

FIRST DIVISION

**[A.M. NO. P-05-1942 (OCA-IPI NO. 03-1580-P),
January 17, 2005]**

**ALIBSAR ADOMA, COMPLAINANT, VS. ROMEO GATCHECO,
SHERIFF III, AND EUGENIO TAGUBA, PROCESS SERVER, OF
BRANCHES 1 AND 2, RESPECTIVELY, OF THE MUNICIPAL TRIAL
COURT IN CITIES OF SANTIAGO CITY, RESPONDENTS.**

DECISION

YNARES-SANTIAGO, J.:

The instant administrative complaint filed against respondents for violation of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act) and conduct unbecoming a court employee, arose from the execution of a writ of replevin in *Adoma v. Spouses Edmundo Andres and Luzviminda Andres*, docketed as Civil Case No. 1404-1-669, for recovery of possession of motor vehicle with prayer for the issuance of a writ of replevin before Branch 1 of the Municipal Trial Court in Cities (MTCC) of Santiago City, presided by Judge Ruben Plata.

Complainant Alibsar Adoma claimed that on August 16, 2003 a writ of replevin^[1] for the recovery of an L-300 van was issued in his favor. On the same day, respondent sheriff Romeo Gatcheco implemented the writ. He was accompanied by respondent Eugenio Taguba, a process server of Branch 2 of MTCC, Santiago City, who volunteered to assist respondent sheriff. After the two respondents seized the vehicle, they demanded payment of P8,000.00, allegedly promised by complainant but the latter was able to give only P1,000.00 and another P1,000.00 the following day.^[2]

The writ of replevin stated that the vehicle will be delivered to complainant after 5 days from the implementation thereof. With the vehicle still undelivered on the 7th day, complainant threatened to file an administrative case against respondent sheriff. Finally, on August 29, 2003, the latter was forced to release the vehicle to complainant. Respondents, however, continued to demand P6,000.00, hence complainant filed the instant administrative case.^[3]

Respondents, on the other hand, denied soliciting and receiving any amount from the complainant. Respondent sheriff admitted, however, that complainant promised to give him P10,000.00 if the vehicle will be sold.^[4]

On September 10, 2003, the Court referred the instant administrative complaint to Judge Fe Albano Madrid, Executive Judge, Regional Trial Court, Santiago City, Isabela, for investigation, report and recommendation.^[5]

In her investigation report, Judge Madrid found the testimony of complainant which

was corroborated by two witnesses, to be more credible. She refused to believe the claim of respondent sheriff that he did not release the vehicle to complainant after 5 days from the implementation of the writ on August 16, 2003, because he was awaiting instructions from Judge Plata. However, she found that respondent sheriff did not actually demand money for the implementation of the writ because it was complainant who promised to give money in exchange for the implementation of the writ of replevin. Nevertheless, she concluded that respondent sheriff is guilty of misconduct considering that he accepted partial payment and insisted on its full payment.

As to respondent Taguba, Judge Madrid recommended that he be reprimanded for trying to abet the misconduct of respondent sheriff.

Upon receipt of the report of Judge Madrid, the Court referred the case to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.^[6]

In its Memorandum dated June 4, 2004, the OCA affirmed the investigating Judge's report. It recommended that respondent sheriff be fined in the amount of P5,000.00 for conduct unbecoming a court employee and that respondent Taguba be reprimanded for trying to abet the misconduct of a fellow employee of another court.

On July 5, 2004, the Court required the parties to manifest whether they are willing to submit the case for resolution based on the pleadings filed. However, to date, the parties have yet to file their manifestation. Hence, we are constrained to dispense the filing of such manifestation.

The Court agrees with the findings of the investigating Judge and the OCA that respondents received the amount of P2,000.00 and that they demanded the payment of an additional P6,000.00 from complainant. The testimony of complainant before the investigating Judge is worthy of belief because the same was not only candid and direct but also corroborated by two witnesses who attested to the veracity of complainant's accusations. The writ of replevin has been implemented and the vehicle is now in complainant's possession.

Under Section 9, Rule 141 of the Rules of Court, the procedure for the execution of writs and other processes are: first, the sheriff must make an estimate of the expenses to be incurred by him; second, he must obtain court approval for such estimated expenses; third, the approved estimated expenses shall be deposited by the interested party with the Clerk of Court and *ex-officio* sheriff; fourth, the Clerk of Court shall disburse the amount to the executing sheriff; and fifth, the executing sheriff shall liquidate his expenses within the same period for rendering a return on the writ. Any amount received by the sheriff in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction which renders him liable for grave misconduct and gross dishonesty.^[7]

In the instant case, respondent sheriff totally disregarded the aforecited procedure. He failed to make and submit estimate of the sheriff's expenses. The amounts received and demanded by him are therefore unauthorized fees. His acts of accepting and soliciting said monetary considerations make him liable not only for conduct unbecoming a court employee but also for grave misconduct and

dishonesty.

As correctly found by the OCA, respondent sheriff deliberately failed to place complainant in possession of the vehicle after five days from the implementation of the writ because the latter failed to give the whole amount he promised. Since the adverse party did not object to the complainant's bond nor posted a redelivery bond to recover possession of the vehicle taken under the writ of replevin, respondent sheriff is under obligation to deliver the van to complainant. However, it took respondent sheriff 13 days before he released the vehicle to complainant, a clear violation of Section 6, Rule 60 of the 1997 Revised Rules of Civil Procedure which provides –

SEC. 6. Disposition of property by sheriff.—If within five (5) days after the taking of the property by the sheriff, the adverse party does not object to the sufficiency of the bond, or of the surety or sureties thereon; or if the adverse party so objects and the court affirms its approval of the applicant's bond or approves a new bond, or if the adverse party requires the return of the property but his bond is objected to and found insufficient and he does not forthwith file an approved bond, the property shall be delivered to the applicant. If for any reason the property is not delivered to the applicant, the sheriff must return it to the adverse party. (6a)

In *Apuyan, Jr. v. Sta Isabel*,^[8] citing *Alvarez, Jr. v. Martin*,^[9] a sheriff was similarly found guilty of grave misconduct, dishonesty and conduct grossly prejudicial to the best interest of the service for receiving and soliciting money from the complainant and for deliberately ignoring the rules for the implementation of a writ of attachment, thus –

Furthermore, respondent's act of demanding money and receiving P1,500.00 from the complainant for the lunch and *merienda* of the policemen who will accompany him in executing the decision of the Court is a clear violation of section 9, Rule 141. The Rules require the sheriff to estimate his expenses in the execution of the decision. The prevailing party will then deposit the said amount to the Clerk of Court who will disburse the amount to the sheriff, subject to liquidation. Any unspent amount will have to be returned to the prevailing party. In this case, no estimate of sheriff's expenses was submitted to the court by respondent. In fact, the money which respondent deputy sheriff had demanded and received from complainant was not among those prescribed and authorized by the Rules of Court. This Court has ruled that any amount received by the sheriff in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction and renders him liable for grave misconduct and gross dishonesty.

Finally, the procedure for execution of a final judgment is the same as that in carrying out a writ of preliminary attachment, as set forth in Rule 141 of the Rules of Court...

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Clearly, in this case, respondent not only utterly failed to live up to the