

MANUEL TAN, COMPLAINANT, VS. JUSTINIANO C. DELA CRUZ, JR. SHERIFF III, METC, BRANCH 38 QUEZON CITY, RESPONDENT.

A.M. No. P-04-1892 (Formerly OCA-IPI No. 03-1622-P). September 30, 2004

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PER CURIAM:

On April 24, 2003, Manuel Tan (Tan) filed a letter-complaint[1] dated April 22, 2003 against Justiniano C. dela Cruz, Jr. (dela Cruz), Sheriff III, Metropolitan Trial Court (MeTC), Branch 38, Quezon City, charging the latter with Dereliction of Duty, Gross Misconduct, Acts Prejudicial to Public Service and Dishonesty.

The records disclose the antecedents:

Judgment[2] was rendered in favor of Tan in Civil Case No. 38-25885 for ejectment against Edgar Mata (Mata). Thereafter, a Writ of Execution[3] dated February 8, 2002 was issued upon Tan's motion.

On March 8, 2002, dela Cruz served a Notification[4] to Mata and all persons claiming rights under him to vacate the premises within five (5) days from receipt of the notice and to pay the money judgment awarded in favor of Tan. The Notification was received by a certain Danilo Seran, an occupant of the subject premises.

Confusion as to the implementation of the writ arose when Mata's counsel, Atty. Faustino Tugade, Sr. (Atty. Tugade), filed an Urgent Motion to Recall/Set-Aside Writ of Execution Issued Against "Angelita Somonod" But Being Enforced Against Defendant Edgar Mata[5] dated March 14, 2002 praying, among others, that the writ be set aside pending the determination of the supersedeas bond which Mata has to pay or deposit to stay the execution of the writ. Tan filed a Comment/Opposition[6] dated March 20, 2002. Subsequently, Atty. Tugade filed a Manifestation and Motion[7] dated April 19, 2002 praying that the writ be withdrawn allegedly because Mata is only an employee of the owners of the subject premises. The court denied the motion in its Order[8] dated June 11, 2002.

Complicating matters further, Atty. Alberto Habitan (Atty. Habitan) wrote a letter[9] dated July 17, 2002 to dela Cruz on behalf of his client, Amor Ubaldo-Cortez (Cortez) informing dela Cruz that Mata has long vacated the premises and that it is Cortez who is in possession of the subject premises. Further, Atty. Habitan informed dela Cruz that Cortez is taking steps to nullify Tan's title and requested dela Cruz to refrain from disturbing Cortez' possession.

One month later, Atty. Habitan filed a Manifestation and Motion[10] dated August 16, 2002 alternatively praying that the Writ of Execution be declared moot and academic as Mata had already vacated the subject premises or that its implementation be held in abeyance considering the presentation of a title containing the same description, area and location as the property subject matter of the case.

Citing the foregoing events, Dela Cruz filed a Sheriff's Report[11] dated August 26, 2002 stating the proceedings he has taken to implement the writ and informing the court that there is a need to amend the writ as it was issued against a certain Angelita Somonod instead of Mata.

However, before the writ could be amended, it appears that a Temporary Restraining Order (TRO) dated October

17, 2002 was issued by the Regional Trial Court (RTC) of Quezon City, Branch 82, upon the application of the Estate of Feliza Ubaldo-San Agustin in Civil Case No. Q02-47821, enjoining the MeTC to cease and desist from implementing the writ and to preserve the status quo.

After the TRO was lifted, Tan filed an Urgent Ex-Parte Manifestation/Motion[12] dated February 24, 2003 praying that the Writ of Execution be amended to reflect the true name and identity of Mata and be immediately implemented. The motion was granted in the court's Order[13] dated March 21, 2003 and an amended Writ of Execution[14] of even date was forthwith issued.

On March 25, 2003 dela Cruz served another Notification[15] to vacate the subject premises. A certain Augie Ubaldo received the Notification. However, on March 28, 2003, dela Cruz again received a letter[16] from Atty. Habitan informing him that Mata had long vacated the subject property which is now occupied by Cortez. In light of this information, dela Cruz sought further instruction from the court in his Sheriff's Report[17] dated March 31, 2003.

In its Order[18] dated April 29, 2003, the court directed dela Cruz to proceed with the implementation of the writ. Thus, on April 30, 2003, dela Cruz implemented the writ, ejected all persons claiming rights under Mata from the premises, and turned over possession thereof to Tan who acknowledged receipt thereof. In his Sheriff's Return[19] dated May 5, 2003, dela Cruz returned the writ fully satisfied as to the ejectment aspect but unimplemented as to the money judgment.

In his letter-complaint, Tan faults dela Cruz for the delay in the implementation of the writ after the first Notification was served upon the occupants of the subject premises. According to Tan, the writ was not implemented after the five (5)-day period to vacate given to the occupants in the first Notification. Again, after the second Notification was served, dela Cruz allegedly stalled the implementation of the writ when he asked for further instruction from the court just because of the letter from Atty. Habitan dated March 27, 2003. Tan also claims that he and dela Cruz agreed on the amount of P20,000.00 as sheriff's fees and that he gave the latter a partial advance payment of P5,000.00 with the balance to be paid upon the full implementation of the judgment.

On the other hand, in his Comment[20] dated June 11, 2003, dela Cruz labels the filing of the instant case against him as "premature and pure harassment." After narrating the antecedent events, he asserts that he implemented the writ with dispatch and that Tan has intimated to him a desire to withdraw the complaint in light of the implementation of the writ.

On June 2, 2003, the Office of the Court Administrator (OCA) received a letter[21] from Tan withdrawing his Complaint because the Writ of Execution has already been implemented to his complete satisfaction.

Upon the OCA's recommendation in its Agenda Report[22] dated January 13, 2004, we issued a Resolution[23] dated March 1, 2004 referring the case to Executive Judge Natividad Dizon (Judge Dizon), RTC-Branch 106, Quezon City, for investigation, report and recommendation.

Pursuant to the Court's directive, Judge Dizon submitted her Report and Recommendation dated June 29, 2004 recommending that dela Cruz be sternly warned and reprimanded for failing to comply with Section 9, Rule 141 of the Rules of Court on the procedure for determining, disbursing and liquidating sheriff's expenses. Judge Dizon, however, found that the delay in the implementation of the writ was not attributable to dela Cruz considering the supervening events and filing of several pleadings bearing on the case over which dela Cruz had no control.

We do not wholly agree.

The Court notes dela Cruz' virtual silence as regards Tan's allegation that he and dela Cruz agreed on the amount of P20,000.00 as sheriff's expenses and that he gave dela Cruz P5,000.00 as partial payment with the balance to be paid upon full implementation of the writ. A perusal of dela Cruz' Comment and Affidavit[24] reveals that while he denies all allegations contained in Tan's letter-complaint, he fails to set forth the substance of the matters upon which he relies to support his denial. His general denial is thus tantamount to an admission that he received money from Tan without complying with Section 9, Rule 141 of the Rules of Court, which provides:

Sec. 9. Sheriffs and other persons service processes.--...

In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer travel, guards' fees, warehousing and similar charges, in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex-officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

The rule requires the sheriff executing writs or processes to estimate the expenses to be incurred. Upon the approval of the estimated expenses, the interested party has to deposit the amount with the Clerk of Court and Ex-officio Sheriff. The expenses shall then be disbursed to the executing Sheriff subject to his liquidation within the same period for rendering a return on the process or writ. Any unspent amount shall be refunded to the party who made the deposit.[25]

In this case, there is nothing on record to indicate that dela Cruz made an estimate of the expenses to be incurred for execution and had the estimate approved by the court. Neither does it appear that the estimated amount of expenses was deposited with the Clerk of Court and Ex-officio Sheriff, and that he rendered an accounting thereof.

