NENA GIMENA SOLWAY, COMPLAINANT, VS. ARIEL R. PASCASIO, SHERIFF III, MTCC, BRANCH 5, OLONGAPO CITY, MICHAEL P. UCLARAY, SHERIFF, III, MTCC-OCC-OLONGAPO CITY AND BENJAMIN M. TULI...

A.M. NO. P-07-2327 [FORMERLY OCA-I.P.I. NO. 04-1934-P]. July 12, 2007

Ponente: TINGA, J.

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TINGA, J.:

This administrative matter pertains to a complaint[1] dated 5 April 2004 filed by Nena Gimena Solway (complainant) against Ariel R. Pascasio (Pascasio), Michael P. Uclaray (Uclaray) and Benjamin M. Tulio (Tulio), charging them with Abuse of Authority and Harassment before the Office of the Court Administrator (OCA). Pascasio holds the position of Sheriff III, Municipal Trial Court in Cities (MTCC) Branch 5, Olongapo City, while Uclaray and Tulio are both employed as Sheriff III of MTCC-OCC.

The complaint, couched in Tagalog, recites the antecedents, thus:

Ely Palenzuela (Palenzuela) is the owner of a building in Baloy Beach, Bo. Barretto, Olongapo City. She leased it to complainant, who opened at the premises an establishment called Mynes Inn and Restaurant. Complainant paid a monthly rental of P13,200.00. Prior to the expiration of the lease contract on 1 August 2003, the parties agreed on its renewal for five (5) years with a ten percent (10%) increase in rentals or P15,000.00 monthly, but no formal contract was executed because Palenzuela had left for Hawaii. Upon Palenzuela's return, she increased the monthly rental to P25,000.00 and shortened the period of lease to one year. The parties failed to reach an agreement. Hence, the matter was referred to the Office of the Lupong Tagapamayapa (Lupon) of Barangay Barretto.

Before the Lupon, the parties signed an Amicable Settlement[2] dated 28 January 2004, wherein it was agreed that the monthly rental is P20,000.00; that complainant will pay P240,000.00 as rental for one year after the finalization of the contract, and; that the contract will be renewed yearly.

On 9 February 2004, Palenzuela went to complainant's restaurant. She produced a copy of a Notice of Execution[3] signed by Barangay Chairman Carlito A. Baloy, who turned out to be Palenzuela's brother, and forced complainant to sign the same. Complainant refused to do so. The following day, Pascasio and Uclaray, with the same copy of the Notice of Execution in tow, also forced and threatened complainant to sign. Out of fear, complainant relented and signed the Notice of Execution.

In the morning of 20 February 2004, Pascasio and Uclaray, accompanied by Isagani Saludo and Tulio, returned to complainant's restaurant. They introduced themselves as sheriffs and ordered complainant to take all her properties out of the restaurant. The latter refused, insisting that there was no court order authorizing the execution and that an agreement for the renewal of the lease contract had already been reached.[4] At around 3:00 p.m. on the same day, the barangay chairman ordered respondents to take complainant's stuff out of the restaurant

and into the street. Respondents complied. Thereafter, respondents padlocked all the rooms and ordered all customers to get out of the establishment.[5]

In her complaint, complainant questioned the presence of respondents in the premises, considering that there was no court order to eject her.[6]

On 25 May 2004, the Court Administrator endorsed the complaint to respondents for their comment.[7]

In their Joint Comment/explanation,[8] respondents admitted their presence in complainant's establishment. According to them, they were there to provide assistance in securing compliance with the Amicable Settlement. Professing innocence of any act of harassment or abuse of authority, they further claimed that they were instructed by Clerk of Court and City Sheriff Alexander Rimando to observe the implementation of the arbitration award. They were thus mere witnesses to complainant's refusal to comply with the settlement process which was under the control and supervision of the barangay chairman. Respondents accordingly prayed for the dismissal of the complaint.

On 13 December 2004, the OCA submitted a Report[9] finding that respondents exceeded their functions when they participated in the execution of the Amicable Settlement. Nevertheless, the OCA observed that there was no showing that respondents profited from their participation in the exercise and on that basis recommended the dismissal of the complaint for lack of merit.[10]

In the Resolution[11] dated 7 February 2005, the parties were required to manifest within ten (10) days from notice, if they are willing to submit the case for resolution based on the pleadings filed. On 10 March 2005, complainant made a manifestation to that effect[12] while respondents submitted a similar manifestation on 9 February 2007.[13]

Respondents are liable.

The Amicable Settlement reached by the parties before the Barangay Lupon is susceptible to legal enforcement. However, the Local Government Code mandates that it is the Lupon itself which is tasked to enforce by execution the amicable settlement or arbitration award within six (6) months from the date of settlement. Upon the lapse of such time, the settlement may only be enforced by filing an action before the appropriate court. Section 417 of the Local Government Code reads:

> SEC. 417. Execution .– The amicable settlement or arbitration award may be enforced by execution by the [L]upon within six (6) months from the date of the settlement. After the lapse of such time, the settlement may be enforced by action in the proper city or municipal court.

Clearly, the implementation of the Notice of Execution was then outside the legitimate concern of the MTCC, of any of its officers or of any other judicial officer. The barangay chairman's letter to the MTCC seeking assistance in the enforcement of the Amicable Settlement is not by any measure the court action contemplated by law as it does not confer jurisdiction on the MTCC over the instant dispute. Such could be accomplished only through the initiation of the appropriate adversarial proceedings in court in accordance with Section 417 of the Local Government Code. The OCA correctly stated that there is no justiciable case filed before the MTCC that could have prompted respondents to act accordingly.

Mere presence of a sheriff in a place of execution where the court has no business is frowned upon. Such act elicits the appearance of impropriety.[14] Participation or intervention in the process is a more grievous act which exacts a more stringent sanction. And whether it is unexplained presence or active participation, the act gives rise to the impression that the execution of the Amicable Settlement is upon lawful order of the court.

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The situation at bar did not involve any court order. The execution was undertaken only under the authority of the barangay chairman, not even that of the Lupon. Even if it was done under the auspices of the Lupon, the presence of respondents would still not be warranted. Both the barangay chairman and the Lupon are components of the local government unit which, in turn, is subsumed under the executive branch of government. As the intended execution of the settlement in this instance was inherently executive in nature and, therefore, extrajudicial, it necessarily follows that judicial officers cannot participate in the exercise. The misdeeds of respondents unnecessarily put the integrity of the court to which they are assigned and the dignity of the institution that is the judiciary on the line.

The fact of willful participation is penalized especially when the acts of the judicial officer concerned are not within his or her legal authority. Complainant alleged that respondents actually participated in the execution of the Amicable Settlement and the OCA observed that these allegations were not sufficiently refuted by respondents.[15] More tellingly, the defense of respondents that they were acting under the order of the Clerk of Court is belied by the directive[16] issued by the latter directing respondents to explain their presence at the site of the implementation of the Notice of Execution.

Furthermore, the functions of sheriffs, such as respondents, are enumerated under the 2002 Revised Manual for Clerks of Court, as follows:

> 2.2.4.1 serves and/or executes writs and processes addressed and/or assigned to him by the Court and prepares and submits returns of his proceedings;
>
> 2.2.4.2 keeps custody of attached properties or goods;
>
> 2.2.4.3 maintains his own record books on writs of execution, writs of attachment, writs of replevin, writs of injunction, and all other processes executed by him; and
>
> 2.2.4.4 performs such other duties as may be assigned by the Executive Judge, Presiding Judge and/or Branch Clerk of Court.

Nothing in this Rule justifies their participation in the implementation of the Notice of Execution. Clearly, respondents were not acting within their authority. This further lends credence to complainant's claim that their presence was only meant to instill fear on her to make her sign the Notice of Execution.

Respondents have exceeded their mandated duties when they interfered with functions that should have been exercised only by barangay officials. Their actions run counter to the Code of Conduct of Court Personnel which provides that court personnel shall expeditiously enforce rules and implement orders of the court within the limits of their authority. As we have so reiterated in a previous ruling, a court employee is expected to do no more than what duty demands and no less than what privilege permits. Though he may be of great help to specific individuals, but when that help frustrates and betrays the public's trust in the system, it cannot and should not remain unchecked.[17]

Sheriffs play an important role in the administration of justice since they are called upon to serve court writs, execute all processes, and carry into effect the orders of the court with due care and utmost diligence. As officers of the court, sheriffs are duty-bound to use reasonable skill and diligence in the performance of their duties, and conduct themselves with propriety and decorum and act above suspicion.[18]

In the instant case, respondents failed to uphold the standard of integrity and prudence ought to be exercised by officers of the court. Based on the foregoing, we are constrained to reverse the recommendation of the OCA in dismissing the complaint.

