

## EN BANC

[ A.M. No. CA-12-25-P, March 20, 2012 ]

**RE: COMPLAINT FILED BY (RET.) MCTC JUDGE RODOLFO B. GARCIA AGAINST 18<sup>TH</sup> DIVISION CLERK OF COURT ATTY. MAY FAITH L. TRUMATA-REBOTIACO, COURT OF APPEALS, CEBU CITY.**

### R E S O L U T I O N

**SERENO, J.:**

Before the Court is an administrative complainant filed by Retired Judges Rodolfo B. Garcia (Ret. Judge Garcia) of the Municipal Circuit Trial Court (MCTC) of Calatrava-Toboso, Negros Occidental, against respondent Atty. May Faith L. Trumata-Rebotiaco (Rebotiaco), Court of Appeals (CA) 18<sup>th</sup> Division Clerk of Court. The core issue at bench is whether respondent should be dismissed from service for allegedly issuing an irregular Writ of Execution.

#### *Facts*

The case stemmed from the Petition for Mandamus filed by Ret. Judge Garcia with the CA against the Government Service and Insurance System (GSIS), Winston F. Garcia, Jessie A. Mauricio, and Mila E. Santarroma (collectively GSIS, *et al.*). The Petition was to compel GSIS, *et al.* to pay in full the face value of complainant's life insurance policy. <sup>[1]</sup> On 20 February 2007, the 19<sup>th</sup> Division of the CA rendered a Decision, which stated the following in the dispositive portion:

**WHEREFORE**, the instant petition for mandamus is **GRANTED**. Respondent Government Service Insurance System (GSIS) is hereby **DIRECTED** to pay petitioner in the sum of Thirty-six Thousand Three Hundred Ninety-three Pesos and Eighty-one centavos (P36,393.81). No pronouncement as to costs.<sup>[2]</sup> (Underlining supplied)

The CA denied the Motion for Reconsideration of GSIS, *et al.* on 14 September 2007.<sup>[3]</sup> The Decision eventually became final, which led complainant to allegedly file a Motion to Issue Writ of Execution dated 22 November 2001.<sup>[4]</sup> He asserts that he filed three more motions thereafter. On 29 May 2008, the CA promulgated a Resolution directing the issuance of an Entry of Judgment of its 20 February 2007 Decision.<sup>[5]</sup>

Complainant posit<sup>[6]</sup> that it was only when he filed his fourth Motion to Issue Writ of Execution dated 11 July 2010 that the 18<sup>th</sup> Division of the CA promulgated its 2 August 2010 Resolution directing respondent- in her capacity as the Division Clerk of Court- to issue a corresponding writ of execution in order to enforce and carry out

the pronouncements in the 20 February 2007 CA Decision.<sup>[7]</sup> Accordingly, she issued the writ, which quoted verbatim the dispositive portion of the 20 February 2007 CA Decision directing only the GSIS to pay the remaining balance of complainant's life insurance proceeds. Thus, Rebotiaco addressed the writ only to GSIS.<sup>[8]</sup> On 24 August 2010, complainant filed yet another Motion to Issue Writ of Execution.<sup>[9]</sup>

As the GSIS continued with its failure to comply with 20 February 2007 CA Decision, <sup>[10]</sup> Ret. Judge Garcia lodged the present administrative complaint against CA 18<sup>th</sup> Division Clerk of Court Rebotiaco on 7 June 2011. Complainant faults her for the unsuccessful enforcement of the Writ of Execution, which was allegedly irregular. According to complainant, it was defective, as it was addressed only to a juridical person-GSIS-and not to the appropriate officers thereof, in violation of Section 11, Rule 51 of the Rules of Court. Complainant also posits that respondent failed to direct a sheriff to enforce the Writ of Execution. He claims that these are, *inter alia*, the reasons why the writ was not enforced.<sup>[11]</sup> Thus, he seeks the dismissal of respondent from service because of her "incompetence, inefficiency, negligence, ignorance of law, or abuse of authority," which allegedly "made her unfit for her position."<sup>[12]</sup>

On 22 August 2011, while the present Complaint was pending before this Court, Ret. Judge Garcia filed a motion for the issuance of another writ of execution or to amend the earlier Writ of Execution.<sup>[13]</sup> On 13 September 2011, the CA 19<sup>th</sup> Division issued a Resolution.<sup>[14]</sup> which noted the noncompliance of GSIS with the Writ of Execution and directed the 19<sup>th</sup> Division of Clerk of Court to issue an Alias Writ of Execution against specific officers of the GSIS. The pertinent portion of the 13 September 2011 CA Resolution states the following:

1. **ISSUE, with dispatch,** the corresponding ALIAS WRIT OF EXECUTION directing The President and General Manager, The Chief, Claims and Loans Division, The Manager, and/or Any Appropriate Officer of the Government Service Insurance System, Pasay City, to enjoin and enforce the Decision dated February 20, 2007, the dispositive portion of which reads as follows:

x x x      x x x      x x x

2. **DIRECT** the Executive Judge of the Regional Trial Court, Pasay City to:

- (a) **Designate a special sheriff** to enforce the ALIAS WRIT OF EXECUTION against the GOVERNMENT SERVICE and INSURANCE SYSTEM, Head Office, Financial Center, Reclamation Area, Roxas Boulevard, Pasay City;

- (b) **Require** the special sheriff to make a Return of the Alias Writ of Execution immediately but not later than ten (10) days from its implementation, enforcement and service; and

(c) **Submit** the originals of the pertinent documents to this Court.

[15]

Accordingly, 19<sup>th</sup> Division Clerk of Court, Atty. Joseph Stephen A. Ygnacio, issued an Alias Writ of Execution on 13 September 2011 commanding the GSIS and its above-mentioned officers to cause the execution of the 20 February 2007 CA Decision "conformably with the dispositive portion thereof and as ordered in the Resolutions dated August 2, 2010 and September 13, 2011." [16]

### ***Issue***

The main issue presented before this Court is whether or not the CA18th Division Clerk of Court committed an administrative offense when she (a) addressed the Writ of Execution solely to GSIS and (b) failed to direct a sheriff to enforce the writ.

### ***Discussion***

Complainant argues that the Writ of Execution issued by Rebotiaco, in her capacity as the CA 18<sup>th</sup> Division Clerk of Court, was irregular for violating Section 11, Rule 51 of the Rules of Court. The pertinent provision of the Rules of Court reads as follows:

SEC 11. *Execution of Judgement.* — Except where the judgment or final order or resolution, or a portion thereof, is ordered to be immediately executory, the motion for its execution may only be filed in the proper court after its entry.

**In original actions in the Court of Appeals, its writ of execution shall be** accompanied by a certified true copy of the entry of judgment or final resolution and **addressed to any appropriate officer for its enforcement.**

In appealed cases, where the motion for execution pending appeal is filed in the Court of Appeals at a time that it is in possession of the original record or the record on appeal, the resolution granting such motion shall be transmitted to the lower court from which the case originated, together with a certified true copy of the judgment or final order to be executed , with a directive for such court of origin to issue the proper writ for its enforcement. (n) (Emphasis supplied.)

This aforecited provision must be read in conjunction with Section 8, Rule 39, viz:

SEC. 8. *Issuance, form and contents of a writ of execution.* — The **writ of execution shall:** (1) issue in the name of the Republic of the Philippines from the court which granted the motion; (2) **state** the name of the court, the case number and title, **the dispositive part of the subject judgment or order;** and (3) **require the sheriff or other proper officer to whom it is directed to enforce the writ according**