LOURDES B. FERRER AND PROSPERIDAD M. ARANDEZ, COMPLAINANTS, VS. JUDGE ROMEO A. RABACA, METROPOLITAN TRIAL COURT, BRANCH 25, MANILA, RESPONDENT.

A.M. No. MTJ-05-1580 [FORMERLY OCA IPI NO. 04-1608-MTJ]. October 06, 2010

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

This administrative case charges Hon. Romeo A. Rabaca, then the Presiding Judge of Branch 25 of the Metropolitan Trial Court of Manila (MeTC), with ignorance of the law, disregard of the law, dereliction of duty, knowingly rendering an unjust interlocutory order, and violation of the Code of Conduct for Government Officials.

The complainants were the President and the Executive Director of the plaintiff in Civil Case No. 176394-CV of the MeTC, an ejectment suit entitled Young Women's Christian Association, Inc. v. Conrado Cano. After trial, Civil Case No. 176394-CV was decided on June 22, 2004 by respondent Judge,[1] who disposed as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the latter as follows:
>
> (a) to vacate the premises located at Ground Floor, YMCA, 1144 Gen. Luna St., Ermita, Manila; and surrender possession thereof to plaintiff;
>
> (b) to pay plaintiff the sum of Php45,211.80 representing his arrears in rentals from February 2003 to July 2003 at Php7,535.30 a month plus the further sum of Php7,535.30 a month as reasonable value for the continued use and occupation of the premises starting August 2003 until the same is finally vacated and possession thereof is turn-over to plaintiff;
>
> (c) to pay the plaintiff the sum of Php20,000 as attorney's fees; and
>
> (d) to pay the costs of suit.
>
> SO ORDERED.

On July 12, 2004, the plaintiff's counsel filed a motion for immediate execution, praying that a writ of execution be issued "for the immediate execution of the aforesaid Judgment." The plaintiff cited Section 19, Rule 70 of the Rules of Court as basis for its motion.[2]

In his order dated July 14, 2004, however, respondent Judge denied the motion for immediate execution,[3] stating:

> A Notice of Appeal dated July 9, 2004, having been seasonably filed by counsel for the defendant, let the records of the above-captioned case be, as it is hereby ordered, elevated to the Regional Trial Court of Manila for appropriate proceedings and disposition.

> In view thereof, no more action shall be taken on the Motion for Execution dated July 8, 2004 filed by the plaintiff thru counsel.
>
> SO ORDERED.

According to the complainants, their counsel talked with respondent Judge about the matter. Allegedly, respondent Judge told their counsel that "if you think the court is wrong, file a motion for reconsideration." With that, the plaintiff filed a motion for reconsideration, which respondent Judge nonetheless denied in his order dated July 28, 2004,[4] thuswise:

> Considering that the Court has already given due course to the appeal of the defendant which was perfected within the reglementary period, no more action will be taken on the Motion for Reconsideration dated July 19, 2004 filed by the plaintiff thru counsel.
>
> The Branch Clerk of Court is hereby directed to immediately forward the records of this case to the Regional Trial Court, Manila.
>
> SO ORDERED.

The complainants averred that respondent Judge's denial of their motions had rendered their victory inutile, and had unfairly deprived the plaintiff of the possession of the premises. They further averred that respondent Judge's refusal to perform an act mandated by the Rules of Court had given undue advantage to the defendant to the plaintiff's damage and prejudice.

The Court required respondent Judge to comment on the administrative complaint against him.

In his comment dated September 16, 2004,[5] respondent Judge denied the charges. He explained that he had honestly thought that his court had lost jurisdiction over the case pursuant to the provision of Section 9, Rule 41 of the Rules of Court (which provides that "in appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties") once he had given due course to the defendant's notice of appeal. He claimed that he had issued the orders in good faith and with no malice after a fair and impartial evaluation of the facts, applicable rules, and jurisprudence; and that if he had thereby committed lapses in the issuance of the orders, his doing so should be considered as error of judgment on his part.

He lastly insisted that he did not know personally the parties in Civil Case No. 176394-CV, and had absolutely no reason to give undue favor or advantage to the defendant; that the complainants did not submit evidence to show that the orders had been issued for a consideration, material or otherwise, or that his issuance of the orders had been motivated by ill-will or bad faith.

