

**CRISPIN CARREON AND NORMA RUFINO-CARREON,
COMPLAINANTS, VS. EDUARDO MENDIOLA, DEPUTY SHERIFF OF
THE METROPOLITAN TRIAL COURT, BRANCH 43, QUEZON CITY, AND
ROBERTO MIRRERA, DEPUTY...**

A.M. No. P-90-512. March 22, 1993

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PER CURIAM:

In a sworn complaint received by this Court on 15 October 1990, complainants charge respondents Eduardo Mendiola and Roberto Mirrera (should be Herrera) with Gross Misconduct. The former allege that on 15 August 1990, Judge Billy M. Apalit of Branch 43 of the Metropolitan Trial Court (MTC) of Quezon City issued a writ of execution pending appeal in an ejectment case; at around 9:00 o'clock in the evening of that same day, respondent. Eduardo Mendiola, the deputy sheriff assigned to Branch 43, accompanied by an unidentified person, visited the complainants to collect the P7,000.00 mentioned in the writ, which the latter did not pay; on 17 August 1990, at around 3:00 o'clock in the afternoon, Mendiola, together with another unidentified companion, levied upon several personal properties belonging to the complainants and set the auction sale thereof for 27 August 1990 at 8:30 o'clock in the morning; on 25 August 1990; a Saturday, respondents Mendiola and Merrera, the latter a deputy sheriff of another branch of the MTC of Quezon City, together with five (5) demolition crew members, demolished the complainants' house without a demolition order from the court; it is alleged that respondent Merrera even chased a certain Ms. Asenas who was then taking pictures of the demolition. The complainants further asseverate that the demolition was illegal, immoral, unfair, unjust and improper, and thus constitutes Gross Misconduct; as a consequence thereof, they suffered actual damages in the amount of P50,000.00. They then pray that the respondents be investigated and meted out the appropriate punishment.

In their Comment filed on 30 January 1991 in compliance with this Court's Resolution of 12 December 1990, respondents contend that the demolition order was effected pursuant to the 11 June 1990 Order of Judge Apalit in Civil Case No. 43-2731 which granted execution pending appeal from the decision therein. The dispositive portion of the said decision directed the complainants, as defendants in the said case, to, inter alia, "VACATE AND DEMOLISH THE STRUCTURE OR HOUSE CONSTRUCTED AT GREZAR COMPOUND, x x x." Respondents further claim that such demolition did not, contrary to the complainants' position, require a demolition order from the court. Moreover, it is averred that Deputy Sheriff Merrera (spelled Merrera in the complaint) was merely requested by respondent Mendiola to act as a witness to the demolition and protector of the latter's person; Merrera had nothing to do with the demolition.

On 5 February 1991, complainants filed a Reply to the respondents' Comment stating therein that the demolition was carried out in violation of Section 14, Rule 39 of the Rules of Court and at the express instance of both respondents. This time, it is prayed that both respondents be dismissed from the service.

On 22 February 1991, respondents filed a Rejoinder to the complainants' Reply; they allege therein that there was no need for a special order of demolition because as held in *Tropical Homes, Inc. vs. Fortun*, (169 SCRA 81 [1989]), "what is ordained in the dispositive portion of the decision is the only portion which becomes the subject

of execution x x x." They further assert that on 17 August 1990, complainants were given a five-day notice to demolish their house; finally, they maintain that they were merely performing their official duty.

In the Resolution of 4 March 1992, this Court referred the instant case to the Executive Judge of the Regional Trial Court (RTC) of Quezon City for investigation, report and recommendation within ninety (90) days from notice of the said resolution.

On 25 March 1991, complainants filed a Reply to the Rejoinder; such filing was duly noted by this Court in the Resolution of 22 April 1991.

Executive Judge Pedro T. Santiago of the RTC of Quezon City conducted an investigation by receiving the evidence for the parties. Thereafter, the latter submitted their respective memoranda.

