

ESTELITO R. MARABE, COMPLAINANT, VS. TYRONE V. TAN, SHERIFF IV, OCC, REGIONAL TRIAL COURT, MALAYBALAY CITY, BUKIDNON, RESPONDENT.

A.M. NO. P-05-1996. April 21, 2009

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This administrative case arose from a Letter-Complaint[1] dated April 15, 2002 filed with the Court by complainant Estelito R. Marabe, President and Chairman of the Board of Asian Hills Bank at Malaybalay, Bukidnon, charging respondent, Tyrone Tan, Sheriff IV of the Office of the Clerk of Court (OCC), Regional Trial Court (RTC), Malaybalay City, Bukidnon with inefficiency and ineffectiveness for failing to implement and execute writs of execution issued in favor of Asian Hills Bank despite having received advanced amounts for expenses to be incurred in the implementation of the said writs.

In his Comment[2] dated July 8, 2002 respondent averred that the six (6) writs of execution subject matter of the complaint were issued in Civil Case Nos. 192-L, entitled Asian Hills Bank v. Fe B. Ygot, et al.; 193-L, Asian Hills Bank v. Efren L. Garcia and Josephine Garcia; 194-L, Asian Hills Bank v. Lina M. Castanares, et al.; 195-L, Asian Hills Bank v. Lina M. Castanares, et al.; and 197-L, Asian Hills Bank v. Julieta Omongos, et al.; and 198-L, Asian Hills Bank v. Rosita Argawanon, [3] et al. While he admitted having received six (6) writs of execution for enforcement, respondent pointed out that the Bank's counsel, Atty. Anastacio c. Rosos, Jr., requested him to implement only three (3), i.e., those issued in Civil Case Nos. 193-L, 195-L and 197-L. Respondent claimed that at the time of the implementation of the writs, all the defendants were insolvent. The spouses Efren and Josephine Garcia defendants in Civil Case Nos. 193-L, committed to settle their obligation as soon as they raise the necessary amount while the spouses Efren and Julieta Omongos, defendants in Civil Case No. 197-L, promised to deposit the amount of P10,000.00 in March 2002 as partial satisfaction of the judgment debt but reneged on said promise. On the other hand, in the cases against Leonida Orizano, Cynthia Berial, Avelino Labis, Ulysses Bacolod, Severino Auza and Virgie Borres, said defendants refused to acknowledge receipt of the court order and that furthermore, said defendants are all government employees solely dependent on their salaries. Hence, their salaries cannot be garnished. Respondent claimed further that as of his submission of his comment/explanation, he was still monitoring all the defendants in the subject cases for whatever remedies that will finally satisfy the court judgment. Attached to respondent's Comment are the Sheriff's Partial Reports[4] in Civil Case Nos. 192-L, 193-L, 194-L and 197-L all dated December 1, 2003.

Initially referred to then Executive Judge Jesus Barroso, Jr. of the RTC of Malaybalay City, Bukidnon, for investigation, report and recommendation[5], the case was subsequently referred to the new Executive Judge of the same court, Rolando S. Venadas, Sr., on March 31, 2004[6].

On August 20, 2004, Investigating Judge Venadas, Sr. submitted to the Court his Report and Recommendation[7] dated August 9, 2004 which contains the following findings:

a) Respondent received from Asian Hills Bank, as sheriff's fee, the following:

- 1) P2,000.00 evidenced by Cashier Check No. 02572 payable to a certain Arceli Ombos;
- 2) P3,000.00 evidenced by Cashier Check No. 02466 dated January 23, 2002, also payable to Arceli Ombos; and
- 3) P2,000.00 evidenced by Cashier Check No. 0950 dated October 30, 2000, payable to one Eden Acto.

b) Respondent submitted Partial Sheriff's Reports, all dated December 1, 2003, referring to the action he took on the writs of execution which he received in the year 2001, in Civil Case Nos. 192-L, entitled Asian Hills Bank v. Fe B. Ygot, et. al.; 193-L, Asian Hills Bank v. Efren Garcia, et al.; 194-L, Asian Hills Bank v. Lina M. Castanares, et al.; and 197-L, Asian Hills Bank v. Julieta Omongos;

c) There was no evidence to show if the complainant and his counsel or the parties were ever furnished copies of the Sheriff's Partial Reports;

d) Respondent did not make any recording or notation of all the proceedings he undertook in the enforcement of the writs of execution;

e) The Partial Sheriff's Reports, which were uniformly dated December 1, 2003, do not state when the writs of execution were actually served upon the respective defendants;

f) The writs of execution in question remained un-acted upon by the respondent for two (2) years with no explanation regarding such inaction; and

g) The veracity of the Partial Sheriff's Reports are doubtful as they appear to be prepared only very recently.

The Investigating Judge found respondent liable for failure to act within a reasonable time on the writs of execution endorsed to him for enforcement without any sufficient justification. Consequently the Investigating Judge recommended the imposition of the appropriate penalty on respondent.

On October 20, 2004, the Court issued a Resolution[8] referring the case to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

On March 16, 2005, the OCA submitted its Memorandum[9], wherein it concurred with the findings of the Investigating Judge and accordingly made the following recommendation:

IN VIEW OF THE FOREGOING, it is respectfully recommended that respondent sheriff Tyrone V. Tan be found guilty of Inefficiency and Ineffectiveness in the Performance of his Duty and be imposed a Fine in the amount of P5,000.00 with a STERN WARNING that the same or similar acts in the future will be dealt with more severely.[10]

In the Resolution[11] dated April 6, 2005, the complaint was re-docketed as a regular administrative case.

