



Republic of the Philippines  
Supreme Court  
Baguio City

SPECIAL FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Special First Division, issued a Resolution dated **January 11, 2023** which reads as follows:*

**“A.M. No. P-11-2968 [Formerly OCA I.P.I No. 10-3535-P] (Solomon Son, complainant v. Rolando C. Leyva, respondent). –** Respondent Rolando C. Leyva, former Sheriff IV, Regional Trial Court-Branch 74, Antipolo City seeks reconsideration of the penalty imposed on him under the Decision<sup>1</sup> dated November 28, 2019. This Court found him guilty of gross neglect of duty and gross incompetence in the performance of official duties, and imposed on him the penalty of six (6) months and one (1) day suspension without pay, with stern warning. He now seeks to modify the penalty of suspension which he can no longer serve by reason of his retirement from the service effective January 31, 2020 or over two months after the promulgation of the Decision dated November 28, 2019.

To recall, in his letter-complaint,<sup>2</sup> Baclaran Marketing Corporation’s (BMC) Finance and Operations Manager Solomon Son (Son) alleged that the Regional Trial Court, Branch 74, Antipolo City, Rizal dismissed the complaint for damages (vehicular collision) filed by Mamerto Sibulo, Jr. (Sibulo) against Ricardo Mendoza and BMC in Civil Case No. 1218-A entitled *“Mamerto Sibulo, Jr. vs. Ricardo Mendoza and Baclaran Marketing Inc.”*.<sup>3</sup> Without notice to BMC, Sibulo appealed to the Court of Appeals under CA-G.R. CV No. 47936. Fifteen years later, or on May 9, 2005, the appellate court reversed the trial court through its Decision dated May 9, 2005.<sup>4</sup> With

- over – six (6) pages ...

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<sup>1</sup> Unpaginated.

<sup>2</sup> *Rollo*, pp. 455–534.

<sup>3</sup> *Id.* at 10–13.

<sup>4</sup> *Id.* at 14–28.

BMC and Son still unaware of the appeal, the ruling of the Court of Appeals attained finality. Writ of Execution<sup>5</sup> dated January 16, 2006 and Order<sup>6</sup> dated February 23, 2006 directing the levy of BMC's real properties were issued.

On April 17, 2006,<sup>7</sup> respondent, as Sheriff of the trial court, immediately sold BMC's real property covered by Transfer Certificate of Title No. 34587 *via* public auction, without first demanding cash payment from BMC or exhausting its personal properties. The property levied, was a prime property located along Quirino Avenue, Parañaque City, which, had an assessed value of PHP 33,395,000.00 as of April 2008 and a market value of PHP19,890,000.00 at the time of the auction though the money judgment against BMC amounted to PHP 765,159.55 only. Clearly, there was an excessive levy in violation of Section 9, Rule 39 of the Rules of Court.<sup>8</sup>

<sup>5</sup> *Id.* at 61.

<sup>6</sup> *Id.* at 63.

<sup>7</sup> *Id.* at 111.

<sup>8</sup> SECTION 9. *Execution of Judgments for Money, How Enforced.* — (a) *Immediate Payment on Demand.* — The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amounts to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

The clerk of said court shall thereafter arrange for the remittance of the deposit to the account of the court that issued the writ whose clerk of court shall then deliver said payment to the judgment obligee in satisfaction of the judgment. The excess, if any, shall be delivered to the judgment obligor while the lawful fees shall be retained by the clerk of court for disposition as provided by law. In no case shall the executing sheriff demand that any payment by check be made payable to him.

(b) *Satisfaction by Levy.* — If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

In his Comment,<sup>9</sup> dated January 5, 2011, respondent denied the charges against him. He faulted BMC for failing to inform the trial court of its new address. It was beyond his authority to determine if BMC was still conducting business on the levied property or that the levied property was in fact worth much more than BMC's obligation.

He countered that he simply performed his ministerial duty of implementing the Writ of Execution dated January 16, 2006 and Order dated February 23, 2006. He served copies of the notices to BMC and its counsel of record Atty. Isagani Rizon (Atty. Rizon). These were, however, returned unserved with corresponding notations "Baclaran Marketing does not exist" and "CNEE moved out as per S/G Tiquio." He also sent them copies of the Notice of Sheriff's Sale at their respective addresses. These too were returned unserved with notation "returned to sender, moved."

On March 24, 2006, he received the Certificate of Posting<sup>10</sup> and Affidavit of Publication and Issues of the Truth Seekers News, all pertaining to the Notice of Sheriff's Sale. Thereafter, he proceeded with the auction sale of the property. The copies of the Certificate of Sale sent to BMC and Atty. Rizon were again returned to sender with corresponding notations "no such company" and "returned to sender, unclaimed." He still submitted his Sheriff's Report informing the trial court of the full satisfaction of the Writ of Execution and Order. Lastly, he averred that BMC could not just expect him to serve on it a formal demand to pay in cash or to locate its personal properties when its address was in fact unknown.

Under Report<sup>11</sup> dated May 23, 2014, the Investigating Judge found respondent guilty of violation of Section 9, Rule 39 of the Rules of Court on the conduct of levy and recommended his suspension for six (6) months and one (1) day and a fine of PHP 10,000.00.

The Investigating Judge found that respondent is liable for: (1) his failure to make a formal demand to pay the judgment debt and computation of lawful fees; (2) levying on BMC's real property ahead of its available personal properties; and (3) excessively levying BMC's property, all in violation of Section 9, Rule 39 of the Rules of Court.

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Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effects as under a writ of attachment.

<sup>9</sup> *Rollo*, pp.88-92.

<sup>10</sup> *Id.* at 118.

<sup>11</sup> *Id.* at 648-657.

The Office of the Court Administrator<sup>12</sup> adjudged respondent guilty of gross neglect of duty for failure to follow the mandatory procedure in the execution of a money judgment and for making an excessive levy on BMC's real property. It adopted the Investigating Judge's recommendation of six (6) months and one (1) day suspension. It added a stern warning against repetition of any similar act. It, however, deleted the fine of PHP 10,000.00

Under Decision dated November 28, 2019, the Court found respondent guilty of gross neglect of duty and gross incompetence in the performance of official duties, and thus ordered his suspension for six (6) months and one (1) day without pay, with stern warning against any repetition of the same or any similar act.

Respondent now prays for the conversion of the penalty of suspension to a fine in view of his retirement effective January 31, 2020 or before he received notice of the Decision dated November 28, 2019 on March 13, 2020. At present, he has not yet received his retirement benefits and monetary equivalent of his accrued leave credits due to the administrative case against him and the unserved penalty of six (6) months and one (1) day suspension.

Per certification of the Office of the Court Administrator, respondent had indeed compulsorily retired from the service "effective at the close of the office hours of 30 January 2020."<sup>13</sup>

In *Tabao v. Cabcabin*,<sup>14</sup> the Court found Sheriff Cabcabin guilty of simple misconduct for certifying that Danilo Miralles voluntarily surrendered himself in connection with the three criminal cases filed against him before the trial court - beyond the clear scope of his duties and responsibilities. Since Cabcabin filed an application for optional retirement effective at the end of December 2015, it was no longer viable to indicate that he should be sternly warned for repetition of the same act. He was meted the penalty of fine in the amount of PHP 5,000.00.<sup>15</sup>

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<sup>12</sup> Unpaginated.

<sup>13</sup> This is to certify that according to the records on file with the Office [of the Court Administrator], Mr. ROLANDO C. LEYVA, former Sheriff IV, Branch 74, Regional Trial Court, Antipolo City, Rizal compulsorily retired from the service under R.A. No. 8291, effective at the close of office hours of 30 January 2020.

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<sup>14</sup> See 785 Phil. 335-349 (2016) [Per J. Peralta, Third Division].

<sup>15</sup> *Id.*

In *Menor v. Guillermo*,<sup>16</sup> the Court found Court Stenographer III (ret.) Teodora Palting Guillermo guilty of conduct grossly prejudicial to the best interest of service, punishable with suspension of six (6) months and one (1) day. Considering her retirement from service, however, the Court imposed on her a fine of PHP 50,000.00 chargeable to her retirement benefits, in lieu of suspension from the service.<sup>17</sup>

In *Casimiro v. Fernandez*,<sup>18</sup> the Court found Judge Fernandez guilty of gross misconduct and imposed on him three (3) months suspension from service without salary or benefits and a fine of PHP 20,000.00. Subsequently, however, the Court approved his application for optional retirement. Since the penalty of suspension earlier imposed on him is no longer feasible, the Court modified the same by imposing instead a fine equivalent to his salary for three months, in addition to the fine of PHP 20,000.<sup>19</sup>

Here, considering respondent's compulsory retirement from the service after the promulgation of the Decision dated November 28, 2019, the penalty of suspension is no longer feasible. Thus, the Court finds it proper to modify the imposed penalty of six (6) months and one (1) day suspension to a fine equivalent to respondent's salary for three (3) months to be deducted from his retirement benefits.

**FOR THESE REASONS**, the Motion for Reconsideration is **GRANTED**. The Court modifies the penalty imposed on Rolando C. Leyva, retired Sheriff IV, Regional Trial Court-Branch 74, Antipolo City for gross neglect of duty and gross incompetence in the performance of official duties from suspension of six (6) months and one (1) day with Stern Warning to a **FINE** equivalent to his salary for three (3) months to be deducted from his retirement benefits.

The Financial Management Office, Office of the Court Administrator is directed to: (1) compute the total amount of fine and deduct the same from respondent's retirement benefits; (2) immediately release his retirement benefits unless there are other pending administrative cases against him; and (3) report compliance within five days from notice of this Resolution.

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<sup>16</sup> See 595 Phil. 10-17 (2008) [Per J. Leonardo-De Castro, *En Banc*].

<sup>17</sup> *Id.*

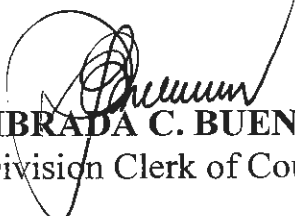
<sup>18</sup> See 493 Phil. 715-718 (2005) [Per J. Carpio-Morales, Resolution; and 466 Phil. 8-17 (2004) [Per J. Carpio-Morales, Third Division].

<sup>19</sup> *Id.*

The Court further resolves to **NOTE** the respondent's Letter dated November 23, 2022, in the vernacular, stating that he has already retired for almost three (3) years, however, he has not yet received his retirement benefits, and requesting that the urgent motion he filed be resolved the soonest possible time.

**SO ORDERED."**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court

by:

**MARIA TERESA B. SIBULO**

Deputy Division Clerk of Court

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**MAR 07 2023**

Mr. Solomon Son  
Complainant  
20th South Bayview Drive  
Los Tamaros Village, Tambo  
1700 Parañaque City

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Respondent – Sheriff IV  
19-B Oliveros Street, Brgy. San Roque  
Antipolo City, 1870 Rizal

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