

DOMINGO BALANTES, COMPLAINANT, VS. JUDGE JULIAN OCAMPO III, MUNICIPAL TRIAL COURT IN CITIES, BRANCH I, NAGA CITY, RESPONDENT.

A.M. No. MTJ-93-853. March 14, 1995

Ponente: ROMERO, J.

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ROMERO, J.:

This resolution disposes of two related complaints of Domingo Balantes, one of which is against respondent Judge Julian Ocampo III (A.M. no. MTJ-93-853)[1] and the other against Clerk of Court Lilia S. Buena (A.M. No. P-94-1013).[2]

Records show that complaint is the defendant in an ejectment case (Civil Case No. 8339) filed by plaintiff Roberto Roco but which was decided by respondent judge against complainant. Complainant appealed the adverse decision to the RTC, Branch 23, Naga City (docketed as RTC 88-1467). On motion of the plaintiff-appellee, the RTC, on October 23, 1989 issued a Writ of Execution and Demolition pending appeal, ordering the removal of one-half (1/2) portion of complainant's residential house found to be built inside the titled property of the plaintiff. Subsequently, the decision on appeal was affirmed by the same Regional Trial Court and the records of the case were remanded to respondent's sala for execution of the judgment. On November 25, 1991, respondent judge issued a writ ordering the demolition of the remaining half portion of complainant's residential house found standing on a public property (legal easement). Complainant filed a motion for reconsideration of the demolition order but the same was denied on December 5, 1991.

It further appear that on August 19, 1992, a second writ of demolition was issued by the respondent Judge, followed by a third one dated February 3, 1993.

Complainant now alleges that respondent judge issued the orders granting plaintiff's motion for issuance of writ of demolition with precipitate haste, hence, he was deprived of his right to oppose the same, that the effects of these writs of demolition is to demolish complainant's entire house, notwithstanding that the appellate court's[3] writ of execution and demolition issued pending appeal ordered the demolition only of the half portion of his house found standing on plaintiff's land.

Respondent Judge Julian Ocampo II filed his comment on November 25, 1993 (A.M. No. MTJ-3-853, pp. 30-34). He explained that after a series of appeals (to RTC, court of Appeals and Supreme Court), and the remand of records to court a quo, he issued the questioned writs of demolition with respect to the remaining portion of complainant's house situated inside the property which court a quo found to be owned by the plaintiff by right of accretion.

Respondent Judge argues that a writ of demolition, being merely incidental to the execution of a final judgment, is immediately enforceable after hearing the arguments of both parties; that thought the writ of demolition was issued on the same day the court issued its order of August 19, 1992, the writ was implemented only on September 2, 1992; that a motion for reconsideration was filed by herein complainant on August 29, 1992 to

forestall its implementation but the same was submitted for the court's consideration only on September 3, 1992 and by that time the writ had already been implemented.

Respondent Judge further argues that the restraining order issued on September 2, 1992 cannot be complied with because by the time it was received by the City Sheriff, the writ of demolition had already been affected and the premises delivered to the plaintiff.

With respect to the complaint filed against respondent Clerk of Court, complaint alleges that she immediately proceeded to implement the writs of demolition without giving him a chance to move for a reconsideration of the order granting issuance thereof.

We find respondent judge to have grossly abused his authority in issuing the questioned writs of demolition.

A precise determination of the total land area encroached upon by complaint over subject property in Civil Case No. 8339 has been ordered by the Judge Gregorion Manio, RTC, Records show that previous to the issuance of the writ of execution and demolition pending appeal, said judge ordered the deputy sheriff with the assistance of a geodetic engineer to determine the metes and bounds of the plaintiff's property. The Sheriff's return clearly showed that two (2) meters of plaintiff's property had been more or less encroached upon by complainant's house while it occupied three (3) meters, more or less, of legal easement formed by accretion. The writ of demolition thus issued by the appellate court contained specifications in accordance with such finding and was returned fully satisfied on January 20, 1990. Moreover, the decision of the RTC, Branch 23, Naga City which incorporated such findings was successively affirmed by the Court of appeals and the Supreme Court.

Respondent Judge, therefore, was fully aware of the previous delineation of the property of the plaintiff. Nevertheless, when the records were remanded to him and upon motion of the plaintiff's counsel, he issued another writ of demolition which sought to demolish the remaining portion of the defendant's house which, as already found by the appellate court(s), was standing upon a public property.

The order of demolition dated November 20, 1991 which he issued, in fact, was the subject of a petition for certiorari (SPL. Civil Action No. RTC '91-2467) before the same RTC, Branch 23, Naga City where Judge Gregorion A. Manio declared, Branch 23, Naga City where Judge Gregorio A. Manio declared said order of demolition and the writ issued pursuant thereto as null and void, having been issued with grave abuse of discretion and enjoined respondent Judge from issuing any further writs of demolition in Civil Case No. 8339.

Despite this directive, respondent Judge exhibited a defiant attitude by issuing another writ of demolition dated August 19, 1992. Said order was the the subject of another petition writ of demolition dated August 19, 1992. Said order was the subject of another petition for certiorari/prohibition (SPL. Civil Action No. 92-2651) wherein Judge Antonio N. Gerona of Branch 27, RTC, Naga City issued an order dated September 2, 1992 restraining the implementation of the aforesaid writ of demolition by the sheriff of MTC, Naga City.

As regards the charge against respondent Clerk of Court and Ex-Officio Sheriff Lilia S. Buena, the same is dismissed, it appearing from the the certification she issued that the Temporary Restraining Order issued by the RTC, Branch 27, Naga City was received by her on September 2, 1992 at 2:15 p.m., after the demolition had been completely effected and the premises delivered to the plaintiff at 1:30 p.m. of the same date. It appears that respondent Buena was not aware of the existing TRO which she received within the hour after the demolition had taken place, thus rendering said restraining order a fait accompli. The rule is that when a writ is placed in the hands of a sheriff, it is his duty, in the absence of instructions, to proceed with reasonable celerity and promptness to execute it according to its mandate. He may not apply his discretion as to whether to execute it or not. [4]

WHEREFORE, in view of the foregoing, respondent Judge Julian Ocampo III, MTCC, branch I, Naga City is

hereby ordered to pay a FINE OF P5, 000.00 with WARNING that a repetition of the same or similar infraction in the future will merit a stiffer penalty. The complaint against respondent Clerk of Court and Ex-Officio Sheriff Lilia S. Buena is hereby DISMISSED.

SO ORDERED.

Feliciano (Chairman), Melo, Vitug, and Francisco, JJ., concur.

[1] The complaint filed against respondent Judge is for gross ignorance of the law and procedure, grave abuse of judicial power, evident partiality, incompetence, personal hostility and violation of constitutional rights of the complainant in connection with respondent judge's issuance of a writ of demolition of complainant's house.

[2] On the other hand, the complaint against respondent Clerk of Court charges the same with deprivation of complainant's right to due process; grave ignorance and disregard of the law and procedure; oppression and persecution of complainant; incompetency in the performance of of official duties; grave misconduct; and performing acts inimical to the service.

[3] RTC, Branch 23, Naga City.

[4] Pancho Yap Young v. Roberto M. Momblan, A.M. No. P-89-367, January 9, 1992, 205 SCRA 33.

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