel were furnished a copy thereof purportedly by registered mail, the registry receipt, numbered 6673, was undated. Complainants actually received the Report only on 17 March 2011 and the envelope containing the same was mailed only on 14 March 2011,^[7] the same day complainants were able to secure a copy thereof.

Respondent’s Report stated that the writ of possession in Special Proceeding No. 4808 was served on 24 January 2011 to the occupants of the property who, however, requested time to vacate the same. For humanitarian reasons, considering that one of the occupants was sickly, respondent gave them a period of three (3) months within which to vacate the property.

Complainants asserted that “[b]ecause it was obvious that the Sheriff was now playing judge,” complainant

Gonzalez filed an Omnibus Motion to Inhibit[8] respondent from implementing the writ, claiming that he and respondent could no longer work cordially, to the prejudice of the interest of his client bank. Upon being directed to comment on the motion for his inhibition, respondent denied having been remiss in his duty to implement the writ, declared that he will not inhibit and asserted that he will proceed with the implementation of the writ on 25 April 2011.[9]

True to his word, but without waiting for the resolution of the motion to inhibit him, respondent went to the Rural Bank on 25 April 2011 and announced that he will implement the writ on that day. The bank manager, Ms. Hanie De Jesus (Ms. De Jesus), told him that she will inform complainant Gonzalez of his presence but respondent refused, saying that he will never coordinate with Atty. Gonzalez. He then implemented the writ in the presence of Mr. Marvin Ravelo, an employee of the bank whom respondent asked to accompany him. Thereafter, respondent returned to the bank and demanded P1,000.00 as expenses incurred in the implementation, which amount Ms. De Jesus was forced to give because respondent would not leave her desk.[10]

Complainants further alleged that while the occupants indeed vacated the premises, a big room supposedly containing their personal effects was allowed to be padlocked. Thus, while the writ was ostensibly implemented and respondent made a return, in reality, the writ was not fully implemented because the house cannot be demolished until the things are removed. They added that respondent's act of demanding money from their bank manager violates the Rules requiring sheriffs to receive only court-approved amounts from litigants.

Pursuant to the directive of the Office of the Court Administrator (OCA), respondent submitted his Comment[11] to the allegations against him. He alleged that:

- While admittedly he gave the occupants a period of 3 months to vacate the premises subject of the writ of possession, he did so only out of sheer compassion and for humanitarian reasons;
- In connection with the service of his Sheriff's Report dated 18 February 2011, attached to his Comment is the affidavit[12] of Mr. Celestino Montalban, their process server, whom respondent requested to mail complainants' copy of the report. Mr. Montalban claimed in his affidavit that because of the numerous documents he mailed on that day, he failed to notice that Registry Receipt No. 6673 addressed to complainant Gonzalez bore no date;
- The writ of possession was fully implemented on 25 April 2011 in the presence of Mr. Ravelo, the representative of the Rural Bank, and possession of the property was formally turned over to him. After implementation, the bank manager, Ms. De Jesus, handed to respondent the amount of P1,000.00 as reimbursement for the expenses incurred as indicated in the Liquidation of Expenses[13] dated 6 May 2011. He did not extort the said amount, contrary to the allegations of complainants. This was precisely the subject of his letter to Ms. De Jesus whom he asked to clarify and shed light on the matter. The formal reply[14] of Ms. De Jesus belies the charge of extortion.

Complainants filed a Reply[15] dated 16 August 2011 to refute the allegations of respondent in his Comment. Attached thereto is the Affidavit[16] of bank manager Ms. De Jesus recounting what actually happened on 25 April 2011 when respondent implemented the writ of possession. According to her, after respondent implemented the writ, he came back and made her sign a Turn-Over Receipt. Respondent, however, would not leave and she "understood that he was waiting for money" so she decided to give him P1,000.00 so he would leave and allow her to attend to her work.

