

SECOND DIVISION

[**A.M. No. P-03-1718 (formerly OCA IPI No. 03-1571-P), March 10, 2004**]

**SEVERINO NICDAO, PETITIONER, VS. SILVESTRE J. ESGUERRA,
SHERIFF IV, RESPONDENT.**

R E S O L U T I O N

AUSTRIA-MARTINEZ, J.:

Before us is an administrative complaint against Silvestre Esguerra, Sheriff IV, for Abuse of Authority filed by Severino Nicdao, defendant in Civil Case No. 711, entitled *Antonio Marasigan, et al. vs. Severino Nicdao*, an action for Ejectment.

In his complaint, Nicdao alleges that on December 27, 2002, respondent sheriff, taking advantage of their absence, implemented the writ of demolition issued by the MTC, Paombong, Bulacan in Civil Case No. 711; that without a break open order from the MTC, respondent sheriff forced himself into their house, demolished the same and confiscated their personal properties; that respondent sheriff was able to list only three properties belonging to them, to wit: an aquarium, a refrigerator and a generator but failed to account for several others including their jewelries.

In his Comment dated March 19, 2003, respondent sheriff explains as follows: Upon receipt of a copy of the writ of execution issued by the MTC for the implementation/execution of the decision issued in Civil Case No. 711, he served a notice to vacate the subject premises upon complainant on March 3, 2000 giving him five days within which to vacate the subject premises but the latter refused to do so. He submitted his Preliminary Report on April 3, 2000 informing the trial court of the complainant's refusal to vacate the premises. Two years later, or on December 4, 2002, he received a copy of an alias writ of demolition from MTC, Paombong giving him thirty days to implement the same and to make a return. He served the writ together with a notice to vacate to the complainant giving him again three days within which to vacate the premises. Considering that no temporary restraining order (TRO) was issued in the case, he decided to implement the writ of execution on December 27, 2002. All personal belongings inside the house/studio were properly inventoried in the presence of a police officer and since defendant thru his son, refused to heed his request to secure their personal belongings, he requested the barangay officials to secure the same for safekeeping but said barangay official likewise refused his request for fear that they might be involved in the problem. In view of that development, he had no alternative but to keep/install, with the plaintiff Marasigan's conformity, all the inventoried personal belongings in the garage of the latter which is adjacent to the premises subject of Civil Case No. 711. On the same date of implementation, December 27, 2002, he submitted before the trial court a copy of his return on alias writ of demolition dated December 7, 2002 with the attached copy of Delivery of Possession. On January 3, 2003, he submitted a copy of his Report dated January 2, 2003 to the Court, narrating all the

proceedings undertaken by him in connection with the implementation of the Writ of Execution and Alias Writ of Demolition effected on December 27, 2002.

Based on the conflicting factual allegations posited by the complainant and respondent sheriff, the OCA recommended that the case be re-docketed as a regular administrative matter and the case referred to the Executive Judge of the Regional Trial Court of Malolos, Bulacan for investigation, report and recommendation within sixty days from receipt of the records.

Finding the recommendation of the OCA to be well-taken, the Court in a Resolution dated July 9, 2003 ordered the case to be re-docketed as a regular administrative matter and referred the same to Executive Judge Guillermo P. Agloro of RTC, Malolos for investigation, report and recommendation.

Judge Agloro submitted his Final Report which was noted in the Court's Resolution dated November 17, 2003. In the said report, Judge Agloro narrated the established facts of the case, to wit:

On December 27, 2002, private complainant Severino Nicdao, who was then residing at no. 12 San Isidro I, Paombong, Bulacan, testified that he left for Manila at around 6:00 a.m. with the rest of his family with the exception of one son, Sherwin Nicdao, who was then residing at no. 77 Guinhawa St., Malolos, Bulacan. Further, complainant testified that he padlocked his house and nobody was left home; and when he returned, he saw his house already demolished and his belongings were no longer inside his house. Consequently, he looked for the plaintiff and the sheriff; and when he could not see them, he went to the municipal hall and blotted the incident at the Paombong Police Station. Thereafter, private complainant testified that he filed this formal complaint on January 14, 2003 against respondent Esguerra with the Office of the Chief Justice, Supreme Court (p.002, Rollo); and likewise filed a list of his personal belongings with the same office on January 29, 2003. . . .

On the other hand, respondent Esguerra testified that upon receipt of the alias writ of demolition on December 4, 2002, a notice to vacate was prepared and served on December 9, 2002 together with the copy of the writ of demolition and the writ of execution dated February 7, 2002 issued by the MTC-Paombong, Bulacan, upon private complainant who received the same thru the son, Sonny Nicdao upon private complainant's instruction, at his residence located at San Isidro I, Paombong, Bulacan (pp. 130-132, Rollo).

Instead of implementing the notice to vacate despite the three (3)-day grace period, respondent Esguerra went to see private complainant Nicdao on December 16, 2003.^[1] However, respondent Esguerra was only able to talk to private complainant Nicdao's daughter-in-law. Thereafter, respondent Esguerra informed private complainant Nicdao's daughter-in-law if she could relay the message to his father-in-law to vacate the property peacefully. Despite the request, complainant Nicdao failed to vacate the property peacefully such that on December 26, 2002, respondent Esguerra went to see the former informing him that he will implement the alias writ of demolition the following day, December 27,

2003^[2] (pp. 13, TSN, September 11, 2003) as there is no temporary restraining order issued preventing the implementation of the same. Further, respondent Esguerra informed Mr. Nicdao that he is only given a period of 30 days from receipt to implement the alias writ of demolition reckoned from December 4, 2002 or up to January 4, 2003.

On December 27, 2002, respondent proceeded to the residence of private complainant Nicdao to implement the writ at on or about 8:00 a.m.; however when respondent arrived, the house was padlocked. Consequently, respondent went to the barangay captain as well as to the PNP-Paombong to request formally for assistance (pp. 137-138, Rollo). Thereafter, with the assistance of 3 barangay councilors together with a police personnel in the person of PO3 Joseph de Guzman, respondent then proceeded to the residence of private complainant. Upon arrival, respondent Esguerra then inquired from the barangay and nearby houses where complainant Nicdao was, but nobody knew where the private complainant and his family went.

Thereafter, at about 10:00 a.m., respondent removed the padlock; however, after removal thereof, respondent saw a person taking a video footage, who he later knew to be Sherwin or Wen-wen, the son of private complainant Nicdao. Respondent then approached the son and told him -
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A. . . . 'nandyan ka pala, kanina ko pa kayo hinahanap ng Tatay mo upang makapag-usap at kung puwede pakikuha nyo na ang mga gamit nyo sa bahay.'

Q. What was his answer if any after you told him that?

A. And he answered while he was taking the coverage on my implementation and my other companions, he told me 'kung gusto po nyo kausapin nyo ang abogado namin' (talk to my lawyer and here I am presently talking with him over the cellphone).

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A The lawyer told me 'kung ayaw mong sumakit ang katawan mo sa asunto ay lubayan mo na ang pag-implement nyan at meron ka bang break-open order?' (pp. 22-23, TSN. September 11, 2003).

After his conversation with the private complainant's lawyer, respondent went back to the residence of Mr. Nicdao and entered the same; and there, respondent took pictures of the actual arrangement of the interior and the personal belongings of the private complainant (Exhibit "2", "2-a" to "2-k" inclusive).

Thereafter, respondent Esguerra started actual demolition of private complainant's house. The personal belongings of private complainant were then brought out of the house, inventoried, and placed inside "aparadors" which were sealed by placing scotch tape around to secure