



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **June 27, 2022** which reads as follows:

“A.M. No. RTJ-18-2534 [Formerly OCA IPI No. 16-4569-RTJ] (*Atty. Marlou L. Velasquez v. Hon. Gilbert P. Moises, Presiding Judge and Constancio V. Alimurung, Sheriff IV, both of Branch 18, Regional Trial Court, Cebu City, Cebu*). -- This Court resolves the Verified Administrative Complaint<sup>1</sup> dated May 4, 2016 filed by complainant Atty. Marlou L. Velasquez (*Atty. Velasquez*) against respondents Presiding Judge Gilbert P. Moises (*Judge Moises*) and Sheriff IV Constancio V. Alimurung<sup>2</sup> (*Sheriff Alimurung*), both from the Regional Trial Court (*RTC*), Branch 18 of Cebu City for gross ignorance of the law, dereliction of duty, grave abuse of authority, bias, and partiality and violation of Republic Act (*R.A.*) No. 3019<sup>3</sup> in relation to their actuations in Civil Case No. CEB-39861, entitled “Jovel Tan Entote vs. Suzuki Yasufumi.”

The matter involved in Civil Case No. CEB-39861 is a complaint for sum of money with prayer for writ of preliminary attachment filed by Jovel Tan Entote (*Entote*), as plaintiff against Suzuki Yasufumi (*Yasufumi*), as defendant. The case was raffled to the RTC of Cebu City, Branch 18 in which Judge Moises and Sheriff Alimurung sit as the presiding judge and branch sheriff.<sup>4</sup>

In an Order<sup>5</sup> dated July 9, 2013, Judge Moises granted Entote’s prayer for writ of preliminary attachment and directed Sheriff Alimurung to attach Yasufumi’s properties not exempt from execution. Thereafter, a Writ of Preliminary Attachment was issued on July 26, 2013.<sup>6</sup>

By virtue of the writ, Sheriff Alimurung seized one unit of Mercedes Benz with Plate No. ZJM550 from a certain Ms. Noly Pates (*Pates*). Upon

<sup>1</sup> Rollo, pp. 2-8.

<sup>2</sup> Also referred to as Alimurong in the Administrative Complaint; *id.* at 2.

<sup>3</sup> Anti-Graft and Corrupt Practices Act.

<sup>4</sup> Rollo, p. 2.

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

<sup>6</sup> *Id.* at 13.

seizing the motor vehicle, Sheriff Alimurung issued a Receipt of Taking dated August 3, 2013, which Pates signed.<sup>7</sup>

Subsequently, a certain Michi Miyahara (*Miyahara*), as third party claimant, filed an Urgent Motion to Return Erroneously Levied/Seized Property.<sup>8</sup> Showing his Certificate of Registration No. 5584725-6<sup>9</sup> dated September 27, 2007, Miyahara contended that he is the registered owner of the Mercedes Benz that Sheriff Alimurung seized. Miyahara further contended that Sheriff Alimurung's act of deliberately seizing the subject motor vehicle without verifying the real owner was tantamount to grave abuse of discretion and authority. He also clarified that he is not Yasufumi, who is the defendant in Civil Case No. CEB-39861 and, thus, Entote, the plaintiff, had no cause of action against him. Finally, he pleaded that, since he is the rightful owner of the seized motor vehicle, the same should be returned to him as soon as possible.<sup>10</sup>

Acting on the motion, a hearing was conducted on August 23, 2013, where Miyahara testified to prove his ownership over the subject motor vehicle.<sup>11</sup>

Thereafter, Miyahara filed two motions, which essentially dealt with the custody and possession of the subject motor vehicle.<sup>12</sup> Acting thereon, Judge Moises issued an Order<sup>13</sup> dated October 14, 2013, which directed Sheriff Alimurung to explain why the possession and custody of the subject motor vehicle was with Entote and not with the court in accordance with the rules.

In response thereto, Sheriff Alimurung filed an explanation<sup>14</sup> claiming that he initially placed the subject motor vehicle in a parking lot because there was a bonded warehouse for its safe storage. When Etonte offered his own parking lot, he decided to place the motor vehicle thereon for its safety and preservation. He also explained that at the time of the taking, the ignition key of the motor vehicle was not available, hence, the same could not be driven and maneuvered.

