

CARMELITA LAO LEE, COMPLAINANT, VS. LOUIE C. DELA CRUZ, SHERIFF IV, RTC-BRANCH 75, VALENZUELA CITY, RESPONDENT.*A.M. No. P-05-1955 (Formerly OCA I.P.I. No. 04-1883-P). November 12, 2007*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d750f2267d7a/>**TINGA, J.:**

This resolves the administrative matter concerning respondent Louie C. Dela Cruz, Sheriff IV of the Regional Trial Court (RTC) of Valenzuela City, Branch 75, which stemmed from an Affidavit-Complaint filed on 26 February 2004 by Carmelita Lao Lee with the Office of the Court Administrator. Respondent was charged with obstruction of justice, inefficiency and incompetence in the performance of his duty and conduct unbecoming a government official relative to Civil Case No. 267-V-02 entitled Carmelita Lao Lee v. Romy and Lina Lamsen, et al.

As both parties opted that an investigation be conducted instead of having the case submitted for decision based on the pleadings, the records of the case were transmitted to Hon. Maria Nena J. Santos, Executive Judge, RTC of Valenzuela City, for investigation.

In her Investigation Report and Recommendation,[1] the investigating judge narrated the following facts:

Herein complainant is the plaintiff-appellee in Civil Case No. 267-V-02 for Ejectment, entitled “Carmelita Lao Lee vs. Sps. Romy and Lina Lamsen and all persons claiming rights under them.” The Court a quo, Metropolitan Trial Court, Br. 82, Valenzuela City, decided the case in favor of plaintiff-appellee. On appeal with the Regional Trial Court, Branch 75, the decision was affirmed by Acting Presiding Judge Dionisio Sison on 10 April 2003, who subsequently issued on 3 July 2003 a Writ of Execution pursuant to Sec. 21, Rule 70 of Rules of Court. In the meantime, incidents relative to the issued writ transpired but were disposed of in the Order dated 15 January 2004, where Respondent Sheriff was directed to immediately execute the Writ of Execution pending appeal.

A Notice to Vacate dated 27 January 2004 was issued and served by the respondent on defendant-appellants on the same day. It was duly received by Lina Lamsen, one of the defendants-appellants. The Notice gave the defendants fifteen (15) days from receipt, within which to vacate the subject premises.

Around 9:00 to 10:00 o'clock in the morning of 12 February 2004, which is the 16[th] day from the service of the notice to vacate, respondent went to the Barangay Hall of Dalandanan, Valenzuela City to seek assistance in the implementation of the Writ of Execution on the losing defendants-appellants Spouses Romy and Lina Lamsen at No. 7-A Marcelo St., Dalandanan, Valenzuela City. Barangay Kagawad Benito Encarnacion, Jr. and Barangay Tanod Ernesto Galang accompanied respondent to defendant-appellants' premises. The place was padlocked but the respondent destroyed it using a 'barreta de cabra' so the complainant, respondent, Encarnacion and Galang were able to enter the house. The occupants of the house were not around although their things were there. Respondent then proceeded to inventory the items but did not carry them outside the house. The arrival of defendant-appellant Romy Lamsen at the subject premises interrupted the inventory. The implementation of the writ was stopped and respondent padlocked the house again then, along with Encarnacion and Galang went back to the Barangay Hall of Dalandanan to enter in the Barangay Blotter what transpired.

The complaint and respondent agreed to meet in Br. 75 the following day, 13 February 2004. Complainant arrived between 10:00 to 11:00 o'clock in the morning and filed an "Ex-Party (sic) Motion to Break Open" dated 13 February 2004, but was not acted upon by the acting Presiding Judge as the premises was already opened the day before. Like the previous day, respondent went to the Barangay Hall of Dalandanan, Valenzuela City to seek for barangay assistance. Three (3) barangay tanods accompanied the respondent and proceeded to the premises of the defendants, arriving there [at] more or less 1:00 o'clock P.M. Thereafter, around 2:00 o'clock, defendant Mr. Lamsen arrived with the Temporary Restraining Order issued by the Court of Appeals and the implementation of the writ was stopped. On 20 February 2004, respondent submitted a "Sheriff's Partial Return" with even date.

Essentially, the charges against respondent were in connection with the following incidents, namely (a) when respondent served a Notice to Vacate dated 27 January 2004 on spouses Lamsen to implement the Writ of Execution dated 3 July 2003; (b) when allegedly respondent demanded from complainant P8,000.00 for execution expenses, with the advertence that if the amount is not given expenses would be deducted from the rentals deposited with the court; (c) when respondent discontinued the service of the orders of the court after

defendant had threatened him with a suit, a development that resulted in delay during which spouses Lamsen succeeded in securing a Temporary Restraining Order (TRO) from the Court of Appeals that prevented the execution of the writ altogether, and; (d) when respondent showed bias in favor of the defendants who were also "Pangalatoks" like him.

Respondent denied having deliberately delayed the execution of the writ, and claimed that it was complainant's suggestion to give defendants fifteen (15)-day grace period to allow her (complainant) time to prepare the money needed for the execution. Respondent explained that the execution of the writ on 12 February 2004 was not fully carried out due to the failure of the complainant to provide him with men to assist in carrying the articles which he had already inventoried. Further, he continued the inventory of the articles inside the premises and stopped the writ's implementation only when Lamsen showed him a copy of the TRO from the Court of Appeals. Respondent disclaimed being biased in the execution of the writ. He also denied demanding from complainant the amount of P8,000.00 covering the expenses for the implementation of the writ. The said amount, he explained, was mentioned only as an "example" and complainant was made to understand that whatever given amount would be liquidated and supported by proper receipts later on.

The investigating judge further found that:

- x x x The Notice to Vacate which respondent served on spouses Lamsen gave the latter fifteen (15) days to vacate the subject premises, [which is beyond the] (3)[-day] grace period mandated by the Rules. However, whether it was actually intended by the respondent to favor the defendant-spouses was not proven;
- The manner with which respondent implemented the writ of execution on February 12 and 13, 2004, displayed his incompetence and inefficiency. Firstly, on both occasions respondent started out very late in the day – between the hours of 11:00 and 12:00 noon on February 12 and around 1:00 P.M. on February 13. Second, respondent was ill-equipped to undertake the task on hand. He had no plan how to carry out the execution; neither had he made arrangements to accomplish his task nor had he coordinated with the complainant. Third, there was no need to proceed with the inventory when the defendant-Mr. Lamsen showed up at the house on February 12. The execution could have been carried out in the presence of Mr. Lamsen. Respondent let the opportune time pass, instead continued with the inventory then stopped when Mr. Lamsen threatened to file charges for the alleged loss of some of his things. Fourth, it was a blatant show of ignorance when respondent required the complainant to secure from the Court a Notice to Break Open before he would proceed with the execution of February 13, 2004. It was unnecessary since defendant-wife duly received the Notice to Vacate. Besides, the premises were already forcibly opened the day before or on February 12, 2004 but ironically, he did not then [ask] for a Break-Open Order. Respondent could have fully implemented the

writ on February 12, 2004, if he had the foresight to prepare what and who would be needed, and the competence to command control of the situation;

- The charge of respondent's collusion and fraternizing with the defendant-spouses who are co-"pangalatoks", has not gone above the level of bare allegations as these were not duly proven. However, complainant's doubt on respondent's independence is not without basis x x x [because, in proceeding with the inventory of the things of spouses Lamsen instead of taking out the same, it appeared as if it was done to placate the Mr. Lamsen];

- x x x On the charge of respondent demanding money from the complainant, undoubtedly, there was discussion about money, but no money changed hands from complainant to respondent. The problem was respondent dispensed with proper procedure. Respondent Sheriff simply demanded money from complainant without first securing Court approval which is in clear violation of the rule. Neither did respondent advise the complainant that the Sheriff's expenses shall be deposited with the Clerk of Court & Ex-officio Sheriff upon approval by the Court. x x x However, since no testimony was given that respondent persisted in allegedly demanding for money, this circumstance somehow disproved that his demand for money was for an illegitimate purpose.

With the above findings, the investigating judge concluded that respondent is guilty of inefficiency, incompetence and simple misconduct relative to Civil Case No. 267-V-02. She recommended that respondent be fined P2,000 and admonished; that PHILJA be directed to require the inclusion of an "On-the-job Training Workshop" during sheriffs' conventions; and that newly-appointed sheriffs be required to undergo an orientation course before assumption of duty.

While the Court shares the findings of the investigating judge, it does not subscribe to the recommended penalties. Under the Uniform Rules on Administrative Cases in the Civil Service,[2] the imposable penalty for simple misconduct is one (1) month and one (1) day to six (6) months whereas that for inefficiency and incompetence in the performance of official duties is suspension ranging from six (6) months and one (1) day to one (1) year for the first offense.[3] Section 17, Rule XIV of the same Rules provides that if respondent is found guilty of two or more charges or counts, the penalty imposed should be that corresponding to the most serious charge or count and the rest may be considered as aggravating circumstances. In the case at bar, the offense of simple misconduct becomes an aggravating circumstance. It follows that respondent should be meted out the maximum of the penalty for inefficiency and incompetence in the performance of official duties, which is ten (10) months and (1) day to one (1) year.

WHEREFORE, the Court finds Louie C. Dela Cruz, Sheriff IV of the Regional Trial Court of Valenzuela City, Branch 75, GUILTY of INEFFICIENCY, INCOMPETENCE and SIMPLE MISCONDUCT, and orders that he be SUSPENDED from service for ten (10) months and one (1) day without pay and other fringe benefits including leave credits, with a stern warning that a repetition of the same offense or offenses shall be dealt with more severely.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

[1] Dated 9 July 2006.

[2] Resolution No. 991936, signed 31 August 1999.

[3] Supra note 2, Rule IV, Section 52. A., par.16.

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