

THIRD DIVISION

[A.M. NO. P-03-1671, January 31, 2005]

ANTONIO RODRIGUEZ, COMPLAINANT, VS. VICENTE P. APOSAGA, JR., SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 24, IPIL, ZAMBOANGA SIBUGAY, RESPONDENT.

DECISION

CARPIO MORALES, J.:

By 1st Indorsement of February 8, 2002,^[1] the Department of Justice referred to the Office of the Court Administrator (OCA) for appropriate action a January 28, 2002 letter^[2] of herein complainant Antonio Rodriguez addressed to the Secretary of Justice requesting assistance in the execution of the decision of Branch 24, Regional Trial Court (RTC) of Sibugay, Zamboanga in Civil Case No. I-194 in light of "the burden of P10,000.00 for execution [by] the sheriff," and requesting action towards "cleansing undesirables in government service."

The letter was referred to Sheriff IV Vicente P. Aposaga, Jr. (respondent) for comment by 1st Indorsement of February 22, 2002 of the OCA.^[3]

By April 16, 2002 letter^[4] to the "THE CLERK," Court Administrator, complainant transmitted "documents [bearing on] Civil Case No. I-94," he complaining that respondent failed to implement the writ of execution. This letter was by 1st Indorsement of Deputy Court Administrator Christopher O. Lock^[5] referred to respondent for comment.

Respondent has submitted his Compliance-Comment.

From respondent's Comment, the following are gathered:

A decision in favor of complainant was rendered in Civil Case No. I-194, "*Antonio Rodriguez v. Elmer Raagas*," by Branch 24 of the RTC of Sibugay, Zamboanga on April 15, 1999. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing consideration, judgment is hereby rendered in favor of plaintiff as follows:

1. Declaring the rescission of the Memorandum of Agreement (Exh. A) dated May 8, 1998;
2. Ordering the defendant to return and/or restitute the sum of FORTY THOUSAND (P40,000.00) PESOS with legal rate of interest from the date of filing of the Complaint until fully paid; the sum of FIVE THOUSAND FOUR HUNDRED (P5,400.00) PESOS as compensatory

damages; the sum of FIFTEEN THOUSAND (P15,000.00) PESOS as moral damages;

3. FIVE THOUSAND (P5,000.00) PESOS as exemplary damages; and to pay the costs of this suit.

SO ORDERED. (Underscoring supplied)^[6]

The RTC decision was appealed by the judgment debtor to the Court of Appeals which dismissed it for his failure to file brief. The record of the case was thereupon returned to the court of origin which received it on December 11, 2001.

On complainant's motion, the trial court ordered the execution of the judgment and a corresponding writ of execution was issued.

As the writ of execution could not be enforced, the judgment debtor having transferred residence, respondent found that the judgment debtor had real property registered in his name in the local Registry of Deeds.

Respondent thus informed complainant to prepare an estimated amount of at least P10,000.00 representing expenses for the notation of the Notice of Levy on the judgment debtor's property in the local Registry of Deeds and expenses to be incurred in the execution sale including those for posting of notice and publication thereof to be done in Pagadian City, with the advice that if there was any excess in the amount requested, it would be returned to complainant and actual expenses incurred would be charged as costs against the judgment debtor.

Complainant, however, paid no heed to respondent's request, hence, respondent could not implement the writ of execution.

On his receipt of complainant's letter to the Justice Secretary, respondent asked complainant to produce the amount of P75.00 for the Sheriff's General Fund and JDF representing payment for the levy on execution as well as the amount to be incurred in travelling to Zamboanga del Sur, which is approximately 130 kilometers from Ipil, but again complainant paid no heed.

With the help of a "common friend" who was aware of his predicament, respondent proceeded to cause the registration of the Notice of Levy on the judgment debtor's property.

Respondent thus proffers that the delay in the execution of the decision is not attributable to him.

The OCA, in its request for the present case to be included in this Court's agenda, gives the following Evaluation:

x x x

Based on the foregoing, respondent has clearly shown a grave disregard of pertinent provisions of the rules with respect to the collection of legal fees or expenses to which a sheriff is entitled. He committed a serious infraction of the above-mentioned provision by demanding directly from