

SECOND DIVISION

[**A.M. No. P-04-1781(Formerly A.M. OCA IPI No. 03-1669-P), February 18, 2004**]

ANDY LOBREGAT, COMPLAINANT, VS. CENEN L. AMORANTO, SHERIFF III, BRANCH 36, METC, QUEZON CITY, RESPONDENT.

D E C I S I O N

CALLEJO, SR., J.:

On March 6, 2003, Presiding Judge Edgardo B. Bellosillo of the Metropolitan Trial Court of Quezon City, Branch 36, issued a Writ Of Execution^[1] in Civil Case No. 28836.^[2] The dispositive portion of the decision in the said case reads:nona

1. To vacate the premises located at No. 200 Tandang Sora cor. Visayas Avenue, Pasong Tamo, Quezon City;
2. To pay the sum of P193,000.00 as of July 27, 2002, and the current rentals of P15,000.00 starting August 2002, until the premises is fully vacated;
3. To pay the sum of P20,000.00 as attorney's fees and;
4. To pay the costs of suit.

SO ORDERED.^[3]

Pursuant to the said writ, respondent Sheriff Cenen L. Amoranto issued a Notice to Vacate^[4] dated March 14, 2003, and noted, thus:

PREMISES WAS PADLOCKED, HOWEVER, A COPY WAS POSTED AT THE FRONT DOOR OF THE "UKAY-UKAY" STORE.^[5]

Judge Bellosillo, thereafter, issued an Order^[6] dated March 20, 2003, authorizing the respondent to "break open the premises in question with the assistance of the proper police authorities to enforce the writ of execution." Thus, on March 31, 2003, the respondent enforced the said order.

However, one Andy Lobregat thereafter filed an Affidavit-Complaint^[7] dated June 5, 2003 charging the respondent with gross misconduct and grave abuse of discretion in implementing the questioned writ. According to the complainant, the Writ of Execution dated March 20, 2003 issued by Judge Edgardo Bellosillo clearly and specifically referred to *No. 200 Tandang Sora St., Quezon City*, whereas the address of the premises owned by him, albeit illegally destroyed and forced open by the respondent and one Ramon Timbang, is *No. 259 Tandang Sora St., Quezon City*. The complainant also alleged that the respondent took his belongings and

equipment.

In his Comment,^[8] the respondent averred that the implementation of the writ was properly and orderly done in the presence of some barangay officials. He claimed the element of unlawful taking or intent to rob as alleged by the complainant is purely imaginative, as there were no personal properties found in the premises when it was broken open, except one dust pan and a broken table. According to the respondent, the enforcement of the Break-Open Order was witnessed by barangay officials having jurisdiction in the area who were willing to support their affidavits to attest to the same.

In his Reply-Affidavit^[9] dated August 18, 2003, the complainant averred that the comment submitted by the respondent referred to the ejectment and collection case between Rolando Timbang and Marissa Punzalan, in which the complainant was never a party. The complainant stressed that the subject for ejectment or Break-Open Order referred to the premises at No. 200 Tandang Sora cor. Visayas Avenue, Quezon City, but that the same was actually and illegally executed at No. 259 (Food Section) Tandang Sora Avenue (In between Andok's Litson Manok and Baliwag Lechon Manok Grills), Quezon City.^[10] He further averred that there was no *ukay-ukay* store in the premises he owned as alleged by the respondent, and that there was no such notice posted therein.

After due evaluation of the case, the Office of the Court Administrator recommended that the respondent be meted a fine of P5,000.00 and sternly warned that a repetition of the same or similar act shall be dealt with more severely.^[11] The OCA found that there was, unequivocally, negligence on the part of the respondent. He was authorized to break open the premises to enforce the writ of execution, and it was clear and apparent that the subject thereof was No. 200 Tandang Sora St., Quezon City, and not the premises at No. 259.

We agree.

The records show that, indeed, the premises owned by the complainant is located at No. 259 Tandang Sora St., in contrast to that indicated in the writ of execution. In fact, the respondent himself confirmed his erroneous execution of the subject writ when he issued a Receipt of Possession^[12] dated March 31, 2000 with the prevailing party Ramon Timbang as signatory, thus:

IN COMPLIANCE WITH THE WRIT OF EXECUTION ISSUED BY THE HON. EDGARDO B. BELLOSILLO, PRESIDING JUDGE OF THE METROPOLITAN TRIAL COURT OF QUEZON CITY IN THE ABOVE-ENTITLED CASE, AND AN ORDER OF THIS COURT AUTHORIZING THE UNDERSIGNED TO BREAK OPEN THE PREMISES DATED MARCH 20, 2003 AS OF THIS DATE, PREMISES KNOWN AS **#200 TANDANG SORA COR. VISAYAS AVE.,** QUEZON CITY IS NOW FORMALLY TURN[ED] OVER TO THE CONTROLLED (SIC) AND POSSESSION BY (SIC) THE HEREIN PLAINTIFF REPRESENTED BY RAMON D. TIMBANG.^[13]

The records also show that the complainant bought the property from Marissa Punzalan, the defendant in Civil Case No. 28836 against whom the writ of execution was issued.^[14] As found by the Court Administrator, "the (respondent's) mistake