

**BRIMEL BAUTISTA, COMPLAINANT, VS. CLERK OF COURT
ABELARDO B. ORQUE, JR., MUNICIPAL TRIAL COURT IN CITIES,
TABACO CITY, RESPONDENT.**

A.M. NO. P-05-2099 (FORMERLY OCA IPI NO. 05-2154-P). October 31, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

Before us is an administrative complaint[1] dated March 17, 2005 filed by the herein complainant Brimel Bautista charging the herein respondent Abelardo B. Orque, Jr., Clerk of Court and Ex-Officio Sheriff, Municipal Trial Court in Cities (MTCC), Tabaco City, with Neglect of Duty and/or Incompetence for refusing to enforce the following writs issued by the MTCC, Tabaco City, in its separate ejectment cases:

- November 17, 2004 Writ of Execution[2] issued in Civil Case No. 68, entitled Brimel Bautista v. Fe Belen, et al.;
- January 20, 2005 Writ of Demolition[3] also issued in Civil Case No. 68;
- January 18, 2005 Writ of Execution issued in Civil Case No. 64, entitled Brimel Bautista v. Abelardo & Rey Bragais;
- January 18, 2005 Writ of Execution[4] issued in Civil Case No. 66, entitled Brimel Bautista v. Naty Candano, et al.; and
- January 18, 2005 Writ of Execution[5] issued in Civil Case No. 67, entitled Brimel Bautista v. Arcilla Bonavente.

The complaint alleges that in Civil Case No. 68, the November 16, 2004 Writ of Execution was not immediately acted upon by the respondent even after the issuance of a Writ of Demolition and despite the complainant's repeated follow-ups. According to the complainant, the respondent's inaction gave the defendants in said case the opportunity to file a motion for reconsideration, which further delayed the implementation of the Writ of Demolition.

Adding fuel to the already inflamed complainant is the fact that even after the said motion for reconsideration had already been denied by the trial court, the respondent still refused to enforce the Writ of Demolition. In the Sheriff's Report dated February 22, 2005, the respondent simply echoed the defendants' argument in that case that Lot No. 270 is not owned by the herein complainant as plaintiff therein.

Additionally, the complainant claims that in Civil Cases No. 64, 66 and 67, which involve the same property subject of Civil Case No. 68, Writs of Execution dated January 18, 2005, were likewise issued. Allegedly, the respondent also took no action to enforce said writs but recently submitted separate Sheriff's Reports, respectively relating to each of the three cases, wherein the respondent gave a misleading impression that he had taken some action on the writs.

In the Sheriff's Report[6] dated February 22, 2005 in Civil Case No. 68, the respondent gave the reason that he could not implement the Writ of Demolition therein issued because of an error in the identification of the lot subject of the suit. He explained that Lot No. 270, referred to in the Writ of Execution issued in that case was not owned by the plaintiff (now complainant) but was, in fact, occupied by a bodega of Teja Hardware.

To the complainant, the proffered excuse given by the respondent was unacceptable because when the latter served the November 16, 2004 Writ of Execution in Civil Case No. 68, the respondent already discovered the discrepancy in the designation of the property subject thereof but took no further action to inform the court about the error in the identification of the lot number. Additionally, the complainant insisted that in its Order[7] of January 18, 2005 in the same case, the MTCC ruled that while there was an erroneous identification of the lot number, the said error had already been corrected when the defendants in the case admitted in their Answer that the property subject matter of the complaint is the Satellite Market. The court likewise noted that the parties themselves had agreed on the identity of the property in question during the preliminary conference.

In his COMMENT[8] dated June 9, 2005, the respondent denies the complainant's charges and alleges that on the 23rd, 26th and 27th of November 2004, he served the Writ of Execution to the various defendants in Civil Case No. 68. On December 6, 2004, he submitted the Officer's Return indicating that the writ had been partially satisfied. Respondent adds that on the same day, complainant filed a Motion for Issuance of a Writ of Demolition, which was granted by the court on January 18, 2005. Accordingly, he (respondent) served the Notice to Vacate on January 31, 2005, and, on February 1, 2005, he gave the defendants twelve (12) days within which to vacate their premises.

