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THIRD DIVISION

[A.M. No. P-12-3043. January 15, 2014]
(Formerly OCA I.P.I. No. 08-2953-P)

ATTY. MARCOS R. SUNDIANG, *complainant, vs*. **ERLITO DS. BACHO, Sheriff IV, Regional Trial Court, Branch 124, Caloocan City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; SHERIFFS; RESPONDENT SHERIFF VIOLATED THE PROCEDURAL STEPS IN SECTION 10, RULE 141 OF THE RULES OF COURT AS AMENDED BY A.M. NO. 04-2-04-SC IN THE IMPLEMENTATION OF WRITS OR PROCESSES OF THE COURT FOR WHICH EXPENSES ARE TO BE INCURRED.— It is clear from the Rule that before an interested party pays the expenses of a sheriff, the latter should first estimate the amount which will then be submitted to the court for its approval. Upon approval, the interested party deposits the amount with the clerk of court and *ex officio* sheriff. The latter then disburses the amount to the sheriff assigned to execute the writ. Thereafter, the amount received shall then be liquidated and any unspent amount shall be refunded to the party making the deposit. From there on, the sheriff shall render a full report. The failure of the sheriff to observe the following: (1) prepare an estimate of expenses to be incurred in executing the writ; (2) ask for the court's approval of his estimates; (3) render an accounting; and (4) issue an official receipt for the total amount he received from the judgment debtor, makes him administratively liable. In the instant case, none of these procedures were complied with by respondent sheriff. He never submitted an estimate to the court for approval, but, on his own, demanded and received sums of money from the complainant. Neither did he advise the complainant that the sheriff's expenses approved by the court should be deposited with the clerk of court and *ex-officio* sheriff. Furthermore, no liquidation was ever submitted to the court.

Supreme Court E-Library

2. ID.; ID.; ID.; ID.; SHERIFFS ARE NOT ALLOWED TO RECEIVE ANY VOLUNTARY PAYMENTS FROM PARTIES IN THE COURSE OF THE PERFORMANCE OF THEIR DUTIES; ANY AMOUNT RECEIVED BY SHERIFFS IN EXCESS OF THE LAWFUL FEES ALLOWED IN SECTION 10 IS AN UNLAWFUL EXACTION THAT RENDERS THEM LIABLE FOR GRAVE MISCONDUCT, DISHONESTY, AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.— It must be stressed that sheriffs are not allowed to receive any *voluntary* payments from parties in the course of the performance of their duties. Nor can a sheriff request or ask sums of money from a party-litigant without observing the proper procedural steps. Even assuming that such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. Neither will complainant's acquiescence or consent to such expenses absolve the sheriff for his failure to secure the prior approval of the court concerning such expense. Any amount received by sheriffs in excess of the lawful fees allowed in Section 10 is an unlawful exaction. It constitutes unauthorized fees. This renders them liable for grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service.

D E C I S I O N

PERALTA, *J.*:

The instant administrative case arose from the complaint filed by Atty. Marcos P. Sundiang,[1] charging respondent Erlito DS. Bacho, Sheriff IV of the Regional Trial Court of Caloocan City, Branch 124 (*RTC*), with extortion, neglect of duty and violation of Republic Act No. 3019.

The antecedents are as follows:

Plaintiffs spouses Rene Castañeda and Nenita P. Castañeda filed a complaint for *accion publiciana* against defendants Pedro

[1] Plaintiffs' counsel in Civil Case No. C-17890 entitled *Sps. Rene Castañeda and Nenita P. Castañeda v. Pedro and Rosie Galacan, Vicente Quesada, Pablo Quesada, Antonio and Norma Bagares.*

Supreme Court E-Library

and Rosie Galacan, Vicente Quesada, Pablo Quesada, Antonio and Norma Bagares for allegedly depriving them of the use and possession of a parcel of residential lot registered in their name, located in Camarin, Caloocan City.

After trial, the RTC rendered a Decision[2] on October 8, 2001 in favor of the plaintiffs. The RTC ruled, among other things, that as owners of the subject property, plaintiffs have a better right over the property as against the defendants. The dispositive portion of the decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendants and all persons claiming right under them, directing the latter to:
>
> 1. Vacate and surrender peaceful possession to the plaintiffs of the subject property, described under Transfer Certificate of Title No. 4844, located at Lot 7, Block 26, Maligaya Park, Barangay 177, Zone 15, Purok 4, Camarin, Caloocan City;
> 2. Pay the plaintiffs moral damages in the amount of ₱50,000.00;
> 3. Pay attorney's fees in the amount of Ten Thousand Pesos (₱10,000.00); and
> 4. Costs of suit.
>
> Defendants' counterclaim is DISMISSED for lack of merit.
>
> SO ORDERED.[3]

Defendants appealed before the Court of Appeals (*CA*), which affirmed the Decision of the RTC in its Decision dated August 5, 2003. Defendants then sought recourse before the Supreme Court, but the Court denied the petition in a Resolution dated January 28, 2004. In a Resolution dated March 29, 2004, the Court denied defendants' motion for reconsideration with finality.

On October 20, 2004, a Writ of Execution was issued by the RTC in favor of the plaintiffs. However, since the defendants

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[2] *Rollo*, pp. 3-15.

[3] *Id.* at 14-15.

Supreme Court E-Library

refused to vacate the premises and remove the structures therein, the writ was not implemented. Hence, plaintiffs filed a motion praying for the issuance of writ of demolition. On November 12, 2004, the RTC issued the Writ of Demolition[4] prayed for.

Complainant avers that prior to the issuance of the writ of demolition, respondent sheriff demanded One Hundred Fifty Thousand Pesos (₱150,000.00) for the implementation of the writ. Consequently, respondent sheriff received the following amounts: Sixty Thousand Pesos (₱60,000.00) on November 23, 2004; Fifty Thousand Pesos (₱50,000.00) on December 10, 2004; and Forty Thousand Pesos (₱40,000.00) on or about August 15, 2005. Despite receipt of the amounts, however, respondent sheriff failed to place the plaintiffs in possession of the subject property because he failed to remove the structures inside and in front of the subject property; hence, ingress and egress to the property was hindered.

On the other hand, respondent sheriff averred that he received the amount of Sixty Thousand Pesos (₱60,000.00) from the complainant. However, he denied that he demanded such payment for his personal benefit. He explained that the amount was used to pay for the food and fees of the laborers, who were hired to undertake the demolition of the concrete structures on the subject property and those contracted to provide security for the workers during the demolition. He found it difficult to evict the defendants because the latter employed various means to prevent the implementation of the writ of demolition issued by the RTC. Nevertheless, respondent sheriff claimed that he was able to fully implement the writ and that the subject property was delivered to the possession of the plaintiffs on December 10, 2004, as evidenced by his Sheriff's Return. After the demolition and turn-over, however, some of the defendants and unidentified persons re-entered the subject property and reconstructed their houses thereon. Hence, the RTC found them guilty of indirect contempt and were meted the penalty of fine. Respondent sheriff further contended that the task of removing the shanties erected

[4] *Id.* at 33-34.

Supreme Court E-Library

by the defendants outside the subject property is the function of the local government concerned and no longer the duty of respondent sheriff.

In a Resolution[5] dated November 23, 2009, the Court referred the case to the Executive Judge of the RTC, Caloocan City, for investigation, report and recommendation. In her Report and Recommendation[6] dated September 22, 2010, Investigating Judge Thelma Canlas Trinidad-Pe Aguirre recommended that the complaint against respondent sheriff be dismissed for want of evidence. Judge Trinidad-Pe Aguirre's Report was referred to the Office of the Court Administrator (*OCA*) for evaluation, report and recommendation.

In a Memorandum[7] dated November 10, 2011, the OCA recommended that respondent sheriff be held liable for conduct prejudicial to the best interest of the service, and that he be suspended for a period of one (1) year. The OCA found that respondent disregarded the procedural steps laid down by Section 9 (now Section 10), Rule 141 of the Rules of Court regarding the sheriff's expenses in executing the writ. The OCA's recommendation provides:

x x x In view of the foregoing, it is most respectfully recommended for Your Honor's consideration that:

1. The instant administrative matter be RE-DOCKETED as a regular administrative case against respondent Sheriff ERLITO DS. BACHO, Sheriff IV, Regional Trial Court, Branch 124, Caloocan City; and

2. Respondent Sheriff Erlito DS. Bacho be found GUILTY of CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, and that the penalty of SUSPENSION from work for a period of ONE (1) YEAR be imposed upon him.

Respectfully submitted.[8]

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[5] *Id.* at 55.

[6] *Id.* at 59-70.

[7] *Id.* at 266-279.

[8] *Id.* at 279.

Supreme Court E-Library

The Court's Ruling

We agree with the conclusion of the OCA that respondent sheriff violated Section 10, Rule 141 of the Rules of Court, but do not agree with the recommended penalty.

In the implementation of writs or processes of the court for which expenses are to be incurred, sheriffs are mandated to comply with Section 10, Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC, the pertinent portion of which reads:

> Sec. 10. *Sheriffs, process servers and other persons serving processes.*
>
> x x x x x x x x x
>
> With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, **the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex-officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation with the same period for rendering a return on the process.** The liquidation shall be approved by the court. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.[9]

It is clear from the Rule that before an interested party pays the expenses of a sheriff, the latter should first estimate the amount which will then be submitted to the court for its approval. Upon approval, the interested party deposits the amount with the clerk of court and *ex officio* sheriff. The latter then disburses the amount to the sheriff assigned to execute the writ. Thereafter, the amount received shall then be liquidated and any unspent

[9] Emphasis supplied.

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amount shall be refunded to the party making the deposit. From there on, the sheriff shall render a full report.[10]

The failure of the sheriff to observe the following: (1) prepare an estimate of expenses to be incurred in executing the writ; (2) ask for the court's approval of his estimates; (3) render an accounting; and (4) issue an official receipt for the total amount he received from the judgment debtor,[11] makes him administratively liable.

In the instant case, none of these procedures were complied with by respondent sheriff. He never submitted an estimate to the court for approval, but, on his own, demanded and received sums of money from the complainant. Neither did he advise the complainant that the sheriff's expenses approved by the court should be deposited with the clerk of court and *ex-officio* sheriff. Furthermore, no liquidation was ever submitted to the court.

It must be stressed that sheriffs are not allowed to receive any *voluntary* payments from parties in the course of the performance of their duties. Nor can a sheriff request or ask sums of money from a party-litigant without observing the proper procedural steps. Even assuming that such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. Neither will complainant's acquiescence or consent to such expenses absolve the sheriff for his failure to secure the prior approval of the court concerning such expense.[12]

Any amount received by sheriffs in excess of the lawful fees allowed in Section 10 is an unlawful exaction. It constitutes unauthorized fees. This renders them liable for grave misconduct,

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[10] *Urbanozo v. Flora*, A.M. No. P-06-2169 (Formerly OCA I.P.I. No. 05-2251-P), March 28, 2008, 550 SCRA 16, 24.

[11] *Gonzalez v. Calo,* A.M. No. P-12-3028 (Formerly OCA I.P.I. No. 11-3649-P), April 11, 2012, 669 SCRA 109, 120.

[12] *Id.* at 120-121.

Supreme Court E-Library

dishonesty, and conduct prejudicial to the best interest of the service.[13]

Section 52 (A) (20), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service classifies conduct prejudicial to the best interest of the service as a grave offense, which is punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and by dismissal for the second offense. The Court, however, deems it appropriate to impose the penalty of suspension of six (6) months and one (1) day, which is within the range of the penalty, instead of the maximum penalty of one (1) year, as recommended by the OCA in light of the circumstances surrounding the case and prevailing jurisprudence on first-time offenders of this nature.

WHEREFORE, premises considered, respondent Erlito DS. Bacho, Sheriff IV, Regional Trial Court, Branch 124, Caloocan City, is found **GUILTY** of Conduct Prejudicial to the Best Interest of the Service and is meted the penalty of **SUSPENSION** from service, without pay, for a period of six (6) months and one (1) day. He is **STERNLY WARNED** that a repetition of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Leonen, JJ.,* concur.

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[13] *Hofer v. Tan,* 555 Phil. 168, 180 (2007).