

NICANOR T. SANTOS, COMPLAINANT, VS. DELILAH GONZALES-MUNOZ, CLERK OF COURT, RTC-OCC, BAGUIO CITY, AND ROMEO R. FLORENDO, SHERIFF IV, RTC-OCC, BAGUIO CITY, RESPONDENTS.

A.M. No. P-02-1628. August 14, 2002

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

In his verified complaint dated 22 February 1999, complainant Nicanor T. Santos charges respondents Delilah Gonzales-Muñoz and Romeo R. Florendo, Clerk of Court and Sheriff IV, respectively, of the Office of the Clerk of Court, Regional Trial Court, Baguio City, with gross neglect of duty relative to some incidents in LRC Case No. 12075, File No. 908, entitled, “Nicanor Santos v. Heirs of Rosa Ganayo.” The basis of the complaint was respondents’ failure to comply with the writ of execution and the demolition orders issued by said court.[1]

In response, respondents filed a Joint Comment and Manifestation[2] asserting as defenses the following:

4. That the truth of the matter is that, since the time of the issuance of the Alias Writ of Execution [o]n September 30, 1993 up to the present, our Office had been on the run conducting dialogues and meetings with the respondents for the peaceful implementation of the Orders of the Court. While it is true that petitioner had deposited the amount of P1,000.00 as sheriff’s fees and expenses way back in 1995, petitioner never really had the occasion to appreciate the actions taken by the Office of the City Sheriff, even going out on their own for the proper implementation of the Alias Writ of Execution and Order of Demolition. Instead, petitioner filed several motions in court which up to this time remain unresolved due to the several changes of Judges hearing the subject case;

...

6. In the process of the implementation of the Demolition Order, the Office of the City Sheriff was actually confused as to what specific houses were to be demolished. This fact was known to the petitioner-complainant. While the old twin houses owned by respondent Cito Backong were demolished by respondents themselves upon the insistence of this Office, the other house (two storey house) also owned allegedly by Cito Backong and which petitioner insist[ed] that it be demolished, is presently occupied by one Peter Saguilot who is not a party to the case. The same Peter Saguilot constructed another structure on the site where the old twin house used to stand. This prompted petitioner-complainant to file a Motion to Declare Respondents in Contempt of Court, but which motion remains unresolved up the present.

Upon the recommendation of the Court Administrator, this Court, in a Resolution dated 4 October 2000, referred the case to Executive Judge Antonio C. Reyes of the Regional Trial Court of Baguio City for investigation, report and recommendation.[3]

From the records of the case and the report of Executive Judge Reyes as Investigating Judge, the antecedent facts are as follows:

On 21 June 1962, complainant Nicanor T. Santos filed a petition with the then Court of First Instance of Baguio City to cancel the adverse claim of Rosa Ganayo, which was annotated on his transfer certificate of title over a parcel of land. The trial court rendered judgment on 27 September 1963 in favor of Santos, declaring him to be the owner of the lot in question and ordering the Register of Deeds of Baguio City to cancel the adverse claim. Santos was, however, ordered to pay Ganayo a reasonable value for the two houses and other improvements in the subject premises. The case reached this Court; and in its decision[4] of 9 September 1982 in G.R. No. L-31854, this Court affirmed the decision of the trial court. Meanwhile, Rosa Ganayo passed away and was substituted by her heirs, known at that time to be Cito Backong and Eduardo Beswayan.

Upon motion of complainant Santos, and based on the assessment of the City Engineer of Baguio City,[5] the trial court fixed the reasonable value of the houses and other improvements at P31,000 and ordered the heirs of Ganayo to vacate the premises in question within fifteen days from receipt of the payment from Santos.[6]

On 25 June 1993, the trial court issued a writ of execution for the enforcement of the judgment. However, despite several attempts to implement the writ, the heirs of Rosa Ganayo refused to accept payment and vacate the property. On 30 September 1993, the trial court issued an Alias Writ of Execution. Once again it was not implemented. Finally, on 24 November 1993, the trial court issued an Alias Writ of Execution ordering the sheriff to “execute the judgment and to use any force necessary and reasonable to execute the same.”[7]

After almost one-and-a-half years, or on 11 May 1995, Deputy Sheriff Florendo filed a manifestation informing the court of the need for a special order of demolition, thus:

That the City Sheriff and the undersigned have conducted dialogues [sic] with the respondents in this case and they told us of their intention to voluntarily leave the premises subject matter of this case, however on condition that the Office of the City Sheriff must be the one to implement demolition of their houses.

That for the office of the City Sheriff to demolish the houses, it needs a specific order of demolition to execute the Writ as per Rule 39, Sec. 14 of the Rules of Court.[8]

On 11 August 1995, complainant filed a manifestation expressing his conformity to the Sheriff’s request for a demolition order. Thereafter, the trial court scheduled hearings for the request for demolition, which were frequently postponed on account of the absence of both parties. The court finally issued on 25 September 1996 an order of demolition directing the Office of the City Sheriff to cause Ganayo’s heirs to vacate the premises and to demolish their houses.[9] It denied the motion for the reconsideration of said order.

In the Sheriff’s return received by the court on 31 March 1997, Sheriff Florendo reported that he went to the property roughly a week after the issuance of the demolition order and there found the smaller half (the one-storey house) of the old “twin houses” demolished and, in its place, two new constructions erected.[10] Occupying the remaining two-storey house and one of the newly constructed houses was Peter Saguilot. Because respondent Sheriff was unsure as to whether he could demolish the houses, he merely requested Rosa Ganayo’s heirs to vacate the premises. The heirs once again refused, saying they would vacate after Christmas.[11]

On 25 February 1997, complainant initiated contempt proceedings against Rosa Ganayo’s heirs for violating the demolition order. These contempt proceedings included Peter Saguilot as alleged son-in-law, heir or privy of Rosa Ganayo. Also impleaded were respondents Deputy Sheriff and Clerk of Court for their failure to demolish the original structures on the property and to recognize Peter Saguilot as a party to the case.[12]

Pending the contempt proceedings, complainant Santos filed this administrative complaint.

In his report dated 16 April 2001, Executive Judge Reyes recommended that the case be dismissed for the following reasons:

Based on the report of February 16, 2000 submitted by Engineer Mogamog, there are three houses constructed within the property of Atty. Santos owned by Peter Saguilot, Eduardo B[e]swayan and Rommel Saguilot. Of the three present owners or occupants, only Eduardo B[e]swayan [was] impleaded in Case No. LRC 908. More importantly, the report is silent as to whether or not the original two houses assessed by the Office of the City Engineer at P31,000.00 still exist inside the premises. This office therefore finds no conclusive evidence that indeed the respondents are guilty of dereliction of duty. On the contrary, the record shows that they tried numerous times to implement the orders emanating from the court for the execution of the judgment but because of the countless manifestations and counter-manifestations that contributed to the delay and confusion as to which houses the writ referred to, it was natural for them to exercise prudence and merely await for further instructions from the court after apprising the latter and the parties of the status of the case.[13]

The Office of the Court Administrator disagreed with the Investigating Judge. In his Memorandum dated 2 January 2002, Deputy Court Administrator Jose P. Perez recommended that the complaint against respondent Clerk of Court be dismissed for lack of evidence that she was inefficient herself, and that respondent Sheriff be reprimanded for the following reasons:

As a rule when a writ is placed in the hands of a Sheriff, it is his duty to proceed with reasonable celerity and promptness to execute it in accordance with its mandates (*Jumio vs. Egay-Eviota*, 231 SCRA 551). Respondent Sheriff was duty bound to use reasonable skill and diligence in the performance of his official duties. He should be zealous in the performance of his duties. Unless restrained by a court order to the contrary, he should see to it that the execution of judgment is not unduly delayed.

Respondent Sheriff has fallen short of the standard as the facts demonstrate. Had respondent implemented the writ of execution with dispatch and did not conduct dialogues with the respondents which took two years, but instead complied with the order dated 24 November 1993 to use any force necessary and reasonable to implement the writ of execution there would have been no problem.[14]

On 4 February 2002, we required the parties to submit their respective manifestations.

