

EN BANC

[A.M. No. P-13-3123, June 10, 2014]

ALBERTO VALDEZ, COMPLAINANT, VS. DESIDERIO W. MACUSI, JR., SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 25, TABUK, KALINGA, RESPONDENT.

DECISION

PER CURIAM:

This administrative matter refers to the failure of respondent Desiderio W. Macusi, Jr., Sheriff IV, Regional Trial Court (RTC) of Tabuk, Kalinga, Branch 25, to act on a writ of execution issued by the Municipal Trial Court in Cities (MTCC) of Tabuk, Kalinga on 3 December 2003 in Criminal Case No. 4050, entitled "*People v. Jorge Macusi y Wayet*," for reckless imprudence and negligence resulting in homicide. Sheriff Macusi was charged with misfeasance, nonfeasance or conduct prejudicial to the best interest of the service.

In a letter-complaint^[1] dated 12 May 2009 sent to Judge Victor Dalanao (Judge Dalanao), presiding judge of the MTCC of Tabuk, Kalinga, complainant Alberto Valdez (Valdez) alleged that Sheriff Macusi failed to act on the writ of execution issued by the MTCC in violation of Section 14, Rule 39 of the 1997 Rules of Civil Procedure.

In his Comment^[2] dated 14 July 2009, Sheriff Macusi stated that he was appointed as Sheriff IV in the Province of Kalinga on 24 May 2004. Sheriff Macusi explained that in a Report^[3] dated 6 January 2004, his predecessor, Francisco C. Mabazza, served on accused Jorge Macusi the writ of execution issued by the MTCC on 5 December 2003. However, the accused replied that he had no money to pay for the execution. Thus, the notation in the writ of execution was "unsatisfactory (sic) served." Thereafter, Sheriff Macusi stated that he tried to serve the order again by entering the residence of defendant looking for personal properties that could be confiscated on account of the writ but to no avail. Sheriff Macusi then asked accused to voluntarily comply with his legal obligation but found out that accused had suffered a stroke and could no longer fend for himself and his family and resorted to accepting charity from his sister.

In a Partial Report^[4] dated 3 May 2006, Sheriff Macusi filed a return of the writ of execution stating that it was still unserved. The relevant portions of the Report state:

1. That the accused because of the incident suffered a stroke and therefrom could no longer find a livelihood for himself and his children and as stated in the order of the Honorable Court is now living on the charity of his sister. His sister is also tending to the needs of their

mother who also suffered the same fate because of illness that befell her son;

x x x x

3. That the court battle begun armed with the hope that the accused was never given his day in court (in fact an ocular inspection was done to determine the seriousness of the illness of the accused and at that time he could hardly speak and walk yet the court continued hearing his case; thus, his right to be present in all the stages of the court proceedings of his case was denied) will be imprisoned should the decision of the Hon. Court will (sic) be against him;

x x x x

Sheriff Macusi averred that he could not be held liable for misfeasance, nonfeasance or conduct prejudicial to the best interest of the service since he carried out all the possible legal remedies on execution and satisfaction of judgment under the rules.

On 19 June 2006, Judge Dalanao issued an Order^[5] stating that the Partial Report dated 3 May 2006 of Sheriff Macusi was an improper and inadequate report as required under the Rules. The relevant portions of the Order state:

It appears therefrom that the said report is not the report contemplated by law, which should be submitted monthly to the Court (Section 14, Rule 39, 1997 Rules of Civil Procedure).

Instead, the Sheriff appears to be lawyering for accused, even going to the extent of accusing the Court of having denied the accused his day in Court. Certainly, this comment, from a responsible officer of the Court is unwarranted or without any justification at all. Not only that, it will certainly diminish the good image of the Court, and worst, tarnish the faith and confidence of the litigants in our judicial processes.

The Court just came to know that the accused in this case is the brother of Sheriff Desiderio Macusi. The least that he should have done was to inhibit himself from handling this case.

Furnish a copy of this Order to the Executive Judge for his information and/or appropriate action without prejudice for this Court to take measures appropriate under the premises, where warranted.

SO ORDERED.

Valdez, in the letter-complaint, added that Sheriff Macusi did not submit another report to the court since the time the MTCC issued the Order dated 19 June 2006. Acting on the letter-complaint, Judge Dalanao issued an Order dated 13 May 2009 endorsing the letter-complaint to the Office of the Court Administrator (OCA) for

appropriate action.

In a Report dated 1 June 2010, the OCA recommended that the administrative complaint be referred to the Executive Judge of the RTC of Bulanao, Tabuk City, Kalinga, Branch 25, for investigation, report and recommendation within 60 days from receipt of notice. In a Resolution^[6] dated 28 July 2010, this Court adopted the recommendation of the OCA and referred the matter to Executive Judge Marcelino K. Wacas (Judge Wacas).

In an Investigation Report^[7] dated 20 April 2012, Judge Wacas found no substantial evidence to hold Sheriff Macusi for the offense charged and recommended the dismissal of the complaint. In a Resolution^[8] dated 4 July 2012, this Court referred the Investigation Report to the OCA.

In its Report^[9] dated 23 April 2013, the OCA disagreed with the recommendation of Judge Wacas and found Sheriff Macusi liable for (1) simple neglect of duty for his failure to submit the proper returns, and (2) violation of the Code of Conduct for Court Personnel for his failure to disclose that the accused in "*People v. Jorge Macusi y Wayet*" is his brother. The OCA recommended that Sheriff Macusi be suspended from office for two months without pay. The recommendation of the OCA states:

1. The instant administrative complaint be RE-DOCKETED as a regular administrative matter;
2. Desiderio W. Macusi, Jr., Sheriff IV, Branch 25, Regional Trial Court, Tabuk, Kalinga, be held LIABLE for Simple Neglect of Duty and Violation of the Code of Conduct for Court Personnel; and
3. Sheriff Macusi be SUSPENDED from office for two (2) months without pay, with a WARNING that a repetition of the same or a similar act shall be dealt with more severely.^[10]

We adopt the findings of the OCA but modify its recommendation on the penalty.

Section 14, Rule 39 of the 1997 Rules of Civil Procedure states:

Section 14. *Return of writ of execution.* — The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.