

## THIRD DIVISION

**[ A.M. No. P-09-2715, June 13, 2011 ]**

**(formerly A.M. OCA I.P.I. No. 02-1383-RTJ)**

**Office of the Court Administrator, Complainant, Efren E. Tolosa,  
Sheriff IV, Regional Trial Court, Office of the Clerk of Court,  
Sorsogon City, Respondent.**

### DECISION

**BRION, J.:**

This administrative complaint stemmed from the administrative complaint, docketed as A.M. I.P.I. No. 02-1383-RTJ, filed by Gerardo D. Espiritu against Judge Jose L. Madrid of the Regional Trial Court (RTC), Branch 51, Sorsogon City, and Sheriff Ariosto Letada of the RTC, Branch 52, Sorsogon City, for Undue Delay in the Disposition of a Case and/or Manifest Bias or Partiality relative to the implementation of the Writ of Execution in Civil Case No. 5327, entitled "Loreto Brondial, et al. v. Vicente Go, et al." The complaint in A.M. OCA I.P.I. No. 02-1383-RTJ was dismissed in a Resolution dated September 15, 2003,<sup>[1]</sup> for the failure of complainant Espiritu to substantiate his claim that Judge Madrid and Sheriff Letada conspired with each other in the non-implementation of the writ. In the same Resolution, the Court directed the Office of the Court Administrator (OCA) to take appropriate action on its report that Efren E. Tolosa, Sheriff IV, Office of the Clerk of Court, RTC, Sorsogon City, who was the one originally designated to implement the writ of execution, violated Section 9, par. 2, Rule 39 of the Rules of Civil Procedure<sup>[2]</sup> when he did not turn over the checks that came into his possession to the Clerk of Court of the court that issued the writ on the same day he received them.

In a letter dated October 21, 2003 of then Deputy Court Administrator, later Court Administrator and now Justice Jose P. Perez, Tolosa was asked to explain his failure to immediately turn over the checks as required by the Rules.

In his letter-explanation dated November 1, 2003,<sup>[3]</sup> Tolosa alleged: (1) he received the checks issued by the defendant in Civil Case No. 5327 but these were postdated and received on the condition that they would be returned to the defendant should the plaintiffs refuse to accept them; (2) the encashed amount of the checks, as well as the checks that have not been encashed, has already been withdrawn by Atty. Rofebar T. Gerona, counsel for the plaintiffs, from the Clerk of Court on December 21, 2000; and (3) there are two plaintiffs in the civil case and "they might have been doing some action without the knowledge of their counsel."

The OCA found Tolosa's explanation insufficient to excuse him from liability for his patent violation of Section 9, par. 2, Rule 39 of the Rules on Civil Procedure, and recommended that he be fined in the amount of P5,000.00, with a warning that a

repetition of the same or similar acts in the future shall be dealt with more severely.  
[4]

In a Resolution dated November 16, 2009,<sup>[5]</sup> the Court directed the OCA to docket separately the complaint against Tolosa; hence, the present administrative complaint.

Asked to manifest to the Court whether he was willing to submit the case against him for resolution, based on the records/pleadings, Tolosa filed his answer, offering his sincere apology for the "misinterpretation" he had done in connection with the case and praying that the case against him be dismissed.<sup>[6]</sup>

#### The Antecedent Facts

Espiritu is one of the legal heirs of one of the plaintiffs in Civil Case No. 5327. In a decision dated March 26, 1990, the RTC ordered the defendants therein, Vicente Go, et al., to pay jointly and severally the plaintiffs the sum of P20,000.00 as actual or compensatory damages, P5,000.00 as attorney's fees and P3,000.00 as litigation expenses, and to pay the costs, with legal interest from the date of the decision until they are fully paid.<sup>[7]</sup>

Both parties appealed to the Court of Appeals (CA). In a decision dated May 14, 1997, the CA affirmed the RTC decision with modification as to the damages awarded to the plaintiffs, as follows: P80,000.00 as actual or compensatory damages with interest at 6% per annum from the date of the filing of the complaint; P20,000.00 and P10,000.00 as moral and exemplary damages, respectively; P5,000.00 as attorney's fees; and P3,000.00 as litigation expenses, with interest of 6% per annum from the date the defendants were served a copy of the decision of the lower court, until the amounts are actually paid.<sup>[8]</sup>

