

## THIRD DIVISION

**[ A.M. No. P-04-1793 (Formerly OCA I.P.I. No. 03-1650-P), December 08, 2008 ]**

**RAUL ZAMUDIO, COMPLAINANT, VS. EFREN AURO, DEPUTY  
SHERIFF, REGIONAL TRIAL COURT, CAMARINES NORTE,  
RESPONDENT.**

### R E S O L U T I O N

**AUSTRIA-MARTINEZ, J.:**

In a Complaint dated April 23, 2003, Raul Zamudio (complainant) charges Efren Auro (respondent), Deputy Sheriff of the Regional Trial Court (RTC), Daet, Camarines Norte, with gross negligence of duty for his failure to implement the writ of execution in Civil Case No. 2527 entitled "*Raul Zamudio v. Romeo Aloc*" for Sum of Money.

Complainant avers: The Municipal Trial Court (MTC) of Daet, Camarines Norte issued a writ of execution on October 30, 2002, pursuant to its decision<sup>[1]</sup> in Civil Case No. 2527 which ordered defendant therein (Aloc) to pay complainant P144,680.00 as unpaid balance of the value of the subject motor vehicle, P37,265.00 as interest, and attorney's fees of P10,000.00 and P500.00 per appearance. The writ was forwarded to the Office of the Clerk of Court (OCC), RTC, Daet and endorsed to respondent for service and implementation. However, respondent up to the date of the filing of the instant complaint has failed to implement the writ. Such failure constitutes gross negligence of duty and has caused complainant damage as he was not able to recover the amount due him as awarded by the court.<sup>[2]</sup>

Respondent filed his Comment dated July 24, 2003, claiming that he was not negligent of his duties and his failure to implement the writ was for reasons beyond his control; and praying that the administrative case against him be dismissed. He explained that he received the folder of Civil Case No. 2527 only on January 20, 2003; that he sent a Notice of Levy dated March 27, 2003 to Aloc which was received by Aloc's wife on April 3, 2003; that before he could take possession of the subject vehicle, however, it became subject of Criminal Case No. 03-7675 for Violation of the Anti-Carnapping Act. Presently, the subject vehicle is impounded at the Old Municipal Building of Daet as it was used to transport illegal logs.<sup>[3]</sup>

Complainant filed a Reply dated August 7, 2003, stating that while respondent received the folder of Civil Case No. 2527 on January 20, 2003, he prepared the Notice of Levy only on March 27, 2003 or two months after receipt of the records. Respondent also did not cause the annotation of the Notice of Levy in the records of the Land Transportation Office (LTO) in Daet and from January 20, 2003 to June 30, 2003, respondent did not execute the writ despite constant reminders from complainant<sup>[4]</sup>.

The Court, in its Resolution dated March 10, 2004, referred the instant complaint to the Executive Judge of the RTC, Daet for investigation, report and recommendation.<sup>[5]</sup>

In compliance with the Court's directive, Investigating Judge Winston Racoma submitted his report dated December 21, 2007 recommending that the instant complaint against respondent be dismissed.<sup>[6]</sup>

Judge Racoma held: Respondent had not been remiss in his duty and he implemented the writ of execution in accordance with Section 9, Rule 39 of the Rules of Court<sup>[7]</sup> on money judgment, which requires the sheriff to first make a demand on the obligor for the immediate payment of the full amount stated in the writ of execution before a levy can be made. Respondent served the writ of execution on Aloc through his wife and demanded the immediate payment of the money judgment. Respondent accommodated the request of Mrs. Aloc and gave her time to comply with the monetary obligation of her husband. Respondent cannot be faulted for granting such request for extension of time to satisfy the writ of execution because from January 20, 2003 to March 3, 2003, Aloc, who was the judgment obligor in Civil Case No. 2527 was still abroad and the wife did not have the money to satisfy the judgment of the court. Moreover, Mrs. Aloc not a party to the case; thus, the liability of Aloc was something personal to him. When Mrs. Aloc failed to pay the amount within the additional period requested, that was the time respondent issued the Notice of Levy. Respondent also cannot be faulted for failing to take possession of the motor vehicle owned by Aloc after the Notice of Levy had been served on his wife, since the vehicle became the subject matter in a criminal case for carnapping and was later impounded for having been used in transporting illegal logs. The motor vehicle was in the legal custody of the Criminal Investigation and Detection Group (CIDG) of Daet which had every right to hold the same as it was an evidence of an offense. If ever respondent failed to take physical possession of the vehicle, it was already beyond his control.<sup>[8]</sup>

