

## FIRST DIVISION

**[ A.M. No. P-07-2330 (Formerly A.M. OCA IPI No. P-03-1538-P), June 20, 2008 ]**

**LUDOVICO RAFAEL, COMPLAINANT, VS. BERNARDO G. SUALOG,  
SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 9, KALIBO,  
AKLAN, RESPONDENT.**

### D E C I S I O N

**AZCUNA, J.:**

This is an administrative case against respondent Bernardo G. Sualog, Sheriff IV, Regional Trial Court (RTC), Branch 9, Kalibo, Aklan, charging him with grave abuse of authority relative to the execution of the judgment in Civil Case No. 3300 for partition and/or recovery of real property and accounting with damages, filed by Ludovico Rafael.

In his letters dated December 18, 2002 and July 10, 2003 addressed to the Office of the Court Administrator (OCA), complainant alleged that on September 8, 1993, respondent, accompanied by members of the Philippine National Police of Nabas Police Station, Nabas, Aklan, arrived at his residence informing him and his co-plaintiffs that they have lost their case and, consequently, they have to place their houses under legal custody; respondent warned them that they would be liable for moral damages if they would resist; respondent further forced them to sign a document but they refused to do so since they could not understand its contents, which were written in English language; as a result, respondent directed them to go to the Municipal Hall of Nabas, Aklan, which, due to fear and in order to avoid any trouble, complainant and some of his co-plaintiffs did; upon arriving thereat, they were surprised to be detained; while not actually imprisoned, their movements were guarded by the police so that they could not go back to their houses; upon the instance of the Mayor of Nabas, complainant and his sister Arsula<sup>[1]</sup> Rafael-Janoya were released from detention after two (2) days while his son Jim and nephew Salcedo Janoya were freed five (5) days after; later, respondent returned to their place to instruct them to vacate their houses and remove their things for the demolition; because of lack of education and fear of any violence, they had no choice but to accede to respondent; and that eventually the houses of complainant, Jim, Arsula and Salcedo were demolished even after complainant explained to respondent that their houses were not included in the case.<sup>[2]</sup>

Respondent, in his Comment dated March 5, 2003,<sup>[3]</sup> countered that the instant complaint stemmed from Civil Case No. 3300 entitled "*Ludovico Rafael, et al. versus Mamerto Rafael, et al.*," which was decided by the RTC of Aklan on September 4, 1990 in favor of the defendants; on December 14, 1990, when respondent served the writ of execution dated December 6, 1990, he explained to complainant and his co-plaintiffs that the case was dismissed and that there is a need for them to vacate the contested lots; complainant refused to vacate on the ground that he owns the

land and has proof in support thereof; for refusing to obey the writ, a motion for contempt of court was thereafter filed by the defendants against complainant, his sons Dione and James, his sister Arsula, and his nephew, Salcedo; on August 2, 1991, the RTC resolved the contempt proceedings and directed the plaintiffs to remove their houses from the disputed lots within thirty (30) days from receipt of the Order, otherwise, the same would be removed and demolished at their expense; the belated appeal of the plaintiffs to the Court of Appeals was dismissed on August 31, 1992, which resolution became final and executory on September 13, 1992; on August 10, 1993, a second alias writ of execution was issued by the RTC; in the execution of the alias writ on August 25 and 27, 1993, respondent served copies thereof to complainant and the other plaintiffs and explained to them in the local dialect its contents with the assistance of the *Punong Barangay*, but complainant and his co-plaintiffs did not comply; after seeking the assistance of the police authorities of Nabas, Aklan, respondent implemented the writ on September 28, 1993<sup>[4]</sup> but complainant and his co-plaintiffs again declined, stating that they would just voluntarily submit themselves to the police authorities and be confined in the Municipal Hall of Nabas rather than witness the demolition of their houses; and that respondent went on to enforce the alias writ and explained to complainant that they could proceed to the Municipal Hall and report whatever complaint they may have against the execution.

Respondent denied complainant's assertion that his house is not included in Civil Case No. 3300 since the latter was the principal plaintiff who actively participated in the case and in the Deed of Undertaking dated September 24, 1993, whereby he and his co-plaintiffs assisted by their counsel bound themselves to remove and demolish their houses at their own expense within thirty (30) days from the date thereof. He asserted that the present case is apparently caused by the miscommunication and strained relations of the plaintiffs and their counsel who failed to apprise them of the September 4, 1990 RTC decision and its effects as well as the subsequent incidents of the case; that he has faithfully adhered to the proper rules of procedure in implementing court orders; and that he has not committed any abuse of authority considering that he made several attempts to effectively and peacefully execute the writs to avoid violence and bloodshed.

On August 13, 2003, the OCA recommended that the case be referred to Hon. Marietta H. Valencia, Executive Judge of RTC Kalibo, Aklan for further investigation, report and recommendation in view of its finding that the case could not be resolved on the basis of the pleadings submitted. The OCA opined that there are conflicting allegations on the part of complainant and respondent as to the manner the latter implemented the writ of execution and that there is also a need to clarify the "nebulous" circumstances leading to the alleged illegal detention of complainants and respondent's purported involvement therein.<sup>[5]</sup>

Acting on the referred administrative case, Judge Valencia ordered complainant to file the affidavits of his witnesses within fifteen (15) days from January 7, 2004 and granted respondent the same period within which to file his counter-affidavit. Despite this, complainant never submitted any affidavit up to the time Judge Valencia finally issued her Report on May 20, 2004. In recommending for the dismissal of the case against respondent, Judge Valencia opined:

x x x. It appears that [the complainant] has lost interest in his complaint.

While desistance by the complainant does not necessarily mean that the respondent should be exonerated from the administrative charge, aside from the allegations of the complainant, there is no documentary proof in the records that show that respondent abused his authority while implementing the writs of execution.

Furthermore, respondent, as an officer of the court, is presumed to have regularly performed his official duty. (*citation omitted*)

The Report was transmitted back to the OCA. On October 27, 2004, it disagreed with Judge Valencia's proposition. Instead, the OCA recommended the ultimate penalty of dismissal from service, with forfeiture of all his benefits and with prejudice to his re-employment in any branch of the Government including government owned and controlled corporations. It ruled:

As borne by the case records, the allegation of respondent that plaintiffs themselves (*sic*) voluntarily submitted themselves to the police authorities and allowed themselves to be confined in the Municipal Hall rather than witness the demolition of the houses is not credible. Respondent failed to countervail the narration contained in Entry No. 2003, Page 232, dated September 1993 in the Police Blotter of Nabas, Aklan Police Station, that complainant and his family were "arrested by Bernardo Sualog, Sheriff IV For (*sic*) their refusal to vacate the land in question x x x that said persons was (*sic*) under police custody for their detention as per request by (*sic*) Bernardo Sualog, Sheriff IV, SGD Tirazona." The presumption that respondent regularly performed his official duty in the implementation of the writ on 28 September 1994 (*sic*), therefore, does not apply in the face of contrary evidence presented by the complainant. It is the police officer who recorded the entry in the police blotter who enjoys the presumption of regularity in the performance of his official function.

In *Cruz vs. Dalisay* (A.M. No. R-181 P, 152 SCRA 485), the Court held that considering the ministerial nature of (the sheriff's) duty, it is incumbent upon him to ensure that only that portion of a decision ordained or decreed in the dispositive portion should be the subject of execution. No more, no less. Section 10(c) and (d), Rule 39 of the Rules of Court in hereunder quoted:

"SECTION 10. Execution of judgments for specific act. -

(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 peacefully 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 police officers, and employing such means as may be reasonably necessary to retake possession, and*