

**ROBERTO JALBUENA, COMPLAINANT, VS. EDGARDO GELLADA[],
CLERK OF COURT IV, AND REX FUENTEBELLA, BOTH OF THE MTCC,
BAGO CITY, NEGROS OCCIDENTAL, RESPONDENTS.**

A.M. No. P-93-995. July 12, 1996

Ponente: PUNO, J.

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PUNO, J.:

Complainant Roberto Jalbuena accuses respondents Edgardo Gellada, Clerk of Court IV and Ex-Officio Sheriff, and Rex Fuentebella, Sheriff III, both of the Municipal Trial Court, Bago City, Negros Occidental, of dishonesty, grave misconduct and corrupt practices in connection with the execution of the money judgments in Civil Case Nos. 1184 and 1187.

The records show that complainant Roberto Jalbuena is the defendant in Civil Case No. 1184, an action filed by Ilawod Farmer's Multi-Purpose Cooperative, Inc. (Ilawod), to collect a P6,500 peso crop loan. Complainant's wife, Magdalena Jalbuena, is also the defendant in Civil Case No. 1187, another action filed by the same cooperative to collect the amount of P7,250.00. Judgments were rendered against the complainant and his wife in said collection suits. In Civil Case No. 1184, the judgment was for P6,500.00, plus P1,000.00 litigation and attorney's fees, and costs of suit, while in Civil Case No. 1187, the judgment was for P7,250.00, plus P1,000.00 attorney's fees and litigation expenses, and costs of suit. Upon motion of judgment creditor Ilawod, the trial court ordered the issuance of the corresponding writs of execution for the satisfaction of its judgments.

Two (2) writs of execution were issued by the respondent clerk of court against the Jalbuenas. The writ of execution against Magdalena Jalbuena was issued on October 8, 1991 and allegedly served on October 16, 1991,[1] while the writ of execution against Roberto Jalbuena was issued on October 16, 1991, and allegedly served on October 17, 1991.[2] The writ was served on Magdalena Jalbuena and it was read to her by her daughter.

On October 16, 1991, respondent deputy sheriff levied on a motorized tricycle parked at the residence of the Jalbuenas. The motorcycle was the subject of a third party claim by Norkis Distributors, Inc., represented by its Branch Manager, Noel F. Pajarillo. It alleged in Civil Case No. 1184, its absolute ownership of the tricycle, excluding its sidecar. Complainant appears to have bought the motorcycle from Norkis on installment basis and he had an unpaid balance of P34,975.00. The sale was covered by a chattel mortgage over the said motorcycle executed by complainant in favor of Norkis on January 22, 1990. On the other hand, a certain Hernando Nacion also filed a "Third Party Claim" in Civil Case No. 1187, claiming ownership of the tricycle sidecar.

In view of the third party claims, judgment creditor Ilawod filed indemnity bonds in the court to answer for the damages which the third party claimants may suffer as a consequence of the projected sale of the subject properties. The indemnity bonds in Civil Case Nos. 1184 and 1187, in the amounts of P40,000.00 and P7,000.00, respectively, were duly approved by the trial court.

Earlier on, or on August 19, 1992, respondent clerk of court issued the required notices of sale on execution in

Civil Case Nos. 1184 and 1187, to satisfy the amount of P17,150.00 representing the combined judgment debts of the Jalbuenas, including interests, costs, etc.

The auction sale took place on August 31, 1992. In Civil Case No. 1184, Ilawod gave the highest bid, in the amount of P35,000.00, for the subject motorcycle, topping the P34,975.00 bid of Norkis.[3] Upon payment of its bid to the respondent clerk of court, Ilawod took possession of the motorcycle. Thereafter, respondent clerk of court gave the amount of P34,975.00 to Norkis, representing the unpaid balance of the motorcycle purchased by the complainant.[4] The remaining amount of P25.00 was retained in favor of Ilawod.

Judgment creditor Ilawod also won the bidding in Civil Case No. 1187 with its P10,000.00 bid for the sidecar. The respondent clerk of court credited Ilawod the said sum of P10,000.00. In fine, the judgment creditor Ilawod received from the respondent clerk of court the total amount of P10,025.00,[5] in satisfaction of the judgments against the Jalbuenas.

On September 1, 1992, the corresponding certificates of sale for the motorcycle and the sidecar were issued in favor judgment creditor Ilawod.

Jalbuena complains that: (1) the respondent clerk of court improperly asked him to pay one thousand pesos (P1,500.00) to settle his case; (2) he was not notified of the auction sale; (3) he was not provided with copies of the auction proceedings; (4) the judgment debts, including interest, costs, etc., in the two (2) civil cases, amounted to only P17,150.00, while the levied properties were sold for a total amount of P45,000.00. Complainant claims that the excess of P27,850.00 should have been given to him and that the respondent clerk of court violated Section 17, Rule 39 of the Rules of Court when he remitted the amount of P34,975.00 to third party claimant Norkis.