In its evaluation report[17] dated 26 October 2011, the OCA found respondent guilty of neglect of duty and grave misconduct but mitigated the penalty on account of his "more than three (3) decades of service in the judiciary, coupled with the fact [that] this is his first infraction of the rules". The OCA recommended that he be fined in the

amount of P10,000.00 and warned that the commission of a similar act in the future will be dealt with more severely.

We agree with the conclusion of the OCA that respondent is liable for neglect of duty but differ with the recommended penalty.

From the allegations of the complaint, it is clear that respondent violated the provisions of the Rules of Court prescribing the duties of sheriffs in the implementation of court writs and processes.

Sections 10 (c) and (d), Rule 39 of the Rules of Court provide for the manner by which a writ for the delivery or restitution of real property should be enforced by a sheriff. Thus:

SEC. 10. Execution of judgments for specific act. –

x x x x

(c) Delivery or restitution of real property. – The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.

(d) Removal of improvements on property subject of execution. – When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.

Section 14 of Rule 39, on the other hand, requires sheriffs, after implementation of the writ, to make a return thereon:

SEC. 14. Return of writ of execution. - The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

The aforequoted sections of Rule 39 enumerate the following duties of a sheriff: first, to give notice of the writ and demand that the judgment obligor and all persons claiming under him vacate the property within three (3) days; second, to enforce the writ by removing the judgment obligor and all persons claiming under the latter; third, to remove the latter's personal belongings in the property as well as destroy, demolish or remove the improvements constructed thereon upon special court order; and fourth, to execute and make a return on the writ within 30 days from receipt of the writ and every thirty (30) days thereafter until it is satisfied in full or until its effectivity expires.[18]

These provisions leave no room for any exercise of discretion on the part of the sheriff on how to perform his or her duties in implementing the writ. A sheriff's compliance with the Rules is not merely directory but mandatory.[19] Thus, herein respondent evidently overstepped his authority when he gave the occupants of the

property a grace period of 3 months within which to vacate the premises. It is well settled that a sheriff's functions are purely ministerial, not discretionary.[20] Once a writ is placed in his hand, it becomes his duty to proceed with reasonable speed to enforce the writ to the letter, ensuring at all times that the implementation of the judgment is not unjustifiably deferred, unless the execution of which is restrained by the court.[21]

In addition to respondent's unauthorized act of giving the occupants of the property time to vacate the same, respondent also failed to file his sheriff's return. The Rules clearly provide that it is mandatory for sheriffs to execute and make a return on the writ of execution within 30 days from receipt of the writ and every thirty (30) days thereafter until it is satisfied in full or its effectivity expires. Even if the writs are unsatisfied or only partially satisfied, sheriffs must still file the reports so that the court, as well as the litigants, may be informed of the proceedings undertaken to implement the writ. Periodic reporting also provides the court insights on the efficiency of court processes after promulgation of judgment. Over all, the purpose of periodic reporting is to ensure the speedy execution of decisions.[22]

In the case of *Cebu International Finance Corporation v. Cabigon*,[23] the Court applied the foregoing Section 14 of Rule 39 to discipline a sheriff who failed to file a return after service of a writ of possession. Likewise, in *Ong v. Pascasio*, [24] the Court, adopting the findings of the evaluation report of the OCA, held administratively liable under the same provision, a sheriff who, failing to implement a writ of possession, did not render the required report.

In this case, respondent was clearly remiss in the performance of his mandated duties: he unilaterally gave the occupants 3 months, instead of the three (3) days provided by the Rules, to vacate the property; when he did evict the occupants from the premises, a room containing their personal effects was padlocked, therefore delaying the demolition of the improvements introduced on the property; finally, respondent failed to make a return on the writ of possession after he implemented the same. As observed by the OCA in its Report dated 26 October 2011, "[r]espondent Sheriff Calo would have us believe that he submitted a report on 18 February 2011 and even furnished complainants a copy thereof. And yet, a perusal of the evidence reveals otherwise. In fact, as seen on its face, the court received a copy of his report only on 4 March 2011"[25] or more than 30 days from the time he was supposed to make a return.

