

THIRD DIVISION

[A.M. No. P-19-3988 [Formerly OCA I.P.I. No. 17-4692-P], August 14, 2019]

**MARILYN MEIM M. VDA. DE ATIENZA, COMPLAINANT, VS.
PALERMO I. AGUILAR, SHERIFF IV, OFFICE OF THE CLERK OF
COURT, REGIONAL TRIAL COURT, SAN JOSE, OCCIDENTAL
MINDORO, RESPONDENT.**

DECISION

PERALTA, J.:

Before us is an administrative complaint^[1] filed by Marilyn Meim M. Vda. de Atienza (*complainant*) against Palermo I. Aguilar (*Aguilar*), Sheriff IV, Office of the Clerk of Court, Regional Trial Court (*RTC*), San Jose, Occidental Mindoro, for misconduct and gross negligence relative to the implementation of a writ of execution issued in relation to Criminal Case No. 12655, entitled "*People v. Eleazar Candido y Janairo*."

The facts are as follows:

Complainant is one of the private complainants in a criminal case against accused Eleazar J. Candido for reckless imprudence resulting in serious physical injuries and damage to property under Article 365 of the Revised Penal Code. On April 29, 2015, Hon. Cornelio A. Sy, Presiding Judge of the Municipal Trial Court (*MTC*), San Jose, Occidental Mindoro, rendered judgment convicting the accused and awarded damages to the private complainants, the dispositive portion of which reads:

WHEREFORE, finding the evidence more than sufficient for this conviction, the court hereby pronounces the accused ELEAZAR CANDIDO y JANAIRRO, GUILTY BEYOND REASONABLE DOUBT for the crime of Reckless Imprudence Resulting in Serious Physical Injuries and Damage to Property defined and penalized under Art. 365 and sentences him to a penalty of FOUR (4) MONTHS AND ONE (1) DAY TO FOUR (4) YEARS, TWO (2) MONTHS.

As far as damages is concerned, the court finds the respondent and so hold him liable to pay the following:

- 1) Actual damages amounting to P240,000.00 consisting [of] the medical and other related expenses covered by receipts;
- 2) Moral damages in amount of P25,000.00 for the outrage and wounded feelings and trauma they suffered from the reckless driving of the drunk driver;

3) Exemplary damages in the amount of P25,000.00;

4) Cost of suit.

SO ORDERED.^[2]

Subsequently, a Writ of Execution^[3] was issued by Clerk of Court Socorro G. Gorospe, MTC, San Jose, Occidental Mindoro, directing Aguilar to cause the execution of the judgment of the court dated April 29, 2015, which was final and executory as regards with the awarded damages. On September 1, 2015, Clerk of Court Gorospe gave Aguilar the amount of Four Thousand Five Hundred Fifty Pesos (P4,550.00) to cover for his expenses in the implementation of the writ.^[4]

Thereafter, complainant made several follow-ups to Aguilar as to the status of the writ of execution and pleaded for his help because she needed the proceeds of the award of damages for her medical expenses. Complainant lamented that Aguilar and accused's respective houses are both located in Barangay Pag-asa, San Jose, Occidental Mindoro, yet Aguilar's usual answer to her follow-ups was, "*hindi ko matiyempo-tiyempuhan si Eleazar eh.*"

On September 29, 2015, complainant went to the MTC and the OCC RTC, San Jose, Occidental Mindoro, to inquire anew on the status of the writ's implementation, however, she was informed that Aguilar has not submitted any report on the matter.

On April 5, 2017, the Office of the Court Administrator (OCA) directed Aguilar to file his comment on the complaint against him.^[5] In his Manifestation/Motion^[6] dated June 9, 2017, Aguilar manifested that he be given more time to file his comment, or until June 30, 2017, to file his comment as he was suffering from an illness and erratic high blood pressure. On July 25, 2017, the OCA granted Aguilar's motion to extend time until June 30, 2017 to file his comment.^[7] On October 6, 2017, due to Aguilar's non-compliance to submit the required comment, the OCA issued a 1st Tracer^[8] and reiterated its earlier directive to require Aguilar to submit his comment on the complaint against him.