For their defense, respondents claim that the levy and subsequent sale at public auction of the subject properties complied with the rules. Respondent clerk of court avers that complainant was aware of the auction sale since the notices of sale on execution were posted in three (3) conspicuous places in accord with Section 18 of Rule 39. Copy of the notice of sale was also served on complainant by the deputy sheriff. Both respondents allege that the Jalbuenas refused to acknowledge receipt of the processes served on them by the deputy sheriff. Respondent deputy sheriff further asserts that Magdalena Jalbuena was present during the levy and the writ was read to her by her daughter as she did not know how to read English well. The two respondents maintain that the proceeds of the auction sale were supported by receipts and duly accounted for.

The crucial issue in this case is whether or not respondents followed the rules in executing the judgments in Civil Case Nos. 1184 and 1187.

Section 15, Rule 39 of the Rules of Court 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. (emphasis ours)

"xxx."

Corollary thereto, sections 16 and 17 of the same rule state:

"Sec. 16. Effect of levy on execution as to third persons. - The levy on execution shall create a lien in favor of the judgment creditor over the right, title and interest of the judgment debtor in such property at the time of the levy, subject to liens or encumbrances then existing.

"Sec. 17. Proceedings where property claimed by third person. - If property levied on be claimed by any other person than the judgment debtor or his agent, and such person make an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serve the same upon the officer making the levy, and a copy thereof upon the judgment creditor, the officer shall not be bound to keep the property, unless such judgment creditor or his agent, on demand of the officer, indemnify the officer against such claim by a bond in a sum not greater than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution.

"The officer is not liable for damages, for the taking or keeping of the property, to any third-party claimant unless a claim is made by the latter and unless an action for damages is brought by him against the officer within one hundred twenty (120) days from the date of the filing of the bond. But nothing herein contained shall prevent such claimant or any third party person from vindicating his claim to the property by any proper action.

"xxx."

The purpose of levying on the property of a judgment debtor is to sell it at public auction for the satisfaction of the judgment of the court. Thus, Section 15 requires that the proceeds of the sale be delivered to the judgment creditor or his attorney, and the excess, to the judgment debtor, unless otherwise ordered by the court. The remedy of a third person claiming ownership of the levied property is spelled out by Section 17 of Rule 39.[6] We have also held that the right of said third party claimant against an erroneous levy can be threshed out in a separate proceeding or another action.[7] Upon proper application of the third person, and after a summary hearing, the court may command that the property be released from the mistaken levy and restored to the rightful owner or possessor.[8]

In this case, the notice of sale on execution issued in Civil Case No. 1184 decrees that the subject motorcycle should be sold to satisfy the judgment debt in favor of judgment creditor Ilawod in the amount of P8,200.00.[9] The motorcycle was sold at P34,975.00. This amount should have been applied to satisfy the judgment of P8,200.00 against complainant Jalbuena. Its excess should have been returned to complainant and not to third party claimant Norkis. On the other hand, the notice of sale in Civil Case No. 1187, states that the tricycle sidecar should be sold for the judgment debt of P8,950.00. The sidecar was sold for P10,000.00. Again, the said sum should have been applied first to satisfy the judgment of P8,950.00 against Magdalena Jalbuena and its excess paid to said judgment debtor. It is plain that the respondent utterly failed to follow the rules on satisfaction of judgment.

The other charges have been satisfactorily explained by the respondents. The Jalbuenas cannot complain of the lack of notice. They were aware of the date of the execution sale but they refused to receive the notices sent to them. The notices of sale on execution were also posted in conspicuous places prior to the auction sale. Likewise, it was proved that the respondent clerk of court did not mishandle the P1,500.00 he received from the complainant on February 8, 1991. Complainant deposited said amount to respondent clerk of court as partial payment for his debt in favor of Ilawod, and it was transmitted to the judgment creditor Ilawod on February 26, 1991.

Despite the procedure flaws in the conduct of the auction sales, the records show that their proceeds were duly accounted for and that respondents had not used any portion thereof for their own personal gain or benefit. For

this reason, we agree with the recommendation of the Office of the Court Administrator that respondents be fined P1,000.00 each, with stern warning that repetition of the same or similar act in the future will be dealt with more severely.

IN VIEW WHEREOF, we hold respondent Clerk of Court Edgardo Gellada and Deputy Sheriff Rex Fuentebella administratively liable for failure to observe the procedure laid down in Sections 15 and 17, Rule 39 of the Rules of Court. Accordingly, they are FINED, in the amount of ONE THOUSAND PESOS (P1,000.00) each, and sternly WARNED that a repetition of the same or similar act in the future will be dealt with more severely.

SO ORDERED.

Regalado (Chairman), Romero, Mendoza, and Torres, Jr., JJ., concur.

[*] Not Eduardo Gellada as erroneously referred to by complainant.

[1] Annex "E", Rollo, p. 56.

[2] Annex "D", Rollo, p. 54.

[3] Annex "K", Rollo, p. 64; Annex "S", Rollo, p. 83.

[4] Annex "V", Rollo, p. 88.

[5] Annex "X", Rollo, p. 90.

[6] Evangelista vs. Penserga, A.M. No. P-92-766, March 27, 1995, 242 SCRA 702; cf. Air France vs. Court of Appeals, et al., G.R. No. 104234, June 30, 1995, 245 SCRA 485.

[7] Air France vs. Court of Appeals, *supra*.

[8] Evangelista vs. Penserga, *supra*.

[9] Annex "K", Rollo, p. 64.

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