

THIRD DIVISION

[A.M. NO. P-03-1724 (Formerly OCA I.P. No. 01-1161-P), September 18, 2003]

**VICENTE ALVAREZ, JR., COMPLAINANT, VS. JOSE R. MARTIN,
SHERIFF IV, RESPONDENT.**

DECISION

PUNO, J.:

Before this Court is an administrative complaint^[1] dated April 4, 2000 against respondent Jose R. Martin, Sheriff IV of the Regional Trial Court of Cauayan, Isabela, Branch 19, for failure or refusal to perform official duty.

Complainant Vicente Alvarez, Jr. is the plaintiff in Civil Case No. 1928 for unlawful detainer, entitled Vicente Alvarez, Jr. vs. Danilo Ico, et al., that was filed before the Municipal Circuit Trial Court of Cauayan, Isabela. On November 27, 1996, the Municipal Trial Court of Cauayan, Isabela rendered a decision in favor of the plaintiff. The dispositive portion^[2] reads as follows:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendants:

1. ORDERING the defendants, their agents, privies, and all persons acting at their authority to immediately vacate the premises in question and surrender the possession thereof to the plaintiff;
2. ORDERING the defendants to pay their monthly rental in arrears as follows:

(a) Danilo Ico – Total of P114,000.00 to date broken down as follows:

First two (2) door paying monthly rental of P1,500.00 per door or P3,000.00 a month:

December 1994	P 3,000.00
.....	
January to December 1995	36,000.00
.....	
January to October 1996	<u>30,000.00</u>
.....	
Total:	P69,000.00

Third door which pays a monthly rental of P800.00

January to December 1992	P 9,600.00
.....	
January to December 1993.....	9,600.00
January to December 1994.....	9,600.00
January to December 1995.....	9,600.00
January to October 1996.....	<u>8,000.00</u>
Total:	P46,000.00

(b) x x x

x x x

with an interest of 6% from the date of filing of this complaint until fully paid.

3. ORDERING the defendants to pay jointly and severally the plaintiff a reasonable amount of P5,000.00 for the damages;
4. ORDERING the defendants to pay jointly and severally the plaintiff a reasonable amount of P5,000.00 as attorney's fees.

WITH COSTS.

The defendants appealed to the Regional Trial Court (RTC) of Cauayan, Isabela. In its Decision^[3] dated February 3, 1997, the said RTC affirmed the trial court.

Of the defendants, only Danilo Ico appealed to the Court of Appeals. The appellate court denied the appeal in its Resolution^[4] dated March 3, 1997. Ico's motion for reconsideration was likewise denied in the Resolution^[5] of the appellate court dated July 13, 1998. Ico then appealed to this Court. The appeal was denied in the Resolution^[6] of this Court dated August 26, 1998. His motion for reconsideration was denied with finality in the Resolution^[7] of this Court dated November 16, 1998.

On November 5, 1999, the Municipal Trial Court of Cauayan, Isabela issued a Writ of Execution^[8] of the subject decision. Respondent sheriff received the writ on February 3, 2000. On March 7, 2000, the respondent returned the said writ of execution unimplemented. Ico refused to vacate the subject premises and showed a copy of the Petition for Review which he had filed with the Supreme Court. The Sheriff's Return^[9] reads as follows:

Respectfully return (*sic*) to the Honorable Court herein writ of execution NOT IMPLEMENTED due to the refusal of defendant Danilo Ico to vacate because according to him there are actually five (5) doors; three (3) doors are under lease, the other two (2) doors not actually occupied by his machine shop not leased (*sic*) besides, he showed us a PETITION FOR REVIEW filed by him with the Supreme Court, respect should be accorded to the Supreme Court to wait the final resolution of this petition for

review, and added that he is willing to vacate if the Supreme Court decided in his favor (*sic*).

Complainant further claimed that during the time the said writ of execution was in the hands of the respondent for enforcement, the latter "had been seen dining and wining with defendant Ico."^[10]

On March 14, 2000, the complainant filed an *ex parte* motion to compel the respondent to execute the writ. The motion, however, was merely noted^[11] by the Municipal Trial Court. On July 5, 2000, the complainant filed a motion to designate another sheriff to enforce the decision. The Municipal Trial Court denied the motion, per its Order dated July 7, 2000, on the ground that it is the prerogative of the *ex officio* Provincial Sheriff, the Clerk of Court of the Regional Trial Court, to select the sheriff that will enforce the decision. The complainant filed his motion for reconsideration which was denied in the resolution of the court dated August 4, 2000.

