

LILY MOCLES, COMPLAINANT, VS. JUDGE MABINI M. MARAVILLA, RESPONDENT.

Adm. Matter No. MTJ-93-873. December 14, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In a sworn letter-complaint dated 11 September 1993, the complainant, who was one of the defendants in Civil Case No. 2833-III of the Municipal Trial Court in Cities (MTCC) of General Santos City, charged the respondent, the presiding judge of Branch 3 thereof, with ignorance of law and bribery in that the respondent (a) issued a writ of execution with respect to the restoration of possession in the said case despite the fact that it was already on appeal with Branch 36 of the Regional Trial Court (RTC) of General Santos City, and (b) was rumored to have received P20,000.00 in connection with such execution.

In his comment, the respondent admits that although he issued the writ of execution after his court had lost jurisdiction over the case in view of the perfection of the appeal, he did so only in compliance with the order of the RTC directing his court to cause the execution of the judgment with respect to the restoration of possession. He states that there is no truth whatsoever to the unsubstantiated rumor that he received P20,000. He avers that since he assumed office in April 1972, he has not asked, demanded, or received any amount from any party in a case before his court.

He further alleges that Lily Mocles "is the complainant only in name," and that she is merely "the stooge of her counsel" who is the real complainant and who has an axe to grind against him. He contends that the complainant's counsel is guilty of forum shopping for also filing with the Office of the Deputy Ombudsman for Mindanao a complaint against him for the violation of Articles 206 and 210 of the Revised Penal Code in connection with the issuance of the writ of execution. The respondent then concludes that this complaint is a "wicked farcical and malicious imputation which pained him gravely, physically and mentally," and prays not only for its outright dismissal but also for appropriate action against the complainant and her counsel.

In her Reply-Affidavit, the complainant asserts that the respondent's admission of the issuance of the writ suggests "not only clear ignorance of law but deliberate and wanton misapplication of the law"; that her counsel, Atty. Rodolfo Ta-asan, a young practitioner from Davao City, is noted for his integrity in the legal profession; and that the charge that she is merely a stooge of her counsel is imaginary and gratuitous.

On 17 June 1994, this Court received from the respondent a copy of the resolution of the Office of the Deputy Ombudsman for Mindanao which dismissed the complaint filed by the complainant on the ground that the questioned writ of execution was regularly issued by the respondent pursuant to Section 8, Rule 70 of the Rules of Court and that the alleged receipt by the respondent of P20,000.00 was based on rumor and unsubstantiated by evidence.

After the issues had been joined, the Court required the parties to inform it if they were willing to submit this case for decision on the basis of the pleadings already filed. They expressed their willingness to do so in their separate

manifestations.

The uncontroverted facts as disclosed by the pleadings are as follows:

Civil Case No. 2833-III was decided by the MTCC of General Santos City (per respondent Judge) on 6 April 1993. The respondent judge rendered a decision ordering the defendants to, inter alia, "vacate and surrender their respective possession and occupation in the area in question to plaintiff including their respective improvements therein within 10 days from notice," and to each pay the amounts indicated therein as rentals in arrears as of 3 August 1992, and thereafter, from date of demand on 3 September 1992, the amount of P75.00 a month as rental until they vacate the premises.[1] A copy thereof was received by the complainant's counsel on 16 April 1993 and on 19 April 1993, the complainant filed a notice of appeal.[2]

In view of the appeal, the respondent issued on 30 April 1993 an order directing the branch clerk of court to transmit to the clerk of court of the RTC of General Santos City "a certified copy of the docket entries together with all the original papers and processes in the case." [3] This order was complied with and the appealed case was docketed in the RTC as Special Civil Case No. 364 and was assigned to Branch 36 thereof, presided over by Judge Apolinario F. Estoque.

On 17 May 1993, the plaintiff in Special Civil Case No. 364 filed with the RTC a motion for the issuance of a writ of execution [4] on the ground that the defendants had failed to file the supersedeas bond and to pay the adjudged monthly rentals and that, hence; pursuant to Section 8, Rule 70 of the Rules of Court, the judgment had become executory. The defendants opposed the motion [5] contending that only decisions of the RTC may be immediately executed pursuant to Section 21 of the Revised Rules on Summary Procedure of 1991 and that the motion did not comply with Sections 4 and 5, Rule 15 of the Rules of Court.

