

**FELBET'S TIMBER, INC. AND FELIX J. DOMINGO,
COMPLAINANTS, VS. GLICERIO LUMUTHANG AND ANTONIO
LETADA, RESPONDENTS.**

Adm. Matter No. P-2089. September 30, 1981

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Administrative complaint against Glicerio Lumuthang and Antonio Letada as deputy sheriffs of the Court of First Instance of Davao del Norte at Tagum.

The verified complaint dated November 24, 1978, charged the respondents of oppression, misconduct and discourtesy in the enforcement of the writ of execution issued against Felbet's Timber, Inc. by the National Labor Relations Commission, Regional Office No. XI at Davao City in NLRC Cases No. 945-MC-XI-78 and No. 946-MC-XI-78.

On September 4, 1978, the National Labor Relations Commission, Region XI, rendered a decision against Felbet's Timber, Inc. in the two aforementioned cases, for the total amount of P117,414.65 plus attorney's fees. Accordingly, a writ of execution was issued by the Labor Arbiter (Region XI) on November 7, 1978.

Felbet's Timber, Inc. appealed to the National Labor Relations Commission at Manila. On its urgent petition, the NLRC issued a resolution en banc dated November 17, 1978, enjoining the execution of the decision and the corresponding writ of execution.

The resolution of November 17, 1978, was not, however, served upon the respondent sheriffs until November 20, 1978, a day after they had actually levied upon and seized some properties of the complainants.

According to the complainants, in the afternoon of November 18, 1978, their counsel, Atty. Blasito Angeles received information from Liwanag Aguirre, Administrative Assistant of NLRC, Region XI, regarding which, Atty. Angeles addressed the following letter dated November 18, 1978, to respondent Glicerio Lumuthang.

"J. S. Carriedo Bldg.,

76-F, Magallanes St.,

Davao City

November 18, 1978

The Sheriff of Davao

(Attn: Dep. Sheriff Lumuthang)

Tagum, Davao

Re: Writ of Execution in NLRC Cases

Nos. 946 & 945, MC-XI-78 -
entitled 'Avila Et Al vs. Felbet's
Timber, Inc., Et Al'

Sirs:

We are informed over the phone by Mr. Aguirre of the NLRC, Regional Office No. XI, Davao City, that pursuant to the telephone conversation with NLRC Executive Director Bolisay, the NLRC shall issue a temporary restraining order, to restrain the im-plementation of the writ of execution issued by the NLRC, Regional Office No. XI. Therefore, Mr. Aguirre requested me to contact you, and to advise you to immediately see Mr. Aguirre on the above-cited matter. I am therefore now relaying said request of Mr. Aguirre to you, with the hope that you can immediately see him for instructions.

In the meantime, and since we are approaching the week-end, or Sunday, it is hoped and requested that you will defer further action on the said writ of execution, until you receive any official advise or instructions from Mr. Aguirre, of the NLRC Regional Branch No. XI, Davao City, which issued the writ of execution now in your hands.

Thank you for your prompt attention hereto.

Very truly yours,

(SGD.) BLASITO E. ANGELES

Counsel for respondents

Felbet's Timber, Inc., et al."

The foregoing letter was delivered to respondent Lumuthang on November P9,1978, by Alfredo Escandor, a representative of the com-plainants, who found Lumuthang and Letada together with Atty. Lucilo Regis (counsel for the claimants in the above-mentioned NLRC cases) at the complainants' logging compound in Maco, Davao del Norte. At that time the respondents were actually in the process of levying on the properties of the complainants at the compound.

Notwithstanding Escandor's plea for suspension of the levy and assurance that measures will be taken so that respondents could immediately communicate with Liwanag Aguirre to verify the report contained in the letter, the respondents continued the seizure of the complainants' properties, consisting of 5 motor vehicles and other personal properties.

The complainants' properties were thus taken from its logging compound at Maco, Davao del Norte, and brought to the Free Farmers Federation compound at Fabe Subdivision, Tagum, Davao del Norte.

The next day, November 20, 1978, the NLRC Regional Office received and in turn served upon the respondents a copy of the NLRC resolution en banc of November 17, 1978, containing the restraining order.

On the same day, complainants obtained the return of the properties seized by the respondents.

The complainants, thus, allege that with obvious partiality and grave abuse of discretion amounting to grave misconduct, respondent sheriffs elected to rely upon the advice of Atty. Regis, and with obvious discourtesy in the performance of their official duty, ignored and unceremoniously rebuffed or disregarded the information contained in the letter. It is further alleged that the writ of execution had been with the respondents from November 8 to 19, 1978, without serving the same; that no prejudice could have resulted if the respondents had suspended the levy on November 19, 1978, which was actually a Sunday, until they could verify the contents of

Atty. Angeles' letter; and that in making the levy, the respondents were motivated by malice and intent to oppress, harass, embarrass and besmirch the personal, social and business reputation of the complainants.

