

THIRD DIVISION

**[A.M. No. RTJ-11-2284 [Formerly A.M. OCA IPI
No. 09-3304-RTJ], July 13, 2011]**

**SPOUSES SUR AND RITA VILLA AND LETICIA GOREMBALEM
VALENZUELA, COMPLAINANTS, VS. PRESIDING JUDGE ROBERTO
L. AYCO, OFFICER-IN-CHARGE/ LEGAL RESEARCHER VIRGINIA
M. BARTOLOME AND SHERIFF IV CRISPIN S. CALSENIA, JR., ALL
OF THE REGIONAL TRIAL COURT, BRANCH 26, SURALLAH,
SOUTH COTABATO, RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

The Court resolves the complaint ^[1] filed by spouses Sur and Rita Villa and Leticia Gorembalem Valenzuela (*complainants*) against: (1) Presiding Judge Roberto L. Ayco (*Judge Ayco*) for undue delay in resolving motions, gross ignorance of the law, bias and abuse of authority; (2) Officer-in-Charge/Legal Researcher Virginia Bartolome (*OIC Bartolome*) for gross ignorance of the law and gross inefficiency; (3) Sheriff IV Crispin S. Calsenia, Jr. (*Sheriff Calsenia*) for grave abuse of authority and gross neglect of duty, all the Regional Trial Court, Branch 26, Surallah, South Cotabato (*RTC*). The complaint stems from Civil Case No. 386-N entitled "*Spouses Sixto and Yolanda Fernandez v. Spouses Miguel and Marina Gorembalem; Estate of Miguel Gorembalem, represented by Crispina G. Artienda, et al.. Third Party Claimant*" filed before the RTC for Specific Performance with Damages.

Complainants allege that they are the legal heirs of Miguel Gorembalem, who was the named defendant in the civil case. In the RTC decision ^[2] dated October 2, 1992, Miguel Gorembalem was held liable to pay the plaintiffs. On January 25, 2006, the Court of Appeals (*CA*) dismissed Gorembalem's appeal. Thus, on March 19, 2006, the judgment against Gorembalem became final and executory. The case was remanded to the RTC for execution. On August 4, 2006, the RTC, presided by Judge Ayco, directed the issuance of a writ of execution on the said case. ^[3]

On August 25, 2006, Sheriff Calsenia issued a Notice of Levy on the property of Gorembalem and scheduled an execution sale since the defendants failed to settle the judgment obligation.

On September 26, 2006, complainants filed a Third Party Claim ^[4] on the said property, but it was denied by the RTC in its Order dated March 7, 2007. Complainants moved for a reconsideration on April 27, 2007 ^[5] but Judge Ayco denied the same only on July 31, 2008 or "fifteen (15) months from filing and more than eight (8) months from the time such motion was submitted for resolution." ^[6] Complainants posit that the delay constitutes gross inefficiency that runs afoul to Rules 1.02 of Canon 1 and 3.05 of Canon 3 of the Code of Judicial Conduct as well

as SC Administrative Circular No. 1-88. [7]

Thereafter, complainants filed their Notice of Appeal [8] which was likewise denied in the RTC Order [9] dated August 29, 2008 for late filing. Their Motion for Reconsideration [10] was likewise denied in an Order [11] dated January 16, 2009.

On March 10, 2009, the plaintiffs in the said Civil Case filed their Motion for Writ of Possession/Demolition/Break Open and set the hearing on March 13, 2009. [12] Complainants alleged that their counsel only received the copy of the said motion on March 18, 2009 or five days after the scheduled hearing. [13]

Despite complainants' Opposition [14] to the motion, on April 30, 2009, Judge Ayco ordered the issuance of the Writ of Possession and Demolition. [15]

On May 14, 2009, OIC Bartolome, issued the Writ of Possession and Demolition, [16] which according to complainants was premature. [17] Complainants also believe that OIC Bartolome displayed either bias or gross ignorance of the law and incompetence when she received the Motion for Writ of Possession/Demolition/Break Open, when it clearly violated the 3-day notice rule, making it a mere scrap of paper.

Then, on July 25, 2009, Sheriff Calsenia implemented the writ of demolition without prior service of the notice to vacate on the complainants. [18] As a result of the demolition, the complainants suffered various damages and loss of expensive materials. They claim that the respondent sheriff failed to make a proper accounting and inventory of the materials taken from the property. [19]

After the demolition, the daughter of the spouses-complainant went to the RTC Office to ask for a copy of the records. OIC Bartolome, however, "in a loud voice and overbearing conduct," [20] shouted at their daughter.

In his Comment dated January 18, 2010, [21] Judge Ayco admitted that the order denying the motion for reconsideration was indeed issued beyond the 90-day period, after it was deemed submitted for resolution. He, however, denied the complainants' allegation and argued that the said incident was isolated and should not be strictly held against him. Judge Ayco countered that their complaint should be dismissed for the following reasons: (1) the motion for reconsideration would have been dismissed anyway as it was filed late; (2) the filing of the motion was merely a ploy to obstruct and impede the conduct of the execution sale; (3) his branch was a single sala court catering to seven large municipalities and burdened with heavy caseload; and (4) this was the first time that he had been charged with delay in the resolution of a motion.

