

ARSENIO FRANCISCO, COMPLAINANT, VS. EDUARDO BERONES, DEPUTY SHERIFF OF MANILA, RESPONDENT.

Administrative Matter No. P-2427. March 28, 1983

Ponente: PLANA, J.

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PLANA, J.:

Respondent Eduardo Berones is a deputy sheriff of Manila. His position was created by the City Government and he was appointed by the City Mayor. In these administrative cases filed separately by complainants Arsenio Francisco and the Philippine Trial Lawyers Association, Inc., he is charged with grave dereliction and "flagrant violation and omission" of official duties.

Administrative Matter No. P-2427

In a sworn complaint, Arsenio Francisco on his own and on behalf of his co-plaintiffs in Civil Case No. 054673-CV of the then City Court of Manila, Branch XIII, charged respondent with grave dereliction of duty for his failure to serve the summons in the said civil case.

According to complainant: Summons was delivered on May 9, 1980 to respondent for service on defendants, together with a notice of hearing set for June 26, 1980. Respondent failed to serve the summons and make a return thereon, so that the hearing had to be cancelled and reset for August 8, 1980. But no hearing took place on August 8, 1980 either, because respondent likewise failed to serve the summons and make his return of service. Consequently, the complainant filed a Motion in the City Court to require the City Sheriff to submit the return of service of summons and to explain why he should not be cited for contempt for his failure to serve the summons and to make his return, which Motion was granted by the Court in an Order dated September 4, 1980 requiring the Sheriff to show cause why he should not be cited for contempt for his failure to serve the summons and make a return thereon. But this Show Cause Order has remained unheeded.

Required to submit an explanation, respondent did not deny the charge that he had failed to serve the summons and make a return thereon, which aborted the first scheduled hearing, although he indirectly, somewhat evasively, parried the charge that he had repeated the offense. His terse explanation reads:

"In compliance with your Memorandum Order dated September 15, 1980, referring to the summons in Civil Case No. 054673-CV, City Court of Manila, entitled 'Vicenta Vda. de Francisco versus Metro Sawmills' have the honor to report that the same is now duly served upon the named defendant and original of said summons was likewise returned to its court of origin on July 22, 1980. I trust that it sufficiently explains the matter."

The case was referred to Executive City Judge Antonio Padua Paredes for investigation, report and recommendation. At the scheduled hearing, complainant did not appear to substantiate his charge. Hence, Judge Paredes recommended the dismissal of the complaint.

However, despite complainant's failure to pursue his charge, we find respondent answerable for nonfeasance on the basis of his partial but nonetheless clear admission thereof. (The repetition of the offense, which is lamely

denied by respondent, cannot be verified against the court records because the entire expediente of Civil Case No. 054673-CV has mysteriously disappeared and an investigation has been ordered to ascertain responsibility therefor.)

Respondent's explanation is unsatisfactory. Nothing was shown to justify or mitigate his nonfeasance which resulted in unnecessary postponement of the hearing and caused undue delay in the administration of justice. Respondent is guilty of dereliction of duty.

Administrative Matter No. P-2207

In this complaint filed by the Philippine Trial Lawyers Association, Inc., respondent Eduardo Berones is charged either neglect of duty for his failure and continued refusal to implement the notice of sheriff's sale issued pursuant to a writ of execution in Civil Case No. 103365 of the then Court of First Instance of Manila, Branch II.

Respondent explained that it was the failure of plaintiff and counsel "to advise or aid the implementing sheriff" that aborted the implementation of the sale.

The case was similarly referred to Executive City Judge Antonio Padua Paredes of Manila for investigation, report and recommendation.

The investigation was set for hearing on three different dates. Despite notices, respondent did not show up, so that after the presentation of complainant's evidence, the case was deemed submitted for decision. Nonetheless, upon respondent's motion, he was given by the investigating judge another opportunity to present his evidence but when the day of hearing came, respondent moved for postponement. In view of the dilatory character of the motion, Judge Paredes denied the same and once again the case was deemed submitted for decision.

Executive Judge Paredes submitted the following findings:

"Evidence discloses that Atty. Procopio Beltran, Jr., is the president of complainant association and counsel for plaintiff in Civil Case No. 103365 in the Court of First Instance of Manila, Branch II, entitled 'General Electric Appliance Company, Incorporated vs. Jose Chua and Lydia Chua.' On August 3, 1978, said counsel give respondent a second alias writ of execution issued in said case against the properties of defendants Chua for the recovery of the principal sum of P3,914.00. Accordingly, respondent levied the properties of defendant Jose Chua, namely one (1) 'Singer' sewing machine, one (1) filing cabinet with four (4) drawers and two (2) show cases with assorted spare parts, announced their sale at public auction at 10:00 o'clock in the morning of November 21, 1978, at 1236 Vito Cruz, Singalong, Manila (Exhibit "D", Notice of Sale on Execution of Personal Property). On the scheduled date, time and place, the representative of plaintiff waited for several hours for respondent but he did not show up. Later they learned that the sale was postponed to December 11, 1978, but on said date respondent did not appear again. On December 14, 1978, Atty. Beltran, Jr., complained to the City Sheriff against respondent's inaction (Exhibit "H"). On February 22, 1979, he demanded an explanation from respondent for indefinitely postponing the sale, calling such action a gross neglect of duty, and threatened him with an administrative charge (Exhibit "I"). On May 16, 1979, he again wrote respondent asking him to render a report to the court that the writ was unsatisfied (Exhibit "J"). And on June 25, 1979, Atty. Beltran, Jr., wrote the Acting Executive Sheriff Dominador Cacpal who had advised him that respondent had been terminated from the service asking him for his copy of the return on the Writ (Exhibit "K"), which was finally received on July 5, 1979 (Exhibit "K-1"). [By a decision dated January 19, 1979, Mayor Bagatsing found the respondent guilty of grave misconduct in the performance of his duties as sheriff and ordered his dismissal. His Honor, however, subsequently reconsidered his decision and reduced the penalty to three months' suspension from office and forfeiture of respondent's salary for the said period.]

"The Sheriff's Return (Exhibit "L"), signed by respondent, is dated May 28, 1979, and states that the auction sale of the levied properties 'did not materialize for the reason that plaintiff nor its counsel failed to notify 'him'

what further action was desired for the satisfaction of the same; and that with the expiration of the 60 day statutory period, he was returning the writ to the court.

'Atty. Beltran's client was no longer able to collect. The properties levied were return (sic) to the judgment debtors and when he went to their store, the items were no longer there (t.s.n., p.11, April 6, 1982).

"The undersigned fails to find any justifiable reason for respondent's absence at the time and place of auction considering that he had levied the properties and posted the notice of sale which he himself had scheduled. It was his duty to be present there.

"Furthermore, 'it is the duty of the sheriff to return the writ of execution at any time not less than ten (10) days nor more than 60 days after he received it. He has no authority to levy upon a property if the period of sixty (60) days has expired. If he has been unable to attach any property within that period, the writ should be returned . . .'" (Moran's Comments on the Rules of Court, p. 262, Vol. 2, 1963 edition; Sec. 11, Rule 39, Rules of Court). Analyzing the "Notice of Sale on Execution of Personal Property, "Exhibit "D", it states that the writ of execution is dated August 3, 1978 (t.s.n., p. 3, April 6, 1982), and that the levy on the listed properties was made by respondent on October 12, 1978. Clearly the levy was made beyond the 60-day period and respondent was without authority to do so. His duty was to return the writ promptly to the Court of origin. But this he did only on May 28, 1979 or some seven (7) months later, after plaintiff's counsel had repeatedly demanded for a copy of the return which he received only on July 5, 1979, leading him to suspect that it was antedated."

In view of the above findings which are amply supported by the evidence, we hold respondent deputy sheriff guilty of grave dereliction of duty for implementing—in violation of Section 11, Rule 39 of the Rules of Court—a writ of execution beyond its lawful life span and after he had lost authority therefor, and for failing to perform his duties in accordance with the Rules of Court, specifically, by twice failing without valid cause to appear on the scheduled dates of the auction sale which he himself had scheduled, and failing to make a return on the writ of execution until almost ten months from date of receipt of the same or more than seven months from date he made a levy thereon, and only after repeated complaints of plaintiff's counsel.

Respondent does not deserve to stay the service. His utter lack of concern for his elementary duties and responsibilities is manifest not only from the acts complained of in these two cases, but also from, his conduct during the formal investigation of Administrative Matter P-2207. He consistently ignored the notices of hearing and attempted to delay the termination of this case without just cause. Records also show that he was, as noted before, previously suspended for three months by the City Mayor of Manila for irregularities in the implementation of a writ of execution.

Respondent is an appointee of the Mayor of Manila, who alone has the power to dismiss the respondent. Nonetheless, since respondent's office carries duties directly connected with the administration of justice, this Court consistently with its pronouncements in *Malanyaon vs. Galang* (84 SCRA 100) and *Amolador vs. Felicidario* (84 SCRA 267), can withdraw from him such duties by reason of his undesirable conduct which impedes the efficient and speedy administration of justice.

WHEREFORE, effective immediately, the authority of respondent to perform functions appertaining to the office of sheriff is hereby withdrawn and the Executive Judges concerned are directed to circularize the same to all branches of the Regional Trial Courts and Metropolitan Trial Courts in the City of Manila. The Honorable City Mayor of Manila is furthermore strongly urged to immediately dismiss respondent from the service on the basis of the foregoing.

SO ORDERED.

Teehankee, Melencio-Herrera, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

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