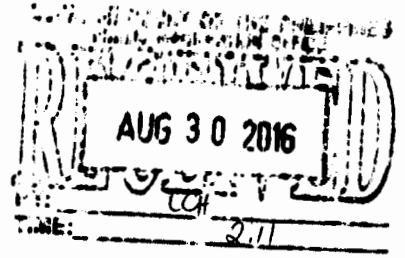




Republic of the Philippines
 Supreme Court
 Manila



EN BANC

ROSEMARIE GERDTMAN,
 represented by her sister and
 Attorney-in-fact, **ROSALINE**
LOPEZ BUNQUIN,
 Complainant,

A.M. No. P-13-3113

Present:
 SERENO, C.J.,
 CARPIO,
 VELASCO, JR.,*
 LEONARDO-DE CASTRO,
 BRION,**
 PERALTA,
 BERSAMIN,
 DEL CASTILLO,
 PEREZ,
 MENDOZA,
 REYES,
 PERLAS-BERNABE,
 LEONEN,
 JARDELEZA, and
 CAGUIOA, JJ.

-versus-

RICARDO V. MONTEMAYOR,
 JR., Sheriff IV, Office of the
 Provincial Sheriff, Calapan City,
 Province of Oriental Mindoro,
 Respondent.

Promulgated:

August 2, 2016

x-----x *[Signature]*-----x

DECISION

PER CURIAM:

We have ruled time and again that sheriffs are keepers of the public faith. Inevitably in close contact with litigants, sheriffs should maintain obedience to the law and the rules and observe circumspection in their behavior. Any conduct short of these shall not be tolerated and we will not hesitate to impose the supreme penalty of dismissal to purge the Judiciary from undeserving individuals.

The Case

For our consideration is the Complaint-Affidavit¹ filed by Rosemarie Gerdman (Complainant) charging Ricardo V. Montemayor, Jr. (Sheriff

* Justice Velasco inhibited due to his relation to one of the parties.

** On leave.

¹ *Rollo*, pp. 1-9.

SO ORDERED.⁵

On January 18, 2000, Mingay filed a Motion for Immediate Execution of Judgment.⁶ The MCTC issued a Writ of Execution⁷ on January 27, 2000 (2000 Writ). Defendants did not appeal the MCTC Decision but filed Civil Case No. R-4846 instead, a petition for annulment of judgment of the MCTC Decision in Civil Case No. 299. It was filed before Branch 40 of the Regional Trial Court (RTC) of Calapan City.⁸ This halted the enforcement of the 2000 Writ, with the RTC restraining its enforcement for 20 days.⁹ Eventually, in the Return¹⁰ he filed, Sheriff Jaime V. Abas (Sheriff Abas) reported that a Notice of Levy on a land owned by complainant and covered by Transfer Certificate of Title (TCT) No. T-32779 was registered on March 1, 2000 with the Register of Deeds of Calapan City.¹¹

In the meantime, on May 9, 2000, the RTC dismissed the petition for annulment of judgment for lack of merit.¹² On May 23, 2000, Sheriff Abas continued to implement the 2000 Writ but complainant refused to vacate the leased premises.¹³ Defendants then filed an appeal to the Court of Appeals (CA), which affirmed the RTC.¹⁴ The case was further elevated to us via a Petition for Review on *Certiorari*. On March 12, 2007, we denied the petition and our resolution became final and executory on July 18, 2007.¹⁵

Consequently, Civil Case No. 299 attained finality. Mingay then filed another Motion for Issuance of a Writ of Execution¹⁶ with the MCTC. A Writ of Execution¹⁷ dated June 26, 2008 (2008 Writ) was issued directing the implementation of the January 5, 2000 Decision of the MCTC.

Complainant thereafter filed the present administrative complaint before us, alleging that Sheriff Montemayor made it appear that the levied property was sold in public auction on March 17, 2009 for the bloated amount of ₱5 million. She claims that the sale was dubious, if not purely simulated. We quote her grounds in *verbatim*:

a) [T]he purported notice of auction sale was personally served by Sheriff Montemayor not on us but on a certain Dhorie dela Cruz who is not even the addressee and whose name was merely printed without any indication whether she did really

⁵ *Id.* at 17-18.

⁶ *Id.* at 321.

⁷ *Id.* at 322-324.

⁸ *Id.* at 19, 21.

⁹ *Id.* at 281.

¹⁰ *Id.* at 281-282.

¹¹ *Id.* at 283-287.

¹² *Id.* at 67, 281.

¹³ *Id.* at 281.

¹⁴ *Id.* at 19-26.

¹⁵ *Id.* at 27.

¹⁶ *Id.* at 325-326.

¹⁷ *Id.* at 327-329.

