

## SECOND DIVISION

**[ A.M. No. 05-12-372-MTCC, December 24, 2008 ]**

**RE: JUDGE HECTOR B. BARILLO, METROPOLITAN TRIAL COURT  
IN CITIES - CANLAON CITY, COMPLAINANT, VS. CLERK OF  
COURT CARMEL A. CUIZON AND SHERIFF PERSHING T. YARED,  
RESPONDENTS.**

### **D E C I S I O N**

**BRION, J.:**

For the Court's decision is the letter-complaint dated May 20, 2005 of Judge Hector B. Barillo (*Judge Barillo*), Metropolitan Trial Court in Cities (*MTCC*), Canlaon City, addressed to the Office of the Court Administrator (OCA) charging Clerk of Court Carmel A. Cuizon (*Cuizon*) and Sheriff Pershing T. Yared (*Yared*) with Grave Abuse of Authority.

#### **The Background Facts**

On January 28, 2005, Judge Barillo issued a resolution<sup>[1]</sup> in Criminal Case No. 1739 (*People of the Philippines v. Aldeguer Canasa y Abendan*) for Reckless Imprudence Resulting in Homicide. The subject of the resolution is the disposition of a motor vehicle (*Strada*) covered by a writ of execution. Judge Barillo directed Yared to proceed with the auction of the *Strada* after the resolution became final and executory.<sup>[2]</sup>

Yared did not comply with the Judge's directive; instead, he accepted/received the amount of the judgment - One Hundred Twenty One Thousand Pesos (Php 121,000.00) - at the office of Cuizon and with her conformity, from a third party. They thereafter immediately paid the amount to the representative of the judgment creditors and released the *Strada*. All these were done without the knowledge and authority of Judge Barillo.<sup>[3]</sup>

Thereafter, Judge Barillo issued an Order<sup>[4]</sup> dated March 28, 2005, directing Yared, Cuizon and Canlaon City Prosecutor Tolomeo A. Dinoy (*Dinoy*) to submit written comments on the following questions:

1. Who received the above amount and when? How was the amount disposed of and who disposed the same? If that subject "*Strada*" vehicle was released, who released the same and why?
2. Was City Prosecutor Tolomeo A. Dinoy who legally represented the heirs of Lucio O. Blanco (*Blanco*) of the above Resolution, formally notified including those heirs?
3. In compliance with the above Resolution, was there an auction sale of said "*Strada*" vehicle, if not, why?

4. Why were those acts done instantly and immediately without the knowledge and authority of the undersigned?
5. Is there a need to auction sale that subject "Strada" vehicle since the above Resolution was not complied with?

In a letter dated July 22, 2005 sent in compliance with the OCA's 1<sup>st</sup> Indorsement directing him to comment on the complaint of Judge Barillo, Yared manifested that he is adopting the comment dated April 11, 2005 he submitted to Judge Barillo.<sup>[5]</sup>

Yared alleged in his April 11, 2005 comment that: on March 18, 2005, Atty. Jesus M. Eleccion, counsel of Jose Calderon, Jr. (*Calderon*), informed him (Yared) of Calderon's intention to pay his civil liability to the heirs of the victim, Blanco, in cash; on the same date, Yared asked one of the heirs to appear before the Office of the Clerk of Court-MTCC on March 22, 2005 for the possible settlement of Calderon's civil liability. Calderon, together with his counsel and Jurinda Gonzales, one of the heirs of Blanco, appeared before Cuizon. In her presence, Atty. Eleccion handed One Hundred Twenty One Thousand Pesos (P121,000.00) to Yared for counting; immediately thereafter, Yared turned over the amount to Gonzales as payment for the civil liability of Calderon.

Yared explained that based on Section 18, Rule 39 of the Rules of Court, he had no reason to further hold the Strada in custody since the civil liability stated in the judgment had already been satisfied. He maintained that since the Rules of Court authorizes him to seize property by virtue of a writ of execution and to keep it under his custody, he also has the authority to release the property. Further, he claimed that he and Gonzales personally informed Dinoy of Calderon's intention to pay his liability in cash. He insisted he did not defy the resolution of Judge Barillo because he believed that the auction sale had become moot and academic.

Cuizon, for her part, confirmed Yared's statement that Calderon, his counsel Atty. Eleccion, Gonzales and Yared personally appeared at her office.<sup>[6]</sup> While there, Calderon expressed his intention to settle his civil obligation with the heirs of the victim, represented by Gonzales. Accordingly, Calderon, through Atty. Eleccion, then paid the amount due - P121,000.00 - to Gonzales. She explained that under Article 1238 of the Civil Code, payment by a third person validly binds the creditor. She thus presumed that the payment made by Atty. Eleccion in representation of his client was valid. She claimed she had no intention of undermining the authority of Judge Barillo; in fact, she informed the Judge of the release of the vehicle the following day.

In his comment<sup>[7]</sup> dated March 29, 2005, Dinoy expressed the view that Yared's action was not tainted with irregularity. He explained that although he was not present when Calderon paid the heirs of Blanco the full amount ordered by the court and when Yared released the Strada to Calderon, he (Dinoy) had no objection to the proceedings because payment was made before the date of the auction sale and the court fees had been duly paid.

### **The Report of the OCA**

On January 10, 2006, the OCA submitted its report on the proceedings *vis-à-vis* the complaint. It found Judge Barillo's charges against Yared and Cuizon to be

"impressed with merit."

### **The Case Against Yared**

For failure to conduct an auction sale of the Strada as ordered by Judge Barillo in his resolution of January 28, 2005<sup>[8]</sup> and for its release to Calderon after payment of the amount due under the judgment, the OCA found Yared liable for misconduct for defiance of a lawful court order. It noted that there is nothing in the rules or in the January 28, 2005 resolution that authorized Yared to release the vehicle upon payment of the judgment debt. It explained that under Section 18, Rule 39 of the Rules of Court, while the judgment obligor may prevent the sale of the property due for auction by paying the required amount, the property cannot be released by the sheriff unless specifically so authorized by the court.<sup>[9]</sup>

### **The Case Against Cuizon**

In Cuizon's case, the OCA found that she unduly exercised a judicial function when she gave her conformity to Yared's release of the Strada; she arrogated unto herself the authority properly belonging to a judge - a serious infringement of, and encroachment upon, judicial authority, and an act of usurpation equivalent to a misconduct under this Court's ruling in *Biag v. Gubatanga*.<sup>[10]</sup>

Based on its evaluation, the OCA recommended that Yared and Cuizon be held liable for simple misconduct and meted the penalty of suspension for one (1) month and one (1) day without pay, with a warning that a repetition of the same or similar act will be dealt with more severely.

### **The Court's Ruling**

The underlying facts of this case are not complicated as both Yared and Cuizon admitted their participation in the extrajudicial settlement of the case that led to the release of the vehicle to be sold at auction without the knowledge and any directive from the court.

Significantly, the records do not show that Yared and Cuizon were motivated by anything other than their desire to expedite the satisfaction of accountabilities arising from vehicular accident that gave rise to the execution sale. Yared, the sheriff, and Cuizon, the Clerk of Court, obviously had no intention to defy or disrespect superior judicial authority; both apparently acted as they did because they wanted to put a *finis* to the case, albeit through a shortcut that did away with the direct intervention of the judge.

That they accomplished this intent is shown by the result of their action - all the parties accepted the settlement without question. Even Dinoy, in his Comment<sup>[11]</sup> dated March 29, 2005, expressed the view that Yared's action was not tainted with irregularity. By joint affidavit, Gonzales (representing the heirs of the victim Blanco) and her brother Felicisimo Blanco validated what transpired during the proceedings, including Calderon's payment of P121,000.00 which was distributed in equal shares to all the ten (10) heirs of Blanco.<sup>[12]</sup>

The foregoing notwithstanding, the OCA still concluded that Yared defied a lawful