

EN BANC

[A.M. No. P-02-1544, June 26, 2003]

**ERNESTO LUMANTA, COMPLAINANT, VS. WILFREDO M. TUPAS,
RESPONDENT.**

R E S O L U T I O N

PER CURIAM:

This concerns the complaint-affidavit dated April 28, 1999 filed with the Office of the Chief Justice by Ernesto Lumanta, charging respondent, Wilfredo M. Tupas, Sheriff III of the Municipal Trial Court in Cities (MTCC) of General Santos City, Branch 11, with gross misconduct, dishonesty and conduct prejudicial to the best interest of the service.

On June 9, 1998, complainant Ernesto Lumanta, a Credit and Collection Manager of Ayala Agricultural Development Corporation (Ayala), accompanied respondent Tupas to the residence of spouses Joel de Vera and Portia de Vera at Ledesma Street, Poblacion Tacurong, Sultan Kudarat in order to implement the writ of attachment in Civil Case No. 4049-3.

Upon meeting with the spouses, respondent introduced and made known his authority and purpose. However, to complainant's dismay and frustration, respondent, instead of implementing the writ, negotiated an amicable settlement that ended in a verbal compromise agreement with the de Vera spouses without the complainant's consent and approval. Respondent received cash in the amount of P5,000 and a post-dated check dated June 20, 1998, amounting to p46,737.50, payable to himself. Respondent advised the de Vera spouses to redeem or make good their post-dated check on or before June 20, 1998, otherwise he would implement the writ.

Despite the lapse of five months from June 20, 1998, respondent failed to deliver the cash and the post-dated check, or the proceeds thereof, to the complainant. Respondent also ignored the complainant's demand letter dated August 17, 1998. Likewise, the records of Civil Case No. 4049-3 reveal that respondent did not file a Sheriff's Return relative to the implementation of the writ.

On June 2, 1999, then Court Administrator Alfredo L. Benipayo referred Lumanta's complaint-affidavit to Judge Jose A. Majaducon, MTCC of General Santos City, Branch 1, who, in turn, indorsed the same to Executive Judge Gaydifredo Ocampo. Executive Judge Ocampo then endorsed the complaint-affidavit to respondent for comment but the latter ignored the same.

On September 20, 2000, respondent personally received a "tracer" giving him 5 days from receipt of the complaint-affidavit to file his comment otherwise the same would be submitted for resolution. Nothing, however, was heard from the

respondent despite his receipt thereof.

His refusal to refute the charges in the complaint, despite notice on two occasions, can only mean that the allegations thereof were true and that he was not denying them. Hence, we find the evidence on hand sufficient to justify a verdict.

When a writ is placed in the hands of a sheriff, it is his duty, in the absence of any lawful instruction to the contrary, to proceed with its prompt execution according to its terms. He is supposed to execute the order of the court strictly to the letter, as his duty is purely ministerial.^[1] In agreeing to an amicable settlement with spouses de Vera, respondent Tupaz went beyond the tenor of the order and, in effect, amended or revised the court order. Such act constituted grave misconduct.

Respondent also overstepped his authority when he requested and personally received the amount of P5,000 and a post-dated check in the amount of p46,737.50 payable to himself. Sec. 9, par.(c), Rule 141 of the Rules of Court authorizes a sheriff's legal fee of no more than P50 for executing a writ of attachment.^[2] An additional sum may be required from the party requesting the writ; however, certain steps must be complied with. Initially, the sheriff's estimate of the expenses in executing the writ must be approved by the judge. The approved estimate shall be deposited with the clerk of court. Thereafter, an *ex officio* sheriff shall disburse the same to the sheriff assigned to implement the writ who, in turn, shall liquidate within the same period for rendering a return. Any unspent amount shall be refunded to the party making the deposit.^[3]

As declared by the complainant, respondent received the amount of p5,000 aside from the post-dated check. Said amount was not part of the approved estimate of expenses and was not deposited with the clerk of court. A sheriff is not allowed to receive gratuities or voluntary payments from parties they are ordered to assist in the course of their duties.^[4] In *Eduarte vs. Ramos*,^[5] a deputy sheriff was administratively held liable for receiving p5,000 from the prevailing party. We noted therein that there was no justification for the sheriff's failure to liquidate the amount paid to him, although the amount was not given strictly in accordance with Section 9 of Rule 141. While the record in the criminal case for estafa against herein respondent reveals that the latter deposited the P5,000 and the check with the clerk of court, the same was made 7 months after the implementation of the writ and only after receipt of a demand letter from the complainant — clearly an afterthought rather than the faithful fulfillment of duty.

Likewise, respondent violated Rule 57, Section 6 of the Rules of Court which provides that:

Sec. 6. Sheriff's Return. — After enforcing the writ, the sheriff must likewise without delay make a return thereon to the court from which the writ was issued, with a full statement of his proceedings under the writ and a complete inventory of the property attached, together with any counter-bond given by the party against whom attachment is issued, and serve copies thereof on the applicant.

Respondent's lack of diligence and zeal in the performance of his duty was inexcusable. His failure to liquidate and remit the amounts received within a reasonable time constituted dishonesty and conduct prejudicial to the best interest