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SECOND DIVISION

[A.M. No. P-10-2789. July 31, 2013]
(formerly A.M. OCA IPI No. 09-3181-P)

DEVELOPMENT BANK OF THE PHILIPPINES, represented by ATTY. BENILDA A. TEJADA, *complainant, vs.* **DAVMIN V. FAMERO, Sheriff IV, Regional Trial Court, Branch 43, Roxas, Oriental Mindoro,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENT; RETURN OF THE WRIT OF EXECUTION; IT IS MANDATORY FOR A SHERIFF TO MAKE A RETURN OF THE WRIT OF EXECUTION TO THE CLERK OR JUDGE ISSUING IT; EFFECT OF THE SHERIFF'S FAILURE TO COMPLY, EXPLAINED.— "It is mandatory for a sheriff to make a return of the writ of execution to the clerk or judge issuing it." Section 14, Rule 39 of the Rules of Court explicitly provides the manner for the return of a writ of execution to the court and the requisite reports to be made by the Sheriff or officer, should the judgment be returned unsatisfied or only partially satisfied; every 30 days until the full satisfaction of a judgment, the sheriff or officer must make a periodic report to the court on the proceedings taken in connection with the enforcement of the writ. x x x [T]he respondent clearly failed to comply with the requirements of Section 14, Rule 39 of the Rules of Court when he failed to submit a return of service every thirty (30) days on the proceedings taken on the writ he was to implement. The long intervals of time between service of the writ on the occupants, to be sure, were not a full and prompt discharge of his responsibility for the speedy and efficient execution of the court's judgment. x x x The submission of the return and of periodic reports by the sheriff is a duty that cannot be taken lightly. It serves to update the court on the status of the execution and the reasons for the failure to satisfy its judgment. The periodic reporting also provides the court insights on how efficient court processes are after a judgment's promulgation. Its overall purpose is to ensure speedy execution of decisions.

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A sheriff's failure to make a return and to submit a return within the required period constitutes inefficiency and incompetence in the performance of official duties; it is conduct prejudicial to the best interest of the service.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; SIMPLE NEGLECT OF DUTY; PENALTY.—** For the respondent's lapses in the procedures in the implementation of the writ of execution, we find him guilty of simple neglect of duty, defined as the failure of an employee to give attention to the task expected of him. Under Section 52(B)(1) of the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is a less grave offense punishable by suspension from office for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense.

3. **ID.; ID.; ID.; IN THE IMPOSITION OF APPROPRIATE PENALTY, THE DISCIPLINING AUTHORITY IS ALLOWED TO CONSIDER MITIGATING CIRCUMSTANCES; IMPOSABLE PENALTY IN CASE AT BAR.—** In the imposition of the appropriate penalty, Section 53 of the same Rules allows the disciplining authority to consider mitigating circumstances in favor of the respondent. We consider in this regard length of service in the Judiciary, acknowledgment of infractions, remorse and other family circumstances, among others, in determining the proper penalty. In the present case, we find the respondent to be entitled to the following mitigating circumstances: (1) his more than 24 years of service in the Judiciary; (2) a clear record other than for the present infraction which is his first offense, (3) the resistance of the informal settlers to leave the property; (4) fear for his life; and (5) his well-grounded recognition that he could not undertake any demolition without the appropriate court order. After considering the attendant facts and the mitigating circumstances, we consider too that the efficiency of court operations may ensue if the respondent's work were to be left unattended by reason of his suspension. Thus, we deem it wise to impose the penalty of fine instead of suspension from service so that respondent can continue to discharge his assigned tasks.

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D E C I S I O N

BRION, *J.:*

In a letter complaint[1] dated June 11, 2009, the Development Bank of the Philippines (*DBP*), through its Office of the Legal Counsel, charged Sheriff IV Davmin V. Famero (*respondent*), Regional Trial Court (*RTC*), Roxas, Oriental Mindoro, Branch 43, with Gross Neglect of Duty amounting to Gross Misconduct. In support of its charges, the DBP submitted a Joint Affidavit[2] executed by Atty. Michael Vernon R. De Gorio and Mr. Rommel P. San Diego, Regional Counsel and Branch Head, respectively, of the DBP's Calapan, Mindoro Branch.

The complaint stemmed from the respondent's alleged failure/refusal to implement the Writ of Execution issued in Civil Case No. C-475, entitled *"Development Bank of the Philippines, Calapan Branch v. Damayang Buklurang Pangkabuhayan Roxas,Represented by Romeo Tejada"* (for Forcible Entry with Preliminary Mandatory Injunction and Damages). The case involved a 5,776 square meter parcel of land located at Poblacion, Roxas, Oriental Mindoro, acquired by the DBP in a public auction sale. It is now registered in its name under Transfer Certificate of Title No. T-103245 of the Register of Deeds of Oriental Mindoro.

