

**VICENTE ALVAREZ, JR., COMPLAINANT, VS. JOSE R. MARTIN,
SHERIFF IV, RESPONDENT.**

A.M. No. P-03-1724 (Formerly OCA IPI No. 01-1161-P). September 18, 2003

Ponente: PUNO, J.

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PUNO, J.:

Before this Court is an administrative complaint[1] dated April 4, 2000 against respondent Jose R. Martin, Sheriff IV of the Regional Trial Court of Cauayan, Isabela, Branch 19, for failure or refusal to perform official duty.

Complainant Vicente Alvarez, Jr. is the plaintiff in Civil Case No. 1928 for unlawful detainer, entitled Vicente Alvarez, Jr. vs. Danilo Ico, et al., that was filed before the Municipal Circuit Trial Court of Cauayan, Isabela. On November 27, 1996, the Municipal Trial Court of Cauayan, Isabela rendered a decision in favor of the plaintiff. The dispositive portion[2] reads as follows:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendants:

- ORDERING the defendants, their agents, privies, and all persons acting at their authority to immediately vacate the premises in question and surrender the possession thereof to the plaintiff;

- ORDERING the defendants to pay their monthly rental in arrears as follows:

(a) Danilo Ico – Total of P114,000.00 to date broken down as follows:

First two (2) door paying monthly rental of P1,500.00 per door or P3,000.00 a month:

December 1994 P 3,000.00

January to December 1995 36,000.00

January to October 1996 30,000.00

Total: P69,000.00

Third door which pays a monthly rental of P800.00

January to December 1992 P 9,600.00

January to December 1993..... 9,600.00

January to December 1994..... 9,600.00

January to December 1995..... 9,600.00

January to October 1996..... 8,000.00

Total: P46,000.00

(b) x x x

x x x

with an interest of 6% from the date of filing of this complaint until fully paid.

- ORDERING the defendants to pay jointly and severally the plaintiff a reasonable amount of P5,000.00 for the damages;
- ORDERING the defendants to pay jointly and severally the plaintiff a reasonable amount of P5,000.00 as attorney's fees.

WITH COSTS.

The defendants appealed to the Regional Trial Court (RTC) of Cauayan, Isabela. In its Decision[3] dated February 3, 1997, the said RTC affirmed the trial court.

Of the defendants, only Danilo Ico appealed to the Court of Appeals. The appellate court denied the appeal in its Resolution[4] dated March 3, 1997. Ico's motion for reconsideration was likewise denied in the Resolution[5] of the appellate court dated July 13, 1998. Ico then appealed to this Court. The appeal was denied in the Resolution[6] of this Court dated August 26, 1998. His motion for reconsideration was denied with finality in the Resolution[7] of this Court dated November 16, 1998.

On November 5, 1999, the Municipal Trial Court of Cauayan, Isabela issued a Writ of Execution[8] of the subject decision. Respondent sheriff received the writ on February 3, 2000. On March 7, 2000, the respondent returned the said writ of execution unimplemented. Ico refused to vacate the subject premises and showed a copy of the Petition for Review which he had filed with the Supreme Court. The Sheriff's Return[9] reads as follows:

Respectfully return (sic) to the Honorable Court herein writ of execution NOT IMPLEMENTED due to the refusal of defendant Danilo Ico to vacate because according to him there are actually five (5) doors; three (3) doors are under lease, the other two (2) doors not actually occupied by his machine shop not leased (sic) besides, he showed us a PETITION FOR REVIEW filed by him with the Supreme Court, respect should be accorded to the Supreme Court to wait the final resolution of this petition for review, and added that he is willing to vacate if the Supreme Court decided in his favor (sic).

Complainant further claimed that during the time the said writ of execution was in the hands of the respondent for enforcement, the latter "had been seen dining and wining with defendant Ico." [10]

On March 14, 2000, the complainant filed an ex parte motion to compel the respondent to execute the writ. The motion, however, was merely noted[11] by the Municipal Trial Court. On July 5, 2000, the complainant filed a motion to designate another sheriff to enforce the decision. The Municipal Trial Court denied the motion, per its Order dated July 7, 2000, on the ground that it is the prerogative of the ex officio Provincial Sheriff, the Clerk of Court of the Regional Trial Court, to select the sheriff that will enforce the decision. The complainant filed his motion for reconsideration which was denied in the resolution of the court dated August 4, 2000.

On August 10, 2000, the Clerk of Court of the Municipal Trial Court forwarded to the Regional Trial Court of Cauayan, Isabela the writ of execution of the decision in Civil Case No. 1928 and a Philippine Postal Money Order for the amount of P150.00 for the payment of the required sheriff's fee in the execution of the decision. The Clerk of Court of the Municipal Trial Court made the notation that the original copy of the writ is still in the possession of the respondent. The Clerk of Court of the Regional Trial Court assigned another sheriff in the person of Rodolfo Tuliao to execute the decision. On September 18, 2000, Sheriff Rodolfo Tuliao of the Regional Trial Court of Cauayan, Branch 20, stated in his Sheriff's Return, among others, that the defendant Ico voluntarily surrendered two (2) apartments.

