

**ANTONIO S. GONZALES, LEON AUREUS AND RAMON TOLARAM,
COMPLAINANTS, VS. IGNACIO D. ALMODOVAR AND VICENTE
RAMIREZ, RESPONDENTS.**

Adm. Matter No. P-108. September 26, 1973

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

This is an administrative complaint filed by Mr. Antonio S. Gonzales of Lerma Street, Legaspi City, and Messrs. Leon Aureus and Ramon Tolaram of Naga City, against Atty. Ignacio D. Almodovar and Mr. Vicente Ramirez, Clerk of Court and ex-officio Provincial Sheriff and Deputy Sheriff, respectively, of the Court of First Instance of Albay, for (1) violation of Republic Act 4569, and for (2) demanding and taking kickbacks on publication fees for judicial notices.

The complainants alleged that on or about the period between June 29, to July 13, 1968, in Naga City, the respondents as ex-officio Provincial Sheriff and Deputy Sheriff, charged with the official duty of causing the publication of notices of extra-judicial foreclosure sales of mortgaged properties under Act 3135, caused the publication in The Bicol Star, a weekly newspaper published, edited and printed in Naga City, of three (3) notices involving properties situated in Albay, without conducting the drawing of lots among all newspapers qualified under the law to publish such notices, and without notifying the complainants who are publishers of other qualified newspapers.

Complainant Gonzales also alleged that respondent Ramirez received cuts on at least two occasions, first, in the case of Island Savings Bank vs. Labrojo, et al., for foreclosure, where the initial deposit of P100.00 for publication was received by said respondent on April 8, 1968, and actually paid to the Bicol Chronicle on November 19, 1968; and second, when the same respondent cashed after proper endorsement PNB Check No. 851211, dated October 23, 1967, for P549.00, representing the cost of publication of the notice of auction sale for two Philippine National Bank foreclosure cases involving Rufino Huab and Tomas Monasterio, to enable the said respondent to get his cut.

This case was referred to Executive District Judge Ezekiel S. Grageda of the Court of First Instance of Legaspi City, for investigation, report and recommendation.

In the investigation, complainants Aureus and Tolaram testified that they are newspapermen of Naga City, the former as publisher of the Bicol Mail and the latter of the Naga Times; that there is a 3rd newspaper in Naga City called The Bicol Star; that there are two other newspapers in Legaspi City, namely, the Mayon Times and the Bicol Chronicle; that The Bicol Star, in its issues of June 29, July 6 and July 13, 1968, published three notices of extra-judicial foreclosures, two of the Philippine National Bank (PNB vs. Spouses Victorino Tuason and Tarcela Quising and PNB vs. Spouses Rosendo M. Flores and Luz Camba) and one of the Development Bank of the Philippines (DBP vs. Pioquinta Dadea Cordero and Santiago Cordero); and that as such publishers they were not notified of any raffle for the publication of said notices.

Complainant Gonzales also testified that he is the publisher of the Bicol Chronicle (Legaspi City); that in 1968 he used to publish judicial notices from the office of the Provincial Sheriff of Albay; that there were only two raffles made in 1968 for the distribution of notices by lots between the Bicol Chronicle and the Mayon Times; that respondent Ramirez received cuts on at least two occasions, the first in the case of Island Savings Bank vs. Labrojo, et al., for fore-closure, where the initial deposit of P100.00 for publication was received by said respondent on April 8, 1968, and actually paid to the Bicol Chronicle on November 19, 1968; and the second when respondent cashed, after proper endorsement, PNB Check No. 851211, dated October 23, 1967, for P549.00, representing the cost of publication of the Notice of Auction Sale in two PNB foreclosure cases involving Rufino Huab and Tomas Monasterio to enable the said respondent to get his cut.

