

THIRD DIVISION

[A.M. No. P-99-1353, May 09, 2000]

PABLO CASAJE, COMPLAINANT, VS. CLERK OF COURT ROMAN GATBALITE AND SHERIFF ARCHIMEDES ALMEIDA, BOTH OF THE MTC-NAVOTAS, BRANCH 54, RESPONDENTS.

D E C I S I O N

GONZAGA-REYES, J.:

Pablo Casaje is the plaintiff in Civil Cases Nos. 3407 and 3408 both for Unlawful Detainer filed before the Metropolitan Trial Court of Navotas, Branch 54 wherein judgments^[1] therein were rendered in his favor. On October 1, 1996, an Order^[2] was issued by the court *a quo* granting plaintiff's motion for execution as the decisions in the aforesaid cases have become final and executory.

Casaje claims that writs of execution were accordingly issued and on October 11, 1996, he paid the necessary amounts for the service of the writs of execution as evidenced by O.R. Nos. 5966365 and 5967228.^[3] Claiming that the herein respondents Branch Clerk of Court Roman Gatbalite and Deputy sheriff Archimedes Almeida never acted on these writs of execution, Casaje filed a letter-complaint dated December 5, 1997^[4] for gross inefficiency and neglect of duty against them alleging, *inter alia*, that Deputy Sheriff Almeida furnished herein complainant Casaje with a list of expenses for the enforcement of writs for the approval of the court in the amount of P5,010.00 allegedly in compliance with Administrative Circular No. 31-90 which included the amount of P2,000.00 for meals and incidental expenses; that more than one (1) year after Casaje paid the fees for the enforcement of the writs in the two (2) civil cases but Almeida has not done anything or taken any step to implement them; and that Gatbalite, as immediate supervisor of Almeida, did nothing despite knowledge of the latter's inaction.

In his Comment,^[5] Branch Clerk of Court Gatbalite denies the charges claiming that he had no knowledge whatsoever of the activities or whatever agreement Casaje had with respondent Almeida nor has Casaje ever reported to him the actuations of respondent Almeida. He further alleges that contrary to Casaje's allegation, the Deputy Sheriff is under the direct control and supervision of the judge.

Respondent Deputy Sheriff Almeida filed his Comment^[6] alleging that he is not in possession of the aforementioned writs of execution; that Casaje merely inquired from him as to the expenses to be incurred in the enforcement of the writs and he submitted his estimate of expenses to the court subject to its approval pursuant to Rule 141 but this was not acted upon by the court up to the time the office of the MTC-Navotas, Branch 54 was gutted by fire on June 6, 1998.

In a letter dated October 8, 1998^[7] addressed to Judge Reynold Yaneza of the MTC-Navotas, Branch 54, Casaje further claims that aside from the amount of P5,010.00,

Almeida likewise asked for P15,000.00 allegedly to be divided between him and Gatbalite.

In the Resolution dated March 17, 1999,^[8] the case was referred to Judge Benjamin Aquino, Jr. of the Regional Trial Court of Malabon, Branch 72 for investigation, report and recommendation and the case was set for hearing.

In his Report,^[9] Investigating Judge Aquino found that respondent Deputy Sheriff Almeida indeed asked for the amount of P5,010.00 for the enforcement of the writs of execution but the amount was not yet final as it was still subject to the approval by the trial court. The alleged demand for the amount of P15,000.00 was not substantiated. For his failure to secure the approval of the court within a reasonable time, however, the investigating judge recommended that Deputy Sheriff Almeida be reprimanded for not acting with dispatch in the execution of the writs.

With respect to respondent Branch Clerk of Court Gatbalite, the investigating judge is of the opinion that Gatbalite should be absolved of the charges as he had no participation in the issuance of the writs. Although clerks of court exercise administrative supervision over all court personnel, the deputy sheriff is under the direct control and supervision of the presiding judge. The writs were signed by the presiding judge and respondent clerk of court did not participate in the issuance thereof. Hence, it is recommended that the complaint against respondent Clerk of Court Gatbalite be dismissed for lack of merit.

In the Resolution dated November 17, 1999,^[10] the case was referred to the Court Administrator for evaluation, report and recommendation. The Court Administrator saw no reason to disregard the findings of the investigating judge but disagreed with the recommendation that respondent Deputy Sheriff Almeida be merely reprimanded for his failure to execute the writs. He opined that the failure to abide by the pronouncements of the court deserves a higher penalty. Hence, it is recommended that respondent Deputy Sheriff Almeida be fined in the amount of P3,000.00 but the complaint against respondent Branch Clerk of Court Gatbalite be dismissed for lack of merit.

The Order for the issuance of a writ of execution was issued by the trial court on October 1, 1996^[11] and the respondent Deputy Sheriff Almeida submitted a list of expenses for the consideration and approval of the court.^[12] He claims, however, that he could not enforce the judgments in Civil Cases Nos. 3407 and 3408 because he was "not in receipt or in possession of any of the alleged writ of execution".^[13] In his testimony, respondent Deputy Sheriff Almeida admitted having seen the writ of execution attached to the records but did not formally serve the copy thereof because he was "waiting (for) the list of expenses to be approved by the Judge".^[14] Branch Clerk of Court Gatbalite likewise does not deny that the writ of execution was issued by the judge of the MTC-Navotas, Branch 54.^[15]

The function of ordering the execution of a judgment, being judicial, devolves upon the judge whereas the act of issuing the writ of execution, being ministerial, can be performed by another person, viz., the clerk of court. As the rule now stands, the clerk of court may, under the direction of the court or judge, make out and sign all writs and processes issuing from the court.^[16] In this case, however, there is no question that the subject writs of execution were signed by the presiding judge and not by the clerk of court.