

OSCAR E. MIRO, COMPLAINANT, VS. RUBEN C. TAN, RESPONDENT.*A.M. No. P-93-977. August 17, 1994*

Ponente: MELO, J.

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A verified complaint was filed by Oscar E. Miro, in representation of Kasalika-Bayan, Inc., the plaintiff in Civil Case No. 136-91, against Ruben C. Tan, Deputy Sheriff, Metropolitan Trial Court, Branch 55, Malabon, Metro Manila. The complaint alleged that on May 28, 1992, a decision in the said Civil Case No. 136-91 was rendered in favor of Kasalika-Bayan, Inc. which ordered the therein defendants to vacate the premises in question and to surrender the same to the corporation. Respondent sheriff was later directed to implement the writ of demolition issued relative thereto. In the process, respondent sheriff allegedly demanded P22,750.00 to answer for the expenses in the implementation of the aforesaid writ of demolition. The scheduled demolition on October 7, 1992, however, did not materialize; thus, complainant was constrained to pray for the issuance of an alias writ of demolition. It was in the implementation of this alias writ that respondent sheriff allegedly demanded another P10,000.00 as grease money for him to perform his duties.

Required to comment on the complaint, respondent sheriff averred that:

- (a) The P22,750.00 which he received from the complainant was been fully liquidated and spent during the implementation of the demolition order, and an itemized account was made as to how the same was spent.
- (b) In the implementation of the order of demolition, only two houses were actually demolished, since one of the defendants who tried to lob a grenade on the demolition team died when the grenade prematurely exploded; and for humanitarian reasons, respondent directed the team to pull-out.
- (c) Thereafter, the demolition order was recalled by the court in view of the passage of Republic Act No. 7279 requiring that a relocation site and/or financial assistance should be provided to the actual occupants before they may be ejected; that after complainant allegedly complied with said provisions, complainant asked how much would be the cost of demolishing the house of one of the defendants, Belen Biglang-awa, to which query, respondent suggested that complainant should provide for the demolition team, seek police assistance, and personally undertake the payment of expenses to that respondent's participation will be limited only to supervision in the implementation; that complainant allegedly insisted on getting an estimate of the cost of expenses if the task be attended by respondent; that due to complainant's insistence, respondent gave the estimate of P10,000.00; and that from then on, respondent never heard from complainant until the filing of this complaint.

Following the filing of respondent's answer, the case was referred to the Executive Judge of the Malabon Regional Trial Court for investigation, report, and recommendation, and in due time, the Honorable Benjamin T. Antonio came out with the following findings and recommendation:

Further inquiry and investigation conducted convinced the undersigned that the amount of P22,750.00 received by the respondent from the complainant has been spent in the implementation of the demolition order. The act of the respondent in hiring fifty persons that acted as the demolition team is justified considering that there

were fifteen houses to be demolished, some of which were made of strong materials and considering further that the defendants were well organized and were expected to prevent the demolition by any means. The fact that the actual demolition was not completed and only two houses were actually demolished does not destroy the reasonableness of the amount charged as the same, which is intended for payment of the demolition team, security force, tools, equipments, transportation and food, is expected to have been fully liquidated during the preparation stage of the demolition, and is non refundable so much so that the stoppage of the demolition was due to reasons beyond the control of the respondent nor his men.

The undersigned is also of the opinion that the complainant's allegation that the respondent demanded P10,000.00 as grease money for the implementation of alias writ of execution is devoid of merit. The claim of the respondent that he quoted the said amount as estimated expenses in the implementation of the alias writ of execution is more credible. It must be noted that during the alleged negotiation on the implementation of the alias writ of execution, the complainant made no mention that they have dealt on the estimated expenses for the said task. Thus, it can be deduced that the complainant merely misunderstood the quotation given by the respondent and the latter's statement that he cannot implement the writ of execution without first receiving the said amount, and thus interpreted the same as grease money, as attested to by him in the Reply Affidavit he later filed.

In view of the foregoing, the undersigned respectfully recommend the exoneration of the respondent from the acts of corruption imputed upon him.

However, the respondent should be reprimanded for his failure to observe the guidelines laid down in Supreme Court Administrative Circular No. 31-90, Section 9, re submission of estimated expenses to the Court for approval and deposit of the same to the Clerk of Court. Moreover, the failure of the respondent to file a report of this proceedings relative to the implementation of the demolition order as warranted by Supreme Court Administrative Circular No. 12, is likewise censurable.

