

MA. CORAZON M. ANDAL, COMPLAINANT, VS. NICOLAS A. TONGA, DEPUTY SHERIFF III, MTCC, LEGASPI CITY, RESPONDENT.

A.M. No. P-02-1581. October 28, 2003

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PER CURIAM:

The instant administrative case arose when Ma. Corazon M. Andal filed a verified Complaint dated January 11, 2000, charging Nicolas A. Tonga, Deputy Sheriff III, MTCC, Legaspi City, with overcharging "unreasonably high sheriff's fees through padded expenses and imaginary charges,"[1] relative to the latter's implementation of an alias writ of execution in Construction Industry Arbitration Commission (CIAC) Case No. 41-98.

The complainant is the president of the defendant corporation, Andamar, Incorporated, in the aforementioned case. She had earlier written to Mrs. Josefa Candia, Acting Clerk of Court, Municipal Trial Court in Cities (MTCC), Rawis, Legaspi City,[2] with the following averments:

Sheriff Tonga claimed that when the records of the case was indorsed to your office for execution, the Sheriff of RTC in Muntinlupa, Melvin Bagubaldo, failed to attach the BPI check which represented the judgment debt, so, Sheriff Tonga allegedly went to Muntinlupa City personally in order to get it.

First, whose fault was it that the subject check was not attached to the records sent to you? Is it not Sheriff Bagubaldo? Why then should the expenses in getting it be reimbursed by us? Are innocent litigants bound to pay for expenses caused by the inefficiencies/mistakes of government servants?

Second, if the check was not included in the records sent to you is it not practical, expedient and inexpensive if you just write Sheriff Melvin Bagubaldo, to send it by mail to your good office? Time is not of the essence here. Sheriff Nicolas Tonga has absolutely no duty to go to Muntinlupa in order to personally get the check.

Third. We were not absolutely benefited by what Sheriff Nicolas Tonga has done. In fact, as losing respondent, we were prejudiced by it. Why then should we reimburse Sheriff Nicolas Tonga when we did not send him to Muntinlupa to get that check? Let the party benefited by his act reimburse him.

Fourth. Look at how unrealistically extravagant the claim is. Does he have to take the plane in going to Manila and charge us P1,800.00 when ordinary citizens take the bus which cost only about P350.00? Does he have to rent a car that cost P4,000.00 to go to Muntinlupa City, which is only 12 km from Makati City? Does he have to stay in Manila for 3 days, only to get one check, then charge us P2,000.00 for his 3 days (sic) accommodations? In fact, if he left October 3 and came back October 5, he was in Manila for only 2 days.

What is this, are we maintaining travelling expenses of an executive?[3]

Attached to this earlier letter was the list of travelling expenses purportedly incurred by the respondent in the said trip to Manila, and submitted to the complainant on October 8, 1999, to wit:

Statement of actual expenses of Sheriff Nicolas A. Tonga in the implementation of the Alias Writ of Execution in CIAC Case No. 41-98 TO WIT;

September 30, 1999- Transportation Expenses (Tricycle) P/160.00

October 1, 1999 - Transportation Expenses (Tricycle)

ANDAL - RTC 100.00

RTC - Andamon 50.00

October 2, 1999 - Transportation Expenses

Residence - Andamon 150.00

October 3, 1999- Transportation Expenses

Residence - Airport 100.00

Airport - Residence (Taxi) 400.00

Plane Ticket 1,800.00

October 4, 5, 1999

Pasig - Muntinlupa City

Muntinlupa City Makati) RENT A 4,000.00

Makati - Muntinlupa City) CAR

Muntinlupa City - Pasig

October 5, 1999 - 7:00 P.M. - Pasig-Philtranco Terminal

Pasay (Taxi) 350.00

Bus Ticket (Pasay-Daraga) 357.00

Manila Accommodation October 3,4, 5, 1999 2,000.00

October 6, 1999 Transportation (Tricycle hired) 250.00

Meal

150.00

October 7, 1999 Transportation expenses (Tricycle) 200.00

P/10,067.00[4]

In his Comment, the respondent averred that his claim for reimbursement was made subject to the approval of the Office of the CIAC. Out of his claim of P 10,760, only P7,638 was approved, as shown in the CIAC Order dated January 18, 2000.[5] Despite such approval, Andamar, Incorporated did not pay a single cent for sheriff's expenses in the implementation of the alias writ of execution. The respondent also averred that upon serving the writ on Mr. Pol Andal, the complainant's husband, he advised the latter to just issue a replacement check for the one already in the possession of the RTC Sheriff of Muntinlupa City, but Mr. Andal decline According to the respondent -

