

EN BANC

[A.M. No. P-17-3652 (Formerly OCA I.P.I. No. 15-4445-P), June 23, 2020]

WILLY FRED U. BEGAY, COMPLAINANT, V. ATTY. PAULINO I. SAGUYOD, CLERK OF COURT VI, REGIONAL TRIAL COURT, BRANCH 67, PANIQUI, TARLAC, RESPONDENT.

R E S O L U T I O N

PER CURIAM:

For resolution is an Affidavit-Complaint^[1] filed by Willy Fred U. Begay (*complainant*) against Atty. Paulino I. Saguyod, Clerk of Court VI and George P. Clemente, Sheriff IV, both of Branch 67, Regional Trial Court (RTC), Paniqui, Tarlac, for gross misconduct, discourteous acts, manifest partiality and grave abuse of authority.

The facts, as summarized by the Office of the Court Administrator (OCA), are as follows:

Complainant Begay states that he is the owner of Garden of Samantha Memorial Park located in Estacion, Paniqui, Tarlac. The memorial park, consisting of three (3) parcels of land, is under litigation in a case he filed against the Rural Bank of San Luis Pampanga, Inc., docketed as Civil Case No. 008-13, before the RTC, Paniqui, Tarlac. He prays for the nullification of the real estate mortgages, promissory notes, foreclosure proceedings, transfer certificates of title, award of damages, and the issuance of a Writ of Preliminary Injunction *pendente lite* which commanded the Rural Bank of San Luis to desist from obtaining possession of the memorial park.

Unknown to complainant Begay, on 2 December 2014, the Rural Bank of San Luis filed an *ex parte* motion for the issuance of a writ of possession, docketed as Land Case No. 041-14, claiming that it purchased a parcel of land covered by TCT No. 043-2014005232 (one of the parcels of land comprising the subject memorial park) through an extrajudicial foreclosure sale per Certificate of Sale dated 5 February 2013. The Rural Bank's prayer for issuance of a possessory writ was directed against Alejandro P. Bautista, former owner of the property and all other persons who might be in possession of the property.

Complainant Begay avers that the Rural Bank of San Luis failed to disclose in its *ex parte* motion that he was in possession of the subject lot in the concept of an owner; that neither Bautista nor any other individual ever acquired possession of the property; and that there is a case docketed as Civil Case No. 008-13 pending before the RTC of Paniqui, Tarlac, questioning the circumstances whereby the property was

transferred to Bautista at the instance and direction of the Rural Bank of San Luis.

In the Order dated 17 April 2015, the trial court granted the *ex parte* motion and directed the Branch Clerk of Court to issue the writ of possession. On 20 April 2015, respondent Atty. Saguyod issued the Writ of Possession addressed to the court's Deputy Sheriff, respondent Clemente. Upon receipt thereof, respondent Sheriff Clemente issued the notice to vacate addressed to complainant Begay, who was not a party to the case nor was mentioned in Civil Case No. 041-14, but not to mortgagor Bautista.

Complainant Begay filed a Motion to Quash dated 21 April 2015 questioning the propriety of the writ of possession and requesting that he be allowed to speak during the hearing on 30 April 2015. However, respondent Atty. Saguyod failed to include him in the said hearing. He states that he filed a Motion to Quash the Writ of Possession on the grounds that he is the real owner who is in actual possession of the subject property. Since he was not made a party to the foreclosure proceedings and to the *ex parte* motion, his right to due process was violated. He adds that there is a pending controversy relative to the foreclosure commenced by the Rural Bank of San Luis, and the issue of ownership needs to be resolved in a full-blown trial.

On 19 May 2015, despite the pendency of the motion to quash, a group led by respondents Sheriff Clemente and Atty. Saguyod implemented the writ and forcibly and furiously took possession of a portion of the memorial park, particularly the lot covered by TCT No. 043-2014005232.

Complainant Begay states that at the time of their takeover, respondent Sheriff Clemente ordered Security Guard Rolando M. Tabilisima to vacate his post and that he be immediately disarmed. He alleges that the security guards and the security agency, the Golden Fort Security Agency, posted by respondents Atty. Saguyod and Sheriff Clemente were not licensed as such within the ambit of Republic Act No. 5487 as amended. The certification issued by the Supervisory Office for Security and Investigation Agencies (SOSIA) of the National Police Commission shows that the Golden Fort Security Agency is not registered and has no record on file in their office.

Complainant Begay alleges that the dates when respondent Atty. Saguyod received the evidence of the Rural Bank of San Luis and when he conducted the *ex parte* hearing are questionable. In the Order dated 17 April 2015, it states that on 19 March 2015, after examining all the exhibits presented by petitioner Rural Bank of San Luis, the trial court admitted the same and the petition was submitted for resolution. Respondent Atty. Saguyod reported to the Presiding Judge that the *ex parte* hearing for reception of evidence was conducted prior to or not later than 19 March 2015. According to complainant Begay, it was not possible for respondent Atty. Saguyod to have conducted the *ex parte* hearing for the reception of the movant-bank's evidence prior to or not later than 19 March 2015. Rather, the records would show that the Rural Bank of San Luis submitted the judicial affidavit of its witness only on 6

April 2015 and the formal offer of exhibits was received by the trial court on 8 April 2015.

Complainant Begay claims that the participation of respondent Atty. Saguyod in the implementation of the writ is highly questionable considering that it is not within his functions as Clerk of Court of the RTC, Paniqui, Tarlac. He alleges that respondent Atty. Saguyod was not only a mere observer during the implementation of the writ, but was also an active participant as he was conferring with the officers and lawyers of the Rural Bank of San Luis. Respondent Atty. Saguyod was also shouting invectives at complainant Begay's employees and ordering them to leave the premises. He adds that respondents Atty. Saguyod and Sheriff Clemente carefully planned the implementation of the writ as they immediately posted a very large notice that the Rural Bank of San Luis was placed in possession of the subject property pursuant to the writ issued by the trial court.

In its Order dated 9 June 2015, the trial court granted the motion to quash filed by complainant Begay and allowed him to take possession of the subject property covered by TCT No. 043-2014005232 until after the case shall have been resolved with finality. The Order dated 17 April 2015, the Writ of Possession dated 20 April 2015, and the Notice to Vacate dated 20 April 2015 were all recalled and set aside.^[2]

In its Memorandum^[3] dated February 20, 2017, the OCA recommended that Atty. Saguyod be found guilty of simple misconduct and be ordered dismissed from the service, with forfeiture of his retirement benefits, except accrued leave credits, with prejudice to re-employment in any branch or instrumentality of the government including government-owned or controlled corporation, while the administrative complaint against Sheriff Clemente was dismissed for lack of merit.

First, the OCA found that there was nothing irregular when respondent issued the writ of possession. It opined that Atty. Saguyod and Sheriff Clemente cannot be held administratively liable for issuing and implementing the writ of possession since the issuance of the possessory writ against complainant was in accordance with the order of the trial court, the complainant having in possession of the property.

Second, the OCA observed that complainant's allegation that Atty. Saguyod and Sheriff Clemente replaced complainant's security guard with an unlicensed security agency is tenuous since complainant failed to substantiate his claims.

However, the OCA found merit in the allegation against Atty. Saguyod in actively participating in the implementation of the writ of possession. The OCA elucidated that there exists substantial evidence which show that Atty. Saguyod was at the scene during the implementation of the writ of possession, together with the representative and lawyers of the Rural Bank of San Luis.. The OCA maintained that Atty. Saguyod's presence during the implementation of the writ, even without any specific act, clearly showed that he was personally involved in the case in one way or another.

Citing Section D(3)(3.2), Chapter 4 of the 2002 Revised Manual for Clerks of Court, the OCA concluded that Atty. Saguyod exceeded his mandate when he was at the subject property during the implementation of the writ of possession. The said