In their reply dated September 22, 2004,[6] the complainants contended that respondent Judge exhibited his ignorance of the law and procedure in relying on Section 9, Rule 41 of the Rules of Court which referred to appeals from the Regional Trial Court; that Rule 40, which contained provisions on appeal from the Municipal Trial Courts to the Regional Trial Courts, and which provided in its Section 4 that the perfection of the appeal and the effect of such perfection should be governed by the provisions of Section 9 of Rule 41, concerned appeals by notice of appeal in general; and that instead, the applicable rule should be Section 19, Rule 70 of the Rules of Court.

The complainants pointed out that respondent Judge apparently did not know that appeal in forcible entry and detainer cases was not perfected by the mere filing of a notice of appeal (as in ordinary actions) but by filing of a notice of appeal and a sufficient supersedeas bond approved by the trial judge executed to the plaintiff to pay the

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rents, damages and costs accruing down to the time of the judgment appealed from. They asserted that respondent Judge's invocation of good faith and error of judgment did not absolve him of liability, because he had grossly neglected his duties mandated by law by failing and refusing to act on their motion for immediate execution and motion for reconsideration and by giving due course to the appeal despite no supersedeas bond having been filed and approved by the trial court.

In his memorandum dated January 13, 2005,[7] then Court Administrator Presbitero J. Velasco, Jr., now Associate Justice of the Court, recommended that the administrative complaint against respondent Judge be re-docketed as a regular administrative matter; and that respondent Judge be fined in the amount of P5,000.00 with warning that a repetition of the same or similar act would be dealt with more severely, based on an evaluation of the charges, as follows:

> EVALUATION: We agree with the complainants that respondent erred when he did not act on complainants' motion for immediate execution.
>
> Section 19, Rule 70 of the 1997 Revised Rules on Civil Procedure provides:
>
> "SEC. 19. If judgment is rendered against the defendant, execution shall issue immediately upon motion, unless an appeal has been perfected and the defendant to stay execution files a supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff 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 determined by the judgment of the Municipal Trial Court. XXXX XXXX XXXX."

It is clear from the foregoing that the perfection of an appeal by itself is not sufficient to stay the execution of the judgment in an ejectment case. The losing party should likewise file a supersedeas bond executed in favor of the plaintiff to answer for rents, damages and costs, and, if the judgment of the court requires it, he should likewise deposit the amount of the rent before the appellate court from the time during the pendency of the appeal. Otherwise, execution becomes ministerial and imperative. (Philippine Holding Corporation vs. Valenzuela, 104 SCRA 401 as cited in Hualam Construction and Development Corporation vs. Court of Appeals, 214 SCRA 612, 626).

In the case at bar, defendant seasonably filed his Notice of Appeal dated 9 July 2004 on 13 July 2004; he however failed to file any supersedeas bond. Prior to the filing of such notice of appeal, more specifically on 12 July 2004, complainants have already filed their Motion for Execution dated 8 July 2004. Instead of acting on the Motion for Execution, respondent Judge Rabaca gave due course to the appeal in an Order dated 14 July 2004 and directed his Branch Clerk of Court to elevate the records of the case to the Regional Trial Court (RTC). The Branch Clerk of Court however failed to forward the records to the RTC. This fact is clear from Judge Rabaca's Order dated 28 July 2004 wherein he directed the Branch Clerk of Court to forward the records of the case to the Manila Regional Trial Court immediately.

From the foregoing, it is clear that when the complainant moved for the immediate execution of Judge Rabaca's decision, the latter still had jurisdiction over the case. He therefore clearly erred when he refused to act on the Motion for Execution. The relevant question that we should resolve however is whether such error is an error of judgment or an error amounting to incompetence that calls for administrative discipline.