In compliance therewith, the respondents filed their joint manifestation on 8 March 2002 reiterating that the delay in the implementation of the orders of the trial court was not due to their fault but to circumstances beyond their control. In addition, the respondents requested consideration of the following events that transpired after the issuance of the 16 February 2001 Order:

On 16 February 2001, the court issued an order finding Peter Saguilot and Eduardo Beswayan guilty of indirect contempt, and directing them to vacate and demolish their houses within ten days from receipt of the order.[15] The court denied the motion for reconsideration on 21 June 2001.[16]

On 4 December 2001, the date the demolition was scheduled, the Sheriff proceeded to the premises but found approximately 150 to 200 people congregated “to protect the structures of [Ganayo’s heirs] and to prevent at all cost the impending demolition.” Further resistance came from a group of elders, who were persistent in their request for a dialogue with complainant Santos, while the others began butchering a pig and “dancing to the beat of their ganzas and ready for any eventuality.”[17] Faced with this defiance, respondent Sheriff realized the futility of further dialogue and postponed the demolition to 1 February 2002 to enable him to secure the assistance of the Baguio City Police and the demolition team of the Office of the City Engineer.

On 1 February 2002, respondent Sheriff filed a Partial Report[18] stating that on 31 January 2001, the children of Eduardo Beswayan requested an extension of time within which to demolish their house. On the other hand, Saguilot signified his intention to voluntarily vacate the house built on the premises and donate the same to complainant. Upon respondent Sheriff’s advice, Beswayan and Saguilot submitted to the trial court for approval their undertakings with motions to lift the orders for their arrest.[19] In said Undertaking, Saguilot promised to

vacate the house and donate it to complainant after finding a house he could rent for his family. On his part, Beswayan promised to demolish his house after the termination of certain rituals related to the wedding of his grandson which required the use of his house. The court granted the request for extension and set the deadline for 4 March 2002.[20]

Later, Saguilot and Beswayan appeared before the Office of the Clerk of Court and promised to vacate the premises and demolish their houses by 16 March 2002. When respondent Sheriff went to the premises on 6 March 2002, Saguilot had already vacated the old two-storey house and had started to demolish the same. He was informed that the other two structures would be vacated and demolished as soon as the house where they would be relocated is finished, which would not be later than 16 March 2002.[21] Respondents assure this Court that they have been constantly monitoring the full implementation of the orders of the court.

For his part, complainant Santos filed his manifestation praying that the case he initiated against respondents be dismissed. He informed us that he, Saguilot, and Beswayan had already settled amicably the execution of the decision and orders of the lower court through the sincere efforts of the respondents.

From the facts presented, we agree with the Office of the Court Administrator's assessment and finding that respondent Sheriff is guilty of dereliction of duty. However, since this finding was premised on events occurring prior to the issuance of the demolition order dated 16 February 2001, we hereby modify and supplement it in light of more recent events.

Prior to the Alias Writ of Execution issued on 24 November 1993, respondents Sheriff and Clerk of Court appeared diligent in their efforts to successfully implement the Writ of Execution. Several returns were filed explaining the difficulties encountered, including the judgment debtor's refusal to accept payment from the complainant. However, after the issuance of the Alias Writ of Execution, it is incomprehensible that respondent Sheriff took one-and-a-half years to notify the court that he had been conducting "dialogues" with the judgment debtor for the peaceful implementation of the orders of the trial court.[22]

Rule 39 of the Rules of Court,[23] on the execution of judgments, maps out the duty of sheriffs as officers of the court. Further, as the frontline representative[24] of the judiciary whose conduct reflects its image, when a writ of execution is placed in his hands, the sheriff has the duty, in the absence of an order to the contrary or restraining order, "to proceed with reasonable celerity and promptness to execute it in accordance with its mandate." [25] He should act with considerable dispatch so as not to unduly delay the administration of justice; otherwise, the judgment if not executed would be an empty victory on the part of the prevailing party.[26]

It has been said enough that the sheriff's duty to execute a judgment is ministerial. A purely ministerial act is one "which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of the legal authority, without regard to the exercise of his own judgment upon the propriety of the act done." [27] Otherwise stated, a sheriff need not look outside the plain meaning of the writ.

In this case, it was respondent Sheriff's duty to use reasonable and necessary force to see that the judgment debtors vacate the premises. Any exercise of discretion may be used only when a sheriff is faced with an ambiguous execution order, in which case prudence and reasonableness dictate that he seek clarification from the judge.

We cannot, therefore, deem respondent Sheriff's conduct of a year-and-a-half's worth of "negotiations" or "dialogues" with Ganayo's heirs or privies as ample defense for failing to implement the writs of execution with appropriate dispatch. As concisely stated in a previous case where a sheriff used a similar excuse, "the time for persuasion was over upon the finality of the judgment and issuance of the Writ of Execution." [28] He was

without authority to conduct dialogues; and, in so doing, he contributed to the delay in the administration of justice. Moreover, such delay had enabled Ganayo's heirs or privies to construct two more houses in the subject premises. As pointed out by the Office of the Court Administrator, it would not have happened had respondent Sheriff implemented with dispatch and with the use of necessary and reasonable force the alias writ of execution dated 24 November 1993, instead of conducting dialogues.

With respect to the general conduct of both respondents following the issuance of the orders of demolition on 25 September 1996, we do not find either of them completely at fault for the delay in the execution thereof. Although belated, the Sheriff properly referred to the trial court the question of whether Peter Saguilot was a privy to the heirs of Rosa Ganayo and, therefore, bound by the writ of execution and demolition orders. Integrated therein were the issues of whether the houses referred to in the demolition order were still existing and whether respondent Sheriff could demolish the new houses constructed. These questions were put forth in the contempt proceedings initiated by the complainant. The difficulty in resolving these issues is manifested in the four years it took the court to find Peter Saguilot and Eduardo Beswayan guilty of indirect contempt. For the proper exercise of prudence and limited discretion, it is worth emphasizing the ruling in *Sta. Ana v. Suñga*,^[29] directing the proper action of sheriffs and the courts in these matters:

There may be cases when the actual possessor may be claimed to be a privy to any of the parties to the action, or his bona-fide possession may be disputed, or where it is alleged, as in the instant case, that such possession has been taken in connivance with the defeated litigant with a view to frustrating the judgment. In any of these events, the proper procedure would be to order a hearing on the matter of such possession and to deny or accede to the enforcement of a writ of possession as the finding shall warrant. But in the absence of any such hearing or any proceeding of a similar character, every person in the actual possession of the land has a right to be respected therein (Art. 446, Civil Code) and his ejectment would constitute a deprivation of a property right without due process of law.

Despite this momentary insight on the part of respondents, we nevertheless find them wanting in the strict performance of their duties: Deputy Sheriff Florendo for his failure to take proper measures to ensure the speedy and efficient execution of the 16 February 2001 Order, as affirmed in the 21 June 2001 Order denying the motion for reconsideration; and Clerk of Court Muñoz, as Ex-Officio Sheriff, for her acquiescence to this failure.

From the Sheriff's Report dated 5 December 2001, it appears that it was only on 28 November 2001 that copies of the Notice to Vacate and to Remove Structures were served on Beswayan and Saguilot. It must be recalled that the 16 February 2001 Order directed them to demolish their houses within ten days from receipt of said order. On 21 June 2001, the motion for reconsideration from the said order was denied. Still, it took respondents five months from the denial of the motion for reconsideration to notify Saguilot and Beswayan of the demolition. On the date set for the demolition, or 4 December 2002, respondent Sheriff was met with resistance for which he was unprepared because he failed to enlist the assistance of the proper law enforcers. From then on, evidence shows that both respondents continued to grant extensions and concessions to the judgment debtors before receiving the proper orders from the court. The demolition was postponed by the respondents to 1 February 2002, but the same was not effected by reason of Beswayan's new plea for an extension. The court finally moved the deadline to 4 March 2002, and yet respondents extended it to 16 March 2002. The fact that the respondents have been continuously monitoring the progress of the court's execution and demolition orders does not depart from the fact that there has been neither strict nor speedy compliance with said orders of the court.

We do not reproach respondents for their ostensible display of compassion to Ganayo's heirs or privies. Especially in the face of several pleas, there would be understandable reluctance to forcibly eject from their homes those of distinguished age or under special circumstances. Nevertheless, to exercise such compassion to the extent that the Sheriff, or the Clerk of Court who condones the Sheriff's conduct, substitutes his own standard

of justice for that which has been properly determined by the courts in contentious proceedings is to encroach upon the power of a judge.

As true as the Sheriff is proscribed from using excessive force and subjecting the judgment debtor to humiliation when he executes judgments, he must, when confronted with those who so happen to appeal to his sympathies, nevertheless “uphold the majesty of the law as embodied on those decisions.”[30] Otherwise, as in this case, the continued delay and postponement of the execution and demolition might give the appearance of partiality by prejudicing the rights of the prevailing party. In so doing, the respondents failed to live up to the standards of their office, which require that in the performance of duties, all must act with propriety and decorum and, at all times, be beyond suspicion.

WHEREFORE, for neglect or dereliction of their duty to implement with considerable dispatch the alias writ of execution and the demolition orders of the trial court, respondent ROMEO R. FLORENDO, Sheriff IV, RTC-OCC, Baguio City, is hereby FINED in the amount of Ten Thousand Pesos (P10,000); and respondent DELILAH GONZALES-MUÑOZ is hereby FINED in the amount of Five Thousand Pesos (P5,000). Both respondents are STERNLY WARNED that a repetition of the same or similar act in the future shall be dealt with more severely.

SO ORDERED.

Vitug, Ynares-Santiago, and Austria-Martinez, JJ., concur.

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- [1] Rollo, 1.
 - [2] Rollo, 8-9.
 - [3] Id., 27.
 - [4] 116 SCRA 431 1982 .
 - [5] Annex “A,” Petitioner’s Complaint, Rollo, 4.
 - [6] Report of the Investigating Judge, 1.
 - [7] Id., 2.
 - [8] Annex “A,” Respondents’ Joint Comment and Manifestation, Rollo, 10.
 - [9] Annex “C,” Respondent’s Manifestation, Rollo, 12; See also Report of the Executive Judge, 3.
 - [10] Rollo, 13.
 - [11] Report of the Investigating Judge, 3.
 - [12] Id., 3-4.
 - [13] Report of the Investigating Judge, 5.
 - [14] Memorandum of Deputy Court Administrator Jose P. Perez, 3-4.
 - [15] Annex “A,” Respondents’ Manifestation.
 - [16] Respondents’ Manifestation, 1.
 - [17] Annex “B,” Respondents’ Manifestation.
 - [18] Annex “C,” Respondents’ Manifestation.
 - [19] Annexes “D” and “E,” Respondents’ Manifestation.
 - [20] Annex “G,” Respondents’ Manifestation.
 - [21] Annexes “H” and “I,” Respondents’ Manifestation.
 - [22] Sheriff’s Report, 1 May 1995.
 - [23] Sections 13 and 14 of the old Rules of Civil Procedure, the governing law at the time, provided:

Sec. 13. How execution for the delivery or restitution of property enforced. — The officer must enforce an

execution for the delivery or restitution of property by ousting therefrom the person against whom the judgment is rendered and placing the judgment creditor in possession of such property....

Sec. 14. Removal of improvements on property subject of execution.—When the property subject of the execution contains improvements constructed or planted by the judgment debtor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon petition of the judgment creditor after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court. (This is now Section 10 of Rule 10 of the 1997 Rules of Civil Procedure, which reads:

Sec. 10. Execution of judgments for specific acts.—

(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.

(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.

[24] Lapeña v. Pamarang, 325 SCRA 440, 445 2000.

[25] Section F(2), Chapter VIII, Manual for Clerks of Court 1991 ; Francisco v. Cruz, 340 SCRA 76, 85 2000.

[26] Moya v. Bassig, 138 SCRA 49, 52-53 1985, cited in Teresa T. Gonzales La'O & Co., Inc. v. Hatab, 329 SCRA 646, 651 2000.

[27] Florendo v. Enrile, 239 SCRA 22, 31 1994.

[28] Vda. de Gillego v. Roxas, 235 SCRA 158, 163 1994.

[29] 54 SCRA 36, 44 1973.

[30] Lapeña v. Pamarang, supra note 24.

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