

THIRD DIVISION

[A. M. No. P-14-3233 [Formerly OCA IPI No. 12-3783-P], October 14, 2019]

LYDIA BALMACEDA-TUGANO, COMPLAINANT, VS. JERRY R. MARCELINO, SHERIFF III, METROPOLITAN TRIAL COURT, BRANCH 71, QUEZON CITY, RESPONDENT.

R E S O L U T I O N

PERALTA, J.:

For resolution is a Complaint^[1] filed by Lydia Balmaceda-Tugano (*complainant*) against Jerry R. Marcelino (*Marcelino*), Sheriff III, Branch 71, Metropolitan Trial Court (MeTC), Pasig City, for grave abuse of authority, in relation to Civil Case No. 17144, entitled "*Heirs of Leonila Licerio-Bautista, etc. vs. Lydia Tugano*" for unlawful detainer.

The facts are as follows:

Complainant is the defendant in the aforesaid unlawful detainer case. In a Decision dated February 22, 2010, the MeTC, Branch 71, Pasig City, ordered complainant to vacate the subject premises and peacefully surrender possession to the plaintiffs therein. Complainant appealed before the Regional Trial Court of Pasig City, Branch 161, however, the appeal was likewise dismissed. Consequently, on November 3, 2011, the court *a quo* issued a Writ of Execution.^[2] Aware of her impending eviction upon finality of the decision, complainant tried to gather good lumber, galvanized iron and other materials from her house to be able to build another home in another place. However, she was prevented from taking away the said materials by the barangay officials of Barangay Oranbo, Pasig City, despite her explanation that the decision of the court covered only the lot and not the house which she built using her own resources.

In her complaint, complainant assailed the manner by which Marcelino enforced the writ of execution. She claimed that all the defendants in the case were neither notified nor furnished with a copy of the writ of execution and were not given sufficient time of at least five (5) days to vacate the premises. She also averred at the time Marcelino enforced the writ, she was not at home because she was looking for a new place where they could move in. She lamented that Marcelino hastily took over the possession and occupancy of their house and turned it over to the plaintiffs without even giving them a chance to remove their house so that they could rebuild in another place.

On January 30, 2012, the Office of the Court Administrator (OCA) directed Marcelino to submit his comment on the charge against him.^[3]

In his Comment^[4] dated February 23, 2012, Marcelino explained that contrary to complainant's claim, he issued a Notice to Vacate^[5] which he posted on the front door of complainant's house because the latter was not around. He admitted that he opened the house and enforced the writ *albeit* in the presence of two (2) barangay peace officers and one (1) barangay councilor.

In her Reply^[6] dated April 13, 2012, complainant maintained that she never received personally from Marcelino the copy of the Writ of Execution. She pointed out that Marcelino essentially admitted that he indeed violated the procedures when he served the writ of execution on November 7, 2011 by merely posting it on the door of the subject premises, and forcibly opened the locked door of the house to remove and bring out all her belongings. She asserted that because Marcelino unlawfully and whimsically evicted her, she had no place to even put her personal belongings which resulted to its loss and damage.

On May 22, 2014, the OCA recommended that the instant administrative complaint be re-docketed as a regular administrative matter, and that Marcelino be fined in the amount of Five Thousand Pesos (P5,000.00) for having been found guilty of grave abuse of authority.^[7]

We adopt the findings and recommendation of the OCA.

Well settled is that the sheriff's duty in the execution of a writ is purely ministerial; he is to execute the order of the court strictly to the letter. He has no discretion whether to execute the judgment or not. When the writ is placed in his hands, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. It is only by doing so could he ensure that the order is executed without undue delay.^[8] This holds especially true herein where the nature of the case requires immediate execution. Absent a [temporary restraining order] TRO, an order of quashal, or compliance with Section 19, Rule 70 of the Rules of Court, respondent sheriff has no alternative but to enforce the writ.^[9]

However, immediacy of the execution does not mean instant execution. The sheriff must comply with the Rules of Court in executing a writ. Any act deviating from the procedure laid down in the Rules of Court is a misconduct and warrants disciplinary action. Marcelino's duties as a sheriff in implementing a writ of execution for the delivery and restitution of real property are outlined in Rule 39, Section 10(c) and (d), and Section 14 of the Rules of Court:

Section 10. *Execution of judgments for specific act.-*

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(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