

BASILIO P. MAMANTEO, FLORENTINO B. TRINIDAD, BONIFACIO MANGANIP AND EDGAR S. SALLIDAO, COMPLAINANTS, VS. DEPUTY SHERIFF MANUEL M. MAGUMUN, RESPONDENT.

A.M. No. P-98-1264 (Formerly OCA IPI No. 97-263-P). July 28, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

What should the sheriff do when he is informed by the defendant in a replevin that the property to be seized is in custodia legis and in fact already forfeited in favor of the government by order of another government agency?

This question assumes importance in light of the charges of grave misconduct filed by complainants Basilio P. Mamanteo, Provincial Environment and Natural Resources (PENR) Officer; Florentino B. Trinidad, Community Environment and Natural Resources (CENR) Officer; and Bonifacio Manganip and Edgar S. Sallidao, both DENR forestry employees stationed in Tabuk, Kalinga, against Deputy Sheriff Manuel M. Magumun of the Regional Trial Court, Br. 4, Tuguegarao, Cagayan.

On 12 April 1996 forestry employees of the DENR, Cordillera Administrative Region, Tabuk, Kalinga, tasked with the enforcement of forestry laws, intercepted a San Miguel Corporation van with Plate No. PJC-321 loaded with narra flitches wrapped in nylon sacks and covered with empty beer bottles and cartons. Confronted by the forestry employees, Villamor Martinez, driver of the van, could not produce any legal permit authorizing him to transport the narra lumber. Hence, after issuing seizure receipts, the vehicle and its load of narra flitches were confiscated by the DENR forestry employees.

On 24 May 1996 a criminal complaint against driver Villamor Martinez was filed before the Provincial Prosecutors Office of Tabuk, Kalinga, for violation of Sec. 78 of P.D. 705[2] as amended, and implemented by DENR Administrative Order 59.[3] On 24 July 1996, after due notice and opportunity to be heard, an order of forfeiture of the vehicle and its load was issued by the DENR Regional Office pursuant to its quasi-judicial authority to administratively order the confiscation and forfeiture of lumber possessed without permit including its conveyance.

Thereafter, San Miguel Corporation, the owner of the vehicle, through its agent Aimardo V. Interior, filed a case for recovery of personal property and damages with application for writ of replevin with the Regional Trial Court, Br. 4, Tuguegarao, Cagayan, against herein complainants. The trial court issued a warrant of seizure of personal property directing its sheriff to take hold of the van and its contents.

On 1 August 1996 Deputy Sheriff Manuel M. Magumun, escorted by Sheriff Jacinto Contapay of RTC-Br. 1, Tabuk, Kalinga, and agents of the Philippine National Police, went to the office of the DENR in Tabuk, Kalinga, to enforce the warrant issued by the trial court but the forestry employees and officials refused to release the van on the ground that it had already been forfeited in favor of the government and was now in custodia legis. Despite this explanation, on 7 August 1996, Deputy Sheriff Magumun accompanied this time by Sheriff John Dongui-is Jr. of the Office of the Clerk of Court of Tabuk, Kalinga, and twenty (20) other persons, took the van without

permission of the employees and officials of the DENR. On 13 August 1996, after the lapse of the five-day period prescribed by law for filing an opposition to the writ, the vehicle was delivered to Aimardo V. Interior, agent of SMC.

In his comment, Deputy Sheriff Magumun explained that it was his ministerial duty to execute the warrant in accordance with its mandate and his duties as sheriff under the Rules of Court and the Manual for Clerks of Court.[4] He conceded that he was informed by the forestry employees and officials of the forfeiture of the vehicle subject of the warrant of seizure but he reasoned that it was not within his discretion to withhold the implementation of the warrant.[5] The execution of a warrant of seizure on a vehicle allegedly forfeited in favor of the government was a question of law too technical for him to resolve[6] and faced with such a dilemma he opted to follow the order of the court and execute the warrant in accordance with its mandate.

On 20 October 1997 the complaint was referred to the Office of the Court Administrator (OCA) for evaluation, report and recommendation. The OCA observed that Deputy Sheriff Magumun made a very literal interpretation of Sec. 4, Rule 60, of the Rules of Court as amended.[7] The OCA noted that while Rule 60 was silent on what should be done when the sheriff is informed by the defendant in the replevin that the personal property to be seized has been forfeited in favor of the government and is already in custodia legis, Deputy Sheriff Magumun should not have insisted on seizing the property subject of the warrant of seizure.[8] The appropriate action should have been for respondent to inform his judge of the situation by way of partial Sheriff's Return and wait for instructions on the proper procedure to be observed.[9] For such ignorance of proper procedure the OCA recommended that Sheriff Magumun be penalized in the amount of P5,000.00 at the very least.[10]

We agree. Respondent was placed in a difficult situation where the vehicle subject of the warrant of seizure had already been confiscated by another government agency and forfeited in favor of the government. However, the novelty of his predicament did not call for him to use his discretion and justify his insistence on taking the property subject of the warrant without waiting for instructions from his judge. A sheriff's prerogative does not give him the liberty to determine who among the parties is entitled to the possession of the attached property,[11] much less does he have any discretion to decide which agency has primary jurisdiction and authority over the matter at hand.

