

FIRST DIVISION

**[A.M. No. P-11-2992 (Formerly A.M. No. 11-8-156-RTC),
November 09, 2015]**

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS. ROGER D. COREA,
SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 39, POLOMOLOK, SOUTH
COTABATO, RESPONDENT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

The instant administrative complaint arose from a Letter^[1] dated July 15, 2009 of Elsie D. Lansang (Elsie), General Manager of the Rural Bank of Polomolok, bringing to the attention of the Supreme Court that Sheriff Roger D. Corea (Sheriff Corea) of the Regional Trial Court, Polomolok, South Cotabato, Branch 39 (RTC-Branch 39), issued to the Bank a Billing Statement^[2] dated June 30, 2009 which reads:

Respectfully submitting the herein billing of Sheriff service fee and other incidental expenses incurable in your application of foreclosure in EJP Case No. 11-09 & 12-09, in the amount of SIX THOUSAND PESOS (P6,000.00), chargeable to the account of the mortgagors, copy of the Notices are hereto attached for your perusal, to wit;

EJP CASE NO. 11-09	P3,000.00
EJP CASE NO. 12-09	<u>3,000.00</u>
	P6,000.00

Your kind consideration and immediate approval upon receipt is highly appreciated.

Elsie inquired whether the said charges were proper, legal, and in accordance with law.

Through 1st Indorsement^[3] dated October 19, 2009, then Court Administrator, now Justice of this Court, Jose P. Perez referred Elsie's Letter to Executive Judge Eddie Rojas (Judge Rojas) of the RTC-Branch 39 for appropriate action.

Upon receipt of the 1st Indorsement, Judge Rojas required Sheriff Corea to file his comment or answer to Elsie's Letter.

In his Answer/Comment^[4] dated November 25, 2009, Sheriff Corea denied Elsie's imputations against him. Sheriff Corea narrated that: (a) The former General Manager of the Rural Bank of Polomolok was Engineer Jose R. Lansang (Jose), Elsie's late husband; (b) Sheriff Corea had submitted to Jose, as General Manager of the Bank, two or three Billing Statements all with the sentence, "[y]our kind consideration and immediate approval is highly appreciated," which constituted a "rider" allowing Jose to determine the proper amounts of service fee and other incidental expenses to be paid to Sheriff Corea in connection with extrajudicial foreclosures the said Sheriff conducted for the Bank; (c) There had been no problem between Jose and Sheriff Corea as regards the Sheriffs service fee and incidental expenses and a misunderstanding as to such amounts only arose when Elsie assumed the post as General Manager of the Rural Bank of Polomolok upon Jose's death; (d) Sheriff Corea's Billing Statement dated June 30, 2009 to Elsie contained the same rider as those previously sent to Jose; (e) In connection with EJP Cases No. 11-09 and 12-09, Sheriff Corea had the Notices to Parties of Sheriffs Public Auction Sale posted on the bulletin boards at the lobby of RTC-Branch 39 and personally served at the mortgagee's residence; (f) The foreclosure and public auction sale of the properties in EJP Cases No. 11-09 and 12-09 had already been completed and the Rural Bank of Polomolok already received the Certificate of Sale in EJP Case No. 12-09; (g) Sheriff Corea was not in the practice of billing a standard fee of P3,000.00 per EJP case as Elsie could approve or deny whatever billing the Sheriff sent her, Sheriff Corea had billed Elsie only once, and Sheriff Corea had no discretion to standardize any fee or expense that might arise from his services; (h) No complaint had ever been filed against Sheriff Corea since he served as a Sheriff of RTC-Branch 39, Municipal Trial Court (MTC) of Polomolok, and MTC-Tupi; and (i) There was only a misunderstanding that needed enlightenment

between Sheriff Corea and Elsie. All told, Sheriff Corea requested that the complaint against him be dismissed outright for lack of merit.

Elsie filed a Comment/Reply dated December 2009, alleging that even during the time when Jose was the General Manager of the Rural Bank of Polomolok and Elsie was a member of the Board of Directors, the said Board members were always arguing about Sheriff Corea's Billing Statements which were high, unjustifiable, unsupported by receipts, and not based on any Supreme Court Circular. The Bank merely tolerated and paid Sheriff Corea's Billing Statements even when its Board of Directors did not deem the amounts stated therein as proper because the Board was afraid that the Sheriff would delay or ignore the applications for foreclosure of the Bank. The Board finally came to agree to inquire, through Elsie, with the Court Administrator on whether it was proper for Sheriff Corea to charge and bill fees in the amount of P3,000.00 for posting and serving notices of foreclosure when the property and landowner-mortgagor were situated within the Poblacion, only about three kilometers away from RTC-Branch 39.

The Office of the Court Administrator (OCA) submitted an agenda report dated July 29, 2011. In a Resolution^[5] dated September 26, 2011, the Court treated the agenda report as an administrative complaint against Sheriff Corea, docketed the said complaint as a regular administrative matter, and directed Sheriff Corea to comment on the complaint against him.

Sheriff Corea submitted his Comment/Answer^[6] dated November 18, 2011, substantially reiterating the contents in his Answer/Comment submitted to Judge Rojas.

In its Resolution^[7] dated August 13, 2012, the Court referred the administrative matter to Executive Judge Oscar P. Noel, Jr. (Judge Noel) of the RTC, General Santos City, South Cotabato, for investigation, report and recommendation within 60 days from receipt of the records.

