

CONCERNED CITIZEN, COMPLAINANT, VS. VIVEN M. TORIO, SHERIFF III, MTCC, PROMULGATED BRANCH 1, BATANGAS CITY, RESPONDENT.

A.M. No. P-01-1490. July 11, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Being the front-line representatives of the justice system, sheriffs must always exert every effort to perform their duties in order to maintain public trust. They must see to it that the final stage in the litigation process -- the execution of the judgment -- is carried out with no unnecessary delay.

The Case and the Facts

Viven M. Torio, Sheriff III of the Municipal Trial Courts in Cities (MTCC), Branch I, Batangas City, is charged with gross inefficiency, dereliction of duty and/or incompetence. The Complaint arose from two anonymous letter-complaints dated October 15, 1999[1] and December 7, 1999[2] addressed respectively to “the Hon. Court Administrator” and to Judge Ruben A. Galvez of the MTCC, Branch 1, Batangas City. The letters alleged that respondent had not been reporting to office regularly, and that he had failed to enforce Writs of Execution in more than fifty cases.

Acting on these letter-complaints, the Office of the Court Administrator (OCA) referred the matter to Judge Ruben A. Galvez for a discreet investigation. In response, Judge Galvez submitted to the OCA the Report of Gilbert Howard M. Atienza, Clerk of Court III, MTCC, Branch 1, Batangas City, showing that respondent had had a spotty attendance record and had indeed failed to enforce fifty Writs of Execution and eight Writs of Replevin and summonses. The Report reads:

“In compliance with your verbal directive, I am respectfully submitting this summary report regarding the attendance and work performance/accomplishment of Mr. Viven M. Torio, Branch Sheriff of this Court.

“Per records of this office, subject person has not yet submitted his Daily Time Record for the month of November. However, his Daily Time Records for the months of October and December together with their corresponding leave applications were submitted only today, January 14, 2000.

“With regard to subject person’s work accomplishment, court records show that he has now 50 pending writs of executions and 8 pending writs of replevin and summonses.

“Of the 50 pending writs of executions, 12 were issued on the year 1997; 24 were issued on the year 1998 and 14 were issued on the year 1999.

“Out of the 12 writs issued in 1997, only two bears a sheriff’s report dated December 29, 1999 with the information that the defendants in said cases are insolvent based on a certification issued by the City Assessor’s Office that defendants have no declared real properties in their names within the city. However, there was no showing in said report that he first attempted to levy personal properties of the defendants

pursuant to Sec. 9 (b) of Rule 39 of the Rules of Court before proceeding with the real properties of the defendants.

“As regards the 24 writs issued on 1998, only 4 bears a sheriff’s report also dated December 29, 1999 with the same reason stated above and without proof that personal properties were levied first pursuant to Sec. 9 (b) of Rule 39 of the Rules of Court.

“On the remaining 14 writs issued on 1999, only 2 bears a sheriff’s report dated December 29, 1999, also with the same reason. Still, it is bereft of any proof that he attempted to levy first the personal properties of the defendants in accordance with Rules of Court.

“In addition to this, court records reveal that all the pending writs in his possession have no periodical report as required by the Rules with the exception of the 8 writs which bears a sheriff’s report all dated December 29, 1999.

“In connection with the 8 pending cases of replevin with damages; one was approved on 1997; four (4) were approved on 1998 and three (3) were approved in the year 1999. All writs of replevin and summonses remained unserved to date.”[3]

In his first Indorsement dated March 22, 2000,[4] Court Administrator Alfredo L. Benipayo required respondent to comment on the two letter-complaints. In compliance, respondent submitted an undated Comment[5] explaining that the nature of his work required him to be out of the office most of the time to serve court processes and writs of execution. As to the other instances when he was absent from work, he claimed that these were covered by approved leaves of absences.

On the basis of these initial exchanges of documents, the OCA issued a Report dated May 8, 2001,[6] finding sufficient reason to call for a full-blown investigation to determine the extent of respondent’s liability. Thus, in its Resolution dated July 11, 2001,[7] the Court resolved to re-docket the case as a regular administrative matter and to refer the same to the executive judge of the MTCC, Batangas City, for investigation, report and recommendation.

Report of the Investigating Judge

In a Memorandum dated November 22, 2001,[8] Executive Judge Minerva A. Malaluan-Exchaure of the MTCC, Batangas City, transmitted to the OCA her Report on the investigation and the complete records of the case. The Report summarized the work performance of respondent and recommended his suspension as follows:

“1. It appears that of those pending fifty (50) Writs of Execution reported as of January 14, [2000], he had acted only on three (3) of them as the writs were returned fully satisfied.

“With respect to the rest, his action taken consisted only of telling the defendants to make arrangements with plaintiff in the manner of payment not even bothering to find out what happened thereafter, the reason why he has not made any initial and periodic reports.

