

**LICERIO P. NIQUE, PETITIONER, VS. PRISCILLA T. HERNANDEZ,
CLERK OF COURT AND JOSE C. PENAS, DEPUTY SHERIFF OF RTC,
BRANCH 16, TANGUB CITY, RESPONDENTS.**

A.M. No. MTJ-94-965. April 02, 1996

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

In an affidavit-complaint,[1] dated May 22, 1993, respondent Judge Priscilla T. Hernandez,[2] then Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court of Tangub City and Jose C. Penas, Jr., Deputy Sheriff of the Regional Trial Court, Branch 16, Tangub City were charged with Ignorance of the Law, Partisanship in the Enforcement of a Court Order, Dereliction of Duty and Failure to Account for the P1,000.00 deposit in connection with the enforcement of a writ of preliminary injunction[3] issued on August 16, 1991 by the Honorable Vicente T. Baz, Jr., Presiding Judge of the said RTC, Branch 16, Tangub City, in a petition for certiorari[4] filed by complainant Licerio P. Nique.

The complainant faulted respondent Judge Hernandez for having delegated the duty to implement the aforementioned writ to her co-respondent Deputy Sheriff Penas who, in turn, allegedly failed to restore complainant Nique's peaceful possession and occupation of the fishpond in Baybay Sumirap, subject matter of the said writ of preliminary injunction, thereby rendering worthless the amount of P1,000.00 deposited as sheriff's fees. In support of his charges against the respondents, complainant Nique submitted an Affidavit,[5] dated June 3, 1993, of his Attorney-in-Fact, Cesar Canones, who stated therein that a deposit of P1,000.00 was demanded from complainant Nique as Sheriff's Expenses in relation to the implementation of the said writ. As fishpond overseer, Canones was instructed to sign a receipt only for the subject fishpond. He refused, therefore, to sign a receipt for the sacks of fish feeds, lime and some valuable equipment when directed to do so by respondent Penas. This, allegedly, is the basis for the charge of failure to enforce the writ in question.

In her Answer,[6] dated August 4, 1993, the respondent Judge counter-stated that as a matter of practice, the implementation of court writs within their territorial jurisdiction devolved upon the Deputy Sheriff and that, in this particular instance, her co-respondent duly submitted a Return of Service together with the itemized liquidation of the amount deposited as and for Sheriff's Expenses. She further averred that after an Alias Writ of Preliminary Injunction was granted, a supersedeas bond in the amount of P200,000.00 was filed by the other party to stay execution thereof.

In his Answer,[7] likewise dated August 4, 1993, the respondent Deputy Sheriff maintained that through the assistance of certain police officers[8] of the Tangub City Police Force he had fully implemented the said writ of preliminary injunction by turning over the possession of the subject fishpond from one Jimmy Chan, overseer of the private respondents in the certiorari petition to complainant's overseer, Cesar Canones. Sheriff Penas further stressed that he had submitted the required Return of Service[9] with respect to said writ and the corresponding Itinerary of Travel[10] duly approved by the presiding judge to account for the deposit of P1,000.00 as Sheriff's

Expenses.

After a Reply,[11] dated October 15, 1993, was filed by the complainant charging the respondents anew with Falsification of Public Document for indicating "Car Hire" in the Itinerary of Travel which totaled P400.00 when what was used in serving the Writ of Preliminary Injunction was a vehicle of the Philippine National Police (PNP) as authorized by then Station Commander[12] of the Tangub City PNP, the respondents submitted their respective Rejoinders,[13] both dated February 24, 1994. In her Rejoinder, the respondent judge stated that she would have handled the execution of the subject writ personally had her deputy sheriff, respondent Penas been unavailable because the service of writs and processes is the primary function of the latter. Respondent Penas, in his Rejoinder, explained that on March 3, 1992, he hired a car and paid P200.00 in his first attempt to serve the subject writ. Thus, the following day, March 4, 1992, when he succeeded in implementing the said writ on board a PNP car, he, again used the term "car hire" in his report to account for another P200.00 which he actually spent for the gasoline and repair expenses of the PNP car.

A final Reply[14] to the Rejoinders of the respondents dated April 15, 1994 was made by the complainant whereby he insisted that the entry "Car Hire" in the Itinerary of Travel particularly on March 4, 1992, could not in any manner correspond to gasoline and repair expenses as claimed by the respondent Deputy Sheriff.

In our Resolution[15] dated July 27, 1994, we referred the instant case to then Acting Executive Judge Vicente T. Baz of RTC, Branch 14, Tangub City, for investigation, report and recommendation as per initial evaluation of the Office of the Court Administrator that the case involved factual issues which could not be threshed out on the basis of the pleadings alone.

After hearing, the Investigating Judge recommended the dismissal of the charges against the respondents for lack of substantial evidence considering that the complainant failed to cross-examine the respondents and their witnesses despite due notice. Hence, their statements remained uncontroverted.[16] Judge Baz received both testimonial and documentary evidence from the respondents while Judge Narciso M. Bumanglag, Sr. of the Municipal Trial Courts in Cities (MTCC) Branch 1, Davao City, took the oral deposition of the complainant after Judge Baz granted complainant Nique's Motion to Take Deposition.

We find no cogent reason to disturb the findings made by the Investigating Judge.

As far as the respondent judge is concerned, there is no debate that as Clerk of Court of RTC, Tangub City, she is an Ex-Officio Sheriff within her territorial jurisdiction.[17] Under the Guidelines and Procedure in the Service and Execution of Court Writs and Processes[18] it is clearly provided that "all Clerks of Court, who are also ex-officio sheriffs, and/or their deputy sheriffs shall serve all court processes and execute all writs of their respective Courts within their territorial jurisdiction." [19] In view thereof, the delegation made by Judge Hernandez to her then Deputy Sheriff, respondent Penas, with respect to the implementation of the writ of injunction in question, was not improper as claimed by the complainant.

As regards the deposit of the amount of P1,000.00 as Sheriff's Fees in connection with the implementation of the subject writ of injunction, indeed, "the collection of legal fees, by its nature, is a delicate function of clerks of court as judicial officers entrusted with the correct and effective implementation of the regulations thereof.[20] The complainant's application of the theory of command responsibility against respondent judge, however, must fail inasmuch as Deputy Sheriff Penas was able to account for the said amount in his Itinerary of Travel which contained an itemized list of the expenses he incurred in serving the subject writ.

With respect to the charges against the respondent deputy sheriff, we are persuaded that there was a turn-over of the possession of the subject fishpond to Cesar Canones, overseer of the complainant. The following observations

made by the Investigating judge are significant:

"It is to be noted that even Cesar Canones, overseer of the complainant admitted the fact that he was placed in possession of the fishpond by the deputy sheriff. The statements of Cesar Canones in his affidavit found on page 76 of the records of this case is as follows: 'That after the conversation between Deputy Sheriff Penas and Jimmy Chan, Deputy Sheriff Penas told me by saying (sic): Mr. Canones, in your capacity as overseer and attorney-in-fact of petitioner Licerio Nique, I am now turning over to you the occupation and possession of the fishpond for which you must sign a receipt of the fishpond and the sacks of fish feeds, lime and some valuable fishpond equipment with a warning that in case of loss of the afore-mentioned articles/equipment in the fishpond, I would be held liable.'

Statement No. 9 of the same affidavit is as follows: "That I informed Deputy Sheriff Jose Penas, Jr. that I am not willing to sign receipt of those articles and equipment because as overseer and attorney-in-fact, I am only instructed and authorized to sign receipt of the fishpond only.'"[21]

Moreover, in the absence of evidence to the contrary, the Return of Service made by the respondent deputy sheriff in connection with the subject writ of preliminary injunction deserves a great amount of evidentiary weight.[22] Deputy Sheriff Penas was not remiss in his duty to execute the said writ, which duty is purely ministerial.[23]

Anent the falsification charge against the respondent deputy sheriff for having listed "car hire" in his Itinerary of Travel to liquidate the amount of P200. 00 instead of using the term "gasoline and repair expenses" inasmuch as he was allowed to use a PNP car in going to the subject fishpond to implement writ, we find the explanation of Deputy Sheriff Penas satisfactory and substantially corroborated by Celso Labang, one of the police escorts who personally saw the respondent Deputy Sheriff Penas pay P200.00 for the gasoline and repair of the PNP car they used in going to the fishpond in Baybay Sumirap.[24] Deputy Sheriff Penas testified thus:

"Atty. Navarez:

Q.

And why did you state in your liquidation that you paid or why is it in your Itinerary of Travel which you submitted it (sic) to the Court the amount that was deposited you indicated that the amount of P200.00 was for car hire. Could you explain to this Honorable body?

A.

It is my understanding that the objective and the amount paid I considered it in my report as a car hire for the reason that the objective in the amount paid was for the same purpose.

Q.

What do you mean by for the same purpose?

