

SECOND DIVISION

[A.M. No. P-00-1360, January 18, 2000]

**ELISEO SOREÑO, SR., COMPLAINANT, VS. ATTY. RHODERICK
MAXINO AND NOEL TAMBOLERO, RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a complaint against respondents Atty. Rhoderick Maxino, clerk of court and ex-officio sheriff of the Municipal Trial Court in Cities, Dumaguete City, and Noel Tambolero, deputy sheriff of the same court, for "robbery with hold-up" and violation of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019). The complaint, dated April 15, 1996, alleges that on February 28, 1996, at around 11:30 in the morning, respondents, with other persons, went to complainant's shop in Daro, Dumaguete City and, for no apparent reason except to intimidate him, respondent Maxino pulled his gun on him and his children; that respondents then took four tricycles belonging to him (complainant), saying, "*Musugot ka ug dili, kuha-on nako imong mga pedicabs.*" ("Whether you like it or not, I will get your pedicabs."); and that when complainant asked to be shown any court order for respondents' actions, respondent Maxino replied, "Ako ang Korte." ("I am the court.") The complaint also alleges that a letter was sent to respondent Maxino demanding the return of the tricycles but a few days later, complainant received a letter from one "Mucho" Uypitching in which the latter claimed ownership of the tricycles and indicated he would not return them to complainant.

In their joint comment, respondents admit having seized the four tricycles of complainant but claim that the seizure of the tricycles was made to enforce the order, dated February 26, 1996, issued by Judge Felipe T. Torres, MTCC, Branch 2, granting an extrajudicial foreclosure of mortgage filed by Ramas Uypitching Sons, Inc. It appears that the tricycles were the subject of a chattel mortgage agreement between complainant and Ramas Uypitching Sons, Inc. Respondent Maxino denied he pulled a gun on complainant and the latter's family. He said he identified himself to complainant as the city sheriff and informed the latter of the purpose of their visit. However, complainant refused to surrender the tricycles and even warned respondents that there would be bloodshed if respondents insisted on taking the tricycles. This prompted respondents to request the assistance of two policemen (PO3 Arcadio Credo and PO2 Nathaniel Rubia). When respondent Maxino presented to complainant copies of the petition for extrajudicial foreclosure, the latter got the documents and, without reading them, threw them back at respondents. One of complainant's sons then approached respondents and inquired as to the reason for the seizure. After respondents explained his mission to complainant's son, the latter pleaded with his father to surrender the tricycles. It was only then that complainant yielded to the authorities.

Respondents also claim that they tendered receipts of seizure to complainant but he