

**J.M. TUASON & CO., INC., PLAINTIFF AND APPELLEE VS.
ANTONIO ESTABILLO, DEFENDANT AND APPELLANT.***G.R. No. L-20610. January 09, 1975*

Ponente: AQUINO, J.

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Antonio Estabillo appealed on pure questions of law from (a) the order of the Court of First Instance of Rizal, Quezon City Branch IV, dated October 13 (18), 1962, denying his motion to declare moot the writ of execution and order of demolition dated November 14, 1959 and (b) the order dated November 17, 1962, denying his motion for reconsideration and for relief from the judgment by default which was rendered on December 2, 1958 (200-210 Record on Appeal).

In that aforementioned judgment, Estabillo was ordered to vacate a lot with an area of around one hundred square meters located at Barrio North Tatalon, Sta. Mesa Heights Subdivision, Quezon City, owned by J. M. Tuason & Co., Inc., and to remove his house therefrom. In the order of demolition, the Sheriff of Quezon City was directed to remove Estabillo's house on January 5, 1960 (9-11, 38-39 Record on Appeal, Civil Case No Q-3296).

This is one of the cases involving the Tatalon Estate which have taxed the attention of the courts for a considerable stretch of time (See J.M. Tuason & Co., Inc. vs. Aguirre, L-16827, January 31, 1963, 7 SCRA 109; Evangelista vs. Deudor, 106 Phil. 170; J.M. Tuason & Co., Inc. vs. Register of Deeds of Quezon City and Aguila, 112 Phil. 922; Deudor vs. J.M. Tuason & Co., Inc. 112 Phil. 53; J.M. Tuason & Co., Inc. vs. Cadampog, L-18815, April 27, 1963, 7 SCRA 808; J.M. Tuason & Co., Inc. vs. Macalindong, L-15398, December 29, 1962, 6 SCRA 938; Abao vs. J.M. Tuason & Co., Inc., L-16796, January 30, 1962, 4 SCRA 119; Deudor vs. J.M. Tuason & Co., Inc., L-20105, October 31, 1963, 9 SCRA 444; Gonzales vs. J.M. Tuason & Co., Inc., L-21692, December 29, 1965, 15 SCRA 644; J.M. Tuason & Co., Inc., vs. Sanvictores, L-16836, January 30, 1962, 4 SCRA 123; J.M. Tuason & Co., Inc., vs. Magdangal, L-15539, January 30, 1962, 4 SCRA 84; J.M. Tuason & Co., Inc., vs. De Leon, L-16669, January 31, 1962, 4 SCRA 276; De Jesus vs. J.M. Tuason & Co., Inc., L-22184, October 20, 1966, 18 SCRA 403; J.M. Tuason & Co., Inc., vs. Rafor, L-15537, June 30, 1962, 5 SCRA 478, J.M. Tuason & Co., Inc. vs. De la Rosa, L-21904, October 29, 1966, 18 SCRA 591; Ruiz vs. J.M. Tuason & Co., Inc., L-18692, January 31, 1963, 7 SCRA 202; J.M. Tuason & Co., Inc. vs. Tongol, L-21877, February 28, 1966, 16 SCRA 331; Torres vs. J.M. Tuason & Co., Inc., L-19668, October 22, 1964, 12 SCRA 174, See also Vda. de Garcia vs. Caluag, CA-G.R. No. 29520-R, August 17, 1961, eleven cases, including Estabillo vs. Caluag, CA-G.R. No. 27399-R.)

The antecedents of the appeal are as follows:

On August 16, 1958, J.M. Tuason & Co., Inc., (J.M. Tuason for short) filed against Estabillo in the Court of First Instance of Quezon City a complaint for forcible entry in order to eject him from the lot in question on the theory that he had occupied the lot through force, strategy and stealth.

The summons for Estabillo was served on October 20, 1958 on Roger Monteverde, his nephew who was residing

with him and whom Rosauo P. Villamayor, the special sheriff, identified as a person of sufficient discretion to accept service. Monteverde signed at the bottom of the original summons.

Estabillo did not answer the complaint within the reglementary period. The trial court, upon plaintiff's motion, declared him in default in its order of November 22, 1958.

J.M. Tuason presented its evidence *ex parte*. In a decision dated December 2, 1958 the lower court ordered Estabillo to vacate the lot in question, to remove his house therefrom and to pay J.M. Tuason the sum of thirty pesos a month "from the date of usurpation" until J.M. Tuason is restored to the possession of the lot.

In an order dated February 14, 1959 the lower court granted J.M. Tuason's motion for a writ of execution. The writ was issued on March 19, 1959.

On May 9, 1959 Estabillo appeared in the case through counsel. He filed a motion to declare void all the proceedings in the case on the ground that he had not been properly summoned and that the appointment of Villamayor as special sheriff was void. J.M. Tuason opposed the motion. It was not resolved by the lower court.

The writ of execution was served on Mrs. Adelfa Estabillo by Elias T. Marfil, a deputy sheriff. In view of Estabillo's failure to vacate the lot, J.M. Tuason in a motion dated August 21, 1959 asked the lower court to issue an alias writ of execution and a special order of demolition.

On November 6, 1959, Estabillo opposed the motion on the ground that the case had become moot due to the decision in *Evangelista vs. Deudor*, 106 Phil. 170 wherein the compromise agreement regarding the rights of the Deudor family over the Tatalon estate was judicially recognized. He also asked that the order of default be lifted.

On November 14, 1959 the lower court ordered the sheriff to demolish Estabillo's house, if necessary, on January 5, 1960.

On November 25, 1959 Estabillo filed an *ex parte* motion to declare void all the proceedings in the case on the ground that the ejectment action contravened the aforementioned compromise agreement which supposedly authorized the filing of ejectment actions against squatters and not against purchasers of lots from the Deudor family. Estabillo also filed a motion to restrain the execution of the judgment. J.M. Tuason opposed both motions. Estabillo on December 12, 1959 reiterated his motion in an *ex parte* pleading for relief from judgment. J.M. Tuason opposed the motion.

On January 18, 1960 Estabillo filed an *ex parte* motion for the suspension of the order of demolition. The court set it for hearing. The next day it denied the motion on the ground that the default judgment against Estabillo had long become final.

About twenty-one months later, or on October 23, 1961, J.M. Tuason filed a motion for the enforcement of the order of demolition. It was alleged in the motion that the Court of Appeals in CA-G.R. No. 27399-R rendered a decision on August 17, 1961 wherein it was held that the buyers of lots in the Tatalon Estate, who were included in the list, Annex B of the compromise agreement, and who had signified their intention to buy the lots, could not be ejected, whereas, the ejectment suits against those who were not included in Annex B could not be enjoined. J.M. Tuason alleged that Estabillo was not included in Annex B. Hence, the order for the demolition of his house could be executed.

Estabillo opposed the motion on the ground that in *J.M. Tuason & Co., Inc. vs. Court of Appeals*, 113 Phil. 673 (2 cases), there was allegedly an understanding that during the pendency of those cases no demolition orders would be executed in Barrio Tatalon. J.M. Tuason denied the alleged understanding.

The lower court in its order of December 5, 1961 ordered the sheriff to enforce the order of demolition. It was not

enforced.

On May 1, 1962 Estabillo, by way of revival of his unresolved motion of May 9, 1959, filed a motion to lift the special order of demolition on the ground that the lower court had no jurisdiction over the case because the summons was served by Villamayor who was not authorized to serve summons. Estabillo invoked the additional ground that J.M. Tuason had supposedly ceased to have any interest in the case because it had sold its rights over the lot in litigation to Jose Cua who had assumed the obligation of recovering its possession from the adverse claimants.

J.M. Tuason, in its opposition, contended that Estabillo's motion should be denied because the Court of Appeals in the case of Estabillo vs. Caluag, CA-R.R. No. 27399-R, August 17, 1961, had upheld the decision ejecting Estabillo. The lower court denied Estabillo's motion.