The Court agrees with the report of the OCA adopting the findings of the Investigating Judge except as to the recommended penalty.

It is undisputable that the most difficult phase of any proceeding is the execution of judgment. The officer charged with this delicate task is the sheriff. The sheriff, as an officer of the court upon whom the execution of a final judgment depends, must necessarily be circumspect and proper in his behavior. Execution is the fruit and end of the suit and is the life of the law. He is to execute the directives of the court therein strictly in accordance with the letter thereof and without any deviation therefrom.[12]

Here, respondent sheriff was clearly remiss in the performance of his mandated duties.

Sec. 14, Rule 39 of the Rules of Court provides that:

Sec. 14. Return of writ of execution. The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefore. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or the periodic report shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

The six (6) writs of execution subject of this case were admittedly received by respondent in the year 2001, but as shown by the Sheriff's Partial Reports[13] which he submitted, he implemented the same two (2) years later, or on December 1, 2003. Moreover, his partial reports referred only to the writs issued in four (4) cases, namely Civil Case Nos. 192-L, 193-L, 194-L and 197-L with no sufficient and reasonable explanation regarding the non-implementation of the writs in Civil Case Nos. 195-L and 198-L.

Likewise, respondent sheriff did not render periodic reports on the writs of execution pursuant to Section 14, Rule 39 aforesaid considering that the only reports he has made and submitted were those dated December 1, 2003.

Undoubtedly, respondent's (1) very long delay in the full implementation of the writs of execution in Civil Case Nos. 192-L, 193-L, 194-L and 197-L; (2) his non-implementation of the writs issued in Civil Case Nos. 195-L and 198-L; and (3) his failure to make the appropriate and periodic reports on the writs as required by the Rules of Court, shows that he has been inefficient and negligent in the performance of his official duties.

Indeed, sheriffs ought to know that they have a sworn responsibility to serve writs of execution with utmost dispatch. When writs are placed in their hands, it is their ministerial duty to proceed with reasonable celerity and promptness to execute them in accordance with their mandate. Unless restrained by a court order, they should see to it that the execution of judgments is not unduly delayed. Accordingly, they must comply with their mandated ministerial duty as speedily as possible.[14]

The failure to implement a writ of execution maybe classified as simple neglect of duty which has been defined as the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference.[15] Under Rule IV, Section 52, B 1 of the Uniform Rules on Administrative Cases in the Civil Service,[16] simple neglect of duty is a less grave offense punishable by suspension from office for one (1) month and one (1) day to six (6) months for the first offense.

Thus, in *Reyes v. Cabusao*,[17] the Court imposed on the respondent sheriff a one-month suspension from office for simple neglect of duty as the latter implemented the writ of execution more than 17 months from the time of its issuance.

Again, in *Pesongco v. Estoya*[18], where a complaint for inefficiency was made against the respondent sheriff, we imposed a one-month suspension for simple neglect of duty, said sheriff having delayed the full implementation of a writ of execution and failed to render periodic returns thereof to the court.

But in *Vda De Escobar v. Luna and Fernandez*,[19] the Court penalized the respondent sheriff with a three-month suspension from office for simple neglect of duty because he failed to implement a writ of execution even after the expiration of the Temporary Restraining Order issued by the Court of Appeals enjoining the implementation of the writ.

Here, not only was there a long delay in the full implementation of the writs of execution issued in Civil Case Nos. 192-L, 193-L, 194-L and 197-L but there was likewise an utter failure to implement the writs issued in Civil Case Nos. 195-L and 198-L. Hence, the Court deems it appropriate to impose on respondent sheriff a penalty of

suspension from office for three (3) months.

WHEREFORE, respondent Tyrone V. Tan, Sheriff IV of the OCC, RTC, Malaybalay City, Bukidnon, is found GUILTY of neglect of duty and is SUSPENDED for Three (3) Months from office. He is STERNLY WARNED that a repetition of the same or similar acts in the future shall be dealt with more severely. Let a copy of the decision be attached to his personal record.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio, Corona, and Bersamin, JJ., concur.

[1] Rollo, p. 142.

[2] Id. at 4-5.

[3] Gawanon in the Investigating Judge's Report; rollo, p. 26.

[4] Rollo, pp. 6-9.

[5] By Resolution dated October 21, 2002; rollo, p. 2.

[6] By Resolution dated March 31, 2004; rollo, p. 12.

[7] Id. at 18-32.

[8] Id. at 144.

[9] Id. at 145-150.

[10] Id. at 150.

[11] Id. at 151.

[12] *Pesongco v Estoya*, A.M. No. P-06-213, March 10, 2006, 484 SCRA 239, 254.

[13] *Supra*, at note 4.

[14] *Supra* at note 11.

[15] *Vda De Escobar v. Luna and Fernandez* A.M. No. P-04-1786, February 13, 2006, 482 SCRA 265, 278.

[16] In Civil Service Commission Memorandum Circular No. 19, the CSC adopted the new Uniform Rules in Administrative Cases in the Civil Service which became effective on September 26, 1999.

[17] A.M. No. P-03-1676, 9 July 15, 2005, 463 SCRA 433.

[18] *Supra* at note 12.

[19] *Supra* at note 15.

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