

SECOND DIVISION

[A.M. No. P-02-1640 [Formerly OCA IPI No. 00-982-P], October 13, 2003]

SAAD ANJUM, COMPLAINANT, VS. SHERIFF IV CESAR L. ABACAHIN AND LEGAL RESEARCHER ABIGAIL M. CARDENAL, RTC, BRANCH 69, PASIG CITY, RESPONDENTS.

R E S O L U T I O N

QUISUMBING, J.:

This administrative matter stems from an affidavit-complaint,^[1] dated January 24, 2000, filed by complainant Saad Anjum charging (a) respondent Cesar L. Abacahin, Sheriff IV, Regional Trial Court of Pasig City, Branch 69, with grave misconduct, oppression, partiality, inefficiency, and incompetence; and (b) respondent Legal Researcher Abigail M. Cardenal, also of the same court, with grave misconduct, usurpation of judicial function, and falsification of official documents.

Complainant and his wife, Wilma Anjum, run a variety store in a rented space located at No. 38 Mindanao Avenue, Maharlika Village, Taguig, Metro Manila. For their failure to pay the rent, an ejectment case was filed against complainant and his wife before Branch 74 of the Metropolitan Trial Court of Taguig docketed as Civil Case SCA No. 1772 entitled "*Ismael T. Zacaria v. Sps. Saad Anjum and Wilma Anjum*." On November 3, 1998, the MTC of Taguig rendered a decision against them. Complainant and his wife appealed the decision to the Regional Trial Court of Pasig, Branch 69. On appeal, the RTC of Pasig granted the appellee's motion for the issuance of a writ of execution pending appeal by Order^[2] dated January 7, 2000. On January 11, 2000, respondent Legal Researcher Abigail M. Cardenal issued a writ of execution.^[3]

Complainant contends that respondent Abigail M. Cardenal, a mere legal researcher, did not have authority to issue the said writ of execution and that by so doing, she usurped judicial function. Complainant adds that respondent Cardenal, for some malicious, unjust, and unlawful reason, altered the date of the writ of execution to make it appear that the writ was issued on January 12, 2000. She likewise failed to serve a copy of the said writ on either complainant and his wife or their counsel. Respondent Sheriff Cesar L. Abacahin, for his part, forcibly opened their store on the said date and levied upon all goods and chattels found therein including some LPG tanks owned by the Petron Corporation and a Toyota 4-door sedan registered to one Ram Antonio. Complainant blames respondent Abacahin for recklessly leaving some of the seized items on the street and causing the loss and theft of some of the goods. He also assails respondent Abacahin's failure to serve a copy of the notice of levy and sheriff's sale before conducting the auction sale and for failure to serve a copy of the notice to vacate before ejecting him and his wife from the leased premises on January 18, 2000.^[4]

In his Comment^[5] dated November 20, 2000, respondent Abacahin prays for the dismissal of the complaint contending that complainant's allegations are baseless, untrue, and meant solely to harass him. Respondent Abacahin avers that he mistakenly thought it was already January 12, 2000 when he typed the writ of execution on January 11, 2000. When respondent Cardenal noticed the error, he superimposed the `1' over the original `2' in the date. He asserts he did so in good faith. In addition, he stresses that by Order of January 7, 2000, the trial court had ordered the issuance of a writ of execution; hence, it is inconsequential whether the writ was issued on January 11 or 12 and even more so considering it was on January 12, 2000 that he implemented the said writ.^[6]

Respondent Abacahin also denies any irregularity when he levied upon the Toyota 4-door sedan. He explains that because complainant's wife failed to present evidence that the Toyota 4-door sedan belonged to a third person and because it appeared from all indications that the said car belonged to complainant, he proceeded to levy the said car. Respondent Abacahin declares that the car is still in the Office of the Barangay Captain of Maharlika Village, Taguig waiting to be turned over to its alleged registered owner, Ram Antonio, to whom the complainant and his wife referred. As far as the LPG tanks are concerned, respondent Abacahin adds that he had already returned the said tanks to the rightful owner.^[7]

Lastly, respondent Abacahin avers that he personally served a copy of the notice to vacate, the writ of execution, and the notice of levy and sheriff's sale on complainant's wife on January 12, 2000, but the latter refused to sign receipt.^[8]

