

EN BANC

[A.M. No. P-01-1529, January 23, 2002]

ATTY. GISELLE G. TALION, CLERK OF COURT VI, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT, PANABO, DAVAO DEL NORTE, COMPLAINANT, VS. ESTEBAN P. AYUPAN, SHERIFF IV, REGIONAL TRIAL COURT, OFFICE OF THE CLERK OF COURT, DAVAO DEL NORTE, RESPONDENT.

DECISION

PER CURIAM:

This is a complaint filed by Atty. Giselle G. Talion, Clerk of Court, Regional Trial Court, Panabo, Davao Province, against Esteban Ayupan, Sheriff IV of the same court, alleging failure of the latter to serve summons assigned to him, to act on petitions for extrajudicial foreclosure, and to enforce writs of execution and absenteeism.

The facts show the following:

On July 20, 1999, respondent Esteban Ayupan, then Sheriff IV of the Regional Trial Court, Panabo, Davao, was absent from work. As he continued to be absent for several days, the Clerk of Court, Atty. Giselle G. Talion, issued Memorandum 01-99 on July 29, 1999, requiring him to explain his absence from work.^[1] In reply, respondent, in a letter dated August 3, 1999, wrote:

"I am submitting herewith my narrative explanations in compliance to your memorandum order 01-99 dated July 29, 1999.

"That on July 21, 1999 I did not report for work because of a stomach pain up to Friday 23 day of July 1999. I have been feeling this long ago. In fact, I had this consulted with the internests (sic) but they only gave me medicines which made me feel temporarily relieved.

"That on the early morning of Monday 26 day of July 1999, me and my wife discovered that our eldest daughter who had just celebrated her 15th birthday on July 25, 1999 disappeared. We immediately exerted all efforts to locate all possibilities of her whereabouts. All of these efforts were in vain.

"Incidentally, on the 27th day of July 1999, one of our neighbors in the province of Cotabato arrived. We were informed that our missing daughter was at her grandfather's house. So, immediately, in the early morning of the 28th of July, I took the first bus trip bound for Cotabato City. I was able to locate my daughter who transferred from my father to her auntie's house. I convinced her without any investigation to go home and back in school.

"On the 30th day of July, I reported to the office and happened to receive said memorandum order.

"During those days I had sleepless nights and even forgot to take regular meals because of worries.

"I will submit to any action against me by my superiors if I violated existing Rules of the Civil Service. However, I suggest for any possibility that I will be given ample time to go on leave for a thorough medical check up."^[2]

On the same day, respondent submitted his daily time record (DTR) and an application for leave stating that he was indisposed. Atty. Talion refused to sign the DTR an application for leave as she received earlier information that respondent was simply staying at home. Respondent's wife, who worked as an interpreter at RTC, branch 34, would not say nor deny if he was sick.

From August 23 until several days thereafter, respondent again did not report for work. Neither did he file his daily time record for the month of August 1999. For this reason, Atty. Talion issued Memorandum No. 02-99 on August 31, 1999, calling respondent's attention to his absences for the period of August 23-31 and ordering him to explain why no disciplinary action should be taken against him. Respondent did not make any explanation even after he had reported back for work on September 2, 1999. Instead, on September 10, respondent was again absent from work without leave, prompting Atty. Talion to issue another memorandum on September 21, 1999, again ordering him to explain his absences from September 10 to the date of the memoranda issued. A copy of the memorandum, together with the three previous memoranda issued to respondent, was furnished Executive Judge Gregorio A. Palabrica, RTC, Panabo and the Office of the Court Administrator. On September 28, 1999, the Office of Administrative Services, Office of the OCA, directed respondent to explain in writing why he should not be dealt with administratively for his unexplained absences and to return to work within five days from receipt of the same. Again, however, respondent did not offer any explanation for his absences and simply reported back for work on October 19, 1999. Hence, on October 25, 1999, Executive Judge Palabrica issued Memorandum No. 06-99, ordering that no cases for service of summons, execution of judgments, and/or petition for extrajudicial foreclosure be assigned to respondent. When respondent applied for an indefinite leave of absence effective November 18, 1999, Judge Palabrica refused to approve respondent's application.^[3]

Atty. Talion found that from 1997 until 1999, respondent failed to serve a number of summonses and to act upon petitions for extrajudicial foreclosure assigned to him. On September 1, 1999, Atty. Talion asked Jonathan Fajardo, Clerk IV of the OCC-RTC, to make an inventory of cases assigned to respondent. The inventory of the cases showed that summonses assigned to respondent for enforcement were either served but unreturned or they remained unserved, petitions for extra-judicial foreclosure remained either unserved upon the mortgagors or mortgagees or unpublished in newspapers of general circulation, or no provisional or final certificates of sale were issued, while several writs of execution remained unenforced. The summonses were dated as early as October 27, 1997 while the petitions for extrajudicial foreclosure were filed as early as November 13, 1997.

On the other hand, respondent received the writs of execution as early as July 10, 1997. The details of the inventory are as follows:^[4]

Inventory conducted on	Status	Number of cases
Summons	Unserved	45
	Served but unreturned	18
	Status undetermined	18
	Total	81
		=====
Extrajudicial Foreclosure	Sheriff's notice of foreclosure unsent / no proof of mailing	106
	For Issuance of final or provisional	36

certificates of sale	
Notice of foreclosure not on file	20
No publication / notice of foreclosure unsent	15
Unacted upon / for re-raffling	8
Petition withdrawn	4
Not included in the raffling of legal notices	4
No status indicated	3
Total	<u>196</u> =====

Inventory conducted on	Status	Number of cases
Writs of Execution	Unimplemented / No sheriff's return	52
	Served	13
	Partial Return	3
	Total	<u>68</u> =====

On October 22, 1999, Atty. Talion submitted a report to Executive Judge Palabrica, who endorsed the same to the Office of the Court Administrator on October 29, 1999. The OCA directed Judge Palabrica to investigate the matter. In compliance with the directive of the OCA, Judge Palabrica scheduled a hearing on December 28, 1999, notifying respondent of the same. However, respondent ignored the notice. Only Atty. Talion appeared to testify on respondent's alleged inefficiency.

After hearing, on January 14, 2000, Judge Palabrica made the following findings and recommendation:

"FINDINGS:

The undersigned finds that Mr. Ayupan has been absent without official leave for more than 30 days. Moreover, he also failed to properly accomplish the extrajudicial foreclosure totalling 197 cases assigned to him. Likewise he has not acted properly on the writ of executions and summons coming from several courts.

"RECOMMENDATION