

ATTY. NERIO G. ZAMORA, COMPLAINANT, VS. TOMAS A. JUMAMOY AND DOMINGO B. BRUNIDOR, RESPONDENTS.

A.M. No. P-93-781. December 02, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In a sworn letter-complaint dated 19 January 1993 and addressed to the Executive Judge of the Regional Trial Court (RTC) of Bohol, the complainant charged the respondents, who are deputy sheriffs in the Municipal Trial Court in Cities (MTCC) of Tagbilaran City, with gross inefficiency, incompetence, and malpractice prejudicial to the government service, committed thus:

"for more than two (2) years from now, the above-named Tomas Jumamoy and Domingo Brunidor, both Deputy Sheriff of the City Courts of Tagbilaran, who reports [sic] for work at their whims and caprices, deliberately failed and continue to fail implementing and/or enforcing writs of execution on the following several cases to wit: Civil Case Nos. 1334, 1388, 1389, 1309, 1308, and Criminal Case No. 3658, to the damage and prejudice to the undersigned and his clients.

... without authority of the court, said respondents accepts [sic] compromise payments from the losing party and appropriate for their own benefit said compromise payments to the further damage and prejudice to the undersigned counsel and his clients.

... despite repeated warnings, said respondents failed and continue to fail performing their sworn duties and functions."

In a 1st Indorsement dated 21 January 1993, then Acting Executive Judge Antonio H. Bautista of the RTC of Bohol forwarded the complaint to the Office of the Court Administrator.

Acting on the memorandum of the Office of the Court Administrator of 1 February 1993, this Court required the respondents to comment on the letter-complaint.[1]

In his Comment/Manifestation dated 24 March 1993,[2] respondent Tomas Jumamoy denied the charges, alleged that the complaint is a pure harassment suit, and claimed that he had already returned the writs of execution in Civil Cases Nos. 1334 (GLY Lending vs. Juvita Jumamil), 1388 (GLY Lending vs. Trinidad Solis), and 1389 (GLY Lending vs. Virginio Cuadra) on 16 January 1991, 21 December 1990, and 20 March 1991, respectively. In the said returns,[3] he stated that Jumamil had asked for ample time to look for the necessary amount to satisfy the judgment debt, but she failed to pay it; that Trinidad Solis made a partial payment of P500.00 and promised to pay the balance before the end of December 1990; and that Cuadra promised to pay the judgment debt before the end of March 1991 but failed to comply with his promise. He stated in the first two returns that they were made "without prejudice for the plaintiff to moves [sic] for the issuance of alias writ in order to satisfy the judgment," and in the third, that the return is "without prejudice for the sheriff to follow-up the promise made by defendant Cuadra."

In his comment dated 29 March 1993,[4] respondent Domingo Brunidor alleged that partial payments were made

by the defendants in Civil Case No. 1308 and Civil Case No. 1309, and that the accused in Criminal Case No. 3658, Serapio Marapao, Jr., paid the clerk of court, by way of consignment, the sum of P1,200.00. He further claimed that the herein complainant did not file motions for the issuance of alias writs of execution in the civil cases and that he received the alias writ of execution in Criminal Case No. 3658 only on 26 February 1993.

On 11 September 1993, the Court referred this case to Executive Judge Antonio H. Bautista of the RTC of Bohol for evaluation, report, and recommendation.[5]

In his Report and Recommendation dated 2 December 1993,[6] Judge Bautista informed the Court that at the scheduled hearing of this case on the same date, the complainant manifested that if the respondents would "apologize and promise to perform their duties as Deputy City Sheriffs faithfully, religiously and diligently he would withdraw the administrative complaint" and that the respondents "in open court, on December 2, 1993 apologized to the complainant in the instant case Atty. Nerio Zamora and promised to perform their duties as Deputy City Sheriffs faithfully, religiously and diligently." Forthwith, the complainant withdrew the complaint and did not any more adduce evidence.

Judge Bautista then recommended that this case be dismissed.

