

CEBU INTERNATIONAL FINANCE CORPORATION REPRESENTED BY ITS PRESIDENT RUBEN ALMENDRAS, COMPLAINANT, VS. ARTHUR R. CABIGON, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 57, CEBU CITY, ...

A.M. NO. P-06-2107 (FORMERLY OCA IPI NO. 05-2184-P). February 14, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is the Affidavit Complaint[1] dated April 7, 2005 of Cebu International Finance Corporation represented by its President Ruben D. Almendras (complainant) charging Arthur R. Cabigon (respondent), Sheriff IV, Regional Trial Court (RTC), Branch 57, Cebu City, for Non-feasance and Neglect of Duty relative to Civil Case No. CEB-22725 entitled “Cebu International Finance Corporation v. Spouses Luzviminda D. Tetales, et al.”

Complainant alleges: On January 23, 2004, a writ of possession was issued by Atty. Jeoffrey S. Joaquin, Clerk of Court and ex-officio sheriff of the RTC, Cebu City, against the defendants in Civil Case No. CEB-22725 pending before the RTC, Branch 57, Cebu City. In September 2004, Atty. Joaquin assigned respondent to implement the writ after the regular sheriff of Branch 57 was disallowed to continue its implementation. He failed, however, to fully implement the writ as he only managed to open the gates, but not the doors, of the house in spite of the break-open order issued by the court on the pretext that the owners of the house were not present. Atty. Joaquin advised respondent that he may implement the writ even in the absence of the owners of the house and there is no need for a break-open order as the writ carries with it an authority to employ necessary means to implement the writ. When respondent ignored the advise of Atty. Joaquin, complainant pleaded with him and even wrote him a letter reminding him that his continued refusal to implement the writ may open himself up to administrative liability. Respondent never relented though and would offer flimsy excuses every time his attention to the implementation of the writ would be called by complainant. Worse, respondent was even guilty of double-dealing on the implementation of the writ. On one instance, respondent called up the guard assigned by complainant to oversee the properties subject matter of the writ asking him to allow the son of the defendants to get some belongings therein.

In his Comment dated June 17, 2005,[2] respondent avers that he already submitted his Sheriff's Report/Comment subject of the complaint to the RTC on June 6, 2005.

In his Report, respondent states: On September 14, 2004, he went to the address of the defendant to serve the notice to vacate but the caretaker told him that defendant was out. He came back the following day but was unable to contact the defendant. Finally on September 20, 2004, he served upon defendant the notice to vacate but the latter refused to sign the same. On the same day, he was served with an Order in Civil Case No. CEB-30029 entitled “Ralph Raye Retales, assisted by his father and natural guardian, Leovigildo Retales v. Luzviminda Retales, et al.” directing him to answer the second amended complaint. On December 7, 2004, he received a letter from complainant regarding the implementation of the writ of possession. Instead of replying to the said letter and

making a partial report, he was convinced by complainant's counsel to just proceed with the implementation of the writ. On January 19, 2005, at around 11:20 a.m., together with Rey Tibay (Tibay) (representative of plaintiff) and Atty. Rolando P. Lavilla, he went to Cebu City and in the presence of a Barangay Councilor, a Barangay Tanod, and a Barangay Worker, he broke the chains and padlocks of the iron gate and the hut in front of the house located outside the gate and installed PHILMUSA Security Guards in the premises with instructions not to let any person enter unless cleared by the respondent or by Tibay. On the same date, at around past 5:00 p.m., defendant Luzviminda Retales called and pleaded that her son be allowed to enter the house to get some clothes so he can attend his classes. He called and asked Tibay about the situation and for humanitarian reasons, both agreed to let the son enter the house and get things inside just for the night. On January 31, 2005, he was surprised to receive a call from Tibay informing him that defendants are staying in the house at night and going out during the day. On February 14, 2005, he wrote a letter which he served upon defendant, informing her that the writ will be enforced on February 22, 2005. On February 18, 2005, he received a letter from defendant's counsel informing him that the intended execution of the writ is premature considering that there is a pending incident embodied in the Order of February 11, 2005 requiring the plaintiff to comment on the supplemental motion filed by defendants. And that should he pursue with the said implementation of the writ despite the court Order, defendant will be constrained to file the necessary administrative case against him. On the same date, he filed a Manifestation and a request for clarification from the court. On March 4, 2005, he received a copy of the Order denying the motion for the stay/suspension in the implementation of the writ. He spent all the necessary expenses in connection with the writ and as much as he would like to continue implementing the same, the lack of logistical support prevented him and besides he cannot do anything as implementing the same would need more expenses which plaintiff should have provided. He informed the court that the writ of possession was duly served and partially satisfied.

