Supreme Court E-Library

IN VIEW OF THE FOREGOING, the Court finds respondent Isabel A. Siwa, former Court Stenographer, Branch 16, Metropolitan Trial Court, City of Manila, **GUILTY** of Gross Neglect of Duty. In lieu of dismissal from service, which may no longer be imposed owing to her retirement, as a penalty for her offense, all her retirement benefits, except accrued leave credits, are hereby **FORFEITED**. She is further disqualified from any reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations and financial institutions. This judgment is immediately executory.

SO ORDERED.

Carpio,[*] *Leonardo-de Castro, Brion, del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen,* and *Jardeleza, JJ.,* concur.

Sereno, C.J., Peralta, and *Bersamin, JJ.,* on official leave.

EN BANC

[A.M. No. P-14-3272. November 11, 2014]
(Formerly OCA I.P.I. No. 14-4264-P)

FELICIANO O. FRANCIA, *complainant, vs.* **ROBERTO C. ESGUERRA, Sheriff IV, Regional Trial Court, Branch 14, Davao City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; SHERIFF; DUTIES IN IMPLEMENTATION OF WRITS.— The duties of sheriffs in the implementation of writs are explicitly laid down

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[*] Acting Chief Justice per Special Order No. 1860.

Supreme Court E-Library

in Section 10, Rule 141 of the Rules of Court, as amended, which reads: Sec. 10. Sheriffs, process servers and other persons serving processes. – 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 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 within 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, the sheriff's expenses shall be taxed as cost against the judgment debtor.

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.—** We held in *Bernabe v. Eguia* that acceptance of any other amount is improper, even if it were to be applied for lawful purposes. Good faith on the part of the sheriff, or lack of it, in proceeding to properly execute its mandate would be of no moment, for he is chargeable with the knowledge that being the officer of the court tasked therefore, it behooves him to make due compliances. In the implementation of the writ of execution, only the payment of sheriff's fees may be received by sheriffs. They are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. To do so would be inimical to the best interests of the service because even assuming *arguendo* 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. In fact, even "reasonableness" of the amounts charged, collected and received by the sheriff is not a defense where the procedure laid down in Section 10, Rule 141 of the Rules of Court has been clearly ignored.

3. **ID.; ID.; ID.;PROCEDURE IN IMPLEMENTATION OF WRITS.—** Respondent sheriff is charged with neglect of duty. In the

Supreme Court E-Library

implementation of writs, sheriffs are mandated to follow the procedure under Section 14, Rule 39 of the Rules, which reads: SEC. 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 reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

4. ID.; ID.; ID.; GROSS NEGLECT AND GROSS INEFFICIENCY.— We have previously ruled that failure of the sheriff to carry out what is a purely ministerial duty, to follow well-established rules in the implementation of court orders and writs, to promptly undertake the execution of judgments, and to accomplish the required periodic reports, constitute gross neglect and gross inefficiency in the performance of official duties.

D E C I S I O N

***PER CURIAM*:**

This case stemmed from the letter-complaint[1] dated 26 April 2013 filed by Feliciano O. Francia (Feliciano) charging Roberto C. Esguerra (respondent sheriff), Sheriff IV, Regional Trial Court (RTC), Branch 14, Davao City with neglect of duty in connection with his failure to implement the Writ of Execution issued in Civil Case No. 21-584-F-2009 for Unlawful Detainer.

Feliciano is the plaintiff in the Unlawful Detainer case filed before the Municipal Trial Court in Cities (MTCC), Davao City. On 2 August 2010, the MTCC rendered a Decision[2] in favor

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[1] *Rollo*, p. 6.

[2] *Id*. at 7-9.

Supreme Court E-Library

of Feliciano and ordered the defendants and their heirs, assigns and those acting for and in their behalf to, among others, vacate the property subject matter of the case.

The defendants filed an appeal which was raffled to RTC, Branch 14, Davao City. In a Decision[3] dated 31 January 2011, the RTC affirmed *in toto* the Decision of the MTCC. The Motion for Reconsideration filed by defendants was denied in an Order dated 2 July 2012.

On 26 April 2012, a Writ of Execution[4] was issued by the RTC commanding respondent sheriff to implement the dispositive portion of the affirmed MTCC Decision and to make a return within sixty (60) days from receipt thereof. The writ was received by respondent sheriff on 2 May 2012.

In his complaint, Feliciano alleged that respondent sheriff asked ₱3,000.00 from him for expenses which he readily gave. He even offered respondent sheriff another ₱15,000.00 for the full satisfaction of the writ. Despite the lapse of more than one (1) year, however, the writ remained unimplemented. This prompted him to file the instant administrative case against respondent sheriff for neglect of duty.

