

FIRST DIVISION

[A.M. No. P-09-2600, December 23, 2009]

**EMMA B. RAMOS, COMPLAINANT, VS. APOLLO R. RAGOT,
SHERIFF III, MUNICIPAL TRIAL COURT IN CITIES, GINGOOG
CITY, RESPONDENT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

In a sworn Affidavit-Complaint^[1] dated March 10, 2007, Emma B. Ramos charged Apollo R. Ragot, Sheriff III, Municipal Trial Court in Cities (MTCC), Gingoog City, with grave misconduct, neglect of duty and dishonesty in connection with the implementation of the writ of execution in Criminal Case No. 2005-363.

Complainant alleged that she filed a criminal case against a Mrs. Neneth Kawaling (Mrs. Kawaling) for violation of Batas Pambansa Blg. 22 before the MTCC in Gingoog City. The case was decided on the basis of a Compromise Agreement, wherein Mrs. Kawaling committed to pay a total of P60,000.00 in six (6) monthly installments of P10,000.00 each. However, for failure of the accused to comply with the terms of the compromise, complainant filed a motion for execution which the trial court granted and in connection therewith issued a Writ of Execution^[2] dated August 14, 2006.

In order to enforce the said writ, complainant coordinated with respondent sheriff. On October 6, 2006, complainant and her husband accompanied respondent sheriff to Mrs. Kawaling's residence in Butuan City. The Ramoses used their own vehicle and spent for all the expenses for the trip.

In Butuan City, respondent sheriff was able to serve the writ on Mrs. Kawaling. Complainant and her husband just allowed the sheriff to discuss the writ with Mrs. Kawaling while they watched from a distance. After serving the writ and talking with Mrs. Kawaling, respondent informed the couple that Mrs. Kawaling promised to pay her obligations and the three of them traveled back to Gingoog City together. When they reached Gingoog City, respondent allegedly asked for the amount of P1,000.00 from the complainant, who initially questioned the sheriff's demand since she and her husband bore all the expenses of their trip to Butuan City. When respondent told her that the payment was "the usual SOP," complainant paid the P1,000.00 which respondent acknowledged in a receipt.^[3] A week later, Mrs. Kawaling sent a check to the court in the amount of P10,750.00 in partial payment of her obligation.

In the following months, complainant repeatedly followed up the full implementation of the writ of execution with respondent since Mrs. Kawaling failed to make any further payments. However, respondent purportedly kept telling complainant to just wait for Mrs. Kawaling to make voluntary payments since levying Mrs. Kawaling's real properties would take years.

On January 18, 2007, respondent sheriff allegedly asked complainant for P500.00 to be used for his trip to the Register of Deeds in Butuan City so that he can levy whatever real property he can find in the name of Mrs. Kawaling. Again, complainant paid and respondent issued a receipt^[4] for the said amount. After a few days, respondent informed complainant that he had already made a levy with the Register of Deeds but he left the file behind because the signatory was absent.

On February 1, 2007, respondent handed complainant a copy of what appeared to be a court-approved Itemized Estimated Amount of Expenses^[5] dated October 6, 2006 in the amount of P4,100.00 but he allegedly told her that there was no need to deposit the said amount in court. Instead, he told complainant to just give him some amount for his trip back to Butuan City to follow-up the levy that he made with the Register of Deeds. Complainant did not give the amount requested because respondent refused to issue a receipt for the same.

By this time, complainant was beginning to feel that the sheriff was stonewalling or neglecting her case. In a letter^[6] dated February 14, 2007, complainant, through counsel, requested the respondent to complete the implementation of the writ of execution. Respondent replied to the aforementioned letter and furnished complainant with a copy of Sheriff's Return of Service^[7] dated February 22, 2007, indicating partial satisfaction of the writ of execution. Thereafter, no further action was made by the respondent sheriff with regard to the writ. As of the time of the filing of the complaint, the amount of P33,000.00 purportedly remained unsatisfied.