The Court referred Judge Racoma's report to the Office of the Court Administrator (OCA) for its evaluation, report and recommendation<sup>[9]</sup> and in its Memorandum dated July 23, 2008, the OCA<sup>[10]</sup> agreed with Judge Racoma that every effort had been exerted by respondent in implementing the writ. However, the OCA disagreed that respondent was totally free from administrative liability. The OCA noted that no sheriff's report was filed by respondent and under Section 14, Rule 39 of the Rules of Court, it is respondent's duty to make a report to the court every 30 days on the proceedings taken on the writ of execution until the judgment is satisfied in full or its effectivity expires. The existence of the present case did not excuse respondent from filing the required sheriff's report. The OCA then recommended that respondent be reprimanded for failure to file the required sheriff's report and that he be warned that a repetition of the same or similar offenses will warrant the imposition of a more severe penalty.<sup>[11]</sup>

The Court agrees that respondent should be disciplined for his failure to comply with Section 14, Rule 39 of the Rules of Court, but disagrees as to the extent of his liability.

Section 14, Rule 39 of the Rules of Court<sup>[12]</sup> makes it mandatory for a sheriff to

make a return of the writ of execution to the clerk or judge issuing it. Specifically, a sheriff is required (1) to make a return and submit it to the court immediately upon satisfaction in part or in full of the judgment; and (2) if the judgment cannot be satisfied in full, to make a report to the court within 30 days after his receipt of the writ and state why full satisfaction could not be made. The sheriff shall continue making a report every 30 days in the proceedings being undertaken by him until judgment is fully satisfied.<sup>[13]</sup> The reason behind this requirement is to update the court on the status of the execution and to take necessary steps to ensure speedy execution of decisions.<sup>[14]</sup>

In this case, respondent in his testimony before Judge Racoma admitted that after he served the writ of execution, he did not make a report to the court stating only that he did not do so because he was waiting for the result of his arrangement with Mrs. Aloc who promised to pay upon the arrival of her husband, and there was already the instant administrative case filed against him.<sup>[15]</sup>

Whatever arrangement Mrs. Aloc made with him or complainant does not justify respondent's failure to make a report on the writ. The filing of the present administrative case also cannot absolve him from non-compliance with Section 14, because from the time he received the folder of Civil Case No. 2527 on January 20, 2003 up to April 23, 2003, the date of the complaint, three months had already lapsed with respondent not having complied with the Rules.

Failure to comply with Section 14, Rule 39 constitutes simple neglect of duty, which is defined as the failure of an employee to give one's attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference.<sup>[16]</sup>

However, the Court finds that respondent's infraction does not end with his failure to make a report.

As the Court has held time and again, execution of a final judgment is the fruit and end of the suit and is the life of the law. A judgment, if not executed, would be an empty victory on the part of the prevailing party; and sheriffs are the ones primarily responsible for the execution of final judgments. Thus, they are expected at all times to show a high degree of professionalism in the performance of their duties.<sup>[17]</sup>

Here respondent avers that he served the writ on defendant Aloc through his wife on January 20, 2003 and gave her 15 days to settle her husband's obligation. Mrs. Aloc went to the OCC on February 10, 2003 requesting an additional 15 days within which to comply with the writ; and again on March 3, 2003 pleading for another extension. It was only upon Mrs. Aloc's failure to keep her promise after the 3<sup>rd</sup> extension that respondent decided to levy on Aloc's property.<sup>[18]</sup> The Notice of Levy is dated March 27, 2003.<sup>[19]</sup>

A sheriff is not required to give the judgment debtor some time to raise cash; otherwise, the property may be placed in danger of being lost or absconded.<sup>[20]</sup> A period of fifteen days as initially given by respondent to Mrs. Aloc in order to comply with the writ may be considered excusable in order to give her ample time to confer