

RENATO MIGUEL D. GARCIA, COMPLAINANT, VS. PERSHING T. YARED, SHERIFF III, MUNICIPAL TRIAL COURT, CANLAON CITY NEGROS ORIENTAL, RESPONDENT. R E S O L U T I O N

Adm. Matter No. P-01-1492. March 20, 2003

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

In a letter-complaint dated September 29, 1999, complainant Renato Miguel D. Garcia charged respondent Pershing T. Yared, Sheriff III, Municipal Trial Court of Canlaon City, Negros Oriental, with neglect of duty and grave abuse of authority relative to Civil Cases Nos. 334,[1] 328,[2] 352[3] and 367.[4]

Complainant is the President and Manager of the Rural Bank of Guihulngan (Negros Oriental), Inc. which is the plaintiff and prevailing party in Civil Cases Nos. 334, 328, 352 and 367, all for collection of sum of money and damages. He claims that the judgments in said civil cases remain unsatisfied since the writs of execution therein are not being implemented properly and efficiently by respondent, as follows:

“1.

Civil Case No. 334 - The last Return of Service was on October 3, 1997 (Annex “A”). The defendants in this case are all MTC personnel. His previous reports dated May 7 & 18, 1993 (Annex “B” & “C”) states that Rene Ricablanca & Juliana Montejar receive from their employer, the Supreme Court of the Philippines, the amount of P2,630.00 each which is far below poverty line (underlining ours). Our heart bleeds for them. But this is already 1999. Are their salaries still below poverty line?

“2.

Civil Case No. 328 – Mr. Yared was able to get an old Karaoke, which was out of order but still, was sold for P1,000.00. The amount collectible is P3,706.08 with interest of 1% a month beginning Feb. 26, 1991. No further action was taken by Mr. Yared so on Dec. 14, 1992 an Order from the Court was obtained for an Alias Writ of Execution (Annex “D”) for the amount of P4,908.10. To date no action has been taken.

“3.

Civil Case No. 352 – Mr. Yared signed a receipt dated Nov. 18, 1998 re receipt of the Writ of Execution (Annex “E”). Under his First Indorsement dated July 1, 1999 (Annex “F”) to the Clerk of Court which was received by the Bank on Aug. 3, 1999 he sent an estimate of his cost of travel to serve the alias writ in Cebu City in the amount of P2,000.00. However, one of the defendants who own a real property here in the locality has not been served the writ. Why go to Cebu City first? Our disagreement was manifested in Court and an ORDER dated July 21, 1999 (Annex “G”) was issued directing him to look into the records of the office of the Municipal Assessor in order not to circumvent the properties and the decision of the Court. To date no action has been taken.

“4.

Civil Case No. 367 - Attached are copies of the return of service of Mr. Yared dated August 2 & 31, 1999 (Annex "H" and "I"). We are also providing photos of the residential houses of Mr. Bernadez, one of the defendants, negating his report that Mr. Bernadez owns no personal and real properties."

On October 27, 1999, then Court Administrator Alfredo L. Benipayo required respondent to comment on the letter-complaint, within ten days from receipt.

In his Answer/Comment dated November 19, 1999, respondent explained:

In Civil Case No. 334 - He furnished the defendants with the writ of execution but said defendants, who are mere employees of the Municipal Trial Court, could not afford to pay the judgment amount, given their meager salary of about P2,630.00 a month. Efforts to locate real or personal properties of defendants yielded negative results. By virtue of a court order, an alias writ of execution was issued on September 15, 1997 which was served unsatisfied due to the assertion of the principal borrower that he had already made partial payments thereon. A second alias writ dated August 25, 1998 was issued by the court wherein the total balance therein stated already reflected the partial payments made by the defendants but this was likewise served unsatisfied as shown in the Sheriff's Return dated November 4, 1998. Respondent served the writs upon the defendants using his own money as the plaintiff bank did not provide him with the amount to defray his expenses.

In Civil Case No. 328 - Since the proceeds of the sale of the sing-along system was insufficient, an alias writ of execution dated December 20, 1992 was issued on motion of the plaintiff bank. The alias writ was never served on the defendant spouses for the reason that it was of judicial notice and public knowledge that the couple were jobless, with six mouths to feed and taking care of an ailing mother who died in 1998. Plaintiff bank moved for the seizure of a refrigerator which for humanitarian reasons and pursuant to Rule 39, Section 13 (b) of the 1997 Rules of Civil Procedure respondent did not seize as it was used in their means of livelihood, selling chicken barbecue and liquor in a small makeshift store at the side of the national highway and, as storage of the medicine of the ailing mother. The real property of defendant spouses could not be proceeded against as it has already become an acquired asset of the Philippine National Bank.