The complaint shows that in a decision dated August 24, 2004, the RTC directed the defendant *Damayang Buklurang Pangkabuhayan Roxas* (*association*), or any person acting in its behalf or deriving any right from it, to vacate and deliver possession of the property to the plaintiff, now complainant DBP. On July 13, 2005, on the DBP's motion, the RTC issued a writ of execution[3] directing the respondent to implement the judgment. Despite repeated demands, however, the respondent

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[1] *Rollo*, pp. 1-4.

[2] *Id.* at 5-9.

[3] *Id.* at 10-11.

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allegedly failed to implement the writ. After almost four (4) years from its issuance, the writ remains to be implemented.

In its 1st Indorsement[4] dated June 29, 2009, the Office of the Court Administrator (*OCA*) required the respondent to comment on the charges against him. In his Comment[5] dated August 12, 2009, the respondent claimed that he is aware that when a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate. Thus, upon receipt of the writ, he immediately went to the property to enforce it. He did his task without asking for any centavo from the DBP or any of its representatives in going to and from the property. He even exposed himself to danger as he had been informed that some of the settlers in the property were relatives of insurgents. There were times when he received death threats in connection with his duty as a sheriff. To prove his point, he submitted a copy of a letter[6] in the vernacular from one "Ka Ikong" of the Bagong Hukbong Bayan-Lucio de Guzman Command Mindoro, asking him to stop the execution of a demolition order and threatening that, *"Ganon paman binibigyan ka namin ng isang pagkakataon para iwasto at pansamantalang itigil ang isinasagawang demolesyon sa Cagulong at isaalang-alang ang kalagayan ng abang magsasaka na walang masilungang lungga sa ginagawa ninyong karahasan hinihiling naming na inyong matugunan sa kagyat na panahon."*

He reported that several of the occupants readily left the place when he told them to vacate the property, but returned again and constructed their shanties thereon after the association filed on November 20, 2009 an urgent motion for the quashal/ lifting of the writ of execution. This development contributed to the delay in the implementation of the writ.

The respondent further stated that, in his desire to help the DBP to fully implement the writ, he suggested that it secure a

[4] *Id.* at 28.

[5] *Id.* at 32-33.

[6] *Id.* at 56.

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writ of demolition so that he could proceed with the demolition of the structures and improvements on the property. He believed that "on his own, he cannot just demolish the improvements without first securing a special order from the court."[7] He insisted that he has never been negligent in the performance of his duty. He has been in the judicial service for more than 24 years with an unblemished record that "he intends to keep till the last drop of his blood."[8]

The DBP filed a Reply-Affidavit[9] dated September 17, 2009, reiterating its allegations of gross neglect of duty against the respondent.

In a Resolution[10] dated March 24, 2010, the Court, on the OCA's recommendation, directed the re-docketing of the complaint as a regular administrative case, and required the parties to manifest to the Court within ten (10) days from notice whether they were submitting the matter for resolution based on the pleadings filed and the records submitted.

In its manifestation[11] dated May 14, 2010, the DBP responded that it was submitting the complaint on the basis of the pleadings filed and the submitted records. The respondent, on the other hand, requested in his Manifestation[12] dated July 1, 2010 that an investigation be conducted.

In accordance with the respondent's request, the complaint was referred to the Executive Judge of the RTC of Roxas, Oriental Mindoro, for investigation, report and recommendation.[13]

The DBP filed a partial motion for reconsideration of the referral,[14] alleging that it would result in undue advantage to

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[7] *Id.* at 33.

[8] *Ibid.*

[9] *Id.* at 57-68.

[10] *Id.* at 81.

[11] *Id.* at 84-85.

[12] *Id.* at 88-89.

[13] Resolution dated August 16, 2010, *id.* at 93.

[14] *Id.* at 97-100.

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the respondent and deprive the bank of an impartial investigation of the case since the referral was to a judge with jurisdiction over the area where the respondent was assigned.

The Court, in a Resolution[15] dated January 17, 2011, denied the DBP's partial motion for reconsideration for lack of merit.

