

EN BANC

[A.M. No. P-12-3076 (Formerly OCA I.P.I. No. 11-3612-P), November 18, 2014]

**NOVO A. LUCAS, COMPLAINANT, VS. ROLANDO A. DIZON,
SHERIFF IV, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL
COURT, STO. DOMINGO, NUEVA ECIJA, RESPONDENT.**

D E C I S I O N

PER CURIAM:

In a complaint-affidavit,^[1] dated February 15, 2011, Novo A. Lucas (*complainant*) charged Rolando A. Dizon (*respondent*), Sheriff IV of the Office of the Clerk of Court, Regional Trial Court, Sto. Domingo, Nueva Ecija (*RTC*), with serious neglect of duty and violation of Republic Act (R.A.) No. 3019,^[2] for delaying the implementation of the Writ of Execution^[3] issued by the Municipal Trial Court of Sto. Domingo (*MTC*) in a case for collection of sum of money against Francisco Pascual (*Pascual*), docketed as Civil Case No. 2374.

Complainant alleged that after having secured the August 18, 2010 Writ of Execution (*writ*) of the judgment which awarded him, among others, the amount of P104,000.00, he immediately proceeded to see respondent, who, being the sheriff, was assigned to implement the writ. According to him, respondent's response to his request was this - "*Five (5) years pa naman bago mag-lapse order mo kaya relax ka lang.*"^[4] He made several attempts to seek the writ's enforcement, but nothing happened. Respondent informed him that he was attending to many things, including complainant's case.

On September 23, 2010, he again went to respondent.^[5] The latter, however, asked him if he had a car. Not having one, he offered his tricycle, to which respondent remarked, "*Ayoko ng traysikel at matatagtag ang katawan ko.*"^[6] Complainant pleaded and respondent told him: "*Bigyan mo ako ng native na manok at sari-saring gulay. Kakailanganin din ang Two Thousand Pesos (P2,000.00) na pambayad sa pulis. Pag nabigay mo na, tutulungan na. kita.*"^[7] Complainant claimed that he delivered the native chicken personally to respondent on the same day.^[8]

Complainant made another attempt to follow up after securing a clearance from the Sto. Domingo Police sometime in October of 2010.^[9] Respondent, seemingly infuriated by the insistence of complainant to immediately enforce the writ, commented: "*Tatal naapura mo ako, ikaw na ang magbigay sa kalaban mo ng order dahil apurado ka. Kung wala kang ibibigay na panggastos wala akong maibibigay na tulong sa iyo! Tsaka di basta-basta ise-serve yun. Kailangan pa ng notice kay Pascual. Wala pa akong naipadala. Kaya maghintay ka!*"^[10]

Complainant added that there was a time that respondent asked him to look for other properties owned by Pascual which could be used to satisfy the judgment on the pretext that it would be embarrassing to only get televisions, radios and other household items.^[11] When he intimated that such a responsibility was not his but that of respondent, the latter simply said, "*Kahit ang sasakyan, hindi aandar kung walang gasolina.*"^[12] He then asked respondent what the latter wanted and the latter requested a goat.^[13]

With the complainant's inability to provide a goat, respondent purportedly became more stubborn in implementing the writ. Out of desperation, complainant offered to give to respondent half of what he would be receiving from Pascual. Respondent rejected the offer by saying: "*Ang gusto ko kaliwaan. Bigyan mo ako ng SAMPUNG LIBONG PISO (P10,000.00) at ako ang bahala sa lahat. Tutulungan kita. Uubusin at sasaidin ko ang bank account ni Pascual. Kayang-kaya kong gawin un!*"^[14]

At the time the complaint was filed, no copy of the Sheriffs Return had been received by complainant.

On March 23, 2011, the Court Administrator Jose Midas P. Marquez required the respondent to file his comment on the complaint-affidavit.^[15]

In his *Comment*,^[16] respondent denied the accusations against him. He claimed that when he and complainant first met, he explained the process of implementing the writ especially the need to demand from Pascual the fulfillment of the judgment before any seizure of personal properties could be made. He accused complainant of not being interested in the rules as his concern centered on proceeding immediately to Pascual's residence. He claimed that on the day they were to proceed to Pascual's residence, complainant informed him that there was no need to proceed to the house of Pascual because an arrangement had been made. This, according to him, explained why he filed on February 14, 2011 the Sheriffs Partial Return of Service, narrating the details of the execution proceedings in the subject case.

Respondent insisted that the delay in the implementation of the writ was attributable to complainant as the latter never returned after making arrangements with Pascual. A day or two after filing the partial return with the MTC, complainant arrived, together with two other persons on board a tricycle, demanding to immediately proceed to the house of Pascual to seize the latter's truck since the commitment to pay the judgment debt was not honored. Respondent allegedly begged complainant to come back the next day as he was ill and because the weather was bad.

Respondent also denied asking for any amount of money, or native chicken, or vegetables, or goat from complainant. He claimed that he was always reminded by his Clerk of Court to claim his Sheriffs Fees, which at one time had accumulated to more than P30,000.00. Thus, it was unbelievable that he, "as a sheriff with a detached interest in his own sheriffs fees would demand the measly sum of Two Thousand Pesos and Ten Thousand Pesos from a poor litigant, who from the very first meeting, emphasized to me that he is poor and that he can only afford a tricycle as a means of conveyance in the implementation of the writ."^[17]

In his *Reply*, ^[18] complainant denied that respondent explained to him the procedure for the implementation of the writ; that he knew for a fact that personal properties of Pascual could be seized as he believed all along that he would be getting cash; that there was an arrangement he made with Pascual; and that the real reason why they did not proceed to Pascual's house was respondent's refusal to ride in a tricycle. Finally, complainant cited respondent's failure to file a return with the court within the period prescribed by Section 14 of Rule 39 of the Rules of Court.

In its Resolution, ^[19] dated July 11, 2012, the Court resolved to refer the administrative matter to Executive Judge Nelson A. Tribiana (*Judge Tribiana*)^[20] for investigation, report and recommendation.

In his Report, ^[21] dated March 8, 2013, Judge Tribiana stated that the full implementation and satisfaction of the writ was made only on December 4, 2012 or more than two years since it was assigned to respondent in September 2010; that respondent deliberately neglected and refused to perform a mandated duty; and that the reasons offered by respondent were not worthy of consideration.

Regarding the allegation of corruption, Judge Tribiana found no evidence to support it because complainant declined to substantiate his claims. For said reason, Judge Tribiana recommended that respondent be meted out the penalty of dismissal from service for gross neglect of duty. With regard to the complaint for violation of R.A. No. 3019, ^[22] Judge Tribiana recommended that it be dismissed for lack of evidence.

In its July 10, 2013 Resolution, ^[23] the Court noted the investigation, report and recommendation of Judge Tribiana. Thereafter, the Court referred the administrative matter to the Office of the Court Administrator (OCA) for evaluation, report and recommendation. ^[24]

The Findings and Recommendations of the OCA

In its Report, ^[25] dated February 5, 2014, the OCA found respondent liable for gross neglect of duty:

Respondent Sheriff Dizon's delay in the implementation of the Writ of Execution for two (2) years is so serious and prejudicial to the best interest of the service as to amount to gross neglect of duty. Gross neglect of duty is classified as a grave offense and is punishable by dismissal from the service. As this is his second offense, the penalty of dismissal from the service is proper. ^[26]

The OCA also agreed with Investigating Judge Tribiana that there was no sufficient evidence to support the charge of violation of R.A. No. 3019 against respondent.

The Court's Ruling

The last standing frontier that the victorious litigant must face is often another difficult process- the execution stage. In this stage, a litigant who has won the battle might lose the war. Thus, the sheriffs, being agents of the court, play an

important role, particularly in the matter of implementing the writ of execution. Indeed, [sheriffs] "are tasked to execute final judgments of courts. If not enforced, such decisions are empty victories of the prevailing parties. They must therefore comply with their mandated ministerial duty to implement writs promptly and expeditiously. As agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its order, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice."^[27]

Engraved in jurisprudence is the rule that the sheriffs duty in the execution of a writ is purely ministerial.^[28] Once the writ is placed in his or her hands, a sheriff is obligated to execute the order of the court strictly to the letter and with reasonable promptness, taking heed of the prescribed period required by the Rules.^[29]

In this case, respondent is charged for failing to perform his ministerial functions in the implementation of the writ of execution issued in favor of complainant. In this regard, the Court agrees with the recommendation of the OCA that respondent's omissions clearly qualify as gross neglect of duty.

In *Proserpina V. Anico v. Emerson B. Pilipiña*,^[30] this Court held that the failure of the sheriff to carry out what was a purely ministerial duty, to follow well-established rules in the implementation of court orders and writs, to promptly undertake the execution of judgments, and to accomplish the required periodic reports constituted gross neglect and gross inefficiency in the performance of official duties.

As defined, gross neglect of duty refers to negligence that is characterized by a glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but wilfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to take on their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.^[31]

Here, respondent failed to implement and enforce the writ promptly despite repeated pleas by complainant. He attributed his delay to his seeming physical inability to travel several kilometers in inclement weather on board a small crowded tricycle and complainant's failure to return to him after making arrangements with Pascual. These excuses, in the mind of the Court, were not justifiable as they only manifested respondent's deliberate refusal to carry out his mandatory and ministerial functions. Indeed, records show that it took respondent two years from the time the writ of execution in Civil Case No. 2374 was assigned to him. It was only on December 5, 2012, that respondent submitted the Sheriff's Final Report.^[32] Verily, he had more than enough time to execute the writ, but because of his indifference and inattentiveness to the rights of complainant and the obligations of his office, he did not do anything.

Respondent's indifference became more apparent when he reasoned out during the investigation that the "execution" of a judgment expires only after a period of five (5) years.^[33] It appears that he misunderstood the said five-year period as the same period that the sheriff may be allowed to carry out the implementation of the