Respondent likewise disregarded Section 10, Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC dated 16 August 2004, which requires sheriffs to secure prior approval from the court of the estimated expenses and fees needed to implement court processes. Paragraph (l) of the section explicitly provides that:

With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex-officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. THE LIQUIDATION SHALL BE APPROVED BY THE COURT. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

Thus, a sheriff is guilty of violating the Rules if he fails to observe the following: (1) prepare an estimate of expenses to be incurred in executing the writ; (2) ask for the court's approval of his estimates; (3) render an accounting; and (4) issue an official receipt for the total amount he received from the judgment debtor. In the instant case, none of these procedures were complied with by respondent sheriff.[26]

The records of this case reveal that, sometime in January 2011, after the issuance of the writ of possession, respondent accepted the amount of P1,000.00 initially given by complainants to defray the expenses of implementation, without submitting an estimate of the expenses or seeking the court's approval therefor. An accounting of this amount was made only on 6 May 2011 or more than four (4) months after respondent received the same, when the Rules require that amounts received by a sheriff are "subject to liquidation within the same period for rendering a return on the process," which is, thirty days. Then, on the day he actually executed the writ, respondent demanded another P1,000.00 from Ms. De Jesus. Again, this amount was received by respondent without submitting an estimate to or obtaining prior approval from the court.

It must be stressed that sheriffs are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. Corollary, a sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps. Even assuming such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. Neither will complainant's acquiescence or consent to such expenses absolve the sheriff for his failure to secure the prior approval of the court concerning such expense.[27]

In addition to violating Rules 39 and 141 of the Rules of Court, We also find respondent liable for conduct unbecoming a court employee for his continued refusal to coordinate with complainants in the implementation of the writ of possession, despite numerous attempts on their part to get in touch with him. It may be recalled that complainants endeavored, no less than four (4) times, to communicate with respondent for the proper and expeditious execution of the writ, but each time, respondent rebuffed their efforts. Finally, on 25 April 2011, the day respondent finally implemented the writ, respondent refused to allow Ms. De Jesus to inform complainants of the intended implementation and opted to be accompanied by an ordinary bank employee to witness the enforcement of the writ.

To our mind, the persistent refusal of respondent to cooperate with complainants in the implementation of the writ runs afoul of the exacting standards required of those in the judiciary. Time and again, the Court has emphasized the heavy burden of responsibility which court officials and employees are mandated to perform. They are constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. This is so because the image of the court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work there.[28] The conduct of even minor employees mirrors the image of the courts they serve; thus, they are required to preserve the judiciary's good name and standing as a true temple of justice.[29]

In determining the appropriate penalty to be imposed on respondent, the Court considered the following administrative cases wherein the respondent sheriffs were also found guilty of violating either Section 14 of Rule 39 or Section 10 of Rule 141:

- Cebu International Finance Corporation v. Cabigon,[30] wherein respondent was found guilty of neglect of duty for violating Section 14 of Rule 39 and fined in the amount of P10,000.00, respondent having been previously reprimanded for neglect of duty;
- Villarico v. Javier,[31] where respondent violated Section 10 of Rule 141 and the Court faulted him for "Conduct Unbecoming a Court Employee" and imposed on him a fine of P2,000.00;
- Guilas-Gamis v. Beltran,[32] where the Court, without characterizing the similar offense of violation of Section 10, Rule 141, imposed on the therein respondent a fine of P2,000.00;
- Balanag, Jr. v. Osita,[33] wherein respondent was found guilty of simple neglect of duty for failing to follow the procedure laid down in Section 9 (now Section 10), Rule 141 of the Rules of Court and was fined in the

amount of P5,000.00; and

- *Tiongco v. Molina*,^[34] where the Court found respondent guilty of dereliction of duty and negligence for failure to comply with the final paragraph of Section 9 (now Section 10), Rule 141, of the Rules of Court and imposed on him a fine of P5,000.00.

