

GLORIA SERDONCILLO, COMPLAINANT, VS. SHERIFF NESTOR M. LANZADERAS, REGIONAL TRIAL COURT, BRANCH 37, GENERAL SANTOS CITY, RESPONDENT.

A.M. No. P-16-3424 [Formerly OCA I.P.I. No. 11-3666-P]. August 07, 2017

Ponente: PERALTA, J.

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PERALTA, J.:

Before us is an administrative complaint^[1] filed by Gloria Serdoncillo, in her capacity as the representative of Ms. Petra D. Sismaet, against Nestor M. Lanzaderas (Lanzaderas), Sheriff of Branch 37, Regional Trial Court, General Santos City, for grave misconduct and incompetence relative to Civil Case No. 6677 entitled "Petra Vda. de Sismaet, in her personal capacity and the Heirs of the late Angeles Sismaet, et al. v. Regino Getis, et al.

Complainant alleged that sometime in February 2011, after the implementation of the demolition order against the illegal occupants of the property subject of Civil Case No. 6677, Lanzaderas went to her office and in an arrogant manner, accused her and her staff of stealing steel bars/trusses recovered from the demolition site. She denied that they participated in the recovery of said steel bars/trusses as in fact it was a certain Mr. Serrano's laborers who handled it. Complainant, however, claimed that she was puzzled by Lanzaderas' reactions and interest in the recovery of the steel bars which was actually taken by its owners.

On January 21, 2011, in the subject Civil Case No. 6677, due to the contradicting claims of the parties as to the boundaries of the subject property, the court directed the sheriff of the court to hold any action on the house of intervenors until the correct and exact boundaries are determined.^[2]

However, complainant alleged that Lanzaderas misled the other occupants of the subject property by making it appear that the Order dated January 21, 2011 was in the nature of a temporary restraining order (TRO) when it was merely a directive by the court to conduct a joint survey to determine the true and correct extent of the boundaries of the area. In fact, complainant averred that after their compliance of the requirements of the Court, an Order for Further Demolition^[3] dated April 13, 2011 was issued by the court.

Complainant added that even after they have requested the court to order Lanzaderas to desist from further enforcing the demolition, Lanzaderas still visited the subject property on several occasions and informed the occupants that his first enforcement of demolition was the correct one and that the order that follows was erroneous. Complainant lamented that said actions of Lanzaderas would cause havoc and stir unrest from the illegal occupants considering that he is an officer of the court.

Finally, complainant claimed that Lanzaderas charged them exorbitant fees amounting to Php 172,600.00 when it was plaintiff Sismaet who personally paid for the labor cost and other provisions for the demolition team. As evidence, complainant submitted copies of the vouchers showing Lanzaderas' receipt of said amount.^[4] Complainant further averred that Lanzaderas failed to account said amount. Thus, complainant requested that Lanzaderas be ordered to liquidate all his expenditures, and prayed that appropriate sanctions be meted upon Lanzaderas for his unethical conduct.

On June 21, 2011, the Office of the Court Administrator (OCA) directed Lanzaderas to submit his comment on the charges against him.[5]

In his Comment[6] dated August 12, 2011, Lanzaderas categorically denied all the allegations against him. For starters, he questioned the personality of the complainant to file the instant administrative case against him as he alleged that there is no evidence that complainant is the attorney-in-fact of the plaintiffs in the subject case.

Lanzaderas claimed that complainant's motive in filing the case was to compel him to inflate the expenses incurred in the demolition in order to make a profit. He asserted that although he did go to complainant's office, this was only to inquire about the missing items as he felt it was his duty to act on the information sent to him by a certain Ms. Elma Ruiz whose house was among those torn down.[7]

He further insisted that he did not mislead the occupants into believing that the Order dated January 21, 2011 was a TRO. He averred that he merely informed them that there was an order from the court directing him to desist from demolishing the house of certain intervenors whose properties were situated meters away from the subject area. He admitted that while he might have frequented the area, it was only because he was doing his job since he did not receive any request from the complainant or any order from the court directing him to stop from executing the demolition.[8]

Lanzaderas likewise denied that he charged exorbitant fees for the demolition conducted. He explained that the plaintiffs in Civil Case No. 6677 agreed to the amount stipulated in the budget which was included in the estimate of expenses submitted to the court. The estimate of expenses amounting to P222,600.00 was also duly approved by the court. However, he added that the estimate of expenses failed to include provisions for financial assistance to the informal settlers who earlier signified their willingness to knock down their houses on their own.[9]

Lanzaderas further claimed that he requested the plaintiffs to deposit said amount with the Clerk of Court and Ex-Officio Sheriff, however, because plaintiffs' counsel wanted the demolition to be effected immediately, they requested that instead of depositing the money to the Clerk of Court, they be allowed to give the amount directly to him on installment basis to avoid the hassle of withdrawing the amount from the Clerk of Court, who may not be available all the time. Out of delicadeza, he admitted to have agreed on said arrangement.[10]

In his Reply/Rejoinder[11] dated September 21, 2011, complainant reiterated that Lanzaderas: (1) in a loud and arrogant manner, falsely accused them of stealing the steel bars recovered from the demolished properties; (2) misled the other occupants as to the nature of the Order dated January 21, 2011 which resulted in confusion and commotion among the occupants and demolition team; (3) did not inform them that they should deposit the amount with the Clerk of Court, as in fact he was given thirty thousand pesos (Php30,000) per day for the alleged expenses; (4) did not give any financial assistance to the informal settlers, as in fact it was the plaintiffs who did so. Complainant surmised that Lanzaderas, in alleging that he spent some of the money to give assistance to the informal settlers, was just trying to cover-up a portion of the money which he utilized for his personal benefit.

On August 25, 2015, the OCA recommended that the instant administrative complaint be re-docketed as a regular administrative matter and that Lanzaderas be fined in the amount of Two Thousand Pesos (Php2,000.00) for having been found guilty of Simple Neglect of Duty.[12]

We adopt the findings of the OCA, except as to the recommended penalty.

Section 10, Rule 141 of the Rules of Court, as amended reads:

Sec. 10. Sheriffs, process servers and other persons serving processes. With regard to sheriffs expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards fees, warehousing and similar charges, the

interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex-officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. The liquidation shall be approved by the court. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriffs expenses shall be taxed as costs against the judgment debtor. (Emphasis supplied)

Moreover, the deposit and payment of expenses incurred in enforcing writs are governed by Section 9, Rule 141 of the Rules of Court:

SEC. 9. Sheriffs and other persons serving processes.

x x x x

In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary; incidental, or final, shall pay the sheriffs expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards fees, warehousing and similar charges, in an amount estimated by the sheriff subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex officio sheriff who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriffs expenses shall be taxed as costs against the judgment debtor. (Emphasis supplied)

In the instant case, it is undisputed that Lanzaderas miserably failed to comply with the above-requirements of Sections 9 and 10. He admitted that a sum total of P172,600.00 was given to him by the complainant.[13] Indeed, while Lanzaderas complied with the preparation of an estimate of expenses and in obtaining the court's approval for such, he, however, willfully disregarded the rules in so far as his collection and receipt of the monies which should have been deposited with the Clerk of Court, and the subsequent liquidation of his expenses. The acquiescence or consent of the plaintiffs to such arrangement, does not absolve the sheriff for failure to comply with the afore-mentioned rules. Compulsory observance of the rules under the circumstances is also underscored by the use of the word shall in the above Sections.[14] Any act deviating from these procedures laid down by the Rules is misconduct that warrants disciplinary action.[15]

To reiterate, the rule requires that the sheriff executing the writs shall provide an estimate of the expenses to be incurred that shall be approved by the court. Upon the court's approval, the interested party shall then deposit the amount with the clerk of court and ex-officio sheriff. Thereafter, the expenses shall then be disbursed to the assigned deputy sheriff who shall execute the writ subject to the latter's liquidation upon the return of the writ. Any amount unspent shall be returned to the interested party. The rule does not allow direct payment of sheriff expenses from the interested party to the sheriff. Thus, Lanzaderas' failure to faithfully comply with the provisions of Rule 141 of the Rules of Court warrants the imposition of disciplinary measures.

Needless to say, only payment of sheriffs fees may be received by sheriffs. Even assuming that the payments were offered to him by complainant to defray expenses of the demolition is of no moment. It makes no difference if the money, in whole or in part, had indeed been spent in the implementation of the writ. The sheriff may receive only the court-approved sheriffs fees and the acceptance of any other amount is improper, even if applied for lawful purposes.[16] Sheriffs are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. To do so would be inimical to the best interests of the service because even assuming arguendo such payments were indeed given and received in good faith, this fact alone would not dispel the

suspicion that such payments were made for less than noble purposes. Corollary, a sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps, otherwise, it would amount to dishonesty or extortion.[17]

Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them. They are duty-bound to know and to comply with the very basic rules relative to the implementation of writs.[18] They are required to live up to the strict standards of honesty and integrity in public service. Their conduct must at all times be characterized by honesty and openness and must constantly be above suspicion. Lanzadera's repeated collection and receipt of sums of money from a party-litigant purportedly to defray expenses of the demolition without rendering an accounting and liquidation thereof, not only is a violation of the rules but also in effect constituted misconduct. That conduct, therefore, fell too far short of the required standards of public service. Such conduct is threatening to the very existence of the system of the administration of justice.[19]

These circumstances show without doubt that the respondent is liable for simple misconduct, defined as a transgression of some established rule of action, an unlawful behavior, or negligence committed by a public officer.[20] He cannot be held liable for grave misconduct since this offense requires substantial evidence showing that the acts complained of were corrupt or inspired by an intention to violate the law or were in persistent disregard of well-known legal rules.[21] In the instant case, there is lack of evidence showing that Lanzaderas' actuations were motivated by any corrupt interest or were done intentionally or willfully to violate the law and the established rules.

It must be emphasized anew as held in *Spouses Villa, et al. v. Judge Ayco, et al.*[22] the important role of sheriffs in the administration of justice, thus:

The Court recognizes the fact that sheriffs play a vital role in the administration of justice. In view of their important position, their conduct should always be geared towards maintaining the prestige and integrity of the court. In *Escobar Vda. de Lopez v. Luna*, the Court explained that sheriffs have the obligation to perform the duties of their office honestly, faithfully and to the best of their abilities. They must always hold inviolate and revitalize the principle that a public office is a public trust. As court personnel, their conduct must be beyond reproach and free from any doubt that may infect the judiciary. They must be careful and proper in their behavior. They must use reasonable skill and diligence in performing their official duties, especially when the rights of individuals may be jeopardized by neglect. They are ranking officers of the court entrusted with a fiduciary role. They perform an important piece in the administration of justice and they are required to discharge their duties with integrity, reasonable dispatch, due care, and circumspection. Anything below the standard is unacceptable. This is because in serving the court's writs and processes and in implementing the orders of the court, sheriffs cannot afford to err without affecting the efficiency of the process of the administration of justice. Sheriffs are at the grassroots of our judicial machinery and are indispensably in close contact with litigants, hence, their conduct should be geared towards maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily echoed in the conduct, official or otherwise, of the people who work thereat, from the judge to the least and lowest of the ranks.

Section 52(B)(2) of the Revised Rules on Administrative Cases in the Civil Service[23] classifies simple misconduct as a less grave offense punishable by suspension of one month and one day to six months for the first offense. Considering that this is respondent sheriffs first offense, suspension of one month and one day is appropriate. However, while the appropriate penalty of one-month suspension is reasonable, the same is not practical at this point, considering that his work would be left unattended by reason of his absence. Instead of suspension, We impose a fine equivalent to his one-month salary, so that he can still continue to perform his duties in his office.

WHEREFORE, premises considered, respondent Sheriff Nestor M. Lanzaderas, Regional Trial Court, Branch 37, General Santos City, is found guilty of simple misconduct, and a FINE equivalent to his one-month salary is hereby imposed upon him. He is, likewise, sternly warned that the commission of the same offense or a similar act in the future will be dealt with more severely.

SO ORDERED.

Carpio, (Chairperson), Mendoza, Leonen, and Martires, JJ., concur.

[1] Rollo, pp. 1-4.

[2] Id. at 5.

[3] Id. at 6.

[4] Id. at 7-16.

[5] Id. at 34.

[6] Id. at 38-48.

[7] Id.

[8] Id.

[9] Id.

[10] Id.

[11] Id. 129-135.

[12] Id. at 182-186.

[13] Id. at 15.

[14] Garcia v. Montejar, 648 Phil. 231, 236 (2010).

[15] See Atty. Zamora v. Villanueva, 582 Phil. 29, 37 (2008).

[16] See Mariñas v. Florendo, 598 Phil. 322, 330 (2009).

[17] Tan v. Paredes, 502 Phil. 305, 313 (2005).

[18] Lopez v. Ramos, 500 Phil. 408, 416 (2005).

[19] See Ong v. Meregildo, A.M. No. P-93-935, July 5, 1994, 233 SCRA 632-645.

[20] China Banking Corp. v. Janolo, Jr., 577 Phil. 176, 181 (2008).

[21] Areola v. Patag, 594 Phil. 416, 419 (2008).

[22] 669 Phil. 148, 157-158 (2011). (Citation omitted)

[23] Promulgated by the Civil Service Commission through Resolution No. 99-1936 dated August 31, 1999 and implemented by CSC Memorandum Circular No. 19, Series of 1999.

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