

RAUL C. BRIZ, PETITIONER, VS. FAUSTINO ENCINARES, JR. AND GLICERIO LUMUTHANG, RESPONDENTS.

Adm. Matter No. P-1549. November 17, 1980

Ponente: BARREDO, J.

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BARREDO, J.:

Administrative complaint against Deputy Sheriffs Faustino Encinares Jr. and Glicerio Lumuthang of the Court of First Instance of Davao del Norte for (1) oppression; (2) dishonesty and (3) incompetence filed jointly by Raul Briz, supported by the sworn statements of Acme C. Briz and Wilma Sandiwa dated January 12, 1977 and referred to the Executive Judge of the Court of First Instance of Davao del Norte, for investigation, report and recommendation, the Court not being satisfied with the explanation of respondents.

After due investigation, the Investigating Judge submitted his report and recommendation. Acting on said report and recommendation, Deputy Court Administrator, Honorable Leo D. Medialdea, with the concurrence of Court Administrator, Honorable Lorenzo Relova, submitted to the Court his own report and recommendation, copy of which is hereto attached and made integral part of this decision.

After going over the records, the Court finds the Court Administrator's recommendation to be supported by substantial evidence and in accordance with law, and therefore, approves and adopts the same as the decision of this Court.

SO ORDERED.

Aquino, Concepcion Jr., Abad Santos, and De Castro, JJ., concur.

SUPREME COURT OF THE PHILIPPINES

MANILA

ADMINISTRATIVE SUPERVISION OF COURTS

MEMORANDUM FOR:

HON. ENRIQUE M. FERNANDO

CHIEF JUSTICE
OFFICE

Re: Raul C. Briz, complainant, versus Deputy Sheriffs Faustino Encinares, Jr., and Glicerio Lumuthang, Court of First Instance of Davao del Norte with station at Tagum, respondents.

ADMINISTRATIVE MATTER NO. P-1549

In his sworn complaint[1] dated January 12, 1977, as well as, in his sworn affidavit-complaint[2] dated January 18, 1977, both filed with this Honorable Court, complainant Raul C. Briz of Tagum, Davao del Norte charges respondents Deputy Sheriffs Faustino Encinares, Jr., and Glicerio Lumuthang of the Court of First Instance of Davao del Norte with station at Tagum of having committed: (1) oppression; (2) dishonesty; and (3) incompetence in connection with the enforcement and execution of a Writ of Execution issued by the City Court of Davao, Branch IV, in Civil Case No. 500-D, entitled "Sofronio Pude, Plaintiff vs. Camilo Briz, Defendant". It appears that the judgment debtor, Camilo Briz, in said civil case is complainants father.

Complainant submits that respondents should be administratively dealt with for oppression and incompetence in the performance of their official duties when at about 10:00 o'clock in the morning on November 27, 1975 and despite the fact that he is not a party to the aforementioned civil case, his passenger jeep which at that time was parked at the Bus Terminal in Tagum, Davao del Norte, almost full of passengers and about to leave for its trip was taken and levied upon by respondents telling him: "Raul, we are taking this jeep because it is under embargo". The respondents did not show him any document or authority of law to take his jeep. Then sometime in December, 1975, it came to his personal knowledge that said passenger jeep was awarded to a certain Sofronio Pude, the prevailing plaintiff in Civil Case No0 500-D.

Specifying his charge for dishonesty against herein respondents, the complainant specifically alleged:

"That on or about 23 October, 1976 at around 7:00 o'clock in the morning, I was at home with our visitor Mr. Roberto T. Ibañez, the former daring, dynamic and most honest Deputy Sheriff of Davao Oriental; that few minutes later, Faustino Encinares, Jr. and Glicerio Lumuthang arrived purportedly to serve alleged Writ of Execution to my father Mr. Camilo Briz, who accordingly have lost in his case in Civil Case Noe 500-D for Sum of Money before the City Court as said above; that in the course of our conversation Faustino Encinares Jr., said, 'Mr, Camilo Briz, we are not going to levy and attached your real estate properties provided however, you can give us an amount of ONE THOUSAND (P1, 000.00) pesos Philippine Currency because we are in dire need the money'; and that my father Mr. Camilo Briz answered, 'I do not have the amount now but if you can give me an ample time, I can produced the same'; that in this instance, Glicerio Lumuthang said, 'We need it badly now'; that my father finally gave them an amount of FIVE HUNDRED (P500.00) pesos, Philippine Currency and which said amount belongs to me as it came from my small savings; that in the subsequent meeting with the said Deputy Sheriffs, my father failed to give the remaining amount because of financial difficulties thereby, resulted that said father's real estate properties were then levied and attached by said Faustino Encinares and Glicerio Lumuthang on 26 August 1976 awarded the same to said Sofronio Pude, the Plaintiff in Civil Case No. 500-D in a petty sum of TWO THOUSAND FOUR HUNDRED FIFTY (P2, 450.00) pesos, Philippine Currency resulted damage and prejudice to my father;

