

## SECOND DIVISION

[ A.M. No. P-99-1297, March 25, 1999 ]

**LUDIVINA MARISGA-MAGBANUA, COMPLAINANT, VS. EMILIO T. VILLAMAR V, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 45, SAN JOSE OCCIDENTAL, MINDORO, RESPONDENT.**

### D E C I S I O N

**MENDOZA, J.:**

This is a complaint filed by Ludivina Marisga-Magbanua against respondent Sheriff Emilio T. Villamar V of the Regional Trial Court, Branch 45, San Jose, Occidental Mindoro for dereliction of duty in connection with the execution of the decision rendered by the RTC in Civil Case No. R-838, entitled "Ludivina Marisga-Magbanua, assisted by husband Ricardo Magbanua vs. Spouses Ignacio Cantonjos and Marietta Cantonjos." The dispositive portion of the decision in that case reads:

ACCORDINGLY, therefore, the Court has to render judgment for the plaintiff as against the defendant spouses and orders the latter to vacate the subject lot covered by TCT No. 6804 and to stay ejectment, has to pay P500.00 rental a month to the plaintiff until defendants desire to pay off the plaintiff on the subject lot or until they vacate the same.<sup>[1]</sup>

After the decision had become final and executory, the RTC on October 24, 1996 issued a writ of execution. However, on January 14, 1997, complainant moved for the issuance of an alias writ of execution and order of demolition, alleging that the same was necessary in view of the sheriff's report showing that "there was failure in implementing the writ of execution" and also because she was in dire need of the property.<sup>[2]</sup> The RTC granted her motion and on April 17, 1997 issued the alias writ of execution and on May 19, 1997, a writ of demolition.<sup>[3]</sup>

In her complaint, complainant alleges that notwithstanding the foregoing, respondent sheriff still "failed to enforce/implement said execution" when it was his ministerial duty to do so. Complainant, therefore, prayed that "a proper administrative case be filed against" respondent sheriff.

In his comment, dated August 21, 1997,<sup>[4]</sup> respondent sheriff claimed that the property in question was owned in common by the heirs of the late Severino Marisga and Eleuteria dela Cruz-Marisga and that, as such, there was a need for relocation survey of the property to determine the portion owned by complainant before he can enforce the said decision. Respondent sheriff attached to his comment a copy of TCT No. T-6804 showing the registered owners of the property to be as follows:

ELEUTERIA CRUZ MARISGA, widow; PRESENTACION MARISGA SUGUITAN, married to Fortunato Suguitan; CON[S]OLACION MARISGA, single; LUDIVINA MARISGA-MAGBANUA, married to Ricardo Magbanua;

FLORA MARISGA MANGAHAS, married to Valentino Mangahas (but separated already for many years); SEVERINO MARISGA, Jr., married to Erlinda Estrilla; FILONILA MARISGA CENDAÑA, married to Javier Cendaña and MAMERTO MARISGA, married to Remedios Pura, all Filipinos, of legal age, and residents of Labangan, San Jose, Occidental Mindoro, Philippines.<sup>[5]</sup>

He also filed a joint affidavit, dated May 26, 1997, of Severino Marisga, Jr., Mamerto Marisga, Jr., Ma. Victoria Marisga-Sincua (representing the heirs of Filonila Marisga-Cendaña), and Lilibeth Marisga Cendaña in which they state:

That, our sister [herein complainant] filed a case before the Regional Trial Court, San Jose, Occ. Mindoro entitled Ludivina Marisga Magbanua versus Sps. Ignacio and Marietta Cantonjos without consulting us first considering that the residential lot subject of the case is a common property:

That, likewise, we subsequently filed a case against our sister Ludivina Marisga Magbanua for completely disregarding our rights and interest over the aforesaid property entitled Severino Marisga, Jr., et al., versus Sps. Ludivina Marisga Magbanua for Recovery of Possession, Annulment of Deed of Sale and Waiver of Rights in Civil Case No. 1018 which is still pending before the Regional Trial Court, Branch 46, San Jose, Occ. Mindoro for property adjudication;

That, during the pendency of the case, we allowed the Sps. Ignacio and Marietta Cantonjos to stay and occupy a certain portion of the land;

That in view of the present situation, we are requesting our sister Ludivina Marisga Magbanua to conduct a resurvey of the property in order to determine our share being co-owners of the land;

That, at this point of time, we believe that the writ of execution and demolition is premature and off-tangent considering our rights and interest will be prejudiced, hence the same must have to be held in abeyance until after the termination of Civil Case No. 1018 filed against our sister Ludivina Marisga Magbanua.<sup>[6]</sup>

Respondent sheriff also alleges that "some of the co-owners are willing to give or donate their shares in favor of the losing party considering that the defendant is a first cousin of [theirs]." He, therefore, prays that the instant complaint be dismissed for lack of merit.

In reply, complainant alleges that the joint affidavit of her alleged co-owners "has no leg to stand on" and that "nowhere in the dispositive portion of the decision sought to be enforced could be found that a relocation survey is needed to ascertain the portion owned by the complainant Ludivina Marisga-Magbanua."

In its memorandum, dated February 8, 1999, the Office of the Court Administrator recommends that the case be redocketed as an administrative matter and that respondent be ordered to pay a fine of P3,000.00 with a warning that repetition of a similar offense will be dealt with more severely.