

FIRST DIVISION

[A.M. No. P-11-2920 (Formerly OCA I.P.I. No. 09-3300-P), September 19, 2012]

LUCIA NAZAR VDA. DE FELICIANO, COMPLAINANT, VS. ROMERO L. RIVERA, SHERIFF IV, REGIONAL TRIAL COURT, OFFICE OF THE CLERK OF COURT, VALENZUELA CITY, RESPONDENT.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is an administrative complaint^[1] for dishonesty, gross neglect of duty, and misconduct, filed by complainant Lucia Nazar vda. de Feliciano against respondent Romero L. Rivera, Sheriff IV of the Regional Trial Court (RTC), Office of the Clerk of Court, Valenzuela City, relative to Civil Case No. 174- V-07, entitled *Lucia Nazar vda. de Feliciano (Plaintiff/Appellee) v. Vitaliano Lota (Defendant/Appellant)*.

Civil Case No. 174-V-07 was an appeal to the RTC, Branch 172, Valenzuela City of the Decision of the Metropolitan Trial Court (MeTC), Branch 81, Valenzuela City in Civil Case No. 9316, an ejectment case instituted by complainant against Vitaliano Lota (Lota).

In Civil Case No. 9316, the MeTC rendered on October 10, 2007 a Decision in complainant's favor. The dispositive portion of the MeTC Decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering the Barangay Council of Barangay Ugong, Valenzuela City, represented by their Barangay Chairman Vitaliano Lota and all barangay officials and persons claiming rights from them to immediately vacate the subject premises and restore peaceful possession thereof to the [herein complainant].^[2]

On appeal, the RTC rendered a Decision on May 11, 2009 affirming the assailed MeTC judgment. The RTC decreed:

WHEREFORE, premises considered, the Court hereby AFFIRMS the decision dated October 10, 2007 of the Metropolitan Trial Court, Branch 81, City of Valenzuela, in Civil Case No. 9316.^[3]

Complainant filed a motion for execution pending appeal which was granted by the RTC in an Order^[4] dated September 4, 2009.

Accordingly, Atty. Levi N. Dybongco, Branch Clerk of Court, issued a Writ of Execution with the following directive to respondent, as the Acting Sheriff of RTC-

Branch 172:

NOW, THEREFORE, you are hereby commanded to execute and make effective the above-quoted decision and orders, in accordance with law and make a return of this writ immediately upon compliance hereof.^[5]

On October 12, 2009, respondent served a notice^[6] dated October 9, 2009 addressed to the *Barangay* Council of *Barangay* Ugong, represented by their *Barangay* Chairman Lota, and all *barangay* officials and persons claiming rights from them, which stated, as follows:

You are hereby notified to vacate within ten (10) days upon receipt hereof the subject properties covered by T.C.T. Nos. (T-115916) T-83728 and 124243 together with all the improvements existing thereon pursuant to the Writ of Execution dated October 5, 2009 issued by Atty. Levi N. Dybongco, Clerk of Court of this court, copy of which is hereto attached.^[7]

The above-quoted notice to vacate was received by Edwin de la Rosa, a *barangay* official.

Thereafter, no other action was undertaken by respondent to implement the subject Writ of Execution.

Thus, complainant filed the instant Complaint-Affidavit dated November 26, 2009 against respondent, alleging, among other things, that:

- 1.03. On October 21, 2009, through my counsel, I asked that the implementation of the writ be made either on October 26 or 27 of 2009 because I have yet to raise the amount which might be needed for the implementation of the writ. The respondent acceded to my request and the implementation of the writ on October 22, 2009 was postponed.
- 1.04. To my surprise however, when I made a follow up of the implementation through my counsel on October 26, 2009, I had been told that the respondent was on leave and would not be back until October 30, 2009. It came as a surprise because the respondent never told me or my counsel and her representative of his intention to take a leave. Besides, we had an agreement that he would implement the writ either on the 26th or 27th of October 2009.
- 1.05. The foregoing notwithstanding, I patiently waited for his return from vacation and so on October 30, 2009, I inquired anew for the date when he would implement the writ issued by the court. On said date however, the respondent told me that he would not implement the writ because the defendant in the civil case had filed a motion to quash the writ.
- 1.06. When I got home, I received information from well meaning

friends in Ugong, Valenzuela City that defendant Lota had given money to [respondent] as a sort of "consolation" for desisting from continuing with the implementation of the writ issued by the Honorable Court. Then, the said information was followed up by another report given to me by my granddaughter who told me that Mr. Lota had boasted that he will not be removed from the premises subject matter of Civil Case No. 174-V-07.

