

**SPOUSES MARILOU R. BONGA AND OSCAR D. BONGA, PETITIONERS,
VS. HON. JUDGE AURORA A. HERNANDEZ-CALLEDO, IN HER
CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT,
BRANCH 87, ...**

Ponente: BARRIOS, M. M., J.

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BARRIOS, M. M., J.:

This is a Petition for Certiorari under Rule 65 of Rules of Court assailing, on the ground of grave abuse of discretion amounting to lack of or in excess of jurisdiction, the Decision dated 28 February 2012 of the Regional Trial Court (RTC), Branch 87, Quezon City in Civil Case No. Q-11-70124, which affirmed the eviction of petitioners from the subject premises. According to petitioner, her constitutional rights to due process of law and the opportunity to be heard were suppressed.

Also assailed is the Order dated 03 August 2012 of the RTC denying petitioners' motion for reconsideration.

THE ANTECEDENT FACTS

Private respondent Marilyn Matriz-Lacap is the owner of a two hundred eleven (211) square meter property located at East Road, Barangay San Roque, Quezon City and covered by Transfer Certificate of Title (TCT) No. N-320492[1] in her name. This property, along with three (3) apartment units standing thereon, was inherited by respondent Marilyn from her deceased parents.

One of the apartments, Unit No. 2-B-2 or 27-C, is occupied by petitioners-spouses by way of lease from the parents of respondent Marilyn - Carmen and Gabriel Matriz - who, incidentally, died in 2000 and 2004. However, petitioner Marilou Bonga continued to stay on the subject unit even though no new lease agreement was executed in her favor by respondent Marilyn nor any of the Matriz' heirs.

After registering the inherited property in her name in the year 2008, respondent Marilyn informed petitioner Marilou that she is now the exclusive owner of subject apartment unit and asked the latter to vacate the premises on three (3) grounds, viz: a) that the latter had no more right to stay in the subject unit after Gabriel Matriz died in 2004; b) that the latter never paid rentals since 1998; and c) that as owner, the former now wish to use the subject unit. However, petitioner Marilou refused to heed the order, contending that the subject unit was donated to her by the late Gabriel Matriz.

As a consequence, respondent Marilyn referred the dispute to the Barangay Council in their area for conciliation, but sadly, no amicable settlement was reached by the parties. This prompted respondent Marilyn to serve several demand letters to petitioner Marilou – the last of which was sent on 14 September 2009 - directing the latter to vacate the premises within fifteen (15) days from receipt. However, despite notice, petitioner Marilou remained defiant.

On 05 July 2010, respondent Marilyn filed the instant case for unlawful detainer against petitioner Marilou and all

persons claiming rights under her before the Metropolitan Trial Court (MeTC) of Quezon City praying that the latter vacate subject premises and turn-over possession to her, and for the latter to pay reasonable rental fees until they actually leave subject apartment unit.

At first, petitioner Marilou filed a Motion to Dismiss for lack of jurisdiction over the subject matter of the complaint. By way of opposition, respondent Marilyn countered that the motion should not be entertained and denied outright for failure of petitioner Marilou's counsel to comply with the Mandatory Continuing Legal Education (MCLE) requirements.

In an Order dated 01 December 2010, MeTC, Branch 32 of Quezon City expunged from the records the motion to dismiss on the ground that the counsel of petitioner Marilou – Atty. Eliseo P. Pitargue - failed to comply with Bar Matter No. 1922 that mandates him to indicate his MCLE Certificate of Compliance Number for the immediately preceding compliance period. Although the rules provide that said pro forma motion is a mere scrap of paper which did not interrupt the running of the reglementary period to file a responsive pleading, in the interest of justice and equity, the MeTC still afforded petitioner Marilou a fresh period of five (5) days to file her Answer. However, in the Answer filed, the same Atty. Pitargue – as counsel - did not again declare such MCLE Certificate of Compliance Number, and thus, prompted the MeTC to expunge the Answer from the records per Order dated 26 April 2011.

On 17 June 2011, the MeTC rendered a Decision in favor of respondent Marilyn, the decretal portion of which reads:

“x. x. x.

WHEREFORE, judgment is rendered in favor of the plaintiff, Marilyn Matriz-Lacap. The defendant, Marilou Roncales-Bonga and all persons claiming right under her are directed to vacate and surrender the premises to the plaintiff. The defendant is further directed to pay the plaintiff P20,000.00 as attorney's fees.”

On 19 July 2011, petitioner Marilou appealed to the RTC of Quezon City. Meanwhile, respondent Marilyn moved to execute the decision of the court a quo pending appeal due to the failure of petitioner Marilou to post a bond to stay the same. In the Order dated 16 January 2012, RTC, Branch 87, Quezon City granted the motion, and ordered the issuance and implementation of the Writ of Execution. Petitioner Marilou moved for a reconsideration, but the same was denied in the Order dated 23 February 2012.

After evaluating the parties' respective Memoranda, the RTC rendered the now assailed Decision dated 28 February 2012 denying the appeal and affirming in full the decision of the MeTC. It opined that respondent Marilyn is entitled to the relief of unlawful detainer for she sufficiently proved that petitioner Marilou unlawfully withheld from her the possession and use of subject properties, and that the complaint was filed within the one-year (1) reglementary period.

Petitioner Marilou moved to reconsider and to set aside the Writ of Execution, but the same were denied in the now assailed Order dated 03 August 2012.

In this petition, it is argued that:

THE PUBLIC RESPONDENT, HONORABLE JUDGE AURORA A. HERNANDEZ CALLEDO ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF (SIC) EXCESS OF JURISDICTION, AND THERE IS NO APPEAL, OR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW - WHEN IN HER DECISION, DATED FEBRUARY 28, 2012, AND IN HER ORDER, DATED AUGUST 3, 2012, DENYING THE MOTION FOR RECONSIDERATION TO THE SAID DECISION –

I.

SHE AFFIRMED IN TOTO THE JUDGMENT OF THE LOWER COURT, THE METROPOLITAN TRIAL COURT, BRANCH 32 OF QUEZON CITY IN A DECISION, DATED JUNE 17, 2011 WHICH (A) DEPRIVED THE PETITIONER (AS THE DEFENDANT IN CIVIL CASE NO. 40226) OF HER CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW – THE OPPORTUNITY TO BE HEARD AND (B) WHOSE DECISION IS REplete WITH LEGAL INFIRMITIES; AND

II.

ORDER, DATED JANUARY 16, 2012, AND DENYING THE MOTION FOR RECONSIDERATION OF THE DEFENDANT APPELLANT (PETITIONER) TO LIFT SUCH ORDER, IN A FINAL ORDER, DATED FEBRUARY 23, 2012, THE PUBLIC RESPONDENT, WITH NO AUTHORITY IN LAW, GAVE DUE COURSE TO A MOTION FOR EXECUTION PENDING APPEAL WITHIN THE PURVIEW OF SEC. 19, RULE 70 OF THE RULES OF COURT, WHEN SHE GRANTED THE ISSUANCE OF A WRIT OF EXECUTION PENDING APPEAL, TO BE IMPLEMENTED BY THE APPELLATE COURT'S SHERIFF.

OUR RULING

The instant petition is unmeritorious.

In the first place, a Petition for Certiorari under Rule 65 of the Rules of Court is not the appropriate remedy to assail the decision of the RTC rendered in the exercise of its appellate jurisdiction. Under Rule 42[2] of the Rules of Court, a party desiring to appeal from a decision of the RTC rendered in the exercise of its appellate jurisdiction should lodge a verified Petition for Review before the Court of Appeals. In this instance, the RTC decision is a final decision since it completely resolved the issues raised in the appeal of petitioner Marilou by sustaining the ejectment verdict of the MeTC. Moreover, the special civil action for Certiorari will not prosper in this case since there is an available remedy which is a Petition for Review. It is the basic precept in Rule 65 that certiorari will lie only if there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law.[3] The Supreme Court has long ruled that a Petition for Certiorari cannot be allowed when a party fails to appeal a judgment despite the availability of that remedy, certiorari not being a substitute for a lapsed or lost appeal,[4] and that both remedies (certiorari and appeal) are mutually exclusive, and not alternative or successive.[5] By resorting, therefore, to a wrong remedy, the immediate dismissal of the petition is in order.

Another factor that has not escaped notice is the obstinate refusal of petitioner's counsel – Atty. Eliseo P. Pitargue – to comply with Bar Matter 1922. Pursuant to its rule-making power, the Supreme Court required all practicing lawyers to undergo periodic legal education and, in this regard, to indicate in all pleadings filed before the courts or quasi-judicial bodies, the number and date of issue of their MCLE Certificate of Compliance or Exemption, as may be applicable, for the immediately preceding compliance period. Failure to disclose the required information will cause the expunction of the pleading concerned from the records.

In the instant petition, it is clearly evident that Atty. Pitargue has not complied with the mandatory continuing legal education requirement since he did not state his MCLE Certificate of Compliance number, or Exemption number if that be the case, for the preceding compliance period. Counsel seems casually oblivious of the fact that the pleadings that he presented before the lower court were considered as “not filed”, and hence, discarded from the records for his failure to follow the rules. Certainly, counsel's wilful and stubborn refusal to comply with the MCLE requirement, and petitioners' persistence in retaining him as counsel despite the disablement, also justify the outright dismissal of the instant petition.

Be that as it may, even if We set aside these infirmities, and resolve the case on the issue of grave abuse of

discretion amounting to lack of or excess of jurisdiction, We still affirm the RTC's pronouncement.

Jurisdiction over unlawful detainer actions properly pertains to the Metropolitan or Municipal Trial Courts where the land or building is situated. In order for an unlawful detainer case to prosper, plaintiff should allege and prove the following requisites, viz: a) that initially, possession of property by defendant was by contract with or by tolerance of the plaintiff; b) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; c) thereafter, defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and d) within a year from the last demand on the defendant to vacate the premises, plaintiff instituted a complaint for ejectment.[6]

In the present case, all these requisites are present and private respondent Marilyn Lacap is undoubtedly entitled to the relief granted by the lower courts against petitioners-spouses relative to the subject property. It is well-established by the evidence that private respondent is the registered owner of a piece of land situated in San Roque, Quezon City as well as Apartment Unit 2-B-2 or 27-C standing thereon. The lease entered into by petitioner Marilou Bonga with the parents of private respondent Marilyn had already expired and terminated. Marilyn's parents, Carmen and Gabriel, died way back in 2000 and 2004, respectively. No new lease agreement was executed with the heirs, and petitioners did not even pay rent since 1998, but nonetheless continued to stay in the subject unit upon the tolerance of the owner. As it happened, subject apartment was allotted to private respondent, and so the title to the land and building was registered in the name of respondent Marilyn in 2008. She then asked petitioners to vacate the premises, but the latter refused.

It is evident that the continued, albeit unwarranted occupancy of petitioners of the subject premises had been tolerated by herein private respondent for several years already. For many years, they have not paid rent; yet, continue to possess and enjoy the same despite demands to vacate. Persons who occupy the lot of another at the latter's forbearance or permission, without any contract between them, are necessarily bound by implied promise that they will vacate upon demand, failing in which, a summary action for ejectment is the proper remedy against them.[7] Truly, the stubborn refusal of the petitioners-spouses to vacate the subject unit despite repeated demands from the respondent-owner Marilyn made their extended stay thereon illegal and inequitable; thus entitling the latter to the remedy of unlawful detainer to restore her in possession of said unit.

Incidentally, on the matter of execution, Section 21 of Rule 70 of the Rules of Court expressly provides that "the judgment of the Regional Trial Court against the defendant shall be immediately executory".

Having reached this conclusion, We do not belabor the other issues raised, since the same are no longer appropriate for discussion in this petition.

WHEREFORE, foregoing considered, the petition is DISMISSED.

SO ORDERED.

Reyes, Jr., (Chairperson) and Pizarro, JJ., concur.

[1] Rollo, pp. 51 – 52.

[2] Section 1 thereof.

[3] Obando vs. Court of Appeals, G.R. No. 139760, October 5, 2001.

[4] Heirs of Lourdes Potenciano Padilla vs. Court of Appeals, G.R. No. 147205, March 10, 2004.

[5] Chua vs. Santos, G.R. No. 132467, October 18, 2004.

[6] Cabrera vs. Getaruela, G.R. No. 164213, April 21, 2009.

[7] Malabanan vs. Rural Bank of Cabuyao, Inc., G.R. No. 163495, May 8, 2009.

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