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THIRD DIVISION

[A.M. No. P-09-2715. June 13, 2011]
(Formerly A.M. OCA I.P.I. No. 02-1383-RTJ)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **EFREN E. TOLOSA, Sheriff IV, Regional Trial Court, Office of the Clerk of Court, Sorsogon City,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; RETURN OF WRIT OF EXECUTION; REQUIRED TO UPDATE THE COURT ON THE STATUS OF THE EXECUTION AND TO TAKE THE NECESSARY STEPS TO ENSURE THE SPEEDY EXECUTION OF DECISIONS.— Section 14, Rule 39 of the Rules of Court makes it mandatory for a sheriff to make a return of the writ of execution to the Clerk of Court or to the Judge issuing it immediately upon satisfaction, in part or in full, of the judgment. If the judgment cannot be satisfied in full, the sheriff shall make a report to the court within thirty (30) days after his receipt of the writ and state why full satisfaction could not be made. The sheriff shall continue to make a report to the court every (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. Failure of a sheriff to make periodic reports on the status of a writ of execution warrants administrative liability. The reason behind this requirement is to update the court on the status of the execution and to take the necessary steps to ensure the speedy execution of decisions.

2. ID.; ID.; ID.; ID.; THE DUTY OF A SHERIFF TO MAKE A RETURN OF THE WRIT IS MINISTERIAL.— The Court finds Sheriff Tolosa's explanation on his delay to make a return of the writ in due time flimsy and untenable. The duty of a sheriff to make a return of the writ is ministerial and it is not his duty to wait for the plaintiff to decide whether or not to accept the checks as payment. A purely ministerial act or duty is one which an officer or tribunal performs in the context of a

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given set of facts, in a prescribed manner and without regard to the exercise of his own judgment, upon the propriety or impropriety of the act done. 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 celerity and promptness to execute it according to its mandate. The Writ of Execution, issued by Branch Clerk of Court Erlano, specifically directed Tolosa to enforce and implement the decision "pursuant to the provision of the Rules of Court," and to return the writ "within the time provided for by law" but he simply ignored the instructions to him.

3. ID.; ID.; ID.; EXECUTION OF JUDGMENTS FOR MONEY; A SHERIFF HAS NO DISCRETION WHATSOEVER WITH RESPECT TO THE DISPOSITION OF THE AMOUNTS HE RECEIVES.— The OCA correctly found that Tolosa violated Section 9, par. 2, Rule 39 of the Rules of Civil Procedure when he failed to turn over all the amounts he received by reason of implementing the writ, within the same day to the clerk of court that issued it. x x x A sheriff has no discretion whatsoever with respect to the disposition of the amounts he receives. If he finds that there is a need to clarify what to do with the checks, prudence and reasonableness dictate that clarification be sought immediately from the clerk or judge issuing it. He cannot escape liability for the "misinterpretation" he had done in connection with the case. Having been in the service for more than 26 years, respondent sheriff cannot wrongly interpret basic rules without appearing grossly incompetent or in bad faith.

4. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; SHOULD KNOW THE RULES OF PROCEDURE RELATIVE TO THE IMPLEMENTATION OF WRITS OF EXECUTION AND SHOULD SHOW A HIGH DEGREE OF PROFESSIONALISM IN THE PERFORMANCE OF DUTIES.— As an officer of the court, sheriffs are chargeable with the knowledge of what is the proper action to take in case there are questions in the writ which need to be clarified, and the knowledge of what he is bound to comply. He is expected to know the rules of procedure pertaining to his functions as an officer of the court, relative to the implementation of writs of execution, and should, at all times, show a high degree of professionalism in the performance of

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his duties. Any act deviating from the procedure laid down by the Rules is misconduct that warrants disciplinary action.

5. ID.; ID.; ID.; GRAVE MISCONDUCT; COMMITTED IN CASE AT BAR; PENALTY.— Misconduct is defined as a transgression of some established or definite rule of action; more particularly, it is an unlawful behavior by the public officer. The misconduct is grave if it involves any of the additional elements of corruption, and willful intent to violate the law or to disregard established rules. For clear violation of established rules, coupled with having encashed the checks which matured without having been authorized to do so, the Court finds Tolosa guilty of Grave Misconduct, tempered only by his length of service. The Court takes into consideration Tolosa's long years of service in the judiciary of about 25 years. Thus, in lieu of the dismissal that Section 52(A)(3), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service commands, we find the penalty of suspension for six (6) months appropriate.

