

HONORIA LAO AND PRIMITIVO LAO, PETITIONERS, VS. HON. JUDGE EULOGIO MENCIAS, OF THE COURT OF FIRST INSTANCE OF RIZAL, AND LINO VICTORINO, LETICIA PIKE, FRANCISCA VDA. DE PIKE, NO...

G.R. No. L-23554. November 25, 1967

Ponente: FERNANDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/ae885c758ab5/>

FERNANDO, J.:

In this petition for certiorari, the issuance of a writ of execution pending appeal, primarily on the allegation that the motion on which it was based "was not sworn to and no affidavit was attached to substantiate the factual allegations" contained therein, is sought to be quashed and set aside on the ground that respondent Court acted with grave abuse of discretion.

In the petition dated September 18, 1964, it was alleged and admitted that petitioners were defendants in a complaint for rescission of contract and damages with attachment filed with the respondent Judge, the Hon. Eulogio Mencias, the other respondents namely, Lino Victorino, Leticia Pike, Francisca Vda. de Pike, Norma Pike, Agatona Natividad and Felisa Lakambakal, being the plaintiffs, the complaint being filed on May 4, 1963, and the answer on August 10, 1963.[1] It was then alleged that on February 28, 1964, respondent Judge conducted a hearing without sending the notice of hearing to the counsel of defendants then, now petitioners, who were thus deprived of their day in court.[2] The answer of respondents dated October 16, 1964 denied the truth of the above assertion with allegation that respondent Judge did not hear the case on February 28, 1964, until after he was informed by a deputy clerk that notice of such trial to petitioners were sent as early as October 15, 1963. Parenthetically it may be observed that this issue, the pertinence of which is not so apparent in this petition for certiorari being more connected with the case on the merits, apparently has been abandoned in the memorandum of petitioners dated January 25, 1965, as noted by respondents in their reply memorandum of February 8, 1965.

The petition for certiorari went on to state that the decision was rendered by respondent Judge on March 5, 1964, that petitioners as defendants filed a motion to set aside and for new trial dated March 9, 1964, and that on July 21, 1964, the other respondents, plaintiffs in that case, filed an unverified motion for issuance of a writ of execution before the decision was final and executory.[3] The above paragraphs are admitted by respondents with the modification that an opposition to petitioners' motion to set aside decision and for new trial was filed and that their motion for writ of execution which was set for hearing on August 8, 1964 was not opposed by counsel for petitioners.

The contention as to why the writ of execution was improvidently issued is based primarily on the ground that "the motion for execution was not sworn to and no affidavit was attached to substantiate the factual allegations therein contained." Nor "was any evidence presented by the movants during the hearing of said motion conducted by the respondent court." It was further argued that it "failed to state good and adequate reasons to justify the issuance of the writ prayed for; that no evidence was introduced in support of the factual allegations of said

motion; that a writ of execution would disturb the status quo and cause irreparable damage and injury to the petitioner." [4]

The denial of the above allegation by respondents was predicated on the provision of Rule 39 of the Rules of Court which "does not require that a motion for writ of execution pending appeal should be under oath much less supported by any affidavit." It would suffice, according to respondents that there be "good and special reasons for the issuance of a writ of execution which was done in the instant case on the basis of the very evidence presented and submitted by [them] which became the basis of the decision * * *." [5]

On September 28, 1964, this Court gave due course to the petition for certiorari and issued a writ of preliminary injunction.