The gist of the respondents' joint comment (dated February 22, 1979), is that they could not have relied merely on the letter of Atty. Angeles, who being counsel for the complainants could not have been "neutral or impartial". No restraining order was presented to them, they claim; and neither was Liwanag Aguirre presented to explain the matter.

They also said that they had to serve the writ of execution on the complainants on Sunday, November 19, 1978, because that was the only day of the week when complainants' motor vehicles could be found at their compound. They maintain that they only followed an order from a proper authority and conducted the levy according to law.

After due investigation, Executive Judge Alfredo Lagamon, Court of First Instance at Tagum, Davao del Norte, submitted an investigation report dated February 24, 1981, which states that:

"The records of the case was received on January 21, 1981. The first hearing was scheduled on February 3, 1981 at 2:00 o'clock in the afternoon. Complainant through counsel, filed an urgent motion for transfer of hearing on February 3, 1981. Said motion was granted and trial was re-scheduled and set for hearing on February 10, 1981 at 8:30 in the morning.

"On February 10, 1981, the day of the hearing, complainant and his lawyer, Atty. Blasito E. Angeles appeared in Court and manifested that they are ready for trial. The respondents also appeared with their lawyer, Atty. Pedro C. Buhion and informed the Court that they are also ready for trial.

"The Court informed the parties that the hearing of the case shall be conducted in chambers because the proceedings are confidential. While the complainant and the respondents were in chambers together with their lawyers, they jointly prayed for a recess and after said recess, complainant through counsel informed the Court that they are not submitting any testimonial evidence but would like the Court to appreciate their complaint on the basis of the documentary evidence annexed to the complaint. The respondents through counsel, also made the same manifestations. In effect, the parties have come to an amicable settlement after the respondents explained to the complainant their positions.

"There are issues however, which still must be considered, supported by documentary evidence and admitted by the respondents, as follows:

- a) That on November 17, 1978, the NLRC en banc approved a resolution enjoining among others the respondents from executing or enforcing the writ of execution in question;
- b) That Atty. Blasito E. Angeles, counsel for the complainant, sent a letter to the respondent, Glicerio Lumuthang, requesting him to confer with Mr. Aguirre, NLRC Regional Office XI, Davao City, about a temporary restraining order issued by the NLRC and requesting further that no further action on the writ of execution shall be made until official advice or instruction shall have been received from Mr. Aguirre;
- c) Respondents admitted these facts in their answer but since no copy of the restraining order was shown to respondent Glicerio Lumuthang, he opted to continue with the levy, completely disregarding the request of Atty. Blasito E. Angeles, counsel for the complainant.

"It is the opinion of the undersigned that respondent Deputy Sheriff Glicerio Lumuthang should not have proceeded with the execution. He could have easily checked with the NLRC, Regional Office at Davao City and verify if indeed there was a temporary restraining order. A delay of a few hours could not have prejudiced the prevailing parties. For this act of indiscretion, the undersigned believes that respondent Lumuthang should be given a warning to be more prudent in the future.

"There seems to be no evidence against respondent Antonio Letada. He only assisted in the execution. The

decision to proceed with the levy was the sole responsibility of respondent Glicerio Lumuthang.

We agree with the investigating judge that Lumuthang is indeed culpable but we cannot accept his recommendation that said respondent be given a mere warning.

In determining the appropriate penalty to be meted to Lumuthang, it is pertinent to mention the decision and resolution rendered by Us in other administrative cases involving said respondent. In Administrative Matter No. P-1549, entitled "Raul C. Briz versus Deputy Sheriffs Faustino Encinares, Jr., and Glicerio Lumuthang, etc.", We found the respondents guilty of incompetence and grave abuse of authority amounting to oppression and grave misconduct and meted the penalty of suspension from office for one month without pay with stern warning that repetition of the same or similar infractions will be dealt with more severely. And in Administrative Matter No. 1264-MJ, entitled "Glicerio Lumuthang versus Judge Juanito de Leon, etc.", We resolved to dismiss the complaint against the judge for failure of the complainant to prosecute the case and We further resolved to require the complainant Glicerio Lumuthang to show cause why he should not be disciplinary dealt with or held in contempt for filing a false or groundless complaint and failing to appear and prosecute.

In view of the recidivism of respondent Lumuthang, he deserves a severe penalty. On the other hand, We agree with the investigating judge that respondent Antonio Letada is blameless.

WHEREFORE, for repeated misconduct in office, respondent Deputy Sheriff Glicerio Lumuthang is hereby considered resigned from the service effective upon receipt of this decision with prejudice to reinstatement. The other respondent, Deputy Sheriff Antonio Letada, is hereby absolved from the complaint.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., and De Castro, JJ., concur.

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