

**APOLINARIO D. SARIGUMBA, PETITIONER, VS. DEPUTY SHERIFF
EUGENIO B. PASOK, RESPONDENT.***A.M. No. R-510-P. November 13, 1987*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/c27509ae656c/>**PER CURIAM:**

On 4 December 1984, Mercur Export Corporation, Sonia Tolopia, Hans Birzele, Cesar Soliven, Arturo Tolopia and Grace Tolopia filed with the Regional Trial Court of Makati, Branch 142, Makati, Metro Manila, a complaint against Apolinario D. Sarigumba, for damages with a prayer for the issuance of a writ of preliminary injunction, docketed therein as Civil Case No. 9172.

The complaint[1] alleges, inter alia, that the individual plaintiffs and defendant are all stockholders and directors of Mercur Export Corporation (MERCUR for short); that due to the worsening economic ills of the country, all of the directors of MERCUR, with the exception of defendant, arrived at a consensus that MERCUR's factories at Calaca-an, Plaridel, Misamis Occidental, be leased out to an interested party so that the corporation could liquidate on time its maturing liabilities which have reached the amount of P3.3M.

The complaint further alleges that when the representatives of the prospective lessee, accompanied by MERCUR's own representative, went to the factories in Calaca-an, Plaridel, Misamis Occidental on 22 November 1984, the defendant, with the use of threats and intimidation, barred or prevented them from entering MERCUR's premises without any justifiable reason and warned them that they could enter the company's factories and premises only "over his (my) dead body"; that defendant's acts and posture are inimical to the business operations of MERCUR and injurious to the rights of plaintiffs-directors-stockholders, and that his acts are designed to enhance and promote his malicious and vicious intention to operate MERCUR's factories and illegally appropriate its properties; that as a consequence of defendant's unlawful and malicious acts, plaintiffs suffered or stand to suffer pecuniary damages estimated at P200,000.00 a month, which amount fairly represents the monthly income to be derived from the use of said factories.

Acting upon the complaint, the Pairing Judge, Judge Zoilo C. Aguinaldo, presiding Judge of Branch 143, RTC of Makati[2], issued on 7 December 1984 an order[3] granting the plaintiffs' prayer for the issuance of a writ of preliminary injunction, and on 15 January 1985, issued the writ[4]. However, upon motion of the plaintiffs[5], Judge Aguinaldo issued on 21 January 1985 an order amending the writ of preliminary injunction and issued on the same date the Amended Writ of Preliminary Injunction[6], the pertinent portion of which reads, as follows:

"In view of the foregoing, you, the said defendant, and all your attorneys, representatives, agents, and any other person assisting you are hereby ordered (a) to deliver to the plaintiffs and/or their representatives all the keys of the factories of the plaintiff Mercur Export Corporation which are the banana chips and charcoal factories and their premises located at Calaca-an, Plaridel, Misamis Occidental, and all of their motor vehicles consisting of two (2) Ford Fieras and two (2) trucks, one (1) Ford and one (1) Isuzu; and to deliver to them other personal properties consisting of about 800 cartons of banana chips, several bags of refined sugar, several drums/cans of coconut oil, banana flavor, 2-way radio and other personal properties which may be found in the said premises; (b) to discontinue or to refrain from committing or causing to be committed, personally or

through another, any and all acts and deeds that are inimical or damaging to the plaintiff Mercur Export Corporation and its business operations until further orders of the court".

On 29 January 1985, Deputy and Special Sheriff Silvino R. Pastrana, filed with the Regional Trial Court of Makati, Branch 142, the Sheriff's Return[7], dated 28 January 1985, stating among others, that on 23 January 1985, he served the summons together with the complaint as well as the order dated 21 January 1985 and the Writ of Preliminary Injunction of even date, upon the person of the defendant Apolinario D. Sarigumba at the gate of the factories in question but he refused "to sign receipt thereof"; that the gate to the factories was padlocked and defendant refused to have it opened, and that he similarly refused to deliver the personal property/ties which he is enjoined to deliver to the plaintiffs.

As a result thereof, plaintiffs filed with the court a quo, an "Ex-parte motion to authorize Deputy Sheriff to Force Open Premises"[8], dated 28 January 1985, which Pair-ing Judge, Zoilo C. Aguinaldo, granted in his order[9], dated 4 February 1985. Plaintiffs filed also a motion, dated 30 January 1985, to commission or authorize the she-riff of Ozamis City or any of his deputies to enforce the writ of preliminary injunction, which was likewise granted by Judge Zoilo C. Aguinaldo in his order[10], dated 31 January 1985.

Meanwhile, on 30 January 1985, defendant Apolinario D. Sarigumba, filed with the trial court, a motion to dismiss[11] the complaint on the ground, among others, that the court a quo has no jurisdiction over the nature of the action or suit and that jurisdiction thereof pertains to the Securities and Exchange Commission under PD No. 902-A. Plaintiffs opposed the motion[12]. Thereafter, defendant Apolinario Sarigumba filed a reply[13] to plaintiff's oppo-sition, after which, the trial court, now presided by Judge Felintrye G. Saulog[14], issued an order[15], dated 28 Feb-ruary 1985, dismissing the plaintiffs' complaint for lack of jurisdiction.

In the meantime, on 25 February 1985, the Deputy She-riff of Ozamis City, Eugenio Pasok, herein respondent, who was commissioned or authorized by Judge Zoilo C. Aguinaldo to enforce the writ of preliminary injunction, implemented the writ. His 1st Indorsement[16], dated 28 February 1985, reads as follows:

"Respectfully returned to the Honorable Pairing Judge, Zoilo Aguinaldo, National Capital Judicial Region, Branch CXLII (142), Makati, Metro Manila, the herein attached Court Order dated February 4, 1985 duly issued in the above-entitled case with the following actions taken thereon, to wit:

"Upon receipt of said Order and the amended writ of preliminary injunction and related orders on February 25, 1985, immediate services were effected by proceeding to the premises of Plaintiff Mercur Export Corp., situated at Calaca-an, Plaridel, Mis. Occidental. The under-signed Sheriff, together with Plaintiffs Sonia Tolopia and Grace Tolopia, Atty. Carmelito Sumile, Phil. Constabulary members of Mis. Occ., Integrated National Police of Plaridel, Mis. Occ., and some hired laborers witnessed the enforcement and/or implementation of the subject order and writ of that Court.

"Arriving thereat, the undersigned Sheriff did his best to contact defendant Apolinario D. Sarigumba, but it was to no avail as he was out of town during that time. Subsequently, the act of entering the Mercur Export Corporation's pre-mises was accomplished by destroying the padlock of the factory's gate, and while inside the plaintiffs' compound, the whole factory was opened as the keys were voluntarily turned over to Ms. Sonia Tolopia by Mr. Luis Gagarino who was then the alleged factory supervisor working this time for Sarigumba. Also, about twelve (12) people were inside the premises working for Sarigumba who, according to them, had been operating the plant. Immediately, the inventory of all the properties inside the factory was conducted, and after the inventory was finished, delivery of the same and the possession of the plants and other equipment and machineries to plaintiff Sonia Tolopia was effected. Copy of the said Inventory is hereto attached to form part of this return.

"Defendant Apolinario Sarigumba did every foul and illegal means, such as harrassing plain-tiff's

representatives and even undersigned Sheriff with the end in view of blocking the implementation and defeating the purposes of the court order/writ. He even filed "robbery" cases against the undersigned and against everyone (including the Provincial Commander and Chief of Police) who took part in the implementation thereof. Unfortunately for him, Sarigumba is not the owner of the factories but Plaintiff Mercur Export Corporation.

"The physical turn-over in favor of plaintiffs of the possession of the plaintiff's (sic) company plants, machineries and equipment has been effected as per above inventory attached hereto. Since other personal properties owned by the company are still in the possession of A. Sarigumba who still refuses to comply with the court order/writ, the undersigned will exert his best efforts to retrieve them to fully comply with said orders/writ".

On 28 March 1985, defendant Apolinario D. Sarigumba, filed with the Office of the Court Administrator, a complaint against Judge Zoilo C. Aguinaldo, charging him with gross ignorance of the law and abusive exercise of judicial authority, docketed as Administrative Matter No. R-340-RTJ. The complaint, however, was dismissed on 19 March 1987, the resignation of Judge Aguinaldo having been accepted by the President and there being no compelling reason for further proceeding with the investigation of the complaint.

On 2 April 1985, defendant Apolinario D. Sarigumba likewise filed with the Office of the Court Administrator, a complaint against Deputy Sheriff Eugenio B. Pasok, charging him with ignorance of the law and for arrogating unto himself powers not accorded him as sheriff, docketed as Administrative Matter No. R-510-P. After respondent Deputy Sheriff had filed his comment, the Court referred the case to the Office of the Court Administrator for report and recommendation. The Report reads as follows:

"Mr. Apolinario D. Sarigumba of Plaridel, Misamis Occidental, charged Mr. Eugenio D. Pasok, Deputy Sheriff, Regional Trial Court, Branch 15, Ozamis City, of alleged ignorance of the law and arrogating unto himself powers not accorded to him as sheriff.

"Complainant alleged that the infractions committed by respondent sheriff consist of the following: (1) On February 25, 1985, respondent enforced a Writ of Preliminary Injunction dated February 4, 1985, issued by the Regional Trial Court of Makati, in Calaca-an, Plaridel, Misamis Occidental; (2) he acknowledged in his Return submitted to the Provincial Commander that he has fully executed the Writ, which was corroborated by Plaintiffs' affidavit that respondent and his party took over possession of the company's factories and properties; (3) on February 26, 1985, in the company of Plaintiffs' counsels and other persons, respondent brought out things from the premises of Deo's Food, Inc., and hauled them to the container yard of William Lines at Ozamis City; (4) on March 5, 1985, despite being furnished a copy of the order of dismissal of the case, respondent not only shipped but also consigned the goods, equipment, etc. to himself, which two German Nationals, German Birzele and Diestrich Heildebrandt, paid and collected; and (5) the court order of January 31, 1985, authorizing respondent to enforce the Writ of Preliminary Injunction dated January 21, 1985, does not exist nor appear in the court record, based on the certification of the Branch Clerk of that court.

"Respondent by way of comment to the complaint (1) admitted that a Writ of Preliminary Injunction was issued by the Regional Trial Court of Makati, which he enforced on February 25, 1985, in Calaca-an, Plaridel, Misamis Occidental, but denied that the date of the Writ is February 4, 1985, inviting attention to complainant's Exhibit "A", which is the copy of the writ dated January 21, 1985; (2) denied that the letter he sent to the Provincial Commander is the Sheriff's Return, but simply a notification on the status and progress of the enforcement of the Writ, which was not fully executed; (3) denied that on February 26, 1985, together with Plaintiff's counsels and other persons, he brought out things from the premises of Deo's Food, Inc., and hauled them to the container yard of William Lines, Inc., at Ozamis City, because on said date he ceased to have possession and responsibility over the properties, in view of the fact that on February 25, 1985 he turned over said properties to the Plaintiffs, through Ms. Sonia Tolopia, in the presence of Plaintiffs' counsels and other

witnesses; (4) denied that he was furnished a copy of the order of dismissal of the case, contending that an examination of complainant's Exhibit "D", which is a copy of said order, will show that there was no proof of service nor was there any notation to that effect on the face of the order, but admitted that he was the shipper of the goods, mainly in due consideration to the request of William Lines, Inc., and the Plaintiffs, who not only paid all fees and charges but also has the exclusive control and direction of the shipment; and (5) for lack of sufficient knowledge and information to form a belief as to the truth of the contents of the Branch Clerk's certification, he specifically denied the same.

"There is no truth to the allegation that the order dated January 31, 1985 is non-existent In a certification dated June 4, 1987 (p. 52, rollo), the Branch Clerk of Court stated that there was indeed an order issued on that date and such order was not in the records of Civil Case No. 9172 as he earlier certified (p. 17, rollo) but was found later attached to the records of CA G.R. No. S.P. - 05977 (Mercur Export Corporation, et al. v. Saulog, et al.) when the plaintiff filed a petition for mandamus with preliminary injunction with the Court of Appeals.

"The actuation of respondent Deputy Sheriff is highly irregular in this case for the following reasons:

a) Respondent's execution of the writ of preliminary injunction runs counter to B.P. 129 (Judiciary Reorganization Act of 1981) and the Interim Rules of January 11, 1983 Implementing B.P. 129 which states that a writ of preliminary injunction issued by a regional trial court may be enforced only in any part of the region. As an officer of the court, respondent ought to have known this provision. Besides, Section 2, Rule 58 of the Rules of Court* on injunction has been interpreted by this Court in *Cudiamat v. Torres* (22 SCRA 695, 698) to be coextensive with the territorial boundaries of the province or district in which the said court sits. Upon receipt of the order dated January 31, 1985 authorizing the sheriff of Ozamis City or any of his deputies to enforce the writ of preliminary injunction of January 21, 1985, respondent Deputy Sheriff should have gone to the Executive Judge or the Clerk of Court for clearance to implement the writ in Ozamis City. This procedure would have been the proper thing to do under the circumstances.

"b) Respondent's compliance with the request of the plaintiffs to ship the personal properties taken under the writ of preliminary injunction to Manila in his name was done in excess of his authority as a sheriff. Such act is not one of those enumerated in the writ of injunction of January 21, 1985. Considering this fact and notwithstanding the notation made by the Clerk of Court of the RTC, Branch 15, respondent ought to have secured a clearance from the Executive Judge or the issuing Judge to transport the said personal items.

