

ATTY. GISELLE G. TALION, CLERK OF COURT VI, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT, PANABO, DAVAO DEL NORTE, COMPLAINANT, VS. ESTEBAN P. AYUPAN, SHERIFF IV, REGIONAL...

A.M. No. P-01-1529. January 23, 2002

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PER CURIAM:

This is a complaint filed by Atty. Giselle G. Talion, Clerk of Court, Regional Trial Court, Panabo, Davao Province, against Esteban Ayupan, Sheriff IV of the same court, alleging failure of the latter to serve summons assigned to him, to act on petitions for extrajudicial foreclosure, and to enforce writs of execution and absenteeism.

The facts show the following:

On July 20, 1999, respondent Esteban Ayupan, then Sheriff IV of the Regional Trial Court, Panabo, Davao, was absent from work. As he continued to be absent for several days, the Clerk of Court, Atty. Giselle G. Talion, issued Memorandum 01-99 on July 29, 1999, requiring him to explain his absence from work.[1] In reply, respondent, in a letter dated August 3, 1999, wrote:

“I am submitting herewith my narrative explanations in compliance to your memorandum order 01-99 dated July 29, 1999.

“That on July 21, 1999 I did not report for work because of a stomach pain up to Friday 23 day of July 1999. I have been feeling this long ago. In fact, I had this consulted with the internests (sic) but they only gave me medicines which made me feel temporarily relieved.

“That on the early morning of Monday 26 day of July 1999, me and my wife discovered that our eldest daughter who had just celebrated her 15th birthday on July 25, 1999 disappeared. We immediately exerted all efforts to locate all possibilities of her whereabouts. All of these efforts were in vain.

“Incidentally, on the 27th day of July 1999, one of our neighbors in the province of Cotabato arrived. We were informed that our missing daughter was at her grandfather’s house. So, immediately, in the early morning of the 28th of July, I took the first bus trip bound for Cotabato City. I was able to locate my daughter who transferred from my father to her auntie’s house. I convinced her without any investigation to go home and back in school.

“On the 30th day of July, I reported to the office and happened to receive said memorandum order.

“During those days I had sleepless nights and even forgot to take regular meals because of worries.

“I will submit to any action against me by my superiors if I violated existing Rules of the Civil Service. However, I suggest for any possibility that I will be given ample time to go on leave for a thorough medical check up.”[2]

On the same day, respondent submitted his daily time record (DTR) and an application for leave stating that he was indisposed. Atty. Talion refused to sign the DTR an application for leave as she received earlier information that respondent was simply staying at home. Respondent's wife, who worked as an interpreter at RTC, branch 34, would not say nor deny if he was sick.

From August 23 until several days thereafter, respondent again did not report for work. Neither did he file his daily time record for the month of August 1999. For this reason, Atty. Talion issued Memorandum No. 02-99 on August 31, 1999, calling respondent's attention to his absences for the period of August 23-31 and ordering him to explain why no disciplinary action should be taken against him. Respondent did not make any explanation even after he had reported back for work on September 2, 1999. Instead, on September 10, respondent was again absent from work without leave, prompting Atty. Talion to issue another memorandum on September 21, 1999, again ordering him to explain his absences from September 10 to the date of the memoranda issued. A copy of the memorandum, together with the three previous memoranda issued to respondent, was furnished Executive Judge Gregorio A. Palabrica, RTC, Panabo and the Office of the Court Administrator. On September 28, 1999, the Office of Administrative Services, Office of the OCA, directed respondent to explain in writing why he should not be dealt with administratively for his unexplained absences and to return to work within five days from receipt of the same. Again, however, respondent did not offer any explanation for his absences and simply reported back for work on October 19, 1999. Hence, on October 25, 1999, Executive Judge Palabrica issued Memorandum No. 06-99, ordering that no cases for service of summons, execution of judgments, and/or petition for extrajudicial foreclosure be assigned to respondent. When respondent applied for an indefinite leave of absence effective November 18, 1999, Judge Palabrica refused to approve respondent's application.[3]

Atty. Talion found that from 1997 until 1999, respondent failed to serve a number of summonses and to act upon petitions for extrajudicial foreclosure assigned to him. On September 1, 1999, Atty. Talion asked Jonathan Fajardo, Clerk IV of the OCC-RTC, to make an inventory of cases assigned to respondent. The inventory of the cases showed that summonses assigned to respondent for enforcement were either served but unreturned or they remained unserved, petitions for extra-judicial foreclosure remained either unserved upon the mortgagors or mortgagees or unpublished in newspapers of general circulation, or no provisional or final certificates of sale were issued, while several writs of execution remained unenforced. The summonses were dated as early as October 27, 1997 while the petitions for extrajudicial foreclosure were filed as early as November 13, 1997.

On the other hand, respondent received the writs of execution as early as July 10, 1997. The details of the inventory are as follows:[4]

Inventory conducted

on

Status

Number of
cases

Summons Unserved

45

Served but unreturned

18

Status undetermined

18

Total

81

=====

Extrajudicial

Foreclosure Sheriff's notice of
foreclosure unsent /
no proof of mailing

106

For Issuance of final
or provisional
certificates of sale

36

Notice of foreclosure
not on file

20

No publication /
notice of foreclosure
unsent

15

Unacted upon / for re-raffling

8

Petition withdrawn

4

Not included in the
raffling of legal
notices

4

No status indicated

3

Total

196

=====

Inventory conducted
on

Status

Number of
cases

Writs of Execution Unimplemented / No
sheriff's return

52

Served

13

Partial Return

3

Total

=====

On October 22, 1999, Atty. Talion submitted a report to Executive Judge Palabrica, who endorsed the same to the Office of the Court Administrator on October 29, 1999. The OCA directed Judge Palabrica to investigate the matter. In compliance with the directive of the OCA, Judge Palabrica scheduled a hearing on December 28, 1999, notifying respondent of the same. However, respondent ignored the notice. Only Atty. Talion appeared to testify on respondent's alleged inefficiency.

After hearing, on January 14, 2000, Judge Palabrica made the following findings and recommendation:

"FINDINGS:

The undersigned finds that Mr. Ayupan has been absent without official leave for more than 30 days. Moreover, he also failed to properly accomplish the extrajudicial foreclosure totalling 197 cases assigned to him. Likewise he has not acted properly on the writ of executions and summons coming from several courts.

"RECOMMENDATION

"On the bases of the above facts, the undersigned recommends that Mr. Esteban Ayupan be removed from service."[5]

On October 19, 2001, the Office of the Court Administrator submitted Judge Palabrica's report to the Court, recommending that respondent Esteban Ayupan be dismissed from the service for abandonment of office, with prejudice to reinstatement in any government instrumentality or government owned or controlled corporation.[6]

We agree with the findings of the Executive Judge. The sheriff has the primary responsibility of ensuring the speedy and efficient service of court processes and orders.[7] In the discharge of his duty a high degree of professionalism is demanded.[8] For it cannot be overemphasized that a decision or process that is left unexecuted or unserved because of the inefficiency, negligence, misconduct, or ignorance of the law of those charged with their execution inevitably delays the administration of justice and rightly deserves the condemnation of the parties who are prejudiced thereby.[9]

First. Under the 1997 Revised Rules of Civil Procedure, the service of summons may be entrusted to the sheriff.[10] He is required, within five days after service, to make a return, personally or by registered mail, to the plaintiff's counsel, and to return the summons to the clerk who issued it, together with the proof of service.[11] The sheriff has the duty to serve the process promptly and to make a return of his service within a reasonable time. This is necessary in order for the court to determine if the period for filing an answer has not yet expired.[12]

In the present case, respondent failed to serve approximately 45 summonses and failed to make a return on 18 summonses served as of October 22, 1999 (date of report of Atty. Talion). These summonses were dated as early as October 27, 1997, with the latest ones bearing the date April 15, 1999. Although respondent's absences started in July, 1999, it appears that he had been neglecting his duties for nearly two years before that date. The Clerk of Court became aware of respondent's neglect when complaints started coming from litigants and two judges who threatened to cite her (the Clerk of Court) for contempt of court.

Second. With respect to the petitions for extrajudicial foreclosure of mortgages, although Act No. 3135 does not provide the period during which the executing sheriff must act upon them, it nevertheless behooved respondent as

an officer of the court to act with reasonable dispatch on all matters entrusted to him in order not to unduly delay the administration of justice.[13] Respondent's failure to perform his duty resulted in 196 petitions for extrajudicial foreclosure remaining pending for so long that respondent's inaction clearly constitutes gross neglect of duty.

Third. As for writs of execution, Rule 39, sec. 14 of the 1997 Revised Rules of Civil Procedure provides:

"Return of writ of execution. — The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment shall be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full or its effectivity expires."

Although a writ of execution is effective for five years from the date of entry of the judgment,[14] the sheriff tasked with its implementation must proceed with reasonable dispatch to execute it and to make a return immediately. If it is not satisfied, he must make a report to the court stating the reason for the failure of execution within thirty days after his receipt of the writ and make a report every 30 days thereafter until the judgment is satisfied.[15]

In the case at bar, no return on a writ of execution received by respondent as early as July 10, 1997 has been made by him. About 18 of the writs he received in 1998 alone either remained unreturned or unimplemented. His failure to implement or make a return of writs of execution he received in a span of nearly two years constitutes gross neglect of duty which is likewise subject to disciplinary action.

Fourth. With regard to respondent's unauthorized absences, the Civil Service Law provides that frequent or habitual unauthorized absences shall be ground for disciplinary action.[16] Any civil service employee who incurs unauthorized absences in excess of the allowable 2.5 days monthly leave credit under the Leave Law for at least three months in a semester or at least three consecutive months during the year is considered habitually absent.[17]

For absence to be considered authorized, the following general rules apply: (1) an application for leave of absence of court personnel for one full day or more shall be submitted for action to the proper head of agency five days in advance, whenever possible, of the effective date of such leave;[18] (2) Sick leaves taken by court personnel in excess of five days must be accompanied by medical certificates and the head of department or agency may determine whether the granting of sick leave is proper under the circumstances;[19] and (3) Leaves of absence for any reason other than serious illness of an officer or employee or any member of his immediate family must be contingent upon the needs of the service.[20]

Respondent complied with none of these requirements. During the first period of his absence in July 1999, when he incurred absences of 11 working days, he never submitted any medical certificate to support his claim of illness. In August 1999, when he was absent for six working days, and from September to October, when he did not report for work for 27 working days, he neither filed for an application for leave nor gave any explanation for his absences in spite of orders issued by Atty. Talion for him to do so. Thus, for four consecutive months in 1999, respondent exceeded the allowable 2.5 days monthly authorized leave credits granted, which, under the Civil Service Rules, is subject to disciplinary action.

Moreover, civil service employees who are absent for at least 30 days without leave are considered absent without leave (AWOL) and shall be dropped from the service after due notice.[21] The notice contemplated by this rule is not jurisdictional in nature and failure to give such notice by the appropriate government office does not prevent

the dropping of the employee concerned from the government service. Staying away from one's regular employment in the government or remaining on leave without proper approval is something that an employee can hardly be unaware of.[22]

Here, after having incurred unauthorized absences of 44 working days from July to October 1999, respondent filed an application for indefinite leave on November 18, 1999, which was not approved by Judge Palabrica. Nevertheless, respondent stopped reporting for work from that date to the present. Counting the number of days from November 18, 1999 to at least the date of the submission by the OCA of the case to this Court for consideration on October 19, 2001, respondent has been absent for more than one year and 10 months from the date of his application for indefinite leave up to the present without attempting to return to work.