The Office of the Court Administrator does not, however, fully agree with the foregoing findings and recommendations. While it agrees that the second charge — that respondent allegedly demanded P10,000.00 as "grease-money" was not substantiated — the Office of the Court Administrator nevertheless recommends that respondent be dismissed from the service for dishonesty and conduct prejudicial to the best interests of the service in connection with the first charge — that of demanding P22,750.00 for the implementation of the writ of demolition. The said office justifies its recommendation in this wise —

We disagree with the findings of Executive Judge Benjamin T. Antonio. While it is true, he was in a better position to observe the witnesses personally and determine by his own first hand impressions the credibility of their testimonies as indicated by their demeanor on the stand, the records of the case however, reveal otherwise.

In the comment (Rollo, p. 7) of respondent Sheriff he alleged that the itemized expenses were as follows:

1. Demolition Crew —

P15,000.00

2. Transportation (to and from the site) —

1,000.00

3. Food —

3,000.00

4. Payment of Writ of Execution —

1,800.00

5. Police Assistance (food, transportation, etc.) —

1,000.00

6. Tools and equipments for demolition —

950.00

T o t a l

P 22,750.00

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In his (respondent's) itemized expenses (Rollo, p. 58) submitted during the investigation he alleged that the following were his detailed account:

Payment for demolition

Team (P300/person)

—

P 15,750.00

Demolition Team

(P30.00/person)

—

1,500.00

Police Team

(20 persons — P11.00/ person)

—

220.00

Transportation Police Team

—

1,000.00

Cigarettes

—

130.00

Crowbars (5 pcs.),

Hammers (10 pcs.),

Ropes (10 meters),

Nails (5 kls.)

—

950.00

Payment of Writ of Execution

—

1,000.00

Payment of Transportation of

Demolition Team

—

1,000.00

Total

P 22,750.00

=====

Assuming that indeed respondent has spent P22,750.00 in the said demolition, what then is the reason why his own detailed account of expenses are inconsistent. It is quite unbelievable for respondent to have overlooked the fact that he submitted inconsistent accounts if he really was aware of his expenses and the same is truthfully recorded. That alone constitutes dishonesty. The only conclusion here therefore is that the P22,750.00 was not totally spent for the said demolition. Noteworthy likewise is the fact that respondent has submitted various affidavits of supposed members of the demolition team to give credence to his testimonies. Said affidavits, however cannot be given great weight as against the evidence submitted by respondent himself in an apparent effort to mislead this office.

Worse, the "Contract" (Rollo, p. 25) of respondent with complainant itemized the justification of his personal expenses, to wit:

(Received P8,000.00 as advanced payment)

(By: R. Tan — 7/24/92)

ORDER OF THE DAY

7-23-92

- Serve Writ of Execution after payment of Sheriff's fee 7-23-92
- Return to Court all writ (15 defendant) with recommendations.
- Execute Motion for Demolition (By Sheriff's)
- Personal (Re-serving of Court Order)
- Back to Court.
- Start of Demolition. 7/30/92 - 7/31/92.
- All expenses to be burned by Sheriff, (food, transportation, etc.).
- All advances pertaining to the (starting) down payment/before demolition will be treated as first payment or 50% and another 50% after completion of jobs, second payment.
- The Association will not be subjected to any additional expenses, should there be any, beyond control, it will be deducted from remaining balance for the Sheriff.

(SGD) OSCAR E. MIRO**(SGD) RUBEN TAN**

Likewise, the following quoted vouchers also evidenced the fact that respondent has collected certain amount of money from complainant for the "processing" of the order of demolition.

CASH VOUCHER (Rollo, p. 26) Dated July 23, 1992 indicated that respondent Ruben Tan has received P8,250.00 as Sheriff's Fee and Advances to Demolition Team from Oscar Miro.

CASH VOUCHER (Rollo, p. 27) Dated September 16, 1992 likewise indicated that respondent has received P4,000.00 from complainant as Partial Payment for the Demolition of additional eight (8) houses.

CASH VOUCHER (Rollo, p. 28) Dated October 1, 1992 likewise indicated that respondent has received P1,500.00 from complainant as Payment for the Processing of the Order of Demolition.

