

## FIRST DIVISION

[ A.M. No. MTJ-94-965, April 02, 1996 ]

**LICERIO P. NIQUE, PETITIONER, VS. PRISCILLA T. HERNANDEZ,  
CLERK OF COURT AND JOSE C. PENAS, DEPUTY SHERIFF OF RTC,  
BRANCH 16, TANGUB CITY, RESPONDENTS.**

### D E C I S I O N

**HERMOSISIMA, JR., J.:**

In an affidavit-complaint,<sup>[1]</sup> dated May 22, 1993, respondent Judge Priscilla T. Hernandez,<sup>[2]</sup> then Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court of Tangub City and Jose C. Penas, Jr., Deputy Sheriff of the Regional Trial Court, Branch 16, Tangub City were charged with Ignorance of the Law, Partisanship in the Enforcement of a Court Order, Dereliction of Duty and Failure to Account for the P1,000.00 deposit in connection with the enforcement of a writ of preliminary injunction<sup>[3]</sup> issued on August 16, 1991 by the Honorable Vicente T. Baz, Jr., Presiding Judge of the said RTC, Branch 16, Tangub City, in a petition for certiorari<sup>[4]</sup> filed by complainant Licerio P. Nique.

The complainant faulted respondent Judge Hernandez for having delegated the duty to implement the aforementioned writ to her co-respondent Deputy Sheriff Penas who, in turn, allegedly failed to restore complainant Nique's peaceful possession and occupation of the fishpond in Baybay Sumirap, subject matter of the said writ of preliminary injunction, thereby rendering worthless the amount of P1,000.00 deposited as sheriff's fees. In support of his charges against the respondents, complainant Nique submitted an Affidavit,<sup>[5]</sup> dated June 3, 1993, of his Attorney-in-Fact, Cesar Canones, who stated therein that a deposit of P1,000.00 was demanded from complainant Nique as Sheriff's Expenses in relation to the implementation of the said writ. As fishpond overseer, Canones was instructed to sign a receipt only for the subject fishpond. He refused, therefore, to sign a receipt for the sacks of fish feeds, lime and some valuable equipment when directed to do so by respondent Penas. This, allegedly, is the basis for the charge of failure to enforce the writ in question.

In her Answer,<sup>[6]</sup> dated August 4, 1993, the respondent Judge counter-stated that as a matter of practice, the implementation of court writs within their territorial jurisdiction devolved upon the Deputy Sheriff and that, in this particular instance, her co-respondent duly submitted a Return of Service together with the itemized liquidation of the amount deposited as and for Sheriff's Expenses. She further averred that after an Alias Writ of Preliminary Injunction was granted, a supersedeas bond in the amount of P200,000.00 was filed by the other party to stay execution thereof.

In his Answer,<sup>[7]</sup> likewise dated August 4, 1993, the respondent Deputy Sheriff

maintained that through the assistance of certain police officers<sup>[8]</sup> of the Tangub City Police Force he had fully implemented the said writ of preliminary injunction by turning over the possession of the subject fishpond from one Jimmy Chan, overseer of the private respondents in the certiorari petition to complainant's overseer, Cesar Canones. Sheriff Penas further stressed that he had submitted the required Return of Service<sup>[9]</sup> with respect to said writ and the corresponding Itinerary of Travel<sup>[10]</sup> duly approved by the presiding judge to account for the deposit of P1,000.00 as Sheriff's Expenses.

After a Reply,<sup>[11]</sup> dated October 15, 1993, was filed by the complainant charging the respondents anew with Falsification of Public Document for indicating "Car Hire" in the Itinerary of Travel which totaled P400.00 when what was used in serving the Writ of Preliminary Injunction was a vehicle of the Philippine National Police (PNP) as authorized by then Station Commander<sup>[12]</sup> of the Tangub City PNP, the respondents submitted their respective Rejoinders,<sup>[13]</sup> both dated February 24, 1994. In her Rejoinder, the respondent judge stated that she would have handled the execution of the subject writ personally had her deputy sheriff, respondent Penas been unavailable because the service of writs and processes is the primary function of the latter. Respondent Penas, in his Rejoinder, explained that on March 3, 1992, he hired a car and paid P200.00 in his first attempt to serve the subject writ. Thus, the following day, March 4, 1992, when he succeeded in implementing the said writ on board a PNP car, he, again used the term "car hire" in his report to account for another P200.00 which he actually spent for the gasoline and repair expenses of the PNP car.

A final Reply<sup>[14]</sup> to the Rejoinders of the respondents dated April 15, 1994 was made by the complainant whereby he insisted that the entry "Car Hire" in the Itinerary of Travel particularly on March 4, 1992, could not in any manner correspond to gasoline and repair expenses as claimed by the respondent Deputy Sheriff.

In our Resolution<sup>[15]</sup> dated July 27, 1994, we referred the instant case to then Acting Executive Judge Vicente T. Baz of RTC, Branch 14, Tangub City, for investigation, report and recommendation as per initial evaluation of the Office of the Court Administrator that the case involved factual issues which could not be threshed out on the basis of the pleadings alone.

After hearing, the Investigating Judge recommended the dismissal of the charges against the respondents for lack of substantial evidence considering that the complainant failed to cross-examine the respondents and their witnesses despite due notice. Hence, their statements remained uncontroverted.<sup>[16]</sup> Judge Baz received both testimonial and documentary evidence from the respondents while Judge Narciso M. Bumanglag, Sr. of the Municipal Trial Courts in Cities (MTCC) Branch 1, Davao City, took the oral deposition of the complainant after Judge Baz granted complainant Nique's Motion to Take Deposition.

We find no cogent reason to disturb the findings made by the Investigating Judge.

As far as the respondent judge is concerned, there is no debate that as Clerk of Court of RTC, Tangub City, she is an Ex-Officio Sheriff within her territorial

jurisdiction.<sup>[17]</sup> Under the Guidelines and Procedure in the Service and Execution of Court Writs and Processes<sup>[18]</sup> it is clearly provided that "all Clerks of Court, who are also ex-officio sheriffs, and/or their deputy sheriffs shall serve all court processes and execute all writs of their respective Courts within their territorial jurisdiction."<sup>[19]</sup> In view thereof, the delegation made by Judge Hernandez to her then Deputy Sheriff, respondent Penas, with respect to the implementation of the writ of injunction in question, was not improper as claimed by the complainant.

As regards the deposit of the amount of P1,000.00 as Sheriff's Fees in connection with the implementation of the subject writ of injunction, indeed, "the collection of legal fees, by its nature, is a delicate function of clerks of court as judicial officers entrusted with the correct and effective implementation of the regulations thereof.

<sup>[20]</sup> The complainant's application of the theory of command responsibility against respondent judge, however, must fail inasmuch as Deputy Sheriff Penas was able to account for the said amount in his Itinerary of Travel which contained an itemized list of the expenses he incurred in serving the subject writ.

With respect to the charges against the respondent deputy sheriff, we are persuaded that there was a turn-over of the possession of the subject fishpond to Cesar Canones, overseer of the complainant. The following observations made by the Investigating judge are significant:

***"It is to be noted that even Cesar Canones, overseer of the complainant admitted the fact that he was placed in possession of the fishpond by the deputy sheriff. The statements of Cesar Canones in his affidavit found on page 76 of the records of this case is as follows: 'That after the conversation between Deputy Sheriff Penas and Jimmy Chan, Deputy Sheriff Penas told me by saying (sic): Mr. Canones, in your capacity as overseer and attorney-in-fact of petitioner Licerio Nique, I am now turning over to you the occupation and possession of the fishpond for which you must sign a receipt of the fishpond and the sacks of fish feeds, lime and some valuable fishpond equipment with a warning that in case of loss of the afore-mentioned articles/equipment in the fishpond, I would be held liable.'***

***Statement No. 9 of the same affidavit is as follows: "That I informed Deputy Sheriff Jose Penas, Jr. that I am not willing to sign receipt of those articles and equipment because as overseer and attorney-in-fact, I am only instructed and authorized to sign receipt of the fishpond only."***<sup>[21]</sup>

Moreover, in the absence of evidence to the contrary, the Return of Service made by the respondent deputy sheriff in connection with the subject writ of preliminary injunction deserves a great amount of evidentiary weight.<sup>[22]</sup> Deputy Sheriff Penas was not remiss in his duty to execute the said writ, which duty is purely ministerial.<sup>[23]</sup>

Anent the falsification charge against the respondent deputy sheriff for having listed "car hire" in his Itinerary of Travel to liquidate the amount of P200. 00 instead of using the term "gasoline and repair expenses" inasmuch as he was allowed to use a