For her part, respondent Legal Researcher Abigail M. Cardenal stresses that she issued the subject writ of execution in due course considering the trial court's Order of January 7, 2000 and her designation as acting clerk of court of Branch 69 of the Pasig RTC by the Office of the Court Administrator. She likewise claims that the superimposition of `1' over `2' in the date of the writ of execution was done to correct a clerical error, and asserts that no party, particularly complainant Saad Anjum, was prejudiced by the error.^[9]

In a Resolution^[10] dated August 28, 2002, the Court re-docketed this case as a regular administrative matter and referred the same to the Executive Judge of the Regional Trial Court of Pasig for investigation, report, and recommendation. In compliance with the Court's directive, Executive Judge Edwin A. Villasor submitted his report dated January 31, 2003 finding both respondents administratively liable.

In its memorandum dated April 8, 2003, the Office of the Court Administrator, through Deputy Court Administrator Christopher O. Lock, adopted the findings of Judge Villasor and recommended that respondent sheriff Cesar L. Abacahin be fined P1,000 while respondent Legal Researcher Abigail M. Cardenal be admonished to be more circumspect in the performance of her duties.

We concur with the recommendation of the Office of the Court Administrator finding respondent Sheriff Cesar L. Abacahin liable for simple misconduct.

Section 15,^[11] Rule 39 of the Rules of Court governing auction sales of properties on execution states that "the place of sale may be agreed upon by the parties. In

the absence of such agreement, the sale of real property or personal property not capable of manual delivery shall be held in the office of the clerk of court of the Regional Trial Court or the Municipal Trial Court which issued the writ or which was designated by the appellate court. In the case of personal property capable of manual delivery, the sale shall be held in the place where the property is located." Here, the parties to Civil Case SCA No. 1772 did not agree to hold the auction sale in the Barangay hall of Maharlika Village, Taguig. This notwithstanding, respondent Abacahin brought out the properties from complainant's store in No. 38 Mindanao Avenue, Maharlika Village, Taguig and held the auction sale in front of the Barangay Hall.^[12] In *Tan v. Dae*,^[13] we held that a sheriff must observe the rules for executing a writ. Any act deviating from the procedures laid down by this Court is considered a misconduct that would warrant disciplinary action.^[14]

We reiterate that a sheriff, who is an officer of the court upon whom the execution of a final judgment depends, must be circumspect in his behavior.^[15] As an officer of the court and therefore agent of the law, respondent Abacahin is mandated to discharge his duties with due care and utmost diligence because, in serving the court's writs and processes and in implementing its lawful orders, he cannot afford to err without affecting the administration of justice.^[16] Any method of execution falling short of the requirement of the law deserves reproach and should not be countenanced.^[17]

As to complainant's other charges, they were found bereft of merit. It very clearly appeared during the hearings before Judge Villasor that complainant himself was not present in their store at the time of the levy and execution.^[18] His averment that respondent Abacahin recklessly left the merchandise on the street is not supported by credible evidence and deserves scant consideration. Complainant also openly admitted that respondent Abacahin did not forcibly open their store on January 12, 2000.^[19] Complainant's wife, Wilma Anjum, testified that respondent Abacahin arrived only around 10:00 a.m. that day when the store was already open for regular business and that they did not forcibly open any door therein.^[20] Also, complainant and his wife, Wilma, were duly served with copies of the writ of execution, notice to vacate, and notice of levy and sheriff's sale when respondent Abacahin left copies of the said notices in complainant's store after Wilma refused to sign receipt of the said notices.^[21] Finally, we find no basis for complainant's claim that respondent Abacahin maliciously levied upon the Toyota 4-door sedan belonging to Ram Antonio, an innocent third person. Neither complainant nor his wife, Wilma, presented to respondent Abacahin the certificates of registration or other proof of ownership of the said vehicle at the time of levy.^[22] Also, they were unable to present the supposed owner, Ram Antonio, to claim the car despite their having been able to present Ram Antonio's supposed affidavit of ownership to respondent Abacahin prior to the scheduled sale.^[23]

As to respondent Abigail Cardenal, we find no reason to hold her administratively liable for usurpation of judicial function or for grave misconduct in allegedly falsifying the date in the writ of execution. Respondent Cardenal's designation as acting clerk of court of Branch 69 of the RTC of Pasig on January 15, 1999^[24] by then Court Administrator Alfredo L. Benipayo empowers her to issue said writ of execution. Likewise, there is no showing that in correcting the error in the date of