

## FIRST DIVISION

[ A.M. No. P-03-1741, March 23, 2004 ]

**ISIDORO ABAPO, COMPLAINANT, VS. JUAN A. GATO, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 27, LAPULAPU CITY, RESPONDENT.**

### D E C I S I O N

**AZCUNA, J.:**

Complainant Isidoro Abapo originally charged respondent Juan A. Gato, Sheriff IV of the Regional Trial Court of Lapulapu City, Branch 27, with Neglect of Duty and violation of Section 3(b) of Republic Act No. 3019 otherwise known as the Anti-Graft and Corrupt Practices Act, before the Office of the Ombudsman. Recognizing that respondent, as a judiciary personnel, is under the direct supervision of the Court, the Office of the Ombudsman referred the case to the Office of the Court Administrator (OCA) for appropriate action.<sup>[1]</sup>

As can be gleaned from the complainant's affidavit-complaint dated April 9, 1999, respondent is being charged for neglect of duty for failing to enforce the writ of attachment obtained by the complainant in a civil case. The complainant alleges that respondent demanded from him and his wife the sum of P5,000 purportedly for expenses to be incurred in the implementation of the writ. Despite the complainant's partial payment of P3,000, and constant reminders from his counsel, the writ remained unenforced by respondent, who allegedly continues to demand the remaining balance of P2,000.

When asked to comment, respondent maintained that he had, on two occasions, tried to implement the writ. He stated that on the first time, on February 3, 1999, the writ was suspended upon the order of the court as the defendant in the civil case filed a motion to quash the writ. After the denial of the defendant's motion, respondent again attempted to enforce the writ on March 23, 1999. The management of the defendant's office, however, could not be contacted. Respondent further stated that he had other processes to attend to, as he was then serving two branches of the trial court. He, however, neither denied nor confirmed that he demanded P5,000 from the complainant.

On February 27, 2002, the Court, upon the recommendation of the OCA, referred the case to the Executive Judge of the Regional Trial Court of Lapulapu City for investigation, report and recommendation.<sup>[2]</sup>

Executive Judge Leopoldo Cañete accordingly conducted several hearings. Only the complainant presented testimonial evidence, as respondent moved to submit the case for resolution without presenting any evidence. In his Investigation Report<sup>[3]</sup> dated July 27, 2002, Judge Cañete found the charges unsubstantiated by clear and convincing evidence, as the two testimonies presented to support the complainant's claim of payment of money to the respondent contradicted each other. Considering,

moreover, that the complainant during the investigation withdrew his complaint, Judge Cañete concluded that no irregularity attended the actuations of respondent and recommended that the case be dismissed for lack of merit.

On March 31, 2003, the OCA issued its Report, coming out with a different finding with respect to the charge of demanding and receiving money from the complainant. It found that respondent failed to comply with the basic requirements set forth in Section 9, Rule 141 of the Rules of Court.<sup>[4]</sup> Particularly, respondent appears to have demanded and received money from the complainant without obtaining the required court approval. It thus recommended that the case be re-docketed as a regular administrative matter and that respondent be fined in the amount of P5,000 with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

The Court has re-docketed the case as an administrative case but it disagrees with the aforesaid findings.

The Court notes that, as admitted by the complainant, the alleged payment to respondent was not substantiated by any receipt or any written document. Hence, the veracity of the claim that respondent demanded P5,000 from the complainant hinges on the credibility of the latter's affidavit-complaint and the testimonial evidence presented during the investigation of the case.

Indeed, the complainant in his affidavit-complaint and in his earlier testimony stated that he filed the instant case against respondent for the latter's demand of money. Subsequently, however, during trial, the complainant recanted his earlier statements and said that his allegations were untrue and incorrect. The pertinent portion of his testimony is quoted hereunder, as follows:

Q Considering the fact, Mr. Abapo, that herein respondent had served the alleged writ of attachment, what is your prayer to the Honorable Court?

WITNESS:

A I pray to this Honorable Court that this case be withdrawn.

x x x

x x x

x x x

COURT: (To Witness)

Q To clarify, what you have given now is merely with respect to the service of the writ of attachment which according to you was served by the respondent. How about the other aspect, the alleged sum of money taken by the respondent?

A I will also withdraw that case, Your Honor.

Q Why?

A Because this case arises due to our misunderstanding, Your Honor.

COURT: