

## SECOND DIVISION

[ A. M. No. P-01-1492, March 20, 2003 ]

**RENATO MIGUEL D. GARCIA, COMPLAINANT, VS. PERSHING T. YARED, SHERIFF III, MUNICIPAL TRIAL COURT, CANLAON CITY NEGROS ORIENTAL, RESPONDENT. R E S O L U T I O N**

**AUSTRIA-MARTINEZ, J.:**

In a letter-complaint dated September 29, 1999, complainant Renato Miguel D. Garcia charged respondent Pershing T. Yared, Sheriff III, Municipal Trial Court of Canlaon City, Negros Oriental, with neglect of duty and grave abuse of authority relative to Civil Cases Nos. 334,<sup>[1]</sup> 328,<sup>[2]</sup> 352<sup>[3]</sup> and 367.<sup>[4]</sup>

Complainant is the President and Manager of the Rural Bank of Guihulngan (Negros Oriental), Inc. which is the plaintiff and prevailing party in Civil Cases Nos. 334, 328, 352 and 367, all for collection of sum of money and damages. He claims that the judgments in said civil cases remain unsatisfied since the writs of execution therein are not being implemented properly and efficiently by respondent, as follows:

- "1. Civil Case No. 334 - The last Return of Service was on October 3, 1997 (Annex "A"). The defendants in this case are all MTC personnel. His previous reports dated May 7 & 18, 1993 (Annex "B" & "C") states that Rene Ricablanca & Juliana Montejar receive from their employer, the Supreme Court of the Philippines, the amount of P2,630.00 each which is far below poverty line (underlining ours). Our heart bleeds for them. But this is already 1999. Are their salaries still below poverty line?
- "2. Civil Case No. 328 - Mr. Yared was able to get an old Karaoke, which was out of order but still, was sold for P1,000.00. The amount collectible is P3,706.08 with interest of 1% a month beginning Feb. 26, 1991. No further action was taken by Mr. Yared so on Dec. 14, 1992 an Order from the Court was obtained for an Alias Writ of Execution (Annex "D") for the amount of P4,908.10. To date no action has been taken.
- "3. Civil Case No. 352 - Mr. Yared signed a receipt dated Nov. 18, 1998 re receipt of the Writ of Execution (Annex "E"). Under his First Indorsement dated July 1, 1999 (Annex "F") to the Clerk of Court which was received by the Bank on Aug. 3, 1999 he sent an estimate of his cost of travel to serve the alias writ in Cebu City in the amount of P2,000.00. However, one of the defendants who own a real property here in the locality has not been served the writ. Why go to Cebu City first? Our disagreement was

manifested in Court and an ORDER dated July 21, 1999 (Annex "G") was issued directing him to look into the records of the office of the Municipal Assessor in order not to circumvent the properties and the decision of the Court. To date no action has been taken.

- "4. Civil Case No. 367 - Attached are copies of the return of service of Mr. Yared dated August 2 & 31, 1999 (Annex "H" and "I"). We are also providing photos of the residential houses of Mr. Bernadez, one of the defendants, negating his report that Mr. Bernadez owns no personal and real properties."

On October 27, 1999, then Court Administrator Alfredo L. Benipayo required respondent to comment on the letter-complaint, within ten days from receipt.

In his Answer/Comment dated November 19, 1999, respondent explained:

In Civil Case No. 334 - He furnished the defendants with the writ of execution but said defendants, who are mere employees of the Municipal Trial Court, could not afford to pay the judgment amount, given their meager salary of about ₱2,630.00 a month. Efforts to locate real or personal properties of defendants yielded negative results. By virtue of a court order, an alias writ of execution was issued on September 15, 1997 which was served unsatisfied due to the assertion of the principal borrower that he had already made partial payments thereon. A second alias writ dated August 25, 1998 was issued by the court wherein the total balance therein stated already reflected the partial payments made by the defendants but this was likewise served unsatisfied as shown in the Sheriff's Return dated November 4, 1998. Respondent served the writs upon the defendants using his own money as the plaintiff bank did not provide him with the amount to defray his expenses.

In Civil Case No. 328 - Since the proceeds of the sale of the sing-along system was insufficient, an alias writ of execution dated December 20, 1992 was issued on motion of the plaintiff bank. The alias writ was never served on the defendant spouses for the reason that it was of judicial notice and public knowledge that the couple were jobless, with six mouths to feed and taking care of an ailing mother who died in 1998. Plaintiff bank moved for the seizure of a refrigerator which for humanitarian reasons and pursuant to Rule 39, Section 13 (b) of the 1997 Rules of Civil Procedure respondent did not seize as it was used in their means of livelihood, selling chicken barbecue and liquor in a small makeshift store at the side of the national highway and, as storage of the medicine of the ailing mother. The real property of defendant spouses could not be proceeded against as it has already become an acquired asset of the Philippine National Bank.