On November 11, 2013, Miyahara, through his counsel, Atty. Velasquez, filed a Motion to Discharge Attachment<sup>15</sup> alleging that during the hearing on his Urgent Motion to Return Erroneously Levied/Seized Property, he was surprised to find out that the registration of Miyahara over the subject

---

<sup>7</sup> *Id.* at 14.  
<sup>8</sup> *Id.* at 15-16.  
<sup>9</sup> *Id.* at 17.  
<sup>10</sup> *Id.* 16.  
<sup>11</sup> *Id.* at 36.  
<sup>12</sup> *Id.* at 31.  
<sup>13</sup> *Id.* at 38.  
<sup>14</sup> *Id.* at 39.  
<sup>15</sup> *Id.* at 40-43.

motor vehicle had been cancelled and a new one had been issued in favor of Yasufumi. According to Atty. Velasquez, Miyahara never sold or alienated the subject motor vehicle to Yasufumi. The alleged transfer was fraudulent as the signature of Miyahara in the Deed of Sale was forged. Atty. Velasquez also questioned why the subject motor vehicle was in the possession of Entote, when the same should have been in *custodia legis*.

On November 22, 2013, Miyahara, through Atty Velasquez, filed a Manifestation and Motion for Early Resolution,<sup>16</sup> insisting that: (1) the Deed of Sale between Miyahara and Yasufumi was fictitious; and (2) the possession of Entote over the subject motor vehicle is contrary to law.

On the other hand, Entote filed an Omnibus Opposition<sup>17</sup> traversing Miyahara's claim of ownership. Entote claimed that at the time of the filing of the complaint for sum of money, the registration over the subject motor vehicle was in the name of Yasufumi. The latter's ownership over the subject motor vehicle was likewise confirmed by Alita Pulga, an employee of the Land Transportation Office (*LTO*). Further, any question regarding the validity of the Deed of Sale between Miyahara and Yasufumi over the Mercedes Benz cannot be questioned in Civil Case No. CEB-39861 because the same is the subject matter of another action docketed as Civil Case No. 40213 for Declaration of Nullity and Cancellation of Motor Vehicle Certificate of Registration.

While the said incidents were pending, Entote filed an *Ex-parte* Motion to Discharge Attachment with Manifestation<sup>18</sup> dated July 2, 2014, seeking to discharge the writ of attachment but clarified that he wanted to pursue his opposition to the motions filed by Miyahara concerning the return of the levied/seized property.

In an Order<sup>19</sup> dated August 20, 2014, Judge Moises granted the *Ex-Parte* Motion to Discharge Attachment, pertinent portion of which reads:

Accordingly, the attachment is discharged. Let the property subject of attachment be **returned immediately to the person from whom the said property was seized or levied upon.**

Notify the parties and the third party claimant through their counsels.

SO ORDERED.<sup>20</sup>

<sup>16</sup> *Id.* at 44-55.

<sup>17</sup> *Id.* at 56-57.

<sup>18</sup> *Id.* at 60-61.

<sup>19</sup> *Id.* at 62.

<sup>20</sup> *Id.* (Emphasis supplied)

In compliance therewith, Sheriff Alimurung submitted his Sheriff's Report<sup>21</sup> dated September 5, 2014, stating that he informed Entote's counsel of the Order discharging the writ of attachment. In turn, Entote's counsel informed him that the subject motor vehicle was already released to Yasufumi and acknowledged by a certain Eduardo Gerali Padilla.

Aggrieved, Miyahara filed an Urgent Manifestation and Omnibus Motion<sup>22</sup> dated September 5, 2014, assailing the release of the subject motor vehicle by Entote to Yasufumi. Miyahara claimed that the motor vehicle should have been returned to Pates, who signed the Receipt of Taking and not to Yasufumi. Miyahara likewise bewailed that Sheriff Alimurung should be directed to formally explain why the subject motor vehicle was in the possession of Entote and why the same was returned to Yasufumi. He also added that appropriate sanctions should be imposed on Sheriff Alimurung for his failure to comply with his legal duties.

In an Order<sup>23</sup> dated September 8, 2014, Judge Moises set for hearing Miyahara's Urgent Manifestation and Omnibus Motion dated September 5, 2014 and directed Sheriff Alimurung to submit his explanation to the accusations against him.

In connection thereto, Sheriff Alimurung submitted his Sheriff's Explanation & Comment<sup>24</sup> dated September 17, 2014 reiterating that the subject motor vehicle was only temporarily placed in Entote's premises. He further averred that the levy on attachment was made against Yasufumi and not against Miyahara; hence, it was proper that the attached property be returned to Yasufumi upon the discharge of the writ of preliminary attachment. Furthermore, he posited that it was prudent not to deliver the subject motor vehicle to Miyahara as his claim in the third party complaint has not yet been resolved.<sup>25</sup>

On April 7, 2014, the foregoing pending incidents concerning the third party claim and the return of the subject motor vehicle were submitted for resolution. However, more than 90 days have passed, but no action had been made by Judge Moises. Consequently, Miyahara, through Atty. Velasquez filed two other motions: (1) *Ex Parte* Motion (to issue a Second Order/Resolution for the Immediate Return of the Seized Motor Vehicle Whose Writ of Attachment Has Been Dissolved)<sup>26</sup> dated October 29, 2015; and (2) Second Motion (to Issue a Second or Amended Order/Resolution for the Immediate Return of the Illegally Seized Motor Vehicle Whose Writ of Attachment Has Been Dissolved)<sup>27</sup> dated February 26, 2016.