- 1.07. I immediately reported these incidents to my counsel who, through Ms. Yolanda P. Arca, persisted on calling the respondent on November 2, 2009 to talk about the implementation of the writ. On the said occasion, Ms. Arca, told the respondent that it is his ministerial duty to proceed with the implementation of the writ there being no temporary restraining order having been issued by any court. Ms. Arca also reminded the respondent that he has no authority to desist from implementing the writ of execution by the mere filing of a motion to quash by the defendant. During their conversation, the respondent told Ms. Arca to give him until Thursday, or November 5, 2009, to implement the writ but when the said date came, the respondent was nowhere to be found.
- 1.08. From morning until afternoon of November 5, 2009, Ms. Arca called the office of the respondent but to no avail. Whenever she would call him, respondent would always be out of the office and even when he is there, he would give instruction to the person taking the call to inform Ms. Arca to call back on a certain time and day but when the [here complainant's] representative would call, still, he would not be there.
x x x x
- 1.09. It appearing that the respondent had no intention to implement the writ of execution, the complainant was constrained to file a motion to designate another sheriff to implement the writ.
x x x x
- 1.10. A copy of the said motion was served upon the respondent who even belligerently instructed my granddaughter - who happened to drop by the RTC, Valenzuela City to follow up on my other case with Branch 171 - to order my counsel to withdraw the motion as it might allegedly affect his pending application as sheriff with the RTC, Branch 172. Also, the respondent even tried to convince my granddaughter to just follow up the motion to quash filed by Mr. Lota with the court claiming that it was the reason why he did not implement the writ of execution.^[8]

In his Comment^[9] dated January 18, 2010, respondent categorically and vehemently denied complainant's allegations. First, respondent did not coordinate with complainant's counsel before serving the notice to vacate upon Lota. To serve the notice to vacate, respondent only coordinated with the sheriff of another RTC branch. Second, respondent did not talk to complainant and the latter's counsel on October 21, 2009. In addition, respondent could not have agreed to complainant's

request that respondent implement said Writ of Execution on October 26 or 27, 2009, since as early as October 10, 2009, respondent had already booked a flight to Cagayan de Oro for October 27, 2009 to implement the Writ of Execution issued in another case, Civil Case No. 218-V-00. Third, respondent did not receive any money from Lota. The information that reached complainant about respondent accepting money from Lota and Lota boasting that he would never be removed from the disputed properties were hearsay and inadmissible. Respondent never said that he had no intention to implement the subject Writ of Execution. In fact, respondent had already begun implementing the Writ of Execution by serving a notice to vacate upon Lota, but respondent failed to complete the eviction because Lota filed a motion to quash the Writ. Respondent admitted deferring the implementation of the subject Writ of Execution until a final determination by the RTC of Lota's motion to quash. Respondent cited *Quilo v. Jundarino*,^[10] where the Court ruled that the prudent course of action of the Sheriff was to defer implementation of the writ of execution until a determination of the motion to quash. In the end, respondent prayed that he be absolved from any administrative liability.

On January 9, 2011, the Office of the Court Administrator (OCA) submitted its report^[11] with the following recommendations:

RECOMMENDATION: Respectfully submitted, for the consideration of the Honorable Court, are our recommendations that:

1. the instant matter be RE-DOCKETED as a regular administrative matter against respondent Romero L. Rivera, Sheriff IV, Regional Trial Court, Office of the Clerk of Court, Valenzuela City; and
2. Sheriff Romero L. Rivera be found GUILTY of Simple Neglect of Duty and be FINED in the amount of Five Thousand (P5,000.00) Pesos and STERNLY WARNED that a repetition of the same or similar acts will be dealt with more severely.^[12]

In a Resolution^[13] dated March 14, 2011, the Court re-docketed the administrative complaint against respondent as a regular administrative matter and required the parties to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed.

Complainant did not file any manifestation.

Respondent initially submitted a Manifestation^[14] dated June 6, 2011, stating that he was submitting the case for resolution based on the pleadings filed. However, Atty. Leven S. Puno (Puno) made a formal appearance as respondent's counsel on August 24, 2011. Respondent, through Atty. Puno, moved to withdraw his Manifestation dated June 6, 2011 and to be allowed to file a Memorandum within 15 days from August 23, 2011 or until September 7, 2011. The Court granted respondent's motion in a Resolution^[15] dated November 21, 2011. Respondent, through Atty. Puno, later filed a Manifestation and Motion dated January 31, 2012,