

EN BANC

[A.M. P-01-1473, March 27, 2001]

**GLORIA O. BENITEZ, COMPLAINANT, VS. MEDEL P. ACOSTA,
SHERIFF IV, RESPONDENT.**

DECISION

PER CURIAM:

This is an administrative complaint against Medel P. Acosta, Sheriff IV, assigned to Regional Trial Court, Branch 19, Bacoor, Cavite, for grave misconduct, dishonesty, and conduct prejudicial to the best interests of the service.

Complainant Gloria Osila Benitez filed this case in representation of her mother, Amparo Osila, the defendant in Civil Case No. GMA-97-02, entitled "Leon Basas vs. Amparo Osila", filed with the 5th Municipal Circuit Trial Court of Carmona and General Mariano Alvarez. It would appear that judgment was rendered against Amparo Osila for a sum of money. Complainant alleges that in implementing the writ of execution and conducting the execution sale to satisfy the judgment in Civil Case No. GMA-97-02, respondent committed the following: (a) ignored the bid of Gloria Osila Benitez and Edna Samson; (b) sold the jeepney to the highest bidder, Mario Timbol, who was absent and only sent his bid through Joe Castillo, who was also absent during the bidding; (c) sold the jeepney for an unconscionably low price of P15,000.00; (d) used Mario Timbol and Joe Castillo merely as fronts because respondent was interested in the jeepney; (e) failed to deliver the jeepney even as of April 2, 1998; (f) did not make a return of the writ of execution until March 30, 1998; and (g) did not comply with the notice requirements in Rule 39, §14 of the 1997 Revised Rules of Civil Procedure as there were no notices of posting attached to the certificate of sale.^[1]

On June 11, 1998, respondent filed a counter-affidavit in which he alleged that: (a) during the auction sale there was only one bidder, Mario Timbol, who was represented by one Joe Castillo; (b) Timbol submitted a written bid for P15,000.00; (c) there was symbolic delivery of the jeepney to Mario Timbol's representative; (d) he did not say that the jeepney would go for P100,000.00; (e) though complainant submitted a bid, she was not able to come up with the money to outbid Mario Timbol; (f) Mario Timbol was not his (respondent's) dummy; (g) Atty. Delfin Gruspe, counsel for complainant, was present throughout the proceedings as per his affidavit; (h) Atty. Gruspe would have protested if he (respondent) had sold the jeepney for a low price; and (i) Joe Castillo was present at the public auction sale as shown by his signature on the Minutes of the Public Auction Sale.^[2]

On July 7, 1998, Amparo Osila filed a Motion to Declare Null and Void the Public Auction Sale conducted on February 16, 1998. As in her complaint in this case, Osila alleged that: (a) the execution sale conducted on February 16, 1998 was simulated; (b) respondent violated Rule 39, §14 of the 1997 Revised Rules of Civil Procedure;

(c) Mario Timbol was a dummy of respondent who had a prohibited interest in the auctioned jeepney; (d) Joe Castillo, representative of Mario Timbol, was not present at the auction sale, contrary to what appears in the minutes; (e) respondent ignored their bid; (f) the jeepney was sold for the unconscionably low price of P15,000.00; (g) the jeepney had not been delivered to the supposed buyer Mario Timbol but had been kept in Cavite as of April 2, 1998; and (h) the sale should have been conducted in Carmona, Cavite, and not in Bacoor, also in the province of Cavite.^[3]

On the same day, complainant replied to respondent's counter- affidavit. She alleged that: (1) respondent's late submission of pertinent documents on March 30, 1998 throws suspicion on his actions; (2) there are discrepancies in the handwritten entries of the documents attached to respondent's counter-affidavit; (3) Cesar Gruspe was not authorized to receive the P15,000.00 auction price from respondent; and (4) respondent was not allowed to turn over the proceeds of the sale to Cesar Gruspe.^[4]

Respondent filed a position paper denying the allegations. He claimed he had complied with Rule 39 of the 1997 Revised Rules of Civil Procedure and that the jeepney was kept in General Mariano Alvarez, Cavite for repairs.^[5]

On July 23, 1998, the 5th Municipal Circuit Trial Court of Carmona and General Mariano Alvarez issued an order declaring null and void the public auction sale conducted on February 16, 1998, and directing as follows:

WHEREFORE, premises considered, after study of evidence submitted, this court hereby finds:

