

SECOND DIVISION

[A.M. No. P-14-3198 (formerly A.M. OCA IPI No. 09-3158-P), July 23, 2014]

FLORA P. HOLASCA, PETITIONER, VS. ANSELMO P. PAGUNSAN, JR., SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 20, IMUS, CAVITE, RESPONDENT.

[A.M. NO. P-14-3199 (FORMERLY A.M. OCA IPI NO. 10-3415-P)]

OFFICE OF THE COURT ADMINISTRATOR (OCA), PETITIONER, VS. FRANCISCO J. CALIBUSO, JR., CLERK OF COURT III, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 1, CAVITE CITY, RESPONDENT.

D E C I S I O N

BRION, J.:

We resolve the administrative matters consolidated pursuant to the Court's Resolution of June 16, 2010.^[1]

Factual Background

The cases OCA IPI Nos. 09-3158-P and 10-3415-P arose from the complaint-affidavit^[2] dated May 5, 2009 of Flora P. Holasca (*Holasca*) against the respondent Anselmo P. Pagunsan, Jr., (*Pagunsan*), Sheriff IV, Regional Trial Court (*RTC*), Branch 20, Imus, Cavite, received by the Office of the Court Administrator (OCA).

i. Holasca's Complaint

In her complaint-affidavit, Holasca charged Sheriff Pagunsan with Gross Misconduct and Serious Dereliction of Duty in connection with his delay and refusal to implement the writ of execution issued in an ejectment case docketed as Civil Case No. 07-1764 (*Flora P. Holasca v. Sps. Nestor B. Moya & Vilma B. Moya*).

Holasca was the plaintiff in the ejectment case. After obtaining a favorable judgment, she sought the execution of the decision through Sheriff Pagunsan. She narrated that on February 11, 2009, Sheriff Pagunsan, accompanied by a male companion, (allegedly a Process Server) and Francisco J. Calibuso, Jr. (Clerk of Court III, Municipal Trial Court in Cities, Branch 1, Cavite City, (*Calibuso*)) went to the occupied property located at Alapan II-A, Imus Cavite, to serve a copy of a Writ of Execution.^[3] There, Sheriff Pagunsan allegedly told the defendants in Civil Case No. 07-1764 Spouses Nestor and Vilma Moya (*defendants*), not to talk to anybody regarding the payment of damages in the ejectment case. Sheriff Pagunsan likewise told the defendants: "*marami pala kayong gamit na pwede kong hilain pero huwag kayong mag-alala, hindi ako hihila kahit ano*".^[4] Before leaving the premises, Sheriff

Pagunsan advised the defendants to see him in his office on February 13, 2009.

Holasca further alleged that Sheriff Pagunsan did not conduct an inventory of all the chattels found inside the house of the defendants, or evict the latter from its premises. According to her, Calibuso, in the presence of the male companion, handed over to Sheriff Pagunsan the amount of P1,500.00, which the latter accepted without issuing any official receipt. Before parting ways, Calibuso allegedly told Sheriff Pagunsan: "*Bahala ka na magreport sa Clerk of Court nyo niyan*".^[5]

When Holasca inspected the property on February 19, 2009, she discovered that the defendants had vacated the premises, leaving the place in

total disarray and littered with debris. When she reported the incident to Sheriff Pagunsan, the latter allegedly did not do anything.

Holasca tried to contact Sheriff Pagunsan regarding the money judgment outlined in the writ of execution, but to no avail. When Calibuso finally confronted Sheriff Pagunsan to inquire about the defendants' whereabouts, Sheriff Pagunsan was allegedly hesitant to locate the defendants and said: "*wala siyang pang-abono*".^[6] Thus, Holasca believes that Sheriff Pagunsan's inaction and delay in evicting the defendants were due to her unwillingness to advance more money for the implementation of the writ.

ii. Pagunsan's Answer

In his Answer^[7] dated June 24, 2009, Sheriff Pagunsan claimed that he served a Notice to Vacate on the defendants on February 11, 2009. He was accompanied by their branch processer and by Calibuso who was allegedly financing the ejectment case from the start of the case. Sheriff Pagunsan admitted that he did not make an inventory of the properties because the defendants did not let them enter the gate. He likewise admitted that he did not evict the defendants because the Notice to Vacate gave the latter three (3) days to voluntarily vacate the premises.