In Civil Case No. 352 - For failure of the plaintiff bank to pay the legal fees, the Clerk of Court did not issue the writ of execution until the said legal fee was finally received. Despite the issuance of the writ on August 27, 1998, plaintiff bank failed to deposit the fees to defray respondent's expenses in going to Cebu City where the principal borrowers reside. Respondent found out upon inquiry with the Municipal Assessor that the husband of defendant Fabia Vizano has a real property in his name. Since Fabia's husband is not himself the defendant, respondent did not attach the same considering that he has no authority to attach the property of any person

under execution except that of the judgment debtor. Respondent believed that he should first serve the writ on the principal borrowers residing in Cebu City before going against the co-makers, that is, there must first be a showing that the principal borrower defaulted in his payment which must be brought to the attention of the co-makers before proceeding against the latter.

In Civil Case No. 367 - Defendant Leonardo Bernadez has no personal or real properties and the house being referred to by complainant which picture he attached in his complaint is where the defendant and his family reside but the same is not owned by the defendant but by his son Prem Bernadez.

In his Reply dated August 28, 2000, complainant argues that it is preposterous for respondent to claim that the defendants in Civil Case No. 334 have no personal properties because even a mere tricycle driver sports a wristwatch nowadays and televisions and refrigerators are now considered a must for ordinary households and even houses in the slums have TV antennas on the rooftops. Complainant pointed out that respondent admitted in his Comment that he did not serve the writ with regards to Civil Case No. 328, which constitutes neglect of duty because the duty to serve and implement the writ is purely ministerial on his part as Sheriff. Finally, complainant expressed that respondent is playing judge in Civil Case No. 352 by stating that he should first exhaust all means to serve the writ upon the principal borrowers before going against the co-makers.

In a Resolution dated August 6, 2001, the Court re-docketed the administrative complaint as a regular administrative matter and required the parties to manifest within ten days from notice if they are willing to submit the case for decision based on the pleadings filed.

In compliance therewith, respondent manifested that he is willing to submit the case for decision on the basis of the pleadings already filed which the Court noted in a Resolution dated October 22, 2001. The complainant filed a letter dated March 6, 2002 inquiring about the status of the administrative case which the Court noted in a Resolution dated May 8, 2002.

However, complainant did not file his manifestation. Thus, the Court issued a Resolution dated November 25, 2002 requiring complainant to show cause why he should not be disciplinarily dealt with or held in contempt for failure to manifest his willingness to submit the administrative matter for decision based on the pleadings filed and to comply with the Resolution of August 6, 2001, both within ten days from receipt.

In a Compliance dated January 14, 2002, complainant cited "heavy volume of work that he had to attend to resulting from numerous requirements imposed by the Bangko Sentral ng Pilipinas (BSP) on banks and other equally pressing matters" as reason for his failure to manifest before the Court that he is willing to submit the case for decision based on the pleadings filed. Not fully satisfied with the explanation of complainant, the Court admonished him to be more heedful of the orders of the Court in the Resolution dated February 19, 2003.

The Report dated June 14, 2001 of the Office of the Court Administrator (OCA) submitted to the Court, reads as follows:

EVALUATION: Relative to Civil Case No. 334, it is the respondent's contention that he tried but failed to locate any real or personal property owned by the defendant hence the writ thereon was returned unsatisfied. Complainant, on the other hand, finds it difficult to believe that defendants do not have any property not even the basic home appliances like television set and refrigerators which are considered necessities nowadays. This bare allegation of complainant, however, does not in any way overcome the presumption that in the absence of contrary evidence, a sheriff has regularly performed his official duty (Navale vs. Court of Appeals, 253 SCRA 705).

As to Civil Case No. 328, respondent made an admission that he intentionally did not serve the Alias Writ of Execution dated December 20, 1992 upon the defendants for the reason that the latter are jobless with six mouths to feed and an ailing mother to attend to. Such an argument is untenable. Service of the writ is one thing; satisfaction of the writ is another. He should have performed his ministerial duty of serving the writ upon the defendants. If indeed said defendants have no money or property with which to pay the judgment amount, then respondent sheriff could return the writ unsatisfied.

We find nothing irregular however, on the estimate of travel cost prepared by respondent in Civil Case No. 352. This is so because part of his duty was to serve the writ upon the defendant who resides in Cebu City notwithstanding that there are other defendants who reside within the locality.

Anent Civil Case No. 367, the picture submitted by complainant which allegedly shows the residential house owned by the defendant therein could not be given credence over the bank document submitted by respondent sheriff (Annex "4-I") which tends to prove that the property actually belongs to the defendant's son who is not a party to the case.

The OCA recommends that respondent be reprimanded for his failure to serve the alias writ of execution in Civil Case No. 328.

The Court agrees with the conclusion of the OCA that respondent is guilty of neglect of duty and grave abuse of authority for his failure to serve the alias writ of execution in Civil Case No. 328. However, the Court finds that respondent is also guilty of neglect of duty and grave abuse of authority in Civil Cases Nos. 334, 352 and 367.

Section 14 of Rule 39 of the 1997 Rules of Civil Procedure explicitly mandates the manner in which a writ of execution is to be returned to court, as well as the requisite reports to be made by the sheriff or officer, should the judgment be returned unsatisfied or only partially satisfied. In any case, every 30 days until the full satisfaction of a judgment, the sheriff or officer must make a periodic report to the court on the proceedings taken in connection with the writ. Section 14 reads as follows:

"Sec. 14. *Return of writ of execution.*—The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full