On 29 June 1992, Executive Judge Santiago handed down a "decision" the dispositive portion of which reads as follows:

"WHEREFORE, PREMISES ABOVE CONSIDERED, finding that the evidences (sic) established painstakingly attest the (sic) material allegations in the complaint as it was unquestionably underscored that respondents act of implementing the writ was without any legal basis much less any justification, respondents Mendiola and Merrera are hereby found guilty of grave misconduct. Consequent thereto, recommendation is strongly made that they be suspended from the service for one month and to serve as a caveat, recommendation is likewise made that any subsequent breach in their performance of duties as public officer (sic) shall result to a more severe sanction."

The following facts are either duly established by the evidence offered by the parties or are disclosed by the pleadings:

A complaint for "Forcible Entry and Unlawful Detainer" was filed by Juanita Martinez, Inc. against the herein complainants with the MTC of Quezon City. The case was docketed as Civil Case No. 2731 and was raffled off to Branch 43 thereof. Because of the complainants' failure to file their answer, the court, per Judge Billy M. Apalit, handed down on 11 June 1990 a decision adverse to them; its dispositive portion reads:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants ordering the latter and all other persons claiming rights under them to vacate and demolish the structure or house constructed at Grezar Compound, Bgy. Talipapa, Novaliches, Quezon City and further ordering defendants to pay the following, to wit:

1. the amount of P500.00 as reasonable monthly rental beginning June 1989 up to the present until such time defendant shall have fully and completely vacated the premises;
2. the amount of P2,000.00 as attorney's fees; and
3. cost of suit."

On 7 August 1990, complainants filed their Notice of Appeal. This was followed on 10 August 1990 by the plaintiffs' filing of a motion for execution pending, appeal which was granted by the MTC on 14 August 1990. Subsequently, on 15 August 1990, the MTC issued the Writ of Execution Pending Appeal.

It was respondent Eduardo Mendiola, the deputy sheriff assigned to Branch 43 of the MTC, who was assigned to implement or enforce the writ. On 17 August 1990, Mendiola served the writ, levied on execution certain properties belonging to the complainants and gave them notice to vacate the premises. The auction sale of the levied properties was scheduled for 27 August 1990 at 8:30 o'clock in the morning at the MMC Compound, City Hall, Quezon City.

It appears, however, that on 16 August 1990, the herein complainants filed a supersedeas bond underwritten by the Plaridel Surety and Insurance Company, Inc. In view thereof, the MTC issued an order on 22 August 1990 approving the said bond, reconsidering and setting aside the writ of execution pending appeal and directing that the records of the case be forwarded to the Regional Trial Court for further proceedings. This notwithstanding, the respondents and five (5) demolition crew members demolished the complainants' house on 25 August 1990.

The complainants' appeal from the decision of the MTC was docketed as Civil Case No. Q-90-6533 in the RTC of Quezon City and assigned to Branch 89 thereof. On 24 October 1990, the latter handed down a decision affirming in toto the appealed judgment.

Executive Judge Santiago, in ruling against the respondents in his "decision," invoked *Basco vs. Alcantara* (A.M. No. P-88217, 30 May 1991) wherein this Court ruled that under Section 14, Rule 39 of the Revised Rules of Court, when the property subject of the execution in an action for recovery of possession or ejectment contains improvements constructed or planted by the judgment debtor or his agent, the sheriff shall not destroy, demolish or remove said improvements except (a) upon special order of the court, (b) issued upon petition of the judgment creditor, (c) after due hearing and (d) after the former has failed to remove the same within a reasonable time fixed by the court. Judge Santiago declared that the herein respondents failed to observe or follow these pre-conditions and that in the instant case, no special order was issued by the MTC. As a matter of fact, the writ of execution pending appeal was even set aside by the latter. By way of conclusion, Judge Santiago found the respondents guilty of grave misconduct; he held that their actuations were highly oppressive and detrimental to public service. They were remiss in the performance of their duties and their act of demolishing the house after the writs setting aside was *ultra vires*.

On 22 July 1992, respondent Merrera filed a motion to reconsider the "decision" of the investigating Judge, alleging therein that it was respondent Mendiola, the deputy sheriff assigned to Branch 43 of the MTC, who decided to proceed with the demolition of 25 August 1990; that he (Merrera) had no power to interfere with the decision of Mendiola; and that the latter even admitted that the former had nothing to do with the execution.

On 14 September 1992, Executive Judge Santiago submitted a Manifestation wherein he states that since this case was referred to him only for investigation, report and recommendation, his "decision" should be treated only as a recommendation.

