

FRANCISCO LU, COMPLAINANT, VS. JUDGE ORLANDO ANA F. SIAPNO, MTC-URDANETA, PANGASINAN, DOMINGO S. LOPEZ, SHERIFF IV, RTC-URDANETA, PANGASINAN, BRANCH 45 AND PRIVATE PROSECUTOR JO...*A.M. No. MTJ-99-1199 (Formerly OCA IPI No. 97-381-MTJ). July 06, 2000*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/63406f0b348f/>

Francisco Lu is the defendant in a civil case for ejectment raffled to respondent Judge Orlando Ana F. Siapno of the Municipal Trial Court of Urdaneta, Pangasinan and docketed as Civil Case No. 4112. In his administrative complaint, Francisco Lu alleges that he filed an Answer with Counterclaim to the Amended Complaint[1] for ejectment which was later amended. Thereafter, he filed a Motion to Dismiss[2] the ejectment case on the ground that plaintiffs therein were no longer the owners of the land in question, the same having been sold to the Shahanis on February 7, 1995 and later transferred in the names of the latter under TCT No. 202393. On September 7, 1995, respondent Judge Siapno rendered judgment[3] against Lu which decision was allegedly received by Lu's counsel on September 13, 1995.[4] A notice of appeal[5] was filed on the same day. On September 11, 1995, MTC-Clerk of Court Celestina Corpuz issued a Writ of Execution[6] which was allegedly implemented by Sheriff Domingo S. Lopez of the Regional Trial Court of Urdaneta, Pangasinan, Branch 45 who forcibly ejected Lu from the premises.

While on appeal, the Regional Trial Court of Urdaneta, Pangasinan, Branch 47 issued a preliminary mandatory injunction and declared the writ of execution earlier issued by the MTC-Urdaneta, Pangasinan to be null and void.[7] On February 5, 1996, RTC-Branch 47 rendered judgment modifying the MTC-judgment by deleting the paragraph "(I)n accordance with the Rules, let a Writ of Execution be issued." [8] Hence, Lu filed a petition for review with the Court of Appeals on February 21, 1996 which was docketed as CA-G.R. SP No. 39875.[9] Meanwhile, plaintiff's counsel filed on February 19, 1996 a Motion for Execution[10] with MTC which was granted by respondent Judge Siapno granted in the Order dated February 22, 1996[11] allegedly without notice and hearing. The writ of execution was issued by Clerk of Court Corpuz on the same day.[12]

On April 2, 1996, Atty. Joselino Viray, plaintiff's counsel, filed an Ex-parte Motion to Withdraw deposit praying that the amount deposited in the municipal treasurer be withdrawn in order to satisfy the judgment. Said motion was granted in the Order dated April 2, 1996.[13] On April 23, 1996, Atty. Viray filed a Motion for Special Demolition which was likewise granted by respondent Judge Siapno, allegedly without notice and hearing, in his Order of May 20, 1996 which order was later amended on May 21, 1996 as the first order directed the plaintiff therein, instead of the sheriff, to demolish the structure on the subject property.[14] On the same date, May 21, 1991, Sheriff Lopez immediately implemented the order of demolition by serving a copy of the said order upon complainant's wife and proceeding to demolish the structure, building and other improvements on the land in question.[15] The order of demolition was allegedly received by complainant's counsel on May 28, 1996.[16]

Hence, this complaint for gross incompetence, gross ignorance of the law, abdication of official function and gross misconduct.

Respondent Siapno denied all the accusations against him. He filed his Comment and Answer to the complaint

against him. On the charge of gross incompetence in the performance of his duties for not dismissing Civil Case No. 4112, respondent Judge argues that complainant Lu filed a Motion to Dismiss the case on the ground that the land subject of the controversy was already sold to the Shahanis but since the said case is governed by the Rules on Summary Procedure, the court did not take action on Lu's motion to dismiss being a prohibited pleading.

As regards the charge of gross ignorance of the law for rendering a decision providing in its dispositive portion the issuance of a writ of execution without notice and hearing, respondent Judge contends that he did not issue a writ of execution implementing the decision since it was his Clerk of Court Celestina Corpuz who signed the writ of execution without his authority. Respondent Judge further denies the charge of partiality and bias in favor of the plaintiffs and against the defendant (herein complainant) in the subject case. He denied having committed a mistake in allowing the motion to withdraw deposit since his decision has been affirmed by the Regional Trial Court and under the rules, the decision of the latter is immediately executory. The motion for demolition was likewise granted in view of the affirmance of his decision ordering the defendant to immediately vacate the premises. Hence, respondent Judge prays for the dismissal of the instant case for lack of merit.

