ATTY. ODEL S. JANDA AND ATTY. JERRY O. REMONTE COMPLAINANTS, VS. JUDGE EDDIE R. ROJAS, REGIONAL TRIAL COURT, BRANCH 39, POLOMOLOK, SOUTH COTABATO; ATTY. QUEENIE MARIE L. FULGAR,...

A.M. No. RTJ-07-2054 (FORMERLY A.M. OCA IPI NO. 07-2575-RTJ). August 23, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

Although a judge has in his favor the presumption of regularity and good faith in the performance of his official functions, a blatant disregard of the clear and unmistakable terms of the law obviates this presumption and renders him susceptible to administrative sanctions.[1]The Facts of the Case

This is an administrative complaint[2] against Judge Eddie R. Rojas (Judge Rojas), Pairing Judge of the Regional Trial Court (RTC), Branch 37, General Santos City, Atty. Queenie Marie L. Fulgar (Atty. Fulgar), Branch Clerk of Court of the same RTC Branch, and Marilyn P. Alano (Alano) and Ramon A. Castillo (Castillo), Sheriffs IV detailed at the Office of the Clerk of Court of the RTC of General Santos City. The complaint was filed by Atty. Odel S. Janda and Atty. Jerry O. Remonte (complainants), as officers and representatives of Planters Development Bank (Planters Bank).

On June 15, 2006, Judge Rojas rendered a Decision[3] in Civil Case No. 6474 entitled "George Philip Palileo and Jose Dela Cruz v. Engr. Edgardo Torcende, Planters Development Bank, Benjamin N. Tria, Arturo R. Delos Reyes, Mao Tividad, and Emmanuel Tesalonia," involving a complaint for specific performance and/or sum of money and damages. The fallo of the said Decision reads:

> IN LIGHT OF THE FOREGOING, defendants are hereby ORDERED to jointly and severally PAY plaintiffs as follows:
>
> i) Actual Damages:
>
> a) Plaintiff George Philip Palileo the amount of Two Million Six Hundred Five Thousand Nine [Hundred] Seventy-Two Pesos and Ninety-Two Centavos (P2,605,972.92) with 12% compounded interest per annum reckoned from the filing of this case until full settlement thereof.
>
> b) Plaintiff Jose R. Dela Cruz the amount of One Million Five Hundred Twenty-Nine Thousand Five Hundred Eight [Pesos] and Eighty Centavos (P1,529,508.80) with 12% compounded interest per annum reckoned from the filing of this case until full settlement thereof;
>
> ii) Moral Damages in the amount of Five Hundred Thousand Pesos (P500,000.00) each;
>
> iii) Exemplary Damages in the amount of Five Hundred Thousand Pesos (P500,000.00) each;
>
> iv) Attorney's Fees in the amount of Five Hundred Thousand [Pesos] (P500,000.00) each and to pay the costs.

SO ORDERED.[4]

The defendants filed an Omnibus Motion for Reconsideration and New Trial (Omnibus Motion). Meanwhile, the plaintiffs filed a Motion for Execution Pending Appeal. Both parties filed their respective responsive pleadings to the said motions.

On August 30, 2006, Judge Rojas issued an Order[5] denying the Omnibus Motion on the ground that it violated Rule 15, Section 5 of the 1997 Rules of Civil Procedure requiring that the hearing of a litigated motion be set not later than 10 days from the date of its filing. In the same Order, Judge Rojas declared the Decision dated June 15, 2006 final and executory because the Omnibus Motion, having been found to be technically infirm, did not suspend the reglementary period to appeal. Thus, the Motion for Execution Pending Appeal (which was treated as a motion for execution of a final and executory judgment) was granted. The Order directed the immediate issuance of a Writ of Execution against the defendants.

On August 31, 2006, Atty. Fulgar issued a Writ of Execution.[6] The next day, or on September 1, 2006, Sheriffs Alano and Castillo enforced the Writ of Execution against Planters Bank.

The herein complainants charge Judge Rojas of gross ignorance of the law and knowingly rendering an unjust order, because in his August 30, 2006 Order, he declared that the June 15, 2006 Decision was already final and executory when he knew that it was not yet so and that it contravened Neypes v. Court of Appeals[7] which provides for a fresh period of fifteen (15) days from receipt of a denial of a motion for reconsideration within which to appeal. They claim that Judge Rojas showed manifest bias in directing the contiguous execution of the Decision against Planters Bank, especially when

he converted the Motion for Execution Pending Appeal into a regular motion for execution in the August 30, 2006 Order. To further show the alleged partisanship of Judge Rojas, they note that he even awarded the plaintiffs more than what they prayed for in the complaint, viz: (a) attorney's fees of P100,000.00 to P500,000.00; (b) moral damages of P300,000.00 to P500,000.00; and (c) exemplary damages of P300,000.00 to P500,000.00.

