

MARIA LOURDES CUSI JAVELONA, GERARD RENE A. CUSI, REGINA AMPARO CUSI SORIANO AND MARY ANN CUSI, PETITIONERS, VS. OLIVIA V. YANSON, REPRESENTED BY HER ATTORNEY-IN-FACT JESIDITH M...

Ponente: LAGURA-YAP, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/8cd802ea6588/>

LAGURA-YAP, J.:

Before this Court is a Petition for Certiorari[1] [with prayer for issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction (WPI)] filed pursuant to Rule 65 of the 1997 Rules of Civil Procedure which seeks to annul or set aside the Orders dated November 28, 2012[2] and April 15, 2013[3] both rendered by the Regional Trial Court (RTC), Branch 49, Bacolod City in Cad. Case No. 12-3245.

Stripped of the non-essentials, the facts are as follows:

On July 11, 2012, private respondent, Olivia V. Yanson (Yanson) filed an Ex-Parte Motion for Writ of Possession[4] pursuant to Section 7, Act. 3135, as amended. She averred that she is the current, absolute and registered owner of three parcels of land together with its improvements situated at Lot 14, 15 and 16, Block 9, Ilang Ilang St., Capitolville Subdivision, Bacolod City, more particularly described under TCT No. 092-2011000672[5], TCT No. 092-2011000673[6] and TCT No. 092-2011000674[7]. She bought the properties from Philippine National Bank (PNB) on June 10, 2009 through a Deed of Absolute Sale[8]. The properties were previously owned by Sps. Renato and Amparo Araneta-Cusi[9] (now deceased). They were used as collateral for the series of loans acquired by Sps. Cusi from PNB. After Sps. Cusi failed to pay their loan, PNB foreclosed the properties way back on July 8, 1976. Since Sps. Cusi also failed to redeem the properties within the time allowed by law, PNB consolidated the titles in its name, being the highest bidder in an auction sale pursuant to Act 3135. On February 14, 1989, TCTs covering the said properties were issued in favor of PNB. Thus, Yanson filed the ex parte motion for issuance of writ of possession considering that she stepped into the shoes of PNB who is a purchaser of the foreclosure sale and now the registered owner of the subject properties in fee simple.[10]

In response, petitioners, Maria Lourdes Cusi Javelona, Gerard Rene A. Cusi, Regina Amparo Cusi-Soriano and Mary Ann A. Cusi (petitioners) filed their Comment/Opposition [To the Ex-Parte Motion for Writ of Possession][11] dated October 9, 2012. In their comment, the petitioners averred that Yanson's ex parte motion for writ of possession should be denied on the following grounds:

1)

The motion did not contain any notice of hearing as specifically required under Sec. 4 & 5, Rule 15 of the Rules of Civil Procedures.

2)

The petitioners who were former owners and in possession of the subject properties were not given any copy or notice of the ex parte motion.

3)

Ricardo Yanson, who is an indispensable party should have been included as one of the movants. Without him there would be no complete and final determination of the case.

4)

The titles, in the name of Olivia Yanson married to Ricardo Yanson are also the subject of a pending civil case before RTC, Branch 48, Bacolod City docketed as Civil Case No. 10-103579 entitled “Maria Lourdes Cusi Javelona, Gerard Rene A. Cusi, Regina Amparo Cusi-Soriano and Mary Ann A. Cusi, petitioners – versus – Philippine National Bank and Register of Deeds of Bacolod City, Spouses Ricardo and Olivia Yanson”. [12]

On November 28, 2012, the RTC rendered the assailed Order [13] denying petitioners' opposition for the issuance of a writ of possession, the dispositive portion whereof is hereunder quoted:

“WHEREFORE, in the light of all the foregoing, the Opposition of the Oppositors for the issuance of a writ of possession is DENIED for lack of merit. Set the reception of evidence for the movant before the Clerk of Court of this Branch on January 24, 2013 at 10:00 o'clock in the morning.

SO ORDERED.”

On January 23, 2013, the petitioners filed a Motion for Reconsideration [14]. Subsequent thereto, on January 31, 2013, filed an Amended Motion for Reconsideration [15].

On April 15, 2013, the RTC issued an Order [16] denying the Amended Motion for Reconsideration filed by the petitioners.

Aggrieved, the petitioners filed the instant Petition for Certiorari (With Urgent Prayer For The Issuance Of A Temporary Restraining Order And/Or Writ of Preliminary Injunction) [17] in accordance with Rule 65 of the Rules of Court on July 8, 2013.