In the Counter-Affidavit (Answer) of respondent Sheriff Lopez, he alleges that the writ of execution dated September 11, 1995 was not implemented because of the appeal of the MTC-decision to the Regional Trial Court which nullified the writ; that he was not the one who implemented the writ of execution but a certain Eduardo Ramos, the Deputy Sheriff of RTC-Branch 47 since Lopez was detailed as sheriff of the office of the Clerk of Court from October 1989 up to April 1997; that per Sheriff's Return dated February 23, 1996, it was Sheriff Ramos who implemented the writ of execution, a copy of the writ and the order having been served upon Lu who voluntarily vacated the premises; that he (respondent Lopez) implemented the order of demolition since there was no restraining order issued by the Court of Appeals while the case was pending appeal and that complainant Lu already voluntarily vacated the premises; and that a copy of the order of demolition was served upon Lu's wife, Elvie, who allegedly refused to sign therein. Respondent Sheriff Lopez claims that he performed what he believed to be his ministerial duty.

Respondent Sheriff Lopez filed a Manifestation stating that he applied for optional retirement to take effect May 9, 1998 and requesting that the amount of P20,000.00 be retained to answer for any penalty that may be meted out to him. His request was denied in this Court's Resolution dated March 24, 1999.

The case was referred to Judge Modesto C. Juanson of the Regional Trial Court of Urdaneta City, Branch 46 for investigation, report and recommendation. He made the following findings: (1) on the charge of gross incompetence in the performance of his duties against respondent Judge, the same is belied by the RTC-decision dismissing the appeal which was affirmed by the Court of Appeals; (2) on gross ignorance of the law, the investigating judge opined that it was Clerk of Court Corpuz who prepared, signed and issued the writ of execution without consulting the respondent Judge thereby absolving the latter from any responsibility; (3) on the charge of abdication of his official function, the investigating judge was of the view that respondent Judge should not be faulted by the unauthorized action of her clerk of court.

As regards respondent Sheriff Lopez, the investigating Judge found him guilty for violating the rights of complainant Lu without giving the latter five (5) days notice to remove his personal belongings.

Hence, the Investigating Judge made the following recommendation:

- "1. Respondent Siapno is exonerated in all the charges;
2. Respondent Lopez is meted a penalty of P10,000.00 with warning that repetition of the same shall be dealt with severely;

3. Celestina Corpuz, not being charged, but on the principle of *res ipsa loquitor* be meted a fine of P10,000.00 with the warning that repetition of the same shall be dealt with severely."

In the Memorandum dated February 10, 2000, the Court Administrator recommended, *inter alia*, that the: (1) respondent Judge likewise fined in the amount of P10,000.00 each. The Court Administrator opined that the respondent Judge erred in including in the dispositive portion of his decision the directive that "(I)n accordance with the Rules, let the Writ of Execution be issued" and by doing so, respondent Judge had no other intention but to see to it that the decision is "immediately executed" without any further action on the part of the plaintiffs therein.

In the Resolution dated February 28, 2000, this Court forwarded the charge against Atty. Joselino A. Viray to the Office of the Bar Confidant, for appropriate action, the latter having exclusive jurisdiction over the case.

We agree with the Court Administrator that respondent Judge Siapno is guilty of gross ignorance of the law when he rendered judgment providing, in the dispositive portion, for its immediate execution. It should be noted that the Regional Trial Court, while affirming the judgment of the respondent Judge, nevertheless deleted that portion of the decision providing for immediate execution. Basic is the rule that a judge may not order execution of judgment in the decision itself.[17] Section 21 of the Rules on Summary Procedure likewise provides that the decision of the regional trial court is immediately executory. Even if immediately executory, there must first be a motion to that effect and a hearing called for that purpose. In an ejectment case, the adverse party is entitled to notice before execution can be ordered.[18] In disregarding the rules and settled jurisprudence, respondent Judge showed gross ignorance, albeit without any malice or corrupt motive. The lack of malicious intent, however, cannot completely free respondent Judge from liability. When the law is elementary, so elementary not to know it constitutes gross ignorance of the law.[19]

As regards the charge of partiality and bias in favor of the plaintiffs, we find the same to be unsubstantiated. Mere suspicion that the judge is partial to a party is not enough; there should be adequate evidence to prove the charge.[20]

Clerk of Court Corpuz admitted that she issued and signed the writ of execution without consulting the respondent judge. Sheriff Lopez likewise admitted that the writ of execution dated September 11, 1995 was not implemented because of the appeal to the RTC which nullified the writ. He claims, however, that he was not the one who implemented the second writ of execution but it was Mr. Eduardo Ramos of the RTC-Branch 47. In the Sheriff's Return dated February 23, 1996 submitted by Ramos, it appears that Lu vacated the subject premises voluntarily.