When asked to comment, the respondents denied the charges levelled against them by the complainant and maintained that they have no basis both in fact and in law but merely an unabashed attempt to smear and cast aspersion on their good names in the course of doing a duty imposed them by the law. According to them, it is not true they levied the complainant's jitney on November 27, 1975 for what actually happened on that date was that they, together with process server Victorino dela Cerna and prevailing plaintiff Sofronio Pude, served Camilo Briz with a copy of the Writ of Execution issued by Davao City Judge Napoleon B. Nidea in Civil Case No. 500-D; as nobody was found in the residence of Camilo Briz, they proceeded to Don Ricardo Briz Elementary School where Acme Briz, wife, of Camilo, was teaching and there served her with a copy of the writ who received it but refused to sign receipt thereof; said writ of execution commanded them to seize the goods and chattels of Camilo Briz in satisfaction of the judgment of P5,000 with 6% interest from September 11, 1974 until fully paid, and P500 as attorney's fees; at the very time they served Mrs. Briz the writ, they informed her they are

given the chance to pay in cash the aforesated amounts at their office in the Provincial Capitol of Davao within one week from November 27, 1975; Camilo Briz failed and/or refused to make any payment within the said one-week period; on December 4, 1975, he (respondent Encinares), accompanied by process server Victorino dela Cerna (without the other respondent Lumuthang) seized and/or levied/attached Camilo Briz' PUJ Jitney bearing Motor No. Jh4-64636 and Chassis No. LTG-4004-DV covered by Registration Certificate No. 910743 in the name of Camilo Briz and brought said jitney to the Provincial Capitol of Davao at Mankilam, Tagum, where Mr. Victorino dela Cerna and himself (Encinares, Jr.) delivered the same to Acting Supervising Security Guard Felimon N. Posadas for safekeeping; and that the allegation in the complaint that after the seizure of the jitney they drove towards the direction of Davao City is an unmitigated lie.

Respondents also denied the charge of dishonesty by demanding from Camilo Briz the amount of P1, 000 and actually getting P500 in order not to levy or attach the parcels of land belonging to the Spouses Briz, maintaining that, quote: "How could this be when, in the first place, it was only I, Glicerio Lumuthang and process server Victorino dela Cerna who served the writ to said spouses; secondly, as heretofore stated, the same Writ was served on the Briz spouses on or about August 25, 1976, and, thirdly, the auction sale of said two (2) parcels of land were conducted as early as October 5, 1976?"

By resolution[3] of this Court (Second Division) dated February 14, 1979, this case was referred to the Executive Judge of the Court of First Instance of Davao del Norte for investigation, report and recommendation. In obedience thereto, Executive Judge Alejandro C. Silapan conducted the requisite formal investigation. Pertinent portions of His Honor's findings and recommendation as contained in his Report[4] dated June 4, 1979 read as follows:

"There were two writs of execution issued in Civil Case No. 500-D. The first, Exhibit '1', bears the date October 8, 1975. This was the writ received by Mr. Torres on November 4, 1975 and raffled to Sheriff Encinares on November 5, 1975. And this was the same writ which was served to Acme Briz by the respondents and Pude and dela Cerna at the school where she was teaching on November 27, 1975, but which the complainant and his witnesses vigorously maintain that it was served at the Briz residence by the two respondents to Camilo Briz himself from whom they demanded P1, 000.00 for the non-enforcement of the execution, but they were given only P500.00.