In her Comment dated January 20, 2010, [22] OIC Bartolome explained that it was her duty to receive the pleadings being filed with the court, such as plaintiffs' Motion for Issuance of Writ of Possession and/or Demolition, but it was not her duty to assess the propriety of the pleadings filed. Likewise, she issued the Writ of Possession and/or Demolition because it was her ministerial duty to issue it in compliance with the April 30, 2009 Order of the court and as mandated by the 2002

Revised Manual for Clerks of Court. Finally, she denied the supposed display of animosity towards complainants' daughter when the latter asked for a copy of the records.

In his Comment dated January 21, 2010, [23] Sheriff Calsenia explained that he served the Writ of Possession and/or Demolition to the complainants as part of his duty as a sheriff. He insisted that the implementation of the writ, contrary to the claim of complainants, did not cause any undue damage because the piggery was already vacant when the demolition took place on July 29, 2009. In fact, Barangay Kagawad Nelson Da-as and Police Officer III Donato Anatado were present on the day of the demolition. In his Supplemental Comment, [24] Sheriff Calsenia denied that he mishandled complainants' belongings because the house was already empty at the time of the demolition. He also denied stealing building materials from the site and even advised complainants' representative, Johnmilgen Villa, to get the remaining materials but, apparently, he failed to take them. He claimed that he did not notice that plaintiffs took some of the old iron sheets and G.I. pipes because he was preoccupied with the supervision of the demolition. When he learned of it, he immediately advised the plaintiffs to return the materials but they refused, so he directed the recording and inventory of the items taken by them.

The Office of the Court Administrator (OCA), in its Report dated May 10, 2011, [25] found OIC Bartolome to be innocent of the charges and recommended the dismissal of the administrative complaint against her. With respect to Judge Ayco, the OCA considered him liable for undue delay in resolving the complainants' motion for reconsideration in Civil Case No. 386-N. As to Sheriff Calsenia, the OCA found him to be administratively liable for his failure to serve a notice to vacate prior to the implementation of the writ of possession and demolition. Accordingly, the OCA recommended that Judge Ayco be admonished and warned that a repetition of the same or similar acts would merit a more severe penalty, and Sheriff Calsenia be penalized with two months suspension with a stern warning that a repetition of the same or equivalent acts in the future would warrant a stricter penalty.

After careful consideration of the case, the Court finds the recommendations of the OCA to be well-taken, except as to the penalty with respect to Sheriff Calsenia.

The Court agrees with the OCA's recommendation to dismiss the case against OIC Bartolome for lack of merit. Complainants claimed that OIC Bartolome should not have accepted the plaintiffs' Motion for Issuance of Writ of Possession and Demolition on account of the absence of the notice of hearing and failure to comply with the three-day notice rule on hearing of motions.

A scrutiny of the records reveals that the said motion enclosed a notice of hearing scheduled on March 13, 2009. At any rate, her issuance of the Writ of Possession and Demolition was pursuant to the April 30, 2009 Order of the RTC and to her ministerial duty to abide by such instruction. As to the allegation of discourteous conduct against OIC Bartolome, the complainants failed to substantiate it. In administrative proceedings, the burden of proof that the respondent committed the act complained of rests on the complainant. The complainant must be able to show this by substantial evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Otherwise, the complaint should be dismissed. [26]

With respect to Judge Ayco, the Court stresses that the propriety or impropriety of the motion for reconsideration is judicial in nature and therefore, beyond the scope of this administrative proceedings. He however, cannot be excused for the delay in resolving complainants' motion for reconsideration. Records show that the motion was deemed submitted for resolution on November 16, 2007, [27] and Judge Ayco denied the motion only on July 31, 2008. As found out by the OCA, it took eight months for him to resolve the said motion which was in violation of Rule 37, Section 4 [28] of the Rules of Court requiring said motions to be resolved within thirty (30) days from the time of submission.

The public's faith and confidence in the judicial system depends largely on the judicious and prompt disposition of cases and other matters pending before the courts. [29] Failure to decide a case or resolve a motion within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring judge. [30]

Under Section 9, Rule 140 of the Revised Rules of Court, undue delay in rendering a decision or order is considered a less serious offense. Pursuant to Section 11 of the same rule, such offense is punishable by:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or
2. A fine of more than P10,000.00 but not exceeding P20,000.00.

In *Judge Angeles v. Judge Sempio Diy*, [31] however, the Court mitigated the penalty to admonition considering that it was the respondent judge's first infraction of the rules and in the absence of bad faith or malice. Following the said ruling, the Court approves the recommendation of the OCA to admonish Judge Ayco and sternly warn him that a repetition of the same or similar offense will be dealt more severely.

With respect to Sheriff Calsenia, the Court finds that he failed to strictly comply with the requirement of prior notice to vacate before demolition as required by the rules. Section 10(c) of Rule 39 of the 1997 Rules of Civil Procedure provides the procedure in the enforcement of the writ. To quote:

Sec. 10(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. [Emphasis supplied]