Sheriff Pagunsan likewise claimed that before leaving the premises, he instructed Holasca, through Calibuso, to secure a Break Open Order to avoid encountering problems during the writ's execution. However, due to Holasca's failure to heed his advice, the writ was not successfully implemented. He claimed that he should not be blamed for the condition of the property after it was ransacked by the defendants. He also claimed that he exerted efforts to locate the defendants but Holasca had been uncooperative. Lastly, Sheriff Pagunsan denied receiving P1,500.00 from Calibuso. He argued that the latter threatened to file an administrative case against him if he could not collect the judgment debt from the defendants.

Meanwhile, Holasca filed a Manifestation^[8] dated August 13, 2009, refuting Sheriff Pagunsan's allegations. There, she added that Sheriff Pagunsan never mentioned anything about the Break Open Order and attached a copy of Calibuso's affidavit dated August 4, 2009 to support her claims.

iii. Calibuso's Affidavit

In his affidavit,^[9] Calibuso alleged that Sheriff Pagunsan erred in not immediately

evicting the defendants from the property. He denied Sheriff Pagunsan's claim that they were refused entry into the premises by the defendants. Calibuso also denied receiving any advice from Sheriff Pagunsan about the need for a Break Open Order and to pay sheriff's fees for its implementation. Finally, he insisted that he gave the amount of P1,500.00 to Sheriff Pagunsan.

The Office of the Court Administrator (OCA) found that the conflicting versions of both parties presented factual issues that could not be resolved based on the documents submitted. It also found that Calibuso's interest and actual participation in the ejectment case by being Holasca's financier may constitute violations of the Code of Conduct for Court personnel. Thus, they recommended on April 13, 2010 that their report be considered as an administrative complaint against Calibuso.

iv. Calibuso's Comment

In his comment^[10] dated August 11, 2010, Calibuso categorically denied taking advantage of his position in court and claimed that he only financed the initial expenses of the ejectment case out of extreme gratitude to Holasca. He maintained that Sheriff Pagunsan only dragged him into the controversy because the latter wanted to get even with him for siding with Holasca. Calibuso further claimed that the cause of the delay in the writ's implementation was solely attributable to Sheriff Pagunsan.

In a resolution^[11] dated June 16, 2010, the Court resolved to refer the cases to Hon. Norberto J. Quisumbing, Jr. (Executive Judge of the RTC, Imus, Cavite) for investigation, report, and recommendation. Judge Quisumbing, however, inhibited himself from the case due to "close personal relationship" with Sheriff Pagunsan, on account of the *esprit d' corps* that inevitably arises between and among court officials and personnel.

In a resolution^[12] dated October 18, 2010, the Court granted Judge Quisumbing's request. Hon. Fernando L. Felicen of the RTC, Branch 20, Imus, Cavite was designated to replace Judge Quisumbing, but he likewise inhibited himself from the case because Sheriff Pagunsan was part of his staff.

The court granted Judge Felicen's request in a resolution^[13] dated June 15, 2011. The cases were thereafter assigned to Hon. Eduardo I. Tanguanco (*investigating judge*, Executive Judge of the Regional Trial Court, Branch 89, Bacoor), for investigation, report and recommendation.

The Investigating Judge's Evaluation and Recommendation

After concluding the reception of evidence of the parties, the Investigating Judge issued its Investigation Report and Recommendation.^[14]

- *Findings in OCA IPI No. 09-3158-P (Sheriff Pagunsan's Case)*

In his Report dated April 26, 2013, the Investigating Judge found Sheriff Pagunsan guilty of Simple Neglect of Duty. He gave weight to the testimonies of Holasca and

Calibuso, and reported as follows:

"As Sheriff IV of the Regional Trial Court, Branch 20, Imus, Cavite, the Code of Conduct for Court Personnel applies to respondent Pagunsan, Jr.

Canon 1 (Fidelity to Duty), particularly Section 3 thereof, provides that *"Court personnel shall not discriminate by dispensing special favors to anyone. They shall now allow kinship, rank, position or favors from any party to influence their official acts or duties."*

Apparently, the act of respondent Pagunsan, Jr. in allowing the defendants to vacate the premises at their own will and without exacting from them the amounts due the plaintiffs pursuant to the Decision sought to be enforced can be rightly considered as *dispensing special favors to anyone to the prejudice of the plaintiffs.*"^[15]

The Investigating Judge recommended Sheriff Pagunsan's suspension without pay for one (1) month with a stern warning that a repetition of the same or similar acts in the future will be dealt with more severely.

- Findings in OCA IPI No. 10-3415-P (Calibuso's case).

With respect to the charge against Calibuso for violations of the Code of Conduct for Court Personnel, the Investigating Judge found that Calibuso's actions were merely motivated by pure generosity to help Holasca and her family. He noted that Holasca herself declared under oath that she has no intention of filing a case against Calibuso. The Investigating Judge also gave weight to Calibuso's contention that he merely shouldered the initial expense of P1,500.00 – which he originally treated as a loan – as a form of assistance to an old friend. The Investigating Judge recommended the dismissal of the case on the ground that Calibuso did not commit any wrongful act.

In a Resolution^[16] dated June 17, 2013, the Court referred the Investigating Judge's report and recommendation to the OCA for evaluation, report and recommendation.

The OCA's Report and Recommendation

On February 4, 2014, the OCA issued its evaluation, report and recommendation.^[17] The OCA recommended that:

1. the OCA IPI No. 09-3158-P be **RE-DOCKETED** as a regular administrative matter, and respondent Anselmo P. Pagunsan, Jr., Sheriff IV, Branch 20, Regional Trial Court, Imus, Cavite be found **GUILTY** of Gross Inefficiency and be **SUSPENDED FOR SIX (6) MONTHS AND ONE (1) DAY WITHOUT PAY**; and
2. the OCA IPI No. 10-3415-P be RE-DOCKETED as a regular administrative matter, and respondent Francisco J. Calibuso, Jr., Clerk of Court III, Branch 1, Municipal Trial Court in Cities, Cavite City, Cavite be found **GUILTY** of Conduct

Prejudicial to the Best Interest of the Service and be **SUSPENDED FOR SIX (6) MONTHS AND ONE (1) DAY WITHOUT PAY.**^[18]

The OCA agreed with the findings of fact of the Investigating Judge, but modified the recommended penalties. It found Sheriff Pagunsan's explanation (that they were not allowed by the defendants to enter the premises) unsatisfactory. It also agreed that Sheriff Pagunsan failed to strictly comply with the writ of execution when he did not expressly order the defendants to immediately vacate the premises and to pay Holasca. The OCA also ruled that Sheriff Pagunsan was not only remiss in his implementation of the writ; he was also guilty of dereliction of duty in the performance of his functions as a sheriff.

As for Calibuso, the OCA found that his actuations, albeit noble, fell short of the standards expected of a court employee. The OCA explained that while there was no proof that Calibuso took advantage of his position as a court personnel in extending assistance to Holasca, his conduct tends to tarnish the image and integrity of his public office; hence, he should be held liable for conduct prejudicial to the best interest of the service under R.A. No. 6713.^[19]

Our Ruling

We find the findings and the recommendations of the OCA in order, but modify the penalty with respect to Sheriff Pangusan, as explained below.

A. *Pagunsan's Case (A.M. OCA IPI No. 09-3158 – P)*

Sheriffs play an important role in the administration of justice because they are tasked to execute final judgments of the courts, which would otherwise become empty victories for the prevailing party, if left unenforced.^[20] As agents of the law, sheriffs are mandated to uphold the majesty of the law, as embodied in the decision, without unnecessary delay to prevent injury or damage to the winning party. There is no need for the litigants to "follow-up" the sheriff's implementation of the writ.^[21] Once the writ is placed in their hands, sheriffs are duty-bound to proceed and see to it that the execution of judgments is not unduly delayed.^[22]

The duties of the sheriff in implementing writs of execution are explicitly laid down in the Rules of Court (*Rules*). Paragraphs (c) and (d) of Section 10, Rule 39 of the Rules^[23] provide for the manner a writ for the delivery or the restitution of real property shall be enforced by the sheriff. Section 14, Rule 39 of the Rules,^[24] on the other hand, requires sheriffs to execute and make a return on the writ of execution after its implementation.

The above provisions enumerate the following duties of a sheriff: **first**, to give notice of the writ and demand that the judgment obligor and all persons claiming under him vacate the property within three (3) days; **second**, to enforce the writ by removing the judgment obligor and all persons claiming under the latter; **third**, to remove the latter's personal belongings in the property as well as destroy, demolish or remove the improvements constructed thereon upon special court order; and **fourth**, to execute and make a return on the writ within 30 days from receipt of the writ and every 30 days thereafter until it is satisfied in full or until its effectivity