

## EN BANC

**[ A.M. No. P-99-1316, October 29, 1999 ]**

**KENNETH S. NEELAND, COMPLAINANT, VS. ILDEFONSO M. VILLANUEVA, CLERK OF COURT, REGIONAL TRIAL COURT, BACOLOD CITY, AND NELSON N. ABORDAJE, SHERIFF III, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 4, BACOLOD CITY, RESPONDENTS.**

### RESOLUTION

#### PER CURIAM:

On December 16, 1996, Kenneth S. Neeland filed with the Office of the Chief Justice a verified letter-complaint<sup>[1]</sup> against Atty. Ildefonso M. Villanueva, Jr., Clerk of Court and Ex-Officio Provincial Sheriff, Regional Trial court, Negros Occidental, and Nelson N. Abordaje, Sheriff III, Branch 04, Municipal Trial Court in Cities, Bacolod City, for gross misconduct.

The complaint arose out of the following incident:

On December 8, 1995, Sugarland Motor sales filed with the City Sheriff, Bacolod City, a request for foreclosure of the chattel mortgage constituted on a Toyota Sedan, owned by the mortgagor, Kenneth S. Neeland, and its sale at public auction to satisfy an obligation owing to the mortgagee, Sugarland Motor Sales in the amount of twenty thousand pesos (P20,000.00).

Acting upon the request, Sheriff Nelson Abordaje seized the motor vehicle and issued a notice of auction sale scheduling its sale at auction on February 6, 1996 at the Daewoo Cars compound, Lacson St., Bacolod City. Accordingly, on said date, respondent Abordaje proceeded to conduct the auction sale.

On February 6, 1996, Sheriff Nelson Abordaje sold the motor vehicle at public auction to the highest bidder, Sugarland Motor Sales, for forty thousand pesos (P40,000.00). On the same date, Clerk of Court Ildefonso M. Villanueva, as ex-officio Provincial Sheriff, issued a certificate of sale conveying the motor vehicle to Sugarland Motor Sales. However, the remaining balance between the sum at which the vehicle was sold and the obligation sought to be satisfied and expenses of sale, amounting to twenty thousand pesos (P20,000.00), was not turned over to Neeland.

Hence, this complaint.

Neeland alleged that the seizure and sale of his motor vehicle was patently irregular, as he had not executed a chattel mortgage over the same. He further contended that the difference at which the vehicle was sold and the obligation sought to be satisfied was not turned over to him. He prayed that an investigation be conducted and that respondents be penalized accordingly.

In his Reply dated August 21, 1997,<sup>[2]</sup> Nelson N. Abordaje attached the Deed of Chattel Mortgage executed by Neeland and Sugarland Motor Sales to prove that a mortgage obligation indeed existed. He admitted that Neeland was not personally served with a copy of the petition for extra-judicial foreclosure and the deed of chattel mortgage because complainant could not be found at his given address. However, the posting of notices and other requirements for public auction sale were properly complied with.

Respondent Abordaje noted that complainant had several opportunities to claim his motor vehicle, particularly at the public auction sale, but failed to do so. At the time that the Sheriff executed the certificate of sale in favor of the mortgagee, notarized on February 13, 1996, Neeland did not claim the excess of the bid and the amount of the obligation, which was twenty thousand pesos (P20,000.00). According to respondent, since Neeland failed to demand said amount, it remained with the mortgagee.

In his Comment dated August 18, 1997,<sup>[3]</sup> Clerk of Court Ildefonso M. Villanueva, Jr. stated that on July 31, 1995, Neeland executed a Deed of Chattel Mortgage in favor of Daewoo Cars Bacolod over a Toyota Sedan Cressida with Engine No. 18R-1727008 and Chassis No. RX30-601611, which was assigned to the Sugarland Motor Sales. He admitted that there was a difference in the amount of the bid and the obligation sought to be satisfied, but denied knowing whether or not Sheriff Abordaje turned over the amount to Neeland.

In his Report dated April 21, 1998,<sup>[4]</sup> Executive Judge Anastacio I. Lobaton found that the auction sale on February 6, 1996 was conducted in accordance with the prescribed rules and regulations, and "respondent Abordaje was duty bound to demand and collect from the highest bidder, the mortgagor, the aforesaid difference amounting to P20,000.00 and deposit the same to the Office of the Clerk of Court for safekeeping since the mortgagor was not around to claim it. When the highest bidder failed to turn over the said difference, it would have been wise and proper for respondent Abordaje to have rendered a report on the matter to his superior, respondent Villanueva, Jr."<sup>[5]</sup>

The Executive Judge held that respondent Villanueva, Jr. can not take refuge behind the negligence of his subordinate in failing to turn over the proceeds of the auction sale to the mortgagor. He recommended that respondents be reprimanded with warning.

On March 17, 1999, this Court referred the matter to the Court Administrator for evaluation, report and recommendation.<sup>[6]</sup>

In his Memorandum dated May 11, 1999, Court Administrator Alfredo L. Benipayo upheld the findings of the investigating judge declaring that the chattel mortgage was validly executed, absent convincing proof of forgery. During the hearings before the investigating judge, complainant admitted that the signature appearing at the right hand margin of the deed of chattel mortgage and those appearing at the back page were his signatures.<sup>[7]</sup> He also admitted that the signature appearing in the affidavit of good faith was his.<sup>[8]</sup>

The Court Administrator agreed with the findings of the investigating judge that both respondents are liable for not demanding from the highest bidder, Sugarland