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EN BANC

[A.M. No. 2796-P. August 7, 1985]

JOSE L. MOYA and REYNALDO B. PEREZ, *complainants, vs.* **RENATO A. BASSIG,** *respondent.*

SYLLABUS

ADMINISTRATIVE LAW; COURT PERSONNEL; DEPUTY SHERIFF; DERELICTION IN THE PERFORMANCE OF DUTY.— It is undisputable that the most difficult phase of any proceeding is the execution of judgment. Hence, the officers charged with the delicate task of the enforcement and/or implementation of the same must, in the absence of a restraining order, act with considerable dispatch so as not to unduly delay the administration of justice; otherwise, the decisions, orders or other processes of the courts of justice and the like would be futile. Stated differently, the judgment if not executed would be just an empty victory on the part of the prevailing party.

D E C I S I O N

***PER CURIAM*:**

This is an administrative complaint instituted by Jose L. Moya and Reynaldo B. Perez against Renato A. Bassig, Deputy Sheriff of the Court of First Instance of Rizal, Branch XVII, Quezon City (now Regional Trial Court, NCR, Branch LXXXVII, Quezon City) for violation of the Rules of Court and of judicial orders, dereliction of duty and abuse of authority for his failure to sell at public auction personal properties levied upon by him under a writ of execution issued in Civil Case No. Q-16322 of the then Court of First Instance of Rizal at Quezon City, entitled: "*Reynaldo B. Perez, et al. versus Benjamin Limson, et al.*"

In Our 1st Indorsement, dated April 15, 1982, through the Office of the Court Administrator, We required respondent Bassig to comment on the charges filed against him.

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On May 6, 1982, respondent submitted his comment/explanation. He averred that he did not enforce the sale because of the pendency of Limsons' appeal to the then Court of Appeals from the order of the trial court, dated January 5, 1981, which was docketed as CA G.R. No. 68550.

After an initial evaluation of the case, We referred the matter to Hon. Ernani Cruz Paño, Executive Judge, Court of First Instance of Rizal, Quezon City, for investigation, report and recommendation.

As found by Judge Paño, the antecedent facts are as follows:

"Complainants Reynaldo B. Perez and Jose L. Moya are plaintiffs in Civil Case No. Q-16322, Court of First Instance of Rizal, Quezon City, Branch XVII, for abatement of a nuisance in *i.e.*, the removal of a fence built alongside a creek by spouses Benjamin Limson and Revelina Limson. Judgment in their favor was rendered on June 23, 1973, directing the removal of the fence and the award of ₱5,000.00 as actual damages and ₱5,000.00 as attorney's fees. The judgment was affirmed by the Court of Appeals in CA G.R. No. 53721-R, and a writ of execution was issued on January 23, 1979, for the removal of the fence, and the collection of the money judgment of ₱10,000.00 plus costs. A levy on personal properties was effected on April 2, 1979, and the public auction sale was scheduled for January 19, 1981. Complainants sent Edmundo Quijano as their representative in the scheduled sale who made a bid of ₱7,500.00 for the personality. The sale did not go through because the judgment debtor delivered to Bassig a check for ₱5,000.00 as partial payment with a promise to pay the balance the following Saturday. The check was delivered to the complainants. The Limsons did not pay the balance; instead, they filed a petition for *certiorari* and prohibition with the Court of Appeals, docketed as CA G.R. No. 11954-P, and on January 23, 1981, the Court of Appeals restrained enforcement of the writ of execution. It appears that even before the scheduled sale on January 19, 1981, the Limsons had asked the trial court not to enforce its judgment on the abatement of the fence allegedly because the fence was already destroyed in 1977, and the fence to be removed was only erected in 1977. The trial court denied all these legal maneuvers, the last order being issued on January 5, 1981, so that the Limsons filed their notice of appeal from the Order of January 5, 1981, on January 13, 1981. A last minute effort to suspend the sale on the ground that a notice of

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appeal was filed on January 5, 1981, was denied by the trial court on January 20, 1981.

