

## THIRD DIVISION

[ A.M. No. RTJ-00-1541, December 03, 2001 ]

**SALUSTIANO G. SONIDO, COMPLAINANT, VS. JUDGE JOSE S. MAJADUCON, REGIONAL TRIAL COURT, BRANCH 23, GENERAL SANTOS CITY AND SHERIFF CYR M. PERLAS, RTC-OCC, GENERAL SANTOS CITY, RESPONDENTS.**

### DECISION

**SANDOVAL-GUTIERREZ, J.:**

This is an administrative case<sup>[1]</sup> filed by Salustiano Sonido against then Judge Jose Majaducan, of the Municipal Trial Court in Cities (MTCC), Branch 2, General Santos City (now Judge of the Regional Trial Court (RTC), Branch 23, same city), and Cyr M. Perlas, then deputy city sheriff of the same MTCC (now Sheriff IV of the said RTC).

In his complaint, Sonido alleged that on September 13, 1989, the MTCC, Branch 2, General Santos City, then presided by respondent judge, rendered judgment in Civil Case No. 2610-II ordering Julie Salazar (defendant therein) to pay him (complainant), as plaintiff, the following amounts: (a) P1,000.00 which she borrowed from him; (b) P6.00 per day as liquidated damages until full payment of the obligation; and (c) P100.00 as costs.

On November 8, 1989, respondent sheriff received from the MTCC the writ of execution.

On November 21, 1989, respondent improvidently served the writ upon Salazar at the MTCC premises, thus warning her of the forthcoming levy. This incident enabled her to hide her appliances.

On January 8, 1990, respondent sheriff made a return of the writ stating that "he could not see the defendant in her house, hence he could not levy the property of the defendant."

On April 25, 1990, an alias writ of execution was issued. On June 25, 1990, respondent sheriff made another return stating that despite diligent efforts, the alias writ could not be served upon Julie Salazar; that according to his father, she was in Manila during those times; and that she has no personal or real property per certification issued by the City Assessor.<sup>[2]</sup>

Complainant now claims that respondent sheriff did not serve the writ of execution despite the lapse of two months after he received the same; that he abandoned the writ when he transferred to the RTC to assume his new position; that his service of the writ upon Salazar on November 21, 1989 at the MTCC premises "was wrong," giving her the opportunity to remove or transfer her appliances; and that respondent sheriff deliberately and maliciously neglected his duty.

On his complaint against respondent judge, complainant alleged that he (respondent) was negligent for he failed to assist in the execution of the writ.

In his comment,<sup>[3]</sup> respondent sheriff denied that he was negligent or remiss in his duties as sheriff, explaining that he received a copy of the writ on November 8, 1989. Between this date and January 8, 1990, when he returned the writ, he tried to serve it upon Salazar. But he could not implement the same because her whereabouts are unknown and that she has no personal or real property. Complainant, in alleging a two-month delay in the implementation of the writ, must have been of the erroneous belief that he served the writ only on January 8, 1990, the date he made the return. He clarified that a sheriff, under the Revised Rules of Court has 60 days within which to serve a writ of execution and make a return thereof. He made a return on January 8, 1990, the 60<sup>th</sup> day from the time he received the writ.

Respondent sheriff further explained that on March 13, 1990, or prior to the issuance of the alias writ of execution, he met Julie Salazar. Upon being informed of the writ, she voluntarily gave P500.00 which he accepted. Immediately, he turned over the money to the complainant.

On June 25, 1990, he made a return<sup>[4]</sup> of the alias writ of execution issued on April 25, 1990, specifying that the writ could not be fully satisfied since Salazar has no known personal and real property. Finally, he stressed that the returns<sup>[5]</sup> submitted by the other sheriffs subsequently assigned to serve the same writ also show that it could not be implemented because Salazar's whereabouts are unknown and that she has no known personal or real property.

On June 19, 2000, this Court referred the instant case to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

In his Memorandum, then Court Administrator Alfredo L. Benipayo recommended that respondent judge be absolved of the charge, the same being baseless. The Court Administrator, however, found that respondent sheriff committed negligence in serving the writ upon Salazar on November 21, 1989 at the MTCC. The Court Administrator concluded that:

"It may be argued that there was the distinct possibility that all those personal properties belonged to her parents-in-law and, therefore, should never have been levied on at all. Still the fact remains that, were it not for the improvident service upon defendant Julie Salazar of the Writ of Execution in the court premises, Sheriff Perlas would have been able to levy on said properties if he had only taken time to follow the requirements of the Rule."<sup>[6]</sup>

With respect to the charge against respondent judge, the Court Administrator stated that the implementation of a writ of execution is the responsibility of the sheriff, not the judge.

We agree with the Court Administrator that Judge Majaducon be absolved of the charge. Records clearly show it has no basis. Indeed, the implementation of the writ