In Civil Case No. 352 - For failure of the plaintiff bank to pay the legal fees, the Clerk of Court did not issue the writ of execution until the said legal fee was finally received. Despite the issuance of the writ on August 27, 1998, plaintiff bank failed to deposit the fees to defray respondent's expenses in going to Cebu City where the principal borrowers reside. Respondent found out upon inquiry with the Municipal Assessor that the husband of defendant Fabia Vizano has a real property in his name. Since Fabia's husband is not himself the defendant, respondent did not attach the same considering that he has no authority to attach the property of any person under execution except that of the judgment debtor. Respondent believed that he should first serve the writ on the principal borrowers residing in Cebu City before going against the co-makers, that is, there must first be a showing that the principal borrower defaulted in his payment which must be brought to the attention of the co-makers before proceeding against the latter.

In Civil Case No. 367 - Defendant Leonardo Bernadez has no personal or real properties and the house being referred to by complainant which picture he attached in his complaint is where the defendant and his family reside but the same is not owned by the defendant but by his son Prem Bernadez.

In his Reply dated August 28, 2000, complainant argues that it is preposterous for respondent to claim that the defendants in Civil Case No. 334 have no personal properties because even a mere tricycle driver sports a wristwatch nowadays and televisions and refrigerators are now considered a must for ordinary households and even houses in the slums have TV antennas on the rooftops. Complainant pointed out that respondent admitted in his Comment that he did not serve the writ with regards to Civil Case No. 328, which constitutes neglect of duty

because the duty to serve and implement the writ is purely ministerial on his part as Sheriff. Finally, complainant expressed that respondent is playing judge in Civil Case No. 352 by stating that he should first exhaust all means to serve the writ upon the principal borrowers before going against the co-makers.

In a Resolution dated August 6, 2001, the Court re-docketed the administrative complaint as a regular administrative matter and required the parties to manifest within ten days from notice if they are willing to submit the case for decision based on the pleadings filed.

In compliance therewith, respondent manifested that he is willing to submit the case for decision on the basis of the pleadings already filed which the Court noted in a Resolution dated October 22, 2001. The complainant filed a letter dated March 6, 2002 inquiring about the status of the administrative case which the Court noted in a Resolution dated May 8, 2002.

However, complainant did not file his manifestation. Thus, the Court issued a Resolution dated November 25, 2002 requiring complainant to show cause why he should not be disciplinarily dealt with or held in contempt for failure to manifest his willingness to submit the administrative matter for decision based on the pleadings filed and to comply with the Resolution of August 6, 2001, both within ten days from receipt.

In a Compliance dated January 14, 2002, complainant cited “heavy volume of work that he had to attend to resulting from numerous requirements imposed by the Bangko Sentral ng Pilipinas (BSP) on banks and other equally pressing matters” as reason for his failure to manifest before the Court that he is willing to submit the case for decision based on the pleadings filed. Not fully satisfied with the explanation of complainant, the Court admonished him to be more heedful of the orders of the Court in the Resolution dated February 19, 2003.

The Report dated June 14, 2001 of the Office of the Court Administrator (OCA) submitted to the Court, reads as follows:

EVALUATION: Relative to Civil Case No. 334, it is the respondent’s contention that he tried but failed to locate any real or personal property owned by the defendant hence the writ thereon was returned unsatisfied. Complainant, on the other hand, finds it difficult to believe that defendants do not have any property not even the basic home appliances like television set and refrigerators which are considered necessities nowadays. This bare allegation of complainant, however, does not in any way overcome the presumption that in the absence of contrary evidence, a sheriff has regularly performed his official duty (Navale vs. Court of Appeals, 253 SCRA 705).

As to Civil Case No. 328, respondent made an admission that he intentionally did not serve the Alias Writ of Execution dated December 20, 1992 upon the defendants for the reason that the latter are jobless with six mouths to feed and an ailing mother to attend to. Such an argument is untenable. Service of the writ is one thing; satisfaction of the writ is another. He should have performed his ministerial duty of serving the writ upon the defendants. If indeed said defendants have no money or property with which to pay the judgment amount, then respondent sheriff could return the writ unsatisfied.

