

## THIRD DIVISION

[ **A.M. No. P-12-3069, January 20, 2014** ]

**ATTY. VIRGILIO P. ALCONERA, COMPLAINANT, VS. ALFREDO T. PALLANAN, RESPONDENT.**

### DECISION

**VELASCO JR., J.:**

Before Us is an administrative complaint for Grave Misconduct and Making Untruthful Statements filed by Atty. Virgilio P. Alconera against Alfredo Pallanan, Sheriff IV, assigned at the Regional Trial Court (RTC), Branch 36 in General Santos City.

The antecedent facts are as follows:

Complainant was the counsel for Morito Rafols, the defendant in Civil Case No. 5967-2, an unlawful detainer case entitled *Cua Beng a.k.a. Manuel Sy and Ka Kieng v. Morito Rafols, et al.*, filed before the Municipal Trial Court in Cities (MTCC), Branch 2 in General Santos City, South Cotabato. After trial, the MTCC ruled against Rafols and his co-defendants in a Judgment<sup>[1]</sup> dated March 12, 2009, disposing as follows:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendant MORITO RAFOLS, his privies, assigns, heirs, transferee, sublessee, co-lessee or agents if any to vacate from the subject lots and deliver possession thereof to the plaintiffs and for defendant to pay back rentals of P5,000.00 per month from June 2008 and every succeeding months thereafter until he vacate the premises and to jointly and severally, together with all other defendants, pay attorney's fees in the amount of P20,000.00 with the other defendants and costs of litigation.

SO ORDERED.

Therefrom, Rafols, through complainant Alconera, appealed the case to the RTC, Branch 36, docketed as Civil Case No. 675. Pending appeal, the court issued an Order dated February 18, 2011 granting Cua Beng's motion for execution she filed in Civil Case No. 5967-2, the unlawful detainer case. Alconera sought reconsideration but the motion was denied through another Order<sup>[2]</sup> dated March 14, 2011.

On March 17, 2011, a troubled Evelyn Rafols, Rafols' daughter-in-law, called up Alconera, who at that time was in Manila, to report that the sheriff, respondent Pallanan, was about to implement the adverted writ of execution. Evelyn Rafols informed Alconera that respondent sheriff arrived along with the lawyer of the

opposing party and 30 other men to enforce the writ. Respondent sheriff then allegedly demanded payment of PhP 720,000 to settle Rafols' obligation to which the latter protested on the ground that the amount is too exorbitant when they have been religiously depositing monthly rentals in court to satisfy the judgment.

After explaining the matter to Alconera, Evelyn Rafols passed her phone to respondent sheriff. Over the phone, a verbal disagreement between the two ensued. Alconera claims that he has a pending motion for reconsideration on the issuance of the writ of execution, but the respondent said that the motion has already been denied. And since no Temporary Restraining Order (TRO) has been issued enjoining the implementation, respondent claimed that he is legally mandated to perform his ministerial duty of enforcing the writ. Complainant countered that he has not yet received a copy of the denial of the motion, rendering the execution premature and, at the same time, preventing him from securing a TRO from the higher courts. Nevertheless, respondent still pushed through with the execution of the judgment.

On March 18, 2011, complainant returned to General Santos City and, at his law office, found a copy of the Order denying his Motion for Reconsideration, which was only served that very same day. The RTC ruled that there was no pending Motion to Approve Supersedeas Bond filed with it. Instead, what was filed not with the RTC but with the MTCC was a "NOTICE OF APPEAL – and – MOTION TO APPROVE PROPERTY SUPERSEDEAS BOND," which was not granted.

That afternoon, Alconera went to RTC Br. 36 with his daughter to confront respondent sheriff. The face-off escalated into a heated argument caught on video. It was complainant's daughter, Shyla Mae Zapanta, who is coincidentally his office clerk, who filmed the incident and transcribed the dialogue during the altercation. As hereunder translated in English, the exchanges went:

*ATTY. ALCONERA: Pag hatod nimo didto sa demolition order, kabalo ka na wala pa ko kadawat ug denial? (When you served the demolition order, you know that I did not yet receive a copy of the denial order?)*

*SHERIFF PALLANAN: Denial sa unsa, motion? (Denial of what, motion?)*

*ATTY. ALCONERA: Oo. (Yes.)*

*SHERIFF PALLANAN: Attorney, ang motion inyoha nang kuan diri sa korte, and akoa sa writ ko. As long as the sheriff did not receive a TRO or any order from the court restraining him to implement the writ, I have to go. So in case, just in case, na may resolution si judge na ireconsider and iyang order after they declare, ideliver na sa area kung asa gi-execute so the sheriff will move out. (Attorney, the motion, that is your.. what do you call this, here in court. Mine is the writ. As long as the sheriff did not receive a TRO or any order from the court restraining him to implement the writ, I have to go. So in case, just in case, the judge reconsiders his order, they will declare, deliver it to the area where the writ if executed so the sheriff will move out.)*

*ATTY. ALCONERA: Mo execute diay ka? Dili diay ka mangutana kung duna pa bay motion for recon ani? (So you will execute? You will not*

inquire whether a motion for reconsideration has been filed?)

*SHERIFF PALLANAN: Bisag may motion for recon na, Attorney, I have to go gyud. (Even if there is a motion for reconsideration, I really have to go.)*

*ATTY. ALCONERA: Uy, di man na ingon ana, uy! Ana imong natun-an as sheriff?*

*SHERIFF PALLANAN: Oo mao na sya. Mao na sya – sa akoha ha, mao na sya. (Yes, that is it. That is it – to me ha, that is it.)*

*ATTY. ALCONERA: Kita ra ta sa Supreme Court ani. (Let us see each other in the Supreme Court.)*

*SHERIFF PALLANAN: ...(unintelligible) Ang imoha ana...imong motion ana... and imong motion ana, delaying tactic. (Your motion is a delaying tactic.)*

*ATTY. ALCONERA: Ah, sige lang, atubang lang ta sa Supreme Court. (Ok, let's just see each other in the Supreme Court.)*

*SHERIFF PALLANAN: Oo, atubangon nako ko na siya, pero mag-review pud ka.*

*ATTY. ALCONERA: Unsay mag-review? (What review?)*

*SHERIFF PALLANAN: Motion nang imoha, Dong. (Yours is motion, Dong.) ("Dong" is equivalent to the Filipino term "Totoy"; if used by one to address someone older than him, it is an insult.)*

*ATTY. ALCONERA: Naunsa man ka, Dong. (What happened to you, Dong?)*

*SHERIFF PALLANAN: Motion na imoha... Dapat diri ka mag file, dili ka didto mag-file. Ayaw ko awaya. (Yours is motion. You should file it here, you do not file it there. Don't quarrel with me.)*

*ATTY. ALCONERA: Lahi imong tono sa akoha sa telepono Dong ba. (You were rude in the telephone, Dong.)*

*SHERIFF PALLANAN: Oo, kay lain man pud ka mag sulti. Ang imong venue kay diri, dili sa area. (Yes, because you also talked bad, your venue is here in court, not in the area.)*

*ATTY. ALCONERA: Ingon nako sa imo nakadawat ka ba.. nakadawat ba ug... (I was just asking you whether you received...)*

*SHERIFF PALLANAN: Dili nako na concern. (That is not my concern.)*

*ATTY. ALCONERA: O, ngano nag ingon man ka nga "Ayaw ko diktahe, Attorney?" (Why did you say, "Don't dictate on me, Attorney?")*

*SHERIFF PALLANAN: Yes, do not dictate me. Kay abogado ka, sheriff ko. Lahi tag venue. Trabaho akoo, magtrabaho pud ka. (Yes, do not dictate me. Because you are a lawyer, and I am a sheriff. I do my job, you do yours.)*

*ATTY. ALCONERA: Bastos kaayo ka manulti ba. (You are very rude!)*

*SHERIFF PALLANAN: Ikaw ang bastos! (You are the one who is rude!)*

*ATTY. ALCONERA: Magkita ta sa Supreme Court. (I will see you in the Supreme Court.)*

*SHERIFF PALLANAN: Magkita ta, eh! Ikaw lang akong hadlukan nga wala man ka sa area. (As you wish, I am not afraid of you, you were not in the area.)*

*ATTY. ALCONERA: Unsa nang inyong style diri, Kempeta? (What is your style here, Kempetai?)*

*SHERIFF PALLANAN: Dili man! Na may order. Why can't you accept? (No! There is an order. Why can't you accept?)*

*ATTY. ALCONERA: Naay proseso, Dong. Mao ning proseso: ang MR, proseso ang MR. (There is a process, Dong. This is the process: MR.)*

*SHERIFF PALLANAN: Oo, proseso pud na ang akong pagimplement. Naa'y writ. (Yes, my implementing the writ is also a process. There is a writ.)*

*ATTY. ALCONERA: Nabuang, ka Dong? (What is going on with you, Dong?)*

*SHERIFF PALLANAN: Ka dugay na nimo nga abogado, wala ka kabalo! (You have been a lawyer for a long time now, yet you do not know!)*

*ATTY. ALCONERA: Dugay na bitaw. Ikaw bago ka lang na sheriff. (Yes, I have been a lawyer for a long time now, you, you are new in your job as sheriff).*

*SHERIFF PALLANAN: Pero kabalo ko. (But I know.)*

*ATTY. ALCONERA: Susmaryosep!*

*SHERIFF PALLANAN: O, di ba? Wala sa padugayay. Naa sa kahibalo. (Isn't that true? It is not the length of time one has spent on his job. It is the knowledge that one possesses.)*

*ATTY. ALCONERA: Tanawa imong pagka sheriff, Dong. (Know your job as a sheriff, Dong.)*

*SHERIFF PALLANAN: Tanawa pud imong pagka abogado kung sakto. Pilde! Sige mo pangulekta didto ibayad sa imo! (Know your job also as a*

lawyer, see if you are correct. Loser! You [and the Rafols] are always collecting [from the other defendants] so your fees can be paid!)

*ATTY. ALCONERA: Ngano wala man lagi nimo kuhaa ang mga butang didto, Dong?* (Why did you not bring with you the things that you had gathered, Dong.)

*SHERIFF PALLANAN: Oo, kay hulaton ta ka pag demotion.* (Yes, because I will wait for you on demotion day.)

*ATTY. ALCONERA: Nahadlok ka, Dong.* (You were afraid, Dong.)

*SHERIFF PALLANAN: Wala ko nahadlok, Doy. Sa demotion adto didto, Attorney. Sulayi ko! Sulayan nato imong pagkaabogado!* (I'm not afraid of you, Doy. On demotion day, you go there, Attorney. You try me! Let us see how good a lawyer you are.) ("Doy" is the same as "Dong.")

*ATTY. ALCONERA: March 22 pa ang hearing sa imong abogado, Dong.* (The hearing of the motion of your lawyer, is on March 22 yet, Dong.)

*SHERIFF PALLANAN: Asus, Pinobre na imong style, Attorney. Bulok!* (Your style is that of an impoverished lawyer, Attorney. Dullard!)

It is against the foregoing backdrop of events that Alconera filed a Complaint-Affidavit<sup>[3]</sup> against the respondent sheriff for grave misconduct before this Court on April 6, 2011. The case was referred to the Office of the Court Administrator (OCA) and was docketed as AM No. 11-3634-P. As directed by the OCA, respondent filed his comment.<sup>[4]</sup> In it, he averred that the duty of a court sheriff in enforcing a writ of execution is ministerial, and without a TRO enjoining it, a sheriff is duty bound to implement it.

On July 14, 2011, respondent filed his own Affidavit of Complaint<sup>[5]</sup> against herein complainant for Grave Misconduct and for violating the Code of Ethics. Respondent alleged that during the enforcement of the writ, a second phone conversation took place. Complainant allegedly called up Evelyn Rafols who put him on loudspeaker for the respondent to hear his words. Alconera then allegedly made a threat that there will be bloodshed if respondent's party pushes through with the implementation of the writ. Respondent likewise claimed that complainant berated him at his office on March 18, 2011 and that the incident was orchestrated by the complainant. His (respondent sheriff's) complaint affidavit avers:

6. GRAVE MISCONDUCT OF ATTY. VIRGILIO ALCONERA – The planned attack happened in our office on March 18, 2011 in the afternoon, after lunch, in the presence of his lady companion (believed to [be] his daughter), who is so delighted in taking videos. He is so angry and at rage as if he is the boss in our office, yelling and nagging at me with NO RESPECT as a nomad. THE ONLY PERSON AROUND WAS ME, THE GIRL HE BROUGHT THERE (who is taking videos), AND THE NAGGING ATTY. VIRGILIO ALCONERA (JUST THREE OF US), while pointing his finger into his MOTION for Reconsideration that he is holding [sic] almost an inch to my face. Saying "KITA NIMO NI, KITA NIMO NI?" NA INSULTO KO NIMO