

## SECOND DIVISION

[ A.M. No. P-99-1346, June 20, 2001 ]

**RESTITUTO L. CASTRO, COMPLAINANT, VS. CARLOS BAGUE, SHERIFF IV, RTC, BRANCH 1, TAGBILARAN CITY, RESPONDENT.**

### DECISION

**MENDOZA, J.:**

This case involves two separate complaints against Carlos Bague, Sheriff IV assigned to the Regional Trial Court, Branch I, Tagbilaran City, Bohol, the first one for abuse of official functions, gross ignorance of duties, and manifest partiality,<sup>[1]</sup> and another one for falsification of public document.<sup>[2]</sup> By resolution of October 9, 1996, the two cases were consolidated and referred to Tagbilaran City Regional Trial Court Executive Judge Achilles L. Melicor for investigation, report, and recommendation.

With respect to the complaint for abuse of authority, the evidence presented for the complainant is as follows:

Complainant Restituto Castro was the highest bidder in the foreclosure sale conducted by respondent Carlos Bague on December 27, 1994 involving the property of Constantino Mendoza and Herminia Mendoza covered by TCT No. (5170) T-3075.<sup>[3]</sup> Respondent issued to complainant a certificate of sale which the latter registered in the Register of Deeds of Bohol on December 28, 1994.

When the foreclosure sale was held, Constantino Mendoza, the husband/mortgagor, was already deceased. His son, Paul, through an attorney-in-fact, Justiniano Mendoza, served on respondent a "Redemption with Notice of Redemption" on June 5, 1995. The next day, respondent wrote complainant informing him of the notice of redemption and of the deposit of P43,575.00 as redemption price.

On June 14, 1995, complainant filed an opposition to the redemption, which he reiterated on October 3, 1995.<sup>[4]</sup> Complainant claimed that in a meeting between him and respondent on December 28, 1995, respondent assured him that he would issue the final bill of sale in January 1996 considering that the current year was ending and there would be no one to sign the necessary documents. As respondent failed to issue to him the final deed of sale, complainant wrote respondent a letter on January 15, 1996, demanding the execution of a final deed of sale in his favor. Respondent, however, did not answer the letter.<sup>[5]</sup> Instead, on December 22, 1995, he issued a "resolution," which stated, among other things:

Premises considered, the grounds adduced by redemptioner are more convincing based upon statute while the pronouncement of the oppositor

are mere conjectures and did not convince the undersigned.

Resolved, as it is hereby resolved, that the subject parcel of land is redeemable by Justiniano Mendoza, AIF of Paul Mendoza, the latter being the son and successor-in-interest of the mortgagors as defined in the Rules of Court, particularly paragraph (a) Sec. 29, Rule 39.

Accordingly, let a certificate of redemption be issued to Justiniano Mendoza, AIF of Paul Mendoza. Mr. Restituto Castro is enjoined to accept redemption money in the amount of P43,500.00 deposited in the Office of the Clerk of Court for Multiple Salas and Ex-Officio Provincial Sheriff of Bohol, RTC, City of Tagbilaran.<sup>[6]</sup>

A copy of the "resolution" was received by complainant on January 24, 1996. On the basis of these facts, complainant says respondent is guilty of abuse of official functions, gross ignorance of duties, and manifest partiality.

On the other hand, with respect to the complaint for falsification of public document, complainant alleged that the one-year period of redemption expired on December 27, 1995; that respondent made it appear that he had prepared the questioned resolution on December 22, 1995; that respondent never informed him about the resolution when they met on December 28, 1995; and that it was only after complainant had formally demanded on January 15, 1996 the issuance of a final deed of sale that respondent came out with the resolution. Complainant averred that the resolution was mailed to him only on January 23, 1996, one month after the date stated in the resolution implying that respondent received some benefits for doing this.<sup>[7]</sup>

Respondent presented evidence showing the following: Respondent is Sheriff IV assigned to Branch I of the Regional Trial Court at Tagbilaran City, Bohol. When Deputy Sheriff Juan Polo, who was then assigned to the Office of the Clerk of Court for Multiple Salas, retired, respondent was designated to act as Deputy Sheriff in addition to his duties as Sheriff of Branch 1 of the RTC.<sup>[8]</sup>

On December 27, 1994, respondent conducted a foreclosure sale of the parcel of land mortgaged by the spouses Constantino and Herminia Mendoza in which complainant Restituto L. Castro was the highest bidder. Respondent issued a certificate of sale to complainant. The certificate was attested by Atty. Ma. Cleofe L. Clarin, Clerk of Court VI and Ex-Officio Provincial Sheriff, and approved by Executive Judge Antonio H. Bautista.<sup>[9]</sup> It indicated that the period of redemption of the property would expire one year from the date of registration of the said instrument.<sup>[10]</sup> The certificate of sale was actually registered in the Register of Deeds of Tagbilaran City on December 28, 1994.

