

**GERMAN AGUNDAY, COMPLAINANT, VS. EMUEL B. VELASCO,
DEPUTY SHERIFF, OFFICE OF THE CLERK OF COURT, REGIONAL
TRIAL COURT, VIRAC, CATANDUANES, RESPONDENT.**

A.M. No. P-05-2003 (Formerly A.M. OCA IPI No. 97-218-P). December 06, 2010

Ponente: BRION, J.

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BRION, J.:

We resolve as an administrative matter the affidavit-complaint,[1] dated October 21, 1996, of German Agunday (complainant) charging Clerk of Court VI Prospero V. Tablizo, Deputy Sheriff Lemuel B. Velasco, Process Server Valentin Gonzales and Court Aide Isidro Guerrero, all from the Regional Trial Court (RTC) of Virac, Catanduanes, with grave misconduct, gross ignorance of the law, and incompetence.

This case traces its roots from a civil case (for recovery of ownership and possession with damages) filed by Lope Panti, Sr. and Francisca Panti (plaintiffs) before the RTC, Branch 43, Virac, Catanduanes, against the complainant (therein defendant). The RTC decided in favor of the plaintiffs. The dispositive portion of this decision reads:

WHEREFORE, judgment is hereby rendered:

- (1) Declaring Transfer Certificate of Title No. 3892 in the name of plaintiff Francisca Panti valid;
- (2) Ordering defendant to vacate that portion of subject lot equivalent to 23.1357 square meters of the 56.4737 he actually occupies on Lot C-1 immediately adjoining the area actually occupied by plaintiffs;
- (3) Ordering plaintiffs to reconvey to defendant 13.3380 square meters of the land erroneously included in Transfer Certificate of Title No. 3892.

The parties' mutual claim for damages and attorney's fees is denied.

Costs against both parties.[2]

The complainant appealed to the Court of Appeals (CA), with the appeal docketed as CA-G.R. CV No. 37494. The CA, in its decision of August 9, 1995, modified the RTC decision, as follows:

THE FOREGOING CONSIDERED, the appealed decision is hereby modified: plaintiff is directed to reconvey to the defendant/appellant an area measuring 13.38 square meters.[3]

In his affidavit-complaint, the complainant alleges that Tablizo, as Clerk of Court and Ex-Officio Provincial Sheriff, issued, on July 9, 1996, a writ of execution and possession which varied the terms of the dispositive portion of the CA decision. Pursuant to this writ, Velasco, Gonzales and Guerrero, in conspiracy with the plaintiffs, caused the demolition of his (Agunday's) house without first notifying him or his brother-in-law, Santos Burce. Velasco, Gonzales and Guerrero allegedly effected the demolition without coordinating with the barangay officials and the Municipal Engineering Office, and without securing a writ of demolition from the RTC. The complainant further claims that Velasco, Gonzales and Guerrero did not prevent the plaintiffs from taking his personal belongings from the demolished house.

The complainant maintains that the 13.38-square meter land subject of the modified CA decision has not been reconveyed to him. Velasco, however, made it appear in the Certificate of Turn-Over of Real Estate Property Ownership dated August 21, 1996, that the 13.38-square meter lot had already been turned over to him (complainant).

Velasco and Gonzales filed their respective comments to the complaint. Guerrero filed a counter-affidavit, while Tablizo filed an answer. They all denied the charges made against them in the affidavit-complaint.

In his reply to the comment, the complainant maintains that the respondent, Tablizo, Guerrero and Gonzales conspired with the plaintiffs in effecting the demolition of his house. He claims they did not do anything to prevent the demolition despite the absence of an order of demolition from the RTC.

In our Resolution dated October 12, 1998,[4] we referred the case to Executive Judge Alfredo A. Cabral of the RTC of San Jose, Camarines Sur, for investigation, report and recommendation. Judge Cabral sought a reconsideration of this resolution, citing, among others, his heavy caseload.

In our Resolution dated October 6, 1999,[5] we granted Judge Cabral's request, and referred the case to the Executive Judge of the RTC of Tabaco City, Albay. Executive Judge Cesar Bordoos recommended the dismissal of the case due to the complainant's failure to appear at the hearing. The Court, in its Resolution of October 17, 2001,[6] ordered Judge Bordoos to conduct a more "earnest and exhaustive fact-finding investigation" of the case.

