

**MILAGROS VILLA ABRILLE, PETITIONER-APPELLEE, VS.
HONORABLE GEORGE E. OMELIO, PRESIDING JUDGE OF THE
MUNICIPAL TRIAL COURT IN CITIES, BRANCH 4, DAVAO CITY AND
EDGAR RICO, RESPOND...**

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

The Comment and/or Opposition to Motion for Reconsideration¹ filed by petitioner on February 11, 2014 is hereby NOTED.

This RESOLVES the Motion for Reconsideration² filed by private respondent-appellant Edgar M. Rico on December 17, 2013.

In his Motion, movant harps on the alleged repeated failure of petitioner-appellee to comply with this Court's order/directive/resolution, thus, in disregard thereof. Movant claims that petitioner-appellee should be considered in default and the Court should decide the appeal based on the movant's Memorandum.

The Motion is without legal basis.

As a general rule, appellees' failure to file briefs or Memorandum does not render them in default. Nonetheless, the Court may declare them to have waived their right to file what had been required of them to file to this Court.

It must be stressed that the instant case had been decided by this Court based on the Memorandum and evidence at hand. As a matter of fact, judicious review of Our Decision³ promulgated on November 28, 2013 tells Us that the issues raised in movant's Memorandum had been carefully considered, evaluated and passed upon by this Court.

The issue therein was so ruled by this Court in this manner:

Section 21, Rule 70 of the Rules of Court specifically provides that "the judgment of the Regional Trial Court against the defendant shall be immediately executory, without prejudice to a further appeal that may be taken therefrom".

This wording of Section 21, Rule 70 has, without any qualification whatsoever, decreed the immediately executory nature of decisions of the RTC rendered in the exercise of its appellate jurisdiction in unlawful detainer cases which can be enforced despite the perfection of an appeal to a higher court. Here, lies Abrille's cause of action against MTCC, Br. 4 to compel its then presiding judge, George E. Omelio, to issue a Writ of Execution.

It must be emphasized that Abrille filed the Motion for Execution in MTCC after RTC 17 had rendered the January 3, 2003 Decision. Moreover, she filed the mandamus case only after her writ of execution was recalled by the MTCC on June 25, 2004. Not only did this give Abrille cause of action, this also belies the existence of malice as perceived by Rico.

Perforce, the COURT A QUO has aptly ruled that Abrille was not impelled by legal malice in filing the

mandamus case. Clearly, a cause of action exists to compel, by mandamus, the court a quo to issue the Writ of Execution pursuant to Section 21 of Rule 70 of the Rules of Court, Abrille was not impelled with malice, but rather to prosecute her claim that the writ of execution should issue as a matter of legal course.

Rico's insistence that the Motion for Execution should have been filed before Us where the appeal (CA-G.R. SP No. 75494) on the RTC 17's January 3, 2003 decision was then pending at that time is misplaced.

The Supreme Court, in *NORTHCASTLE PROPERTIES and ESTATE CORPORATION v. Acting Presiding Judge ESTRELLITA M. PAAS, MeTC, Branch 45, Pasay City*, warned and fined the aforementioned MeTC judge for denying a Motion for Execution filed in accordance with Section 21, Rule 70 of the Rules of Court. It said:

"xxx Unfamiliarity with the Rules of Court is a sign of incompetence, which goes against Canon 3, specifically Rule 3.01, of the Code of Judicial Conduct.

Having accepted the exalted position of a judge, respondent judge owes the public and the court she sits in to be proficient in the law. She must have the basic rules at the palm of her hand as she is expected to maintain professional competence at all times."

Undeterred, Rico further argued that granting Abrille had a legal right, there still no cause of action to file a mandamus case as there was no correlative duty on his part to respect Abrille's right considering that RTC 17's January 3, 2003 Decision could not be enforced because the land he occupied is separate and distinct from that of Abrille's.

The argument rings hollow and specious.

Section 21 of the Rule 70 does not provide a means to prevent execution; hence, the court's duty to order such execution is practically ministerial.

Although Rico is not without recourse to avoid immediate execution of the RTC decision as he may secure a writ of preliminary injunction, the records however of the case is bereft of any showing that one had been filed and issued seasonably by this Court. Thus, it remains a fact that Section 21 of Rule 70 mandates the courts to immediately issue a writ of execution without prejudice to the appeal taking its due course which was the very essence of Abrille's right to file a petition for mandamus.

All told, Rico having failed to establish that the filing of mandamus is but a malicious prosecution, albeit anchored on strong and solid legal ground, the dismissal of his counterclaim must be sustained.

In view of the Foregoing, the Motion for Reconsideration is DENIED.

SO ORDERED.

[*]Jacob and Badelles, JJ., concur.

[*] Vice Justice Henri Jean Paul B. Inting, who inhibited, per Raffle dated November 12, 2013.

[1] Rollo, P. 136.

[2] Rollo, p. 95.

[3] Rollo, p. 80.

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