Complainant maintains that respondent's refusal to implement the writ of execution because of the pendency of defendant Ico's purported petition for review with the Supreme Court, is a clear abdication of his official and ministerial duty.[12] In defense, respondent claims that complainant had no legal right to compel him to implement the writ of execution because the complainant had repeatedly failed and refused to pay the corresponding sheriff's fees and to accompany him during its implementation. He avers that though the complainant had not paid the required sheriff's fees, he still went to see defendant Ico on two (2) occasions – on February 14 and March 7, 2000 to implement the writ of execution. Unfortunately, defendant Ico had padlocked the building and respondent was refused entry therein.[13]

Respondent also denies the allegation that he "was dining and wining with defendant Ico" for the reason that he had never been with the latter in any place in Cauayan, Isabela, or in the Philippines. He avers he does not drink wine.[14]

Complainant, in his Reply[15] to Respondent's Answer, denies the allegation of respondent that he refused to pay the corresponding sheriff's fees despite repeated demands made by respondent. He explained that even before the writ of execution was issued on November 5, 1999, he had already authorized his personal representative, Mr. Ernesto Tallano, to attend to the matter of the issuance and enforcement thereof. He alleged that it was Mr. Tallano himself who negotiated with Sheriffs Martin and Asirit for a "PACKAGE DEAL" of TEN THOUSAND PESOS (P10,000.00) for the implementation of the writ of execution to be paid upon the ejectment of defendant Ico from the subject premises. He clarified that when he gave his approval to the said arrangement, he was not informed that the payment of the sheriff's fees was a pre-condition for the implementation of the writ of execution.[16]

Furthermore, complainant brands as bereft of any factual basis the allegation of respondent that the latter had required the personal presence of the former during the enforcement of the writ of execution. He averred that since he had already designated Mr. Ernesto Tallano as his personal representative, there was no more need for him to personally accompany the respondent to eject defendant Ico from the subject premises.

Lastly, complainant charges conspiracy among some court personnel to delay the implementation of the writ of execution against defendant Ico. He alleged that the purported letters, and the affidavit of Ico annexed to respondent's Answer and even the Answer of the respondent bear unerring resemblance in writing style, sentence construction, and afterthought reasoning to the pleadings of Ico in connection with the ejectment case. Even the typewriter/s used, the computer print-outs, and the handwritten notations on the Answer of the respondent and its Annexes bear unmistakable resemblance to the pleadings and papers filed by Ico in the ejectment and related cases. These, complainant concludes, indicate that respondent is part of Ico's "team effort" at further detaining the premises.

In a Resolution[17] dated July 31, 2002, we referred this administrative complaint to the Honorable Henedino P. Eduarte, Executive Judge of the Regional Trial Court of Cauayan, Isabela for investigation, report and recommendation.

Executive Judge Eduarte recommended that respondent be suspended for two (2) months without pay. In his Report and Recommendation dated October 20, 2002, he found that respondent:

- (1) violated section 9, Rule 141, Rules of Court when he demanded from the complainant P1,500.00 for the alleged "lunch or merienda" of the policemen who will accompany him to implement the writ;
- (2) violated section 14, Rule 39, Rules of Court for not submitting a monthly report to the Municipal Trial Court regarding his implementation of the writ;

- (3) knowing that the Sheriff's fee was not paid, he nevertheless attempted to implement the writ of execution;
- (4) refused to enforce the writ of execution just because the defendant Danilo Ico refused to vacate the property; and
- (5) delayed the implementation of the writ when he returned the same to the Clerk of Court, because defendant Danilo Ico refused to vacate the property.

The Office of the Court Administrator, upon evaluation of the Report and Recommendation of Executive Judge Henedino P. Eduarte, likewise recommended a penalty of suspension for a period of two (2) months against respondent. In addition, it also recommended that the Clerk of Court of the Municipal Trial Court of Cauayan, Isabela be admonished for non-compliance with section 9(g), Rule 141 of the Rules of Court when it issued the writ of execution without requiring the payment of the fee required by the rules.

We agree with the findings of the investigating judge holding respondent liable for refusal to perform his duty and for violation of section 9, Rule 141[18] and section 14, Rule 39[19] of the Rules of Court.

It is clear that respondent refused to perform his duty to enforce the writ when he returned it to the Municipal Trial Court unimplemented. It is stated in his Sheriff's Return dated March 7, 2000 that he was unable to implement the writ because of the refusal of defendant Ico to vacate the premises, the latter showing him a pending Petition for Review with the Supreme Court. Under section 10(c), Rule 39, Rules of Court,[20] he is mandated to oust the defendant Ico from the subject premises. If there is resistance, he is authorized to employ the assistance of peace officers and use such means necessary to take possession of the property and place the complainant in its possession.

