

FIRST DIVISION

[A.M. NO. P-03-1693, March 17, 2005]

SALVADOR P. DE GUZMAN, JR., COMPLAINANT, VS. ANTONIO O. MENDOZA, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 58, MAKATI CITY, RESPONDENT.

D E C I S I O N

YNARES-SANTIAGO, J.:

This is a complaint filed by Salvador P. de Guzman, Jr. against Antonio O. Mendoza, Sheriff IV, and Floro G. Calixihan, Jr., Branch Clerk of Court, of the Regional Trial Court of Makati City, Branch 58, for grave misconduct and conduct prejudicial to the best interest of the judiciary.^[1] Specifically, the respondents were charged with conniving with each other in causing the issuance of an alias writ of execution and profiting on the rentals collected from the tenants of the subject property.

It appears that on May 2, 1988, the Regional Trial Court of Makati City, Branch 58, rendered decision in favor of the defendant in Civil Case No. 979 entitled *Feliciana G. Camara and Augusto A. Camara vs. Celina Hernaez*. Complainant was the counsel for the plaintiffs therein.

On October 13, 2000, a writ of execution^[2] was issued by then Judge Escolastico U. Cruz, Jr. which ordered respondent sheriff to cause the satisfaction of the May 2, 1988 decision. On April 4, 2001, an *Alias Writ of Execution/Possession/Ejectment/Demolition and Others*^[3] was issued. Unlike the October 13, 2000 writ of execution which only ordered the cancellation of the notice of lis pendens and payment of attorney's fees, the April 4, 2001 alias writ directed the transfer of possession, ejectment, payment of monthly rentals, and demolition, which were not covered by the court's decision dated May 2, 1988.^[4]

Thereafter, respondent sheriff, together with Atty. Melotindos who was the counsel for the defendant, went to the subject property and served the Notice to Comply^[5] upon the five tenants of the plaintiffs. Respondent sheriff allegedly intimidated the tenants to vacate the premises, pay monthly rentals of P50,000.00, and demolish the structures therein.^[6]

Complainant averred that respondent sheriff intentionally failed to attach page 3 of the alias writ of execution to the notice to comply.^[7] He insisted that the missing page was important because it contains the signatory of the writ, the date it was signed, and the dispositive portion of the May 2, 1988 decision which did not mention ejectment, monthly rentals, demolition or possession.^[8]

Complainant also argued that from May 2001 until March 2002, respondent sheriff gathered the plaintiffs' tenants at Noytsi's Panciteria at 116 Zobel St., Makati City,

where Atty. Melotindos would collect the rental and issue a receipt in the name of Soledad S.M. Del Rosario who was a stranger to the case. Thereafter, Atty. Melotindos would hand over to respondent sheriff his share in the collection.^[9]

On one occasion, Calixihan received the monthly rental in the absence of respondent sheriff and issued a Receipt for a Stay of Execution.^[10] When the money was handed over to respondent sheriff, he angrily said, "*Bakit ito lang, umalis na lang kayo doon, ididimolis ko na iyan.*"^[11]

In his comment,^[12] Calixihan claimed that he does not know any of the parties in Civil Case No. 979; thus, he could not be charged with connivance.^[13] He averred that the void alias writ of execution was prepared and issued by then Judge Cruz^[14] and implemented by the respondent sheriff.^[15] He never profited from the rentals because he immediately turned over the same to Atty. Melotindos^[16] who issued a receipt.^[17] He argued that as a clerk of court and a subordinate employee, he had no authority to prevent the judge from conducting hearings or proceedings in court.^[18]

For his part, respondent sheriff characterized as "preposterous, ridiculous and non-sensical, and should not be attended to or entertained",^[19] the charge that he connived in the issuance of the void writ of execution because as a branch sheriff, he lacks the authority to issue writs or any court order. He labeled as "cheap, low-down, unkind, pure harassment and shows either ignorance of the law or deliberate suppression of the truth"^[20] the allegation that he personally gathered the plaintiffs' tenants and collected rentals from them. He argued that the allegation bespoke of a "depraved mentality, habituated with low life; oblivious of others' dignity, reputation and good faith".^[21]

In the *Agenda Report*^[22] dated March 7, 2003, the Office of the Court Administrator noted that the alias writs have been declared null and void by this Court in its en banc Resolution dated September 18, 2001.^[23]

Upon the recommendation of the Court Administrator, the complaint against Calixihan was dismissed,^[24] the case against respondent sheriff was docketed as a regular proceeding and the complaint that respondent sheriff had financially participated in the proceeds of the execution was referred to the Executive Judge of the RTC-Makati City for investigation, report and recommendation.

In his *Report and Recommendation*^[25] dated August 19, 2004, Executive Judge Sixto Marella, Jr. found respondent sheriff guilty of simple misconduct and recommended his suspension for thirty days without pay. It was established that on two occasions, he received P24,000.00 and P1,500.00 representing rentals from two tenants. In October 2001, he also received P500.00 from Atty. Melotindos which he claimed as legal fees. The investigating judge, however, noted that the amount exceeded the limit for legal fees provided under Section 9, Rule 141 of the Rules of Court, and the respondent sheriff also failed to comply with the requirements stated therein.

In a *Memorandum* dated January 31, 2005, the Office of the Court Administrator

agreed with the investigating judge that by receiving money from the lawyer of the prevailing party without complying with Rule 141, the respondent sheriff is guilty of simple misconduct and act inimical to the best interest of the judiciary. It thus recommended respondent sheriff's suspension from the service for one month and one day without pay.

We adopt the findings of the OCA except for the penalty imposed.

Indeed, there is no proof that respondent sheriff participated in the issuance of the void alias writ of execution. Neither did he commit any infraction in the enforcement of the same. Thus, when he ordered the tenants to vacate the premises, pay monthly rentals of P50,000.00, and demolish the structures therein, he was merely implementing the writ as issued by the judge. At the time of its enforcement, respondent sheriff had no way of knowing that ultimately, the alias writs would be nullified by this Court.

The duty of a sheriff to execute a valid writ is ministerial and not discretionary. A purely ministerial act or duty is one which an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard to the exercise of his own judgment upon the propriety or impropriety of the act done. A discretionary act, on the other hand, is a faculty conferred upon a court or official by which he may decide the question either way and still be right.^[26]

In general, a sheriff is the proper officer to execute all writs returnable to the court, unless another is appointed, by special order, for the purpose. It is not his duty to decide on the truth or sufficiency of the processes committed to him for service.^[27] 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 supposed to execute the order of the court strictly to the letter.^[28]

On the other hand, we find sufficient proof that respondent sheriff gathered the plaintiffs' tenants at the *Noytsi's Panciteria* and received P500.00 from Atty. Melotindos. According to the investigating judge, these facts were undisputed. Even in his comment, we note that respondent sheriff offered no explanation nor denied this accusation. Instead, he labeled as "cheap, low-down, unkind, pure harassment and shows either ignorance of the law or deliberate suppression of the truth"^[29] the allegation and that it bespoke of a "depraved mentality, habituated with low life; oblivious of others' dignity, reputation and good faith".^[30]

Moreover, respondent sheriff did not deny receipt of P500.00 although he tried to explain, albeit unsatisfactorily, that the same represented the legal fees for the service and execution of the writ. Under Section 9, Rule 141 of the Rules of Court, the procedure for the execution of writs and other processes are: first, the sheriff must make an estimate of the expenses to be incurred by him; second, he must obtain court approval for such estimated expenses; third, the approved estimated expenses shall be deposited by the interested party with the Clerk of Court and ex-officio sheriff; fourth, the Clerk of Court shall disburse the amount to the executing sheriff; and fifth, the executing sheriff shall liquidate his expenses within the same period for rendering a return on the writ. Any amount received by the sheriff in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction which