



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

ELEANOR OLYMPIA-GERONILLA and EMMA OLYMPIA GUTIERREZ,
represented by **ATTY. BEATRIZ O. GERONILLA-VILLEGAS,**
Complainants,

A.M. No. P-17-3676 [formerly OCA IPI No. 12-3985-P]

Present:
SERENO, *C.J.*, Chairperson,
LEONARDO-DE CASTRO,
DEL CASTILLO,
PERLAS-BERNABE, and
CAGUIOA, *JJ.*

- versus -

RICARDO V. MONTEMAYOR, JR., SHERIFF IV AND ATTY. LUNINGNING CENTRON, CLERK OF COURT VI and EX-OFFICIO SHERIFF,
Respondents.

Promulgated:
JUN 05 2017

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DECISION

PERLAS-BERNABE, J.:

The instant administrative case arose from a verified Complaint-Affidavit¹ dated October 15, 2012 for dereliction of duty, serious misconduct, negligence, dishonesty, and conduct prejudicial to the service filed by complainants Eleanor Olympia-Geronilla and Emma Olympia-Gutierrez, represented by Atty. Beatriz O. Geronilla-Villegas (complainants) against respondents Sheriff Ricardo V. Montemayor, Jr. (Sheriff Montemayor) and Clerk of Court Atty. Luningning Y. Centron (Atty. Centron; respondents), both from the Office of the Clerk of Court of the Regional Trial Court (OCC-RTC) of Calapan City, Oriental Mindoro.

¹ Rollo, pp. 1-23.



The Facts

Complainants alleged that they are the plaintiffs in an ejectment case entitled “*Eleanor Olympia and Emma Olympia v. Carlito Aceveda and Tolentino Malinao*,” docketed as Civil Case No. 327 (ejectment case) filed before the First Municipal Circuit Trial Court, Province of Oriental Mindoro (MCTC).² On October 29, 2004, Judge Edgardo M. Padilla (Judge Padilla) of the MCTC rendered a Decision³ in favor of complainants, directing defendants therein Carlito T. Aceveda (Aceveda), Tolentino Malinao (Malinao; defendants), and all persons claiming rights under them to: (a) vacate the property subject of the dispute; (b) remove whatever structures they may have erected thereon, at their own expense; (c) pay complainants ₱50,000.00 every four (4) months beginning November 2002 as reasonable compensation for the value of the crops being appropriated by defendants until they surrender possession to complainants; and (d) pay ₱30,000.00 as attorney’s fees and costs of suit.⁴

In view of the MCTC’s favorable decision, complainants filed a Motion for Immediate Execution thereof; on the other hand, defendants appealed to the Regional Trial Court of Calapan City, Branch 40 (RTC).⁵

Meanwhile, on July 1, 2005, the MCTC issued a Writ of Execution⁶ directing the implementation of its October 29, 2004 Decision.⁷

Subsequently, in a Decision⁸ dated May 4, 2007, the RTC denied defendants’ appeal and affirmed the MCTC’s Decision *in toto*. Defendants’ motion for reconsideration was denied in an Order⁹ dated May 28, 2007.¹⁰

Notwithstanding the RTC’s affirmance of the MCTC’s Decision and the issuance of a writ of execution, the judgment in favor of the complainants remained unsatisfied. Thus, they filed an Urgent Motion for Issuance of Alias Writ of Execution, which the MCTC granted. An alias writ of execution¹¹ was issued on July 29, 2010.¹²

Aceveda refused to vacate the premises despite the issuance of the alias writ of execution. Upon Sheriff Montemayor’s instruction,

² Id. at 1.

³ Id. at 24-33.

⁴ Id. at 2. See also pp. 32-33.

⁵ Id. at 2.

⁶ Id. at 34-36.

⁷ Id. at 2.

⁸ Id. at 37-48. Penned by Judge Tomas C. Leynes.

⁹ Id. at 49.

¹⁰ Id. at 2-3.

¹¹ Id. at 50-52.

¹² Id. at 3.

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complainants filed a motion for the issuance of a Writ of Demolition, which the MCTC granted. On May 20, 2011, a Writ of Demolition¹³ was issued.¹⁴

From the issuance of the Writ of Demolition on May 20, 2011 to November 2011, complainants consistently and religiously coordinated with Sheriff Montemayor for the enforcement of the MCTC Decision. However, the latter informed them that he could not enforce the said writ upon the portion of the property occupied by Aceveda as the same was excluded from the scope of the judgment. Sheriff Montemayor declared that Aceveda was able to produce “believable” documents from the Department of Agrarian Reform (DAR) tending to show his ownership over the portion of the land upon which he had constructed his house. Thus, Sheriff Montemayor advised complainants to conduct a resurvey to ascertain the boundaries of the property that should be included in the demolition.¹⁵

Complainants insisted that all issues pertaining to the subject property, particularly the portion being claimed by Aceveda, had already been settled in the ejectment case. As such, all that Sheriff Montemayor had to do was to enforce the judgment therein. Unfortunately, the latter refused to do so, prompting complainants to send a letter dated November 22, 2011 to Atty. Centron, informing her of Sheriff Montemayor’s unjustified refusal to perform his duty of implementing the MCTC Decision. In the letter, complainants mentioned Sheriff Montemayor’s receipt of the amount of ₱10,000.00 allegedly as operational expenses for the intended demolition.¹⁶

On December 23, 2011, Sheriff Montemayor advised complainants that he had scheduled the demolition on December 27, 2011 and asked for additional funds. Acceding to the request in the hope that the favorable decision will finally be enforced, complainants gave the amount of ₱15,000.00 to Sheriff Montemayor, for which the latter signed an acknowledgment receipt.¹⁷

Unfortunately, the scheduled demolition did not push through because of alleged flooding in Baco, Oriental Mindoro. Nonetheless, Sheriff Montemayor assured complainants that he will undertake the demolition on January 2, 2012, which never transpired at all. Instead, he suggested that complainants secure permission from the Department of Environment and Natural Resources–Community Environment and Natural Resources Office (DENR-CENRO) to cover the improvements on the portion of the premises occupied by Aceveda. Despite the cancellation of the demolition, Sheriff Montemayor failed to return the ₱15,000.00 given to him as expenses therefor.

¹³ Id. at 53-54.

¹⁴ Id. at 3.

¹⁵ Id. at 3-4.

¹⁶ Id. at 4.

¹⁷ Id. at 4-5.

Complainants reported¹⁸ the matter to Atty. Centron, who, however, failed to take appropriate action on Sheriff Montemayor's unwarranted refusal to carry out the demolition. Hence, the instant administrative case against both Sheriff Montemayor and Atty. Centron for dereliction of duty, serious misconduct, dishonesty, and conduct prejudicial to the service.

In his defense,¹⁹ Sheriff Montemayor denied having received the amount of ₱10,000.00 as alleged operational funds for the demolition, maintaining that there was no proof of his receipt thereof other than complainants' bare allegation.²⁰ However, he admitted receipt of the ₱15,000.00, which he claimed was distributed as financial assistance among the Mangyans who voluntarily agreed to vacate and remove their structures on the subject premises.²¹ He argued that, contrary to complainants' allegation, Section 10,²² Rule 141 of the Rules of Court on sheriff's fees did not apply in this case as the ₱15,000.00 that he received and gave as financial assistance to the Mangyans cannot be considered as sheriff's fees.²³

As regards his refusal to demolish Aceveda's structure on the premises, he explained that he had doubts on whether Aceveda's house was truly within complainants' property. It was because of this uncertainty that he advised complainants to conduct a resurvey of the property, but they never cooperated.²⁴

For her part, Atty. Centron asserted²⁵ that she never tolerated Sheriff Montemayor's alleged dereliction of duty nor did she fail to act on complainants' concerns after they were brought to her attention. In fact, she gave Sheriff Montemayor written directives to carry out the writ of demolition and even reminded him of the money judgment contained in the MCTC's Decision, which he must also enforce in favor of complainants. Likewise, in light of Sheriff Montemayor's advice to conduct a resurvey, Atty. Centron sought complainants' cooperation by asking that they provide a surveyor for the expeditious resolution of the matter.²⁶

¹⁸ Id. at 57-62 and 63-64.

¹⁹ Id. at 121-127.

²⁰ Id. at 123.

²¹ Id.

²² **Section 10. Sheriffs, Process Servers and other persons serving processes.** –
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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 the 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, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

²³ *Rollo*, p. 124.

²⁴ Id. at 125.

²⁵ Id. at 84-87.

