

**SIMEON GUARIÑO, RESTITUTO GUARIÑO, ARNOLD CARAGUIAN,
LIZARDO SARMIENTO, AND PRESING SARMIENTO, PETITIONERS, VS.
CESAR F. RAGSAC, SHERIFF IV, AND TEOTIMO D. CRUZ, BRANCH
CLERK OF...**

A.M. No. P-08-2571 [Formerly OCA IPI No. 07-2651-P]. August 27, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

For consideration is the complaint of herein petitioners Simeon Guariño et al. lodged before the Office of the Court Administrator against Sheriff Cesar F. Ragsac (Ragsac) and Branch Clerk of Court Timoteo D. Cruz of Branch 75 of the Regional Trial Court (RTC) of San Mateo, Rizal, for grave abuse of authority in connection with the implementation of a Writ of Execution of a January 23, 2003 Decision of the said court in an ejectment case resulting in the demolition, without an order for the purpose, of the houses of petitioners erected on the land subject of that case.

In his Comment on the Complaint, respondent Sheriff claimed that he merely implemented the Writ of Execution. As for respondent Branch Clerk, he claimed that he merely issued the Writ of Execution pursuant to the court's order.[1]

Upon evaluation of the Complaint and respondents' respective Comments, the Court Administrator, noting that respondent Sheriff caused the demolition of petitioners' properties without an order for the purpose, observed:

Before the removal of an improvement must take place, there must be a special order, hearing and reasonable notice to remove. Section 10(d), Rule 39 of the Rules of Court provides:

(d) Removal of improvements on property subject of execution. - When the property subject of 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.

The above-stated rule is clear and needs no interpretation. If demolition is necessary, there must be a hearing on the motion filed and with due notices to the parties for the issuance of a special order of demolition.

Respondent [Sheriff's] ignorance of the foregoing rule as to his functions is inexcusable. The requirement of a special order of demolition is based on the rudiments of justice and fair play. It frowns upon arbitrariness and oppressive conduct in the execution of an otherwise legitimate act. It is an amplification of the provision of the Civil Code that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

In the present administrative complaint, respondent sheriff immediately caused the demolition of the complainants' property and destroyed their plants without an order of demolition from the court. Clearly his

actuations amounted to grave abuse of authority. x x x

x x x x

Anent the charge against the respondent clerk of court Teotimo D. Cruz, we find the instant administrative complaint unmeritorious. Complainants failed to present substantial evidence to support their charge against him. On the other hand, the respondent clerk of court was able to show that he issued the subject writ pursuant to the Order of the Court dated January 23, 2004 in compliance with his duties as such.

The manner in which the respondent acted with dispatch in complying with his duty of issuing the subject writ precluded a notion that he is guilty of grave abuse of authority.[2] (Emphasis and underscoring supplied)

The Court Administrator accordingly recommended that respondent Sheriff be found guilty of grave abuse of authority and fined P5,000, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.[3]

With respect to the complaint against respondent Branch Clerk of Court, the Court of Administrator recommended its dismissal for lack of merit.[4]

This Court finds well-taken the evaluation by the Court Administrator.

Respondent Sheriff's explanation that he merely implemented the Writ of Execution fails. For the Writ, after incorporating the dispositive portion of the decision in the ejectment case reading:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff ANITA T. DIAZ, and against defendants Simeon Guarino, Resty Guarino, Felizardo Sarmiento and Arnold Caraguian ordering:

- The defendants or any other persons acting in their behalf, to vacate the premises in question identified as Lot 3054-A now covered by TCT No. 129103 registered in the name of the herein plaintiff;
- The defendants to surrender its possession to plaintiff;
- Defendants to pay the sum of P200.00 per month as reasonable compensation for the use of property respectively occupied by them, commencing from the year of 1993 until they finally vacate the same;
- Defendants to pay P50,000 as attorney's fees;
- Defendants to pay the cost,[5]

merely commanded him to execute the decision "pursuant to the [R]ules of Court and to likewise return th[e] Writ . . . as provided under Rule 39, Sec. 14 of the 1997 Rules of Civil Procedure." The above-quoted dispositive portion of the decision is self-explanatory, and since there is no order in the Writ for the demolition of the improvements on the land subject of the case, respondent Sheriff's failure to observe the procedure in Section 10 (d), Rule 39 of the Rules of Court which reads:

SEC. 10. Execution of judgments for specific act.

x x x x

(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, (Emphasis and underscoring supplied)

constitutes grave abuse of authority.[6]

It appearing that this is respondent Sheriff's first offense of grave abuse of authority (oppression), it is, under Rule IV, Section 52 (A) (14) of the Uniform Rules on Administrative Cases in the Civil Service, punishable by suspension for six months and one day to one year.[7]

Respecting the complaint against respondent Branch Clerk of Court, the Court finds the recommendation for its dismissal well-taken.

WHEREFORE, respondent Sheriff Cesar F. Ragsac is found GUILTY of grave abuse of authority (oppression) and is SUSPENDED for six months and one day. He is STERNLY WARNED that a repetition of the same or similar act will be dealt with more severely.

The case against respondent Branch Clerk of Court Teotimo D. Cruz is DISMISSED for lack of merit.

SO ORDERED.

Quisumbing, (Chairperson), Brion, Del Castillo, and Abad, JJ., concur.

[1] Rollo, p. 103.

[2] Id. at 147-148.

[3] Id. at 148.

[4] Ibid.

[5] Id. at 15.

[6] Vide *Torres v. Sicat, Jr.*, 438 Phil. 109, 116-117 (2002).

[7] Vide Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Section 52 (A) (14); *Hao v. Andres*, A.M. No. P-07-2384, June 18, 2008, 555 SCRA 8, 25.

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