

HEIRS OF CELESTINO TEVES, REPRESENTED BY PAUL JOHN TEVES ABAD, ELSA C. AQUINO AND FELIMON E. FERNAN, COMPLAINANTS, VS. AUGUSTO J. FELICIDARIO, SHERIFF IV, OFFICE OF THE CLERK OF...

A.M. No. P-12-3089 (Formerly OCA IPI No. 11-3591-P). November 13, 2013

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Before the Court is the Complaint-Affidavit^[1] of complainants Heirs of Celestino Teves (represented by Paul John Teves Abad), Elsa C. Aquino, and Felimon E. Fernan, accusing respondent Augusto Felicidadario, Sheriff IV of the Office of the Clerk of Court (OCC), Regional Trial Court (RTC), Manila, of Grave Misconduct, Dishonesty and Conduct Unbecoming an Officer of the Court.

Complainants alleged that they are the successors-in-interest of the late Celestino Teves to two parcels of land, initially identified as Lots 263 and 264 of the Sampaloc Townsite in Tanay, Rizal, distributed under the Department of Agrarian Reform (DAR) Resettlement Project. Lots 263 and 264 measured 965 square meters and 648 square meters, respectively, or 1,613 square meters combined. The late Celestino Teves and complainants have been in possession of Lots 263 and 264 since 1960. Lots 263 and 264 are adjacent and contiguous to Lot 268, which has been occupied by respondent and with an area of 838 square meters. In May 2003, upon the approval of a new subdivision plan, Lots 263 and 264 were clustered into one lot, designated as Lot 190; while Lot 268 was designated as Lot 189.^[2] Under the same plan, the area of Lot 189 was erroneously increased from 838 square meters to 941 square meters. Respondent knew of this error but being dishonest, he concealed it from the DAR. Respondent was eventually issued Original Certificate of Title (OCT) No. M-01182, pursuant to Certificate of Land Ownership Award (CLOA) No. 00222161, for Lot 189, with a total area of 941 square meters. On the basis of OCT No. M-01182 (CLOA No. 00222161), respondent started to unlawfully and forcibly acquire 117 square meters of complainants' Lot 190 (disputed area) by (a) altering and installing concrete boundaries; (b) destroying the riprap and cyclone wires which served as boundary between respondent's Lot 189 and complainants' Lot 190; (c) destroying the comfort room, dirty kitchen, warehouse, and trees in the disputed area; and (d) constructing a concrete fence with steel gate around Lot 189 and the disputed area. Complainants were helpless in preventing respondent from performing the aforementioned acts as respondent bragged that he is a Sheriff of the RTC of Manila and threatened complainants with bodily harm.

Complainants had filed with the DAR Region IV-A a letter-complaint against respondent, docketed as Case No. A-0400-0168-09. Complainants pointed out that Regional Director Antonio G. Evangelista (Evangelista) of DAR Region IV-A issued an Order dated October 20, 2009, ruling in their favor. Pertinent portions of said Order read:

Per Memorandum dated May 19, 2009 of [Legal Officer (LO)] Cleufe S. Eder as noted by Atty. Raul I. Bautista, the [DAR Provincial Office (DARPO)] Legal Division conducted an investigation/inspection on the subject lots on May 18, 2009 and the following facts were established to wit:

x x x x

- That based on that new survey in 2003, [Certificate of Land Ownership Award (CLOA)] with No. 00222161/OCT No. M-01182 with an area of 941 square meters was awarded to Augusto Felicidadario on October 2, 2005. Augusto Felicidadario conducted his own survey to determine the boundaries based on the issued CLOA. It appears that there was an area of 117 square meters from his original area of 838 square meters, however, the excess area of 117 square meters belong to Elsa Aquino, Felimon Fernan and Heirs of Celestino Teves. Augusto Felicidadario tainted with bad faith instead proceed[ed] to get the excess area of 117 square meters and placed another mujon, other than the old mujon previously placed during the 1965 survey of 838 square meters;

- That CLOA/s for Elsa Aquino, Felimon Fernan and [Heirs] of Celestino Teves have not yet been issued to them. They were not aware of the changes in their respective area of possession until in March 2009 when Augusto Felicidadario destroyed the riprap and the old cyclone wires which serves as the boundary of Elsa Aquino et al. with motive to forcibly get the 117 square meters covering the portions of 54 square meters, 51 square meters, and 12 square meters from Elsa Aquino et al.;

x x x x

In the same Memorandum, LO Cleufe S. Eder stated that the only basis of the claim of Augusto Felicidadario over the portions of the areas of Elsa Aquino and Felimon Fernan is that said portions appeared to be included in his CLOA, where in truth and in fact, was not included in his actual area of possession and occupation. Evidently, Lot 189 (formerly Lot 268) is bounded by old boundaries (muhon), riprap and cyclone wires erected since 1960's or more that forty-five (45) years by complainants which is only adjacent/adjoining to Lot 189 (Lot [268]) of Augusto Felicidadario who incidentally been in the said premises for a long period of time and fully aware that he possessed only 838 square meters as evidenced by the Lot Description Survey conducted in December 1966. Complainants and Augusto Felicidadario have been good neighbors, until the latter on March 29, 2009 received a copy of TCT-CLOA in October 2005 awarding him 941 square meters per new subdivision survey in 2003. Thereafter, Augusto Felicidadario threatened to eject Elsa Aquino et al. purposely to acquire the portions of 51 square meters and 12 square meters without a lawful order.

[Provincial Agrarian Reform Officer (PARO)] Samuel S. Solomero concurred with the recommendation of DARPO-Legal Division that the CLOA issued to Augusto Felicidadario be cancelled/corrected to only 838 square meters as his actual area of possession and further recommended that individual CLOAs be generated/issued in favor of Elsa Aquino, Felimon Fernan and Heirs of Celestino Teves in accordance with their actual area of possession.

DAR Administrative Order No. 1 Series of 1992, specifically paragraph IV, regarding the Modes of Disposition of Homelots, provides that:

"Homelots in barangay sites and residential, commercial and industrial lots in townsites shall be disposed of by direct sale to actual occupants occupying said homelots".

WHEREFORE, premises considered, an Order is hereby issued:

- DIRECTING the PARO to undertake the necessary steps to cause the correction of [the] area inscribed in OCT No. M-01182 (CLOA No. 00222161) issued in the name of Augusto Felicidadario from 941 square meters to 838 square meters; and

- DIRECTING the PARO and the [Municipal Agrarian Reform Officer (MARO)] to make the necessary steps for the issuance of individual titles in the names of Elsa Aquino, Felimon Fernan and Heirs of Celestino Teves based on their actual area of possession.[3]

The DAR Region IV-A Order dated October 20, 2009 in Case No. A-0400-0168-09 became final and executory

as no motion for reconsideration and/or appeal was filed.[4]

Respondent, in his Comment,[5] denied complainants' allegations. He prayed for the outright dismissal of the instant complaint against him since the acts subject thereof are not related to his official functions as Deputy Sheriff and are not grounds for administrative action. In addition, respondent explained that as a result of the re-survey conducted by the DAR Geodetic Engineer in May 2003, the area of complainants' Lot 190 was decreased to 210 square meters, while that of respondent's Lot 189 was increased to 941 square meters. Based on the 2003 re-survey, respondent was issued OCT No. M-01182 (CLOA No. 00222161) for Lot 189. Respondent has been in continuous actual and physical possession of Lot 189 and religiously paying the real estate tax thereon as they fall due. In 2009, respondent applied for and was granted a Fencing Permit by the Office of the Building Official of Tanay. On the strength of the Fencing Permit and with the assistance of barangay officials, respondent proceeded to place new fences or mupon/markers along the perimeter of Lot 189. Although respondent acknowledged the existence of the final and executory Order dated October 20, 2009 of the DAR Region IV-A in Case No. A-0400-0168-09, adverse to his interest, respondent maintained that he had been deprived of due process of law because he never received summons or notice relative to said case, thus, he had already requested the Office of the President for a reinvestigation of the same. Respondent also mentioned in his Comment that the PARO had already instituted a Petition for Correction of CLOA No. 00222161/OCT No. M-01182 before the DAR Adjudication Board (DARAB) Region IV-A, docketed as PARAD Case No. R-0409-0009 to 0010-10.

Respondent argued that the acts imputed by complainants against him were not related to the performance of his official duties and were not in any manner related to a case in which complainants are parties or have legal interests. Besides, a cursory reading of the allegations in the complaint will clearly show the absence of the requisites of corruption or a clear intent to violate the law or a flagrant disregard of established rule; as well as the lack of evidence that respondent's conduct in the exercise of his rights as a private individual debased the public's confidence in the courts. Respondent reiterated that he had no hand in the increase of his total lot area after the new survey. Lastly, respondent averred that complainants, in filing the present complaint, was forum shopping with the intention of purposely vexing, harassing, and intimidating respondent and thereby gain upper ground. Complainants mean to escalate a private matter to the institution respondent is serving.

Complainants filed a Reply[6] but raised no new matters.

On July 26, 2012, the Office of the Court Administrator (OCA) submitted its report[7] with the following recommendations:

In view of the foregoing, this Office respectfully submits for the consideration of the Honorable Court the following recommendations:

- the instant administrative complaint against Augusto J. Felicidario, Sheriff IV, Office of the Clerk of Court, Regional Trial Court, Manila, be RE-DOCKETED as a regular administrative matter; and
- respondent be found GUILTY of Conduct Prejudicial to the Best Interest of the Service and be SUSPENDED for three (3) months without pay.[8]

In a Resolution[9] dated September 24, 2012, the Court re-docketed the administrative complaint against respondent as a regular administrative matter and required the parties to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed. Respondent[10] and complainants[11] submitted their respective Manifestations informing the Court that they were already submitting the case for decision based on the pleadings on record.

The Court partly diverges from the findings of the OCA. Respondent is guilty of simple dishonesty and conduct

prejudicial to the best interest of the service, but not of grave misconduct.

In *Villordon v. Avila*,^[12] the Court defined dishonesty as “intentionally making a false statement on any material fact[;]” and “a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity, lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.”

It is true that respondent did not have a hand in the re-survey conducted by the DAR in 2003 which resulted in the increased land area of his Lot 189. Nonetheless, respondent’s actuations thereafter displayed his lack of honesty, fairness, and straightforwardness, not only with his neighbors, but also with the concerned government agencies/officials. Complainants and respondent had been awarded and occupying their respective properties under the DAR Resettlement Program since 1966, yet, respondent did not express surprise and/or bafflement that the land area of his Lot 189 was significantly increased from 838 square meters to 941 square meters after the 2003 re-survey. Honesty, fairness, and straightforwardness, as well as good faith and prudence, would have impelled respondent to bring the matter to the attention of complainants and the DAR, and inquire and verify with the DAR his entitlement to the increased land area, especially when he was well-aware that complainants had been in possession of the disputed area, and had, in fact, introduced substantial improvements thereon, for almost four decades. Instead, respondent, undeniably benefitting from the increased land area of Lot 189, held his peace and already proceeded to secure a certificate of title in his name for Lot 189, with a land area of 941 square meters. When respondent was finally issued OCT No. M-01182 (CLOA No. 00222161), he invoked the same as justification for occupying the 117-square meter disputed area, destroying complainants’ improvements thereon, and enclosing Lot 189 (inclusive of the disputed area) within a concrete fence and steel gate. Whether or not an error was indeed committed by the DAR officials during the 2003 re-survey, resulting in the increased land area of Lot 189, respondent evidently took advantage of complainants’ ignorance of the situation in order to acquire OCT No. M-01182 (CLOA No. 00222161) with nary an opposition. It bears to stress that the final and executory Order dated October 20, 2009 of the DAR Region IV-A in Case No. A-0400-0168-09 declared erroneous the increase in land area of respondent’s Lot 189 after the 2003 re-survey and the PARO had already instituted proceedings before the DARAB for the correction of respondent’s OCT No. M-01182 (CLOA No. 00222161). While respondent is seeking to have the final and executory DAR Region IV-A Order set aside by the Office of the President, as things stand at present, the basis for respondent’s legal title to the disputed area is doubtful, at best. Considering that the increase in land area of Lot 189 was due to the (erroneous) result of the 2003 re-survey of the Sampaloc Townsite by the DAR; that respondent’s dishonesty was committed through his silence and/or inaction, when the circumstances demanded otherwise, rather than his active and/or express misrepresentation to the complainants and concerned public officials; and that respondent committed the dishonesty in his private life and not in the course of performance of his official functions, the Court holds him guilty of only simple dishonesty.

Respondent’s deportment under the circumstances likewise constitute conduct prejudicial to the best interest of the service. In addition to being dishonest, respondent appears to have illegally forced his way into the disputed area. As a Sheriff, he is expected to be familiar with court procedure and processes, especially those concerning the execution of orders and decisions of the courts. It is difficult for the Court to believe that respondent is completely unaware that even as the registered owner of the real property and with the barangay officials’ assistance, he cannot simply enter and take possession of the disputed area and destroy complainants’ improvements thereon. He must first initiate an ejectment case against complainants before the appropriate court and secure a court order and writ of possession.

The Civil Service law and rules do not give a concrete description of what specific acts constitute conduct

prejudicial to the best interest of the service, but the Court defined such an offense in *Ito v. De Vera*[13] as acts or omissions that violate the norm of public accountability and diminish or tend to diminish the faith of the people in the Judiciary, thereby prejudicing the best interest of the administration of justice. In *Government Service Insurance System v. Mayordomo*,[14] the Court further declared that the administrative offense of conduct prejudicial to the best interest of the service need not be related to or connected with the public officer's official functions. As long as the questioned conduct tarnishes the image and integrity of his public office, the corresponding penalty may be meted on the erring public officer or employee.

Respondent's transgressions may not be related to his official duties and functions, but certainly reflect badly upon the entire Judiciary. Respondent failed to live up to the high ethical standards demanded by the office he occupies. As the Court explained in *Marquez v. Clores-Ramos*[15]:

It can not be overemphasized that every employee of the judiciary should be an example of integrity, uprightness and honesty. Like any public servant, he must exhibit the highest sense of honesty and integrity not only in the performance of his official duties but in his personal and private dealings with other people, to preserve the Court's good name and standing. This is because the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel. Thus, it becomes the imperative sacred duty of each and every one in the court to maintain its good name and standing as a true temple of justice. (Citations omitted.)

However, precisely because respondent was not acting in the performance of his official duties, he cannot be administratively liable for misconduct, whether grave or simple. The survey of cases presented in *Largo v. Court of Appeals*[16] is particularly instructive:

[T]he administrative offense committed by petitioner is not "misconduct." To constitute misconduct, the act or acts must have a direct relation to and be connected with the performance of his official duties. In *Manuel v. Calimag, Jr.*, it was held that:

Misconduct in office has been authoritatively defined by Justice Tuazon in *Lacson v. Lopez* in these words: "Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x. It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office x x x More specifically, in *Buenaventura v. Benedicto*, an administrative proceeding against a judge of the court of first instance, the present Chief Justice defines misconduct as referring 'to a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer.'

x x x x

In *Salcedo v. Inting* we also ruled –

It is to be noted that the acts of the respondent judge complained of have no direct relation with his official duties as City Judge. The misfeasance or malfeasance of a judge, to warrant disciplinary action must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of said judge.

In *Milanes v. De Guzman*, a mayor collared a person, shook him violently, and threatened to kill him in the course of a political rally of the Nacionalista Party where said mayor was acting as the toastmaster. The Court held that the acts of the mayor cannot come under the class of the administrative offense of misconduct, considering that as

the toastmaster in a non-governmental rally, he acted in his private capacity, for said function was not part of his duties as mayor. In *Amosco v. Magro*, the respondent Judge was charged with grave misconduct for his alleged failure to pay the amount of P215.80 for the purchase of empty Burma sacks. In dismissing the case, the Court sustained, among others, the argument of respondent Judge that the charge did not constitute misconduct because it did not involve the discharge of his official duties. It was further held that misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. So also, a Judge's abandonment of, and failure to give support to his family; and alleged sale of carnapped motor vehicles, do not fall within the species of misconduct, not being related to the discharge of official functions. (Citations omitted.)

Now the Court considers the appropriate penalty to be imposed upon respondent.

On November 18, 2011, the Civil Service Commission (CSC) promulgated the Revised Rules on Administrative Cases in the Civil Service (RRACCS). Under Rule 10, Section 46(E) of RRACCS, simple dishonesty is a less grave offense punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense; six (6) months and one (1) day to one (1) year for the second offense; and dismissal for the third offense. Rule 10, Section 46(B)(8) classifies conduct prejudicial to the best interest of the service as a grave offense penalized by suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from the service for the second offense. Rule 10, Section 50 additionally provides that if the civil servant is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

Based on the foregoing rules, the Court shall apply the penalty for conduct prejudicial to the best interest of the service, it being the more serious offense. The Court then considers for purposes of determining the proper penalty, respondent's simple dishonesty as an aggravating circumstance; while respondent's 43 years in government service, 32 of which had been in the judiciary, as mitigating circumstance. The Court likewise takes into account, for humanitarian reasons, that respondent is almost of retirement age at 64 years. Consequently, the penalty of suspension without pay for six (6) months and one (1) day is appropriate under the circumstances.

WHEREFORE, the Court finds respondent Augusto Felicidadario, Sheriff IV of the Office of the Clerk of Court, Regional Trial Court, Manila, GUILTY of simple dishonesty and conduct grossly prejudicial to the best interest of the service and is suspended for a period of six (6) months and one (1) day without pay, with a stern warning that a repetition of the same or similar act in the future shall be dealt with more severely.

SO ORDERED.

Sereno, C.J., (Chairperson), Bersamin, Villarama, and Reyes, JJ., concur.

[1] Rollo, pp. 1-7.

[2] Complainants mistakenly referred to the parcel of land as Lot 180 in their Complaint-Affidavit.

[3] Rollo, pp. 10-13.

[4] Id. at 61. Per Certification dated February 24, 2010 of Regional Director Antonio G. Evangelista.

[5] Id. at 39-47.

[6] Id. at 70-75.

[7] Id. at 76-81.

[8] Id. at 81.

[9] Id. at 82.

[10] Id. at 85-86.

[11] Id. at 87.

[12] A.M. No. P-10-2809, August 10, 2012, 678 SCRA 247, 255.

[13] 540 Phil. 23, 34 (2006).

[14] G.R. No. 191218, May 31, 2011, 649 SCRA 667, 686.

[15] 391 Phil. 1, 11 (2000).

[16] 563 Phil. 293, 302-304 (2007).

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