On August 10, 2000, the Clerk of Court of the Municipal Trial Court forwarded to the Regional Trial Court of Cauayan, Isabela the writ of execution of the decision in Civil Case No. 1928 and a Philippine Postal Money Order for the amount of P150.00 for the payment of the required sheriff's fee in the execution of the decision. The Clerk of Court of the Municipal Trial Court made the notation that the original copy of the writ is still in the possession of the respondent. The Clerk of Court of the Regional Trial Court assigned another sheriff in the person of Rodolfo Tuliao to execute the decision. On September 18, 2000, Sheriff Rodolfo Tuliao of the Regional Trial Court of Cauayan, Branch 20, stated in his Sheriff's Return, among others, that the defendant Ico voluntarily surrendered two (2) apartments.

Complainant maintains that respondent's refusal to implement the writ of execution because of the pendency of defendant Ico's purported petition for review with the Supreme Court, is a clear abdication of his official and ministerial duty.^[12] In defense, respondent claims that complainant had no legal right to compel him to implement the writ of execution because the complainant had repeatedly failed and refused to pay the corresponding sheriff's fees and to accompany him during its implementation. He avers that though the complainant had not paid the required sheriff's fees, he still went to see defendant Ico on two (2) occasions – on February 14 and March 7, 2000 to implement the writ of execution. Unfortunately, defendant Ico had padlocked the building and respondent was refused entry therein.^[13]

Respondent also denies the allegation that he "was dining and wining with defendant Ico" for the reason that he had never been with the latter in any place in Cauayan, Isabela, or in the Philippines. He avers he does not drink wine.^[14]

Complainant, in his Reply^[15] to Respondent's Answer, denies the allegation of respondent that he refused to pay the corresponding sheriff's fees despite repeated demands made by respondent. He explained that even before the writ of execution was issued on November 5, 1999, he had already authorized his personal representative, Mr. Ernesto Tallano, to attend to the matter of the issuance and enforcement thereof. He alleged that it was Mr. Tallano himself who negotiated with Sheriffs Martin and Asirit for a "PACKAGE DEAL" of TEN THOUSAND PESOS (P10,000.00) for the implementation of the writ of execution to be paid upon the

ejection of defendant Ico from the subject premises. He clarified that when he gave his approval to the said arrangement, he was not informed that the payment of the sheriff's fees was a pre-condition for the implementation of the writ of execution.^[16]

Furthermore, complainant brands as bereft of any factual basis the allegation of respondent that the latter had required the personal presence of the former during the enforcement of the writ of execution. He averred that since he had already designated Mr. Ernesto Tallano as his personal representative, there was no more need for him to personally accompany the respondent to eject defendant Ico from the subject premises.

Lastly, complainant charges conspiracy among some court personnel to delay the implementation of the writ of execution against defendant Ico. He alleged that the purported letters, and the affidavit of Ico annexed to respondent's Answer and even the Answer of the respondent bear unerring resemblance in writing style, sentence construction, and afterthought reasoning to the pleadings of Ico in connection with the ejection case. Even the typewriter/s used, the computer print-outs, and the handwritten notations on the Answer of the respondent and its Annexes bear unmistakable resemblance to the pleadings and papers filed by Ico in the ejection and related cases. These, complainant concludes, indicate that respondent is part of Ico's "team effort" at further detaining the premises.

In a Resolution^[17] dated July 31, 2002, we referred this administrative complaint to the Honorable Henedino P. Eduarte, Executive Judge of the Regional Trial Court of Cauayan, Isabela for investigation, report and recommendation.

Executive Judge Eduarte recommended that respondent be suspended for two (2) months without pay. In his Report and Recommendation dated October 20, 2002, he found that respondent:

- (1) violated section 9, Rule 141, Rules of Court when he demanded from the complainant P1,500.00 for the alleged "lunch or merienda" of the policemen who will accompany him to implement the writ;
- (2) violated section 14, Rule 39, Rules of Court for not submitting a monthly report to the Municipal Trial Court regarding his implementation of the writ;
- (3) knowing that the Sheriff's fee was not paid, he nevertheless attempted to implement the writ of execution;
- (4) refused to enforce the writ of execution just because the defendant Danilo Ico refused to vacate the property; and
- (5) delayed the implementation of the writ when he returned the same to the Clerk of Court, because defendant Danilo Ico refused to vacate the property.

The Office of the Court Administrator, upon evaluation of the Report and Recommendation of Executive Judge Henedino P. Eduarte, likewise recommended a penalty of suspension for a period of two (2) months against respondent. In