

## SECOND DIVISION

**[ A.M. No. P-12-3028 [Formerly OCA IPI No. 11-3649-P], April 11, 2012 ]**

**ATTYS. RICARDO D. GONZALES & ERNESTO D. ROSALES,  
COMPLAINANTS, VS. ARTHUR G. CALO, SHERIFF IV, REGIONAL  
TRIAL C, BRANCH 5, BUTUAN CITY RESPONDENT.**

### DECISION

**PEREZ, J.:**

In a verified Complaint<sup>[1]</sup> dated 2 May 2011, complainants Atty. Ricardo D. Gonzalez and Atty. Ernesto D. Rosales, in their capacity as counsels for the Rural Bank of Cabadbaran (Agusan), Inc., charged Arthur G. Calo, Sheriff IV, Regional Trial Court (RTC), Branch 5, Butuan City, with grave abuse of authority, falsification, arrogance, grave misconduct and gross dishonesty in connection with the implementation of the writ of possession in Special Proceeding No. 4808. The writ of possession,<sup>[2]</sup> dated 12 January 2011, commanded respondent to “immediately place” the Rural Bank of Cabadbaran in possession of the property subject of the special proceeding case and eject all occupants thereof.

Complainants alleged that instead of coordinating with them, as was the usual practice of sheriffs when implementing writs, respondent never bothered to get in touch with them. Thus, to facilitate matters, complainants delivered P1,000.00 to respondent to answer for whatever expenses the implementation would occasion. When respondent still did not communicate with them, complainant Gonzalez wrote him a letter<sup>[3]</sup> dated 25 January 2011, asking for an estimate of the necessary expenses for the implementation of the writ. Since respondent did not reply, complainant Gonzalez reiterated the demand to implement the writ in a letter dated 14 February 2011.<sup>[4]</sup> This time, respondent was warned that should he continue to delay implementation of the writ, the Office of the Court Administrator will be informed of the matter. Another letter,<sup>[5]</sup> dated 3 March 2011, was sent to respondent reminding him that he still had not submitted an estimate of the expenses of implementation as well as a sheriff’s report, as required by the Rules of Court.

On 14 March 2011, complainants learned that respondent had filed his Sheriff’s Report,<sup>[6]</sup> a copy of which they obtained solely through their own initiative from respondent’s office. Although dated 18 February 2011, the Report was filed only on 4 March 2011 as evidenced by the date of receipt stamped on its first page. Further, while the report stated that plaintiff and counsel were furnished a copy thereof purportedly by registered mail, the registry receipt, numbered 6673, was undated. Complainants actually received the Report only on 17 March 2011 and the envelope containing the same was mailed only on 14 March 2011,<sup>[7]</sup> the same day complainants were able to secure a copy thereof.

Respondent's Report stated that the writ of possession in Special Proceeding No. 4808 was served on 24 January 2011 to the occupants of the property who, however, requested time to vacate the same. For humanitarian reasons, considering that one of the occupants was sickly, respondent gave them a period of three (3) months within which to vacate the property.

Complainants asserted that "[b]ecause it was obvious that the Sheriff was now playing judge," complainant Gonzalez filed an Omnibus Motion to Inhibit<sup>[8]</sup> respondent from implementing the writ, claiming that he and respondent could no longer work cordially, to the prejudice of the interest of his client bank. Upon being directed to comment on the motion for his inhibition, respondent denied having been remiss in his duty to implement the writ, declared that he will not inhibit and asserted that he will proceed with the implementation of the writ on 25 April 2011.<sup>[9]</sup>

True to his word, but without waiting for the resolution of the motion to inhibit him, respondent went to the Rural Bank on 25 April 2011 and announced that he will implement the writ on that day. The bank manager, Ms. Hanie De Jesus (Ms. De Jesus), told him that she will inform complainant Gonzalez of his presence but respondent refused, saying that he will never coordinate with Atty. Gonzalez. He then implemented the writ in the presence of Mr. Marvin Ravelo, an employee of the bank whom respondent asked to accompany him. Thereafter, respondent returned to the bank and demanded P1,000.00 as expenses incurred in the implementation, which amount Ms. De Jesus was forced to give because respondent would not leave her desk.<sup>[10]</sup>

Complainants further alleged that while the occupants indeed vacated the premises, a big room supposedly containing their personal effects was allowed to be padlocked. Thus, while the writ was ostensibly implemented and respondent made a return, in reality, the writ was not fully implemented because the house cannot be demolished until the things are removed. They added that respondent's act of demanding money from their bank manager violates the Rules requiring sheriffs to receive only court-approved amounts from litigants.

