

MAXIMA ROSALES, COMPLAINANT, VS. JUDGE FRANCISCO R. LLAMAS OF CITY COURT, BRANCH IV, PASAY CITY, RESPONDENT.*A.M. No. 672-CJ. June 30, 1976*

Ponente: FERNANDO, J.

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A losing party is ever apt to entertain suspicions, whether well-founded or not, as to the impartiality of an arbiter. That seems to be a plausible explanation for this administrative complaint against respondent City Judge Francisco R. Llamas, who was accused of misconduct predicated on what was alleged to be a premature issuance of a writ of execution. It was contended by complainant Maxima Rosales that had there been no favoritism, and if time and attention were devoted to the case at hand, he would not have acted the way he did. Respondent Judge, in his answer, reviewed the proceedings in the case entitled *Adelaida Vda. de Reyes v. Maxima Rosales*. A copy of the disputed decision was likewise therein attached. It was pointed out by him that it was rendered on July 31, 1973, and that on August 18, 1973 he granted a motion for execution by issuing the questioned writ. The ejectment case arose from a complaint for ejectment, dated May 9, 1973, instituted against complainant Maxima Rosales. It was set for hearing on May 30, 1973, but in view of the failure of plaintiff or counsel to appear, it was dismissed on May 30, 1973. There was, on the next day, a motion for reconsideration by plaintiff *Adelaida Vda. de Reyes*. It was granted and the case was reset for hearing on June 19, 1973.

There was a postponement to July 12, 1973, on which date plaintiff submitted her evidence. Complainant Rosales as defendant was given up to July 30, 1973 for the presentation of her evidence. She appeared on that date without counsel. Nor was there any motion for postpone-ment. The case was thus considered submitted for decision, rendered the next day. As set forth in such decision: "Accordingly, on July 30, 1973, at 2:00 o'clock in the afternoon, when this case was called for the continuation of hearing, only the defendant Maxima Rosales appeared while her counsel, Atty. Julio B. Pequet, notwithstanding proper notice and admonition by this Court, failed to appear. Neither was there a motion for continuance filed by said counsel, in view of which counsel for the plaintiff moved that if defendant cannot present any evidence and in fact has no witness in her behalf, then this case must be considered deemed submitted for decision. Defendant Maxima Rosales, when asked if she has in Court any witness or whether she is ready to present her own testimony and evidence, confessed that she does not have any witness and neither is she in a position to submit her evidence. Atty. Conrado Enriquez finally therefore moved to consider this case submitted for decision on the basis of the evidence on record and consequently, this Court, properly taking into account the summary nature of this action and the defendant's evident failure and inability to present any evidence, considered this case submitted for decision." [1] After a summary of plaintiff's evidence, came the dispositive portion of the decision: "[Wherefore,], judgment is hereby rendered in the above-entitled case in favor of the plaintiff, sentencing the defendant [Maxima-Rosales] and all persons claiming under her to vacate plaintiff's premises located at No. 2155 F. B. Harrison, Pasay City, and surrender peacefully its possession to the plaintiff, to pay to the plaintiff the rentals in arrears in the sum of [Three hundred (P300.00 pesos)] a month computed from May 30, 1972 until the premises is vacated and surrendered to the plaintiff, to also pay reasonable attorney's fees in the sum of [Four hundred P400.00) pesos] and cost of suit." [2]

The answer submitted by respondent Judge then alleged: "j) On August 15, 1973, plaintiff's counsel filed a motion for immediate execution under the pertinent provisions of the Rules of Court: pertinently, on August 18, 1973, the Court granted the motion for execution and issued the writ of execution pleaded: k) On August 20, 1973, Atty. Julio Pequet filed an urgent motion to recall order of execution on the ground that judgment hereof not having become final in fact, only 11 days had elapsed the issuance of execution is premature; * * * 1) On August 20, 1973, defendant through counsel filed a motion for recon-sideration of the decision hereof, * * * and accordingly on August 24, 1973, the Court denied the motion for reconsideration; m) On August 27, 1973, defendant interposed her notice of appeal and accordingly on the same date, the Court, acting on said notice of appeal, approved the same and transmitted the complete records of this case to the Court of First Instance of Rizal, on appeal." [3] Its concluding paragraph reads: "May it be further submitted that up to this date and by reason of the appeal, there has not been any return of the execution or non-execution of the writ of execution issued hereunder and neither has there been a decision by the appellate court, Court of First Instance of Rizal on the appeal interposed by the defendant." [4]

That is all that the record reveals. No additional fact of consequence was brought to the attention of this Court. Clearly then, there was insufficient evidence for any disciplinary action. As was recently held in *Bartolome v. de Borja*: [5] "Proceedings of this character, according to *In re Horrilleno*, as set forth in the opinion of Justice Malcolm, are 'in their nature highly penal in character and to be governed by the rules of law applicable to criminal cases. The charges must, therefore, be proved beyond a reasonable doubt.' That 1922 decision has been subsequently adhered to. It is quite obvious then, why as set forth at the outset, complainants must fail." [6] Even on the assumption then that there was a misinterpretation of Section 8 of Rule 70, which provides for the immediate execution of judgment against a defendant in ejectment cases unless an appeal has been perfected, still a finding of misconduct is far from warranted. This excerpt from *Dizon v. De Borja*, [7] in the opinion of the then Justice, subsequently Chief Justice, Makalintal, now retired, is relevant: "To hold a judge administratively accountable for every erroneous ruling or decision he renders, assuming that he has erred, would be nothing short of harassment and would make his position unbearable." [8]

WHEREFORE this administrative complaint against respondent Judge Francisco R. Llamas is dismissed for lack of merit. Let a copy of this decision be entered on his record.

Barredo, Antonio, and Martin, JJ., concur.

Aquino, J., concurs in the result.

Concepcion, Jr., J., on leave.

[1] Decision, Annex B to Answer, 4-5.

[2] *Ibid*, 6-7.

[3] Answer, 2.

[4] *Ibid*.

[5] Adm. Matter No. 1096-CFI, May 31, 1976.

[6] *Ibid*. In *re Horrilleno* is reported in 43 Phil. 212 (1922). The cases cited follow: *Enriquez v. Araula*, Adm. Case No. 270-J, Dec. 18, 1973, 54 SCRA 232; *Tombo v. Medina*, Adm. Case No. 929, Jan. 17, 1974, 55 SCRA 13; *Lampauog v. Villarojo*, Adm. Matter No. 381-MJ, Jan. 28, 1974, 55 SCRA 304.

[7] Adm. Case No. 163-J, January 28, 1971, 37 SCRA 46.

[8] Ibid, 52.

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