On December 6, 2013, this Court rendered a Resolution [18] inter alia denying petitioners' prayer for issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction (WPI). The Court likewise directed respondents to file their Comment on the petition within 10 days.

On January 24, 2014, Yanson filed her Comment [19]. Also, on even date the petitioners filed a Motion for Reconsideration [20] questioning the Resolution of this Court dated December 6, 2013.

On February 13, 2014, the Court issued a Resolution [21] inter alia directing Yanson to file her Comment of petitioners' motion for reconsideration. In Compliance thereto, Yanson filed her Comment [22] on March 2, 2014.

ISSUE

Considering that this is a Petition for Certiorari filed in accordance with Rule 65 of the Rules of Court, the only issue that should be resolved is:

WHETHER OR NOT NOT THE COURT A QUO HAS ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RENDERING THE ORDERS DATED NOVEMBER 28, 2012 AND APRIL 15, 2013 WHICH DENIED PETITIONERS' OPPOSITION TO YANSON'S EX PARTE MOTION FOR WRIT OF POSSESSION.

The Ruling of this Court

In essence, the petitioners argued that the RTC committed grave abuse of discretion in issuing the assailed orders. They presented the following arguments to buttress their claim:

(1)

The Ex Parte Motion for Writ of Possession did not contain any notice of hearing.

(2)

The petitioners were not given any notice of the ex parte motion.

(3)

Ricardo Yanson whose name appears in the TCTs is an indispensable party and should have been included in the ex parte motion as one of the movants.

(4)

Sec. 4, Rule 3 of the 1997 Rules of Civil Procedure provides that a husband and wife shall sue or be sued jointly.

(5)

The TCTs subject of the ex parte motion are also the subject of Civil Case No. 10-13579 pending before RTC, Branch 48, Bacolod City.

(6)

The attorney-in-fact has no personal knowledge over the factual circumstances in the ex parte motion and is not competent to sign the verification and certificate of non-forum shopping on the ex parte motion.

(7)

There was no proper substitution of parties.

(8)

The Yansons are not purchasers in good faith and for value.[23]

After a judicious perusal of the facts of this case, together with applicable laws and jurisprudence, We find that the instant petition is bereft of merit.

Significantly, Section 1, Rule 65 of the Rules of Court, reads:

“Sec. 1. Petition for certiorari. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

“The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.” (Emphasis Supplied)

Thus, a writ for certiorari may issue only when the following requirements are set out in the petition and established, to wit:

- (1) The writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions;
- (2) Such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and
- (3) There is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[24]

Excess of jurisdiction as distinguished from absence of jurisdiction means that an act, though within the general power of a tribunal, board or officer is not authorized, and invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting. Without jurisdiction means lack or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[25]

We have judiciously scoured the records of this case and We cannot conclude that the court a quo acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the assailed orders. Conversely, We find that these are in accordance with law and jurisprudence.

In the instant case, the RTC did not err in denying petitioners' comment/opposition. It should be emphasized that an ex parte petition for issuance of a writ of possession is a non-litigious proceeding authorized in an extrajudicial foreclosure of mortgage pursuant to Act 3135, as amended. Thus, In the Case of Darcen v. V.R. Gonzales Credit Enterprises, Inc.[26] the Supreme Court reiterated the ruling in Asia United Bank v. Goodland Company, Inc.[27] regarding the non-litigious nature an ex parte motion for issuance of a writ of possession, to quote:

“We repeated the above rule in Asia United Bank v. Goodland Company, Inc., in this wise:

It is a time-honored legal precept that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, entitlement to a writ of possession becomes a matter of right. As the confirmed owner, the purchaser's right to possession becomes absolute. There is even no need for him to post a bond, and it is the ministerial duty of the courts to issue the same upon proper application and proof of title. To accentuate the writ's ministerial character, the Court has consistently disallowed injunction to prohibit its issuance despite a pending action for annulment of mortgage or the foreclosure itself.

