

THIRD DIVISION

[A.M. No. P-07-2359 (Formerly OCA IPI No. 05-2304-P), August 11, 2008]

**JUDGE OFELIA CALO, METC, BRANCH 59, MANDALUYONG CITY
AND PABLEA TAMAYO, COMPLAINANTS, VS. RICARDO L. DIZON ,
SHERIFF III, METC, BRANCH 59, MANDALUYONG CITY,
RESPONDENT.**

RESOLUTION

CHICO-NAZARIO, J.:

The administrative case at bar arose from the letter^[1] dated 6 January 2005 of Mr. Melo M. Acuna, Station Manager of Radio Veritas, informing the Office of the Court Administrator (OCA) of the plight of Mrs. Pablea Tamayo (Mrs. Tamayo), plaintiff in Civil Case No. 18787, a case for unlawful detainer, pending before the Metropolitan Trial Court (MeTC), Branch 59, Mandaluyong City. The MeTC, in its Decision dated 29 April 2003, ruled in favor of plaintiff Mrs. Tamayo and ordered the defendants Neron Ladaga, Luisa Ladaga, Olympio Taray, and all other persons claiming rights under them, "to vacate the subject premises, pay the amount of P3,000.00 as attorney's fees and pay the costs of suit." Pursuant to the Decision dated 29 April 2003 of MeTC Judge Marilyn Payoyo-Villordon, a writ of execution dated 14 September 2004 was issued, addressed to Sheriff Ricardo Dizon (Sheriff Dizon), which reads:

WHEREAS, in the above-entitled action for Forcible Entry and Illegal Detainer of the following described premises, to wit: 360 Addition Hills, Mandaluyong City, lately tried before me, wherein judgment was rendered on 29 April 2003, that the plaintiff aforesaid have restitution of the premises, and also that he recovers the rent in arrears, and damages in the amount of P_____ and also that he recovers cost in the sum of P_____ x x x.

NOW, THEREFORE, you are hereby commanded to cause the defendant aforesaid to forthwith be removed from the premises and that the plaintiff aforesaid to have restitution of the same; also that you collect from defendant the rent, damages, and costs in the amount aforesaid, and your fees for the service of this execution, and upon the failure of defendant to pay same, that you seize the goods and chattels of the said defendant, except such are by law exempt, and make sale thereof according to the law in such cases made and provided to the amount of said judgment and costs and interest hereon from the date of said judgment, together with your fees upon this execution, and pay the amount so collected by you hereunder to the plaintiff in said action except the amount of your fees hereon.

In case sufficient personal property of the said defendant cannot be

found to satisfy the amount of said judgment, costs, interest, and your fees hereon, you are directed to levy upon any real estate of Neron & Luisa Ladaga and Olympio Taray, defendant, and to sell the same in the manner provided by law for the satisfaction of the balance of said judgment, costs, interest, and your fees hereon, and that you make return of your proceedings hereunder upon this writ within 60 days from receipt hereof.^[2]

Sheriff Dizon, though, failed to implement the MeTC Decision dated 29 April 2003.

The OCA referred^[3] the matter to Judge Ofelia L. Calo (Judge Calo) of MeTC, Branch 1, Mandaluyong City, for appropriate action on 10 January 2005, and again on 2 March 2005. Judge Calo was instructed to submit a report on any action taken on the matter.

In her Report^[4] dated 18 April 2005, Judge Calo stated that she required Sheriff Dizon to comment on the complaint of Mrs. Tamayo, but found his explanation unsatisfactory. She reported that the P10,000.00 sheriff's fee declared by Sheriff Dizon as part of the execution expenses was highly irregular for lack of approval by the court and failure of Sheriff Dizon to explain how the money was spent. Judge Calo concluded that Sheriff Dizon must have misappropriated the amount.

Still, according to Judge Calo's report, the writ of execution in Civil Case No. 18787 was received by Sheriff Dizon on 20 September 2004. While the Sheriff's Return stated that the writ was satisfactorily enforced with the turnover of the subject premises to Mrs. Tamayo on 31 January 2005, it did not constitute a full execution of the judgment, because the money award therein was never satisfied. Sheriff Dizon failed to exert reasonable effort to fully implement the writ.

In addition to the subject civil case, Judge Calo also took note of several cases in which the integrity of Sheriff Dizon in the performance of his functions was put in issue, to wit:

1. In Civil Case No. 18317 entitled "Teresita Brioso v. Chit Penuis," for Sum of Money, the plaintiff filed a Motion for Appointment of a Special Sheriff because sheriff Dizon was unable to enforce the writ of execution. In his report, sheriff Dizon alleged that the judgment could not be enforced because the defendant does not have any real or personal property to be levied upon. Plaintiff filed another motion reiterating her earlier motion for appointment of a special sheriff. During the hearing, plaintiff declared in open court that the defendant has personal properties such as refrigerator and computer. In addition, the record reveals that the filing of the return was made several months late. In an Order date 31 March 2005, the court granted the motion of the plaintiff for the appointment of a special sheriff to enforce the writ of execution.
2. In Civil Case No. 19171 entitled "Genie Grace Tuyay and Joel Tuyay v. P. Ador De Asis" for Unlawful Detainer, defendant filed a verified Motion to Cite Deputy Sheriff Ricardo Dizon for Contempt of Court. According to defendant, sheriff Dizon failed to provide him with full statement of the proceedings under the writ and an itemized list of

the properties attached. In addition, instead of depositing the attached property in court, sheriff Dizon turned them over to the plaintiff. Subsequently, the court, in an Order dated 01 September 2004, dissolved the writ of attachment and ordered sheriff Dizon to return the items to the defendant. Although the petition for contempt did not push through because of defendant's failure to pay the necessary filing fee, sheriff Dizon has yet to submit his compliance to the aforesaid order as in fact, the record reveals that he has not submitted any report as regards the implementation of the writ. It was only after the court ordered him to explain such inaction that he submitted his report.

3. In Civil Case No. 19438 entitled "Eagle Financial Service Group, Inc. v. Sps. Angelito and Violeta Langubnan" for Sum of Money, the court dismissed the case for failure of the plaintiff to cause the service of summons for six (6) months. Plaintiff filed a Motion for Reconsideration alleging that it has already advanced the amount of P1,500.00 to sheriff Dizon for the service of summons. The latter admitted having received the money but reasoned out that it was plaintiff's counsel who agreed to hold in abeyance the service of summons pending the availability of funds for the service of summonses in other civil cases. Judge Calo noted that the sheriff has no authority to withhold the service of summons upon the mere plea of the plaintiff.
4. In Civil Case No. 19696 entitled "Radiowealth Finance Company, Inc. v. Sps. Alden Arcinas & Lilia Arcinas and John Doe" for Recovery of Possession, plaintiff filed an Ex Parte Motion to Compel Sheriff to Implement the Writ of Replevin because of sheriff Dizon's refusal to implement the writ. Sheriff Dizon explained that he served the summons upon a certain Alex Canaveral who introduced himself as a lawyer and upon whose possession the vehicle was found. Canaveral allegedly refused to surrender possession of the vehicle and despite prodding of plaintiff's representative, he desisted from seizing the vehicle in order to prevent the happening of any untoward incident considering that plaintiff refused to avail of the presence of police officers. The court reprimanded sheriff Dizon with a stern warning that a repetition of same or similar act will be dealt with more severely citing that there was no basis that would indicate a threat to his life or limb. It is also incumbent upon him to coordinate with the police.^[5]

On the basis of Judge Calo's report, the OCA made the following recommendations:

A perusal of the documents submitted before us reveals that the complaints against sheriff Dizon are serious in nature and should be given due course. The initial investigation conducted by Judge Ofelia L. Calo provided sufficient basis to continue with the administrative proceedings against the said sheriff. Meanwhile, in the interest of due process, sheriff Dizon must be given the chance to answer the charges against him.

WHEREFORE, in view of the foregoing, it is most respectfully recommended that:

1. The report dated 18 April 2005 of Judge Ofelia L. Calo be TREATED as administrative complaint against sheriff Dizon in addition to the letter-complaint of Mrs. Pablea G. Tamayo;
2. That the instant complaint be DOCKETED for informal preliminary inquiry;
3. That sheriff Ricardo L. Dizon be required to COMMENT on the letter of Mr. Melo M. Acuna and the Report dated 18 April 2005 of Judge Ofelia L. Calo within ten (10) days from receipt hereof. [6]

In his comment^[7] dated 16 November 2005, Sheriff Dizon stated that he could not immediately act on the writ of execution in Civil Case No. 18787 due to Mrs. Tamayo's inability to provide him with police assistance on the scheduled date of its implementation. Therein defendants and their supporters already exhibited disrespect for the authorities and obviously would exert physical violence to thwart the execution. It was only on 31 January 2005 that police authorities were made available to assist Sheriff Dizon. Sheriff Dizon alleged that he implemented the writ despite the invectives hurled against him by the irate defendants. The possession of the subject premises was thus already transferred to Mrs. Tamayo. Sheriff Dizon further asserted that he could not be faulted for his failure to execute the monetary judgment award, since, during the implementation of the writ, nothing was left in the subject premises except a clutter of old clothes, kitchen utensils, and rickety makeshift furniture.

