Supreme Court E-Library

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.M. No. P-12-3069. January 20, 2014]

ATTY. VIRGILIO P. ALCONERA, *complainant, vs.* **ALFREDO T. PALLANAN,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; GRAVE MISCONDUCT.—** Misconduct has been defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, all of which must be established by substantial evidence, and must necessarily be manifest in a charge of grave misconduct.

2. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; RULINGS OF THE COURTS ARE IMMEDIATELY EXECUTORY; EXCEPTIONS.—** In ejectment cases, the rulings of the courts are immediately executory and can only be stayed via compliance with Section 19, Rule 70 of the Rules of Court. x x x [Thus,] under said Sec. 19, Rule 70, a judgment on a forcible entry and detainer action is made immediately executory to avoid further injustice to a lawful possessor. The defendant in such a case may have such judgment stayed only by (a) perfecting an appeal; (b) filing a supersedeas bond; and (c) making a periodic deposit of the rental or reasonable compensation for

Supreme Court E-Library

the use and occupancy of the property during the pendency of the appeal. The failure of the defendant to comply with **any** of these conditions is a ground for the **outright execution** of the judgment, the duty of the court in this respect being ministerial and imperative. Hence, if the defendant-appellant has perfected the appeal but failed to file a supersedeas bond, the immediate execution of the judgment would automatically follow. Conversely, the filing of a supersedeas bond will not stay the execution of the judgment if the appeal is not perfected. Necessarily then, the supersedeas bond should be filed within the period for the perfection of the appeal. x x x Because of the non-compliance with the requirements under the above-quoted rule, the execution of the judgment was not effectively stayed. The only exceptions to non-compliance are the existence of fraud, accident, mistake or excusable negligence which prevented the defendant from posting the supersedeas bond or making the monthly deposit, or the occurrence of supervening events which brought about a material change in the situation of the parties and which would make the execution inequitable. But whether or not these obtain in the case at bar is an issue best left to the court that issued the writ of execution.

3. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; SHERIFFS; DUTY IN THE EXECUTION OF WRIT IS PURELY MINISTERIAL.— Well-settled is that the sheriff's duty in the execution of a writ is purely ministerial; he is to execute the order of the court strictly to the letter. He has no discretion whether to execute the judgment or not. When the writ is placed in his hands, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. It is only by doing so could he ensure that the order is executed without undue delay. This holds especially true herein where the nature of the case requires immediate execution. Absent a TRO, an order of quashal, or compliance with Sec. 19, Rule 70 of the Rules of Court, respondent sheriff has no alternative but to enforce the writ. Immediacy of the execution, however, does not mean instant execution. The sheriff must comply with the Rules of Court in executing a writ. Any act deviating from the procedure laid down in the Rules of Court is a misconduct and warrants disciplinary action.

Supreme Court E-Library

4. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; EXECUTION OF JUDGMENTS FOR SPECIFIC ACT; DELIVERY OR RESTITUTION OF REAL PROPERTY.— Sec. 10 (c), Rule 39 of the Rules provides: **Section 10**. Execution of judgments for specific act. — x x x (c) Delivery or restitution of real property. — The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee, otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money. Based on this provision, enforcement in ejectment cases requires the sheriff to give notice of such writ and to demand from defendant to vacate the property within three days. Only after such period can the sheriff enforce the writ by the bodily removal of the defendant in the ejectment case and his personal belongings. Even in cases wherein decisions are immediately executory, the required three-day notice cannot be dispensed with. A sheriff who enforces the writ without the required notice or before the expiry of the three-day period is running afoul with the Rules.

5. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; DISCOURTESY IN THE PERFORMANCE OF OFFICIAL DUTIES WARRANTS PENALTY.— [T]he Court adopts in part the recommendation of the investigating judge that respondent should nonetheless be penalized for discourtesy in the performance of his official duties. As a public officer and a trustee for the public, it is the ever existing responsibility of respondent to demonstrate courtesy and civility in his official actuations with the public.

