

## **SECOND DIVISION**

**[ A.M. NO. P-04-1786 (FORMERLY OCA I.P.I. NO. 02-1341-P), February 13, 2006 ]**

**ADELAIDA ESCOBAR VDA. DE LOPEZ, COMPLAINANT, VS. ATTY. ANALIZA M. LUNA, CLERK OF COURT, AND SHERIFF IV VICTOR R. HERNANDEZ, BOTH OF RTC, TAGAYTAY CITY, BRANCH 18, RESPONDENTS.**

### **DECISION**

**PUNO, J.:**

Clerk of Court Atty. Analiza M. Luna and Sheriff IV Victor R. Hernandez, both of the Regional Trial Court (RTC) of Tagaytay City, Branch 18, are being charged by Adelaida Escobar Vda. de Lopez in a complaint-affidavit she filed with the Office of the Court Administrator for delay in the implementation of a writ of execution.

The facts as culled from the records show that complainant Vda. de Lopez, together with her co-plaintiffs, filed a complaint for easement of right of way with the RTC of Tagaytay City entitled Vda. De Lopez v. Laurel, docketed as Civil Case No. TG-1308. On November 29, 1999, the RTC of Tagaytay City, Branch 18, rendered a decision granting the compulsory right of way over the property of defendant Sotero Laurel. On December 4, 2000, the trial court granted the motion for execution pending appeal provided the complainant and her co-plaintiffs post a bond in the amount of Eight Million Four Hundred Thousand Pesos (P8,400,000.00). On January 18, 2001, the bond was posted. Meanwhile, defendant Laurel filed several motions including a motion to stay the execution pending appeal. On October 18, 2001, the trial court denied the motions and ordered the issuance of a writ of execution pending appeal.

Some two (2) months later, on January 3, 2002, complainant went to the RTC of Tagaytay City, Branch 18, and looked for Branch Clerk of Court Atty. Analiza Luna to inquire whether the writ of execution has already been issued. Since Atty. Luna was not around, a lady clerk informed complainant that the writ of execution has not yet been issued and told her to call Atty. Luna instead on the latter's cellular telephone. Complainant then allegedly called up Atty. Luna and was informed that the writ of execution has not yet been issued since plaintiff, herein complainant, has not paid the docket fee of P150.00.

On January 8, 2002, after paying the docket fee, complainant followed up with Atty. Luna and was advised to talk to Sheriff Victor R. Hernandez as the writ of execution was supposedly already given to him. Complainant was also allegedly told to take care of the "*panggastos*" of the sheriff for the implementation of the writ. As advised, she called up the sheriff and requested him to pass by her house to get the "*panggastos*" as she was bound to a wheelchair and did not have a driver. The sheriff then told her to call him up again after one (1) week as he had other legal documents to process.

On January 25, 2002, complainant again called up Atty. Luna but her calls were unanswered. On January 28, 2002, she was informed by Atty. Luna that the writ could no longer be issued since a temporary restraining order (TRO) dated January 24, 2002, was issued by the Court of Appeals. Upon being asked by complainant when the writ of execution was issued, Atty. Luna allegedly said that it was issued on January 22, 2002, and given to the sheriff on January 25, 2002.

Sometime on May 6, 2002, after the expiration of the 60-day TRO issued by the Court of Appeals, counsel for complainant went to see Atty. Luna for the implementation of the writ of execution. However, Atty. Luna refused to implement the writ without any order from the court.

Complainant thus filed this case against Atty. Luna and Sheriff Hernandez “[f]or dishonesty, by misleading [complainant] to believe that the writ of execution was already made and issued to the sheriff for implementation when in fact they delayed the same so that it will be overtaken by a [TRO] to the prejudice and damage of the [complainant]; and x x x x for demanding a consideration which they termed as ‘panggastos’ for the implementation of the writ of execution.”<sup>[1]</sup>

In her answer<sup>[2]</sup> to the complaint, Atty. Luna contends that it was clear in complainant’s affidavit that the complainant only followed up her case in January 2002 after the legal fees of P150.00 for the issuance of the writ of execution were paid.<sup>[3]</sup> Atty. Luna also denied asking complainant for any “panggastos” since she will not be the one enforcing the writ.<sup>[4]</sup> Respondent sheriff, on the other hand, maintains that he never talked to complainant personally except once over the cellular telephone of Atty. Luna. He had to schedule the service of writs as he is the only sheriff of the RTC of Tagaytay City which also caters to the towns of Silang, Amadeo, Alfonso, and Gen. Emilio Aguinaldo compelling him to act on the court processes on a “first come, first served basis.” Unfortunately, before he could serve the writ in complainant’s case, a TRO was issued by the Court of Appeals.<sup>[5]</sup>

On March 24, 2003, the Court referred the case for investigation, report and recommendation to Judge Cesar A. Mangrobang, RTC of Imus, Cavite, who thereupon conducted hearings on May 6 and 14, 2003.

In his Report dated August 7, 2003, Judge Mangrobang stated:

Based on the foregoing circumstances it is quite clear that both respondents, Clerk of Court Atty. Analiza M. Luna and Sheriff Victor Hernandez, were negligent in the performance of their duties.

I. With respect to Atty. Analiza Luna, the order of the Court is quite very clear:

*“... accordingly, let a writ of execution of the decision of this Court dated November 29, 1999 pending appeal be issued in this case.”*

While it may be true that under Rule 141, Sec. 9, the payment of One Hundred Fifty Pesos (P150.00) is necessary “for executing a writ or process to place a party in possession of real estates,” the same is not *sine qua non* requirement in the issuance of the writ of execution. As can

be noted from the above cited rule, the same is addressed to "Sheriffs and other persons serving processes." Atty. Luna should have at least notified and/or informed the complainant or her lawyer of the necessity of the payment if she believed it to be so.

Further, after her attention was called regarding the expiration of the Temporary Restraining Order, with a Certification to that effect to boot, she could have at least consulted the Presiding Judge if the writ of execution could already be implemented. Regrettably, she also failed to do the same.

II. Anent Sheriff Victor Hernandez, his delay in implementing the writ is disappointing. The rule is that when a writ is placed in the hands of a sheriff it is his duty to proceed with reasonable promptitude to execute it pursuant to its mandate. His duty to do so is ministerial and not directory, and one which he must accomplish as early as possible (*RCBC v. Noel Quilantang, A.M. No. P-01-1481, July 5, 2001*). As the Supreme Court stresses in *Padilla v. Arabia* (242 SCRA 227):

When a writ is placed in the hands of a sheriff it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate. He is to execute the order of the court strictly to the letter. He has no discretion, much less authority to grant a judgment debtor a grace period within which to settle his obligation.

Respondent sheriff's explanation that he failed to immediately execute the writ because he was busy and he is the only sheriff in the area is simply not a valid reason. Suffice it to say that a sheriff is responsible for the speedy and efficient implementation of writs of execution (*Casal v. Concepcion, Jr., 243 SCRA 339*). [6]

Consequently, Judge Mangrobang recommended that Atty. Luna be penalized with a suspension of one (1) month and a fine of P10,000.00, while Sheriff Hernandez be reprimanded.

In a Memorandum dated December 16, 2003, in compliance with the resolution of this Court referring the instant case for evaluation, report and recommendation to the Office of the Court Administrator, Deputy Court Administrator Jose P. Perez, with the recommending approval of the Court Administrator, concurred with the findings of the investigating judge but differed in the penalty to be imposed and instead recommended that Atty. Luna be suspended for four (4) months without pay for simple neglect of duty while Sheriff Hernandez six (6) months without pay for dereliction of duty. [7]

We quote with approval the evaluation of Deputy Court Administrator Perez that "the issuance of writs of execution is part of the adjudicative support functions of the clerk of court. There is nothing in the Rules of Court which makes the payment of P150.00 docket fee *sine qua non* to the issuance of the writ. In fact, the payment of the P150.00 is not for the issuance of the writ of execution but for the execution of the 'writ of process to place a party in possession of real estates' (Sec. 9[g], Rule

141 of the Rules of Court, as amended). There was no need for complainant to pay P150.00 before a writ of execution could issue. Thus, respondent Atty. Luna was already in delay when she issued the writ of execution more than two months after the issuance of the court order.”<sup>[8]</sup>

Clerks of Court are officers of the law who perform vital functions in the prompt and sound administration of justice.<sup>[9]</sup> They are important functionaries in the judiciary because they are primarily responsible for the speedy and efficient service of all court processes and writs.<sup>[10]</sup> They keep the records and the seal of the court, issue processes, enter judgment and orders, and give certified copies of records upon request.<sup>[11]</sup> They are the hubs of adjudicative and administrative orders, processes and like concerns. Their responsibilities are vital to the prompt and sound administration of justice. They cannot be allowed to slacken on their work. They should be officers of competence; they should safeguard the integrity of the court and its proceedings; they should uphold the confidence of the public in the administration of justice; and they should help ensure that the cause of justice is done without delay.<sup>[12]</sup>

Clerks of Court serve as models for their co-employees to act speedily and with dispatch on their assigned task to avoid the clogging of cases in court and thereby assist in the administration of justice without delay.<sup>[13]</sup> They serve as models for court employees in their conduct and actuations.<sup>[14]</sup> Thus, they are expected to possess a high degree of discipline and efficiency in the performance of their functions.<sup>[15]</sup>

We likewise sustain the conclusions of Deputy Court Administrator Perez with regard to respondent Sheriff Hernandez that “it was therefore not [Sheriff Hernandez’s] fault that the writ was not implemented”<sup>[16]</sup> at the first instance since under the Rules, the sheriff had thirty (30) days to issue a return on the writ which was apparently issued on January 3, 2002, and handed to him on January 8, 2002.<sup>[17]</sup> But before the thirty (30)-day period ended, a TRO was issued by the Court of Appeals on January 24, 2002, enjoining the implementation of the writ. “However, upon the expiration of the sixty (60)-day effectivity of the writ issued by the Court of Appeals, respondent sheriff should have immediately caused its implementation. Records reveal that as of the hearing conducted on 6 May 2003 in the instant administrative matter, the writ has yet to be implemented by respondent sheriff (TSN, hearing of 6 May 2002, [sic] p. 7). The complainant in this case was therefore greatly prejudiced by the inaction of respondent sheriff.”<sup>[18]</sup>

Well settled is the rule that when writs are placed in the hands of sheriffs, it is their ministerial duty to proceed with reasonable celerity and promptness to execute them in accordance with their mandate.<sup>[19]</sup> Their duty is purely ministerial; they are to execute the order of the court strictly to the letter.<sup>[20]</sup> Their function is not discretionary.<sup>[21]</sup> And, good faith on their part, or lack of it, in proceedings to properly execute their mandate would be of no moment, for they are chargeable with the knowledge that being officers of the court tasked therefore, it behooves them to make due compliances.<sup>[22]</sup> Their unreasonable failure or neglect to perform such function constitutes inefficiency and gross neglect of duty.<sup>[23]</sup> Sheriffs are officers of the court who serve and execute writs addressed to them by the