Sheriff Dizon argued that the conclusions of Judge Calo that the former received P10,000.00 from Mrs. Tamayo and misappropriated the same had no basis. He was not able to deny that he received the P10,000.00 because Mrs. Tamayo never alleged that she gave said amount to him and that he received the same. Sheriff Dizon explained that Mrs. Tamayo had her own version of the dispositive portion of the MeTC Decision dated 29 April 2003, including therein several amounts not actually mentioned in the said decision. He averred that his refusal to collect Mrs. Tamayo's purported damages and unpaid rentals from the defendants was for the simple reason that they were not covered by the MeTC Decision dated 29 April 2003.

Sheriff Dizon then proceeded to state his side on the other cases cited by Judge Calo in which he did not perform his functions.

In Civil Case No. 18317 entitled, *"Teresita Briosos v. Chit Penus,"* Sheriff Dizon clarified that the writ of execution issued therein was not implemented because the defendant did not make any payment and had no properties to be levied upon. Respondent informed the plaintiff of this fact but her counsel moved for the appointment of a special sheriff. It was not correct to state that he failed to enforce the writ. The writ was immediately acted upon but the enforcement was unsuccessful. He, however, admitted that he failed to render a report of the proceedings on time.

As for Civil Case No. 19171 entitled, *"Genie Grace Tuyay v. P. Ador de Asis,"* Sheriff Dizon alleged that he executed the order of attachment by taking one meat-grinding

machine, one chest freezer and one defective GE refrigerator. These items were deposited at plaintiff's residence, because there was no space in the court where they could be stored, and plaintiff did not want to shoulder the expenses for their storage in a bonded warehouse. Sheriff Dizon justified his action by arguing that the rule on the custody of attached goods is not absolute. Again, he admitted that he failed to immediately submit a report of the proceedings, but his report was submitted nonetheless.

Sheriff Dizon explained that in Civil Case No. 19438 entitled, "*Eagle Financial Services Group, Inc. v. Sps. Angelito and Violeta Langubnan*," the plaintiff's counsel handed him P1,500.00 as sheriff's expenses for the service of summons in Sagana, Santiago City, Isabela. The said counsel advised Sheriff Dizon to wait for the summons in the other cases the former filed in court that also needed to be served in the remote northern provinces. As sheriff, he is responsible for the speedy and efficient service of all court processes. Given a situation in which it is possible for him to serve more summons in far-off places, common sense dictates that he arrange a schedule and make arrangements that would enable him to achieve more in a single trip.

Relative to Civil Case No. 19696, Sheriff Dizon pointed out that he did not seize the vehicle subject of the writ of replevin therein for the reason that the vehicle was in a company compound and heavily guarded by armed security men. He was also not provided any police assistance. He wanted to accomplish his work, but he had to exercise prudence in doing so.

On 28 June 2006, the Court directed Judge Calo and Mrs. Tamayo to file a reply to Sheriff Dizon's comment.

In her reply^[8] dated 30 August 2006, Judge Calo stated that Mrs. Tamayo's interpretation of the dispositive portion of the MeTC Decision dated 29 April 2003 included the amount of P10,000.00 as sheriff's fee, P100,000.00 as damages, and P17,800.00 as rent in arrears. Judge Calo maintained that she would not have concluded that Sheriff Dizon received P10,000.00 from Mrs. Tamayo and misappropriated the same if Sheriff Dizon had made a categorical denial of receipt of the said amount when he submitted his comment to Judge Calo.

Judge Calo further informed the Court that after she submitted her report (re: 1st Indorsement dated 2 March 2005), she made a continuing effort to monitor Sheriff Dizon's implementation of court processes, including writs of execution; and that Sheriff Dizon was made to submit an itinerary of travel and estimate of expenses subject to her approval whenever he was scheduled to implement the court processes. As a result, miscommunication and misunderstanding were avoided during the service of summons and implementation of writs. Judge Calo additionally observed that Sheriff Dizon was now more cautious with his work, and this administrative matter has served as a stern warning to him to deal with the litigants expeditiously and honestly.

Judge Calo's second reply dated 30 October 2006 is a mere reproduction of her previous reply.

In her letter dated 3 November 2006, Mrs. Tamayo apologized to the Court for her