

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.
JUDGE RENATO A. FUENTES AND SHERIFF IV NORBERTO
PARALISAN, BOTH OF THE REGIONAL TRIAL COURT OF DAVAO
CITY (BRANCH XVII), AND ...**

A.M. No. RTJ-94-1270. August 23, 1995

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PER CURIAM:

This is an administrative case^[1] against Norberto N. Paralisan, Sheriff IV, Regional Trial Court of Davao City (Branch XVII), for conduct prejudicial to the best interest of the service, in violation of Section 36 (b), Article IX of PD 807, otherwise known as the Civil Service Decree, in relation to the hasty implementation of a writ of execution issued by the lower court in an expropriation case.

The records show that pursuant to the government's plan to construct its first fly-over in Davao City, the Republic of the Philippines (represented by the DPWH) filed an expropriation case^[2] against the owners of the properties affected by the project, namely, defendants Tessie Amadeo, Reynaldo Lao and Rev. Alfonso Galo. The case was docketed as Special Civil Case No. 22,052-93 and presided by Judge Renato A. Fuentes.

The government won the expropriation case.^[3] As reasonable compensation for their expropriated properties, Tessie Amadeo was to receive a total sum of P1,527,500.00; Reynaldo Lao, P498,000.00; and Rev. Alfonso Galo, P16,121,175.00.

Upon motion for reconsideration by Rev. Galo, his compensation was adjusted to P18,383,175.00.^[4] The government did not appeal the lower court's decision and its order modifying the award given to Rev. Galo, hence, the same became final and executory.

It appears that, as of May 19, 1994, the DPWH still owed the defendants-lot owners, the total sum of P15,510,415,^[5] broken down as follows:

Dr. Reynaldo Lao

-

P 489,000.00

Tessie P. Amadeo

-

1,094,200.00

Rev. Alfonso Galo

-

13,927,215.00

P 15,510,415.00

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In an Order,[6] dated April 5, 1994, the lower court granted Tessie Amadeo's motion for the issuance of a writ of execution against the DPWH, to satisfy her unpaid claim. The Order was received by DPWH (Regional XI) through its Legal Officer, Atty. Warelito Cartagena. DPWH's counsel, the Office of the Solicitor General, received its copy of the order only on May 10, 1994.[7]

On April 6, 1994, Clerk of Court Rogelio Fabro issued the corresponding Writ of Execution.[8] On April 15, 1994, the writ was served by respondent Sheriff Paralisan to the DPWH-Region XI (Legal Services) through William Nagar.[9]

On May 3, 1994, respondent Sheriff Paralisan issued a Notice of Levy,[10] addressed to the Regional Director of the DPW, Davao City, describing the properties subject of the levy as follows:

"DESCRIPTION OF PERSONAL PROPERTIES

"All scrap iron/junks (sic) found in the premises of the Department of Public (Works and) Highways depot at Panacan, Davao City."

On May 10, 1994, the Sheriff's Notice of Sale[11] was issued, the full text of which reads:

"SHERIFF'S NOTICE OF SALE

"WHEREAS, by virtue of the Writ of Execution issued in the above-entitled case, the undersigned Sheriff levied and attached the personal properties of the plaintiff, Republic of the Philippines (represented) by the Department of Public Works and Highways, whereof to satisfy the unpaid balance in the sum of ONE MILLION NINE HUNDRED (sic) NINETY FOUR THOUSAND TWO HUNDRED PESOS (P1,094,200.00); plus other expenses and legal charges incident to execution and sale, the said levied properties are described and mentioned below, to wit:

`DESCRIPTION OF PERSONAL PROPERTIES

'ALL SCRAP IRON JUNKS (sic) HEAVY EQUIPMENT FOUND IN THE PREMISES OF THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS LOCATED AT PANACAN, DAVAO CITY'

(Italics ours)

"WHEREFORE, in compliance with said Writ of Execution and in accordance with law, the undersigned hereby announces to the general public that on the 18th day of May, 1994 at 10:00 o'clock in the morning or soon thereafter, in front of the Department of Public Works and Highways (depot) at Panacan, Davao City, he will sell at public auction to the highest bidder for CASH and in Philippine Currency, the aforementioned properties in order to satisfy the money judgment above-stated.

"Davao City, Philippines, May 10, 1994.

"FOR THE EX-OFFICIO SHERIFF

"(sgd.) NORBERTO N. PARALISAN

"Sheriff IV

"NOTE: Prospective bidders are hereby enjoined to investigate forthemselves the condition of the personal

properties."

The OSG was not furnished with copies of the above-mentioned notices of levy and auction sale, although Attorney Warelito Cartagena received the Sheriff's Notice of Sale on behalf of the DPWH-Region XI.

Allegedly, the auction sale pushed through as scheduled on May 18, 1994 at the DPWH depot in Panacan, Davao City. Alex Bacquial emerged as the highest bidder, besting two other bidders. Alex Bacquial bade P602,000.00 for the properties described in the notice of levy.[12] Significantly, none of the alleged bidders or their representatives went to the DPWH depot to inspect the scrap iron/junk equipment.[13]

On even date, respondent Sheriff Paralisan issued the corresponding Certificate of Sale[14] in favor of Alex Bacquial for "all (the) scrap iron junks (sic) heavy equipment found in the premises of the Department of Public Works and Highways located at Panacan, Davao City."

The following day, May 19, 1994, the OSG received information, via a long distance call from the DPWH-Region XI, regarding the execution sale. That same day, the OSG sent a telegram to respondent Sheriff Paralisan, to "hold in abeyance all execution/auction proceedings." Allegedly, the telegram was officially received by respondent Sheriff on May 23, 1994. Later on, the OSG moved for a reconsideration of the orders of the lower court, allowing the execution against the Republic of the Philippines (represented by the DPWH).

Meanwhile, Alex Bacquial, together with respondent Sheriff Paralisan, attempted to withdraw the auctioned properties on May 19, 1994. They were, however, prevented from doing so by the custodian of the subject DPWH properties, a certain Engr. Ramon Alejo, Regional Equipment Engineer, Regional Equipment Services (RES), DPWH Depot in Panacan, Davao City. Engr. Alejo claimed his office was totally unaware of the auction sale. Respondent Sheriff Paralisan was then informed that many of the properties within the holding area of the depot were still serviceable and were due for repair and rehabilitation.[15]

On May 20, 1994, Alex Bacquial filed an ex-parte urgent motion[16] for the issuance of a "break through" order to enable him to effect the withdrawal of the auctioned properties. The motion was granted by Judge Fuentes on even date.[17]

On May 21, 1994, a Saturday, Alex Bacquial, assisted by respondent Sheriff Paralisan, returned to the depot. Armed with the lower court's order, Engr. Alejo was unable to prevent Mr. Bacquial and his men from hauling the scrap iron/junk equipment in the depot, including the repairable equipment within the DPWH depot.

At around 4:00 P.M., that very day, Atty. Warelito Cartagena went to the depot with specific instructions from Regional Director Jesus Cammayo to stop respondent Sheriff Paralisan and Alex Bacquial from withdrawing the equipment since it was a Saturday. Atty. Cartagena called a conference attended by respondent Sheriff Paralisan and his companion, Deputy Sheriff Hipolito Balangdal, Assistant Regional Director Conrado Repato, Engr. Ernesto Lacuesta, and Supply Officer Mateo Butlig. During the conference, Atty. Warelito Cartagena allegedly explained to the Sheriff that the execution should be limited to scrap iron and/or junk equipment. Sheriff Paralisan and Alex Bacquial were warned that they would be responsible for hauling serviceable equipment of the depot which were included in the rehabilitation program of the DPWH. Despite the warning, Sheriff Paralisan allowed the withdrawal of said serviceable equipment without issuing receipt or proof of withdrawal from the Regional Equipment Services.

The following day (May 22, 1994, a Sunday), Bacquial and his men again took several heavy equipment from the depot. The records reveal that from May 21 and 22, 1994, Alex Bacquial had succeeded in taking various junk/disposable equipment, including a repairable equipment worth P355,649.00, with a total estimated appraised value of P1,132,846.51.[18]

The days that followed were no different. Alex Bacquial continued taking serviceable equipment within the depot to his heart's content. Thus, on May 23, he withdrew several junk or repairable equipment with a total value of P2,638,736.83;[19] on May 24, 1994, P8,069,554.63;[20] and on May 25, 1994, P2,655,831.18.[21]

Upon the request of Mr. Conrado M. Repato, Assistant Regional Director of the DPWH, the lower court temporarily suspended the writ of execution it earlier issued in the expropriation case.[22] Alex Baccjuial was also directed not to implement the writ and the May 20, 1994 Order.

