

## THIRD DIVISION

**[ A.M. No. P-99-1323 (formerly OCA IPI No. 97-339-P), February 20, 2001 ]**

**DAVID DE GUZMAN, COMPLAINANT, VS. DEPUTY SHERIFF PAULO M. GATLABAYAN, REGIONAL TRIAL COURT, ANTIPOLLO CITY, RIZAL, RESPONDENT.**

### DECISION

**GONZAGA-REYES, J.:**

Complainant David de Guzman is a businessman engaged in rice retailing in Angono, Rizal while respondent Paulo M. Gatlabayan is the Deputy Sheriff of the Regional Trial Court of Antipolo, Rizal.

In the instant administrative complaint, complainant de Guzman charges respondent Gatlabayan with Grave Abuse of Authority and Grave Misconduct relative to Criminal Cases Nos. 94-28361, 94-28354, 94-28598, 94-28599, 94-28600, 94-28601, 94-28602, 94-28603 and 94-28604 entitled "People of the Philippines vs. Pascualita Domdom" and Civil Case No. 97-4496, (for Recovery of Personal Property with Prayer for the Issuance of a Temporary Restraining Order and a Writ of Preliminary Injunction).

From the records, the following are the antecedent facts: The Metropolitan Trial Court of Marikina issued a writ of execution dated November 7, 1996 for the satisfaction of judgment in favor of one Adela Villon against Pascualita Domdom, president of Angono Rice Retailers' Association, as a result of the criminal cases filed against the latter by the former. The writ of execution commanded the sheriff "that, of the goods and chattels of Pascualita Domdom (defendant), you cause to be made the sum" as stated therein in the aggregate amount of P92,800.00 "together with your lawful fees for the service".<sup>[1]</sup>

The writ of execution was not served at Marikina City but it was served in Antipolo, Rizal when the sheriff of Marikina City endorsed the writ of execution to the sheriff of the Municipal Trial Court of Binangonan, Rizal. Thus, on July 2, 1997, in coordination with the sheriff of Binangonan, Rizal, herein respondent Deputy Sheriff Gatlabayan seized two hundred (200) sacks of rice by virtue of the above-mentioned writ of execution.<sup>[2]</sup>

Complainant presented to respondent sheriff a Third-Party Claim to prove his ownership over the sacks of rice but the latter ignored the same. Despite several pleas and the presentation of documents showing ownership of the sacks of rice, respondent did not return the same and instead scheduled the auction sale on July 9, 1997. To avert the sale, complainant filed on July 8, 1997 a petition for recovery of personal property with prayer for issuance of temporary restraining order and a writ of injunction docketed as Civil Case No. 97-4496 before the Regional Trial Court

of Antipolo, Rizal wherein said court issued a temporary restraining order and set the hearing on the application for preliminary injunction. Meanwhile, on July 30, 1997, complainant filed a manifestation and motion for the release of 86 bags of rice which were allegedly in excess of the amount to be satisfied in accordance with the writ of execution.

On July 31, 1997, the RTC issued an Order denying the application for writ of preliminary injunction. This order was received by complainant on August 1, 1997 and by respondent on August 4, 1997. On August 4, 1997, complainant filed a motion for reconsideration of the said order while on the same day, respondent Gatlabayan and Villon took the 200 bags of rice from the premises of the courthouse of the RTC-Antipolo without the permission of the court and respondent levied and executed the same.

In the present administrative case, complainant prays that respondent Gatlabayan be investigated for grave abuse of authority and grave misconduct:

- "a. in capriciously executing the Writ of Execution dated November 7, 1996.
  - b. in forcibly taking complainant's property with the assistance of dismissed policeman Jun Llanes, former deputy Sheriff Villaran, Gregorio Gatlabayan, and Binangonan deputy Sheriff Cecil Pulan without valid and legal ground.
  - c. issuing Notice of Levy and Sale of property on July 31, 1997 despite of the fact that the Order denying the application for preliminary injunction was released only on August 1, 1997 a copy of which was received by respondent on August 4, 1997 and secondly despite knowledge of the pendency of the manifestation with Urgent Motion and Motion for Reconsideration of the Order dated July 31, 1997;
  - d. in not giving notice to complainant/claimant of the scheduled August 4, 1997 auction sale and disregarding court's order to maintain status quo and giving too much favor to Mrs. Adela Villon apparently in exchange of the total amount of P30,000.00 he charged from Mrs. Villon."
- [3]

In his Answer/Position Paper, respondent Gatlabayan denied the allegations in the complaint. He averred that the writ of execution was properly implemented and that the enforcement of the writ even during the pendency of the complainant's manifestation with motion and the motion for reconsideration was valid since the Order of July 31, 1997 denying complainant's prayer for issuance of a writ of preliminary injunction and the lapse of the temporary restraining order (TRO) issued earlier effectively removed any obstacle that barred him from selling the levied properties. Respondent further contends that there was no valid objection to the conduct of the auction sale as the notice of sale was duly posted by him; that the proceedings of the auction sale were lawfully and regularly performed and duly recorded in the minutes; and, that the proceeds of the sale were lawfully applied to the various legal expenses.

In the Resolution dated July 5, 1999, this Court referred the case to Executive Judge Mauricio M. Rivera of the Regional Trial Court, Antipolo City for investigation, report and recommendation.