Complainants impute to Atty. Fulgar uncanny speed in issuing a Writ of Execution on August 31, 2006, the day after the issuance of the questioned Order, aware that no copy of the Order had been furnished the defendants, and knowing fully well that the Decision was not yet final and executory. They further aver that the Writ of Execution was defective as it did not provide for the full amount of the obligation. According to complainants, Atty. Fulgar was ignorant of the Manual of the Clerks of Courts and of Rule 36, Section 2[8] of the Rules of Court regarding the procedure in issuing an Entry of Judgment. They allege that Atty. Fulgar does not even keep a Book of Entries of Judgments.

With respect to Sheriffs Alano and Castillo, who were purportedly in cahoots with Judge Rojas and Atty. Fulgar, complainants charge them with oppression, grave misconduct, and conduct prejudicial to the best interest of the service in the hasty and arrogant enforcement of the Writ of Execution against Planters Bank on September 1, 2006.

Complainants allege that at 10:00 a.m. that day, Sheriffs Alano and Castillo, together with twelve (12) policemen proceeded to the General Santos City Branch of Planters Bank and demanded immediate payment from the branch manager, without any prior demand from all the defendants who were held jointly and severally liable for the judgment obligation. Due to the hostile action of Sheriffs Alano and Castillo, word got around that the bank was under siege, resulting in huge withdrawals from its depositors during the day. Complainants bewail the failure of Sheriffs Alano and Castillo to serve copies of the August 30, 2006 Order and of the Writ of Execution to all the defendants.

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As the amount of the judgment obligation was allegedly not specified in the Writ of Execution, defendants claim that Sheriffs Alano and Castillo arrogated unto themselves the judicial power to determine the same. Likewise, on September 1, 2006, Sheriffs Alano and Castillo proceeded to the Land Bank of the Philippines, General Santos City Branch and served a Notice of Garnishment[9] upon the deposits of Planters Bank therein.

Planters Bank, thru counsel, filed an Urgent Motion to Quash Writ of Execution[10] and a Supplemental Motion to Quash Writ of Execution,[11] furnishing the sheriffs copies thereof. However, while the court had yet to rule on the said motions, Sheriffs Alano and Castillo still demanded delivery of the garnished amount by way of an Order of Delivery of Money[12] dated September 25, 2006.

In sum, complainants posit that the indecent haste in the execution of the June 15, 2006 Decision through an erroneous Writ of Execution shows that respondent court officers were bent on exacting from Planters Bank alone the total amount of the judgment obligation, to the damage and prejudice of the latter.

In his Comment[13] dated December 11, 2006, Judge Rojas claims that the charges against him pertain to the exercise of his judicial functions and should not be the subject of an administrative complaint. He narrates that Planters Bank filed on July 28, 2006 its Omnibus Motion for Reconsideration and New Trial, set for hearing on August 18, 2006, or 16 days after its filing. Finding it contrary to Rule 15, Section 5[14] of the Rules of Court, he peremptorily denied the motion for being pro forma and a "mere scrap of paper" in his Order of August 30, 2006, the dispositive portion of which reads:

> IN LIGHT OF THE FOREGOING, the Omnibus Motion for Reconsideration and New Trial is hereby DENIED, and the Motion for Execution Pending Appeal (which is treated as a motion for execution of a final and executory judgment) is also GRANTED as explained above. Accordingly, let A WRIT OF EXECUTION be issued against herein defendants to enforce the FINAL and EXECUTORY Decision dated 15 June 2006.
>
> SO ORDERED.[15]

He explained that the motion, being a "mere scrap of paper," did not toll the reglementary period to appeal. Accordingly, he considered the June 15, 2006 Decision final and executory. Thus, he found the Motion for Execution Pending Appeal moot and academic and instead, treated it as a motion for execution of the final and executory Decision.

Judge Rojas dismisses the charge of knowingly rendering an unjust order as based only on suspicion and speculation. He argues that adequate proof is required to show that the order is truly unjust and not merely erroneous. He submits that judges cannot be held liable for acts done in the exercise of judicial functions and in good faith.

Clerk of Court Atty. Fulgar avers in her Comment[16] dated December 8, 2006, that she issued the questioned Writ of Execution on August 31, 2006 to comply with the August 30, 2006 Order, and that the writ was modified on October 9, 2006 by Judge Panambulan M. Mimbisa, newly appointed regular judge of the same court, in his Order dated October 6, 2006. She denies issuing the writ with "uncanny speed" considering that there was legal basis therefor. She says she was specifically ordered to issue the same and she found no reason to delay compliance. She proffers that she keeps a Book of Entry of Judgments since she assumed her office in 1998 and submitted copies of its pages.

