

FIRST DIVISION

[A.M. No. P-05-1971 (Formerly OCA IPI No. 04-1915-P), June 26, 2008]

JORGE Q. GO, COMPLAINANT, VS. VINEZ A. HORTALEZA, DEPUTY SHERIFF, REGIONAL TRIAL COURT- OFFICE OF THE CLERK OF COURT, DAGUPAN CITY, RESPONDENT.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This administrative case stemmed from a verified complaint dated April 26, 2004 filed with the Office of the Court Administrator (OCA) by Jorge Q. Go, charging the respondent, Vinez A. Hortaleza, Deputy Sheriff, Regional Trial Court-Office of the Clerk of Court (OCC), Dagupan City, with Abuse of Authority and Illegal Exaction in connection with the implementation of the writ of execution issued by the Municipal Trial Court (MTC) of Mangaldan, Pangasinan in Civil Case No. 1512, entitled "*Spouses Gromeo Evangelista and Jovita Abuan vs. Spouses Jorge Go and Teresita Geronimo*," for Ejectment.

The record shows that complainant and his spouse were the defendants in the above-mentioned *Civil Case No. 1512*. The MTC of Mangaldan, Pangasinan rendered an adverse decision against the said defendants-spouses.

On November 25, 2002, the MTC granted the Motion for Execution filed by the plaintiff in the said civil case, prompting the defendant therein to file a motion for reconsideration dated April 14, 2003.

On August 21, 2003 and pending resolution of the said motion for reconsideration, respondent seized and levied upon the complainant's Toyota Corolla car with Plate No. ADV-767. Respondent impounded and stored said vehicle at the parking lot of the Hall of Justice in Dagupan City, which according to complainant exposed it to the elements. To secure the release of the car, complainant deposited, under protest, the amount of P161,042.00^[1] with the OCC.

On October 8, 2003, a Resolution was issued by the MTC denying complainant's Motion for Reconsideration dated April 14, 2003 but granted his Motion for Release of Motor Vehicle dated August 25, 2003 in view of the deposit of P161,042.00.^[2]

Accordingly, upon order of the MTC, respondent released to the complainant, through Melanio Balolong, complainant's Toyota Corolla. However, according to complainant, before effecting the release of the said vehicle, respondent demanded from complainant's representative, Melanio Balolong, the amount of P5,000.00, which purportedly would answer for the expenses in the implementation of the writ of execution. Respondent did not deny his receipt of the said sum of money as he in fact issued an ACKNOWLEDGMENT RECEIPT^[3] on October 29, 2003.

Complainant claimed to have repeatedly demanded to no avail the return of the said P5,000.00 or the issuance of an official receipt if the aforementioned expenses could properly be charged to complainant, the losing party in the MTC case.

Hence, this complaint praying for the imposition of appropriate sanctions on respondent.

As required by the Court Administrator, respondent filed his comment dated June 24, 2004^[4] which prayed for the dismissal of the complaint. Respondent cited Rule 39 of the Rules of Court, requiring the requesting party to pay sheriff's expenses incurred in enforcing writs of execution. He explained that he paid P4,000.00 to a mechanic and P500.00 to a key master and the balance of P500.00 was spent for his transportation expenses and other expenses in serving the writ. The mechanic removed the vehicle's wheel to prevent it from being taken by bad element and also watched over the same while it was stored in the courtyard.

In its Memorandum Report, the OCA recommended that the present case be re-docketed as a regular administrative matter and that respondent be suspended for one (1) month, pursuant to Section 52(B)(1) of CSC Resolution No. 99-19 dated August 31, 1999, with a stern warning that a repetition of a similar infraction in the future shall be dealt with more severely.

We agree with the OCA's recommendation that respondent be found guilty of simple misconduct but with modification as to the proposed penalty.

The culpability of the respondent lies not in the implementation of the writ of execution during the pendency of the motion for reconsideration of the MTC Resolution granting the Motion for Writ of Execution of the judgment, since the latter was already final and executory. Rather, he is answerable for his act of demanding and receiving money from complainant without observing the proper procedure prescribed in Section 9, Rule 141 of the Revised Rules of Court.

Time and again we have ruled that high standards of conduct are expected of sheriffs who play an important role in the administration of justice because they are tasked to execute final judgments of the courts. Thus, when a writ is placed in the hands of a sheriff, it becomes his ministerial duty to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. This duty, in the proper execution of a valid writ, is not just directory, but mandatory. He has no discretion whether to execute the writ or not.^[5] He is mandated to uphold the majesty of the law as embodied in the decision. As we explained in *Zarate v. Untalan*:^[6]

...the primary duty of sheriffs is to execute judgments and orders of the court to which they belong. It must be stressed that a judgment, if not executed, would be an empty victory on the part of the prevailing party. It is said that execution is the fruit and the end of the suit and is very aptly called the life of the law. It is also indisputable that the most difficult phase of any proceeding is the execution of judgment. Hence, the officers charged with this delicate task must, in the absence of a restraining order, act with considerable dispatch so as not to unduly delay

the administration of justice; otherwise, the decisions, orders, or other processes of the courts of justice would be futile.

Thus, respondent sheriff cannot be faulted for immediately implementing the writ of execution, there being no injunction nor temporary restraining order being issued by the court. However, the OCA correctly found him accountable administratively for his failure to adhere to the rules governing the acceptance of money from parties-litigants as well as to respond to the letter of the complainant inquiring about the nature of the P5,000.00 exacted from the latter's representative and to issue an official receipt for the said amount.

Section 9, Rule 141 of the Revised Rules of Court prescribes the procedure to be followed by the sheriffs in implementing a writ of execution, as follows:

SEC. 9. Sheriffs and other persons serving processes.-

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In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, 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 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. 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.

In accordance with the above-quoted Rule, the steps that must be followed before an interested party pays the sheriff's expenses are: 1) the sheriff must make an estimate of the expenses to be incurred by him; 2) he must obtain court approval for such estimated expenses; 3) the approved estimated expenses shall be deposited by the interested party with the Clerk of Court and *ex-officio* sheriff; 4) the Clerk of Court shall disburse the amount to the executing sheriff; and 5) the executing sheriff shall liquidate his expenses within the same period for rendering a return on the writ.^[7] Any unspent amount should be refunded to the party making the deposit. Thereafter, the sheriff must render a full report.

Here, respondent demanded and received the sum of P5,000.00 from complainant without first making an estimate of the sheriff's expenses. Hence, nothing was submitted to the court for approval. Also, it was respondent sheriff, and not the Clerk of Court, who took custody of the fund. While in his comment, respondent was able to show the breakdown of all the expenses amounting to P5,000.00, this, however, does not justify his deviation from the procedure laid down in the above-quoted rule. The Court also doubts the veracity of the belated manifestation of respondent that he turned over the P5,000.00 to the counsel of the judgment creditor, the plaintiff in the MTC case.