"The respondents' documentary evidence show that only Camilo Briz was the defendant in Civil Case No. 500-D. At the bottom of Exhibit '1' there is a notation which reads:

'Served to Mrs. Acme Briz wife of the defendant. She received copy but refused to sign on November 27, 1975. '

"Despite Acme's refusal to acknowledge receipt which was a clear indication of her unmistakably objection to be involved in the case where she was not a party, but her husband alone, respondent Encinares still instructed her to pay the indebtedness within one week, instead of exerting effort to serve the writ personally to the judgment debtor, Camilo Briz. In fact, the respondents admitted that they did not endeavor to see Camilo Briz after serving the writ to the wife. Even the notice of sale, Exhibit '3', dated December 8, 1975, announcing the auction sale of the jeep on December 15, 1975 which, according to Encinares, was served to Wilma Briz, instead of the judgment-debtor himself, bears a similar notation:

'Received copy but refused to sign on December 10, 1975.'

"Sheriff Encinares said that Exhibit '3' was given to Wilma when she filed her third party claim, Exhibit '4', but Exhibit '3' was made on December 8, 1975 while Exhibit '4' was filed on December 4, 1975 when Exhibit '3' did not yet exist. It was not the rescheduled notice, Exhibit '8', either, which served to Wilma when she filed a modified third party claim, Exhibit '6', on December 13, 1975, because Exhibit '8' clearly shows that she recieved

it on December 15, 1975.

"The rescheduled notice of sale, Exhibit '8', dated December 15, 1975 announcing the auction sale of the same jeep on December 22, 1975 was the one recieved by Wilma Briz on December 12, 1975.

"Clearly, there was insufficient if not lack of service of the writ of execution, Exhibit '1', as well as the notice of sale, Exhibit '3', and the rescheduled notice of sale, Exhibit '8', to the judgment debtor. Section 15, Rule 5 required inferior courts to notify the parties in writing of their judgment and of any and all orders issued by them, personally or by registered mail and if the notice is orally given in open court, the giving of the notice must be noted down in the docket (underlined supplied).

"The lack of notice to Camilo Briz deprived him of the right accorded to a judgment debtor under Section 20, 21 and 24, Rule 39, if he was still the owner of the jeep in question.

But it would seem that respondents gave weight to the third party claim of Raul and Wilma Briz, reason for which they served the notice of sale to Wilma instead of the judgment debtor. And yet the certificate of sale, Exhibit "10", executed by Encinares over the jeep in favor of Sofronio Pude openly violated Section 28, Rule 39, mandating that the certificate of sale to be issued by the sheriff shall make express mention of the existence of such third-party claim, a thing which does not appear in the document (underlining supplied).

"Another important aspect of the case which could not be overlooked in connection with this jeep over which a third party claim was filed by Raul and Wilma was that respondent Encinares, encouraged by Lumuthang, insisted on selling the vehicle at public auction, although he could have dispensed with it just to avoid trouble without prejudice to the rights of the judgment creditor, because, anyway, the judgment debtor had two more jeeps registered in his name, aside from three parcels of valuable residential lots which were more than enough to satisfy the indebtedness, but subsequently levied on and sold at public auction by Lumuthang to the judgment creditor at a price of P4,200. 00 which was surprisingly very low and shocking to the conscience. True, it is that the jeep which was sold was still registered in the name of Camilo Briz because he was the licensed operator, but the vehicle was already actually owned by Raul even before Civil Case No. 500-D was filed, per Exhibit "7". Sound discretion should have guided the respondents to go after the properties of the judgment debtor.

"For an indebtedness of P7,700.00 which was the total of Sofronio Pude's bids in Exhibits "10" and "12", it would seem that there was no need to levy and sell a passenger jeep having a third party claim and three residential lots, because even only one of the two jeeps or one of the three lots of Camilo Briz which were free from any claims was more than enough to satisfy the judgment and costs.

"Section 15, Rule 39, says that "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. "

"Regarding the alleged extortion of P1,000.00 as a consideration for the non-enforcement of the writ of execution, but only P500.00 was advanced to the respondents, this accusation was not substantiated by the contradictory, irreconcilable, biased and unnatural testimonies of the complainant and his witnesses. The time, place and manner the P500.00 was allegedly given create serious disbelief as to the veracity thereof. Besides, common sense dictates that the respondents could not stop the execution by selling the writ to the judgment debtor. And the complainant, his wife and parents are aware of this, because they are intelligent people as observed by the court during the investigation.

"The going of Sheriff Lumuthang and process server dela Serna with Sheriff Encinares to implement the writ of execution, Exhibit '1', was not a good practice. Only the sheriff to whom the case is assigned must work on it, to

save time, money and effort on the part of those not concerned. If the sheriff concerned needs assistance he should secure it from the agents of the law where the process will be served.