"All the above precautions should have been taken by the respondent because sheriffs are bound *virtute officii* to bring to the discharge of his duties that prudence, caution and attention which careful men usually exercise in the management of their own affairs. (*Penalosa v. Viscaya, Jr.*, 84 SCRA 298, 300). Respondent's complete unawareness/disregard of the provisions of B.P. 129, the Interim Rules of 1983 and the limitations of his authority as sheriff can not be dismissed lightly. As an officer of the Court whose duties form an integral part of the administration of justice, respondent should be the first person to know and comprehend the law he is set to enforce. However, considering that this is respondent's first offense in his fifteen (15) years of service in the judiciary, and that no malice or bad faith attended the implementation of the writ of preliminary injunction as borne by the records, a penalty of fine equivalent to one (1) month's salary would be an appropriate chastisement for respondent".

It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer, must have a direct relation to and be connected with the performance of official duties, amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office[17].

Respondent's enforcement in Calaca-an, Misamis Occidental of the writ of preliminary injunction issued by the RTC in Makati was irregular, to say the least, even if there was an order from said Makati Court authorizing respondent to enforce the writ. As an officer of the Court, respondent ought to have known that a writ of preliminary injunction issued by a Regional Trial Court may be enforced only within its region. Moreover,

prudence dictated that respondent should have first cleared with the Executive Judge or the Clerk of Court in Ozamis City whether he had the authority to implement in Misamis Occidental the writ of preliminary injunction issued by the RTC in Makati. This he failed to do, without any explanation.

Respondent's act of shipping, on 5 March 1985, from Ozamis City to Manila, in his name, the personal properties taken under the writ of preliminary injunction[18], upon request of the plaintiffs and William Lines, Inc., appears to have been done in connection with the performance of his official duties as special sheriff to enforce the writ of preliminary injunction, but the act was not authorized or required by law, the rules or the writ itself. It should be noted that respondent Deputy Sheriff executed or enforced the writ of preliminary injunction on 25 February 1985, and, immediately thereafter, turned over the possession of the personal properties to the plaintiffs. As of that date, his duties or functions (apart from the irregularity in their performance) as special sheriff, to enforce the writ of preliminary injunction, ceased. He had no business to ship to the plaintiffs in Manila, in his own name, the properties that he had already turned over to the plaintiffs. Clearly, therefore, the shipping of the personal properties to Manila by respondent Deputy Sheriff is an uncalled for "extra service" to the plaintiffs in Civil Case No. 9172. It gives rise to the reasonable conclusion that respondent went out of his way to unduly favor the plaintiffs in Civil Case No. 9172 particularly when related to the fact that he implemented the writ of preliminary injunction issued in said case, in excess of, or beyond his authority.

ACCORDINGLY, the Court Resolved to DISMISS the respondent from the service with forfeiture of all retirement benefits and with prejudice to re-employment in any branch or instrumentality of the government, including government owned or controlled corporations.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

[1] Record, AM No. R-340-RTJ, p. 6

[2] Branch 142, Regional Trial Court of Makati, was vacant at the time. (Rollo, AM No. R-340-RTJ, pp. 63-67).

[3] Rollo, AM No. R-340-RTJ, p. 17

[4] Id., p. 20

[5] Id., p. 22

[6] Id., pp. 24, 26; Rollo, AM No. R-510-P, p. 3

[7] Rollo, AM No. R-340-RTJ, p. 29

[8] Rollo, AM No. R-340-RTJ, p. 30

[9] Id., p. 52

[10] Id., p. 103; Rollo, AM No. R-340-P, p. 43

[11] Id., p. 32

[12] Rollo, AM No. R-340-RTJ, p. 41

[13] Id., p. 54

[14] Assigned to Branch 142 on 7 February 1985 (Rollo, AM No. R-340-RTJ, p. 63)

[15] Rollo, AM No. R-340-RTJ, p. 60; Rollo, AM No. R-510-P, p. 8

[16] Id., p. 104; Rollo, AM No. R-510-P, p. 46

* Section 2, Rule 58, Rules of Court provides:

"Sec. 2. Who may grant preliminary injunction. -- A preliminary injunction may be granted by the judge of any court in which the action is pending, or by a Justice of the Court of Appeals or of the Supreme Court. It may also be granted by the Judge of a Court of First Instance in any action pending in an inferior court within his district".

[17] Amosco vs. Magro, AM No. 439-MR, 20 September 1976; 73 SCRA 107; Tenza vs. Espinelli, AM No. P-2095, 23 October 1981, 108 SCRA 154

[18] Rollo, AM No. R-510-P, p. 11

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