In the light of the foregoing facts, it is not difficult to rule for the complainants. We therefore find the respondents guilty of grave misconduct, gross ignorance of the duties pertaining to their office, oppression and conduct prejudicial to the best interest of the service.

The demolition aspect of the decision subject of the writ of execution pending appeal cannot be implemented without a special order for that purpose. Section 14, Rule 39 of the Revised Rules of Court is the law on the matter. It provides:

“SEC. 14. Removal or improvements on property subject of execution. -- When the property subject of the execution contains improvements constructed or planted by the judgment debtor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon petition of the judgment creditor after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.”

In the instant case, notwithstanding the fact that the plaintiff did not apply for such an order, the respondents, doing what the court could not even do as yet, granted the complainants on 17 August 1990 a 5-day period, ending on 22 August 1990, within which to vacate the premises. The latter having refused to leave -- and correctly so because by then, they had already filed a supersedeas bond and the MTC had, in fact, already set aside the writ

of execution pending appeal -- the respondents took it upon themselves to demolish the house without waiting for a special order from the MTC issued in accordance with the aforementioned section. This is not simply a case of an honest mistake being committed in the interpretation of the said section, but a deliberate disregard thereof -- since the respondents insist up to the very end that a special order was not necessary allegedly because the demolition is specifically ordered in the dispositive portion of the decision subject of the writ of execution pending appeal -- or a manifestation of gross ignorance of their duties. As deputy sheriffs, they should know better than to misread the law. In *Foloso vs. Director of Lands* (92 Phil. 810, 816 [1953]), this Court already ruled that:

"Under Section 13, Rule 39, the officer called upon to enforce a final judgment involving delivery or restitution of property may do so by placing the plaintiff in possession of such property, but 'the officer shall not destroy, demolish or remove the improvements made by the defendant or his agent on the property, except by special order of the court, which order may only issue upon petition of the plaintiff after due hearing and upon the defendant's failure to remove the improvements within a reasonable time to be fixed by the court.' The safeguard accorded to the defendant by the above provision has not been followed. While the motion of the appellee for the removal of the houses was set for hearing after due notice given to the appellants, the court ordered the sheriff to remove said houses within a period of 30 days but without giving them a reasonable time within which to do so as required by said section 13. This requirement is not an empty gesture. This safeguard is necessary to give the defendant an opportunity to protect his interest. The lower court erred in issuing the order of demolition without giving a reasonable time to the appellants."

The portion of Section 13 of Rule 39 adverted to above is actually its second sentence which, with some modifications, is now Section 14 of the same rule of the Revised Rules of Court (FRANCISCO, V.J., *The Revised Rules of Court in the Philippines*, Vol. II, 1966 ed., 688). Said Section 13, Rule 39 of the 1940 Rules of Court was in turn taken from subdivision 5, Section 444 of Act No. 190 and from Section 1 of C.A. No. 89 (MORAN, M.V., *Comments on the Rules of Court*, Vol. 1, 1952 ed., 822; FRANCISCO, V.J., *Rules of Court in the Philippines*, Vol. 1, 1957 ed., 915). Section 1 of C.A. No. 89 (enacted on 26 October 1936) provides:

"SEC. 1. The provincial sheriff, in executing the decision of a competent court in ejectment cases, shall not destroy, demolish, or remove the improvements constructed or planted by the defendant or his agent or servant on the premises, unless expressly authorized by the court. The court may authorize the provincial sheriff to do so, upon petition of the plaintiff or his attorney, after due hearing, and upon the failure of the defendant to remove the aforesaid improvements within a reasonable time after being so ordered by the court."

In *Guevara vs. Laico* (64 Phil. 144, 150 [1937]), this Court ruled that said Section 1:

"x x x prohibits the sheriff, executing a decision in an ejectment case, from destroying, demolishing or removing the improvements constructed by the defendant and execution debtor or his agents, unless, upon petition of the plaintiff or his attorney and after due hearing, it is so authorized by the court, upon failure of the defendant and execution debtor to do so within a reasonable time, after having been so ordered by said court."

