

FIRST DIVISION

[A.M. NO. MTJ-04-1566, August 22, 2005]

**RITA M. MELECIO, COMPLAINANT, VS. TYRONE V. TAN, SHERIFF
IV, REGIONAL TRIAL COURT-OFFICE OF THE CLERK OF COURT,
MALAYBALAY CITY, BUKIDNON, RESPONDENT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

In a complaint^[1] filed with the Office of the Court Administrator (OCA) on July 2, 2003, Rita M. Melecio, Regional Coordinator of Task Force Detainees of the Philippines in Northern/Southern Mindanao, charged Judge Dante L. Villa and Clerk of Court Angelina A. Gam, of Municipal Trial Court (MTC), Quezon, Bukidnon, with *Command Responsibility, Grave Abuse of Authority and Grave Misconduct*; and Sheriff Tyrone V. Tan, Regional Trial Court-Office of the Clerk of Court (RTC-OCC), Malaybalay City, Bukidnon, with *Grave Abuse of Authority and Grave Misconduct* relative to Civil Case No. 428.^[2]

Complainant alleged that the March 18, 2003 directive of Clerk of Court Gam commanding the sheriff or his deputies to implement the dispositive portion of the trial court's decision dated October 22, 2002 in Civil Case No. 428, which ordered the respondents therein (the Manobos) to vacate the litigated premises, is void considering that no writ of execution has been issued by Judge Villa. Sheriff Tan allegedly implemented the said order by ejecting the Manobos from the disputed property.^[3]

In his Comment,^[4] respondent sheriff admitted that on March 28, 2003, he served copies of the Writ of Execution to the Manobos and advised them to vacate the premises within fifteen (15) days. They failed to vacate the property within the period stated, hence he evicted them on April 16, 2003.

In their joint-comment,^[5] Judge Villa and Clerk of Court Gam prayed for the dismissal of the complaint. They averred that on January 31, 2003, plaintiffs in Civil Case No. 428 filed a motion for execution which the trial court granted on March 17, 2003. Hence, the issuance on March 18, 2003 of the writ of execution was proper.

In the Agenda Report^[6] dated September 1, 2004, the OCA recommended that the complaint against Judge Villa and Clerk of Court Gam be dismissed for lack of merit and that the case against Sheriff Tan be referred to the Executive Judge of RTC-Malaybalay City, Bukidnon, for further investigation,^[7] which recommendation was adopted in a Resolution dated October 11, 2004.^[8]

In his Report/Recommendation, the Investigating Judge found that the parties in Civil Case No. 428 agreed to resurvey the property in question and that respondent-

Manobos would vacate the premises if found encroaching thereon.^[9] Pursuant to their agreement, the latter voluntarily vacated the premises on November 2, 2002,^[10] and transferred to another portion which they claimed formed part of the public domain. Thus, for all intents and purposes, the October 22, 2002 order of the trial court to vacate the property has been fully satisfied.^[11]

In fact, in his partial report dated March 31, 2003,^[12] Sheriff Tan averred that he served notices to vacate to the Manobos and gave them ten (10) days to vacate. However, he deemed it necessary that an ocular inspection be conducted considering the Manobos' claim that the properties they are now occupying are part of the public domain.

Without however waiting for the ocular inspection,^[13] Sheriff Tan implemented the writ on April 16, 2003 by ejecting the Manobos and loading them on a dump truck. He demolished^[14] their improvements without securing a writ of demolition^[15] pursuant to Rule 39 of the Revised Rules of Civil Procedure.

The Investigating Judge found that Sheriff Tan gravely abused his authority in executing the writ and demolishing the structures without a writ of demolition.^[16] He thus recommended that respondent sheriff be suspended from service for three (3) months and warned that a repetition of the same or similar act will be dealt with more severely.^[17]

The OCA agreed with the findings and recommendations of the Investigating Judge.^[18]

We adopt the findings of the OCA with modification on the recommended penalty.

When the issue is the credibility of witnesses, the function of evaluating it is primarily lodged in the investigating judge. The rule which concedes due respect, and even finality, to the assessment of credibility of witnesses by trial judges in civil and criminal cases where preponderance of evidence and proof beyond reasonable doubt, respectively, are required, applies a fortiori in administrative cases where the quantum of proof required is only substantial evidence. The investigating judge is in a better position to pass judgment on the credibility of witnesses, having personally heard them when they testified and observed their deportment and manner of testifying.^[19] We find no reason to depart from this rule.

Indeed, respondent sheriff was grossly inefficient and guilty of misconduct in implementing the writ on April 16, 2003. He evicted the occupants without ascertaining whether the portion they occupy formed part of the litigated property or not. He was aware that there was uncertainty concerning the property occupied by the Manobos as he even recommended in his partial report that an ocular inspection be conducted. Yet he proceeded with the eviction without the benefit of the inspection to determine the exact boundaries. The unfortunate incident could have been avoided had the respondent sheriff observed due care and diligence in ascertaining the exact location of the property subject of the execution.^[20] In serving the court's writs and processes and in implementing the orders of the court, sheriffs cannot afford to err without affecting the efficiency of the process of the administration of justice.^[21]