

## **SECOND DIVISION**

**[ A.M. NO. P-00-1361 (FORMERLY OCA IPI NO. 97-319-P), June 29, 2005 ]**

**JEANIFER BUENVIAJE AND BLESILDA RECUENCO,  
COMPLAINANTS, VS. DEPUTY SHERIFF OF THE METROPOLITAN  
TRIAL COURT (MTC) OF SAN JUAN, METRO MANILA, BRANCH 58,  
RESPONDENT.**

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

**AUSTRIA-MARTINEZ, J.:**

Complainants accuse Arturo Anatalio, Deputy Sheriff of the Metropolitan Trial Court (MTC) of San Juan, Metro Manila, Branch 58, for Gross Misconduct and Conduct Unbecoming as an Officer of the Court and for violations of the Code of Conduct of Professional Responsibility.

Complainants in their affidavit dated July 15, 1997 allege that: on June 30, 1997, at around 9 a.m. until 4 p.m., respondent together with several policemen, barged into and forcibly ejected them from their house; they left inside the house most of their furnitures and fixtures and permanently locked the door; they prepared a list of properties which they took against their will; this was done by virtue of a Writ of Execution issued by the MTC of San Juan, Branch 58, in connection with Civil Case No. 8290 now pending with the Regional Trial Court (RTC), Branch 158, Pasig City; since the case is already pending before the RTC and the lower court already lost jurisdiction over the case, the execution made by respondent was improper and illegal; in any case, the writ of execution already expired on June 23, 1997 or seven days before the actual execution thereof; respondent also told complainants that he was paid by the plaintiffs in the civil case to undertake the said execution and he cannot afford not to implement the writ as his income would be diminished; because of the acts of respondent, some of complainants' personal properties were lost and destroyed; these acts constitute violation of Republic Act (R.A.) No. 3019 or the Anti-Graft Law.<sup>[1]</sup>

In his Comment, respondent asserted that: he did not violate R.A. No. 3019; he enforced the writ of execution dated April 21, 1997 according to procedure; when he received the writ on April 23, 1997, he immediately issued a notice to complainants, who were respondents in Civil Case Nos. 8290-91 & 8293-97,<sup>[2]</sup> asking them to vacate the premises in dispute within five (5) days; he also tried to collect from complainants their respective back rentals; on April 29, 1997, complainants Buenviaje and Recuenco paid the sum of P2,307.00 and P5,000.00, respectively, and pleaded for a 30-day extension to which Thomas Dagala, plaintiff *a quo*, agreed; on May 29, 1997, only Recuenco made a partial payment of P2,000.00 and again both complainants asked for additional 30 days for them to vacate and pay their obligation which Dagala once again permitted; upon failure of herein complainants to honor their commitment and upon instruction of Dagala, respondent

implemented the writ of execution on June 30, 1997 at which date respondent turned over the possession of the premises to Dagala, *et al.*; the writ of execution issued by Branch 58 of MTC San Juan is legal and valid because it was issued only after due notice and hearing prior to the expiration of the time to appeal and prior to the transmittal of the records to the RTC, pursuant to Rule 39 of the Rules of Court and upon failure of complainants to file a supersedeas bond; there was also no order of injunction to restrain the enforcement of the subject writ; the extensions given the complainants for a total of 60 days should actually be deducted from the 60 days allowed to implement the writ because it was because of complainants' own act that the writ was not implemented; no property was lost or destroyed in the process of implementing the writ; he was with two policemen who would not permit the same and who complainants could turn to for the protection of their rights; complainants also could not specify what properties were lost or destroyed neither could they present pictures of the properties allegedly destroyed; and it is not true that he received monetary consideration from the plaintiffs a quo apart from the lawful fees.<sup>[3]</sup>

On January 12, 2000, then Court Administrator Alfredo I. Benipayo recommended that:

1. this instant complaint be RE-DOCKETED as an administrative matter; and
2. respondent Deputy Sheriff Arturo Anatalio be REPRIMANDED for failure to observe the rules and regulations regarding the enforcement of orders issued by the court with a STERN WARNING that a commission of the same or similar acts in the future would be dealt with more SEVERELY.<sup>[4]</sup>

On July 26, 2000, the Court issued a Resolution referring the case to the Executive Judge of the RTC of Pasig for investigation, report and recommendation.<sup>[5]</sup>

After investigation, Judge Edwin Villasor submitted his report dated December 8, 2004, observing that:

...Since the writ was received by Respondent Sheriff on April 23, 1997, he had sixty (60) days, or up to June 23, 1997, within which to implement the same. However, the record shows that he was able to do so only on June 30, 1997. The fact that Respondent Sheriff was not able to implement the writ due to extensions requested by the Complainants does not justify his actions. His admission that he implemented the writ only on June 30, 1997 is proof of his not having complied with the rules then regarding the enforcement of a writ. Respondent Sheriff's duty was purely ministerial, that is, he had to execute the writ within the period provided.

Considering that, from the records received by the undersigned, the Complainants failed to appear during the hearing scheduled by the former Executive Judge, and Respondent Sheriff did not present any testimonial evidence, aside from his Comment, the undersigned Executive Judge based his evaluation on the pleadings attached to the record.<sup>[6]</sup>

Judge Villasor then recommended that respondent Deputy Sheriff Arturo Anatalio be REPRIMANDED for failing to observe the rules on the enforcement of orders issued by the Court with STERN WARNING that a repetition of the same or similar acts will be dealt with more severely.<sup>[7]</sup>

On May 12, 2005, the Office of the Court Administrator (OCA) submitted its findings and recommendation, thus:

After study of the records, we find no cogent reason to disturb the findings and recommendations of Executive Judge Edwin Villasor. In fact, the same conforms to the evaluation and recommendation of this Office dated 12 January 2000. Indeed, the writ of execution was not timely enforced within the mandated 60-day period pursuant to Section 11, Rule 39, Rules of Court which is the pertinent rule then prevailing. That the delay was allegedly caused by the two extensions granted does not excuse respondent. His duty is purely ministerial, and he has no discretion whether or not to enforce the writ of execution, much less to delay its enforcement beyond the period fixed under the rules within which to implement the same. Time and again, this Honorable Court has emphasized the heavy burden and responsibility that Sheriffs are saddled with, minding the important role they play in the administration of justice. It behooves upon them to make due compliance.

We only stress though that the delay in the implementation of the subject writ was apparently consented to by both parties. The defendants (herein complainants) refused several times to vacate the premises despite notices sent to them; while plaintiffs did not protest the defendants' actuations. This, on top of the fact that the writ was actually implemented on 30 June 1997 or a delay of only seven days. Hence, the submission that the penalty should be accordingly tempered is well taken.

WHEREFORE, it is respectfully recommended that respondent Deputy Sheriff be REPRIMANDED for failure to observe the rules and regulations regarding the enforcement of writs of execution with a STERN WARNING that the same or similar transgression in the future shall be dealt with more severely.<sup>[8]</sup>

We agree with the findings and recommendations of the Investigating Judge and the OCA.

It is basic that when a writ is placed in the hands of a sheriff, it becomes his ministerial duty to proceed with reasonable celerity and promptness to implement it in accordance with its mandate.<sup>[9]</sup> This duty, in the proper execution of a valid writ, is not just directory, but mandatory.<sup>[10]</sup> The sheriff has no discretion whether to execute the writ or not, and good faith on his part, or lack of it, in proceeding to properly execute his mandate would be of no moment for he is chargeable with the knowledge that being an officer of the court tasked therefor, it behooves him to make due compliance.<sup>[11]</sup>

As we explained in *Zarate vs. Untalan*<sup>[12]</sup>: