

## EN BANC

**[ A.M. No. P-16-3430 (Formerly OCA IPI No. 12-3905-P), March 01, 2016 ]**

**AIREEN A. MAHUSAY, COMPLAINANT, VS. GEORGE E. GAREZA, SHERIFF III, MUNICIPAL TRIAL COURT IN CITIES, VICTORIAS CITY, NEGROS OCCIDENTAL, RESPONDENT.**

### DECISION

#### PER CURIAM:

The instant administrative case arose from a complaint-affidavit<sup>[1]</sup> filed by complainant Aireen A. Mahusay (complainant) charging respondent George E. Gareza (respondent), Sheriff III of the Municipal Trial Court in Cities of Victorias City, Negros Occidental (MTCC), of dishonesty, grave misconduct, and gross negligence.

#### The Facts

In her complaint-affidavit, complainant averred that she is the authorized representative of Lopue's Victorias Corporation (Lopue's), the plaintiff in Small Claims Case No. SCC-8-V against one Joseph Andrei A. Garcia (Garcia), entitled "*Lopue's Victorias Corporation v. Joseph Andrei A. Garcia*"<sup>[2]</sup> filed before the MTCC of Victorias City. She alleged that on February 9, 2011, the MTCC of Victorias City rendered a Decision<sup>[3]</sup> based on the compromise agreement<sup>[4]</sup> executed between the parties, where Garcia undertook to pay, in installments, the total amount of P54,591.05 to Lopue's. However, because Garcia reneged on his undertaking under the compromise agreement, Lopue's filed a motion for the issuance of a writ of execution,<sup>[5]</sup> which the MTCC granted<sup>[6]</sup> on October 11, 2011. Respondent was tasked to implement the writ.<sup>[7]</sup>

Complainant alleged that respondent, despite having received a partial payment from Garcia through his staff, Janice C. Sta. Ana (Sta. Ana) in the amount of P10,000.00, failed to remit the same to Lopue's for a period of around four (4) months and ten (10) days.<sup>[8]</sup> Respondent failed to turn over the same despite follow-ups from complainant.<sup>[9]</sup>

On February 24, 2012, the MTCC Branch Clerk, Cheline T. Sorreno (Sorreno), issued a reminder<sup>[10]</sup> to respondent requiring him to submit a return on the writ, Thereafter, or on March 7, 2012, more than four (4) months after the writ of execution had been issued, Lopue's was able to receive<sup>[11]</sup> the P10,000.00 partial payment in satisfaction of Garcia's Obligation. Still, the rest of Garcia's obligation remained unsatisfied notwithstanding the lapse of five (5) months from the issuance of the writ of execution; hence, the administrative complaint against respondent.<sup>[12]</sup>

In his defense,<sup>[13]</sup> respondent denied complainant's allegations and claimed that upon receipt of the writ of execution, he inquired from the latter the exact amount that Garcia owed to Lopue's, considering the alleged previous payments he had made. He also averred that Garcia was willing to settle the balance of the judgment obligation, provided that their records would tally complainant's outstanding balance in the amount of P55,000.00, which was much more than Garcia's computation at P17,000.00.<sup>[14]</sup> Respondent further explained that he deferred the enforcement of the writ of execution in deference to Garcia's status as City Councilor of Victorias City and the latter's willingness to settle his account.<sup>[15]</sup>

Thereafter, when Garcia, through Sta. Ana, tendered the amount of P10,000.00 as partial payment of the judgment obligation, complainant refused to accept the same and instead, demanded the full settlement of the obligation. Further, respondent admitted that he failed to make a return of service as he did not know "how to establish the fact that defendant Garcia took the money he was supposed to pay through me."<sup>[16]</sup>

On January 8, 2014, the Court, through the Office of the Court Administrator (OCA), referred<sup>[17]</sup> the instant administrative complaint to Executive Judge Dyna Doll C. Trocio (Executive Judge Trocio) of the Regional Trial Court of Silay City, Negros Occidental (RTC), for investigation, report, and recommendation.<sup>[18]</sup>

Pending investigation, or on May 30, 2014, complainant filed an ex-parte motion<sup>[19]</sup> to direct respondent to enforce the writ of execution, which the MTCC granted in an Order<sup>[20]</sup> dated June 2, 2014. Thus, on July 24, 2014, respondent filed a Return of Service,<sup>[21]</sup> stating that, despite demands for payment, the writ could not be served as Garcia was unemployed, had no other source of income, and had no personal properties that can be levied against him.

In her Investigation Report<sup>[22]</sup> dated March 11, 2015, Executive Judge Trocio found that respondent's Return of Service was submitted only on July 24, 2014, or two (2) years, nine (9) months, and thirteen (13) days<sup>[23]</sup> after the issuance of the writ of execution, and only after he was directed to do so upon *ex-parte* motion of complainant. She found that the delay could only be attributed to respondent's irresponsibility and apparent refusal to perform his duty. As such, he failed to live up to his sworn duty to uphold and execute the law.<sup>[24]</sup> Consequently, she recommended that respondent be dismissed from the service, having found him guilty of dishonesty, gross neglect of duty, and simple neglect of duty.<sup>[25]</sup>

### **The OCA's Report and Recommendation**

In a Memorandum<sup>[26]</sup> dated December 1, 2015, the OCA concurred with Executive Judge Trocio's recommendation that respondent should be held guilty of dishonesty, gross neglect of duty, and simple neglect of duty and, accordingly, be dismissed from service, with forfeiture of all benefits and privileges except accrued leave credits, if any, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.<sup>[27]</sup>

Holding that sheriffs are responsible for the speedy and efficient implementation of writs of execution, the OCA found that respondent did not observe the degree of dedication required of him as a sheriff, in that he failed to discharge his duties in the execution of the final judgments of the courts. Moreover, a sheriff's duty is purely ministerial; hence, he must comply with this mandated ministerial duty as speedily as possible, without any need for the litigants to "follow up" the implementation of the writ.<sup>[28]</sup>

Respondent's failure to turn over the partial payment that he received from Garcia to the judgment creditor, Lopue's, or to the Branch Clerk, was an act of misappropriation of funds amounting to *dishonesty*. Furthermore, his failure to issue official receipts for the amount received was also a violation of the General Auditing and Accounting Rules.<sup>[29]</sup>

Moreover, respondent should also be held liable for *gross neglect of duty* for failing to implement the writ for a period of almost three (3) years<sup>[30]</sup> after its issuance.<sup>[31]</sup>

Finally, he should likewise be held guilty of *simple neglect of duty* for failing to make or submit a report/return on the implementation of the writ of execution within the required period under the Rules of Court.<sup>[32]</sup>

### **The Issue Before the Court**

The issue for the Court's resolution is whether or not respondent should be held administratively liable for dishonesty, gross neglect of duty, and simple neglect of duty and, accordingly, be dismissed from service.

### **The Court's Ruling**

The factual findings of the Investigating Judge and the recommendation of the OCA are well-taken and are therefore adopted by the Court.

Sheriffs play an important role in the administration of justice. They are tasked to execute final judgments of the courts. If not enforced, such decisions become empty victories of the prevailing parties. As agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its orders, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice.<sup>[33]</sup>

Sheriffs ought to know that they have a sworn responsibility to serve writs of execution with utmost dispatch. When writs are placed in their hands, it is their ministerial duty to proceed with reasonable celerity and promptness to execute them in accordance with their mandate. Unless restrained by a court order, they should see to it that the execution of judgments is not unduly delayed. Accordingly, they must comply with their mandated ministerial duty as speedily as possible. As agents of the law, high standards are expected of sheriffs.<sup>[34]</sup>

With regard to the sheriff's duty to turn over or remit any payments in satisfaction of money judgments, Section 9 (a), Rule 39 of the Rules of Court provides in part:

Section. 9. *Execution of judgments for money, how enforced.*

(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 oblige 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 amount 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.

x x x x (Emphases and underscoring supplied)

In this case, it has been established, through substantial evidence, that respondent *received* the amount of P10,000.00 from Garcia, through the latter's staff, in partial satisfaction of the judgment obligation in favor of Lopue's. It; has also been established that despite the lapse of more or less four (4) months, respondent failed to remit the same to the Branch Clerk of the MTCC of Victorias City. In fact, had it not been for several follow-ups from complainant and a reminder from the Branch Clerk requiring respondent to make a return of service on the writ of execution, the latter would not have remitted the money. Likewise, even after having remitted the partial payment from Garcia, respondent failed to satisfactorily implement the writ and only made a return of service after a period of almost three (3) years after the issuance thereof.

Under these premises, the Court thus concurs with the OCA that respondent's omissions in this case make him administratively liable for dishonesty, as well as for gross neglect of duty.<sup>[35]</sup>

Records indubitably show his receipt of the money which he was obliged to remit immediately to the Branch Clerk, it being his *ministerial duty* to satisfactorily enforce the writ of execution. As the amounts were received by him by virtue of his