

JUDGE GREGORIO R. BALANAG, JR., COMPLAINANT, VS. ALONZO B. OSITA, SHERIFF IV, RTC-ALABEL, SARANGANI, RESPONDENT.*A.M. No. P-01-1454. September 12, 2002*

Ponente: CARPIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/ad72f8f39878/>**CARPIO, J.:**

It is the ministerial duty of the sheriff to implement the writ of execution issued by the court. However, Section 9, Rule 141 of the Rules of Court requires the sheriff to secure the court's prior approval of the estimated expenses and fees needed to implement the writ.

The Facts

The Municipal Circuit Trial Court of Kiamba-Maitum, Sarangani rendered a decision dated August 8, 1995 in Civil Case No. 281 entitled "Felicidad and Arsenio Gadut, et al. vs Diahing Saliang, et al." for Forcible Entry and Damages. The trial court issued a writ of execution on October 4, 1996 to restore possession to plaintiffs and to satisfy a money judgment of P40,000.00. The trial court tasked respondent Alonzo B. Osita, Sheriff IV ("Sheriff Osita" for brevity) of the Regional Trial Court of Alabel, Sarangani to implement the writ.

Based on the Sheriff's Return of the Writ of Execution and Notice of Levy dated January 20, 1997,[1] Sheriff Osita caused the harvest of 172 sacks of rice which he sold for P60,102.00. He incurred expenses in the total amount of P49,535.00, leaving net proceeds of P10,567.00 which he turned over to Arsenio Gadut, one of the plaintiffs in the case.[2]

In his Comment to the Sheriff's Return dated February 18, 1997,[3] Atty. H. Echavez-Villondo, counsel for plaintiffs, asserted that Sheriff Osita lodged and dined at Kiamba, Sarangani Province from January 7-19, 1997 with more than twenty escorts composed of PNP, RMF, SF/CAFGU and Marines. Atty. Echavez-Villondo questioned the exorbitant expenses for lodging and meals amounting to P10,000.00. He assailed Sheriff Osita for justifying the expenses for meals and lodging as necessary for the "High Morale of the Troops." He pointed out that Sheriff Osita incurred these expenses without securing the approval of the court in violation of the procedure laid down in the Rules of Court. He lamented that Sheriff Osita did not consult him before incurring these expenses when the "lawyer and sheriff are partners in executing a final judgment." He bewailed that Sheriff Osita "exhausted the proceeds to the detriment of the plaintiffs and counsel."

Furthermore, Atty. Echavez-Villondo faulted Sheriff Osita for turning over the net proceeds of P10,567.00 to only one of the plaintiffs, Arsenio Gadut. He asserted that Sheriff Osita should have apportioned the proceeds among all the plaintiffs. He therefore prayed that Sheriff Osita be declared guilty of grave misconduct and gross dishonesty and be made "personally accountable for the attorney's fees as mentioned in the decision."

In his Reply to Comment to Sheriff's Return dated March 18, 1997,[4] Sheriff Osita cited the Affidavit of Arsenio Gadut who stated that he was "fully satisfied and (had) no complaint whatsoever as to the manner" Sheriff Osita implemented the writ and incurred the incidental expenses.

In his Rejoinder to Sheriff's Reply dated April 22, 1997,[5] Atty. Echavez-Villondo argued that the approval by one of the plaintiffs of the exorbitant expenses incurred in implementing the writ does not rectify a violation of Section 9 of Rule 141.

In his Comment dated September 7, 2001 filed with this Court, Sheriff Osita submitted the Joint-Affidavit dated September 26, 1997 of all the plaintiffs stating that—

“Admittedly, we are all fully satisfied, and have no complaint whatsoever, as to the manner the sheriff enforced the Writ of execution, including all the expenses which we personally handled.

It is to our great dismay to note lately that our Counsel, Atty. H. Echavez-Villondo, is now putting the good Sheriff into bad light. Charging the respondent Sheriff to have abused his office by charging the plaintiff with exorbitant fees and expenses in enforcing the Writ of execution, disregarding the fact that the Sheriff had never charged nor collected from us any amount as expenses for the service of the retained Policemen and Military Forces, is both unwarranted and unfair. As earlier mentioned, the expenses incurred to successfully enforce the writ of execution was nothing but our own making, freely and voluntarily made without the advice of the Sheriff.”

OCA's Report and Recommendation

The Court Administrator opined that while it is the ministerial duty of the sheriff to implement the writ, the sheriff is required to secure the issuing court's approval of the estimated expenses and fees to implement the writ. Sheriff Osita failed to follow the procedure laid down in Section 9, Rule 141 of the Rules of Court and also failed to turn over the proceeds of the levy to the clerk of court. The Court Administrator recommended that Sheriff Osita, being remiss in his duties on two counts, be fined Five Thousand Pesos (P5,000.00).

The Court's Ruling

We agree with the findings and conclusions of the Court Administrator.