The motion for the issuance of a writ of execution filed by the other respondents with the respondent Judge stated the following: "That a Decision was rendered by this Honorable Court in the above-entitled case dated March 5, 1964 against [petitioners as] defendants in favor of [the other respondents as] plaintiffs; that [petitioners as] defendants filed a 'Motion To Set Aside Decision And For New Trial' dated March 9, 1964 but the same was denied by this Honorable Court; that the property in question owned by [petitioners as] defendants was encumbered and the obligations thereof have not been settled; that [petitioners as] defendants have been exhausting for their personal use all the monthly installments being received by them from the sales of the different lots of the Fatima Subdivision in question and they have not constructed therein the improvements required by law like the construction of roads, gutters, * * *; that the said [petitioners as] defendants do not appear to have any other properties or assets to answer not only for the aforementioned obligations but more particularly for the obligations imposed upon them by the aforesaid Decision of this Honorable Court in favor of [respondents as] plaintiffs and that [they] will be deprived of the right to collect the amounts due to them if this case will drag for several years by the appeal of [petitioners as] defendants to the superior courts for by that time all [their] remaining assets with the said subdivision would have been completely exhausted; that by virtue of the foregoing special reasons although the period for appeal of the aforementioned decision has not yet expired yet this Honorable Court may issue a writ of execution pending appeal pursuant to Sec. 2, Rule 39 of the Rules of Court; that a writ of execution is necessary to be issued as soon as possible so that the remaining rights of [petitioners as] defendants to the Fatima Subdivision in question may be accordingly levied upon by the [other respondents as] plaintiffs to answer for their obligations * * * pursuant to the aforesaid decision, which obligations represented payments made to [petitioners as] defendants for several lots which the [other respondents as] plaintiffs purchased from them from the above-described subdivision." [6] The prayer was for a writ of execution to be issued pursuant to Section 2 of Rule 39 to enforce the decision of March 5, 1964 pending its appeal.

As noted in the answer of respondents, the aforesaid motion for writ of execution "was not objected to or opposed by the defendants therein, who are now the petitioners * * *." Moreover, it was likewise asserted in such answer that petitioners "did not file in the lower court any motion for the reconsideration of the Order of Execution * * *." There was no denial of such an assertion by petitioners. It should not be lost sight of either, that neither in the petition nor in the memorandum of petitioners is there any showing that the facts alleged in the motion for execution were lacking in truth. The record is barren of any attempt to refute the allegations therein contained.

Instead, the main thrust of petitioners' attack is centered on the fact that the motion for the issuance of the writ of execution filed by the other respondents was "unverified." There is no such requirement under the Rules of Court. A motion of the prevailing party with notice to the adverse party allows the Court to "order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order." [7] According to the late Chief Justice Moran, "in order that discretionary execution may issue before the expiration of the time

to appeal the following three circumstances must be present: (a) there must be a motion by the prevailing party with notice to the adverse party; (b) there must be good reasons for issuing execution and (c) that the good reasons be stated in a special order."^[8]

All such requisites being present, this petition must fail. That the action of respondent Judge could not correctly be characterized as a grave abuse of discretion is obvious as it finds direct support in the applicable legal provision. What he did was in accordance with procedural principles. *Astraquillo v. Javier*,^[9] is not without relevance. As stated in the opinion of this Court, thru Justice J. B. L. Reyes. "It is not disputed that respondents Javier filed their motion for execution pending appeal in the trial court before petitioners Astraquillos perfected their appeal, and averred the insol-vency of the latter as the special and good reason for such execution specifying and citing the facts appearing in the records of the case upon which such claim is based. Respondent trial judge, in granting the motion, seemed to have been satisfied that the evidence already submitted did warrant such execution pending appeal. This finding was confirmed by the Court of Appeals in its disputed resolution." From which inevitably flowed the conclusion. "Under the circum-s-tances prevailing in the case at bar, we are constrained not to disturb the disputed ruling of the Court of Appeals."

At the very least then, it could likewise be well and truly said that this Court is "constrained not to disturb" the challenged actuation of respondent Judge in granting the motion for the issuance of an execution pending appeal. There may be cases where undoubtedly such a discretion vested in the lower court must be interfered with. This is not one of them. To repeat, the petition must fail.

WHEREFORE, this petition for certiorari is denied and the preliminary injunction dissolved. With costs against petitioners.

Dizon, Acting C.J., Makalintal, Bengzon, Zaldivar, Sanchez, Castro and Angeles JJ., concur.
Concepcion, C.J., and Reyes J.B.L., J., are on official leave.

[1] Pars. 1 to 4, Petition.

[2] Pars. 5 and 6, Petition.

[3] Pars. 7, 8 and 9, Petition.

[4] Par. 10, Petition.

[5] Par. 5, Answer.

[6] Pars. 1 to 7, Motion for Issuance of Writ of Execution.

[7] Section 2, Rule 39.

[8] II Moran, Comments on the Rules of Court, 1963 ed., at p. 238.

[9] L-20034, January 30, 1965.

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.