

ASUNCION Y. ARIÑOLA, COMPLAINANT, V. ANGELES D. ALMODIEL, JR., INTERPRETER II, MUNICIPAL TRIAL COURT IN CITIES, MASBATE CITY, MASBATE, RESPONDENT.

A.M. No. P-19-3925 (Formerly OCA IPI No. 16-4635-P). January 07, 2019

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CAGUIOA, J:

This resolves the administrative complaint[1] filed by Complainant Asuncion Y. Ariñola (Complainant) against Respondent Angeles D. Almodiel, Jr., (Respondent Sheriff) in his capacity as Sheriff III (now, Interpreter II) at the Municipal Trial Court in Cities (MTCC), Masbate City, Masbate, charging the latter with gross neglect of duty, inefficiency, incompetence in the performance of official duties and refusal to perform an official duty relative to Civil Case No. 1475 entitled "Sps. Celestino Ariñola and Asuncion Ariñola v. Sps. John Mark Viceo and Ma. Michelle Lobrigo."

Complainant, along with her husband, was the plaintiff in an action for the collection of sum of money with damages filed with the MTCC, Masbate City and docketed as Civil Case No. 1475 against respondents therein, John Mark Viceo and Ma. Michelle Lobrigo (Spouses Viceo). On May 28, 2012, the MTCC rendered a Judgment[2] in Complainant's favor, ordering the Spouses Viceo to pay Complainant P209,000.00, among others. After the Judgment attained finality on July 6, 2012,[3] the MTCC issued a Writ of Execution[4] on July 18, 2012 commanding Respondent Sheriff to enforce the judgment.

On July 25, 2012,[5] Respondent Sheriff served upon John Mark Viceo a copy of the Writ of Execution and a Notice of Demand for Immediate Payment with Notice of Levy on Execution.[6] Later, on July 26[7] and July 30,[8] 2012, Respondent Sheriff sent a Notice of Levy upon Realty[9] (covered by Tax Declaration No. 0291) to the Provincial Assessor's Office and to the Spouses Viceo.[10] Based on a Certification[11] issued by the Office of the Provincial and Municipal Assessor of Masbate dated July 25, 2012 and August 1, 2012, the declared owner of the property covered by Tax Declaration No. 0291 is John Mark Viceo.

On August 3, 2012, Respondent Sheriff submitted his Report on the Implementation of the Writ[12] to the MTCC informing the court that he had served the Writ of Execution and a Notice of Demand for Immediate Payment with Notice of Levy on Execution as well as the Notice of Levy upon Realty on the Spouses Viceo. The Spouses Viceo failed to pay, leading Respondent Sheriff to cause the issuance and publication of a Notice of Sale on Execution of Real Property[13] on August 1, 2012.

However, before the scheduled date of the execution sale on August 1, 2012, Respondent Sheriff learned that the subject property had already been sold by John Mark Viceo to his uncle and former Masbate Mayor Konrad Ramos (Ramos). Subsequently, Respondent Sheriff sent a letter[14] to Ramos on September 4, 2012 advising him to file a third-party claim over the property.

Heeding Respondent Sheriffs advice, Ramos filed an Affidavit of Third-Party Claim[15] before the MTCC Masbate on October 4, 2012. Attached to the Affidavit of Third-Party Claim was a Deed of Absolute Sale[16] dated May 27, 2008 executed between John Mark Viceo and Ramos. In his Affidavit, Ramos claims that he

purchased the property from John Mark Viceo for P2.5 million and that he had been in open, continuous and peaceful possession of the property since 2008. Finally, Ramos claimed that he was the occupant of the property and was never served a copy of the Notice of Levy upon Realty, in violation of the requirement of Section 7, Rule 57 of the Rules of Court.[17]

Following Ramos' Affidavit of Third-Party Claim, Respondent Sheriff issued a Notice of Filing of Third-Party Claim[18] dated October 4, 2012, requiring Complainant to post an indemnity bond in the amount of P2,500,000.00. After the hearing on the third-party claim, the MTCC Masbate, in an Order[19] dated July 11, 2014, ruled that the Notice of Levy upon Realty was invalid for Respondent Sheriffs failure to serve a copy of the notice of levy on the actual occupant of the property (i.e., Ramos), viz.:

x x x [t]here can be no valid sale without a valid levy. Under Section 9, Rule 39, in conjunction with Section 7, Rule 57 of the Rules of Court, the sheriff is required to do only two specific things to effect a levy upon a realty: (a) file with the register of deeds a copy of the order of execution, together with the description of the levied property and notice of execution; and (b) leave with the occupant of the property [a] copy of the same order, description and notice (Hulst v. PR Builders, Inc., G.R. No. 156364, September 3, 2007, 532 SCRA 74). These are prerequisites to a valid levy, non-compliance with any of which is fatal.

