



*Mis D C Batt*  
MISAEEL DOMINGO C. BATTUNG III  
Deputy Division Clerk of Court  
Third Division

Republic of the Philippines  
Supreme Court  
Manila

NOV 08 2019

SUPREME COURT OF THE PHILIPPINES  
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**THIRD DIVISION**

**LYDIA BALMACEDA-TUGANO,**  
Complainant,

**A.M. No. P-14-3233**  
[Formerly OCA I.P.I. No. 12-3783-P]

**Present:**

PERALTA, J., *Chairperson,*  
LEONEN,\*  
REYES, A., JR.,  
HERNANDO, and  
INTING, JJ.

- versus -

**JERRY R. MARCELINO, Sheriff**  
**III, Metropolitan Trial Court,**  
**Branch 71, Quezon City,**  
Respondent.

**Promulgated:**

**October 14, 2019**

*Mis D C Batt*

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**RESOLUTION**

**PERALTA, J.:**

For resolution is a Complaint<sup>1</sup> filed by Lydia Balmaceda-Tugano (*complainant*) against Jerry R. Marcelino (*Marcelino*), Sheriff III, Branch 71, Metropolitan Trial Court (*MeTC*), Pasig City, for grave abuse of authority, in relation to Civil Case No. 17144, entitled "*Heirs of Leonila Licerio-Bautista, etc. vs. Lydia Tugano*" for unlawful detainer.

The facts are as follows:

Complainant is the defendant in the aforesaid unlawful detainer case. In a Decision dated February 22, 2010, the MeTC, Branch 71, Pasig City, ordered complainant to vacate the subject premises and peacefully surrender possession to the plaintiffs therein. Complainant appealed before the Regional Trial Court of Pasig City, Branch 161, however, the appeal was

\* On wellness leave.  
1 Rollo, pp. 2-3.

likewise dismissed. Consequently, on November 3, 2011, the court *a quo* issued a Writ of Execution.<sup>2</sup> Aware of her impending eviction upon finality of the decision, complainant tried to gather good lumber, galvanized iron and other materials from her house to be able to build another home in another place. However, she was prevented from taking away the said materials by the barangay officials of Barangay Oranbo, Pasig City, despite her explanation that the decision of the court covered only the lot and not the house which she built using her own resources.

In her complaint, complainant assailed the manner by which Marcelino enforced the writ of execution. She claimed that all the defendants in the case were neither notified nor furnished with a copy of the writ of execution and were not given sufficient time of at least five (5) days to vacate the premises. She also averred at the time Marcelino enforced the writ, she was not at home because she was looking for a new place where they could move in. She lamented that Marcelino hastily took over the possession and occupancy of their house and turned it over to the plaintiffs without even giving them a chance to remove their house so that they could rebuild in another place.

On January 30, 2012, the Office of the Court Administrator (OCA) directed Marcelino to submit his comment on the charge against him.<sup>3</sup>

In his Comment<sup>4</sup> dated February 23, 2012, Marcelino explained that contrary to complainant's claim, he issued a Notice to Vacate<sup>5</sup> which he posted on the front door of complainant's house because the latter was not around. He admitted that he opened the house and enforced the writ *albeit* in the presence of two (2) barangay peace officers and one (1) barangay councilor.

In her Reply<sup>6</sup> dated April 13, 2012, complainant maintained that she never received personally from Marcelino the copy of the Writ of Execution. She pointed out that Marcelino essentially admitted that he indeed violated the procedures when he served the writ of execution on November 7, 2011 by merely posting it on the door of the subject premises, and forcibly opened the locked door of the house to remove and bring out all her belongings. She asserted that because Marcelino unlawfully and whimsically evicted her, she had no place to even put her personal belongings which resulted to its loss and damage.

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<sup>2</sup> *Id.* at 9-10.

<sup>3</sup> *Id.* at 4.

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

<sup>5</sup> *Id.* at 11.

<sup>6</sup> *Id.* at 13-14.

On May 22, 2014, the OCA recommended that the instant administrative complaint be re-docketed as a regular administrative matter, and that Marcelino be fined in the amount of Five Thousand Pesos (₱5,000.00) for having been found guilty of grave abuse of authority.<sup>7</sup>

We adopt the findings and recommendation of the OCA.