²⁶ Id.

Atty. Centron pointed out that the delays attendant to the demolition were caused by Sheriff Montemayor's belief that Acevedo's house was not within the property of complainants, at the same time maintaining that he (Sheriff Montemayor) never deliberately intended to obstruct or cause such delay.²⁷

The Report and Recommendation of the Office of the Court Administrator

In its Report²⁸ dated January 13, 2017, the Office of the Court Administrator (OCA) recommended, *inter alia*, that Sheriff Montemayor be found guilty of dereliction of duty, grave misconduct, and dishonesty, and fined in the amount of ₱40,000.00 in view of his previous dismissal from the service. Likewise, the OCA recommended that Atty. Centron be held liable for simple neglect of duty and fined in the amount of ₱10,000.00, with a stern warning that a repetition of the same or any similar act shall be dealt with more severely.²⁹

In its evaluation, the OCA held that Sheriff Montemayor exceeded his authority and substituted his own judgment when he deferred the implementation of the writ of demolition based on his own belief that the property in dispute had to be resurveyed, forgetting that a sheriff has no discretion on whether to execute a judgment or not. Neither can he choose as to which portion of a property should be included or excluded in the execution.³⁰

With respect to his receipt of the aggregate amount of ₱25,000.00 from complainants, the OCA found no proof that Sheriff Montemayor indeed received the initial amount of ₱10,000.00. With regard, however, to the amount of ₱15,000.00 which he *admittedly* received, the OCA did not give credence to his allegation that the said amount was distributed to the Mangyans. Instead, it found him liable for violation of the procedural steps that sheriffs are mandated to comply with relative to the fees and expenses in implementing court processes, pursuant to Section 10, Rule 141 of the Rules of Court. In particular, Sheriff Montemayor did not secure court approval with respect to the ₱15,000.00 he admittedly received, which is tantamount to an unlawful exaction, thereby making him administratively liable.³¹

In sum, the OCA found Sheriff Montemayor liable for dereliction of duty on account of his failure and refusal to enforce the writ of execution and writ of demolition. For demanding and receiving money without court

²⁷ Id. at 87.

²⁸ Id. at 155-168. Issued by Court Administrator Jose Midas P. Marquez, Deputy Court Administrator Raul Bautista Villanueva, and Chief of Office (OCA), Legal Office Wilhelmina D. Geronga.

²⁹ Id. at 168.

³⁰ Id. at 163-164.

³¹ Id. at 164-166.

approval in violation of Section 10, Rule 141 of the Rules of Court, he is liable as well for grave misconduct and dishonesty, for which the prescribed penalty is dismissal. However, in light of his previous dismissal from the service,³² the OCA recommended that he instead be fined in the amount of ₱40,000.00, which shall be deducted from the monetary value of his accumulated leave credits, if sufficient; otherwise, he shall pay said amount directly to the Court.³³

Similarly, the OCA found Atty. Centron remiss in the performance of her duties as Clerk of Court in view of her failure to effectively supervise Sheriff Montemayor in carrying out his tasks. While it may be true that she had called his attention by directing and/or reminding him to enforce the writ of demolition in this case, her failure to effectively address the matter that complainants had brought to her attention makes her liable for simple neglect of duty, for which the OCA recommended the alternative penalty of fine in the amount of ₱10,000.00 in lieu of suspension to prevent undue adverse effect on public service.³⁴

The Issue Before the Court

The sole issue for the Court's resolution is whether or not respondents Sheriff Montemayor and Atty. Centron should be held administratively liable, as recommended by the OCA.

The Court's Ruling

The Court concurs with the findings and conclusions of the OCA.

In *Lucas v. Dizon*,³⁵ the Court declared:

The last standing frontier that the victorious litigant must face is often another difficult process – the execution stage. In this stage, a litigant who has won the battle might lose the war. Thus, the sheriffs, being agents of the court, play an important role, particularly in the matter of implementing the writ of execution. Indeed, [sheriffs] “are tasked to execute final judgments of courts. If not enforced, such decisions are empty victories of the prevailing parties. They must therefore comply with their **mandated ministerial duty to implement writs promptly and expeditiously**. As agents of the law, sheriffs are called upon to discharge

³² In a Decision dated August 2, 2016, the Court *En Banc*, in A.M. No. P-13-3113, formerly OCA-I.P.I. No. 12-3815-P entitled “*Rosemarie Gerdman, represented by her sister and Attorney-in-fact, Rosaline Lopez Bunquin v. Ricardo V. Montemayor, Jr. x x x*,” **dismissed** Sheriff Montemayor from the service for grave misconduct, with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government or any of its subdivisions, instrumentalities, or agencies, including government-owned and controlled corporations.

³³ *Rollo*, pp. 166-167.

³⁴ *Id.* at 167-168.

³⁵ 747 Phil. 88 (2014).

their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its order, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice."³⁶ (Emphasis supplied)

Engraved in jurisprudence is the rule that the sheriff's duty in the execution of a writ is *purely ministerial*. Once the writ is placed in his or her hands, a sheriff is obligated to execute the order of the court strictly to the letter and with reasonable promptness, taking heed of the prescribed period required by the Rules.³⁷

In this case, Sheriff Montemayor's mandated task was to implement the MCTC's Decision in favor of complainants. However, instead of doing so, he substituted his own judgment and acted on his own belief that a specific portion of the subject property should be excluded from the execution. He refused to demolish the house of defendant Aceveda and vehemently insisted that the subject property must first be resurveyed, unduly causing delay in the implementation of the MCTC Decision, to the prejudice of the prevailing parties, *i.e.*, the complainants.

Sheriff Montemayor's failure to enforce the alias writ of execution and writ of demolition clearly renders him liable for dereliction of duty. He overstepped his authority and conveniently overlooked the ministerial nature of a sheriff's duty in the execution of judgments. Instead of enforcing the MCTC's orders, he exercised his discretion and supplanted his own judgment for that of the court's. To reiterate, the duty of a sheriff to execute a writ is purely ministerial, and he has no discretion to delay the execution thereof. Absent any instruction by a court to the contrary, he is mandated to proceed with reasonable celerity and promptness in implementing the writ.³⁸ If for any reason, he cannot do so in part or in full, his duty is outlined in Section 14,³⁹ Rule 39 of the Rules of Court which, unfortunately, he likewise failed to observe.

As regards the amount of ₱15,000.00 that Sheriff Montemayor had admittedly received from complainants as additional expenses for the cancelled demolition and which he claimed had been distributed among the Mangyans who voluntarily vacated the premises, the Court concurs with the

³⁶ Id. at 95-96, citing *Teresa T. Gonzales La'O & Co., Inc. v. Sheriff Hatab*, 386 Phil. 88, 92-93 (2000), cited in *Gonzales v. Cerenio*, 564 Phil. 295, 302-303 (2007).

³⁷ Id., citing *Guerrero-Boylon v. Boyles*, 674 Phil. 565 (2011) and *Anico v. Pilipiña*, 670 Phil. 460, 470 (2011).

³⁸ *Garcera II v. Parrone*, 502 Phil. 8, 12 (2005).

³⁹ **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 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.

OCA's finding that the said money was beyond the ambit of allowable fees that a sheriff may receive in the implementation of writs. Moreover, Sheriff Montemayor failed to observe the following procedure laid down in Section 10, Rule 141 of the Rules of Court with respect to sheriff's expenses: (1) the sheriff is required to secure the court's prior approval of the estimated expenses and fees needed to implement the court process; (2) the requesting party shall deposit such amount with the Clerk of Court and *Ex-Officio* Sheriff, who shall disburse the same to the executing sheriff subject to his liquidation within the same period for rendering a return on the process or writ; and (3) any unspent amount shall be refunded to the requesting party who made the deposit.

Indisputably, the sum of ₱15,000.00 received by Sheriff Montemayor without the approval of the court cannot be considered as lawful sheriff's fees. As such, his receipt thereof is tantamount to an unlawful exaction for which he must be held liable for grave misconduct and dishonesty.⁴⁰ A sheriff's conduct of unilaterally demanding sums of money from a party-litigant purportedly to defray expenses of execution, without obtaining the approval of the trial court for such supposed expense and without rendering an accounting constitutes dishonesty and extortion and falls short of the required standards of public service. Such conduct threatens the very existence of the system of administration of justice.⁴¹

Grave misconduct and dishonesty are grave offenses each punishable by dismissal on the first offense under Section 46 (A), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS).⁴² Conduct prejudicial to the best interest of the service is likewise a grave offense which carries the penalty of suspension for six (6) months and one (1) day to one (1) year, and dismissal on the second offense. However, as records show that Sheriff Montemayor had been previously meted the penalty of dismissal,⁴³ the Court instead imposes on him the penalty of fine in the amount of ₱40,000.00, which amount shall be deducted from the monetary value of his accrued credit leaves, if sufficient; otherwise, he shall pay the amount directly to the Court.

Similarly, Atty. Centron should be held administratively liable for her failure to take a more decisive action against Sheriff Montemayor's unwarranted refusal to enforce the MCTC Decision in favor of complainants. Although she may have advised and/or reminded him with respect to the performance of his duties, her apparently lackadaisical attitude in this matter evinces a similar failure on her part to perform her duty of effectively supervising him. Moreover, instead of taking Sheriff

⁴⁰ *Beltran v. Monteroso*, 593 Phil. 413 (2008), citing *De Guzman, Jr. v. Mendoza*, 493 Phil. 690 (2005); *Adoma v. Gatcheco*, 489 Phil. 273 (2005); and *Tan v. Dela Cruz, Jr.*, 482 Phil. 782 (2004).

⁴¹ *Beltran v. Monteroso*, id. at 417.

⁴² Promulgated by the Civil Service Commission through Resolution No. 1101502 dated November 8, 2011.

⁴³ See footnote 32.

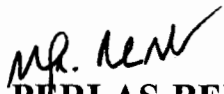
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Montemayor's stance that a resurvey should be conducted on the subject property based on his groundless belief that a portion thereof should be excluded from the judgment, she should have firmly reminded him of his mandated ministerial task of implementing writs promptly and expeditiously, and that he had no discretion with regard to the merits of the judgment. Atty. Centron's failure in this respect renders her administratively liable for simple neglect of duty.

Simple neglect of duty is defined as the failure of an employee to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference,⁴⁴ a less grave offense punishable by suspension from office for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense under Section 46 (D) of the RRACCS. However, the Court, in several cases,⁴⁵ imposed the penalty of fine in lieu of suspension as an alternative penalty in order to prevent any undue adverse effect on public service which would ensue if work were otherwise left unattended by reason of respondent's suspension. Therefore, the Court imposes on Atty. Centron the penalty of fine in the amount of ₱10,000.00, with a stern warning that a repetition of the same or any similar act shall be dealt with more severely.

WHEREFORE, respondent Ricardo V. Montemayor, Jr., Sheriff IV of the Office of the Clerk of Court, Regional Trial Court, Calapan City, Oriental Mindoro is found **GUILTY** of dereliction of duty, grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service. In view of his previous dismissal from the service, he is **FINED** in the amount of ₱40,000.00, to be deducted from the monetary value of his accumulated leave credits, if sufficient; otherwise, he is ordered to pay the said amount directly to the Court. Likewise, respondent Atty. Luningning Y. Centron, Clerk of Court VI of the same office is found **GUILTY** of simple neglect of duty and **FINED** in the amount of ₱10,000.00 and **STERNLY WARNED** that a repetition of the same or any similar act shall be dealt with more severely.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

⁴⁴ *Miranda v. Raymundo, Jr.*, A.M. No. P-13-3163, December 1, 2014, 743 SCRA 343, 349.

⁴⁵ *Mendoza v. Esguerra*, 703 Phil. 435 (2013); *Zamudio v. Auro*, 593 Phil. 575, 584 (2008).

WE CONCUR:



MARIA LOURDES P. A. SERENO

Chief Justice

Chairperson



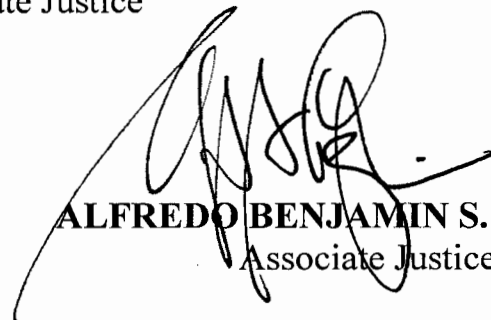
TERESITA J. LEONARDO-DE CASTRO

Associate Justice



MARIANO C. DEL CASTILLO

Associate Justice



ALFREDO BENJAMIN S. CAGUIOA

Associate Justice