In *Rom vs. Cobadora* (28 SCRA 758, 763 [1969]), this Court, applying Section 14, again ruled:

"x x x Under Rule 39, section 14, the appellant's house could not be removed pending appellee's recourse to the Court for a special order for the demolition and removal of such improvements constructed by the appellant, which order is to be issued 'upon petition of the judgment creditor after due hearing, and after the former has failed to remove the same within a reasonable time fixed by the court.'"

We reiterated the rule in *Basco vs. Alcantara* (A.M. No. P-88-217, 30 May 1991). In that case, for failing to observe the pre-conditions required by Section 14 of Rule 39 for the removal or demolition of the house, the respondent sheriff, therein was adjudged to be guilty of grave misconduct and gross ignorance of the duties pertaining to his office and ordered suspended for one (1) year.

It is to be observed that on 22 August 1991, the MTC, pursuant to Section 3, Rule 39 of the Revised Rules of Court, set aside the writ of execution pending appeal after it approved the supersedeas bond filed by the complainants. Thus, when the respondents demolished the complainants' house on 25 August 1990, the writ of execution pending appeal, upon which the former anchor their so-called authority to demolish, was already non-existent or, at the very least, had ceased to have legal efficacy. Plainly, respondents had absolutely no right, power or authority to demolish the complainants' house. That they were not aware of the order of the MTC which reconsidered or set aside the writ of execution pending appeal cannot be invoked as a valid defense, for there could have been no lawful demolition without a special order from the court issued in strict compliance with Section 14 of Rule 39, and also because it was incumbent upon the respondents to verify the current status of the writ from the MTC before accomplishing their act of destruction. The demands of accountability and responsibility accompanying the trust reposed in a public office under the Constitution (Section 1, Article XI of the 1987 Constitution) require nothing less than this standard of diligence. It is clear that such verification was not difficult for the respondents to accomplish because both of them were assigned to the MTC of Quezon City; in fact, Mendiola was even specially assigned to the branch which issued the writ.

In demolishing the complainants' house in blatant disregard of the safeguards prescribed in Section 14, Rule 39 of the Revised Rules of Court, and despite the order setting aside the writ of execution pending appeal, respondents committed and were guilty of grave misconduct, gross ignorance of the duties pertaining to their office, oppression and conduct prejudicial to the best interest of the service; such transgression was clearly aggravated by notorious bad faith and malice because the respondents conducted the demolition on a day -- Saturday -- -when no court was open to hear the complainants had they decided to seek immediate redress.

The claim of respondent Merrera that he was only requested by respondent Mendiola to act as a witness and protector of the latter's person is unmeritorious and deserves no consideration whatsoever. Merrera is a deputy sheriff of another branch of the MTC. He had no business attending to the writs or processes of Branch 43 thereof, Mendiola's station, unless the court itself authorized him to serve the latter branch. There is no law requiring a sheriff to act as witness to the proceedings undertaken by another sheriff in the implementation or enforcement of a writ of execution. There is, as well, no showing that Mendiola was threatened or intimidated as to require some form of security for the protection of his life or limb. Besides, if the threat of some bodily harm existed, Mendiola should have requested for the assistance of law enforcement authorities. In Our considered view, he respondents conspired together and helped each other to commit the acts complained of.

The wrongful acts of the respondents cannot remain unpunished. We said in *Sy vs. Academia* (198 SCRA 705, 717 [1991]) that:

"The administration of justice is a sacred task. By the very nature of their duties and responsibilities, all those involved in it must faithfully adhere to, hold inviolate, and invigorate the principle solemnly enshrined in the 1987 Constitution that a public office is a public trust; and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, and act with patriotism and justice, and lead modest lives. (Sec. 1, Article XI).

This Court condemns and would never countenance any conduct, act or omission 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. x x x"

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered finding respondents EDUARDO MENDIOLA and ROBERTO MERRERA guilty of grave misconduct, gross ignorance of the duties pertaining to their office, oppression and conduct prejudicial to the best interest of the service, and ordering their DISMISSAL from the service effective upon receipt of a copy of this Decision, with forfeiture of all benefits, except for the

monetary value of their leave credits.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Campos, Jr., and Quiason, JJ., concur.
Gutierrez, Jr., J., on terminal leave.

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