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On the basis of facts accepted by the Court, I believe, that in order to keep inviolate the image of the Bench, to serve as an effective deterrent, and to strengthen public faith, the Court should re-study its policy of leniency in cases of judicial misbehaviour, specially in cases of palpable infraction of statutory and ethical standards, and in respect of respondent Judge impose, at the very least, suspension from office of three (3) months.

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**FIRST DIVISION**

[A.M. No. P-1622. June 29, 1979]

**LEONARDA VDA. DE MALASARTE,** *complainant, vs.* **DEPUTY SHERIFF LIBRADO Z. YEBES, COURT OF FIRST INSTANCE OF ZAMBOANGA DEL NORTE, DIPOLOG CITY,** *respondent.*

**SYLLABUS**

**ADMINISTRATIVE LAW; COURT PERSONNEL; DEPUTY SHERIFF; FAILURE TO MAKE A RETURN OF THE WRIT OF EXECUTION WITHIN SIXTY DAYS AND DEMANDING MONEY FROM THE PREVAILING PARTY TO COVER EXPENSES INCIDENT TO SERVICE AND EXECUTION OF THE WRIT; SANCTION; CASE AT BAR.**— Having again failed to make a return of the Writ of Execution within the maximum period of sixty (60) days prescribed by Sec. 11, Rule 39 of the Revised Rules of Court and for demanding the amount of Two Hundred Pesos (₱200.00) from the prevailing party to cover his expenses incident to serving and executing the writ of execution, an act which is in violation of existing regulation on the matter, the respondent Librado Yebes, Deputy Sheriff of the Court of First Instance of Zamboanga del Norte, Dipolog City, is hereby suspended for a period of one (1) month without pay commencing from the time his preventive suspension is lifted.

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## RESOLUTION

**FERNANDEZ, *J.*:**

This is an administrative complaint filed by Leonarda *Vda. de* Malasarte, dated March 7, 1977, charging respondent Librado Yebes, Deputy Sheriff of the Court of First Instance of Zamboanga del Norte, Branch III, Dipolog City, with alleged failure to execute a writ of execution issued in her favor as a prevailing litigant and for demanding and receiving from her the sum of Two Hundred Pesos (₱200.00) to reimburse what the respondent supposedly incurred while serving the aforesaid writ of execution.[1]

In Civil Case No. 2627 for Forcible Entry, originally filed with the Municipal Court of Sibutad, Zamboanga del Norte, the plaintiffs therein, heirs of Juanito Malasarte, *et al.*, obtained a favorable decision, dated September 16, 1974, which, when appealed to the Court of First Instance of Zamboanga del Norte and later to the Court of Appeals, was sustained and affirmed. Although the decision of the Court of Appeals was elevated to this Court on *certiorari*, because of failure of the petitioners to pay the required fees on time, the petition was dismissed. When the decision of the Court of Appeals became final and executory, the Court of First Instance of Zamboanga del Norte, Branch I, Dipolog City, upon application, issued a writ of execution, dated March 4, 1976. The Writ commanded the Provincial Sheriff or any of his deputies to:

1) Place the plaintiffs' heirs, represented by Leonarda *Vda. de* Malasarte, in the possession of a parcel of land described therein; and

2) To satisfy from the goods and chattels of the defendants the sum of ₱629.00 and deliver the same to the plaintiffs, represented by Leonarda *Vda. de* Malasarte. If sufficient personal property cannot be found to satisfy the judgment and other fees, to raise the amount

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[1] *Rollo*, p. 1.

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from real properties of defendants in accordance with the Rules of Court.[2]

In a 1st Indorsement, dated March 9, 1977, the then Executive Judge of the Court of First Instance of Zamboanga del Norte, Branch III, Dipolog City, Hon. Dimalanes B. Buissan, required the respondent Deputy Sheriff Librado Yebes to explain within seventy-two (72) hours (1) why he had not served the writ of execution in the case or if he had served it, why no return had been made; and (2) why it was necessary for him to get ₱200.00 from complainant Leonarda *Vda. de* Malasarte and to explain what he did with the money.[3]

In his reply dated March 14, 1977 to the aforesaid 1st Indorsement, the respondent stated:[4]

a) That he received the office directive assigning him to serve the Writ of Execution in Civil Case No. 2627 on March 5, 1976; that finding out later on that one of the defendants, Amparo Dumuag, was residing in Sapang Dalaga, Misamis Occidental, about 80 kilometers away from Dipolog City, which may be reached only through a circuituous way, he had to hire a pump boat and sail in open sea; that he had to stay overnight at said Sapang Dalaga, take his meals there as well as on the way and to buy gasoline for the pump boat, and succeeded in serving the writ;

b) That on March 8, 1976, he had to hike some 12 kilometers to reach Baylimangao, Dapitan City, to serve the writ on Teofila M. Bolay-og, another defendant;

c) That plaintiff Leonarda *Vda. de* Malasarte was placed in possession of the land subject of the Writ of Execution on March 6, 1976;

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[2] Writ of Execution, Civil Case No. 2627, CFI, Branch I, Dipolog City, March 4, 1976. *Rollo*, pp. 23-25.

[3] 1st Indorsement of Executive Judge Dimalanes B. Buissan, March 9, 1977. *Rollo*, p. 2.

[4] Reply to 1st Indorsement, March 14, 1977, of Librado Yebes. *Rollo*, pp. 20-21.

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d) That he received the amount of ₱200.00 from complainant to reimburse him for the expenses he incurred while serving the said writ but submitted an accounting of how the money was disbursed;

e) That he could not raise the amount of ₱629.00 from the personal properties of defendants because these are exempt from execution under the Rules of Court and defendants had no real properties registered in their names; and

f) That he was unable to make a return of the Writ within the 60-day period because he was trying to help Malasarte locate other properties of defendants and he kept the Writ of Execution in his possession.[5]

In a Resolution of this Court dated September 18, 1978, the case was referred to Executive Judge Simplicio Apalisok of the Court of First Instance of Zamboanga del Norte, at Dipolog City, for investigation, report and recommendation.[6]

At the hearing conducted by the Executive Judge on November 6, 1978, the complainant, Leonarda *Vda. de* Malasarte, declared that she was no longer interested to pursue her complaint against Deputy Sheriff Yebes.[7] However, for the good of the service, Judge Apalisok continued the investigation to elicit facts. In his report, he made the following findings:[8]

a) Complainant Leonarda *Vda. de* Malasarte had been placed in possession of the property in accordance with the Writ of Execution;

b) The amount of ₱629.00 could not be secured because defendants have no properties which could be seized and levied upon for the purpose;

c) Respondent's explanation regarding his failure to make a return of the Writ to the court was unsatisfactory;

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[5] Judge Simplicio Apalisok's Investigation Report, pp. 5-6, *Rollo*, pp. 37-38.

[6] *Rollo*, p. 30.

[7] *Rollo*, p. 47.

[8] Investigation Report of Judge Simplicio Apalisok, *Rollo*, pp. 33-34.

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d) The expenditure by respondent of the ₱200.00 was not justified since the expenses incurred by him in serving the Writ were unnecessary.

The investigating judge recommended that respondent Librado Yebes be exonerated with respect to the charges that he failed to place complainant in possession of the property or secure the amount of ₱629.00 from defendants but that the erring Deputy Sheriff be severely reprimanded for demanding and obtaining the amount of ₱200.00 from complainant Malasarte to reimburse himself for the purported expenses he incurred while serving and executing the Writ.

The findings of fact of Executive Judge Simplicio Apalisok who conducted the inquiry into the case are supported by the record. This is the second time that the respondent Yebes has committed the same offense despite an earlier warning. The respondent deputy sheriff should be meted a heavier penalty for having disregarded the warning.

**WHEREFORE**, having again failed to make a return of the Writ of Execution within the maximum period of sixty (60) days prescribed by Sec. 11, Rule 39 of the Revised Rules of Court and for demanding the amount of Two Hundred Pesos (₱200.00) from the prevailing party to cover his expenses incident to serving and executing the writ of execution, an act which is in violation of existing regulation on the matter, the respondent Librado Yebes, Deputy Sheriff of the Court of First Instance of Zamboanga del Norte, Dipolog City, is hereby suspended for a period of one (1) month without pay commencing from the time his preventive suspension is lifted.

**SO ORDERED.**

*Teehankee (Chairman), Makasiar, Guerrero, De Castro,* and *Melencio-Herrera, JJ.*, concur.