

## FIRST DIVISION

[ A.M. No. P-07-2304, February 12, 2009 ]

**EMILIA MARIÑAS, COMPLAINANT, VS. TERCENCIO G. FLORENDO, SHERIFF V, REGIONAL TRIAL COURT (RTC), BRANCH 21, VIGAN CITY, ILOCOS SUR, RESPONDENT.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

In a Complaint-Affidavit<sup>[1]</sup> dated March 7, 2006, Emilia Mariñas charged Terencio G. Florendo, Sheriff V, Regional Trial Court (RTC), Branch 21, Vigan City, Ilocos Sur, with neglect of duty relative to the implementation of the writ of execution issued by the RTC, Branch 21, Vigan City, in Civil Case No. 5238-V entitled *Emilia Mariñas v. Cesar Zaplan*.

Complainant alleged that the decision in Civil Case No. 5238-V was promulgated on November 18, 2002 and the same became final and executory for failure of defendant therein to file his appeal. Thus, on May 19, 2003, the RTC issued a writ of execution and respondent sheriff was assigned to implement the same. Respondent assured complainant that the writ would be implemented and demanded from her seven thousand pesos (P7,000.00) for sheriff's expenses which she readily gave to the respondent. Complainant repeatedly followed-up the execution of the writ of execution. However, respondent failed to implement the writ for about three (3) years at the time of the filing of her complaint. Hence, complainant was constrained to file this complaint for neglect of duty against respondent.

In his 1<sup>st</sup> Indorsement dated September 20, 2005, Court Administrator Jose P. Perez referred the matter to Executive Judge Alipio V. Flores of the RTC of Vigan City, Ilocos Sur for appropriate action.<sup>[2]</sup>

In a Letter<sup>[3]</sup> dated October 25, 2005, Judge Flores reported that complainant failed to appear for a confrontation with respondent despite several invitations. On December 16, 2005, complainant executed an affidavit explaining that her failure to appear before Judge Flores was due to the fact that she was never informed nor notified of the same.<sup>[4]</sup>

In his comment, respondent denied having solicited, much less, received P7,000.00 from complainant. He, however, admitted that he received P1,000.00 from complainant, but only because complainant herself offered the said amount as, "*pandagdag gastos man lang . . kasi nakakahiya na!*" Respondent claims that he asked the assistance of Sheriff Fernando Austria of the RTC, Lingayen in conducting surveillance on Cesar Zaplan's (defendant in Civil Case No. 5238-V) residence for two (2) days but the latter found nothing to report. On November 27, 2003, Clerk

of Court and *Ex-Officio* Sheriff Alex R. Raqueno of the RTC, Vigan, officially endorsed the subject writ of execution for further proceedings to his counterpart, Clerk of Court Alicia Favia of the RTC, Dagupan City, Pangasinan. According to respondent he transmitted, via postal money order, the P1,000.00 given to him by complainant to the Office of the Clerk of Court, Dagupan City, for sheriff's operational expenses. In fine, respondent contended that the referral of the said writ transferred the task of enforcing the same to the RTC, Dagupan City.

Respondent belied complainant's allegation that the latter made numerous follow-ups between 2004 and 2005. According to him, aside from the complainant's visit in January 2004, when he informed the latter that he had not received any feedback from the RTC, Dagupan City, complainant visited his office only twice. Respondent also disclosed that on October 4, 2005, the parties were summoned for a conference with Executive Judge Alipio V. Flores, but the complainant did not show up for the scheduled dialogue.

Finally, respondent claimed that the search for the vehicle of the defendant in the case proved futile and budgetary constraints prevented a longer stay in Dagupan City.

In its Memorandum Report<sup>[5]</sup> dated February 14, 2007, the Office of the Court Administrator made the following evaluation:

EVALUATION: Respondent was negligent in the performance of his duty as sheriff.

A review of the records of this case reveals that the Writ of Execution was issued on May 19, 2003 and has not yet been implemented up to this day, more than three (3) years after the date of issuance. It is the duty of the sheriff to enforce the writ of execution without delay once it is given to him unless restrained. Section 14 of Rule 39 of the Rules of Court provides the manner by which the execution is to be implemented as follows:

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 days (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefore. 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) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or 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.

Pursuant to the rule, respondent sheriff should report to the court within thirty (30) days from receipt of the writ of execution dated May 19, 2003, the reasons why the judgment obligation has not been satisfied. Moreover, he should submit reports every thirty (30) days thereafter until

such time that the judgment obligation has been fully satisfied. It does not appear that respondent rendered these reports. Instead, respondent sought to avoid administrative liability by commissioning the services of Sheriff Viñez A. Hortaleza, RTC, Dagupan City, to conduct surveillance on the judgment defendant's assets. Respondent sheriff cannot rely solely on the surveillance he requested to be conducted by Sheriff Hortaleza as respondent is tasked to personally implement the writ. It is almost trite to say that execution is the fruit and end of the suit and is the life of law. A judgment, if left unexecuted, would be nothing but an empty victory for the prevailing party. Evidently, respondent was not only remiss in his implementation of the writ, but likewise derelict in his submission of the returns thereon.

Likewise, respondent grievously failed to comply with the requirements of Section 10, Rule 141 of the Rules of Court, as follows:

xxx                      xxx                      xxx

With regard to sheriff's expenses in executing writ issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex-officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation with the same period for rendering a return on the process. THE LIQUIDATION SHALL BE APPROVED BY THE COURT. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

Despite the plain meaning of the above-quoted procedure, respondent failed to comply therewith. His act of receiving an amount for expenses to be incurred in the implementation of the writ of execution, without him having made an estimate thereof and securing prior approval of the court issuing the writ is clearly proscribed by the rule. Whether the amount was just given to respondent is beside the point, his mere acceptance of the amount without the prior approval of the court and without him issuing a receipt thereof is clearly a misconduct in office [Danao vs. Franco, Jr., 440 Phil. 181, 185-186 (2002); Commendador vs. Canabe, 438 Phil. 99, 107 (2002)].

It is clear that under the rule, the sheriff has to estimate the expenses to be incurred and upon the court's approval of the estimated expenses the interested party has to deposit the amount with the Clerk of Court. These expenses shall then be disbursed to the executing sheriff subject to his liquidation. Any unspent amount shall be refunded to the party