Still, according to the respondent, before the lapse of the twelve days given in the Notice to Vacate, he found out that Lot No. 270 is actually owned by other persons, namely, Ernesto Moran and TEJA Hardware, while the alleged property of the complainant is Lot No. 272. Thus, he realized that he cannot successfully demolish the structures erected on Lot No. 270 without running afoul with the law and private rights as earlier adverted to in his February 22, 2005 Sheriff's Report in Civil Case No. 68.

With regard to Civil Cases No. 64, 66 and 67, the respondent alleges that on February 28, 2005, the complainant, as plaintiff therein, filed a MOTION[9] asking the MTCC to order him (respondent) to enforce the decision thereon in all its aspects. To said motion, he (respondent) filed a Manifestation[10] dated March 3, 2005 requesting that he be relieved of the job to implement the writ of demolition. According to the respondent, the MTCC, acting on his manifestation, issued an Order dated April 19, 2005, designating the Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court (RTC) of Tabaco City to implement the writs of execution and demolition in Civil Cases No. 64, 66 and 67.

The respondent hastens to add that the January 18, 2005 Order of the MTCC in Civil Case No. 68 did not rectify the erroneous identification of the lot number. To him, said order cannot be considered the proper way to correct inaccuracies and/or oversight found in the decision in that case, adding that the "designation of the lot number of the property subject matter of ejectment cases cannot be considered as mere clerical error but a substantial one, the amendment of which is not authorized under the circumstances considering that the decision in said case has already attained finality." [11]

In sum, the respondent avers that he merely exercised prudence and caution in not enforcing the writs of execution and demolition in Civil Case No. 68.

The most important phase of any proceeding is the execution of judgment.[12] If not enforced, decisions embodying the judgments become empty victories for the prevailing parties.[13] The officer charged with this delicate task is the sheriff.[14] Verily, sheriffs play an important role in the administration of justice because they

are called upon to serve court writs, to execute all processes, and to carry into effect the orders of the court with due care and utmost diligence.[15]

In *Mendoza v. Tuquero*,[16] the Court held that the officers charged with the delicate task of the enforcement and/or implementation of judgments 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 courts of justice and the like would be futile. Well-settled is the rule that it is respondent's sworn duty, as ex-officio sheriff, to enforce the writs placed in his hands. The duty of a sheriff in enforcing writs of execution is ministerial and not discretionary.[17]

Regarding the writ of demolition issued in Civil Case No. 68, the error in the designation of the property subject of the unimplemented writ is not enough as to relieve the respondent from his ministerial duty to implement the same. The supposed mistake was raised by the defendants in that case in their opposition to the motion for a writ of demolition as well as in their motion for reconsideration of the order granting the writ. In both instances, the court ruled against the defendants, thereby clearing the way for the writ's implementation. However, in his Sheriff Report dated February 22, 2005, the respondent still adverts to the same error of designation as reason for the non-enforcement of the writ of demolition issued in Civil Case No. 68.

Respondent's defense of prudence and caution as reason for his refusal to implement the subject writ is ludicrous. He cannot, in the guise of prudence, refuse to execute the writ of demolition simply because the defendants take issue with the order granting the same, more so when the issue of erroneous property designation was already passed upon and rectified by the court in its Order of January 18, 2005 in that case, to wit:

xxx the court finds that there was indeed an erroneous identification of the lot number of the property in question but the said error was corrected when the defendants themselves admitted in their answer that the property subject matter of this case is what is presently called the Satellite Market located in Quinale, Tabaco City. Whatever is the lot number of the property called the Satellite Market is now immaterial. xxx

The issue therefore of the identities of the property and the plaintiff's ownership and right of possession over the same having been already settled, this court will not allow the defendants to subvert the proper execution of the decision which has become final and executory.

Moreover, the respondent still stubbornly refused to act in that case even after the court's denial of the defendant's motion for reconsideration on February 14, 2005. The Sheriff's Report in Civil Case No. 68 was submitted on February 22, 2005, a week after the court denied the defendants' motion for reconsideration, and ruled that there was no need to change the lot number indicated in the writ. The respondent's insistence that the Order dated January 18, 2005 could not correct inaccuracies and/or oversight found in the decision on his reasoning that the inaccuracy in the identity of the property is a substantial mistake, the amendment of which was not authorized under the circumstances since the decision has already attained finality, is specious. If anything else, such stance merely validated the respondent's reluctance to perform his ministerial duty.

For sure, we fail to see any satisfactory explanation as to why the respondent failed to promptly implement the January 18, 2005 writ of demolition in Civil Case No. 68 despite complainant's payment of the sheriff's fee therefor as early as January 20, 2005. The filing of a motion for reconsideration did not justify the respondent's refusal to perform what was otherwise his ministerial duty. It is settled that a sheriff must act with all appropriate celerity in serving and implementing the writ. He has no discretion whether or not to execute the writ, absent any restraining order or instructions to the contrary.

As we see it, had the respondent been half as prudent as he claims to be, he could have observed the procedure outlined in Section 16, Rule 39, of the Rules of Court, which reads:

Sec. 16. Proceedings where property claimed by third person. - If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on.

The respondent failed to observe the foregoing elementary rule. We also note that the respondent failed to submit his Sheriff's Report in Civil Case No. 68 within the 30-day reglementary period therefor, as mandated by Section 14, Rule 39 of the Rules of Court. As it is, the respondent submitted said report only on February 22, 2005, or four (4) days after its due date on February 18, 2005, again reflecting his neglect of duty. The respondent, being an officer charged with the delicate task of implementing the judgment, should, in the absence of a restraining order, act with considerable dispatch so as not to unduly delay the cause of justice.[18]

We, however, exculpate the respondent from any wrongdoing with respect to writs of execution dated January 18, 2005 in Civil Cases No. 64, 66 and 67. The complaint simply fails to substantiate the charge that the respondent was remiss with respect to said cases. For one, the writs of execution issued in Civil Cases No. 64, 66 and 67 were each addressed not to the respondent but to the Sheriff or his deputies of RTC, Tabaco City, unlike in Civil Case No. 68 which specifies the herein respondent Clerk of Court & Ex-Officio Sheriff, MTCC, Tabaco City, as the implementing officer. For another, the respondent was eventually relieved of his duties of implementing those writs in the April 19, 2005 Order of the court.

The Court is likewise inclined to consider some factors that merit a tempered penalty for the respondent. First, there was in fact an error in the lot number of the property involved in Civil Case No. 68, albeit such error was deemed admitted by the parties during the pre-trial conference, and to which the herein complainant, as the plaintiff therein, never objected throughout the entire proceedings. Second, the delay in the implementation of the writ in Civil Case No. 68 was not so protracted. Third, the respondent has served the judiciary for thirty (30) years since 1975.

IN VIEW WHEREOF, the Court finds the herein respondent Abelardo B. Orque, Jr., Clerk of Court and ex-officio sheriff, MTCC, Tabaco City, GUILTY of dereliction of duty and is FINED in the amount of Four Thousand Pesos (P4,000.00), with a WARNING that a repetition of the same or similar offense will be dealt with more severely.[19]

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

[1] Rollo, pp. 1-6.

[2] Id. at 7-8.

[3] Id. at 9-10.

[4] Id. at 11-12.

[5] Id. at 15-16.

[6] Id. at 19-20.

[7] Id. at 21-22.

[8] Id. at 35-46.

[9] Id. at 67-69.

[10] Id. at 70.

[11] Comment, p. 8.

[12] Moya v. Bassig, A.M. No. 2796-P, August 7, 1985, 138 SCRA 49.

[13] Orlando Mendoza v. Rosbert M. Tuquero, et al., A.M. No. P-99-1343, June 28, 2001, 360 SCRA 21, 26-27.

[14] Florentino A. Caja v. Atilano Nanquil, Sheriff IV, RTC-Br. 72, Olongapo City, A.M. No. P-04-1885, September 13, 2004, 438 SCRA 174.

[15] Wenceslao v. Madrazo, A.M. No. P-92-768, August 28, 1995, 247 SCRA 696.

[16] Supra note 13.

[17] Eduarte v. Ramos, A.M. No. P-94-1069, November 9, 1994, 238 SCRA 36.

[18] Teresa T. Gonzalez Laó & Co. v. Hatab, A.M. No. P-99-1337, April 5, 2000, 329 SCRA 646.

[19] Teodoro M. Garcia v. Ruel Magcalas, Sheriff IV, Regional Trial Court, Branch 28, Sta. Cruz, Laguna, OCA IPI No. 04-1917-P, December 17, 2004, 447 SCRA 285.

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