Supreme Court E-Library

D E C I S I O N

VELASCO, JR., *J.*:

Before Us is an administrative complaint for Grave Misconduct and Making Untruthful Statements filed by Atty. Virgilio P. Alconera against Alfredo Pallanan, Sheriff IV, assigned at the Regional Trial Court (RTC), Branch 36 in General Santos City.

The antecedent facts are as follows:

Complainant was the counsel for Morito Rafols, the defendant in Civil Case No. 5967-2, an unlawful detainer case entitled *Cua Beng a.k.a. Manuel Sy and Ka Kieng v. Morito Rafols, et al.*, filed before the Municipal Trial Court in Cities (MTCC), Branch 2 in General Santos City, South Cotabato. After trial, the MTCC ruled against Rafols and his co-defendants in a Judgment[1] dated March 12, 2009, disposing as follows:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendant MORITO RAFOLS, his privies, assigns, heirs, transferee, sublessee, co-lessee or agents if any to vacate from the subject lots and deliver possession thereof to the plaintiffs and for defendant to pay back rentals of ₱5,000.00 per month from June 2008 and every succeeding months thereafter until he vacate the premises and to jointly and severally, together with all other defendants, pay attorney's fees in the amount of ₱20,000.00 with the other defendants and costs of litigation.
>
> SO ORDERED.

Therefrom, Rafols, through complainant Alconera, appealed the case to the RTC, Branch 36, docketed as Civil Case No. 675. Pending appeal, the court issued an Order dated February 18, 2011 granting Cua Beng's motion for execution she filed in Civil Case No. 5967-2, the unlawful detainer case. Alconera sought reconsideration but the motion was denied through another Order[2] dated March 14, 2011.

---

[1] Penned by Judge Jose A. Bersales; Exhibit "F" of the Judicial Affidavit of Virgilio Alconera.

[2] *Rollo*, p. 14.

Supreme Court E-Library

On March 17, 2011, a troubled Evelyn Rafols, Rafols' daughter-in-law, called up Alconera, who at that time was in Manila, to report that the sheriff, respondent Pallanan, was about to implement the adverted writ of execution. Evelyn Rafols informed Alconera that respondent sheriff arrived along with the lawyer of the opposing party and 30 other men to enforce the writ. Respondent sheriff then allegedly demanded payment of PhP 720,000 to settle Rafols' obligation to which the latter protested on the ground that the amount is too exorbitant when they have been religiously depositing monthly rentals in court to satisfy the judgment.

After explaining the matter to Alconera, Evelyn Rafols passed her phone to respondent sheriff. Over the phone, a verbal disagreement between the two ensued. Alconera claims that he has a pending motion for reconsideration on the issuance of the writ of execution, but the respondent said that the motion has already been denied. And since no Temporary Restraining Order (TRO) has been issued enjoining the implementation, respondent claimed that he is legally mandated to perform his ministerial duty of enforcing the writ. Complainant countered that he has not yet received a copy of the denial of the motion, rendering the execution premature and, at the same time, preventing him from securing a TRO from the higher courts. Nevertheless, respondent still pushed through with the execution of the judgment.

On March 18, 2011, complainant returned to General Santos City and, at his law office, found a copy of the Order denying his Motion for Reconsideration, which was only served that very same day. The RTC ruled that there was no pending Motion to Approve Supersedeas Bond filed with it. Instead, what was filed not with the RTC but with the MTCC was a "NOTICE OF APPEAL – and – MOTION TO APPROVE PROPERTY SUPERSEDEAS BOND," which was not granted.

That afternoon, Alconera went to RTC Br. 36 with his daughter to confront respondent sheriff. The face-off escalated into a heated argument caught on video. It was complainant's daughter, Shyla Mae Zapanta, who is coincidentally his office clerk, who filmed the incident and transcribed the dialogue during the

Supreme Court E-Library

altercation. As hereunder translated in English, the exchanges went:

ATTY. ALCONERA: Pag hatod nimo didto sa demolition order, kabalo ka na wala pa ko kadawat ug denial? (When you served the demolition order, you know that I did not yet receive a copy of the denial order?)