CASH VOUCHER (Rollo, p. 29) Dated October 7, 1992 likewise indicated that respondent has received P9,000.00 from complainant as Expenses of the Demolition Party (Partial Payment).

Our examination of the records of the case indicate that the amounts indicated in the "cash vouchers" mentioned by the Office of the Court Administrator refer to the same amount of P22,750.00 received by respondent for the implementation of the order of demolition. Contrary to the intimation of the Office of the Court Administrator, no other amount, aside from the P22,750.00, was received by respondent from complainant. Then too, the fact that there was a discrepancy in the two reports of itemized expenses submitted by respondent does not imply that the said amount of P22,750.00 was not spent for the purpose it was intended. It is beyond dispute that respondent hired no less than fifty (50) persons to effect the demolition. The affidavits of the members of the demolition team and the owners of the vehicles used (pp. 52-59, Rollo) show that they were paid for the services rendered by them. Even the affidavit (p. 73, Rollo) of complainant himself, Oscar Miro, admits the reasonableness of the amount of P22,750.00 charged by respondent. The said affidavit partly states —

That I came to the conclusion of the reasonableness of the cost charged to us by Mr. Tan when I personally

took care of hiring a new demolition team, the food, transportation, tools and the security force needed to implement the writ of execution to demolish the remaining structures of the defendants under the supervision of Mr. Tan and indeed it cost me more than what Mr. Tan charged us;

That I now realized that the amount of P22,750.00 charged of us by Mr. Ruben Tan was indeed reasonable and that the TEN THOUSAND (P10,000.00) PESOS quoted by him was not grease money but a new estimated additional cost to implement the alias writ of execution subsequently issued by the Court (MTC, Br. 55) after the previous order of demolition was not fully carried out on account of the grenade throwing incident that resulted to the death of one of the defendants in the ejection cases, and the legal maneuvers undertaken by the defendants in cases.

However, respondent is not entirely free from liability. Section 9 of Rule 141, as amended, of the Rules of Court specifically provides —

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

xxx xxx xxx

(g) For executing a writ of process to place a party in possession of real estate, one hundred (P100.00) pesos;

xxx xxx xxx

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, 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. (*italics supplied*)

The foregoing provision is clear, but respondent failed to comply with the same. The observation of the Office of the Court Administrator in this regard is well taken:

. . . it is very clear that respondent has failed to comply with the said requirement. As Sheriff he is duty bound to know at least the very basic rules relative to the implementation of writs of execution and/or demolition. It is very elementary, that costs or rough estimates or implementation of the writ of demolition and possession must be submitted to the Court for approval. It is either he forgot to comply or deliberately failed to do the same to advance his personal interest.

The Court cannot overstress the need for circumspection and proper behavior on the part of a sheriff, an officer of the court, upon whom the execution of a final judgment depends. It is said that execution is the fruit and end of the suit and is very aptly called the life of the law (*PAL vs. Court of Appeals*, 181 SCRA 557 [1990]).

In the language of Justice Cecilia Muñoz-Palma, "the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel — hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice". (*Recto vs. Racelis*, 70 SCRA 438 [1976]). To upkeep public faith and confidence in the administration of justice, we once again must emphasize the relevance of the aforesaid pronouncement in this administrative complaint. The desistance of the complainant, as in this case, does not bar the taking of disciplinary action against the respondent. Neither does it dissuade the Court from imposing the appropriate disciplinary action (*Cruz vs. Dalisay*, 152 SCRA 482 [1987]). Considering, however, that this is the

first administrative complaint against respondent, the penalty of dismissal from service recommended by the Office of the Court Administrator, seems to be too harsh. And verily, there is no showing that respondent financially benefited in the execution of the writ of demolition. In point of fact, the amount of P22,750.00 seems to be just enough to answer for the needs of 50 people charged with the difficult and dangerous task of demolishing dwellings. The gravamen of respondent's shortcoming is in his failure to observe Section 9 of Rule 141. We feel that a penalty of fine of Three Thousand Pesos (P3,000.00) Pesos would be in order.

WHEREFORE, the Court finds respondent guilty of simple negligence and hereby imposes upon him the penalty of fine of Three Thousand (P3,000.00) Pesos, with a WARNING that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Feliciano, Bidin, Romero and Vitug, JJ., concur.

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