"WHEREFORE, it is respectfully submitted that the respondents have not tried to extort P1000 P1,000.00 and did not receive part payment of P500.00 from the complainant, but, indeed, they have committed shortcomings and excesses which are already narrated above, for which it is recommended that they be absolved of dishonesty, but censured and admonished to be more diligent and careful in the performance of their official duties by following strictly the law, tempered with fairness, justness, humility and respect for the parties concerned, with the stern warning that a repetition of the acts complained of will result in the imposition of a heavier penalty."

After a careful analysis of the entire records, it is submitted that while the foregoing findings of Investigating Judge Alejandro C. Silapan deserve the approval and concurrence by this Court as they are amply supported by the evidence on record, yet, we feel that His Honor's recommended penalty of censure and admonition with stern warning appears to be too light and not commensurate to the proven acts of incompetence and grave abuse of authority amounting to oppression and grave misconduct committed by the respondents in the instant case. To our mind, the appropriate penalty should be suspension from office for one month without pay with stern warning.

As correctly found by Judge Silapan, herein respondents committed what he termed as "shortcomings and excesses" in the performance of their duties in enforcing the writs of execution in Civil Case No. 500-D. The writs were served not personally to the judgment debtor himself, Camilo Briz, as mandated by Section 15 of Rule 5, Rules of Court. Instead, copy of the writ of execution (marked as Exh. "1") was given to Mrs. Acme Briz who is not a party to the case and despite her refusal to acknowledge the same but merely on ground that she is the wife of Camilo Briz. Respondent Encinares still instructed her to pay the indebtedness within one week and did not bother to exert effort to serve said writ personally to Camilo Briz which ought to be done being the judgment debtor. In the same manner, the notice of sale of the jeep (Exh. "3") was not served personally to Camilo Briz but to his daughter-in-law, Mrs. Wilma Briz. Thus, there was certainly insufficient if not lack of services of said court processes to the judgment debtor which could only be attributed to respondents' incompetence in the proper service of said documents to the great damage and prejudice of complainant's father, Camilo Briz.

The respondents should also be made to answer for abusing their power and authority in levying the jeep despite timely protest of herein complainant that said property actually belonged to him and no longer to the judgment-debtor, Camilo Briz. What made it more condemnable was the fact that said jeep was sold at a public auction despite herein complainants filing of a third party claim over said jeep. And, worst still, said jeep was sold to the judgment creditor at a price of P4,200.00 which price the Investigating Judge considered as "surprisingly very low and shocking to the conscience." Besides, there was no need to have said jeep levied upon as there was a third person claiming ownership of said jeep. And, the judgment-debtor has two other jeeps available to be made the subject of their levy. And apart from these two jeeps, the judgment-debtor still own three residential lots. As pointed out by Judge Silapan and we quote: "For an indebtedness of P7,700.00 which was the total of Sofronio Pude's bids in Exhibits "10" and "12", it would seem that there was no need to levy and sell a passenger jeep having a third party claim and three residential lots, because even only one of the two jeeps or one of the three lots of Camilo Briz which were free from any claims are more than enough to satisfy the judgment and costs." There can be no doubt that respondents in the performance of their duties did really commit grave abuse of authority amounting to oppression and grave misconduct for which they should only be made to pay for the consequences thereof.

With respect to the charge for dishonesty, the finding of the Investigating Judge that the same was not duly substantiated could already be sustained and herein respondents deserve exoneration on this particular charge.

ACCORDINGLY, it is respectfully recommended that herein respondents Deputy Sheriffs Faustino Encinares, Jr., and Glicerio Lumuthang of the Court of First Instance of Davao del Norte with station at Tagum, be declared guilty of incompetence and grave abuse of authority amounting to oppression and grave misconduct and that they be meted the penalty of suspension from office for one month without pay with stern warning that repetition of the same or similar infractions will be dealt with more severely.

October 14, 1980.

(SGD.)

LEO D. MEDIALDEA

Deputy Court Administrator

I AGREE:

(SGD.)

LORENZO RELOVA

Court Administrator

JMP/aai

TRUE COPY

[1] Pp. 2-3, Rollo

[2] Pp. 4-5, Ibid.

[3] P. 28, Rollo.

[4] His Honor's Report of the Investigation was transmitted in a 2nd Indorsement dated June 5, 1979 which now form part of the record of this case.

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