

**NILDA SURA, IN HER BEHALF AND IN BEHALF OF HER MINOR CHILD
VICENTE MARTIN, JR., PLAINTIFF-APPELLEE, VS. VICENTE
SILVESTRE MARTIN, SR., DEFENDANT-APPELLANT.**

G.R. No. L-25091. November 29, 1968

Ponente: CAPISTRANO, J.

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CAPISTRANO, J.:

Appeal from the Orders of January 9 and February 1, 1965, of the Court of First Instance of Negros Occidental ordering the arrest and imprisonment of the defendant, Vicente Martin, Sr., for contempt, "hasta que cumpla con la decision dictada, en esta causa."

Appellant's statement of facts, accepted by the appellee, is as follows:

"In Civil Case No. 5580 of the Court of First Instance of Negros Occidental entitled, 'NILDA SURA, In her behalf and in behalf of her minor child, VICENTE MARTIN, JR., Plaintiffs, versus VICENTE SILVESTRE MARTIN, SR., Defendant', judgment was rendered on June 20, 1961, amended on July 15, 1961, as follows:

'EN MERITOS DE TODO LO EXPUESTO, el Juzgado falls esta causa coma sigue:

- (a) Se sobresee el primer motivo de accion de la demanda;
- (b) Se ordena al demandado a que reconozca al demandante Vicente Martin, Jr. como su hijo natural; y
- (c) Se condena al demandado pagar al demandante Vicente Martin, Jr., alimentos atrasados a razon de P100.00 mensuales a contar desde el dia 10 de Diciembre de 1959, fecha de la presentacion de la demanda, y a pasar al mismo demandante una pension mensual de P100.00 hasta que el misnollegue a la mayor edad.
- (d) Se condena al demandado a pagar los honorarios del abbgado de las demandantes en la cantidad de P1,000.00.

Las costas del presente juicio seran pagadas por el demandado.

Asi se ordena.

Ciudad de Bacolod, Julio 15, 1961.

(Fdo) EDUARDO D. ENRIQUEZ

Juez'

"From the above judgment, the defendant appealed to the Court of Appeals, and the latter Court, in C.A. G.R.No. 30388-R, affirmed said decision on January 30, 1964.

"On May 9, 1964, the Court of First Instance of Negros Occidental issued the following order:

'Upon petition of counsel for the plaintiff, the Clerk of Court is hereby ordered to issue writ of execution, same be forwarded to the Provincial Sheriff of Negros Oriental.

SO ORDERED.

Bacolod City, Philippines, May 9, 1964.

(Sgd.) JOSE R. QUERUBIN

Judge'

Pursuant to this aforecited order, a writ of execution was issued on May 9, 1964 by the Clerk of Court, and the Provincial Sheriff of Negros Oriental served the same upon the defendant in Tanjay, Negros Oriental but returned the writ unsatisfied. The second paragraph of the Sheriff's return of service, dated September 21, 1964, stated:

'The judgment debtor is jobless, and is residing in the dwelling house and in the company of his widowed mother, at Tanjay, this province. Debtor has no leviabale property; he is even supported by his mother. Hereto attached is the certificate of insolvency issued by the Municipal Treasurer of Tanjay, Negros Oriental, where debtor legally resides.'

"On October 6, 1964, counsel for the plaintiff prayed that defendant, for failure to satisfy the writ of execution, be adjudged guilty of contempt of Court. On November 28, 1964, the Court issued the following order:

'A U T O

A peticion del abogado Sr. Villasis que representa al demandado, y con la conformidad del, abogado Sr. Tupaz, por el presente se le concede al demandado un plazo de 30 dias a contar desde esta fecha, para,cumplir con la decision de este Juzgado antes de que se le declare en desacato.

Asi se ordena.

Ciudad de Bacolod, Noviembre 28, 1964.

(Fdo) EDUARDO D. ENRIQUEZ

Juez'

"The defendant having failed-to satisfy said order, the Court on January 9, 1965 issued the fol-lowing'order:

'A U T O

Habiendo dejado de cumplir con la orden de este Juzgado de fecha 28 de Noviembre de 1964, por el presente se ordena el arresto del demandado Vicente Silvestre, Sr.

Asi se ordena.

Ciudad de Bacolod, Enero 9, 1965.

EDUARDO D. ENRIQUEZ

Juez'

"Notice of appeal from the last aforecited order was filed on January 26, 1965 by attorney for the defendant who at the same time prayed for the fixing of a bond for the temporary re-lease of the defendant. On February 1, 1965, the Court issued the following order:

'A U T O

Oidas y consideradas las explicaciones, dadas por el demandado en la silla testifi-cal el dia 28 de Noviembre de

1964, y no encontrando biers fundadas las razones alegadas por.el, por el presente se ordena el confinamiento de dicho demandado en la carcel provincial hasta que cumpla con la decision dictada en esta causa. Se fija en P7,000.00 la fianza que el demandado debe prestar si desea apelar contra la orden dictada en esta misma fecha.

Asi se ordena.

Ciudad de Bacolod, February 1, 1965.

EDUARDO D. ENRIQUEZ

Juez'

The orders for the arrest and imprisonment of the defendant, Vicente Martin, Sr., for contempt of court for failure to satisfy the judgment were illegal, in view of the following considerandos:

(1) The judgment ordering the defendant to pay past and future support at P100 per month was a final disposition of the case and was declaratory of the obligation of the defendant. The writ of execution issued on the judgment with respect to past support in the amount of about P6,000 required "the sheriff or other proper officer" to whom it was directed (Rule 39, Section 8, Rules of Court) to satisfy the amount out of all property, real and personal, of the judgment debtor in the manner specified in Rule 39, Section 15, of the Rules of Court. The writ of execution was, therefore, a direct order to the sheriff or other proper officer to whom it was directed, and not an order to the judgment debtor. In view thereof, the judgment debtor could not, in the very nature of things, have committed disobedience to the writ.

(2) The sheriff's return shows that the judgment debtor was insolvent. Hence the Orders of January 9 and February 1, 1965, in effect, authorized his imprisonment for debt in violation of the Constitution.

(3) The disobedience to a judgment considered as indirect contempt in Section 3(b) of Rule 71 of the Rules of Court, does not refer to a judgment which is a final disposition of the case and which is declaratory of the rights of the parties, but to a special judgment, which is defined in Section 9, Rule 39 of the Rules of Court as a judgment "which requires the performance of any other act than the payment of money, or the sale or delivery of real or personal property.

According to Moran:

"Generally, any order or judgment of a court finally disposing of an action should be enforced by ordinary execution proceedings, except special judgments which should be executed by contempt proceedings in accordance with Rule 39, sec. 9," citing, Caluag, et al. vs. Pecson, et al., 82 Phil., 8. (Moran, Comments on the Rules of Court, 1963 Ed., Vol. 3, p. 320.)

IN VIEW OF ALL THE FOREGOING, the appealed Orders of January 9 and February 1, 1965, are hereby reversed. No costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Fernando, JJ., concur.

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