

**GEDEON M. JUMIO, COMPLAINANT, VS. ATTY. MARIETTA EGAY-EVIOTA, CLERK OF COURT AND EX OFFICIO PROVINCIAL SHERIFF, AND SAMUEL G. BASCO, DEPUTY SHERIFF, REGIONAL TRIAL COURT, SURIGA...**

*A.M. No. P-92-746. March 29, 1994*

Ponente: REGALADO, J.

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**REGALADO, J.:**

Complainant Gedeon M. Jumio filed a sworn complaint against respondents Atty. Marietta Egay-Eviota, Clerk of Court and Ex Officio Provincial Sheriff of the Regional Trial Court of Surigao City, and Samuel G. Basco, a deputy sheriff of the same court, for their alleged failure to fully execute the original and alias writs of execution issued in NLRC Case No. SUB-RABX-10-07-00438-89, entitled "Gedeon M. Jumio vs. Siargao Shipping Lines, Inc., et al." [1]

It appears that in the aforesaid labor case, the original writ of execution dated May 28, 1990 directed the Provincial Sheriff of the Regional Trial Court of Surigao City to collect from respondents "Siargao Shipping Lines, Inc. and/or Sabina Andit Tiu and/or the Manager" of said corporation the amount of P65,971.34 representing the judgment awarded in favor of herein complainant, who was also the complainant in said case. The writ further ordered the reinstatement of herein complainant to his former position in therein respondent company. [2]

Respondent Eviota received the writ on June 11, 1990, and, on the same day, she delegated the implementation thereof to her deputy, herein respondent Basco. [3] On June 15, 1990, the latter attempted to enforce collection of the judgment account by sending notices of garnishment to all the nine banks doing business in Surigao City. [4] It turned out, however, that respondent shipping company did not maintain any account with any, one of them, except the Philippine National Bank which had deposits in the former's name but had a prior lien over the same. [5] Basco accordingly proposed to levy upon or attach a motor launch belonging to respondent company and demanded from complainant a deposit of P1,200.00 [6] pursuant to Section 7, Rule 141 of the Rules of Court. The latter, however, was able to produce only P200.00, hence, on August 16, 1991, Basco returned the writ unsatisfied or unenforced. [7]

On her part, respondent Eviota avers that she assigned the implementation of the original writ to Basco, as being a woman, she does not personally perform such function, aside from her being pressed with other duties as clerk of court. [8] She further alleges that the original writ had already expired after its return by Basco. This respondent had allegedly advised complainant to secure an alias writ but the latter reportedly refused to heed that advice. [9] It was only on April 28, 1993 that an alias writ was issued in the case and another deputy sheriff, Juan Gonzaga, was assigned to enforce the same. [10]

Respondent Basco, on the other hand, contends that he served the writ on respondent Tiu on June 26, 1990, but the latter refused to receive it. Nevertheless, he issued and served notices of garnishment to all the banks in

Surigao City, shouldering his own transportation expenses. He contends that the failure to satisfy the original writ was due to complainant's refusal to deposit the required sheriff's expenses authorized by Section 7 of Rule 141, and to defray the expenses for the levy on the motor launch owned by Tiu. Thus, the writ expired and was returned to the court of origin duly served but unsatisfied.[11] He admits that an alias writ of execution was issued on April 28, 1993, but it was assigned to another sheriff.[12]

Executive Judge Carlo H. Lozada, to whom the case was referred for investigation, report and recommendation,[13] found, among others, that the address of therein respondent shipping corporation and/or Sabina Andit Tiu and/or the Manager of the company is Dapa, Surigao del Norte. Nevertheless, nowhere in the comment of respondent Eviota or in the sheriff's return of respondent Basco was there any mention that the writ was served on respondents at said address. Moreover, even before the alleged service of the writ on Tiu was made, the notices of garnishment were already sent to the nine banks aforementioned. The action taken by Basco was also limited only to attempted collection of the monetary award of P65,971.34. There was no showing of any action or attempt on his part to implement the main relief under the writ, that is, the reinstatement of complainant to his former position in defendant company,[14] which would not have involved any expense.

From the foregoing, it is apparent that respondent clerk of court had no direct or personal participation in the implementation of the original writ of execution although respondent sheriff was under her supervision. Nonetheless, clerks of court are required to exercise diligence in the issuance of writs and to act with dispatch in the disposition thereof.[15]

One of the most difficult phases of any proceeding is the execution of judgment. Hence, the officers charged with the delicate task of the enforcement and/or implementation of the same must, in the absence of a restraining order, act with considerable dispatch so as not to unduly delay the administration of justice; otherwise, the decision, orders or other processes of the courts of justice would be futile. Stated differently, the judgment, if not executed, would be just an empty victory on the part of the prevailing party.[16]

It is of no moment that respondent clerk of court, as ex officio provincial sheriff, is a woman and that she is pressed with other duties. Granting arguendo that she could not personally attend to the actual implementation of the writ, the least that she could have done was to properly supervise the person to whom she had delegated the task which had been directed to her for performance.

On the other hand, it cannot be gainsaid that respondent Basco merely focused his attention on the collection of the judgment account and completely ignored the matter of complainant's reinstatement in the defendant company. This is in stark contrast with the efforts exerted by Deputy Sheriff Juan Gonzaga who assiduously worked for the full and complete implementation of the writ.[17]

As Executive Judge Lozada opined,[18] it is doubtful whether the writ was actually served on defendant Tiu, for the following reasons, viz.: first, there was no showing, in the comments filed by respondents, that the writ was served at their address in Dapa, Surigao del Norte; and, second, the notices of garnishment were sent to the banks even before the writ was allegedly served on respondents.

It can, therefore, be safely concluded that respondent Basco failed to effect the reinstatement of complainant in respondent company due to the fact that there had been no valid service of the writ on the latter. Parenthetically, Judge Lozada also noted that Dapa, Surigao del Norte has its own branch of the regional trial court, with its own clerk of court and ex officio sheriff. Accordingly, respondents should have advised complainant thereof and transmitted the writ to said branch clerk of court.

Be that as it may, we cannot completely fault respondent Basco for his failure to collect the judgment account as

the same was not solely attributable to him. It was also due to complainant's failure to defray the sheriff's fees and the expenses for the levy on the motor launch, hence the non-satisfaction of the monetary award.

When a writ is placed in the hands of a sheriff, it is his duty, in the absence of instructions, to proceed with reasonable celerity and promptness to execute it in accordance with its mandates.[19] The sheriff is primarily responsible for the speedy and efficient service of all court processes and writs originating from his court, the branches thereof, and those that may be delegated to him by other courts.[20]

IN VIEW OF THE FOREGOING, the Court Resolved to impose a FINE of One Thousand Pesos (P1,000.00) on Deputy Sheriff Samuel G. Basco for failing to duly serve on and enforce the writ of execution against the respondents in NLRC Case No. SUB-RABX-10-07-00438-89, with a WARNING that a repetition of the same or similar acts will be dealt with more severely. Respondent Clerk of Court Marietta Egay-Eviota, as Ex Officio Provincial Sheriff, is hereby ADMONISHED to exercise closer supervision over matters delegated by her to subordinate employees, with the same warning in the event of a repetition of similar acts of negligence.

**SO ORDERED.**

Narvasa, C.J., (Chairman), Padilla, and Puno, JJ., concur.

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[1] Rollo, 41-44.

[2] Ibid., 18.

[3] Ibid., 29.

[4] Ibid., 30.

[5] Ibid., 58.

[6] Ibid., 38.

[7] Ibid., 33.

[8] Ibid., 49.

[9] Ibid., 22.

[10] Ibid., 76.

[11] Ibid., 58.

[12] Ibid., 59.

[13] Ibid., 13.

[14] Ibid., 7-8.

[15] Circular No. 53, Department of Justice, October 2, 1951.

[16] Maya vs. Bassig, A.M. No. 2796-P, August 7, 1985, 138 SCRA 49.

[17] Rollo, 54.

[18] Ibid., 85.

[19] 47 Am. Jur. Sheriffs, Police and Constables 855.

[20] De Castro vs. Santos, A.M. No. P-90-474, June 19, 1991, 198 SCRA 245.

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