

RESTITUTO L. CASTRO, COMPLAINANT, VS. CARLOS BAGUE, SHERIFF IV, RTC, BRANCH 1, TAGBILARAN CITY, RESPONDENT.

A.M. No. P-99-1346. June 20, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This case involves two separate complaints against Carlos Bague, Sheriff IV assigned to the Regional Trial Court, Branch I, Tagbilaran City, Bohol, the first one for abuse of official functions, gross ignorance of duties, and manifest partiality,[1] and another one for falsification of public document.[2] By resolution of October 9, 1996, the two cases were consolidated and referred to Tagbilaran City Regional Trial Court Executive Judge Achilles L. Melicor for investigation, report, and recommendation.

With respect to the complaint for abuse of authority, the evidence presented for the complainant is as follows:

Complainant Restituto Castro was the highest bidder in the foreclosure sale conducted by respondent Carlos Bague on December 27, 1994 involving the property of Constantino Mendoza and Herminia Mendoza covered by TCT No. (5170) T-3075.[3] Respondent issued to complainant a certificate of sale which the latter registered in the Register of Deeds of Bohol on December 28, 1994.

When the foreclosure sale was held, Constantino Mendoza, the husband/mortgagor, was already deceased. His son, Paul, through an attorney-in-fact, Justiniano Mendoza, served on respondent a "Redemption with Notice of Redemption" on June 5, 1995. The next day, respondent wrote complainant informing him of the notice of redemption and of the deposit of P43,575.00 as redemption price.

On June 14, 1995, complainant filed an opposition to the redemption, which he reiterated on October 3, 1995.[4] Complainant claimed that in a meeting between him and respondent on December 28, 1995, respondent assured him that he would issue the final bill of sale in January 1996 considering that the current year was ending and there would be no one to sign the necessary documents. As respondent failed to issue to him the final deed of sale, complainant wrote respondent a letter on January 15, 1996, demanding the execution of a final deed of sale in his favor. Respondent, however, did not answer the letter.[5] Instead, on December 22, 1995, he issued a "resolution," which stated, among other things:

Premises considered, the grounds adduced by redemptioner are more convincing based upon statute while the pronouncement of the oppositor are mere conjectures and did not convince the undersigned.

Resolved, as it is hereby resolved, that the subject parcel of land is redeemable by Justiniano Mendoza, AIF of Paul Mendoza, the latter being the son and successor-in-interest of the mortgagors as defined in the Rules of Court, particularly paragraph (a) Sec. 29, Rule 39.

Accordingly, let a certificate of redemption be issued to Justiniano Mendoza, AIF of Paul Mendoza. Mr. Restituto Castro is enjoined to accept redemption money in the amount of P43,500.00 deposited in the Office

of the Clerk of Court for Multiple Salas and Ex-Officio Provincial Sheriff of Bohol, RTC, City of Tagbilaran.[6]

A copy of the "resolution" was received by complainant on January 24, 1996. On the basis of these facts, complainant says respondent is guilty of abuse of official functions, gross ignorance of duties, and manifest partiality.

On the other hand, with respect to the complaint for falsification of public document, complainant alleged that the one-year period of redemption expired on December 27, 1995; that respondent made it appear that he had prepared the questioned resolution on December 22, 1995; that respondent never informed him about the resolution when they met on December 28, 1995; and that it was only after complainant had formally demanded on January 15, 1996 the issuance of a final deed of sale that respondent came out with the resolution. Complainant averred that the resolution was mailed to him only on January 23, 1996, one month after the date stated in the resolution implying that respondent received some benefits for doing this.[7]

Respondent presented evidence showing the following: Respondent is Sheriff IV assigned to Branch I of the Regional Trial Court at Tagbilaran City, Bohol. When Deputy Sheriff Juan Polo, who was then assigned to the Office of the Clerk of Court for Multiple Salas, retired, respondent was designated to act as Deputy Sheriff in addition to his duties as Sheriff of Branch 1 of the RTC.[8]

On December 27, 1994, respondent conducted a foreclosure sale of the parcel of land mortgaged by the spouses Constantino and Herminia Mendoza in which complainant Restituto L. Castro was the highest bidder. Respondent issued a certificate of sale to complainant. The certificate was attested by Atty. Ma. Cleofe L. Clarin, Clerk of Court VI and Ex-Officio Provincial Sheriff, and approved by Executive Judge Antonio H. Bautista.[9] It indicated that the period of redemption of the property would expire one year from the date of registration of the said instrument.[10] The certificate of sale was actually registered in the Register of Deeds of Tagbilaran City on December 28, 1994.