Sadly, the record in the instant case is bereft of any evidence showing that the Court Sheriff left a copy of the notice of levy to the actual occupant of the property being levied. In view of the fact that no notice of the levy was given to herein third-party claimant who was then in occupancy of the property, it follows that there was no valid levy on the land and, therefore, its registration in the registry of deeds and annotation in the tax declaration of the property levied upon were also invalid and ineffective.

WHEREFORE, in view of the foregoing, the motion of the plaintiff is GRANTED. Consequently, the execution proceedings conducted by the Court Sheriff are hereby declared NULL and VOID and OF NO FORCE AND EFFECT. The levy on execution is hereby LIFTED and/or CANCELLED and the Sheriff is restrained from proceeding with the auction sale of the levied real property.

The Court Sheriff is directed to proceed with the enforcement of the Writ of Execution issued in this case according to its mandate and to make a periodic report to the Court as required by the Rules until the judgment is fully satisfied.

SO ORDERED.[20]

Four months having lapsed since the MTCC issued the above order directing Respondent Sheriff to proceed with the enforcement of the execution, no action had yet been taken by Respondent Sheriff, leading Complainant to send a letter[21] to Judge-Designate Diana Tambago-Sanchez of the MTCC on November 14, 2014, calling the attention of the court to Respondent Sheriffs inaction on the writ of execution. Notably, by then, two years had already lapsed since Complainant had obtained a favorable judgment from the MTCC and the Writ of Execution enforcing the judgment had been issued. Despite the letter, no action was taken on the enforcement of the writ, leading Complainant to file the present administrative complaint against Respondent Sheriff on August 25, 2016.

In his Answer to the Administrative Complaint,[22] Respondent Sheriff claims that the allegation that he did not leave a copy of the Notice of Levy on the actual occupant of the property is not true.[23] According to him, he made two attempts to serve the notice of levy on the younger brother of John Mark Viceo but was unable to do so. Respondent Sheriff further claims that going to the area where the land is levied is not practicably advisable because said area where the land is located is frequented by different armed groups.[24]

Insofar as Ramos was concerned, Respondent Sheriff claims that he deemed it more proper to write first to former Mayor Ramos before he proceeded with the auction sale, because "per information given by the Municipal

Assessor of Mobo, Masbate," Ramos had already purchased the property from John Mark Viceo but was unable to transfer ownership over the property for being preoccupied with the elections.[25]

The OCA Recommendation

In its Report and Recommendation[26] the Office of the Court Administrator (OCA) found that Respondent Sheriff failed to perform his mandated duty to implement the writ of execution, specifically considering that, at the time the MTCC issued its last Order on July 11, 2014 (in which the MTCC declared the execution sale null and void and ordered Respondent Sheriff to proceed with the enforcement of the Writ of Execution until the judgment is fully satisfied) until the time he filed his comment to the administrative complaint on December 9, 2016, Respondent Sheriff has never denied that he failed to fully implement the judgment. Quite the contrary, the OCA observed that all that Respondent Sheriff did instead was to put forward justifications for his failure to carry out the writ of execution (i.e., he could not locate another property upon which the judgment could be enforced; the subject property is located in an area with armed groups making it dangerous for him to visit).[27]

Thus, the OCA noted that Respondent Sheriff failed to fully enforce the judgment and to submit a Sheriff's Report as required by the Rules of Court, making him administratively liable for Simple Neglect of Duty.[28] On the basis of the foregoing, the OCA recommended that Respondent Sheriff be found GUILTY of Simple Neglect of Duty and FINED the amount of P5,000.00 with a STERN WARNING that a repetition of the same or any similar act shall be dealt with more severely.

The Court's Ruling

The Court agrees with, and accordingly adopts, the findings and recommendation of the OCA.

Section 14, Rule 39 of the Rules of Court mandates the sheriff to make a return on the writ of execution to the Clerk or Judge issuing the Writ. Specifically, a sheriff is required: (1) to make a return and submit it to the court immediately upon satisfaction in part or in full of the judgment; and (2) if judgment cannot be satisfied in full, to state why full satisfaction cannot be made. As well, the sheriff is required to make a report every thirty (30) days in the proceedings being undertaken by him until judgment is fully satisfied.

Respondent Sheriff failed to do both. He neither fully enforced the judgment nor submitted his Sheriffs Report. In *Zamudio v. Auro*,[29] the Court ruled that:

Failure to comply with Section 14, Rule 39 constitutes simple neglect of duty, which is defined as the failure of an employee to give one's attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference.

However, the Court finds that respondent's infraction does not end with his failure to make a report.

As the Court has held time and again, execution of a final judgment is the fruit and end of the suit and is the life of the law. x x x[30] (Emphasis and underscoring supplied)

The reason is simple. A judgment, if not executed, would be an empty victory on the part of the prevailing party; and sheriffs are the ones primarily responsible for the execution of final judgments. Thus, they are expected at all times to show a high degree of professionalism in the performance of their duties.[31] Accordingly, disregard of the rules on execution of judgment is tantamount to neglect of duty.[32]

Pursuant to Section 46(D)(1), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service – which apply to the instant case[33] – simple neglect of duty is classified as a less grave offense and is punishable by suspension for one (1) month and one (1) day and six (6) months for the first offense and dismissal from the service for the second offense. The Court has, however, in several cases,[34] imposed the penalty of fine instead

of suspension as an alternative penalty, to prevent any undue adverse effect on public service which would ensue if work were otherwise left unattended by reason of respondent's suspension.[35] Accordingly, and in accordance with previous rulings,[36] since sheriffs discharge frontline functions, the penalty of fine may be imposed in lieu of suspension from office pursuant to Section 47 (1)(b), Rule 10 of the RRACCS.[37]

WHEREFORE, in view of the foregoing, the Court finds Respondent Angeles D. Almodiel, Jr., GUILTY of Simple Neglect of Duty and is hereby FINED the amount of P5,000.00 with a STERN WARNING that a repetition of the same or any similar act shall be dealt with more severely.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Perlas-Bernabe, J. Reyes, Jr., and Hernando,[*] JJ., concur.

[*] Designated additional Member per Special Order No. 2630 dated December 18, 2018.

[1] Rollo, pp. 2-6.

[2] Id. at 7-13, Through Presiding Judge Rolando G. Sandigan.

[3] Id. at 14.

[4] Id. at 14-15.

[5] Id. at 38.

[6] Id. at 18.

[7] Id. at 19.

[8] Id. at 20.

[9] Id. at 19.

[10] Per Certification from the Provincial and Municipal Assessor's Office, the owner of the property covered by Tax Declaration No. 0291 is John Mark Viceo, see id. at 22-23.

[11] Id. at 22, 23.

[12] Id. at 16-17.

[13] Id. at 21.

[14] Id. at 24.

[15] Id. at 26.

[16] Id. at 27-28.

[17] SEC. 7. Attachment of real and personal property; recording thereof.—Real and personal property shall be attached by the sheriff executing the writ in the following manner:

(a) Real property, x x x by filing with the registry of deeds a copy of the order, together with a description of the property attached, and a notice that it is attached, or that such real property and any interest therein held by or standing in the name of such other person are attached, and by leaving a copy of such order, description, and notice with the occupant of the property, if any, or with such other person or his agent if found within the province. xxx

[18] Rollo, p. 29.

[19] See *id.* at 30-31. Through Judge-Designate Diana Tambago-Sanchez.

[20] *Id.* at 30-31.

[21] *Id.* at 32.

[22] *Id.* at 36-37.

[23] *Id.* at 37.

[24] *Id.*

[25] *Id.* at 36.

[26] *Id.* at 38-42.

[27] *Id.* at 37, 40.

[28] *Id.* at 41.

[29] 593 Phil. 575 (2008).

[30] *Id.* at 582.

[31] *Id.*, citing *Mangubat v. Camino*, 518 Phil. 333, 343 (2006).

[32] *Zamudio v. Auro*, *id.* at 583, citing *Mangubat v. Camino*, *id.*

[33] The RRACCS has been repealed by the CSC Resolution No. 1701077, promulgated on July 3, 2017, also known as the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS); Section 124, Rule 23 thereof provides that, "[t]he provisions of the existing RRACCS shall continue to be applied to all pending cases which were filed prior to the effectivity of these Rules, provided it will not unduly prejudice substantive rights." Section 125, Rule 23 thereof states that, "[said] Rules shall take effect after fifteen (15) days from date of publication in the Official Gazette, or in a newspaper of general circulation." See also *Mañalac v. Bidan*, A.M. No. P-18-3875, October 3, 2018.

[34] *Juario v. Labis*, 579 Phil. 33 (2008); *Patawaran v. Nepomuceno*, 543 Phil. 249 (2007).

[35] *Juario v. Labis*, *id.* at 37.

[36] *Mañalac v. Bidan*, *supra* note 33.

[37] See *id.* at 5-6.

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