

LUMEN POLICARPIO, CONCORDIA GLADYS YSMAEL, RICARDO POLICARPIO RENTAO, JOSE POLICARPIO AND LEONILA POLICARPIO, PETITIONERS, VS. GALLARDO TOLENTINO, DEPUTY SHERIFF AND AUGUSTO CAS...

A.M. No. P-92-673. June 17, 1993

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

On October 21, 1991, Attorney Lumen Policarpio, Concordia Gladys Ysmael, Ricardo Policarpio Rentao, Jose Policarpio and Leonila Policarpio filed an administrative complaint charging respondents Gallardo C. Tolentino, deputy sheriff of the Office of the Clerk of Court of the Regional Trial Court of Malabon, Metro Manila, and Attorney Augusto D. Castro, Jr., Clerk of Court and Ex-Oficio Sheriff of the same court, with grave abuse of authority, serious misconduct and conduct prejudicial to the best interest of the service, in connection with their actuations in Civil Case No. R-83-19048 (41518) entitled, "Philippine Trust Company vs. Lumen Policarpio, et al.," of Branch 12, Regional Trial Court of Manila.

As set out in the resolution of this Court dated September 28, 1988 in G.R. No. 81142 entitled, "Lumen Policarpio vs. Justice Lorna Lombos-Dela Fuente, et. al.," the background facts of this case are:

Sometime in 1958, Attorney Lumen Policarpio borrowed P300,000.00 from PHILTRUST. As security for the loan, her parents mortgaged to PHILTRUST some properties in Navotas, Rizal. For failure of the debtors to pay the loan when due, the bank commenced foreclosure proceedings in 1963. Eventually, as highest bidder at the public sale, the bank consolidated its ownership over the mortgaged properties. A new title was issued in its name on March 13, 1972.

Sometime in 1974, the Policarpio residence which stood on the foreclosed property was destroyed by a typhoon. Apparently, Lumen Policarpio had not vacated it, for she rebuilt it in January 1975. In 1980, the bank sold the property to Alto Industrial Enterprises, Inc. On August 28, 1989, a writ of possession was issued by Judge Castaneda of the Regional Trial Court of Manila, Branch 17, whom Lumen Policarpio sought to disqualify. The case was raffled to Branch 12 presided over by Judge Procoro J. Donato, who issued a second alias writ of possession on October 15, 1990. It was given to respondent deputy sheriff Gallardo Tolentino for implementation. Attorney Policarpio, et al. challenged Judge Donato's order in the Court of Appeals but without success. Her petition was dismissed by the Court of Appeals on March 21, 1991. Her petition for review of the Appellate Court's decision was likewise dismissed by the Supreme Court.

On November 12, 1990, Deputy Sheriff Tolentino filed in court a motion for approval of his estimate of expenses for the implementation of the writ of possession and prayed that the plaintiff be ordered to deposit the amount with the sheriff. The court, however, deferred action on Tolentino's motion until after the hearing on December 6, 1990 of Policarpio's motion for reconsideration. Without waiting for the court's action on his motion, Tolentino proceeded to implement the alias writ of possession on November 14, 1990.

On November 29, 1990, Judge Donato found Tolentino guilty of indirect contempt for his undue haste in implementing the alias writ of possession without waiting for the court's approval of his estimate of expenses for the implementation of said writ.

On October 4, 1991, Tolentino filed with the Executive Judge of the Regional Trial Court of Malabon, Metro Manila, a sheriff's Return and Manifestation seeking authority to place certain personal property of the complainants in a bonded warehouse. He also asked the court to approve his bill of expenses for moving the complainants' property from the premises. On October 7, 1991, Executive Judge Cabigao issued the order prayed for.

On October 14, 1991, acting by virtue of the resolution of the Supreme Court dated August 28, 1991 in the case of "Simeon Policarpio, et al. vs. CA, G.R. No. 97963, as well as the October 7, 1991 order of Judge Cabigao, deputy sheriff Gallardo Tolentino, with the knowledge and approval of clerk of court Attorney Augusto D. Castro, and aided by PHILTRUST's lawyer and a support force of thirty (30) bank employees, forcibly opened the house of the complainants, ransacked the same, removed all the personal property therein, and transferred them to an undisclosed bonded warehouse in Pandacan; Metro Manila.

The next day, October 15, 1991, Judge Cabigao recalled and set aside his October 7, 1991 order for fear that it might be misinterpreted as an assumption of jurisdiction over the case by the Regional Trial Court of Malabon.

Complainants filed this administrative complaint against the respondents, alleging that the enforcement of the writ of possession by breaking into the Policarpio home which was not even "included in the mortgage with the Philtrust" (p. 2, Rollo), was unlawful because the Regional Trial Court of Malabon had no jurisdiction over the case. Despite that, Tolentino filed his Return and Manifestation in the Regional Trial Court of Malabon. Complainants filed robbery charges against the respondents.

There is no doubt that the implementation of the writ of possession on October 14, 1991 by the respondents was premature and irregular. It was carried out with undue haste and in an oppressive manner, without awaiting the court's action on respondent sheriff's motion for approval of his estimated expenses. As a matter of fact, for that misconduct, Tolentino was found guilty of indirect contempt by Judge Donato of the Regional Trial Court of Manila, Branch 12.

WHEREFORE, as recommended by the Court Administrator, respondents Gallardo C. Tolentino and Attorney Augusto Castro are found guilty of abuse of authority and serious misconduct and are each ordered to pay a fine of TWO THOUSAND (P2,000.00) PESOS for having arbitrarily and oppressively disregarded procedural rules in implementing the writ of possession on the property of the herein complainants. They are warned that a repetition of the same or similar act in the future will be dealt with more severely and they are admonished to henceforth exercise utmost care and prudence in the performance of their duties.

SO ORDERED.

Cruz and Quiason, JJ., concur.

Bellosillo, J., No part. Was Court Administrator when complainant Atty. Lumen Policarpio initially complained against respondents.

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