In its Reply,[3] complainant alleges that despite several opportunities given him, respondent failed to fully implement the writ. It took respondent almost nine months from the time the writ of possession was assigned to him to file his report, in violation of Section 14, Rule 39 of the 1997 Rules of Court. Complainant likewise refutes the respondent's claim that he spent his own money in implementing the writ, as it provided everything necessary for the latter to implement the writ. It did not advance the money necessary for the implementation of the writ because respondent failed to make an estimate of the expenses to be incurred in the implementation to be approved by the court.

In the Agenda Report dated December 7, 2005,[4] the Office of the Court Administrator (OCA) submitted its evaluation and recommendation, to wit:

Evaluation: As frontline officials of the justice system, sheriffs must always strive to maintain public trust in the performance of their duties. They must see to it that the final stage in litigation process is completed without unnecessary delay. Respondent sheriff failed in this respect.

The writ of possession and the order to break open the chains and padlocks were assigned for implementation to the respondent sheriff on 10 September 2004. The notice to vacate was served upon the defendants on 20 September 2004. After more than four months, or on 19 January 2005, respondent sheriff finally implemented the writ, but the same has not yet been completed up to the present.

Respondent's failure to fully implement the writ of possession is inexcusable and constitutes dereliction of duty. That he is required to implement the writ without delay is clear from Administrative Circular No. 12 dated 1 October 1985, requiring sheriffs to submit a progress report on the action taken on the writ within ten days from receipt of the assignment order directing him to implement the writ. Moreover, under Section 4, Rule 39 of the Rules of Court, sheriffs are required to render a report on the action taken on the writ of execution within thirty days from receipt thereof and every thirty days thereafter until judgment shall have been fully satisfied. In this case, it took respondent sheriff nine months to submit his report on the action taken

on the writ of possession to Branch 57, which submission came about only after complainant filed a motion to require him to render his report.

His claim that he was prevented from fully implementing the writ by lack of logistical support from the complainant is untenable. Under the writ, he was duty-bound “to collect from complainant – the expenses for execution of the writ.” He should not have, therefore, waited passively for the amount to be remitted to him because he is obliged to submit and secure the approval by the court of the estimated expenses and fees for the implementation of the writ. The records are bereft of any showing that he took the initiative in this respect. He cannot, therefore, blame complainant for his omissions.

In *Lumbre v. dela Cruz*, the respondent, after being found guilty of an inexcusable seven-month delay in carrying out a lawful Writ of Execution was fined PhP5,000.00. The same penalty was imposed on the erring sheriff in *Fajardo v. Quitalig*. Taking into consideration the stance of the Court in these cases, the imposition of a fine in the amount of P5,000.00 upon herein respondent sheriff is appropriate.

RECOMMENDATION: The foregoing circumstances considered, it is respectfully recommended that Arthur B. Cabigon, Sheriff IV, Office of the Clerk of Court, Regional Trial Court, Cebu City, be FINED in the amount of Five Thousand Pesos (P5,000.00), with a STERN WARNING that a repetition of the same or similar offense will be dealt with more severely.

We agree and adopt the findings and recommendation of the OCA.

On March 30, 2006, respondent manifests that he is willing to submit the administrative matter for resolution based on the pleadings filed.

For failure of the complainant to manifest it is willing to submit the matter for resolution/decision based on the pleadings filed, the Court, in its Resolution of October 11, 2006, deemed the case submitted for resolution.

Well-settled is the rule that a sheriff's duty in the execution of the writ is purely ministerial; he is to execute the order of the court strictly to the letter.[5] He has no discretion whether to execute the judgment or not.[6] When a writ is placed in the hands of the sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to implement it in accordance with its mandate.[7] For it is only by doing so could he ensure that the order is executed without undue delay. It cannot be overemphasized that sheriffs play an important part in the administration of justice, because they are tasked to execute the final judgments of courts. If not enforced, such decisions are empty victories on the part of the prevailing parties.[8] Indeed, the execution of a final judgment is “the fruit and end of the suit and is the life of the law.”

And we held in *Escobar Vda. De Lopez v. Luna*: [9]

As public officers who are repositories of public trust, sheriffs have the obligation to perform the duties of their office “honestly, faithfully and to the best of their abilities.” They must always hold inviolate and invigorate the tenet that a public office is a public trust. As court personnel, their conduct must be beyond reproach and free from any suspicion that may taint the judiciary. They must be circumspect and proper in their behavior. They must use reasonable skill and diligence in performing their official duties, especially when the rights of individuals may be jeopardized by neglect. They are ranking officers of the court entrusted with a fiduciary role. They play an important part in the administration of justice and are called upon to discharge their duties with integrity, reasonable dispatch, due care and circumspection. Anything less is unacceptable. This is because in serving the court's writs and processes and in implementing the orders of the court, sheriffs cannot afford to err without affecting the efficiency of the process of the administration of justice. Sheriffs are at the grassroots of our judicial machinery and are indispensably in close contact with litigants, hence their conduct should be geared towards maintaining the prestige and integrity of the court, for 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.[10]

We find respondent to be remiss in his duties and responsibilities. It is noted that although respondent executed the writ of possession on September 14, 2004, a day after he received his assignment order from the court, the same was not fully implemented due to the fact that defendants were not in the premises to receive the said writ. It was only on September 20, 2004 that respondent was able to serve on defendant the writ but the latter refused to affix her signature therein. It was only on January 19, 2005 that respondent, assisted by barangay authorities, was able to break the padlocks of the iron gate and the hut located outside the gate and thereupon placed security guards to secure the premises.

