

**MARIBETH CORDOVA AND CHRISTOPHER CORDOVA,
COMPLAINANTS, VS. HON. EMMA C. LABAYEN, PRESIDING JUDGE,
BRANCH 54, RTC, 6TH JUDICIAL REGION, BACOLOD CITY; HON.
BETHEL KATALBAS--MOSCA...**

A.M. No. RTJ-93-1033. October 10, 1995

Ponente: REGALADO, J.

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REGALADO, J.:

For consideration by the Court is the matter of the order we issued on November 23, 1994,[1] requiring Atty. Salvador T. Sabio, counsel for herein complainants, to show cause and explain why he should not be administratively dealt with for violation of Canon I, Rules 1.02 and 1.03 of the Code of Professional Responsibility.

Acting on the Memorandum of the Office of the Court Administrator and the Compliance[2] filed by Atty. Sabio, the Court issued a Resolution on May 30, 1995,[3] further referring the matter to the Bar Confidant for evaluation, report and recommendation. On July 7, 1995, the latter submitted a Report and Recommendation[4] finding Atty. Sabio guilty of violating Rules 1.02 and 1.03 of Canon I, which the Court hereby approves with modifications.

The present incident is an offshoot of an administrative complaint[5] filed by complainants Maribeth and Christopher Cordova, through their aforesaid counsel, Atty. Sabio, against herein respondents for disbarment, dismissal from office and disqualification to hold public office with forfeiture of employment benefits for their involvement in Civil Case No. 7092 of the Regional Trial Court, Branch 54, Bacolod City. The administrative complaint, however, was dismissed by this Court on the basis of a Memorandum Report[6] dated October 17, 1994 submitted by Deputy Court Administrator Bernardo P. Abesamis, who likewise recommended that Atty. Sabio be required to explain why he should not be administratively dealt with for violation of Canon I, Rules 1.02 and 1.03 on the ground that:

"Their charge that Atty. Salvador T. Sabio 'clearly instigated' the filing of this complaint is also not totally baseless.

In her comment, Judge Moscardon stated that 'x x x the original counsel on record unquestionably accepted the Decision of the appellate RTC court (sic). On the other hand, the petitioners now, as well as their present counsel who are not fully conversant (with) the circumstances surrounding the matter, now attempt to mislead the High Court x x x.' Also worth mentioning were the allegations that (1) the respondent sheriffs were criminally charged for robbery, grave threats and malicious mischief; (2) that the plaintiffs re-occupied the premises after being ejected therefrom; (3) Atty. Sabio had been charged for crimes involving dishonesty.

The foregoing points to the possible violations of the Code of Professional Ethics, particularly Canon I, Rule 1.02 (A lawyer shall not counsel or abet activities aimed at defiance of the law x x x) and Rule 1.03 (A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause)."

The main bulk of Atty. Sabio's contentions were premised on the issue of whether the writs of execution were

issued and implemented by herein respondents in gross violation of Sections 8 and 10, Rule 70 of the Rules of Court, with manifest partiality and breach of judicial trust, and with grave abuse of discretion in excess of jurisdiction. In his Compliance, Atty. Sabio asserts that the writ of execution was issued pending appeal despite the filing of a supersedeas bond and the payment of advance rentals. A review of the complaint, comment and answer filed in this case will readily show that the writs in question were issued strictly in accordance with Sections 8 and 10, Rule 70 of the Rules of Court which provide:

"SEC. 8. Immediate execution of judgment. How to stay same. - If judgment is rendered against the defendant, execution shall issue immediately, unless an appeal has been perfected and the defendant to stay execution files a sufficient bond, approved by the municipal or city court and executed to the plaintiff to enter the action in the Court of First Instance and to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as found by the judgment of the municipal or city court to exist. In the absence of a contract, he shall deposit with the court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment, on or before the tenth day of each succeeding month or period. The supersedeas bond shall be transmitted by the municipal or city court, with the other papers, to the clerk of the Court of First Instance to which the action is appealed."

x x x x x x x x

"SEC. 10. Stay of execution on appeal to Court of Appeals or Supreme Court. - Where defendant appeals from a judgment of the Court of First Instance, execution of said judgment, with respect to the restoration of possession, shall not be stayed unless the appellant deposits the same amounts and within the periods referred to in Section 8 of this rule to be disposed of in the same manner as therein provided."

