

**RITA M. MELECIO, COMPLAINANT, VS. TYRONE V. TAN, SHERIFF IV,
REGIONAL TRIAL COURT-OFFICE OF THE CLERK OF COURT,
MALAYBALAY CITY, BUKIDNON, RESPONDENT.**

A.M. NO. MTJ-04-1566. August 22, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

In a complaint[1] filed with the Office of the Court Administrator (OCA) on July 2, 2003, Rita M. Melecio, Regional Coordinator of Task Force Detainees of the Philippines in Northern/Southern Mindanao, charged Judge Dante L. Villa and Clerk of Court Angelina A. Gam, of Municipal Trial Court (MTC), Quezon, Bukidnon, with Command Responsibility, Grave Abuse of Authority and Grave Misconduct; and Sheriff Tyrone V. Tan, Regional Trial Court-Office of the Clerk of Court (RTC-OCC), Malaybalay City, Bukidnon, with Grave Abuse of Authority and Grave Misconduct relative to Civil Case No. 428.[2]

Complainant alleged that the March 18, 2003 directive of Clerk of Court Gam commanding the sheriff or his deputies to implement the dispositive portion of the trial court's decision dated October 22, 2002 in Civil Case No. 428, which ordered the respondents therein (the Manobos) to vacate the litigated premises, is void considering that no writ of execution has been issued by Judge Villa. Sheriff Tan allegedly implemented the said order by ejecting the Manobos from the disputed property.[3]

In his Comment,[4] respondent sheriff admitted that on March 28, 2003, he served copies of the Writ of Execution to the Manobos and advised them to vacate the premises within fifteen (15) days. They failed to vacate the property within the period stated, hence he evicted them on April 16, 2003.

In their joint-comment,[5] Judge Villa and Clerk of Court Gam prayed for the dismissal of the complaint. They averred that on January 31, 2003, plaintiffs in Civil Case No. 428 filed a motion for execution which the trial court granted on March 17, 2003. Hence, the issuance on March 18, 2003 of the writ of execution was proper.

In the Agenda Report[6] dated September 1, 2004, the OCA recommended that the complaint against Judge Villa and Clerk of Court Gam be dismissed for lack of merit and that the case against Sheriff Tan be referred to the Executive Judge of RTC-Malaybalay City, Bukidnon, for further investigation,[7] which recommendation was adopted in a Resolution dated October 11, 2004.[8]

In his Report/Recommendation, the Investigating Judge found that the parties in Civil Case No. 428 agreed to resurvey the property in question and that respondent-Manobos would vacate the premises if found encroaching thereon.[9] Pursuant to their agreement, the latter voluntarily vacated the premises on November 2, 2002,[10] and transferred to another portion which they claimed formed part of the public domain. Thus, for all intents and purposes, the October 22, 2002 order of the trial court to vacate the property has been fully satisfied.[11]

In fact, in his partial report dated March 31, 2003,[12] Sheriff Tan averred that he served notices to vacate to the Manobos and gave them ten (10) days to vacate. However, he deemed it necessary that an ocular inspection be

conducted considering the Manobos' claim that the properties they are now occupying are part of the public domain.

Without however waiting for the ocular inspection,[13] Sheriff Tan implemented the writ on April 16, 2003 by ejecting the Manobos and loading them on a dump truck. He demolished[14] their improvements without securing a writ of demolition[15] pursuant to Rule 39 of the Revised Rules of Civil Procedure.

The Investigating Judge found that Sheriff Tan gravely abused his authority in executing the writ and demolishing the structures without a writ of demolition.[16] He thus recommended that respondent sheriff be suspended from service for three (3) months and warned that a repetition of the same or similar act will be dealt with more severely.[17]

The OCA agreed with the findings and recommendations of the Investigating Judge.[18]

We adopt the findings of the OCA with modification on the recommended penalty.

When the issue is the credibility of witnesses, the function of evaluating it is primarily lodged in the investigating judge. The rule which concedes due respect, and even finality, to the assessment of credibility of witnesses by trial judges in civil and criminal cases where preponderance of evidence and proof beyond reasonable doubt, respectively, are required, applies a fortiori in administrative cases where the quantum of proof required is only substantial evidence. The investigating judge is in a better position to pass judgment on the credibility of witnesses, having personally heard them when they testified and observed their deportment and manner of testifying.[19] We find no reason to depart from this rule.

