

**FRANCISCO SYCIP, COMPLAINANT, VS. NICANOR SALAYSAY,
EX-OFFICIO PROVINCIAL SHERIFF OF RIZAL, AND HIS DEPUTIES,
MESSRS. ANTONIO MARINAS, AND AGAPITO RAMOS, RESPONDENTS.**

A.M. No. P-158. January 31, 1974

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

We now have before this Court the voluminous pleadings and evidence presented by the parties, and the three reports and recommendations, respectively dated October 3, 1972, December 18, 1972 and July 23, 1973 of judge Nicanor S. Sison of the Court of First Instance of Rizal (Pasig Branch), to whom the case was forwarded for investigation, report and recommendation.

As stated in the first report of Judge Sison of October 3, 1972, on motion of respondent Deputy Sheriff Agapito Ramos, with the conformity of the complainant, the case against Ramos was considered dismissed.

The complainant lost in an ejectment suit filed by one Enrique C. Huenefeld in the Municipal Court. He was ordered to vacate the premises being rented by him and to pay the rentals in arrears. A writ of execution was issued. He then filed a petition for certiorari with a prayer for the issuance of a writ of preliminary injunction in the Court of First Instance which issued a temporary restraining order to stop the enforcement of the writ of execution. Later on, said Court denied the issuance of the writ of preliminary injunction and lifted and dissolved the restraining order. In view thereof, Deputy Sheriff Antonio Marinas, accompanied by the plaintiff Enrique Huenefeld, his counsel, and a sheriff guard, forthwith ejected the complainant from the premises being rented by him; levied on certain personal properties of the complainant, and served upon him a copy of the notice of sheriff's sale.

The first report of Judge Sison dated October 3, 1972 was supplemented by him in a second report dated December 18, 1972 which discussed the points raised in a letter by the respondent Marinas, and in the third report of July 23, 1973 which discussed the additional evidence presented by said respondent in the reinvestigation requested by him and approved by the Undersecretary of Justice.

The recommendation of Judge Sison was exoneration for respondent Salaysay and a disciplinary action of 15 days work without salary against respondent Marinas for having committed an error in the listing of the personal properties of the complainant which were attached to satisfy the money judgment against him in the ejectment suit but which error was promptly corrected afterwards and did not prejudice the complainant.

The recommendation of exoneration in favor of respondent Salaysay is well taken, it appearing that he promptly caused the investigation of the failure of the respondent Marinas to make a correct listing of the personal properties of the complainant. The contention that Salaysay should be held responsible for the acts of his deputies in the performance of his official functions under the theory of command responsibility cannot be sustained, considering that Salaysay had no prior knowledge of the ejectment suit against the complainant; that he came to know of the same only when he received the letter of the complainant on January 20, 1972 or five days after the

complainant had been ejected from the premises. And Salaysay immediately required the respondent Marinas to answer the letter of the complainant before the auction sale of the properties set for January 21, 1972.

The charge against respondent Marinas that he acted with undue haste in enforcing the writ of execution in the afternoon of January 15, 1972, which was a Saturday, is untenable because there is no law or circular prohibiting a sheriff from enforcing the writ of execution in an ejectment case on a Saturday or after office hours; and the execution was done in an orderly and peaceful manner.

Regarding the error in the preparation of the list of properties to be sold at public auction prepared by the respondent Marinas, Judge Sison, in his second report and recommendation, himself found that "said error was likely to be committed by any person under similar situation, considering that the premises leased included other furniture belonging to plaintiff Huenefeld. This error was rectified and corrected immediately after its discovery and did not in any way prejudice complainant Francisco Sycip." In view of this finding which we sustain, we believe that the penalty recommended by Judge Sison is a little bit too harsh. Admonition to Marinas to be more careful in the future in the discharge of his duties should be considered sufficient.

WHEREFORE, the present administrative case against respondents Salaysay and Marinas is hereby ordered dismissed. Respondent Marinas is however admonished to be more careful in the discharge of his duties in the future. As stated earlier, the case against respondent Ramos had already been dismissed upon his motion, with the conformity of the complainant.

SO ORDERED.

Zaldivar, (Chairman), Fernando, Barredo, Antonio, and Aquino, JJ., concur.

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