

PANCHO YAP YOUNG, COMPLAINANT, VS. ROBERTO M. MOMBLAN, RESPONDENT.

A.M. No. P-89-367. January 09, 1992

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is an Administrative Complaint against respondent, Roberto M. Momblan, for alleged neglect of duty in the performance of his functions as Deputy Sheriff, Regional Trial Court (RTC), Branch 33, Iloilo City.

It appears that on 24 June 1987, the aforesaid RTC Branch rendered a Decision in Civil Case No. 14789, entitled "Salvacion Solis, et al. vs. Ramona Fernandez, et al.," for Annulment of Contract, Cancellation and Damages. Complainant, Pancho Yap Young, was a defendant as well as a third-party-plaintiff therein. The dispositive portion of the judgment reads as follows:

"WHEREFORE, premises considered, judgment is hereby rendered:

"1. The Waiver of Rights (Annex "A") covering Lot No. 7988 and Lot No. 7996 in favor of the spouses Ramona Fernandez and Samson Fernandez as well as the Waiver of Rights which said spouses executed in favor of Pancho Young are null and void;

"2. Transfer Certificate of Title No. T-104736 covering Lot No. 7996 of the Cadastral Survey of Oton in the name of Pancho Young and Transfer Certificate of Title No. T-104889 covering Lot No. 7988 of the Cadastral Survey of Oton in the name of Pancho Young are hereby ordered cancelled and the Register of Deeds of Iloilo is hereby ordered to reinstate Original Certificates of Title Nos. 0-66041 and 0-658611 in the name of Quintino Solis as registered owner;

"3. The Waiver of Rights (Annex "J") in favor of Pancho Young allegedly executed by Quintino Solis is hereby declared null and void;

"4. Transfer Certificate of Title No. T-104760 covering Lot No. 8733, Oton Cadastre, in the name of Pancho Young is hereby ordered cancelled and annulled and the Register of Deeds of Iloilo is hereby ordered to reinstate Transfer Certificate of Title No. 43436 covering said Lot No. 8733 in the name of Quintino Solis as registered owner;

"5. The defendant spouses Ramona Fernandez and Samson Fernandez are hereby ordered to pay the plaintiffs the sum of P15,000.00 as moral damages and P10,000.00 as attorney's fees;

"6. The cross defendants spouses Ramona Fernandez and Samson Fernandez are hereby ordered to pay Pancho Young P30,000.00 plus interest until the amount is fully paid;

"7. The cross defendants spouses Ramona Fernandez and Samson Fernandez are hereby ordered to pay Pancho Young P20,000.00 as moral damages plus P10,000.00 as attorney's fees;

"8. The third party defendant Gloria Solis Caños is hereby ordered to pay the third party plaintiff Pancho Young the sum of P80,000.00 plus interest until the amount is fully paid;

"9. The third party defendant Gloria Solis Caños is hereby ordered to pay the third party plaintiff Pancho Young the sum of P20,000.00 as moral damages plus P10,000.00 as attorney's fees and the costs of this suit.

"SO ORDERED."

On 8 September 1988, the RTC granted the Motion for Issuance of a Writ of Execution filed by the plaintiffs therein. A Writ of Execution was then issued on 11 October 1988 relative to the said RTC Order.

It is in connection with the execution of the aforesaid Writ that this Complaint, dated 26 May 1989, was filed against respondent Deputy Sheriff. Complainant asserts that Respondent maliciously failed to fully implement the Writ according to its tenor, there having been no execution made against third-party-defendant Caños, who is the niece of the plaintiffs in that case.

Complainant also took Respondent to task for the latter's alleged malicious actuations in serving him a copy of the Writ of Execution and, at the same time, demanding from him his owner's copy of the Transfer Certificates of Title of the lots in question. Complainant contends that he should not have been served a copy of the said Writ because he was not a "judgment delinquent."

In his Comment, dated 28 May 1991, Respondent denied that he was negligent and had acted maliciously in not fully executing the Writ against the cross-defendants and third-party-defendant. He explained that the aforesaid Writ was issued at the instance of the plaintiff in that case. It was also his honest opinion that the Writ may not be utilized by Complainant against the cross-defendants and third-party-defendant unless said Complainant moved for execution, which Complainant never did.

Respondent also contended that he served a copy of said Writ on Complainant because the RTC Decision itself required the latter to surrender the Transfer Certificates of Title in question so that the same may be cancelled by the Register of Deeds.

Complainant, in his Reply to Comment, dated 12 June 1991, asserted that Respondent failed to execute the RTC Decision pursuant to its terms and conditions because the latter had allegedly received bribes.

On 26 June 1991, this case was referred to the Office of the Court Administrator for evaluation, report and recommendation. In compliance therewith, the Court Administrator submitted his Report, dated 24 September 1991, with the finding that although Complainant failed to prove that Respondent received bribe money in connection with the enforcement of the Writ of Execution in Civil Case No. 14789, the latter's Comment on why he failed to execute the same as against the cross-defendants and third-party-defendants was unsatisfactory.

We agree with the findings of the Court Administrator.

The Writ of Execution, dated 11 October 1988, explicitly commanded Respondent to execute the RTC Decision, dated 24 June 1987, which had already become final and executory, in the manner spelled out in its dispositive portion. As a matter of fact, he was commanded to seize "lands and buildings of the said defendants/third-party-defendants" should their personal property be insufficient to satisfy the Writ and its lawful fees. No part of the disposition in said Decision was either modified or deleted. All that Respondent had to do then was to merely execute the same in accordance with its mandate.

After all, the Sheriff and/or his deputies merely perform ministerial, not discretionary functions.

"2. Duty of a sheriff as to execution of process. - When a writ is placed in the hands of a sheriff, it is his duty in the absence of instructions, to proceed with reasonable celerity and promptness to execute it according to its mandate x x x. He has no discretion whether to execute it or not. x x x." The Manual for Clerks of Court, p. 178, citing 47 Am. Jur. 855) (Underscoring ours).

It should be recalled that a purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to the exercise of his own judgment, upon the propriety or impropriety of the act done (*Lamb v. Phipps*, 22 Phil 456). Discretion, on the other hand, is a faculty conferred upon a court or official by which he may decide the question either way and still be right (*Asuncion v. De Yriarte*, 28 Phil 67).

In the case at bar, Respondent's only duty was to have implemented the Writ of Execution according to its terms, without exception. Thus, he should have also enforced the Writ insofar as the cross-defendants and the third-party defendants were concerned. Not having done so, Respondent must be held to have been remiss in the performance of his functions. His defense that even if the Writ had been served against said parties the same would have been returned unsatisfied because they have no properties in their names is no justification for an incomplete enforcement of the Writ. His notion that another Writ, at Complainant's instance, was necessary neither finds any support in law.

It is axiomatic that those "involved in the administration of justice x x x must live up to the strictest standard of honesty and integrity in the public service " (*Mejia v. Pamaran*, G.R. Nos. 56741-42, 15 April 1988, 160 SCRA 477). Their conduct, therefore, must, at all times, not only be characterized with propriety and decorum but above all else must be above suspicion (*Llanes v. Borja*, A.M. No. P-86-32, 10 December 1990, 192 SCRA 288). Respondent's actuations in enforcing the Writ of Execution in Civil Case No. 14789 below did not live up to this strict standard.

Anent the charge that Respondent maliciously served Complainant with a copy of said Writ when, in fact, the latter was not even a "judgment delinquent" therein, we agree with the finding of the Court Administrator that there was nothing irregular with the procedure followed. Complainant's Transfer Certificates of Title were declared by the RTC as null and void and at most, the service of a copy of the Writ merely served as a notice to Complainant of his obligation to surrender the same to the Register of Deeds for cancellation.

WHEREFORE, a fine of P2,000.00 is hereby imposed on respondent Roberto M. Momblan, Deputy Sheriff of the Regional Trial Court, Branch 33, Iloilo, for neglect of duty and conduct prejudicial to the best interest of the service, payable within thirty (30) days from notice. Respondent is hereby warned that a repetition of the same, or of any act calling for disciplinary action, will be dealt with more severely.

SO ORDERED.

Paras, Padilla, Regalado, and Nocon, JJ., concur.

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