

CASIANO WENCESLAO, COMPLAINANT, VS. RESTITUTO MADRAZO, DEPUTY SHERIFF, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 7, DAVAO CITY, RESPONDENT.

A.M. No. P-92-768. August 28, 1995

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Sheriffs, as officers of the court, must at all times be circumspect and scrupulous in the performance of their duties to avoid charges of misconduct and grave abuse of authority. Alas, in the case at bench, respondent Deputy Sheriff Restituto Madrazo failed to live up to this standard. He should, therefore, be held accountable.

In a letter-complaint^[1] dated 18 June 1992 complainant Casiano Wenceslao charged respondent Deputy Sheriff Madrazo with grave abuse of authority and/or grave misconduct in the performance of his official duties relative to Civil Case No. 295-G-92 entitled Lourdes Leonor, et al. v. Casiano Wenceslao, et al. for forcible entry.

The charges arose from the order of Judge Hilario Mapayo, Presiding Judge of the Municipal Trial Court in Cities (MTCC) Davao City, Branch 7, dated 30 March 1992 granting the motion for preliminary mandatory injunction and urgent motion for issuance of a writ of demolition filed by the plaintiffs in Civil Case No. 295-G-92.^[2] Respondent Deputy Sheriff Madrazo implemented the order of demolition on the 1st, 14th and 22nd of April, 1992.

Complainant, who was one of the defendants in the aforestated case, made the following allegations:^[3]

1. That respondent Deputy Sheriff Madrazo implemented the Order of 30 March 1992 without first serving a copy of the same to complainant's counsel who could have advised him to voluntarily obey the order (said counsel received the order of demolition only on 2 April 1992);
2. That respondent gravely abused and exceeded his authority when he "took, carried and carted away" the materials of the demolished structures to the damage and prejudice of the complainant and the other defendants, as said acts were no longer within the context of the aforementioned order;
3. That respondent failed to make an inventory of the materials taken (consisting of miscut lumber and bamboo sticks) and to issue a receipt to complainant and the other defendants for the same; and
4. That after enforcing the aforestated order, respondent failed to file a Return of Service with the court which issued the same;

In his comment dated 29 July 1992, respondent claimed that the complaint against him is baseless, misleading and merely a form of harassment to prevent him from performing his duty to enforce the order of 30 March 1992.

Respondent, in turn, made the following contentions:^[4]

1. That in enforcing the order of demolition on 1 April 1992 and again on 14 and 22 April 1992 (when the

defendants re-entered the subject premises), he gave the complainant and the other defendants ample time to voluntarily remove their illegal structures but they stubbornly refused to obey;

2. That the duty to serve copies of court orders belong to the process server, the sole responsibility of the sheriff being merely to implement the same. Hence, he had presumed that complainant's counsel had already been served with a copy of the demolition order at the time he received and implemented the same;

3. That the materials, which were too numerous to be capable of detailed physical inventory, were deposited for safekeeping with petitioner's farm-in-charge Rosie Kiamco and stored in petitioner's bodega pending litigation because there was no other safe place to deposit the same. The City Sheriff's Office was too small to accommodate the demolished materials and was located far from the demolition site;

4. That no return of service can be made due to the unresolved motion to Hold in Abeyance Return of Service and to Perpetuate the order of 30 March 1992 filed by plaintiffs dated 11 April 1992;

5. That the plaintiffs posted a bond of P150,000.00 to answer for damages which complainant and the other defendants may sustain if the plaintiffs are ultimately adjudged not to be entitled to the relief prayed for; and

6. That it was his ministerial duty to enforce the order of 30 March 1992.

On 20 January 1993 we referred the case for investigation, report and recommendation to Executive Judge Romeo Marasigan of the Regional Trial Court, Davao City, Branch 16 who found respondent Deputy Sheriff Madrazo guilty of grave abuse of authority and misconduct in the performance of his official duties as a sheriff in the implementation of the order of demolition dated 30 March 1992.

