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SO ORDERED.

Narvasa, C.J., Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, and *Purisima, JJ.,* concur.

Regalado, J., no part; On official leave during deliberations.

EN BANC

[A.M. No. P-98-1276. September 25, 1998]

EDGAR P. REMOLLO, *complainant, vs.* **ATTY. THELMA A. GARCIA, Clerk of Court, Regional Trial Court, Dumaguete City,** *respondent.*

SYNOPSIS

Complainant charged respondent Atty. Thelma A. Garcia, Clerk of Court and *Ex Officio* Provincial Sheriff, Regional Trial Court of Negros Oriental, with misfeasance, bias, ignorance of the law and usurpation of judicial functions. The complainant alleged that respondent persistently refused to perform her ministerial duty to execute a Sheriff's Final Deed of Sale over forty-three (43) parcels of land in Negros Oriental sold at public auction despite the expiration of the period of redemption. Respondent also refused to execute the Final Deed of Sale despite the final and executory decision of the Court of Appeals in an appeal interposed by complainant and his sister, Rosario R. Habana. Complainant also alleged that respondent's refusal was a clear manifestation of bias in favor of respondent's deceased brother-in-law, Julio P. Garcia and his wife Josefa, who were the judgment debtors in an action for possession, ejectment, receivership and damages filed by complainants' parents, Proceso and Rosario Remollo against spouses Julio Garcia and Josefa Garcia. The Office of the Court Administrator recommended the imposition of a ₱5,000.00 fine upon respondent

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after finding her remiss in the performance of her ministerial functions.

The Supreme Court found respondent guilty of gross misconduct in refusing to execute a sheriff's final deed of sale as directed in a final judgment of the trial court and using her official position to favor party-litigants who are her close relatives. By her actuations, respondent has not only caused anguish and damage to the complainant for the unwarranted delay in the execution of the Sheriff's Final Deed of Sale, but more importantly, she has placed the court where she works in a bad light and has undermined the faith of a party-litigant and of the public in general in the court's administration of justice.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; CLERKS OF COURT AS *EX OFFICIO* PROVINCIAL SHERIFFS; REFUSAL TO EXECUTE THE SHERIFF'S FINAL DEED OF SALE DESPITE THE CLEAR MANDATE IN SECTION 35, RULE 39 OF RULES OF COURT AS WELL AS CHAPTER VIII, SEC. D., PAR. (2) (u), OF MANUAL FOR CLERKS OF COURT AND AS DIRECTED IN FINAL JUDGMENT OF TRIAL COURT CONSTITUTE GROSS MISCONDUCT.** — We agree with the OCA that respondent is administratively liable for her failure to execute the Sheriff's Final Deed of Sale. However, we are unable to agree with the recommended penalty. From the records it is clear that respondent was not simply remiss or neglectful of her duties as *Ex Officio* Provincial Sheriff. On the contrary, and in fact, she intentionally refused to execute a Sheriff's Final Deed of Sale despite the clear mandate in Sec. 35, Rule 39 of the Rules of Court, as well as Chapter VIII, Sec. D, par. (2)(u), of the Manual for Clerks of Court that the Sheriff shall execute the corresponding deed of conveyance in favor of the purchaser upon the expiration of the twelve-month period given the judgment debtor within which to redeem properties sold at public auction.

2. **ID.; ID.; ID.; ID.; RESPONDENT'S LIABILITY IS COMPOUNDED BY FACT THAT SHE USED HER OFFICIAL POSITION FOR PERSONAL AND SELFISH ENDS BY FAVORING PARTY-**

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LITIGANTS WHO ARE HER KIN. — In the case of respondent, her liability is compounded by the fact that she used her official position for personal and selfish ends, *i.e.*, favoring party-litigants who are her kin. Under the *Code of Conduct and Ethical Standards for Public Officials and Employees,* public officials and employees are mandated to always uphold public interest over and above personal interests in consonance with the time-honored principle of a public office being a public trust. Specifically, they are prohibited from dispensing or extending undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to strictly confidential positions or as coterminous members of their personal staff. By her actuations respondent has not only caused anguish and damage to complainant for the unwarranted delay in the execution of the Sheriff's Final Deed of Sale, but more importantly, she placed the court where she works in a bad light and has undermined the faith of a party-litigant and of the public in general in that court's administration of justice, hence warranting the administrative penalty herein imposed.

D E C I S I O N

BELLOSILLO, *J.*:

EDGAR P. REMOLLO, in a sworn letter-complaint dated 4 March 1997,[1] charged respondent Atty. Thelma A. Garcia, Clerk of Court and *Ex Officio* Provincial Sheriff, Regional Trial Court of Negros Oriental, with misfeasance, bias, ignorance of the law and usurpation of judicial functions. The complainant alleged that respondent persistently refused to perform her ministerial duty to execute a Sheriff's Final Deed of Sale over forty-three (43) parcels of land in Negros Oriental sold at public

[1] This complaint was originally filed by Edgar P. Remollo on 5 March 1992, docketed as A.M. No. P-92-722, but was provisionally dismissed by the Court on 14 September 1992 to await the outcome of Civil Case No. 10109, an action for *mandamus* filed on 11 December 1991 by the same complainant Edgar P. Remollo and his sister Rosario R. Habaña with the RTC of Dumaguete City, to compel respondent Atty. Thelma A. Garcia to execute the Sheriff's Final Deed of Sale.

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auction in 1986 despite the expiration of the period for their redemption on 27 October 1989; that such refusal was a clear manifestation of bias in favor of respondent's deceased brother-in-law Julio P. Garcia and his wife Josefa who were the judgment debtors in Civil Case No. 5221; and, that respondent still refused to execute the Final Deed of Sale despite the final and executory decision dated 26 June 1996 of the Court of Appeals in CA-G. R. SP-34649,[2] an appeal interposed by complainant and his sister Rosario R. Hạbaña from Civil Case No. 10109 for *mandamus*, the dispositive portion of which pertinently reads —

> x x x the judgment of respondent court dated May 4, 1994, is hereby REVERSED and SET ASIDE, and another one is entered *ordering ATTY. THELMA A. GARCIA, Clerk of Court and Ex-Officio Provincial Sheriff of Negros Oriental, to execute the Sheriff's Final Deed of Sale of the subject parcels of land in favor of the petitioners within thirty (30) days after the finality of this decision* in order to avoid any further delay in the enforcement, execution and satisfaction of the judgment in Civil Case No. 5221, which, as affirmed by the Supreme Court in G.R. No. 53429, has become final and executory on August 23, 1985 (italics supplied).[3]

As gleaned from the decision of the Court of Appeals, this administrative complaint traces its roots to Civil Case No. 5221, an action for possession, ejectment, receivership and damages filed by complainant's parents Proceso and Rosario Remollo against respondent's brother-in-law Julio Garcia and his wife Josefa.

On 28 March 1974 judgment was rendered in favor of complainant's parents declaring respondent's brother-in-law and his wife to be possessors and planters in bad faith. The decision became final and executory on 23 August 1985 after it was affirmed by this Court on 13 June 1980.[4]

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[2] *Rosario Remollo Habaña and Edgar Remollo v. Clerk of Court and Ex Officio Provincial Sheriff of Negros Oriental.*

[3] Decision penned by Justice Artemon D. Luna, concurred in by Justices Ramon A. Barcelona and Portia Aliño Hormachuelos, prom. 26 June 1996; *Rollo*, pp. 108-122.

[4] *Julio A. Garcia and Josefa Villegas vs. Court of Appeals, Proceso Remollo and Rosario P. Remollo*, G. R. No. 53429.

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To satisfy the money judgment, forty-three (43) parcels of land belonging to the Garcia spouses were sold at public auction for ₱229,487.10. The highest bidders were the heirs of the deceased Remollo spouses who were the judgment creditors, namely: Maria Azucena, Rosario, Proceso, Jr., Rufinita and herein complainant Edgar, all surnamed Remollo. A Sheriff's Certificate of Sale was issued on 12 February 1986 by then Clerk of Court and *Ex Officio* Provincial Sheriff, Atty. Benjamin V. Diputado, and registered with the Register of Deeds on 27 October 1988. However, despite the expiration of the twelve-month period for redemption on 27 October 1989, respondent Atty. Garcia, who was then already the Clerk of Court and *Ex Officio* Provincial Sheriff, refused to execute a Sheriff's Final Deed of Sale allegedly because the heirs of the judgment debtors, who happened to be her nephews and nieces, were making partial payments of the judgment obligation by paying the Remollo account with the Philippine National Bank. This prompted Rosario, Maria Azucena and Edgar Remollo, three (3) of the judgment creditors' heirs, to execute an Affidavit of Consolidation in lieu of the Sheriff's Final Deed of Sale.

On the other hand, respondent executed a Certificate of Redemption dated 11 June 1990 which the heirs of the judgment debtors presented for registration with the Register of Deeds on 20 December 1991. When their Affidavit of Consolidation was denied registration on the ground that such a document was proper only in foreclosures of mortgage, siblings Edgar and Rosario Remollo instituted Civil Case No. 10109 for *mandamus* as well as an administrative case with this Court[5] to compel respondent to execute the Sheriff's Final Deed of Sale. On 14 September 1992 the administrative case docketed as A.M. No. P-92-722 was provisionally dismissed to await the outcome of the petition for *mandamus*. However when respondent allegedly still refused to execute the Sheriff's Final Deed of Sale despite the Court of Appeals' directive for her to do so in CA-G.R. SP-34649, the appealed *mandamus* case, complainant Edgar P. Remollo refiled this administrative complaint against respondent.

[5] See Note 1.

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In her *Comment* filed on 24 October 1997 respondent alleged that she already complied with the decision of the Court of Appeals when she executed and signed on 5 March 1997 the subject Sheriff's Final Deed of Sale in favor of Rosario, Edgar, Maria Azucena, Rufinita, Proceso Jr. and Arthur, all surnamed Remollo, in their capacity as heirs of the judgment creditors in Civil Case No. 5221; and, that complainant was informed through his counsel of the execution of the Deed of Sale by means of a letter dated 17 March 1997 of the Branch Clerk of Court, RTC-Br. 38, Dumaguete City. Respondent contended that she did not execute the Sheriff's Final Deed of Sale when the period for redemption first expired on 27 October 1989 because of on-going negotiations between complainant's other siblings, namely, Maria Azucena, Proceso Jr., Rufinita and Arthur, on one hand, and the heirs of the judgment debtors on the other, for the redemption of the parcels of land.

In his *Reply* to respondent's *Comment* complainant countered that the agreement for the redemption of the parcels of land after the expiration of the one-year period for redemption on 27 October 1989 was not sanctioned by him nor by his sister Rosario, hence, it was still ministerial for respondent to execute the Deed of Sale. In addition, complainant averred that the Sheriff's Final Deed of Sale executed on 5 March 1997 did not comply with the Court of Appeals' decision for respondent "*to execute the Sheriff's Final Deed of Sale x x x in favor of the petitioners x x x*" as it was executed in favor of all the Remollo siblings instead of only in his name and that of his sister Rosario being the only petitioners in Civil Case No. 10109 for *mandamus*. Furthermore, it contained a rider not ordered by the Court of Appeals, thus —

HOWEVER, MRS. AZUCENA R. VDA. DE QUANZON, ARTHUR REMOLLO, PROCESO REMOLLO, JR., and RUFINITA R. ESPINA, abandon, quit and waive all their rights, shares, interests and participation of (sic) the above-described parcels of land together with the improvements existing thereon in favor of defendant-judgment debtors JULIO GARCIA, ET AL., in a document entitled AFFIDAVIT OF WAIVER duly notarized by Notary Public ROTHELIO LUMJOD x x x attached and form an integral part hereof.

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Complainant asked that respondent be meted the maximum penalty under the law for continually and unjustifiably denying them the fruit of their legal victory for nearly a decade despite court orders for her to do so.

On 24 November 1997 we referred this case to the Office of the Court Administrator (OCA) for evaluation, report and recommendation. In its report dated 4 March 1998 the OCA recommended the imposition of a ₱5,000.00-fine upon respondent after finding her to be remiss in the performance of her ministerial functions.