Judge Rabaca claims that he refused to act on the complainant's Motion for execution because he honestly thought that when he gave due course to the defendant's appeal which was seasonably filed, and ordered the elevation of the records to the appellate court, his court already lost jurisdiction over the case.. In making his ruling, respondent asserts he relied on the provisions of Section 9, Rule 41 of the Rules of Court. This provision reads as

follows:

> In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

He likewise allegedly relied on the ruling of the Court in Administrative Matter OCA IPI No. 03-1513-MTJ: Susana Joaquin Vda. De Agregado vs. Judge Thelma Bunyi-Medina, MeTJ wherein the Court said that-

> Respondent Judge is correct in saying that she had lost jurisdiction to entertain the motion for execution after the perfection of the appeal and after she issued an order to transmit the records of the case to the appellate court for review.

The facts of the case against Judge Bunyi-Medina are however different from those prevailing in the instant case. In the Medina case, the fifteen (15) day period within which to perfect the appeal had already lapsed before the complainant therein moved for the execution of the execution judgment. Clearly therefore, appeal had already been perfected. In the instant case, although the defendant had filed his appeal, the period to appeal had not yet lapsed since the plaintiff still had his own period to appeal from the judgment and such period had not yet lapsed. The provision relied upon by judge Rabaca, more specifically, Section 9, Rule 41 of the Rules of Court, clearly states that, "In appeals by notice of appeal, the court loses jurisdiction over the case upon perfection of the appeals filed on due time and the expiration of the time to appeal of the other parties." Moreover and more importantly, the herein complainants filed their Motion for Execution even before the defendant had filed his Notice of Appeal. Such motion was therefore still well within the jurisdiction of the lower court.

It is basic rule in ejectment cases that the execution of judgment in favor of the plaintiff is a matter of right and mandatory. This has been the consistent ruling of the Court in a number of cases involving the same issue posed before the respondent judge. Respondent Judge is expected to know this and his justification of erroneous application of the law, although mitigating, could not exculpate him from liability.

We agree with and adopt the evaluation of the Court Administrator.

Indeed, respondent Judge should have granted the plaintiff's motion for immediate execution considering that the defendant did not file the sufficient supersedeas bond despite having appealed. Granting the plaintiff's motion for immediate execution became his ministerial duty upon the defendant's failure to file the sufficient supersedeas bond. Section 19, Rule 70, of the Rules of Court clearly imposes such duty, viz:

> Section 19. Immediate execution of judgment; how to stay same. -- If judgment is rendered against the defendant, execution shall issue immediately upon motion, unless an appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff 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 determined by the judgment of the Municipal Trial Court. In the absence of a contract, he shall deposit with the Regional Trial 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 of the lower court on or before the tenth day of each succeeding month or period. The supersedeas bond shall be transmitted by the Municipal Trial Court, with the other papers, to the clerk of the Regional Trial Court to which the action is appealed.
>
> xxx

Respondent Judge's excuse, that he had lost jurisdiction over the case by virtue of the defendant's appeal, was unacceptable in light of the clear and explicit text of the aforequoted rule. To begin with, the perfection of the appeal by the defendant did not forbid the favorable action on the plaintiff's motion for immediate execution. The

execution of the decision could not be stayed by the mere taking of the appeal. Only the filing of the sufficient supersedeas bond and the deposit with the appellate court of the amount of rent due from time to time, coupled with the perfection of the appeal, could stay the execution. Secondly, he could not also credibly justify his omission to act according to the provision by claiming good faith or honest belief, or by asserting lack of malice or bad faith. A rule as clear and explicit as Section 19 could not be misread or misapplied, but should be implemented without evasion or hesitation. To us, good faith, or honest belief, or lack of malice, or lack of bad faith justifies a non-compliance only when there is an as-yet unsettled doubt on the meaning or applicability of a rule or legal provision. It was not so herein. And, thirdly, given that his court, being vested with original exclusive jurisdiction over cases similar to Civil Case No. 176394-CV, had been assigned many such cases, he was not a trial judge bereft of the pertinent prior experience to act on the issue of immediate execution, a fact that further exposed the abject inanity of his excuses.

We agree with the complainants' insistence, therefore, that respondent Judge's omission to apply Section 19 was inexcusable. He had ignored the urging to follow the clear and explicit provision of the rule made in the plaintiff's motion for immediate execution. Had he any genuine doubt about his authority to grant the motion for immediate execution, as he would have us believe, he could have easily and correctly resolved the doubt by a resort to the Rules of Court, which he well knew was the repository of the guidelines he was seeking for his judicial action. Neither was it relevant that he did not know any of the parties, or that he did not corruptly favor the defendant by his omission. His mere failure to perform a duty enjoined by the Rules of Court sufficed to render him administratively accountable.

This case is an opportune occasion to remind judges of the first level courts to adhere always to the mandate under Section 19, Rule 70, of the Rules of Court to issue writs of execution upon motion of the plaintiffs in actions for forcible entry or unlawful detainer when the defendant has appealed but has not filed a sufficient supersedeas bond. The summary nature of the special civil action under Rule 70 and the purpose underlying the mandate for an immediate execution, which is to prevent the plaintiffs from being further deprived of their rightful possession, should always be borne in mind.

The recommended penalty of P5,000.00 with warning that a repetition of the same or similar act would be dealt with more severely is also correct. The Court Administrator rationalized the recommendation of the penalty thuswise:

> Under A.M. No. 01-8-10-SC, `Gross Ignorance of the Law or Procedure' is classified as serious offense for which the imposable penalty ranges from a fine to dismissal. However, we find respondent's acts not ingrained with malice or bad faith. It is a matter of public policy that in the absence of fraud, dishonesty or corrupt motive, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous. In Domingo vs. Judge Pagayatan, A.M. No. RTJ-03-1751, 10 June 2003, the penalty of fine in the amount of five thousand pesos was deemed sufficient where it was held that respondent's lack of malice or bad faith frees him from administrative liability but not for gross ignorance of the law.

We concur with the rationalization of the Court Administrator. Verily, even if respondent Judge's omission would have easily amounted to gross ignorance of the law and procedure, a serious offense under Section 8,[8] Rule 140, of the Rules of Court, as amended, the fact that the complainants did not establish that malice or bad faith impelled his omission to act, or that fraud, dishonesty, or a corrupt motive attended his omission to act demands a downgrading of the liability. In the absence of any showing that he had been held guilty of any other administrative offense,[9] and without our attention being called to other circumstances that might demonstrate respondent Judge's dark motives for his inaction, we should find and consider the recommended penalty of P5,000.00 with warning that a repetition of the same or similar act would be dealt with more severely to be

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commensurate to the offense.[10]

WHEREFORE, we find respondent JUDGE ROMEO A. RABACA, Presiding Judge of Branch 25, Metropolitan Trial Court, in Manila guilty of ignorance of the law and procedure, and, accordingly, impose upon him a fine of P5,000.00 with warning that a repetition of the same or similar act would be dealt with more severely.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Villarama, Jr., and Sereno, JJ., concur.

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[1] Rollo, pp. 4-8

[2] Id., pp. 9-10.

[3] Id., p. 12-A

[4] Id., p. 16.

[5] Id., pp. 18-21.

[6] Id., pp. 28-35.

[7] Id., pp. 37-41.

[8] Section. 8. Serious charges. - Serious charges include:

- Bribery, direct or indirect;

- Dishonesty and violations of the Anti-Graft and Corrupt Practices Law (R.A. No. 3019);

- Gross misconduct constituting violations of the Code of Judicial Conduct;

- Knowingly rendering an unjust judgment or order as determined by a competent court in an appropriate proceeding;

- Conviction of a crime involving moral turpitude;

- Willful failure to pay a just debt;

- Borrowing money or property from lawyers and litigants in a case pending before the court;

- Immorality;

- Gross ignorance of the law or procedure;

- Partisan political activities; and

- Alcoholism and/or vicious habits.

[9] Berin v. Barte, A.M. No. MTJ-02-1443, July 31, 2002, 385 SCRA 527; Esguerra v. Loja, A.M. No. RTJ-00-1523, August 15, 2000, 338 SCRA 1; Conducto v. Monzon, A.M. No. MTJ-98-1147, July 2, 1998, 291 SCRA 619.

[10] See Domingo v. Pagayatan, A.M. No. RTJ-03-1751, June 10, 2003, 403 SCRA 381, 388-389.

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