The sheriff's conduct of unilaterally demanding sums of money from a party-litigant purportedly to defray expenses of execution, without obtaining the approval of the trial court for such purported expense and without rendering an accounting therefor constitutes dishonesty and extortion and falls short of the required standards of public service. Such conduct threatens the very existence of the system of administration of justice.[26]

Dela Cruz' failure to issue an official receipt for the amount he received from Tan also constitutes a violation of Sec. 113, Art. III, Chapter V of the National Accounting and Auditing Manual which provides "that no payment of any nature shall be received by a collecting officer without immediately issuing an official receipt in acknowledgment thereof."

We also find dela Cruz liable for failure to implement the writ after serving the first Notification and to make a timely return thereof.

Section 14, Rule 39 of the 1997 Revised Rules of Civil Procedure provides:

Sec. 14. Return of writ of execution.—The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the

whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

The records do not indicate when dela Cruz received the Writ of Execution dated February 8, 2002. However, it discloses that dela Cruz served the first notice to vacate on the occupant of the subject premises on March 8, 2002. Following the above-cited rule, the writ shall be returnable immediately after judgment is satisfied in part or in full, or if the judgment cannot be satisfied in full within thirty (30) days after his receipt, the officer shall report to the court and state the reason therefor.

In this case, it was only on August 26, 2002, more than five (5) months after the first Notification was served, that dela Cruz filed a Sheriff's Report updating the court on the proceedings he had thus far taken and informing the court of the need to amend the writ. The fact that several pleadings bearing on the case were filed and that Atty. Habitan wrote to inform him that Mata had already vacated the premises should not have precluded him from enforcing the writ. It is well settled that a sheriff must act with all appropriate celerity in serving and implementing the writ. He has no discretion whether to execute it or not, absent any restraining order or instructions to the contrary, for his duty is purely ministerial. His failure to comply with this duty constitutes nonfeasance.[27]

However, as regards dela Cruz' alleged failure to implement the writ after the second Notification was served, we find no liability. The circumstances that led to the delay in the implementation of the amended writ were largely beyond his control. The records show that on March 28, 2003, after serving the second notice to vacate, dela Cruz received another letter from Atty. Habitan informing him that Mata had long vacated the subject property which is now occupied by Cortez. In light of this information, dela Cruz sought further instruction from the court. Immediately after receiving the court's Order dated April 29, 2003 directing him to proceed with the implementation of the writ, dela Cruz ejected all persons claiming rights under Mata from the premises and turned over possession thereof to Tan. We note though that the amended writ was not fully implemented as regards the money judgment in favor of Tan and that no explanation as to why the writ was not fully implemented was made.[28]

Anent Tan's withdrawal of his complaint, Judge Dizon correctly points out that the withdrawal of an administrative complaint does not divest us of our disciplinary authority over court personnel. Neither does it necessarily warrant the dismissal of an administrative complaint. The Court cannot be bound by the unilateral decision of a complainant to desist from prosecuting a case involving the discipline of parties subject to its administrative supervision.[29]

Judge Dizon recommends stern warning and reprimand for dela Cruz. However, we are convinced that his acts are odious and call for a more severe penalty. We have held that failure to make a return makes respondent guilty of malicious nonfeasance warranting dismissal.[30] In *Padilla vs. Arabia*[31] and *Moya v. Bassig*,[32] a sheriff was held liable for dereliction of duty and dismissed for his failure to sell at a public auction personal properties levied upon under a writ of execution. In *Custodio vs. Fulinara*,[33] a sheriff was dismissed for failure to enforce a writ of execution, to conduct a public auction sale, and to make a return on the writ of execution. And in *Ong vs. Meregildo*,[34] a sheriff who demanded sums of money from a party-litigant without obtaining approval from the trial court and rendering an accounting thereof, was found guilty of serious misconduct and conduct prejudicial to the best interest of the service and dismissed from office.