D E C I S I O N

BRION, *J.*:

This administrative complaint stemmed from the administrative complaint, docketed as A.M. I.P.I. No. 02-1383-RTJ, filed by Gerardo D. Espiritu against Judge Jose L. Madrid of the Regional Trial Court (*RTC*), Branch 51, Sorsogon City, and Sheriff Ariosto Letada of the RTC, Branch 52, Sorsogon City, for Undue Delay in the Disposition of a Case and/or Manifest Bias or Partiality relative to the implementation of the Writ of Execution in Civil Case No. 5327, entitled *"Loreto Brondial, et al. v. Vicente Go, et al."* The complaint in A.M. OCA I.P.I. No. 02-1383-RTJ was dismissed in a Resolution dated September 15, 2003,[1] for the failure of complainant Espiritu to substantiate his claim that Judge Madrid and Sheriff Letada conspired with each other in the non-implementation of the writ. In the same Resolution, the Court directed the Office of the Court Administrator (*OCA*)

[1] *Rollo,* A.M. OCA IPI No. 02-1383-RTJ, pp. 41-42.

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to take appropriate action on its report that Efren E. Tolosa, Sheriff IV, Office of the Clerk of Court, RTC, Sorsogon City, who was the one originally designated to implement the writ of execution, violated Section 9, par. 2, Rule 39 of the Rules of Civil Procedure[2] when he did not turn over the checks that came into his possession to the Clerk of Court of the court that issued the writ on the same day he received them.

In a letter dated October 21, 2003 of then Deputy Court Administrator, later Court Administrator and now Justice Jose P. Perez, Tolosa was asked to explain his failure to immediately turn over the checks as required by the Rules.

In his letter-explanation dated November 1, 2003,[3] Tolosa alleged: (1) he received the checks issued by the defendant in Civil Case No. 5327 but these were postdated and received on the condition that they would be returned to the defendant should the plaintiffs refuse to accept them; (2) the encashed amount of the checks, as well as the checks that have not been encashed, has already been withdrawn by Atty. Rofebar T. Gerona, counsel for the plaintiffs, from the Clerk of Court on December 21, 2000; and (3) there are two plaintiffs in the civil case and "they might have been doing some action without the knowledge of their counsel."

The OCA found Tolosa's explanation insufficient to excuse him from liability for his patent violation of Section 9, par. 2, Rule 39 of the Rules on Civil Procedure, and recommended that he be fined in the amount of ₱5,000.00, with a warning that a repetition of the same or similar acts in the future shall be dealt with more severely.[4]

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[2] If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amount to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

[3] *Id.* at 45.

[4] *Id.* at 48-49; Memorandum dated November 25, 2003.

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In a Resolution dated November 16, 2009,[5] the Court directed the OCA to docket separately the complaint against Tolosa; hence, the present administrative complaint.

Asked to manifest to the Court whether he was willing to submit the case against him for resolution, based on the records/pleadings, Tolosa filed his answer, offering his sincere apology for the "misinterpretation" he had done in connection with the case and praying that the case against him be dismissed.[6]

The Antecedent Facts

Espiritu is one of the legal heirs of one of the plaintiffs in Civil Case No. 5327. In a decision dated March 26, 1990, the RTC ordered the defendants therein, *Vicente Go, et al.*, to pay jointly and severally the plaintiffs the sum of ₱20,000.00 as actual or compensatory damages, ₱5,000.00 as attorney's fees and ₱3,000.00 as litigation expenses, and to pay the costs, with legal interest from the date of the decision until they are fully paid.[7]

Both parties appealed to the Court of Appeals (*CA*). In a decision dated May 14, 1997, the CA affirmed the RTC decision with modification as to the damages awarded to the plaintiffs, as follows: ₱80,000.00 as actual or compensatory damages with interest at 6% per annum from the date of the filing of the complaint; ₱20,000.00 and ₱10,000.00 as moral and exemplary damages, respectively; ₱5,000.00 as attorney's fees; and ₱3,000.00 as litigation expenses, with interest of 6% per annum from the date the defendants were served a copy of the decision of the lower court, until the amounts are actually paid.[8]

The defendants contested the CA decision in a petition for review on *certiorari* filed with the Supreme Court. In a Resolution dated October 21, 1998, the Court dismissed the

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[5] *Id.* at 68-69.

[6] *Rollo*, A.M. No. P-09-2715, pp. 13-14.

[7] See Writ of Execution *rollo*, A.M. OCA IPI No. 02-1383-RTJ, p. 18.

[8] *Id*. at 19.

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petition. The dismissal became final and executory on December 7, 1998.[9]

On February 16, 2000, upon the plaintiffs' motion, the RTC directed the issuance of a Writ of Execution. Accordingly, Branch Clerk of Court William D. Erlano issued the corresponding Writ of Execution on February 29, 2000, directing the Provincial Sheriff or any of his deputies to enforce and implement the decision "pursuant to the provision of the Rules of Court" and to make a return of the writ "within the time provided for by law."[10] The respondent was furnished a copy of the writ on March 31, 2000.

Three (3) months thereafter, or on July 3, 2000, the complainant's mother wrote Clerk of Court Marilyn D. Valino inquiring about the status of the writ. In a 1st Indorsement dated July 4, 2000,[11] Clerk of Court Valino forwarded the letter to Tolosa, directing him to immediately execute and/or implement the Writ of Execution "in accordance with the decision and [in consonance] with the existing rules," and inviting his attention to the provisions of Section 14, Rule 39 of the Rules of Court.

On July 17, 2000, Tolosa complied and submitted a Sheriff's Partial Return,[12] reporting that he attempted to serve the writ twice, on April 17, 2000 and May 12, 2000, but defendant Vicente Go was not in his house on both occasions. He was able to implement the writ only on June 14, 2000. He reported that he received from defendant Vicente Go several postdated checks in the total amount of ₱118,000.00, in partial satisfaction of the judgment, and that he informed the complainant's counsel of his receipt of the checks. Counsel did not make any comment on whether to accept the checks or not.

On September 22, 2000, Espiritu, apparently unaware that there was a partial implementation of the writ, wrote Judge

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[9] *Ibid.*

[10] *Id.* at 20.

[11] *Id.* at 21.

[12] *Id.* at 22.

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Madrid, complaining that Tolosa has failed to do his task, as mandated by the Rules of Court, despite that "several months have passed" and requesting that a substitute Sheriff be designated.[13] In a 1st Indorsement dated September 26, 2000, Judge Madrid required Tolosa to comment on Espiritu's letter.[14]

On October 10, 2000, Tolosa filed his comment/manifestation,[15] explaining that as early as July 17, 2000, he already made a partial return of the Writ of Execution and that he had encashed the matured checks in the amount of ₱60,000.00. On the same day, he deposited the amount of ₱60,000.00 with the Branch Clerk of Court of the RTC, Branch 51, together with the other postdated checks. He enclosed an Acknowledgment Receipt dated October 10, 2000, signed by Branch Clerk of Court Erlano.[16]

The Court's Ruling

The Court finds that the respondent committed two offenses in this case, (1) failure to make a return of the writ within the period provided by the Rules of Court; and (2) failure to turn over the checks he received by virtue of the implementation of the writ, to the court issuing it within the same day he received them.

Section 14, Rule 39 of the Rules of Court[17] makes it mandatory for a sheriff to make a return of the writ of execution to the

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[13] *Id.* at 23.

[14] *Id.* at 24.

[15] *Id.* at 26.

[16] *Rollo*, p. 27.

[17] *Return of the 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 therefor. 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.

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Clerk of Court or to the Judge issuing it immediately upon satisfaction, in part or in full, of the judgment. If the judgment cannot be satisfied in full, the sheriff shall make a report to the court within thirty (30) days after his receipt of the writ and state why full satisfaction could not be made. The sheriff shall continue to make a report to the court every (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. Failure of a sheriff to make periodic reports on the status of a writ of execution warrants administrative liability.[18] The reason behind this requirement is to update the court on the status of the execution and to take the necessary steps to ensure the speedy execution of decisions.[19]

The writ was placed in the hands of Tolosa on March 31, 2000 but he submitted a Sheriff's Partial Return only on July 17, 2000. He submitted the return only after Espiritu's mother wrote Clerk of Court Valino, complaining that he had not taken any action on the writ. Tolosa attributes the delay in the submission of his Sheriff's Return on the failure of the plaintiffs to decide whether or not to accept the checks delivered to him. He allegedly verbally informed Atty. Gerona, the plaintiff's counsel, but the latter could not definitely decide what to do with the checks. He believed that Atty. Gerona was the proper person to know because he was the one who requested the implementation of the writ. He further claimed that he was not sure whom to deal with because there were several persons claiming to be the legal heirs and persistently making demands from him of the amounts he received.

The Court finds Sheriff Tolosa's explanation on his delay to make a return of the writ in due time flimsy and untenable. The duty of a sheriff to make a return of the writ is ministerial and it is not his duty to wait for the plaintiff to decide whether or not to accept the checks as payment. A purely ministerial act or duty is one which an officer or tribunal performs in the

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[18] *Dignum v. Diamla*, A.M. No. P-06-2166, April 28, 2006, 488 SCRA 405.

[19] *Zamudio v. Auro*, A.M. No. P-04-1793, December 8, 2008, 573 SCRA 178.

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context of a given set of facts, in a prescribed manner and without regard to the exercise of his own judgment, upon the propriety or impropriety of the act done.[20] 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 celerity and promptness to execute it according to its mandate.[21] The Writ of Execution, issued by Branch Clerk of Court Erlano, specifically directed Tolosa to enforce and implement the decision "pursuant to the provision of the Rules of Court," and to return the writ "within the time provided for by law"[22] but he simply ignored the instructions to him.

The OCA correctly found that Tolosa violated Section 9, par. 2, Rule 39 of the Rules of Civil Procedure when he failed to turn over all the amounts he received by reason of implementing the writ, within the same day to the clerk of court that issued it. Sheriff Tolosa received, on June 14, 2000 from defendant Vicente Go five (5) checks, in varying amounts and different dates of maturity in the total amount of ₱118,000.00, in partial satisfaction of the judgment in favor of the plaintiffs. He encashed the matured check for ₱60,000.00, without having been authorized to do so. He kept in his possession the ₱60,000.00 cash and the four remaining checks. He turned them over to the clerk of court only on October 10, 2000. The amount of ₱60,000.00 and the four postdated checks were eventually delivered to the plaintiffs only on December 21, 2000. Tolosa's acts of keeping and encashing the checks that matured spawned suspicion regarding his true intentions.

A sheriff has no discretion whatsoever with respect to the disposition of the amounts he receives. If he finds that there is a need to clarify what to do with the checks, prudence and reasonableness dictate that clarification be sought immediately from the clerk or judge issuing it. He cannot escape liability

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[20] *Cobarrubias v. Apostol,* A.M. No. P-02-1612, January 31, 2006, 481 SCRA 20.

[21] *Dignum v. Diamla, supra* note 19.

[22] *Supra* note 11.

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for the "misinterpretation" he had done in connection with the case. Having been in the service for more than 26 years, respondent sheriff cannot wrongly interpret basic rules without appearing grossly incompetent or in bad faith.[23]

As an officer of the court, sheriffs are chargeable with the knowledge of what is the proper action to take in case there are questions in the writ which need to be clarified, and the knowledge of what he is bound to comply.[24] He is expected to know the rules of procedure pertaining to his functions as an officer of the court,[25] relative to the implementation of writs of execution, and should, at all times, show a high degree of professionalism in the performance of his duties. Any act deviating from the procedure laid down by the Rules is misconduct that warrants disciplinary action.[26]

Misconduct is defined as a transgression of some established or definite rule of action; more particularly, it is an unlawful behavior by the public officer. The misconduct is grave if it involves any of the additional elements of corruption, and willful intent to violate the law or to disregard established rules. For clear violation of established rules, coupled with having encashed the checks which matured without having been authorized to do so, the Court finds Tolosa guilty of Grave Misconduct, tempered only by his length of service. The Court takes into consideration Tolosa's long years of service in the judiciary of about 25 years. Thus, in lieu of the dismissal that Section 52(A)(3), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service commands, we find the penalty of suspension for six (6) months appropriate.

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[23] *Bautista v. Sula*, A.M. No. P-04-1920, August 17, 2007, 530 SCRA 406.

[24] *Stilgrove v. Sabas*, A.M. No. P-06-2257, March 28, 2008, 550 SCRA 28.

[25] *Zamora v. Villanueva*, A.M. No. P-04-1898, July 28, 2008, 560 SCRA 32.

[26] *Ibid*.; *Viaje v. Dizon*, A.M. No. P-07-2402, October 15, 2008, 569 SCRA 45; and *Areola v. Patag*, A.M. No. P-06-2207, December 16, 2008, 574 SCRA 10.

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WHEREFORE, Sheriff Efren E. Tolosa, Sheriff IV, Regional Trial Court, Office of the Clerk of Court, Sorsogon City is found *GUILTY* of grave misconduct and he is hereby imposed the penalty of *SUSPENSION* of six (6) months without pay with a *STERN WARNING* that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

FIRST DIVISION

[G.R. No. 164153. June 13, 2011]

JOHN ANTHONY B. ESPIRITU, for himself and as Attorney-in-Fact for Westmont Investment Corporation, STA. LUCIA REALTY AND DEVELOPMENT CORPORATION, GOLDEN ERA HOLDINGS, INC., and EXCHANGE EQUITY CORPORATION, *petitioners, vs.* **MANUEL N. TANKIANSEE and JUANITA U. TAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM-SHOPPING; PRESENT WHERE A PARTY'S PETITION FOR *CERTIORARI* AND SUBSEQUENT APPEAL SEEK TO ACHIEVE ONE AND THE SAME PURPOSE; CASE AT BAR.— [W]hile this case was pending review before the Court of Appeals or on February 2, 2004, the trial court rendered a Decision in the main case (*i.e.*, Civil Case No. 02-103160). From this judgment, petitioners, except petitioner Westmont Investment Corporation, filed a notice of appeal. This case