

EN BANC

[A.M. NO. P-06-2212, July 14, 2009]

GERONIMO FRANCISCO, PETITIONER, VS. SEBASTIAN BOLIVAR, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 19, NAGA CITY, RESPONDENT.

D E C I S I O N

PERALTA, J.:

Before this Court is a verified complaint dated October 6, 2005 filed by complainant Geronimo Francisco alleging that respondent Sebastian Bolivar, Sheriff IV of the Regional Trial Court (RTC), Branch 19 of Naga City, acted with dishonesty and abuse of authority in implementing the writ of execution in connection with the judgment rendered by the said court in Civil Case No. RTC-3811, entitled *Geronimo F. Francisco, et al. v. Danilo Soreta, et al.*

Herein complainant was one of the plaintiffs in a civil case for damages, docketed as Civil Case No. RTC-3811, entitled *Geronimo F. Francisco, et al. v. Danilo Soreta, et al.*, filed with the RTC, Branch 19 of Naga City, where judgment was rendered in his favor.^[1] The dispositive portion of the Decision dated October 22, 2003, reads as follows:

WHEREFORE, the Court renders judgment in favor of the plaintiffs and against the defendants, ordering the latter:

- 1) to pay plaintiffs the sum of P50,000.00 as civil indemnity for the death of Cheyserr B. Francisco;
 - 2) to pay plaintiffs the sum of P28,797.10, less the sum of P10,800.00 already paid to plaintiffs, as actual damages for hospitalization, medical and funeral expenses;
 - 3) to pay plaintiffs the sum of P50,000.00 as exemplary damages;
 - 4) to pay plaintiffs the sum of P50,000.00 as moral damages;
 - 5) to reimburse plaintiff Geronimo Francisco the sum of P4,200.00, representing lost income for twenty-one (21) days at P200.00 per day;
 - 6) to pay plaintiffs the sum of P50,000.00 as attorney's fees and P10,000.00 litigation expense; and
- to pay the costs of suit.

SO ORDERED.^[2]

On February 19, 2005, the judgment in Civil Case No. RTC-3811 became final and executory. On May 13, 2005, the RTC granted therein plaintiffs' Motion for Execution and, on May 23, 2005, issued a Writ of Execution^[3] of the judgment. Herein respondent was the Sheriff assigned to implement the writ of execution.

In his Complaint, complainant alleged that before the writ of execution was implemented, respondent submitted his Sheriff's Itemized Estimated Account of Expenses^[4] dated May 24, 2005 in the total amount of P7,500.00 which he demanded that complainant deposit in his name with the Office of the Clerk of Court, RTC, Naga City. However, complainant was able to deposit only P2,000.00. Respondent then proceeded to lambast and humiliate complainant at the lobby of the Hall of Justice, Naga City. Respondent, in a loud voice, told them that they should not talk to the other sheriffs, as he was the only sheriff assigned to implement the writ. Respondent gave complainant a run-around. On another occasion, Francisco and his wife approached respondent who was then taking his snack at a canteen near the court, but the latter angrily told them that the canteen was not the proper place to discuss about the execution of judgment. After respondent Sheriff had eaten, they followed him to his office where complainant and his wife pleaded for the implementation of the writ. Aside from paying the P2,000.00 already deposited, they offered to shoulder the other expenses during the actual implementation of the writ, but respondent ignored their pleas.^[5] Complainant later discovered that respondent had withdrawn the P2,000.00. Complainant also gave respondent an additional amount of P500.00, which the latter demanded as additional expense. Without a court order, respondent demanded that complainant file a bond, as there was a third-party claimant.

On June 6, 2005, as advised by respondent, complainant hired a truck and three laborers in order to haul properties belonging to the defendants. However, upon their arrival at the defendants' residence, respondent merely listed down and levied upon defendants' properties, attaching two tricycles registered in defendant Merly Soreta's name.^[6]

On June 18, 2005, complainant and therein defendant Merly Soreta entered into a compromise agreement to reduce the amount of the money judgment from P232,997.10 to P210,000.00, after which defendant made a partial payment of P180,000.00. Defendant then executed a promissory note,^[7] in which she promised to pay complainant the balance of P30,000.00 as follows: P20,000.00 on or before August 30, 2005, and P10,000.00 on or before September 15, 2005. However, as of September 13, 2005, when the instant complaint was filed, defendant had not yet paid the balance of P30,000.00. Respondent also deducted the amount of P10,000.00 from the partial payment of P180,000.00 without any explanation as to what expenses it represented.

On June 22, 2005, complainant sent a letter^[8] to the Presiding Judge of the RTC, Branch 19 of Naga City, requesting the latter to require respondent to make a proper liquidation of the expenses incurred in enforcing the writ of execution and to return the excess amount to complainant.

On July 21, 2005, complainant wrote respondent, demanding, among others, the return of the excess amount of the sheriff's fees collected within five (5) days; otherwise, he would file an administrative complaint.