On June 21, 1994, the lower court issued another order,[23] upholding the validity of the writs of execution issued in favor of the defendants in Sp. Civil Case No. 22,052-93. The government appealed the dismissal of its motion for reconsideration. The Court of Appeals, however, dismissed the appeal on a technicality.[24]

This administrative case stemmed from a letter[25] of Congressman Manuel M. Garcia of the Second District of Davao, dated June 6, 1994, referring to this Court the letter[26] of the Engineer Ramon A. Alejo, in his capacity as the custodian of the DPWH properties in Davao City. Congressman Garcia seeks the assistance of this Court to determine the persons responsible for the alleged irregularities surrounding the May 18, 1994 auction sale of "all the scrap iron/junk equipment of the DPWH (Region XI) depot in Panacan, Davao City, as mentioned in the aforesaid letter of Engr. Alejo who described the manner of implementation of the writ of execution as a clear case of "robbery in broad daylight."

The aforesaid letters of Congressman Garcia and Engr. Alejo were referred to Atty. Edna E. Diño, Chief Attorney, Legal Department of this Court. The Chief Attorney then submitted her Memorandum to Chief Justice Andres R. Navasa, advising the Chief Justice on the possible filing, *motu proprio*, of an administrative case against the sheriff and other persons responsible for the anomalous implementation of the writ of execution.

The Court Administrator thus directed Judge Renato Fuentes, Presiding Judge, RTC, Branch 17, Davao City, to require Sheriff Norberto Paralisan to comment on the report of the Chief Attorney. As directed, Judge Fuentes submitted his memorandum relative to the case, together with the comment of the sheriff.

The aforementioned auction sale incident also prompted the Republic of the Philippines (Department of Public Works and Highways), through the Office of the Solicitor General, to file an administrative complaint against Sheriff Norberto Paralisan for conduct prejudicial to the best interest of the service, in violation of Section 36 (b), Article IX of PD 807,[27] more particularly, for abuse of authority, gross neglect of duty, inefficiency and incompetence in the performance of official duty and refusal to perform official duty.

Deputy Court Administrator Reynaldo L. Suarez submitted a report on the matter on October 27, 1994, wherein he recommended the: (1) dismissal of the sheriff from the service for gross misconduct and grave abuse of discretion in the implementation of the writ of execution issued in the expropriation case; (2) imposition of P20,000.00 fine against Judge Fuentes for gross ignorance of the law in granting the motion for writ of execution against government properties; and (3) disbarment of Atty. Warelito Cartagena.

In a Resolution,[28] dated November 23, 1994, we asked respondent Sheriff Paralisan to Comment on the charges levelled against him by the OSG. Thereafter, we referred the case to the Deputy Court Administrator who submitted his second report, dated April 26, 1995. The second report reiterated its earlier findings against the sheriff and Judge Fuentes. However, it withdrew its recommendation against Atty. Warelito Cartagena since "no grounds appear to exist for disciplinary proceedings against him."

We find respondent Sheriff Norberto Paralisan guilty of conduct prejudicial to the best interest of the service.

It is uncontroverted that the implementation of the assailed writ of execution was done with undue haste.

Respondent invokes in his favor the presumption of regularity in the performance of official duty. This presumption has been rebutted by the evidence on record.

We are not convinced that respondent Sheriff was only performing his assigned tasks when he implemented the controversial writ of execution. On the contrary, his conduct showed unjustified bias in favor of Alex Bacquial.

The evidence shows that respondent sheriff levied on the properties of the DPWH (Region XI) depot, without conferring with the concerned officials as to what properties are specifically being attached to satisfy the government's liability in the amount of P1,094,200.00. A cursory reading of the Notice of Levy vis-a-vis the Notice of Sale reveals the hidden ploy of respondent Sheriff in the implementation of the writ.