Indeed, respondent sheriff was grossly inefficient and guilty of misconduct in implementing the writ on April 16, 2003. He evicted the occupants without ascertaining whether the portion they occupy formed part of the litigated property or not. He was aware that there was uncertainty concerning the property occupied by the Manobos as he even recommended in his partial report that an ocular inspection be conducted. Yet he proceeded with the eviction without the benefit of the inspection to determine the exact boundaries. The unfortunate incident could have been avoided had the respondent sheriff observed due care and diligence in ascertaining the exact location of the property subject of the execution.[20] In serving the court's writs and processes and in implementing the orders of the court, sheriffs cannot afford to err without affecting the efficiency of the process of the administration of justice.[21]

Respondent sheriff is a ranking officer of the court, a public official entrusted with a fiduciary role. He plays an important part in the administration of justice and is called upon to discharge his duties with integrity, due care and circumspection. Anything less is unacceptable.[22] Good faith on his part, or lack of it, in proceeding to properly execute his mandate would be of no moment, for he is chargeable with the knowledge that being an officer of the court tasked therefor, it behooves him to make due compliances.[23]

While it is true that he must comply with his mandated ministerial duty to serve court writs, execute all processes and carry into effect all court orders promptly and expeditiously, however, this ministerial duty is not without limitation. In the performance of his duties, he is deemed to know what is inherently right and inherently wrong and is bound to discharge such duties with prudence, caution and attention which careful men usually exercise in the management of their affairs.[24] While the authority of a sheriff is broad, it is not boundless. He must be circumspect and proper in his behavior in the enforcement of judgments and judicial orders. He is required to perform the duties of his office without needless severity or oppression, as he is an agent of the law.[25]

Considering the Manobos' insistence that they have already vacated the litigated premises on November 2, 2002 and the portion they are now occupying is already part of the public domain, respondent sheriff properly requested

for an ocular inspection as shown in his partial report. His error lies on the fact that he nonetheless proceeded to implement the writ on April 16, 2003 without waiting for the trial court's instruction on the proper procedure to be observed.[26]

Sheriff Tan not only gravely abused his authority in evicting the Manobos from the property; he also committed misconduct when he demolished the improvements thereon without securing a writ of demolition. As clearly provided under Section 10(d), Rule 39 of the Revised Rules of Civil Procedure, the sheriff must secure a special order of the court before he could destroy, demolish or remove the improvements on the property.

We have emphasized, time and again, the heavy burden and responsibility which the court officials and employees are mandated to observe, in view of their exalted positions as keepers of the public faith. Any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. Public office is a public trust. All public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency.[27]

We find respondent sheriff guilty of misconduct, which is any unlawful conduct of a person related to the administration of justice and prejudicial to the rights of parties or to the right determination of the cause. It generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. Civil Service Commission (CSC) Memorandum Circular No. 19 classifies misconduct as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months, for the first offense,[28] as in this case.

WHEREFORE, respondent Sheriff Tyrone V. Tan, Regional Trial Court-Office of the Clerk of Court, Malaybalay City, Bukidnon, is found GUILTY of misconduct and is hereby SUSPENDED for a period of six (6) months without pay, with a STERN WARNING that a repetition of the same or similar act will be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 01-02.

[2] Heirs of Jose F. Escaño, et al. v. Datu Gregorio Dagon, et al., for Forcible Entry, Damages, and Attorney's Fees with Petition for the Issuance of a Writ of Preliminary Injunction and Restraining Order.

[3] Rollo, p. 01.

[4] Id. at 31.

[5] Id. at 36-39.

[6] Id. at 40-44.

[7] Id. at 44.

[8] Id. at 46-47.

[9] Report/Recommendation, p. 9.

[10] Id. at 10.

[11] Id. at 11.

- [12] Rollo, p. 22.
- [13] Report/Recommendation, pp. 12 & 14.
- [14] Id. at 11-12.
- [15] Id. at 15.
- [16] Id. at 32.
- [17] Id. at 33-34.
- [18] See Memorandum of 17 June 2005.
- [19] *Meneses v. Zaragoza*, A.M. No. P-04-1768, 11 February 2004, 422 SCRA 434, 441.
- [20] *Lobregat v. Amoranto*, A.M. No. P-04-1781, 18 February 2004, 423 SCRA 195, 198.
- [21] *Abalde v. Roque, Jr.*, A.M. No. P-02-1643, 1 April 2003, 400 SCRA 210, 215.
- [22] *Lobregat v. Amoranto*, *supra* at 198.
- [23] Id. at 199.
- [24] *Malmis v. Bungabong*, A.M. No. P-03-1721, 30 September 2004, 439 SCRA 538, 541-542.
- [25] *Deang v. Sicat*, A.M. No. P-00-1423, 10 December 2004, 446 SCRA 22, 32.
- [26] *Malmis v. Bungabong*, *supra* at 543.
- [27] *Deang v. Sicat*, *supra* at 33.
- [28] Id.

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