

ALICIA T. KAW, COMPLAINANT, VS. JUDGE CASIANO P. ANUNCIACION JR., METC, BRANCH 2, MANILA, AND SHERIFF SAMUEL A. ARIBUABO, SHERIFF III, METC, OFFICE OF THE CLERK OF COURT, RESPON...

A.M. No. MTJ-93-811. March 01, 1995

Ponente: MENDOZA, J.

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MENDOZA, J.:

This letter-complaint, dated March 20, 1993, was filed by Alicia T. Kaw, charging the respondents, Judge Casiano P. Anunciacion, Jr. of the Metropolitan Trial Court (MeTC) of Manila (Branch 2) and Samuel A. Aribuabo, Sheriff III, Office of the Clerk of Court, MeTC of Manila, with grave misconduct, incompetence, and partiality.

The charges stemmed from an ejectment case filed by the Italy Marketing Corporation (IMC) against complainant's husband, George L. Kaw. The case, docketed as Civil Case No. 132227-CV, was later assigned to respondent Judge Anunciacion.

It appears that for more than twenty (20) years, George Kaw had leased from Margarita Manalo a unit of a building located at 648-650 Padre Rada Street, Tondo, Manila where he conducted his business under the name "PocketSaver's Mart and Bakeshop."

On May 20, 1989, IMC sent a letter to Kaw, informing him of its acquisition of the building and demanding that Kaw vacate the premises. Several demands followed, the latest of which was made on February 15, 1990.

As Kaw refused to leave, IMC filed on May 2, 1990 an ejectment suit (Civil Case No. 132227-CV). IMC prayed that Kaw be ordered to vacate the premises and to pay "reasonable rents from the period covering April, 1989 to the present;" attorney's fees in the amount of P5,000.00 plus P500.00 every hearing; and the cost of suit.

The summons, with a copy of the complaint, was served on Kaw on May 9, 1990, ordering him to file his answer within a non-extendible period of ten (10) days. Kaw nonetheless filed a motion for extension of 15 days from May 18, 1990 within which to file his answer on the ground that he had not yet engaged the services of an attorney. On June 1, 1990, he filed, through counsel, another motion for extension of ten (10) days to file his answer.

Respondent judge did not act on the two motions. On June 1, 1990, he rendered a decision ordering Kaw to vacate the premises and to pay IMC P1,500.00 a month beginning April 1989 until he (Kaw) had actually vacated the premises; P5,000.00 as attorney's fees; and costs. His decision was affirmed by the Regional Trial Court (RTC) of Manila (Branch 23) in Civil Case No. 90-53638 and later by the Court of Appeals (Special Sixth Division) in CA-G.R. SP No. 24680.

Alicia Kaw alleges that she and her husband received the respondent judge's decision on June 7, 1990 and that immediately, the following day, they were served a copy of the writ of execution by respondent sheriff and

evicted from the premises. Their personal properties, consisting of tools and equipment used in business were levied upon and later sold at an auction sale.

Complainant contends that the issuance of the writ of execution was improper because under §18 of the 1983 Rule on Summary Procedure, the decision of the MeTC was still appealable to the RTC and that it was the latter court's decision, if adverse to them, which was immediately executory. She complains that IMC's "Ex Parte Motion for Execution" was granted by respondent judge on the same day (June 7, 1990) that it was filed without notice to her and her husband. She also claims that respondent Sheriff Samuel Aribuabo was not authorized to enforce the writ of execution, because he was not the deputy or branch sheriff nor was he duly designated or appointed sheriff by respondent judge.

Complainant also alleges that respondent judge gravely abused his discretion by unilaterally fixing the monthly rentals at P1,500.00 despite the fact that IMC failed to specify the amount of damages in the form of reasonable rentals in its complaint. She claimed that the judge did this to make it appear that the amount involved was less than P20,000.00 and thereby bring the case within the Rule on Summary Procedure and enable IMC to evade payment of the proper amount of docket fees.

In his comment, respondent judge alleges that he would have been guilty of ignorance of the law had he granted George Kaw's two motions for extension of time to file an answer, because such motions are prohibited pleadings under the Rule on Summary Procedure; that he issued the writ of execution on June 8, 1990 pursuant to Rule 70, §8 which provides that a decision rendered by an inferior court in an unlawful detainer case is immediately executory; that he had nothing to do with the manner in which the writ was enforced by the deputy sheriff; and that complainant should be grateful that he had fixed the monthly rental at P1,500.00 because then she and her husband could easily stop execution of the decision by filing a supersedeas bond in a small amount.

Respondent sheriff, on the other hand, alleges in his comment that while he was not the court deputy sheriff, he was appointed or deputed on June 8, 1990 by respondent judge to enforce the latter's decision and that he "did not [go] beyond the parameters of his solemn duty as court sheriff in enforcing the writ of execution against complainant's husband."

