

**[ A.M. No. P-07-2385 [Formerly OCA I.P.I No. 07-2556-P], October 26, 2009 ]**

**JUDGE JACINTO C. GONZALES, COMPLAINANT, VS. CLERK OF COURT AND CITY SHERIFF ALEXANDER C. RIMANDO, CLERK III ANNALIZA O. FLORES, SHERIFF III PERLITA D. DUMLAO, AND UTILITY WORKER I RAMON R. RAMONES, RESPONDENTS.**

**D E C I S I O N**

**PER CURIAM:**

Branch Sheriff Rewel Cerenio (Cerenio) was relieved of his duties as Branch Sheriff of Branch 2 of the Municipal Trial Court in Cities (MTCC) in Olongapo City. Instead of turning over all unserved writs, orders and processes to the Branch Clerk of Court, Annabelle F. Garcia,<sup>[1]</sup> he turned them over to the MTCC Clerk of Court-City Sheriff Alexander Rimando (Rimando) including the writ of execution issued in Civil Case No. 4876 (the civil case), "*Shirley Gonzaga v. Felicitas de la Cruz*," for sum of money.

Rimando implemented the writ of execution issued in the civil case on July 11, 2006 by seizing a Starex van belonging to one Ramon Reyes (Reyes), who was not a party thereto. On July 16, 2006, a Sunday, Rimando attempted to release the van but was prevented by a Hall of Justice security guard on the order of MTCC Branch 2 Presiding Judge Jacinto C. Gonzales (Judge Gonzales).

The van owner, Reyes, thus complained of the seizure of his van to Judge Gonzales who, after investigation during which Rimando did not comply with his (the judge's) order for him to comment, filed a letter-complaint before this Court against herein respondents Rimando, Annaliza, Sheriff III Perlita Dumlao (Perlita) and Utility Worker I Ramon Ramones (Ramones), along with Enrique Deliguin and SPO1 Teofilo Fami, for grave misconduct, usurpation of authority or official functions, and conduct prejudicial to the best interest of the court or justice, the subject of this Court's present Decision.

Judge Gonzales detailed the complained acts of respondents as follows:

1. They willfully performed the function pertaining to the branch sheriff of this court without the consent of herein complainant].
2. They illegally took and carried away the personal property of a person not a party to the case putting the image of the court in bad light.
3. Irregularly performing a judicial function by seeking the release of the vehicle on a non-working day (Sunday).
4. Deliberate refusal to respond to the lawful order of the undersigned

with respect to matters involving the performance of official functions.<sup>[2]</sup>  
(Underscoring supplied)

In his Comment<sup>[3]</sup> filed in compliance with the directive of the Office of the Court Administrator (OCA), Ramones denied having participated in the confiscation of the van and in the attempt to remove it from the Hall of Justice. He claimed that he was only following the order of Rimando, coursed thru Perlita, to ask for police assistance in the implementation of the writ.

In her Comment,<sup>[4]</sup> Perlita claimed that she and another sheriff were merely implementing a directive from Rimando to verify, among other things, whether Percival Sañarez, son-in-law of the judgment debtor Felicitas dela Cruz (Felicitas) and who was allegedly her co-maker of the promissory note presented in evidence at the civil case, "is the registered owner of a Starex [van] which he use[d] to drive";<sup>[5]</sup> that as the writ of execution appeared to be regular, she asked the judgment creditor Shirley Gonzaga (Shirley) for assistance in looking for property of the judgment debtor Felicitas; that Shirley informed Rimando that Felicitas owned a Starex van with plate number bearing the number of that seized, which van she (Perlita) herself saw parked at Felicitas' address; and that while Felicitas' son-in-law claimed that she (Felicitas) did not own the vehicle, Rimando advised him to avail himself of court proceedings where he could raise that claim.

Perlita denied having participated in the attempt to release the vehicle.

Rimando did not submit his comment to the present complaint as directed by the Office of the Court Administrator (OCA) by 1<sup>st</sup> Indorsement of August 23, 2006, despite the grant to him, on his motion, of extension of time for the purpose<sup>[6]</sup> and the issuance by the OCA of its 1<sup>st</sup> Tracer dated March 5, 2007.  
<sup>[7]</sup>

Annaliza, in the meantime, died on June 1, 2007.

On the recommendation of the OCA, the Court resolved, on October 3, 2007, to:

1. **NOTE** the sworn letter-complaint filed by Presiding Judge Jacinto C. Gonzales, and the comments of respondents Ramones and [Perlita] dated 27 March 2007 and 16 October 2006, respectively;
2. **RE-DOCKET** this matter as a regular administrative matter;
3. **REQUIRE** respondent Clerk of Court and City Sheriff Alexander C. Rimando to SHOW CAUSE why he should not be charged for contempt for his failure to submit his comment as directed by the Office of the Court Administrator and to submit his comment within five (5) days from receipt hereof;
4. **DISMISS** the complaint against respondent Clerk III Annaliza O. Flores in view of her death; and

5. **REFER** this matter to the Executive Judge of the RTC of Olongapo City for investigation, report and recommendation within sixty (60) days from receipt of records thereof.<sup>[8]</sup> (Emphasis in the original; underscoring supplied)

During the investigation conducted by Executive Judge Josefina D. Farrales (Judge Farrales), it surfaced that Reyes could not register the van at the Cavite Land Transportation Office (LTO) because Rimando filed a "Notice of L[i]s Pendens"<sup>[9]</sup> before the Olongapo City LTO requesting it to hold in abeyance any transaction regarding the transfer or disposition of the van, as "[it] is now the subject of litigation, wherein [Felicitas is] the defendant in Civil Case No. 4876 for Collection of Sum of Money . . ."<sup>[10]</sup>

Also during the investigation conducted by Judge Farrales on **December 17, 2007**, Rimando, explaining his failure to comply with the OCA directive to submit his comment on the complaint, claimed that he was occupied assisting Annaliza's family during her illness. He also claimed that as Branch Sheriff Cerenio was merely his deputy, he (Rimando), being the MTCC Clerk of Court-City Sheriff, had the authority to implement the writ; and that while he tried to release the van on a non-working day,<sup>[11]</sup> it was out of his desire to "have an immediate solution on the matter after ascertaining that indeed the van does not belong to the defendant."<sup>[12]</sup>

On his refusal to heed Judge Gonzales' order for him to comment on the complaint of Reyes, Rimando explained that he had then "a strong feeling, basing on the prejudgment" of the Judge, that the latter would elevate the matter to this Court, hence, he "decided to just reserve [his] filing of a comment."<sup>[13]</sup>

In her Report submitted to the OCA on March 26, 2008, Judge Farrales detailed her findings, quoted *verbatim* below:

x x x x

The charges against respondents [Perlita] and Ramones should be dismissed.

With respect to respondent Rimando, the charges against him relate to his acts of taking personal property (Hyundai Starex van with Plate No. WHZ 140) belonging to another in the guise of implementing a writ of execution issued in Civil Case No. 4876 and attempting to remove the said vehicle from the premises of the Hall of Justice Olongapo City without prior court order.

x x x [T]he acts of respondent Sheriff Rimando constitute **usurpation of authority**. The mere fact that he relied only on the information that [the judgment debtor] Dela Cruz owned a Hyundai Starex van with plate no. WHZ 140 without first verifying the true owner thereon and thereafter levied the van violated the procedure in the execution of judgments outlined in Section 9, Rule 39 of the Revised Rules of Court which reads:

"Sec. 9. Execution of judgments for money, how enforced - (a) Immediate payment on demand. - The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt direct to the judgment obligee or his authorized representatives if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of the court that issued the writ.

x x x x

The records [are] **bereft of any showing that Sheriff Rimando first demanded for the judgment obligor Dela Cruz the full payment of the amount stated in the writ.** Worse, Sheriff Rimando levied on the Hyundai Starex van even after he was informed that it was not owned by Dela Cruz.

Sheriff Rimando likewise **abused his authority** when he made it appear that the Hyundai Starex van [with] plate no. WHX 140 was a subject of litigation in Civil Case No. 4876 in issuing a Notice of Lis Pendens dated 21 June 2006 addressed to district Head Engr. Reynaldo J. Cortez. The issuance of Notice of Lis Pendens is highly irregular. First, the Starex van with plate no. WHZ 140 was not the subject matter of Civil Case No. 4876. Second, the Notice of Lis Pendens is proper only in cases enumerated under Section 14, Rule 13 of the 1997 Rules of Civil Procedure and Section 76 of P.D. 1529 and lastly, the subject van [was] improperly levied on 11 July 2006. Sheriff Rimando attempted to show that he levied the subject Hyundai van after verification from the LTO by issuing the Notice of Lis Pendens on 21 June 2006 but adduced no evidence to prove it.

By making it appear in the Notice of Lis Pendens dated 21 June 2006 that the Starex van with Plate No. WHZ 140 was the subject of litigation in Civil Case No. 4876, respondent Rimando **knowingly made false entries thereon.** Undoubtedly, this act of respondent Rimando x x x violates the norms of public accountability and tends to diminish the faith of the people in the judiciary, thereby prejudicing the best interest of the administration of justice.

Further, in an attempt to cover up the irregularities in the "implementation of the writ of execution", Sheriff Rimando tried to release the Hyundai Starex van with Plate No. WHZ 140 to Sañarez and dela Cruz on 15 July 2006 [*sic*] and remove the same from the premises of the Hall of Justice without prior court order. Significantly, x x x 15 July 2006 [*sic*] was a Sunday.

For failure of complainant to substantiate his charges against [Perlita]

and Ramones, the [charges] against them must be dismissed. x x x [R]espondents [Perlita] and Ramones merely complied with the directive of their superior, City Sheriff Rimando, to seek assistance from the police concerning the "implementation of the writ of execution" issued in Civil Case No. 4876.<sup>[14]</sup>

x x x x (Emphasis and underscoring supplied)

Judge Farrales thus recommended:

x x x x

- (1) that the complaint against Ramon Ramones, Utility Worker I, and Perlita D. Dumlao, Sheriff III, both of MTCC, OCC, Olongapo City be DISMISSED; and,
- (2) that respondent Alexander C. Rimando, Clerk of Court and City Sheriff of MTCC, OCC, Olongapo City be administratively charged for conduct prejudicial to the best interest of the service and the penalty left to the sound discretion of the Honorable Court Administrator.<sup>[15]</sup> (Underscoring supplied)

The OCA, noting that the findings and recommendations of Judge Farrales were supported by substantial evidence,<sup>[16]</sup> concluded that Rimando exceeded the limits of his ministerial functions as City Sheriff and accordingly recommended that Rimando be suspended for six months and one day to one year for Acts Prejudicial to the Best Interest of the Service.<sup>[17]</sup>

As for respondents Ramones and Perlita, the OCA concurred in the recommendation to exonerate them as they merely heeded Rimando's instructions and in the absence of evidence of bad faith or other malevolent acts on their part.

The Court finds well taken the recommendation of the OCA to hold Rimando guilty of Acts Prejudicial to the Best Interest of the Service. *Francisco v. Gonzales*<sup>[18]</sup> enlightens:

While the trial court has the competence to identify and to secure properties and interest therein held by the judgment debtor for the satisfaction of a money judgment rendered against him, such exercise of its authority is premised on one important fact: that the properties levied upon, or sought to be levied upon, are properties **unquestionably owned by the judgment debtor** and are not exempt by law from execution. Also, a sheriff is not authorized to attach or levy on property not belonging to the judgment debtor, and even incurs liability if he wrongfully levies upon the property of a third person. A sheriff has no authority to attach the property of any person under execution except that of the judgment debtor.<sup>[19]</sup> (Emphasis in the original; italics and underscoring supplied)