The foregoing circumstances led complainant to believe that respondent is in direct contact and communication with Mrs. Kawaling and the two are the ones deciding when and how much to pay complainant to complainant's prejudice. Hence, complainant was constrained to file this administrative case against respondent.

Then Court Administrator Christopher Lock, in his 1st Indorsement^[8] dated March 28, 2007, required respondent sheriff to comment on the complaint.

In his Comment^[9] dated April 26, 2007, respondent presented his own version of what happened. Respondent confirmed that on October 6, 2006, complainant and her husband accompanied him to Butuan City to serve the writ of execution on Mrs. Kawaling. On the same date, they were also able to secure certified true copies of tax declarations under the name of Mrs. Kawaling from the city assessor's office. Upon their return to Gingoog City and while they were at complainant's house, complainant's husband allegedly thanked respondent for agreeing to execute the writ even though the required sheriff's expenses had not yet been deposited. Respondent purportedly told the couple not to worry about the sheriff's expenses since they would be accounted for and refunded by the losing party. Respondent then suggested that they charge Mrs. Kawaling the amount of P1,000.00 for gasoline, meals and the fees paid at the Butuan City Assessor's Office. Complainant's husband then allegedly made him sign a ready-made receipt to acknowledge their expenses to Butuan City that day.

On January 18, 2007, respondent sheriff claimed that he reminded complainant about the Notice of Levy on Mrs. Kawaling's real properties. According to respondent, complainant's husband could not drive for them because of a marital

spat so he simply asked for money to serve said notice in Butuan City. Complainant gave P500.00 which respondent acknowledged in a receipt. The following day, respondent served the Notice of Levy on the Register of Deeds of Butuan City and allegedly incurred expenses in the total amount of P559.00.

On February 1, 2007, respondent personally provided complainant a copy of the approved Itemized Amount of Expenses dated October 6, 2006. A few weeks later, respondent allegedly sent a letter^[10] to complainant requesting her to deposit the approved estimated amount of expenses with the Clerk of Court so he can continue with the implementation of the writ. Although complainant failed to make the deposit, respondent still went to the Register of Deeds of Butuan City to obtain the Notice of Levy on April 20, 2007.

Respondent sheriff denied having solicited the amount of P1,000.00 from complainant, but acknowledged that he signed a prepared receipt which complainant's husband said would be used in claiming for reimbursement of expenses they incurred in going to Butuan City on October 6, 2006. He, however, admitted that he asked for and received from the complainant the amount of P500.00 when he went back to Butuan City to file the notice of levy. He claimed that his request for this amount was allowed under Section 10 of Amended Administrative Circular No. 35-2004 on the Guidelines in the Allocation of Legal Fees. After the trip, he purportedly liquidated his expenses and signed a receipt for the amount he received.

Respondent denied having told complainant that there was no need to deposit the approved estimate of sheriff's expenses with the Clerk of Court, as in fact, he even wrote a letter dated February 15, 2007 to complainant to that effect. Likewise, he denied transacting directly with Mrs. Kawaling without the complainant's knowledge.

Finally, respondent claimed that he executed the writ before the sheriff's expenses could be deposited because of the complainant's insistence as the latter was worried that Mrs. Kawaling would abscond.

In her reply-affidavit, complainant pointed out that respondent did not deny nor confirm personally receiving the amount of P1,000.00 from her on October 6, 2006; that while the Itemized Estimated Amount of Expenses was dated October 6, 2006, the document was given to her only on February 1, 2007; that respondent went back to the Register of Deeds of Butuan City on April 20, 2007, notwithstanding the absence of any deposit from the complainant, only because the present administrative complaint had already been filed against him; and that only after her counsel demanded from respondent to complete the enforcement of the writ did the latter execute the Sheriff's Return of Service dated February 22, 2007.

In the agenda report dated November 24, 2008, the Office of the Court Administrator (OCA) made the following evaluation and recommendation:^[11]

EVALUATION: After thorough review of the records of this case, this Office believes that respondent sheriff should be disciplined for non-compliance with the requirements in the implementation of the writ of execution.