Besides, dela Cruz has been previously penalized for similar offenses. In A.M. No. P-91-575 decided on May 5, 1993, he was fined the amount of P2,000.00. In MTJ-01-1379 decided on September 10, 2002, he was fined the amount of P5,000.00 for dereliction of duty. In MTJ-04-1518 decided on January 15, 2004, he was suspended for one (1) month and one (1) day for manifest partiality and incompetence.

WHEREFORE, respondent Justiniano C. dela Cruz, Jr., Sheriff III of the Metropolitan Trial Court, Branch 38, Quezon City, is hereby found GUILTY of serious misconduct, nonfeasance and conduct prejudicial to the best interest of the service, and is hereby DISMISSED from office, with forfeiture of all retirement benefits and accrued leave credits and with prejudice to re-employment in any branch or instrumentality of government, including government owned and controlled corporations.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Tinga, JJ., concur.
Azcuna, and Chico-Nazario, JJ., on leave.

[1] Rollo, pp. 1-8.

[2] Id. at 9-12; Decision dated November 26, 2001; Annex “A” of the letter-complaint.

[3] Id. at 14; Annex “C” of the letter-complaint.

[4] Id. at 15; Annex “D” of the letter-complaint.

[5] Id. at 47-48; Annex “H” of the Comment.

[6] Id. at 49-54; Annex “I” of the Comment.

[7] Id. at 56-59; Annex “J” of the Comment.

[8] Id. at 65.

[9] Id. at 69; Annex “M” of the Comment.

[10] Id. at 70-72; Annex “N” of the Comment.

[11] Id. at 16; Annex “E” of the letter-complaint.

[12] Id. at 117-119; Annex “S” of the Comment.

[13] Id. at 120; Annex “T” of the Comment.

[14] Id. at 121; Annex “U” of the Comment.

[15] Id. at 122; Annex “V” of the Comment.

[16] Id. at 123; dated March 27, 2003; Annex “W” of the Comment.

[17] Id. at 125; annex “X” of the Comment.

[18] Id. at 126; Annex “Y” of the Comment.

[19] Id. at 128-129; Annex “AA” of the Comment.

[20] Id. at 30-33.

[21] Id. at 131; dated May 27, 2003.

[22] Id. at 135-140.

[23] Id. at 141.

[24] Id. at 150-151; dated May 26, 2004.

[25] Bercasio vs. Benito, 341 Phil. 404 (1997), citing Section 9, Rule 141 of the Rules of Court.

[26] Ong vs. Meregildo, 233 SCRA 632, cited in Bercasio vs. Benito, supra.

[27] Benitez vs. Acosta, A.M. P-01-1473, March 27, 2001, 355 SCRA 380 citing Evangelista vs. Pensurga, 242 SCRA 702 (1995) and Valencia vs. Valeña, A.M. P-00-1409, August 16, 2000, 338 SCRA 150. See also Patangan vs. Concha, A.M. No. R-699-P, August 7, 1987, 153 SCRA 30.

[28] Supra, note 1 at 129.

[29] Casanova, Jr. vs. Cajayon, A.M. No. P-02-1595, April 3, 2003, 400 SCRA 472.

[30] Benitez vs. Acosta, supra, citing Sibulo vs. Ramirez, 154 SCRA 101 (1987), Patangan vs. Concha, 153 SCRA 30 (1987), Bareno vs. Cabauatan, 151 SCRA 293 (1987) and Smith Bell & Co. vs. Saur, 96 SCRA 668 (1987).

[31] 242 SCRA 227 (1995) cited in Benitez vs. Acosta, supra.

[32] 138 SCRA 49 (1985) cited in Benitez vs. Acosta, supra.

[33] 94 SCRA 808 (1979) cited in Benitez vs. Acosta, supra.

[34] Supra, note 26.

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