

FIRST DIVISION

[A.M. No. P-05-2010, June 08, 2007]

SPS. DIONY & EVELYN ALMACHA, COMPLAINANTS, VS. RODOLFO V. PAYUMO (SHERIFF IV, RTC BRANCH 93, QUEZON CITY), RESPONDENT.

DECISION

AZCUNA, J.:

On July 7, 2003, complainants, spouses Diony and Evelyn Almacha, filed with this Court a letter-complaint against respondent Rodolfo V. Payumo, Sheriff of the Regional Trial Court (RTC) of Quezon City, Branch 93, charging him of gross ignorance of the law, serious misconduct in office, conduct prejudicial to the best interest in the service, oppression, and conduct unbecoming of a government employee.

The facts are:

On December 3, 2001, Judge Apolinario D. Bruselas,^[1] RTC, Branch 93, Quezon City, rendered a decision in Civil Case No. Q-96-2931 entitled *World War II Veterans Legionnaires of the Philippines, et al. v. Teofilo Fran, et al.*, ordering the plaintiffs therein and all persons claiming rights under them to vacate the property in question and surrender the possession thereof to the private defendants.

On May 29, 2003, the private defendant Teofilo Fran filed a motion for execution, which motion was granted by Judge Bruselas in an Order dated June 6, 2003.

On June 16, 2003, the Branch Clerk of Court of the RTC, Branch 93, Quezon City issued a writ of execution addressed to respondent Payumo ordering him to cause the execution of the judgment in the manner provided for under Rule 39 of the 1997 Rules of Civil Procedure, as amended.

On June 25, 2003, respondent personally served the copy of the Notice to Vacate upon complainants, together with a copy of the Writ of Execution giving them five days from receipt thereof within which to vacate the premises.

On July 1, 2003, respondent, after coordinating with the Quezon City Police Detachment and the Office of the Barangay Captain of Pasong Tamo, Quezon City, proceeded to the place of complainants at Lot No. 2, Block 23, Tempis, Barangay Pasong Tamo, Quezon City, accompanied by two policemen in uniform and some other men for the purpose of implementing the writ.

Complainants felt aggrieved by the manner the writ was enforced by respondent; thus, they filed a complaint against him with this Court.

In a Resolution dated March 31, 2004, the First Division of this Court resolved to refer the case to Executive Judge Natividad G. Dizon, RTC of Quezon City, for investigation, report and recommendation. Thereafter, in a Resolution dated December 6, 2004, the Court resolved to refer the case to the Office of the Court Administrator for evaluation, report and recommendation.

During the investigation, complainant Evelyn Almacha testified that she charged respondent for ignorance of the law because he did not consider their pending motion to set aside the Writ of Execution. She also charged him of conduct unbecoming of a public officer because respondent, following a heated argument, told her that had she approached him, she would not have been ejected from her house.

She further testified that on the day the writ of execution was implemented, there were men aboard a jeep who arrived ahead of respondent. Although she did not know them, she was sure that they were companions of respondent. After about 20 to 30 minutes, respondent arrived in the area with around 20 men – one in police uniform, another in a security guard uniform, while the rest were in civilian clothes. She was shocked upon seeing respondent and his men in their area. She then prepared their documents for respondent to see. About eight companions of respondent entered their house but respondent just stayed outside the house talking with somebody. Thirty minutes later, her neighbors came to help move their things out of the house.

Co-complainant Diony Almacha affirmed the contents of their Joint Affidavit.

Respondent did not take the witness stand, but submitted his position paper. He stated therein that by virtue of the Writ of Execution issued by the RTC, Branch 93, Quezon City, he served the Notice to Vacate upon complainants and gave them five days from receipt thereof within which to vacate the premises. However, complainants, despite receipt of the Notice to Vacate, still refused to vacate the premises on the ground that they had filed with the Court of Appeals a Motion to Set Aside the Writ.

After the lapse of five days from service of the notice, respondent proceeded to enforce the writ, causing complainants to vacate the premises.

Respondent contended that the enforcement of the writ was proper, regular and peaceful because complainants themselves personally removed their belongings and turned over the possession of the premises to him. The implementation of the writ was also witnessed by the representative of the Barangay Chairman of Pasong Tamo and some police officers who executed a Joint Affidavit (Annexes "D-1" and "D-2") confirming that the writ was enforced regularly and peacefully by him.

The Investigating Judge found that respondent is not guilty of Gross Ignorance of the Law on the ground that at the time of the enforcement of the writ, there was no restraining order issued by the appellate court to stop respondent from implementing the same. He stated that when a writ is placed in the hands of the sheriff, it is his duty, in the absence of any instruction to the contrary, to proceed with promptness to execute it according to its mandate, citing *Young v. Momblan*.^[2] Hence, he held that respondent acted in accordance with law.