We find that respondents' unjustified presence in the implementation of the Amicable Settlement despite the absence of an order from the court in tandem with its lack of jurisdiction over the matter constitutes misconduct. Misconduct is defined as any unlawful conduct on the part of the person concerned in the administration of justice prejudicial to the rights of parties or to the right determination of the cause. It generally means wrongful, improper, unlawful conduct motivated by a premeditated, obstinate or intentional purpose.[19] Respondents' impropriety subjected the image of the court to public suspicion and distrust. Thus, they are guilty of simple misconduct.[20]

Under the Civil Service Rules,[21] simple misconduct is punishable by suspension of one (1) month and one (1) day to six (6) months.

WHEREFORE, respondents Ariel R. Pascasio, Sheriff III, Branch 5, MTCC, Olongapo City, Michael P. Uclaray, Sheriff III, MTCC-OCC, and Benjamin M. Tulio, Sheriff III, MTCC-OCC, Olongapo City, are found GUILTY of misconduct and are hereby SUSPENDED for a period of three (3) months without pay, with a STERN WARNING that a repetition of the same or similar act will be dealt with more severely.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, and Carpio-Morales, JJ., concur.
Velasco, Jr., no part due to prior action in OCA.

[1]Rollo, pp. 1-2.

[2]Id. at 3.

[3] Id. at 5. The Notice of Execution reproduced an alleged condition of settlement as follows:

> In the event that the settlement fails despite with the effort exerted by my office the complainant and the respondent disagrees with the solution thereto and the higher level of the government agency who has jurisdiction over that matter recommend to issue a motion of execution to once and for all settle the differences by issuing such notice of execution.
>
> x x x x
>
> Its dispositive portion reads:
>
> NOW, THEREFORE, in behalf of the Lupong Tagapamayapa and by virtue of the powers vested upon me and the Lupon by the Katarungang Pambarangay Law and Rules, I shall cause to be realized from the goods and personal property of NENA GIMENA & PATRICK SOLWAY the sum of Php. 240,000.00 agreed upon in the said amicable settlement (or adjudged in the said arbitration award), unless voluntary compliance of said settlement or award shall have been made upon receipt hereof.

[4] It does not appear from the record whether a lease contract was finalized or formally executed.

[5] Id. at 2.

[6] Id.

[7] Id. at 9-11.

[8] Id. at 14-15.

[9] Id. at 32-34.

[10] Id. at 34.

[11] Id. at 35.

[12] Id. at 36.

[13] Id. at 69.

[14] Robles v. Baloloy, A.M. No. P-07-2305, 3 April 2007.

[15] Supra note 10.

[16] Rollo, p. 38. There is a visible discrepancy between the signature of Clerk of Court Rimando in this directive and that purporting to be his in the letter relied upon by respondents (see id. at 17).

[17] Donton v. Loria, A.M. No. P-03-1684, 10 March 2006, 484 SCRA 224, 231, citing Macalua v. Tiu, 341 Phil. 317, 323-324 (1997).

[18] Flores v. Falcotelo, A.M. No. P-05-2038, 25 January 2006, 480 SCRA 16, 26, citing Zarate v. Untalan, A.M. No. MTJ-05-1584, 31 March 2005, 454 SCRA 206; Raymundo v. Calaguas, A.M. No. P-01-1496, January 28, 2005, 449 SCRA 437; Alabastro v. Moncada, Sr., A.M. No. P-04-1887, 16 December 2004, 447 SCRA 42; Caja v. Nanquil, A.M. No. P-04-1885, 13 September 2004, 438 SCRA 174.

[19] Lachica v. Tormis, A.M. No. MTJ-05-1609, 20 September 2005, 470 SCRA 206, 214; Office of the Court Administrator v. Duque, A.M. P-05-1958, 7 February 2005, 450 SCRA 527, 532.

[20] Pan v. Salamat, A.M. No. P-03-1678, 26 June 2006, 492 SCRA 460, 468.

[21] Civil Service Commission Memorandum Circular No. 19-99 (1999), entitled Revised Uniform Rules on Administrative Cases in the Civil Service.

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