

SECOND DIVISION

[A.M. No. P-10-2789 (formerly A.M. OCA IPI No. 09-3181-P), July 31, 2013]

**DEVELOPMENT BANK OF THE PHILIPPINES, REPRESENTED BY
ATTY. BENILDA A. TEJADA, COMPLAINANT, VS. DAMVIN V.
FAMERO, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 43,
ROXAS, ORIENTAL MINDORO, RESPONDENT.**

D E C I S I O N

BRION, J.:

In a letter complaint^[1] dated June 11, 2009, the Development Bank of the Philippines (DBP), through its Office of the Legal Counsel, charged Sheriff IV Damvin V. Famero (*respondent*), Regional Trial Court (RTC), Roxas, Oriental Mindoro, Branch 43, with Gross Neglect of Duty amounting to Gross Misconduct. In support of its charges, the DBP submitted a Joint Affidavit^[2] executed by Atty. Michael Vernon R. de Gorio and Mr. Romel P. San Diego, Regional Counsel and Branch Head, respectively, of the DBP's Calapan, Mindoro Branch.

The complaint stemmed from the respondent's alleged failure/refusal to implement the Writ of Execution issued in Civil Case No. C-475, entitled "*Development Bank of the Philippines, Calapan Branch v. Damayang Buklurang Pangkabuhayan Roxas, Represented by Romeo Tejada*" (for Forcible Entry with Preliminary Mandatory Injunction and Damages). The case involved a 5,766-square meter parcel of land located in Poblacion, Roxas, Oriental Mindoro, acquired by the DBP in a public auction sale. It is now registered in its name under Transfer Certificate of Title No. T-103245 of the Register of Deeds of Oriental Mindoro.

The complaint shows that in a decision dated August 24, 2004, the RTC directed the defendant *Damayang Buklurang Pangkabuhayan Roxas (association)*, or any person acting in its behalf or deriving any right from it, to vacate and deliver possession of the property to the plaintiff, now complainant DBP. On July 13, 2005, on the DBP's motion, the RTC issued a writ of execution^[3] directing the respondent to implement the judgment. Despite repeated demands, however, the respondent allegedly failed to implement the writ. After almost four (4) years from its issuance, the writ remains to be implemented.

In its 1st Indorsement^[4] dated June 29, 2009, the Office of the Court Administrator (OCA) required the respondent to comment on the charges against him. In his Comment^[5] dated August 12, 2009, the respondent claimed that he is aware that when a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate. Thus, upon receipt of the writ, he immediately went to the property to enforce it. He did his task without asking for any centavo

from the DBP or any of its representatives in going to and from the property. He even exposed himself to danger as he had been informed that some of the settlers in the property were relatives of insurgents. There were times when he received death threats in connection with his duty as sheriff. To prove his point, he submitted a copy of a letter^[6] in the vernacular from one "Ka Ikong" of the Bagong Hukbong Bayan-Lucio de Guzman Command Mindoro, asking him to stop the execution of a demolition order and threatening that, "*Ganon paman binibigyan ka namin ng isang pagkakataon para iwasto at pansamantalang itigil ang isinasagawang demolesyon sa Cagulong at isaalang-alang ang kalagayan ng abang magsasaka na walang masilungang lungga sa ginagawa ninyong karahasan hinihiling namin na inyong matugunan sa kagyat na panahon.*"

He reported that several of the occupants readily left the place when he told them to vacate the property, but returned again and constructed their shanties thereon after the association filed on November 20, 2009 an urgent motion for the quashal/lifting of the writ of execution. This development contributed to the delay in the implementation of the writ.

The respondent further stated that, in his desire to help the DBP to fully implement the writ, he suggested that it secure a writ of demolition so that he could proceed with the demolition of the structures and improvements on the property. He believed that "on his own, he cannot just demolish the improvements without first securing a special order from the court."^[7] He insisted that he has never been negligent in the performance of his duty. He has been in the judicial service for more than 24 years with an unblemished record that "he intends to keep till the last drop of his blood."^[8]

The DBP filed a Reply-Affidavit^[9] dated September 17, 2009, reiterating its allegations of gross neglect of duty against the respondent.

In a Resolution^[10] dated March 24, 2010, the Court, on the OCA's recommendation, directed the re-docketing of the complaint as a regular administrative case, and required the parties to manifest to the Court within ten (10) days from notice whether they were submitting the matter for resolution based on the pleadings filed and the records submitted.

In its Manifestation^[11] dated May 14, 2010, the DBP responded that it was submitting the complaint on the basis of the pleadings filed and the submitted records. The respondent, on the other hand, requested in his Manifestation^[12] dated July 1, 2010 that an investigation be conducted.

In accordance with the respondent's request, the complaint was referred to the Executive Judge of the RTC of Roxas, Oriental Mindoro, for investigation, report and recommendation.^[13]

The DBP filed a partial motion for reconsideration of the referral,^[14] alleging that it would result in undue advantage to the respondent and deprive the bank of an impartial investigation of the case since the referral was to a judge with jurisdiction over the area where the respondent was assigned.

The Court, in a Resolution^[15] dated January 17, 2011, denied the DBP's partial motion for reconsideration for lack of merit.

Executive Judge Pastor A. de Castro heard the parties on May 19, 2011.^[16] On May 31, 2011, he submitted his report,^[17] finding –

All having been told already, the court was convinced that the respondent Sheriff had not totally ignored the implementation of the said Writ of Execution, per honest to goodness evaluation of the respective claim of the parties on this matter. Made as basis for this observation are the respondent's alleged implementation of the subject Writ of Execution for three (3) times in a row. One was as early as July 15, 2005 or just only two (2) days after the said writ was issued by the court on July 13, 2005, per return of service dated July 24, 2007 or more than two (2) years after its alleged service on said date; second, was on January 10, 2008, per return of service dated February 12, 2008; and, the third, was on January 23, 2009, per return of service dated February 3, 2009. These series of services though made under the long interval of time as shown by said returns, the court found no contradicting document in the records and/or introduced during the proceedings telling that those services did not indeed take place. Unfortunately, however, the respondent failed to successfully evict the occupants from the subject property despite those services thereby frustrating the said respondent to place the complainant bank in possession of the property involved. Be that as it may the respondent is still optimistic that he could ultimately turn over the property into the possession of the owner complainant-bank if given another chance to do it through Writ of Demolition. On this score, he said *"If given another chance I would like the DBP people to give a Writ of Demolition which is much easier to enforce."* Per honest understanding of the court, the respondent would like to convey that he found it hard for himself in enforcing successfully the said Writ of Execution, but if the writ to be implemented is for demolition, he could be able to enforce it easier or without much ado.

"It is mandatory for a sheriff to make a return of the writ of execution to the clerk or judge issuing it."^[18] Section 14, Rule 39 of the Rules of Court explicitly provides the manner for the return of a writ of execution to the court and the requisite reports to be made by the sheriff or officer, should the judgment be returned unsatisfied or only partially satisfied; every 30 days until the full satisfaction of a judgment, the sheriff or officer must make a periodic report to the court on the proceedings taken in connection with the enforcement of the writ.^[19] Specifically, it provides –

Section 14. *Return of writ of execution.* – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30)