We now consider the charges against respondents.

A. As to respondent Judge Anunciacion:

(1) Re fixing of the monthly rental at P1,500.00.

Admittedly, IMC's complaint against George L. Kaw did not specify the amount of damages sought as reasonable rentals. Complainant claims that this omission was deliberate, for the purpose of enabling respondent judge to decide the case under the 1983 Rule on Summary Procedure by making the amount of damages less than P20,000.00 [1] and the IMC to evade payment of the required docket fees. According to complainant, "it is improbable if not altogether impossible for respondent judge to know that the premises is located in Divisoria, Manila which is a commercial place and the monthly rentals could not therefore be only P1,500 as our rental is P6,500 a month."

In answer, respondent judge contends that "he did not know that the premises was a bakery and that the defendant thereat [complainant's husband George Kaw] invested the amount of P4,000,000.00 on the premises."

We find no grave abuse of discretion on the part of respondent judge in fixing the rentals at P1,500.00 a month. This question was already decided by the Court of Appeals in the appeal brought by complainant's husband and should now be considered closed. The Court of Appeals held:

Plaintiff, Italy, being the new owner, had no lease contract with defendant Kaw whose original lease contract with the former owner had expired. Plaintiff had no means of ascertaining the amount of rent in arrears since plaintiff took over as owner; hence, the plaintiff left the determination of reasonable rent to the discretion of the trial judge. The MTC fixed the rent of P1,500.00. The complaint demanded the ejectment of defendant and payment of rent eleven months in arrears or a total of P19,500.00. The Rules on Summary Procedure in unlawful detainer cases is applicable to cases where the unpaid rentals sought to be recovered does not exceed P20,000.00. The case at bar still falls within the limit fixed by the said Rules for the MTC to exercise jurisdiction. [2]

Neither is there merit in the allegation that the amount of the monthly rental was also fixed at P1,500.00 to enable the IMC, as plaintiff in the case, to evade payment of the proper docket fees. The amount of damages in the form of rentals alleged in complaints for unlawful detainer cases is immaterial in determining the docket fees because the fee is a straight fee of P100.00 [3]

(2) Re the inaction on George Kaw's motions for extension to file answer.

This, too, has no merit. Complainant does not dispute the fact that the summons, together with a copy of the complaint, was duly served on her husband, George Kaw, with a warning that he should file his Answer within a non-extendible period of ten (10) days from notice under the Rule on Summary Procedure. A motion for extension is in fact a prohibited pleading under the Rule on Summary Procedure.

(3) Re the issuance of the writ of execution.

But we find the respondent judge liable for issuing an order of execution when no prior notice of the motion for execution had been given to complainant's husband. The record shows that IMC filed an "Ex Parte Motion for Execution" on June 7, 1990 and that the same day respondent judge granted it. The following day (June 8, 1990) complainant and her family were ejected.

Respondent judge defends his action on the ground that under Rule 70, §8 decisions of the MeTC in unlawful detainer cases are immediately executory. He disputes complainant's contention that under §18 of the 1983 Rule on Summary Procedure it is the decision of the RTC on appeal and not that of the MeTC which is immediately executory. He invokes the ruling in *Hualam Const. and Dev't Corp. v. Court of Appeals*, [4] that "In forcible entry and unlawful detainer cases, the execution or judgment in favor of the plaintiff is a matter of right and mandatory. The duty to order the immediate execution is ministerial and imperative; it cannot be avoided."

The validity of the order of execution was precisely raised in a petition for certiorari, prohibition and mandamus, which complainant's husband filed in the RTC of Manila (Branch 34). [5] As a result the RTC enjoined the sheriff's sale. Although IMC in turn filed a petition for certiorari in the Court of Appeals, [6] its petition was dismissed. The appellate court upheld the RTC's finding that George Kaw had been denied due process. This Court [7] later affirmed, holding that in an ejectment case the adverse party is entitled to notice before execution can be ordered. The Court reiterated the ruling in *Angel Jose Realty Corp. v. Galao* [8] that

Pursuant to said section 8 of Rule 72 [now Rule 70] of the Rules of Court, . . . the writ of execution may only be issued by the court in ejectment cases after notice to the adverse party and if the rents have not been paid or deposited by him.

Indeed, that the MeTC's decision in ejectment cases is immediately executory does not mean that notice of the motion for execution to the adverse party is unnecessary. Rule 70, §8 provides:

SEC. 8. Immediate execution of judgment. How to stay same. — If judgment is rendered against the defendant, execution shall issue immediately, unless an appeal has been perfected and the defendant to stay execution files a

sufficient bond, approved by the justice of the peace or municipal court and executed to the plaintiff to enter the action in the Court of First Instance and to pay the rents, damages, and costs accruing down to the time of the judgment 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 found by the judgment of the justice of the peace or municipal court to exist. In the absence of a contract, he shall deposit with the court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment, on or before the tenth day of each succeeding month or period. The supersedeas bond shall be transmitted by the justice of the peace or municipal court, with the other papers, to the clerk of the Court of First Instance to which the action is appealed. . . .