Executive Judge Pastor A. de Castro heard the parties on May 19, 2011.[16] On May 31, 2011, he submitted his report,[17] finding –

> All having been told already, the court was convinced that the respondent sheriff had not totally ignored the implementation of the said Writ of Execution, per honest to goodness evaluation of the respective claim of the parties on this matter. Made as basis for this observation are the respondent's alleged implementation of the subject Writ of Execution for three (3) times in a row. One was as early as July 15, 2005 or just only two (2) days after the said writ was issued by the court on July 13, 2005, per return of service dated July 24, 2007 or more than two (2) years after its alleged service dated February 12, 2008; and third, was on January 23, 2009, per return of service dated February 3, 2009. these series of services though made under the long interval of time as shown by said returns, the court found no contradicting document in the records and/or introduced during the proceedings telling that those services did not indeed take place. Unfortunately, however, the respondent failed to successfully evict the occupants from the subject property despite those services thereby frustrating the said respondent to place the complaint bank in possession of the property involved. Be that as it may the respondent is still optimistic that he could ultimately turn over the property into the possession of the owner complainant-bank if given another chance to do it through Writ of Demolition. On this score, he said *"If given another chance I would like the DBP people to give a Writ of demolition which is much easier to enforce.* Per honest understanding of the court, the respondent would like to convey that he found it hard for himself in enforcing successfully the said Writ of Execution, but if the writ to be

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[15] *Id.* at 104.

[16] *Id.* at 111.

[17] *Id.* at 114-128.

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implemented is for demolition, he could be able to enforce it easier or without much ado.

"It is mandatory for a sheriff to make a return of the writ of execution to the clerk or judge issuing it."[18] Section 14, Rule 39 of the Rules of Court explicitly provides the manner for the return of a writ of execution to the court and the requisite reports to be made by the Sheriff or officer, should the judgment be returned unsatisfied or only partially satisfied; every 30 days until the full satisfaction of a judgment, the sheriff or officer must make a periodic report to the court on the proceedings taken in connection with the enforcement of the writ.[19] Specifically, it provides –

> Section 14. *Return of writ of execution*. – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefore. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic report shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties. [italics supplied]

In the present case, the writ of execution was issued by the RTC on July 13, 2005. Two days thereafter, or on July 15, 2005, the respondent went to the property to personally serve the writ on Romeo Tejada, then the president of the association, but Tejada was no longer connected with the association and had already left the place. Thus, on August 25, 2005, the respondent should have submitted a report to the RTC on the reason why the judgment had not been satisfied in full; this

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[18] *Arevalo v. Loria,* 450 Phil. 48, 58 (2003); and *Areola v. Patag,* A.M. No. P-06-2207, December 16, 2008, 574 SCRA 10, 13.

[19] *Calo v. Dizon,* A.M. No. P-07-2359, August 11, 2008, 561 SCRA 517, 527.

report must have been made every thirty (30) days thereafter until the judgment was satisfied in full or until its effectivity expires.

The record shows that the respondent filed his Sheriff's Return of Service only on July 24, 2007,[20] or after the lapse of two (2) years. He again sought to implement the writ on January 10, 2008, and submitted a Sheriff's Return of Service on February 12, 2008.[21] He reported that he informed the occupants of the property that they had only up to January 31, 2008 to remove their shanties and vacate the place. However, he was told by the occupants that they would not vacate the property because it was a declared timberland and that they had filed a case against the DBP for Declaratory Reliefs, Declaration of Nullity of Titles and Documents and/or Reversion with Preliminary Injunction and Restraining Order.

On January 23, 2009, he again went to the property and told Romulo Diaz, the new association president, to remove their shanties, vacate the place and deliver possession to DBP within one week or up to January 30, 2009. He returned to the place on February 2, 2009 but the structures were still there.[22]

Under these facts, the respondent clearly failed to comply with the requirements of rule 14, Rule 39 of the Rules of Court when he failed to submit a return of service every thirty (30) days on the proceedings taken on the writ he was to implement. The long intervals of time between service of the writ on the occupants, to be sure, were not a full and prompt discharge of his responsibility for the speedy and efficient execution of the court's judgment.

However, we cannot entirely blame the respondent for his failure to fully implement the writ. He could not fulfill his task solely by verbally telling the occupants to vacate the property as he encountered resistance from the informal settlers on the property who had built permanent structures thereon and refused

[20] *Id.* at 36.

[21] *Id.* at 37.

[22] Sheriff's Return of Service, *id.* at 38.

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to leave. The respondent was correct in repeatedly suggesting to the DBP to file with the RTC a motion for the issuance of a writ of demolition as the property subject of the execution contained improvements constructed or planted by the occupants.

On this point, we find merit on the respondents' statement during the hearing of the case, that "*whatever is the result of this investigation, I am willing to accept the consequences but if given another chance I would like the DBP people to give me a Writ of Demolition which is much easier to enforce.*"[23] Without a special order of the court, the respondent may not destroy, demolish or remove improvements built by the occupants of the property subject of the writ of execution. Section 10(d), Rule 39 of the Rules of Court provides:

> (d) *Removal of Improvements on property subject of execution* – When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment oblige after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court. [underscore ours; italics supplied]

The respondent, however, cannot fully be excused for his failure to make periodic reports in the proceedings taken on the writ, as mandated by Section 14, Rule 39 of the Rules of Court. The submission of the return and of periodic reports by the sheriff is a duty that cannot be taken lightly. It serves to update the court on the status of the execution and the reasons for the failure to satisfy its judgment. The periodic reporting also provides the court insights on how efficient court processes are after a judgment's promulgation. Its overall purpose is to ensure speedy execution of decisions. A sheriff's failure to make a return and to submit a return within the required period constitutes inefficiency and incompetence in the performance of official duties; it is conduct prejudicial to the best interest of the service.[24]

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[23] *Id.* at 149.

[24] *Katipunan ng Tinig sa Adhikain, Inc. v. Maceren,* A.M. No. MTJ-07-1680, November 28, 2008, 572 SCRA 354, 359-360.

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For the respondent's lapses in the procedures in the implementation of the writ of execution, we find him guilty of simple neglect of duty, defined as the failure of an employee to give attention to the task expected of him.[25] Under Section 52(B)(1) of the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is a less grave offense punishable by suspension from office for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense. In the imposition of the appropriate penalty, Section 53 of the same Rules allows the disciplining authority to consider mitigating circumstances in favor of the respondent. We consider in this regard length of service in the Judiciary, acknowledgment of infractions, remorse and other family circumstances, among others, in determining the proper penalty.[26]

In the present case, we find the respondent to be entitled to the following mitigating circumstances: (1) his more than 24 years of service in the Judiciary; (2) a clear record other than for the present infraction which is his first offense, (3) the resistance of the informal settlers to leave the property; (4) fear for his life; and (5) his well-grounded recognition that he could not undertake any demolition without the appropriate court order.

After considering the attendant facts and the mitigating circumstances, we consider too that the efficiency of court operations may ensue if the respondent's work were to be left unattended by reason of his suspension. Thus, we deem it wise to impose the penalty of fine instead of suspension from service so that respondent can continue to discharge his assigned tasks.[27]

WHEREFORE, for Simple Neglect of Duty, respondent Davmin V. Famero, Sheriff IV of the Regional Trial Court of

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[25] *Pesongco v. Estoya,* 519 Phil. 226, 242-243 (2006).

[26] *Beltran v. Monteroso,* A.M. No. P-06-2237, December 4, 2008, 573 SCRA 1, 7.

[27] *Juario v. Labis,* A.M. No. P-07-2388, June 30, 2008, 556 SCRA 540, 544-545.

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Roxas, Oriental Mindoro, Branch 43, is FINED in the amount of Two Thousand Pesos (₱2,000.00), with the **WARNING** that any repetition of this offense or of similar acts shall be dealt with more severely.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 147257. July 31, 2013]

SPOUSES JESUS DYCOCO and JOELA E. DYCOCO, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, NELLY SIAPNO-SANCHEZ and INOCENCIO BERMA,**[1] *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL BY *CERTIORARI* UNDER RULE 45; THE EXISTENCE AND AVAILABILITY OF THE RIGHT OF APPEAL PROHIBITS THE RESORT

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[1] Petitioner-spouses named seven private respondents in their petition, namely, Eusebio Siapno, Rogelio Siapno, Nelly Siapno-Sanchez, Felix Sepato, Sr., Leonora Talagtag, Pablo Bonde, Sr. and Inocencio Berma. A reading of the petition, however, shows that the petition is against Nelly Siapno-Sanchez and Inocencio Berma. In particular, only Nelly Siapno-Sanchez and Inocencio Berma were the appellants in DARAB Case No. 5573, which is the subject of the Court of Appeals case involved in this petition. Also, petitioner-spouses state that Eusebio Siapno has fully paid his obligation on June 27, 1996 (Exhibit "S" of petition, *rollo*, p. 104). On the other hand, in a Manifestation dated September 23, 2004 (*rollo*, pp. 256-257), petitioner-spouses have dropped Felix Sepato, Sr. and Leonora Talagtag as respondents in this case.