

**MERCEDES RUTH COBB-PEREZ AND DAMASO P. PEREZ,
PETITIONERS VS. HON. GREGORIO LANTIN, ETC., ET AL.,
RESPONDENTS.**

G.R. No. L-22320. July 29, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

This is a motion for partial reconsideration of this Court's decision of May 22, 1968, specifically directed against the following observation therein made:

"We feel compelled to observe that during the protracted litigation below, the petitioners resorted to a series of actions and petitions, at some stages alternately, abetted by their counsel, for the sole purpose of thwarting the execution of a simple money judgment which has long become final and executory. Some of the actions were filed, only to be abandoned or withdrawn. The petitioners and their counsel, far from viewing courts as sanctuaries for those who seek justice, have tried to use them to subvert the very ends of justice."

Corollarily, this Court assessed treble costs against the petitioners, to "be paid by their counsel."

The herein movants, Attys. Crispin D. Baizas and A.N. Bolinao, counsels for the petitioners, while submitting to the judgment on the merits, seek reconsideration of the decision in so far as it reflects adversely upon their "professional conduct" and condemns them to pay the treble costs adjudged against their clients.

At first blush, the motion for reconsideration presents a semblance of merit. After mature deliberation and patient reprobation into the records of the case, however, we are of the firmer conviction that the protracted litigation, alluded to in the above-quoted portion of our decision, was designed to cause delay, and the active participation of the petitioners' counsels in this adventure is patent.

After November 15, 1962 when the Court of Appeals rendered judgment sustaining Damaso Perez' position with respect to the extent of the levy, the subsequent proceedings interposed alternately by the petitioner spouses were obviously quixotic maneuvers expected to be overthrown by the courts but calculated to delay an execution long overdue.

Had the petitioners and their counsels seriously believed that the levied shares of stock were conjugal property, why did they not adopt this position from the very start, or, at the latest, in CA-G.R. 29962-R wherein Damaso Perez challenged the legality of the levy's coverage, in order to end the litigation with reasonable dispatch? They chose, however, to attack the execution in a piece-meal fashion, causing the postponement of the projected execution sale six times. More than eight years after the finality of the judgment have passed, and the same has yet to be satisfied.

In a determined effort to prolong the litigation, the Perez spouses, as represented by their counsels, sought the issuance of preliminary injunctions to restrain the execution of the final judgment in civil case 39407 from courts which did not have jurisdiction and which would, as expected, initially or ultimately deny their prayer. For

instance, after Damaso Perez bowed out temporarily from the scene following the rendition of the aforementioned Court of Appeals decision, his wife, Mercedes Ruth Cobb-Perez, intruded into the controversy and asked for an ex parte writ of preliminary injunction from the Court of First Instance of Rizal in connection with civil case 7532 which she filed with said court, knowing fully well that the basic civil case 39407 was decided by the Court of First Instance of Manila (Branch VII presided by the respondent Judge Lantin), which latter court was the proper forum for any action relative to the execution. Judge Eulogio Mencias of the Court of First Instance of Rizal, looking to *Acosta vs. Alvendia* (L-14598, October 31, 1960), which held that courts of first instance have no power to restrain acts outside their territorial jurisdictions, lifted on October 4, 1963 the exparte writ which he previously issued enjoining the respondent sheriff from carrying out the execution sale. It is clear, however, that Mrs. Perez and her counsels, the movants, knew or ought to have known beforehand that the Court of First Instance of Rizal did not have jurisdiction to issue the writ which Mrs. Perez herself sought, and anticipating the recall of the writ improvidently issued, on September 3, 1963, a month before the said writ was actually lifted, filed in the basic civil case 39407 an urgent motion to lift the writ of execution issued on August 15, 1961, alleging as justification the conjugal nature of the levied shares of stock and the personal nature of Damaso Perez' judgment debt, the very same reasons advanced in civil case 7532 which was then still pending in the Court of First Instance of Rizal. Incidentally, Mrs. Perez failed to adduce any evidence in support of her aforesaid urgent motion, as in fact neither she nor her counsels appeared during the scheduled hearing, prompting the respondent judge to issue the following order:

"When the urgent motion to recall or lift writ of execution was called this morning for hearing, counsel for the movant did not appear despite the fact that he had been duly notified of the motion for hearing. In view thereof the court assumes that he is waiving his right to present evidence in support of his urgent motion to recall or lift writ of execution. Said urgent motion is therefore deemed submitted for resolution."

