

FIRST DIVISION

**[A.M. No. P-93-990 and A.M. No. P-94-1042,
September 08, 2000]**

**TERESITO D. FRANCISCO, COMPLAINANT, VS. FERNANDO CRUZ,
DEPUTY SHERIFF, BRANCH 171, REGIONAL TRIAL COURT,
VALENZUELA, RESPONDENT.**

RESOLUTION

DAVIDE JR., C.J.:

Two cases were filed by complainant against respondent Deputy Sheriff Fernando Cruz of Branch 117 of the Regional Trial Court of Valenzuela (now Valenzuela City), Metro Manila. The first, A.M. No. P-93-990, was referred on 26 January 1994 for investigation, report and recommendation to Atty. Jose P. Perez, then Chief of the Reporter's Office, now Assistant Court Administrator.^[1]

The second case, A.M. No. P-94-1042 (formerly OMB-0-93-0627), was ordered consolidated with A.M. No. P-93-990^[2] in our resolution of 29 June 1994. The records of both cases were transmitted to Atty. Perez who started to conduct the investigation.

It would appear that, as stated in the Motion to Dismiss filed on 2 June 1999 by respondent, the investigation was suspended in view of an alleged prejudicial question, namely, the outcome of the case filed by complainant before the Regional Trial Court of Valenzuela City entitled *Sps. Teresito Francisco and Rosana Francisco vs. Ma. Luisa Lacorte and Fernando Cruz*, docketed as Civil Case No. 4353-V-94 (erroneously referred to as 4353-V-93 in the Motion to Dismiss dated 7 July 1994).

In the Resolution of 25 October 1999 we referred these cases to the Court Administrator for evaluation, report and recommendation on the basis of the pleadings already filed.

In his Memorandum of 31 July 2000, Court Administrator Alfredo L. Benipayo makes the following findings and evaluation:

In his sworn complaint dated September 4, 1993 and June 1993, docketed by this Court as A.M. No. P-93-990 and A.M. No. P-94-1042 respectively, Teresito D. Francisco charges Deputy Sheriff Fernando Cruz, RTC, Branch 171, Valenzuela with violation of Sections 8 and 18, Rule 39 of the Rules of Court and the Anti-Graft and Corrupt Practices Act (RA No. 3019) relative to Civil Case No. 3156-V-89 entitled "*Maria Luisa Lacorte, et al. vs. Sps. Rosana and Teresito Francisco*", for collection of sum of money.

Complainant who is defendant in the aforecited civil case, alleges that on

November 20, 1989 a money judgment was rendered by the RTC, Branch 171, Valenzuela in Civil Case No. 3156-V-89 ordering him and his wife to pay the plaintiffs therein the total amount of P129,196.00. On January 16, 1990, a writ of execution was issued by the clerk of court. The following day, January 17, 1990, respondent sheriff in violation of Section 8, Rule 39 of the Rules of Court immediately levied on their house and lot with TCT No. 50532, despite the fact that they have other personal properties that are more than enough to satisfy the money judgment. Then, in conspiracy with the plaintiffs, said respondent caused the auction sale of said realty on February 20, 1990 without posting any notice of sale as required by Section 1, Rule 39 of the Rules of Court. On February 23, 1990, a certificate of sale was issued in favor of the said plaintiffs.

Complainant further alleges that on January 14, 1993, plaintiffs Lacorte and Iñigo filed a petition entitled "Luisa Lacorte and Elizabeth Iñigo vs. Sps. Teresito Francisco and Rosana Francisco", for recovery of possession of the very same house and lot subject of the auction sale in Civil Case No. 3156-V-89 and docketed as (AD) Case No. 976-V-93. He and his wife opposed the petition by saying that as early as December 17, 1992 they have already deposited in court a manager's check payable to the plaintiffs in satisfaction of the money judgment in Civil Case No. 3156-V-89.

When asked to comment, respondent denied the charges.

Respondent narrates that on January 17, 1990, he levied the real property of the complainant and his wife described by TCT No. 50532 of the Register of Deeds of Caloocan City. He argues that since the decision sought to be implemented is a money judgment, the rule to follow is Section 15, Rule 39 of the Rules of Court. He seems to suggest that by virtue of the said rule he may proceed with any and all of judgment debtor's properties be they real or personal. Thereafter, he prepared the corresponding notice of sale and personally served the same upon complainant's wife. He likewise caused the posting of the notice of execution sale and caused the same to be published in a newspaper of general circulation as evidenced by an affidavit of publication (Annex "4", Rollo, p. 31). During the public auction on February 20, 1990, the judgment creditors were allegedly adjudged as the highest bidders and as such, a certificate of sale (Annex "5", Rollo, p. 32) was issued in their favor. He maintains that all the appropriate procedures were followed by him except that, through inadvertence, he failed to prepare the corresponding sheriff's report and/or return with respect to the posting of notices.

