

OSCAR P. DE LOS REYES, COMPLAINANT, VS. ESTEBAN H. ERISPE, JR., SHERIFF III, METC, BRANCH 79, LAS PIÑAS, METRO MANILA, RESPONDENT.

A.M. No. P-96-1205. July 24, 1997

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PER CURIAM:

This is a complaint for grave misconduct and violation of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019) against Esteban H. Erispe, Jr., Sheriff III of the Metropolitan Trial Court, Branch 79, of Las Piñas, Metro Manila. Complainant is Oscar P. de los Reyes who was plaintiff in a case for ejectment (Civil Case No. 4033) filed with the Metropolitan Trial Court, Las Piñas, Branch 79.

On October 10, 1994, judgment was rendered in his favor, ordering the defendants therein to vacate the premises and to pay complainant the amount of P115,000.00 as rentals for the use of the subject house and lot. On January 3, 1995, a writ of execution was issued, pursuant to which, on January 26, 1995, respondent Esteban Erispe, Jr. ejected the defendants and levied upon the following appliances found in the premises:

- “1. One (1) unit of Sony components with five decks with two (2) speakers
- “2. One (1) unit Electronic Remote colored TV, Montgomery brand old and out of order
- “3. One (1) unit Refrigerator (old) with brush paint of white with Kelvinator brand, and out of order
- “4. One (1) pc. Aparador made of plywood Narra type and 3 drawer
- “5. One (1) unit Stand fan 3d brand out of order
- “6. One (1) set Dining Table made of wood and painted maroon with 6 chairs upholstered partly torn and old
- “7. One (1) unit of Stereo Music System with Serial No. 805503 out of order, old
- “8. One (1) unit BW TV Tatung brand old
- “9. One (1) set partly torn sala set with tattered upholstery with center table small with top glass and sofa old black in color with dilapidated ballcasters.”[1]

Sheriff Erispe allegedly took the appliances to the house of his sister and gave to complainant the Sony component set and the Tatung television set.

On February 27, 1995, respondent prepared a motion for complainant for the issuance of an alias writ of execution. The motion was granted and an alias writ was issued by the trial court on March 13, 1995, by virtue of which respondent sheriff levied upon eight (8) more appliances of the judgment debtors, namely:

- “1. One (1) unit of Panasonic colored TV with Serial No. MB 131-50961;
- “2. One (1) unit Super Jumbo de Luxe Washing Machine with National Brand, Model NA 650;

- “3. One (1) unit Refrigerator “Kelvinator” brand 2-door colored white, with Serial Nos. 5-002761;
- “4. One (1) Sala set composed of sofa and two chairs with ball casters with a blue-black color and upholstered and a center table with top glass;
- “5. One (1) unit Gold Star Micro Oven with Serial Nos. 20700174;
- “6. One (1) unit La Germania gas range and with Blue tank color with Serial Nos. X-830-1863;
- “7. One (1) unit Honda Scooter with Eve Pax-S Model;
- “8. One (1) set Compact Disc Player Digital, Model CDP-253 with Serial Nos. S-3818994 with Four Deck and two (2) side speakers.”[2]

On May 15, 1995, respondent obtained from the trial court authority to “break open” the premises, by virtue of which he was able to take the eight (8) appliances which he scheduled for sale at public auction on August 25, 1995, at 1 p.m., at his residence at St. Matthew Street, St. Joseph Subdivision, Pulang Lupa, Las Piñas, Metro Manila, posting for this purpose a notice of levy and sheriff’s sale. Complainant claims, however, that no auction actually took place on the date scheduled. According to complainant:

“On August 25, 1995 at 1:00 p.m., I was at the designated place of public auction. I was then on high spirit as all those appliances will be converted to cash and to my surprise, the sheriff was not around, no other person was there for the auction, plain and simple, no public auction. I waited and at around 4:30 p.m., the sheriff called and requested that I wait for him. Mr. Erispe told me that he came from a demolition job and that he has talked to some interested persons to buy the appliances. One (1) unit La Germania Gas Range with Petron tank was bought by his mother for P1,500.00. All the other appliances were all accounted for except one (1) unit Goldstar Microwave Oven with Serial No. 20700174 which was pawned at Precious Gem Pawnshop III, per Receipt No. 34940 for P1,500.00 on July 25, 1995 (Annex “C”).

“On September 2, 1995, morning, I went to the house of Mr. Erispe and picked up the Sony Component Disc 4-Deck with 2-speakers and the Panasonic colored TV. My decision to get the two (2) appliances was to protect my own interest in view of the fact that the Microwave Oven was still at the Pawnshop. The Westinghouse Refrigerator was not around as it was sold for P4,500.00 and payment will be made on Friday, September 8, 1995. Before I left the place, Mr. Erispe told me to meet him at the Las Piñas, MTC on Monday, September 4, 1995 at 9:00 A.M. to give the Goldstar Microwave Oven. He did not come and at 11:00 A.M., I called his sister’s house and was able to talk to Mr. Erispe who promised again to meet me next day, September 5, 1995 at 2:00 P.M., Las Piñas, MTC, rain or shine. I told him that I have to take a leave of absence and spend gasoline and time just to be in Las Piñas. Again, he did not show up.

“On September 7, 1995, I was able to secure a photocopy of the pawnshop Receipt No. 34940 and proceeded to Las Piñas MTC where I met Mr. Erispe at around 11:30 A.M. and even showed him the xerox copy of the receipt to his surprise.

“On September 9, 1995 (Saturday afternoon), I hired a pick up and get the Honda Scooter and the National Washing Machine. Mr. Erispe gave me P3,700.00 representing the proceed of the sale of the Westinghouse Refrigerator which was negotiated at P4,500.00. Therefore, he still have a balance of P800.00. Regarding the upholstered sala set, it was at the house of his sister (Mrs. Perico) who promised to pay me P5,000.00 as soon as she has the money.

“I gave him one last chance to surrender the microwave oven on September 11, 1995 at 2:00 P.M. at the Las Piñas MTC. Again, he did not show up nor even called the court. Very disappointed, I decided to write him a letter asking him to meet me at the guardhouse of the Supreme Court. Again, he did not show up.”[3]

This is complainant’s first time to go to court. He states that he finds the judicial system very expensive and

justice difficult to come by from the very person who is supposed to implement the decision.

Respondent admits having pawned the microwave oven but claims that complainant agreed the oven could be delivered to him after it was redeemed by respondent. As for the seven items levied upon under the original writ of execution, respondent denies he took them and claims that they were unserviceable and for this reason complainant discarded them as junk. Complainant allegedly gave the cabinet (aparador) made of narra plywood to his assistant as a graduation present for the latter's daughter. On the other hand, the dining set was given by complainant as a gift to the sheriff, to help the latter for his transportation and other expenses in implementing the writ. The other items, according to respondent, were abandoned by complainant. With respect to the appliances seized under the alias writ of execution, respondent states that they were delivered to his (respondent's) sister's house with the knowledge and consent of complainant, to insure their safety and avoid payment of storage fees.

Respondent denies that he disregarded the procedure for the execution of the property and the sale thereof as there was notice of the auction sale of August 25, 1995.

The case was referred to the Office of the Court Administrator for evaluation, report and recommendation. The OCA reported that two other cases had been filed against respondent, namely, A.M. No. P-94-1044, entitled "Españo vs. Erispe" for Grave Misconduct also arising from the implementation of a writ of execution, for which respondent, in the resolution of October 27, 1994, was given an admonition and a stern warning that a repetition of the same or similar acts would be dealt with more severely, and A.M. No. P-96-1191 entitled "Contreras vs. Erispe" for gross dereliction of duty and gross exaction of money, which is pending consideration by the Court, in which Executive Judge Florentino M. Alumbres has recommended the dismissal of respondent. The OCA recommends that Sheriff Erispe be suspended for six (6) months for serious misconduct, without prejudice to the outcome of A.M. No. P-96-1191.

The Court finds the complaint against respondent sheriff to be well substantiated. In the first place, there is no reason why respondent should levy upon property, which he knew to be old and unserviceable, and, for that reason, not dispose of them by public auction sale, when the judgment debtor had several other properties of value which respondent could have taken. Respondent had no discretion not to conduct a sale. When a writ is placed in the hands of a sheriff, it is his duty, in the absence of instructions to the contrary, to proceed with reasonable alacrity and promptness, to execute it according to all good fidelity.[4] Respondent knew this. His present excuse is nothing but a pretext to justify his failure to comply with his duty.

Also, in complete disregard of propriety and the law, respondent took an interest in the things he had seized from the judgment debtor by accepting, if indeed they were given to him, some of the things he had levied upon to satisfy the judgment. In Padilla vs. Arabia (supra), the Court ruled that a sheriff is entitled to retain as his fee only 4 per cent of the first P4,000.00 and 2 per cent of the sums in excess of that amount. Beyond that, a sheriff is not allowed to accept more, whether in cash or in kind, even if such fees or gifts are given to him voluntarily. To accept additional amounts than are authorized under the law would be a palpable violation of sec. 3(b) of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019, as amended)[5] and an act plainly inimical to the best interest of the service.[6] Thus, no amount of justification can lend a color of validity to the highly irregular execution of the decision in Civil Case No. 4033 by respondent sheriff.

Secondly, it is elementary that a judgment creditor cannot be given the property of the judgment debtor levied upon under a writ of execution except through a public auction sale. An auction sale is mandatory. Whatever is not sold or is in excess of the judgment should be returned to the judgment debtor. This is clear enough from Rule 39, sec. 15 of the 1964 Rules of Court, which provides:

"Sec. 15. Execution of money judgments. - The officer must enforce an execution of a money judgment by

levying on all the property, real and personal of every name and nature whatsoever, and which may be disposed of for value, of the judgment debtor not exempt from execution, or on a sufficient amount of such property, if there be sufficient, and selling the same, and paying to the judgment creditor, or his attorney, so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be delivered to the judgment debtor, unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, within the view of the officer, he must levy only on such part of the property as is amply sufficient to satisfy the judgment and costs.”

This is substantially reiterated in the new Rules of Civil Procedure, Rule 39, sec. 19 of which provides:

“Sec. 19. How property sold on execution; who may direct manner and order of sale. - All sales of property under execution must be made at public auction, to the highest bidder, to start at the exact time fixed in the notice. After sufficient property has been sold to satisfy the execution, no more shall be sold and any excess property or proceeds of the sale shall be promptly delivered to the judgment obligor or his authorized representative, unless otherwise directed by the judgment or order of the court. When the sale is of real property, consisting of several known lots, they must be sold separately; or, when a portion of such real property is claimed by a third person, he may require it to be sold separately. When the sale is of personal property capable of manual delivery, it must be sold within view of those attending the same and in such parcels as are likely to bring the highest price. The judgment obligor, if present at the sale, may direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels which can be sold to advantage separately. Neither the officer conducting the execution sale, nor his deputies, can become a purchaser, nor be interested directly or indirectly in any purchase at such sale.”

It was irregular for the sheriff to appropriate the personal properties of the judgment debtor for himself and for the judgment creditor, and later to ask for an alias writ of execution without first knowing how much of the judgment had been satisfied. What respondent did in this case amounted to a pillage of the possessions of the judgment debtor, when he knew or ought to have known that he was limited to the amount of the judgment and he must comply strictly with the procedure set forth in the Rules of Court. What this Court said in one case bears repeating here:

“It is indisputable that the most difficult phase 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 decisions, orders or other processes of the courts of justice and the like would be futile. Stated differently, the judgment if not executed would be just an empty victory on the part of the prevailing party.”[7]

For the foregoing reasons, the Court finds respondent guilty of gross misconduct justifying his dismissal from the service, considering that he has already been given a warning that a repetition of his previous misconduct in the implementation of a writ of execution would be punished more severely, but the warning appears to have fallen on deaf ears.

WHEREFORE, the Court finds respondent Esteban H. Erispe, Jr., Sheriff III, MeTC, Branch 79, Las Piñas, Metro Manila GUILTY of gross misconduct and conduct prejudicial to the administration of justice and hereby orders his DISMISSAL from the service with forfeiture of all leave credits and retirement benefits and disqualification for reemployment in any government office, including government owned and controlled corporations.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, and Panganiban, JJ., concur.

Hermosisima, Jr. and Torres, Jr., JJ., on leave.

[1] Rollo, p. 10.

[2] Ibid., p. 9.

[3] Ibid., pp. 5-7.

[4] Young vs. Momblan, 205 SCRA 33 (1992); Padilla vs. Arabia, 242 SCRA 227 (1995).

[5] Re: Deputy Sheriff, Pioquinto Villapana, Regional Trial Court, Makati, Metro Manila, 229 SCRA 718 (1994).

[6] Tan vs. Herras, 195 SCRA 1 (1991).

[7] Moya vs. Bassig, 138 SCRA 49 (1985).

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