The defendants contested the CA decision in a petition for review on *certiorari* filed with the Supreme Court. In a Resolution dated October 21, 1998, the Court dismissed the petition. The dismissal became final and executory on December 7, 1998.<sup>[9]</sup>

On February 16, 2000, upon the plaintiffs' motion, the RTC directed the issuance of a Writ of Execution. Accordingly, Branch Clerk of Court William D. Erlano issued the corresponding Writ of Execution on February 29, 2000, directing the Provincial Sheriff or any of his deputies to enforce and implement the decision "pursuant to the provision of the Rules of Court" and to make a return of the writ "within the time provided for by law."<sup>[10]</sup> The respondent was furnished a copy of the writ on March 31, 2000.

Three (3) months thereafter, or on July 3, 2000, the complainant's mother wrote Clerk of Court Marilyn D. Valino inquiring about the status of the writ. In a 1st Indorsement dated July 4, 2000,<sup>[11]</sup> Clerk of Court Valino forwarded the letter to Tolosa, directing him to immediately execute and/or implement the Writ of Execution "in accordance with the decision and [in consonance] with the existing rules," and inviting his attention to the provisions of Section 14, Rule 39 of the Rules of Court.

On July 17, 2000, Tolosa complied and submitted a Sheriff's Partial Return,<sup>[12]</sup> reporting that he attempted to serve the writ twice, on April 17, 2000 and May 12,

2000, but defendant Vicente Go was not in his house on both occasions. He was able to implement the writ only on June 14, 2000. He reported that he received from defendant Vicente Go several postdated checks in the total amount of P118,000.00, in partial satisfaction of the judgment, and that he informed the complainant's counsel of his receipt of the checks. Counsel did not make any comment on whether to accept the checks or not.

On September 22, 2000, Espiritu, apparently unaware that there was a partial implementation of the writ, wrote Judge Madrid, complaining that Tolosa has failed to do his task, as mandated by the Rules of Court, despite that "several months have passed" and requesting that a substitute Sheriff be designated.<sup>[13]</sup> In a 1st Indorsement dated September 26, 2000, Judge Madrid required Tolosa to comment on Espiritu's letter.<sup>[14]</sup>

On October 10, 2000, Tolosa filed his comment/manifestation,<sup>[15]</sup> explaining that as early as July 17, 2000, he already made a partial return of the Writ of Execution and that he had encashed the matured checks in the amount of P60,000.00. On the same day, he deposited the amount of P60,000.00 with the Branch Clerk of Court of the RTC, Branch 51, together with the other postdated checks. He enclosed an Acknowledgment Receipt dated October 10, 2000, signed by Branch Clerk of Court Erlano.<sup>[16]</sup>

### The Court's Ruling

The Court finds that the respondent committed two offenses in this case, (1) failure to make a return of the writ within the period provided by the Rules of Court; and (2) failure to turn over the checks he received by virtue of the implementation of the writ, to the court issuing it within the same day he received them.

Section 14, Rule 39 of the Rules of Court<sup>[17]</sup> makes it mandatory for a sheriff to make a return of the writ of execution to the Clerk of Court or to the Judge issuing it immediately upon satisfaction, in part or in full, of the judgment. If the judgment cannot be satisfied in full, the sheriff shall make a report to the court within thirty (30) days after his receipt of the writ and state why full satisfaction could not be made. The sheriff shall continue to make a report to the court every (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. Failure of a sheriff to make periodic reports on the status of a writ of execution warrants administrative liability.<sup>[18]</sup> The reason behind this requirement is to update the court on the status of the execution and to take the necessary steps to ensure the speedy execution of decisions.<sup>[19]</sup>

The writ was placed in the hands of Tolosa on March 31, 2000 but he submitted a Sheriff's Partial Return only on July 17, 2000. He submitted the return only after Espiritu's mother wrote Clerk of Court Valino, complaining that he had not taken any action on the writ. Tolosa attributes the delay in the submission of his Sheriff's Return on the failure of the plaintiffs to decide whether or not to accept the checks delivered to him. He allegedly verbally informed Atty. Gerona, the plaintiff's counsel, but the latter could not definitely decide what to do with the checks. He believed that Atty. Gerona was the proper person to know because he was the one who requested the implementation of the writ. He further claimed that he was not sure whom to deal with because there were several persons claiming to be the legal heirs and persistently making demands from him of the amounts he received.