

THIRD DIVISION

[A.M. NO. P-06-2257 (FORMERLY OCA IPI NO. 01-1212-P), November 29, 2006]

**SPS. 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.:

This resolves an administrative complaint against Eriberto Sabas, the since retired^[1] Clerk of Court and Ex-Officio Sheriff of the MTC, 4th Judicial Region, Puerto Princesa City, and Ernesto Simpliciano, already deceased,^[2] as Deputy Sheriff of the same court. The complaint was filed by the spouses Arthur and Leonora Stilgrove for grave abuse of authority and for conduct unbecoming officers of the court.

In their verified Complaint dated 20 July 2001,^[3] complainants claim that the respondents are liable in view of the following:

- a. For having knowingly, voluntarily and feloniously acted beyond the scope of their powers and functions, with manifest partiality, evident bad faith or gross inexcusable negligence, thereby causing undue damage and injury to herein complainants;
- b. For having knowingly allowed themselves to be persuaded, induced and influenced by Latube and De los Santos into committing such illegal demolition of complainants' structures not included in the aforementioned decision in [C]ivil [C]ase [N]o[.] 1311;
- c. For unjustifiably refusing to heed the clearly justified pleas of complainants for them not to include in the demolition said structures[,] as well as to accept the letter and the affidavit of third-party claim that complainants were tendering on them; and
- d. Specifically on the part of respondent Sabas, for insulting complainant Arthur Stilgrove by shouting at him to "Return to (his) country, for (he) is not welcome here!", and for almost causing him to suffer physical injuries by ordering the demolition men to proceed in chainsawing the fence without minding said complainant even as he already saw that the latter was standing between the saw and the fence in order to prevent the illegal demolition from proceeding.

Another case arising from the same incident was filed by the same complainants with the Ombudsman.^[4] OMB-1-01-0668-H was a complaint for violation of

Sections 3(a) and (e) and Section 4(b) of Republic Act No. 3019 filed by complainant spouses against respondents Sabas and Simpliciano and Francisca Gacot-Latube and Cresencia de los Santos. The case was dismissed as far as the latter two were concerned for lack of jurisdiction.^[5]

The antecedent facts of this case are as follows:

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^[6] 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.^[7] The dispositive portion of the affirmed MTC decision reads:

1. Ordering defendants, Emilio Batul, Joaquin Montero as well as all persons claiming rights under them to peaceably vacate the property subject of this litigation within three (3) working days and restore possession thereof to the plaintiff or his representative;
2. Ordering defendants to pay plaintiff jointly and severally the sum of P10,000.00 as attorney's fees;
3. Ordering defendants, Emilio Batul, and all persons claiming rights under him to pay plaintiff as reasonable rental for the use and occupation of plaintiff's property the amount of P100.00, a month from January 1987, until he vacates the property; there being no fixed month in 1986, when he entered the premises; and
4. Ordering Joaquin Montero and all persons claiming rights under him to pay plaintiff the amount of P100.00, a month effective January 1994, for the same reason as above, until they too, vacate the premises;
5. To pay the costs.^[8]

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^[9] 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 [ten] 10 days from receipt of this Order to voluntarily demolish any structure they built within the premises.^[10]

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.^[11] 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.^[12]

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),^[13] entitled *Arthur Stilgrove, et. al v. Eriberto Sabas, et. al.*

In their Joint Comment^[14] 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^[15] 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,^[16] and as such were bound by the judgment in Civil Case No. 1311.^[17]

Respondents further claimed, citing a *Sinumpaang Salaysay*^[18] allegedly executed by Joaquin and Esther Montero, that complainant spouses were claiming rights under one of the defendants in Civil Case No. 1311, Emilio Batul, who sold a portion of Lot No. 18553 to them during the pendency of Civil Case No. 1311. According to respondents, complainants cannot claim any right better than their seller who was a defendant in Civil Case No. 1311 and they are bound by the demolition order.

Respondents further averred that they were the ones who were subjected to verbal abuse by complainant Arthur Stilgrove. In fact, according to respondents, a criminal complaint for grave slander was filed by the former against the latter and his spouse.

On 13 August 2001, the Office of the Deputy Ombudsman referred the records of

OMB-1-01-0668-H to the Office of the Court Administrator^[19] pursuant to Section 6, Article VIII of the 1987 Constitution.^[20]

In their Reply,^[21] complainants countered that respondents' reliance on the relocation survey conducted by a licensed engineer allegedly for Cresencia de los Santos is untenable since such survey was never presented to the Court and was thus, never part of the records of Civil Case No. 1311. More tellingly, the survey plan was prepared only on 26 June 2001 after the RTC and MTC decisions and after the demolition had been carried out. Accordingly, it could not have been taken cognizance of by the Courts at the time Civil Case Nos. 1311 and 3470 were heard. The relocation survey was not even approved by the Land Registration Authority.

Complainants also argued that Article 433 of the New Civil Code which requires resort to judicial process for the recovery of property was not observed when respondents considered valid the alleged claim of encroachment. Likewise, respondents' refusal to accept complainants' affidavit of third-party claim violated Section 16 of Rule 39 of the Rules of Court. Complainants also alleged that Joaquin Montero never appeared before the notary public to sign the *Sinumpaang Salaysay* dated 23 May 2001 and that the signature of Esther Montero in said affidavit was procured because respondents took advantage of her lack of education.

On 25 November 2002, upon the recommendation of the Office of the Court Administrator, the Court referred this administrative matter to the Executive Judge of the Regional Trial Court of Puerto Princesa City for investigation, report and recommendation within sixty (60) days from receipt of the record.^[22] On 10 February 2003, Executive Judge Nelia Yap-Fernandez informed the Court that respondent Clerk of Court IV Sabas had already retired from the service on 17 September 2001, and that her office had already taken judicial notice of the death of the other respondent Simpliciano in connection with another administrative matter.^[23] This Court referred her letter to the Office of the Court Administrator for evaluation, report and recommendation within five (5) days from receipt of the records.^[24] Upon recommendation by Deputy Court Administrator Jose P. Perez in his Memorandum^[25] dated 1 October 2003, the Court referred the case back to the Executive Judge of the Regional Trial Court of Puerto Princesa City, Palawan for investigation, report and recommendation within sixty (60) days from receipt of the record.^[26]

After hearing the testimonies of the witnesses and reception of documentary evidence for both parties, Investigating Judge Nelia Yap-Fernandez dismissed the administrative case against respondent Simpliciano for lack of merit but found respondent Sabas guilty of grave misconduct, abuse of authority and conduct unbecoming of a court personnel. The Report and Recommendation^[27] of the investigating judge states:

WHEREFORE, this investigating officer respectfully recommends to the Honorable Supreme Court thru the Honorable Court Administrator the forfeiture of respondent Eriberto Sabas' retirement benefits and all other benefits withheld from him pending the resolution of this case, except accrued sick leave and vacation leave credits and the dismissal of the case against deputy sheriff Ernesto Simpliciano for lack of merit.^[28]

It is worthy to note that the Investigating Judge in her Report and Recommendation, like the Office of the Court Administrator before, did not touch the complaint for violation of Sections 3(a), 3(e) and 4(b) of the Anti-Graft and Corrupt Practices Act. Accordingly, we refer the matter to the Executive Judge of the Regional Trial Court of Puerto Princesa City for investigation, report and recommendation on respondents' administrative liability.

Now, we turn again to the charge of grave abuse of authority and conduct unbecoming an officer of the court. We agree with the findings of the Investigating Judge with respect to both.

The administrative case with respect to respondent Simpliciano must be dismissed. The testimonies of his co-respondent Sabas and complainant Arthur Stilgrove^[29] show that, aside from his mere presence at the time of the demolition, respondent Simpliciano did not participate in the actual demolition of complainants' fence and house. It is a basic rule in evidence that each party must prove his affirmative allegation.^[30] Since the burden of evidence lies with the party who asserts the affirmative allegation, complainant spouses have to prove the material allegations in their complaint.^[31] As far as Simpliciano's administrative liability was concerned, complainant spouses failed to discharge this evidentiary burden by establishing any culpable acts which the Deputy Sheriff performed, other than his mere presence when the demolition occurred.

However, a different result must obtain as to the administrative liability of respondent Sabas.

Respondent Sabas is charged with grave abuse of authority when he caused the demolition of a fence and a portion of complainant spouses house which structures were all built on Lot No. 18556, the lot adjacent to Lot No. 18553, and for conduct unbecoming an officer of the court when he shouted at complainant Arthur Stilgrove the words: "Return to (his) country, for (he) is not welcome here!"

Grave abuse of authority (oppression) is a "misdemeanor committed by a public officer, who under color of his office, wrongfully inflict upon any person any bodily harm, imprisonment or other injury." It is an "act of cruelty, severity, or excessive use of authority."^[32]

In this case, respondent attempted to justify the demolition of the fence and a portion of complainant spouses' house by saying that he was merely implementing a lawful order of the Court. Indeed, the scope of respondent Sabas' power as Sheriff was limited by the decision of the MTC in Civil Case No. 1311, which decision was affirmed in *toto* by the RTC, and the Special Order for Demolition^[33] issued by Judge Heriberto M. Pangilinan. The two documents could not be any clearer. The MTC decision was directed to the "defendants ... as well as all persons claiming rights under them x x x" while the Special Order of Demolition ordered the Ex-Officio Sheriff and/or Deputy Sheriff "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."^[34]

The spouses Stilgrove were not the defendants in Civil Case No. 1311 nor were they persons claiming rights under such defendants. They were merely the occupants