As regards the writ of demolition, Sheriff Lopez argues that although the RTC-decision was appealed to the Court of Appeals, the latter did not issue any restraining order, thus the implementation of the order of demolition following the return of the writ issued on February 22, 1996.

The Clerk of Court and the Sheriff must be held responsible. The issuance of the writ of execution and its subsequent implementation without motion and hearing and at the time the copy of the judgment has not yet been received by defendant's counsel, was precipitate and against all sense of fair play. Lu's counsel received the MTC-decision on September 13, 1995 and filed a notice of appeal on the same day. However, the writ of execution was issued by Clerk of Court Corpuz on September 11, 1995 and was implemented by Sheriff Lopez on said date. Clearly, there was a violation of the rules of procedure. Even in the Rule on Summary Procedure, a judgment must first be given to the losing party before it can be executed.[21]

Moreover, as found by Investigating Judge Juanson, Sheriff Lopez removed the personal belongings of Lu without giving the latter five (5) days notice to remove the same or to obtain remedies somewhere. Under the Rules of Court, the immediate enforcement of a writ of execution in ejectment cases is carried out by giving the

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 the bodily removal of the defendant and his personal belongings.[22] And if demolition is involved, there must first be a hearing on motion and due notice for the issuance of a special order under Section 14, Rule 39.[23]

While we agree with the recommendation of both the Court Administrator and the Investigating Judge imposing a fine upon respondent Sheriff Lopez in the amount of ten thousand pesos (P10,000.00), we find the same to be too harsh. So too is the fine imposed upon respondent Judge as recommended by the Court Administrator. Accordingly, the amount of fine is reduced to five thousand pesos (P5,000.00) in both cases.

As regards Clerk of Court Corpuz, she was not impleaded in the instant administrative complaint and should be given her day in court. The Court Administrator is directed to institute a separate administrative case against her.

WHEREFORE, premises considered, respondent Judge Orlando Ana F. Siapno of the Municipal Trial Court of Urdaneta, Pangasinan is hereby found guilty of gross ignorance of the law and is FINED in the amount of Five Thousand Pesos (P5,000.00).

For gross abuse of authority, respondent Sheriff Domingo S. Lopez, Sheriff IV of the Regional Trial Court of Urdaneta, Pangasinan, Branch 45 is FINED in the amount of Five Thousand Pesos (P5,000.00).

They are likewise warned that a repetition of the same or similar act shall be dealt with more severely by this Court.

The Court Administrator is further directed to institute the appropriate administrative case against Clerk of Court Celestina Corpuz.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Annex "B", p. 12, Rollo.

[2] Annex "C", p. 15, Rollo.

[3] Annex "D", pp. 21-23, Rollo.

[4] Par. 5, Complaint-Affidavit, p. 1, Rollo.

[5] Annex "E", p. 24, Rollo.

[6] Annex "F", p. 25, Rollo.

[7] Order of November 9, 1995, Annex "H", pp. 27-31, Rollo.

[8] Annex "I", pp. 32-33, Rollo.

[9] Annex "K", pp. 40-45, Rollo.

[10] Annex "L", p. 48, Rollo.

[11] Annex "M", pp. 49-50, Rollo.

[12] Annex "N", p. 51, Rollo.

[13] Annexes "O" & "P", pp. 52-54, Rollo.

- [14] Annexes "Q", "R" & "S", pp. 55-58, Rollo.
- [15] Par. 2.d, Counter-Affidavit (Answer), p. 64, Rollo.
- [16] Par. 2 of Annex "T", p. 59, Rollo.
- [17] Felongco vs. Dictado, 223 SCRA 696.
- [18] Kaw vs. Anunciacion, Jr., 242 SCRA 1.
- [19] Carpio vs. De Guzman, 262 SCRA 615.
- [20] Zamudio vs. Peñas, Jr., 286 SCRA 367.
- [21] Felongco vs. Dictado, supra.
- [22] City of Manila vs. Court of Appeals, 204 SCRA 362.
- [23] Fuentes vs. Leviste, 117 SCRA 958.

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