Invoking Rule 39, §29(a) of the Rules of Court, respondent maintains that property sold at public auction may be redeemed by the judgment debtor or his successors-in-interest, in whole or in part. As the mortgagor, Constantino Mendoza, had by then passed away, his son, Paul, through attorney-in-fact Justiniano Mendoza, filed a notice of redemption dated June 5, 1995. Respondent says he informed complainant of this fact and advised him to claim the redemption money, but complainant demanded instead that a final deed of sale be issued to him. Respondent claims that he informed complainant that he could not do so because the redemption had already been effected and the money had in fact been deposited with his office. Complainant filed an opposition[11] to the redemption, contending that as Paul Mendoza was just one of several heirs of the mortgagors, he could not exercise the right of redemption for more than his share as an heir. He reiterated his contention in another opposition he filed.

Complainant contended that Paul Mendoza alone did not have the right nor authority to redeem the foreclosed property. For this reason, he argued that the authority granted by Paul Mendoza to Justiniano Mendoza, as attorney-in-fact, to redeem the mortgaged property was unenforceable, if not invalid, and could not be made the basis for the issuance of a certificate of redemption.[12]

According to respondent, he was not able to resolve the opposition of complainant as in the meantime a new Deputy sheriff had assumed office as Ex-Officio Sheriff, and he (respondent) had to turn over the records of the instant case to her.

On December 15, 1995, respondent says, he referred complainant's protest to the new Clerk of Court and Ex-Officio Sheriff, Atty. Ma. Cleofe Clarin, who told him to continue acting in the case. For this reason, the record of the case was returned to him. According to respondent, he then prepared on December 22, 1995 the

resolution in question.[13]

Clerk of Court and Ex-Officio Sheriff Ma. Cleofe Clarin corroborated respondent's testimony. She said that on September 27, 1995, respondent wrote her about the notice of redemption given by Paul Mendoza and the opposition filed by complainant. She confirmed that she instructed respondent to continue his work because respondent was the executing sheriff. Clarin also stated that she signed a certificate of redemption in favor of Paul Mendoza.[14]

With respect to the complaint for abuse of official function, gross ignorance of the law, and manifest partiality, the Investigating Judge, Achilles L. Melicor, found that respondent "failed to observe the prescribed norm of conduct of court personnel and to discharge his duties with prudence and circumspection." Accordingly, he recommended that respondent be reprimanded with a stern warning that a repetition of the same act in the future will be dealt with more severely. But, with regard to the charge of falsification of public documents, he found the evidence to be insufficient and, therefore, recommended that the complaint be dismissed. Both recommendations were made in a report submitted by Judge Melicor on March 12, 1997.

By resolution of this Court, dated June 9, 1997, the case was referred to the Office of the Court Administrator for evaluation, report, and recommendation.

On September 17, 1997, the Office of Court Administrator (OCA), through Deputy Court Administrator Bernardo P. Abesamis, submitted a Memorandum to then Chief Justice Andres R. Narvasa, recommending that respondent be found guilty of Usurpation of Judicial Function and that he be suspended from office for six months with a warning that a repetition of the same or similar acts will be dealt with more severely.

The OCA adopted Judge Melicor's findings of fact. As to the charge of abuse of official function, gross ignorance of duties and manifest partiality, the OCA found:

We find no cogent reason to disagree with the findings of the investigating judge with regards (sic) to the irregularity in the issuance of the assailed "Resolution" dated December 22, 1995. Undoubtedly, the act of the respondent Sheriff constitutes usurpation of Judicial function.

The reason given by respondent, i.e., that it was upon advise of the Clerk of Court Atty. Cleofe Clarin "to continue with his unfinished work" which is why he issued the assailed resolution, cannot be given due consideration so as to exculpate him from administrative liability. "The judicial power vested in a judge and its exercise is strictly personal to the judge because of, and by reason of his highest qualification, and can never be subject of agency. That would not only be contrary to law, but also subversive of public order and policy" (Conzales-Austria vs. Abaya, 176 SCRA 637). The advise given to him by the Clerk of Court, "to continue with his unfinished business" notwithstanding, respondent could have exercised more circumspection in the exercise of his ministerial function...[15]

The OCA noted that in view of his purely ministerial functions, respondent gravely abused his function when he exercised a judicial prerogative: resolving the legality of the Notice of Redemption filed by Paul Mendoza through his attorney-in-fact Justiniano Mendoza.

Anent the charge of falsification, the OCA found that the same had not been substantiated.

First. Rule 39, §27 (formerly §29) of the Revised Rules of Civil Procedure provides in part:

Who may redeem real property so sold. $\frac{3}{4}$ Real property sold as provided in the last preceding section, or any part thereof sold separately, may be redeemed in the manner hereinafter provided, by the following persons:

(a) The judgment obligor, or his successor in interest in the whole or any part of the property;

The "successor in interest" of the judgment debtor referred to in the above provision includes a person who succeeds to his property by operation of law, or a person with a joint interest in the property, or his spouse or heirs.[16]

The procedure governing the exercise of the right of redemption is provided for in Act No. 3135, §6 which provides:

In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from the date of the sale, and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure,[17] in so far as these are not inconsistent with the provisions of this act.

The one-year period of redemption is reckoned from the date of registration of the certificate of sale.[18]

In the case at bar, the mortgaged property was sold at public auction on December 27, 1994 to complainant as the highest bidder. On the same day, he was issued a certificate of sale which clearly stated that the period of redemption of the foreclosed property would expire one year from the date of registration of the certificate of sale. Pursuant to Rule 39, §27 of the Revised Rules of Court, Paul Mendoza, as heir of the mortgagor-spouses Mendoza, had the right to redeem the property. However, after being informed that complainant was opposing the redemption of the entire property on the ground that Paul Mendoza could exercise the right of redemption only with respect to his share as heir of the mortgagors, respondent should not have resolved the opposition and issued a certificate of redemption to Paul Mendoza. Complainant's opposition is based on the following provisions of the Civil Code:

Art. 1612. If several persons, jointly and in the same contract, should sell an undivided immovable with a right of repurchase, none of them may exercise this right for more than his respective share.

The same rule shall apply if the person who sold an immovable alone has left several heirs, in which case each of the latter may only redeem the part which he may have acquired.

Art. 1613. In case of the preceding article, the vendee may demand of all the vendors or co-heirs that they come to an agreement upon the repurchase of the whole thing sold, and should they fail to do so, the vendee cannot be compelled to consent to a partial redemption.

Complainant's opposition to the redemption of the property and his insistence on the issuance to him of a final deed of sale gave rise to a contentious matter. For this reason, respondent should have refrained from sealing the redemption by Paul Mendoza and advised the parties to seek redress in the courts. Respondent had no authority to decide the matter. In fact, respondent now tries to minimize the effect of what he made by claiming that he merely repeated the prior notice he had given to complainant on June 7, 1995 that the redemption of the property had already been effected on June 5, 1995.

Second. This is not all that respondent did. Pursuant to his "resolution" of December 22, 1995 adjudicating the matter in favor of the redemptioner, respondent issued to the latter on January 22, 1996 a certificate of redemption. At the time, the period of redemption had already expired. But respondent claims that he actually resolved this matter before the period of redemption expired on December 28, 1995, and his "resolution" was not mailed to complainant until January 15, 1996 only because he waited for the resolution of the matter by the Clerk of Court, Atty. Ma. Cleofe Clarin. This contradicts respondent's other claim that he prepared his resolution on December 22, 1995 after being authorized to do so by Atty. Clarin.

Thus, to avoid the charge that he allowed the redemption to be made even after the period for doing so had expired on December 27, 1995, respondent claims that he actually prepared the resolution allowing the redemption and authorizing the issuance of a certificate of redemption on December 22, 1995. He claims he was not able to do this earlier because in the meantime a new Clerk of Court for Multiple Salas and Ex-Officio Sheriff, Atty. Ma. Cleofe Clarin, had taken over office, and it was only on December 15, 1995 that he was told by the latter to continue with the case. However, when confronted with the fact that the "resolution" purporting to have been prepared on December 22, 1995 was not sent to complainant until January 15, 1996, while a certificate of redemption was issued to the redemptioner, Paul Mendoza, only on January 22, respondent says it was because he had to wait for Atty. Clarin's action. Respondent finds himself between the horns of a dilemma and is unable to extricate himself.