SHERIFF PALLANAN: Denial sa unsa, motion? (Denial of what, motion?)

ATTY. ALCONERA: Oo. (Yes.)

SHERIFF PALLANAN: Attorney, ang motion inyoha nang kuan diri sa korte, and akoa sa writ ko. As long as the sheriff did not receive a TRO or any order from the court restraining him to implement the writ, I have to go. So in case, just in case, na may resolution si judge na ireconsider and iyang order after they declare, ideliver na sa area kung asa gi-execute so the sheriff will move out. (Attorney, the motion, that is your… what do you call this, here in court. Mine is the writ. As long as the sheriff did not receive a TRO or any order from the court restraining him to implement the writ, I have to go. So in case, just in case, the judge reconsiders his order, they will declare, deliver it to the area where the writ if executed so the sheriff will move out.)

ATTY. ALCONERA: Mo execute diay ka? Dili diay ka mangutana kung duna pa bay motion for recon ani? (So you will execute? You will not inquire whether a motion for reconsideration has been filed?)

SHERIFF PALLANAN: Bisag may motion for recon na, Attorney, I have to go gyud. (Even if there is a motion for reconsideration, I really have to go.)

ATTY. ALCONERA: Uy, di man na ingon ana, uy! Ana imong natun-an as sheriff?

SHERIFF PALLANAN: Oo mao na sya. Mao na sya – sa akoa ha, mao na sya. (Yes, that is it. That is it – to me ha, that is it.)

ATTY. ALCONERA: Kita ra ta sa Supreme Court ani. (Let us see each other in the Supreme Court.)

Supreme Court E-Library

SHERIFF PALLANAN: …(unintelligible) Ang imoha ana…imong motion ana… and imong motion ana, delaying tactic. (Your motion is a delaying tactic.)

ATTY. ALCONERA: Ah, sige lang, atubang lang ta sa Supreme Court. (Ok, let's just see each other in the Supreme Court.)

SHERIFF PALLANAN: Oo, atubangon nako ko na siya, pero mag-review pud ka.

ATTY. ALCONERA: Unsay mag-review? (What review?)

SHERIFF PALLANAN: Motion nang imoha, Dong. (Yours is motion, Dong.) ("Dong" is equivalent to the Filipino term "Totoy"; if used by one to address someone older than him, it is an insult.)

ATTY. ALCONERA: Naunsa man ka, Dong. (What happened to you, Dong?)

SHERIFF PALLANAN: Motion na imoha… Dapat diri ka mag file, dili ka didto mag-file. Ayaw ko awaya. (Yours is motion. You should file it here, you do not file it there. Don't quarrel with me.)

ATTY. ALCONERA: Lahi imong tono sa akoa sa telepono Dong ba. (You were rude in the telephone, Dong.)

SHERIFF PALLANAN: Oo, kay lain man pud ka mag sulti. Ang imong venue kay diri, dili sa area. (Yes, because you also talked bad, your venue is here in court, not in the area.)

ATTY. ALCONERA: Ingon nako sa imo nakadawat ka ba.. nakadawat ba ug… (I was just asking you whether you received…)

SHERIFF PALLANAN: Dili nako na concern. (That is not my concern.)

ATTY. ALCONERA: O, ngano nag ingon man ka nga "Ayaw ko diktahe, Attorney?" (Why did you say, "Don't dictate on me, Attorney?")

SHERIFF PALLANAN: Yes, do not dictate me. Kay abogado ka, sheriff ko. Lahi tag venue. Trabaho akoa, magtrabaho pud ka. (Yes, do not dictate me. Because you are a lawyer, and I am a sheriff. I do my job, you do yours.)

ATTY. ALCONERA: Bastos kaayo ka manulti ba. (You are very rude!)

Supreme Court E-Library

SHERIFF PALLANAN: Ikaw ang bastos! (You are the one who is rude!)

ATTY. ALCONERA: Magkita ta sa Supreme Court. (I will see you in the Supreme Court.)

SHERIFF PALLANAN: Magkita ta, eh! Ikaw lang akong hadlukan nga wala man ka sa area. (As you wish, I am not afraid of you, you were not in the area.)

ATTY. ALCONERA: Unsa nang inyong style diri, Kempeta? (What is your style here, Kempetai?)

SHERIFF PALLANAN: Dili man! Na may order. Why can't you accept? (No! There is an order. Why can't you accept?)

ATTY. ALCONERA: Naay proseso, Dong. Mao ning proseso: ang MR, proseso ang MR. (There is a process, Dong. This is the process: MR.)

SHERIFF PALLANAN: Oo, proseso pud na ang akong pagimplement. Naa'y writ. (Yes, my implementing the writ is also a process. There is a writ.)

ATTY. ALCONERA: Nabuang, ka Dong? (What is going on with you, Dong?)

SHERIFF PALLANAN: Ka dugay na nimo nga abogado, wala ka kabalo! (You have been a lawyer for a long time now, yet you do not know!)

ATTY. ALCONERA: Dugay na bitaw. Ikaw bago ka lang na sheriff. (Yes, I have been a lawyer for a long time now, you, you are new in your job as sheriff).

SHERIFF PALLANAN: Pero kabalo ko. (But I know.)

ATTY. ALCONERA: Susmaryosep!

SHERIFF PALLANAN: O, di ba? Wala sa padugayay. Naa sa kahibalo. (Isn't that true? It is not the length of time one has spent on his job. It is the knowledge that one possesses.)

ATTY. ALCONERA: Tanawa imong pagka sheriff, Dong. (Know you job as a sheriff, Dong.)

SHERIFF PALLANAN: Tanawa pud imong pagka abogado kung sakto. Pilde! Sige mo pangulekta didto ibayad sa imo! (Know your job also as a lawyer, see if you are correct. Loser! You [and

Supreme Court E-Library

the Rafols] are always collecting [from the other defendants] so your fees can be paid!)

ATTY. ALCONERA: Ngano wala man lagi nimo kuhaa ang mga butang didto, Dong? (Why did you not bring with you the things that you had gathered, Dong.)

SHERIFF PALLANAN: Oo, kay hulaton ta ka pag demotion. (Yes, because I will wait for you on demotion day.)

ATTY. ALCONERA: Nahadlok ka, Dong. (You were afraid, Dong.)

SHERIFF PALLANAN: Wala ko nahadlok, Doy. Sa demotion adto didto, Attorney. Sulayi ko! Sulayan nato imong pagkaabogado! (I'm not afraid of you, Doy. On demotion day, you go there, Attorney. You try me! Let us see how good a lawyer you are.) ("Doy" is the same as "Dong.")

ATTY. ALCONERA: March 22 pa ang hearing sa imong abogado, Dong. (The hearing of the motion of your lawyer, is on March 22 yet, Dong.)

SHERIFF PALLANAN: Asus, Pinobre na imong style, Attorney. Bulok! (Your style is that of an impoverished lawyer, Attorney. Dullard!)

It is against the foregoing backdrop of events that Alconera filed a Complaint-Affidavit[3] against the respondent sheriff for grave misconduct before this Court on April 6, 2011. The case was referred to the Office of the Court Administrator (OCA) and was docketed as AM No. 11-3634-P. As directed by the OCA, respondent filed his comment.[4] In it, he averred that the duty of a court sheriff in enforcing a writ of execution is ministerial, and without a TRO enjoining it, a sheriff is duty bound to implement it.

On July 14, 2011, respondent filed his own Affidavit of Complaint[5] against herein complainant for Grave Misconduct and for violating the Code of Ethics. Respondent alleged that

---

[3] *Id.* at 1.

[4] *Id.* at 173.

[5] Exhibit "J" of the Judicial Affidavit of Virgilio Alconera.

Supreme Court E-Library

during the enforcement of the writ, a second phone conversation took place. Complainant allegedly called up Evelyn Rafols who put him on loudspeaker for the respondent to hear his words. Alconera then allegedly made a threat that there will be bloodshed if respondent's party pushes through with the implementation of the writ. Respondent likewise claimed that complainant berated him at his office on March 18, 2011 and that the incident was orchestrated by the complainant. His (respondent sheriff's) complaint affidavit avers:

> 6. GRAVE MISCONDUCT OF ATTY. VIRGILIO ALCONERA – The planned attack happened in our office on March 18, 2011 in the afternoon, after lunch, in the presence of his lady companion (believed to [be] his daughter), who is so delighted in taking videos. He is so angry and at rage as if he is the boss in our office, yelling and nagging at me with NO RESPECT as a nomad. THE ONLY PERSON AROUND WAS ME, THE GIRL HE BROUGHT THERE (who is taking videos), AND THE NAGGING ATTY. VIRGILIO ALCONERA (JUST THREE OF US), while pointing his finger into his MOTION for Reconsideration that he is holding [sic] almost an inch to my face. Saying "*KITA NIMO NI, KITA NIMO NI?" NA INSULTO KO NIMO NGANO WALA KA NI PATOO NAKO PAYLAN TAKA UG KASO HULATA SA SUPREME COURT!* (DO YOU SEE THIS? DO YOU SEE THIS? YOU INSULTED ME WHY DID YOU NOT FOLLOW MY ORDER I WILL FILE CHARGES AGAINST YOU WAIT FOR IT IN THE SUPREME COURT!) HE wants me to shiver in scare and expect me to beg. No, GO I said. I ALWAYS REPEATED THE WORDS "WHERE IS YOUR T.R.O. Just present it." Because he is too loud, Mrs. Nenita Paredes, our stenographer, ARRIVED and middle on us our arguments. On the mid part of the arguments, he recorded the events; he and his companion, cohort in designing the plan of the attack, orchestrated it. IT'S AN ASSAULT TO THE OFFICER OF THE LAW. He told me – *SHERIFF KA LANG WALA KAY NABAL AN. NGANON NADAWAT MAN KA DIRI BOGO KA.* (YOU ARE JUST A SHERIFF. WHAT DO YOU KNOW? WHY ARE YOU ADMITTED HERE YOU DUMB, WHO TAUGHT YOU THAT?) *Ana mo diri IPINATAY! KINSA NAG TUDLO SA IMOHA ANA.* While he almost struck his motion papers into my face, I was caught unaware.

Supreme Court E-Library

In view of respondent's counter-charge, Alconera supplemented his affidavit-complaint[6] to include a charge against the former for False Testimony. Complainant belied the claims of respondent sheriff, and showed that the respondent's allegations can nowhere be seen in the transcript of the altercation.

On March 2, 2012, this Court, upon the OCA's recommendation, resolved to re-docket Alconera's complaint as a regular administrative case with docket No. A.M. No. P-12-3069 and referred the same to the Executive Judge of the Regional Trial Court, General Santos City, South Cotabato, for investigation, report, and recommendation.

After due proceedings, the investigating judge submitted a report, styled as Order[7] dated August 6, 2013, with the following recommendation:

> Based on the findings and evaluation, the herein Executive Judge hereby recommends the respondent Sheriff be ADMONISHED. The respondent must be reminded that as a Court Employee, he must exercise utmost patience and humility in the performance of his duties amidst all the pressures and personal attacks against his person because he carried with him the image of the entire judiciary.
>
> SO ORDERED.

The Executive Judge adopted the transcript of the altercation as appearing in the affidavit of Shyla Mae Zapanta and based his recommendation mainly thereon.

The Issues

The main issue in this case is whether or not respondent can be held administratively liable for grave misconduct and false testimony. In fine, the controversy stems from the propriety of the implementation of the writ of execution, and the altercation between complainant and respondent. While the investigating judge made a recommendation based on how respondent conducted

---

[6] *Rollo*, p. 188.

[7] Penned by Judge Oscar P. Noel, Jr.

