

THIRD DIVISION

[A.M. No. P-95-1158, July 14, 1997]

**EUFEMIA BERCASIO, COMPLAINANT, VS. HERBERTO BENITO,
SHERIFF, REGIONAL TRIAL COURT, NAGA CITY, RESPONDENT.**

R E S O L U T I O N

FRANCISCO, J.:

On October 11, 1993, complainant Eufemia Bercasio through her attorney-in-fact, Pastor Bravo, filed a complaint before the Office of Executive Judge David C. Naval of Regional Trial Court (RTC), Naga City against Herberto Benito, Sheriff IV, RTC, Branch 27, Naga City, for irregularities in connection with his failure to implement the Second Alias Writ of Demolition issued in Civil Case No. 34, Branch 22 of the RTC, Naga City.

Judge Naval conducted an investigation on the matter. The relevant facts as culled from his report and which are substantially undisputed are as follows:

"On October 6, 1992 there was issued in Civil Case No. 34 a 2nd alias writ of demolition. Complainant Bravo, as Attorney-in-fact of the prevailing party Eufemia Bercasio, paid Respondent Benito a total amount of P8,000.00 on the dates hereunder indicated:

October 4, 1992 ---- P2,000.00

December 4, 1992 ---- P1,000.00

December 29, 1992 ---- P1,000.00

January 25, 1993 ---- P4,000.00

TOTAL ---- P8,000.00

for the expenses of the latter in the enforcement of the said writ of demolition. The writ of demolition was, however, quashed by the Order dated July 2, 1993 (Exh. 3-F, pages 201-206), without Respondent Benito having implemented the writ of demolition. Subsequently, Complainant Bravo demanded that Responded Benito account for the P8,000.00 he received and return the unspent amount, but the latter failed to comply with the demand. Thereafter, Complainant Bravo reported the matter to Atty. Rosario B. Torrecampo, RTC Clerk of Court IV and Ex-Officio Provincial Sheriff who, by a letter dated June 17, 1993, directed Respondent Benito to account for the P8,000.00 and deposit the balance thereof, if any. Complying with the directive, Respondent Benito

submitted a written accounting (Exh. 3-E, page 199-200) showing that he spent P7,880.00, and deposited the amount of P120.00 with the Office of the Clerk of Court under O.R. No. 2504858 (page 197). Not satisfied with the accounting made by Respondent Benito Atty. Rosario B. Torrecampo filed in Civil Case No. 34 a "Report With Prayer to Direct Deputy Sheriff Herbert Benito To Justify Expenses" (pages 33-34), copy of which was furnished the undersigned, as Executive Judge (page 37). In a letter dated July 17, 1993 (page 40), Counsel for Complainant Bravo requested the undersigned to order Respondent Sheriff Benito to justify his expenses. On July 20, 1993 undersigned issued a Memorandum Order...

x x x

x x

x

x x x

"Respondent Benito complied with the xxx Memorandum Order, by way of a letter dated July 26, 1993 (page 30) where he alleged that he could no longer carry out the writ of demolition because it was already quashed on July 2, 1993, and that he had already submitted his report of his expenditure to the Provincial Sheriff.

"Not satisfied with the explanation of Respondent Benito, Complainant Bravo filed the present Letter-Complaint (page 191-193). Respondent Benito filed his Answer to the Letter-Complaint by way of a verified letter dated November 18, 1993 (pages 212-213) where he reiterated his claim that he spent P7,880.00, and he named the witnesses who would corroborate his claim.

"Parties were allowed to adduce their respective evidence. Complainant Bravo adduced in evidence his verified complaint and its annexes. Respondent Benito admitted having received the P8,000.00 and having failed to implement the writ of demolition, and adduced oral and documentary evidence to support his expenses of P7880.00, as itemized in his report to the Provincial Sheriff (Exh. 3-E, page 199-200), to wit:

November 8, 1992 -

Hiring of jeepney	P1,000.00
Per diems of securities	300.00
Meals	200.00
Total	P1,500.00

November 14, 1992 -

Hiring of Jeepney	P1,000.00
Per diems of securities	300.00
Meals	150.00

Total	P1,450.00
-------	-----------

December 4, 1992 -

Hiring of Motorcycles	P200.00
-----------------------	---------

Meals	150.00
-------	--------

Total	P350.00
-------	---------

February 1, 1993 -

Hiring of jeepney	P1,000.00
-------------------	-----------

Wages of laborers	1,050.00
-------------------	----------

Meals	350.00
-------	--------

P2,400.00

February 9, 1993 -

Hiring of Jeepney	P1,000.00
-------------------	-----------

Meals	80.00
-------	-------

Total	P1,080.00
-------	-----------

March 3, 1993 -

Hiring of Jeepney	P1,000.00
-------------------	-----------

Meals	100.00
-------	--------

Total	P1,100.00
-------	-----------

Grand Total	P7,880.00
-------------	-----------

"Above itemized expenses were substantiated by the affidavits of Respondent Benito himself (Exh. 3, pages 235-236); of Rodolfo Valenciano (Exh.1, page 223); of Gonzalo Brioso (Exh. 2, page 228); of Rodolfo Segovia (Exh. 4, page 234); and Jaime Imperial (Exh.5, p.227). Said affidavits of the witnesses were adopted as their respective direct testimonies, and were made the bases of their cross-examination. Above-named witnesses identified the "Reimbursement Expense Receipts" (Exhs. 1-B to 1-D, pages 220-222, Exhs 3-M to 3-Q, pages 229-233; and Exh. 3-R, page 226). These "Reimbursement Expense Receipts" were adduced in evidence to prove that Respondent Benito hired the Jeepney driven by Rodolfo Segovia for five (5) rounds trips from Naga City to Tinambac, Camarines Sur and back for P1,000.00 per trip; and the motorcycle of Jaime Imperial for one round trip from Naga City to