In his order of 11 August 1993 [6] in Special Civil Case No. 364, Judge Estoque found that the complainant and her co-defendants did not file any supersedeas bond and did not pay the adjudged monthly rentals and held that pursuant to Section 8 of Rule 70, immediate execution of the judgment appealed from should have been ordered by the trial court before the appeal was perfected. He then decreed:

"WHEREFORE, in the light of the foregoing and this being an appealed judgment, the MTCC, Branch 3, General Santos City that rendered said judgment is ordered to cause the execution thereof with respect to the restoration of possession only, without prejudice however to whatever will be the result of the pending appeal.

SO ORDERED."

In compliance with the order of Judge Estoque, the respondent judge issued the writ of execution on 23 August 1993. [7]

On 25 August 1993, a day after the receipt of a copy of the order of Judge Estoque dated 11 August 1993, the complainant and her co-defendants filed a motion for the reconsideration thereof. [8] Judge Estoque then issued an order [9] directing the plaintiff-appellee to comment on the motion for reconsideration.

On 26 August 1993, Judge Estoque issued an order [10] directing the parties to submit their respective memoranda within fifteen days from notice, after which the appeal would be deemed submitted for decision.

On 17 September 1993, Felizardo Requillos, Sheriff III of the MTCC of General Santos City, filed a "Sheriff's Return of Service" [11] on the writ of execution stating therein the steps he took to implement the writ and informing the court of the "total failure of the implementation" because some of the defendants he approached refused to vacate their respective houses.

On 21 September 1993, Judge Estoque issued an order^[12] in Special Civil Case No. 364 suspending in the meantime, upon agreement of the parties, the implementation of the writ of execution issued by the respondent judge and giving the defendants three days from the said date within which to deposit the supersedeas bond as well as to deposit the rentals in arrears from the time of the judgment appealed from "up to the present"; otherwise, upon their failure to do so, the court "shall cause the full implementation of the order of execution issued by this court." Judge Estoque also declared as moot and academic the motion for reconsideration of the order of 11 August 1993 and the motion for preliminary injunction and restraining order.

The Office of the Court Administrator (OCA), to which this case was referred for evaluation and report, found that the respondent erred in issuing the writ of execution because his court had lost its jurisdiction over the case. It states that it should have been the RTC which should issue such writ pursuant to *City of Manila vs. Court of Appeals*^[13] and *Sy vs. Romero*.^[14] Nevertheless, it is of the opinion that the respondent should not be blamed solely since it was Judge Estoque who ordered the MTCC to issue the writ. Since Judge Estoque is not a respondent in this complaint, the OCA concludes that it would be "unfair" if it recommends that the respondent judge "be penalized without Judge Estoque being likewise penalized." It also found that there is no evidence to support the charge of bribery. It then recommends that:

"(a) Judge Mabini M. Maravilla be ADVISED not to repeat his mistake of issuing a writ of execution in a case which is pending appeal, even if erroneously ordered by the RTC judge acting as an appellate judge in such a case, as a repetition of similar acts will be dealt with more severely; (b) Judge Apolinario F. Estoque be FURNISHED a copy of the Court's Resolution in this case and be likewise ADVISED not to order the municipal trial court to issue a writ of execution in a case which is pending appeal and to issue the writ himself, if the circumstances warrant its issuance; and (c) the charge that Judge Maravilla received P20,000.00 from issuing the writ be DISMISSED for lack of evidence to support such a charge."

We agree with the OCA that there is no evidence of the alleged bribery. The complainant herself states in her complaint that her charge is based on a rumor. She did not even disclose the source of the rumor and the occasion, place, and time when she heard it. Instead of subsequently establishing the truth of the rumor by volunteering to offer some evidence, the complainant agreed to submit this case on the basis of the pleadings. Rumors are not evidence and the complainant was grossly irresponsible when she imputed upon the respondent, under her solemn oath, the commission of a grave offense solely on the basis of a rumor with the full awareness that she could not prove it. The lawyer who assisted her in the preparation of the complaint should have, under his oath as a lawyer, prevented her from making the wild accusation.

However, the respondent judge must be administratively sanctioned for issuing the writ of execution. His court had lost its jurisdiction over Civil Case No. 2833-III after the appeal to the RTC had been perfected. He knew that on 30 April 1993 he had directed his clerk of court to transmit the records of the case to the RTC, which was duly complied with. The plaintiff did not file in his court a motion for execution for failure of the defendants to file a supersedeas bond. That motion was filed only with the RTC. Since, indeed, no supersedeas bond was filed and, furthermore, the defendant did not deposit the adjudged monthly rentals, execution of the judgment with respect to the restoration of possession was in order pursuant to Section 8, Rule 70 of the Rules of Court. It is the RTC which should issue the writ of execution.

Section 8 of Rule 70 is a reproduction of Section 8 of Rule 72 of the old Rules of Court, which was taken from Section 88 of Act No. 190, as amended by Act No. 2588.^[15] In 1918 yet, this Court, applying Act No. 2588,^[16] already held that upon failure of the defendant in an unlawful detainer case to make the payments prescribed from time to time during the pendency of the appeal in the Court of First Instance, the latter, upon motion, shall order the execution of the judgment of the court a quo relative to the possession of the property in litigation and that

such order for execution shall not be a bar to the appeal in the Court of First Instance until final decision thereof on its merits.

In the 1991 case of *City of Manila vs. Court of Appeals*,^[17] this Court ruled:

"The rule is that if the judgment of the metropolitan trial court is appealed to the regional trial court and the decision of the latter itself is elevated to the Court of Appeals, whose decision thereafter became final, the case should be remanded through the regional trial court to the metropolitan trial court for execution. The only exception is the execution pending appeal, which can be issued by the regional trial court under Sec. 8 of Rule 70 or the Court of Appeals or the Supreme Court under Sec. 10 of the same Rule."

Accordingly, the RTC was the proper court which could issue the writ of execution in its Special Civil Case No. 364 -- the appealed case. Said court, per Judge Estoque, should not have issued the 11 August 1993 order directing the MTCC to issue the writ of execution with respect to the restoration of possession.

Obedience to or "faithful compliance with" the said 11 August 1993 order of Judge Estoque cannot be pleaded as a justification to the respondent's issuance of the writ of execution. He knew that his court had lost jurisdiction over the case and, moreover, he ought to have known that pursuant to the clear language of Section 8 of Rule 70 and the pronouncements of this Court, it was beyond his court's authority to issue the writ. He should have informed the RTC, through appropriate means, of this constraint.

It appears, however, that no damage was done to the defendants because the writ was returned unsatisfied and in the meantime, during the pendency of the defendant's motion to reconsider the RTC order of 11 August 1993, the RTC had issued on 21 September 1993, upon agreement by the parties, an order suspending the implementation of the writ of execution issued by the respondent; giving the defendants-appellants three days from 21 September 1993 within which to deposit the supersedeas bond and to deposit the rentals in arrears from the date of the judgment of the MTCC up "to the present"; ordering them to pay their corresponding monthly rentals of P75.00 each which should be deposited within the first ten days of the month during the pendency of the appeal; and declaring as moot and academic the motion to reconsider the 11 August 1993 order and the motion for preliminary injunction and restraining order.

Nevertheless, the absence of any damage to the complainant does not totally absolve the respondent from any administrative liability for having wrongfully issued the writ of execution, which amounted to grave abuse of authority if not ignorance of the rule on execution in ejectment cases. A mere advice to the respondent not to repeat the act is not enough. A fine of P1,000.00 and a warning would be in order.

WHEREFORE, judgment is hereby rendered:

1. DISMISSING, for utter lack of merit, the charge of bribery against the respondent; and
2. IMPOSING upon respondent Judge Mabini M. Maravilla a FINE of One Thousand Pesos (P1,000.00) for grave abuse of authority, with a warning that a subsequent commission of the same or similar acts will be dealt with more severely.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Quiason, and Kapunan, JJ., concur.

[1] Rollo, 17.

[2] Annex "A" of letter-complaint; Id., 14.

[3] Annex "B" of letter-complaint; Rollo, 15.

[4] Annex "D," Id.; Id., 17-18.

[5] Annex "E," Id.; Id., 19-20.

[6] Annex "F," Id.; Id., 21-24.

[7] Annex "I" of letter-complaint; Rollo, 30.

[8] Annex "G," Id.; Id., 25-28.

[9] Annex "H," Id.; Id., 29.

[10] Annex "C," Id.; Id., 16.

[11] Annex "G" of Comment; Id., 45.

[12] Annex "A" of Reply-Affidavit; Rollo, 52-53.

[13] 204 SCRA 362 [1991].

[14] 214 SCRA 187 [1992].

[15] 4-B (Part 2) VICENTE J. FRANCISCO, *The Revised Rules of Court in the Philippines* 200 (1973 ed.).

[16] *Domingo vs. Flordeliza*, 37 Phil. 694 [1918].

[17] 204 SCRA 362, 369 [1991] (citation omitted). See also *Sy vs. Romero*, *supra* at note 14.

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