We find nothing irregular however, on the estimate of travel cost prepared by respondent in Civil Case No. 352. This is so because part of his duty was to serve the writ upon the defendant who resides in Cebu City notwithstanding that there are other defendants who reside within the locality.

Anent Civil Case No. 367, the picture submitted by complainant which allegedly shows the residential house owned by the defendant therein could not be given credence over the bank document submitted by respondent sheriff (Annex “4-I”) which tends to prove that the property actually belongs to the defendant’s son who is not a party to the case.

The OCA recommends that respondent be reprimanded for his failure to serve the alias writ of execution in Civil Case No. 328.

The Court agrees with the conclusion of the OCA that respondent is guilty of neglect of duty and grave abuse of authority for his failure to serve the alias writ of execution in Civil Case No. 328. However, the Court finds that respondent is also guilty of neglect of duty and grave abuse of authority in Civil Cases Nos. 334, 352 and 367.

Section 14 of Rule 39 of the 1997 Rules of Civil Procedure explicitly mandates the manner in which a writ of execution is to be returned to court, as well as the requisite reports to be made by the sheriff or officer, should the judgment be returned unsatisfied or only partially satisfied. In any case, every 30 days until the full satisfaction of a judgment, the sheriff or officer must make a periodic report to the court on the proceedings taken in connection with the writ. Section 14 reads as follows:

“Sec. 14. Return of writ of execution.—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 (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof furnished the parties.”
(Underscoring supplied)

Verily, the sheriff is mandated to execute and make a return on the writ of execution within the period provided by the Rules.[5] In addition, he must make periodic reports on partially satisfied or unsatisfied writs in accordance with the above-cited rule, in order that the court as well as the litigants may be apprised of the proceedings undertaken in connection therewith. Such periodic reporting on the status of the writs must be done by the sheriff regularly and consistently every 30 days until they are returned fully satisfied.

Respondent grievously failed to comply with the mandate of the Rules on periodic reporting. His reports were submitted sporadically such that the plaintiff bank in Civil Cases Nos. 334, 328, 352 and 367 was not regularly informed of the actions taken to satisfy the judgment in its favor. Therefore, the presumption of regularity of performance of duty cannot be considered in favor of respondent. It is almost trite to say that execution is the fruit and end of the suit and is the life of law.[6] A judgment, if left unexecuted, would be nothing but an empty victory for the prevailing party.[7] Unless restrained by a court order to the contrary, sheriffs should see to it that the execution of judgments is not unduly delayed.[8]

The Court also finds unacceptable the explanation of respondent on the actions he undertook in the implementation of the writs of execution in Civil Cases Nos. 334, 328 and 352.

The failure to promptly and efficiently implement the writs of execution in Civil Cases Nos. 334 and 352 cannot be justified by the excuse that the plaintiff bank in said civil cases did not give respondent financial assistance to defray expenses in serving and implementing the writs. Section 9, Rule 141 of the Revised Rules of Court provides:

“Sec. 9. Sheriff, and other persons serving processes.--

x x x x x x x x

“(1) For money collected by him by order, execution, attachment, or any other process, judicial or extrajudicial, the following sums, to wit:

“1. On the first four thousand (P4,000.00) pesos, four (4%) per centum.

“2. On all sums in excess of four thousand (P4,000.00) pesos two (2%) per centum.

“In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff’s expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards’ fees, warehousing and

similar charges, in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex-officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor." (Underscoring supplied)

It is clear that under the rule, sheriffs are authorized to collect certain specified fees in specified amounts. The sheriff has to estimate the expenses to be incurred and upon the court's approval of the estimated expenses the interested party has to deposit the amount with the Clerk of Court and the Ex-officio Sheriff. These expenses shall then be disbursed to the executing Sheriff subject to his liquidation within the same period for rendering a return on the process or writ. Any unspent amount shall be refunded to the party who made the deposit.

Respondent admittedly is well-aware of the foregoing rule. He essentially cited this rule to justify the delay in implementing the writ of execution in Civil Case No. 352. As the rule provides, respondent need not wait for the plaintiff bank or its representative to deposit an amount in court for the expenses in implementing the writ. Respondent was obliged to estimate the expenses and secure the approval of the issuing court of the estimated expenses and fees for immediate implementation of the writ of execution. He was duty-bound to collect from the winning party the expenses and fees for the implementation of the writ of execution.