Estabillo moved for the reconsideration of the order of denial. J.M. Tuason opposed his motion. While that motion was pending, Estabillo on June 27, 1962 filed a motion for the suspension of the proceedings. He invoked Republic Act No. 3453, amending Republic Act No. 2616, which suspended ejectment proceedings against occupants of the Tatalon Estate.

J.M. Tuason opposed the motion for suspension. It assailed the constitutionality of Republic Act No. 3453. It cited the ruling in J.M. Tuason & Co., Inc. vs. Court of Appeals, 113 Phil. 673, 683, that the mere filing of the proceeding for the expropriation of the Tatalon Estate, without depositing the value thereof or without the coetaneous payment of just compensation, did not preclude J.M. Tuason from enforcing final judgment in eviction suits. (Compare with Tuason vs. De Asis, 107 Phil. 131. See J.M. Tuason & Co., Inc. vs. Cabildo, L-17168, October 31, 1962, 6 SCRA 477).

The lower court, in its order dated August 14, 1962, denied the motion for suspension of the order of demolition.

During the one and a half month period following the issuance of that order, the demolition was not carried out. On October 1, 1962 the Estabillo spouses filed a motion to declare as moot and unenforceable the writ of execution and order of demolition on the ground that J.M. Tuason had sold to Jose Cua the lot in litigation as shown in a contract to sell dated May 16, 1960 and that the buyer had assumed the obligation of recovering the lot from the adverse claimants. (Note that the same point was raised in Estabillo's motion of May 1, 1962).

J.M. Tuason opposed the motion. It averred that the ownership of the lot had not yet been transferred to Cua and that it was optional upon J.M. Tuason to proceed or not to proceed with the order of demolition. The lower court denied the motion in open court on October 13, 1962 and in a confirmatory written order dated October 18, 1962.

On October 15, 1962 Estabillo filed a notice of appeal, stating that he was appealing from the order given in open court, denying his motion to declare moot the writ of execution and order of demolition. He prayed for a temporary restraining order.

On October 19, 1962 J.M. Tuason filed an opposition to the motion for a restraining order. It also opposed the appeal on the ground that the order of denial was not appealable. It cited the rule that, ordinarily, an order of execution is not appealable.

Estabillo, in reply, cited the ruling that an order denying a motion for relief from judgment is appealable (Pfleider vs. Hodges, L-17683, September 26, 1962, 6 SCRA 25).

Cornelio Ruperto, Estabillo's lawyer, taking his cue from the ruling in the Pfleider case, realized that he should appeal from an order denying a petition for relief from judgment.

So, Ruperto, notwithstanding that he had already filed a notice of appeal and appeal bond on October 15, 1962,

filed on October 31, 1962 a "motion for reconsideration and for relief from judgment" (on December 12, 1959 he had filed a motion for relief from judgment, 55-62 Record on Appeal) by repeating the grounds that the case had become academic due to the sale to Cua of the litigated lot and that the sheriff, who served the summons, had no authority to do so.

An affidavit of merits, which was sworn to by Ruperto rather than by Estabillo, was attached to the petition. What was recounted in that affidavit was that on February 15, 1957 or eighteen months before the ejectment suit was filed in this case, J.M. Tuason filed an undocketed petition in the Court of First Instance of Quezon City, praying for the appointment of Rosauo P. Villamayor, whom it had employed as investigator, to act as special sheriff of Quezon City for the purpose of serving the summons, order and other papers on the defendants in the numerous civil cases to be filed by it. J.M. Tuason cited as reasons for that petition the heavy workload of the sheriff's office of Quezon City and the difficulty in locating the addresses of the defendants whose houses were not properly numbered. It stated in the affidavit that on February 16, 1957 Judge Hermogenes Caluag appointed Villamayor as special sheriff (196-197 Record on Appeal. The petition and order are quoted in pages 6 to 10 of Estabillo's brief.)

Ruperto, as the counsel of Estabillo, and thirty-five other persons, filed a petition in the Court of First Instance of Quezon City on May 18, 1959 to cancel Villamayor's appointment. After hearing, the petition was dismissed by Judge Caluag on November 10, 1961 (Gueco vs. J.M. Tuason & Co., Inc., Civil Case No. Q-4369, Quezon City CFI). Ruperto did not appeal from the order of dismissal (197-198 Record on Appeal).

Ruperto, in his aforementioned affidavit of merits did not state whether Estabillo had a meritorious defense to the ejectment suit. He did not deny that Estabillo had received the summons which was served on his nephew. (Compare with J.M. Tuason & Co., Inc. vs. Fernandez, L-19556, October 30, 1964, 12 SCRA 235 where there was a sufficient affidavit of merits).

J.M. Tuason opposed Estabillo's belated motion for relief from judgment. It underscored that the motion was filed out of time or beyond the reglementary period fixed in section 3, Rule 38 of the Rules of Court. It defended the appointment of Villamayor as special sheriff. It stressed that it was still the owner of the disputed lot.

On November 17, 1962 the lower court denied Estabillo's petition for relief from judgment. He filed an amended notice of appeal dated November 23, 1962. As already noted at the beginning of this decision, he specified that he was appealing (a) from the order dated October 13, 1962, denying his motion to declare moot the writ of execution and order of demolition dated November 14, 1959 and (b) from the order dated November 17, 1962, denying his motion for relief from judgment.

In this appeal, Estabillo's overlapping and repetitious contentions are that the trial court erred (1) in entertaining J.M. Tuason's petition for the appointment of Villamayor as special sheriff in spite of the fact that no docketing fee was paid and the adverse parties were not served with copies thereof; (2) in declaring Estabillo in default and in rendering judgment although the court had no jurisdiction over him and over the subject matter of the action; (3) in not voiding all the proceedings in this case; (4) in not quashing the order of demolition; (5) in not dismissing the complaint; (6) in not granting relief from judgment and in not lifting the order of demolition; (7) in issuing an order to enforce the order of demolition; (8) in not granting Estabillo's motion to lift the order of demolition and in not declaring moot the writ of execution and (9) in not granting Estabillo's motion for reconsideration and relief from judgment.

It is not necessary to resolve all those contentions. The preliminary or threshold issue is whether Estabillo's appeal from the orders of October 13, 1962 and November 17, 1962 were warranted.

We are of the opinion that Estabillo's appeal from the order denying his motion to declare the writ of execution moot should be dismissed. That order was not appealable. Estabillo was in effect appealing from the writ of execution and order of demolition.

The rule is that a writ of execution is not appealable where there is no allegation that it has varied the tenor of the judgment. If it were appealable, then a case would never end for as often as an order of execution is issued, it would be appealed. (J.M. Tuason & Co., Inc. vs. Jaramillo, Versoza and De la Cruz, L-18932-4, L-19024-35 and L-19036-44, 24 cases, September 30, 1963, 9 SCRA 189; Manaois-Salonga vs. Natividad, 107 Phil. 268, 273; Molina vs. De la Riva, 8 Phil. 569; Castro vs. Surtida, 87 Phil. 166; Socco vs. Vda. de Leary, 63 O.G. 6841, SCRA 326).

It is noteworthy that in Estabillo vs. Caluag, 3 Court of Appeals Reports 31, Estabillo assailed by means of certiorari and prohibition the lower court's order of November 14, 1959, ordering the Sheriff of Quezon City to remove Estabillo's house and to demolish the same, if necessary, on January 5, 1960.

The Court of Appeals in its decision dated January 5, 1963 dismissed the petition on the ground that the order of demolition was not appealable. Not being appealable, the Court of Appeals could not issue the writs of certiorari and prohibition in aid of its appellate jurisdiction. It had no such jurisdiction.

