



**Republic of the Philippines
Supreme Court
Manila**

FIRST DIVISION

**FELISICIMO* R. SABIJON and
ZENAIDA A. SABIJON,**
Complainants,

A.M. No. P-14-3281
(Formerly OCA IPI No. 12-3998-P)

Present:

- versus -

BENEDICT M. DE JUAN,
SHERIFF IV, REGIONAL
TRIAL COURT OF KABACAN,
NORTH COTABATO,
BRANCH 22,**

SERENO, C.J., Chairperson,
LEONARDO-DE CASTRO, J.,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, JJ.

Respondent.

Promulgated:

JAN 28 2015

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DECISION

PERLAS-BERNABE, J.:

Before the Court is a Joint Affidavit-Complaint¹ dated November 23, 2012 filed by complainants Felisicimo R. Sabijon (Felisicimo) and Zenaida A. Sabijon (Zenaida; collectively, complainants) against respondent Benedict M. De Juan (respondent), Sheriff IV of the Regional Trial Court of Kabacan, North Cotabato, Branch 22 (RTC), charging him of Grave Misconduct and Malfeasance.

The Facts

In their Joint Affidavit-Complaint, complainants alleged that on May 19, 2007, Felisicimo and PO2 Recto Aquino (PO2 Aquino) figured in a vehicular accident whereby the former's Isuzu Elf Truck with Plate No. GJY-476 (subject truck), which complainants used for their livelihood, hit PO2 Aquino's van from behind. Due to their failure to settle, PO2 Aquino

* Felisicimo in some parts of the record.

** Referred to as "Benedicto" in the title of the case.

¹ Rollo, pp. 14-16.

filed a civil case for damages and attorney's fees against Felisicimo and a certain Roger Saso, as driver/owners of the subject truck, entitled "*PO2 Recto Aquino v. Roger Saso and/or Felicisimo Sabijon*," docketed as Civil Case No. 345, before the 2nd Municipal Circuit Trial Court of Mlang-Matalam, Mlang, Cotabato (MCTC). Thereafter, or on December 8, 2011, respondent and PO2 Aquino went to complainants' residence and, on the strength of the Writ of Execution² dated June 14, 2011 (subject writ), allegedly forcibly took away the subject truck.³

In this regard, complainants surmised that respondent committed irregularities in executing the judgment in Civil Case No. 345 and in the disposition of the subject truck, claiming that: (a) they were not furnished a Notice of Sheriff's Sale anent the subject truck; (b) assuming an auction sale indeed took place, respondent never gave them the excess of the proceeds, considering that the value of the subject truck was significantly higher than their judgment debt which was less than ₱80,000.00; (c) respondent and PO2 Aquino connived in not selling the subject truck at public auction and instead, appropriated the same for their personal benefit, causing damage and prejudice to complainants; and (d) Zenaida personally saw the subject truck being driven by a person other than PO2 Aquino.⁴

In his defense,⁵ respondent vehemently denied the accusations against him and invoked good faith in the performance of his duties. He maintained that he was merely enforcing the subject writ. He explained that he initially went to complainants' residence on November 25, 2011, but was unable to talk to them since they were away. He went back on December 8, 2011 and levied on execution the subject truck.⁶ On December 21, 2011, he issued a Notice of Sale on Execution of Personal Property⁷ setting the public auction on December 29, 2011 at 2 o' clock in the afternoon at the Hall of Justice, RTC, but since nobody participated in the auction,⁸ the vehicle was awarded to PO2 Aquino.⁹ Respondent then asserted that he already submitted his Sheriff's Return on January 6, 2012, only that it could not be found in the records of the MCTC. Later on, he readily admitted his failure to submit the Sheriff's Return and attributed the same to the fact that he is the only Sheriff in the MCTC after his colleagues either retired or went on a leave of absence.¹⁰

² Id. at 20. Penned by Presiding Judge Arvin Sadiri B. Balagot, CPA.

³ Id. at 15 and 74.

⁴ Id. at 74.

⁵ See letter dated January 16, 2013; id. at 37-38.

⁶ Id. at 37.

⁷ Id. at 43.

⁸ As reflected in the Minutes of Auction Sale dated December 29, 2011 signed by Process Server Victor Silapan and certified by respondent. Id. at 44.

⁹ Id. at 37-38, 46-47, and 75.

¹⁰ To note, Sheriff's Return was only filed with the RTC on January 15, 2013 (see id. at 40.) See also id. at 75.

Finally, respondent contested complainants' valuation of the subject truck, arguing that its value should only be more or less ₱80,000.00, taking into consideration the poor state of its engine as well as its rotten under chassis.¹¹

The OCA's Report and Recommendation

In a Report and Recommendation¹² dated September 11, 2014, the Office of the Court Administrator (OCA) found respondent administratively liable for Grave Abuse of Authority and Simple Neglect of Duty, mitigated by the fact that it was his first offense in his more than 19 years of service, and accordingly, meted him the penalty of fine in the amount of ₱10,000.00 payable within thirty (30) days from receipt of the Court's Resolution, with a stern warning that a repetition of the same or similar infraction shall be dealt with more severely.¹³

The OCA found that by his own admission, respondent digressed from the procedure laid down by the Rules of Court for the enforcement of judgments when he: (a) immediately levied upon the subject truck, rendering nugatory the option given to complainants, as judgment debtors, to choose which property or part thereof may be levied upon; (b) failed to keep the levied property securely in his custody; and (c) did not prepare a Sheriff's Return within the prescribed period and furnish the parties copies of the same.¹⁴ In this light, the OCA doubted the existence of the auction sale, opining that without the foregoing, all that respondent has to prove that an actual auction sale occurred is his bare allegation, which is at most self-serving, and thus, cannot be given any credence.¹⁵

Finally, the OCA did not give credence to respondent's assertion that the subject truck was only valued at more or less ₱80,000.00, considering that the same was mortgaged on November 28, 2011 in order to secure a loan amounting to ₱149,272.00.¹⁶

The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable for Grave Abuse of Authority (otherwise referred to as Oppression) and Simple Neglect of Duty.

¹¹ Id. at 38 and 75.

¹² Id. at 74-81. Signed by Court Administrator Jose Midas P. Marquez, Deputy Court Administrator Thelma C. Bahia, and OCA Legal Office Chief Wilhelmina D. Geronga.

¹³ Id. at 80-81.

¹⁴ See id. at 77-79.

¹⁵ See id. at 79-80.

¹⁶ Id. at 79.

The Court's Ruling

The Court concurs with the OCA's findings and recommendation, except as to the recommended penalty to be imposed upon respondent.

Sheriffs, like respondent being ranking officers of the court and agents of the law, must discharge their duties with great care and diligence. In serving and implementing writs, as well as processes and orders of the court, they cannot afford to err without affecting adversely the proper dispensation of justice. Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them. They should always hold inviolate and invigorate the tenet that a public office is a public trust.¹⁷ In this light, sheriffs are expected to know the rules of procedure pertaining to their functions as officers 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 their duties. Any act deviating from the procedure laid down by the Rules of Court is misconduct that warrants disciplinary action,¹⁸ which may be deemed as Simple Neglect of Duty¹⁹ or even Grave Abuse of Authority.²⁰

Simple Neglect of Duty is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference.²¹ On the other hand, Grave Abuse of Authority has been defined as a misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment, or other injury; it is an act of cruelty, severity, or excessive use of authority.²²

In this case, respondent, as a Sheriff, ought to know that pursuant to Section 9,²³ Rule 39 of the Rules of Court, a judgment debtor, in case he has

¹⁷ See *Viscal Development Corporation v. Dela Cruz-Buendia*, A.M. No. P-12-3097, November 26, 2012, 686 SCRA 299, 305, citing *Cruz v. Villar*, 427 Phil. 229, 234-235 (2002).

¹⁸ *Katague v. Ledesma*, A.M. No. P-12-3067, July 4, 2012, 675 SCRA 527, 535, citations omitted.

¹⁹ See *Viscal Development Corporation v. Dela Cruz-Buendia*, supra note 17, at 310-311, citing *Atty. Bansil v. De Leon*, 529 Phil. 144, 148 (2006).

²⁰ See *Romero v. Villarosa, Jr.*, A.M. No. P-11-2913, April 12, 2011, 648 SCRA 32, 41-42.

²¹ *Court of Appeals v. Manabat, Jr.*, A.M. No. CA-11-24-P, November 16, 2011, 660 SCRA 159, 165, citing *Reyes v. Publico*, 538 Phil. 10, 20 (2006).

²² *Romero v. Villarosa, Jr.*, supra note 20, citing *Rafael v. Sualog*, 577 Phil. 159, 169 (2008).

²³ Section 9, Rule 39 of the Rules of Court provides:

SEC. 9. *Execution of judgments for money, how enforced.* –

(a) *Immediate payment on demand.* – The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

insufficient cash to pay all or part of the judgment debt, is given the option to choose which among his properties or a part thereof may be levied upon. Moreover, respondent should have known that under Section 14²⁴ of the same Rule, he is required to make a return on the writ of execution and make periodic reports on the execution proceedings until either the full satisfaction of the judgment or the expiration of the writ's effectivity, as well as to furnish the parties copies of such return and periodic reports.

Contrary to the aforesaid provisions and as correctly pointed out by the OCA, there was no showing that complainants manifested that: (a) they were unable to settle their judgment debt through cash, certified bank check, or any other mode of payment acceptable to the judgment creditor, PO2 Aquino; and (b) they chose the subject truck to be levied upon for the payment of their judgment debt. Instead, respondent immediately levied upon the subject truck without regard to complainants' pleas not to do so, since they were using the subject truck for their livelihood. Indeed, respondents' brazen act not only deprived complainants of the option given to them by the Rules on Execution but also caused undue prejudice to them since they were using the subject truck for livelihood purposes. Worse, respondent himself admitted that he failed to make a return on the writ and to make periodic reports on the execution process, thus, putting into serious doubt that an auction sale involving the subject truck was actually conducted. Irrefragably, the OCA correctly concluded that respondent's foregoing acts constitute Grave Abuse of Authority and Simple Neglect of Duty.

Anent the proper penalty to be meted to respondent, the Court deems it appropriate to modify the penalty recommended by the OCA. Section 50, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) provides that "[i]f the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that

(b) *Satisfaction by levy.* – If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

x x x x

²⁴ Section 14, Rule 39 of the Rules provides:

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.

corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.” Under the RRACCS, Grave Abuse of Authority (or Oppression) is punishable by suspension for a period of six (6) months and one (1) day to one (1) year for the first offense and dismissal from service for the second offense, while the Simple Neglect of Duty is only punishable by suspension for the period one (1) month and one (1) day to six (6) months for the first offense and dismissal for the second offense.²⁵ Hence, the OCA correctly deemed the former to be the more serious offense, thus rendering the latter offense as a mere aggravating circumstance.

However, the OCA erred in downgrading respondent’s penalty to a mere fine in the amount of ₱10,000.00 payable within thirty (30) days from receipt of the Court’s Resolution, with a stern warning that a repetition of the same or similar infraction shall be dealt with more severely, in view of the fact that it was respondent’s first administrative offense in his more than nineteen (19) years of service.²⁶ While “First Offense” and “Length of Service” may indeed be considered as mitigating circumstances,²⁷ the presence thereof does not automatically result in the downgrading of the penalty to be imposed upon respondent, especially in view of the existence of an aggravating circumstance. Section 49, Rule 10 of the RRACCS on the imposition of the proper administrative penalties is instructive on this matter, to wit:

Section 49. *Manner of imposition.* – When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

- a. **The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present;**
- b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present;
- c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present;
- d. **Where aggravating and mitigating circumstances are present, paragraph [a] shall be applied where there are more mitigating circumstances present;** paragraph [b] shall be applied when the circumstances equally offset each other; and paragraph [c] shall be applied when there are more aggravating circumstances. (Emphases and underscoring supplied)

In this case, since there is one (1) aggravating circumstance (*i.e.* Simple Neglect of Duty) and two (2) mitigating circumstances (*i.e.* First Offense and Length of Service), only the minimum of the imposable penalty

²⁵ See Section 46 (B) (2) and (D) (1) of the RRACCS.

²⁶ See *rollo*, p. 80.


²⁷ See Section 48 (l) and (n) of the RRACCS.

for Grave Abuse of Authority (or Oppression) should be meted against respondent. Under the foregoing circumstances, the Court deems it appropriate to impose upon respondent the penalty of suspension for a period of six (6) months and one (1) day, with a stern warning that a repetition of the same or similar infraction shall be dealt with more severely.

It bears noting that a Sheriff is a front-line representative of the justice system in this country. Once he loses the people's trust, he diminishes the people's faith in the judiciary. High standards of conduct are expected of sheriffs who play an important role in the administration of justice. They are tasked with the primary duty to execute final judgments and orders of the courts. When a writ is placed in the hands of a sheriff, it becomes his ministerial duty to proceed with reasonable celerity and promptness to implement it in accordance with its mandate.²⁸ Doubtless, a sheriff must always act with a high degree of professionalism and responsibility. Their conduct must not only be characterized by propriety and decorum, but must also be in accordance with the law and court regulations. No position demands greater moral righteousness and uprightness from its holder than an office in the judiciary. Court employees should be models of uprightness, fairness and honesty to maintain the people's respect and faith in the judiciary. The conduct of court personnel, therefore, must not only be, but must also be perceived to be, free from any whiff of impropriety, both with respect to their duties in the judiciary and to their behavior outside the court. Any act or omission of any court employee diminishing or tending to diminish public trust and confidence in the courts will not be tolerated. The Court will not hesitate to impose the ultimate penalty on those who fall short of their accountabilities.²⁹

WHEREFORE, respondent Benedict M. De Juan, Sheriff IV of the Regional Trial Court of Kabacan, North Cotabato, Branch 22 is found **GUILTY** of Grave Abuse of Authority (or Oppression) and Simple Neglect of Duty, mitigated by the fact that it is his first offense in his more than nineteen (19) years of service. Accordingly, he is hereby **SUSPENDED** for a period of six (6) months and one (1) day effective from the finality of this Decision, with a **STERN WARNING** that a repetition of the same or similar infraction in the future shall be dealt with more severely.


SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

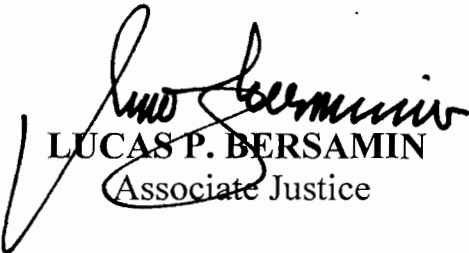
²⁸ *Romero v. Villarosa, Jr.*, supra note 20, at 45, citations omitted.

²⁹ *Id.*

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice