

**RUBEN BARBOSA, PETITIONER, VS. JUDGE EFREN A. LAMORENA,
BRANCH CLERK CLARITA Q. MALANAY, SHERIFF MARIO S.
PANGILINAN, METROPOLITAN TRIAL COURT, BRANCH 73, PATEROS,
METRO MANILA,...**

A.M. No. MTJ-95-1026. April 17, 1996

Ponente: VITUG, J.

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VITUG, J.:

In a sworn complaint, dated 15 September 1994, complainant charged respondent Judge with grave abuse of authority, respondent Clerk of Court with grave misconduct, and respondent Sheriff with grave abuse of authority, as well as malfeasance and misfeasance, in connection with their handling of Civil Case No. 874-93 (Clarita Rosales vs. Ruben Barbosa) for ejectment.

Complainant, who was the defendant in the above-numbered case, averred that on 22 September 1993, the trial court issued a notification setting the case for preliminary conference on 13 October 1993. He filed, through counsel, an urgent motion, dated 08 October 1993, for the cancellation of the preliminary conference on the ground that he had to make a sudden trip to Iloilo and prayed that the conference be instead reset for 24 November 1993. Respondent Judge did not act on the motion. On 13 October 1993, he issued an order that read:

"During the preliminary conference of the parties this morning, only the plaintiff along with her counsel appeared.

"The defendant and his counsel failed to appear despite notice to them. Upon this ground, plaintiff thru counsel manifested that the preliminary conference be ordered terminated and movant be allowed to file her position paper.

"Acting on the petition and the ground adduced in support of the motion to be well- taken same is GRANTED. And as prayed for, the plaintiff is given fifteen (15) days from today within which to submit her position paper.

"SO ORDERED."[1]

Complainant filed another "Urgent Motion," dated 03 November 1993, asking that the order of 13 October 1993 be set aside. His motion was set for hearing on 25 November 1993. On the day of the hearing, complainant appeared but only to inform the court that his counsel was unavailable and to orally move for another setting of the preliminary conference. Respondent Judge issued an order submitting the motion and the opposition thereto for resolution. On 01 July 1994, respondent Judge, supposedly without resolving the pending incidents and without giving complainant an opportunity to submit his position paper, rendered judgment in favor of the plaintiff. Counsel for the defendant filed a notice of appeal on 15 August 1994, followed by an urgent motion to fix the supersedeas bond. On 23 August 1994, respondent Judge issued two orders, one granting the plaintiff's motion for execution because the defendant had failed to put up a supersedeas bond and the other giving due course to the defendant's appeal.

On 31 August 1994, respondent Sheriff served a "Notice to Vacate and Demand Payment," on complainant giving him five days from receipt, or until 05 September 1994, within which to vacate the premises and to demolish the improvements thereon. The notice was received by the wife of complainant. Simultaneously with the serving of the notice, respondent Sheriff started to seize and to take possession of all personal property found in complainant's residence. Respondent Sheriff thereafter issued a "Notice of Levy and Sheriff's Sale," also dated 31 August 1994, to the effect that the property was to be sold at public auction on 05 September 1994. Respondent Sheriff demanded the amount of thirty thousand pesos (P30,000.00) in exchange for the non-implementation of the writ of execution.

Complainant filed an urgent manifestation and motion, asking that the scheduled auction sale be held in abeyance. Respondent Judge granted the motion; however, the auction sale still went through.

In the Court's resolution, dated 13 February 1995, respondents were required to comment on the complaint.

Commenting, respondent Judge explained that the complaint against him was motivated by his decision in another case convicting complainant's son of malicious mischief and, of course, by his judgment in the ejectment case. He maintained that complainant's motion to fix the supersedeas bond was mailed and was received by the court only on 25 August 1994 and that he, in fact, promptly acted thereon. On 02 September 1994, complainant's wife personally appeared before his sala and was informed of the amount of the supersedeas bond. She was likewise personally furnished with a copy of the order. Another copy was sent to complainant's counsel. A verification of the correspondence book kept by the mailing clerk indeed showed that copies of all these incidents were sent to the parties by the clerk of court.