Considering that the violation of the procedure in the implementation of court processes committed by respondent is coupled with conduct unbecoming of a court employee, a fine of P20,000.00 is appropriate under the circumstances. Considering further that respondent has compulsorily retired from the service on 6 November 2011, the amount of P20,000.00 should be deducted from whatever retirement benefits may be due him.

WHEREFORE, the Court finds respondent Arthur G. Calo, Sheriff IV, RTC, Branch 5, Butuan City, GUILTY of neglect of duty and conduct unbecoming a court employee and is FINED in the amount of TWENTY THOUSAND PESOS (P20,000.00) to be deducted from the benefits due him.

SO ORDERED.

Carpio, (Chairperson), Brion, Sereno, and Reyes, JJ., concur.

[1] Rollo, pp. 1-10.

[2] Id. at 11-12, Annex “A.”

[3] Id. at 13, Annex “B.”

[4] Id. at 14, Annex “C.”

[5] Id. at 15, Annex “D.”

[6] Id. at 16-17, Annex “E.”

[7] Id. at 18, Annexes “F” and “F-1.”

[8] Id. at 19-21, Annex “G.”

[9] Id. at 22-23, Annex “H.”

[10] Id. at 80.

[11] Id. at 47-54.

[12] Id. at 66, Annex “8.”

[13] Id. at 64, Annex “6.”

[14] Id. at 71, Annex “10.”

[15] Id. at 72-82.

[16] Id. at 83, Annex “A.”

[17] Id. at 85-91.

[18] *Guerrero-Boylon v. Boyles*, A.M. No. P-09-2716, 11 October 2011.

[19] Id. citing *Office of the Court Administrator v. Efren E. Tolosa, etc.*, A.M. No. P-09-2715, 13 June 2011, 651

SCRA 696.

[20] Erdenberger v. Aquino, A.M. No. P-10-2739, 24 August 2011.

[21] Dy Teban Trading Co., Inc. v. Verga, A.M. No. P-11-2914, 16 March 2011, 645 SCRA 391, 397 citing Dacdac v. Ramos, A.M. No. P-052054, 553 SCRA 32, 35-36.

[22] Anico v. Pilipiña, A.M. No. P-11-2896, 2 August 2011, 655 SCRA 42, 51 citing Benitez v. Acosta, 407 Phil. 687, 694 (2001).

[23] A.M. No. P-06-2107, 14 February 2007, 515 SCRA 616.

[24] A.M. No. P-09-2628, 24 April 2009, 586 SCRA 364.

[25] Rollo, p. 89.

[26] Anico v. Pilipiña, supra note 22 at 49-50 citing Bercasio v. Benito, 341 Phil. 404, 410 (1997).

[27] Id. at 50 citing Tan v. Paredes, A.M. No. P-04-1789, 22 July 2005, 464 SCRA 47, 55 and Balanag, Jr. v. Osita, 437 Phil. 453, 458 (2002).

[28] Manaog v. Rubio, A.M. No. P-08-2521, 13 February 2009, 579 SCRA 10, 14 citing Reyes v. Vidor, A.M. No. P-02-1552, 3 December 2002, 393 SCRA 257, 260.

[29] Id. citing Pizzaro v. Villegas, A.M. No. P-97-1243, 20 November 2000, 345 SCRA 42.

[30] Supra note 23.

[31] A.M. No. P-04-1828, 14 February 2005, 451 SCRA 218, 225, cited in Sales v. Rubio, A.M. No. P-08-2570, 4 September 2009, 598 SCRA 195, 199.

[32] A.M. No. P-06-2184, 27 September 2007, 534 SCRA 175, 180, cited in Sales v. Rubio, A.M. No. P-08-2570, 4 September 2009, 598 SCRA 195, 201.

[33] A.M. No. P-01-1454, 12 September 2002, 388 SCRA 630, 636.

[34] A.M. No. P-00-1373, 4 September 2001, 364 SCRA 294, 300-301.

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