When a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate.[12] However, the prompt implementation of a warrant of seizure is called for only in instances where there is no question regarding the right of the plaintiff to the property. Where the plaintiff has shown by his own affidavit that he is entitled to the possession of the property; that the property is wrongfully detained by the defendant; that the same has not been taken for tax assessment or seized under execution or attachment, or if so seized, that it is exempt from such seizure,[13] then the executing officer has no other recourse but to execute the warrant or writ expeditiously.

In the instant case, Deputy Sheriff Magumun has been informed that the property had been impounded due to violation of forestry laws and an order for its forfeiture had already been issued by the DENR. Moreover, he was advised that the proper remedy for SMC, owner of the vehicle, was to appeal the order of forfeiture to the Secretary of the DENR.[14] The prudent recourse then for respondent was to desist from executing the warrant and convey the information to his judge and to the plaintiff. Instead, Deputy Sheriff Magumun carried out the implementation of the warrant of seizure with undue haste as evidenced by the mere 6-day lapse from the time he first served the warrant of seizure on the DENR officials to the time of his precipitate seizure of the van. A warrant could be returned within a period of not less than ten (10) days nor more than sixty (60) days after its receipt by the executing officer.[15] Within this time frame, Deputy Sheriff Magumun should have conferred with his judge and thereafter execute the warrant judiciously and with more certainty.

True, sheriffs must comply with their mandated ministerial duty to implement writs promptly and expeditiously, but equally true is the principle that sheriffs by the nature of their functions must at all times conduct themselves with propriety and decorum and act above suspicion.[16] There must be no room for anyone to conjecture that sheriffs and deputy sheriffs as officers of the court have conspired with any of the parties to a case to obtain a favorable judgment or immediate execution. The sheriff is the front line representative of the judiciary and by his act he may build or destroy the institution.

As observed by the OCA, the writ of replevin has been repeatedly used by unscrupulous plaintiffs to retrieve their chattel earlier taken for violation of the Tariff and Customs Code,[17] tax assessment, attachment or execution. Officers of the court, from the presiding judge to the sheriff, are implored to be vigilant in their execution of the law otherwise, as in this case, valid seizure and forfeiture proceedings could easily be undermined by the simple devise of a writ of replevin. Hence, sheriffs and deputy sheriffs, as agents of the law, are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing the orders of the court, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice.[18]

WHEREFORE, respondent Deputy Sheriff Manuel M. Magumun is found guilty of grave misconduct and, as recommended, is fined P5,000.00 for arbitrarily implementing the warrant of seizure of personal property and for ignorance of the proper procedure in serving writs of replevin in cases where the personal property to be recovered has already been seized and forfeited in favor of the government for violation of forestry laws. Respondent is warned that a repetition of the same or similar act will merit a more severe sanction.

SO ORDERED.

Puno, Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Respondent Deputy Sheriff Manuel M. Magumun was referred to as Deputy Sheriff M. Magiimun in the affidavit-complaints submitted by complainants, although in his answer to the complaint as well as in his Sheriff's Report he gave his family name as "Magumun."

[2] Sec. 78. Cutting, gathering and/or collecting timber or other products without license. - Any person who shall cut, gather, collect, or remove timber or other forest products from any forest land, or timber from alienable and disposable public land, or from private land, without any authority or possess timber or other forest products without the legal documents required under existing laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code; Provided, That in the case of partnerships, associations or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The court shall further order the confiscation in favor of the government of the timber or forest products cut, gathered, collected, removed, or possessed as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found. (Revised Forestry Code, P.D.705 as amended by P.D.1559, and by E.O. No. 277, promulgated 25 July 1987, 83 OG No. 31, 3 August 1987).

[3]Guidelines for the Confiscation, Forfeiture and Disposition of Conveyance used in the commission of offenses.

[4] Rollo, p. 21.

[5] Id., p. 22.

[6] Ibid.

[7] Sec. 4. Duty of the sheriff. - Upon receiving such order, the sheriff must serve a copy thereof on the adverse party, together with a copy of the application, affidavit and bond, and must forthwith take the property, if it be in the possession of the adverse party, or his agent, and retain it in his custody. If the property or any part thereof be concealed in a building or enclosure, the sheriff must demand its delivery, and if it be not delivered, he must cause the building or enclosure to be broken open and take the property into his possession. After the sheriff has taken possession of the property as herein provided, he must keep it in a secure place and shall be responsible for its delivery to the party entitled thereto upon receiving his fees and necessary expenses for taking and keeping the same.

[8] Rollo, p. 36.

[9] Id., p. 39.

[10] Ibid.

[11] NBI v. Tuliao, A.M. No. P-96-1184, 24 March 1997, 270 SCRA 351.

[12] See Note 7; Balantes v. Buena, A.M. No. P-94-1013, 14 March 1995, 242 SCRA 327.

[13] Paat v. CA, G.R. No. 111107, 10 January 1997, 266 SCRA 167.

[14] Rollo, p. 5.

[15] Chua v. Gonzales, A.M. No. P-94-1060, 17 December 1996, 265 SCRA 662.

[16] Vda. de Tisado v. Tablizo, A.M. No. P-94-1025, 20 February 1996, 253 SCRA 646; Flores v. Caniya, A.M. No. P-95-1133, 256 SCRA 518; Lepanto Consolidated Mining Co. v. Melgar, A.M. No. P-92-725, 30 April 1996, 256 SCRA 600.

[17] Pacis v. Hon. Averia, No. L-22526, 29 November 1966, 18 SCRA 907.

[18] Bernasal Jr. v. Montes, A.M. No. P-97-1250, 6 October 1997, 280 SCRA 181.

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