

## EN BANC

**[ A.M. No. P-08-2454 (Formerly OCA IPI No. 07-2561-P), May 07, 2008 ]**

**VIRGILIO A. MUSNGI, Complainant, vs. ARIEL D. PASCASIO, Sheriff III, Municipal Trial Court in Cities (MTCC), Branch 5, Olongapo City , Respondent.**

### DECISION

#### PER CURIAM:

Sheriffs are ranking officers of the court. They play an important part in the administration of justice -- execution being the fruit and end of the suit, and the life of the law. In view of their exalted position as keepers of the public faith, their conduct should be geared towards maintaining the prestige and integrity of the court.<sup>[1]</sup> The respondent failed to live up to this creed in the case at bar.

#### *Facts of the Case*

This administrative case stemmed from a Complaint<sup>[2]</sup> dated October 31, 2006 of Mr. Virgilio A. Musngi (Mr. Musngi) charging Mr. Ariel D. Pascasio (Mr. Pascasio), Sheriff III of MTCC, Branch 5, Olongapo City with Grave Misconduct. Complainant alleges that he is the owner of V.A. Musngi Forwarders, an SBMA-accredited service contractor. On August 8, 2006, his two (2) closed vans were hired by respondent to transport used clothing from California Waste and Rags Corp. to the Supreme Court for Seven Thousand Pesos (P7,000.00) per delivery trip.

Complainant further alleges that respondent assured him that the taxes imposed on the goods to be transported were already paid. However, after the Custom's Police had inspected the goods, they found out that said goods were smuggled and his two vans were impounded. Complainant begged for respondent's assistance but the latter ignored his plea. Complainant laments that he was in desperate condition to get support for his family since those vans were his only source of income.

In his Comment dated May 29, 2007, respondent denies all the allegations in the complaint contending that he never entered into any contractual relation with complainant, or hired his vehicle. He points out that the complaint is unsubstantiated, as complainant has no contract to prove his claim.

The Office of the Court Administrator (OCA), in its Memorandum dated August 22, 2007, recommended that the instant administrative complaint be referred to Hon. Norman V. Pamintuan, Executive Judge of MTCC, Olongapo City for further investigation, report and recommendation. The Court, in its Resolution of September 19, 2007, adopted the recommendation of the OCA.

On January 17, 2008, the OCA received the investigation report and

recommendation of Judge Pamintuan.

### ***Investigation Report and Recommendation***

During the investigation, the following persons were summoned to testify before Hon. Pamintuan: Virgilio A. Musngi, complainant; Aloither Vergel Musngi, son of the complainant; Alexander Rimando, the Clerk of Court of MTCC, Olongapo City; Diane Fernandez, Branch Clerk of Court of MTCC Branch 5, Olongapo City; and Ariel Pascasio, the respondent.

The findings of the Investigating Judge based on the facts alleged in the complaint and proved in the investigation are as follows:

**First, it is undisputed that respondent Ariel Pascasio hired on August 8, 2006 the two (2) closed vans of the complainant for P7,000.00 per delivery trip of each truck purportedly to transport used clothings from the warehouse of California Waste and Rags Inc. in Subic Bay Freeport Zone to a warehouse somewhere in Manila by virtue of a Writ of Execution dated October 18, 2005, as per decision issued by Hon. Reynaldo M. Laigo on August 1, 2005, with the corresponding Notice of Levy/Attachment upon Realty/Personalty which was prepared and signed by respondent Pascasio, dated November 3, 2005.<sup>[3]</sup>**

The complainant testified that on August 8, 2007 it was his son Aloither Vergel Musngi who personally attended the transaction between V.A. Musngi Forwarders and Sheriff Pascasio. This was corroborated by Aloither Musngi, who met with the respondent at the Subic Bay Freeport Zone and discussed the rate of the service and the destination of the goods to be transported. The respondent gave Aloither a copy of Request for Inspection of Cargoes No. 1071<sup>[4]</sup> approved by the Seaport Department of SBMA and two (2) gatepasses stating that the subject goods were examined by a customs examiner. Notably, the company and consignee stated in both documents is the Supreme Court of the Philippines, with Sheriff Pascasio as its authorized representative.

Aloither immediately noticed that the goods to be transported out of the Freeport area were illegal but he was persuaded to continue with the transaction because he was shown a copy of the writ of execution<sup>[5]</sup> and the decision<sup>[6]</sup> of the MCTC Branch 5, Olongapo City in Civil Case No. 6610. Respondent, likewise, assured that the goods would be donated to the Department of Social Welfare and Development (DSWD).

However, the goods were apprehended at the Tipo Gate of SBMA, it being a prohibited importation under Republic Act (R.A.) No. 4653.<sup>[7]</sup> The goods, with an estimated value of Four Million Pesos (P4,000,000.00), were seized, including the carriers, the two (2) closed vans of V.A. Musngi Forwarders and three (3) closed vans owned by a certain Marlon M. Aguirre. The vans were impounded by the Bureau of Customs. During the hearing of the seizure case, Aloither sought the assistance of Sheriff Pascasio for the release of the vans but the latter never answered his call and did not show up.

