

FIRST DIVISION

[A.M. No. P-02-1546, April 18, 2002]

TEOFILA M. SEPARA, ROSITA C. CLARIDAD, ALEJANDRA M. LUCENDA AND ALEJANDRO M. BASIBAS, COMPLAINANTS, VS. ATTY. EDNA V. MACEDA, IN HER CAPACITY AS BRANCH CLERK, RTC OF TACLOBAN CITY, BRANCH 6, ERNESTO V. MARTINEZ, SHERIFF IV, RTC OF TACLOBAN CITY, BRANCH 6 AND VIRGILIO D. LENTEJAS, JR., SHERIFF IV, RTC OF TACLOBAN CITY, BRANCH 9, RESPONDENTS.

R E S O L U T I O N

YNARES-SANTIAGO, J.:

This administrative complaint has its origin in the following cases:

On September 22, 1962, Fabian, Juana, Francisca and Eugenia, all surnamed Moreno, instituted an action for recovery of property with the Court of First Instance of Tacloban City, Branch I, docketed as Civil Case No. 3113, against Josefina Gualberto. The trial court found in favor of defendant and, in a decision dated August 15, 1966, dismissed the case.^[1] The decision was appealed to the Court of Appeals in CA-G.R. 4560-R, which affirmed the trial court's decision.

On November 18, 1982, Josefina Gualberto filed an action for revival of the judgment in Civil Case No. 3113, against the Morenos, with the Regional Trial Court of Palo, Leyte, Branch VII, docketed as Civil Case No. 6484. On August 8, 1983, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, it is ordered that the subdivision plan submitted by Geodetic Engr. Wenceslao Nicolasora in this case on July 25, 1983, be and is hereby approved and plaintiff Josefina Gualberto is hereby declared the lawful owner of the portion of Lot 1991 of the Tacloban Cadastre on the eastern side of the property containing 4,096 square meters. Without pronouncement as to costs.

SO ORDERED.^[2]

On appeal to the then Intermediate Appellate Court, docketed as AC- G.R. CV No. 01574, it was held that Gualberto should have filed an action for partition and not an action for revival of the judgment which merely dismissed Civil Case No. 3113. Thus, the case was remanded to the lower court for further proceedings. Accordingly, the trial court dismissed Civil Case No. 6484 without prejudice to the right of Gualberto to file an action for partition of the lot subject of the action.^[3]

Hence, the Heirs of Macario Gualberto filed a case for partition against the Morenos with the Regional Trial Court of Tacloban City, Branch VII, docketed as Civil Case No.

7087. On December 9, 1985, the trial court dismissed the case without prejudice, on the ground that not all indispensable parties have been impleaded.^[4]

On January 6, 1986, the Heirs of Macario Gualberto filed a new case for partition with the Regional Trial Court of Palo, Leyte, Branch VII, docketed as Civil Case No. 7172. Again, the case was dismissed without prejudice for failure, to implead all indispensable parties.

The order of dismissal was appealed to the Court of Appeals, which affirmed the dismissal in a decision dated September 21, 1989.^[5]

Sometime in 1990, the Morenos filed an action for quieting of title with the Regional Trial Court of Tacloban City, Branch 6, docketed as Civil Case No. 90-09-163, entitled "*Fabian Moreno, et al. v. Josefina Gualberto, et al.*" The trial court dismissed the case on December 18, 1992, on the ground of res judicata.^[6] The ruling of the trial court was affirmed by the Court of Appeals in CA-G.R. CV No. 41592 on May 23, 1995,^[7] and by this Court in a Resolution dated November 13, 1995 in G.R. No. 122152.^[8] The same became final and executory on July 22, 1996.^[9]

On motion of the Gualbertos in Civil Case No. 90-09-163, the Regional Trial Court of Tacloban City, Branch 6, issued a writ of execution, ordering Sheriff Ernesto V. Martinez to place Josefina Gualberto, *et al.* in possession of the subject property and to eject all adverse occupants therefrom, including the Morenos.^[10] An Amended Writ of Execution to the same effect was issued on September 2, 1997.^[11]