- 1.) That Sheriff Medel P. Acosta is administratively liable for grave misconduct and partiality in the conduct of the writ of execution up to the auction sale and serious misconduct for arbitrarily and oppressively disregarding procedural rules; That this Court reprimands him and a repeat of said offense shall be dealt with more severely;
- 2.) That due to Sheriff Medel P. Acosta's failure to make a proper return of the writ of execution to this Honorable Court, in violation of §14 Rule 39 of the Rules of Civil Procedure, as amended and the evidence presented showing that the public auction sale allegedly held on February 6, 1998 was simulated, the SALE of the Isuzu passenger jeep with plate no. PTY-292 thus levied and sold on execution is hereby declared null and void; That the Certificate of Sale dated February 17, 1998 is hereby cancelled;
- 3.) That Sheriff Medel Acosta is hereby ordered to return to the defendant-movants the possession of said Isuzu passenger jeepney with plate no. PTY-292 and motor no. 4DR5-700TEA-043-Q88;
- 4.) That Sheriff Medel P. Acosta is hereby ordered to pay defendants-movants the amount of P2,000.00 by way of damages;

- 5.) That a copy of this Order shall be transmitted to the Office of the Court Administrator.^[6]

On July 17, 2000, the Office of the Court Administrator to which this matter had been referred for investigation and recommendation found the following: (a) that in making his return only on March 30, 1998, respondent violated Rule 39, §14 of the 1997 Revised Rules of Civil Procedure; (b) that respondent submitted different versions of the Minutes of Public Auction, both of which had different handwritten entries in violation of Article 171 of the Revised Penal Code; (c) that it was within respondent's discretion to reconvene the sale to a date when there would be more bidders and the jeepney would fetch a higher price; (d) that his failure to exercise sound discretion is proof that he did not live up to the standards of professionalism the law demands of him; and (e) there was no auction sale as contemplated by the law. Based on the foregoing findings, the Office of the Court Administrator recommended:

1. that the instant case be RE-DOCKETED as a regular administrative matter; and
2. that respondent Medel P. Acosta be found guilty of Grave Misconduct, Dishonesty and Conduct Prejudicial to the Best Interests of the Service and be DISMISSED from the service with forfeiture of all benefits and with prejudice to his reinstatement or re-employment in any branch, agency, or instrumentality of the government, including government owned and controlled corporations.^[7]

We agree with the Office of the Court Administrator. We find respondent liable for the simulation of the auction sale conducted on February 16, 1998 for the following reasons:

First. On December 11, 1997, a writ was issued by Branch 19 of the Municipal Circuit Trial Court of Carmona and General Mariano Alvarez for the satisfaction of the judgment in Civil Case No. GMA-97-02 entitled "Leon Basas vs. Amparo Osila." The writ of execution directed the respondent:

.... to likewise return this writ into (sic) the Court at any time, not less than ten days nor more than sixty days after its receipt with your proceedings endorsed thereon.

As per the pertinent portion of the order issuing the writ of execution, respondent should have made a return on the writ within 60 days from his receipt of the order, or by February 9, 1998. To date, respondent has not submitted or made a return on the writ and has violated a mandate of the court. It is well settled that the sheriff's duty in the execution of a writ issued by a court is purely ministerial.^[8] As such, any failure to comply with such constitutes nonfeasance in the performance of his duties.

Second. Rule 39, §14 of the 1997 Revised Rules of Civil Procedure provides that:

Sec. 14 Return of the writ of execution. - The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. *If the judgment cannot be satisfied in full*

within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefore. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties. (Emphasis supplied.)

Thus, under this provision, respondent is required (1) to make a return and submit it to the court immediately upon satisfaction in part or in full of the judgment; and (2) if the judgment cannot be satisfied in full, to make a report to the court within 30 days after his receipt of the writ and state why full satisfaction could not be made. The Sheriff shall continue making a report every 30 days on proceedings being taken thereon until the judgment is full satisfied. The reason for this requirement is to update the court as to the status of the execution and give it an idea why the judgment has not been satisfied. It also provides the court an idea as to how efficient court processes are after the judgment has been promulgated. The over-all purpose of the requirement is to ensure the speedy execution of decisions.

In this case, the records show that respondent received the writ of execution on December 11, 1997. Following Rule 39, § 14 of the 1997 Revised Rules of Civil Procedure, respondent was supposed to make a return to the court 30 days after December 11, 1997, or by January 10, 1998, and every 30 days thereafter until the judgment has been satisfied. However, as of July 17, 2000, he failed to make any report to the court as it was his ministerial duty to do so. He was thus guilty of nonfeasance.

Third. Rule 39, §14 of the 1997 Revised Rules of Civil Procedure provides that:

Sec. 9. Execution of judgments for money, how, enforced. - a) Immediate payment on demand.- The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee, or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court that issued the writ.

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the 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.

The clerk of said court shall thereafter arrange for the remittance of the deposit to the account of the court that issued the writ whose clerk of