"The Court of Appeals dismissed the Limsons' *certiorari* petition on October 6, 1981, and set aside its restraining order. Complainants then asked Bassig to proceed with the sale in three separate letters dated October 20, October 29 and November 11, 1981. As no action was forthcoming, complainants threatened Bassig with an administrative suit on March 15, 1982, and Bassig forthwith set the sale for March 26, 1982. On March 25, 1982, however, complainants received from Bassig a letter dated March 20, 1982, that the sale cannot be pushed through as the appeal of the Limsons is pending before the Court of Appeals in CA G.R. No. 68550.

"Bassig's explanation in his comment dated May 6, 1981 centers on the pendency of the Limsons' appeal from the Order of the trial court dated January 5, 1981, now docketed as CA G.R. No. 68550. He was informed about the pendency of the appeal by Atty. Jose Francisco who wrote him on March 17, 1982, that he (Bassig) should not execute the judgment in view of the appeal. To do so would be a malfeasance. He was informed by Atty. Francisco that the amount of execution has no more legal effect."

The foregoing facts are not disputed. The Inquest Judge found that respondent is guilty of dereliction in the performance of his official duties. WE are quoting with affirmance the reasons of the Investigating Judge, to wit:

"1. The sale of property on execution may be prevented only by payment of the amount required by the writ and the costs incurred. (Sec. 20, Rule 39, Rules of Court). The payment of ₱5,000.00 by the Limsons did not warrant the indefinite cancellation of the sale. The sale may be adjourned only by written consent of debtor and creditor (Sec. 24, Rule 39, Rules of Court). In this case, Bassig should have secured the written consent of both parties to the cancellation of the sale of January 19, 1982, and reset it to another day. As it is, the proceedings were merely abandoned. No return was submitted to the trial court on what had transpired on January 19, 1981.

"2. Respondent has simply ignored the request of complainants to proceed with the sale after the Court of Appeals dismissed the petition in CA G.R. No. 11954 — no explanation was proferred for this omission until this complaint was filed. The pendency of the

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appeal (CA G.R. No. 68550) from the Order of January 5, 1981, could not have been an obstacle to the sale because the appeal relates to the removal of the fence, and not to the money judgment. At any rate, if he had any doubt, Bassig should have submitted even a partial return to the trial court, and asked the trial court for clarification on the propriety of proceeding with the sale.

"It is not farfetched that Bassig may have been himself overwhelmed by the various legal maneuvers undertaken by the Limsons in Civil Case No. 168322 when the original judgment rendered in 1973 was elevated first to the Court of Appeals and then to the Supreme Court; was then again brought to the Court of Appeals on *certiorari* (CA G.R. No. 11954), and is now pending again in the Court of Appeals to review the writ of execution in CA G.R. 68550. But being merely a deputy sheriff, he should have asked for clarification from the trial court which issued the writ of execution if he had any doubt on his capacity to act to avoid any suspicion that he is favoring the other side. While it may be argued that complainants should have brought the matter to the attention of the trial court, this would not completely excuse Bassig who was responsible for the execution of the writ."

It is undisputable that the most difficult phase of any proceeding is the execution of judgment. Hence, the officers charged with the delicate task of the enforcement and/or implementation of the same must, in the absence of a restraining order, act with considerable dispatch so as not to unduly delay the administration of justice; otherwise, the decisions, orders or other processes of the courts of justice and the like would be futile. Stated differently, the judgment if not executed would be just an empty victory on the part of the prevailing party.

WHEREFORE, We find respondent Renato A. Bassig, Deputy Sheriff of the Court of First Instance of Rizal, Branch XVII, Quezon City (now Regional Trial Court, NCR, Branch LXXXVII, Quezon City) guilty of dereliction in the performance of his official duties and hereby order his separation from the service, with forfeiture of all retirement benefits. With costs.

Makasiar, C.J., Teehankee, Aquino, Concepcion Jr., Abad Santos, Plana, Escolin, Relova, Gutierrez, Jr., De la Fuente, Cuevas, and *Alampay, JJ.*, concur.

Melencio-Herrera, J., no part.