

SECOND DIVISION

[A.M. No. P-93-995, July 12, 1996]

**ROBERTO JALBUENA, COMPLAINANT, VS. EDGARDO GELLADA^[*],
CLERK OF COURT IV, AND REX FUENTEBELLA, BOTH OF THE
MTCC, BAGO CITY, NEGROS OCCIDENTAL, RESPONDENTS.**

D E C I S I O N

PUNO, J.:

Complainant **Roberto Jalbuena** accuses respondents **Edgardo Gellada**, Clerk of Court IV and Ex-Officio Sheriff, and **Rex Fuentebella**, Sheriff III, both of the Municipal Trial Court, Bago City, Negros Occidental, of **dishonesty, grave misconduct** and **corrupt practices** in connection with the execution of the money judgments in Civil Case Nos. 1184 and 1187.

The records show that complainant Roberto Jalbuena is the defendant in Civil Case No. 1184, an action filed by Ilawod Farmer's Multi-Purpose Cooperative, Inc. (Ilawod), to collect a P6,500 peso crop loan. Complainant's wife, Magdalena Jalbuena, is also the defendant in Civil Case No. 1187, another action filed by the same cooperative to collect the amount of P7,250.00. Judgments were rendered against the complainant and his wife in said collection suits. In Civil Case No. 1184, the judgment was for P6,500.00, plus P1,000.00 litigation and attorney's fees, and costs of suit, while in Civil Case No. 1187, the judgment was for P7,250.00, plus P1,000.00 attorney's fees and litigation expenses, and costs of suit. Upon motion of judgment creditor Ilawod, the trial court ordered the issuance of the corresponding writs of execution for the satisfaction of its judgments.

Two (2) writs of execution were issued by the respondent clerk of court against the Jalbuenas. The writ of execution against Magdalena Jalbuena was issued on October 8, 1991 and allegedly served on October 16, 1991,^[1] while the writ of execution against Roberto Jalbuena was issued on October 16, 1991, and allegedly served on October 17, 1991.^[2] The writ was served on Magdalena Jalbuena and it was read to her by her daughter.

On October 16, 1991, respondent deputy sheriff levied on a motorized tricycle parked at the residence of the Jalbuenas. The motorcycle was the subject of a third party claim by *Norkis Distributors, Inc.*, represented by its Branch Manager, Noel F. Pajarillo. It alleged in Civil Case No. 1184, its absolute ownership of the tricycle, excluding its sidecar. Complainant appears to have bought the motorcycle from Norkis on installment basis and he had an unpaid balance of P34,975.00. The sale was covered by a chattel mortgage over the said motorcycle executed by complainant in favor of Norkis on January 22, 1990. On the other hand, a certain Hernando Nacion also filed a "Third Party Claim" in Civil Case No. 1187, claiming ownership of the tricycle sidecar.

In view of the third party claims, judgment creditor Ilawod filed indemnity bonds in the court to answer for the damages which the third party claimants may suffer as a consequence of the projected sale of the subject properties. The indemnity bonds in Civil Case Nos. 1184 and 1187, in the amounts of P40,000.00 and P7,000.00, respectively, were duly approved by the trial court.

Earlier on, or on August 19, 1992, respondent clerk of court issued the required notices of sale on execution in Civil Case Nos. 1184 and 1187, to satisfy the amount of P17,150.00 representing the combined judgment debts of the Jalbuenas, including interests, costs, etc.

The auction sale took place on August 31, 1992. In Civil Case No. 1184, Ilawod gave the highest bid, in the amount of P35,000.00, for the subject motorcycle, topping the P34,975.00 bid of Norkis.^[3] Upon payment of its bid to the respondent clerk of court, Ilawod took possession of the motorcycle. Thereafter, respondent clerk of court gave the amount of P34,975.00 to Norkis, representing the unpaid balance of the motorcycle purchased by the complainant.^[4] The remaining amount of P25.00 was retained in favor of Ilawod.

Judgment creditor Ilawod also won the bidding in Civil Case No. 1187 with its P10,000.00 bid for the sidecar. The respondent clerk of court credited Ilawod the said sum of P10,000.00. In fine, the judgment creditor Ilawod received from the respondent clerk of court the total amount of P10,025.00,^[5] in satisfaction of the judgments against the Jalbuenas.

On September 1, 1992, the corresponding certificates of sale for the motorcycle and the sidecar were issued in favor judgment creditor Ilawod.

Jalbuena complains that: (1) the respondent clerk of court improperly asked him to pay one thousand pesos (P1,500.00) to settle his case; (2) he was not notified of the auction sale; (3) he was not provided with copies of the auction proceedings; (4) the judgment debts, including interest, costs, etc., in the two (2) civil cases, amounted to only P17,150.00, while the levied properties were sold for a total amount of P45,000.00. Complainant claims that the excess of P27,850.00 should have been given to him and that the respondent clerk of court violated Section 17, Rule 39 of the Rules of Court when he remitted the amount of P34,975.00 to third party claimant Norkis.

For their defense, respondents claim that the levy and subsequent sale at public auction of the subject properties complied with the rules. Respondent clerk of court avers that complainant was aware of the auction sale since the notices of sale on execution were posted in three (3) conspicuous places in accord with Section 18 of Rule 39. Copy of the notice of sale was also served on complainant by the deputy sheriff. Both respondents allege that the Jalbuenas refused to acknowledge receipt of the processes served on them by the deputy sheriff. Respondent deputy sheriff further asserts that Magdalena Jalbuena was present during the levy and the writ was read to her by her daughter as she did not know how to read English well. The two respondents maintain that the proceeds of the auction sale were supported by receipts and duly accounted for.