Judge Noel submitted a partial report^[8] dated March 14, 2013 in which he stated that:

In compliance with the Resolution of the Honorable First Division of the Supreme Court dated 13 August 2012, the undersigned tried to conduct an investigation by contacting [Elsie] thru her stepson for her to clarify the complaint particularly the counter allegation by [Sheriff Corea] found in the records of the case that the amount of THREE THOUSAND (P3,000.00) PESOS billed for each case is subject to the approval of the bank thru its officers particularly [Elsie]. Several invitations were made but [Elsie] failed to appear allegedly due to very tight schedule brought about by the almost daily brown-outs in addition to [Elsie's] slow phase brought about by her advance age.

On the other hand, undersigned also had difficulty scheduling a meeting with both parties due to brown-outs experienced not only by the City of General Santos but also the Provinces of South Cotabato and Sarangani, hence, the need to prioritize the cases of the Regional Trial Court, Branch 35 and those being handled by the Sarangani Justice on Wheels which is also presided by yours truly.

However, a talk with some of the sheriffs in General Santos City reveals that they do not normally bill the parties. All that they do when it is necessary to make a budget like in cases of demolition is to prepare an estimate but leaves it to the party/representative to handle the funds and make the necessary disbursements. With respect to Extra-Judicial Foreclosure, they normally receive at the instance of the client like the "Balikatan" a fixed amount of EIGHT HUNDRED (P800.00) PESOS regardless of distance. Allegedly, they do not ask from the parties but it had been the habit of the parties thru counsels to give the above-said amount.

To the mind of the undersigned, it is not proper for a sheriff to bill a party an amount which is more than what is necessary to perform his duties and responsibilities. Even granting that the bill is subject to the approval of the party, no party will ever deny it at the risk of the sheriff delaying the implementation of the Extra-Judicial Foreclosure proceedings.

A bill might be proper only after completing the task but only for the reimbursement of reasonable actual expenses duly supported with official receipts.

For billing the party a fixed/standard amount, Sheriff Corea should be, at least, admonished or reprimanded since based on his claims as contained in the records of the case, he was not able to satisfactorily justify why he billed [Elsie] for his services at a standard rate. The reasoning

that it is subject to the approval of [Elsie] is, to the undersigned, not acceptable.

To avoid similar situations, undersigned hereby recommends that a petty cash fund be maintained and Sheriffs shall be allowed to make cash advances from the Office of the Clerk of Court for expenses necessary in the performance of their duties and responsibilities in such an amount deemed reasonable by the Clerk of Court or the Executive Judge subject to liquidation. Failure to liquidate a prior cash advance will disqualify the sheriff to request for another cash advance. The party shall then be required to pay for the actual expenses directly to the court's cashier/cash clerk and accordingly issued a receipt. As an alternative, the party shall be required to make a deposit to the Office of the Clerk of Court to be released as cash advance to be immediately liquidated by the sheriff. Any excess amount shall be returned by the sheriff to the cashier who in turn shall return the same to the party making the deposit subject to regular accounting and auditing procedures. Of course, sheriffs who fail to immediately liquidate and return any excess amount shall be subject to disciplinary action.^[9]

Judge Noel then requested for an additional 70 days to complete his investigation.

The Court, in a Resolution dated July 1, 2013, noted Judge Noel's partial report and granted his prayer for extension of time to submit his report and recommendation.

Judge Noel submitted his Report^[10] dated August 20, 2013 in which he recommended the dismissal of the administrative matter against Sheriff Corea considering that Elsie failed to appear for the hearings scheduled on April 24, April 25, May 2, May 8, and June 25, 2013. Judge Noel likewise prayed that his partial report dated March 14, 2013 be duly considered.

The OCA submitted to the Court its Memorandum dated August 11, 2014 with the finding that under Circular No. 7-2002 or the "Guidelines for the Enforcement of Supreme Court Resolution of December 14, 1999 in Administrative Matter No. 99-10-05-0 (Re: Procedure in Extrajudicial Foreclosure of Mortgage), as amended by the Resolutions dated January 30, 2001 and August 7, 2001," only the Clerk of Court may collect the fees prior to the extrajudicial foreclosure, subject only to the exception under Section 6 of the same Circular, in relation to Rule 141, Section 10(1) of the Rules of Court. The OCA recommended thus:

IN VIEW OF THE FOREGOING, it is respectfully recommended for the consideration of the Court that Roger D. Corea, Sheriff IV, Regional Trial Court, Branch 39, Polomolok, South Cotabato be found **GUILTY** of conduct prejudicial to the best interest of the service and be **FINED** in the amount of Five Thousand Pesos (P5,000.00), payable within a **NON-EXTENDIBLE** period of thirty (30) days from notice.^[11]

In a Resolution^[12] dated November 26, 2014, the Court required the respondent to manifest within 10 days from notice if he was willing to submit the administrative matter for resolution based on the pleadings filed.

Sheriff Corea complied with the foregoing Resolution of the Court and submitted his Manifestation^[13] dated March 3, 2015, praying that his attached Judicial Affidavit be admitted and included in the records of the case and manifesting his willingness to submit the matter for resolution based on the records and pleadings filed.

The Court agrees with the factual and legal conclusions of the OCA, except the recommended penalty.

Section 2 of Circular No. 7-2002^[14] authorizes the Clerk of Court to collect filing fees for the conduct of extrajudicial foreclosure of real estate or chattel mortgage under the direction of the sheriff in the following amounts^[15]:

Sec. 2. Upon receipt of the application, the **Clerk of Court** shall:

x x x x

- c. For the conduct of extra-judicial foreclosure of real estate or chattel mortgage under the direction of the sheriff, collect the appropriate filing fees and issue the corresponding