The records of this administrative matter show that in an action for ejectment filed against the predecessor in interest of herein complainants,[7] judgment was rendered on April 14, 1992 by the Municipal Trial Court, Branch 6, Bacolod City, in Civil Case No. 18761, ordering defendants to vacate the premises and to pay plaintiffs therein the sum of P5,000.00 as attorney's fees plus P1,200.00 appearance fee, P18,000.00 for rentals from May, 1991 to April, 1992, and costs of suit. On August 20, 1992, the Regional Trial Court affirmed said judgment after finding that there was no cogent reason to reverse the lower court's decision.

A Motion for Writ of Execution Pending Appeal was filed by plaintiffs on September 4, 1995, to which an Opposition and Motion for Reconsideration was filed by defendants on September 10, 1992. The Regional Trial Court granted the motion on September 28, 1992 and the writ of execution was issued on September 30, 1992. However, in the afternoon of September 29, 1992, plaintiffs filed a Motion for Reconsideration of the order of September 28, 1992 granting the motion for execution, on the ground that they could not file the supersedeas bond because the court allegedly failed to apprise them of the amount thereof and, at the same time, attaching to said motion a bond in the amount of P18,000.00. The motion for reconsideration was denied by the Regional Trial Court on October 1, 1992, as a consequence of which the writ of execution previously issued was implemented on October 8, 1992 and plaintiffs were ordered restored to the possession of the subject premises.

Therein defendant Luz Cordova went to the Court of Appeals on a petition for certiorari with injunction but was rebuffed therein. In a decision promulgated on March 31, 1993 in CA-G.R. SP No. 29102, said appellate court affirmed in toto the decision of the Regional Trial Court. As a result, the lower court granted on April 21, 1993 the Motion for Alias Writ of Execution filed by plaintiffs and ordered the release of the amounts of P12,000.00 and P18,000.00 deposited by therein defendants. An alias writ of execution was subsequently issued on April 26, 1993.

The administrative complaint now filed before us by herein complainants, as heirs and successors in interest of the late Luz Cordova, revolves around the validity of the writ of execution issued by Judge Moscardon and the alias writ of execution issued by Judge Labayen.

1. The writ of execution issued on September 30, 1992 by Judge Moscardon is being controverted on the ground that a supersedeas bond had been validly filed in this case and periodic rentals had been paid, hence said supposed compliance with the Rules of Court should have legally stayed execution pending appeal.

Sections 8 and 10 of Rule 70 clearly provide that to stay the immediate execution of judgment in ejectment proceedings, it is necessary that the defendant-appellant must (a) perfect his appeal, (b) file a supersedeas bond, and (c) periodically deposit the rentals falling due during the pendency of the appeal.

The purpose of the supersedeas bond is to answer for the rents, damages and costs accruing down to the judgment of the inferior court appealed from, the amount of which is to be determined from the judgment of said court. The postulation of complainants and their counsel that the execution sought was effectively stayed by the filing of a supersedeas bond was sufficiently refuted and justifiably rejected when we consider the circumstances then obtaining.

First. The amount of the supersedeas bond to be posted is easily discernible from the dispositive portion of the judgment of the municipal trial court. Hence, it was erroneous, if not altogether a deliberate falsity, for Atty. Sabio to claim that they could not file a supersedeas bond because that court failed to determine the same.