<sup>21</sup> *Id.* at 63.

<sup>22</sup> *Id.* at 64-77.

<sup>23</sup> *Id.* at 78-79.

<sup>24</sup> *Id.* at 80-82.

<sup>25</sup> *Id.* at 82.

<sup>26</sup> *Id.* at 21-22.

<sup>27</sup> *Id.* at 23-24.

Despite these motions, no resolution had been rendered by Judge Moises, thereby prompting the filing of the present administrative complaint against Judge Moises and Sheriff Alimurung. According to Atty. Velasquez, Judge Moises acted with grave abuse of discretion and committed gross ignorance of the law when he hastily granted the prayer for writ of preliminary attachment despite the clear lack of cause of action of Entote against Yasufumi, as alleged in the complaint for sum of money. Judge Moises also committed undue delay in resolving the motions concerning the issue of ownership, as well as the return or delivery of the motor vehicle to its rightful owner. The said incidents were pending since April 7, 2014 and as of the filing of the administrative complaint in May 2016, no resolution had been made.<sup>28</sup>

As to Sheriff Alimurung, Atty. Velasquez asserted that he is administratively liable for gross dereliction of duty as an officer of court due to the following reasons: (1) he wrongfully attached and seized the motor vehicle belonging to Miyahara, who is not a party in the suit between Entote and Yasufumi; (2) he failed to safely keep the possession and custody of the subject motor vehicle, when he allowed Entote to take its possession; and (3) he failed to promptly return the motor vehicle to Pates despite the Order dated August 20, 2014, which directed him to deliver the said personal property to the person from whom the same was taken.<sup>29</sup>

Finally, Atty. Velasquez insisted that Judge Moises and Sheriff Alimurung connived to divest Miyahara of his ownership, use, and possession of the motor vehicle, the whereabouts of which are no longer known and allegedly beyond the control and custody of the court.<sup>30</sup>

On July 25, 2016, Judge Moises filed his Comment<sup>31</sup> essentially denying the allegations in the complaint. He contended that he was not unmindful of the third party claim of Miyahara as he set the same for hearing and allowed the interested parties to present their respective evidence. He likewise entertained the subsequent motions and other similar pleadings of Miyahara and set the same for hearing. He also denied that he was in cahoots with Sheriff Alimurung to deprive Miyahara of his ownership and possession of the subject motor vehicle. He pointed out that he even directed Sheriff Alimurung thrice to explain why the subject motor vehicle was in the possession of Entote and to clarify why he delivered the same to defendant Yasufumi instead to "the person from who the said property was seized or levied upon."<sup>32</sup>

---

<sup>28</sup> *Id.* at 5-6.

<sup>29</sup> *Id.* at 4-5.

<sup>30</sup> *Id.* at 6-7.

<sup>31</sup> *Id.* at 30-34.

<sup>32</sup> *Id.* at 31-32.

Judge Moises, however, admitted that there was a delay in resolving the motions of Miyahara, which uniformly sought for the return of the seized motor vehicle. Nonetheless, he ascribed the delay to a myriad of reasons, such as: (1) his designation as then Vice Executive Judge, which required him to entertain more applications for search warrants; (2) his earnest efforts to keep his court docket below 400; (3) the designation of his court as one of the assisting courts of Lapu-Lapu City RTCs; (4) lack of court personnel; and (5) other pressing matters that he needed to attend to. He added that while these circumstances are not sufficient justification, he implored this Court's kind consideration and understanding and assured that the delay was neither intentional nor malicious.<sup>33</sup> He also stressed that the pending motions filed by Miyahara were already resolved in an Order<sup>34</sup> dated July 12, 2016, the dispositive portion of which reads:

WHEREFORE, finding the third party claimant Michi Miyahara's Manifestation with Omnibus Motion to be meritorious, the same is granted.

The court sheriff is hereby directed to immediately return the seized vehicle more specifically denominated as Mercedes Benz (Sedan) with Plate No. ZJM550 covered under Certificate of Registration No. 5584725-6 to Noly P. Pates, the person who signed the Certificate of Taking, in accordance with the [O]rder issued dated August 20, 2014 without prejudice to the continuation of the main case for collection of sum of money filed by plaintiff Jovel Entote against the defendant Suzuki Yasufumi.

SO ORDERED.<sup>35</sup>

For his part, Sheriff Alimurung asserted that the administrative complaint against him should be dismissed because he merely performed his ministerial duty as a sheriff when he implemented the writ of attachment and attached the subject motor vehicle in the name of Yasufumi. He emphasized that at the time of the taking, the subject motor vehicle was registered in the name of Yasufumi, as affirmed by Certificate of Registration No. 172680664 dated June 4, 2013 and not in the name of Miyahara.<sup>36</sup>

On October 26, 2017, the Office of the Court Administrator (OCA) issued its Recommendation<sup>37</sup> finding Judge Moises to have committed undue and inordinate delay when he failed to resolve the several motions of Miyahara within the mandatory period of 90 days. He likewise failed to file a written request for extension of time to resolve the pending incidents without a valid reason and, thus, his delay cannot be excused.

---

<sup>33</sup> *Id.* at 33-34.

<sup>34</sup> *Id.* at 83-86.

<sup>35</sup> *Id.* at 86.

<sup>36</sup> *Id.* at 87-88.

<sup>37</sup> *Id.* at 122-131.

As to his penalty, the OCA recommended that Judge Moises be reprimanded, with a stern warning that a repetition of the same or similar offense shall be dealt with more severely.<sup>38</sup> In mitigating his penalty, the OCA considered the following factors: 1) first offense; (2) promulgation of the Order dated July 12, 2016, which already disposed the pending matters subject of the administrative complaint; (3) remorse and admission for the delay; and (4) absence of intention to delay the proceedings, or to maliciously deprive Miyahara of his rights over the subject motor vehicle.<sup>39</sup>

As for Sheriff Alimurung, the OCA found him liable for Simple Neglect of Duty under Section 50(D)(1) of the 2017 Rules on Administrative Cases for his failure to safely keep the seized motor vehicle in his custody and for failure to account therefor when he allowed Entote to deliver the subject motor vehicle to Yasufumi, who was not the party who signed the Receipt of Taking. Since respondent Sheriff Alimurung had been previously suspended for six months in another administrative offense, the OCA recommended a stiffer penalty of one year suspension without salary and benefits, with a stern warning that a repetition of the same, or similar offense shall be dealt with more severely.<sup>40</sup>

On the other hand, the OCA recommended that all the other charges of gross ignorance of the law, grave abuse of authority, bias, partiality, and violation of R.A. No. 3019 against Judge Moises and Sheriff Alimurung be dismissed for lack of merit.<sup>41</sup>

This Court adopts the findings and recommendations of the OCA but modifies the designation of the offense against respondent Judge Moises.

*Administrative liability  
of respondent Judge  
Moises.*

Time and again, this Court has emphasized that the honor and integrity of the judicial system is measured not only by the fairness and correctness of decisions rendered, but also by the efficiency with which disputes are resolved.<sup>42</sup> Thus, judges are mandated to render justice, not only impartially but also expeditiously,<sup>43</sup> for “any delay in the administration of justice, no matter how brief, deprives the right of a litigant to a speedy disposition of the case.”<sup>44</sup> Undue delay in resolving cases also undermines the people’s faith

---

<sup>38</sup> *Id.* at 131.

<sup>39</sup> *Id.* at 129.

<sup>40</sup> *Id.* at 30-31.

<sup>41</sup> *Id.* at 31.

<sup>42</sup> *The Office of the Court Administrator v. Hon. Atienza-Turla*, A.M. No. RTJ-21-005, December 09, 2020.

<sup>43</sup> *Office of the Court Administrator v. Judge Villegas*, 474 Phil. 475, 478 (2004).

<sup>44</sup> *Office of the Court Administrator v. Judge Dilag*, 508 Phil. 183, 189 (2005).

and confidence in the judiciary, lowers its standards, and brings it to disrepute.<sup>45</sup>

Correlatively, to underscore the importance of prompt and judicious disposition of cases, Our Constitution<sup>46</sup> is no less emphatic in mandating all lower court judges to dispose all cases within three months from the date of submission for decision or resolution. This constitutional policy is reiterated in Rule 1.02,<sup>47</sup> Canon 1 of the Code of Judicial Conduct, which provides that judges should administer justice impartially and without delay; and Rule 3.05,<sup>48</sup> Canon 3 of the same Code, which requires judges to dispose of court's business promptly and decide them within the required periods.

In *Biggel v. Judge Pamintuan*,<sup>49</sup> this Court explained the rationale behind the requirement of resolving cases and other pending incidents with utmost dispatch and within the prescribed periods provided by law, thus:

Undue delay in the disposition of cases and motions erodes the faith and confidence of the people in the judiciary and unnecessarily blemishes its stature. No less than the Constitution mandates that lower courts must dispose of their cases promptly and decide them within three months from the filing of the last pleading, brief or memorandum required by the Rules of Court or by the Court concerned. In addition, a judge's delay in resolving, within the prescribed period, pending motions and incidents constitutes a violation of Rule 3.05 of the Code of Judicial Conduct requiring judges to dispose of court business promptly.

There should be no more doubt that undue inaction on judicial concerns is not just undesirable but more so detestable especially now when our all-out effort is directed towards minimizing, if not totally eradicating the perennial problem of congestion and delay long plaguing our courts. The requirement that cases be decided within the reglementary period is designed to prevent delay in the administration of justice, for obviously, justice delayed is justice denied. An unwarranted slowdown in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute.<sup>50</sup>

In this case, this Court sustain the findings of the OCA that Judge Moises committed undue and inordinate delay in resolving the several motions of Miyahara, which all sought for the return of the subject motor vehicle and the subsequent motions asking for the same relief. As noted by the OCA, the motion of respondent Judge Moises had been submitted for resolution as early as April 7, 2014, but the same had not been acted upon by Judge Moises. Worse, he failed to promptly act on the subsequent motions dated September 5, 2014 and November 12, 2015 of Miyahara, which all

<sup>45</sup> *Belleza v. Judge Cobarde*, 492 Phil 24, 27 (2005).

<sup>46</sup> Section 15, Article VIII of the 1987 Constitution.

<sup>47</sup> Rule 1.02 - A judge should administer justice impartially and without delay.

<sup>48</sup> Rule 3.05 - A judge shall dispose of the court's business promptly and decide cases within the required periods.

<sup>49</sup> 581 Phil. 318 (2008).

<sup>50</sup> *Id.* at 324-325.

dealt with the return of the subject motor vehicle to Miyahara, or to his representative, Pates.<sup>51</sup> It was only after the present administrative complaint was filed that Judge Moises issued an Order dated July 12, 2016, which resolved the issue on the third party claim and directed the return of the subject motor vehicle to Pates. By that time, more than two years have already lapsed since April 7, 2014, or when the pending incidents were submitted for resolution.

Notably, Judge Moises admitted that he was not able to dispose the pending incidents in due time but attempted to attribute the delay to various reasons, such as his other functions in the RTC of Lapu-Lapu City, disrupted court operations, heavy case load, lack of court personnel, and other matters that required his immediate attention.<sup>52</sup> However, even if these reasons were true and reasonable, the same are not sufficient to excuse him from administrative liability.

Case law instructs that when a judge, for some valid reason, cannot comply with the required deadline, an extension of time should be requested from this Court to avoid administrative sanctions.<sup>53</sup> Indeed, this Court allows certain leeway to judges and grants them reasonable extensions of time to dispose cases upon proper application and on meritorious grounds.<sup>54</sup> Thus, Judge Moises could have requested an additional time to resolve the pending incidents by requesting an extension from this Court. However, he did not avail of this remedy. Consequently, he cannot, by himself, choose to prolong the period for deciding cases beyond that authorized by law.<sup>55</sup> Without an order of extension granted by this Court, his failure to decide within the required period merited an administrative sanction.

Under Section 9(1), Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC,<sup>56</sup> undue delay in rendering a decision or order is classified as a less serious charge for which the penalty is suspension from office without salary and other benefits for not less than one nor more than three months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

On March 16, 2021, this Court issued A.M. No. 21-03-17-SC,<sup>57</sup> which amended the fines in Rule 140 of the Rules of Court. The fine for a less serious charge was increased to not less than ₱35,000.00 but not exceeding ₱100,000.00.

---

<sup>51</sup> *Rollo*, p. 128.

<sup>52</sup> *Id.* at 33-34.

<sup>53</sup> *Office of the Court Administrator v. Judge Javellana*, 481 Phil. 315, 317 (2004).

<sup>54</sup> *Office of the Court Administrator v. Judge Teves, Sr.*, A.M. No. RTJ-21-2606, February 09, 2021.

<sup>55</sup> *Tengco v. Presiding Judge dela Cruz*, A.M. No. RTJ-21-2608, February 15, 2021.

<sup>56</sup> Issued on September 11, 2001 and took effect on October 1, 2001.

<sup>57</sup> Took effect on May 31, 2021.

Notably, on February 22, 2022, Rule 140 of the Revised Rules of Court was further amended by A.M. No. 21-08-09-SC.<sup>58</sup> Section 24<sup>59</sup> thereof provides for its retroactive application to all pending and future administrative cases for all court personnel.

With the new amendments introduced in A.M. No. 21-08-09-SC, undue delay in rendering decision or order, which is a form of negligence may now be subsumed under either “gross neglect of duty” under the provision on serious charges or “simple neglect of duty” under the provision on less serious charges, depending on the seriousness thereof.<sup>60</sup>

In this regard, it is imperative to determine whether the transgression of Judge Moises’s equates to gross or simple neglect of duty.

In *Office of the Ombudsman v. De Leon*,<sup>61</sup> the distinction between gross neglect of duty and simple neglect of duty is explained in this wise:

Gross neglect of duty or gross negligence “refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property.” It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.

In contrast, simple neglect of duty means the failure of an employee or official to give proper attention to a task expected of [them], signifying a “disregard of a duty resulting from carelessness or indifference.”<sup>62</sup>

Gauged by the foregoing standards, this Court finds that Judge Moises only committed simple neglect of duty as it has not been shown that his failure to resolve the pending incidents on time were deliberate and willful. Neither is there any evidence to show that he maliciously intended to delay the proceedings or acted in bad faith to prejudice the rights of the parties.

Under Section 17(2), Rule 140 of the Rules of Court, as amended by A.M. No. 21-08-09-SC, simple neglect of duty is classified as a less serious charge, which carries the penalty of either suspension from office without

<sup>58</sup> Further Amendments to Rule 140 of the Rules of Court.

<sup>59</sup> Section 24. Retroactive Effect – All the foregoing provisions shall be applied to all pending and future administrative cases involving the discipline of Members, officials, employees, and personnel of the Judiciary, without prejudice to the internal rules of the Committee on Ethics and Ethical Standards of the Supreme Court insofar as complaints against Members of the Supreme Court are concerned.

<sup>60</sup> See Section 15(b), A.M. No. 21-08-09-SC (Annotated Version).

<sup>61</sup> 705 Phil. 26 (2013).

<sup>62</sup> *Id.* at 37-38.

salary and other benefits for not less than one (1) month nor more than six months, or a fine of more than ₱35,000.00 but not exceeding ₱100,000.00.<sup>63</sup>

Considering however, that this is the first offense of Judge Moises, the same can be appreciated in his favor as a mitigating circumstance under Section 19(1)(a), Rule 140 of the Rules of Court, as amended by A.M. No. 21-08-09-SC.

With respect to the manner of imposition of the penalty where a mitigating circumstance is present, the second paragraph of Section 20, Rule 140 governs. The entirety of the provision reads:

SECTION 20. *Manner of Imposition.* – If one (1) or more aggravating circumstances and no mitigating circumstances are present, the Supreme Court may impose the penalties of suspension or fine for a period or amount not exceeding double the maximum prescribed under this Rule.

**If one (1) or more mitigating circumstances and no aggravating circumstances are present, the Supreme Court may impose the penalties of suspension or fine for a period or amount not less than half the minimum prescribed under this Rule.**

If there are both aggravating and mitigating circumstances present, the Supreme Court may offset each other.<sup>64</sup>

After taking into account the mitigating circumstance of first offense and the rules in the imposition of penalties, this Court finds the need to modify the recommended penalty by the OCA. A fine in an amount not less than half of the minimum penalty of ₱35,000.00 shall be imposed upon Judge Moises. Accordingly, he must be meted the penalty of fine in the amount of ₱18,000.00 with a stern warning that a repetition of the same offense shall be dealt with more severely by this Court.

*Administrative liability  
of respondent Sheriff  
Alimurung.*

As to Sheriff Alimurung, this Court adopts the findings of the OCA that he cannot be held administratively liable for attaching the subject motor vehicle as the same was made pursuant to the Writ of Preliminary Attachment,<sup>65</sup> which directed him to attach the properties of Yasufumi not exempt from execution. At the time of the taking of the property on August 3, 2013, Sheriff Alimurung was able to prove that the registered owner of the

<sup>63</sup> Section 17(2), Rule 140, as amended.

<sup>64</sup> Emphasis supplied.

<sup>65</sup> *Rollo*, p. 13.

subject motor vehicle was Yasufumi as evidenced by Certificate of Registration No. 172680664 dated June 4, 2013.<sup>66</sup> While Miyahara claims to be the owner thereof, Sheriff Alimurung cannot be faulted for relying on Yasufumi's document of title, which, unless cancelled remains to be valid.

Nevertheless, records disclose that Sheriff Alimurung was remiss in his duties when he allowed Entote to take possession of the subject motor vehicle after attaching the same, in violation of Section 7(b), Rule 57 of the Revised Rules of Court which requires the sheriff executing the writ to take and safely keep the seized personal property in their custody after issuing the corresponding receipt therefor. His justification that he only temporarily placed the subject motor vehicle in the parking space of Entote due to the unavailability of a bonded warehouse cannot be given merit for being self-serving and unsubstantiated.

Compounding his infraction, Sheriff Alimurung failed to comply with the Order<sup>67</sup> dated August 20, 2014 of Judge Moises, directing him to return the attached property "to the person from whom said property was seized or levied upon." As borne by the records, Sheriff Alimurung allowed Entote's counsel to deliver the subject motor vehicle to Yasufumi,<sup>68</sup> who was not the party who signed the Receipt of Taking dated August 3, 2013. Yasufumi was not even in possession of the subject motor vehicle at the time of the attachment. To recall, the subject motor vehicle was in the possession of Pates, who signed the Receipt of Taking.<sup>69</sup> Thus, the motor vehicle should have been returned to Pates pursuant to the Order<sup>70</sup> dated August 20, 2014.

Taken collectively, the foregoing supports the conclusion that Sheriff Alimurung fell short of his obligation to comply with the Order of the court, as well as to safely keep and account for the attached property. As a sheriff, he is ought to be reminded that he is called upon to discharge his duties with due care and utmost diligence<sup>71</sup> for he performs a very sensitive function in the dispensation of justice.<sup>72</sup> In serving court writs and processes and implementing court orders, he cannot afford to err lest he undermine the integrity of his office and the efficient administration of justice.<sup>73</sup>

For his acts or omissions, Sheriff Alimurung was correctly held liable for simple neglect of duty, which is defined as "the failure of an employee to give attention to a task expected of [them] and signifies a disregard of a duty resulting from carelessness or indifference."<sup>74</sup>

---

<sup>66</sup> *Id.* at 90.

<sup>67</sup> *Id.* at 62.

<sup>68</sup> *Id.* at 63.

<sup>69</sup> *Id.* at 14.

<sup>70</sup> *Id.* at 62.

<sup>71</sup> *Judge Geolingo v. Albayda*, 516 Phil. 389, 395 (2006).

<sup>72</sup> *Pineda v. Torres*, 680 Phil. 388, 393 (2012).

<sup>73</sup> *Atty. Zamora v. Villanueva*, 582 Phil. 29, 38 (2008).

<sup>74</sup> *Olympia-Geronilla v. Montemayor, Jr.*, 810 Phil. 1, 15 (2017).

As adverted to earlier, Section 17(2), Rule 140 of the Rules of Court, as amended by A.M. No. 21-08-09-SC classifies simple neglect of duty as a less serious charge and punishable by either suspension from office without salary and other benefits for not less than one (1) month nor more than six (6) months, or a fine of more than ₱35,000.00 but not exceeding ₱100,000.00.<sup>75</sup>

Considering that Sheriff Alimurung had been previously held administratively liable for his insufficiency and incompetence in the performance of his duties in A.M. No. P-08-2584,<sup>76</sup> this Court finds the recommended penalty of suspension of one (1) year without salary and benefits to be appropriate and reasonable under the circumstances.

*All the other charges against respondents are dismissed for lack of merit.*

Anent the other charges against Judge Moises, Atty. Velasquez submits that the former committed gross ignorance of the law and grave abuse of authority when he hastily granted the preliminary attachment in favor of Entote without delving on the merits of the latter's case.<sup>77</sup> Indisputably, the basis of the administrative charges against Judge Moises is the alleged erroneous issuance of the provisional remedy. As accurately opined by the OCA, the matter involved is judicial in nature, and thus, beyond the ambit of an administrative proceedings.<sup>78</sup>

It is doctrinally settled that any error that may have been committed by judges in the exercise of their adjudicative functions should be assailed through judicial remedies and not through administrative proceedings.<sup>79</sup> Disciplinary proceedings against judges do not complement, supplement, or substitute judicial remedies, whether ordinary or extraordinary.<sup>80</sup> Where a sufficient judicial remedy exists, the filing of an administrative complaint is not the proper remedy for the correction of actions of a judge perceived to have gone beyond the norms of propriety.<sup>81</sup> If prejudiced by a judge's orders in the course of trial, the recourse of a party is with the proper reviewing court and not through an administrative complaint.<sup>82</sup>

Verily, even if Judge Moises has committed an error in his appreciation of facts and evidence in issuing the preliminary attachment, the same does not

---

<sup>75</sup> Section 17(2), Rule 140 as amended.

<sup>76</sup> *Rollo*, pp. 130-131.

<sup>77</sup> *Id.* at 3.

<sup>78</sup> *Id.* at 127.

<sup>79</sup> *Maylas, Jr. v. Judge Sese*, 529 Phil. 594, 597 (2006).

<sup>80</sup> *Valmores-Salinas v. Salinas*, G.R. No. 218281, September 29, 2021.

<sup>81</sup> *Rivera v. Mendoza*, 529 Phil. 600, 606 (2006).

<sup>82</sup> *Atty. Tamondong v. Judge Pasal*, 820 Phil. 220, 230 (2017).

necessarily render him administratively liable. The proper recourse of Atty. Velasquez is to file an appropriate judicial action to correct the perceived irregularity or impropriety in the issuance of the provisional remedy.

In any case, the issue on the propriety of the issuance of the provisional remedy is already moot in view of the Order<sup>83</sup> dated August 20, 2014 of Judge Moises, which already discharged the writ of preliminary attachment.

As to the alleged bias, partiality, and commission of corrupt practices under R.A. No. 3019, there is absolutely no evidence to prove the same. Similarly, there is paucity of evidence to indicate that respondents connived with one another to maliciously divest Miyahara of his rights over the subject motor vehicle.

In administrative proceedings, the burden of proof rests on the complainant to prove the allegations in the complaint by substantial evidence.<sup>84</sup> As defined in jurisprudence, “substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.”<sup>85</sup> Thus, the case against the respondents must be established by clear, convincing and satisfactory proof in order for this Court to exercise its disciplinary powers.<sup>86</sup>

Here, apart from his vague allegations of bias, partiality, and corruption, Atty. Velasquez failed to proffer any evidence to substantiate the facts upon which he anchors his accusations against the respondents. Surely, reliance on mere allegations, conjectures, and suppositions will leave an administrative complaint with no leg to stand on.<sup>87</sup> After all, basic is the rule that mere allegation is not equivalent to proof<sup>88</sup> and charges based on mere suspicion, speculation or conclusion cannot be given credence.<sup>89</sup>

All told, this Court adopts the recommendation of the OCA to dismiss the other charges against respondents for gross ignorance of the law, grave abuse of authority, bias, partiality, and violation of R.A. No. 3019 for lack of merit.

---

<sup>83</sup> *Rollo*, p. 62.

<sup>84</sup> *Zara v. Atty. Joyas*, A.C. No. 10994, June 10, 2019.

<sup>85</sup> *Gubaton v. Atty. Amador*, 835 Phil. 825, 832 (2018).

<sup>86</sup> *Bunagan-Bansig v. Atty. Celera*, 724 Phil. 141-151 (2014).

<sup>87</sup> *Tan v. Atty. Alvarico*, A.C. No. 10933, November 03, 2020.

<sup>88</sup> *Aboy, Sr. v. Atty. Diocos*, A.C. No. 9176, December 05, 2019.

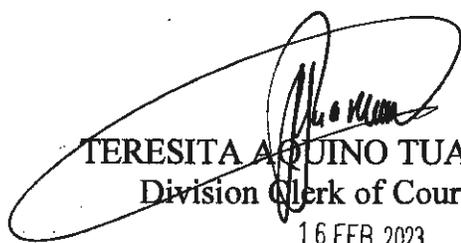
<sup>89</sup> *Spouses Nocuenca v. Atty. Bensi*, A.C. No. 12609, February 10, 2020.

**FOR THESE REASONS**, judgment is hereby rendered as follows:

1. Respondent Judge Gilbert P. Moises is found **GUILTY** of **SIMPLE NEGLECT OF DUTY** and meted a penalty of **FINE** in the amount of **₱18,000.00** with a stern warning that a repetition of the same or similar offense shall be dealt with more severely;
2. Respondent Sheriff Alimurung is found **GUILTY** of **SIMPLE NEGLECT OF DUTY** and meted the penalty of **SUSPENSION** of **ONE (1) YEAR** without salary and benefits, with a stern warning that a repetition of the same, or similar offense shall be dealt with more severely; and
3. All the other charges for gross ignorance of the law, grave abuse of authority, bias, partiality, and violation of Republic Act No. 3019 are **DISMISSED** for lack of merit.

**SO ORDERED.**"

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Division Clerk of Court  
16 FEB 2023

HON. RAUL B. VILLANUEVA (x)  
Office of the Court Administrator  
HON. DEPUTY COURT ADMINISTRATOR  
Jenny Lind Aldecoa-Delorino (x)  
Leo T. Madrazo (x)  
ASSISTANT COURT ADMINISTRATOR  
Hon. Lilian C. Baribal-Co (x)  
Hon. Maria Regina Adoracion  
Filomena M. Ignacio (x)  
Legal Office (x)  
Court Management Office (x)  
Financial Management Office (x)  
Docket & Clearance Division (x)  
Office of Administrative Services (x)  
Office of the Court Administrator  
Supreme Court, Manila

ATTY. MARLOU L. VELASQUEZ (reg)  
Petitioner  
1865 H. Borgonia St., Mabolo  
Cebu City

HON. GILBERT P. MOISES (reg)  
Presiding Judge  
CONSTANCIO V. ALIMURUNG (reg)  
Sheriff IV  
Regional Trial Court, Branch 18  
Cebu City

HON. EXECUTIVE JUDGE (reg)  
Regional Trial Court  
Cebu City

JUDICIAL AND BAR COUNCIL SECRETARIAT (x)  
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)  
LIBRARY SERVICES (x)  
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)  
PHILIPPINE JUDICIAL ACADEMY (x)  
Supreme Court, Manila

\*EMPLOYEE'S LEAVE DIVISION (x)  
Office of Administrative Services  
\*CASH DIVISION (x)  
Office of the Court Administrator  
Supreme Court, Manila

\*For this resolution only  
*Please notify the Court of any change in your address.*  
AM No. RTJ-18-2534. 6/27/2022B(173)URES *MG*