JG B. Abas

- a. It was Sheriff Abas and not he who made the levy on March 1, 2000 through the Register of Deeds of Oriental Mindoro. This is evidenced by the annotation stated in TCT No. T-32779;²³
- b. He notified complainant and her family of the schedule of the auction sale as shown by the registry return card and the certification issued by the Postmaster of the Philippine Postal Corporation in Puerto Galera, Oriental Mindoro;²⁴
- c. He complied with Section 15 (c) of Rule 39 of the Revised Rules of Court (the Rules). He posted a Notice of Sheriff's Sale of Property on Execution at the mandated locations, such as: the main entrance of the Office of the Clerk of Court, the bulletin board of the Provincial Capitol Building and the Municipal Hall of Puerto Galera and the Barangay Hall of Sabang, Puerto Galera as evidenced by the Certificate of Posting;²⁵
- d. A.M. No. 99-10-05-0 does not prohibit the participation of only one (1) bidder in an auction sale,²⁶ and
- e. The ₱5 million bid is considered small compared to the ₱16,935,737.00 demanded in the letter of Mingay's wife. Also, complainant and her family must pay the cost of the suit.²⁷

Complainant filed a Reply²⁸ dated April 13, 2012 where she rebuts the defenses raised by Sheriff Montemayor and maintains that she is not guilty of forum shopping because the three (3) cases seek different reliefs. She also argues that as a sheriff, Sheriff Montemayor is duty bound to enforce only the writ of execution issued by the court and not the demand of the judgment obligee.²⁹ Complainant attacks the manner by which the writ was implemented, noting that Sheriff Montemayor immediately levied upon complainant's real property without checking if her personal properties are sufficient. Complainant also observes that the minutes of the auction sale contain only meager facts on how the proceedings were had, not even stating whether the bid was paid in cash.³⁰

OCA Recommendation

In its Report³¹ dated January 21, 2013, the OCA found sufficient ground to hold Sheriff Montemayor administratively liable for grave misconduct and

²³ *Id.* at 268.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Rollo*, pp. 268-269.

²⁸ *Id.* at 248-254.

²⁹ *Id.* at 252-253.

³⁰ *Id.* at 251.

³¹ *Id.* at 298-308.

Jeffrey N. Noyan

In *Villaceran v. Beltejar*,³⁵ we ruled that requirements for execution sales under Rule 39 of the Rules must be strictly complied with.³⁶ The Rules require personal service of the notice to ensure that the judgment obligor will be given a chance to prevent the sale by paying the judgment debt sought to be enforced.³⁷ If only Sheriff Montemayor personally served the notice, there would be no question on who “Dhorie dela Cruz” is and there would be no issue on whether the complainant has knowledge of the sale.³⁸

Second, Sheriff Montemayor stated in the notice of execution sale that the sale shall be held at the main entrance of the Hall of Justice, Provincial Capitol Complex, Camilmil, Calapan City.³⁹ The Rules, however, require that for property not capable of manual delivery, the sale shall be held at the office of the clerk of court of the regional trial court that issued the writ of execution.⁴⁰ In *Villaceran*, we held the sheriff therein liable for ignorance of this rule, as well.

Third, Sheriff Montemayor deviated from his ministerial duty in executing the 2008 Writ when he decided that the excess from the execution sale shall cover the costs of suit. Section 19, Rule 39 of the Rules provides:

Sec. 19. *How property sold on execution; who may direct manner and order of sale.* — All sales of property under execution must be made at public auction, to the highest bidder, to start at the exact time fixed in the notice. **After sufficient property has been sold to satisfy the execution, no more shall be sold and any excess property or proceeds of the sale shall be promptly delivered to the judgment obligor or his authorized representative, unless otherwise directed by the judgment or order of the court.** When the sale is of real property, consisting of several known lots, they must be sold separately; or, when a portion of such real property is claimed by a third person, he may require it to be sold separately. When the sale is of personal property capable of manual delivery, it must be sold within view of those attending the same and in such parcels as are likely to bring the highest price. The judgment obligor, if present at the sale, may direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels which can be sold to advantage separately. Neither the officer conducting the execution sale, nor his deputies, can become a purchaser, nor be interested directly or indirectly in any purchase at such sale. (Emphasis ours.)

³⁵ A.M. No. P-05-1934, April 11, 2005, 455 SCRA 191.

³⁶ *Id.* at 196-198.

³⁷ *Venzon v. Juan*, G.R. No. 128308, April 14, 2004, 427 SCRA 237, 243-244.

³⁸ *Rollo*, p. 3.

³⁹ *Id.* at 292.

⁴⁰ REVISED RULES OF COURT, Rule 39, Sec. 15.

Y. P. Villaceran

amount was not reflected in the 2008 Writ. The conduct of Sheriff Montemayor betrayed the foremost duty of sheriffs to execute the order of the court strictly to the letter. Sheriffs are under obligation to perform their duties honestly, **faithfully** and to the best of their ability; they must conduct themselves with propriety and decorum, and above all else, be **above suspicion**.⁴³

Should Sheriff Montemayor find the MCTC decision confusing or wanting as to the cost of suit, he should have asked the MCTC for clarification. Sheriff Montemayor is expected to know the limits of his authority. We have frequently reiterated that the sheriff and his deputies merely perform ministerial, not discretionary functions in the performance of their duties, sheriffs are supposed to execute orders of the court strictly to the letter of the order and the governing law. They are not supposed to decide and interpret for themselves unclear wordings of the judgment or order.⁴⁴

The foregoing series of procedural lapses committed by Sheriff Montemayor shows misconduct in service. Misconduct is the transgression of some established and definite rule of action, more particularly unlawful behavior or gross negligence by a public officer.⁴⁵ In *Tan v. Dael*,⁴⁶ we held that any act of deviation from the procedures is considered a misconduct that warrants disciplinary action.⁴⁷

Here, Sheriff Montemayor's misconduct is not only simple but has gone across being grave or gross for which the penalty of dismissal is imposable for the first offense.⁴⁸ There is grave misconduct when the misconduct involves any of the additional element of corruption, willful intent to violate the law, or **disregard of the established rules**.⁴⁹

We often stress that sheriffs, by the very nature of their duties, perform a very sensitive function in the dispensation of justice. They are duty-bound to know the basic rules relative to the implementation of writs of execution, and should, at all times show a high degree of professionalism in the performance of their duties.⁵⁰ Otherwise, the Judiciary would be filled

⁴³ *Musngi v. Pascasio*, A.M. No. P-08-2454, May 7, 2008, 554 SCRA 1, 13 citing *Letter of Atty. Socorro M. Villamer-Basilla, Clerk of Court V, RTC, Branch 4, Legaspi City*, A.M. No. P-06-2128, February 16, 2006, 482 SCRA 455, 459. (Emphasis ours.)

⁴⁴ *Eduarte v. Ramos*, A.M. No. P-94-1069, November 9, 1994, 238 SCRA 36, 40 citing *Young v. Momblan*, A.M. No. P-89-367, January 9, 1992, 205 SCRA 33. See also *Del Rosario v. Bascar, Jr.*, A.M. No. P-88-255, March 3, 1992, 206 SCRA 678.

⁴⁵ *Alconera v. Pallanan*, A.M. No. P-12-3069, January 20, 2014, 714 SCRA 204, 217.

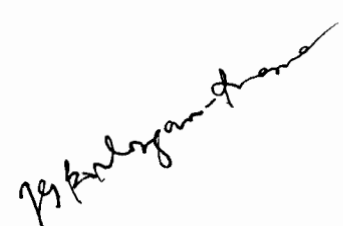
⁴⁶ A.M. No. P-00-1392, July 13, 2000, 335 SCRA 513.

⁴⁷ *Id.* at 514.

⁴⁸ Pursuant to Section 46 (A) (3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, the offense of "grave misconduct" is punishable by dismissal from service on the first offense.

⁴⁹ *Alconera v. Pallanan*, *supra*. (Emphasis ours.)

⁵⁰ *Pineda v. Torres*, A.M. No. P-12-3027, January 30, 2012, 664 SCRA 374, 379.



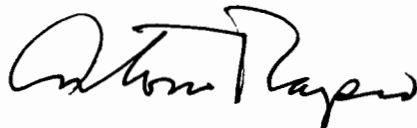
leniency to repeat offenders for to do so would give the public the impression that we tolerate incompetence in the Judiciary.⁵⁸

WHEREFORE, we find Sheriff Ricardo V. Montemayor, Jr. guilty of **GRAVE MISCONDUCT** and order his **DISMISSAL** from the service with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations. We also **DIRECT** the Legal Office of the Office of the Court Administrator to file the appropriate criminal charges against him.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice



ANTONIO T. CARPIO
Associate Justice

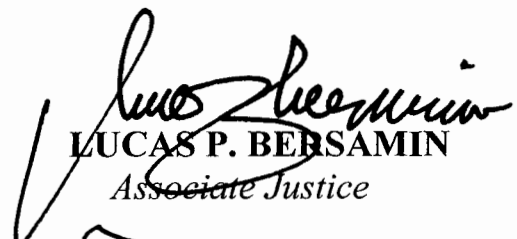
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PRESBITERO J. VELASCO, JR.
Associate Justice


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

(On Leave)
ARTURO D. BRION
Associate Justice


DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice

⁵⁸ *Olivan v. Rubio*, A.M. No. P-12-3063, November 26, 2013, 710 SCRA 590, 606 citing *Marcos v. Pamintuan*, A.M. No. RTJ-07-2062, January 18, 2011, 639 SCRA 658, 669.