

DOMINGA S. CUNANAN, COMPLAINANT, VS. SHERIFF JOSE L. CRUZ, RESPONDENT.*A.M. No. R-89-P. November 24, 1988*

Ponente: SARMIENTO, J.

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Complainant Dominga S. Cunanan filed this administrative complaint against respondent Jose L. Cruz, Deputy Sheriff of Manila, for grave abuse of authority and grave misconduct.

Complainant avers that on October 18, 1983, in connection with the execution of judgment in Civil Case No. 144328 entitled "Talamayan, et al. vs. Carreon and Criss," the respondent forcibly evicted her from her residence at No. 339 San Rafael St., San Miguel, Manila, despite the fact that she was not, in any way, a party litigant in the said case. She claims that on account of the respondent's illegal execution, she lost several of her personal belongings.[1] She claims, further, that as the housemaid of Alicia Criss, she has a right to remain in the premises (from which she was sought to be, and was successfully, evicted), by virtue of a document entitled "Provision for Free Lifetime Lodging" executed by Edgardo Carreon, vendee and present owner of the subject premises, wherein Carreon undertook "to provide vendor Alicia Minerva Criss, together with her husband, Enrique Vergara, and one household helper, free lodging at said house or any extension thereof for the rest of her life." [2] Specifically, the complainant accuses the respondent Deputy Sheriff of grave abuse of authority and grave misconduct and prays that he "be declared NOTORIOUSLY UNDESIRABLE and be dismissed from service." [3]

It appears that the subject premises were formerly owned by Alicia Criss who lived therein together with her husband and one housemaid, the complainant herein. The property was sold to Atty. Edgardo Carreon, but because of her failure to deliver possession of the same on the date promised, Carreon filed an ejectment case against Criss (Civil Case No. 059696, "Carreon vs. Criss," in the then City Court of Manila, Branch X), without, however, including the tenants of the latter as parties-defendants. In the decision of the court a quo based on the compromise agreement submitted by the parties, Criss and all persons claiming under her were given up to December 30, 1980 within which to vacate the subject premises. Later, Carreon moved for execution of the above decision, but when the sheriff attempted to execute against the tenants, the latter resisted.[4] These tenants subsequently filed in the then Court of First Instance (CFI, for short) of Manila, Branch XXXV, a petition for relief (Civil Case No. 144328, "Teresita Talamayan, et al. vs. Edgardo Carreon and Alicia Criss") to enjoin the execution against them of the decision in the aforementioned case of "Carreon vs. Criss." Thereafter, a restraining order[5] was issued by CFI Judge Alfredo Lazaro, enjoining the enforcement of the writ of execution earlier issued by Judge Antonio Paredes in the Carreon case. Meanwhile, the parties in the Talamayan case entered into a compromise agreement; Judge Lazaro rendered a decision[6] approving the same, and his decision was upheld by the Intermediate Appellate Court (IAC, for short) on appeal.[7] Subsequently, an alias writ of execution in the latter case was issued on October 10, 1983.[8]

Initially, the respondent sheriff maintained that the writ he served on the complainant was not the one issued by Judge Lazaro but the one issued by Judge Paredes.[9] However, when the respondent returned to the witness stand

for redirect examination, he reversed himself completely by categorically declaring that the writ he enforced for the purpose of ejecting the complainant was the one which Judge Lazaro issued in the Talamayan case,[10] in effect confirming the allegation of the complainant.

But the complainant was never a party in the Talamayan case. A simple reading of the decision of Judge Lazaro will reveal that she was not one of the plaintiffs later ordered ejected. Neither was she a party to the compromise agreement subject of the above decision, nor was her name ever mentioned in the decisions[11] rendered in connection with the same matter. She cannot even be considered an agent of the plaintiffs therein because she never claimed to have derived her right to stay in the subject premises from any of them. Rather, she had consistently maintained that her right to remain therein stemmed from her position as housemaid of Alicia Criss.

We therefore hold that the respondent sheriff's actuation in enforcing a judgment against the complainant who is not a party in the aforementioned case calls for disciplinary action. "Considering the ministerial nature of his duty in enforcing writs of execution, what is incumbent upon him is to ensure that only that portion of a decision ordained or decreed in the dispositive part should be the subject of execution. No more, no less." [12] It is of no moment that the complainant herself deserves to be ejected as she had long lost her right to stay in the subject premises. The point is that the respondent is well aware of the rules on execution of judgments, particularly the proper procedure in ejectment, and yet he ignored them.

In the light of the respondent's express admission, made under oath when he testified in his own behalf on August 26, 1985, that what he enforced was the writ of execution issued in the Talamayan case, it can be reasonably deduced that the purported sheriff's return[13] was fraudulently prepared so it would appear that the writ which he served was that issued in the Carreon case, where the complainant, as a person claiming under the defendant Alicia Criss, was indeed ordered ejected.

At any rate, the writ of execution issued in the Carreon case on June 30, 1981[14] could no longer be validly implemented in October 1983. As we said in *Sibulo vs. Ramirez*:

x x x. As an officer of the court, a sheriff has the duty to serve and make a return of a writ of execution "to the clerk or judge of the court issuing it, at any time not less than ten (10) days nor more than sixty (60) days after its receipt by the officer (sheriff) x x x." The law is mandatory. The Sheriff is left with no discretion on whether or not to execute and to make a return of the writ within the period provided by the Rules of Court aforesaid.[15]

Whilst it is true that the restraining order issued by CFI Judge Lazaro tolled the running of the six (60)-day period, it commenced to run again after the promulgation of the decision of the IAC on February 8, 1983. The writ (issued by Judge Paredes of the City Court of Manila, on June 30, 1981) should have been served, and a return made, soon after receipt by the CFI of the IAC decision. Parenthetically, notice to the court is notice to the sheriff. However, according to the respondent himself, this writ was enforced only on October 24, 1983, or some eight months after the promulgation of the said IAC decision, which is already way beyond the writ's lawful life span. The respondent, therefore, violated his official duty to enforce writs of execution with considerable dispatch so as not to induly delay the administration of justice.[16]

As regards the personal items alleged to have been lost during the ejectment proceedings through the fault of the respondent, we agree with the conclusion of the investigating judge that the respondent's fault or negligence was not proved by convincing and credible evidence.

ACCORDINGLY, we find the respondent GUILTY of negligence in the enforcement of the writ of execution in Civil Case No. 144328, and dishonesty in the preparation of the sheriff's return. A fine equivalent to five months salary is hereby imposed with a stern warning that the commission of the same or similar offense in the future will

be dealt with more severely. Let a copy of this Resolution be filed in the personal record of the respondent.

SO ORDERED.

Melencio-Herrera, (Chairperson), Paras, Padilla, and Regalado, JJ., concur.

[1] Rollo, 1.

[2] Id., 46.

[3] Id., 1.

[4] Decision, 2; Rollo, 30.

[5] Rollo, 24.

[6] Id., 26-27.

[7] Id., 29-32.

[8] Exhibit "17", Folder of Exhibits.

[9] Comment, 1; Rollo, 19. See also t.s.n., June 11, 1985, 12, 16.

[10] T.s.n., August 26, 1985, 4-5.

[11] CFI and IAC.

[12] Cruz vs. Dalisay, Adm. Matter No. R-181-P, July 31, 1987, 152 SCRA 485.

[13] Id., 34.

[14] Id., 22.

[15] Adm. Matter No. R-494-P, September 17, 1987, 154 SCRA 104.

[16] Patangan vs. Concha, Adm. Matter No. R-699-P, August 7, 1987, 153 SCRA 37.

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