Meanwhile, herein complainant David de Guzman filed a Reply to respondent's Answer alleging that the 200 sacks of rice which were illegally levied by respondent belongs to complainant and these sacks of rice were part of the 800 sacks of rice purchased by him from the National Food Authority (NFA) in the aggregate amount of P560,000.00. He allegedly paid the said amount directly to the NFA. He further avers that the name of Pascualita Domdom was in the receipt to facilitate the release of the said rice in her capacity as president of the Angono Rice Retailers' Association. He further states that out of the proceeds of the sale of P130,000.00, respondent charged the judgment creditor Villon the amount of P5,000.00.

In his Recommendation dated April 12, 2000, Investigating Judge Mauricio M. Rivera found that the conduct of the auction sale by respondent Gatlabayan exceeded the bounds of regularity and procedure as provided by the Rules of Court. Investigating Judge Rivera noted that respondent Gatlabayan, together with Villon, took the 200 sacks of rice from the court premises in the early morning of August 4, 1997 without the knowledge of the RTC-Antipolo. These sacks of rice were sold without public bidding in Marikina City and the amount realized from the sale was for P130,000.00. The Investigating Judge found respondent Gatlabayan guilty of the administrative charge of grave abuse of authority and grave misconduct and recommended that the penalty of suspension from the service for a period of six (6) months be imposed upon him. We quote hereunder the pertinent portions of the findings of facts made by the Investigating Judge:

- "1. That Paulo Gatlabayan levied the 200 sacks of rice on August 4, 1997;
2. He took the 200 sacks of rice from the premises of the Antipolo Court house early in the morning of August 4, 1997 together with Adela Villon and brought them to Marikina City without the knowledge of Branch 73, RTC Antipolo;
3. The 200 sacks of rice were sold without public bidding in Marikina City contrary to the certificate of sale signed by Sheriff Paulo Gatlabayan that the auction sale were (sic) made at 10:00 A.M. in front of the RTC of Antipolo, which is not correct;
4. The amount of the sale was for P130,000.00 to Adela Villon as "the aforementioned highest bidder" in the auction sale according to the certificate of sale signed by Paulo Gatlabayan but the testimony of Adela Villon stated that she sold the rice to her husband's cousin in Marikina City."<sup>[4]</sup>

On September 25, 2000, the Court Administrator submitted his Memorandum recommending the dismissal of respondent Gatlabayan from the service, with forfeiture of all retirement benefits and accrued leave credits and with prejudice to

re-employment in any branch or instrumentality of the government, including government-owned or controlled corporation. He opined that respondent failed to refute the charges against him and the rule is settled that silence of a party when he has ample opportunity to controvert the charges against him is deemed an admission. He noted that as found by the Investigating Judge, respondent sold the 200 sacks of rice without a public bidding and then prepared a certificate of sale and in the process, committed falsification of a public document.

We agree with the recommendation of both the Investigating Judge and the Court Administrator that respondent Gatlabayan is guilty as charged.

Respondent sheriff Gatlabayan was overzealous and committed irregularities in implementing the writ of execution. While it is the duty of the sheriff, as a ministerial officer, to enforce the writ in the absence of instructions or a restraining order, he should proceed with reasonable celerity and promptness to execute it according to its mandate.<sup>[5]</sup>

Respondent Gatlabayan went beyond the call of his duties when he took the 200 sacks of rice without the knowledge of the RTC-Antipolo and sold the same without a public bidding. While it is true that the Notice of Levy and Sale of Personal Property/ies Upon Writ of Execution<sup>[6]</sup> signed by respondent Gatlabayan stated that the public auction was scheduled on August 4, 1997 in front of the RTC House, Circumferential Road at 10:00 o'clock in the morning, no auction sale was actually made in the place and time fixed therein. As found by Investigating Judge Mauricio Rivera during the hearing of this administrative case, "the sacks of rice were taken from the court house early in the morning of August 4, 1997 and were brought to Marikina City without the knowledge of the court and were sold to a cousin of judgment creditor Adela Villon."<sup>[7]</sup> This is a blatant disregard of the rules as respondent Gatlabayan failed to follow strictly the procedural requirements laid down in Section 19,<sup>[8]</sup> Rule 39 of the 1997 Rules on Civil Procedure which explicitly states that "all sales of property under execution must be made at public auction to the highest bidder **to start at the exact time fixed in the notice.**"

Moreover, the 200 sacks of rice sold respondent Sheriff Gatlabayan likewise were in excess of the amount necessary to satisfy the judgment and costs. During the hearing on August 7, 1997 on the Motion for Reconsideration and Motion to Maintain Status Quo in Civil Case No. 97-4496, the alleged "highest bidder" Adela Villon testified that the sheriff (herein respondent) charged her "P15,000.00, P10,000.00 for Atty. Rosantina and indemnity in the amount of P5,000.00" and that the amount stated in the writ of execution was P92,000.00.<sup>[9]</sup> It would appear that the total amount charged, including miscellaneous and incidental expenses, should have been only P107,000.00 but respondent Sheriff Gatlabayan levied upon all the 200 sacks of rice of complainant and sold the same for P130,000.00 at P650.00 per sack.<sup>[10]</sup> Respondent sheriff should have limited the number of sacks to be sold by simply adding the amount as indicated in the writ of execution and the incidental expenses. The rule is well-settled that a sheriff is guilty of misconduct where he failed to limit the goods to be levied to the amount called for in the writ.<sup>[11]</sup> Section 15, Rule 39 of the Rules of Court (now Section 9 (b) of the 1997 Rule on Civil Procedure)<sup>[12]</sup> expressly provides that "when there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, within the view of the officer,