

NECENIO GILLANA, Complainant, vs. BALBINO B. GERMINAL, and Sheriff IV, Regional Trial Court, Branch 60, Cadiz City, Negros Occidental, Respondent.

A.M. No. P-07-2307 (Formerly OCA I.P.I. No. 03-1740-P). March 14, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Necenio Gillana (complainant) charges Sheriff Balbino B. Germinal (respondent) of the Regional Trial Court (RTC), Branch 60 of Cadiz City, Negros Occidental with failure to implement a writ of demolition and failure to liquidate the money for its implementation.[1]

In the complaint dated June 28, 2003, complainant as the Judicial Administrator of the Intestate Estate of Spouses Gervacio Jimenez, avers: The Municipal Trial Court in Cities (MTCC) of Sagay City issued on May 30, 2001 a 2nd Alias Writ of Demolition in Civil Case No. 949[2] and a Writ of Demolition dated June 7, 2002 in Civil Case No. 1295[3] which it forwarded to respondent for implementation since the MTCC did not have a sheriff of its own and was under the jurisdiction of RTC Branch 60. Respondent asked for money for the demolition of the structures of the defendants in the two cases. As complainant could not give the amount initially asked for by respondent, it was agreed that respondent would just demolish five of the ten structures stated in the writs for P10,000.00. The structures they agreed to demolish were those of Danilo Panonce, Lucia Fernandez, Cesar Francisco and Andres Casipong defendants in Civil Case No. 949; and of Ladislao Fernandez Diongson, defendant in Civil Case No. 1295. In spite of having received the amount however, as evidenced by a receipt dated August 13, 2002, respondent was only able to implement the writ in Civil Case No. 1295 and failed to demolish the four other structures he was supposed to demolish. Respondent also failed, up to the time of the filing of the complaint, to liquidate the amount of P10,000.00 which he received from complainant.[4]

In his Comment dated October 22, 2003, respondent explains: he failed to implement the writ because the occupancy and possession of the structures to be demolished were uncertain. There were about 150 structures in the area, and he could not rely on complainant's representative in determining which structures were those of defendants, since said representative was not a resident of the place. The structures supposed to be demolished were occupied by persons not defendants in the case and who claimed to be the owners thereof by showing Declarations of Real Property Value. Respondent filed a Sheriff's Partial Return of Service, in order to place in the court and the parties the responsibility of clarifying the issue of possession of the defendants and did not proceed to implement the writ without clarifying first said issue, especially since the decision was rendered way back in 1994. He was very willing to demolish the properties subject of the writs, despite the danger to his life, as he in fact demolished the house of Diongson, there being no dispute regarding his occupancy.[5]

Respondent further contends that: he did not ask for the amount of P10,000.00; it was unexpectedly given him by complainant; respondent instructed complainant's lawyer to deposit the money with the clerk of court but said counsel insisted that respondent sign the receipt and accept the amount, threatening that if respondent would not

accept it directly, they would look for another sheriff and report the matter to this Court; he believed in good faith that he was not obliged to liquidate the amount of P10,000.00, as said amount was for the food and transportation of the police and the demolition team and not for the sheriff's expenses; neither did the counsel nor complainant's representative ask for the liquidation of the amount either verbally or in writing; and in any event, attached to the Comment was the liquidation of the expenses incurred, showing that no amount accrued to respondent's personal benefit.[6]

Complainant filed a Reply refuting respondent's allegations.[7]

The Court in its Resolution dated June 14, 2004 referred the case to the Executive Judge of the RTC, Branch 60 of Cadiz City, for investigation, report and recommendation.[8]

In his Report dated June 22, 2007,[9] Judge Reynaldo M. Alon found respondent guilty of failing to implement the writ of demolition against four defendants in Civil Case No. 949 and recommended that he be fined in the amount of P5,000.00.[10]

The Court does not agree.

While there is no question that sheriffs must act with considerable dispatch in executing judgments,[11] it is equally true, however, that in the enforcement of judgments and writs, sheriffs must know what is inherently right and wrong and must act with prudence and caution. They are called to exercise due care and reasonable skill in the performance of their duties.[12] They cannot just demolish any house within the property of the victorious plaintiff, even if the writ of demolition contains the phrase "and any and all persons claiming rights under them" following the names of the defendants to a case. Evidence must be presented to establish that persons whose properties are to be demolished but whose names do not appear in the complaint derived their rights from defendants impleaded therein.[13] If there is objection to the demolition of structures being claimed by persons not parties to the case, the appropriate course of action for the sheriff is to inform the judge of the situation by way of a partial sheriff's return and wait for instructions on the proper procedure to be observed.[14]

In this case respondent filed a Sheriff's Partial Return of Service dated September 30, 2002, explaining that he was not able to implement the writ of demolition because when he, together with two policemen and four members of the demolition team, went to the subject area on September 26, 2002, the scheduled date of demolition, he found out that Panonce had no house or improvements on the lot; and Cesar Francisco's house was being claimed by Jonathan Francisco, Lucia Fernandez's house by Ruel Carton and Andrea Casipong's house by Lydia Adena, all supported by Declarations of Real Property.[15]

Considering that the decision was rendered by the MTCC way back in 1994 and respondent went to the area to implement the writ only in 2002, as the writ of demolition was indorsed to him only in 2001, respondent acted prudently when he did not push through with the demolition and instead brought to the court's attention, by way of partial return, the question of what particular structures were to be demolished in order for the court and the parties to clarify the same and for the court to give further instructions for respondent to carry out.

Under the premises, the Court finds that respondent cannot be faulted for failing to implement the writ.

The Court notes, however, that respondent failed to observe Section 14 of Rule 39 of the Rules of Court, to wit:

Sec. 14. Return of writ of execution. -- The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon

until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

for which he should be disciplined.

Respondent admitted that he received the writ of demolition on July 9, 2001. Yet he filed a Sheriff's Partial Return of Service only on September 30, 2002.[16]

Respondent is required to make a return and submit it to the court immediately upon satisfaction of the judgment in part or in full; and if the judgment could not be satisfied in full, to make a report to the court within 30 days after his receipt of the writ and to state why full satisfaction could not be made. As sheriff, it was respondent's duty to continue making a report every 30 days on the proceedings being taken thereon until the judgment was fully satisfied. The reason for this was to update the court on the status of the execution and to give it an idea as to why the judgment was not satisfied, with the ultimate purpose of ensuring the speedy execution of decisions.[17]

For failing to observe the requirements set forth in Section 14, Rule 39 of the Rules of Court, the Court finds respondent guilty of simple neglect of duty. As complainant failed to show that respondent was motivated by bad faith or malice in failing to comply with this Rule, a mere reprimand is proper.[18]

Respondent also failed to comply with Section 9, Rule 141 of the Rules of Court which was in effect when respondent received money from the complainant. Although Rule 141 was amended by A.M. No. 04-2-04-SC in 2004, the old provision applies to this case, as the offense took place prior to the amendment. It reads:

Sec. 9. Sheriffs and other persons serving processes. ---

x x x x

In addition to the fees herein above 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.

From this provision it is clear that a sheriff is required to secure the court's prior approval of the estimated expenses and fees needed to implement a court process. The requesting party shall then deposit the amount with the Clerk of Court, and the expenses shall be disbursed to the executing sheriff subject to his liquidation within the same period for rendering a return on the process or writ. Any unspent amount shall be refunded to the party who made the deposit.[19]

Respondent's claim that the amount of P10,000.00 was unexpectedly given him by complainant and that he was forced to accept it cannot excuse him from liability. Respondent should know that as sheriff, he is not allowed to receive any voluntary payments from the parties in the course of the performance of their duties, for to do so would be inimical to the best interest of the service. Even assuming arguendo that such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that these were made for less than noble purposes.[20] Good faith on the part of respondent, or lack of it, in proceeding to properly execute his mandate would be of no moment, for he is chargeable with the knowledge that being the officer of the court

tasked therefor, it behooves him to make due compliances.[21]

