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The stern reprimand imposed upon him by Judge Donato for such gross negligence and inexcusable failure in the performance of his duties as a Clerk of Court with the warning that a repetition thereof shall be dealt more severely, is too light a penalty for the respondent. As Clerk of Court, respondent should be the model for his co-employees to act speedily and with dispatch on their assigned task to avoid the clogging of cases in court and thereby assist in the administration of justice without undue delay. We find that the explanation of the respondent is unsatisfactory and having shown himself not to be a fitting example of official integrity, responsibility and efficiency, respondent deserves a penalty heavier than a stern reprimand.

WHEREFORE, the Court hereby resolves to impose a fine upon respondent Clerk of Court Valentin C. Remigio equivalent to his three months salary and to authorize the Collecting and Disbursing Officer, the Accounting Officer, the Budget and Finance Officer and the Auditor, all of this Court, to withhold the salary of respondent until this fine is fully paid.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, De Castro, and *Melencio Herrera, JJ.*, concur.

FIRST DIVISION

[A.M. No. P-1687. February 28, 1979]

ANGEL MANALILI, SIXTO MORALES, ORLANDO MONTEMAYOR, GLORIA SALALILA, MARCELO BAUTISTA, ERNESTO SURLA, PAULA MANALILI, MARIO CALARA, and SERAFIA VDA. DELA CRUZ, *complainants*, *vs.* **DANILO VIESCA and RENATO ROBLES**, *respondents*. **Re: Acting Municipal Judge Vivencio A. Bantugan.**

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SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; EXECUTION; DUTY OF SHERIFF.** — It is not enough for the sheriff, in the enforcement of a judgment for delivery or restitution of property, to direct the defeated party to make such delivery or restitution. It is the duty of the sheriff to oust the defeated party from the property and make the restitution by placing the winning party in possession of said property. If to accomplish this he has to remove an improvement constructed by the defeated party, he cannot effect such removal without special order of the court which order can only be issued upon motion of the prevailing party with notice and after hearing, and upon the defeated party's failure to remove the improvement within the reasonable time given to him by the court.

2. **ID.; ID.; ID.; ID.; RULE IN EJECTMENT CASE.** — Section 14, Rule 39 of the Revised of Court has been taken from Section 1 of Commonwealth Act No. 39, which states that: 'The Provincial sheriff, in executing the decision of a competent court in ejectment cases, shall not destroy, demolish, or remove the improvements constructed or planted by the defendant or his agent or servant on the premises, unless expressly authorized by the Court. The court may authorize the Provincial Sheriff to do so, upon petition of the plaintiff or his attorney, after due hearing, and upon failure of the defendant to remove the aforementioned improvements within a reasonable time after being so ordered by the Court." Evident from the foregoing in the statutory purpose which is to grant to the defeated party a reasonable time to remove his improvement from the premises. Therefore, any delay in the implementation of the order of demolition accrues to the benefit of the defrociant. The grant of such a reasonable period to remove the improvements is predicated upon reasons of fairness and justice to enable the defeated party to look for another place wherein he can transfer his improvements and personal effects.

3. **ID.; ID.; ID.; EXECUTION OF DEMOLITION ORDER, PERIOD NOT SPECIFIC.** — The law does not specify the period within which the order of demolition should be carried out. The reason is obvious. There may be factors and circumstances which would justify deferment of the implementation of the order of demolition.

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RESOLUTION

FERNANDEZ, *J.*:

This incident arose from an administrative complaint filed against Deputy Sheriffs Danilo M. Viesca and Renato E. Robles of the Province of Bataan for alleged irregularity committed while executing a demolition order in Civil Case No. 179 of the Municipal Court of Dinalupihan, Bataan on July 12, 1977.[1]

After both Deputy Sheriffs, Renato E. Robles and Danilo M. Viesca, had filed their respective comments, this Court issued a Resolution dated October 23, 1978 dismissing the administrative complaint but requiring Acting Municipal Judge Vivencio A. Bantugan of the Municipal Court of Dinalupihan to explain within ten (10) days "why no administrative action should be taken against him for issuing an order to execute a judgment promulgated more than 10 years old on a mere *ex parte* motion in violation of Section 6, Rule 39 of the Rules of Court."

In this explanation dated November 8, 1978, Acting Judge Vivencio A. Bantugan avers that the Order of Demolition in question was the subject of a *certiorari* and prohibition case filed with this Court docketed as G. R. No. L-46452, entitled "*Marcela R. Diwa, et al., vs. Hon. Vivencio Bantugan, et al.*"; that the petition in G. R. No. L-46452 was dismissed by the Second Division of this Court in a minute resolution dated October 10, 1977 for lack of merit; that the judgment rendered on October 10, 1966 in Civil Case No. 179 for illegal detainer had already been executed within the five year period from its entry so that Section 6, Rule 39 of the Revised Rules of Court does not apply; and that the respondent judge issued the questioned Order "not only in the exercise of jurisdiction, but also in the exercise of sound judicial discretion"; and that it is his "inescapable and sworn duty to resolve once and for all the said motion for demolition."[2]

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[1] *Rollo*, pp. 1-3.

[2] Letter of Judge Vivencio A. Bantugan dated November 8, 1978, pp. 1-3.

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It appears from the Order of Demolition that the plaintiff's counsel in Civil Case No. 179 filed on January 12, 1977 an "Urgent *Ex-Parte* Motion for Immediate Issuance of an Order of Demolition." However, although the motion was urgent and *ex-parte*, the respondent judge took it upon himself to conduct a full hearing upon proper notice to the parties and their counsel on January 21, 1977. The order mentioned the receipt of a telegraphic message from the Office of the President signed by Technical Assistant for Legal Affairs, M. V. Icasiano, requesting deferment of the resolution on the motion until such time as the protest lodged by defendants in Civil Case No. 179 against the prevailing party-plaintiff over the grant of the land in question shall have been resolved by said Office.

The protest in question was finally resolved by the dismissal of the appeal interposed by defendants for lack of merit. The Administrative Order dismissing the appeal of the defendants was signed by Executive Assistant Ronaldo Zamora and was filed before the respondent's court on April 22, 1977. There was also filed on May 6, 1977 with the municipal court a certification from the Team Leader of the Department of Agrarian Reform stationed at Dinalupihan, Bataan, confirming said final adjudication of the protest in favor of the prevailing party-plaintiff in Civil Case No. 179.

All the foregoing facts were made known to the complainants and their counsel during the hearing on June 3, 1977.

It is clear from the record that the Order of Demolition was not issued upon a mere *ex-parte* motion. Said order was issued only after consideration of the facts and circumstances brought out at the hearing. The judgment rendered in the detainer case was already executed within the period of five (5) years from the entry of judgment as shown by the sheriff's return filed before the Municipal Court of Dinalupihan, Bataan, on November 7, 1966.

In *Albetz Investments, Inc. vs. Court of Appeals, et al.*,[3] this Court said:

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[3] 75 SCRA 311, 316-317.

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"There is no question that the Municipal Court had full authority to order the demolition of the Calma's house by the Sheriff in order to give effect to its judgment in the unlawful detainer case. It is not enough for the Sheriff, in the enforcement of a judgment for delivery or restitution of property, to direct the defeated party to make such delivery or restitution. It is the duty of the Sheriff to oust the defeated party from the property and make the restitution by placing the winning party in possession of said property. If to accomplish this he has to remove an improvement constructed by the defeated party, he cannot effect such removal without special order of the court, which order can only be issued upon motion of the prevailing party with notice and after hearing, and upon the defeated party's failure to remove the improvement within the reasonable time given to him by the court. (*Guevara vs. Laico, et al.*, 64 Phil. 144).

Thus, Section 14, Rule 39, of the Revised Rules of Court, specifically provides:

> 'SEC. 14. Removal of improvements on property subject of execution. — When the property subject of the execution contains improvement constructed or planted by the judgment debtor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon petition of the judgment creditor after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.'

This provision has been taken from Section 1 of Commonwealth Act No. 39, which states that: 'The Provincial Sheriff, in executing the decision of a competent court in ejectment cases, shall not destroy, demolish, or remove the improvements constructed or planted by the defendant or his agent or servant on the premises, unless expressly authorized by the Court. The Court may authorize the Provincial Sheriff to do so, upon petition of the plaintiff or his attorney, after due hearing, and upon failure of the defendant to remove the aforementioned improvements within a reasonable time after being so ordered by the Court."

Evident from the foregoing is the statutory purpose which is to grant to the defeated party a reasonable time to remove his improvement from the premises. Therefore, any delay in the implementation of the order of demolition accrues to the benefit of the deforciant. The grant of such a reasonable period to remove the

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improvements is predicated upon reasons of fairness and justice to enable the defeated party to look for another place wherein he can transfer his improvements and personal effects. *The law does not specify the period within which the order of demolition should be carried out.* The reason is obvious. There may be factors and circumstances which would justify deferment of the implementation of the order of demolition." (Emphasis supplied).

Moreover, in the instant case, the order of demolition was the subject in G. R. No. L-46452 for *certiorari* and prohibition. The petition was dismissed by the Second Division of this Court for lack of merit.

WHEREFORE, the explanation of Acting Judge Vivencio A. Bantugan on why he issued the order of demolition is found satisfactory and no administrative action lies against him.

SO ORDERED.

Teehankee (Chairman), Makasiar, Guerrero, De Castro, and *Melencio-Herrera JJ.*, concur.

FIRST DIVISION

[A.M. No. P-1769. February 28, 1979]

CRESENCIO GARCIA, *complainant, vs.* **ALBERTO ASILO, Deputy Sheriff, Court of First Instance, Malolos, Bulacan**, *respondent.*

SYLLABUS

1. ADMINISTRATIVE LAW; ADMINISTRATIVE COMPLAINTS; FORMAL INVESTIGATION UNNECESSARY WHERE FACTS OF RECORDS ARE SUFFICIENT. — Where the facts of record are sufficient to provide a basis for determining whether or not