Well settled is that the sheriff's duty in the execution of a writ is purely ministerial; he is to execute the order of the court strictly to the letter. He has no discretion whether to execute the judgment or not. When the writ is placed in his hands, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. It is only by doing so could he ensure that the order is executed without undue delay.<sup>8</sup> This holds especially true herein where the nature of the case requires immediate execution. Absent a [temporary restraining order] TRO, an order of quashal, or compliance with Section 19, Rule 70 of the Rules of Court, respondent sheriff has no alternative but to enforce the writ.<sup>9</sup>

However, immediacy of the execution does not mean instant execution. The sheriff must comply with the Rules of Court in executing a writ. Any act deviating from the procedure laid down in the Rules of Court is a misconduct and warrants disciplinary action. Marcelino's duties as a sheriff in implementing a writ of execution for the delivery and restitution of real property are outlined in Rule 39, Section 10(c) and (d), and Section 14 of the Rules of Court:

Section 10. *Execution of judgments for specific act.* —

x x x x

(c) Delivery or restitution of real property. — The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee, otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.

<sup>7</sup> *Id.* at 23-27.

<sup>8</sup> *Cebu International Finance Corporation v. Cabigon*, A.M. No. P-06-2107, February 14, 2007, 515 SCRA 616, 622.

<sup>9</sup> *Alconera v. Pallanan*, A.M. No. P-12-3069, January 20, 2014.

(d) Removal of improvements on property subject of execution. When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.

x x x x

It is then clear that the above-cited provisions mandate that upon the issuance of the writ of execution, the sheriff must demand that the person against whom the writ is directed must peaceably vacate the property within three (3) working days; otherwise, they will be forcibly removed from the premises.<sup>10</sup> Even in cases wherein decisions are immediately executory, the required three-day notice cannot be dispensed with. A sheriff who enforces the writ without the required notice or before the expiry of the three-day period is running afoul with the Rules.<sup>11</sup>

In the instant case, the guilt of Marcelino is undisputed. He admitted that he merely posted the notice to vacate on the front door of complainant's house because the latter was nowhere to be found. Likewise, he enforced the writ of execution on the same day he posted the notice to vacate on the door by forcibly opening the door, and took out movables from the subject premises, *albeit*, in the presence of barangay officials. There was no prior notice given. Complainant only learned of the issuance of the writ of execution at the time it was being enforced by Marcelino. Moreover, the latter neither made any effort to ascertain the whereabouts of complainant nor made any attempt to ensure that complainant received personally the notice to vacate. Clearly, this arbitrary manner in which Marcelino acted in delivering possession of the subject premises to the plaintiff is inexcusable.

It must be emphasized that the requirement of notice is based on the rudiments of justice and fair play. It frowns upon arbitrariness and oppressive conduct in the execution of an otherwise legitimate act. It is an amplification of the provision that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.<sup>12</sup> Indeed, having enforced the writ of execution with undue haste and without giving complainant the required prior notice and reasonable time to vacate the subject premises, Marcelino is guilty of grave abuse of authority.

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<sup>10</sup> *Santos v. Leano, Jr.*, A.M. No. P-16-3419 [Formerly OCA I.P.I. No. 11-3648-P], February 23, 2016.

<sup>11</sup> *Supra* note 9.

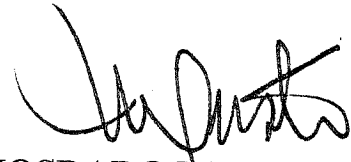
<sup>12</sup> *Pineda v. Torres*, A.M. No. P-12-3027, January 30, 2012.

Under Section 52(A)(14), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, grave abuse of authority (oppression) is punishable by suspension for six months and one day to one year.<sup>13</sup>

However, in an earlier case decided by the Court entitled *Antonio K. Litonjua v. Jerry R. Marcelino*,<sup>14</sup> Marcelino was already meted the penalty of dismissal along with its accessory penalties for serious dishonesty and dereliction of duty. Thus, instead of suspension, the penalty of a fine in the amount of ₱10,000.00 is, thus, appropriate to be imposed on him, which amount shall be deducted from his accrued leave credits, and if such is insufficient, he shall be ordered to pay the balance.

**WHEREFORE**, premises considered, respondent Jerry R. Marcelino is found **GUILTY** of grave abuse of authority. He is **ORDERED** to **PAY** a fine of ₱10,000.00 to be deducted from his accrued leave credits. In case his leave credits be found insufficient, he is directed to pay the balance within ten (10) days from receipt of this Resolution.

**SO ORDERED.**




**DIOSDADO M. PERALTA**  
Associate Justice


**WE CONCUR:**


On wellness leave  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice

  
**ANDRES B. REYES, JR.**  
Associate Justice

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

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**MISAEEL DOMINGO C. BATTUNG III**  
Deputy Division Clerk of Court  
Third Division

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

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<sup>13</sup>

Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Section 52(A)(14).

<sup>14</sup>

A.M. No. P-18-3865, October 9, 2018.