Supreme Court E-Library

himself as an officer of the court in the afternoon of March 18, 2013, there was no discussion regarding the propriety of the implementation of the writ, which is the main issue in the case for grave misconduct. It then behooves this Court to sift through the arguments and records to rule on this point.

The Court's Ruling

Grave Misconduct

Misconduct has been defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, all of which must be established by substantial evidence, and must necessarily be manifest in a charge of grave misconduct.[8] In this case, complainant imputes grave misconduct on the respondent for the following acts:

1. For enforcing the writ despite the fact that complainant has yet to receive the copy of the order denying his motion for reconsideration on the issuance of the writ of execution;
2. For allegedly leaking to the opposing counsel the issuance of the order denying the motion for reconsideration;
3. For allegedly demanding ₱720,000 from Rafols for a ₱165,000.00 obligation; and
4. For allegedly being arrogant and disrespectful.

Complainant admits that there is no TRO enjoining the enforcement of the writ, nor allegation in his pleadings that a motion to quash the writ of execution was ever filed. However, complainant asserts that respondent committed grave misconduct when the latter implemented the writ prior to serving the complainant a copy of the order denying the motion for reconsideration. According to complainant, said motion stayed the execution, and the writ could not have been validly executed

---

[8] *Tan v. Quitorio*, A.M. No. P-11-2919, May 31, 2011.

Supreme Court E-Library

without first informing the parties concerned of the motion's denial.

We rule against complainant on this point.

It must be borne in mind that the case at bar traces its roots to an unlawful detainer case wherein the MTCC ruled against Rafols, complainant's client. In ejectment cases, the rulings of the courts are immediately executory and can only be stayed via compliance with Section 19, Rule 70 of the Rules of Court, to wit:

> **Section 19.** Immediate execution of judgment; how to stay same. — If judgment is rendered against the defendant, execution shall issue immediately upon motion, unless an appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court. In the absence of a contract, he shall deposit with the Regional Trial Court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment of the lower court on or before the tenth day of each succeeding month or period. The supersedeas bond shall be transmitted by the Municipal Trial Court, with the other papers, to the clerk of the Regional Trial Court to which the action is appealed.

Clearly then under said Sec. 19, Rule 70, a judgment on a forcible entry and detainer action is made immediately executory to avoid further injustice to a lawful possessor. The defendant in such a case may have such judgment stayed only by (a) perfecting an appeal; (b) filing a supersedeas bond; and (c) making a periodic deposit of the rental or reasonable compensation for the use and occupancy of the property during the pendency of the appeal.[9] The failure of the defendant to comply with **any**

---

[9] *Lim v. Uni-Tan Marketing Corporation*, G.R. No. 147328, February 20, 2002, 377 SCRA 491, 499.

Supreme Court E-Library

of these conditions is a ground for the **outright execution** of the judgment, the duty of the court in this respect being ministerial and imperative. Hence, if the defendant-appellant has perfected the appeal but failed to file a supersedeas bond, the immediate execution of the judgment would automatically follow. Conversely, the filing of a supersedeas bond will not stay the execution of the judgment if the appeal is not perfected. Necessarily then, the supersedeas bond should be filed within the period for the perfection of the appeal.[10]

In the case at bar, complainant lost his client's case and appealed to the RTC. His client has also been periodically depositing rental with the court for the use of the property pending appeal. However, as ruled by the RTC, the bond filed did not meet the legal requirements because first and foremost, the bond posted was a property bond, not cash nor surety. Furthermore, Rafols did not own the property he posted as bond and besides, it was also not issued in favour of the plaintiff in the ejectment case. Because of the non-compliance with the requirements under the above-quoted rule, the execution of the judgment was not effectively stayed. The only exceptions to non-compliance are the existence of fraud, accident, mistake or excusable negligence which prevented the defendant from posting the supersedeas bond or making the monthly deposit, or the occurrence of supervening events which brought about a material change in the situation of the parties and which would make the execution inequitable.[11] But whether or not these obtain in the case at bar is an issue best left to the court that issued the writ of execution.