In his report and recommendation dated 13 December 1993, Executive Judge Marasigan opined that:

The respondent admitted that he failed to render a return of service to the court of the result of the implementation and enforcement of the March 30, 1992 order. His only defense is that there was a motion filed by plaintiff to hold in abeyance the return of service pending resolution. Such motion pending resolution was not a valid reason for him not to render a return of service for the Rules of Court and the Circular of the Supreme Court No. 12 dated October 19, 1985 requires him to make a return of service not less than ten (10) days nor more than sixty (60) days from receipt of the writ. He is presumed to know the provisions of the Rules of Court and the aforesaid circular. He must know his duties as a Sheriff.

Respondent admitted that after demolishing the structures of the defendants, he loaded them in the truck and transported and deposited them in the bodega of the plaintiff; that he did not issue receipts of the demolished materials to the defendants before he loaded them in the truck; that he did not furnish a copy of the order of demolition to the defendant's lawyer before he demolished the structures; that no inventory was made by the respondent of the demolished materials owned by the defendants.

Said actuations of the respondent was beyond and outside the scope of the authority given to him by the court in its order of March 30, 1992. Said order only gave him the power to destroy, demolish and remove all the shanties/structure and other improvements of the defendants. It does not empower him to carry away those demolished materials. Those demolished materials are owned by the defendants, not the plaintiffs, so that respondent has no right nor authority to carry and transport them away. They should be delivered to the defendants who own them. There was even no receipt issued by the respondent to the defendants of the demolished materials nor inventory made of the demolished materials that were carted away by the respondent. He arrogated to himself powers that does not belong to him. In short, he usurped the prerogative and authority of the court.[5]

Executive Judge Marasigan thus recommended that respondent be suspended from office for a period of three (3) months without pay.

On 27 June 1994 the case was referred to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

In its memorandum dated 20 July 1994, the Office of the Court Administrator (OCA) adopted the findings and recommendation of Executive Judge Marasigan.

We concur with the above findings of Executive Judge Marasigan and the Office of the Court Administrator (OCA).

Anent the first charge, respondent has readily admitted that he failed to serve complainant's counsel a copy of the demolition order dated 30 March 1992:

xxx

Q

Mr. Restituto Madrazo, is it not a fact that you implemented the order of March 30, 1992 without first serving a copy to the lawyer of Casiano Wenceslao?

A

Yes, sir.[6]

xxx

We find this glaring omission a clear violation of the principles of fair play and due process. Contrary to respondent's claim, the sheriff's duty is not limited to acts of execution and enforcement. It is also the sheriff's responsibility to serve writs, orders and other processes of the Court.[7]

Supreme Court Circular No. 12[8] can be no less specific:

2. All Clerks of Court of the Metropolitan Trial Courts and Municipal Trial Courts in Cities, and/or their deputy sheriffs shall serve all court processes and execute all writs of their respective courts within their territorial jurisdiction; (Italics ours)

Respondent should not have simply presumed that the demolition order has already been served by the process server considering that, as hereinabove stated, this is also part of his own functions and responsibilities. Such careless presumptions amount to negligence and misconduct.

In *Bareno v. Cabauatan*[9] we declared:

Sheriffs and deputy sheriffs have an important role to play in the administration of justice. In *To vs. Dictor*, (110 SCRA 398, 400 [1981]), this Court held: 'It is well to remind Sheriffs and Deputy Sheriffs are officers of the court, and considered agents of the law. They form an integral part of the administration of justice because they are called upon to serve court writs, execute all processes, and carry into effect the orders of the Court, as such, they should discharge their duties with due care and utmost diligence.'

And in *Balais v. Abuda*, we issued this reminder:

Respondent, and all Sheriffs for that matter, should be reminded that Writs of Execution should always be served and enforced with prudence and caution, taking into consideration all relevant circumstances. They should bear in mind the injunction in *Peñalosa vs. Viscaya* (84 SCRA 298 [1978]) that:

Public Officers, as recipients of a public trust, are under obligation to perform the duties of their offices honestly, faithfully and to the best of their ability. As trustees for the public, they should demonstrate courtesy and civility in their official actuations with the public. Every public officer is bound to use reasonable skill and diligence in the performance of his official duties, particularly where rights of individuals may be jeopardized by his neglect. In sum, he is bound *virtute officii*, to bring to the discharge of his duties that prudence, caution and attention which careful men usually exercise in the management of their own affairs.[10]

Praiseworthy is the expeditious and efficient execution of court orders and writs but not at the expense of due process and fair play, as demonstrated in the case at bench by respondent's overzealousness.

