

THIRD DIVISION

[A.M. No. P-97-1249, July 11, 1997]

**PACITA SY TORRES, COMPLAINANT, VS. FROILAN S. CABLING,
DEPUTY SHERIFF, RTC, MALABON, METRO MANILA,
RESPONDENT.**

D E C I S I O N

DAVIDE, JR., J.:

In a complaint filed on 30 March 1995 with the Office of the Ombudsman and later referred to this Court for appropriate action, the complainant, who was the defendant in Civil Case No. 1769-MN of Branch 170 of the Regional Trial Court (RTC) of Malabon, Metro Manila, charged the respondent with abuse of authority and grave abuse of discretion in the implementation of the writ for the execution of the balance of ₱6,000 of her judgment debt. She claimed that the respondent carted away over her vigorous protest and objection the following: (a) a sala set worth ₱7,000; (b) a Mitsui karaoke worth ₱3,500; (c) a G.E. refrigerator worth ₱7,000; and (d) a Sony television worth ₱1,500. The sala set or the refrigerator would have been sufficient to answer for the money judgment, but the respondent insisted on taking all the aforementioned properties. She even offered to pay in cash her judgment obligation. Besides, the levied properties belonged to her son Wilfredo Sy and her sisters Diosdada Sy de Guzman and Victoria Sy Esquivel, which were merely kept in her house for the use of her mother. Despite the third party claims, the respondent sold all these properties, whose aggregate value is ₱19,000, for only ₱5,750 at a public auction on 21 March 1995 without giving her any copy of the plaintiff's indemnity bond as required by the Rules of Court.

In his comment dated 22 September 1995, the respondent admitted having levied the aforementioned properties pursuant to a Writ of Execution issued on 11 November 1994. He, however, claimed that the complainant neither objected to the levy nor offered to pay the judgment debt in cash. After the levy of the subject properties, he issued and left a Notice of Levy and Sheriff's Sale to the party concerned. Upon receiving an Affidavit of Third Party Claim on 13 March 1995, he sent a Notice of Third Party Claim to plaintiff Apolonio Coronel directing him to file an indemnity bond if he wanted to stay the levy on the properties. As the indemnity bond was filed by the plaintiff on 17 March 1995 he proceeded with the sheriff's sale scheduled on 21 March 1995 and then sold the properties at public auction to the highest bidder. It was not his obligation to sell the subject properties at a price acceptable to the defendant or the third party claimants. Respondent further declared that the third party claimants had already filed a claim for damages against him and Apolonio Coronel, docketed as Civil Case No. 4514 at MeTC, Branch 71, Pasig City.

In her Reply to Comment dated 20 November 1995, the complainant stressed that it was irregular for respondent sheriff to accept the bond of ₱12,000 considering that the properties levied upon were worth more or less ₱19,000. Section 17, Rule 39 of

the Rules of Court provides that the sheriff should have required the judgment creditor to put up a bond in the sum not greater than the value of the property levied upon which is ₱19,000. It was also irregular and corrupt for the respondent to sell the levied properties at public auction without giving notices of the date of the auction sale to the third party claimants as required by the Rules. He thereby disregarded claimants' right to participate, if not to question, the proceedings especially as to the price of the properties. The respondent unjustifiably refused to follow the requirement under Section 7, Rule 60 of the Rules of Court that in case of disagreement as to the value of property levied, he should submit the same to the court that issued the order for decision. The civil action filed against him will not exonerate him from his liability for the aforementioned irregular and corrupt practices.

On 20 May 1996, we referred this case to Hon. Benjamin T. Antonio, the Presiding Judge of Branch 170 of the RTC of Malabon, for investigation, report, and recommendation. However, Judge Antonio inhibited himself to avoid suspicion of partiality considering that the respondent is a member of his staff. Thus, we reassigned the case to the Vice-Executive Judge of the said court, Judge Amanda Valera-Cabigao.

In the affidavit she submitted during the investigation, the complainant merely adopted the testimonial and documentary evidence offered by her sisters in Civil Case No. 4514, as well as the latter's memorandum submitted in said case.

Upon the other hand, in his affidavit which he submitted during the investigation, the respondent reiterated that there is no truth in complainant's claim that she had objected to the levy and offered to pay in cash her judgment obligation. He further alleged that the third party claims of complainant's son and sisters were highly suspicious.

On 30 October 1996, Judge Cabigao submitted her Investigation Report, Findings, and Recommendation. She found the respondent to be guilty of misconduct for acting with undue haste in levying the personal properties and selling them at a public auction without giving the judgment debtor and the third party claimants a chance to be heard. She then recommended that the respondent be meted out the penalty of suspension for one month and one day as per Memorandum Circular No. 30 series of 1989 and Resolution No. 89-506 dated 20 July 1989 of the Civil Service Commission.

On 4 December 1996, we referred the report of Judge Cabigao to the Office of the Court Administrator (OCA) for evaluation, report, and recommendation.

In the Memorandum of 12 March 1997, the OCA made the following findings and conclusion:

A close review of the records reveal that as correctly claimed by complainant, respondent failed to prove that he complied with Section 18 (b and d), Rule 39 of the Rules of Court which provides that before the sale of personal property in execution, notice thereof must be given by posting a similar notice in three public places in the municipality or city where the sale is to take place for not less than five (5) nor more than ten (10) days. Respondent likewise failed to prove that written notice of sale was given to judgment debtor as required under Section 18(d) Rule 39 of the Rules of Court. Moreover, respondent also violated Section 23,