A sheriff must comply with Section 9 of Rule 141 in serving processes.[6] Section 9, Rule 141, as amended in A.M No. 00-2-01-SC,[7] prescribes the legal procedure in the implementation of the writ. It expressly provides:

“SEC. 9. Sheriffs and other persons serving processes. -

x x x

In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometre of travel, guard's fees, warehousing and similar charges, 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. 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.” (Emphasis supplied).

Section 9, Rule 141 requires that the sheriff's estimate of expenses in the execution of a writ shall be approved by the judge. The approved estimated amount shall be deposited with the clerk of court who, as ex officio sheriff, shall then disburse the same to the assigned sheriff.

Thus, a sheriff is guilty of violating the Rules if he fails to observe the following: (1) preparing an estimate of expenses to be incurred in executing the writ, for which he must seek the court's approval; (2) rendering an

accounting; and (3) issuing an official receipt for the total amount he received from the judgment debtor.[8]

Sheriff Osita never followed the procedure laid down in Section 9 of Rule 141. He spent P49,535.00 as expenses of execution without any approval from the court. The acquiescence or consent of the plaintiffs to such expenses, before or after the implementation of the writ, does not absolve the sheriff for his failure to secure the prior approval of the court to such expenses. Section 9 of Rule 141 expressly requires the sheriff to secure the issuing court's approval of the estimated expenses and fees to implement the writ of execution.[9] Costs or rough estimates for the implementation of the writ must be submitted to the court for approval.[10]

In case where the judgment obligor voluntarily pays in cash or certified check the judgment debt and the judgment obligee is not present, Section 9 of Rule 39 requires the sheriff to receive the payment. However, the sheriff must turn over the amount within the same day to the clerk of court. If it is not practicable to deliver the amount to the clerk of court within the same day, the sheriff shall deposit the amount in a fiduciary account with the nearest government depository bank. The clerk of court then delivers the amount to the judgment obligee in satisfaction of the judgment.

Although Section 9 of Rule 39 does not expressly so provide, the same procedure should be followed in case the judgment obligee cannot pay in cash and the sheriff makes a levy to satisfy the judgment. If the judgment obligee is not present to receive the net proceeds of the auction sale, the sheriff should within the same day turn over the amount to the clerk of court. If it is not practicable to turn over the amount within the same day, the sheriff should deposit the amount in a fiduciary account with a government depository bank. It is the clerk of court who delivers the amount to the judgment obligee.

In the instant case, Sheriff Osita sold the 172 sacks of rice for cash on January 18, 1997 and turned over the cash proceeds on January 20, 1997 to Arsenio Gadut, one of the four plaintiffs. Sheriff Osita should have turned over the cash proceeds to the clerk of court.[11] Even if Arsenio Gadut was present when the writ was implemented, Sheriff Osita should not have turned over to Gadut the entire cash proceeds unless the latter had authority to receive the share of his co-plaintiffs.

Time and again we have ruled that high standards are expected of sheriffs who play an important role in the administration of justice. We explained in *Vda. De Abellera vs. Dalisay*:[12]

“At the grassroots of our judicial machinery, sheriffs and deputy sheriffs are indispensably in close contact with the litigants, hence, their conduct should be geared towards maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel; hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a temple of justice.”

As an implementing officer of the court, Sheriff Osita should set the example by faithfully observing the Rules of Court, and not brazenly disregard the Rules.[13]

WHEREFORE, respondent Sheriff IV Alonzo B. Osita of the Regional Trial Court of Alabel, Sarangani, is hereby found guilty of simple neglect of duty for failing to follow the procedure laid down in Section 9, Rule 141 of the Rules of Court and for failing to turn over the proceeds of the levy to the clerk of court. Sheriff Osita is FINED Five Thousand Pesos (P5,000.00) with a stern WARNING that a repetition of the same or similar act shall be dealt with more severely by this Court.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Ynares-Santiago, JJ., concur.

[1] Rollo, pp. 22-24 & 30.

[2] Ibid., pp. 34-35; Affidavit of Arsenio Gadut, Rollo, p. 15.

[3] Ibid., pp. 17-21.

[4] Ibid., pp. 12-14.

[5] Rollo, pp. 7-9.

[6] Ong vs. Meregildo, 233 SCRA 632 (1994).

[7] Effective March 1, 2000.

[8] Tan vs. Dael, 335 SCRA 513 (2000).

[9] Casaje vs. Gatbalite, 331 SCRA 508 (2000).

[10] Ignacio vs. Payumo, 344 SCRA 169 (2000).

[11] Borja, Sr. vs. Angeles, 244 SCRA 706 (1995).

[12] 268 SCRA 64 (1997); also cited in Canlas vs. Balasbas, 337 SCRA 41 (2000).

[13] Caña vs. Gebusion, 329 SCRA 132 (2000).

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.