

SECOND DIVISION

**[A.M. No. P-03-1758 (Formerly A.M. No. OCA
I.P.I. 03-1553-P), December 10, 2003]**

**JOSEFA C. CHUPUNGCO, COMPLAINANT, VS. BENJAMIN L.
CABUSAO, JR., DEPUTY SHERIFF III, METROPOLITAN TRIAL
COURT, PASIG CITY, BRANCH 68, RESPONDENT.**

R E S O L U T I O N

CALLEJO, SR., J.:

Before the Court is the Affidavit-Complaint dated September 3, 2002 filed by Josefa C. Chupungco against respondent Benjamin L. Cabusao, Jr., Deputy Sheriff III of the Metropolitan Trial Court (MeTC) of Pasig City, Branch 68, for oppression and grave abuse of authority.

The complainant, Chupungco, was one of the defendants in Civil Case No. 4199, an unlawful detainer case, entitled *Spouses Francisco and Juanita Sotto v. Josefa Chupungco and Amariley Genova*. She filed the present administrative complaint against the respondent relative to his allegedly malicious, oppressive and unlawful implementation of the writ of execution issued in the aforesaid case.

It appears that on March 17, 1995, the MeTC promulgated its judgment in Civil Case No. 4199 in favor of the plaintiffs and against the complainant and her co-defendant ordering them to, *inter alia*, "vacate the subject parcel of land located at Tanangco St., Buting, Pasig, Metro Manila."^[1] Upon motion of Spouses Sotto (the plaintiffs in Civil Case No. 4199), the MeTC issued a writ of execution on August 26, 1998, directing the respondent as the deputy sheriff to enforce the decision. On June 27, 2000, the respondent filed his return on the unsatisfactory service of the writ of execution.

On November 7, 2000, the Spouses Sotto filed a motion for issuance of an *alias* writ of execution which the MeTC granted. In the meantime, the complainant's motion for reconsideration having been denied, she filed with the Regional Trial Court (RTC) of Pasig City a petition for *certiorari* with an application for a temporary restraining order. The same was dismissed by the RTC, Branch 70, on June 25, 2002.

When the complainant and her co-defendant failed to comply with the *alias* writ of execution, the MeTC on April 9, 2002 issued a writ ordering the demolition of the improvements they erected on the subject lot. The notice of demolition was served on the daughters of the complainant's co-defendant, Genova, on July 11, 2002.

On July 16, 2002, the respondent implemented the writ of demolition. The complainant was not then around, as she had to file a petition for *certiorari* with the Court of Appeals questioning the RTC decision dismissing her petition. The demolition was witnessed by the complainant's neighbors, including Asuncion Camacan, who is the complainant's sister, as well as Rossana Genova and Rowena Gallano.

In her affidavit-complaint, the complainant alleged that the respondent, accompanied by thirteen (13) members of the demolition team, despite notice of her absence, "broke, destroyed and shattered in violent, harsh and inhuman manner" her "cherished sanctuarial home."^[2] The respondent and his cohorts ransacked her house of its valuables amounting to P300,000 and took her P50,000 cash. She placed the value of her house at P900,000.

The complainant further alleged that the respondent, together with the demolition team, hauled the complainant's belongings and the materials of the house onto a truck. Some of these belongings were dumped on the nearby river while the materials of the demolished house were sold off to a buyer in Mandaluyong City.

In support of her affidavit-complaint and its annexes, the complainant likewise submitted the affidavit of her sister Asuncion Camacan. Camacan stated that she witnessed the demolition of the complainant's house and saw the respondent and his team haul the complainant's personal belongings on a truck.

For his part, the respondent categorically denied the charges against him. He averred that the complainant had also filed a motion to cite him for indirect contempt before the RTC of Pasig City, Branch 70, in connection with the same incident. The same was denied for lack of merit.

Upon the recommendation of Deputy Court Administrator Christopher O. Lock, the Court, in the Resolution of July 9, 2003, referred the administrative complaint to Executive Judge Jose R. Hernandez, RTC, Pasig City, for investigation, report and recommendation.

In compliance therewith, Judge Hernandez conducted the investigation. In addition to the affidavit-complaint and its annexes, the complainant likewise submitted to the investigating judge the affidavits of Rossana Genova, Rowena Gallano and Ismael Mejia. The respondent, on the other hand, manifested his willingness to submit the case for resolution.

In his Report dated October 17, 2003, the investigating judge found that there was no substantive evidence to support the complainant's accusations of oppression and grave abuse of authority against the respondent. In implementing the writ of execution, the respondent even sought the assistance of the police and *barangay* officials, including Rogelio Cruz, Executive Officer of the *Barangay* Security Force of Buting, Pasig City. The Spouses Sotto also hired a *lipat-bahay* crew to assist in the implementation of the writ of demolition. That there were no belongings of value in the complainant's house, as claimed by the respondent, is supported by the certification issued by Cruz as well as the photographs of the complainant's house and its interior immediately prior to and after the demolition.^[3]

According to the investigating judge, the complainant failed to substantiate her claim that her house was worth P900,000 and that there were personal properties therein amounting to P300,000 as well as cash in the amount of P50,000.^[4]

The investigating judge, however, noted that the respondent failed to give any explanation as to what happened to the belongings of the complainant and the materials of her house that the respondent and the demolition team hauled onto a "*lipat-bahay*" truck. According to the investigating judge, the respondent's lack of