

**R.M. SALAZAR JR. CONSTRUCTION, INC., COMPLAINANT, VS.
DEPUTY SHERIFF RODOLFO M. ESPINELI, RESPONDENT.***Adm. Matter No. P-2443. December 14, 1981*

Ponente: FERNANDEZ, J.

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In a sworn-complaint filed on June 23, 1980, R. M. Salazar Jr. Construction, Inc., through counsel, charged Deputy Sheriff Rodolfo M. Espineli of Quezon City with grave abuse of authority for allegedly having levied on properties of a value far in excess of the amount which appears in the writ of execution.

The complaint alleged that the complainant is a corporation duly organized by virtue of the laws of the Philippines, while the respondent, Rodolfo M. Espineli, is a Deputy Sheriff of Quezon City assigned to the Court of First Instance of Rizal, Branch III, Quezon City; that on August 31, 1977, a complaint for the recovery of a sum of money was filed against R.M. Salazar Jr. Construction, Inc., by one Antonio M. de Dios in the Court of First Instance of Rizal at Quezon City, which was docketed as Civil Case No. 23736 entitled "Antonio M. De Dios, etc., plaintiff vs. R.M. Salazar Jr. Construction, Inc., defendant"; that on January 24, 1978, judgment was rendered in said case ordering the defendant to pay the plaintiff the principal amount of P52,000.00; that pursuant to an order dated July 11, 1978, a writ of execution for the amount of the judgment was issued and the respondent, Deputy Sheriff Rodolfo M. Espineli, was appointed as special sheriff to enforce the writ of execution; that in enforcing the writ of execution, the respondent levied on one (1) Komatsu bulldozer, one (1) Kimco payloador and one (1) Toyota Hi-Lux pick-up of the complainant then easily worth about P500,000.00, P175,000.00 and P60,000.00, respectively; that the complainant was then engaged in prosecuting government projects and the equipment levied upon were being used for that purpose; that as a consequence, the construction projects had to be stopped and several workers entirely dependent upon the project were laid off; and that the complainant denounced the levy made by the respondent, Deputy Sheriff, as malicious, patently excessive, confiscatory and abusive.[1]

In his comment, the respondent Deputy Sheriff explained that the issue of the excessiveness of the levy he made had been raised by the complainant in a Motion to Quash Levy which the Court of First Instance of Rizal, after due hearing, denied for lack of merit on June 26, 1980; and that since the respondent's opposition to the motion to quash levy squarely met the issue of excessive levy posed by the complainant, the respondent adopted said opposition as part of this answer to the administrative complaint.[2]

Executive Judge Ernani Cruz Paño of the Court of First Instance of Quezon City to whom this case was referred for investigation, submitted a report and recommendation, the pertinent portion of which reads:

"From the evidence on record, it appears undisputed that on January 24, 1978 Antonio de Dios secured judgment against R.M. Salazar Jr. Construction, complainant herein, for the payment of the following sums:

"1. The amount of P25,833.33 representing the unpaid purchase price of the motor vehicle subject of the case with interest thereon at 14% per annum from July 21, 1977 until fully paid;

- "2. The amount of P5,129.59 representing the unpaid spare parts;
- "3. The amount of P1,125.59 as additional charges on Fuso Truck Tractor;
- "4. The amount of P6,072.72 as interest on overdue account on the unit and spare parts as of July 20, 1977;
- "5. The sum equivalent to 33 1/3% of the amount of P25,833.33 as liquidated damages; and P8,525.60;
- "6. The sum equivalent to 25% of the amount of P25,833.33 as attorney's fees, plus the costs of suit, P6,458.33.

"A writ of execution was issued on January 14, 1978 and levy was made on November 9, 1978 on a Komatsu bulldozer, a payloader and a Toyota pick up truck. No evidence has been submitted to establish the claim of Salazar Construction that the heavy equipments levied upon by respondent had an actual value of P735,000.00. On the other hand, Espineli appears to have relied upon the valuation made by a collector and two mechanics of De Dios which assessed the equipments at P100,000.00. The persons in charge of the equipments did not object to the levy and removal of the equipments. It was only on March 7, 1980 that complainant informed him that the equipments were worth P800,000.00. The pro-perties were not sold at public auction be-cause first a third party claim was filed and later Salazar filed a complaint for an-nulment of judgment in Civil Case No. 26652. Later this was dismissed but some arrangements were made between De Dios and Salazar. The equipments were eventually released to Salazar."[3]

The Investigating Judge recommended that the complaint be dismissed on the ground that no evidence was introduced by complainant on the supposed value of the equipments.

The Court Administrator disagreed with the Inves-tigating Judge for the following reason:

"Any person with ordinary sense of values of equipments, and it is hard to believe respondent was entirely devoid of experience to more or less have ideas in this respect, could have known that one (1) Komatsu bull-dozer, one (1) Kimco payloader and one (1) Toyota Hi-Lux pick up were valued more than P52,000.00. Indeed, he must have known he was taking more than what was needed. In Felicitas Salazar Sioco, et al. versus Deme-trio S. Villafior, Deputy Sheriff of the Office of the Provincial Sheriff of Davao City, 81 SCRA 229, respondent was found guilty of having attached motor vehicles worth much more than the claim of the plaintiff in the complaint. The total claim of plaintiff in said case was only about P28,000.00 and res-pondent attached 21 units of motor vehicles with a total value of around P105,000.00. The Court found the Sheriff guilty of misconduct in the discharge of his office and was suspended for one (1) month without pay, with a warning that a repetition of the same or similar act will be dealt with more severely."[4]

Even without the testimony of the complainant, it is clear that the equipments that were levied upon were worth more than the amount of P52,000.00, the claim sought to be satisfied.

After the first deliberation on this case, the voting ranged from exoneration to dismissal of the res-pondent deputy sheriff. Hence the Court set the case for a second deliberation.

Mr. Justice Ramon C. Aquino maintained his vote to dismiss the respondent on the ground that he is guilty of gross misconduct when he made an excessive levy. Mr. Justice Claudio Teehankee, Mr. Justice Felix V. Makasiar, and Mr. Justice Hermogenes Concepcion Jr., although originally voting to dismiss the respondent, changed their votes to suspend the petitioner for six (6) months from office only so that the required number of votes to release the decision can be obtained.

Mr. Justice Pacifico P. de Castro maintained his vote to exonerate the respondent.

WHEREFORE, the respondent Deputy Sheriff Rodolfo M. Espineli is found guilty of misconduct in the dis-charge of his office and is hereby suspended from office for six (6) months, not to be charged against his leave, with a warning that a repetition of the same or similar offense will be dealt with more severely.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Concepcion, Jr., Guerrero, Abad Santos, and Melencio-Herrera, JJ., concur.

Aquino and De Castro, JJ., dissent.

[1] Rollo, pp. 1-4.

[2] Rollo, p. 13.

[3] Rollo, p. 81.

[4] Memorandum of Court Administrator to the Chief Justice, p. 3.

DISSENTING OPINION**AQUINO, J.:**

I dissent. I vote for the dismissal of the respondent, following the rule in Policarpio vs. Fajardo, Adm. Matter No. P-312, August 3, 1977, 78 SCRA 210 that a sheriff is guilty of gross misconduct where he made an excessive levy.

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DISSENTING OPINION**DE CASTRO, J.:**

I am unable to see cause for punishing respondent for an act which the complainant labelled as excessive levy but which the CFI of Quezon City in which complainant filed a motion to question the levy fully sustained as valid and regular. Exe-cutive Judge Paño of the same Court who investigated the administrative case complainant filed against respondent for abuse of authority in making the levy in question, instead of appealing the order sustaining the levy, was thus fully justi-fied in recommending exoneration. However, the Court Administra-tor cited the case of a deputy sheriff who levied on 21 units of motor vehicles valued at P105,000.00 for a judgment debt of only P28,000.00 to recommend one (1) month suspension for respondent herein. The difference is obvious in that the question of excessiveness of the levy in that case was not judicially passed upon, while in the present case Judge Tutaan sustained the levy. The actual value of the three (3) heavy equipments levied upon by respondent, as estimated by two mechanics was P100,0000.00 when respondent levied on them. The debt to be satisfied is P52,000.00. These three (3) units are a bulldozer, a payloader and a truck which obviously have no market or salability in an execution sale as the 21 motor vehicles in the case cited (Felicitas Salazar-Choco, et al. vs. Demetrio Villa-flor, Deputy Sheriff of Davao, 81 SCRA 229).

The case cited by Justice Aquino in his original note when he voted for dismissal (Policarpio vs. Fajardo, 78 SCRA 210), is vastly different because it is more in how the sheriff carted away the goods in question after he was informed that the store where the goods levied upon were displayed or deposited, did not belong to the defendant named in the writ, and where the sheriff did not wait for the defendant, a practising attorney, with an office located nearby, to arrive as requested by those in the store, before taking the goods levied upon, without giving a chance for the defendant to pay first the judgment debt before making the levy which he did in the

absence of defendant as well as the owner of the goods levied upon allegedly worth more than P800,000.00 for a debt of only P5,927.70; that the respondent sheriff therein, a mere "special sheriff" at that, was punished with dismissal. The excessiveness of the levy was not passed upon judicially, and in the administrative action filed against him the investigating judge now Justice Carolina Griño-Aquino, recommended dismissal.

It should not escape notice that both judicially and ad-ministratively, respondent was found blameless by Judge Tutaan and Executive Judge Paño, respectively. If we should punish respondent, are We not in effect imputing error to said judges amounting to abuse of discretion, but leaving them untouched, where for an alleged error of respondent, labelled as abuse of authority which is found not to be so by them, respondent will be punished?

I vote for exoneration.

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