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SECOND DIVISION

[A.M. No. RTJ-99-1445. June 21, 1999]

VENTURA B. AYO, *complainant, vs.* **JUDGE LUCIA VIOLAGO-ISNANI, BRANCH CLERK OF COURT JAIME M. LUY, SHERIFF JADI HATAB, Regional Trial Court, Branch 59, Makati, CLERK OF COURT ERLINDA M. PEREZ, Regional Trial Court, Balanga, Bataan, and LEGAL RESEARCHER JOEY A. ASTORGA, Regional Trial Court, Branch 5, Dinalupihan, Bataan,** *respondents.*

SYNOPSIS

Complainant was the representative of Vilma C. Aquino and her minor children who are plaintiffs in a civil case. In an amended decision rendered by the respondent judge, the plaintiffs were awarded indemnity for the death of her husband, for the loss of earning capacity, actual damages and moral damages. She filed the complaint against respondent judge and some of his staff due to the delay in the issuance and implementation of the writ of execution in relation to the said civil case. The Office of the Court Administrator recommended that the cases filed against all other respondents be dismissed except that of the Clerk of Court (Atty. Jaime M. Luy).

The Supreme Court ruled that the clerk of court Atty. Luy, must take the responsibility for the delay in the implementation of the writ of execution of the civil case. As officer of the court, he was duty bound to use reasonable skill and diligence in the performance of his officially designated duties. For simple neglect of duty, the Court suspended clerk of court Atty. Jaime M. Luy for one month and one day with the stern warning that repetition of the same or similar acts would be dealt with more severely. The complaint against the other respondents was dismissed for lack of merit.

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SYLLABUS

POLITICAL LAW; LAW ON PUBLIC OFFICERS; COURT PERSONNEL; CLERK OF COURT; DUTY-BOUND TO USE REASONABLE SKILL AND DILIGENCE IN THE PERFORMANCE OF HIS OFFICIALLY DESIGNATED DUTIES; NOT PRESENT IN CASE AT BAR. — As the Court has more than once stated, execution is the fruit and end of the suit and is the life of law. A judgment that is left unexecuted is nothing but an empty victory for the prevailing party. In the case at bar, Clerk of Court Jaime M. Luy must take responsibility for the delay in the implementation of the writ of execution in Civil Case No. 91-354. He gave no reason why, considering that the writ of execution was issued as early as July 15, 1997, he gave the same to complainant for delivery to the RTC of Bataan only on December 17, 1997. It would appear that had not complainant followed up the matter with respondent, the writ would not have been sent to the RTC of Bataan. Worse, when he finally issued the writ, respondent Luy endorsed it to the Balanga branch of the RTC of Bataan which does not have the territorial jurisdiction to enforce the writ. He was finally able to endorse an alias writ of execution to the Clerk of Court and *Ex-Officio* Sheriff of the appropriate court, the RTC of Dinalupihan, Bataan, only on June 9, 1998. As an officer of the court, respondent was duty-bound to use reasonable skill and diligence in the performance of his officially designated duties. He has fallen short of this standard as the preceding narration demonstrates. The OCA recommended that respondent Clerk of Court Jaime M. Luy be merely admonished and warned that a repetition of the same or similar act would be dealt with more severely. The Court believes that the imposition of a penalty is called for under the circumstances. The Court find respondent Luy guilty of simple neglect of duty which, pursuant to the Civil Service Law, is a less grave offense punishable by suspension for one month and one day to six months for the first infraction.

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DECISION

MENDOZA, *J.*:

This is a complaint filed by Ventura B. Ayo against Judge Lucia Violago-Isnani of the Regional Trial Court, Branch 59, of Makati City, and Atty. Jaime M. Luy and Jadi I. Hatab, Clerk of Court V and Sheriff, respectively, of the same court, and Atty. Erlinda M. Perez, Clerk of Court VI, Regional Trial Court of Balanga, Bataan, and Joey A. Astorga, Legal Researcher II of the Regional Trial Court, Branch 5, of Dinalupihan, Bataan.

Complainant was the representative of Vilma C. Aquino and her minor children who are plaintiffs in Civil Case No. 91-354. In an amended decision rendered by respondent judge on September 4, 1996, Vilma Aquino and her children were awarded ₱50,000.00 as indemnity for the death of her husband Ireneo Aquino; ₱1,101,600.00 for the loss of Ireneo's earning capacity; ₱14,000.00 actual damages; and ₱100,000.00 moral damages.

Complainant's charges and the respective comments of respondents are as follows:

(1) Clerk of Court Jaime M. Luy and Sheriff Jadi I. Hatab of the RTC, Branch 59 of Makati City.

Complainant alleged that it took respondents an unreasonably long time, from July 15, 1997, when the writ was issued, to December 17, 1997, to enforce the writ of execution in favor of Vilma C. Aquino and her minor children. Complainant claimed that the two "did not even send the writ of execution through registered mail to the appropriate Clerk of Court and/or the Sheriff and his deputy who have administrative jurisdiction to enforce [said writ]."

In his comment, Clerk of Court Luy denied delaying the implementation of the writ of execution. He alleged that while he issued the writ of execution on July 15, 1997, it was only on December 17, 1997 that complainant got the writ from him for delivery and payment of the required fees to the Clerk of Court and *Ex-Officio* Sheriff, RTC of Balanga, Bataan. Luy pointed

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out that when an order was issued on January 9, 1998 authorizing Aquino and her children to litigate as indigent parties, he immediately issued an alias writ of execution and endorsed the same to the Clerk of Court and *Ex-Officio* Sheriff, RTC of Dinalupihan, Bataan.

For his part, Sheriff Hatab alleged that he had nothing to do with the writ of execution as the same was first addressed to the Clerk of Court and *Ex-Officio* Sheriff of the RTC of Balanga, Bataan, and later endorsed to the RTC of Dinalupihan, Bataan.

2. Clerk of Court and *Ex-Officio* Sheriff Erlinda M. Perez of the RTC of Balanga, Bataan.

Complainant alleged that on December 19, 1997 he tried to give the writ of execution to respondent Perez, but the latter refused to receive and enforce the same.

On the other hand, respondent Perez denied that she refused to receive the writ of execution. She said that as the persons against whom the writ was issued were residents of Dinalupihan, Bataan, she referred the writ to Joey Astorga, the Officer-in-Charge of the RTC in Dinalupihan. She did this in a letter dated the same day, the original of which was received by complainant himself for delivery to the addressee.

3. Clerk of Court and *Ex-Officio* Sheriff Joey A. Astorga of the RTC, Branch 5 of Dinalupihan, Bataan.

Complainant alleged that, for one month since complainant personally delivered to him the writ on January 27, 1998, Astorga did nothing to cause its enforcement.

Respondent Astorga on the other hand alleged that when complainant filed the writ in his office on January 12, 1998, he informed the latter that the Deputy Sheriff was out doing fieldwork and suggested that complainant return another time. However, when complainant came back on January 29, 1998, the writ could not be enforced as complainant had not deposited the amount necessary to defray the Deputy Sheriff's expenses. Respondent Astorga alleged that Judge Jose Ener S. Fernando offered to give police escort and even "shell out the expenses

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that may be incurred in the implementation of the writ that same date but [complainant] refused as he prefer[red] Manila Police as escort and the media people." Respondent Astorga concluded his comment by saying that, insofar as he is concerned, "the deputy sheriff is doing her best to have the decision of the court fully implemented but Mr. Ayo [herein complainant] seems to be the one who causes delay in its implementation."

4. Judge Lucia Violago-Isnani, RTC, Branch 59 of Makati City.

Complainant alleged that he filed a motion to disqualify Atty. Jose V. Natividad as counsel for Vilma C. Aquino and her children, as well as Enrico Tensuan and his representatives to negotiate on behalf of the Aquinos; that at the hearing on his motion on February 6, 1998, Judge Isnani showed her partiality toward Atty. Natividad and Tensuan by subjecting him (complainant) to humiliation, telling him that he was not a lawyer, and prevented him from speaking when he tried to state the grounds for his motion. Complainant further alleged that on that date, Judge Isnani granted Atty. Natividad 35 days to negotiate for a settlement with the defendants.

In her comment, respondent Judge Isnani alleged:

On January 30, 1998, Mr. Ayo, as representative of co-plaintiffs' Vilma Aquino and her minor children, filed a "Motion To Dismiss And Disqualify Atty. Jose V. Natividad as Legal Counsel for the Co-plaintiffs (Vilma S. Aquino and Her Minor Children) etc." (Xerox copy is hereto attached as Annex "B"). Mr. Ayo set the hearing of the motion on February 6, 1998 at 8:30 A.M.

During the hearing of the motion on February 6, 1998, the Court noticed that while Atty. Romualdo Din, Jr., counsel for the defendants, was furnished with a copy of the said motion, Atty. Natividad, against whom the motion to dismiss and disqualify was directed, was not. Hence, the undersigned pointed out to Mr. Ayo, who appeared as representative of co-plaintiffs Vilma Aquino and her minor children, that since he claims in his motion to dismiss that: Atty. Natividad could no longer protect honestly and effectively the individual interest of the co-plaintiffs in Civil Case No. 91-354; Atty. Natividad did not effectively and completely carried out his duties as legal counsel

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for the co-plaintiffs; Atty. Natividad compromised the individual interest of the indigent litigants, the widow and the orphans, to the self-interest of Mr. Enrico Tensuan (a wealthy and influential businessman); and Atty. Natividad should not compromise his client's litigation without special authority to do so, then in the interest of justice and fair play, Atty. Natividad should be given a chance to comment. Mr. Ayo insisted that there is no need to furnish Atty. Natividad with a copy of his Motion to Dismiss; that precisely he did not furnish Atty. Natividad with a copy of the motion was because he did not want Atty. Natividad to prepare; and that he has all the right to dismiss Atty. Natividad as he does not trust him anymore. Mr. Ayo started delivering a speech attacking Atty. Natividad. The undersigned admonished him to stop as Atty. Natividad was not present in Court to answer his attack. But Mr. Ayo refused to stop and started lecturing on the freedom of speech. At this point, the undersigned reminded Mr. Ayo that since he is not a lawyer, he does not know that his motion is litigious and that notice is important and part of due process. Obviously, Mr. Ayo resented being admonished for he retorted that even if he is not a lawyer, he has read the Rules of Court many times and there is nothing there to show that a lawyer must be notified of his dismissal by his client. Mr. Ayo then proceeded to argue that since the co-plaintiffs whom he is representing, are pauper litigants, the Court must be on their side.

On the same date, February 6, 1998, the Court through the undersigned, dictated an order in Open Court directing Mr. Ayo, to furnish, within three days, Atty. Natividad with a copy of said motion and for Atty. Natividad to file his comment thereto within five (5) days from receipt of said copy. The Court also reset the hearing of the motion to March 13, 1998. (Xerox copy of the Order dated February 6, 1998 is hereto attached as Annex "C"). Throughout the proceedings on February 6, 1998, the undersigned never spoke "harshly" to Mr. Ayo or to anyone, for that matter. The undersigned was very patient with Mr. Ayo knowing pretty well that he is not a lawyer and the fact that the co-plaintiffs (he represents in Court) are poor litigants.

Respondent judge denied that the implementation of the writ of execution in Civil Case No. 91-354 was delayed. She pointed out that, on June 23, 1998, she received a Sheriff's Report, dated April 22, 1998, from Corazon L. Bautista, Sheriff IV of the RTC, Branch 5, Dinalupihan, Bataan, to the effect that the writ of execution issued by respondent Clerk of Court Jaime

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M. Luy was duly implemented and that defendant Noel J. Cruz promised to settle the case amicably with the conformity of herein complainant, the authorized representative of plaintiff Vilma Aquino.

On March 15, 1999, the Office of the Court Administrator submitted the following evaluation and recommendation:

EVALUATION:

I. Atty. JAYME M. LUY

The excuse of respondent Luy that it was only after five (5) months that complainant made a follow-up regarding the writ is not tenable because it is incumbent upon him to act with considerable dispatch so as not to unduly delay the administration of justice. His defense that the required fees should be paid first is not available to him because payment of the same should be made in Bataan and not in Makati.

Moreover, as asserted by the complainant, respondent should have sent a copy of the writ at least through registered mail to the proper court personnel at Dinalupihan, Bataan. The mistake of respondent in sending the writ to Balanga, Bataan instead of sending it to Dinalupihan shows that he is not too diligent and careful which unduly delayed the enforcement of the writ causing prejudice to the rights of the complainant.

In view of the foregoing, respondent should be admonished and warned that a repetition of the same or similar act would be dealt with severely.

II. Sheriff JADI T. HATAB

Respondent Hatab correctly argued that he cannot be blamed for the delay being complained since he had nothing to do with the subject writ considering that he was not the addressee thereof.

The case as against him should be dismissed.

III. Atty. ERLINDA M. PEREZ

The defense raised by respondent Perez is meritorious. She cannot be held liable for Abuse of Discretion and Non-feasance merely because she refused to receive and implement the subject writ. The reasons she gave in support of her defense are legal and valid. In so far as she is concerned, this case should be dismissed.

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IV. JOEY A. ASTORGA

The complainant's allegation that the writ and other documents remained in respondent Ayo's table from January 12, 1998 up to January 27, 1998 was not substantiated. While the explanation of respondent that the writ was already endorsed to the deputy sheriff is supported by the legal presumption that he performed his duty with regularity.

Furthermore, fifteen (15) days of delay is not extra-ordinarily long as to show deliberate delay as suggested by the complainant. The case as against him should also be dismissed.

V. Judge LUCIA VIOLAGO-ISNANI

Respondent Judge is not liable for grave abuse of discretion and partiality. Her actions clearly showed that she was scrupulous in seeing to it that the requirements of fair play and due process were satisfied.

The allegation of complainant that respondent manifested partiality by humiliating him in open court stands on a shaky ground. There was no evidence submitted to prove the same. Assuming *arguendo* that complainant was ordered to refrain from talking during the hearing on February 6, 1998, respondent Judge cannot be faulted for so doing because the judge conducting a trial is not a mere moderator but is the governor of the trial for the purpose of assuring its proper conduct and the fair and impartial administration of justice between the parties to the litigation. Freedom of expression cannot be invoked by complainant because it is available only in so far as it is exercised for the discussion of matters affecting public interest; purely private matters do not come within the guaranty.

Anent the contention of complainant that respondent judge's order dated February 6, 1998 was unjust, no merit may be given to such considering that hearings of cases or incidents thereof are ordinarily re-scheduled to a further date in view of heavy caseload of court's calendar especially those situated in Metro Manila.

RECOMMENDATION: Respectfully submitted for the consideration of the Honorable Court are our recommendations that:

1. This case be *RE-DOCKETED* as an administrative matter as regards respondent Atty. Jayme M. Luy;

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2. Respondent Atty. Jayme M. Luy be *ADMONISHED* for his non-feasance and be *WARNED* that a repetition of the same or similar act would be dealt with severely; and

3. The case against the other respondents be *DISMISSED* for lack of merit.

Except as to respondent Jaime M. Luy, the Court finds the foregoing recommendation to be well taken.

As the Court has more than once stated, execution is the fruit and end of the suit and is the life of law.[1] A judgment that is left unexecuted is nothing but an empty victory for the prevailing party.[2]

In the case at bar, Clerk of Court Jaime M. Luy must take responsibility for the delay in the implementation of the writ of execution in Civil Case No. 91-354. He gave no reason why, considering that the writ of execution was issued as early as July 15, 1997, he gave the same to complainant for delivery to the RTC of Bataan only on December 17, 1997. It would appear that had not complainant followed up the matter with respondent, the writ would not have been sent to the RTC of Bataan. Worse, when he finally issued the writ, respondent Luy endorsed it to the Balanga branch of the RTC of Bataan which does not have the territorial jurisdiction to enforce the writ.[3] He was finally able to endorse an alias writ of execution to the Clerk of Court and *Ex-Officio* Sheriff of the appropriate court, the RTC of Dinalupihan, Bataan, only on June 9, 1998.

As an officer of the court, respondent was duty-bound to use reasonable skill and diligence in the performance of his

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[1] *E.g., Marisga-Magbanua v. Villamor,* A.M. No. P-99-1297, March 29, 1999.

[2] *Junio v. Egay-Eviota*, 231 SCRA 551 (1994).

[3] Per Administrative Circular No. 12, dated October 12, 1995, §1, "All Clerks of Court, who are also *ex officio* sheriffs, and/or their deputy sheriffs shall serve all court processes and execute all writs of their respective courts *within their territorial jurisdiction.*" (Italics added)

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officially designated duties.[4] He has fallen short of this standard as the preceding narration demonstrates. The OCA recommended that respondent Clerk of Court Jaime M. Luy be merely admonished and warned that a repetition of the same or similar act would be dealt with more severely. The Court believes that the imposition of a penalty is called for under the circumstances.

We find respondent Luy guilty of simple neglect of duty which, pursuant to the Civil Service Law, is a less grave offense punishable by suspension for one month and one day to six months for the first infraction.

WHEREFORE, the Court *RESOLVED* to *SUSPEND* Atty. Jayme M. Luy, Clerk of Court V, RTC, Branch 59 of Makati City, for one month and one day with *WARNING* that repetition of the same or similar acts would be dealt with more severely. As recommended by the Office of the Court Administrator, the complaint, with respect to the other respondents, is *DISMISSED* for lack of merit.

SO ORDERED.

Bellosillo (Chairman), Puno, Quisumbing, and *Buena, JJ.*, concur.

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[4] *See De Castro v. Santos*, 198 SCRA 245 (1991).