His claim that he did not liquidate his expenses because the complainant never demanded it from him also betrays his ignorance of the aforesaid Rule. No demand on the part of the requesting party is needed, as the rule itself mandates that the sheriff should liquidate the expenses incurred by him within the same period for rendering a return on the process. Whether or not he personally benefited from the amount he received is immaterial.[22]

For respondent's act of receiving money from complainant without observing the proper procedure laid down by the rules, the Court finds him liable for simple misconduct.[23] Simple misconduct is a less grave offense, which carries a penalty of suspension of one (1) month and one (1) day to six (6) months for the first offense.[24] Considering however that this is respondent's first offense of this nature which serves to mitigate his liability,[25] the Court finds that a penalty of fine in the sum of P5,000.00, with a stern warning that a repetition of the same offense shall be dealt with more severely, is reasonable and just.[26]

WHEREFORE, the Court finds respondent Balbino B. Germinal, Sheriff IV of the Regional Trial Court, Branch 60 of Cadiz City, Negros Occidental GUILTY of SIMPLE NEGLIGENCE OF DUTY, for which he is REPRIMANDED; and SIMPLE MISCONDUCT, for which he is FINED in the sum of P5,000.00, with a STERN WARNING that repetition of the same or similar offenses shall be dealt with more severely.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Rollo, pp. 1-3.

[2] Entitled "Intestate Estate of the late Spouses Gervacio Jimenez and Lucia Abello, represented by Necenio Gillana, Judicial Administrator v. Danilo Panonce, et al."

[3] Entitled "Intestate Estate of the late Spouses Gervacio Jimenez and Lucia Abello, represented by Necenio Gillana, Judicial Administrator v. SPO4 Ladislao Fernandez Diongson, Jr. alias 'Boy Diongson,' et al."

[4] Supra note 1.

[5] Rollo, pp. 36-39.

[6] Id. at 41-42.

[7] Id. at 75-87.

[8] Id. at 91.

[9] Judge Alon submitted a Manifestation dated October 23, 2006 saying that there has been a delay in the investigation due to the parties' request for resittings and that he will exert all efforts to terminate the case the soonest possible time; id. at 212.

[10] Id. at 318-319.

[11] *Bautista v. Orque, Jr.*, A.M. No. P-05-2099, October 31, 2006, 506 SCRA 309, 315; *Casaje v. Gatbalite*, 387 Phil. 530, 537 (2000).

[12] *Collado v. Sevidal*, A.M. No. P-05-2073, August 29, 2006, 500 SCRA 1, 6.

[13] *Amor v. Leyva*, A.M. No. P-02-1536, January 27, 2006, 480 SCRA 236, 241.

[14] Collado v. Sevidal, supra note 12, at 7.

[15] Rollo, p. 14.

[16] Rollo, p. 14.

[17] Bernabe v. Eguia, 458 Phil. 97, 107 (2003); see also Mangubat v. Camino, A.M. No. P-06-2115, February 23, 2006, 483 SCRA 163, 171.

[18] Punzalan v. Macalisang, A.M. No. P-06-2268, November 27, 2006, 508 SCRA 157, 164.

[19] Tan v. Paredes, A.M. No. P-04-1789, July 22, 2005, 464 SCRA 47, 54-55.

[20] Id. at 55.

[21] Villaluz v. Bautista, 387 Phil. 544, 554 (2000).

[22] See Guevarra v. Sicat, Jr., 446 Phil. 872 (2003).

[23] Id. at 879.

[24] Rule IV Section 52 B (2) Uniform Rules on Administrative Cases in the Civil Service, Civil Service Commission Memorandum Circular No. 19, s. 1999.

[25] Flores v. Falcotelo, A.M. No. P-05-2038, January 25, 2006, 480 SCRA 16; Adoma v. Gatcheco, A.M. No. P-05-1942, January 17, 2005, 448 SCRA 299.

[26] See Grayda v. Primo, A.M. No. P-04-1897, November 11, 2004, 442 SCRA 60.

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