

1ST ENDORSEMENT DATED JUNE 3, 1991 OF ATTY. DANILO CUNANAN, HEAD EXECUTIVE ASSISTANT, OFFICE OF THE OMBUDSMAN

A.M. No. 91-8-374-OMB. November 28, 1994

Ponente: MELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a-m-no-91-8-374/>

MELO, J.:

The administrative case before us stemmed from the unsworn-letter complaint dated May 15, 1991 of Ms. Esperanza F. Choy against Rodrigo Saure, Sheriff III, Regional Trial Court, Office of the Clerk of Court, Kalookan City, for dereliction of duty, relative to the implementation of the writ of execution issued in Civil Case No. 931, entitled "Esperanza F. Choy vs. Nila Valencia", for Collection of Sum of Money. The said unsworn letter-complaint was originally filed with the Office of the Ombudsman but was referred to this Court for appropriate action by Atty. Danilo Cunanan, Head Executive Assistant.

Complainant, the plaintiff in the aforecited case, alleges that on January 31, 1991, Judge Nilo Barsaga, MTC, Masbate, Masbate issued an order for the issuance of a writ of execution upon Nila Valencia and directed the City Sheriff of Kalookan or any authorized deputies to serve the same to satisfy a judgment for P2,400.00. Respondent Saure was the one designated to enforce the writ.

Complainant claims that it was at her instance that the writ of execution was served by respondent upon defendant Nila Valencia at her residence at Lot 3, Block 4, Don Pepe Street, La Trinidad Subdivision, Tenejeros, Malabon. Although respondent sheriff levied upon some of the defendant's personal property and scheduled the auction sale on March 11, 1991, he did not, however, take physical possession of the property levied upon. The auction sale did not materialize because herein complainant was not available. A second auction sale was scheduled on April 23, 1991 but did not push through because the defendant was not around and her house was padlocked.

It is the contention of complainant that had respondent taken physical possession of the levied personal property, the judgment would have been satisfied.

Complainant reiterated the foregoing allegations in her sworn complaint submitted to this Court on October 14, 1991 in compliance with the Resolution of the Court dated September 3, 1991.

In his Comment dated September 30, 1994, respondent sheriff, in sum, alleges that:

1. Upon receipt of the writ of execution issued in Civil Case No. 931, together with the complainant, he proceeded to the residence of the defendant. There they were allegedly informed that the defendant was not present due to her work in Masbate. Considering that the defendant's son, Joel Valencia, was there and he was of sufficient age and discretion, he (respondent) explained to Joel the obligations of her mother and served upon him a copy of the Writ of Execution, Notice of Levy, and Sheriff's Sale on the property found inside their house;
2. The sale was scheduled for March 11, 1991 to give sufficient time to the defendant to be notified and to appear during the public auction;

3. At the scheduled sale, complainant was absent despite notice to her and in view thereof the auction sale was postponed.
4. On April 17, 1991, complainant informed him (respondent) that there is no way of recovery and/or settlement of payment as she (complainant) herself failed to contact defendant in Masbate. Consequently, respondent and complainant proceeded again to the defendant's residence and re-scheduled the public auction sale to April 23, 1991 at 10 o'clock in the morning and in the same address (referring to the residence of defendant). The respondent likewise informed Joel of the re-scheduled auction sale.
5. At the re-scheduled auction sale wherein barangay and police assistance was sought, they were surprised to find the house of the defendant unoccupied and padlocked. Neighbors of the defendant gave the information that the defendant was still in the province and her children were in school.
6. After finding it difficult to locate the whereabouts of the defendant, respondent decided to look for another property and came up with a piece of real property which is, however, mortgaged with the Development Bank of the Philippines.
7. Thereafter, respondent explained to complainant the procedures on the sale of real estate property which requires publication, greatly disappointing, in the process, complainant.
8. On April 26, 1991, a Sheriffs Report/Return was submitted to the MTC, Masbate for record and information purposes.

The case was then referred to the Office of the Court Administrator for evaluation, report, and recommendation.

In his report dated November 26, 1994, Deputy Court Administrator Reynaldo Suarez came up with the following findings and recommendation:

Rule 39, Section 15 of the Revised Rules of Court provides that:

"Section 15. Execution of money judgments.- The officer must enforce an execution of a money judgment by levying on all the property, real and personal of every name and nature whatsoever, and which may be disposed of for value, of the judgment debtor not exempt from execution, or on a sufficient amount of such property, if there be sufficient, and selling the same, and paying to the judgment creditor, or his attorney, so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be delivered to the judgment debtor, unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, within the view of the officer, he must levy only on such part of the property as is amply sufficient to satisfy the judgment and costs.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied on in like manner and with like effect as under a writ of attachment."

Under the aforesaid rule, before the property may be sold on execution, it must be levied on. The levy is indispensable to the validity of the execution sale. There can be no valid sale without a valid levy (*Llenares vs. Valdeavalle*, 46 Phil. 358). Levy is in the nature of an attachment provided in Rule 57.

Thus, it is very clear in the case at bar, that respondent Sheriff is liable as charged. While it is true there has been a notice of levy and Sheriff's sale, the personal properties so listed remained in the possession of the defendants and were never pulled out even after it was scheduled twice for public auction.

Admitted likewise is the fact that respondent submitted a Sheriff's Report dated April 26, 1991. The said return has stated among others, that he has already conducted a levy on some of the personal properties of defendant but the scheduled sale (twice) did not materialize, first due to the absence of the complainant and secondly, due

to the fact that the house of the defendant was padlocked and the properties are inside. That in itself shows that defendant failed to take custody of the personal properties which were levied pursuant to the writ of execution issued by Judge Nilo B. Barsaga. Respondent was therefore remiss in the performance of his duty for having failed to take custody over the levied properties.

This is a serious breach on the part of the Sheriff and he should be meted a sterner penalty. Since, however, this is the first complaint ever filed against respondent in his long years of service with the Court, a light penalty of a FINE of FIVE THOUSAND PESOS (P5,000.00) is commensurate to the gravity of the ?????.

The Court agrees with the foregoing findings. The sheriff is a court officer primarily responsible for the speedy and efficient service of all court processes and writs originating from his court and the branches thereof and those that may be delegated to him from other courts.

As such officer, whose duties form an integral part of the administration of justice, a sheriff and his deputies may be properly dismissed or suspended from office, by this tribunal which exercises administrative supervision over the judicial branch of the government, for action committed in violation of Rules of Court and which impedes and detracts from a fair and just administration of justice (*Hipolito vs. Mergas*, 195 SCRA 6 [1991]). The Court cannot overstress the need for circumspection and proper behavior on the part of a sheriff, an officer of the court upon whom the execution of a final judgment depends. It is said that execution is the fruit and end of the suit and is very aptly called the life of the law (*Tan vs. Herras*, 195 SCRA 1 [1991]; *PAL vs. Court of Appeals*, 181 SCRA 557 [1990]). It is indisputable that the most difficult phase of any proceeding is the execution of judgment. Hence, the officers charged with this delicate task must, in the absence of a restraining order, act with considerable dispatch so as not to unduly delay the administration of justice, otherwise, the decision, orders, or other processes of the courts of justice would be futile (*Pascual vs. Duncan*, 216 SCRA 786 [1992]).

This Court had said before, and now reiterates it here, that the conduct and behavior of every one connected with an office charged with the dispensation of justice, from the highest magistrate to the lowest clerk, should be circumscribed with the heavy burden of responsibility. Respondent sheriff's actuations in the enforcement of the writ of execution in Civil Case No. 931 did not live up to this strict standard. The recommended fine in the amount of P5,000.00, however, appears a bit too much considering that the judgment credit in favor of complainant is only for P2,400.00.

ACCORDINGLY, a fine of TWO THOUSAND PESOS (P2,000.00) is hereby imposed on respondent sheriff Rodrigo Saure, payable within thirty (30) days from notice. Respondent is hereby warned that a repetition of the same or of any act calling for disciplinary action, will be dealt with more severely.

SO ORDERED.

Bidin, Romero, and Vitug, JJ., concur.

Feliciano, J., (Chairman), on leave.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.