Due to Judge Bordoos' retirement, we designated Executive Judge Arnulfo B. Cabredo of the RTC, Tabaco City, to continue with the investigation of the case.[7] Judge Cabredo, however, was dismissed from the service due to misconduct; thus, we referred the case to Executive Judge Virginia G. Almonte of the RTC, Branch 17, Tabaco City.

In her Investigation Report dated November 27, 2003, Judge Almonte found Velasco to be remiss and negligent in the performance of his duties as sheriff for his failure to implement the writ of execution. She recommended that Velasco be fined P10,000.00 for his infraction. She, however, recommended the dismissal of the charges against Tablizo, Gonzales, and Guerrero for lack of merit.

In our Resolution of January 21, 2004, we noted Judge Almonte's Investigation Report. We, thereafter, referred the case to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

The OCA, in its Memorandum dated April 4, 2005, made the following recommendations:

- this case be RE-DOCKETED as a regular administrative matter;
- the complaint against respondents Prospero V. Tablizo, Valentin Gonzales and Isidro Guerrero be DISMISSED for lack of merit;
- respondent Sheriff Lemuel B. Velasco be FOUND GUILTY of Neglect of Duty and be accordingly FINED in the amount of Ten Thousand Pesos (P10,000.00); and
- the Fiscal Management Office, Office of the Court Administrator, be DIRECTED to IMMEDIATELY RELEASE the withheld amount of P20,000.00 to Valentin Gonzales.

The OCA held that the evidence does not show that Tablizo, Guerrero and Gonzales had a hand in the demolition of the complainant's house. Lope Panti, Sr., the plaintiff in Civil Case No. 1528, admitted that the demolition of complainant's house was through his own act and initiative. Tablizo, Guerrero and Gonzales only learned of the demolition from the complainant's cousin when the demolition was almost complete. The OCA added that Velasco even directed Lope to stop the demolition since the same was illegal. Lope initially complied, but

continued with the demolition after the respondent, Tablizo, Guerrero and Gonzales had left.

The OCA, nonetheless, found Velasco liable for neglect of duty for his failure to reconvey the 13.38 square meters of the subject property to the complainant. The OCA reasoned out that for a period of eight years, more or less, the complainant had been deprived of his right to enjoy the 13.38-square meter portion of the subject lot that had been adjudged by the CA to belong to him.

As regards the charge that Tablizo issued a writ of execution and possession that varied the terms of the dispositive portion of the CA decision, the OCA held that the issue is a judicial matter which should have been raised in an appropriate judicial proceeding.

In our Resolution of April 27, 2005, we resolved to adopt the OCA's recommendations. Accordingly, we dismissed the complaint against Tablizo, Gonzales, and Guerrero for lack of merit. Thereafter, Velasco manifested that he is submitting the case for resolution on the basis of the pleadings/records filed and submitted.

THE COURT'S RULING

We agree with the OCA that Velasco is administratively liable for neglect of duty. We, however, modify the penalty imposed on him.

Velasco not involved in the demolition

We concur with the OCA's finding that Velasco did not have a hand in the demolition of the complainant's house. Lope himself admitted in his affidavit, dated March 18, 1997, that he alone ordered the demolition of the complainant's house. Lope's court testimony likewise shows that Velasco had no participation in the demolition, thus:

ATTY. DOTE:

Q:

Where were you on July 22, 1996 at about 4:00 o'clock (sic) in the afternoon?

WITNESS:

A:

At my store.

Q:

While at your store[,] what happened, if any?

A:

On July 22, 1996[,] at about 4:00 o'clock (sic) in the afternoon[,] I was in the store and Mr. Lemuel Velasco came over to that store and told me or asked me if I was already prepared to make the survey and that the survey will be done tomorrow morning.

Q:

What did you do after Lemuel Velasco told you that the area is to be surveyed?

A:

After that I told my son Leopoldo to prepare and get some workers for the survey, to remove the house of Mr.

German Agunday because it will be an obstacle in the survey.