“While he claims that some defendants are already insolvent, there is no showing that they have no personal nor real properties and no report was ever submitted to the Clerk of Court about this fact.

“The seven (7) reports on file of unsatisfied Writs of Execution were all dated December 29, 1999 and were probably done after his being informed by Judge Ruben Galvez of the anonymous complaint against him dated December 7, 1999.

“With respect to those writs which he claims to be partially satisfied, he could not produce any receipt except for two (2) and not bothering to make a report at all.

“2. It appears that it was only in the service of the Writ of Replevin whereby he complied with his duty but not even so completely because he failed to return the writ with his proceeding indorsed thereon.

“3. Of those issued writs of execution issued in the year 2000 and 2001, he has not even gone over the thirty-six (36) writs when it is his duty to act on them promptly after receipt. Of those wherein he claims that he had already acted upon, he had actually done nothing but to inform defendant to pay plaintiff. As sheriff he should demand full payment and if no payment is made, he has to levy on the personal and/or real properties of defendants to satisfy the obligation. It is no longer the prevailing parties['] responsibility to exact payment. That is Sheriff Torio's duty.

“There could be no valid justification for the respondent Sheriff's failure to perform his duty faithfully. He is not new to his job and in fact has held this position for twelve (12) years. He had attended seminars for Sheriffs. He knows that he is guided by the Rules of Court with respect to the manner and procedure in the service of court processes and enforcement of writs. Yet, despite this knowledge he had failed to implement the orders in the writs faithfully. He failed to act on the writs with dispatch on the excuse that the writ has a life of five years. The five years life was intended to favor the prevailing parties so that they would not have to secure alias writs. This was not intended for the sheriff's convenience so that he may take his own sweet time in executing the writ. His duty is to execute the writ promptly and enforce it faithfully according to the letter. He has to inform the Court and the prevailing party of his action taken on the writ within thirty (30) days from his receipt thereof.

“The respondent sheriff's failure to do his duties is indicative of the fact that he has not taken his work seriously. He had forgotten that he is an officer of the court and subject to its orders. By his work ethics, Sheriff Torio had lost his sense of accountability to the Court. In so doing, he had rendered to naught the whole proceedings the Court had taken until its judgment and defeated the very purpose of litigation, to give the deserving party what is his due. In this sense, he had contributed to the lack of faith and respect with which the public sometimes has of the judicial system.

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“Finding the Sheriff to be guilty of inefficiency and incompetence in the performance of his duties, [I] hereby recommend that he be suspended for one year.”[9]

Recommendation of the OCA

In its Memorandum dated February 15, 2000,[10] the OCA, through Deputy Court Administrator Jose P. Perez, found no reason to disturb the findings of the investigating judge. Concurring in her recommended penalty, it ruled thus:

“WHEREFORE, in view of the foregoing, it is respectfully recommended to this Honorable Court that respondent Sheriff Viven M. Torio, MTCC, Branch 1, Batangas City be SUSPENDED without pay for one (1) year for Inefficiency and Incompetence in the Performance of Duties with a WARNING that a repetition of the same or similar offense in the future shall be dealt with more severely; Presiding Judge Ruben A. Galvez, MTCC, Branch 1, Batangas City be REMINDED to be more efficient in the management of his court and the supervision of personnel under him; Executive Judge Minerva A. Malaluan-Exchaure be directed to assign the Sheriff in the office of the Clerk of Court to take over the duties of Sheriff Viven M. Torio at MTCC, Branch 1, Batangas City and immediately take proper action on the outstanding writs issued by said court.”[11]

The Court's Ruling

We agree with the findings of the OCA and adopt its recommendation, with modification as to the sanction to be imposed.

Administrative Liability of Respondent

A perusal of the Report of Executive Judge Minerva A. Malaluan-Exchaure confirms the allegations in the anonymous letter-complaints, particularly with respect to respondent sheriff's failure to implement the Writs of Execution issued by the MTCC, Branch 1 of Batangas City. Out of the 50 pending Writs of Execution, some of which were issued as early as 1997, only three (3) appear to have been returned satisfied. As to the other remaining Writs, only seven (7) have reports on record to the effect that they have been partially satisfied. All the other pending Writs of Execution have neither been implemented nor reported to the court insofar as the proceedings thereon are concerned.

Section 14 of Rule 39 of the Rules of Court explicitly provides the manner in which a writ of execution is to be returned to court, as well as the requisite reports to be made by the sheriff or officer, should the judgment be returned unsatisfied or only partially satisfied. In any case, every 30 days until the full satisfaction of a judgment, the sheriff or officer must make a periodic report to the court on the proceedings taken in connection with the writ. We quote Section 14 below:

"Sec. 14. Return of writ of execution.—The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefore. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof furnished the parties."

To be sure, it is mandatory for the sheriff to execute and make a return on the writ of execution within the period provided by the Rules of Court.[12] Moreover, the sheriff must make periodic reports on partially satisfied or unsatisfied writs in accordance with the above-cited rule, in order that the court as well as the litigants may be apprised of the proceedings undertaken in connection therewith. Such periodic reporting on the status of the Writs must be done by the sheriff regularly and consistently every 30 days until they are returned fully satisfied.

Undisputed by respondent is the non-execution of the subject Writs as well as his failure to make the appropriate reports thereon, as required by the foregoing rule. He even candidly admitted his lapses and shortcomings in the performance of his duties in his September 24, 2001 Comment[13] which we quote:

"In connection to your directive to give comment regarding the Investigation Report dated January 14, 2001 submitted by Mr. Gilbert Howard Atienza, Branch Clerk of Court, Br. I as required by Judge Ruben Galvez, the undersign[ed] admits the lack of the necessary reports required and makes no excuse for its dereliction of duty. I would accept whatever consequences it may bring me, knowing that I have been remiss to my duty."
(Italics supplied)

When writs are placed in the hands of sheriffs, it is their mandated ministerial duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to implement those writs according to their mandate.[14] Only by doing so can they ensure that judgments are executed without undue delay.[15]

Gross inefficiency in the performance of official duties cannot be tolerated. The failure of respondent to carry out what is a purely ministerial duty cannot be justified.[16] Certainly, the procrastination displayed by him, resulting in the long delay in the execution of court judgments, is truly deplorable.[17]

Charged with the execution of decisions in cases involving the interests of litigants, sheriffs have the duty to uphold the majesty of the law as embodied in those decisions.[18] A decision left unexecuted or indefinitely delayed due to their inefficiency renders it inutile; and worse, the parties who are prejudiced thereby tend to

condemn the entire judicial system.[19]

Inarguably, sheriffs must exert every effort to see to it that the final stage in the litigation process -- the execution of a judgment -- is carried out in order to ensure a speedy and efficient administration of justice.[20] Indeed, they play an important part therein, because they are tasked to execute final judgments of courts. They are the front-line representatives of the justice system in this country. If they lose the people's trust, the people's faith in the judiciary is diminished.[21]

Although we agree with the findings made by the OCA as to respondent's administrative liability, we find the recommended penalty of one (1) year suspension too harsh under the circumstances. Moreover, it would be counter-productive to penalize respondent with a year-long suspension, as this would only give him a convenient excuse for the continued delay in the execution of the subject Writs of Execution. Thus, we deem it appropriate to impose a fine equivalent to his three (3) months' salary and to direct him to immediately implement the pending Writs of Execution and/or make the necessary periodic reports relative thereto.

WHEREFORE, respondent sheriff is found guilty of inefficiency and dereliction of duty, and is imposed a FINE equivalent to three (3) months' salary, with a WARNING that a repetition of the same or a similar act will be dealt with more severely. Likewise, upon receipt of this Decision, respondent sheriff is hereby DIRECTED to immediately implement the subject Writs that have been pending for a long time and to make the necessary periodic reports to the court with respect to those writs that have not been returned fully satisfied. Should he not be able to follow this direction within three (3) months from notice, a further FINE equivalent to three more months of salary shall be additionally imposed and collected from him.

SO ORDERED.

Puno, (Chairman), Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Rollo, p. 11.

[2] Ibid., p. 5.

[3] Id., pp. 2-3.

[4] Id., p. 6.

[5] Id., p. 9.

[6] Id., pp.13-16; signed by Acting Court Administrator Zenaida N. Elepaño.

[7] Id., p. 17.

[8] Id., p. 80.

[9] Id., pp. 88-90.

[10] Id., pp. 125-130.

[11] Id., p. 30.

[12] Vda. de Gillego v. Roxas, 235 SCRA 158, August 5, 1994.

[13] Rollo, p. 28.

[14] Francisco v. Cruz, 340 SCRA 76, September 8, 2000; Mamateo v. Magumun, 311 SCRA 259, July 28, 1999.

[15] Marisga-Magbanua v. Villamar V, 305 SCRA 132, March 25, 1999.

[16] Valencia v. Valeña, 338 SCRA 150, August 16, 2000.

[17] Baes v. Bautista, 260 SCRA 527, August 13, 1996.

[18] Lapeña v. Pamarang, 325 SCRA 440, February 15, 2000.

[19] Portes v. Tepace, 267 SCRA 185, January 30, 1997.

[20] Lacuata v. Bautista, 235 SCRA 290, August 12, 1994.

[21] Dilan v. Dulfo, 304 SCRA 460, March 11, 1999.

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