

MARCELA GUILAS-GAMIS, COMPLAINANT, VS. JUDGE RODOLFO P. BELTRAN, RTC, BRANCH 34, AND SHERIFF ERNESTO A. MENDOZA, OCC, GAPAN CITY, RESPONDENTS.

A.M. No. P-06-2184 (FORMERLY A.M. NO. 06-2443-RTJ). September 27, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

In a verified Sinumpaang Salaysay dated June 18, 2006, Marcela Guilas-Gamis, complainant, denounced Judge Rodolfo P. Beltran of the Regional Trial Court (RTC), Branch 34, Gapan City, for gross ignorance of the law and knowingly rendering an unjust judgment in Civil Case No. 2804, entitled “Cynthia E. Abes v. Marcela Guilas, et al.” for annulment of title and reconveyance and damages. She also charged Ernesto A. Mendoza, sheriff in the Office of the Clerk of Court, same court, with gross dereliction of duty, incompetence and dishonesty relative to Civil Case No. 1738, entitled “Marcela Guilas v. Ricardo Cajucom, et al.” for recovery of possession and damages.

On the date the complaint was filed, respondent Judge had already retired. Records show that he left the judiciary on February 5, 2006. Verily, the complaint against him has become moot.

Upon recommendation of the Office of the Court Administrator (OCA), the complaint against respondent sheriff was referred to Executive Judge Dorentino Z. Floresta, RTC, Gapan City, for investigation, report and recommendation.

On August 30, 2006, Executive Judge Floresta submitted his Report and Recommendation.

In the Court’s internal Resolution of October 4, 2006, Judge Floresta’s Report and Recommendation was referred to the OCA for evaluation, report and recommendation.

After a review of the Memorandum dated February 20, 2007 of Court Administrator Christopher O. Lock and Deputy Court Administrator Jose P. Perez, the Court RESOLVES to ADOPT and APPROVE their findings of facts and conclusions of law partly reproduced hereunder:

Executive Judge Dorentino Z. Floresta, RTC, Gapan City, submitted the following:

In a sworn statement, Marcela Guilas-Gamis charged Ernesto A. Mendoza, Sheriff IV, RTC, Office of the Clerk of Court, Gapan City, with gross dereliction of duty, incompetence and dishonesty. To support her charges, she alleged that on January 12, 2004, by virtue of a writ of execution issued by MTC-Gen. Tinio, Nueva Ecija, sheriff Mendoza was directed to enforce the final and executory Decision of the court. On February 18, 2004, sheriff Mendoza issued the Abiso sa Pag-alis ng Bahay and Return of Service on August 23, 2004. It is very clear from the return of service that sheriff Ernesto A. Mendoza did not perform his duties and misappropriated the amount of P3,000.00 which he asked for the expenses in the implementation of the writ of execution. Likewise, sheriff Ernesto Mendoza failed to implement the Special Order issued by MTC, Gen. Tinio, Nueva Ecija despite his receipt of P6,000.00 and the total amount of P15,000.00. On November 2, 2005, instead of fulfilling his promise to enforce the writ of demolition, sheriff Ernesto A. Mendoza connived

with former RTC Judge Feliciano Buenaventura who represented as a new counsel in Civil Case No. 2804, RTC, Branch 34, Gapan City. He filed a motion for Issuance of Preliminary Injunction in the said case. Sheriff Ernesto A. Mendoza testified in this case and as a result of his testimony, Judge Rodolfo P. Beltran issued a writ of preliminary injunction on the same day, ordering sheriff Ernesto A. Mendoza to cease and desist from implementing the Special Order of demolition issued by the Acting Municipal Judge of Gen. Tinio, Nueva Ecija.

During the investigation of the case on August 22, 2006 at 2:00 o'clock in the afternoon, Marcela Guilas-Gamis appeared and submitted a sworn statement. In the said sworn statement, Marcela Guilas-Gamis alleged that she was impelled to file the case against sheriff Ernesto A. Mendoza because of her anger caused by the issuance of the Temporary Restraining Order by Judge Rodolfo P. Beltran. Her real intention was to complain only against Judge Beltran and not sheriff Mendoza. With respect to the money, she claimed that she gave the same to the demolition team and not to sheriff Mendoza. As regards to the amount of P2,000.00, she claimed that the said amount represents the reimbursement of the expenses of sheriff Ernesto Mendoza for the implementation of the Special Order.