The non-implementation of the alias writ of execution in Civil Case No. 328 cannot be justified by the allegation that it is "judicial notice and public knowledge that the couple were jobless, with six mouths to feed and taking care of an ailing mother who died in 1998". Nor can delayed implementation of the writ of execution in Civil Case No. 352 be founded on the argument that the writ of execution in said case should first be served on the principal borrowers residing in Cebu City instead of applying the writ on properties of co-makers located in the locality. To exercise compassion and discretion to the extent that the sheriff substitutes his own standard of justice for that which has been properly determined in contentious proceedings is to encroach upon the power of a judge,[9] which amounts to a grave abuse of authority.

A sheriff's duty in the execution of a writ is purely ministerial; he is to execute the order of the court strictly to the letter.[10] He has no discretion whether to execute the judgment or not.[11] He is mandated to uphold the majesty of the law as embodied in the decision.[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.[13]

Being the front-line representative of the justice system, a sheriff must always exert every effort and, indeed, consider it his bounden duty, to perform his duties in order to maintain public trust. He must see to it that the final stage in the litigation process -- the execution of the judgment -- is carried out with no unnecessary delay, in order to ensure a speedy and efficient administration of justice.[14] A decision left unexecuted or indefinitely delayed due to his neglect of duty renders it inutile; and worse, the parties who are prejudiced thereby tend to condemn the entire judicial system.[15]

The Court cannot countenance any act or omission which diminishes or tends to diminish the faith of the people in the judiciary. To stress that high standards are expected of sheriffs as agents of the law and to drive home to all those involved in the administration of justice the obligation to perform the duties of their office honestly, faithfully and to the best of their ability, the Court deems it just and reasonable to impose on respondent a fine of Ten Thousand Pesos (P10,000.00).

WHEREFORE, respondent Pershing T. Yared is found guilty of Neglect of Duty and Grave Abuse of Authority.

He is FINED in the amount of Ten Thousand Pesos (P10,000.00) with a stern WARNING that a repetition of the same or similar act shall be dealt with more severely by this Court.

Let copy of herein Resolution be attached to the personal files of respondent Pershing T. Yared.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing and Callejo, Sr., JJ., concur.

[1] Entitled “Rural Bank of Guihulngan (Negros Oriental), Inc. vs. Rene Ricablanca, Juliana R. Montejar and Bobby Yap,” decided on August 10, 1992.

[2] Entitled “Rural Bank of Guihulngan (Negros Oriental), Inc. vs. Emma Epistola, Bonifacio Epistola, Cristino Rizona and Alice Oliva,” decided on February 26, 1991.

[3] Entitled “Rural Bank of Guihulngan (Negros Oriental), Inc. vs. Elizabeth Vizano, Freddie Vizano, Fabia Vizano and Roman Gonzaga,” decided on February 20, 1996.

[4] Entitled “Rural Bank of Guihulngan (Negros Oriental), Inc. vs. Luz Melancolico, Leonardo Bernadez and Materno Folgo” decided on April 19, 1996.

[5] Concerned Citizen vs. Torio, A.M. No. P-01-1490, July 11, 2002.

[6] Villareal vs. Rarama, 247 SCRA 493, 501 (1995); Tan vs. Herras, 195 SCRA 1, 5 (1991).

[7] Jumio vs. Egay-Eviota, 231 SCRA 551, 554 (1994); Moya vs. Bassig, 138 SCRA 49, 53 (1985).

[8] Marisga-Magbanua vs. Villamar V, 305 SCRA 132, 137 (1999).

[9] Santos vs. Gonzales-Munoz, A.M. No. P-02-1628, August 14, 2002.

[10] Wenceslao vs. Madrazo, 247 SCRA 696, 704 (1995); Eduarte vs. Ramos, 238 SCRA 36, 40 (1994).

[11] Aristorenas vs. Molina, 246 SCRA 134, 137 (1995); Evangelista vs. Penserga, 242 SCRA 702, 709 (1995); Florendo vs. Enrile, 239 SCRA 22, 37 (1994); Añonuevo vs. Pempeña, 234 SCRA 168, 173 (1994).

[12] Lapeña vs. Pamarang, 325 SCRA 440, 445 (2000).

[13] Francisco vs. Cruz, 340 SCRA 76, 85 (2000); Mamanteo vs. Magumun, 311 SCRA 259, 265 (1999); Onquit vs. Binamira-Parcia, 297 SCRA 354, 364 (1998).

[14] Lacuata vs. Bautista, 235 SCRA 290, 294 (1994).

[15] Portes vs. Tepace, 267 SCRA 185, 194 (1997).

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