On October 7, 1997, Teofila M. Separa, Rosita C. Claridad, Alejandra M. Lucenda and Alejandro M. Basibas, who are heirs of Fabian Moreno, *et al.*, filed with this Court a complaint against Atty. Edna V. Maceda, Branch Clerk of Court, and Ernesto V. Martinez, Sheriff IV, both of the Regional Trial Court of Tacloban City, Branch 6, and Virgilio D. Lentejas, Jr., Sheriff IV, of Branch 9 of said court.^[12] They alleged that respondents are guilty of usurpation of authority, falsification and gross ignorance of the law for declaring the Gualbertos as the lawful owner of Lot 1991-A, when the judgment sought to be enforced was the decision of the trial court in Civil Case No. 90-09-163, which merely dismissed the case.

Complainants also claim that respondent Branch Clerk of Court committed falsification when she invoked the court orders in Civil Cases Nos. 3113 and 6484 in the writ of execution, considering that these cases were not decided by Branch 6 of the Tacloban City RTC. Complainants further claim that the amended writ of execution, which was enforced by respondent sheriffs, enabled Josefina Gualberto to obtain Transfer Certificate of Title No. T-49382 over Lot No. 1991-A in her name.^[13]

Respondent Branch Clerk filed her comment,^[14] alleging that the writ of execution was not successfully served by respondents sheriffs for fear of physical harm; that respondents only performed their assigned tasks to the best of their abilities and in good faith; and that the imputations against them are purely lies made by persons who refuse to accept the decisions of said courts.

In his comment,^[15] respondent Sheriff Ernesto V. Martinez argued that their attempts to survey the property subject of execution in Civil Case No. 90-09-103

were met with resistance by complainants; that during their attempt to enforce the amended writ of execution, respondent Atty. Edna V. Maceda directed them, through a phone call, to stay the enforcement of the writ of execution as the new counsel for the complainants filed a Motion/Manifestation for Reconsideration of the Writ of Execution and Amended Writ of Execution; and that because of the said instruction, the enforcement of the questioned writ remained unsatisfied. Respondent further claims that their ditty is purely ministerial and he had no knowledge of what transpired in the case.

For his part,^[16] respondent Sheriff Virgilio D. Lentejas, Jr. averred that he was directed by the Clerk of Court of the RTC of Tacloban City to assist Sheriff Ernesto V. Martinez in enforcing the amended writ of execution. Together with Sheriff Martinez and the police, he proceeded to the subject property and were surprised to see that there were already many people in the area, thus, preventing the surveyor and his staff from proceeding with the survey. Branch Clerk of Court Edna V. Maceda instructed them to stay the implementation of the writ as counsel for complainant filed a motion for reconsideration.

The complaint was referred to the Court Administrator, who recommended the dismissal of the charges against respondent sheriffs but found respondent Branch Clerk of Court liable and recommended that she be ordered to pay a fine in the amount of P 10,000.00, with stern warning that a commission of the same or similar act will be dealt with more severely.

The parties manifested that they were willing to submit the case for resolution on the basis of the pleadings already filed.^[17]

At the outset, it is well to state the difference between the *issuance* of a writ of execution and the *awarding* of execution, as set forth in *Viray v. Court of Appeals*^[18] in this wise:

The issuing of an execution is a ministerial act, and must be carefully distinguished from the awarding of an execution, which is a judicial act. "To award is to adjudge, to give anything by judicial sentence" and when it is said that a party is awarded an execution upon a judgment it should be understood thereby that it is judicially declared that the party has a right to have the judgment executed. x x x the right of a party to have an execution having been duly adjudged, the mere issuing of the writ when the time for its issuance as prescribed by law has arrived; that is to say, the preparation and delivery of the formal writ or order to the sheriff or other officer charged with the execution of judgments, directing him to proceed with the execution is a mere compliance with the provisions of the award of judgment and essentially a purely ministerial act.

Succinctly stated, the function of *ordering* the execution of a judgment, being judicial, devolves upon the judge, whereas the act of *issuing* a writ of execution, being ministerial, can be performed by another person, viz., the clerk of court. As the rule now stands, the clerk of court may, under the direction of the court or judge, make out and sign all writs and processes issuing from the court.^[19]

In short, a Clerk of Court has no other duty but to issue the writ *in accordance with*