In his Counter-Affidavit^[9] dated January 17, 2006, respondent denied being the cause of the delay in the implementation of the writ pursuant to the judgment rendered by the trial court in Civil Case No. RTC-3811. He claimed that after the issuance of the writ, he required complainant to deposit the amount of P7,500.00 with the Office of the Clerk of Court to cover incidental expenses, but complainant deposited only P2,000.00. Respondent added that despite complainant's failure to pay the amount in full, respondent still implemented the writ by attaching two (2) tricycles belonging to therein defendant Merly Soreta as partial satisfaction of the judgment. Thereafter, on June 18, 2005, the parties in the civil case agreed to settle the money judgment in the amount of P210,000.00. Respondent admitted the existence of the acknowledgment receipt^[10] dated June 18, 2005 covering the amount of P10,000.00, as evidence of payment by complainant, but claimed that it was therein defendant who paid the said amount which she borrowed from complainant because the latter insisted that defendant should pay the balance of the sheriff's fees. Respondent also averred that the total amount of P12,500.00 he received was insufficient as shown by the breakdown of expenses. He denied having knowledge of the complainant's expenses because it was the former who paid for all the expenses. Moreover, respondent stated that he submitted the itemized breakdown of the expenses to the complainant's lawyer, and when complainant requested a report on the liquidation of expenses, the writ had not yet been fully satisfied. Respondent insisted that the amount being claimed by complainant as exorbitant had already been duly liquidated and was covered by a supplemental breakdown of expenses.

In its Report^[11] dated May 19, 2006, the Office of the Court Administrator (OCA) recommended that respondent Sheriff be found guilty of simple misconduct and suspended for one (1) month and one (1) day without pay, with a warning that a repetition of the same or similar acts be dealt with more severely. The pertinent portions of the said Report state:

In the discharge of the sheriff's duty of enforcing writs issued pursuant to court orders for which expenses are to be incurred, Section 10 of Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC which took effect on August 16, 2004, expressly provides:

x x x x

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, guard's 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. (Emphasis and underscoring supplied).

The clear import of the above-mentioned provision is that the interested party shall deposit the court-approved estimate of the sheriffs' expenses with the Clerk of Court. The Clerk of Court shall then disburse the same to the executing sheriff subject to liquidation within the same period for rendering a return on the writ. The liquidation shall then be approved by the court.

Although respondent seemingly observed the procedure laid down under Section 10 of Rule 141 by submitting an estimate of the expenses and a liquidation of the same, it appears that he did not completely follow the procedure. Aside from directly receiving sums of money from the party litigants, respondent received an amount more than the court-approved sheriff's fees. There is also no showing that the liquidation of expenses he submitted to the court was approved.

Record shows that the estimate of expenses amounting to P7,500.00 was approved by the court. However, respondent admitted that he received the total amount of P12,500.00 as sheriff's fees. Out of the amount he received, P2,000.00 was disbursed by the Clerk of Court, the rest were received by the respondent directly from the party litigants. Respondent did not deny demanding and receiving the additional amount of P500.00 from the complainant. He also acknowledged receiving the amount of P10,000.00 which he claims to have been paid by the defendant as sheriff's fees.

Respondent knew fully well, as it was he who submitted the estimate of expenses to the court, that the amount of P12,500.00 he received is beyond the court-approved sheriff's fees. His contention that it was the defendant in the civil case and not herein complainant who paid the amount of P10,000.00 is of no moment. Likewise, the justification that the amount he received was insufficient to cover the amount of expenses incurred in the implementation of the writ is unacceptable. A sheriff may receive only the court-approved sheriff's fees and acceptance of any other amount is improper. (*Bernabe v. Eguia, A.M. No. P-03-1742, 18 September 2003*).

There is also no showing that the court has approved the liquidation of expenses submitted by the respondent wherein he itemized his expenses in the implementation of the writ amounting to P13,000.00. Said liquidation is not even supported by documents. In his counter-affidavit,

respondent was only able to attach two (2) receipts representing payment of guarding fee for the [(2) levied] units of tricycles and hiring fee for the jeepney used in the implementation of the writ amounting to P2,000.00 and P1,500.00, respectively. The said receipts are not sufficient to cover the amount of the expenses that the respondent allegedly incurred in the implementation of the writ.

x x x x

Respondent's act of demanding and receiving sums of money, for expenses incurred in the implementation of the writ, directly from party-litigants shows his propensity to disregard the procedural steps in defraying expenses in the implementation of court processes, which puts at risk the integrity of the judiciary. Such demand and receipt of money compounded by the fact that he received an amount exceeding the court-approved sheriff's fees and by submitting an unsupported liquidation report may arouse suspicion and impression that the same were received for less than noble purposes.

To our mind, respondent's deviation from the procedure of requiring the party interested to deposit the court-approved sheriff's fees with the Clerk of Court by directly receiving the same compounded by the fact that he received an amount more than the court-approved sheriff's fees is clearly a misconduct in office.^[12]

In a Resolution^[13] dated February 14, 2007, the Court referred the matter to the Executive Judge of the RTC, Naga City, for investigation, report and recommendation within ninety (90) days from notice.

On September 20, 2007, Executive Judge Jaime Contreras submitted his Report^[14] which contained the following findings:

The defense of the respondent that the Php10,000.00 which he received was given to him by the defendants, who borrowed the said amount from the complainant, as payment for sheriff's expenses per their agreements, do not evince belief even if said version was corroborated by fellow sheriff, Pielagio Papa, Jr., and court interpreter, Jesus Almero. Why should the defendants (losing party) pay for the sheriff's expenses which must be borne by the prevailing party (complainant)? Such tale was not in accordance [with] the ordinary course of human nature and experience that the prevailing party, who was not fully satisfied of the money judgment would still lend money to the losing party just to pay for the sheriff's expenses.

Further, complainant bewailed the shabby treatment he received and the conduct or arrogance displayed by the respondent in several occasions thereby causing him (complainant) embarrassments when he persistently made several follow-ups for the enforcement of the writ, and the same were as follows: (1) for seeking the reduction of the court-approved sheriff's estimated expense of Php7,500.00, (2) for publicly berating the