We agree with the OCA that respondent is administratively liable for her failure to execute the Sheriff's Final Deed of Sale. However we are unable to agree with the recommended penalty. From the records it is clear that respondent was not simply remiss or neglectful of her duties as *Ex Officio* Provincial Sheriff. On the contrary, and in fact, she intentionally refused to execute a Sheriff's Final Deed of Sale despite the clear mandate in Sec. 35, Rule 39 of the Rules of Court,[6] as well as Chapter VIII, Sec. D, par. (2) (u), of the Manual for Clerks of Court that the sheriff shall execute the corresponding deed of conveyance in favor of the purchaser upon the expiration of the twelve-month period given the judgment debtor within which to redeem properties sold at public auction.

Respondent attempted to justify her inaction with the claim that the heirs of the judgment debtors — who are her nephews and nieces — were allegedly negotiating with the heirs of the judgment creditors-purchasers for the redemption of the properties beyond the twelve-month period. However, respondent was well aware that only some of the judgment creditors, namely, Maria Azucena, Proceso Jr. and Arthur, were in such an agreement with the heirs of the judgment debtors, and that at least two (2) of the judgment creditors-purchasers, namely, herein complainant and his sister Rosario Habaña, were opposed to giving the heirs of the judgment debtors an extension of the

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[6] Now Sec. 33, Rule 39, 1997 Rules of Civil Procedure.

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redemption period as in fact they had been demanding that respondent execute the Final Deed of Sale.

It is well-settled that a sheriff's functions are purely ministerial, not discretionary.[7] The *Manual for Clerks of Court* categorically states that —

> *Sheriffs are ministerial officers. They are agents of the law and not agents of the parties, neither of the creditor nor of the purchaser at a sale conducted by him.* It follows, therefore, that the sheriff can make no compromise in an execution sale x x x It is not his duty to decide on the truth or sufficiency of the processes committed to him for service (italics ours).

As a ministerial officer, a sheriff ought to know that it is his duty, in the absence of instructions, to faithfully perform what is incumbent upon him. Moreover, he is under obligation to conduct himself, at all times, with propriety; but most of all, be above suspicion[8] for the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the personnel who work thereat, from the judge to the lowest of its personnel.[9]

In this case, respondent not only refused to perform a specific duty imposed upon her, but favored the heirs of the judgment debtors (her nephews and nieces) further by executing a Certificate of Redemption on 11 June 1990 some eight (8) months after the period for redemption had already expired knowing fully well that it is ministerial for a sheriff to execute a certificate of redemption only when the tender payment in the correct amount is made within the period for the purpose,[10] *i.e.*, twelve

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[7] *Evangelista vs. Penserga*, A.M. No. P-92-766, 27 March 1995, 242 SCRA 702.

[8] *De Labaco vs. Parale*, A.M. No. P-66-A, 14 December 1981, 110 SCRA 25.

[9] *Dicdican vs. Fernan, Jr.*, A.M. No. P-96-1231, 12 February 1997, 268 SCRA 69.

[10] *Morales vs. CFI of Cavite, Br. V*, No. L-47125, 29 December 1986, 146 SCRA 373.

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(12) months[11] from the date of registration of a certificate of sale. Worse, respondent falsely stated in the Certificate of Redemption that she was reconveying the subject parcels of land to the heirs of the judgment debtors "*with authority of the plaintiff judgment creditor(s)*" when complainant Edgar Remollo and his sister Rosario Habaña, two (2) of the heirs of the judgment creditors, never gave her such authority, and were in fact demanding the execution of a final deed of sale in their favor.

Even after the Certificate of Redemption was properly denied registration by the Register of Deeds[12] for the very reason that it was "dated and presented for registration long after and beyond the period for redemption declared in the Sheriff's Certificate of Sale,"[13] respondent still refused to execute the proper deed and allowed herself to become the respondent in a petition for *mandamus* (Civil Case No. 10109) which herein complainant and his sister Rosario Habaña were constrained to file against her. In fact, it was only on 5 March 1997 that she executed a Sheriff's Final Deed of Sale despite the fact that the directive of the Court of Appeals dated 26 June 1996 in CA-G.R. SP-34649, the appealed *mandamus* case, was for her to "*execute the Sheriff's Final Deed of Sale x x x within thirty (30) days after the finality of this decision in order to avoid any further delay in the enforcement, execution and satisfaction of the judgment in Civil Case No. 5221, which x x x became final and executory on August 23, 1985.*" The decision attained finality on 18 July 1996.[14]

In *Padilla vs. Arabia*[15] we dismissed a deputy sheriff for serious misconduct and dereliction of duty when he failed to

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[11] Now one (1) year under Sec. 33, Rule 39, 1997 Rules of Civil Procedure.

