Supreme Court E-Library

the idea of a continuance or repetition of like acts:"[5] on the contrary, the complainant admitted that the respondent had not actually taken any logs from his woodland.

ACCORDINGLY, the complaints in Administrative Matters Nos. 32 MJ and 33 MJ against the respondent judge are hereby *dismissed.*

Makasiar, Esquerra, Muñoz Palma, and *Martin, JJ.*, concur.

Teehankee, J., is on leave.

FIRST DIVISION

[A.M. No. P-107. July 18, 1975]

ANTONIO PALAFOX, JR., *complainant, vs.* **CHARITO AKUT, et al.,** *respondents.*

SYLLABUS

ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFF; DISCIPLINARY ACTION, NOT WARRANTED IN CASE AT BAR.— The respective bid prices for the vehicles and the sewing machine were fair and reasonable: in fact, the IFC later sold the vehicles for the same amounts it had bidded. It thereby earned no profit, but in effect merely recovered part of the judgment debt due it. It follows that the respondents did not give the corporation any "unwarranted benefits, advantage or preference." And even if the bid prices were low, as contended by the complainant Palafox, this is not a ground for disciplinary action against the respondents, in the absence of evidence that

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[5] Words & Phrases, Vol. 14A, p. 275, Perm. ed., citing *Farrior v. New England Mortgage Security Co.*, 7 So. 200, 88 Ala. 275.

Supreme Court E-Library

would overcome the presumption that the auction sale had been regularly conducted.

DECISION

CASTRO, *J.*:

The complainant Antonio Palafox, Jr. assails as "graft-and corrupt-ridden," illegal and simulated, the auction sale of three motor vehicles and a sewing machine conducted on December 13, 1972 by the respondents Charito Akut and Maximiano Mabanag, Jr., *ex-officio* Provincial Sheriff and Deputy Sheriff, respectively, in obedience to a writ of execution based on a money judgment rendered by the Court of First Instance of Misamis Oriental, in its civil case 3794, in favor of the Cagayan de Oro Industrial Finance Corporation (IFC for short) and against the complainant Palafox and one Romeo Serina. Palafox avers that the respondents auctioned off the properties fictitiously or thru collusion with and partiality for the winning bidder, the IFC, giving it "unwarranted benefits, advantage or preference," to the complainant's "undue injury," in violation of Section 21 of Rule 39 of the Rules of Court[1] and Section 3(e) of Republic Act 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.[2]

The charges were referred to District Judge Bernardo Teves of the Court of First Instance, Branch VIII, Cagayan de Oro City for investigation, report and recommendation. In his report

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[1] "SEC 21. *How property sold on execution. Who may direct manner and order of sale.* — All sales of property under execution must be made at public auction, to the highest bidder, between the hours of nine in the morning and five in the afternoon. x x x."

[2] "(e) Causing any undue injury in any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions."

Supreme Court E-Library

dated October 29, 1973 Judge Teves recommends exoneration of the respondents. We agree.

In our view, the evidence not merely fails to indicate any irregularity committed by the respondents but, on the contrary, shows that they acted creditably and commendably in the conduct of the questioned public auction sale.

On auction day, December 13, 1972, the complainant Antonio Palafox, Jr. and his wife went to the capitol building. The complainant stayed at the corridor to watch; his wife entered the respondent Akut's office and requested for the postponement of the auction sale. To accommodate her, the respondent Akut instructed his deputy, the respondent Mabanag, to accompany Mrs. Palafox to see Atty. Ernesto Malferrari, legal officer of the judgment-creditor IFC, who held office in front of the capitol building, about the request for postponement. The respondent Mabanag complied, but Atty. Malferrari denied the request. When they returned to the capitol building, together with the said lawyer, the respondent Akut requested Atty. Malferrari to grant the request; deputy sheriff Jose Yusay also made a similar request.

As Atty. Malferrari was unrelenting, the respondent Mabanag, at the stroke of ten o'clock in the morning, informed Mr. Palafox that he would proceed with the auction sale as scheduled, He then publicly announced the auction sale, even as Mrs. Palafox was in tears; he re-announced the sale twice at intervals of five minutes. One Col. Ligutom inspected the vehicles but entered no bid. Meantime, another deputy sheriff, Eufrocino Carillo, took pity on Mrs. Palafox and suggested that she request the intercession of Judge Tago Bantuas. The spouses Palafox went to Judge Bantuas, who was contacted at his house, but the latter declined to intercede. When they returned to the capitol building, they were informed that the auction sale was over, that the Isuzu TX bus was sold for ₱4,000 and the two smaller buses were sold at ₱2,000 each to the IFC as the only bidder, and that the sewing machine was sold to Jaime Tejano, the only bidder, for ₱200. Mabanag then gave a copy of the minutes

Supreme Court E-Library

of the auction sale to Mrs. Palafox who uttered no word of protest.

Mrs. Palafox expressly acknowledged in her testimony the efforts taken by the respondent Akut to convince the IFC to postpone the auction sale, and admitted that there was an auction sale. The claim of the complainant that there was no auction sale is, therefore, a wild indictment against the very persons who tried to help him.

The respective bid prices for the vehicles and the sewing machine were fair and reasonable: in fact, the IFC later sold the vehicles for the same amounts it had bidded. It thereby earned no profit, but in effect merely recovered part of the judgment debt due it. It follows that the respondents did not give the corporation any "unwarranted benefits, advantage or preference." And even if the bid prices were low, as contended by the complainant Palafox, this is not a ground for disciplinary action against the respondents, in the absence of evidence that would overcome the presumption that the auction sale had been regularly conducted.

ACCORDINGLY, the respondents Charito Akut and Maximiano Mabanag, Jr. are exonerated of the charges, and the complaint is *dismissed.*

Makasiar, Esguerra, Muñoz Palma, and *Martin, JJ.*, concur.

Teehankee, J., is on leave.