

**JOAQUIN LEDESMA, IN HIS CAPACITY AS MAYOR OF CADIZ,
NEGROS OCCIDENTAL, AND THE MUNICIPALITY OF CADIZ, NEGROS
OCCIDENTAL, PETITIONERS, VS. HONORABLE JOSE TEODORO, SK.,
JUDGE OF T...**

G.R. No. L-9174. January 25, 1956

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for certiorari and mandamus with preliminary injunction interposed by Joaquin Ledesma, in his capacity as Mayor of Cadiz, Negros Occidental, seeking to set aside the order of respondent judge dated May 24 1955 directing the execution of the judgment rendered in the main case as w his order of May 23, 1955 denying the offer of petitioner to put up a supersedeas bond to forestall said execution.

Jose Agapuyan instituted an action in the Court of First Instance of Negros Occidental against Joaquin Ledesma, in his capacity as Mayor of Cadiz, Negros Occidental, seeking his reinstatement as chief of police of said mun (Civil Case No. 3132). He claimed that he was removed as chief of police defendant without cause on July 1, 1946 and that notwithstanding the effort made to secure his reinstatement immediately thereafter no action was taken thereon by the Undersecretary of Interior. But with the change of administration in January, 1954, he revived his fight and on June 3, 1954 the then Governor of Negros Occidental ordered defendant to reinstate him to his position as of police. This order was ignored by , defendant, hence the action he has taken.

On August 16, 1954, defendant filed a motion to dismiss on two grounds: (1) the action has already prescribed,, and (2) plaintiff had abandoned his claim by accepting another position in the government service. This motion having been denied, defendant put in an answer setting up the same defenses he had alleged in his,motion to dismiss. Thereupon the par concluded a stipulation of facts and on its strength submitted case for decision.

On April 15, 1955, the court rendered decision, which was later amended, ordering defendant to reinstate plaintiff to his position as chief of police directing the municipality of Cadiz to pay him his back salaries from Jul 1946 to July 1, 1948, without pronouncement as to costs. Defendant filed motion for reconsideration, and when this was denied, he gave notice of his intention to appeal.

On May 14, 1955, plaintiff filed a motion for execution invoking section 2, of the Rules of Court, which was vigorously objected to by defendant who invoked weighty reasons showing why said motion should be denied, but the court, ignoring the plea, granted the motion for execution on the main ground that the appeal which defendant was interposing was suspicious an was taken merely for purposes of delay. Notified of the adverse resolution defendant, as an alternative, gave notice of his desire to put up a supersedeas bond in an effort to stay the execution but this move was also denied the court. These two orders gave rise to the present petition certiorari.

Under section 2, Rule 39, the court may, in the exercise of its discretion order of execution, on motion of the prevailing party, with notice to the adverse party, "upon good reasons to be stated in a special order," However, if

the execution is issued before the expiration of the time to appeal, it "may be stayed upon the approval by the court of a sufficient supersedeas bond filed by the appellant, conditioned for the performance of the judgment or order appealed from in his case it be affirmed wholly or in part. Are there good reasons justifying the issuance of an order of execution and the pendency of the appeal in the present case? In the affirmative case there sufficient justification, for denying the supersedeas bond offered appellant?

"The requirement as to special reasons is one the importance of which trial courts must not overlook. If the judgment is executed and, on appeal, the same is reversed, although there are provisions for restitution, oftentimes damages may arise which cannot be fully compensated. Accordingly, execution should be granted, only when these considerations are clearly outweighed by superior circumstances demanding urgency, and the above provision requires statement of those circumstances as a security for their existence" (Aguilos vs. Barrios, et al., 72 Phil., 285).

A careful perusal of the order of respondent judge which grants the execution of the decision rendered in the main case would show that the reasons which served to justify the issuance of said execution do not outweigh the import of those considerations we have above adverted to for they are not founded on sound factual basis. The order seems to be predicated on the impression that the appeal being interposed by appellant was merely for purposes of delay and not because of an honest desire to get a review of the decision based on sound legal grounds. There is an intimation that the appeal was merely prompted by a desire to cause prejudice to the plaintiff

While as a rule the power to grant or deny a motion for execution is addressed to the sound discretion of the court, and generally the appellate courts should not interfere to modify, control or inquire into the exercise of discretion, however, the intervention becomes necessary when it is shown there has been an abuse thereof.[1] Such is the situation obtaining herein Petitioner has charged respondent judge with such an abuse and the facts on record seem to support it. This can be clearly seen by considering the special defenses set up by the defendant in his answer, to wit, that the plaintiff has already prescribed and that he had abandoned his former office by accepting another position in the government service. These defenses cannot easily be brushed aside for they are borne out by the stipulation of facts. There it appears that plaintiff was removed from office on July 1, 1946 and that his efforts to obtain reinstatement administratively since September 19, 1946 and yet he took action in court only on August 1954. Considering that the proper action opened to him was *quo warranto*, and not *mandamus*, it would appear that such action has already prescribed under section 16, Rule 68 (Tumulak vs. Egay, 82 Phil., 828, F 24, 1949; Martines vs. Ozaeta, et al., G. R. No. L-2430, May 30, 1949).

It likewise appears that on July 1, 1948, plaintiff was appointed, as tempo ranger in the Bureau of Forestry with an annual salary of P1,140 and was later promoted to senior forest guard as permanent employee in the same Bureau, and on June 21, 1954 he addressed a letter to defendant stating therein that he was no longer interested in his reinstatement. The acceptance of these positions bars plaintiff from pressing his claim for reinstatement.[2]

Another noteworthy circumstance is the offer made by defendant to put up a supersedeas bond to forestall the plea for execution but even this relief denied for no apparent reason when under the rule this right is expressly acknowledged when there are reasons justifying it (section 2, Rule 39).

It appearing that respondent Jose Agapuyan was already reinstated to his former position when the writ of preliminary injunction was issued by this court on June 3, 1956, the motion for contempt filed by petitioners on September 1955 has now become moot. Accordingly, we are dissolving said writ of preliminary injunction.

Wherefore, the orders of respondent judge dated May 23 and May 24, 1955 are hereby set aside, without pronouncement as to costs.

As a consequence, the Court hereby orders respondent Agapuyan to vacate the position of chief of police and restore it to Manuel R. Solivio whom had replaced by virtue of an improper writ of execution subject to the outcome of the main, case which is pending appeal in this Court.

The writ of preliminary injunction is hereby dissolved.

Parás, C. J., Padilla, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J. B. L., and Endencia,, JJ., concur.

[1] Federal Films, Inc. vs. Ocampo, 78 Phil., 479, 44 Off. Gaz. (No. 10) 8819 vs. Gutierrez, 4 Phil., 203; Case vs. Metropole Hotel & Restaurant, 5 Phil Camay vs. Gutierrez David, 48 Phil., 768; Buenaventura vs. Pena, 78 Phil., Off. Gaz. (No. 12) 4923; Ong Sit vs. Piccio, 44 Off. Gaz., (No. 12) 4915 Naredo vs. Yatco, 80 Phil., 220, 45 Off. Gaz., (No. 8) 3390.

[2]Floresca vs. Getulio, 82 Phil., 128; Madumba vs. Ozaeta, 82 Phil., 345; Potot vs. Bagano, et al., 82 Phil., 679; Argos vs. Veloso, et al., 83 Phil., 929.

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