

## MARTINIANO O. DE LA CRUZ, COMPLAINANT, VS. THE PROVINCIAL SHERIFF OF BULACAN, RESPONDENT.

*A.M. No. P-10. December 28, 1973*

Ponente: MUÑOZ PALMA, J.

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### MUÑOZ PALMA, J.:

This Resolution treats of a complaint dated March 1, 1973, filed originally with the Honorable Secretary of Justice by Atty. Martiniano O. de la Cruz against Provincial Sheriff, Atty. Flor F. Resurreccion, of the province of Bulacan.[1] The complaint was referred for comment, thru the Honorable Executive District Judge, Court of First Instance, Malolos, Bulacan, to the Provincial Sheriff and to deputy sheriff Iral.[2] Comment and explanation having been made on March 23, 1973, by respondent Provincial Sheriff,[3] complainant was asked to reply thereto if desired,[4] which the latter did on April 30, 1973.[5]

On May 14, 1973, the record of the case was forwarded by the Office of the Secretary of Justice to this Court pursuant to Presidential Decree No. 185, dated May 7, 1973.

The complainant, Atty. Martiniano O. de la Cruz, is the plaintiff in Civil Case No. 246 of the Municipal Court of Marilao, Bulacan, entitled "Martiniano de la Cruz vs. Hermenegildo Andrade, et al.". Copy of the complaint for ejectment and the summons issued by the Municipal Court were given by Atty. de la Cruz to Deputy Sheriff Iral in the morning of February 14, 1973, after the former had paid the corresponding sheriff's fees for service of said documents. The summons required the defendants to answer "not less than two days nor more than five days after service", and set the hearing of the case on February 27, 1973. On the scheduled date of February 27, 1973, defendant Atanacia Banadera Andrade appeared before the Municipal Judge and moved for the cancellation of the hearing because according to her, defendants were served summons only on February 23rd and the period granted them to file their answer would expire only on February 28, 1973. On the basis of the statement of said defendant, the Municipal Judge postponed the hearing of the ejectment case to March 8, 1973.[6]

Complainant now charges the Provincial Sheriff of Bulacan with "Gross Misconduct, Neglect of Duty and/or Conduct Prejudicial to the Best Interest of the Service" because of the alleged delay in the service of summons resulting in the postponement of the hearing of the ejectment case from February 27 to March 8, 1973. Complainant claims that he gave the summons and copy of the complaint to Deputy Sheriff Iral as early as February 14, 1973 and that if said documents were served immediately upon the defendants, the cancellation or postponement of the hearing of February 27, 1973, would have been avoided.[7]

Respondent, Provincial Sheriff Resurreccion, in his 3rd Indorsement dated March 23, 1973, gave the following explanation of the incident complained of:[8]

On February 14, 1973, deputy sheriff Iral was assigned as Officer of the Day and as such, his duty was to receive and record all court processes filed with the Office of the Sheriff of Bulacan. Deputy Sheriff Iral received the summons and complaint filed by Atty. Martiniano O. de la Cruz in Civil Case No. 246, and issued the corresponding official receipt for the sheriff's fee paid by the complainant. After the summons and complaint were

duly recorded, deputy sheriff Ruben Magtoto was assigned by respondent Provincial Sheriff to serve said documents on the defendants Hermenegildo Andrade and Atanacia Banadera Andrade who were residents of Marilao, Bulacan. The service to the defendants was accomplished by deputy sheriff Magtoto on February 20, 1973, as shown in the return of service marked Annex "B" of respondent's 3rd Indorsement.[9] Deputy sheriff Magtoto sent the sheriff's return by registered mail to the clerk of court, Marilao, Bulacan, on February 26, 1973.[10]

The explanation of respondent Provincial Sheriff Resurreccion shows that it was not he who was directly responsible for the service of the summons in question, but that it was deputy sheriff Magtoto who was assigned for the purpose; if there was, therefore, any unreasonable delay in the service of summons, it was sheriff Magtoto who was accountable for it.

At any rate, the record of the case does not expose any gross misconduct or negligence of duty sufficient to warrant disciplinary action against the respondent Provincial Sheriff or his deputy sheriff Magtoto. The explanation of respondent proves that the summons and copy of the complaint were served on defendants on February 20, 1973,[11] and not on February 23 as claimed by defendant Atanacia Banadera Andrade. Defendants had five days from February 20 within which to answer the complaint, and the five-day period would have expired on February 25; hence, the hearing set for February 27 could have proceeded as scheduled. It was defendant Atanacia Banadera Andrade who unjustifiably caused the delay in the hearing by misrepresenting to the Municipal Judge that defendants were served with the summons only on February 23 and that their five-day period to answer the complaint had not yet expired.

In disposing of this case, we note, however, that there was no prompt return of service made to the municipal court, for in spite of the fact that deputy sheriff Magtoto had served the summons on defendants on February 20, it was only on February 26, 1973, a day before the scheduled hearing when the return of service was sent to the Municipal Court, and by registered mail at that.[12] Naturally, when the case was called for hearing on February 27, there was no return of service appearing in the record which could belie defendant Atanacia's assertion that service was made only on February 23, and per-force, the municipal judge had to postpone the hearing. If the return of service was promptly sent in order that it could have been received before the scheduled hearing, the postponement of the trial on the ground invoked by defendant Atanacia Banadera Andrade could have been justifiably denied.

Delays of this nature impede an orderly, efficient, and speedy administration of justice in the trial courts. This is therefore an occasion for us to stress upon the courts' process-servers that the duty to serve promptly upon the parties concerned the processes of the court carried with it an equally important duty of making a return of such service within a reasonable time so as to guide the court in the prompt disposition of the incident before it. In the case of *Acting Collector of Customs, Pacis, et. al. vs. Hon. Averia, et. al.*[13] wherein respondent sheriff failed to enforce a writ of preliminary mandatory injunction and make a return thereof for quite a time, this Court said that such inaction directly interfered with, impeded, or obstructed the processes of the Court resulting in a setback in the administration of justice.

WHEREFORE, THIS COMPLAINT IS DIS-MISSED AND RESPONDENT IS EXONERATED OF THE CHARGE; HOWEVER, RESPONDENT IS ADMONISHED TO EXERCISE A CLOSER AND STRICTER SUPERVISION OVER THE PROCESS-SERVERS UNDER HIM SO AS TO AVOID A REPETITION OF DELAYED RETURNS OF SERVICE.

Makalintal, C.J., Ruiz Castro, Teehankee, Makasiar, and Esguerra, JJ., concur.

- [1] page 21, rollo
- [2] page 20, rollo
- [3] page 11, id.
- [4] page 10, id.
- [5] page 1, id.
- [6] page 21, rollo
- [7] id id
- [8] page 11, rollo
- [9] page 18, id
- [10] page 16, penultimate paragraph, rollo
- [11] page 18, rollo
- [12] Page 16, rollo

**[13] 18 SCRA 907, 919**

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