- To my mind, the filing of this complaint is a form of harassment to dis[s]uade me from claiming any sheriff's expense which is a legitimate claim as provided by the Rules of Court and perhaps as a form of vengeance for having lost in this case. If this is so, then she is definitely barking up the wrong tree, so to speak.[6]

Meanwhile, the CIAC had apparently issued a Supplemental Writ of Execution dated November 26, 1999 in favor

of the respondent, signed and approved by Sole Arbitrator Joven B. Joaquin, to wit:

By virtue of the authority vested upon me by Executive Order No. 1008, and pursuant to Rule 141 of the Rules of Court authorizing Sheriffs to recover the costs incurred in connection with their implementation of Writs of Execution against the losing parties, you are hereby commanded that, of the goods and chattels of Claimant ANDAMAR, INCORPORATED, you cause to be made the amount of P7,638.00 representing your actual expenses duly proven to have been incurred in connection with your implementation of the Writ of Execution issued by this Sole Arbitrator and duly concurred in by the Construction Industry Arbitration Commission (CIAC) on September 20, 1999, to enforce the judgment rendered by this Sole Arbitrator against the Claimant in the above-captioned case.

If sufficient property cannot be found whereof to satisfy this Supplemental Writ of Execution, then you are commanded that of the lands and buildings of the said Claimant, you make the said sum of money in the manner required by the Rules of Court, and make return of your proceedings with this Writ within thirty (30) days from receipt hereof.[7]

The complainant requested the CIAC for a bill of particulars,[8] praying that pending clarification of the items, payment of the said sheriff's fees be ordered suspended. The CIAC thereafter issued the January 18, 2000 Order[9] denying the complainant's prayer for suspension of payment and setting forth the itemized detail of the sheriff's expenses as follows:

Particulars

Amount

1.

Philtranco Bus Fare

P 357.00

2.

PAL Air Fare

P3,281 .00

3.

Elvin Service Rent-A-Car

P4,000.00

TOTAL

P7,638.00

The case was referred to Executive Judge Raymund M. Jacob, MTCC Branch 2, Legaspi City, for investigation, report and recommendation.[10] In Letter dated November 17, 1999, the Executive Judge informed the complainant that when confronted, Acting Clerk of Court Josefa Candia admitted that she sent copies of the sheriff's report, together with other pertinent papers in connection with the implementation of the said writ. However, Mrs. Candia explained that she never actually demanded reimbursement of the said expenses. The Executive Judge clarified that in the said report, the respondent was merely asking the CIAC for its approval of the alleged actual expenses incurred in serving the alias writ. Judge Jacob further advised the complainant not to pay the said amount, because "in the first place, the CIAC should have first assessed and determined whether the

said alleged expenses were reasonable and proper."[11]

After due hearing and presentation of evidence, the investigating Judge submitted his Report dated March 1, 2002 with the following recommendation:

After a careful assessment and evaluation of the evidence adduced, the undersigned finds that respondent sheriff acted irregularly when he demanded on October 6, 1999 from complainant Ma. Corazon M. Andal, President of Andamar Incorporated, the amount of P 10,000.00 as reimbursement of his actual expenses incurred relative to the enforcement of the alias writ of execution, issued by the Construction Industry Arbitration Commission, without first securing the approval of said expenses by said commission. As shown by evidence, respondent sheriff prepared his statement of actual expenses (Exhs. A and 4, common, Rollo, p. 2) only on October 8, 1999 (Exh. A-3, supra) for approval by the CIAC, after complainant herein had refused on October 6 and 7, 1999 to give him the amount demanded (t.s.n., Feb. 12, 2002, pp. 20-21).

...

WHEREFORE, it is hereby respectfully recommended that respondent Nicolas A. Tonga be held administratively liable for irregularity in the performance of his duties in violation of Section 9 of Rule 141 of the Rules of Court, as amended, by imposing upon him the penalty of SUSPENSION without pay for a period of fifteen (15) days, with a warning that a similar act in the future shall be dealt with more severely.[12]

We agree with the findings of the Executive Judge.

Rule 141, Section 9(1) of the Revised Rules of Court, as amended. authorizes the sheriff and other persons serving processes to collect certain amounts from parties while in the performance of their functions.[13] According to the same rule:

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.

In the case of *Tiongco v. Molina*,[14] we restated what should be of common knowledge to court personnel, thus:

The rule requires the sheriff executing the writs or processes to estimate the expenses to be incurred and upon the approval of the estimated expenses, the interested party has to deposit the amount with the Clerk of Court and the Ex-officio Sheriff. These expenses shall then 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.[15]

It is clear then that a sheriff in the performance of his duties is not precluded from collecting additional sums from a requesting party. He is, however, mandated by the Rules to follow certain steps: first, to make an estimate of the expenses to be incurred by him; second, to obtain court approval for such estimated expenses; third, the approved amount shall be deposited by the interested party with the clerk of court and ex-officio sheriff; fourth, the clerk of court shall disburse the amount to the executing sheriff; and fifth, the executing sheriff shall liquidate his expenses within the same period for rendering a return on the writ.[16]

The respondent admittedly failed to follow this procedure. As found by the Investigating Judge:

...In this case, respondent sheriff failed to first file with the CIAC the estimated actual expenses for its approval before incurring the alleged actual expenses in implementing the alias writ of execution. Respondent sheriff acted irregularly when he first shouldered the alleged actual expenses in the total amount of P 10,067.00 without first allowing the CIAC to determine whether the estimated expenses would be reasonable and proper and then tried to pass said expenses on to the herein complainant, who is the President of Andamar Incorporated. He should have waited for the amount to be first approved and officially disbursed to him, if indeed due or required for expenses. ...[17]

Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them.[18] They are duty bound to know at least the very basic rules relative to the implementation of writs of execution.[19]

The respondent ought to be reminded that as an officer of the court, he should at all times show a high degree of professionalism in the performance of his duties. By failing to observe the proper procedure, the respondent showed very little regard in upholding the law. As a front-line representative of our justice system, he should be more vigilant in the execution of the law, for once he loses the people's trust, he diminishes the people's faith in the judiciary.[20] The imperative and sacred duty of each and everyone in the court is to maintain its good name and standing as a temple of justice.[21]

The respondent's failure to faithfully comply with the provisions of Rule 141 constitutes dereliction of duty and negligence[22] which warrants the imposition of disciplinary measures. The Court also takes judicial notice that the respondent was previously found guilty of serious misconduct and fined P5,000 for having "assisted" a fellow sheriff in the implementation of a writ without authority of the issuing court; he was likewise sternly warned by the Court that a similar conduct in the future would be dealt with more severely.[23]

The Court finds that the appellant, by his actuations, is guilty of gross neglect of duty. Gross neglect of duty is classified as a grave offense under Section 52, Rule IV of Civil Service Memorandum Circular No. 10, and carries with it the penalty of dismissal.

WHEREFORE, respondent Sheriff Nicolas A. Tonga is found GUILTY of gross neglect of duty and is forthwith DISMISSED from the service with forfeiture of all benefits and privileges except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations and financial institutions.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.
Ynares-Santiago, J., on leave.

[1] Rollo, p. 1.

[2] Annex "B," Rollo, p. 3.

[3] Ibid.

[4] Annex "A," Rollo, p. 2.

[5] Annex "3," id. at 13.

[6] Rollo, p. 9.

[7] Exhibit "G," Rollo, p. 42.

[8] Exhibit "H," Rollo, p. 44.

[9] Exhibit "I," Rollo, p. 45.

[10] Rollo, p. 19.

[11] Exhibit "F," Rollo, p. 41.

[12] Report, p. 9-11.

[13] SEC. 9. Sheriffs and other persons serving processes.-

(l) For money collected by him by order, execution, attachment, or any other process, judicial and extrajudicial, the following sums, to wit:

- On the first four thousand (P4,000.00) pesos, five (5%) per centum;

- On all sums in excess of four thousand (P4,000.00) pesos, two and one-half (2.5%) per centum.

[14] 416 Phil. 676 (2001).

[15] Id. at 681-682.

[16] Rizal Commercial Banking Corporation v. Quilantang, 413 Phil. 13 (2001).

[17] Report, pp. 9-11.

[18] Ignacio v. Payumo, 344 SCRA 169 (2000).

[19] Morta, Sr. v. Sañez, 343 SCRA 177 (2000).

[20] Visitacion, Jr. v. Ediza, 414 Phil. 699 (2001).

[21] Punzalan Santos v. Arquiza, 244 SCRA 527 (1995).

[22] Tiongco v. Molina, *supra*.

[23] Araza v. Garcia, 325 SCRA 1 (2000).

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