First, we observed that respondent sheriff failed to follow the procedure relative to the expenses to be incurred in implementing the writ. Section (10) (1), Rule 141 of the Rules of Court requires the sheriff to prepare and submit to the court for approval a statement of the estimated expenses. Upon approval of the said estimated expenses, the interested party shall deposit such amount with the Clerk of Court and ex-officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. In this case, however, respondent did not wait for the approval of his statement of estimated expenses and served the writ without the required deposit due to the insistence of complainant who got worried that accused might abscond. Respondent should not have deviated from the rules of procedures. He should have waited for complainant to make the deposit because he is obliged to follow the prescribed procedure regardless of the persuasion coming from the complainant. Had he done so, he could have avoided any misunderstanding with the complainant as to the sheriff's expenses.

Respondent's failure to comply with the requirements in the implementation of the writ of execution led him to commit his second mistake. We noticed that respondent sheriff failed to make a return on the implementation of the writ of execution after every thirty (30) days from receipt of the writ.

Respondent stated in his return that he got hold of the writ on October 4, 2006 but he made his first and only return on February 22, 2007. Since the judgment was not satisfied in full within thirty (30) days after his receipt of the writ, respondent should have made the periodic report every thirty (30) days stating the reason/s therefore as required by section 14, Rule 39 of the Rules of Court. Had he done so, complainant would have no basis charging him of neglect of duty.

Simple Neglect of Duty under Section 52, B(1), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, is punishable with suspension for a period of one (1) month and one (1) day to six (6) months for the first offense. Based on our record, this is the first administrative case filed against respondent sheriff. Hence, we are of the opinion that the penalty of suspension of one (1) month and one (1) day is proper.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, it is respectfully recommended that this case be RE-DOCKETED as a regular administrative matter and APOLLO R. RAGOT, Sheriff, MTCC, Gingoog City, be found GUILTY of SIMPLE NEGLIGENCE OF DUTY and be SUSPENDED for One (1) Month and One (1) day, the same to take effect immediately upon receipt of the Court's decision.

In its Resolution^[12] of January 19, 2009, the Court had the instant case re-docketed as a regular administrative matter and required the parties to manifest whether they were submitting the same on the basis of the pleadings filed. In separate manifestations, complainant and respondent separately manifested their conformity

to a resolution of the case on the pleadings.

We concur with the OCA's finding and recommended penalty.

At the outset, we must reiterate that the conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with a heavy burden of responsibility, necessarily so if the faith and confidence of the people in the judiciary are to be maintained.^[13] This Court has repeatedly warned that by the very nature of their functions, sheriffs are under obligation to perform the duties of their office honestly, faithfully and to the best of their ability, and must conduct themselves with propriety and decorum, and above all else, be above suspicion.^[14]

From the record, the following facts have been established:

- (a) Respondent received the Writ of Execution on October 4, 2006.
- (b) Respondent served the writ on Mrs. Kawaling on October 6, 2006 and acknowledged receiving the amount of P1,000.00 directly from complainant by signing a receipt therefor.
- (c) On January 18, 2007, respondent asked for and received from complainant the amount of P500.00, as also evidenced by a receipt.
- (d) Respondent handed a court-approved Itemized Estimated Amount of Expenses dated October 6, 2006 relative to the execution of the writ to complainant only on February 1, 2007.
- (e) In a letter dated February 14, 2007, the counsel for complainant requested the respondent to undertake the complete enforcement of the writ of execution.
- (f) Thereafter, complainant received from the respondent a Sheriff's Return of Service dated February 22, 2007, reporting therein the partial satisfaction of the writ of execution. This was the first return of service executed by respondent sheriff since receiving the writ of execution and serving the same on Mrs. Kawaling more than four (4) months prior.
- (g) Complainant filed an administrative case against respondent sheriff on March 26, 2007.
- (h) Respondent submitted to the Court another Sheriff's Return of Service^[15] dated October 17, 2007 reporting the full satisfaction of the writ of execution.

In the implementation of writs or processes of the court for which expenses are to be incurred, sheriffs are mandated to comply with Section 10, Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC, the pertinent portion of which reads: