

FIRST DIVISION

[A.M. NO. P-05-2059 [OCA-IPI NO. 03-1793-P],
August 19, 2005]

ATTY. AUDIE C. ARNADO, COMPLAINANT, VS. EDILBERTO R. SUARIN, SHERIFF III, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 8, CEBU CITY, RESPONDENT.

D E C I S I O N

YNARES-SANTIAGO, J.:

In his complaint^[1] filed on October 3, 2003 with the Office of the Court Administrator (OCA), Atty. Audie C. Arnado charged Sheriff III Edilberto R. Suarin of Municipal Trial Court in Cities (MTCC)-Cebu City, Branch 8, with *Serious Misconduct, Oppression, Harassment and Unethical Conduct* relative to Civil Case No. R-37529 entitled *Lourdes L. Rosaroso v. Sps. Audie and Caroline Arnado*.

Complainant alleged that Sheriff Suarin prematurely implemented the writ of execution and served notices to vacate by banging his gate, shouting and creating public scandal, and posting notices at the gate which caused him humiliation.^[2]

In his Comment,^[3] Sheriff Suarin alleged that he merely implemented the final decision of the trial court.^[4] He belied the allegations in the complaint and claimed that he always used the buzzer each time he served the notice in complainant's residence; that an employee of spouses Arnado would open the peep hole and inform him that the spouses are not around then instruct him to slip the notice in the opening underneath the gate.

In the March 30, 2003 Agenda Report,^[5] the OCA recommended the dismissal of the complaint against Sheriff Suarin for lack of merit and that Atty. Arnado be directed to explain why he should not be administratively sanctioned for filing a frivolous complaint, which recommendation was adopted by this Court in its Resolution^[6] of June 7, 2004.

In his Comment,^[7] Atty. Arnado maintained that his complaint against Sheriff Suarin is not frivolous and was not filed to exact revenge but to bring to the attention of the Court the corrupt acts of judicial employees. He alleged that Judge Mamerto Y. Coliflores of MTCC-Cebu City, Branch I, was paid P30,000.00 to render the judgment of eviction while Sheriff Suarin received P60,000.00 to implement the same. The latter allegedly implemented the writ without waiting for the trial court's resolution of their complaint to annul the sale and deed of donation.

The OCA recommended that complainant, Atty. Arnado be fined in the amount of P5,000.00 for filing a groundless suit.^[8]

We agree with the findings of the OCA.

It appears that in Civil Case No. R-37529 for Ejectment filed by Lourdes L. Rosaroso against spouses Arnado before MTCC-Cebu City, Branch 1, decision was rendered directing, among others, spouses Arnado to vacate the premises and turn over physical possession thereof to Rosaroso. The decision became final and executory^[9] on December 9, 1999 per Entry of Judgment issued by the Judicial Records Office^[10] of this Court.

On April 28, 2000, Judge Coliflores issued a Writ of Execution^[11] but its implementation was delayed^[12] because spouses Arnado filed several motions. They moved to quash the writ and/or suspend execution but the same was denied.^[13] After denial of their motion for reconsideration,^[14] they filed a petition for certiorari^[15] with the RTC praying that MTCC be ordered to stay execution^[16] pending resolution of Civil Case No. CEB-19194 for *Nullity or Annulment of Sale and Revocation of Donation with Damages*^[17] before the RTC of Cebu City. They also moved for the inhibition of Judge Coliflores which was granted, hence, the case was raffled to MTCC-Cebu City, Branch 8, presided by Judge Edgemelo C. Rosales.^[18]

In an Order dated January 25, 2002,^[19] Judge Rosales directed full implementation of the writ. Again, Atty. Arnado moved to quash the writ^[20] but the same was denied on February 19, 2002.^[21] A Petition for Certiorari was filed before RTC-Cebu City, Branch 12 which was also denied.^[22] The order dismissing the application for preliminary injunction to stop execution likewise became final and executory.^[23]

The writ was implemented initially by Sheriff III Roldan Artes who served a Notice to Vacate, a 2nd Notice to Vacate and Notice to Implement Writ of Execution, and a Notice of Levy on Execution upon Real Property^[24] which were all unheeded. On subsequent dates,^[25] Sheriff Suarin attempted to serve the notices, but spouses Arnado were not around and the latter's employees refused him entry. Thus, on October 11, 2002, an order^[26] to break open the premises was issued by Judge Rosales.

Atty. Arnado sought reconsideration of the break open order and moved to inhibit Judge Rosales and charged him administratively^[27] for *Partiality, Gross Ignorance of the Law and Grave Abuse of Discretion*.^[28]

Incidentally, this Court dismissed Atty. Arnado's complaint against Judge Rosales for lack of sufficient evidence and at the same time referred the counter-charge of Judge Rosales to the Office of the Bar Confidant for appropriate action.^[29]

Thereafter, Sheriff Suarin served a 2nd Notice to Vacate dated January 7, 2003,^[30] 3rd Notice to Vacate dated September 16, 2003,^[31] and a Final Notice to Vacate dated October 6, 2003^[32] but only to the employees of spouses Arnado because the latter were not always around.

It is well to note that as early as December 9, 1999, the judgment in the ejectment

case has become final and executory, but through legal maneuverings, Atty. Arnado was able to delay its execution for several years.

In administrative proceedings, complainants have the burden of proving by substantial evidence the allegations in their complaints. Administrative proceedings against judicial employees are by nature, highly penal in character and are to be governed by the rules applicable to criminal cases. The quantum of proof required to support the administrative charges should thus be more substantial and they must be proven beyond reasonable doubt.^[33]

In this case, Atty. Arnado not only lacked personal knowledge of the charges but also failed to substantiate them. He claimed that Sheriff Suarin banged at his gate, shouted and posted notices at the gate but he failed to mention the details and the dates on which these infractions were alleged to have been committed. He presented no witnesses to prove his claim particularly his employees who had always informed the sheriff that he and his wife were away each time the notices were served.

Atty. Arnado must know that it was the ministerial duty of Sheriff Suarin to implement the writ of execution and that he was merely following a lawful order of the court. This complaint was filed less than a month after his complaint against Judge Rosales was dismissed. Atty. Arnado must be sanctioned for filing this unfounded complaint. Although no person should be penalized for the exercise of the right to litigate, however, this right must be exercised in good faith.^[34]

As officers of the court, lawyers have a responsibility to assist in the proper administration of justice. They do not discharge this duty by filing frivolous petitions that only add to the workload of the judiciary.

A lawyer is part of the machinery in the administration of justice. Like the court itself, he is an instrument to advance its ends - the speedy, efficient, impartial, correct and inexpensive adjudication of cases and the prompt satisfaction of final judgments. A lawyer should not only help attain these objectives but should likewise avoid unethical or improper practices that impede, obstruct or prevent their realization, charged as he is with the primary task of assisting in the speedy and efficient administration of justice.^[35] Canon 12^[36] of the Code of Professional Responsibility promulgated on June 21, 1988 is very explicit that lawyers must exert every effort and consider it their duty to assist in the speedy and efficient administration of justice.

In *Retuya v. Gorduiz*,^[37] respondent-lawyer was suspended for six (6) months for filing a groundless suit against a former client in order to harass and embarrass her. In this case, we find the fine of P5,000.00, as recommended by OCA, commensurate under the circumstances.

The practice of law is a sacred and noble profession. It is limited to persons of good moral character with special qualifications duly ascertained and certified. The right does not only presuppose in its possessor integrity, legal standing and attainment, but also the exercise of a special privilege, highly personal and partaking of the nature of a public trust.^[38] Thus, a lawyer should not use his knowledge of law as an instrument to harass a party nor to misuse judicial processes, as the same