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Investigating Judge Floresta found that respondent sheriff was not remiss in his duties and therefore recommended that the charges of gross dereliction of duty, incompetence and dishonesty be dismissed. Judge Floresta, however, found respondent sheriff to have violated Section 10 of Rule 141, as amended (not Section 9) for his failure to remit the amount collected from the complainant as part of the sheriff's fee for the implementation of the writ of execution.

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Judge Floresta applied the ruling of the Supreme Court in the case of Antonio Rodriguez v. Vicente P. Aposaga, Jr., etc., A.M. No. P-03-1671, January 31, 2005, and recommended that sheriff Ernesto Mendoza be fined in the amount of P2,000.00 and sternly warned that a repetition of the same or similar offense shall be dealt with more severely for violation of Sec. 10 of Rule 141. He further recommended that the charges for gross dereliction of duty, incompetence and dishonesty be DISMISSED.

After a careful evaluation of the records of the case, the undersigned fully concur with the investigation report and recommendation of the Investigating Judge, finding the same to be in accordance with the existing rules and jurisprudence.

Pertinent provision of Section 10 of Rule 141 of the Rules of Court, as amended, reads:

Sec. 10. Sheriffs, process servers and other persons serving processes. – With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses 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. The liquidation shall be approved by the court. 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.

In the instant case, respondent, instead of preparing an estimate of expenses to be incurred in implementing the writ of execution and thereafter securing the court's approval thereof, merely verbally estimated the expenses and directly conveyed the same to complainant, which the latter then paid to respondent. Respondent sheriff should

have known better. He should have secured the approval of the estimated expenses and advised the complainant to deposit the approved amount with the Office of the Clerk of Court.

The sheriff is obliged to secure the approval of the issuing court of the estimated expenses and fees for implementation of the writ of execution (*Vda. de Gillego v. Roxas*, 235 SCRA 158 [1994]). Costs or rough estimates for the implementation of the writ of demolition and possession must be submitted to the court for approval (*Miro v. Tan*, 235 SCRA 405 [1994]).

It bears emphasis that high standards are expected of sheriffs, they being agents of the law (*Balanag, Jr. v. Osita*, 388 SCRA 630 [2002]). They are mandated to perform the duties of their office earnestly, faithfully and honestly.

In the case of *Roberto Ignacio v. Rodolfo Payumo*, Deputy Sheriff, RTC, Quezon City, A.M. No. P-00-1396, October 24, 2000, 344 SCRA 169 [2000]), respondent sheriff was fined in the amount of Five Thousand Pesos for having committed the same violation (violation of Sec. 9 of Rule 141 of the 1997 Rules of Civil Procedure). Respondent Payumo was likewise sternly warned that a repetition of the same or similar act shall be dealt with more severely by the Honorable Court. In the case of *Carmelita S. Danao v. Jesus T. Franco*, Sheriff IV, RTC, Branch 215, Quezon City, A.M. No. P-02-1569, November 13, 2002, respondent sheriff Franco was found guilty of simple misconduct for the same offense as that of herein respondent and was ordered SUSPENDED from the service for two (2) months without pay and other fringe benefits including leave credits, with a stern warning that a repetition of the same or similar offense in the future shall be dealt with more severely. In the more recent case, *Re: Antonio Rodriguez v. Vicente P. Aposaga, Jr.*, Sheriff IV of the Regional Trial Court of Sibugay, Zamboanga was FINED in the amount of two thousand (P2,000.00) pesos and sternly warned for having been found guilty of violation of Sec. 9 (now Sec. 10) of Rule 141 of the Rules of Civil Procedure.

WHEREFORE, premises considered, the undersigned respectfully recommend to the Honorable Court that respondent sheriff Ernesto A. Mendoza, RTC-OCC, Gapan City, Nueva Ecija, be FINED in the amount of TWO THOUSAND PESOS for violation of Section 10, Rule 141 of the Rules of Civil Procedure, as amended.

ACCORDINGLY, and as recommended by Court Administrator Christopher O. Lock and Deputy Court Administrator Jose P. Perez, respondent sheriff Ernesto A. Mendoza is imposed a FINE of Two Thousand Pesos (P2,000.00) for violation of Section 10, Rule 141 of the Revised Rules of Court.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Garcia, JJ., concur.

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