Respondent Ramirez denied having asked for cuts from complainant Gonzales. He stated that with respect to the P100.00 alluded to as having come from the notice in Island Savings Bank vs. Labrojo, et al., this amount was given by the sheriff's office to the Bicol Chronicle under a receipt, dated November 19, 1968, which was entrusted to Vito Espartinez, chief clerk and collecting officer of the provincial sheriff's office; that in connection with the PNB Check, Ramirez stated that Gonzales endorsed the same to him with the request to personally cash the same as Gonzales had an overdue account with the PNB; and that Gonzales in fact waited for him outside the PNB Building where he delivered the money. With regards to the publication of the three (3) notices in The Bicol Star, he explained that in a petition filed by the PNB, it indicated that the notices be published in The Bicol Star of Naga City, which is of wider circulation (Exhs. 6 & 6-B, Ramirez; and Exhs. 7 & 7-B, Ramirez); and that insofar as the DBP is concerned, its representative verbally indicated his preference for The Bicol Star.

Respondent Almodovar explains that he had nothing to do with the issuance of the questioned notices for publication in The Bicol Star; that when he learned of the questioned notices from interpreter Antonio Salazar, he (Almodovar) called on respondent Ramirez to get his explanation; and Ramirez reasoned out that the PNB and DBP expressed their preference for said newspaper.

In his report, dated November 19, 1969, the Executive Judge recommended (a) that respondent Clerk of Court and Ex-Officio Provincial Sheriff Ignacio D. Almodovar be exonerated of the charges filed against him for lack of evidence; (b) that Deputy Sheriff Vicente Ramirez be likewise exonerated as regards the insinuations of kickbacks for lack of supporting evidence; and (c) that as to whether or not respondent Deputy Sheriff Vicente Ramirez is liable for violation of Republic Act 4569 in awarding publication in The Bicol Star of notices of judicial foreclosure under Act No. 3135 by the PNB and the DBP, the matter being sub-judice before the City Court of Naga, no pronouncement as to his liability thereunder should be made until after the proper court shall have decided the matter.

After a careful review of the evidence of record, We found that respondent Almodovar had no participation in the publication of three (3) notices of the PNB and the DBP in The Bicol Star on June 29, July 6 and July 13, 1968. Respondent Ramirez having admitted that he took the notice in question to The Bicol Star for publication without raffle and without the knowledge of Almodovar, Ramirez is liable for violation of Republic Act 4569,[1] as well as the implementing circular of the District Judge.[2] As early as May 31, 1967, then Executive Judge Revilla enjoined deputy provincial sheriffs not to deal directly with publishers in the matter of publication of notices without referring them to the clerk of court. Respondent Ramirez, in spite of the injunction embodied therein, caused such publication to be made without the knowledge of his superior, the clerk of court. The recommendation of the investigating judge that Ramirez is answerable for non-compliance with the requirements of Republic Act 4569 as well as the implementing circular issued by the District Judge is in order. However, his recommendation that Almodovar be completely exonerated of the charge against him is not well taken. While it is true that respondent Almodovar had no direct participation in the publication of the notices in question, the

publication of notices of foreclosure in The Bicol Star without conducting the drawing of lots was brought to his attention by interpreter Salazar. He could have, right then and there, ordered the cancellation of their publications, if he was vigilant in supervising his subordinates. But he proceeded with, and personally conducted, the auction sale, thereby sanctioning and approving the anomalous act of his subordinate Ramirez. This in itself is an irregularity in the performance of his official duties as Clerk of Court and ex-officio Provincial Sheriff, for which he should also be held answerable under Republic Act 4569 and the circular of the District Judge.

As to the charge against respondent Ramirez of demanding and receiving kickbacks, there is no evidence to support the same. As early as April 8, 1968, the sum of P100.00 received from the Island Savings Bank was ready for delivery to the Bicol Chronicle. The collector of this newspaper tried to get this amount but was unable to do so for lack of official receipt form at that time. Mr. Vito Espartinez, chief clerk and collecting officer of the Provincial Sheriffs office, testified that he actually delivered the money to the Bicol Chronicle and was properly receipted for by said paper under O. R. BC No. 0384, dated November 9, 1968.

In connection with PNB Check No. 851211 for P549.00 dated October 23, 1967, the reason complainant Gonzales endorsed it to Ramirez was because Gonzales then had an outstanding account with the PNB, and to avoid the value of the check from being withheld by that bank, he endorsed it to Ramirez as a payee who, in turn, cashed it with the bank for Gonzales.

The suggestion of the investigating judge that this administrative case should first await the outcome of Criminal Case No. 29700 filed by the City Fiscal of Naga City against the herein respondents with the Naga City Court for violation of Republic Act 4569, is without legal basis. The pendency of a criminal action does not abate the administrative proceeding which involves the same cause of action (*Festejo vs. Crisologo, et al.*, G. R. No. L-25853, July 30, 1966).[3] This administrative case may, therefore, be decided without awaiting the outcome of the criminal case.

WHEREFORE, for violation of Republic Act 4569, respondent Vicente Ramirez is hereby suspended from office for three (3) months without pay as deputy sheriff of the Court of First Instance of Albay. Respondent Ignacio B. Almodovar, as Clerk of Court and ex-officio Provincial Sheriff of the same court, is hereby admonished to exercise closer supervision over his deputy sheriffs in matters of publication in the newspapers of all judicial notices, advertisements for public biddings, notices of auction sales and other similar notices required by law to be published.

SO ORDERED.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Fernando, Barredo, and Antonio, JJ., concur.

Teehankee, J., concurs in the result.

Makasiar, J., on leave.

[1] "Section 1. All judicial notices, advertisements for public biddings, notices of auction sales and other similar notices or announcements required by law to be published in newspapers of general circulation in particular provinces and/or cities shall be published in newspapers or publication published, edited and printed in the same city and/or province where the requirement of general circulation applies: Provided, That in the event there are no newspapers published and edited in the locality, the same may be published in the newspapers published and edited in the nearest city or province: Provided, further, That no newspaper which has not been regularly published for at least five years before the date of publication of the notices or announcements which may be assigned to it shall be qualified to publish the said notices.

Section 2. The clerk of court, sheriff or official charged with the duty of causing the publication of the said notices or advertisements shall designate a regular working day and a definite time each week during which such newspapers, as defined in the preceding section of this Act, which distribution shall be done by lot: Provided, That should the circumstances require that another day be set for the purpose, he shall notify in writing the editors and publishers concerned at least three days in advance of the designated date.

Section 3. No newspaper shall charge for the publication of said notices and announcements more than three pesos per column inch nor less than two pesos and fifty centavos per column inch.

Section 4. Violation of this Act shall be punished by a fine not exceeding one thousand pesos or imprisonment for not more than one year, or both.

Section 5. All other Acts, rules and regulations inconsistent with this Act are hereby repealed.

Section 6. This Act shall take effect upon its approval."

[2] The then Executive District Judge Pedro A. Revilla of the Court of First Instance of Albay, on May 31, 1967, issued an implementing circular regarding the strict implementation of Republic Act 4569, addressed to all publishers and editors of newspapers in Legaspi City and in the Province of Albay, all Deputy Provincial Sheriffs of the Court of First Instance of Albay, banking institutions, notaries public, and the register of deeds of the Province of Albay. The pertinent portions of this circular directed the clerk of court to adopt certain measures, as follows: (1) matters for publication shall be distributed by lot every Monday afternoon at 2:00 o'clock in the office of the clerk of court; (2) all deputy provincial sheriffs are warned not to deal directly with publishers without referring the matter of publication to the clerk of court; (3) all banking institutions are advised that all notices for publication as a result of business transactions shall be coursed through the clerk of court; (4) no CFI employee shall directly receive any money from any editor or publisher or any person for that matter in consideration of any publication.

[3] The Civil Service Commissioner, in a 5th Indorsement, dated Nov. 15, 1952, in the case of Anastacio Mulato, opined: "An administrative case filed against an official or employee of the Government is entirely distinct and separate from a criminal case filed in court although based on the same facts and that the decision in the administrative case does not necessarily depend upon the result of the criminal case filed against the respondent in court. By the most approved opinion administrative proceedings are regarded as an executive function and considered as remedial rather than penal in character, because the purpose of an administrative proceeding is not to punish the officer but to improve the public service and the consequences of a conviction in an administrative proceedings extend only to the possession of an office and its emoluments. It is for this reason that in a criminal case, a stronger proof is necessary to convict a person accused of a crime, the law requiring that the guilt of the accused be proven beyond reasonable doubt while in administrative case, all the law requires is a moral conviction of the guilt of the official. The reason for this distinction is very clear. It is the punishment of the individual as a member of society that is sought in a criminal case while what is sought in an administrative case is to improve the public service and to preserve the faith and confidence of the people in their government and its officials."

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