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KATIPUNAN NG TINIG SA ADHIKAIN, INC. (KATIHAN) BY GODOFREDO S. BONGON, COMPLAINANT, VS. JUDGE LUIS ZENON O. MACEREN, SHERIFF ANTOLIN ORTEGA CUIZON, METROPOLITAN TRIAL COURT, BRA...

A.M. No. MTJ-07-1680 (FORMERLY OCA I.P.I. NO. 07-1876-MTJ). August 17, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

This is an administrative complaint against Presiding Judge Luis Zenon O. Maceren (Judge Maceren) and Sheriff Antolin Ortega Cuizon (Sheriff Cuizon) of the Metropolitan Trial Court (MeTC), Branch 39, Quezon City, for violation of Article III, Section 1 of the Constitution and Rule 39, Section 10(d) of the Rules of Court.

The facts of the case are undisputed as follows:

A case for ejectment and damages was filed in the MeTC, Branch 39, Quezon City on September 14, 2005, docketed as Civil Case No. 35076, entitled "Efrain Limsui, represented by his Attorney-in-fact, Apolonio Magno v. Damayang Magkakapitbahay ng 81 Linaw Street, Inc. and B.I.G.K.I.S. Neighborhood Association, and their members and all persons claiming rights under them."

The plaintiff is the new owner of the eight (8) parcels of land formerly owned by Dr. Carmen Lopez (Lopez), covered by Transfer Certificate of Title Nos. RT-38111 (38772), RT-38112 (387710), RT-38113 (38770) and RT-38006 (38773), issued by the Registry of Deeds of Quezon City in 1957 in the name of Lopez. To oversee the vacant lands, Lopez appointed caretakers who brought along with them their families to live therein, but they assured Lopez that they will leave the property when so ordered. After some time, the caretakers allowed their friends to stay in the property. Before long, Lot Nos. 65 and 81 were filled with squatters.[1]

Because the property was occupied by squatters, prospective buyers shied away. Efrain Limsui bought the parcels of land from Lopez at a lower price, assuming the risks of dealing with the squatters. Limsui learned that the squatters in Lot No. 81 grouped together and incorporated as "Damayang Magkakapitbahay (Damayang Magkakapitbahay) ng 81 Linaw St., Inc.," while the other squatters in the land formed "Buklurang Idoloheya sa Gawa at Kaunlaran ng Isip at Salita, Inc. (BIGKIS)."[2]

Representatives of Limsui talked to the different leaders of the defendant-associations and the barangay officials in the area in February 2005, offering financial and other material assistance in exchange for vacating the premises. The members of the defendant-associations accepted. However, some did not comply with the undertaking, adamantly refusing to leave the property. Thus, Limsui filed the said ejectment case.[3]

Summonses were duly served on the defendant-associations on September 19, 2005. No answer was filed by the defendants. However, a Compromise Agreement was executed and presented to the trial court on September 26, 2005. On November 2, 2005, the MeTC rendered a Decision based on the compromise agreement submitted by the parties.

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In the compromise agreement, the parties agreed that the defendants would voluntarily vacate the property and remove the structures they have erected on the land. Defendants acknowledged the ownership of Lopez over the land and admitted that they occupied the same through the mere tolerance of Lopez. They also recognized the right of Lopez to sell the land to Limsui. In exchange for the peaceful surrender of the property by the members of the defendant-associations, the parties agreed on the amount of financial assistance that plaintiff would give to the defendants.

On October 21, 2005, Katipunan ng Tinig sa Adhikain, Inc. (KATIHAN) and Pagsasama sa Iisang Adhikain (PIA) filed a Verified Manifestation and Motion with the trial court where the action for ejectment was pending, stating that they are also residents of the land subject of the ejectment suit, and that they are in danger of being evicted without due process of law. They claimed that they did not receive any summons, and not being parties to Civil Case No. 35076, they should not be affected by the Decision based on the compromise. Thus, any writ of execution that may be issued by the MeTC should only be enforced against the signatories of the compromise agreement. They also informed the trial court through the Verified Manifestation and Motion that on October 14, 2005, several men carrying guns, crowbars and sledgehammers, arrived at the subject premises, and destroyed their houses without any court order.

Judge Maceren noted the Verified Manifestation and Motion of KATIHAN and PIA.

On November 23, 2005, the MeTC issued an Order granting the issuance of a writ of execution for the enforcement of the Decision dated November 2, 2005. On November 30, 2005, a Writ of Execution was issued by the MeTC, the pertinent portion of which reads:

> WHEREAS, you are hereby commanded to cause the following DEFENDANTS and the other/all persons claiming interest under them to VACATE the place designated on the Decision, and restore the possession thereof to the Plaintiff.

On the same day, Antolin Ortega Cuizon, Sheriff III, MeTC, Quezon City, issued a Notice to Vacate to the defendants, and on June 28, 2006, he issued a Final Notice of Demolition, viz.:

> That the undersigned Sheriff III hereby gives you until the whole day of July 3, 2006 (Monday) from receipt thereof within which to vacate the subject premises.
>
> In this connection, and in order to avoid inconvenience and discomfort on your part regarding the service of such Writ of Demolition, formal demand is hereby made upon you to vacate and demolish all structures and improvements in the premises in question.
>
> Failure on your part to comply herewith shall leave the undersigned no other alternative but to employ necessary means or force to satisfy [the] said Writ.

On July 7, 2006, Cuizon submitted a Sheriff's Report to the MeTC, which reads:

> That, on [the] 10th day of January 2006 and June 28[,] 2006, the undersigned served a copy of Notice to Vacate and Final Notice of Demolition and Writ of Execution and copy of the Decision based on Compromise Agreement, attached thereon, respectively, upon Defendants DAMAYANG MAGKAKAPITBAHAY NG 81 LINAW STREET, INC. and B.I.G.K.I.S. NEIGHBORHOOD ASSOCIATION, and their members and all persons claiming rights under them, at the premises in question, thru ULYSIS MANLANGIT, President, LITA MAGPANTAY, Chairman of the Board, and RODRIGO PELAYO, President, thru Carmelita Perez, association Officer, who signed to acknowledged (sic) receipt thereof;
>
> That, on the 3[rd] day of July 2006, Counsel for the Plaintiff, Atty. Lauron, informed the undersigned Sheriff that they had a meeting with the Defendants/Occupants of subject premises and both parties agreed, that the

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> latter will voluntarily vacate and demolish their shanties on July 4, 2006;
>
> That, on the 4[th] day of July 2006, the undersigned went back to the premises in question to verify the veracity of both parties['] verbal compromise agreement;
>
> That, upon arrival thereat, the undersigned found out that Defendants and all occupants of the premises in question have already voluntarily and peacefully vacated the premises in question and the Plaintiff's demolition workers peacefully and freely extracted all the usable materials of the shanties/structures and consequently turned-over the same to the Defendants/Occupants;
>
> That, the undersigned turned-over the subject premises to the Plaintiff thru the Counsel for the Plaintiff, copy of which are (sic) attached hereto, and the Plaintiff is now in the actual physical control and possession of the premises in question;
>
> In view of the foregoing, the undersigned respectfully return the copy of the Writ of Execution SERVED and DULY COMPLIED/SATISFIED for the information and guidance of the Honorable Court, and for whatever action as it may deem proper under the premises.

The enforcement of the writ of execution is the reason for KATIHAN's administrative complaint against Judge Maceren and Sheriff Cuizon. KATIHAN contends that its members were in peaceful possession of a portion of the property subject of Civil Case No. 35076, and because of the Writ of Execution issued by Judge Maceren and the Writ of Demolition issued by Sheriff Cuizon, they were ejected from the land in violation of their right to due process of law and contrary to the procedure set forth in the Rules of Court. KATIHAN stresses the fact that it was not impleaded as a defendant in Civil Case No. 35076, and therefore, it is not, nor are its members, bound by the Decision in the said case.[4]

Furthermore, the implementation of the Final Notice of Demolition by Sheriff Cuizon on July 4, 2006, according to KATIHAN, was a violation of the Rules of Court because he should have secured an order from the MeTC before he destroyed, demolished or removed the improvements on the subject lots.[5] Judge Maceren allegedly participated in the malfeasance committed by Sheriff Cuizon, since he (Maceren) personally assured KATIHAN on July 3, 2006 that it was not involved in the case, that the issue had already been resolved, and that it was now up to the Sheriff who would implement the Writ of Demolition. KATIHAN is of the view that Judge Maceren should have prevented Sheriff Cuizon from implementing the Writ of Demolition because no hearing was set for the purpose and the trial court did not issue a special order of demolition.[6]

In his Comment dated November 16, 2006, Judge Maceren stated that during the hearing on the Compromise Agreement on October 17, 2005, lawyers were present claiming to represent certain individuals who were supposedly occupants of the subject lots, and they expressed their objections to the Compromise Agreement. They alleged that they are not members of the defendant-associations in Civil Case No. 35076. However, no formal intervention was filed by the said counsels. Judge Maceren also explained that he merely noted the Verified Manifestation and Motion filed by PIA and KATIHAN because both are not parties to the case and the trial court had no jurisdiction to consider and/or act on their claims. As to the allegation that he personally talked to the officials and members of PIA and KATIHAN, and told them "HINDI KAYO KASAMA AT TAPOS NA ANG USAPIN, NASA SHERIFF NA LAMANG KUNG IPATUTUPAD PA ANG DEMOLITION," Judge Maceren manifested that he cannot remember having talked to them, and that he doubts its truth since he is not in the habit of talking to persons who have interests in pending cases that are heard before his sala.