The complainant then appeared alone in the seizure case for the recovery of his

vans until the termination of the proceedings on December 28, 2006 when an Order<sup>[8]</sup> for the release of the vans was granted by the Bureau of Customs.

The complainant alleged that he suffered damages in the amount of P14,000.00 for the unpaid charter of the vans, and approximately P900,000.00 as lost income since complainant was not able to use the vans for approximately seven (7) months during the pendency of the seizure proceedings.

**Second, the respondent's defense that he only mediated in the transaction between the complainant herein and the judgment creditor in the civil case, Anglo-Asia Corp., was not proven.**

The respondent denied that there was a contract between him and the complainant for the hiring of the latter's vans. He alleged that he was merely complying with a writ of execution issued by the court, and that his only participation was to assist in the loading of the used clothings on the vans of the complainant. However, it is obvious from the documentary exhibits presented by the complainant that Sheriff Pascasio actively took part in the hiring of the vans until the goods were apprehended at the Tipo Gate. In fact, in the Request for Inspection and gatepasses, he positively acknowledged that his signature appeared thereon.<sup>[9]</sup>

**Third, respondent Sheriff Pascasio blatantly disregarded the procedure for execution of judgments.**

Section 10, Rule 141 of the Rules of Court explicitly provides that:

*With regard to the Sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses in an amount estimated by the Sheriff, subject to the approval of the court.*

*Upon approval of said estimated expenses, the interested party shall deposit such amount with the Clerk of Court and ex-officio Sheriff, who shall distribute 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. THE LIQUIDATION SHALL BE APPROVED BY THE COURT. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the Deputy Sheriff assigned with his return, and the Sheriff's expenses shall be taxed as costs against the judgment debtor.*

The above procedure is mandatory. The failure of Sheriff Pascasio to pay complainant Musngi the rental for the hauling service is a clear disregard of the Rules. There is no showing that he complied with the rules on estimation of expenses and liquidation of the same.

The Sheriff of Branch 5, Mr. Rimando, a superior of the respondent, testified in court that he was not furnished a copy of the writ of execution, which is usually done as a matter of procedure.<sup>[10]</sup> He came to know about the incident only in the newspapers the day after the goods and the vans were confiscated by the Bureau of

Customs. The Branch Clerk of Court of Branch 5, Ms. Dianne Fernandez, also testified and her testimony corroborated the allegation that the vans were hired at the instance of Sheriff Pascasio.<sup>[11]</sup> It must be noted though that said witness failed to submit an affidavit to this effect when asked by the court to submit one.<sup>[12]</sup> Moreover, the records of the case disclosed that after the goods and the vans were seized, the respondent filed the Sheriff's Report only after the lapse of fourteen (14) days.

The Investigating Judge recommended that the respondent be punished with dismissal from service with forfeiture of all benefits and with prejudice to re-employment in any branch or agency of the government, including government-owned or controlled corporations.

### ***This Court's Ruling***

The issue in this case is whether or not Sheriff Pascasio is guilty of grave misconduct for acts prejudicial to the best interest of service.

The authority of a sheriff is broad, but it is not boundless. In the enforcement of judgments and judicial orders, a sheriff as an officer of the court upon whom the execution of a final judgment depends, must necessarily be circumspect and proper in his behavior. He must know what is inherently right and wrong and must discharge his duties with prudence and caution. Moreover, he must, at all times, show a high degree of professionalism in the performance of his duties.<sup>[13]</sup>

The respondent in this case faces the charge of Grave Misconduct, an offense that carries a severe penalty, which is dismissal from service,<sup>[14]</sup> with forfeiture of all benefits and with prejudice to re-employment in any branch or agency of the government, including government-owned or controlled corporations.<sup>[15]</sup> It is, therefore, imperative that the guilt of the respondent be proven by substantial evidence.

It is settled in jurisprudence that "misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."<sup>[16]</sup> In grave misconduct, there must be substantial evidence showing that the acts complained of are corrupt or inspired by an intention to violate the law, or constitute flagrant disregard of well-known legal rules.<sup>[17]</sup>

In the case at bar, the investigation conducted by Hon. Pamintuan, Executive Judge of MTCC in Olongapo City, fairly afforded the respondent due process, the right to be heard and to defend himself against the accusation. It was also adequately shown that respondent not only used his position to benefit himself by entering in a contract with complainant Musngi but he did so in blatant violation of the law, the Rules of Court and the Code of Conduct of Judicial Employees. Respondent Sheriff Pascasio argues that he is unaware that the law prohibits the importation of used clothings. But he also knows that his ignorance cannot excuse him from compliance. As a Sheriff, respondent ought to know that he cannot attach goods which are banned and illegal. He should have been more prudent in the execution of the said writ especially because the value of the goods is estimated at around Four Million Pesos (P4,000,000.00).