Given the above circumstances, there was no legal impediment preventing respondent sheriff from performing his responsibility of enforcing the writ of execution. Since Rafols failed to comply with the requirements under the Rules, Cua Beng who prevailed

---

[10] *Chua v. Court of Appeals*, G.R. No. 113886, February 24, 1998, 286 SCRA 437, 444-445.

[11] *De Laureano v. Adil*, No. L-43345, July 29, 1976, 72 SCRA 149, 157.

Supreme Court E-Library

in the unlawful detainer case is entitled as a matter of right to the immediate execution of the court's judgment both as to the restoration of possession and the payment of the accrued rentals or compensation for the use and occupation of the premises.[12]

Well-settled is that the sheriff's duty in the execution of a writ is purely ministerial; he is to execute the order of the court strictly to the letter. He has no discretion whether to execute the judgment or not. When the writ is placed in his hands, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. It is only by doing so could he ensure that the order is executed without undue delay.[13] This holds especially true herein where the nature of the case requires immediate execution. Absent a TRO, an order of quashal, or compliance with Sec. 19, Rule 70 of the Rules of Court, respondent sheriff has no alternative but to enforce the writ.

Immediacy of the execution, however, does not mean instant execution. The sheriff must comply with the Rules of Court in executing a writ. Any act deviating from the procedure laid down in the Rules of Court is a misconduct and warrants disciplinary action. In this case, Sec. 10(c), Rule 39 of the Rules prescribes the procedure in the implementation of the writ. It provides:

Section 10. Execution of judgments for specific act. —

x x x x x x x x x

(c) Delivery or restitution of real property. — The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee, otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing

---

[12] *Id.* at 156.

[13] *Cebu International Finance Corporation v. Cabigon*, A.M. No. P-06-2107, February 14, 2007, 515 SCRA 616, 622.

Supreme Court E-Library

such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.

Based on this provision, enforcement in ejectment cases requires the sheriff to give notice of such writ and to demand from defendant to vacate the property within three days. Only after such period can the sheriff enforce the writ by the bodily removal of the defendant in the ejectment case and his personal belongings.[14] Even in cases wherein decisions are immediately executory, the required three-day notice cannot be dispensed with. A sheriff who enforces the writ without the required notice or before the expiry of the three-day period is running afoul with the Rules.[15]

In the present controversy, the Order denying the motion for reconsideration was allegedly served, according to the respondent, on the same day the writ was executed on March 17, 2011. Complainant, however, avers that his office was only able to receive the denial the day after the execution or on March 18, 2011. At first blush, one might hastily conclude that the three-day notice rule was apparently not observed. This Court, however, is not prepared to make such a finding. We are mindful of the possibility that a demand to vacate has already been given when complainant and Rafols were first served the Order granting the issuance of a writ of execution, before the motion for reconsideration was filed. More importantly, complainant failed to allege con-compliance with Sec. 10(c) of Rule 39.

Thus far, no deviation from the Rules has been properly ascribed to respondent. As an officer of the court, he is accorded the presumption of regularity in the performance of his duties. The burden was on complainant to adduce evidence that would

---

[14] *San Manuel Wood Products, Inc. v. Tupas*, A.M. No. MTJ-93-892, October 25, 1995, 249 SCRA 466, 476.

[15] *Mendoza v. Doroni*, A.M. No. P-04-1872, January 31, 2006, 481 SCRA 41, 52-53.

Supreme Court E-Library

prove the respondent's culpability, if any. Without evidence of any departure from well established rules, any unlawful behaviour, or any gross negligence on his part, the presumption remains applicable and respondent cannot be held administratively liable for the offense of grave misconduct.

Discourtesy in the Performance of Official Duties

The foregoing notwithstanding, the Court adopts in part the recommendation of the investigating judge that respondent should nonetheless be penalized for discourtesy in the performance of his official duties.

As a public officer and a trustee for the public, it is the ever existing responsibility of respondent to demonstrate courtesy and civility in his official actuations with the public.[16] In *Court Personnel of the Office of the Clerk of Court of the Regional Trial Court – San Carlos City v. Llamas*,[17] this Court has held that:

> Public service requires integrity and discipline. For this reason, public servants must exhibit at all times the highest sense of honesty and dedication to duty. By the very nature of their duties and responsibilities, they must faithfully adhere to, hold sacred and render inviolate the constitutional principle that a public office is a public trust; that all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency.
>
> x x x x x x x x x
>
> At all times, employees of the judiciary are expected to accord respect to the person and the rights of another, even a co-employee. Their every act and word should be characterized by prudence, restraint, courtesy and dignity. Government service is people-oriented; high-strung and belligerent behavior has no place therein.
>
> Rude and hostile behavior often translates a personal conflict into a potent pollutant of an otherwise peaceful work environment;

---

[16] *Abenojar v. Lopez*, A.M. No. P-2221, November 2, 1982, 118 SCRA 1, 4.

[17] A.M. No. P-04-1925, December 16, 2004, 447 SCRA 69.

Supreme Court E-Library

ultimately, it affects the quality of service that the office renders to the public. Letting personal hatred affect public performance is a violation of the principle enshrined in the Code of Conduct and Ethical Standards for Public Officials and Employees, a principle that demands that public interest be upheld over personal ones.

Improper behavior especially during office hours exhibits not only a paucity of professionalism at the workplace, but also great disrespect for the court itself. Such demeanor is a failure of circumspection demanded of every public official and employee. Thus, the Court looks "with great disfavor upon any display of animosity by any court employee" and exhorts every court personnel to act with strict propriety and proper decorum to earn public trust for the judiciary. Colleagues in the judiciary, including those occupying the lowliest position, are entitled to basic courtesy and respect.

In discharging its constitutional duty of supervising lower courts and their personnel, this Court cannot ignore the fact that the judiciary is composed essentially of human beings who have differing personalities, outlooks and attitudes; and who are naturally vulnerable to human weaknesses. Nevertheless, the Code of Judicial Ethics mandates that court personnel must not only be, but also be perceived to be, free from any impropriety — with respect not only to their duties in the judicial branch, but also to their behavior anywhere else.

Based on the transcript of the altercation, it is readily apparent that respondent has indeed been remiss in this duty of observing courtesy in serving the public. He should have exercised restraint in dealing with the complainant instead of allowing the quarrel to escalate into a hostile encounter. The balm of a clean conscience should have been sufficient to relieve any hurt or harm respondent felt from complainant's criticisms in the performance of his duties. On the contrary, respondent's demeanour tarnished the image not only of his office but that of the judiciary as a whole, exposing him to disciplinary measure.

Making Untruthful Statements

Lastly, the charge of making untruthful statements must also fail. While the statements mentioned in respondent's complaint-affidavit were not reflected in the transcript submitted by the

Supreme Court E-Library

complainant, this actuality is not conclusive evidence that such event did not take place. As claimed by respondent, complainant's clerk was only able to record a part of the argument. We cannot then discount the probability that there is more to the argument than what was caught on video and there remains the possibility that what respondent narrated and what complainant recorded both actually transpired.

WHEREFORE, respondent Alfredo T. Pallanan is **ADMONISHED** and **WARNED** to be always courteous in dealing with the public in the performance of official duties. A repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Peralta, Abad, Mendoza, and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 159926. January 20, 2014]

PINAUSUKAN SEAFOOD HOUSE, ROXAS BOULEVARD, INC., *petitioner, vs.* **FAR EAST BANK & TRUST COMPANY, NOW BANK OF THE PHILIPPINE ISLANDS and HECTOR I. GALURA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENT/FINAL ORDER; ELUCIDATED.— The objective of the remedy of annulment of judgment or final order is to undo or set aside the judgment or final order, and thereby grant to the petitioner an opportunity to prosecute his cause or to ventilate his defense. If the ground relied upon is lack of jurisdiction, the entire proceedings are set aside without