Respondent maintains that he could not have conspired with the judgment creditors since a close look at the annotations of TCT No. 50532 of the Register of Deeds of Caloocan City will show that while the certificate of sale was issued on February 20, 1990 the same was registered only on January 20, 1991 owing to the pleas of the judgment debtors that they be given time to pay their monetary obligations. As such, the judgment debtors were able to stop the running of the 1-year

period of redemption by eleven (11) months.

During the (course of the) investigation conducted by Atty. Jose P. Perez pursuant to the Honorable Court's resolution dated January 26, 1994, it was established that herein complainant and his wife failed to redeem the subject house and lot within the one year redemption period, as a consequence of which the judgment creditors had already consolidated their ownership over the subject property. To obtain possession thereof, the judgment creditors filed (AD) Case No. 976-V-93 entitled "Luisa Lacorte and Elizabeth Iñigo vs. Teresito Francisco and Rosana Francisco" for recovery of possession. Herein complainant and his wife, on the other hand, filed Civil Case No. 4353-V-93 entitled "Sps. Teresito Francisco and Rosana Francisco vs. Ma. Luisa Lacorte and Elizabeth Iñigo" for Nullification of Title, etc. In the case for nullification of title, complainant questions the validity of the auction sale. Apparently, the issues thereon involve the very same issues as in the instant administrative case.

On July 7, 1994, respondent filed a Motion to Dismiss contending that the instant case is premature in view of the pendency of (AD) Case No. 976-V-93 and Civil Case No. 4353-V-93.

On June 1, 1999, respondent once again filed a motion to dismiss informing the Court that an Order dated March 24, 1999 was already issued by the RTC, Branch 75, Valenzuela City dismissing (AD) Case No. 976-V-93 and Civil Case No. 4353-V-93, hence, the instant complaint should likewise be dismissed. Said order is hereinafter quoted, thus:

"ORDER

A perusal of the records of this case would show that, it has been tried together with Civil Case No. 3156-V-89 which is a money suit filed by plaintiff Ma. Luisa Lacorte and Elizabeth Iñigo on July 24, 1989 against the defendant spouses Rosana Francisco and Teresito Francisco, plaintiffs in the herein case, wherein a decision was rendered by the then Executive Judge Adriano R. Osorio who handled the said case, as early as November 20, 1989 in favor of the plaintiffs of said case, and AD Case No. 976-V-93 for a writ of possession which was filed before Branch 172 filed by the petitioners Ma. Luisa Lacorte and Elizabeth Iñigo which appears to be an after effect of the decision rendered in Civil Case No. 3156-V-89, which both cases were transferred to this Court to be consolidated with the herein case.

As borne out from the records of this case, would show that pre-trial was terminated, considering that the possibility of a settlement of the civil aspect was remote, and the plaintiff was ordered to present its evidence. But, for failure of the plaintiffs to present its evidence, their right to present the same was deemed waived. For this reason, for failure of the plaintiffs to prosecute, this case is hereby ordered DISMISSED.

SO ORDERED.

Valenzuela City, March 24, 1999."

After a careful study of the entire records of the case, we are of the opinion that complainant resorted to the filing of the instant administrative complaint primarily to obtain declaration from this Honorable Court of respondent sheriff's alleged violation of certain rules in the conduct of the auction sale with the end in view of using such declaration in the civil case for nullification of title. This opinion finds basis in the statement of Atty. Eduardo Santos, counsel for the complainant as well as in the observation of Atty. Jose P. Perez during the investigation hearing conducted last May 24, 1994 (TSN, pages 108-109), to wit:

"ATTY. SANTOS:

As a matter of fact, this Honorable Investigator could see, he see it, from the very comments, Exhibit "B", of respondent that he himself did not mention about making any posting in that comment like this Honorable Court why we do not like to widen this so much to assail the integrity of the respondent. We would like to make of record that the very evidence are supreme including his testimony in Court. And this Honorable Court, the Supreme Court, we have a better say on the matter than the trial court because there are so many, many outside influences in the trial courts. We are sorry to state so. That will defect the genuine decision on the issue which only the Supreme Court could determine. (Emphasis ours)

ATTY. PEREZ:

That is it. You see. You admit that the central issue is whether or not the respondent sheriff followed the requirements of the rules in the matter of auction sale. That is the central issue in the administrative case and in the civil case. You said that and I thank you for that, that the Supreme Court would be in a better position to rule on that issue but that will come in appeals from these cases, not at this stage where it is still being tried at the First Instance. Since we are putting the cart before the horse, the matter of whether or not the sheriff in fact followed the Rules of Court in the conduct of the auction sale is pending litigation. There is no decision as yet by the trial courts. But here, we are trying the Sheriff on the same allegation that he did not post the notice as required by the Rules of Court. What if I decide another way. This is my predicament."

Failing to obtain the desired declaration from this Court, both (AD) Case No. 976-V-93 and Civil Case No. 4353-V-94 did not prosper quite