Second. The bond should have been filed forthwith after the municipal trial court had rendered judgment against complainants, which judgment was immediately executory, without prejudice to the right of appeal. As the records readily reveal, the purported bond was belatedly filed on September 29, 1992, more than five months later, and only after the aforementioned Regional Trial Court had already issued an order granting the motion for execution pending appeal. We cannot, therefore, elude the impression thus created that the filing thereof came only as a dilatory afterthought on the part of defendants and their counsel. In a vain attempt to remedy the situation, Atty. Sabio filed a motion for reconsideration of the order granting execution, but the same necessarily had to fail for being frivolous.

Third. It will be observed that no supersedeas bond was filed after the rendition of the decision either in the court of origin or in the appellate court. The requirement for the filing of a supersedeas bond is mandatory.[8] Defendants in the ejectment case appealed to the latter court without filing a supersedeas bond. Such failure is a ground for outright execution of the judgment of the municipal trial court, the duty of the appellate court to order the execution of the appealed decision being thereby ministerial and imperative.[9]

Fourth. The Court of Appeals stated that the amount of P18,000.00 deposited by defendants therein represented rental payments for the period from May, 1991 to April, 1992, and that a writ of execution had by then already been issued by the Regional Trial Court. Evidently, therefore, the amount thus deposited could not qualify as or subserve the purpose of a supersedeas bond. Thus:

"Finally, anent the prayer for injunction, petitioner contends that she had deposited with the public respondent court the amount of P18,000.00 representing the money judgment, to stay execution pending appeal. The court noted that the said amount represented the rental payments only for the months from May 1991 to April 1992. It is for this reason that this Court, in its Resolution dated October 9, 1992 (p. 60, Rollo), ordered petitioner to present proof of subsequent payments made pursuant to Sections 8 and 10 of Rule 70. It appears, however, that a Writ of Execution was already issued and even implemented (par. 5, Urgent Motion for Issuance of Temporary Restraining Order, pp. 98-99, Rollo; Delivery of Possession, p. 118, Rollo) that a preliminary injunction is thereby rendered nugatory x x x." [10]

While it is true, therefore, that defendants deposited an amount which approximates the monetary judgment for unpaid rentals, since the same was filed late, it could not qualify as a supersedeas bond. What is considered material for purposes of staying execution pending appeal under Rule 70 is not only the fact of payment but, more importantly, the timeliness of the filing of the supersedeas bond. Hence, the amount of P18,000.00 was correctly applied as mere rental payments from May, 1991 to April, 1992. On this ground alone, Judge Moscardon was perfectly justified in issuing the writ of execution and respondent sheriffs in implementing the same. Of these legal considerations, Atty. Sabio could not have been unaware.

The records, furthermore, do not sustain Atty. Sabio's representations with respect to the application of the P12,000.00 which complainants supposedly deposited with the court a quo. Atty. Sabio insists that said amount was intended to answer for monthly rentals falling due after the rendition of the decision of the Municipal Trial Court. This, however, runs contrary to the facts obtaining in this case. The decisions of the Municipal Trial Court and the Court of Appeals are silent on this point except for a statement found in the higher court's decision that "this Court, in its Resolution dated October 9, 1992, ordered petitioner to present proof of subsequent payments made." Also, in the order of Judge Moscardon dated October 1, 1992, she stated that "the record does not show that the defendants had likewise paid the periodical rentals." Also, in the complaint filed in this administrative matter, it is alleged that the defendant consigned the rentals from May, 1991 until April, 1992 in the amount of P12,000.00.

In view of these conflicting statements of complainants, plus the fact that there is not enough evidence on hand, we are prevented from making a specific determination thereon. Nevertheless, whether or not periodic rental payments were made during the pendency of the appeal no longer carries any weight in view of our earlier finding that execution could not be legally stayed by reason of the admittedly belated filing of the purported supersedeas bond.

Complainants further contend that the Regional Trial Court had no jurisdiction to issue the writ of execution allegedly because it should have forwarded the records of the case to the court of origin for proper implementation. The argument is specious. The Municipal Trial Court may issue execution immediately after judgment if no action was taken therefrom by defendants. But, after the perfection of the appeal, it is obvious that the jurisdiction over the controversy had passed to the Regional Trial Court, hence the motion for execution of the judgment was properly filed in and granted by the latter court.[11]

2. Anent the issue on the legality of the alias writ of execution issued by Judge Labayen, Atty. Sabio avers that the same is void for the reason that he was not furnished a copy of the order, dated April 21, 1993, which granted the motion for alias writ of execution. He further insists that the same was issued despite the fact that the decision of the Court of Appeals had not yet become final and executory since it was still pending review before the Supreme Court.

Under Section 10 of Rule 70, an appeal to the Court of Appeals or the Supreme Court shall likewise not be stayed unless the appellants deposit the amount of rent due from time to time. In the case at bar, no proof has been presented to show that the monthly rentals which fell due after the rendition of the trial court's decision had been duly paid. Assuming arguendo, as claimed by Atty. Sabio, that the P12,000.00 deposited with the Regional Trial Court should answer for said rentals, the same was not sufficient to cover rentals due during the entire pendency of the case before the Court of Appeals and the Supreme Court. At most, such amount could apply only to rental payments from May, 1992 to December, 1992. Of these facts, again, Atty. Sabio could not have been completely oblivious.

The Court of Appeals rendered its decision on March 31, 1993 and there is absolutely nothing in the records to

show that herein complainants made further payments aside from the P12,000.00 and P18,000.00 deposited with the Municipal Trial Court and the Regional Trial Court, respectively. In Addition, Atty. Sabio does not refute, and in fact it is admitted in paragraph 6 of the complaint filed in this administrative matter, that complainants reentered and remained in possession of the premises, and it appears that they continued to do so despite the prior implementation of the original writ of execution. Verily, this time for failure of complainants to make periodic deposits during the pendency of the appeal and their continued occupancy of the premises, the issuance of the alias writ of execution was a ministerial and mandatory duty of respondent judges.

Atty. Sabio likewise claims that execution could not issue because he was not served a copy of the order dated April 21, 1993[12] which granted the motion for alias writ of execution. He rationalizes that:

"x x x The fact is that, a copy of the Order dated April 21, 1993 was not furnished the defendant's counsel.

Truth to tell, this is exactly the ground why undersigned counsel filed his Urgent Motion to Lift Alias Writ of Execution, x x x.

It is therefore clear that the Alias Writ of Execution dated April 26, 1993 issued by the defendant Clerk of Court, Gia L. Aranday, was improperly issued, considering that the Order of the court granting the Motion for Issuance of Writ of Execution dated April 21, 1993 was not furnished the undersigned counsel, and, it is only through the resourcefulness of the undersigned of following-up this case that he came to know of the said Order dated April 21, 1993.

Undersigned counsel found himself in an embarrassing situation, when he was confronted by his clients that the Alias Writ of Execution dated April 26, 1993 was issued without his knowledge of the prior Court Order dated April 21, 1993.

It is in this respect, that undersigned honestly believed that he has a well grounded complaint against respondents Clerk of Court and process server for their negligent act." (Italics in the original text.)[13]

That bad faith attended the filing of this administrative charge was unwittingly disclosed by the aforequoted allegations of Atty. Sabio in his compliance. No ratiocination was proffered by him nor did he invoke any authority of law or jurisprudence, since decidedly there is none, to support his theory that execution should not issue where the adverse party is not served a copy of the order even where the grant thereof had become a matter of right. The inescapable conclusion, therefore, is that the filing of the present complaint was, at the very least, ill-conceived and malicious, and was resorted to as a last-ditch effort and a face-saving recourse of counsel.

It is worth noting that the administrative complaint was filed against herein respondents only after the Court of Appeals had rendered a decision in favor of plaintiffs. This in itself is already a clear indication that the acts of respondents are valid and legal. Yet, Atty. Sabio persisted in instituting these baseless charges against respondents to their proven prejudice.[14] As correctly observed by the Bar Confidant, under the given circumstances, it is apparent that complainants decided to institute the present case only on the advice and/or upon the urging of Atty. Sabio. It also bears stressing that respondent Judge Labayen even waited for the Court of Appeals' decision before acting on the motion for an alias writ of execution of plaintiffs, if only to obviate any imputation of bias or partiality.

We are fully convinced that, despite the misleading assertions of Atty. Sabio, the issuance of the writ of execution was done in the valid and judicious exercise of the functions and duties of respondent judges. We have carefully examined and analyzed the procedure adopted by respondents in the issuance and enforcement of the questioned writs. It would be the height of injustice were we to impose any sanction on them for complying faithfully with the procedural mandate of the rules governing the matter.

The Court would like to call attention again to the reprehensible propensity of disgruntled litigants, most especially their counsel, of filing totally baseless and unfounded charges against judges and court personnel in a vain attempt to escape the dire consequences of their own negligence or in an effort to transgress the lawful orders of the court. Judges and court personnel should be protected from unjust accusations of dissatisfied litigants, abetted by counsel who seek thereby to comouflage their shortcomings. Besides, it goes without saying that mere suspicion that a judge is partial to one of the parties to the case is not enough. There should be evidence to prove the charge,[15] which is obviously absent in the case at bar.

As an officer of the court, a lawyer has the sworn duty to assist in, not to impede or pervert, the administration of justice. The present administrative charge seeks to cast doubt on the integrity of respondent judges, the judicial personnel and the court which they represent, in flagrant abdication of the bounden responsibility of a lawyer to observe and maintain the respect due to courts of justice. Atty. Sabio thus deserves to be punished for instigating the filing of an administrative complaint by his clients, in the guise of upholding their rights but actually to frustrate the enforcement of lawful court orders and consequently obstruct the desirable norms and course of justice.

WHEREFORE, Atty. Salvador T. Sabio is hereby **SUSPENDED** from the practice of law for a period of **SIX (6) MONTHS**, effective upon his receipt of a copy of this decision. He is warned that a more severe sanction shall be imposed should he commit another administrative offense. Let copies hereof be attached to his record and served on the Bar Confidant, the Integrated Bar of the Philippines, and on all courts of the land.

SO ORDERED.

Narvasa, C.J., (Chairman), Puno, Mendoza, and Francisco, JJ., concur.

[1] Rollo, 96.

[2] Ibid., 100.

[3] Ibid., 123.

[4] Ibid., 126.

[5] Ibid., 1.

[6] Ibid., 91.

[7] Spouses Romeo and Marietta Laguardia vs. Luz Cordova and Rudy Kubchan, Civil Case No. 18761.

[8] Fuentes vs. Hon. Bautista, etc., et al., G.R. No. L-31351, October 26, 1975, 53 SCRA 420.

[9] Acibo, et al. vs. Macadaeg, et al., L-19701, June 30, 1964, 11 SCRA 446.

[10] Rollo, 63.

[11] Francisco, Rules of Court, Vol. IV-B, Part II, 1973 ed., 206.

[12] Respondents contend that, according to the record of the case in the lower court, his office refused to receive a copy thereof from the process server and that two notices thereof were also sent to him.

[13] Rollo, 105-106.

[14] Because of the filing of said administrative complaint, respondents were prevented from receiving their

mid-year and Christmas benefits as a consequence of which this Court was impelled, on the recommendation of the Office of the Court Administrator, to adopt new guidelines in the evaluation of administrative complaints and the effects thereof on the bene-fits and privileges of judges and court personnel, pursuant to its Resolution of May 30, 1995.

[15] People vs. Hon. Serrano, etc., et al., G.R. No. L-44712, October 28, 1991, 203 SCRA 171.

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