

**FAR EASTERN SURETY & INSURANCE COMPANY, INC.,
PLAINTIFF-APPELLEE, VS. VIRGINIA D. VDA. DE HERNANDEZ, JOSE
ABEL, VICENTE SANTOS AND MATIAS COSTELO, DEFENDANTS,
VIRGINIA D. VDA. D...**

G.R. No. L-30359. October 03, 1975

Ponente: ANTONIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/274cb60a6053/>

ANTONIO, J.:

Appeal from the order of the Court of First Instance of Manila dated June 4, 1965, granting the ex-parte motion for execution of the judgment rendered by said court in Civil Case No. 48670, and an order denying the defendant-appellant's motion for reconsideration of said grant.

The records show that on June 7, 1965, the defendant-appellant received a copy of the order granting the writ of execution and on June 9, 1965, she filed a motion for reconsideration praying that the said order of June 4, 1965 granting the ex-parte motion for execution be set aside and that the same be set for hearing after service of copy thereof to the defendant-appellant as required by Section 6 of Rule 15 of the Revised Rules of Court.

On July 7, 1965, defendant-appellant received an order dated June 29, 1965, denying the motion for reconsideration for lack of merit. Thereafter, or on July 28, 1965, the defendant-appellant appealed from said orders of June 4 and 29, 1965 to the Court of Appeals, which appeal was docketed therein as CA-G.R. No. 36391-R. On February 15, 1966, defendant-appellant filed her brief, whereas plaintiff-appellee failed to file its brief within the reglementary period which expired on April 10, 1966. Subsequently, the Court of Appeals, by resolution of February 13, 1969, transmitted to this Court the records of this case for resolution, it appearing that the question raised in the appeal is one purely of law.

Submitted for resolution is the question of law - whether or not the absence of prior notice of an application for the issuance of a writ of execution on a judgment that is final and executory, absent any showing that the other party will be prejudiced thereby, renders the execution and subsequent proceedings thereunder void.

As a general rule, a notice of a motion is required where a party has a right to resist the relief sought by the motion and the principle of justice demands that his rights be not affected without an opportunity to be heard.[1] The purpose of giving notice of a motion is to bring the party into court at the time of the motion,[2] or at least to inform him that a motion is to be made, thereby enabling him to appear and contest the motion if he desires to do so.[3] Prior notice enables the adverse party to appear for his own protection and be heard before an order is made.[4]

In the case at bar, defendant-appellant has not shown in what manner she was prejudiced by the issuance of the writ of execution, considering that the judgment is admittedly final and executory and, therefore, it became the ministerial duty of the court to issue said writ.[5]

Section 1 of Rule 39 of the Revised Rules of Court provides, as follows:

"SECTION 1. Execution upon final judgments or orders. — Execution shall issue only upon a judgment or order that finally disposes of the action or proceeding. Such execution shall issue as a matter of right upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

"If the judgment has been duly appealed, execution may issue as a matter of right from the date of the service of the notice provided in section 11 of Rule 51."

It is evident that section 1 of Rule 39 of the Revised Rules of Court does not prescribe that a copy of the motion for the execution of a final and executory judgment be served on the defeated party, like litigated motions such as a motion to dismiss (section 3, Rule 16), or motion for new trial (section 2, Rule 37), or a motion for execution of judgment pending appeal (section 2, Rule 39), in all of which instances a written notice thereof is required to be served by the movant on the adverse party in order to afford the latter an opportunity to resist the application.

It is not disputed that the judgment sought to be executed in the case at bar had already become final and executory. It is fundamental that the prevailing party in a litigation may, at any time within five (5) years after the entry thereof, have a writ of execution issued for its enforcement^[6] and the court not only has the power and authority to order its execution but it is its ministerial duty to do so. It has also been held that the court cannot refuse to issue a writ of execution upon a final and executory judgment, or quash it, or order its stay, for, as a general rule, the parties will not be allowed, after final judgment, to object to the execution by raising new issues of fact or of law, except when there had been a change in the situation of the parties which makes such execution inequitable or when it appears that the controversy has never been submitted to the judgment of the court; or when it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or is issued against the wrong party, or that judgment debt has been paid or otherwise satisfied; or when the writ has been issued without authority.^[7] Defendant-appellant has not shown that she falls in any of the situations afore-mentioned. Ordinarily, an order of execution of a final judgment is not appealable. Otherwise, as was said by this Court in *Molina vs. de la Riva*,^[8] a case could never end. Once a court renders a final judgment, all the issues between or among the parties before it are deemed resolved and its judicial function as regards any matter related to the controversy litigated comes to an end. The execution of its judgment is purely a ministerial phase of adjudication. The nature of its duty to see to it that the claim of the prevailing party is fully satisfied from the properties of the loser is generally ministerial.^[9]

In *Pamintuan vs. Muñoz*,^[10] We ruled that once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right, and the judgment debtor need not be given advance notice of the application for execution.

"Also of the same stature is the rule that once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right and the granting of execution becomes a ministerial duty of the court. Otherwise stated, once sought by the prevailing party, execution of a final judgment will just follow as a matter of course. Hence, the judgment debtor need not be given advance notice of the application for execution nor be afforded prior hearing."

Absence of such advance notice to the judgment debtor does not constitute an infringement of the constitutional guarantee of due process.

"However, the established rules of our system of jurisprudence do not require that a defendant who has been granted an opportunity to be heard and has had his day in court should, after a judgment has been rendered against him, have a further notice and hearing before supplemental proceedings are taken to reach his property in satisfaction of the judgment. Thus, in the absence of a statutory requirement, it is not essential that he be given notice before the issuance of an execution against his tangible property; after the rendition of the judgment he must take 'notice of what will follow,' no further notice being 'necessary to advance justice.'

Ayres vs. Campbel, 9 Iowa, 213, 216, 74 Am. Dec. 346; Reid vs. Northwestern R. Co., 32 Pa. 257, 258; Foster vs. Young, 172 Cal 317, 322, 156 Pac. 476; McAnaw vs. Matthis, 120 Mo. 142, 152, 31 S.W. 344." (Italics supplied.)[11]

From the foregoing, it is thus clear that the ex-parte motion for execution was correctly granted by the court a quo.

WHEREFORE, the appealed order of June 4, 1965 should be, as it is hereby, affirmed, with costs against defendant-appellant.

Castro, Acting C.J., Fernando, Teehankee, Barredo, Makasiar, Muñoz Palma, Aquino, and Martin, JJ., concur.

Makalintal, C.J., on official leave.

Esguerra and Concepcion, Jr., JJ., on leave.

[1] McDonald vs. Severy, 59 P. 2d 98, 6 Cal. 2d 629; Petition of Volpe, 66 N.E. 2d 146; Dougherty vs. Manhattan Rubber Mfg., Co., 29 S.W., 2d 126, cited in 60 C.J.S. 15. See also Amante vs. Sunga, L-40491, May 28, 1975.

[2] Makepeace vs. Lukens, 27 Ind. 435, 92 Am. Dec. 263.

[3] Alexander vs. Brown, 1 Pet. [U.S.] 683, 7 L. ed. 314.

[4] Farmer vs. Foniler, 123 N.E. 350, 288 Ill. 949.

[5] Fiesta vs. Llorente, 25 Phil. 554; Lim vs. Singian, 37 Phil. 817; Zulueta vs. Paredes, 63 Phil. 1; Buenaventura vs. Garcia, 78 Phil. 759; Siefert vs. Bachrach, 79 Phil. 748; Manansala vs. Narvas, L-10223, August 29, 1957; De los Angeles vs. Victoriano, L-13632, July 27, 1960; Vda. de Caina vs. Court of Appeals, L-14567, Nov. 29, 1960; Philippine British Co., Inc. vs. De los Angeles, L-33720-21, March 10, 1975, 63 SCRA 50.

[6] Sec. 5, Rule 39, Revised Rules of Court; Compañia General de Tabacos vs. Martinez, 17 Phil. 160.

[7] Amor vs. Judge Jugo, 77 Phil. 703.

[8] 8 Phil. 571.

[9] Bayer Philippines, Inc. vs. Agana, G.R. No. L-38701, April 8, 1975, 63 SCRA 355.

[10] 22 SCRA 1111-1112.

[11] Endicott-Johnson Corp. vs. Encyclopedia Press, Inc., 69 L. ed. 288, 266 U.S. 292.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.