Indeed, Rule 39, §29 provides:

Effect of Redemption by Judgment Debtor, and a Certificate to be Delivered and Recorded Thereupon; To Whom Payments on Redemption Made. - If the judgment debtor redeems, he must make the same payments as are required to effect a redemption by a redemptioner, whereupon the effect of the sale is terminated and he is restored to his estate, and the person to whom payment is made must execute and deliver to him a certificate of redemption acknowledged or approved before a notary public or other officer authorized to take acknowledgments or conveyances of real property. Such certificate must be filed and recorded in the office of the register of deeds of the province in which the property is situated, and the register of deeds must note the record thereof on the margin of the record of the certificate of sale. The payments mentioned in this and the last preceding sections may be made to the purchaser or redemptioner, or for him, to the officer who made the sale.[19] (emphasis supplied)

The import of this provision is that as soon as payment is made by the redemptioner, the officer to whom the payment is made must deliver to him a certificate of redemption. Yet as we have seen, respondent waited for nearly eight months before issuing the certificate. In the meantime, the parties' respective rights to the property remained hanging. It is not an excuse that respondent was relieved of his duty as the Deputy Sheriff in charge of the case. More than three months had elapsed from the time the notice of redemption was filed and the redemption price tendered, and the time respondent turned over the records of the case to the Clerk of Court and Ex-Officio Sheriff. Why was the certificate of redemption not issued within this time?

To make matters worse, the certificate of redemption was issued on the same day that complainant received a copy of respondent's questioned resolution $\frac{3}{4}$ which resolution in turn was only mailed a month after it was supposedly issued by respondent. The long delay engendered the belief in complainant's mind that redemption might have possibly taken place after the expiration of the redemption period.

From all these facts, it is evident that respondent was partial to the redemptioner. After a long delay, he issued a certificate of redemption to Paul Mendoza resolving the opposition by complainant which respondent did not even have the power to do. In one case,[20] we said that "this Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and would diminish or even just tend to diminish the faith of the people in the judiciary." By the very nature of their functions, sheriffs perform a very sensitive function in the dispensation of justice. Accordingly, their conduct must at all times be above suspicion.[21] We agree with Executive Judge Melicor, the Investigating Judge, that complainant's evidence may not sustain a charge of falsification of public document, but it does show that respondent was less than impartial in handling complainant's opposition to redemption.

WHEREFORE, the Court finds respondent Carlos Bague to have been GUILTY of abuse of official functions and

manifest impartiality and ORDERS him suspended for six (6) months without pay, with warning that repetition of the same act committed will be dealt with more severely. The complaint for falsification of a public document is DISMISSED for insufficiency of evidence.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] A.M. No. OCA-IPI 96-114-P.

[2] A.M. No. OCA-IPI 96-142-P.

[3] Investigation Report, March 12, 1997, p. 1; Rollo, p. 126. See also Petition to the RTC, January 26, 1996, p. 1; Rollo, p. 9.

[4] Id., pp. 1-2; id., pp. 126-127. See also Petition to the RTC, January 26, 1996, pp. 2-3; Rollo, pp. 10-11.

[5] Id., p. 2; id., p. 127.

[6] Resolution, December 22, 1995; id., p. 16.

[7] Complaint, dated March 6, 1996, pp. 1-2; Rollo, vol. II, pp. 1-2.

[8] Investigation Report, supra note 5 at 3; id., p. 128.

[9] Id., p. 4; id., p. 129.

[10] Comments to the Petition, August 21, 1996, p. 2; id., p. 25.

[11] Investigation Report, supra note 5 at 4-5; id., pp. 129-130.

[12] Petition to the RTC, January 26, 1996, p. 4; id., p. 12.

[13] Resolution, supra note 6.

[14] Investigation Report, supra note 5 at 6; Rollo, pp. 131.

[15] Report of the Office of the Court Administrator, Sept. 17, 1997, p. 8.

[16] 1 Florenz D. Regalado, Remedial Law Compendium 455 (1999) citing Magno v. Viola, 61 Phil. 80 (1934).

[17] Now Rule 39, §§25-31 of the Revised Rules of Civil Procedure.

[18] Rural Bank of Davao City, Inc. v. Court of Appeals, 217 SCRA 554 (1993).

[19] See also Chapter VIII, Sec. D (2) (s) of the Manual for Clerks of Court.

[20] Lepanto Consolidated Mining Company v. Melgar, 256 SCRA 600 (1996).

[21] Id., citing Lianes v. Borja, 192 SCRA 288 (1990).

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