

EN BANC

[A.M. NO. P-05-2007 (FORMERLY OCA I.P.I. NO. 03-1609-P), June 08, 2005]

SENEN VILOS, COMPLAINANT, VS. EXPEDITO B. BATO, SHERIFF III, RESPONDENT.

DECISION

PER CURIAM:

The facts which gave rise to the present administrative complaint of Senen Vilos against Expedito B. Bato, Sheriff III, Municipal Trial Court in Cities (MTCC), Branch 1, Dumaguete City, are as follows:

In a Decision rendered on October 15, 2001^[1] by the MTCC of Dumaguete City, Branch 1 in Civil Case No. 90-28-5, a case for ejectment filed by Vilos, the therein defendants spouses Fermin and Maxima Nocete et al. were ordered to, among other things,

x x x

. . . pay to plaintiff Senen Vilos representing arrears or past rentals to the land the amount equivalent to P400.00 per month representing the rentals for the reasonable use and occupation of the land effective January 1990 until the land is fully vacated by the defendants;

. . . to pay to plaintiff Senen Vilos representing arrears or past rentals to the land the amount equivalent to P150.00 per month from 1984 up to January 1990;

. . . to pay jointly the amount equivalent to P3,000.00 as reimbursement payments of attorneys fees to plaintiff;

. . . the cost of the suit.^[2]

The Decision of the MTCC was not appealed and it having become final and executory, the trial court, on motion of the judgment creditor Vilos, ordered the issuance of a Writ of Execution and one was issued dated February 18, 2002.^[3]

Herein respondent MTCC Sheriff Expedito Bato, by his own admission, received a copy of the Writ of Execution on February 19, 2002.

No Progress Report on the enforcement of the Writ of Execution having been made by respondent, he was constantly reminded by Vilos' counsel to submit the same but it was not heeded.

Vilos' counsel was later furnished a copy of respondent's Return of Writ of Execution dated March 4, 2002^[4] on October 10, 2002.^[5] The March 4, 2002 return stated that on February 26, 2002, respondent served a copy of the Writ of Execution only upon the defendants judgment debtors Nocete spouses, the other defendants having vacated the premises and their whereabouts could no longer be determined; and that when he sought to collect from the Nocete spouses the full amount of their judgment obligation, they replied that they had neither cash nor personal or real property sufficient to satisfy the same in full but they promised to settle it "on or before April 2002 with the conformity of [Vilos]."

Vilos (hereinafter referred to as complainant), was eventually informed that all the while respondent had been collecting some amounts from the Nocetes. Complainant thereupon asked respondent to make a return of the Writ of Execution and to remit to him his collections but respondent failed to and did not give a satisfactory explanation therefor either, prompting him to execute on February 5, 2003 an Affidavit-Complaint^[6] charging respondent with ten (10) counts of Malversation of Public Funds as defined in Article 217 of the Revised Penal Code.

On receipt of a copy of the Affidavit-Complaint which the MTCC Clerk of Court forwarded to the Court Administrator, the latter directed respondent, by 1st Indorsement of May 8, 2003,^[7] to submit his Comment thereon within ten (10) days from receipt.

By Comment of June 19, 2003,^[8] respondent, in compliance with the directive of the Court Administrator, gave the following capsulized self-explanatory comment:

1. Plaintiff wanted full payment and full settlement of the decision;
2. Defendant could not at one time, make a full payment to satisfy the decision;
3. As soon as defendant can come up with the full amount to settle and fully satisfy the decision the same shall be turned over to the plaintiff;
4. Private funds cannot be subject to malversation;
5. Attached are papers and documents. (Underscoring supplied)

It turned out that, indeed, respondent had been collecting various amounts on different occasions from judgment debtor Fermin Nocete since April 22, 2002 as shown in the tabulation below, which were duly receipted by respondent:

<u>DATE</u>	<u>AMOUNT</u>
April 22, 2002	P10,000.00
June 3, 2002	P 2,000.00
July 2, 2002	P 2,000.00
August 6, 2002	P 2,000.00
September 5, 2002	P 2,000.00
October 11, 2002	P 2,000.00

November 5, 2002	P 2,000.00
December 7, 2002	P 2,000.00
(Undated)	P 5,000.00
Undated)	<u>P 5,000.00</u>
	P39,000.00 ^[9]
	=====

In a parallel move, the affidavit-complaint of complainant was lodged with the Dumaguete City Prosecutor's Office. The *rollo* of the case shows that in a Joint Resolution issued in I.S. Nos. 2003-107 up to 2003-116, "Senen Vilos, Complainant, versus Expedito Bato, Respondent," for Malversation of Public Funds, the City Prosecutor's Office found probable cause to hale respondent into court for 10 counts of misappropriation.^[10] He was eventually indicted for 10 cases of Estafa.

By Resolution of this Court dated November 21, 2003,^[11] the administrative complaint was referred to the Executive Judge of the Regional Trial Court (RTC) of Dumaguete City for Investigation, Report and Recommendation within sixty (60) days.

The record of the investigation conducted by Executive Judge Araceli S. Alafriz shows that respondent submitted a Counter-Affidavit^[12] echoing his earlier quoted Comment. Thus, his Counter-Affidavit reads:

I am innocent of the charge;

Plaintiff Senen Vilos wanted full payment and full settlement of the decision;

Defendants could not at one time, make a full payment to satisfy the decision;

As soon as the defendant can come up with the full payment to settle and fully satisfy the decision the same shall be turned over to the plaintiff;

Besides for the sake of argument but without admitting, private funds cannot be the subject of malversation;

Attached are the Sheriff's Progress Report as annexes 1 and 2 hereto;

Plaintiff also received payments even **after** the filing of the complaint copy of the receipts are hereto attached as annexes 3, 4, and 5.

x x x (Emphasis and underscoring supplied)

In her Report and Recommendation entitled "COMPLIANCE,"^[13] Judge Alafriz, on the basis of the facts of the case already reflected above, gives the following

EVALUATION

The respondent has violated the provisions of Rule 39 of the 1997 Rules