

MARIA AÑONUEVO, COMPLAINANT, VS. ROLANDO E. PEMPEÑA, RESPONDENT.

A.M. No. P-93-795. July 18, 1994

Ponente: REGALADO, J.

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REGALADO, J.:

In a sworn letter-complaint dated January 27, 1993, Maria Añonuevo charged Rolando E. Pempeña, Sheriff IV assigned to the Municipal Trial Court of Goa, Camarines Sur, with non-performance of official duty. Complainant was the plaintiff in Civil Case No. 822, entitled "Spouses Orencio Añonuevo and Maria Añonuevo vs. Bernardo Rodriguez, et. al.," for forcible entry with a prayer in her complaint for a writ of preliminary injunction. In due course, she obtained a favorable judgment for which a writ of execution was subsequently issued. Respondent sheriff allegedly failed to implement said writ.[1]

Pursuant to a resolution of this Court dated May 10, 1993,[2] respondent filed his comment, to which complainant later submitted her reply. Thereafter, the case was referred to the Office of the Court Administrator for evaluation, report and recommendation.

In a memorandum[3] submitted by Deputy Court Administrator Reynaldo L. Suarez, dated April 18, 1994, the following findings are reported:

"It appears that complainant is the plaintiff in Civil Case No. 822, entitled 'Sps. Orencio Añonuevo and Maria Añonuevo vs. Bernardo Rodriguez, et. al., for Forcible Entry with Prayer for Preliminary Injunction.' On June 7, 1989, a decision was rendered in favor of the plaintiffs. The case was appealed to the Regional Trial court of Tigaon and then to the Court of Appeals, both of which courts affirmed the lower court's decision. The decision having become final and executory, the court a quo on February 4, 1992 issued a Writ of Execution commanding the sheriff to require the defendants to vacate and restore the possession of the premises to the plaintiffs; to remove and/or demolish the building being erected on the land in question; and to order the defendants to pay jointly and severally the amount of P15,000 as damages and litigation expenses; P3,500 as attorney's fees and to pay the costs of suit. The aforesaid writ was received by the respondent on February 13, 1992.

"Complainant asserts that on same date, she gave respondent the amount of P500 (P100 with receipt and P400 without receipt) to implement the decision. But until now, respondent has failed to fully execute the decision in spite of the fact that the property in question can only be found within 3 1/2 kms. from the respondent's office.

"Respondent, in his comment, denies that he failed to perform his duty as a sheriff. He claims that the delay was due to the non-cooperation of the plaintiff in the execution of the judgment; that complainant at first was reluctant to give the reasonable amount for the implementation of the writ under the wrong notion that the expenses shall be shouldered first by the Executing Sheriff subject to reimbursement; that despite the pittance allowance of P500 (P100 went to the Clerk of court) given to respondent, the latter was able to realize the P6,000 initially which was increased to P12,000 from the defendants (Annexes 1 and 2); that complainant always prevail(ed) over the respondent to defer the demolition of the houses which will require expenses as (s)he is more interested in the monetary aspect of the main case; that respondent caused to be levied (sic) the

supersedeas bond worth P20,000 which was conditioned to pay for the damages of one of the defendants, Resurreccion Rodriguez, who was considered insolvent but complainant refuses to pay for the documentation and registration fees; and that the alias writ of execution cannot be implemented in the absence of a demolition order from the court which should be obtained by the plaintiff.

"In her reply, complainant denies being interested more in the monetary aspect of the case rather than the main case, claiming that she in fact asked respondent how much money will she have to raise for the demolition of the defendant's houses. She asserts that respondent could have long ago levied (on) the supersedeas bond of the defendants for the damages suffered by her and not implement the writ on a piece by piece basis. She claims that the collection of P12,000 was anomalous since it was realized well beyond the period to execute the writ. Moreover, respondent did not notify complainant of the additional collection of P6,000 as early as October 5, 1992 and that P200 was deducted therefrom when in fact respondent was already paid P400 in advance as sheriff(s) expenses. As for the P100 paid to Atty. Rivera, the latter issued 2 official receipts therefor, OR No. 1367714 and OR No. 0169659.

"On February 3, 1994, respondent filed a Manifestation with Motion to Dismiss praying that the complainant be declared non-suited for failure to file (her) reply despite (an) order from this Court.

