

## **WINNIE BAJET, PETITIONER, VS. JUDGE PEDRO M. AREOLA REGIONAL TRIAL COURT OF QUEZON CITY (BRANCH 85), RESPONDENT.**

*A.M. No. RTJ-01-1615. June 19, 2001*

Ponente: PANGANIBAN, J.

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### **PANGANIBAN, J.:**

Attaining the objective of fully executing the judgment against the defendant in an ejectment case does not justify the immediate and ex parte issuance of an order authorizing demolition. The Rules of Court specifically requires that motions on the matter must be duly heard first, before an order of demolition may be issued.

#### **The Case**

In a sworn letter-complaint dated September 20, 1999, filed by Winnie Bajet, Judge Pedro M. Areola of the Regional Trial Court of Quezon City (Branch 30) was charged with palpable violation of the Constitution, grave abuse of authority, oppression, gross ignorance of the law and incompetence.

#### **The Facts**

Complying with the directive of the court administrator, respondent filed his Comment by way of a "2nd Indorsement" dated December 1, 1999, denying liability for the acts complained of.

In his Report dated December 15, 2000, then Court Administrator Alfredo L. Benipayo related the complainant's and the respondent's versions of the factual antecedents as follows:

"As claimed by the complainant, one of the defendants in the abovesited case, the antecedent facts of the case are as follows:

- `1. June 23, 1999 - plaintiff filed his Motion to Endorse Alias Writ of Execution [with] the Office of the Clerk of Court for immediate implementation;
- `2. June 26, 1999 - defendants filed their Motion to Quash Alias Writ of Execution;
- `3. August 16, 1999 - respondent issued an Order giving plaintiff ten (10) days to file his comment on the motion to quash, and the defendants the same period to file their reply;
- `4. August 27, 1999 - defendants received plaintiff's Comment on the motion to quash alias writ of execution, and at the same time plaintiff's Motion to Issue Writ of Demolition;
- `5. August 30, 1999 - defendants filed their Opposition to the Motion to Issue Writ of Demolition;
- `6. September 2, 1999 - defendants received respondent's August 16, 1999 Order giving them ten (10) days from receipt of the plaintiff's Comment on their Motion to Quash Alias Writ of Execution within which to file their reply. On even date, the defendants also received respondent's Order denying their motion to quash alias writ of execution;

`7. September 3, 1999 - respondent issued an Order granting plaintiff's motion to issue writ of demolition;

`8. September 13, 1999 - Deputy Sheriff Pedro Borja caused the demolition of complainant's house resulting [in] the loss of some of her jewelries and money;'

"Complainant contends that respondent judge abused his authority when he denied their motion to quash alias writ of execution before the expiration of the 10 day period he gave them within which to file their reply.

"Complainant likewise assail, for lack of hearing, the Order of respondent granting plaintiff's motion to issue writ of demolition.

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"Respondent relays the information that on 25 July 1998, defendants including herein complainant, filed a petition for certiorari with the Court of Appeals assailing the Order granting the motion for execution pending appeal. The Court of Appeals denied the petition and declared that it was mandatory for the RTC to order the execution of the appealed judgment.

"With regard to his denial of defendant's motion to quash alias writ of execution, respondent avers that the same was because the motion was a mere rehash of a previous motion which the court already denied on 31 May 1999.

"As to his Order granting the plaintiff's `Motion for an order to Break In or for a Writ of Demolition', respondent argues that even if the motion did not have notice of hearing, the same was not fatal because the motion was a non-litigious one."

#### OCA Recommendation

With respect to the denial of the defendant's motion to quash alias writ of execution, the Office of the Court Administrator (OCA) found that respondent judge acted in accordance with Section 19, Rule 70 of the Rules of Civil Procedure, which states:

"Section 19. Immediate execution of judgment; how to stay the same. -- If judgment is rendered against the defendant, execution shall issue immediately upon motion, unless an appeal has been perfected and the defendant to stay execution filed a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the rents, damages and costs accruing down to the time of the judgments appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court."

The court administrator further stated: "[T]here is no allegation much less proof that complainant and her co-defendants complied with the aforequoted provision. Henceforth it becomes the duty of the court to order the execution of the judgment upon motion of the plaintiff. If complainant wants to stay the execution of the judgment pending appeal, she should have filed a sufficient supersedeas bond and ma[d]e periodic deposits of rent, instead of filing a motion to quash alias writ of execution." [1]

Regarding the issuance of the Order for demolition, the OCA found respondent judge to have ran afoul of the mandatory requirement of a hearing before the issuance of such Order in accordance with Section 10 (d), Rule 39 of the Rules of Civil Procedure. It recommended that respondent be penalized with a fine of three thousand pesos (P3,000) for gross ignorance of the law.

#### The Court's Ruling

We agree with the findings of the Office of the Court Administrator.

#### Respondent Judge's Responsibility and Liability

With respect to the Order denying the Motion to Quash Alias Writ of Execution, respondent judge incurred no liability. The denial of the defendant's motion to quash and execution of the judgment against the defendant was clearly proper, considering that a supersedeas bond had not been filed, and periodic deposits of a reasonable value for the use of the property had not been made in accordance with Section 19, Rule 70 of the Rules of Civil Procedure. As stated by the Court in *Fernandez v. Espanol*:<sup>[2]</sup>

"... [E]jectment cases are summary in character and ... the judgment in an action for unlawful detainer is immediately executory, and may be stayed only if the defendant-appellants (1) [perfect] their appeal, (2) file a supersedeas bond, and (3) periodically deposit rentals falling due during the pendency of the appeal. ... The defendant's failure to comply with these requisites entitled the complainant to the immediate execution of the judgment."

Furthermore, considering that the Motion to Quash Alias Writ of Execution was the second one, which merely reiterated grounds already previously ruled upon and disposed of, respondent judge was right in immediately denying the same. Under the circumstances, waiting for defendant's reply was clearly unnecessary and would have served no other purpose than to unjustly delay the necessary subsequent court processes.

We now go to the Order dated September 3, 1999, authorizing the deputy sheriff to demolish the property, subject of the execution.

Respondent judge classified the "Ex-parte Motion for an Order to Break In or for a Writ of Demolition" as non-litigious in nature. He took into consideration the fact that the Alias Writ of Execution had long been issued, and the only thing needed was to enforce and implement the same. It is thus his contention that there was no need for a notice of hearing on the Motion.

Respondent is mistaken. The relief which the Motion is asking for is breaking in and demolishing the premises occupied by defendants. Clearly, the court cannot act upon that Motion without some prejudice to the rights of the adverse party. This alone should have alerted respondent on the need for compliance with the general rule set forth under Rule 15 of the Rules of Court requiring motions to be set for hearing.

More particularly, respondent judge should have heeded paragraph (d) of Section 10, Rule 39, which was invoked by defendants in their opposition, and which states:

"(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." (Emphasis supplied)

The above provision deals squarely with the matter raised in the "Ex-parte Motion for an Order to Break [i]n or for a Writ of Demolition." There is no room for doubt that a hearing is necessary before the issuance of any order for the demolition or removal of improvements on the property, subject of the execution.

By issuing the September 13, 1999 Order authorizing demolition without first conducting a hearing, respondent judge showed ignorance of the law.

Not substantiated by evidence on record are the charges of palpable violation of the Constitution, grave abuse of authority, and oppression. On the contrary, what is evident from the records is the abuse committed by the

complainant, aimed at delaying or thwarting the valid execution of the judgment against her.

WHEREFORE, Respondent Judge Pedro M. Areola has been found **LIABLE** for gross ignorance of the law and is hereby **ORDERED** to pay a **FINE** in the sum of three thousand pesos (P3,000.00) with a warning that a repetition of the same or of a similar offense shall be dealt with more severely.

**SO ORDERED.**

Melo (Chairman), Vitug, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

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[1] Court Administrator's Report, p. 3.

[2] 289 SCRA 1, 5-6, April 15, 1998.

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