

## THIRD DIVISION

**[ A.M. No. P-02-1592 (formerly OCA IPI No. 01-1069-P), October 16, 2003 ]**

**LUZITA ALPECHE, COMPLAINANT, VS. EXPEDITO B. BATO,  
SHERIFF III, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 1,  
DUMAGUETE CITY, RESPONDENT.**

### DECISION

**SANDOVAL-GUTIERREZ, J.:**

In a complaint-affidavit<sup>[1]</sup> dated March 13, 2001 filed with the Office of the Court Administrator (OCA), complainant Luzita Alpeche alleged that she is the plaintiff in Civil Case No. 2000-150 filed with the Municipal Trial Court in Cities at Dumaguete City against spouses Rommel and Corazon Artuz for a sum of money. On October 9, 2000, the court rendered its Decision ordering the defendants to pay her P22,900.00 plus interest at 12% per annum, computed from March 1, 2000 until fully paid. Upon the finality of the Decision, the trial court issued a writ of execution dated February 6, 2001. It was implemented the following day, February 7, by sheriff Expedito Bato, respondent. On that same day, he was able to collect P28,504.00 from the defendants, as shown by a handwritten receipt<sup>[2]</sup> signed by him. However, he did not immediately turn over to complainant the amount.

Complainant further alleged that on February 12, 2001, respondent asked from her the sum of P3,200.00 "as expenses for the execution of Civil Case No. 2000-150."<sup>[3]</sup>

On February 27, 2001, complainant came to know that the defendants delivered to respondent the sum of P28,504.00 as early as February 7, or ten (10) days earlier. So she reported the matter to Presiding Judge Antonio T. Estoconing who immediately confronted respondent. The latter promised to produce the money on March 2, 2001.

On March 6, 2001, respondent delivered the sum of P28,740.00 to Clerk of Court Joseph V. Tumacole who, in turn, turned it over to complainant that same day. However, according to her, the sum of P28,740.00 was not enough because the expense for the execution (or P3,200.00 earlier received by respondent) and cost of suit were not included."

In his comment dated May 18, 2001, respondent denied complainant's allegations, contending that his failure to deliver immediately to her the amount awarded by the trial court was due to an error in his computation of the monetary award which he would present to defendant Rommel Artuz; that the P28,504.00 he collected did not include P818.35, the lawful fee already paid by complainant in advance directly to the City Sheriff's Office; and that the correct amount to be collected from the defendants should be P29,558.35, broken down as follows: principal sum - P22,900.00; interest at 12% per annum from March 1, 2000 to February 7, 2001 -

P2,748.00; attorney's fees - P2,500.00; cost of suit - P585.00; and lawful fees - P818.35.

He admitted that while he held in abeyance the delivery of the money, however, he turned over the total amount of P29,558.35 to the Clerk of Court on March 6, 2001. He also returned to complainant the sum of P3,200.00 as shown by a receipt she signed.<sup>[4]</sup>

In his Report, Court Administrator Presbitero J. Velasco, Jr. made the following evaluation:

"While respondent claims that the amount of P29,558.35 was received by complainant on March 6, 2001 and the amount of P3,200.00 was returned to her on April 10, 2001, it cannot be denied that there was indeed delay in doing so. The statement of respondent that he held in abeyance the delivery of the amount of P28,504.00 because it was not the correct computation is suspicious. He avers that the correct computation should have been P29,558.35, but it is doubtful that it took one month for respondent to collect the difference of P1,054.35 from defendants Artuz. Moreover, records show that defendants paid the interest at 12% per annum from March 1, 2000 until February 7, 2001, but from the documents received by this office, it shows that the decision states that the legal interest of 12% per annum must be computed from March 1, 2000 until completely paid.

"Pursuant to Section 9(a), Rule 39 of the Rules of Court, the executing sheriff is mandated to 'xxx turn over all the amounts coming into his possession within the same day to the Clerk of Court that issued the writ, or if the same is not practicable, deposit said amounts to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality xxx.' **The delay of respondent sheriff in turning over the amount received by him leads one to suspect that he misappropriated the same for his personal use.**

"Furthermore, the contention of respondent that he returned the amount of P3,200.00 for publication expenses to complainant on April 10, 2001 constitutes misconduct. It shows that there was bad faith on the part of respondent because he returned the money to complainant only after the latter filed her complaint to this office."

On June 3, 2002, we issued a Resolution directing the parties to manifest whether they are submitting the case for decision on the basis of the pleadings and records already filed.

Only respondent submitted the required manifestation.

Section 9 (a), Rule 39 of the 1997 Rules of Civil Procedure, as amended, provides:

*"Sec. 9. Execution of judgments for money, how enforced. - (a) Immediate payment on demand. -*