Respondent Clerk of Court, for her part, corroborated the explanation of respondent Judge. She averred that she saw complainant's wife only on 02 September 1994 when the latter saw her in court, acting arrogantly, to post the supersedeas bond. She affixed a list of the proceedings which transpired in Civil Case No. 874-93. She stated that respondent Sheriff was a regular employee of the Office of the Sheriff of the Regional Trial Court in Pasig. She also attached to her supplemental comment copies of certifications issued by the Office of the Clerk of Court, RTC, Pasig, and the Rizal Provincial Prosecution Office relative to complainant's pending criminal cases.

In his comment, respondent Sheriff countered that he was not prevented from implementing the court order. His demand for payment of the sum of P30,000.00 was for the satisfaction of the money judgment and not for any devious purpose. He admitted that Mrs. Barbosa had asked him not to levy a washing machine, alleged to be owned by a third party, but the supposed owner failed to file a third-party claim within the prescribed period. Regrettably, he said, he received a copy of the 05th September 1994 order to hold in abeyance the auction sale only at 3:45 p.m. of that day or hours after the auction sale (at 10:30 a.m.).

The Office of the Court Administrator ("OCA"), through Deputy Court Administrator Zenaida N. Elepaño, recommended:

"CONSIDERING the foregoing, it is respectfully recommended: 1) that the charges against Judge Efren A. Lamorena, in his capacity as former presiding Judge of the Metro TC, Br. 73 of Pateros, Rizal and against Branch Clerk of Court Clarita Q. Malanay, be DISMISSED for lack of merit; and 2) for misconduct in office Sheriff Mario S. Pangilinan of the Office of the Clerk of Court, RTC, Pasig, be SUSPENDED from office for a period of two (2) months without pay effective from the date of receipt of the resolution." [2]

The Court agrees with the recommendation.

Nothing was proffered to show that respondent Judge had abused his authority. No party or counsel should assume that motions for postponement, particularly in ejectment cases, appropriately covered by the Rules on

Summary Procedure, would be granted. When respondent Judge ordered, on 23 August 1994, execution at the plaintiff's instance, he was unaware of complainant's motion to fix a supersedeas bond which was received by the court only two days later or on 25 August 1994.

We find the charges against respondent Clerk of Court to be totally unsubstantiated. It appears, in fact, that copies of the court orders have been sent to the parties all in due course.

With respect to respondent Sheriff, the OCA aptly concluded that respondent Sheriff was guilty of misconduct in the precipitate implementation of the writ of execution and in conducting the auction sale of the levied property. The Sheriff's notice to vacate, dated 31 August 1994, showed that complainant was given a period of five days within which to comply with the writ. The notice read:

"You are hereby notified that by virtue of the Writ of Execution dated August 23, 1994 issued by the Honorable Court in the above-entitled case, copy of which is hereto attached and herewith served upon you, this office is giving you a grace period of five (5) days from receipt hereof within which to voluntarily vacate the premises in question, to demolish all the improvements existing thereon and to pay the amount of Execution.

"Failure on your part to do so, much to our regret we will be constrained to force into effect the said Writ of Execution to the limits provided for by law."[3]

Respondent Sheriff acted with undue haste in levying the personal property of complainant and in selling the same at public auction in the morning of 05 September 1994. Clearly, the complainant had a grace period ordered by the Court until midnight of that day.

WHEREFORE, the administrative complaints against Judge Efren A. Lamorena and Branch Clerk of Court Clarita Q. Malanay are DISMISSED. Respondent Sheriff Mario S. Pangilinan is ORDERED to pay a fine of P2,000.00 and cautioned against being incircumspect in the future.

SO ORDERED.

Padilla, Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Rollo, p.20.

[2] Rollo, pp. 81-82.

[3] Rollo, p. 40.

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