

## FIRST DIVISION

[ A.M. No. P-01-1454, September 12, 2002 ]

**JUDGE GREGORIO R. BALANAG, JR., COMPLAINANT, VS. ALONZO B. OSITA, SHERIFF IV, RTC-ALABEL, SARANGANI, RESPONDENT.**

### DECISION

**CARPIO, J.:**

It is the ministerial duty of the sheriff to implement the writ of execution issued by the court. However, Section 9, Rule 141 of the Rules of Court requires the sheriff to secure the court's prior approval of the estimated expenses and fees needed to implement the writ.

#### The Facts

The Municipal Circuit Trial Court of Kiamba-Maitum, Sarangani rendered a decision dated August 8, 1995 in Civil Case No. 281 entitled "Felicidad and Arsenio Gadut, et al. vs Diahing Saliang, et al." for Forcible Entry and Damages. The trial court issued a writ of execution on October 4, 1996 to restore possession to plaintiffs and to satisfy a money judgment of P40,000.00. The trial court tasked respondent Alonzo B. Osita, Sheriff IV ("Sheriff Osita" for brevity) of the Regional Trial Court of Alabel, Sarangani to implement the writ.

Based on the Sheriff's Return of the Writ of Execution and Notice of Levy dated January 20, 1997,<sup>[1]</sup> Sheriff Osita caused the harvest of 172 sacks of rice which he sold for P60,102.00. He incurred expenses in the total amount of P49,535.00, leaving net proceeds of P10,567.00 which he turned over to Arsenio Gadut, one of the plaintiffs in the case.<sup>[2]</sup>

In his Comment to the Sheriff's Return dated February 18, 1997,<sup>[3]</sup> Atty. H. Echavez-Villondo, counsel for plaintiffs, asserted that Sheriff Osita lodged and dined at Kiamba, Sarangani Province from January 7-19, 1997 with more than twenty escorts composed of PNP, RMF, SF/CAFGU and Marines. Atty. Echavez-Villondo questioned the exorbitant expenses for lodging and meals amounting to P10,000.00. He assailed Sheriff Osita for justifying the expenses for meals and lodging as necessary for the "High Morale of the Troops." He pointed out that Sheriff Osita incurred these expenses without securing the approval of the court in violation of the procedure laid down in the Rules of Court. He lamented that Sheriff Osita did not consult him before incurring these expenses when the "lawyer and sheriff are partners in executing a final judgment." He bewailed that Sheriff Osita "exhausted the proceeds to the detriment of the plaintiffs and counsel."

Furthermore, Atty. Echavez-Villondo faulted Sheriff Osita for turning over the net proceeds of P10,567.00 to only one of the plaintiffs, Arsenio Gadut. He asserted that Sheriff Osita should have apportioned the proceeds among all the plaintiffs. He therefore prayed that Sheriff Osita be declared guilty of grave misconduct and gross

dishonesty and be made "personally accountable for the attorney's fees as mentioned in the decision."

In his Reply to Comment to Sheriff's Return dated March 18, 1997,<sup>[4]</sup> Sheriff Osita cited the Affidavit of Arsenio Gadut who stated that he was "fully satisfied and (had) no complaint whatsoever as to the manner" Sheriff Osita implemented the writ and incurred the incidental expenses.

In his Rejoinder to Sheriff's Reply dated April 22, 1997,<sup>[5]</sup> Atty. Echavez-Villondo argued that the approval by one of the plaintiffs of the exorbitant expenses incurred in implementing the writ does not rectify a violation of Section 9 of Rule 141.

In his Comment dated September 7, 2001 filed with this Court, Sheriff Osita submitted the Joint-Affidavit dated September 26, 1997 of all the plaintiffs stating that-

"Admittedly, we are all fully satisfied, and have no complaint whatsoever, as to the manner the sheriff enforced the Writ of execution, including all the expenses which we personally handled.

It is to our great dismay to note lately that our Counsel, Atty. H. Echavez-Villondo, is now putting the good Sheriff into bad light. Charging the respondent Sheriff to have abused his office by charging the plaintiff with exorbitant fees and expenses in enforcing the Writ of execution, disregarding the fact that the Sheriff had never charged nor collected from us any amount as expenses for the service of the retained Policemen and Military Forces, is both unwarranted and unfair. As earlier mentioned, the expenses incurred to successfully enforce the writ of execution was nothing but our own making, freely and voluntarily made without the advice of the Sheriff."

#### OCA's Report and Recommendation

The Court Administrator opined that while it is the ministerial duty of the sheriff to implement the writ, the sheriff is required to secure the issuing court's approval of the estimated expenses and fees to implement the writ. Sheriff Osita failed to follow the procedure laid down in Section 9, Rule 141 of the Rules of Court and also failed to turn over the proceeds of the levy to the clerk of court. The Court Administrator recommended that Sheriff Osita, being remiss in his duties on two counts, be fined Five Thousand Pesos (P5,000.00).

#### The Court's Ruling

We agree with the findings and conclusions of the Court Administrator.

A sheriff must comply with Section 9 of Rule 141 in serving processes.<sup>[6]</sup> Section 9, Rule 141, as amended in A.M No. 00-2-01-SC,<sup>[7]</sup> prescribes the legal procedure in the implementation of the writ. It expressly provides:

"SEC. 9. *Sheriffs and other persons serving processes.* -

x x x

In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the