

**MARDAVE K. TANG, COMPLAINANT, VS. SHERIFF ROMEO ASIRIT,
REGIONAL TRIAL COURT, BRANCH 19 AND SHERIFF JOSE R.
MARTIN, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL
COURT, CAUAYAN C...**

A.M. No. P-05-2052 (Formerly A.M. OCA IPI No. 01-1220.PI). January 30, 2009

Ponente: BRION, J.

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BRION, J.:

On September 10, 2007, the Court (First Division) promulgated a Resolution stating that:

Considering the complaint of Mardave Tang against respondent Romeo B. Asirit for misconduct in office, abuse of discretion and ignorance of law for the alleged seizure, levy and sale at public auction of the Fuso Fighter with Plate No. UNE-212 relative to Civil Case No. 19-722, the Court resolves to dismiss the same for lack of merit.

As to the procedural lapses which happened in the course of the satisfaction of the judgment in Civil Case No. 19-722, the Court further resolves to require Sheriff's Romeo B. Asirit and Jose R. Martin to MANIFEST if they are willing to submit the case for decision on the basis of the records/pleadings files x x x

The memorandum dated 02 May 2007 of the Office of the Court Administrator is NOTED.

In a Joint Manifestation dated October 31, 2007, respondent Sheriffs Romeo B. Asirit (Asirit) and Jose R. Martin (Martin) expressed their willingness to submit the alleged procedural lapses for decision on the basis of the records and pleadings already filed. They also informed the Court that both of them will be retiring soon.

The Factual Background

The allegation of procedural lapses has its roots in a decision dated November 8, 1999 in Civil Case No. 19-722, entitled "Eric Lansigan and Mariano Felipe v. Forpirio E. Padilla Jr., North Point International Corporation and Peter Baltazar," (Civil Case) rendered by Judge Artemio R. Alivia (Judge Alivia) of the Regional Trial Court (RTC), Branch 19, Cauayan City.

The dispositive portion of Judge Alivia's decision reads:

Wherefore, in view of the foregoing consideration, judgment is hereby rendered:

1. Ordering the defendant North Point and cross-defendants Pedro Baltazar and Remedios Tolentino, to pay jointly and severally, the plaintiffs the following:
 - (a) To Eric Lansigan, Php 95,000.00 as actual damages, x x x Php 100,000.00 as lost income; Php 20,000.00 as exemplary damages; and Php 15,000.00 as attorney's fees;
 - (b) To Mariano Felipe, Php 54,000.00 as actual damages x x x Php 30,000.00 as moral damages; Php 20,000.00 as exemplary damages; and Php 15,000.00 as attorney's fees.

2. Ordering the cross-defendants Pedro Baltazar and Remedios Tolentino to reimburse the defendant North Point for whatever it is ordered to pay in this action; and
3. Ordering the defendants and cross-defendants to pay the costs.

SO ORDERED.

A writ of execution followed on August 28, 2000 after the decision became final and executory. Clerk of Court Raymundo Meris (Meris) issued the writ in the absence of the Clerk of Court Branch 19. The writ, which was not addressed to a particular sheriff, was endorsed to Martin (a deputy sheriff-at-large) and not to Asirit (the regular deputy sheriff of RTC Branch 19).

Thereafter, Martin levied on two cargo trucks owned by North Point Corporation (North Point). The first was an Isuzu Forward and the second, a Fuso Fighter. Martin conducted an auction sale on October 16, 2000 for the Isuzu Forward. A lone bidder and one of the plaintiffs in the civil case, Eric Lansigan (Lansigan), won with a bid of P100,000.00. Martin awarded the Isuzu Forward to Lansigan.

On January 16, 2001, Martin conducted another public auction for the Fuso Fighter which Lansigan, also as lone bidder, won with a bid of P100,000.00. Martin awarded the Fuso Fighter to Lansigan.

After the auction sale, Lansigan filed an administrative case against Martin before the Prosecutor's Office, and Martin was relieved as the implementing sheriff of the judgment in the civil case. Meris then referred the writ to Asirit sometime in the latter part of January 2001.

On February 2, 2001, Asirit seized an Isuzu cargo truck of North Point, but released the vehicle immediately to Atty. Alfredo Derige (Derige), North Point's counsel, subject to the return of the vehicle to the court when so required.

On June 13, 2001, Martin submitted a Sheriff's Return of Service dated February 23, 2001 stating in the main that "the money judgment of P399,000.00 awarded to him (complainant Eric Lansigan) in the decision rendered by this Court has already been satisfied."

