

## **FIRST DIVISION**

**[ A.M. No. P-03-1742 (A.M. OCA-IPI No. 02-1307-P), September 18, 2003 ]**

**SALVADOR L. BERNABE, COMPLAINANT, VS. WINSTON T. EGUIA, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 26, ILOILO CITY, RESPONDENT.**

### ***RESOLUTION***

**YNARES-SANTIAGO, J.:**

Sheriffs have the ministerial duty to implement writs of execution promptly. Their unreasonable failure or neglect to perform such function constitutes inefficiency and gross neglect of duty.<sup>[1]</sup> When writs are placed in the hands of sheriffs, it is their ministerial duty to proceed with reasonable speed and promptness to execute such writs in accordance with their mandate.<sup>[2]</sup> Corollarily, a sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps, otherwise it would amount to dishonesty or extortion.<sup>[3]</sup>

In a verified complaint dated November 21, 2001,<sup>[4]</sup> complainant charged respondent Sheriff Winston T. Eguia of the Iloilo RTC, Branch 26 with Conduct Prejudicial to the Best Interest of the Service relative to Civil Case No. 00-26-308 entitled *Golden Road Runner International Corporation v. Bianibe Apinan*.

Complainant was the counsel of record for plaintiff Golden Road Runner International Corporation in Civil Case No. 00-26308. On April 25, 2001, a Decision was rendered in favor of plaintiff and a Writ of Execution<sup>[5]</sup> was issued by Clerk of Court Magdalena L. Lometillo on July 23, 2001. Defendant Bianibe Apinan was ordered by the court to pay the plaintiff the sum of P133,537.00 with 2% penalty per month to be computed from October 11, 1999. The Writ of Execution directed respondent sheriff to enforce the Decision and to seize personal properties of the defendant valued at an amount sufficient to satisfy the judgment; and that if personal properties were not sufficient, real properties would be levied upon and sold in the manner provided by law.

Complainant averred that respondent sheriff went to his office and asked for Five Thousand Pesos (P5,000.00) as Sheriff's fee to which he complied. The amount was given under Check No. 52381 which was acknowledged under Disbursement Voucher No. 904184 dated July 26, 2001.<sup>[6]</sup> Complainant alleges that on October 25, 2001, he received a copy of the Sheriff's Return of Service<sup>[7]</sup> through the mail. The writ of execution was returned unsatisfied and it was dated October 4, 2001, more than sixty (60) days from the time the respondent received the writ of implementation.

Complainant claims that the respondent sheriff solicited the amount of Five

Thousand Pesos (P5,000.00) from the plaintiff which is not in accordance with the established legal procedure. He should have estimated the expenses to be incurred, have it approved by the court and upon approval, for him to deposit the same with the Office of the Clerk of Court from where sheriffs could withdraw their expenses. Complainant further asserts that sheriffs are mandated to return the writ 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 within thirty (30) days after the receipt of the writ, sheriffs shall report to the court and state the reason therein.

Complainant alleges that the respondent sheriff not only solicited money from a party but likewise violated the established rules and procedures by failing to report to the court within the prescribed period the proceedings he had taken. Respondent likewise failed to strictly follow the directive of the writ by implementing the same in a manner prejudicial to the interest of the plaintiff. Complainant then prayed that appropriate sanctions be meted against respondent sheriff.

In a Memorandum dated November 23, 2001,<sup>[8]</sup> Executive Judge Tito G. Gustilo required respondent to answer under oath the charge against him. The complaint and answer were, in turn, forwarded to the Office of the Court Administrator (OCA) by Judge Gustilo on January 10, 2002.<sup>[9]</sup>

In his Answer/Explanation,<sup>[10]</sup> respondent sheriff avers that he received the writ of execution issued in Civil Case No. 00-26308; that he was approached by a representative of the plaintiff to whom he explained the procedure in the execution of the writ. He also described the expenses that would be incurred in relation thereto. However, the plaintiff's representative seemed to be in a hurry to have the writ of execution implemented and was willing to advance money for travel expenses. Respondent was then issued a check in the amount of Five Thousand Pesos (P5,000.00). He was initially adamant to receive the check and to sign a disbursement voucher but he was assured by the plaintiff's representative that it was only for internal accounting purposes and that the amount was voluntarily given apart from what may be submitted as expenses to be incurred in the service as approved by the court.

Respondent sheriff alleges that he made six (6) trips to Roxas City where the defendant was based to serve the writ of execution but to no avail as there was no property left for execution. In all his trips to Roxas City, he always demanded payment from the defendant but the latter had no money to satisfy the judgment although he consistently promised to pay. Respondent denied that he acted in a manner prejudicial to the interest of the plaintiff. He exhausted all efforts and took all measures to execute the writ to no avail. He claims that he did not violate the Rules of Court; that the requirement of the Rules that the writ of execution should be returned to the issuing court after the judgment has been satisfied in full or in part and to report to the court within thirty (30) days after the receipt if the judgment cannot be satisfied in full, is not applicable in his case because there was neither full nor partial satisfaction of the judgment. He further denied that his consolidated report or return dated October 4, 2001 which was beyond the sixty-day period was done with malice. There was an honest effort on his part to execute the writ but the defendant was destitute and in a miserable financial status. He never solicited any amount from the plaintiff but the sum was voluntarily given to him to have the writ of execution implemented. Thus, respondent prayed that the

complaint be dismissed.

The OCA to which the case was referred to for evaluation and report found the respondent culpable and recommended that he be suspended for two (2) months without pay with a stern warning that the commission of similar infractions in the future will be dealt with more severely.

Upon being required by the Court, complainant manifested that he is willing to submit the case for resolution on the basis of the pleadings filed. Respondent failed to file his manifestation and the same was dispensed with in the Resolution dated June 9, 2003.

The Court agrees with the findings and recommendation of the OCA.

The administration of justice is a sacred task and it demands the highest degree of efficiency, dedication and professionalism.<sup>[11]</sup> In this regard, the court finds it necessary to reiterate that "[S]heriffs and deputy sheriffs, being ranking officers of the court and agents of the law, must discharge their duties with great care and diligence. In serving and implementing court writs, as well as processes and orders of the court, they cannot afford to err without affecting adversely the proper dispensation of justice."<sup>[12]</sup> Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them.<sup>[13]</sup> They should always hold inviolate and invigorate the tenet that a public office is a public trust.<sup>[14]</sup>

Sheriffs, as public officers are repositories of public trust and are under obligation to perform the duties of their office honestly, faithfully and to the best of their ability. They are bound to use reasonable skill and diligence in the performance of their official duties particularly where the rights of individuals may be jeopardized by their neglect. It must be borne in mind that the conduct required of court personnel must be beyond reproach and must always be free from suspicion that may taint the judiciary.<sup>[15]</sup> It is therefore incumbent upon every member of the judiciary family to work hand in hand in restoring and upholding, rather than destroying the integrity of the courts to which they belong.<sup>[16]</sup>

Good faith on the part of the sheriff, or lack of it, in proceeding to properly execute its mandate would be of no moment, for he is chargeable with the knowledge that being the officer of the court tasked therefor, *it behooves him to make due compliances*.<sup>[17]</sup> In the implementation of a writ of execution, only the payment of sheriff's fees may be received by sheriffs. They are not allowed to receive any *voluntary* payments from parties in the course of the performance of their duties. To do so would be inimical to the best interests of the service because even assuming *arguendo* such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. In fact, even "*reasonableness*" of the amounts charged, collected and received by the sheriff is not a defense where the procedure laid down in Section 9, Rule 141 of the Rules of Court has been clearly ignored.<sup>[18]</sup> Only the payment of sheriff's fees can be lawfully received by a sheriff and the acceptance of any other amount is improper, even if it were to be applied for lawful purposes.<sup>[19]</sup> In short, sheriffs cannot, as in this case, received gratuities or voluntary payments

from parties they are ordered to assist. [20] As the Court scathingly said in *Tiongco v. Molina*: [21]

. . . The fact that this money was allegedly used for the implementation of the writ is of no moment. Being an officer of the, Magat must be aware that there are well-defined steps provided in the Rules of Court, particularly Rule 141, Sec. 9, final paragraph [22] regarding the payment of expenses that might be incurred with respect to properties to be levied. To restate what should be common knowledge to court personnel:

The rule requires the sheriff executing the writs or processes to estimate the expenses to be incurred and upon the approval of the estimated expenses, the interested party has to deposit the amount with the Clerk of Court and the *Ex-officio* Sheriff. These expenses shall then be disbursed to the executing Sheriff subject to his liquidation within the same period for rendering a return on the process or writ. Any unspent amount shall be refunded to the party who made the deposit... [23]

Sheriff Magat ignored the procedures set forth in the Rules of Court. The money was not deposited with the Clerk of Court and there was no showing that this amount was subjected to the court's prior approval. He should have waited for the money to be officially disbursed to him if indeed due or required for expenses. ***He should not go on accepting money from a party, much less requesting for it.*** [24] (Emphasis and italics supplied)

The duty of the Sheriff to execute a valid writ is ministerial and not directory. Indeed, Section 14, Rule 39 of the 1997 Rules of Civil Procedure states in no uncertain terms that –

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 within thirty (30) days after receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall be forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

Pursuant to this provision, respondent is required to make a return and submit it to the court immediately upon satisfaction in part or in full of the judgment; and if the judgment cannot be satisfied in full, to make a report to the court within thirty (30) days after his receipt of the writ and to state why full satisfaction could not be made. The sheriff shall continue to make a report every thirty (30) days on the proceedings being taken thereon until the judgment is fully satisfied. The reason for this requirement is to update the court as to the status of the execution and to give it an idea as to why the judgment was not satisfied. It also provides insights for the