In their Joint-Comment[17] dated December 18, 2006, Sheriffs Alano and Castillo explain that when they received the Writ of Execution on August 31, 2006, they proceeded with the execution the next day with some unarmed policemen, following standard operating procedure. They allege that the policemen were left in front of a store beside the bank while they talked with the branch manager of Planters Bank. In their demand for payment,

they claim that they stayed at the bank from 10:00 a.m. till 12:00 noon waiting for an offer from the bank on how the judgment obligation may be satisfied. As their negotiations proved futile, they then proceeded to the Land Bank of the Philippines, Pioneer Avenue Branch, to serve the Notice of Garnishment upon request of the counsels of Planters Bank, with the conformity of its officials. They argue against the charge of exceeding their authority or of any impropriety in demanding payment from Planters Bank alone, in light of the solidary nature of the judgment obligation.

The OCA Findings and Recommendations

With respect to Judge Rojas, the OCA, in its Report[18] dated April 19, 2007, agreed with him that the issue as to the correctness of the August 30, 2006 Order in resolving the Omnibus Motion for Reconsideration and New Trial and the Motion for Execution Pending Appeal should be properly threshed out in a judicial action, rather than in an administrative complaint for gross ignorance of the law and knowingly rendering an unjust order, in the absence of proof of bad faith or malice on his part.

The OCA, however, observed the extraordinary zeal of Judge Rojas to execute judgment in favor of the plaintiffs despite lack of a proper motion therefor and to declare the defendants' right to appeal as barred even before it could be exercised. It noted that Judge Rojas ordered the immediate execution of the June 15, 2006 Decision against Planters Bank alone by virtue of a writ of execution which was amended only one month after it was implemented, and without the requisite prior demand from the bank or any of its co-defendants.

The OCA ascribed as highly improper and subject to administrative sanction the act of Judge Rojas in strictly applying the Rules of Court with respect to the Omnibus Motion for Reconsideration and New Trial, and swiftly denying the same on a technical ground while leniently treating the Motion for Execution Pending Appeal as a regular motion for execution after declaring the June 15, 2006 Decision final and executory even before the defendants knew that their right to appeal was lost.

Thus, despite his protestations of good faith, the OCA found Judge Rojas guilty of grave abuse of authority and recommended that he be reprimanded with a stern warning not to repeat the same or similar act under pain of a more severe penalty.

As regards Atty. Fulgar, the OCA found the charges against her without merit considering that her participation was confined to the preparation of the assailed writ of execution, and in doing so, she was merely following the directive of the court. Further, the error found in the writ she originally prepared was insignificant and it was then formally corrected. Atty. Fulgar was also found not to have been moved by bad faith, malice or other ill motive. Lastly, the charge of not keeping a Book of Entry of Judgments has been sufficiently belied when she submitted copies of its pages in her Comment.

As to the charges against Sheriffs Alano and Castillo, the OCA found that the complainants failed to overcome the presumption of regularity in the performance of official duty in favor of respondent Sheriffs. Like Atty. Fulgar, the OCA said that they were only carrying out their ministerial roles and had no discretion in either proceeding or delaying the accomplishment of their tasks. While they seemed too eager to effect satisfaction of judgment, they were also found to have been moved by caution against being exposed to accusations of delay. The OCA, likewise, considered that they consulted their superior, the Acting Ex-Officio Provincial Sheriff, before proceeding with the execution. Moreover, the OCA found that the allegation of arrogance against Sheriffs Castillo and Alano was unsubstantiated, taking into account the time they took in negotiating with the officers of Planters Bank, which showed a sense of patience and civility on their part.

In view of these findings, the OCA recommended the dismissal of the charges against Atty. Fulgar and Sheriffs

Alano and Castillo.

The Court's Ruling

We partially agree with the disquisitions and recommendations of the OCA.

Anent Judge Rojas, we agree with the OCA that while the correctness of the August 30, 2006 Order resolving the Omnibus Motion of Planters Bank and the Motion for Execution Pending Appeal of the plaintiffs in Civil Case No. 6474 should be threshed out using judicial remedies, Judge Rojas' unilateral conversion of the latter motion into a regular motion for execution, taking into consideration the unequal treatment in the application of the requirements of the Rules of Court, warrants administrative sanction.

Rule 39, Section 1 of the Rules of Court regarding execution of judgment or final order, specifically provides:

> Section 1. Execution upon judgments or final orders. - Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.
>
> If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party.
>
> The appellate court, may, on motion in the same case, when the interest of justice so requires, direct the court of origin to issue the writ of execution. (Emphasis and underscoring supplied.)

On the execution of a judgment or final order pending appeal, the pertinent provision is Rule 39, Section 2(a) which states:

> Sec. 2. Discretionary execution. -
>
> (a) Execution of a judgment or final order pending appeal. - On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.
>
> After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.
>
> Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.(Emphasis and underscoring supplied.)

A plain reading of the afore-cited provisions of the Rules of Court readily reveals that the execution of a judgment or final order that has attained finality and another pending appeal require different motions from the prevailing party. Put differently, a judgment or final order that has become final and executory mandatorily requires a specific motion to execute the same. Thus, Judge Rojas erred when, finding the Motion for Execution Pending Appeal mooted by his pronouncement that the June 15, 2006 Decision had attained finality, effectively "granted" it as a motion for execution which the plaintiffs in Civil Case No. 6474 should have filed separately, and only after they received notice of the denial of the Omnibus Motion of Planters Bank. Verily, the error committed by Judge Rojas pertains to basic procedural rules that he, as a member of the Bench, is expected to be conversant with.

Notwithstanding his claims of good faith, Judge Rojas' unequal treatment of the two motions of the contending

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parties in Civil Case No. 6474 is truly manifest. As aptly pointed out by the OCA, it is one thing to strictly apply the procedural requirement on the notice of hearing of a motion, and it is another to become overly lenient with respect to the requirement of a proper motion for execution of a decision that purportedly became final and executory.

When the inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority.[19] If the law is so elementary, not to know it or to act as if he does not know it constitutes gross ignorance of the law, without even the complainant having to prove malice or bad faith on the part of the judge as it can be clearly inferred from the error committed.[20]

We also note that this is not the first time Judge Rojas has been administratively charged before this Court. In Re: Inhibition of Judge Eddie R. Rojas, RTC Branch 39, Polomolok, South Cotabato in Crim. Case No. 09-5668,[21] he was fined P10,000.00 for his failure to inhibit himself from the said criminal case where he previously appeared as public prosecutor. Recently, in the consolidated cases of Coronado v. Rojas and Capisin, et al. v. Rojas,[22] Judge Rojas was suspended without salaries for three (3) months for gross ignorance of the law for disregarding the rule on indispensable parties and due process. In both cases, Judge Rojas was given a stern warning that the commission of the same or similar offense would merit a more severe penalty.

In light of the circumstances, we hold that Judge Rojas deserves an administrative penalty of one (1) year suspension without salaries.

With respect to Clerk of Court Atty. Fulgar and Sheriffs Alano and Castillo, we agree with the OCA that the charges against them should be dismissed for lack of merit, considering that they were merely performing their respective ministerial duties when they performed the acts complained of. As such, they did not have the discretion not to proceed with the preparation of the writ of execution and the consequent execution of the June 15, 2006 Decision.

WHEREFORE, Judge Eddie R. Rojas, Pairing Judge of the Regional Trial Court, Branch 37, General Santos City, is found administratively GUILTY of gross ignorance of the law and meted the penalty of one (1) year SUSPENSION from his office without salaries. He is also STERNLY WARNED that a repetition of the same or any similar infraction in the future will be more severely dealt with. The administrative charges against Atty. Queenie Marie L. Fulgar, Clerk of Court, Regional Trial Court, Branch 37, General Santos City, and against Sheriffs Marilyn P. Alano and Ramon A. Castillo, of the Regional Trial Court, Branch 22, General Santos City and Regional Trial Court, Office of the Clerk of Court, General Santos City, respectively, are DISMISSED for lack of merit.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

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[1] Vda. de Danao v. Ginete, 443 Phil. 657, 663 (2003); Caguioa v. Lavina, 398 Phil. 845, 853-854 (2000).

[2]Rollo, pp. 9-12.

[3] Id. at 13-19.

[4]Id. at 19.

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[5] Id. at 20-21.

[6] Id. at 22-23.

[7] G.R. No. 141524, September 14, 2005, 469 SCRA 633, 646.

[8]SEC. 2. Entry of judgments and final orders. - If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory.

[9] Rollo, p. 83

[10]Id. at 34-37.

[11]Id. at 38-42.

[12] Id. at 43.

[13]Id. at 53-59.

[14] Sec. 5. Notice of hearing. - The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion. (emphasis supplied)

[15] Rollo, p. 21.

[16] Id. at pp. 89-92.

[17]Id. at 73-79.

[18] Id. at. 1-6.

[19] Español v. Mupas, A.M. No. 03-1462-MTJ, April 19, 2007; De Guzman, Jr. v. Judge Sison, 407 Phil. 351, 369 (2001); Macalintal v. Teh, A.M. No. RTJ-97-1375, October 16, 1997, 280 SCRA 623, 631.

[20] Officers and Members of the Integrated Bar of the Philippines, Baguio-Benguet Chapter v. Pamintuan, A.M. No. RTJ-02-1691, November 19, 2004, 443 SCRA 87, 101; Uy v. Dizon-Capulong, A.M. No. RTJ-91-766, April 7, 1993, 221 SCRA 87, 95.

[21]358 Phil. 790, 796 (1998).

[22]A.M. No. RTJ-07-2047 and A.M. No. RTJ-07-2048, July 3, 2007.

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