The Office of the Court Administrator (OCA) referred the letter-complaint to Judge George Omelio (Judge Omelio), RTC, Branch 14, Davao City for appropriate action or comment.[5] Judge Omelio issued a memorandum directing respondent sheriff to comment within five (5) days from receipt of the same on 14 June 2013.

In his Explanation,[6] respondent sheriff acknowledged receiving the ₱3,000.00 from Feliciano and contended that the amount was for legal expenses. He reported that he tried on several occasions to convince the defendants to voluntarily vacate the place, subject matter of the case, but his efforts proved futile.

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[3] *Id.* at 13-15.

[4] *Id.* at 19.

[5] *Id.* at 20.

[6] *Id.* at 28-29.

Supreme Court E-Library

He maintained that Feliciano was aware of all the actions he has undertaken.

He contended that defendants insisted on staying in the subject place. Thus, he requested for police assistance in the implementation of the writ and in the service of the Notice to Vacate.

He averred that by the time the request for police assistance was approved, Feliciano could no longer be found. He further averred that as of date of his letter-explanation, he is still waiting for Feliciano to appear so that he could proceed with the implementation of the Writ of Execution.

In its Report[7] dated 6 March 2014, the OCA found respondent sheriff guilty of gross neglect of duty. It recommended that respondent sheriff be dismissed from the service with forfeiture of retirement benefits except accrued leave credits and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

We agree with the findings of the OCA that respondent sheriff is administratively liable. We, however, find him also liable for other offenses.

The duties of sheriffs in the implementation of writs are explicitly laid down in Section 10, Rule 141 of the Rules of Court, as amended, which reads:

> Sec. 10. Sheriffs, process servers and other persons serving processes. – x x x
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> 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 approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such**

[7] *Id.* at 1-4.

Supreme Court E-Library

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 within 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, the sheriff's expenses shall be taxed as cost against the judgment debtor. (Emphasis supplied)

The aforesaid rule enumerated the steps to be followed in the payment and disbursement of fees for the execution of a writ, to wit: (1) the sheriff must prepare and submit to the court an estimate of the expenses he would incur; (2) the estimated expenses shall be subject to court approval; (3) the approved estimated expenses shall be deposited by the interested party with the Clerk of Court, who is also the *ex-officio* sheriff; (4) the Clerk of Court shall disburse the amount to the executing sheriff; (5) the executing sheriff shall thereafter liquidate his expenses within the same period for rendering a return on the writ; and (6) any amount unspent shall be returned to the person who made the deposit. It is clear from the enumeration that sheriffs are not authorized to receive direct payments from a winning party. Any amount to be paid for the execution of the writ should be deposited with the Clerk of Court and it would be the latter who shall release the amount to the executing sheriff. The amount deposited should be spent entirely for the execution only and any remainder of the amount should be returned.

Respondent sheriff acknowledged his receipt of the ₱3,000.00 from Feliciano and explained that it was for legal expenses. Other than his vague explanation, there was no accounting of the ₱3,000.00 he admitted to have received. In fact, there was also no showing that a liquidation was prepared and submitted to the court as required under the rules.

Even if Feliciano was amenable to the amount requested or that the money was given voluntarily, such would not absolve respondent sheriff from liability because of his failure to secure

Supreme Court E-Library

the court's prior approval. We held in *Bernabe v. Eguia*[8] that acceptance of any other amount is improper, even if it were to be applied for lawful purposes. Good faith on the part of the sheriff, or lack of it, in proceeding to properly execute its mandate would be of no moment, for he is chargeable with the knowledge that being the officer of the court tasked therefore, it behooves him to make due compliances. In the implementation of the writ of execution, only the payment of sheriff's fees may be received by sheriffs. They are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. To do so would be inimical to the best interests of the service because even assuming *arguendo* 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. In fact, even "reasonableness" of the amounts charged, collected and received by the sheriff is not a defense where the procedure laid down in Section 10, Rule 141 of the Rules of Court has been clearly ignored.

The rules on sheriff's expenses are clear-cut and do not provide procedural shortcuts. A sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps otherwise, it would amount to dishonesty and extortion.[9] And any amount received in violation of Section 10, Rule 141 of the Rules of Court constitutes unauthorized fees.

Respondent sheriff is charged with neglect of duty. In the implementation of writs, sheriffs are mandated to follow the procedure under Section 14, Rule 39 of the Rules, which reads:

SEC. 14. Return of writ of execution. – The writ of execution shall be returnable to the court issuing it immediately after the judgment

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[8] 458 Phil. 97, 105 (2003).

