

SECOND DIVISION

[**A.M. No. P-06-2257 [Formerly OCA I.P.I. No. 01-1212-P], March 28, 2008**]

ARTHUR AND LEONORA STILGROVE, COMPLAINANTS, VS. CLERK OF COURT ERIBERTO R. SABAS AND SHERIFF III ERNESTO SIMPLICIANO, RESPONDENTS.

R E S O L U T I O N

TINGA, J.:

In a Resolution^[1] issued on 29 November 2006, the Court resolved the administrative complaint against respondents Eriberto Sabas, retired^[2] clerk of court and *ex officio* sheriff of the Municipal Trial Court (MTC), 4th Judicial Region, Puerto Princesa City, and Ernesto Simpliciano, now deceased,^[3] former deputy sheriff of the same court, finding Sabas guilty of grave abuse of authority and conduct unbecoming a court personnel while dismissing the complaint against Simpliciano. Sabas' Motion for Reconsideration^[4] was partially granted in a Resolution dated 29 May 2007 thereby clarifying the penalty imposable upon him. The dispositive part of the latter resolution reads:

WHEREFORE, premises considered, respondent Eriberto Sabas, former Clerk of Court and Ex-Officio Sheriff of the Municipal Trial Court of Puerto Princesa City, Palawan, is found **GUILTY** of Grave Abuse of Authority and Conduct Unbecoming of a Court Personnel, and accordingly **FINED** in an amount equivalent to his salary for six (6) months plus the amount corresponding to fifteen (15) days of leave credits, deductible from his retirement pay.

The charges of grave abuse of authority and conduct unbecoming a court officer against Ernesto Simpliciano, former Deputy Sheriff of the Municipal Trial Court of Puerto Princesa City, Palawan, is hereby **DISMISSED** for lack of merit.

The charge of violation of Sections 3(a), 3(e) and 4(b) of Republic Act No. 3019 against Eriberto Sabas and Ernesto Simpliciano is **REFERRED** to the Executive Judge of the Regional Trial Court of Puerto Princesa City for investigation, report and recommendation on respondents' administrative liability within sixty (60) days from receipt of the record.

SO ORDERED.

The matter is again before us on account of the completion of the investigation conducted by Perfecto E. Pe, Executive Judge of the Regional Trial Court of Puerto Princesa City, the results of which are contained in his Report and Recommendation^[5] dated 24 August 2007.

The necessary factual background is supplied by the narration of facts in the Court's 29 November 2006 Resolution, which we again adopt:

In 1994, Geronimo Gacot filed a detainer suit (subsequently amended into an action for recovery of possession of a parcel of land) against Joaquin Montero and Emilio Batul with the Municipal Trial Court (MTC) of Puerto Princesa City. The case, docketed as Civil Case No. 1311, involved Lot No. 18553, the lot adjacent to the land occupied and possessed by the spouses Stilgrove. During the pendency of Civil Case No. 1311, Lot No. 18553 was sold to Cresencia de los Santos, who was able to secure Transfer Certificate of Title No. 162460 in her name. Eventually, the MTC rendered a decision in favor of Gacot, who had, upon his death, been already substituted by his heirs, represented by Francisca Gacot-Latube.

The decision of the MTC in Civil Case No. 1311 was affirmed on appeal by Branch 48 of the Regional Trial Court, Puerto Princesa City, Palawan on 8 January 2001.

x x x x

A writ of execution was subsequently issued and served on the defendants in Civil Case No. 1311. Instead of complying with the order for them to vacate the premises subject of the litigation within three (3) working days, the defendants remained on the land and even built new structures on Lot No. 18553. Thus, Judge Heriberto M. Pangilinan issued a Special Order for Demolition on 30 April 2001, which commanded the Ex-Officio Sheriff and/or Deputy Sheriff:

x x x to cause the demolition of all structures including fences built or erected by defendants or any other persons claiming rights under such defendants within the premises forming part of plaintiff's property. The demolition shall immediately be carried out after giving them a reasonable period of up to 10 [ten] days from receipt of this Order to voluntarily demolish any structure they built within the premises.

On 18 May 2001, respondents Sabas, being then the Clerk of Court and Ex-Officio Sheriff of the MTC, and Simpliciano, then the Deputy Sheriff of the same court, with a demolition team, proceeded to execute the demolition order. The demolition team proceeded to demolish the houses of defendants Joaquin Montero and Emilio Batul. Upon being asked by Arthur Stilgrove, respondent Sabas confirmed that the demolition will include a portion of Lot No. 18556 which was then occupied and possessed by the former. Arthur Stilgrove thereafter demanded that the demolition team desist from carrying out the demolition. Notwithstanding Stilgrove's protestations, the demolition continued to include a fence and a portion of Stilgroves' house which was built on Lot No. 18556. Thereafter, on 21 May 2001, respondent Sabas executed a Return of Service.

The two respondents' demolition of the fence and one-half of the house of the complainant spouses as well as respondent Sabas's shouting at

complainant Arthur Stilgrove the words: "Return to (his) country, for (he) is not welcome here!," prompted the complainants to file this administrative case against respondents. As mentioned at the outset, another complaint was filed with the Office of the Ombudsman and docketed as OMB-1-01-0668-H (for violation of Sections 3(a) and (e) and Section 4(b) of Republic Act No. 3019), entitled *Arthur Stilgrove, et. al v. Eriberto Sabas, et. al.*

In their Joint Comment dated 10 September 2001, respondents prayed for the dismissal of the complaint and raised the defense that they demolished the fence and one-half of the house of the complainants by virtue of the Special Order for Demolition issued by Judge Heriberto M. Pangilinan in Civil Case No. 1311. Respondents alleged that the markers that were placed along the boundary line of Lot No. 18553 were placed at the surveyor's own initiative based on a relocation survey conducted by a licensed geodetic engineer. Respondents also maintained that the Stilgroves were mere trespassers or squatters with respect to a 10-meter wide encroachment made on Lot No. 18553 by Lot No. 18556 as determined by the same relocation survey, and as such were bound by the judgment in Civil Case No. 1311.^[6]

The Court in its aforequoted 29 May 2007 Resolution referred the case to Judge Pe for further investigation of respondents' alleged violations of Section 3(a), 3(e) and 4(b) of Republic Act (R.A.) No. 3019 or the *Anti-Graft and Corrupt Practices Act* (hereinafter referred to as Sections 3(a), 3(e) or 4(b) for brevity). This was done because the complaint on these grounds was not acted upon either by the investigating judge or the Office of the Court Administrator in the previous proceedings. Hence, an investigation ensued, the results of which are now the focus of the instant resolution.

During the initial hearing for the second investigation, complainants and respondents jointly manifested that the evidence submitted in the preceding administrative case would be used in the evaluation of the instant case. Both parties opted to submit their respective position papers after which, the investigation was terminated.

Complainants' Position Paper^[7] accuses respondents of having violated R.A. No. 3019 for allowing themselves to be "influenced and induced" by De Los Santos and Gacot-Latube.

Respondents' Position Paper^[8] alleges that the execution of the writ of demolition was made on the basis of the boundary monuments indicated in the relocation survey plan. Since a portion of complainants' property was erected on the land forming part of the surveyed property, it was therefore included in the demolition. Respondents claim that in order to be liable under Sections 3(a) and (e), the act of the accused must be done in bad faith, which is not attendant in this case.

In his Report and Recommendation, the investigating judge absolved Sabas from violation of Section 3(a), finding that there was no evidence pointing Sabas to have persuaded or induced or influenced other public officer to perform an act constituting a violation of rules and regulation or allowed himself to be persuaded,

induced or influenced to commit such violation or offense.

As for Sabas's liability under Section 3(e), the investigating judge exculpated him therefrom, citing *Zoomzat, Inc. v. People of the Philippines*,^[9] and held that to be liable for the offense under this provision, the offender must be officers and employees of offices of government corporations charged with the grant of licenses or permits or other concessions. Since Sabas was an *ex officio* sheriff of the Municipal Trial Court by virtue of his being a clerk of court whose functions do not include the granting of licenses, permits or concessions, he could not be held liable under the aforementioned provision.

Lastly, as regards Sabas' alleged offense under Section 4(b) which provides that "[i]t shall be unlawful for any person knowingly to induce or cause any public official to commit any of the offenses defined in Section 3 hereof," the investigating judge likewise found no basis to hold Sabas liable because Sabas was actually the one who demolished the property and did not induce nor cause any public official to commit the offense.

The Report and Recommendation contained no discussion on Simpliciano's liability. As earlier stated, the Court notes that respondent Simpliciano is already deceased. While it is true that respondent's cessation from office by death does not warrant the dismissal of the administrative case against him as long as the complaint was filed before the respondent's death,^[10] it has been the Court's finding that, aside from Simpliciano's mere presence at the time of the demolition, he did not participate in the actual demolition of complainants' fence and house.^[11] Complainants failed to present sufficient evidence to prove Simpliciano's liability for the acts complained of. For this reason, the Court likewise clears Simpliciano of any liability for the alleged offenses involved in the second administrative investigation subject of this Resolution.

Now, we turn to the merits of the complaint with respect to respondent Sabas.

As can be gleaned from the tenor of complainants' position paper, respondents are charged with violation of Section 3(a) and (e) and Section 4(b) of R.A. No. 3019 for allowing themselves to be "influenced and induced" to do the prohibited acts under said provisions.

Section 3(a) states:

Sec. 3. Corrupt practices of public officers . - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officers and are hereby declared to be unlawful.

(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

Sabas did not induce any public officer to perform an act violating rules and regulations. Neither was there evidence that Sabas allowed himself to be "influenced

or induced" to commit the act which became the root cause of this administrative case. Sabas, on his own volition, committed the acts complained of. Consequently, there is no reason to find him administratively liable under the said provision.

Section 4(b) declares as unlawful for any person to knowingly induce or cause any public official to commit any of the offenses defined in Section 3 of the same law. As it is already the Court's finding that there was no proof of the alleged inducement to or by respondents, no liability can likewise arise under this provision.

Section 3(e) declares as unlawful the act of:

(e) Causing any undue injury to any party, including the Government or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices of government corporations charged with the grant of licenses or permits or other concessions.

As aforementioned, the investigating judge interpreted the last sentence of Section 3(e) as applying only to those officers and employees of government corporations charged with the grant of licenses or permits or other concessions. For this reason, Sabas was not held liable under the provision. The investigating judge cites *Zoomzat, Inc. v. People of the Philippines*^[12] to support this position.

Admittedly, the Court made a statement in *Zoomzat* that for one to be held liable under Section 3(e), he must be an officer or employee of offices or government corporations charged with the grant of licenses or permits or other concessions.^[13]

The earlier case of *Mejorada v. Sandiganbayan*,^[14] however, squarely addressed the issue on the proper interpretation of Section 3(e). In *Mejorada*, the Court explained that "the last sentence of [[Section] 3](e) is intended to make clear the inclusion of officers and employees of [offices] or government corporations which, under the ordinary concept of `public officers,' may not come within the term," adding that "[i]t is a strained construction of the provision to read it as applying exclusively to public officers charged with the duty of granting license or permits or other concessions."^[15]

Mejorada was decided by the Court *en banc*. Following the constitutional mandate that no doctrine or principle of law laid down by the Court in a decision rendered *en banc* or in division may be modified or reversed except by the Court sitting *en banc*,^[16] the case of *Zoomzat* cannot reverse the pronouncement in *Mejorada*, the former case having been decided by a Division of the Court.

More importantly, the ultimate and undisputed anchor of the decision in *Zoomzat* is that the respondents cannot be validly charged under Section 3(e) since the ordinance they enacted is void for being *ultra vires*, the authority to grant franchise to operate cable television being lodged in the National Telecommunications Commission (NTC) and not with the *Sangguniang Panlungsod*. To quote the pertinent passages of the Court in *Zoomzat*:

Executive Order No. 205 clearly provides that only the NTC could grant certificates of authority to cable television operators and issue the