

FIRST DIVISION

[A.M. NO. P-01-1496, January 28, 2005]

**LEONILA S. RAYMUNDO AND LUZVIMINDA VDA. DE RAYMUNDO,
COMPLAINANTS, VS. ENRIQUE M. CALAGUAS,^[1] SHERIFF IV,
REGIONAL TRIAL COURT OF MALOLOS, BULACAN, BRANCH 79,
RESPONDENT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

In their sworn complaint dated March 15, 1999, complainants charged respondent sheriff with grave abuse of authority, oppression, conduct prejudicial to the best interest of the service, discourtesy and violation of Administrative Circular No. 12, relative to the implementation of a writ of possession.

The complaint averred that complainant Leonila S. Raymundo filed a petition for the probate of the holographic will of Sofia J. Raymundo before the Regional Trial Court of Malolos, Bulacan, Branch 79, docketed as Special Proceedings No. 72-M-98 and entitled "*In the Matter of the Testamentary Estate of the Deceased Sofia J. Raymundo.*" Among the properties left by the deceased is a 40-hectare fishpond located in Anda, Pangasinan, covered by FLA No. 2082; and a house and lot situated at 311 Ferguson, Guisad, Baguio City, covered by Transfer Certificate of Title No. T-22794. Both properties are occupied by complainants.

In its Resolution^[2] dated November 27, 1998, the trial court ordered the issuance of a writ of possession to place Teofila Raymundo, the duly appointed administratrix of the estate of the deceased, in possession of the subject properties.

On November 28, 1998, the trial court issued the writ of possession.^[3] On the same day, respondent sheriff together with several others implemented the writ by forcibly ejecting complainants from the fishpond. The next day, November 29, 1998, respondent sheriff attempted to oust complainants from their residence in Baguio City but desisted upon learning of the arrival of the city authorities.

Complainants claim that respondent sheriff is administratively liable for enforcing the writ without giving them a grace period within which to vacate the premises and for implementing the writ in Pangasinan and attempting to implement the same in Baguio City without notifying the sheriffs who have jurisdiction thereat. In support thereof, complainants presented certifications from the Office of the Provincial & Ex-Officio Sheriff of Alaminos, Pangasinan,^[4] and the Office of the Clerk of Court of Baguio City, both to the effect that said offices did not receive any request or notice for the implementation of a writ of possession from the Regional Trial Court of Malolos, Bulacan, in November 1998.^[5]

In his Comment/Answer,^[6] respondent sheriff denied that he forced or threatened complainants in implementing the writ and averred that the complaint was intended merely to harass him. He admitted that he implemented the writ on the same day it was issued on the impression that the same was immediately executory. He allegedly tried to coordinate with the Sheriff of the Regional Trial Court of Alaminos, Pangasinan, but was not able to do so because of time constraint. Respondent sheriff did not, however, explain his failure to notify the concerned sheriff when he attempted to execute the writ in Baguio City.

In its Agenda Report^[7] dated June 19, 2001, the Office of the Court Administrator (OCA) recommended that respondent sheriff be administratively held liable for grave abuse of authority and violation of Administrative Circular No. 12 and be ordered to pay a fine of P3,000.00 with a stern warning that a repetition of the same or similar act shall be dealt with more severely.^[8]

On October 10, 2001, the Court referred the case to Executive Judge Oscar C. Herrera, Jr., Regional Trial Court of Malolos, Bulacan for investigation, report and recommendation.^[9]

During the investigation, complainants manifested that they are no longer interested in pursuing this administrative case. Subsequently, complainant Leonila Raymundo submitted an affidavit of desistance, which reads:

2. After a careful study of the pleadings filed in the said administrative case, I hereby declare that the same was just a product of misunderstanding and misappreciation of the facts between me and my co-complainants on one hand and our co-heirs led by Reiniero Raymundo on the other hand.

3. Sheriff Enrique Calaguas and his companions were just caught in the midstream of the conflict between the two (2) groups of the heirs of the late Sofia Raymundo.

4. Sheriff Calaguas and his companions did not abuse their authority in enforcing a valid Order of the Regional Trial Court of Malolos, Bulacan, Branch 79 and 85 which was even affirmed by the Court of Appeals and the Supreme Court. Neither did they oppress us nor commit any conduct prejudicial to the government service.

5. As of now, I and my co-heirs have already settled our differences including the estate of the late Sofia Raymundo.

6. I executed this affidavit to attest to the truthfulness of the foregoing and for the purpose of moving for the dismissal of the administrative case against Sheriff Calaguas and his companions.

Nevertheless, the investigating Judge found respondent sheriff guilty of grave abuse of authority and violation of Administrative Circular No. 12 and recommended the imposition of a fine of P3,000.00.

On September 4, 2002, the Court further referred the instant case to the OCA which reiterated the findings and recommendation in its June 19, 2001 Agenda Report.

In a Manifestation dated December 6, 2004, respondent sheriff agreed to submit the case for resolution based on the pleadings filed.

The settled rule is that the filing of an affidavit of desistance by the complainant for lack of interest does not *ipso facto* result in the termination of an administrative case against the respondent. The Court's disciplinary authority cannot be dependent on or frustrated by private arrangements between parties; otherwise, the prompt and fair administration of justice, as well as the discipline of court personnel, would be undermined.^[10]

We agree with the findings of the OCA that respondent sheriff violated Administrative Circular No. 12 dated October 1, 1985, on the Guidelines and Procedure in the Service and Execution of Court Writs and Processes in the Reorganized Courts. Pertinent portion thereof, provides:

5. No sheriff or Deputy Sheriff shall execute a court writ outside his territorial jurisdiction without first notifying in writing, and seeking the assistance of the Sheriff of the place where the writ of execution shall take place;

In the instant case, respondent sheriff of Malolos, Bulacan, enforced the writ in Pangasinan and attempted to implement the same in Baguio City, outside his territorial jurisdiction without informing the respective sheriffs of said places of the intended implementation of the writ. We find no merit in respondent sheriff's claim that he failed to comply with Administrative Circular No. 12 because of time constraint. Had he followed the rules by giving complainants prior notice and reasonable time to vacate the premises, he would have had ample time to notify the sheriffs concerned of the actual date of the enforcement of the writ.

Section 10 (c), Rule 39 of the 1997 Rules of Civil Procedure, states –

(c) **Delivery or restitution of real property.**—The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him **to peaceably vacate the property within three (3) working days**, and restore possession thereof to the judgment obligee; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money. (Emphasis supplied)

Respondent sheriff's alleged ignorance of the foregoing rule which pertains particularly to his function is inexcusable. The requirement of notice is based on the rudiments of justice and fair play. It frowns upon arbitrariness and oppressive conduct in the execution of an otherwise legitimate act. It is an amplification of the provision that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.