

**NORMA SEXTON, REPRESENTED BY CELESTINO ANTER,
COMPLAINANT, VS. NESTOR R. CASIDA, SHERIFF III,
METROPOLITAN TRIAL COURT, OFFICE OF THE CLERK OF COURT,
PAIG CITY, RESPONDENT.**

A.M. NO. P-05-2048 [FORMERLY OCA IPI NO. 05-2114-P]. September 30, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Celestino Anter, Attorney-in-Fact of Norma Sexton, charged Deputy Sheriff Nestor R. Casida, Sheriff III of the Office of the Clerk of Court, Metropolitan Trial Court (MeTC) of Pasig City, by letter of January 24, 2005, for conduct unbecoming a public official and acts prejudicial to public interest.

From the rollo are gathered the following facts which gave rise to the filing of the administrative complaint against respondent:

By 1[st] Indorsement dated November 2, 2004,[1] Clerk of Court VI Atty. Rafael H. Zurbito, Jr. of the Regional Trial Court (RTC) of Gubat, Sorsogon forwarded to MeTC Pasig Clerk of Court Atty. Reynaldo Bautista a copy of a Writ of Execution issued by Branch 54 of the Sorsogon RTC for the enforcement of its decision dated May 6, 2004 in Civil Case No. 1777, "Prudencio Esquejo, et al., plaintiffs versus Rodrigo Ubongen, et al., defendants." The 1st Indorsement bears the imprimatur of the RTC Gubat Executive Judge.

Respondent to which the Writ of Execution was assigned for enforcement gathered from the Land Transportation Office in Quezon City documents showing that the following vehicles,

- One (1) Isuzu Elf bearing Plate No. UTP 348
- One (1) Bus (Liberty Transport) bearing Plate No. TVZ 863,

belong to Liberty Transport which appears to be owned and operated by the defendant Ubongen.

Respondent thereafter seized the Isuzu Elf (the vehicle) while it was parked at the premises of Liberty Transport in P. Tuazon Street, Cubao Quezon City. It turned out that the vehicle had previously been bought from the defendant Ubongen by Norma Sexton, the highest bidder in a public auction conducted on April 30, 2001.

Complainant, as attorney-in-fact of Norma Sexton, thus filed an Affidavit of Third Party Claim dated November 18, 2004[2] before respondent on account of which the latter allegedly advised the plaintiffs Esquejos to file an indemnity bond.

The plaintiffs Esquejos, et al. failed to file an indemnity bond, however, hence, complainant sought the release of the vehicle.

At a dinner-meeting on December 6, 2004 between complainant and respondent at the Nipa Hut Restaurant in Pasig City for which complainant spent P4,433.00, respondent promised to release the vehicle in due time.

Despite complainant's repeated demands the last of which was by letter of December 16, 2004,[3] respondent, welched on his undertaking to release the vehicle, hence, complainant filed the complaint at bar on January 24, 2005.

Complainant avers that while he and respondent were at the restaurant, respondent even asked for P2,000.00 to pay the Guest Relations Officer (GRO) he was with at the time; and he had been informed that respondent's jurisdiction is limited to Pasig, hence, he had no authority to enforce the Writ of Execution in Quezon City.

By Comment dated January 14, 2005,[4] respondent, in compliance with the Court Administrator's 1[st] Indorsement of January 31, 2005,[5] alleges that he received a copy of the Affidavit of Third Party Claim two days after he released the vehicle to the plaintiffs on November 17, 2004 on the advice of MeTC Pasig Clerk of Court Atty. Bautista.

Respecting the meeting on December 6, 2004 at the restaurant in Pasig City, respondent explained that it was Sheriff Nonato Ramon Dayao of the National Labor Relations Commission and a certain Atty. Villamor Mostrales who invited him to the said restaurant at which he was introduced for the first time to complainant. And respondent denied demanding P2,000.00 to pay for a GRO he was alleged to have been with at the time, in support of which he submitted, as Annex "E" to his Comment, a Certification dated February 26, 2005[6] issued by the Assistant Personnel Manager of the Nipa Hut Restaurant stating that "[w]e do not have Guest Relations Officers . . . or women who offer personal services in our employ."

During the pendency of the present administrative case or on March 15, 2005,[7] respondent passed away at the age of 45.

In its report and recommendation, the OCA notes the following:

x x x

- Per respondent's Service Record, he joined the service on September 19, 1989. As of 28 February 2005, he had 22 vacation leave credits and 33 sick leave credits remaining.
- Aside from the present administrative matter, respondent had two other pending administrative cases, to wit:
 - A.M. No. P-02-1405-P, entitled "OCA versus Nestor R. Casida" for Violation of Art. 294 of the Revised Penal Code "Robbery;" and
 - OCA IPI No. 05-2122-P, entitled "Amado Selmo versus Nestor R. Casida" for Grave Misconduct and Grave Abuse of Authority/Discretion.
- Respondent was fined Two Thousand (P2,000.00) Pesos in A.M. No. P-02-1572, entitled "Bienvenido Mercado versus Nestor R. Casida" for "Implementing a writ of execution that was neither addressed to him nor coursed through the normal channels."

The OCA finds that respondent may indeed be liable for conduct unbecoming a public official and acts prejudicial to public interest in view of his following acts:

- He seized the vehicles registered in the names of the defendants and turned them over to the plaintiffs without the benefit of an auction sale;
- He allowed himself to be wined and dined by complainant whom he knew had a pending official business with him;
- He did not act on the Third Party Claim despite the fact that the plaintiffs did not file an indemnity bond.

Respecting respondent's alleged demand for money to pay the services of a GRO whom he was alleged to be with at the Nipa Hut Restaurant, the OCA finds the same to have been "overcome" by the certification issued by the Nipa Hut Restaurant. This Court does not necessarily find this conclusion of the OCA well-taken, for complainant did not state that the GRO was in the employ of the restaurant. Complainant's statement was that respondent "even asked for P2,000.00 as payment for the GRO he had at that time." [8]

As for complainant's information that respondent did not have authority to implement a Writ of Execution in Quezon City, the OCA finds the same to be "adequately explained with the copy of respondent's request for assistance addressed to the Office of the Clerk of Court of the Metropolitan Trial Court of Quezon City."

Respecting respondent's claim that it was the MeTC Pasig Clerk of Court who ordered him to turn over the vehicles to the plaintiffs, the OCA finds that in light of respondent's demise, he could no longer substantiate his claim even if it was made on official record. Nevertheless, the OCA asserts that respondent could still have refused to comply with an unlawful order of his superior, for the procedure to follow in the execution of judgment is provided for in Rule 39 of the Rules of Court.

In fine, the OCA finds respondent to have violated the rules of conduct for court personnel by committing an act unbecoming of a public official and acts prejudicial to public interest, for which it recommends the imposition of a FINE P5,000.00 after considering the penalty previously imposed upon him and the gravity of the offenses he is presently charged with and found liable for, and tempering it with compassion in light of his untimely demise.

It never sounds like a broken record to reiterate this Court's reminder to sheriffs that they perform a very sensitive function in the dispensation of justice,[9] hence, in the discharge thereof, they must exercise due care and utmost diligence. For in serving the court's writs and processes and in implementing its lawful orders, they cannot afford to err without affecting the administration of justice.[10]

By respondent's failure to heed the pertinent provisions of Rule 39 of the Rules of Court on EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS, to wit:

Section 16. Proceedings where property claimed by third person. – If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. x x x (Underscoring supplied)

x x x,

and

Section 19. How property sold on execution; who may direct manner and order of sale. – All sales of property under execution must be made at public auction, to the highest bidder, to start at the exact time fixed in the notice. x x x (Underscoring supplied)

x x x,

he having failed to release the vehicle to complainant despite the non- posting by the plaintiffs of indemnity bond, and he having turned over the vehicle to the plaintiffs without the benefit of a public auction, he did not live up to the exacting standards required of an officer of the court. His acts were thus prejudicial to public interest.

And, as the OCA holds, for accepting a favor or benefit based on an explicit or implicit understanding that such

favor or benefit shall influence his official acts (Section 2, Canon 1, Code of Conduct for Court Personnel [A.M. No. 03-06-13-SC]) and accepting any hospitality under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence him in performing his official duties (Section 2[a], Canon III of the same Code), respondent committed an act unbecoming of a public official.

WHEREFORE, for act unbecoming a public official and acts prejudicial to the best interest of the service, respondent, NESTOR R. CASIDA, who has in the meantime died, is fined in the amount of Five Thousand (P5,000.00) Pesos to be taken from his terminal leave pay.

SO ORDERED.

Panganiban, (Chairman), Sandoval- Gutierrez, Corona, and Garcia, JJ., concur.

[1] Rollo at 24.

[2] Id. at 5-6.

[3] Id. at 18.

[4] Id. at 22-23.

[5] Id. at 21.

[6] Id. at 29.

[7] OCA report and recommendation, Id. at 30, 31.

[8] Id. at 1.

[9] Espina v. Gato, 401 SCRA 40 (2003).

[10] Lumenat v. Tupas, 405 SCRA 12 (2003).

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