

**VICTOR ELIPE, COMPLAINANT, VS. “HONESTO FABRE,
DEPUTY SHERIFF, MTCC, CAGAYAN DE ORO CITY, RESPONDENT.**

A.M. No. P-94-1068. February 13, 1995

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an administrative complaint filed against respondent Honesto G. Fabre, charging him with nonfeasance and incompetence in the performance of his duties as Deputy Sheriff of Branch 3 of the Municipal Trial Court in the Cities (MTCC) at Cagayan de Oro City.

The complaint was referred to Judge Antonio A. Orcullo of MTCC, Branch 3, Cagayan de Oro City who, in a report dated November 15, 1993, found the charges to be true and accordingly recommended that respondent be reprimanded and given a stern warning that a repetition of the same acts would be dealt with more severely.

In its memorandum dated August 29, 1994, the office of the Court Administrator concurs with the findings of the investigating judge and recommends that respondent deputy sheriff be fined P1,000.00 and given a stern warning.

The record discloses that on June 19, 1992, the MTCC, Branch 3, at Cagayan de Oro issued a writ of execution for the enforcement of a barangay agreement in Case No. 91-144 for collection of unpaid rentals and construction materials amounting to P100,000.00. Complainant testified that on June 25, 1992, at nine o' clock in the morning, respondent served the writ on judgment debtors Michael dela Cerna and his wife but the respondent was able to levy only upon a dilapidated vehicle and an old piano. [1] Complainant stated that at ten o' clock in the evening of the same day, the judgment debtors surreptitiously removed several pieces of furniture from the house which they rented. [2] On June 26 and 30 and again on July 4, 11, 18 and 19, 1992, they removed appliances and other personal properties and destroyed building fixtures on the property owned by complainant. [3] On these occasions, according to the complainant, respondent did not make any effort to prevent the judgment debtors from removing leviable properties to implement the writ, despite the fact that he had been told by complainant of the judgment debtor's activities.

Respondent Fabre denied the complainant's allegation. He claimed that he levied on several properties of the judgment debtors, but unfortunately the bid price paid for them at the public auction was only P10,000.00.⁴ He justified his action in levying only on the personal properties which he found at the business establishment and in desisting from enforcing the writ with respect to properties on the second floor of the residence of the judgment debtors on two grounds: (1) the judgment debtors refused to let him in; and (2) he did not have any order from the MTCC to force open the door which had been locked.

The records show that on July 10, 1992, respondent sold to the complainant, as the highest bidder at public auction, personal properties of the judgment debtors for P10,000.00. On July 13, 1992, respondent levied on a parcel of land owned by the judgment debtors which on August 14, 1992 was also sold to complainant for P15,006.00.[5] On December 17, 1992, personal properties of the judgment debtors which had been levied upon were sold, also to the complainant as the highest bidder, for P2,001.00.[6] The result is that the judgment debt of

P100,000.00 was only partially satisfied to the extent of P27,007.00.

In his memorandum report, Deputy Court Administrator Juanito A. Bernad found that, because of respondent's inaction and lack of diligence in enforcing the writ of execution, the judgment debtors were able to cart away properties which he could have levied upon execution. There is merit in the following observations contained in his memorandum:

Respondent Deputy Sheriff correctly argued that he was not directed by any Judge by court orders to stop the carting away of properties or the demolition of the fixtures. But respondent Sheriff should understand that by virtue of the writ of execution issued in favor of herein complainant, he (respondent Sheriff) was mandated to levy upon properties of judgment debtor to satisfy an obligation amounting to P100,000.00. However, in disregard of this Order, respondent Sheriff chose to levy the properties of the judgment debtor which amounted only to P27,000.00.

If indeed respondent Sheriff is dedicated in his work, respondent Sheriff could have chosen to stop the carting away of the valuable properties of judgment debtor for the very purpose of levying it and for the purpose of complying with the Order.

If the arguments of respondent Sheriff will be sustained, all judgment debtors can easily circumvent the orders of the court by carting away their properties thinking that sheriffs have no authority to stop them. This line of thinking and reasoning will create chaos and instability in the administration of justice.

Furthermore, respondent Sheriff exhibited an utter disregard of what is incumbent upon him when he failed to inform the complainant that in order to levy properties of the defendant on the second floor of the establishment, a special order of the court is necessary to force or break-open the closed door in accordance with Section 14, Rule 39 of the Rules of Court. The respondent Sheriffs duty was apparent but he did not comply with it as he should have. The attack on the complainant's moral character was not necessary in this case, as it would not justify the non-performance of his duties.

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. He has no discretion whether to execute it or not (Young vs. Momblan, A.M. No. P-89-367, 9 January 1992, Second Division, Melencio-Herrera, J.).

Indeed, as clearly stated in the Manual for Clerks of Court, a sheriff, to whom a valid writ or process is delivered to be levied upon a property within his jurisdiction, is liable to the person in whose favor the process or writ runs if he fails to make a levy upon property owned by the judgment debtor within his jurisdiction and by reason thereof the judgment creditor is injured. It is not dependent upon intentional wrong or negligent omission to seize property of judgment debtor.[7]

In *Eduarte v. Ramos*[8] we said:

Respondent ought to have known the correct procedure to be followed in order to ensure proper administration of justice, especially in its concluding stage. He failed to observe that degree of dedication to the duties and responsibilities required of him as a sheriff. He is bound to discharge his duties with prudence, caution and attention which careful men usually exercise in the management of their affairs. The sheriff, an officer of the court upon whom the execution of a final judgment depends, must be circumspect and proper in his behavior. Execution is the fruit and end of the suit and is the life of the law.

In the case at bar, it is not that respondent did not know what he should do, given the problem that he was confronted with. In his answer[9] respondent tried to excuse himself from what was his duty, claiming that he did

not force his way into the second floor where the judgment debtors resided because a special court order was needed to enable him to do this. Knowing this to be the case, it was his duty to see to it that such an order was secured from the court.

The fact is that he has shown himself to be less than energetic and zealous in the performance of his duty. His lackadaisical attitude betrays his inefficiency and incompetence which in accordance with sec. 46(b)(8) of the Civil Service Law is a ground for disciplinary action.[10]

WHEREFORE, a FINE of P2,000.00 is hereby imposed on Deputy Sheriff Honesto G. Fabre, with a STERN WARNING that a repetition of the same or of any act calling for disciplinary action will be dealt with more severely.

SO ORDERED.

Narvasa, C.J., Bidin, Regalado and Puno, JJ., concur.

[1] TSN, Jan. 15, 1993, p. 11.

[2] Ibid, pp. 13-14; Records, Annex A, p. 22.

[3] Records, Annexes A to Q, pp. 22-38.

[4] TSN, Mar. 16, 1993. pp. 9-11; Records, Exh. 1, pp. 162-163.

[5] Records, Exh. 2, p. 164.

[6] Records, Exh. 3, p. 165.

[7] MANUAL FOR CLERKS OF COURT, p. 179, citing 47 AM. JUR. 856.

[8] A.M. No. P-94-1069, Nov. 9, 1994.

[9] Rollo, p. 50.

[10] Sec. 46. Discipline: General Provisions. - (a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process. (b) The following shall be grounds for disciplinary action: . . . (8) Inefficiency and incompetence in the performance of official duties.

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