For his part, Sheriff Cuizon submitted an undated Comment to this Court, the pertinent portions of the said Comment reads:

- I am the designated Sheriff assigned to (sic) the Metropolitan Trial Court, Branch 39, Quezon City;

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- I have been tasked to implement the Decision dated November 02, 2005 of the said court by virtue of a Writ of Execution dated November 30, 2005 in connection with the case "Efrain Limsui, etc. vs. Damayang Magkakapitbahay Ng 81 Linaw Street, Inc. and B.I.G.K.I.S. Neighborhood Association," docketed as Civil Case No. 35076. Among the undertakings, under the Writ of Execution, is the demolition of the structures of the defendants. A copy of the Writ of Execution is attached hereto as Annex "1";

- Accordingly, I prepared and sent a Notice to Vacate to the defendants in the said case on January 10, 2006. However, this was not implemented immediately as I was made to understand by the plaintiff that the defendants are being convinced to vacate voluntarily. A copy of the Notice to Vacate is attached hereto as Annex "2";

- On June 28, 2006, upon the prodding of the plaintiff, I sent a Final Notice of Demolition to the defendants informing them of the implementation on July 04, 2006. A copy of the notice is attached as Annex "3";

x x x x

- (sic) The complainants claim that there was no special order of demolition, and thus I could not undertake the same. This is not true, my Notice to Vacate and Final Notice for Demolition were based on a Decision and a Writ of Execution that incorporates an undertaking to demolish structures of the defendants, as earlier mentioned. Under the circumstances, therefore, there was no need for me to ask for an Order of Demolition.

The sole issue in this case is whether Judge Maceren and Sheriff Cuizon can be held administratively liable for the demolition of the structures of complainants ostensibly without due process of law, and for violation of the rules of procedure concerning the execution of judgments under Rule 39.

The Court finds that Judge Maceren acted within the bounds of his authority when he merely noted the Verified Manifestation and Motion filed by PIA and KATIHAN in Civil Case No. 35076, as the movants were not parties to the ejectment case. They did not file any formal motion for intervention in the said case despite the opportunity to do so.

As to the demolition of complainants' structures and improvements on the subject lots, as correctly observed by the Office of the Court Administrator, there is no concrete evidence that Judge Maceren acquiesced to or participated in Sheriff Cuizon's act of directing the demolition of the structures without proper authority from the court. However, Judge Maceren should have exercised considerable care and caution before approving the compromise agreement, knowing that a formal manifestation and motion was filed by persons who claimed that they would be adversely affected by the decision based on the compromise agreement. He should have directed all parties in interest to intervene in the case. Be that as it may, the lapse of judgment of Judge Maceren is not ample basis to hold him administratively liable, since his action of merely noting the Verified Manifestation and Motion is well within his judicial discretion.

Conversely, Sheriff Cuizon is administratively liable for ordering the demolition of the structures on the subject property and for his issuance of the Final Notice of Demolition without authority from the court. Sheriff Cuizon exceeded his authority in issuing the Final Notice of Demolition. He issued the same without a special order of demolition from the court having jurisdiction over the ejectment case.

It must be stressed that the preparation of writs is not among the duties of sheriffs as the authority to issue the same resides in judges.[7] The Rules of Court is very clear and categorical in saying that when the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.[8]

Sheriff Cuizon's compliance with the Rules of Court, especially in the implementation of judgments, is not merely directory but mandatory. Sheriff Cuizon is expected to know the rules of procedure, particularly when it pertains to his function as an officer of the court. Furthermore, in the Final Notice of Demolition, Sheriff Cuizon committed misrepresentation when he stated that a writ of demolition was issued by the trial court.

Sheriff Cuizon is likewise administratively liable for his failure to make periodic reports as mandated by Section 14, Rule 39 of the Rules of Court which states:

> SEC. 14. 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 therefore. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filled with the court and copies thereof promptly furnished the parties.

It is mandatory for a sheriff to make a return of the writ of execution to the clerk or judge issuing it within thirty (30) days upon his receipt of the writ.[9] The Writ of Execution was issued by Judge Maceren on November 30, 2005. On the same date, Sheriff Cuizon issued a Notice to Vacate. Correspondingly, Sheriff Cuizon should have submitted to the MeTC a return of writ on December 30, 2005 and a report every thirty (30) days thereafter until the judgment is fully satisfied. The reason behind this mandatory requirement is to update the court on the status of the execution and to take necessary steps to ensure the speedy execution of decisions. [10]

WHEREFORE, in view of the foregoing, the administrative complaint against Judge Luis Zenon O. Maceren is DISMISSED for lack of merit. Sheriff Antolin Ortega Cuizon is SUSPENDED for a period of three (3) months without pay, with a WARNING that the commission of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

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[1] Complaint, Civil Case No. 35076

[2] Id.; Damayang Magkakapitbahay was issued by the Securities and Exchange Commission (SEC) a Certificate of Incorporation on January 23, 2004. On the other hand, the Articles of Incorporation and By-Laws of BIGKIS was registered with SEC on January 2, 1990.

[3] Id.

[4] Sinumpaang Reklamong Salaysay, pp. 1-2.

[5] Id.

[6] Id.

[7] Buenviaje v. Anatalio, A.M. No. P-00-1361, July 29, 2005, 465 SCRA 20, 26.

[8] RULES OF COURT, Rule 39, Section 10(d).

[9] Villarico v. Javier, A.M. No. P-04-1828, February 14, 2005, 451 SCRA 218, 222.

[10] Biglete v. Maputi, Jr., 427 Phil. 221, 226 (2002).

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