

SECOND DIVISION

[A.M. No. P-97-1235, January 30, 1997]

**ERNIO PORTES, COMPLAINANT, VS. DEPUTY PROVINCIAL
SHERIFF CESARIO G. TEPACE, RESPONDENT.
D E C I S I O N**

ROMERO, J.:

Before us is an affidavit-complaint dated June 1, 1995 filed by Ernio Portes charging respondent Deputy Provincial Sheriff Cesario G. Tepace with oppression, neglect of duty, misconduct, engaging directly or indirectly in partisan political activities and conduct prejudicial to the interest of the service relative to Election Case No. 5 for Election Protest.

Complainant Portes alleged that during the May 9, 1994 barangay elections, he and a certain Jeremias Lesiguez were candidates for the position of Punong Barangay in Cabacungan, Allen, Northern Samar. Mr. Lesiguez was initially proclaimed duly elected thereat. Thereafter, complainant Portes filed an Election Protest with the Municipal Trial Court of Allen wherein on October 28, 1994, judgment was rendered declaring complainant Portes the winner. On the same day, Mr. Lesiguez filed a Notice of Appeal with the Commission on Elections, Manila. Meanwhile, complainant Portes filed a motion for execution pending appeal which was granted by the MTC of Allen in an order dated January 3, 1995. Pursuant to said order, complainant Portes posted a P20,000.00 cash bond for the immediate implementation of the writ of execution. On January 6, 1995, the MTC Clerk of Court requested respondent Tepace, in his capacity as deputy provincial sheriff, to immediately serve the writ of execution taking into account the nature and character of election cases. However, respondent Tepace allegedly refused to receive the copy of the writ of execution on the pretext that he will not be able to serve the same as he was going to Manila. In view of respondent Tepace's refusal, complainant Portes immediately approached the Provincial Governor with whom he took up the possibility of taking his oath as the duly elected winner. Consequently, complainant Portes took his oath of office before the Governor on January 7, 1995.

Complainant further alleged that on January 9, 1995, respondent Tepace voluntarily requested the MTC Clerk of Court to furnish him a copy of the writ of execution for service to the parties. On the same day, respondent received the copy of said writ and wrote the PNP Station Commander of Allen requesting for at least two PNP escorts to help him serve the said writ on January 16, 1995. Respondent likewise notified the parties involved as well as their respective lawyers of the scheduled service of the writ of execution on January 16, 1995. However, on January 16, 1995, respondent again failed to serve the writ of execution as scheduled and instead wrote a letter to the MTC Clerk of Court concerning the circumstances of his failure to do so.

Complainant Portes protested that although a petition for certiorari and prohibition

was filed by Mr. Lesiguez with the Regional Trial Court of Allen, respondent Tepace has no reason not to serve the same considering that the court has not issued any injunction or temporary restraining order. In fact, said petition for certiorari and prohibition was dismissed by the court on April 24, 1995. Still, respondent continued to refuse to serve the writ of execution notwithstanding the order dated April 27, 1995 issued by the MTC of Allen directing him to serve the same. Respondent's alibi this time was Mr. Lesiguez' filing of a motion for reconsideration although the court has never issued any injunction and/or any temporary restraining order up to the present.

In the course of making the abovementioned allegations, complainant Portes opined that respondent is biased and partial in favor of Mr. Lesiguez because the latter is a die-hard follower of Mayor Rodolfo Suan of Allen. Respondent's wife, Filma Suan, is Mayor Suan's sister. This complainant Portes alleged, was why respondent was reluctant to effect service of the said writ of execution.

In his comment dated January 4, 1996, respondent Tepace regarded the instant administrative charge against him as "politically concocted, maliciously manufactured and invented lies with no other purpose than to malign and implicate and "harass" him. He then went on to state that in the afternoon of Friday, January 6, 1995, he was on field service in connection with Civil Case No. A-712. However, at around 4:30 P.M. of the same day, the MTC process server found him home and urged him to immediately serve the writ as per the instruction of the MTC Clerk of Court. Much as he wanted to do so, respondent Tepace found it impossible for him to reach the party concerned who lives in a far slung barangay, almost eight (8) kilometers away by a rough-rocky-dirt road. Respondent further averred that no sheriff could possibly serve the writ under the circumstances specially since the barangay where the writ is to be served is still gripped with erupting political tension because of the replacement of their barangay captain. Respondent then admitted that while he was scheduled to leave for Manila the following day, he was not able to do so because of financial matters.

Respondent Tepace further alleged that on January 9, 1995, he received from the MTC Clerk of Court the writ of execution and the court order. The following day, he issued a sheriff's notice informing the parties of the service of the writ scheduled on January 16, 1995. He likewise requested the assignment of two (2) PNP personnel to assist him in serving the writ. However, the scheduled service of the writ on January 16, 1995 did not materialize because he was on sick leave.

Further to his comment, respondent averred that on January 15, 1995, he consulted his immediate superior, RTC Judge Tomas Noynay, whom he saw on pier site. Respondent allegedly asked the judge how he should proceed under the given situation. The judge, in turn, purportedly advised respondent Tepace to solicit the legal assistance of the solicitor General and to hold in abeyance the serving of the writ of execution in the meantime. However, in a letter dated January 17, 1995 addressed to the respondent, Judge Noynay denied ever advising the former to defer the service of the writ in question.

Respondent, claiming to be baffled by the turn of events in view of Mr. Lesiguez' filing of the certiorari case before the RTC of Allen wherein he was implicated as respondent, thereafter requested MTC Judge Norma Cardinas to issue a written order for him to continue with the service of the writ. Such request was allegedly

not acted upon by Judge Cardinas. It was under these circumstances that he returned the writ on March 7, 1995 stating his reasons therefor. However, on April 27, 1995, Judge Cardinas issued an order for him to serve the writ in view of the dismissal of Mr. Lesiguez' petition for certiorari. Despite having scheduled the service and issued the necessary notices, respondent again deferred the service of the writ upon receipt of Mr. Lesiguez' letter requesting him to defer the service because a motion for reconsideration has been filed with the RTC of Allen. The certiorari case in question is now pending before the Court of Appeals. Believing that the appeal of said case effectively impedes the service of the writ, respondent felt justified in deferring its service anew.

In the resolution of March 25, 1996, this Court referred this case to the Office of the Court Administrator for evaluation, report and recommendation.

In its memorandum of June 19, 1996, the Office of the Court Administrator found that:

"At the outset, it is noteworthy to mention that the sheriff is a court official primarily responsible for the speedy and efficient service of all court processes and writs originating from his court and the branches thereof, as well as those that may be delegated to him by other courts. (De Castro v. Santos, etc., 198 SCRA 245).

The records of this case show that respondent unjustifiedly failed to execute the writ involved in the instant complaint. Said writ commanded him to install in favor of protestant (Sheriff's Notice, Rollo, p. 10) the position of Punong Barangay in Cabacungan, Allen, Northern Samar.

The scheduled service of the writ on January 16, 1995 did not push through because respondent was on sick leave. His Daily Time Record (Rollo, p. 40) shows that he was already on sick leave beginning January 13, 1996 up to January 20, 1996, and the notice of the scheduled service of the writ was sent as early as January 10, 1996. (Sheriff's Notice, Rollo, p. 10).

Therefore, as a responsible officer of the court, he should have informed the court of his condition so that in his absence the judge could designate a special deputy sheriff to enforce the writ of execution which he did not do.

Respondent also contends that the reason why he deferred the service of the writ was the filing of the certiorari case implicating him as respondent. This defense is unsatisfactory. The Manual for Clerks of Court (p. 178) provides:

'2. Duty of sheriff as to execution process. — When a writ is placed in the hands of the sheriff, it is his duty in the absence of instructions, to proceed with reasonable celerity and promptness to execute it in accordance with its mandate He has no discretion whether to execute it or not.'