Respondent's failure to serve 45 summonses and make a return on 18 served by him; to act upon 196 petitions for extrajudicial foreclosure; and to act upon 68 writs of execution in a span of approximately a period of two years constitutes gross neglect of duty. This offense is punishable by dismissal.[23] His unauthorized absences in excess of the allowable 2.5 monthly leave credits for four consecutive months in 1999 is punishable by suspension for six months and one day to one year for the first offense and dismissal for the second offense.[24] As this is his first offense, a suspension of six months and one day is proper. In addition, respondent is considered AWOL for being absent from work for more than 30 days without leave and should be automatically dropped from the service.

Under the Civil Service Rules, the penalty that should be imposed on an employee who, like respondent, is guilty of two or more offenses is that corresponding to the most serious offense. The rest of the offenses shall be considered as aggravating circumstances only.[25] Gross neglect of duty is the most serious charge of which respondent is guilty. Hence, dismissal from the service is the appropriate penalty to be imposed on him. The penalty of dismissal carries with it cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification from reemployment in government service.[26]

WHEREFORE, in view of the foregoing, respondent Esteban P. Ayupan is hereby found guilty of gross neglect of duty, aggravated by unauthorized absences and absence without leave, and is hereby DISMISSED from the service, with the forfeiture of his leave credits and retirement benefits and with prejudice to his reemployment in any branch of the government or any of its agencies or instrumentalities, including government owned and controlled corporations.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Exh. A.

[2] Exh. C.

[3] TSN (Atty. Giselle G. Talion), December 28, 1999, pp. 6-13; Exhs. D, E, and F.

[4] Exhs. G, G-1 to G-26, I, I-1 to I-25, K, K-1 to K-16.

[5] Findings and Recommendations of Judge Palabrica, dated January 14, 2000, p. 4.

[6] Administrative Matter for Agenda, dated October 19, 2001, p. 2.

[7] De Castro vs. Santos, 198 SCRA 245 (1991).

- [8] Chan vs. Castillo, 238 SCRA 359 (1994).
- [9] Portes vs. Tepace, 267 SCRA 185 (1997).
- [10] RULES OF COURT, Rule 14, sec. 3.
- [11] Id., sec. 4.
- [12] De la Cruz vs. Provincial Sheriff of Bulacan, 54 SCRA 398 (1973).
- [13] Cf. Casaje vs. Gatbalite, 331 SCRA 508 (2000); Viray vs. Court of Appeals, 286 SCRA 468 (1998); Jumio vs. Egay-Eviota, 231 SCRA 551 (1994).
- [14] RULES OF COURT, rule 39, sec. 14, in relation to sec. 6 thereof.
- [15] See Casaje vs. Gatbalite, 331 SCRA 508 (2000); Viray vs. Court of Appeals, 286 SCRA 468 (1998); Jumio vs. Egay-Eviota, 231 SCRA 551 (1994).
- [16] ADMINISTRATIVE CODE OF 1987, Book V, Title I, Subtitle A, Chapter 6, sec. 46(b)(14).
- [17] RULES IMPLEMENTING BOOK V OF EXECUTIVE ORDER NO. 292, Rule XIV, sec. 23 (q), par. 2.
- [18] MANUAL FOR CLERKS OF COURT, Chapter XIII, sec. C (1).
- [19] Id., sec. C (2).
- [20] Id., sec. C(3).
- [21] Id., Rule XVI, sec. 35.
- [22] Cf. Quezon vs. Borromeo, 149 SCRA 205 (1987).
- [23] RULES IMPLEMENTING BOOK V OF EXECUTIVE ORDER NO. 292, Rule XIV, sec. 23(b).
- [24] Id., Rule XIV, sec. 23(q).
- [25] Id., Rule XIV, sec. 17.
- [26] Id., Rule XIV, sec. 9.

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