

SALUD CLEMENTE-DE GUZMAN, COMPLAINANT, VS. MUNICIPAL JUDGE TIRSO REYES, AND DEPUTY SHERIFFS PABLO C. IRAL AND ROGELIO T. AGAY, RESPONDENTS.

Adm. Matter No. 2358-MJ. June 29, 1982

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

In her sworn statement given before the Complaints and Investigation Section of the Office of the President, Salud Clemente-de Guzman charged Municipal Judge Tirso Y. Reyes of the municipal court of Pulilan, Bulacan, with grave abuse of authority and gross ignorance of the law for having prematurely issued a writ of execution; and deputy sheriffs of Bulacan, Pablo C. Iral and Rogelio T. Agay, for having committed irregularities in the enforcement of the said writ.

Complainant was one of the defendants in an ejectment suit instituted in the municipal court of Pulilan, presided by the respondent judge, wherein the said court, after due trial, rendered a decision dated June 20, 1979, in favor of plaintiffs and against the defendants. On appeal, the judgment was affirmed by the Court of First Instance of Bulacan.

On December 14, 1979, the Court of First Instance of Bulacan remanded to the municipal court the entire records of the case, together with the corresponding mittimus[1]; and on February 4, 1980, the respondent judge, on motion of the plaintiff, issued a writ of execution which respondent sheriffs enforced on the same day.

Alleging that the decision of the court of first instance had not yet become final at the time of transmittal of the records to the municipal court because her counsel had not been notified of the CFI's decision, complainant charges respondent judge with grave abuse of authority and gross negligence of the law, for alleged premature issuance of the writ of execution.

We find no legal basis for this charge. After the remand of the records, together with the mittimus, respondent judge was justified in considering the judgment of the appellate court as one that had already become final. The mittimus is the final process for carrying into effect the decision of the appellate court, and the transmittal thereof to the court of origin is predicated upon the finality of the judgment.

It is a basic rule of procedure that the granting of a motion for execution of a final judgment is ministerial on the part of the court; and the prevailing party can have it forthwith executed as a matter of right.[2]

As to the complainant's assertion that neither she nor her counsel had been notified of the decision of the court of first instance, it suffices to point out that the duty of giving such notice devolved upon the clerk of the said court. Certainly, for the latter's failure to perform such duty, respondent judge cannot be faulted.

Equally untenable is the contention that respondent judge, before allowing execution, should have notified the parties of the receipt by him of the records of the case from the appellate court, in accordance with paragraph 2, section 11 of Rule 51 of the Rules of Court.[3] The duty prescribed by the rule cited applies only to the clerk of

the court of first instance and not to the judge or clerk of the municipal or city court.[4]

Thus, absent any specific rule or law which imposes upon respondent the duty to give notice of his receipt of the records from the appellate court, the charge that he acted capriciously and maliciously, or that he disregarded any well-known rule of procedure in issuing the writ of execution complained of cannot be sustained.

Now, the complaint against deputy sheriffs Pablo C. Iral and Rogelio T. Agay. Complainant specifies the gravamen of her charges as follows:

- (1) They enforced the writ of execution after office hours;
- (2) they employed threats and intimidation in the enforcement of the writ;
- (3) they collected from the complainant an amount in excess of the sum indicated in the writ of execution; and
- (4) they issued a non-official receipt for the amount collected.

We find the first three counts bereft of adequate basis to justify the imposition of disciplinary sanction.

(1) The fact that the respondents enforced the writ of execution after office hours requires no extensive disquisition. It needs be pointed out only that there is no rule or circular prohibiting sheriffs from enforcing a writ of execution on a Saturday or after office hours.[5]

(2) As to the charge that respondents employed threats and intimidation in the enforcement of the writ, the same was not sufficiently substantiated by complainant. Apart from the respondents' vehement denial of the charge, there is in the records their uncontradicted averment that all they did at the time was to explain to complainant their official duties in connection with the execution of judgment and their liability under the law should they fail to comply with such duty.

(3) Complainant alleged that while the amount due under the decision in Civil Case No. 5687-M was only P1,826.00, the respondents demanded, and were paid, the sum of P1,874.39. Upon the other hand, the respondents claimed that what they received from complainant fell short of the amount due and, therefore, did not fully satisfy the judgment in question. We have painstakingly scrutinized the records, and in view of the lack of sufficient and reliable data therein to enable Us to properly determine the correct amount due under the judgment, We are constrained to likewise dismiss this charge.

(4) Respondent sheriffs, however, have admitted that for the amount collected, they issued a mere private receipt, instead of an official one. Respondents' comment on this point reads as follows:

"As to the non-issuance of receipt, the undersigned respondent sheriffs beg to state that as they were in the field, without expecting that the levy on execution would be successful, they did not bring official receipts for any money or monies that may be recovered by virtue of the writ of execution. The money proceeds of the writ of execution was immediately turned over to the plaintiff in partial satisfaction of the judgment covered by the writ of execution when respondents proceeded to the house of the plaintiff."

Undoubtedly, for failure to issue an official receipt, respondents violated Section 113 of Article III, Chapter V of the National Accounting and Auditing Manual, providing that no payment of any nature shall be received by a collecting officer without immediately issuing an official receipt in acknowledgment thereof. But while respondents' culpability on this count appears indubitable, the fact that they delivered the amount collected to the judgment creditor and did not appropriate or divert the same, or any part thereof, to their personal use and benefit, should be appreciated as an extenuating circumstance in their favor.

WHEREFORE, the charge against Judge Tirso Y. Reyes is hereby dismissed. Deputy sheriffs Pablo C. Iral and Rogelio T. Agay are hereby admonished, with warning that a repetition of a similar violation will be dealt with

more severely.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., Guerrero, Abad Santos, and De Castro, JJ., concur.

[1] p. 50, records.

[2] Far Eastern Assurance and Insurance Co. versus Vda. de Hernandez, 63 SCRA 256; Pamintuan versus Muñoz, 22 SCRA 1111.

[3] "x x x x

"It shall be the duty of the clerk of the lower court to notify the parties within five days of the receipt by him of the records of a case from the appellate court."

[4] Section 19, Rule 5 of the Rules of Court.

[5] Sycip versus Salaysay, 55 SCRA 378, 381.

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