In that same decision, the Appellate Court noted that Estabillo "was served with summons and a copy of the complaint" and that the validity of the service of summons made by Villamayor, as special sheriff, was contested by Estabillo in this Court in L-20331, which was an appeal of the Estabillo spouses in Civil Case No. 7142 of the Court of First Instance of Rizal, Pasig Branch, a case which they filed against Jose Cua, J.M. Tuason & Co., Inc., Judge Caluag and the Sheriff of Quezon City. The appeal was dismissed for failure of the Estabillo spouses to deposit the cost for printing their record on appeal.

Estabillo's appeal from the order denying his motion for relief from the judgment by default was unjustified because his motion was not filed on time. It was filed as an afterthought. He filed it after he had submitted his notice of appeal from the order denying his motion to declare moot the writ of execution and order of demolition. He was seeking relief from a judgment which was rendered nearly four years before he filed his petition for relief. His motion for relief was palpably frivolous and dilatory. In two similar ejectment cases, also involving lots in the Tatalon Estate, where the defendants appealed from an order, denying their petition for relief, this Court made the following observations which are applicable to the instant case:

"Since defendant has appealed directly to this Court, and it appears from the record as well as in the order of the court a quo that the motion for relief was filed beyond the reglementary period, or beyond the period of 60 days from the date counsel for defendant received a copy of the decision, there is, therefore, no plausible reason to disturb the order of the court a quo denying the motion for relief. The same is in accordance with Rule 38, Section 3, of our Rules of Court." (J.M. Tuason & Co., Inc. vs. Aguila, L-16757, November 29, 1963, 9 SCRA 537, 539. See J.M. Tuason & Co., Inc. vs. Register of Deeds and Aguila, 112 Phil. 922).

"We find no error in the denial of the petition for relief, because the record shows that appellant did not act with due diligence, and that he has no meritorious defense." (J.M. Tuason & Co., Inc. vs. Vibat, L-18884, May 29, 1963, 8 SCRA 54, 57. See Montalban vs. Maximo, L-22997, March 15, 1968, 22 SCRA 1070).

Estabillo's contention that Villamayor's appointment as special sheriff is void is not correct. The rule is that the summons may be served "for special reasons by any person especially authorized by the judge of the court issuing the summons" (Sec. 5, Rule 7, now Sec. 5, Rule 14, Rules of Court). Judge Caluag in his order declared as well-founded the reasons stated in the petition of J.M. Tuason praying for the appointment of Villamayor as special sheriff (196 Record on Appeal). The substituted service of summons on Estabillo which presumably was

followed in the other ejectment cases filed by J.M. Tuason against the other occupants of the Tatalon Estate, was effective (Sec. 8, Rule 14, Rules of Court. See *Montalban vs. Maximo*, supra).

What was irregular was Villamayor's failure to swear to the proof of service (Sec. 20, Rule 7, now Sec. 20, Rule 14, Rules of Court; *Sequito vs. Letrondo*, 105 Phil. 1139, 1140). But that irregularity, if it vitiated the lower court's jurisdiction over Estabillo's person, was waived by him when he filed motions to lift the order of default and for relief from judgment (31, 55, Record on Appeal).

The filing of those motions was tantamount to a voluntary appearance within the meaning of section 23, Rule 14 of the Rules of Court (See *Ocampo vs. Mina*, 41 Phil. 308; *Tenchavez vs. Escano*, L-19671, July 26, 1966, 17 SCRA 674; *Sunga vs. Lacson*, L-26055, April 29, 1968, 23 SCRA 393; *Republic vs. Ker & Co.*, L-21609, September 29, 1966, 18 SCRA 207, 214; *Ramos vs. Manalac and Lopez*, 89 Phil. 270, 274; *Aguilos vs. Sepulveda*, L-29312, October 19, 1973, 53 SCRA 269, 274).

The trial court did not err in denying defendant-appellant Estabillo's motions for relief from judgment and to declare moot the writ of execution and order of demolition. Accordingly, the orders under appeal are affirmed with costs against appellant.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Fernandez, JJ., concur.

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