Despite the recall of the aforementioned writ of injunction by Judge Mencias on a disclaimer of jurisdiction (since the execution sought to be enjoined was ordered by another tribunal), Mrs. Perez, now assisted by her husband who had staged a comeback, prayed for the issuance of another injunction, this time from Branch XXII of the Court of First Instance of Manila (not the same Branch which issued the controverted writ of execution), in connection with civil case 55292 filed on October 25, 1963, an action almost identical to civil case 7532, then still pending in the Court of First Instance of Rizal. As most probably anticipated anew by the Perez spouses and their counsels, Judge Alikpala, presiding judge of Branch XXII, on November 8, 1963 denied the preliminary injunction sought, on the ground, among others, that he had no power to interfere by injunction with the judgment or decree of a court of concurrent or coordinate jurisdiction. On the very day the injunction was denied, Damaso Perez, as if expecting the reversal from Judge Alikpala, was already prepared with another "remedy", as in fact on that day, November 8, 1963, he filed in the basic civil case 39407 an "Urgent Motion for Reconsideration" of the order of October 19, 1963, which denied his wife's above-mentioned motion to recall the controverted writ of execution.

The foregoing motion, far from seriously seeking the reconsideration of the order of October 19, 1963, which in the first place Damaso Perez could not legally do for he was not even a party to the denied "Urgent Motion to Recall Writ of Execution" (filed by his wife alone), was merely an offer to replace the levied stocks with supposed cash dividends due to the Perez spouses as stockholders in the Republic Bank.[1] As a matter of fact, when the motion was set for hearing on December 21, 1963, the counsels for Damaso Perez promised to produce the said cash dividends within five days, but the promise was never fulfilled.[2] Consequently, the respondent Judge on January 4, 1964, denied the said motion for reconsideration.

The above exposition of the circumstances relative to the protracted litigation clearly negates the avowal of the movants that "in none of the various incidents in the case at bar has any particular counsel of petitioners acted

with deliberate aforethought to delay the enforcement of the judgment in Civil Case No. 39407." From the chronology of antecedent events, the fact becomes inescapable that the Perez spouses, coached by their counsels, had sallied forth on a stratagem of "remedies" projected to foil the lawful execution of a simple money judgment. It is equally obvious that they foreshadowed their own reversals in the "remedies" they ventured to adopt, such that even before one remedy had been exhausted, they interposed another until the case reached this Court for the second time.[3] Meanwhile, justice was delayed, and more than one member of this Court are persuaded that justice was practically waylaid.

The movants also contend that even this Court sanctions the aforesaid civil cases 7532 and 55292 as the "proper remedy" when we said that

"In reality, what they attacked is not the writ of execution, the validity and regularity of which are unchallenged, but the levy made by the respondent Sheriff. In this regard, the remedy is not the recall of the writ, but an independent action to enjoin the Sheriff from proceeding with the projected sale, in which action the conjugal nature of the levied stocks should be established as a basis for the subsequent issuance of a permanent injunction, in the event of a successful claim. Incidentally, in the course of protracted litigation, the petitioners had already availed of this remedy in civil cases 7532 and 55292, only to abandon it as they incessantly sought other, and often simultaneous, devices of thwarting satisfaction of the judgment debt." (Italics supplied)

And because of this statement, they now counter that the said cases could not be branded as having been instituted for delay.

The reference we made to civil cases 7532 and 55292 in the above-quoted statement must not be considered out of context. We said that the petitioners incidentally had already availed of the suggested remedy only in the sense that said civil cases 7532 and 55292 were apparently instituted to prove the conjugal nature of the levied shares of stocks in question. We used the word incidentally advisedly to show that in their incessant search for devices to thwart the controverted execution, they accidentally stumbled on the suggested remedy. But the said civil cases were definitely not the "proper remedy" in so far as they sought the issuance of writs of preliminary injunction from the Court of First Instance of Rizal and the Court of First Instance of Manila (Branch XXII) where civil cases 7532 and 55292 were filed respectively, for the said courts did not have jurisdiction to restrain the enforcement of the writ of execution issued by the Court of First Instance of Manila (Branch VII) under the settled doctrines that courts are without power to restrain acts outside their territorial jurisdiction[4] or interfere with the judgment or decree of a court of concurrent or coordinate jurisdiction.[5] However, the recall and the denial of the writs of preliminary injunction in civil cases 7532 and 55292 did not amount to the termination of dismissal of the principal action in each case. Had the Perez spouses desired in earnest to continue with the said cases, they could have done so. But the fact is that Mrs. Perez practically abandoned civil case 7532 when she instituted the above-mentioned urgent motion to recall writ of execution in the basic civil case 39407, anchored on the same grounds which she advanced in the former case, until the said civil case 7532 was dismissed on November 9, 1963, upon her own motion. Anent civil case 55292, the Perez spouses virtually deserted the same when they instituted the herein petition for certiorari with urgent writ of preliminary injunction based on the same grounds proffered in the said civil case—until the latter was also dismissed on March 20, 1964, with the consent of the parties because of the pendency then of the aforesaid petition for certiorari.

The movants further contend that "If there was delay, it was because petitioners' counsel happened to be more assertive . . . a quality of the lawyers (which) is not to be condemned."

A counsel's assertiveness in espousing with candour and honesty his client's cause must be encouraged and is to be commended; what we do not and cannot countenance is a lawyer's insistence despite the patent futility of his

client's position, as in the case at bar.

It is the duty of a counsel to advise his client, ordinarily a layman to the intricacies and vagaries of the law, on the merit or lack of merit of his case. If he finds that his client's cause is defenseless, then it is his bounden duty to advise the latter to acquiesce and submit, rather than traverse the incontrovertible. A lawyer must resist the whims and caprices of his client, and temper his client's propensity to litigate. A lawyer's oath to uphold the cause of justice is superior to his duty to his client; its primacy is indisputable.

The movants finally state that the "Petitioners have several counsel in this case but the participation of each counsel was rather limited," implying that the decision of this Court ordering that "treble costs are assessed against the petitioners, which shall be paid by their counsel" is not clear. The word "counsel" may be either singular or plural in construction, so that when we said "counsel" we meant the counsels on record of the petitioners who were responsible for the inordinate delay in the execution of the final judgment in the basic civil case 39407, after the Court of Appeals had rendered its aforementioned decision of November 15, 1962. And it is on record that the movants are such counsels. Atty. Bolinao, upon his own admission, "entered his appearance in the case at bar about the time the Court of First Instance of Manila dismissed the petitioners' Petition for Relief in Civil Case No. 39407," or about August 3, 1961 and even prior to the Court of Appeals decision above mentioned. Atty. Baizas claims that he "became petitioners' counsel only in October, 1963 when he filed, with Atty. A.N. Bolinao, Jr. Civil Case No. 55292 before the Court of First Instance of Manila presided by the Hon. Judge Alikpala," although it appears on record that the urgent motion to recall writ of execution filed by Mrs. Perez in the basic civil case 39407 on September 3, 1963, was over the signature of one Ruby Zaida of the law firm of "Crispin Baizas & Associates" as counsel for Mrs. Perez. It is to be recalled that the said urgent motion is the same motion discussed above, which, curiously enough, antedated by at least one month the lifting of the writ of preliminary injunction issued in civil case 7532.

ACCORDINGLY, the motion for partial reconsideration is denied. Our decision of May 22, 1968 is hereby modified in the sense that Attys. Crispin D. Baizas and A.N. Bolinao, Jr. shall pay jointly and severally the treble costs assessed against the petitioners.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, and Angeles, JJ., concur.

Conception, C.J., voted to merely deny the motion for reconsideration.

Fernando, J., did not take part

Motion denied; decision modified.

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