Consequently, North Point filed an "Ex-Parte Motion for the Issuance of an Alias Writ of Execution" in order to implement paragraph 2 of the decision "to Order the cross-defendants Pedro Baltazar and Remedios Tolentino to reimburse the defendant North Point for whatever it is ordered to pay in this action." The trial court did not issue an alias writ.

Despite Martin's return showing full satisfaction of the judgment, Asirit used the same writ of execution (dated August 28, 2000) to levy on another motor vehicle (an Isuzu Fighter) owned by North Point. Asirit seized the vehicle from the company's driver, Nestor Legaspi, on August 8, 2001. It was loaded with cylinders of industrial oxygen and standard acetylene and industrial acetylene.

On August 10, 2001, Asirit issued a "Sheriff's Notice of Levy Auction Sale by Execution," setting the auction of the vehicle on August 20, 2001 to satisfy the plaintiff's money judgment's deficiency of P209,768.00. Lansigan again won the bid as lone bidder with a bid of P100,000.00 for the vehicle and P50,000.00 for the gas cylinder. The Certificate of Sale, issued by Asirit, noted by Executive Judge Henedino P. Eduarte, indicated that ownership over the property had been conveyed to Lansigan .

Later, using the same writ of execution, Asirit levied on a motor vehicle owned by defendant Pedro Baltazar (Baltazar) allegedly to satisfy the balance of the money judgment in favor of Lansigan amounting to P220,000.00. He scheduled and conducted the auction on December 28, 2001. A lone bidder, Eleanor P. Abella, of Sta. Cruz,

Manila, won the auction with a bid of P223,000.00. Accordingly, Asirit awarded the mini-bus to Ms. Abella, with a certificate of sale noted by Judge Raul V. Babaran (Judge Babaran), the newly appointed presiding judge of RTC Branch 19. On the same day, Asirit delivered the vehicle to Abella who paid Lansigan P223,000.00.

On December 21, 2001, Baltazar moved to declare the levy and auction sale null and void and prayed for the immediate release of the mini-bus. Acting on the motion, Judge Babaran issued an order dated May 8, 2002 directing Asirit and Lansigan to deposit within ten (10) days the proceeds of the sale of Baltazar's property with the branch clerk of court. Asirit was further directed to submit an accounting of any and all moneys paid by defendants Baltazar and Remedios Tolentino (Tolentino) to satisfy the decision in the civil case. This is now the subject of another administrative endorsement from the OCA, referenced as Administrative Matter No. CMO-1380A.

Based on these facts and developments, we are now left with the task of resolving the procedural lapses that this Court's Resolution of September 10, 2007 defined and left for resolution.

The Procedural Lapses

The OCA best summarized the issues before us when it listed the "procedural lapses which happened in the course of the satisfaction of the judgment" as follows: (1) all the proceeds of the auction sale were turned over to Lansigan to the detriment of co-plaintiff Mariano Felipe (Felipe); (2) Asirit immediately released the Isuzu Cargo Truck (Plate No. T-PTF-833), seized on February 2, 2001, to Derige, North Point's counsel; and, (3) Asirit made overpayments to Lansigan, as follows:

- (a) Sale by Martin - P200,000.00 for the sale of two motor vehicles (with plate nos. UBA 827 and UMZ 652)
- (b) Sale by Asirit - P150,000.00 for the sale of motor vehicle (T-UNE-212) and P223,000.00 for the sale of vehicle (BVG-276), subject of a replevin case.

The records show that while the award to Lansigan amounted to only P280,900.00, the grand total of P573,000.00 from the auction sales was given to him. There was therefore an overpayment of P292,100.00 to Lansigan.

Based on the decision of Judge Alivia, the P573,000.00 from the auction sales should have been distributed as follows:

Lansigan

-

P280,900.00

Felipe

-

119,000.00

Total

P399,900.00

Proceeds

P573,000.00

For return to North Point

P173,100.00

Under this computation, the balance of P173,100.00 should have been turned over to North Point as required by Section 19, Rule 39, of the Rules of Court. We likewise note that there was an impropriety in Asirit's handling of the Isuzu Cargo truck (Plate No. T-PTF-833) which he seized on February 2, 2001. The condition imposed on Derige that he should produce the vehicle whenever required violates the Rules of Court[1] which requires that the subject vehicle remain in the possession of Asirit. His turnover of the vehicle to Derige effectively placed it under his possession and control. Thus, as noted by the OCA, Asirit's "performance fell short of his bounded duty to execute the writ as ordered."

On the other hand, the OCA found Martin to have been inefficient in the performance of his duties. The OCA pointed out that Martin's erroneous return caused all the confusion in the case. Moreover, he made it appear that he seasonably made the return on February 23, 2001 when he submitted it only on June 13, 2001, almost four (4) months after.

The Court's Ruling

We hold that the "procedural lapses" the OCA noted warrant the imposition of an appropriate disciplinary action on Asirit and Martin. In allowing the lapses to happen, Asirit and Martin proved themselves inefficient and incompetent in the performance of their official duties.

Asirit, committed a serious irregularity when he turned over the proceeds of the auction sales he conducted to Lansigan without satisfying the award to Lansigan's co-plaintiff Felipe. He also failed to deliver to defendant North Point the excess of the total proceeds of the sales. The irregularity worsened when Asirit released the motor vehicle he seized to the defendant's counsel when it was his duty to keep the vehicle for auction in his possession and control.[2] Martin, on the other hand, contributed to the confusion when he made a return indicating that P399,000.00 was awarded to Lansigan in the money judgment and it had been fully satisfied. This must have misled Asirit into thinking that Lansigan was the only plaintiff in the civil case so that he turned over the entire proceeds to Lansigan to the prejudice of Felipe. Given the total sales proceeds of P573,000.00, it was a gross violation not to have turned over the excess of this amount over the total judgment amount to North Point.

The OCA recommended that Asirit and Martin be fined P20,000.00 separately for having caused the procedural lapses that arose during the execution of the Judge Alivia's decision of November 8, 1999.

We find the recommended sanction disproportionate to the infraction committed by the two sheriffs, considering the resulting prejudice suffered by the victims of their transgressions and the erosion of the public's trust and confidence in the administration of justice whenever these violations come to public knowledge. The conduct and behavior of everyone charged with the dispensation of justice are defined by the trust and confidence that this public office requires.[3] The image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who man the courts, from the judge to the lowliest clerk.[4] As such agents of the law, the highest standards were expected from Asirit and Martin. Theirs was the mandate to perform the duties of their office earnestly, faithfully, and honestly to ensure speedy and efficient administration of justice.[5]

While no evidence exist showing that Asirit and Martin acted in bad faith, they nevertheless failed to discharge their duties with judiciousness and proficiency.[6] Thus, they should be meted the appropriate sanction for neglect of duty.

Under Section 52, B(1) of the Revised Uniform Rules on Administrative Cases in the Civil Service,[7] simple neglect of duty is a less grave offense and is penalized with suspension from work for one (1) month and one (1) day to six (6) months for the first offense and dismissal for the second. Considering that no evidence of bad faith

exists, we deem it appropriate to impose the penalty of suspension from the service for three (3) months.

WHEREFORE, premises considered, Sheriff ROMEO B. ASIRIT, Regional Trial Court, Br. 19, Cauayan, Isabela and Sheriff JOSE R. MARTIN, Office of the Clerk of Court, Regional Trial Court, Br. 19, Cauayan, Isabela, are hereby SUSPENDED WITHOUT PAY for three (3)

months, for neglect and inefficiency in the performance of their duties, effective upon receipt of a copy of this Decision.

SO ORDERED.

Quisumbing, (Chairperson), Corona[*], Carpio Morales, and Tinga, JJ., concur.

[*] Designated additional member per Special Order No. 558 dated January 15, 2009.

[1] Rule 39, Section 16. Proceedings whose property claimed by third person.-If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on the demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on x x x.

[2] Chan v. Castillo, A.M. No. P-94-1055, November 25, 1994, 238 SCRA 359.

[3] Atty. Bandong v. Ching, A.M. No. P-95-1161, August 23, 1996, 261 SCRA 10.

[4] Atty. Mutia-Hagad v. Denila, A.M. No. P-00-1430, October 3, 2000, 341 SCRA 682.

[5] Marcela Guilas-Gamis v. Judge Rodolfo P. Beltran, A.M. No. P-06-2184, September 27, 2007, 524 SCRA 630.

[6] Eddie M. Tiu v. Romeo dela Cruz, A.M. No. P-06-2288, June 15, 2007, 524 SCRA 630.

[7] MC No. 19, S. 1999 signed by CSC Chairman Corazon Alma de Leon.

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