A.

That amount was for the purpose of car hire and I spent the same.

Q.

Do you mean to tell the Court that you have to spend P200.00 for the car hire in going to and in going back?

A.

Yes, Sir.

Atty. Navarrez:

Q.

How do you base your answer?

A.

I based that- on the first hiring on March 3, 1992 where I hired a private vehicle.

xxxxxxxxx

Q.

So, therefore, Mr. Witness, when you entered in your Itinerary of Travel the amount of P200.00 as car hire despite the fact that you were using a police car in that time what you mean there is that the P200.00 which was intended for car hire was spent for the gasoline and repair of that police car?

A.

Yes.

Q.

And why did you not declare that in your Itinerary of Travel specifically that amount was for the gasoline and repair of the police car which you had by (sic) using at that time?

A.

I understand that a car hire and the expenses of the gasoline and repair of my travel is just the same.

Q.

By the way, how many kilometers is the distance from the Court to Sumirap?

A.

From the Court to Sumirap is more or less 10 kilometers.

And from Sumirap to the fishpond I think that will be more or less two kilometers.

Q.

And how about the road that you were there negotiating from Sumirap towards the fishpond, could you describe the condition of the road?

A.

The conditions of the roads there are gravels, big stones, deep holes and there are also muds and hardly passable by public transportation.[25]

In fine, a careful scrutiny of the records of this case reveals that the Investigating Judge correctly recommended the dismissal of the case for lack of substantial evidence. As we have held in the case of *Casiano Wenceslao v. Restituto Madrazo*,[26] citing the case of *Bareno v. Cabauatan*: [27]

"Sheriffs and deputy sheriffs have an important role to play in the administration of justice. In *To v. Distor*, (110 SCRA 398, 400 [1981]), this Court held: 'It is well to be reminded Sheriffs and Deputy Sheriffs are officers of the court, and considered agents of the law. They form an integral part of the administration of justice because they are called upon to serve court writs, execute all processes, and carry into effect the orders

of the Court, as such, they should discharge their duties with due care and utmost diligence.”

We are fully convinced that the respondents have not failed in this regard.

WHEREFORE, in view of the foregoing, the herein complaint is hereby DISMISSED for LACK OF MERIT. Both respondents Judge Priscilla T. Hernandez and Deputy Sheriff Jose C. Penas are hereby EXONERATED from the charges against them.”

SO ORDERED.

Padilla (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Rollo, pp. 72-75.

[2] Presiding Judge at the Municipal Circuit Trial Court of Jimenez-Sinacaban, Misamis Occidental.

[3] Exhibit "1"; Rollo, pp. 44-45.

[4] Docketed as Sp. Civil Case No. TC-91-033 entitled "Licerio P. Nique v. The Honorable Felipe G. Zapatos, et al."

[5] Rollo, pp. 76-77.

[6] Exhibit "6"; Rollo, pp. 42-43.

[7] Rollo, pp. 56-57.

[8] Isidro C. Baguhin, Andres C. Enquito, Jr., Primo R. Mirafuentes and Celso E. Labang; Exhibit "2", pp. 62-63.

[9] Exhibit "6"; Rollo, p. 68.

[10] Exhibit "5"; Rollo, p. 67.

[11] Motion to Refute Answers of Respondents, Rollo, pp. 106-108.

[12] Lt. Degayo; TSN, October 28, 1994, p. 10; Rollo, p. 58.

[13] Rollo, pp. 10-14.

[14] Rollo, pp. 5-6.

[15] Rollo p. 128.

[16] Investigation, Report and Recommendation, Rollo, pp. 127-131.

[17] Administrative Circular No. 12, dated October 10, 1985.

[18] Manual for Clerks of Court, pp. 176-177.

[19] Italics supplied.

[20] Office of the Court of Administrator v. Bawalan, 231 SCRA 408, 411 [1994].

[21] Rollo p. 130.

[22] Valenton v. Melgar, 219 SCRA 372, 375 [1993].

[23] Evangelista v. Penserga, 242 SCRA 702, 709 [1995] citing Young v. Momblan, 205 SCRA 33 [1992]; see also Padilla v. Arabia, 242 SCRA 227, 231 [1995].

[24] TSN, October 28, 1994, pp. 14-15; Rollo, pp. 62-63.

[25] TSN, October 28, 1994, pp. 11-12; Rollo, pp. 59-60.

[26] A.M. No. P-92-768 promulgated on August 28, 1995, p. 7.

[27] 151 SCRA 293 [1987].

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