

**KATIPUNAN NG TINIG SA ADHIKAIN, INC. (KATIHAN) BY
GODOFREDO S. BONGON, COMPLAINANT, VS. JUDGE LUIS ZENON O.
MACEREN, SHERIFF ANTOLIN ORTEGA CUIZON, METROPOLITAN
TRIAL COURT, BRA...**

A.M. No. MTJ-07-1680 (Formerly OCA I.P.I. No. 07-1876-MTJ). November 28, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

Before us is respondent Sheriff Antolin Ortega Cuizon's motion for reconsideration of the Decision of the Court dated August 17, 2007, suspending him for a period of three (3) months without pay with a warning that a commission of the same or similar acts will be dealt with more severely.

The antecedents:

Complainants were among the unlawful occupants of the parcels of land owned by Carmen Lopez, which were subsequently sold to Efrain Limsui (Limsui). On September 14, 2005, Limsui filed a case for ejectment and damages against the informal settlers of the property before the Metropolitan Trial Court (MeTC) of Manila, Branch 39, Quezon City. The case was entitled "Efrain Limsui, represented by his Attorney-in-fact, Apolonio Magno v. Damayang Magkakapitbahay ng 81 Linaw Street, Inc. and B.I.G.K.I.S. Neighborhood Association, and their members and all persons claiming rights under them." Complainants' group was not impleaded as respondent in the complaint.

On September 19, 2005, summonses were served on the defendant associations. However, no answer was filed by them. On September 26, 2005, a Compromise Agreement was executed and presented to the MeTC. On November 2, 2005, the MeTC rendered a Decision based on the compromise agreement. Under the agreement, defendant associations consented to vacate the property voluntarily and remove the structures that they erected on the land, in exchange for the financial assistance that Limsui would give them.

On October 21, 2005, complainants filed a Verified Manifestation and Motion before the MeTC, stating that they were also residents of the land and that they were in danger of being evicted without due process of law. Respondent judge merely noted the verified manifestation and motion since complainants were not parties to the case.

On November 23, 2005, the MeTC issued an Order granting the issuance of the writ of execution for the enforcement of the Decision dated November 2, 2005. On November 30, 2005, a Writ of Execution was issued by the MeTC. On the same day, respondent sheriff issued a notice to vacate the property. On June 28, 2006, respondent sheriff, without authority from the MeTC, issued a final notice of demolition. On July 7, 2006, he submitted the Sheriff's Report to the MeTC, that is, after almost eight months from the issuance of the writ of execution.

Complainants filed the present administrative complaint against respondents. They contend that due to the writ of

demolition issued by respondent judge, they were ejected from the property without due process of law. They aver that they should not be affected by the decision rendered by respondent judge because they are not parties to the case before the MeTC. They filed the administrative case against respondent sheriff because he issued a notice of demolition without order or authority from the MeTC.

On August 17, 2007, the Court issued the assailed Decision, the fallo of which reads:

WHEREFORE, in view of the foregoing, the administrative complaint against Judge Luis Zenon O. Maceren is DISMISSED for lack of merit. Sheriff Antolin Ortega Cuizon is SUSPENDED for a period of three (3) months without pay, with a WARNING that the commission of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Respondent judge was exonerated from administrative liability because there was no concrete evidence that he acquiesced to, or participated in, respondent sheriff's act of directing the demolition of complainants' structures on the subject property without authority from the court. On the other hand, respondent sheriff was held administratively liable for exceeding his authority in issuing a final notice of demolition without any order from the MeTC and for belatedly filing the sheriff's report.

On September 26, 2007, respondent sheriff filed a Motion for Reconsideration, insisting that he committed no infraction in issuing a notice of demolition without authority from the MeTC and for not filing the sheriff's report within the time mandated by the Rules of Court. He argued that he could not be held administratively liable for ordering the demolition of the structures because the parties themselves had agreed to the demolition under the compromise agreement. Likewise, he maintained that he could not be held liable for failure to make periodic reports on the progress of execution since in the Sheriff's Report dated July 7, 2006, he stated that on July 3, 2006, Limsui's counsel informed him that defendant associations agreed that they would voluntarily remove their structures on July 4, 2006.

We are not persuaded.

Granting that the demolition of the structures erected on the property was sanctioned by the decision based on the compromise agreement, an outright removal of the same is not allowed by the Rules of Court, Section 10(d), Rule 39 of which provides:

(d) Removal of improvements on property subject of execution. - When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.[1]

Respondent sheriff is specifically mandated by the Rules not to destroy, demolish or remove improvements, except upon special order of the court. Thus, aside from the writ of execution implementing the decision based on the compromise agreement, another writ or order from the court is needed specifically allowing the removal of the improvements on the property subject of execution.

Likewise, respondent sheriff cannot be excused for his failure to make periodic reports, as mandated by Section 14, Rule 39 of the Rules of Court which states that:

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.[2]

Respondent sheriff's stubborn insistence that he was not negligent in furnishing the trial court with periodic reports is unacceptable. The Rules of Court is clear that 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. The records reveal that on November 30, 2005, the MeTC issued the writ of execution. On the same date, respondent sheriff issued the notice to vacate. Thus, on December 30, 2005, it was incumbent upon him to submit a report to the MeTC on the reason why the judgment was not satisfied in full, and every thirty (30) days thereafter until the judgment is satisfied in full or until its effectivity expires. His excuse that Limsui's counsel assured him on July 3, 2006 that the associations agreed to remove the structures voluntarily is utterly devoid of merit.

The submission of the return and periodic reports by the sheriff is not a duty that is to be taken lightly. It serves to update the court on the status of the execution and why the judgment was not satisfied. It also provides insights to the court as to how efficient court processes are after judgment has been promulgated. The overall purpose of the requirement is to ensure speedy execution of decisions.[3] A sheriff's failure to make a return and to submit a return within the allowable period constitutes inefficiency and incompetence in the performance of official duties, and conduct prejudicial to the best interest of the service.[4]

Under the Revised Uniform Rules on Administrative Cases in the Civil Service, respondent sheriff is guilty of simple neglect of duty, which is defined as the failure of an employee to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference. It is classified as a less grave offense which carries the penalty of suspension for one (1) month and one (1) day to six (6) months for the first offense and dismissal for the second offense.[5]

Be that as it may, considering that there has been no previous administrative case against respondent sheriff and in order not to hamper the duties of his office, instead of suspending him for a period of three (3) months without pay, we reconsider our previous decision and lower the penalty to one (1) month and one (1) day suspension without pay.

We would like to reiterate once again that respondent sheriff's compliance with the Rules of Court is not merely directory but mandatory. He is expected to know the rules of procedure pertaining to his functions as an officer of the court.

WHEREFORE, in view of the foregoing, our Decision dated August 17, 2007 is hereby MODIFIED. Sheriff Antolin Ortega Cuizon is SUSPENDED for a period of one (1) month and one (1) day without pay, with a STERN WARNING that the commission of the same or similar acts shall be dealt with more severely. This resolution is immediately executory.

SO ORDERED.

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

[1] Emphasis supplied.

[2] Emphasis supplied.

[3] *Tablante v. Rañeses*, A.M. No. P-06-2214, April 16, 2008, 551 SCRA 400.

[4] *Grutas v. Madolaria*, A.M. No. P-06-2142, April 16, 2008, 551 SCRA 379.

[5] *Tablante v. Rañeses*, *supra* note 4, at 400-401.

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