[12] Affirmed by the Land Registration Authority on 23 March 1994 in Consulta No. 1986.

[13] *Rollo*, p. 25.

[14] Order issued on 11 March 1998 in Civil Case No. 10109 by Judge Alfonso P. Briones, RTC-Br. 38, Negros Oriental.

[15] A.M. No. 93-774, 8 March 1995, 242 SCRA 227.

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enforce writs of execution and instead granted the judgment debtor a grace period within which to settle his obligation. In the case of respondent, her liability is compounded by the fact that she used her official position for personal and selfish ends, *i.e.*, favoring party-litigants who are her kin. Under the *Code of Conduct and Ethical Standards for Public Officials and Employees*,[16] public officials and employees are mandated to always uphold public interest over and above personal interests in consonance with the time-honored principle of a public office being a public trust.[17] Specifically, they are prohibited from dispensing or extending undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to strictly confidential positions or as coterminous members of their personal staff.[18] By her actuations respondent has not only caused anguish and damage to the complainant for the unwarranted delay in the execution of the Sheriff's Final Deed of Sale, but more importantly, she has placed the court where she works in a bad light and has undermined the faith of a party-litigant and of the public in general in that court's administration of justice,[19] hence warranting the administrative penalty herein imposed.

However, before this Court could dispose of this case, respondent compulsorily retired on 28 October 1997, which effectively precluded it from actually imposing the proper penalty which respondent otherwise deserves. But, we are not prevented from ordering that her retirement benefits, which the Court earlier ordered withheld, be forfeited in part for her malfeasance

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[16] RA No. 6713, "An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, to Uphold the Time-Honored Principle of Public Office Being a Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations thereof and for Other Purposes.

[17] Sec. 4, par. (A), subpar. (a), RA No. 6713.

[18] Sec. 4, par (A), subpar. (c), *id.*

[19] *Recto vs. Racelis*, A.M. No. P-182, 30 April 1996, 70 SCRA 438.

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and misfeasance in office. In fact, this is not the first time that respondent has taken advantage of her official position to favor party-litigants closely related to her. In *Ponce de Leon vs. Atty. Thelma A. Garcia*,[20] the Court reprimanded respondent for her unauthorized act of transferring *motu proprio* Civil Case No. 9803 on ground of improper venue to the RTC, Bais City, instead of merely including it in the raffle of cases, to favor the defendants therein among whom were her husband Tomas A. Garcia and brother-in-law Jose A. Garcia. Thus, we said therein —

> There is nothing wrong with respondent's act of protecting the interest of her husband in the co-ownership. After all, her husband's income therefrom is conjugal in character and would benefit their family. However, her over-zealousness had transcended the bounds of propriety. For her actuations, respondent should be reprimanded.

WHEREFORE, respondent Atty. Thelma A. Garcia, former Clerk of Court and *Ex-Officio* Provincial Sheriff of Negros Oriental, is found *GUILTY* of gross misconduct in refusing to execute a Sheriff's Final Deed of Sale over certain parcels of land as directed in a final judgment of the trial court, affirmed by this Court in G.R. No. 53429, which affirmance had in turn become final and executory, thus using her official position to favor party-litigants who are her close relatives. Consequently, this Court imposes upon respondent a fine of ₱30,000.00 to be deducted from her retirement benefits earlier ordered withheld pending termination of the instant case. After the deduction is made, let the rest of the retirement benefits of respondent be released to her.

SO ORDERED.

Narvasa, C. J., Regalado, Davide, Jr., Romero, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Martinez, Quisumbing, and *Purisima, JJ.*, concur.

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[20] Second Division Resolution dated 27 January 1992, A.M. No. P-91-544.