"Complainant, on March 22, 1994, opposed the motion to dismiss, arguing that she had already made her reply as of November 1, 1993 and that an oversight to furnish a copy of the reply to herein respondent is not a ground for dismissal due to lack of interest. On said date, she furnished a copy of said reply to the respondent." [4]

x x x

Prefatorily, it bears mentioning that the sheriff is a court official primarily responsible for the speedy and efficient service of all court processes and writs originating from his court and the branches thereof, as well as those that may be delegated to him by other courts. [5]

The records of this case yield ample evidence showing that respondent unjustifiedly failed to fully execute the writ involved in the instant complaint. Said writ commanded him to satisfy the monetary obligation of the defendants therein, to evict the latter and place the plaintiff in possession of the premises, and to remove and/or demolish the structure erected on her land. [6]

In an attempt to justify his half-hearted efforts in the collection of the monetary award, respondent capitalizes on the fact that he succeeded in collecting one-third (1/3) of the obligation from Teofilo Atole, one of the defendants. [7] He allegedly failed to collect any amount from Resurreccion Rodriguez, another defendant, since the latter had no real property registered in his name as certified to by the Deputy Provincial and Municipal Assessor of Goa, Camarines Sur. [8]

Unfortunately for respondent, his aforesaid asseverations cannot exculpate him from liability.

Firstly, it is significant that the decision being executed imposed a solidary obligation upon the defendants. Respondent, therefor, was not in any way justified in collecting only one-third (1/3) of the obligation from Atole as the latter's share, as if the obligation was a joint and not a solidary one.

Secondly, respondent should have levied on all the leviable properties, real or personal, of all the other defendants, [9] sufficient to satisfy the amount of the judgment, costs of suit and attorney's fees.

Respondent further contends that the reason why he did not exert much effort in implementing the other directives in the judgment was that herein complainant became more interested in the enforcement of the monetary aspect thereof. [10]

This defense is definitely unsatisfactory, if not specious. Complainant's alleged "instigation" as to how the judgment must be implemented did not invest respondent with discretion in the enforcement of the writ and, hence, is no justification for its incomplete execution. The sheriff's duty to implement a writ of execution is purely ministerial and not discretionary.[11] Moreover, as we have held in *Young vs. Momblan*,[12] "(w)hen a writ is placed in the hands of a sheriff, it is his duty, in the absence of instructions, to proceed with reasonable celerity and promptness to execute it according to its mandate."

We likewise find irregular respondent's non-issuance of an official receipt for the P400.00 he collected from complainant allegedly as sheriff's expenses.[13] While said amount may not be excessive, it is nonetheless incumbent upon him to issue an official receipt, considering that sheriff's fees form part of the Judiciary Development Fund which is subject to periodic examination and accounting by this Court.[14] Furthermore, it will also be observed that respondent still deducted P200.00 from the P6,000.00 he collected from one of the defendants although he already received P500.00 from complainant as sheriff's fees.[15]

It is an abhorrent and anomalous practice for a sheriff to demand fees in excess of those lawfully allowed. This Court has emphasized, time and time again, that the conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the sheriff and down to the lowliest clerk should be circumscribed with the heavy burden of responsibility. Their conduct, at all times, must be characterized with propriety and decorum, but above all else, must be above and beyond suspicion. For every employee of the judiciary should be an example of integrity, uprightness and honesty.[16]

We find merit, however, in respondent's contention that the removal and/or demolition of the structures erected on the land of the plaintiff (herein complainant) could not be executed for lack of a special order for that purpose.[17] Section 14, Rule 39 of the Rules of Court is explicit on the matter, to wit:

"When the property subject of the execution contains improvements constructed or planted by the judgment debtor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon petition of the judgment creditor after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court."

Thus, we held in *Carreon, et al. vs. Mendiola, etc., et al.*,[18] that "(t)he demolition aspect of the decision subject of the writ of execution pending appeal cannot be implemented without a special order for that purpose." We accordingly absolve respondent on that particular aspect.

WHEREFORE, on the foregoing premises, respondent sheriff Rolando E. Pempeña is declared guilty of non--performance of official duty and is hereby ORDERED to pay a fine corresponding to one (1) month salary, or P4,240.00, with a stern warning that his commission of the same or similar act in the future will be dealt with more severely.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Puno, and Mendoza, JJ., concur.

[1] Rollo, 2.

[2] *Ibid.*, 10.

[3] *Ibid.*, 41.

[4] *Ibid.*, 41-43.

- [5] De Castro vs. Santos, etc., A.M. No. P-90-474, June 19, 1991, 198 SCRA 245.
- [6] Rollo, 33.
- [7] Ibid., 16.
- [8] Ibid., 17.
- [9] Section 15, Rule 39, Rules of Court.
- [10] Rollo, 12.
- [11] Cruz vs. Dalisay, etc., A.M. No. R-181-P, July 31, 1987, 152 SCRA 482.
- [12] A.M. No. P-89-367, January 9, 1992, 205 SCRA 33.
- [13] Annex A, Rollo, 34.
- [14] Adm. Circular No. 31-90, dated October 15, 1990.
- [15] Annex 2, Rollo, 15.
- [16] Valenton, et al. vs. Melgar, etc., A.M. No. P-92-698, March 3, 1993, 219 SCRA 372.
- [17] Rollo, 12.
- [18] A.M. No. P-90-512, March 22, 1993, 220 SCRA 214.

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