In the resolution of 1 June 1994,[7] the Court referred back this case to Judge Bautista for investigation, report, and recommendation, inviting his attention to the ruling in *Sy vs. Academia*[8] that a complaint for misconduct, malfeasance, or misfeasance against a public officer or employee cannot just be withdrawn at any time by the complainant simply because he has lost interest in the prosecution of the case and that public interest and the need to maintain the faith and confidence of our people in the Government and its agencies and instrumentalities demand that proceedings in administrative cases against public officers and employees should not be made to depend on the whims and caprices of the complainants who are, in a real sense, only witnesses; hence, regardless of their motion to dismiss or to withdraw the complaint, the proceedings therein may continue.

Judge Bautista then conducted an investigation in this case. The complainant and the respondents testified.

In his Report and Recommendation dated 27 June 1994,[9] Judge Bautista explicitly states:

"The charges preferred by the complainant Atty. Nerio Zamora were admitted, under oath, in open court, on the testifical chair by the respondents Domingo Brunidor and Tomas Jumamoy who have shown remorse and repentance of what they have done as observed by the Court in their deportment and behavior on the testifical chair.

The charges, as admitted by the respondents, under oath, and in open court, are conclusively serious."

He then recommends "the suspension of the respondents Tomas Jumamoy and Domingo Brunidor from office for two months without pay."

The Office of the Court Administrator recommends the approval of the recommendation of Judge Bautista considering that the "respondents' plea for forgiveness appears sincere and proceeds from a voluntary admission of the charges from a repentant heart, and considering further that this is the first time that they had been administratively charged."

The Court finds the above recommendation to be well-taken. The respondents having thus admitted the charges in open court and while they were under oath, no further evidence was necessary for holding the respondents liable for gross inefficiency, incompetence, and conduct prejudicial to the best interest of the service. Their own comments readily show that they withheld the due implementation of the writs of execution on the mere pleas of the judgment debtors for time to raise funds or to pay them on installments, and that they then returned the writs

unsatisfied or partially satisfied, hoping, nevertheless, that the prevailing party would ask for alias writs of execution. In short, they deliberately failed to exercise due diligence in the performance of their duty to obtain satisfaction of the judgments. There is no proof that the judgment debtors had no property exempt from execution; accordingly, the respondents should have complied with Section 15, Rule 39 of the Rules of Court. They should not have simply folded their arms and waited for the fulfillment of the promises of the judgment-debtors. A delay in the execution of a judgment may prejudice the judgment creditor, for such delay may provide an opportunity for scheming judgment debtors to bring their property beyond the reach of the writs. It may be that the respondents were moved by compassion and sympathy, but such personal feelings must never be allowed to compromise the public-trust character of their office which binds them to a continuing accountability to the people. The respondents should not have forgotten the rule that the conduct and behavior of every one connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility.[10]

The Court does not look with favor upon the actuation of the complainant in offering to withdraw the complaint provided that the respondents would apologize to him and promise to be more diligent in the performance of their duties. His grievances against the respondents relate to their public duty and not to a purely personal matter and, therefore, transcend the complainant's personal pique or pride. After this Court had taken cognizance of this case, the complaint can no longer be withdrawn just because the respondents have apologized or repented. Such a withdrawal by the complainant could only invite suspicion that he was not really sincere in bringing the complaint. In any event, this Court cannot be bound by the unilateral act of a complainant in a matter which may involve its disciplinary authority.

WHEREFORE, for gross inefficiency, incompetence, and conduct prejudicial to the best interest of the service, respondents TOMAS JUMAMOY and DOMINGO BRUNIDOR are each **SUSPENDED** from office for **TWO (2) MONTHS**, without pay. The suspension shall take effect upon notice hereof.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Quiason, and Kapunan, JJ., concur.

[1] Resolution of 17 February 1993.

[2] Rollo, 17.

[3] Annexes "A," "B," and "C" of Comment.

[4] Rollo, 22.

[5] Id., 37.

[6] Id., 61.

[7] Rollo, 130.

[8] 198 SCRA 705 [1991].

[9] Rollo, 159 et seq.

[10] Jereos vs. Reblando, 171 SCRA 126 [1976]; Sy vs. Academia, supra note 8.

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