[9] *Hofer v. Tan*, 555 Phil. 168, 179 (2007); *Judge Tan v. Paredes*, 502 Phil. 305, 313 (2005); *Lopez v. Ramos*, 500 Phil. 408, 415 (2005); *Adoma v. Gatcheco*, 489 Phil. 273, 278 (2005); *Alvarez, Jr. v. Martin*, 458 Phil. 85, 95-96 (2003); *Abalde v. Roque, Jr.*, 448 Phil. 246, 251 (2003); *Danao v. Franco, Jr.*, 440 Phil.181, 185 (2002).

Supreme Court E-Library

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 reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

Respondent sheriff would want us to believe that his failure to implement the writ was brought about by circumstances beyond his control. He maintained that the defendants were adamant in staying in the subject property. Thus, he had to seek police assistance which he obtained only after several months of waiting. Respondent sheriff further alleged that he thereafter waited for Feliciano to appear before him so that he could proceed with the implementation of the writ.

We find respondent sheriff's contention untenable. His being remiss in his duties was underscored by the fact that a year had passed without the writ being implemented. If his contention was true, then he could have still complied with his duty by making a return on the writ within 30 days from his receipt thereof and submitting periodic reports every 30 days thereafter until it was satisfied in full. Respondent sheriff failed in accomplishing any of these. We held in *Mendoza v. Tuquero*[10] that sheriffs have no discretion on whether or not to implement a writ. There is no need for the litigants to "follow-up" its implementation. When writs are placed in their hands, it is their ministerial duty to proceed with reasonable celerity and promptness to execute them in accordance with their mandate. Unless restrained by a court order, they should see to it that the execution of judgments is not unduly delayed.[11] Respondent sheriff's failure to implement the writ gives rise to presumption

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[10] 412 Phil. 435, 441 (2001).

[11] *Atty. Lacambra, Jr. v. Perez*, 580 Phil. 33, 39 (2008).

Supreme Court E-Library

that he was waiting for additional financial consideration from Feliciano or that he has already received a bribe from the losing party to stall the writ's implementation. We have previously ruled that failure of the sheriff to carry out what is a purely ministerial duty, to follow well-established rules in the implementation of court orders and writs, to promptly undertake the execution of judgments, and to accomplish the required periodic reports, constitute gross neglect and gross inefficiency in the performance of official duties.[12]

Records reveal that this is not the first offense of respondent sheriff. In A.M. No. P-07-2370 dated 14 September 2007, he was suspended by the Court for one (1) month for dereliction of duty. Records further reveal that another charge of neglect of duty (OCA IPI No. 12-3880-P) is pending before the Legal Office, OCA.[13]

As a final note, it cannot be over-emphasized that sheriffs are ranking officers of the court. They play an important part in the administration of justice – execution being the fruit and end of the suit, and the life of the law. In view of their exalted position as keepers of the faith, their conduct should be geared towards maintaining the prestige and integrity of the court.[14] Respondent sheriff failed to live up to this standard. It is evident that he never learned from his previous infraction. Having tarnished the good image of the judiciary, he should not be allowed to stay a minute longer in the service.

WHEREFORE, we find respondent Roberto C. Esguerra, Sheriff IV, Regional Trial Court, Branch 14, Davao City **GUILTY** of dishonesty, gross neglect of duty and gross inefficiency in the performance of official duties. Accordingly, he is **DISMISSED** from the service, with forfeiture of all his retirement benefits, except accrued leave credits, if any, and with prejudice to re-employment in any branch or instrumentality

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[12] *Anico v. Pilipiña,* A.M. No. P-11-2896, 2 August 2011, 655 SCRA 42, 52.

[13] *Rollo,* p. 2.

[14] *Escobar vda. De Lopez v. Atty. Luna,* 517 Phil. 467, 478-479 (2006).

Supreme Court E-Library

of the government, including government-owned or controlled corporations.

SO ORDERED.

Carpio,[*] *Velasco, Jr., Leonardo-de Castro, Brion, del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen,* and *Jardeleza, JJ.,* concur.

Sereno, C.J., Peralta and *Bersamin, JJ.,* on official leave.

EN BANC

[G.R. No. 125346. November 11, 2014]

LA SUERTE CIGAR & CIGARETTE FACTORY, *petitioner, vs.* **COURT OF APPEALS and COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

[G.R. Nos. 136328-29. November 11, 2014]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **FORTUNE TOBACCO CORPORATION,** *respondent.*

[G.R. No. 144942. November 11, 2014]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **LA SUERTE CIGAR & CIGARETTE FACTORY,** *respondent.*

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[*] Acting Chief Justice per Special Order No. 1860 dated 4 November 2014.