We likewise agree that respondent committed grave abuse of authority when he confiscated the demolished materials and stored the same in plaintiff's warehouse. The demolition order explicitly provided that respondent was only authorized and directed to immediately:

- a) deliver/restore possession, *pendente lite* the subject properties to the plaintiffs; and
- b) destroy, demolish or remove all the shanties, structures and other improvements, if any, of the defendants should they fail or refuse to vacate the subject premises.[11]

Nowhere in the order of demolition was respondent granted the power or authority to take possession of the demolished materials.

It is a settled rule that the sheriff's duty in the execution of a writ issued by a court is purely ministerial.[12] When a writ is placed in the hands of a sheriff it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate. He is to execute the order of the court strictly to the letter.[13]

In the case at bench, respondent clearly went beyond the bounds of his authority. His testimony before Executive Judge Marasigan leaves us without any doubt:

xxx

Q

Have you read the order of March 30, 1992, the order of Judge Mapayo in Civil Case No. 295 which order is marked as Exhibit 6-B?

A

Yes, sir.

Q

Now, you will admit that after implementing or enforcing the said order, the demolished materials were carried or transported or carted by your group?

A

I deposited it with plaintiff's warehouse.

xxx

Q

Who ordered you to bring those demolished materials to the bodega of the plaintiff?

A

I just brought it with me and deposited it with the plaintiff's warehouse considering that in my experience specially with these kind of cases, if we have leave, since I have given them time to demolish their structures . . .

Q

You just answer the question. Who ordered you to bring those materials to the warehouse of the plaintiff?

A

Nobody ordered me to bring it.

Q

So, it was your own decision to bring the demolished materials?

A

Yes, Your Honor. (Italics ours)

COURT:

Q

Did it not occur to your mind to just deliver those demolished materials to those owners of the structures instead of bringing them to the bodega of the plaintiff?

A

No, sir, because I believe if I have to leave the demolished materials, they will just have to re-erect them in the same premises.

ATTY. SARONA:

Q

So, that was your thinking that if you will just leave the materials there, the defendants will re-erect them there?

A

It is not on my thinking. It is based on experience of other cases of the same nature.

Q

What was done by you in depositing the materials to the plaintiff's warehouse was not embodied in order of March 30, 1992?

A

Yes, sir. (Italics ours)

COURT:

Q

When was that when you brought those demolished materials to the bodega of the plaintiff?

A

After the demolition, Your Honor, on April 1, 1992.

Q

And until now, those demolished materials are still there?

A

Yes, sir.

Q

You did not notify the defendants that they could get those demolished materials because they own them?

A

I did not.[14]

x x x

Indeed, to allow respondent to confiscate the demolished materials is tantamount to usurpation of the court's authority[15] and is equivalent to vesting respondent deputy sheriff with judicial powers.

Respondent's professionalism is also put in question when he failed to make an inventory of the demolished materials and to issue a receipt to complainant and the other defendants who own the materials.

x x x

Q

Mr. Madrazo, the only issue in this case which was manifested earlier by counsel for the complainant, Casiano Wenceslao, is that you did not conduct a physical inventory of the demolished materials in the implementation of the writ last April 1, 1992, last April 14, 1992 and last April 22, 1992. Could you please tell the Honorable Court why?

A

Since the demolished materials were too numerous, I could not possibly render an inventory of those demolished materials considering 80% are bamboo sticks and miscut lumber consisting of coconut and used lumber. So to my best judgment, since it is impossible for me to render physical inventory I have decided to deposit it with the warehouse of the plaintiff in this case, Francisco Leonor, since it will be best to store them than to our office which is ten kilometers away from the city considering that our office could not possibly accommodate those demolished materials.

x x x

ATTY. SARONA:

Q

You said you deposited the demolished materials with the plaintiff's warehouse?

A

Yes, sir.

Q

Did you issue a receipt to the defendants who owns the demolished structures?

A

No, sir.[16]

x x x

Sheriffs must at all times show a high degree of professionalism in the performance of their duties.[17]

Finally, by his own admission that he failed to make a return of the demolition order after he implemented the same,[18] we find respondent to have been remiss in the performance of his duties particularly that embodied in paragraph 4 of Supreme Court Circular No. 12.[19]

Respondent cannot use as an excuse the unresolved motion to hold in abeyance return of service and to perpetuate order dated 30 March 1992 filed by plaintiff. This is the sole concern of the courts. It does not affect the duty of the sheriff to make a return of service pursuant to the aforestated administrative circular. Again, we emphasize that sheriffs are only ministerial officers.[20]

It is lamentable that we have to repeat again and again that "the conduct and behaviour of everyone connected with an office charged with the dispensation of justice from the presiding judge to the sheriff to the lowest clerk should be circumscribed with propriety and decorum and, above all else, must be beyond suspicion. A public office is a public trust and all public officers and employees must at all times be accountable to the people. The Supreme Court cannot countenance any act or omission which diminishes or tends to diminish the faith of the people in the judiciary."[21]

WHEREFORE, premises considered, respondent Deputy Sheriff Restituto Madrazo is found guilty of misconduct and grave abuse of authority and is hereby fined P5,000.00 with STERN WARNING that the commission of the same or similar acts in the future will be dealt with more severely. Let a copy of this decision be entered in respondent's personal record.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Hermosisima, Jr., JJ., concur.

[1] Rollo, p. 40. The sworn complaint was filed by complainant Casiano Wenceslao with Deputy Court Administrator Eutropio Migrino on 2 October 1992, Rollo, p. 32.

[2] Rollo, pp. 26-28.

[3] Id., at 32, 40; Complainant's Memorandum, pp. 1-2.

[4] Rollo, pp. 37-38; 16; Respondent's Written Offer of Documentary Exhibits, pp. 1-4; Executive Judge Romeo Marasigan's Report and Recommendation, pp. 1-2.

[5] Report and Recommendation, pp. 4-5.

[6] TSN, 17 September, 1993, p. 6.

[7] Manual for Clerks of Court, pp. 31, 34, 148-149.

[8] Embodied in the Resolution of the Supreme Court En Banc dated 1 October 1985.

[9] 151 SCRA 293 (1987).

[10] 146 SCRA 56 (1986).

[11] Rollo, p. 28; Memorandum of the OCA dated 20 July 1994, p. 2.

[12] Evangelista v. Penserga, A.M. No. P-92-766, 27 March 1995.

[13] Padilla v. Arabia, A.M. No. 93-774, 8 March 1995; Junio v. Egay-Eviota, 231 SCRA 551 (1994); Eduarte v. Ramos, 238 SCRA 36 (1994); Young v. Mombian, 105 SCRA 33 (1992); Smith Bell v. Saur, 95 SCRA 668 (1980).

[14] TSN, 17 September 1993, pp. 7, 9-10.

[15] Memo of the OCA, supra, p. 3.

[16] Id., at 4, 9-10.

[17] Active Wood v. IAC, 183 SCRA 671 (1990).

[18] TSN, 17 September 1993, p. 10.

[19] 4. All sheriffs and deputy sheriffs shall submit a report to the judge concerned on the action taken on all writs and processes assigned to them within ten (10) days from receipt of said process or writ. Said Report shall form part of the records of the case;

[20] Manual for Clerks of Court, p. 148.

[21] Eduarte v. Ramos, supra, citing Sy v. Academia, et al., A.M. No. P-87-72 and Pardo v. Academia, etc. A.M. No. P-90-481, 198 SCRA 705 (1991); Evangelista v. Penserga, supra.

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