Pursuant to the directive of the Office of the Court Administrator (OCA), respondent submitted his Comment<sup>[11]</sup> to the allegations against him. He alleged that:

1. While admittedly he gave the occupants a period of 3 months to vacate the premises subject of the writ of possession, he did so only out of sheer compassion and for humanitarian reasons;
2. In connection with the service of his Sheriff's Report dated 18 February 2011, attached to his Comment is the affidavit<sup>[12]</sup> of Mr. Celestino Montalban, their process server, whom respondent requested to mail complainants' copy of the report. Mr. Montalban claimed in his affidavit that because of the numerous documents he mailed on that day, he failed to notice that Registry Receipt No. 6673 addressed to complainant Gonzalez bore no date;

3. The writ of possession was fully implemented on 25 April 2011 in the presence of Mr. Ravelo, the representative of the Rural Bank, and possession of the property was formally turned over to him. After implementation, the bank manager, Ms. De Jesus, handed to respondent the amount of P1,000.00 as reimbursement for the expenses incurred as indicated in the Liquidation of Expenses<sup>[13]</sup> dated 6 May 2011. He did not extort the said amount, contrary to the allegations of complainants. This was precisely the subject of his letter to Ms. De Jesus whom he asked to clarify and shed light on the matter. The formal reply<sup>[14]</sup> of Ms. De Jesus belies the charge of extortion.

Complainants filed a Reply<sup>[15]</sup> dated 16 August 2011 to refute the allegations of respondent in his Comment. Attached thereto is the Affidavit<sup>[16]</sup> of bank manager Ms. De Jesus recounting what actually happened on 25 April 2011 when respondent implemented the writ of possession. According to her, after respondent implemented the writ, he came back and made her sign a Turn-Over Receipt. Respondent, however, would not leave and she “understood that he was waiting for money” so she decided to give him P1,000.00 so he would leave and allow her to attend to her work.

In its evaluation report<sup>[17]</sup> dated 26 October 2011, the OCA found respondent guilty of neglect of duty and grave misconduct but mitigated the penalty on account of his “more than three (3) decades of service in the judiciary, coupled with the fact [that] this is his first infraction of the rules”. The OCA recommended that he be fined in the amount of P10,000.00 and warned that the commission of a similar act in the future will be dealt with more severely.

We agree with the conclusion of the OCA that respondent is liable for neglect of duty but differ with the recommended penalty.

From the allegations of the complaint, it is clear that respondent violated the provisions of the Rules of Court prescribing the duties of sheriffs in the implementation of court writs and processes.

Sections 10 (c) and (d), Rule 39 of the Rules of Court provide for the manner by which a writ for the delivery or restitution of real property should be enforced by a sheriff. Thus:

*SEC. 10. Execution of judgments for specific act. –*

x x x x

(c) *Delivery or restitution of real property.* – The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of

appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.

(d) *Removal of improvements on property subject of execution.* – When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.

Section 14 of Rule 39, on the other hand, requires sheriffs, after implementation of the writ, to make a return thereon:

SEC. 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.

The afore-quoted sections of Rule 39 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 thirty (30) days thereafter until it is satisfied in full or until its effectivity expires.<sup>[18]</sup>

These provisions leave no room for any exercise of discretion on the part of the sheriff on how to perform his or her duties in implementing the writ. A sheriff's compliance with the Rules is not merely directory but mandatory.<sup>[19]</sup> Thus, herein respondent evidently overstepped his authority when he gave the occupants of the property a grace period of 3 months within which to vacate the premises. It is well settled that a sheriff's functions are purely ministerial, not discretionary.<sup>[20]</sup> Once a writ is placed in his hand, it becomes his duty to proceed with reasonable speed to enforce the writ to the letter, ensuring at all times that the implementation of the judgment is not unjustifiably deferred, unless the execution of which is restrained by the court.<sup>[21]</sup>