While the Notice of Levy described the attached properties as: "all scrap iron/junks (sic) found in the premises of the Department of Public (Works and) Highways depot at Panacan, Davao City," the Notice of Sale was against "all scrap iron junks (sic) heavy equipment found in the premises of the department of public works and highways located at Panacan, Davao City." In both notices, the description of the properties were so broad and vague. The tenor of said notices thus facilitated the irregularities in the hauling the DPWH properties. In fact, sheriff and Alex Bacquial considered as part of the sold properties practically everything that they could lay their hands on within the DPWH depot. The Sheriff's Certificate of Sale was no exception. There is no means of verifying what were the items sold to Alex Bacquial since there was no previous record or inventory of the levied DPWH properties.

Respondent sheriff contends that he had done his duty when he served the DPWH with copies of the notices of levy and execution and that it was incumbent upon the responsible employees and officials of the DPWH to inform its counsel and other offices about the levy and the auction sale.

The fact that not one of the bidders in the alleged auction sale on May 18, 1994 made any verification with the custodian of the levied/sold properties creates a cloud of doubt if such an auction sale was held in the depot. No one would be more interested in knowing the true value of the properties being sold other than the bidders themselves. And yet, the bidders submitted their bids without securing the inventory for the properties subject of the auction sale.

We also find it strange that the sheriff did not bother to meet with the custodian of the properties to ascertain which of the equipment stored in the holding area of the depot are considered scrap or junk and which ones are still included in the rehabilitation program of the DPWH.

Worse, respondent sheriff was warned by Engr. Alejo and Atty. Cartagena that he (respondent sheriff) was authorizing the withdrawal of the serviceable/repairable equipment. Respondent sheriff did not heed the warning. Instead, he opted to assist Alex Bacquial in taking such properties.

Upon hearing the objections raised by Engr. Alejo, it would have been more prudent for respondent Sheriff not to immediately proceed with the hauling of the subject properties on May 21 and 22, 1994, not only because government offices/employees do not conduct official business transactions on Saturdays and Sundays, but also because of his admission that they have agreed to withdraw the properties on May 23, 1994, which was a Monday. Respondent sheriff's incredible explanation on the May 21--22, 1994 incident reveals his callous character, thus:

"The allegation, that nobody would record the withdrawal of equipment, is an absurdity. It is common knowledge that, Regional Director Cammayo and Mr. Alejo both (sic) are residing inside the DPWH Compound at Panacan DPWH Depot. They could have taken the cudgel to record it themselves or assign the guards manning the compound on twenty four hours basis to do it for them. These considerations may have prompted Mr. Bacquial to effect withdrawal on a Saturday, May 21, 1994, instead of the previous date agreed, which was May 23, 1994."

For reasons only known to him, respondent sheriff appears overzealous in implementing the writ of execution to the prejudice of the government. He went beyond the call of his duties when he assisted the taking of the properties on a Saturday and Sunday despite the legal objections of Engr. Alejo. We note, further, that respondent Sheriff also failed to give satisfactory explanation on why he failed or refused to issue receipts or proof of withdrawal of the serviceable equipment from the Regional Equipment Services of the depot.

The reason for the undue haste is obvious. The Office of the Solicitor General had been informed, via a long distance call on May 19, 1994, of the execution sale. The filing of a motion for consideration on the ex-parte issuance of the writ of execution was inevitable. Time was of the essence. Further delays in the implementation of the writ would leave Alex Bacquial and his conspirators empty handed. The telegram of the OSG was dated May 19, 1994. Yet, surprisingly, this very important message was officially received by respondent on May 23, 1994, after the execution sale. More. Despite the previous agreement — that the withdrawal of the auctioned properties would be made on May 23, 1994 — Alex Bacquial applied for a break through order on May 20, 1994. They needed the court order very badly on that day because on May 21 and 22, respondent sheriff would use it against DPWH and he did.

It could be that some employees or officials of the DPWH may have conspired with Alex Bacquial in hauling junk or repairable/serviceable equipment worth millions of pesos. Be that as it may, respondent sheriff cannot escape liability for his own transgression. In more ways than one, respondent sheriff took part in the anomalous transaction. His actions constitute grave misconduct or conduct prejudicial to the best interest of the service. Considering the damage caused the government and all the attending circumstances in this case, we agree that respondent Sheriff Norberto Paralisan deserve the severe penalty of dismissal from the service.

A public office is a public trust. All public officers and employees must, at all times, be accountable to the people. They ought to perform their duties with utmost responsibility, integrity, competence and loyalty, and with patriotism and justice, lead modest lives, and uphold public interest over personal interest.[29] Respondent sheriff is a court employee. He is thus required to conduct himself with propriety and decorum. His actions must be beyond suspicion. In this case, he failed to comply with the strict standards required of all public officers and employees.[30]

We disagree, however, with the recommendation of the Deputy Court Administrator to fine Judge Renato Fuentes twenty thousand pesos (P20,000.00). Judge Fuentes has not been charged by any interested party, in relation to the issuance of the writs of execution against the government, particularly, the DPWH. The imposition of fine against Judge Fuentes will deny him procedural due process.

With respect to the possible complicity of Atty. Warelito Cartagena in the incident, the determination of his administrative liability, if any, is lodged with the Department of Public Works and Highways.

IN VIEW WHEREOF, respondent NORBERTO PARALISAN, Sheriff IV, Regional Trial Court (Branch XVII), Davao City, is declared guilty of conduct prejudicial to the best interest of the service, in violation of Section 36 (b), Article IX of PD 807. Accordingly, respondent sheriff is DISMISSED from the service, with forfeiture of all retirement benefits and accrued leave credits and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations. The Office of the Court Administrator is directed to conduct an investigation on Judge Renato Fuentes and to charge him if the result of the investigation so warrants. The Office of the Solicitor General is likewise ordered to take appropriate action to recover the value of the serviceable or repairable equipment which were unlawfully hauled by Alex Bacquial.

SO ORDERED.

Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, and Hermosisima, Jr., JJ., concur.

Narvasa, C.J., and Feliciano, J., on official leave.

[1] The Office of the Court Administrator initiated an investigation on the apparent partiality of respondent Sheriff to the highest bidder in an auction sale of junk/heavy equipment of the Department of Public Works and Highways held on June 6, 1994. Thereafter, the Republic of the Philippines (Department of Public Works and Highways), through the Office of the Solicitor General, filed the instant administrative complaint. See Rollo, pp. 51-70.

[2] Regional Trial Court (Branch XVII), Davao City, presided by Judge Renato A. Fuentes.

[3] RTC Decision, dated December 23, 1993; Rollo, p. 103.

[4] cf. Letter of Judge Renato Fuentes, dated June 24, 1994, to Deputy Court Administrator Reynaldo L. Suarez; Rollo, pp. 13-17.

[5] See Rollo, p. 112.

[6] Ibid, p. 72.

[7] Ibid, p. 53.

[8] Ibid, p. 25.

[9] Ibid., p. 171.

[10] Rollo, p. 187.

[11] Ibid., p. 186.

[12] See Minutes of the auction sale, issued by Sheriff Norberto Paralisan; Rollo, p. 185.

[13] See Rollo, p. 84; Affidavit of Ernesto Lacuesta, Chief of the Planning and Control Section, Regional Equipment Services, Panacan, Davao City.

[14] Rollo, p. 78.

[15] Affidavit of Ernesto Lacuesta, *supra*.

[16] Rollo, p. 196.

[17] Order, dated May 20, 1994; Rollo, p. 102.

[18] Annex "H", Rollo, p. 90; cf. Rollo, p. 118.

[19] Estimated Appraised Value; see Annex "H-1", Rollo, p. 91. However, as per Annex "H-3", the total estimated appraised value of the equipment withdrawn on May 23, 1994, is P15,682,670.31.

[20] Replacement cost; see Annex "H-2", Rollo, p. 92.

[21] Replacement cost; see Annex "H-4", Rollo, p. 94.

[22] Order, dated May 25, 1994; Rollo, p. 95.

[23] Rollo, pp. 210-215.

[24] CA Resolution dated July 4, 1994 in CA G.R. No. 34451; Rollo, p. 217.

[25] Rollo, p. 97.

[26] Ibid., p. 98.

[27] Otherwise known as the Civil Service Decree.

[28] Rollo, p. 134.

[29] Section 2, Republic Act 6713.

[30] See *Ong vs. Meregildo*, A.M. No. P-93-935, July 5, 1994, 233 SCRA 632; *GVM, Inc. vs. De Guzman*, A.M. No. R-284-P, November 11, 1993, 227 SCRA 684.

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