

**ANTONIO RODRIGUEZ, COMPLAINANT, VS. VICENTE P. APOSAGA, JR., SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 24, IPIL, ZAMBOANGA SIBUGAY, RESPONDENT.**

*A.M. NO. P-03-1671. January 31, 2005*

Ponente: CARPIO MORALES, J.

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**CARPIO MORALES, J.:**

By 1[st] Indorsement of February 8, 2002,[1] the Department of Justice referred to the Office of the Court Administrator (OCA) for appropriate action a January 28, 2002 letter[2] of herein complainant Antonio Rodriguez addressed to the Secretary of Justice requesting assistance in the execution of the decision of Branch 24, Regional Trial Court (RTC) of Sibugay, Zamboanga in Civil Case No. I-194 in light of “the burden of P10,000.00 for execution [by] the sheriff,” and requesting action towards “cleansing undesirables in government service.”

The letter was referred to Sheriff IV Vicente P. Aposaga, Jr. (respondent) for comment by 1[st] Indorsement of February 22, 2002 of the OCA.[3]

By April 16, 2002 letter[4] to the “THE CLERK,” Court Administrator, complainant transmitted “documents [bearing on] Civil Case No. I-94,” he complaining that respondent failed to implement the writ of execution. This letter was by 1st Indorsement of Deputy Court Administrator Christopher O. Lock[5] referred to respondent for comment.

Respondent has submitted his Compliance-Comment.

From respondent’s Comment, the following are gathered:

A decision in favor of complainant was rendered in Civil Case No. I-194, “Antonio Rodriguez v. Elmer Raagas,” by Branch 24 of the RTC of Sibugay, Zamboanga on April 15, 1999. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing consideration, judgment is hereby rendered in favor of plaintiff as follows:

- Declaring the rescission of the Memorandum of Agreement (Exh. A) dated May 8, 1998;
- Ordering the defendant to return and/or restitute the sum of FORTY THOUSAND (P40,000.00) PESOS with legal rate of interest from the date of filing of the Complaint until fully paid; the sum of FIVE THOUSAND FOUR HUNDRED (P5,400.00) PESOS as compensatory damages; the sum of FIFTEEN THOUSAND (P15,000.00) PESOS as moral damages;
- FIVE THOUSAND (P5,000.00) PESOS as exemplary damages; and to pay the costs of this suit.

SO ORDERED. (Underscoring supplied)[6]

The RTC decision was appealed by the judgment debtor to the Court of Appeals which dismissed it for his failure

to file brief. The record of the case was thereupon returned to the court of origin which received it on December 11, 2001.

On complainant's motion, the trial court ordered the execution of the judgment and a corresponding writ of execution was issued.

As the writ of execution could not be enforced, the judgment debtor having transferred residence, respondent found that the judgment debtor had real property registered in his name in the local Registry of Deeds.

Respondent thus informed complainant to prepare an estimated amount of at least P10,000.00 representing expenses for the notation of the Notice of Levy on the judgment debtor's property in the local Registry of Deeds and expenses to be incurred in the execution sale including those for posting of notice and publication thereof to be done in Pagadian City, with the advice that if there was any excess in the amount requested, it would be returned to complainant and actual expenses incurred would be charged as costs against the judgment debtor.

Complainant, however, paid no heed to respondent's request, hence, respondent could not implement the writ of execution.

On his receipt of complainant's letter to the Justice Secretary, respondent asked complainant to produce the amount of P75.00 for the Sheriff's General Fund and JDF representing payment for the levy on execution as well as the amount to be incurred in travelling to Zamboanga del Sur, which is approximately 130 kilometers from Ipil, but again complainant paid no heed.

With the help of a "common friend" who was aware of his predicament, respondent proceeded to cause the registration of the Notice of Levy on the judgment debtor's property.

Respondent thus proffers that the delay in the execution of the decision is not attributable to him.

The OCA, in its request for the present case to be included in this Court's agenda, gives the following Evaluation:

x x x

Based on the foregoing, respondent has clearly shown a grave disregard of pertinent provisions of the rules with respect to the collection of legal fees or expenses to which a sheriff is entitled. He committed a serious infraction of the above-mentioned provision by demanding directly from complainant the amount of P10,000.00 (which fact Sheriff Aposaga, Jr. admitted) for the annotation of the levy on execution of the property of the judgment debtor, without the requisite authority of the court. As sheriff he is duty bound to know at least these very basic rules relative to the implementation of writs of execution. What is worthy of note is that respondent has been a deputy sheriff for more than twelve years. Surely, respondent ought to have known the correct/proper procedure to be followed in requesting for expenses from a judgment creditor in order to ensure proper administration of justice especially in its concluding stage. In sum, the gravamen of respondent's shortcoming is in his failure to observe Sec. 9 of Rule 141. We feel that a penalty of fine of (P2,000.00) would be in order. (Underscoring supplied)[7]

By Resolution of December 18, 2002, this Court resolved:

- (a) to RE-DOCKET the complaint as a regular administrative matter; and
- (b) to require the parties to MANIFEST to the Court, within twenty (20) days from notice, whether they are submitting the case for resolution on the basis of the pleadings/records already filed and submitted.[8]

The records show that the copy of this Court's abovestated Resolution of December 18, 2002 addressed to complainant was received on February 6, 2003.[9] Nothing has been heard from him, however.

On respondent's part, he filed a Manifestation[10] which was received at the Docket and Clearance Division of this Court on March 13, 2003 informing that the decision was "already executed per return attached as Annex 'A' hereto dated August 6, 2002," and that a Certificate of Sale dated August 2, 2002 was issued, xerox copy of which he attached as Annex "B." He submits the case for resolution with prayer for its dismissal for "being utterly baseless and unfounded."

The pertinent provision of Section 9 of the 1997 Rules of Civil Procedure reads:

SEC. 9. Sheriff, and other persons serving processes.—

x x x

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. (Emphasis and underscoring supplied)

It bears emphasis that high standards are expected of sheriffs, they being agents of the law.[11] They are mandated to perform the duties of their office earnestly, faithfully and honestly.

In respondent's case, instead of preparing an estimate of expenses to be incurred in implementing the writ of execution and thereafter securing the court's approval thereof, he verbally estimated the expenses and directly conveyed the same to the judgment creditor-complainant.

For violation of Sec. 9 of Rule 141 then, respondent should be faulted. The recommendation of the OCA that he be fined the amount of P2,000.00 and sternly warned sits well with this Court.

WHEREFORE, for violation of Sec. 9 of Rule 141 of the 1997 Rules of Civil Procedure, respondent Vicente P. Aposaga, Jr., Sheriff IV of the Regional Trial Court of Sibugay, Zamboanga, is hereby FINED the amount of TWO THOUSAND (P2,000.00) PESOS and STERNLY WARNED that a repetition of the same or similar offense shall be dealt with more severely.

**SO ORDERED.**

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

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[1] Rollo, unpagged but inserted between pages 24 and 25.

[2] Id at 25.

[3] Id. at 24.

[4] Id. at 17.

[5] Id. at 16.

[6] Id. at 35.

[7] Id. at 3-4.

[8] Id. at 37.

[9] Registry Return Receipt No. 7984, pasted at the dorsal side of 37, rollo.

[10] Rollo at 38.

[11] Balanag, Jr. v. Osita, 388 SCRA 630 (2002).

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