

**PABLO L. BAROLA, COMPLAINANT, VS. VICTORIANO L. ABOGATAL,
DEPUTY SHERIFF, CFI, MISAMIS OCCIDENTAL, OZAMIZ CITY
BRANCH II, RESPONDENT.**

Adm. Matter No. P-1974. June 29, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

In Civil Case No. OZ-623 of the Court of First Instance of Misamis Occidental, Pablo L. Barola, et al. vs. Serapion Gomez, et al., Judge Melecio Genato rendered a judgment on November 17, 1977, ordering defendant Gomez to pay P15 ,340 as damages for the death of Felipa Lambayong, Barola's mother.

Barola in his administrative complaint alleged that on January 15, 1978, the writ of execution to enforce the said final judgment was given to Victoriano L. Abogatal, a deputy sheriff. According to Barola and his witnesses, although Abogatal listed the personal properties of Gomez which could be levied upon (a refrigerator, two electric fans or blowers, a Singer sewing machine and a stereo-phonograph) and although Abogatal even told Gomez not to remove those properties and to post a bond, he (the sheriff) did not proceed with their auction sale allegedly because he received "a folded envelope" from the judgment debtor, Gomez.

Hence, in April, 1978, Barola denounced Abogatal to the President of the Philippines and the Secretary of Justice and later to this Court for dereliction of duty.

His complaint was supported by the affidavits of Jesus Barola and Dimas Apique. Emil J. Sagrado, a newsman, manifested in his letter of January 8, 1979 his intention to testify in this case for complainant Pablo L. Barola.

Abogatal in his comment said that in order to enforce the writ of execution he went to Gomez's house and told him "not to squander" his second-hand refrigerator and blowers. He explained that he was not able to make a return of the writ of execution because Barola refused to return to him the writ.

The case was brought to the Court's attention only on February 23, 1981. It was referred to Executive Judge Genato for investigation, report and recommendation.

Barola testified that Abogatal contacted him about the service of the writ of execution. On January 16, 1978 Pablo Barola, Abogatal, Jesus Barola and Dimas Apique left for Iligan City. The four spent the night in the house of a friend who in-formed them of the location of the house of Serapion Gomez. The following morning, Pablo L. Barola and Apique went early to the police headquarters in Iligan City to request for police escort during the service of the writ. When the two returned to the house, Abogatal and Jesus Barola were not there because they went out to serve the writ.

Upon their return, Abogatal assured Pablo L. Barola that he could seize a refrigerator and electric fans from Gomez in the afternoon. He showed a list of the personal properties of Gomez. As it was already eleven o'clock in the morning, Abogatal suggested that they should lunch in the public market. After lunch, they went to their friend's house to rest.

Abogatal gave Pablo L. Barola a letter addressed to a certain Gio, a police investigator, requesting for a service car from the police. The request was denied because it should have been made by the sheriff so that the request could be entered in the police blotter. When Pablo L. Barola returned to the house at about two o'clock in the afternoon Abogatal was not there anymore.

Pablo L. Barola learned that Abogatal had talked with Gomez who handed to Abogatal a small folded paper bag. When Abogatal arrived, he was angry. He told Pablo L. Barola to go back to Ozamiz City because Gomez was poor and without money to satisfy the judgment. Barola reminded him of the list of the things to be seized but Abogatal did not mind him anymore and was in a hurry to go home.

Barola hired a car to catch the last trip of the launch from Kolambugan to Ozamiz City. The next morning Abogatal scolded him and told him not to come to the court. Barola was advised by a friend to denounce Abogatal for his failure to levy upon the refrigerator and electric fans of Gomez.

On the other hand, Abogatal testified that he failed to transport the appliances because Barola had no money to pay for the freight. The appliances had been stored in the police headquarters in Iligan City. The electric fan, stereo phono and refrigerator were not salable anymore. He denied having received an envelope from Gomez. Abogatal explained that Barola and his two relatives were with Abogatal when he went to see Gomez at his house.

The judgment against Gomez had not been satisfied.

We hold that, as found by the Court Administrator and his deputy, Judge Leo D. MediaIdea, Abogatal is guilty of dereliction of duty for not enforcing the writ of execution. He failed to levy on the refrigerator and the electric fans belonging to said judgment debtor and to sell them at public auction. He also failed to return the writ of execution "not less than ten (10) nor more than sixty (60) days after its receipt." (Sec. 11, Rule 39, Rules of Court.) He received the writ on January 15, 1978 but made a return thereat only on May 22, 1978. His alibi for such delay, that the writ was in the possession of Barola is not meritorious. It only shows his carelessness in handling the writ.

WHEREFORE, a fine equivalent to his one month's salary is imposed upon Abogatal with the warning that a repetition of that infraction will be dealt with more severely.

SO ORDERED.

Barredo, (Chairman), Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.
Concepcion, Jr., J., on leave.

SECOND DIVISION

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D E C I S I O N

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