

EN BANC

[A.M. No. P-00-1363, February 08, 2000]

WILFREDO F. ARAZA, COMPLAINANT, VS. SHERIFFS MARLON M. GARCIA AND NICOLAS A. TONGA, RESPONDENTS.

RESOLUTION

PER CURIAM:

This administrative case arose from a letter-complaint^[1] dated July 2, 1997 filed by Wilfredo F. Araza charging sheriffs Marlon M. Garcia and Nicolas A. Tonga with grave misconduct, violation of the anti-graft and corrupt practices act, gross ignorance of the law, gross neglect of duty, grave abuse of authority, oppression, conduct prejudicial to the best interest of the service, gross inefficiency and incompetence, relative to the implementation of the writ of execution in Civil Case No. 4256 of the Municipal Trial Court, Legaspi City, entitled "Salvacion B. Araza and Wilfredo F. Araza, plaintiffs, vs. Lilia S. Agu, defendant" for a sum of money.

On September 19, 1997, Court Administrator Alfredo L. Benipayo required respondents to comment on the charges within ten (10) days from notice.^[2]

On June 30, 1999, the Court referred the administrative case to Judge Raymund M. Jacob, Executive Judge, Municipal Trial Court in Cities, Legazpi City, for investigation, report and recommendation.^[3] On October 27, 1999, Judge Jacob submitted his report.^[4]

On February 25, 1997, the Municipal Trial Court in Cities, Branch 1, Legazpi City rendered a decision in Civil Case No. 4256, sentencing defendant Lilia S. Agu to pay plaintiffs spouses Wilfredo and Salvacion Araza the total sum of P93,904.62 excluding interest.^[5] The decision having become final, on April 15, 1997, the trial court issued a writ of execution, and assigned its implementation to respondent sheriff Marlon M. Garcia.^[6]

Because he was recuperating from an ailment and had just undergone an operation, respondent Garcia sought the assistance of respondent Nicolas A. Tonga, a city sheriff from the Office of the Clerk of Court, MTCC, Legazpi City, who willingly obliged. On April 28, 1997, respondent sheriffs served the writ upon the judgment debtor and demanded payment of the judgment debt. The latter, however, failed to pay.

At about 9:00 in the morning of May 5, 1997, complainant and respondent sheriffs went to the judgment debtor's hardware store to levy on leviable property found inside the store. Complainant waited outside the store with a truck and three (3) hired helpers until 12:00 noon only to be informed by respondents that they could not proceed with the levy because the judgment debtor was not around.

Complainant then went home for lunch.

In the meanwhile, defendant Agu was able to persuade respondents Garcia and Tonga not to proceed with the levy. Instead, she executed a promissory note^[7] and promised to pay the judgment debt on May 9, 1997, and in the event that she failed to pay on said date, she would turn over the hardware materials attached as payment of the debt.^[8]

In the afternoon of the same day, respondent sheriffs proceeded to the house of complainant and presented to him the promissory note executed by the judgment debtor. Complainant's wife, Salvacion Araza refused to accept it and insisted that they proceed with the inventory and attachment of the hardware materials. Respondent Tonga told complainant that they would need the assistance of a technical man to assist them in making the inventory. Complainant resented this suggestion and told respondent Tonga not to interfere because he was not the implementing sheriff. Because of the disagreement with complainant, respondent Tonga desisted from further assisting in the implementation of the writ. In fact, the inventory was conducted with the assistance of a third person, one Rustom Galicia. For his services, complainant paid him one thousand (P1,000.00) pesos.^[9]

However, on May 9, 1997, the judgment debtor failed to pay. On May 14, 1997, she voluntarily delivered to the Office of the Clerk of Court, MTCC, Legazpi City the hardware material levied upon with an estimated value of fifty one thousand five hundred fifteen (P51,515.00) pesos.

On June 11 and 24, 1997, the judgment debtor made partial payments in cash to respondent sheriff Garcia in the amounts of nine thousand four hundred (P9,400.00) and twenty thousand six hundred (P20,600.00) . On June 26, 1997, respondent Garcia turned over the sum of thirty thousand (P30,000.00) to complainant's wife. Prior to the expiration of the lifetime of the original writ, complainant asked the trial court for the issuance of an *alias* writ, with prayer for the replacement of sheriff Garcia.^[10] The trial court granted the motion and appointed sheriff Jose O. Galvez as the implementing sheriff.

On November 14, 1997, the hardware materials earlier delivered to the court were sold at public auction for a measly sum of three thousand (P3,000.00) pesos.^[11]

In his report dated October 27, 1999, Judge Jacob recommended the dismissal of the administrative complaint against respondent sheriff Nicolas A. Tonga for lack of sufficient evidence.

We do not agree.

With respect to the charges against respondent Marlon M. Garcia, Judge Jacob found sufficient evidence to hold him liable. As regards the fact that respondent Garcia asked from complainant one thousand (P1,000.00) pesos to be given to assisting sheriff respondent Nicolas A. Tonga, the evidence showed that complainant refused to give the amount demanded. However, complainant directly gave P1,000.00 to Rustom Galicia who prepared the inventory of materials seized.^[12] Such act of asking complainant for money intended for "assisting" sheriff Tonga was virtually an

extortion.^[13] The sheriff assigned by the court was not authorized, on his own, to appoint an "assisting" sheriff or a "technical" adviser. Decidedly, it was in violation of Supreme Court Administrative Circular No 31-90.^[14]

With regard to the manner of enforcement of the writ of execution, investigating Judge Jacob found it irregular. We agree. Respondent Garcia was to implement the writ by demanding payment from the judgment debtor and, if no payment was made, to satisfy the judgment debt out of the personal and real property of the judgment debtor. Instead of following the terms of the writ, respondent Garcia accepted a promissory note executed by the judgment debtor, and allowed the materials levied upon to remain in the hardware store of the judgment debtor. Thus, by allowing the hardware materials to remain in the custody of the judgment debtor, the attachment was rendered useless because the judgment debtor could easily dispose of the same.

As to the alleged violation of the anti-graft and corrupt practices act, Judge Jacob found that respondent Garcia did not derive personal gain from the partial payments of the judgment debts. This is immaterial in cases of violation of the anti-graft act. The fact is that respondent Garcia gave the judgement debtor an unwarranted benefit by acts of manifest partiality. Besides, respondent Garcia deprived the government of lawful fees amounting to six hundred eighty (P680.00) pesos, which form part of the Judiciary Development Fund, pursuant to Administrative Circular No. 31-90.

Investigating Judge Jacob recommended that respondent Garcia be fined the amount of five thousand (P5,000.00) pesos, with warning that a repetition of the same or similar acts would be dealt with more severely.

We find the investigating judge's recommendation to be too lenient and accommodating to the respondents. The administrative charges against respondents were proven and are sufficient basis for disciplinary action.

Respondent sheriff Marlon M. Garcia, was without doubt guilty of grave misconduct in the implementation of the writ of execution relative to Civil Case No. 4256.

"When a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate. He is supposed to execute the order of the court strictly to the letter."^[15] "It is well settled that the sheriff's duty in the execution of a writ issued by a court is purely ministerial."^[16] It is spelled out in pertinent provisions of law and administrative circulars of the Supreme Court.

Instead of strictly following the terms of the writ, respondent Garcia asked respondent sheriff Tonga to assist him in executing the writ. This is a practise without authority of law, or the court that issued the writ. It is a bad practice of sheriffs, known as the buddy-buddy system. More, respondent Tonga had the temerity to suggest to complainant the hiring of a "technical" man to make the inventory of the seized property. This is a duty of the executing sheriff. There is nothing "technical" about making an inventory. We do not need a civil engineer to make an inventory. And worse, respondent Garcia blatantly asked complainant for P1,000.00 to be given to respondent Tonga for acting as "assisting" sheriff.