

CONRADA LIWANAG, ASSISTED BY HER HUSBAND ANTONIO TANTAY, AND THE HON. JUDGE EULOGIO MENCIAS, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, PETITIONERS, VS. FELIX CASTILLO, RESP...

G. R. No. 13517. October 20, 1959

Ponente: BARRERA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-13517/>

BARRERA, J.:

This is a petition for a writ of certiorari to review and set aside the decision of the Court of Appeals (in CA G. R. No. 21313-R), promulgated on January 18, 1958. The records disclose that on May 2, 1956, petitioner Gonrada Liwanag, assisted by her husband, Antonio Tantay, brought an action for ejectment against respondent Felix Castillo in the Justice of the Peace Court of Mandaluyong, Rizal. Not being satisfied with the decision of said court upholding defendants defenses and counter- claims, petitioner appealed to the Court of First Instance of Rizal.

In due time, notices of appeal were sent by registered mail by the Clerk of the Court of First Instance in accordance with Section 7, Rule 40 of the Rules of Court. Respondent having failed to answer within the reglementary period, upon ex-parte motion of petitioner, the Court of First Instance, on May 18, 1957, entered an order of default and thereafter, received petitioner's evidence on the merits. On June 7, 1957, a decision against respondent was rendered. Upon receipt of copy of the decision on June 27, 1957, counsel for respondent learned for the first time of the appeal taken by petitioner and made inquiry and discovered that the notice of appeal sent by registered mail was received by his clerk on April 25, 1957, who had lost it during his absence from office due to illness.

On July 1, 1957, respondent filed a motion, accompanied with an affidavit of said receiving clerk attesting to the loss of said registered mail containing the notice of appeal and his illness, praying that the order of default of May 18, 1957, be lifted, and the decision rendered on June 7 be set aside, which motion was denied by the court on July 15 for lack of sufficient affidavit of merit. Thereafter, petitioner filed a motion for execution.

On July 27, 1957, at the hearing of petitioner's motion for execution, respondent asked for and was granted extension up to July 30, 1957, within which to file his answer to said motion and a motion for reconsideration.

On July 30, 1957, respondent filed a motion for reconsideration and answer to the motion for execution attaching thereto an affidavit of merits specifying the defenses upon which he relies to oppose petitioner's complaint. Counsel for respondent, apparently in obedience to the order of the court that upon the filing of said motion and answer, "the incidents in the case shall be considered submitted for resolution" instead of setting the motion for hearing, appended a note stating "The foregoing are respectfully submitted without oral argument." On August 30, 1957, the lower court, however, refused to consider the motion on the ground that it was not filed in compliance with the provisions of Section 5, Rule 26 of the Rules of Court. Declaring the decision as final and executory, the court ordered the execution hereof and the corresponding writ was issued on September 3, 1957.

On petition of the respondent, upon the facts above narrated, the Court of Appeals, in its decision of January 18, 1958, granted a writ of certiorari, stating:

"In the light of the foregoing facts, particularly the honest mistake and/or excusable negligence of the receiving clerk of petitioner's (respondent herein) counsel, who lost the registered letter containing the 'notice of appealed case' when he fell sick with flu, under ordinary circumstances, the remedy of petitioner (respondent) who claims now that he has been deprived of his day in court is to file a petition with the trial court praying that the decision and orders complained of be set aside. This is the rule as stated in Section 2 of Rule 33, Rules of Court. Nevertheless, considering that in the instant case a writ of execution was already issued and may be in the process of being carried out, we maintain that the relief provided for by said Rule 88 of the Rules of Court cannot 'be adequate and for that reason we hold that the rule should be relaxed in the interest of justice. That is to say, although as a general rule certiorari does not lie where there is another remedy provided or, nevertheless, the rule should be relaxed in the interest of justice where, as in the instant case, respondent Judge (petitioner herein) had already issued an order of execution. (*Saludes vs. Pajarillo, et al.*, 78 Phil. 754 *Woodcraft Works, Ltd. vs. Moscoso*, 92 Phil., 1021). To hold otherwise, petitioner's (respondent) right to have his day in court would be illusory.

WHEREFORE, the petition for a writ of certiorari is hereby granted, the orders and decision of respondent Judge (petitioner) complained of are hereby set aside, and said respondent Judge (petitioner) is hereby directed to allow petitioner (respondent) to file his answer to the complaint and to resume thereafter the trial of the case so as to enable petitioner (respondent) to present his evidence in support of his defense. Without cost." (Italics supplied.)

Petitioner now comes to this Court and claims that in granting the writ of certiorari prayed for by respondent, the Court of Appeals acted with grave abuse of discretion.

We do not agree. By "grave abuse of discretion" is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. (*Abad Santos vs. Province of Tarlac*, 67 Phil., 480; *Tan vs. People*, 88 Phil., 609; *Rueda vs. Court of Agrarian Relations*, supra, p. 300). It has been held that abuse of discretion alone is not sufficient to warrant the issuance of the writ, but that the abuse must be so grave, as where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined or to act at all, in contemplation of law. (*Tavera-Luna, Inc. vs. Nable*, 67 Phil., 340; *Alafriz vs. Nable*, 72 Phil., 278.)

In the case at bar, it appears that upon receipt on June 27, 1957, of the decision rendered on default, counsel for defendant-respondent seasonably filed a motion to set aside first, the order declaring him in default, and second, the decision on the merits. True it is that said motion was denied for lack of the required affidavit of merit; but on July 27, 1957, on the occasion of the hearing of petitioner's motion for the issuance of a writ of execution, the lower court granted respondent up to July 30 to file his opposition to the motion as well as a motion for reconsideration of the denial of his motion to set aside, with the statement in the order of the court that "after which time the incidents in the case shall be considered submitted for resolution". Counsel for respondent duly filed one single pleading on July 30, entitled "Motion for Reconsideration and Answer to Plaintiff's Motion for Execution", accompanied by an affidavit of merit specifying the grounds relied upon as specific defenses against the complaint for ejectment. Respondent's counsel, instead of setting this pleading for hearing, merely appended a note to this effect: "The foregoing are respectfully submitted without oral argument", for the reason, the respondent contends, that it was superfluous to set the same for hearing as the incident had been taken up and argued previously on three occasions: on July 3, 1957, when his motion to set aside both the order of default and the decision was first discussed; on July 13, the second hearing of the same motion; and on July 27, when petitioner's motion for execution and respondent's opposition were taken up, and furthermore, in view of the order

of the court that "after which time (July 30) the incidents in the case shall be considered submitted for resolution." This pleading upon representation of petitioner was not considered and was merely ordered filed without action, on August 30, 1957, on the ground that it was merely a piece of paper which cannot be considered by the court under the doctrine of *Manakil vs. Revilla*,^[1] and forthwith an order for execution of the judgment was issued.

Under the circumstances, the pleading submitted by respondent's counsel on July 30, 1957, is in substantial compliance with the order of the court of July 27th and the Court of Appeals, for from acting with grave abuse of discretion, acted properly in granting the writ prayed for by respondent considering the fact that the lower court had already issued a writ of execution which was probably in the process of being carried out, making inadequate an appeal or the relief provided under Rule 38 of the Rules of Court. The action is in line with the doctrines enunciated by this Court in the cases of *Saludes vs. Pajarillo, et al.* (78 Phil, 754) and *Woodcraft Works, Ltd. vs. Moscoso, et al.* (92 Phil., 1021 to the effect that while as a rule, certiorari does not lie when there is appeal, the rule may be related where, as in the instant case, a writ of execution had already been issued and is in the process of being carried out. Needless to say, the underlying reason for this doctrine is to give a party litigant his day in court and an opportunity to be heard.

Wherefore, the decision of the Court of Appeals is hereby affirmed, and the petition for certiorari dismissed, with costs against the petitioner Conrada Liwanag. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Concepcion, Endencia, and Gutierrez David, JJ., concur.

[1] 2 Phil., 81.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.