Invoking Rule 39, §29(a) of the Rules of Court, respondent maintains that property sold at public auction may be redeemed by the judgment debtor or his successors-in-interest, in whole or in part. As the mortgagor, Constantino Mendoza, had by then passed away, his son, Paul, through attorney-in-fact Justiniano Mendoza, filed a notice of redemption dated June 5, 1995. Respondent says he informed complainant of this fact and advised him to claim the redemption money, but

complainant demanded instead that a final deed of sale be issued to him. Respondent claims that he informed complainant that he could not do so because the redemption had already been effected and the money had in fact been deposited with his office. Complainant filed an opposition<sup>[11]</sup> to the redemption, contending that as Paul Mendoza was just one of several heirs of the mortgagors, he could not exercise the right of redemption for more than his share as an heir. He reiterated his contention in another opposition he filed.

Complainant contended that Paul Mendoza alone did not have the right nor authority to redeem the foreclosed property. For this reason, he argued that the authority granted by Paul Mendoza to Justiniano Mendoza, as attorney-in-fact, to redeem the mortgaged property was unenforceable, if not invalid, and could not be made the basis for the issuance of a certificate of redemption.<sup>[12]</sup>

According to respondent, he was not able to resolve the opposition of complainant as in the meantime a new Deputy sheriff had assumed office as Ex-Officio Sheriff, and he (respondent) had to turn over the records of the instant case to her.

On December 15, 1995, respondent says, he referred complainant's protest to the new Clerk of Court and Ex-Officio Sheriff, Atty. Ma. Cleofe Clarin, who told him to continue acting in the case. For this reason, the record of the case was returned to him. According to respondent, he then prepared on December 22, 1995 the resolution in question.<sup>[13]</sup>

Clerk of Court and Ex-Officio Sheriff Ma. Cleofe Clarin corroborated respondent's testimony. She said that on September 27, 1995, respondent wrote her about the notice of redemption given by Paul Mendoza and the opposition filed by complainant. She confirmed that she instructed respondent to continue his work because respondent was the executing sheriff. Clarin also stated that she signed a certificate of redemption in favor of Paul Mendoza.<sup>[14]</sup>

With respect to the complaint for abuse of official function, gross ignorance of the law, and manifest partiality, the Investigating Judge, Achilles L. Melicor, found that respondent "failed to observe the prescribed norm of conduct of court personnel and to discharge his duties with prudence and circumspection." Accordingly, he recommended that respondent be reprimanded with a stern warning that a repetition of the same act in the future will be dealt with more severely. But, with regard to the charge of falsification of public documents, he found the evidence to be insufficient and, therefore, recommended that the complaint be dismissed. Both recommendations were made in a report submitted by Judge Melicor on March 12, 1997.

By resolution of this Court, dated June 9, 1997, the case was referred to the Office of the Court Administrator for evaluation, report, and recommendation.

On September 17, 1997, the Office of Court Administrator (OCA), through Deputy Court Administrator Bernardo P. Abesamis, submitted a Memorandum to then Chief Justice Andres R. Narvasa, recommending that respondent be found guilty of Usurpation of Judicial Function and that he be suspended from office for six months with a warning that a repetition of the same or similar acts will be dealt with more severely.

The OCA adopted Judge Melicor's findings of fact. As to the charge of abuse of official function, gross ignorance of duties and manifest partiality, the OCA found:

We find no cogent reason to disagree with the findings of the investigating judge with regards (sic) to the irregularity in the issuance of the assailed "Resolution" dated December 22, 1995. Undoubtedly, the act of the respondent Sheriff constitutes usurpation of Judicial function.

The reason given by respondent, i.e., that it was upon advise of the Clerk of Court Atty. Cleofe Clarin "to continue with his unfinished work" which is why he issued the assailed resolution, cannot be given due consideration so as to exculpate him from administrative liability. "The judicial power vested in a judge and its exercise is strictly personal to the judge because of, and by reason of his highest qualification, and can never be subject of agency. That would not only be contrary to law, but also subversive of public order and policy" (Conzales-Austria vs. Abaya, 176 SCRA 637). The advise given to him by the Clerk of Court, "to continue with his unfinished business" notwithstanding, respondent could have exercised more circumspection in the exercise of his ministerial function...<sup>[15]</sup>

The OCA noted that in view of his purely ministerial functions, respondent gravely abused his function when he exercised a judicial prerogative: resolving the legality of the Notice of Redemption filed by Paul Mendoza through his attorney-in-fact Justiniano Mendoza.

Anent the charge of falsification, the OCA found that the same had not been substantiated.

**First.** Rule 39, §27 (formerly §29) of the Revised Rules of Civil Procedure provides in part:

*Who may redeem real property so sold.*  $\frac{3}{4}$  Real property sold as provided in the last preceding section, or any part thereof sold separately, may be redeemed in the manner hereinafter provided, by the following persons:

(a) The judgment obligor, or his successor in interest in the whole or any part of the property;

The "successor in interest" of the judgment debtor referred to in the above provision includes a person who succeeds to his property by operation of law, or a person with a joint interest in the property, or his spouse or heirs.<sup>[16]</sup>

The procedure governing the exercise of the right of redemption is provided for in Act No. 3135, §6 which provides: