

FIRST DIVISION

[A.M. No. P-13-3105 (Formerly A.M. No. 10-7-83-MTCC), September 11, 2013]

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT,
DESIDERIO W. MACUSI, JR., SHERIFF IV, REGIONAL TRIAL
COURT, BRANCH 25, TABUK CITY, KALINGA, RESPONDENT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Criselda M. Paligan (Paligan) was the plaintiff in Civil Case No. 429-06, entitled *Ms. Criselda M Paligan v. Spouses Cornelio and Leonila Tabanganay*, an action for collection of sum of money with damages, before the Municipal Trial Court in Cities (MTCC) of Tabuk City, Kalinga. In a letter dated July 23, 2009,^[1] addressed to the Presiding Judge, MTCC,^[2] Tabuk City, Kalinga, Paligan inquired as to the status of the writ of execution issued on September 10, 2008 by the MTCC in Civil Case No. 429-06, since she had not received any report or information whether the said writ had already been served. Paligan also furnished the Sheriff of the Regional Trial Court (RTC), Branch 25, of Tabuk City, Kalinga, a copy of her letter.

Judge Victor A. Dalanao (Dalanao), MTCC, Tabuk City, Kalinga, through a 1st Indorsement dated July 29, 2009,^[3] referred Paligan's letter to the Office of the Court Administrator (OCA) for appropriate action. Judge Dalanao reported that the writ of execution, issued in Civil Case No. 429-06 on September 10, 2008, was received by the Office of the Provincial Sheriff on September 19, 2008. A return was made on October 30, 2008 informing the court that the writ was returned "unserved." Thereafter, no other report on the writ was made. Judge Dalanao further observed that "a lot of cases are similarly situated, where not even a report [has been] submitted as prescribed by the Rules of Court."

In a 2nd Indorsement dated August 17, 2009,^[4] the OCA referred Judge Dalanao's 1st Indorsement dated July 29, 2009 and Paligan's letter dated July 23, 2009 to Atty. Mary Jane A. Andomang (Andomang), Clerk of Court, RTC, Tabuk City, Kalinga, for comment and appropriate action.

Complying with the 2nd Indorsement, Atty. Andomang sent a Comment and Report on Civil Case No. 429-06 of [MTCC]-Tabuk City, dated September 30, 2009 to the OCA. In her Comment and Report, Atty. Andomang recounted that she already required the Deputy Sheriff^[5] to explain why no report was made on the writ in Civil Case No. 429-06 since October 2008. The Deputy Sheriff explained to her in a letter dated September 14, 2009 that no report was made because Paligan never appeared at the Office to coordinate the implementation of the said writ. Atty. Andomang claimed that she had always reminded the Deputy Sheriff of his duties and responsibilities in serving writs and making periodic reports.

Instead of filing a reply to Atty. Andomang's Comment and Report as directed by the OCA, Judge Dalanao submitted a letter dated November 6, 2009 with an inventory of cases^[6] "if only to show the acts of the Sheriff." Judge Dalanao pointed out that the Sheriff^[7] was inconsistent: making reports in some cases, although some of said reports were late, and making no reports at all in other cases. Judge Dalanao further noted that five years has already lapsed without execution in several cases. He has also yet to receive the Sheriff's estimate of expenses for approval. Judge Dalanao lastly averred that after receiving complaints from parties, he already verbally brought up the matter with the Executive Judge, and even personally talked to the Sheriff several times to remind the Sheriff of his duties and responsibilities.

In his letter dated November 16, 2009,^[8] Desiderio W. Macusi, Jr. (Macusi), Sheriff IV, RTC-Branch 25, Tabuk City, Kalinga, defended himself by calling attention to the fact that he was appointed as Sheriff only in 2006, while some of the writs of execution in Judge Dalanao's inventory of cases were issued as early as 1997. While admitting that in some cases, there were late reports or no reports at all on the writs of execution, Macusi argued that "(t)he rule states that the Sheriff must act with celerity and promptness when they are handed the Writs of Execution; yet, the rule also states that when party litigants, in whose favor the Writs, have been issued, frustrate the efforts of the Sheriffs to implement those Writs, the latter are relieved from such duty and incur no administrative liability therefor."^[9] Macusi additionally wrote that he did not report regularly despite the presence of the rules since he "relied on the dictates of practicality so as not to waste supplies. Rules, accordingly are there to guide but they are not absolute[,] what matters is what one accomplishes."^[10] Macusi then informed the OCA that he had been, in fact, sued before the courts because of his accomplishments as a Sheriff. As for his failure to submit his estimate of expenses for Judge Dalanao's approval, Macusi explicated that he dispensed with the same for the winning parties were already willing to assist him and pay for his expenses.

The OCA, finding that Macusi violated Rule 39, Section 14 and Rule 141, Section 9 of the Rules of Court, sent the latter a letter dated December 2, 2009^[11] directing him to show cause why no disciplinary action should be taken against him.

In his letter-compliance dated January 4, 2010,^[12] Macusi provided the following explanation:

1. That I was appointed Court Interpreter on May 24, 2004 and was designated Sheriff in April 2005;
2. That the Writs of Execution issued in the year 1997-2004 were not properly turned over to the undersigned; hence, I could not make any follow-ups and updated reports;
3. That the Writs of Execution without initial or updated reports could not be blamed on the undersigned because as early as August 2006 **[please see attached reports marked as annex A]**, I already informed the Honorable Court of the stand of the plaintiff, Rural Bank of Tabuk [K-A], Inc. regarding the Writs of Execution issued in its favor – **THAT THE WRITS OF EXECUTION WILL ONLY BE**

DELIVERED AND EXPLAINED TO THE LOSING PARTY LITIGANTS – thus; what report could be made in such a scenario. **Please see also attached reports marked as Annex A-1 on the stand of the plaintiff of scheduling the service of the Writs of Execution**, this was reported to the Hon. Court in August 2008. Kindly compare this with the report where plaintiffs through their counsels who always coordinate with the Office of the Clerk of Court of RTC BR 25 where I am serving as the Sheriff **resulted to either partial or full satisfaction of the amount of execution [said report is marked as Annex A-2];**

4. That Plaintiff Rural Bank of Tabuk [K-A] Inc. **does not like to make the necessary deposit for the Sheriff's expenses in IMPLEMENTING OR EXECUTING the Writs of Execution because the company [Rural Bank] had been and is spending thousands of pesos for litigation expenses [please see attached report marked as Annex B].** Thus; no estimated expenses could be shown, **though I AM ACCOMPLISHING THE FORM FOR ESTIMATED EXPENSES WHENEVER I SERVED COURT PROCESSES and said form is attached and marked as Annex C;**
5. That I am attaching **OCA Circular No. [44-2007] marked as Annex D to show why Cooperatives does (sic) not need to make the necessary deposits for Sheriff's expenses; hence, no estimated expenses to be accomplished and shown;**
6. That I have done everything I could to comply with the Rules of Court on Execution and satisfaction of Judgment; hence, I should not be liable for a disciplinary action because **"...the rule also states that when party litigants, in whose favor the Writs, have been issued, frustrate the efforts of the Sheriffs to implement those Writs, the latter are relieved from such duty and incur no administrative liability therefore."**

In a Resolution dated August 18, 2010,^[13] the Court treated the instant matter as an administrative complaint against Macusi and referred the same to Executive Judge Marcelino K. Wacas (Wacas), RTC-Branch 25, Tabuk City, Kalinga, for investigation, report, and recommendation. The Court also directed Atty. Andomang to facilitate, in coordination with all concerned, the immediate implementation of the writs of execution listed in Judge Dalanao's inventory and submit a status report thereon within 30 days from notice.

After his investigation, Judge Wacas submitted a Resolution dated April 20, 2012. ^[14] Judge Wacas found substantial evidence that Macusi violated Rule 39, Section 14 and Rule 141, Section 10 of the Rules of Court. According to Judge Wacas, Macusi exercised "some degree of discretion," having his own rules and unmindful of the existing rules and established jurisprudence. Judge Wacas took into account the following:

[T]he attention of this Court was partly focused on the length of service of Mr. Macusi as Deputy Sheriff and that is for the period of more than 3

years and by reason of the same, this Court could say that he wrongly interpreted some basic rules in the implementation of writs of execution and the disbursement of expenses relative thereto. Another point to consider, is the principle of first offense which has the effect of mitigating the administrative liability.^[15]

In the end, Judge Wacas recommended that Macusi be found guilty of simple neglect of duty and meted the penalty of a fine in the amount of Four Thousand Pesos (P4,000.00).

The OCA, in its Memorandum dated October 17, 2012,^[16] agreed with the conclusions of fact of Judge Wacas and recommended that:

1. [T]he instant administrative complaint be **RE-DOCKETED** as a regular administrative case;
2. Desiderio W. Macusi, Jr., Sheriff IV, Branch 25, RTC, Tabuk, Kalinga, be found **GUILTY** of Simple Neglect of Duty and a penalty of **FINE** in the amount of Four Thousand Pesos (P4,000.00) be imposed upon him, with a **STERN WARNING** that a repetition of the same or similar offense will be dealt with more severely.^[17]

In a Resolution dated February 6, 2013,^[18] the Court re-docketed the administrative complaint against Macusi as a regular administrative matter and required Macusi to manifest within 10 days from notice if he was willing to submit the matter for decision/resolution based on the records/pleadings filed.

Macusi^[19] submitted his Manifestation and Motion dated May 30, 2013, informing the Court that he was deemed resigned from government service by operation of law when he filed his Certificate of Candidacy for the position of City Councilor in Tabuk City, Kalinga for the 2010 Local Elections. He prayed that the Court dismiss the administrative case against him for being moot and academic.

As found by Judge Wacas and the OCA, Macusi violated Rule 39, Section 14 and Rule 141, Section 10 of the Rules of Court, which provide:

RULE 39
EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS

x x x x

Sec. 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 (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires.** The returns or the periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.