The nature of an ex parte petition for issuance of the possessory writ under Act No. 3135 has been described as a non-litigious proceeding and summary in nature. As an ex parte proceeding, it is brought for the benefit of one party only, and without notice to or consent by any person adversely interested. (Citations omitted)” (Emphasis Ours)

In this case, the Ex parte Motion for Writ of Possession filed by Yanson is sanctioned under Act. No. 3135, as amended. Section 7[28] thereof, specifically provides that a petition (for a writ of possession) is in the nature of an ex parte motion in which the court hears only one side of the controversy. An ex parte proceeding presupposes a right of the petitioners to which there is no adverse party. An ex parte proceeding merely means that it is taken or granted at the instance and for the benefit of one party, and without notice to or contestation by any party adversely affected.[29]

Similarly, in Metrobank & Trust Company v. Hon, Salvador[30] the Supreme Court clearly pronounced that an intervention is not allowed in an ex parte proceeding, thus:

“No intervention allowed in ex parte proceedings

We also find merit in Metrobank's contention that the lower court should not have allowed De Koning to intervene in the proceedings.

A judicial proceeding, order, injunction, etc., is ex parte when it is taken or granted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested.

Given that the proceeding for a writ of possession, by the terms of Section 7 of Act No. 3135, is undoubtedly ex parte in nature, the lower court clearly erred not only when it notified De Koning of Metrobank's ex parte petition for the writ of possession, but also when it allowed De Koning to participate in the proceedings and when it took cognizance and upheld De Koning's motion to dismiss." (Bold letters in the original)

All told, We find that the RTC did not act without jurisdiction or in excess of jurisdiction or with grave abuse of discretion in rendering the assailed orders. Considering that the petitioners filed a comment/opposition in an ex parte motion which is non-litigious in nature, the court a quo is correct in denying it.

Hence, We dismiss the instant petition for being patently without merit in accordance with Sec. 8, Rule 65 of the Rules of Court[31].

Needless to state, the petitioners are not without remedy. If indeed they are aggrieved by the writ of possession then they should follow the appropriate remedy provided by law, more specifically Sec. 8, of Act. No. 3135[32].

WHEREFORE, the petition is DISMISSED for lack of merit. Accordingly, the Motion for Reconsideration by the petitioner assailing the Resolution of this Court dated December 6, 2013 is rendered moot and academic. Hence, it is DENIED.

SO ORDERED.

Delos Santos, and Azcarraga-Jacob,[*] JJ., concur.

[*]Acting Third Member vice J. Lopez per Office Order No. 18-14-GTI dated July 7, 2014.

[1] Rollo, pp. 3-23.

[2] Id., pp. 28-29, penned by Judge Manuel O. Cardinal.

[3] Id., at p. 27.

[4] Rollo, pp. 161-166.

[5] Id. pp. 169-171.

[6] Id., pp. 172-175.

[7] Id., pp. 176-179.

[8] Id., pp. 183-184.

[9] Hereinafter referred to as Sps. Cusi.

[10] Culled from the Ex-Parte Motion for Writ of Possession, Rollo, pp. 161-166.

[11] Rollo, pp. 196-202.

[12] Culled from petitioner's comment, id.

[13] Supra note 2.

[14] Rollo, pp. 30-36.

[15] Rollo, pp. 37-41.

[16] Supra note 3.

[17] Supra note 1.

[18] Rollo, pp. 279-281.

[19] Rollo, pp. 285-302.

[20] Rollo, 303-312.

[21] Rollo, p. 313.

[22] Rollo, pp. 314-323.

[23] Culled from the petition, supra note 1, (at p. 12).

[24] Soriano vs. Ombudsman Marcelo, Gr. No. 167743, November 22, 2006.

[25] Cathay Pacific Steel Corporation v. Hon. Court of Appeals, G.R. No. 164561, Aug. 30, 2006.

[26] G.R. No. 199747, April 3, 2013.

[27] G.R. No. 188051, November 22, 2010, 635 SCRA 637.

[28] SECTION 7.

In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

[29] See Sps. Arquiza v. CA, G.R. No. 160479, June 8, 2005.

[30] G.R. No. 157867, December 15, 2009.

[31] Sec. 8. Proceedings after comment is filed. - After the comment or other pleadings required by the court are filed, or the time for the filing thereof has expired, the court may hear the case or require the parties to submit memoranda. If after such hearing or submission of memoranda or the expiration of the period for the filing thereof the court finds that the allegations of the petition are true, it shall render judgment for the relief prayed for or to which the petitioner is entitled.

The court, however, may dismiss the petition if it finds the same to be patently without merit, prosecuted

manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration. (Emphasis ours)

[32] Sec. 8. Setting aside of sale and writ of possession. — The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal. (Emphasis Ours)

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.