Section 14, Rule 39 of the Rules of Court provides that 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 days after his receipt of the writ, the officer shall report to the court and state the reason therefor. The officer shall make a report to the court every thirty days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires.

In *San Jose v. Centeno*,[11] the Court held that there is neglect in the performance of duty on the part of respondent when he failed to submit his report on time. Records show that the writ was placed in the hands of respondent on September 13, 2004, and the return was made only on June 3, 2005, or more than eight months after the partial execution of the same and after complainant filed a Motion to direct respondent to render a report on the writ of possession assigned to him for implementation.

It is of no moment that the court, in its Order[12] of June 15, 2004, denied the abovementioned motion on the ground that the allegations of double-dealing committed by respondent is an irresponsible and reckless insinuation, hence, baseless and unfounded. It is clear from the facts of the case that respondent was negligent in his duties and responsibilities required of him for the orderly administration of justice.

Also, respondent's averment that the lack of logistical support prevented him from executing the writ and that he cannot do anything as implementing the same needs more expenses which plaintiff should have provided, is simply untenable. Section 9, Rule 141 of the Rules of Court provides, *inter alia*, that a sheriff must submit an estimate of expenses and have the same approved by the court. Respondent's failure to follow basic procedure for the smooth implementation of the writ warrants disciplinary action from this Court.

Respondent must always bear in mind that public service requires utmost integrity and strictest discipline. A public servant must exhibit at all times the highest sense of honesty and integrity.[13] The administration of justice is a sacred task. By the very nature of their duties and responsibilities, all those involved in it must faithfully adhere to, hold inviolate, and invigorate the principle solemnly enshrined in the 1987 Constitution that a public office is a public trust; and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency. The conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility.[14] Their conduct, at all times, must not only be characterized by propriety and decorum but, above all else, must be above suspicion. Indeed, every employee of the judiciary should be an example of integrity, uprightness and honesty.[15]

In several cases[16] involving neglect of duty, the Court finds it proper to impose a fine of P5,000.00 on erring court personnel. However, considering that in a minute resolution of March 21, 2001, the Court reprimanded respondent for neglect of duty with a warning that a repetition of the same offense will be dealt with more severely,[17] we find it appropriate to impose a fine of P10,000.00 with stern warning that a repetition of the same or similar offense will be dealt with more severely.

ACCORDINGLY, the Court finds respondent ARTHUR R. CABIGON guilty of neglect of duty and is FINED in the amount of TEN THOUSAND PESOS (P10,000.00) with a STERN WARNING that a repetition of the same or similar offense will be dealt with more severely.

SO ORDERED.

Ynares-Santiago, (Chairperson), Callejo, Sr., and Chico-Nazario, JJ., concur. Nachura, J., on leave.

[1] Rollo, p. 1.

[2] Id. at 16.

[3] Id. at 72-80.

[4] Id. at 107-109.

[5] Dela Cruz v. Bato, A.M. No. P-05-1959, February 15, 2005, 451 SCRA 330, 336.

[6] Id. at 336.

[7] Villareal v. Rarama, 317 Phil. 589, 597-598 (1995); Padilla v. Arabia, 312 Phil. 276, 283 (1995).

[8] Guevarra v. Sicat, 446 Phil. 872, 880 (2003); Teresa T. Gonzales La'O & Co., Inc. v. Hatab, 386 Phil. 88, 93 (2000).

[9] A.M. No. P-04-1786, February 13, 2006, 482 SCRA 265.

[10] Id. at 275-276.

[11] 315 Phil. 296, 303 (1995).

[12] Rollo, pp. 70-71.

[13] Asumbrado v. Macuno, Jr., 325 Phil. 520, 524 (1996) citing Mirano v. Saavedra, A.M. No. P-89-383, August 4, 1993, 225 SCRA 77, 85.

[14] Mirano v. Saavedra case, supra note 13 at 85.

[15] Id. at 85.

[16] Balanag, Jr. v. Osita, 437 Phil. 452, 460 (2002); Casano v. Magat, 425 Phil. 356, 363 (2002); Tiongco v. Molina, 416 Phil. 676, 684 (2001); Beso v. Daguman, 380 Phil. 544, 555 (2000).

[17] Philip Go for Ngo Teong Kaw v. Cabigon, A.M. No. P-01-1477, March 21, 2001.

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