Q:

Why did you tell your son to demolish the house which according to you, will be an obstacle to the conduct of the survey?

A:

Because Mr. Velasco told me that there will be a survey.

Q:

Do you know that the survey that will be conducted is to determine whether the house of Mr. Agunday is encroaching upon your lot?

A:

The house is encroaching on my lot.

Q:

You mean to say that you know already that the house has encroached upon your lot?

A:

Because before we had a case between us. I already procured the services of a private surveyor.

Q:

You mean to say that you did not wait for the Sheriff to tell you that the house of Mr. Agunday will be removed because it was occupying part of your lot?

A:

No, I did not wait for the Sheriff because I already know that it was encroaching.

x x x x

Q:

x x x After the demolition, what happened next?

A:

Lemuel Velasco came over.

Q:

Who was with him?

A:

I do not know the names of those who were with him?

x x x x

Q:

When Lemuel Velasco arrived, what did he do, if any?

A:

He told us to stop the demolition which we were doing.

Q:

And what did you do when you were told to stop?

A:

Because the demolition was already about to be finished so we stopped and we took a rest but when Mr. Velasco left, we continued with the demolition.[8]

These exchanges clearly establish that Velasco was not in any way involved in the demolition of the complainant's house; Lope alone ordered the demolition of the complainant's house. Velasco, in fact, only arrived on the scene when the demolition was almost finished. Velasco even ordered Lope and his men to stop the demolition. We, thus, find no basis to support the complainant's claim that Velasco conspired with the plaintiffs, Tablizo, Guerrero and Gonzales to effect the demolition of his house.

Velasco liable for neglect of duty

We, nonetheless, hold Velasco liable for his failure to reconvey the 13.38 square meters of the subject property to the complainant. We find no merit in his excuse that his failure to implement the writ of execution and possession was due to the complainant's refusal to sign the Certificate of Turn-Over of Real Estate Property Ownership.

The records disclose that when Velasco received the writ of execution and possession, he saw the need for a relocation survey in order to determine the 13.38 square meters that must be reconveyed to the complainant. He informed Lope of the need for a relocation survey, and left to him the hiring of the surveyor. Lope hired a surveyor and ordered him (surveyor) to conduct a relocation survey. Thereafter, Lope ordered the demolition of the complainant's house based on the result of the relocation survey that the house was encroaching on.

As the implementing sheriff, it was Velasco's duty to inform both Lope and the complainant regarding the need for a relocation survey, to ensure that the relocation survey would be witnessed by all the parties concerned. He has to personally supervise the conduct of the relocation survey, and not delegate this duty to one of the interested parties. More importantly, he should have requested the surveyor, during the survey, to point to the complainant the exact metes and bounds of the property to be reconveyed to him. As explained by Judge Almonte in her Investigation Report:

Velasco can not deliver the portion of the lot decreed for Agunday by merely making him sign the Certificate of Turn-Over of Real Estate Property Ownership that he prepared. There should be an actual delivery, pointing to Agunday the metes and bounds of the 13.38 square meters pursuant to the survey plan prepared by the surveyor. Also, the relocation survey should have been conducted in the presence of both parties in Civil Case No. 1528, possibly assisted by their counsel. The particular surveyor should have been the choice of both and not the unilateral preference of one party. Velasco, as the implementing Sheriff had to supervise the conduct of the relocation survey. x x x

It appears, however, that it was only Lope Panti who was informed by the Sheriff about the need for the relocation survey and he left it to the former, the hiring of a surveyor. The survey was then conducted on July 23, 1996[,] right after the house was demolished and this was without the direct supervision of Velasco. Agunday was not present. Yet on the basis of the results of the survey, Velasco prepared the Certificate of Turn-Over of Real Estate Property Ownership (Exh. 1-I). Agunday, however, did not sign the certificate. Thereafter, Velasco filed in Court a Sheriff Partial Return of Writ of Execution, indicating, among others, that Agunday "did not recognize" the survey made by Engr. Fernando Asuncion and the area of 13.38 square

meters was not officially reconveyed to him (Exh. 1-H).[9]

We cannot, therefore, fault the complainant for refusing to recognize the results of the relocation survey. As earlier discussed, he was not informed by Velasco regarding the need for a relocation survey. Neither did he witness the relocation survey. In addition, the surveyor was hired by Lope, and the survey was done at the latter's instance. These circumstances rendered the integrity of the survey highly suspect.

Velasco also failed to comply with Section 14, Rule 39 of the Rules of Court. Under this Rule, the lifetime of a writ of execution is without limit for as long as the judgment has not been satisfied, but is "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." The officer is mandated to "make a report to the court every thirty (30) days on the proceedings taken thereon until judgment is satisfied in full, or its effectivity expires." [10]

In the present case, the RTC issued a writ of execution and possession on July 9, 1996. Velasco submitted the Sheriff's Partial Return of Writ of Execution on August 23, 1996. However, nothing in the records shows that he made periodic reports to the court, every 30 days, on the proceedings taken thereon, until the judgment was fully satisfied.

A sheriff's duty in the execution of a writ issued by a court is purely ministerial. When a writ is placed in the hands of a sheriff, it is his duty, in the absence of instructions, to proceed with reasonable celerity and promptness to execute it according to its mandate.[11] Sheriffs must exert every effort to see to it that the final stage in the litigation process - the execution of a judgment - is carried out in order to ensure a speedy and efficient administration of justice. A decision left unexecuted or indefinitely delayed due to their inefficiency renders it useless. Worse, the parties prejudiced by the inaction tend to condemn the entire judicial system for the lapse.[12]

Velasco's failure to implement the writ of execution and possession, as well as to submit the required periodic report, shows his lack of diligence and zeal in the performance of his duties. By his actuations, Velasco displayed conduct short of the stringent standards required of Court employees. We, thus, find him liable for 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, signifying a disregard of duty resulting from carelessness or indifference. Under Section 52(B)(1) of the Uniform Rules on Administrative Cases in the Civil Service, 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, and dismissal for the second offense.[13]

In *Pesongco v. Estoya*, [14] we found the respondent sheriff guilty of neglect of duty and suspended him for one (1) month for his failure to fully implement the writ of execution, and for his failure to make periodic reports to the court. Likewise, in *Reyes v. Cabusao*, [15] we imposed a one-month suspension on the respondent sheriff for his delay in the implementation of the writ of execution.

While the recommended penalty of one-month suspension is reasonable, the same is not practical at this point, considering that Velasco's work would be left unattended by reason of his absence. Instead of suspension, we impose a fine equivalent to his one-month salary, so that he can finally implement the subject writ and perform the other duties of his office.[16]

WHEREFORE, respondent Sheriff Lemuel B. Velasco is found guilty of simple neglect of duty and is FINED in an amount equivalent to his salary for one (1) month. He is warned that the commission of the same offense or a similar act in the future will be dealt with more severely. Let a copy of this decision be attached to his personal record.

SO ORDERED.

Carpio Morales, (Chairperson), Bersamin, Villarama, Jr., and Sereno, JJ., concur.

[1] Rollo, pp. 2-3.

[2] Id. at 7-8.

[3] Id. at 101-102.

[4] Id. at 57.

[5] Id. at 73.

[6] Id. at 126.

[7] Id. at 128.

[8] TSN, September 26, 2003, pp. 43-47.

[9] Investigation Report, p. 19.

[10] See *Pesongco v. Estoya*, A.M. No. P-06-2131 [formerly OCA I.P.I. No. 05-7-2132-P], March 10, 2006, 484 SCRA 239, 250.

[11] See *Zarate v. Judge Untalan*, 494 Phil. 208 (2005).

[12] See *Aquino v. Martin*, 458 Phil. 76 (2003).

[13] See *Calo v. Dizon*, A.M. No. P-07-2359 [formerly OCA I.P.I. No. 05-2304-P], August 11, 2008, 561 SCRA 517, 533.

[14] *Supra* note 10.

[15] A.M. No. P-03-1676 [formerly OCA I.P.I. No. 02-1266-P], July 15, 2005, 463 SCRA 433.

[16] See *Mariñas v. Florendo*, A.M. No. P-07-2304, February 12, 2009, 578 SCRA 502.

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