The testimony of respondent that he ejected the defendant Danilo Ico from the two (2) doors on March 7, 2000 is not true.[21] He never made this allegation in his Sheriff's Return dated March 7, 2000. It was Sheriff Rodolfo Tuliao who took over the implementation of the writ after respondent returned the writ of execution. Sheriff Tuliao successfully implemented the writ on September 18, 2000 when defendant Ico finally vacated the two (2) doors, and complainant was placed in its possession.[22]

Further, respondent sheriff erred in proceeding to implement the writ of execution despite knowledge of non-payment of the sheriff's fee. Respondent's excuse that he was being pestered by the complainant[23] is unavailing. Moreover, having in fact proceeded in implementing the writ without payment of the sheriff's fee, respondent cannot now raise the same issue of non-payment as his defense for not completing the execution. Respondent sheriff should have exerted every effort and indeed considered it his bounden duty to see to it that the final stage in the litigation process, i.e., the execution of the judgment is carried out in order to ensure a speedy and efficient administration of justice.[24] A sheriff's role in the execution of judgment is purely ministerial and he has no discretion whether to execute the judgment or not.[25] The pendency of a petition for review with any court is not sufficient excuse to defer implementation of the said writ. In the absence of any instruction to the contrary, it is the duty of the sheriff to proceed with reasonable celerity and promptness to execute a judgment according to its mandate.[26]

Furthermore, respondent's act of demanding money and receiving P1,500.00 from the complainant for the lunch and merienda of the policemen who will accompany him in executing the decision of the Court is a clear violation of section 9, Rule 141.[27] The Rules require the sheriff to estimate his expenses in the execution of the decision. The prevailing party will then deposit the said amount to the Clerk of Court who will disburse the amount to the sheriff, subject to liquidation. Any unspent amount will have to be returned to the prevailing party. In this case, no estimate of sheriff's expenses was submitted to the court by respondent. In fact, the money which respondent deputy sheriff had demanded and received from complainant was not among those prescribed and authorized by

the Rules of Court.[28] This Court has ruled that any amount received by the sheriff in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction and renders him liable for grave misconduct and gross dishonesty.[29]

We disregard the recommendation of the Office of the Court Administrator that the Clerk of Court of the Municipal Trial Court of Cauayan, Isabela be admonished for non-compliance with section 9(g), Rule 141 of the Rules of Court when he issued the writ of execution without requiring the payment of the fee required by the Rules. The Clerk of Court of the Municipal Trial Court of Cauayan, Isabela was not impleaded in the complaint. Thus, he was given no opportunity to explain his alleged omission which is demanded by due process. Thus, we refer this matter to Investigating Judge Henedino P. Eduarte for appropriate action.

IN VIEW THEREOF, respondent Jose R. Martin, Sheriff IV of the Regional Trial Court of Cauayan, Isabela, Branch 19 is found GUILTY of failure/refusal to perform official duty, and is hereby SUSPENDED for a period of three (3) months[30] without pay. Investigating Judge Henedino P. Eduarte is hereby directed to require the Clerk of Court of the Municipal Trial Court of Cauayan, Isabela to explain why he failed to collect the sheriff's fee from complainant upon issuance of the writ of execution.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.

[1] Rollo, pp. 2-20.

[2] Id. at 10-12.

[3] Id. at 13-19.

[4] Id. at 20-21.

[5] Id. at 22-23.

[6] Id. at 24.

[7] Id. at 25.

[8] Exhibit "A," Rollo, pp. 27-29.

[9] Exhibit "B," id. at 30.

[10] "Administrative Complaint," id. at 5.

[11] Exhibit "C," Order, id. at 31.

[12] Rollo, p.5.

[13] Id. at 67.

[14] Id. at 58.

[15] Id. at 59-66.

[16] TSN, 13 September 2002, pp. 6-7.

[17] Id. at 76.

[18] Rule 141 LEGAL FEES

SEC. 9. Sheriffs and other persons serving processes. –

x x x

(g) For executing writ or process to place a party in possession of the real estates, one hundred and fifty (P150.00) pesos;

x x x

[19] Rule 39 EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS

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 therefore. 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.

[20] SEC. 10. Execution of judgments for specific act. –

x x x

(c) Delivery or restitution of real property. – The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.

x x x

[21] TSN, 02 October 2002, p. 7.

[22] TSN, 11 September 2002, p. 10.

[23] TSN, 02 October 2002, p. 19.

[24] Lacuata vs. Bautista, 235 SCRA 290 (1994).

[25] Paner vs. Torres and Vergara, A.M. No. P-01-1451, 28 February 2003, citing Araza vs. Garcia, 325 SCRA 1 (2000) and Aristorenas vs. Molina, 246 SCRA 134 (1995).

[26] Villareal vs. Rarama, 247 SCRA 493 (1995).

[27] Rule 141, Sec. 9. Sheriff, and other persons serving processes. –

x x x

(g) For executing writ or process to place a party in possession of the real estate, one hundred and fifty pesos (P150.00);

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 travel, guard's 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.

[28] *Lim vs. Guash*, 223 SCRA 756 (1993).

[29] *Abalde vs. Roque, Jr.*, A.M. No. P-02-1643, 01 April 2003.

[30] Failure/Refusal to Perform Official Duty is Neglect of Duty under Civil Service Rules and Regulations. Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, effective September 26, 1999, prescribes the penalty of suspension for a period of 1 month and 1 day to 6 months for the 1[st] offense of Simple Neglect of Duty. Section 54 further provides that the medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.

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