Thus, on June 13, 2018, as recommended by the OCA, the Court resolved to direct Aguilar to show cause why he should not be administratively dealt with, for his failure to submit the required comment despite two directives to do so, and to submit the said comment.^[9]

In his Comment^[10] dated August 30, 2018, Aguilar explained that he was unable to file his comment on time because he suffered from a life-threatening condition which required him to rest and recuperate. He submitted a medical certificate^[11] dated December 12, 2017 where it was stated therein that Aguilar was diagnosed to have COPD D (*Severe Obstruction Ventilatory Defect*) and was declared as unfit to continue his current profession. Another medical certificate^[12] issued on the same date also certified that Aguilar was diagnosed to have *Dilated Cardiomyopathy*, Hypertension, and Diabetes Type 2, and was advised to resume work with limitations that extreme physical and psychological stress must be avoided. Aguilar's medical records, issued by The Medical City, also showed that due to his medical condition, he was advised to rest for three (3) months.

As to the non-implementation of the subject writ of execution, Aguilar claimed that he actually served the writ to accused on September 14, 2015, as evidenced by the signature of accused on the copy^[13] of the subject writ of execution. However, Aguilar explained that the implementation of the writ was never fully satisfied due to several circumstances, to wit: (1) accused did not have a permanent address, and sometimes accused would stay with his parents and the latter would hide him so he was unable to meet accused anymore; (2) upon receipt of the writ, accused merely shrugged off and claimed that he has no money to pay for the damages; and (3) while it may be true that accused' family has a real property in a remote island to which the judgment could be attached, the property could not be presumed to be owned by the accused.^[14] Aguilar maintained that he had exerted all diligent efforts to locate the accused as well as his properties but failed to find them, thus, he could not be considered as remiss in his duties as sheriff.^[15]

With regard to the periodic reporting, Aguilar admitted that he failed to make a periodic report as to the status of the execution of the subject writ. He claimed that he had so many duties and responsibilities being a sheriff of two courts that he has no free time to make periodic reports on the writs he executed. While admitting that he failed to submit the report, Aguilar alleged that the same was not deliberately done but rather it just slipped off his mind as he was already old and sickly. Aguilar acknowledged that volume of work is not an excuse from non-compliance with the mandate of the law, nevertheless, considering his circumstances, he prays for the indulgence of the Court.^[16]

In a Resolution^[17] dated January 16, 2019, the Court resolved to refer the instant administrative matter to the OCA for evaluation, report and recommendation.

In a Memorandum^[18] dated April 22, 2019, the OCA found Aguilar guilty of Simple Neglect of Duty for his failure to (a) immediately implement the Writ of Execution dated April 29, 2015 relative to Criminal Case No. 12666; (b) submit the required periodic reports with respect to the implementation of the writ; and (c) for his delay in complying with the directives of the OCA to submit a comment on the complaint against him. It, thus, recommended that the instant complaint be re-docketed as a regular administrative complaint and that Aguilar be suspended for one (1) month and one (1) day, with stern warning that the commission of the same or any similar act will be dealt with more severely.

We agree with the findings and recommendation of the OCA.

Section 9, Rule 39 of the Rules of Court provides for the manner by which execution of judgments for money should be enforced by a sheriff, to wit:

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(a) *Immediate payment on demand.* - The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt

under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amounts to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

The clerk of said court shall thereafter arrange for the remittance of the deposit to the account of the court that issued the writ whose clerk of court shall then deliver said payment to the judgment obligee in satisfaction of the judgment. The excess, if any, shall be delivered to the judgment obligor while the lawful fees shall be retained by the clerk of court for disposition as provided by law. In no case shall the executing sheriff demand that any payment by check be made payable to him.

(b) *Satisfaction by levy.* - If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed, of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of attachment.

(c) *Garnishment of debts and credits.* - The officer may levy on debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal property not capable of manual delivery in the possession or control of third parties. Levy shall be made by serving notice upon the person owing such debts or having in his possession or control such credits to which the judgment obligor is