

**LINA M. PANER, PETITIONER, VS. SHERIFF IV EDGARDO M. TORRES
AND JUNIOR PROCESS SERVER ADRIANO A. VERGARA,
RESPONDENTS.***A.M. No. P-01-1451 (Formerly OCA IPI No. 99-563-P). February 28, 2003*

Ponente: AUSTRIA-MARTINEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/72161175d90c/>**AUSTRIA-MARTINEZ, J.:**

Herein complainant Lina M. Paner is one of the plaintiffs in Civil Case No. 3542 entitled *Anicia Mule v. Spouses Dominador Luna, et al.* for Ejectment filed before the Municipal Trial Court (MTC) of Calamba, Laguna which rendered judgment in favor of the plaintiffs. The other plaintiffs are her siblings and co-owners of the subject property.

The defendants interposed an appeal with the Regional Trial Court of Calamba, Laguna. Complainant and the other plaintiffs filed a motion for a writ of execution pending appeal with the MTC for insufficiency of the supersedeas bond put up by the defendants. The MTC granted the motion and the corresponding writ of execution pending appeal was issued.

Respondent Sheriff IV Edgardo M. Torres returned the writ unsatisfied reasoning that the defendants refused to vacate the subject premises. Complainant and her siblings filed a motion for a writ of Demolition. In an Order dated October 15, 1998, the MTC granted the motion and correspondingly issued the writ of Demolition.

Respondent Junior Process Server Adriano A. Vergara served a copy of the writ of demolition to the Office of the Provincial Sheriff but did not serve a copy to the parties.

Defendants filed a motion for reconsideration of the Order granting the motion for a writ of demolition. Respondent Sheriff issued a Sheriff's Return declaring that the implementation of the writ of demolition had been held in abeyance pending the resolution of the motion for reconsideration filed by the defendants. This prompted complainant to file with the Office of the Court Administrator an affidavit-complaint for Obstruction of Justice on December 1, 1998 against respondent Sheriff and Junior Process Server alleging that respondent Sheriff deliberately refused to enforce the writ of execution pending appeal; that respondent Sheriff demanded P15,000.00 for expenses for the implementation of the writ of demolition but complainant was able to give only P3,000.00; that to assist respondent Sheriff, complainant hired one heavy truck and engaged the services of twenty laborers. As regards respondent Junior Process Server, complainant alleged that said respondent deliberately did not serve them a copy of the Order granting their motion for a writ of demolition and that they came to know only of such Order when they received a copy of defendant's motion for reconsideration thereof, to their prejudice.

In his answer, respondent Sheriff averred that the writ of execution pending appeal was returned unsatisfied because of the refusal of the defendants to vacate the premises; that he was not able to implement the writ of demolition by reason of the pending motion for reconsideration filed by the defendants; that respondent as one of the defendants in RTC Civil Case No. 2688-98-C received a Notice of Hearing for the issuance of a Temporary

Restraining Order involving the implementation of the writ of demolition; that the RTC issued a TRO effective for twenty days on December 1, 1998 and that the complaint had become moot and academic because subsequently on February 8, 1999, said writ of demolition has been fully satisfied, the house erected thereon was demolished and that possession of the subject premises was already turned over to the complainants.[1]

In his separate Answer, respondent Junior Process Server alleged that it has been his adopted procedure to immediately serve a copy of the order granting the writ of demolition itself to the office of the Provincial Sheriff without furnishing a copy thereof to the parties as it is his honest belief that here is nothing more to be done in the case considering that the writ has already been served to the proper officer who is in charge of enforcing the same and that no one has ever called his attention as to the impropriety of the procedure.

The allegations of complainant in her affidavit-complaint clearly indicate that what she meant by Obstruction of Justice is actually Dereliction of Duty and Manifest Partiality relative to Civil Case No. 3542, as aptly considered to be so by the Office of the Court Administrator.

Anent the complaint against respondent Sheriff:

The Court is not persuaded by the assertion of respondent Sheriff that this case has become moot and academic because the writ of demolition was fully satisfied and that the subject premises were already turned over to the complainant.

Considering that the Sheriff's role in the execution of judgment is purely ministerial,[2] he has no discretion whether to execute a judgment or not.[3] The pendency of a motion for reconsideration of the Order granting the writ of demolition is not an excuse to defer implementation of the said writ. It has been consistently held by this Court that in the absence of any instruction to the contrary, it is the Sheriff's duty to proceed with reasonable celerity and promptness to execute a judgment according to its mandate.[4]

Moreover, respondent Sheriff was negligent. The writ of demolition is dated October 15, 1998. On even date, respondent received the said writ mandating him to make a return within 20 days from date or until November 4, 1998. He did not implement the writ until its expiration. This is bolstered by the letter of defendant's lawyer to respondent Sheriff dated November 13, 1998[5] that at the time he served the writ of demolition, the same had already expired. Worse, he used the Motion for Reconsideration as an excuse for not enforcing the said writ.

Wittingly or unwittingly, the defendants were unduly favored by respondent Sheriff when he did not implement the writ of demolition. In fact, the deferment made by respondent Sheriff gave rise to other incidents thereby subjecting the complainant to unnecessary prolonged agony.

However, the Court finds that the allegation that respondent Sheriff demanded and received money from the complainant for the implementation of the writ of demolition is unsubstantiated. No evidence was adduced to prove it.

As to the charge against respondent Junior Process Server.

It is noted that he admitted that he did not serve copies of the writ of demolition to the parties as he believed that such service is not required upon service to the Provincial Sheriff. The Court is appalled by said admission and fully agrees with the Court Administrator that this is a clear case of incompetence and inefficiency that even the defense of good faith and lack of malice on the part of respondent would not excuse him from liability; for otherwise, the judiciary would be filled with incompetent personnel acting on their personal beliefs and opinions rather than on established rules and principles of law.

WHEREFORE, respondents Sheriff IV Edgardo M. Torres and Jr. Process Server Adriano A. Vergara are found

GUILTY of Dereliction of Duty and ordered to pay a FINE of Two Thousand Pesos (P2,000.00) each with a STERN WARNING that a repetition of the same or similar act in the future shall be dealt with more severely.

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

[1] Annex “4” of the Answer.

[2] Araza v. Garcia, 325 SCRA 1, 8.

[3] Aristorenas v. Medina, 246 SCRA 134.

[4] Portes v. Tepace, 267 SCRA 185, 193; Casaje v. Gatbalite, 331 SCRA 508.

[5] Annex “2” of Respondent Sheriff’s Answer.

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