Obviously, a party would not be in a position to stay execution unless he is notified of the filing of a motion for execution. After all, he has 15 days to perfect his appeal and stay execution by filing a notice of appeal and supersedeas bond and periodically depositing the rentals as required by the Rules of Court. Unless notice is given to him of a motion for execution, he cannot take these steps at once to stay execution. This is made clear in this case where respondent judge granted the IMC's motion for execution on June 7, 1990 on the same day that George Kaw had received a copy of the decision against him and the following day the writ was carried out by the respondent deputy sheriff. Respondent judge certainly could not have overlooked the absence of notice considering that IMC's motion was made *Ex Parte*.

(4) Re designation of a special deputy sheriff

Respondent sheriff admits that he is not the deputy sheriff assigned to respondent judge's court. He claims, however, that as deputy sheriff in the Office of the Clerk of Court, he may be deputized whenever the deputy sheriff detailed in the MeTC is absent or is on official leave of absence.

Respondents have not shown that the deputy sheriff assigned to Branch 2 of the MeTC of Manila was absent or was on leave on June 8, 1990, when the writ of execution was enforced. The writ of execution signed by respondent judge and addressed to respondent sheriff, did not say so. It appears that respondent judge simply designated respondent judge upon the request of IMC. In its "*Ex Parte Motion for Issuance of Writ of Execution*," IMC requested "the Honorable Court to Implement the Writ in the person of Mr. Samuel Aribuabo, Special Deputy Sheriff of Manila." This is contrary to pars. (3) and (6) of Administrative Circular No. 12, dated October 1, 1985, to the effect that no sheriff or deputy sheriff can be designated special deputy sheriff of any party litigant unless the regular deputy sheriff is absent or is on leave. In allowing IMC to in effect dictate who should implement the writ of execution, both respondent judge and sheriff committed grave misconduct.

B. As to respondent Sheriff Aribuabo -- manner of enforcing the writ.

In *Reformina v. Adriano* [9] and *City of Manila v. Court of Appeals*, [10] this Court held:

Under the Rules of Court, the immediate enforcement of a writ of ejectment execution is carried out by giving defendant notice of such writ, and making a demand that defendant comply therewith within a reasonable period, normally from three (3) to five (5) days, and it is only after such period that the sheriff enforces the writ by bodily removal of the defendant and his personal belongings.

In this case, respondent sheriff admits that he did not give the spouses Kaw the requisite three (3) to five (5) days notice to vacate the premises. Instead he implemented the writ of execution on the same day it was issued.

To compound his lapse, respondent sheriff levied on tools and implements [11] used by the Kaws in their bakery business in violation of the provision of Rule 39, §12(b) that tools and implements are exempt from execution. As the Office of the Court Administrator stated in its report, respondent sheriff could not have failed to notice that he

was ejecting the Kaws from a bakery and that the tools and implements in question were used in the business.

IN VIEW OF THE FOREGOING, the Court hereby imposes a FINE of P10,000.00 each on respondent Judge Casiano P. Anunciacion and Sheriff III Samuel A. Aribuabo and WARNS them that a repetition of the same or similar acts in the future will be dealt with more severely.

SO ORDERED.

Narvasa, C.J., (Chairman), Bidin, Regalado, and Puno, JJ., concur.

[1] Under the Revised Rule on Summary Procedure, which took effect on November 15, 1991, it is now provided that it shall apply to all cases of forcible entry and unlawful detainer, irrespective of the amount of damages or unpaid rentals sought to be recovered. §1A(1).

[2] CA-G.R. SP No. 24860, decided January 14, 1992, per Associate Justice Jose C. Campos, Jr. with the concurrence of Associate Justices Alicia V. Sempio-Diy and Felimon H. Mendoza.

[3] Administrative Circular No. 31-90, § 8(a)(5).

[4] 214 SCRA 612 (1992).

[5] Civil Case No. 90-53472.

[6] CA-G.R. SP No. 22632, November 15, 1990, per Associate Justice Cezar D. Francisco with the concurrence of Associate Justices Lorna S. Lombos-de la Fuente and Venancio D. Aldecoa, Jr.

[7] Resolution, G.R. No. 96809, August 19, 1991.

[8] 76 Phil. 201, 205 (1946).

[9] 189 SCRA 723, 726 (1990).

[10] 204 SCRA 362, 368 (1991).

[11] Per the "Notice of Levy and Sale on Execution of Personal Properties" attached as Annexes B and B-1 of Aribuabo's Comment. The tools and implements include 2 ovens, 1 dough roller, 1 stainless baking table, and 1 wooden baking table.

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