

YUPANGCO COTTON MILLS, INC., PETITIONER, VS. RODRIGO SY MENDOZA, BOY RAYMUNDO, ANAM TIMBAYAN, RENE MASILUNGAN AND ELPIDIO CERVANTES, RESPONDENTS.

G.R. NO. 139912. March 31, 2005

Ponente: TINGA, J.

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TINGA, J.:

In the maze of the flurry of suits and counter-suits between the contending parties, the central question posed before the Court in this petition is whether the prevailing party or its representatives, as well as the sheriffs, may be haled to court on robbery charges for hauling the properties which said party purchased at the execution sale.

This is a petition for review on certiorari, assailing the Decision[1] of the Court of Appeals dated 09 October 1998 and Resolution[2] dated 17 August 1999 in CA–G.R. SP No. 46811 entitled “Rodrigo Sy Mendoza, et al. v. The Honorable Secretary of Justice Silvestre Bello III, et al.”

In 1986, the Development Bank of the Philippines foreclosed the properties mortgaged to it by Artex Development Company (“Artex”). The loan of Artex was thereafter transferred to the Assets Privatization Trust, which created a Direct Debt Buy-Out Scheme to enable Artex to pay its loans. In 1989, Yupangco Cotton Mills, Inc. bought the real and personal properties of Artex, otherwise known as the Artex Compound in Panghulo, Malabon. On 15 May 1991, new transfer certificates of title over these properties were issued in the name of Yupangco.[3]

Sometime in 1990, the Samahang Manggagawa ng Artex Union (“SAMAR”) filed a complaint docketed as NLRC-NCR Case No. 00-05-02960-90 with the National Labor Relations Commission (“NLRC”) for underpayment of wages against Artex.[4] On 08 October 1992, Labor Arbiter Ramon Valentin Reyes found Artex liable and ordered it to pay the complaining members of SAMAR wage differentials amounting to P19,824,804.00. Artex appealed the decision, but the appeal was dismissed for having been filed out of time. Entry of judgment was recorded on 17 January 1994. Thus, SAMAR moved for the issuance of the corresponding writ of execution and Labor Arbiter Reyes obliged by issuing the writ on 28 September 1993.[5]

On 06 October 1994, Sheriff Max Lago of the NLRC, together with officers of SAMAR went to the Artex Compound in Panghulo, Malabon to implement the writ of execution but failed to do so because security guards prevented their entry therein. On 12 October 1994, SAMAR filed a motion for the issuance of a break-open order so that the writ could be implemented.[6]

On 18 October 1994, the Malabon Municipal Assessor issued a certification to the effect that the Artex Compound had been transferred to Yupangco Cotton Mills, Inc. since February 1991. The same information was reflected in the Sheriff’s Return dated 29 November 1994.[7] Nonetheless, a break-open order was issued by the Labor Arbiter on 30 March 1995. Yupangco moved to set aside this order on 26 April 1995, but its motion was denied on 01 June 1995.

Meanwhile, on 22 April 1995, Labor Arbiter Reyes issued an Order,[8] the dispositive portion of which reads:

WHEREFORE, premises considered, the assigned Sheriff in this case and his assistants are hereby ordered with the assistance of the police or military, if they deem necessary for an orderly implementation of this Order, to gain access to the premises/compound of the respondent corporation where the properties may be found by breaking open doors, windows, gates and other obstacles leading to said properties.[9]

An Alias Writ of Execution was issued on 25 April 1995.

On 04 May 1995, Yupangco filed a Notice of Third Party Claim[10] with the NLRC, claiming ownership over the Artex Compound and praying for the stay of any break-open order until further hearing of the case. Thereafter, on 12 May 1995, Yupangco filed an Urgent Motion to Quash the Alias Writ of Execution.[11]

On 03 July 1995, Sheriff Lago levied all the properties found inside the Artex Compound.[12] A day later, or on 04 July 1995, Yupangco filed an Affidavit of Adverse Claim,[13] alleging, among others, that Yupangco is the owner in fee simple of all the properties of Artex. In the 30 August 1995 Order of Labor Arbiter Reyes, Yupangco's notice of adverse claim was dismissed for lack of merit.[14]

Aggrieved, Yupangco filed a petition for certiorari and prohibition with the Regional Trial Court (RTC) of Manila, docketed as Civil Case No. 95-75628, entitled "Yupangco Cotton Mills, Inc. v. Hon. Ramon Valentin Reyes, et al.," maintaining that it was the owner of all the properties previously belonging to Artex.[15] The petition was dismissed on 11 October 1995, with the trial court ruling that the dismissal of Yupangco's third party claim is appealable to the NLRC and recourse to the regular court does not lie.

In view of the dismissal of the petition for certiorari and prohibition, SAMAR moved for the issuance of an alias writ of execution. On 18 October 1995, a third alias writ of execution was issued.[16] After the filing of an indemnity bond of P10,000,000.00[17] by SAMAR, and upon due publication and notice, the sheriff sold the levied properties in a public auction held on 13 November 1995, wherein SAMAR, as represented by its President, Rustico Cortez, emerged as the winning bidder.[18] Thereafter, SAMAR sold the properties to Rodrigo Sy Mendoza.[19]

On 14 November 1995, the sheriff started to withdraw from Artex Compound the levied properties sold at the execution sale.[20] On 16 November 1995, Yupangco filed a petition for mandatory injunction, docketed as NLRC NCR IC No. 0000602-95 and entitled Yupangco Cotton Mills, Inc. v. Hon. Ramon Valentin Reyes, et al.[21] Acting on the petition, the NLRC issued a temporary restraining order enjoining the enforcement of the final judgment.[22]

Meanwhile, on 08 December 1995, the NLRC issued a resolution dismissing Yupangco's appeal from the denial of its adverse claim.[23] In view of this dismissal, on 09 December 1995, SAMAR and Mendoza, with the assistance of sheriffs Timbayan and Masilungan and some members of the Malabon police force, proceeded to the Artex Compound to haul the properties bought at the public auction.[24]

Undaunted, Yupangco filed a complaint, docketed as Civil Case No. 95-76395 with the RTC of Manila for recovery of property and damages with prayer for the issuance of a temporary restraining order and/or writ of preliminary prohibitory and mandatory injunction.[25] On 12 December 1995, the RTC of Manila, Branch 50 issued a temporary restraining order for three (3) days, which was extended by seventeen (17) more days by virtue of an order dated 15 December 1995.[26] On 05 January 1996, the complaint was, however, dismissed for lack of jurisdiction.[27]

In view of the dismissal of the complaint, SAMAR requested the sheriff's assistance for the continuation of the hauling of the properties sold on execution. Hence, on 10 January 1996, acting on the letter request of SAMAR,

members of SAMAR, Mendoza, with sheriffs Timbayan and Masilungan and some members of the Malabon police continued the hauling of the properties.[28]

Yupangco moved for the reconsideration of the dismissal of Civil Case No. 95-76395, and by reason thereof, the trial court issued a status quo order on 11 January 1996, which was complied with by respondents.[29] Yupangco's motion for reconsideration was eventually denied on 31 January 1996.[30]

Once more, SAMAR requested the sheriff's assistance in hauling out the properties from the Artex Compound. Hence, on 03 February 1996, more properties subject of the auction sale were hauled out.[31]

Unhappy with the decision of the RTC, Yupangco filed a special civil action for certiorari and mandamus with the Court of Appeals, docketed as CA-G.R. SP No. 39700 and entitled Yupangco Cotton Mills v. Hon. Urbano C. Victorio, Sr., et al., seeking to annul the questioned ruling of the RTC. On 29 March 1996, the Court of Appeals dismissed the petition.[32]

In the interim, Yupangco, through its property manager, Marylen A. Bartolome, filed on 20 February 1996 a Complaint/Affidavit[33] before the Office of the City Prosecutor of Caloocan. Bartolome stated that on various dates³⁴ 14 and 17 November 1995, 11 and 12 December 1995, 10 and 11 January 1996, and 3, 4, and 5 February 1996³⁴ respondents Sheriffs Timbayan and Masilungan, Mendoza, Boy Raymundo, and a certain Protacio, together with armed men forcibly entered the Artex Compound and forcibly opened the padlocks, chains and wooden barricades of the doors of certain buildings and carried away truckloads of generators, machines, equipment, motors and fabrics. In addition, Bartolome alleged that among those hauled were properties not listed among those levied and eventually sold on execution to SAMAR. Yupangco charged the above-named persons for robbery with intimidation and robbery with the use of force upon things under Arts. 293, 294 and 299 of the Revised Penal Code. Mendoza and Raymundo filed their joint answer and counter-affidavits[34] while Sheriffs Timbayan, Masilungan and Cervantes[35] filed theirs also jointly.[36]

In a Resolution dated 20 May 1996, the City Prosecutor recommended the filing of informations against Mendoza, Raymundo, Protacio, Sheriffs Timbayan and Masilungan for three (3) counts of robbery committed during the following periods, namely: from 14 November to 12 December 1995, from 09 to 12 December 1995, and from 10 January to 05 February 1996, under Art. 302 of the Revised Penal Code; and against Cervantes for one (1) count of robbery committed from 10 January to 05 February 1996.[37] The City Prosecutor stated:

The acts of the respondents constitute robbery committed on three separate and distinct occasions. One, by unlawfully taking personal properties belonging to Yupangco by intimidation over properties listed in the Sheriff's Levy and Certificate of Sale from 14 November to 12 December 1995, second, over properties not included in the Sheriff's Levy and Certificate of Sale from 9-12 December 1995, and third, by force upon things over properties without any "alias writ of execution" from 10 January to 05 February 1996. Respondents could not hide under the cloak of legality of their acts just because the writ specified Artex, not Yupangco, as owner. It is very improbable that they were not aware that the properties were already owned by Yupangco and not Artex when they enforced the writ. The Levy and Certificate of Sale may be valid but when the respondents found out that the properties already belonged to Yupangco, their taking of the same became unlawful. A writ cannot be issued or enforced against the wrong party (*Luna v. Intermediate Appellate Court*, 137 SCRA 7).[38]

....

Assuming that the properties were owned by Artex, this does not mean that respondents are exempted from criminal liability in the commission of the crime of robbery. It is not necessary that the person from whom the property is taken shall be the owner thereof. It is sufficient if the property is taken for the purpose of gain on the part of the person appropriating it. The possession of property is sufficient. Ownership is not necessary (US

v. Albao, 29 Phil. 86).

Even assuming further that the levy was validly done because the subject properties are owned and possessed by Artex, respondents' act of taking personal properties outside those listed in the levy constitutes unlawful taking, the intent to gain being presumed from the act of taking beyond what is listed in the levy.[39]

In the meantime, the Court of Appeals dismissed CA-G.R. SP No. 39700. It held that Yupangco was guilty of forum-shopping, taking note of Yupangco's previous suits filed with the NLRC and the trial courts, wherein it presented the same issues and asked for substantially the same reliefs. It also found no grave abuse of discretion on the part of the respondent judge.[40] The Court of Appeals also dismissed Yupangco's motion for reconsideration. Thereafter, Yupangco filed a petition with this Court, seeking review of the dismissal of its petition in the Court of Appeals.[41]

On 17 June 1996, three (3) informations for robbery were filed against respondents before Branch 74 of the RTC of Malabon.[42] Meanwhile, a petition for review of the City Prosecutor's resolution was filed before the Department of Justice.

On 18 December 1996, Chief State Prosecutor Jovencito Zuno dismissed the petition for review.[43] He held in part:

Apparently, even if respondents may have been armed with writs of levy and/or execution, definitely the enforcement thereof against the properties of the complainant and not that of ARTEX constituted an unlawful taking of complainant's properties. Since the said taking was done with force and intimidation as it was made in the presence of armed persons, there was the breaking of the gate lock and locks, and padlocks in the different buildings, such circumstances qualify the unlawful taking as robbery. In this regard, except for respondents' bare denial, they failed to controvert complainant's positive evidence that the taking of the questioned properties were made under such circumstances.[44]

....

Finally, in view of the totally opposing claims and allegations of the parties, it becomes necessary to determine the probability and credibility of the parties' testimonies. This determination is properly within the province of the trial court (Pp. vs. Bania, 134 SCRA 347) as the full blown trial in court where evidence is presented extensively and witnesses may be cross examined places the trial judge in a more competent position to discriminate against the true and the false.[45]

Respondents moved for the reconsideration of the dismissal of their petition for review, which motion, however, was denied[46] by then Secretary of Justice Teofisto T. Guingona, Jr. on 13 January 1998. According to him, the issue of ownership had long been settled by the NLRC, and the execution of the labor judgment against Artex in favor of SAMAR was made on properties that were by then already owned by Yupangco. Secretary Guingona added that the matters raised by respondents were mere rehashes apart from being evidentiary in nature, which are best left for the court to determine in a full-blown trial.[47]

Meanwhile, on 28 January 1997, Labor Arbiter Jovencio Mayor, in another labor case,[48] declared:

Based on the testimonial and documentary evidence adduced during the hearings, it has been established by clear, convincing evidence that Yupangco Cotton Mills, Inc. has become the absolute owner and possessor of the real and personal properties located at 12 Panghulo, Malabon, Metro Manila since May 29, 1989 up to the present. Hence, the Third Party Claim of Yupangco Cotton Mills, Inc. is declared to be valid.[49]

....

Finally, the testimonies and documents have established the fact that as of the time of the issuance of the Writ

of Execution on September 19, 1996 by this Office and up to the present, Yupangco Cotton Mills is the absolute owner and actual possessor of the properties located at 12 Panghulo, Malabon, Metro Manila.[50]

....

PREMISES CONSIDERED, the Third Party Claim filed by Yupangco Cotton Mills, Inc. is hereby declared VALID, having established beyond any doubt its absolute ownership and actual possession of the properties located at 12 Panghulo, Malabon, Metro Manila, since 1989 up to the present.[51]

The losing party's appeal from the above-quoted order proved futile as it was dismissed for lack of merit.[52]

While the petition for review of the City Prosecutor's resolution was pending, Artex and Yupangco filed before the NLRC a joint motion for an order declaring the labor case closed and terminated by reason of full satisfaction of the judgment in NLRC-NCR Case No. 00-05-02960-90. Labor Arbiter Reyes issued the sought order on 16 November 1998. In the said order, he noted that[53]:

It would be unjust and unlawful to tolerate the further taking and hauling of properties inside the premises located at Panghulo, Malabon, Metro Manila to satisfy the previous judgment considering that the amount and value of properties previously taken were more and above the value of the judgment. Likewise, Artex and not Yupangco is the judgment debtor.

Not satisfied with the decision of the Secretary of Justice, respondents filed a petition for certiorari under Rule 65 of the Rules of Court with the Court of Appeals, imputing grave abuse of discretion amounting to lack or excess of jurisdiction in the finding that there was probable cause for the filing of robbery charges against the respondents. On 9 October 1998, the Court of Appeals promulgated its Decision, granting the petition, setting aside the resolutions dated 13 January 1998 and 18 December 1996 of the Secretary of Justice and Chief State Prosecutor, respectively, and directing the RTC of Malabon, Branch 74, to dismiss the criminal cases against respondents.[54]

The Court of Appeals held that Yupangco was not able to show unlawful taking on the part of respondents to substantiate the charge of robbery. Citing the case of *Bobis v. Provincial Sheriff of Camarines Norte*,[55] the appellate court ratiocinated that since the levied properties claimed by Yupangco were taken and sold pursuant to a writ of execution, respondent sheriffs did not wrongfully or unlawfully take the same and therefore cannot be held liable.[56] Moreover, it found that no item allegedly outside those listed in the levy were specified by the supposed eyewitnesses for Yupangco in their respective affidavits. Besides, even assuming that respondents took properties not listed in the levy, the same does not warrant the filing of criminal charges against them.[57]

The Court of Appeals stated that the law provides a third-party claimant several remedies for asserting his rights over levied properties, such as a separate action to prosecute his claim over the levied properties or a third-party claim in the court issuing the writ of execution.[58] Taking judicial notice of the findings and pronouncements of its Decision dated 29 May 1996 in CA-G.R. SP No. 39700,[59] the appellate court found that Yupangco availed of all such remedies to the point of unabashedly violating the prohibition against forum-shopping.[60] Finally, the Court of Appeals held that:

The foregoing, taken in the light of the present case, betrays Yupangco's continuing abuse of judicial processes through culpable forum-shopping. As in the proceedings mentioned in our quoted Decision, the subject matter of the present case are the levied properties and the main issue raised in the Complaint/Affidavit in this case is the ownership of Yupangco over the levied properties. It appears that the criminal case lodged against petitioners constitutes an additional forum for their repeatedly failed bid to recover the levied properties.

To deny the present petition would therefore allow a trifling of the courts and its processes.[61]

Yupangco's motion for reconsideration was also denied by the Court of Appeals.[62]

In the present petition, Yupangco presents the issues, thus:

IN THE LIGHT OF THE AFOREMENTIONED CIRCUMSTANCES, THE PRINCIPAL ISSUE IN THIS CASE IS WHETHER THERE EXISTS A PROBABLE CAUSE THAT ROBBERY BY FORCE OR INTIMIDATION HAS BEEN COMMITTED IN THE TAKING OF THE PERSONAL PROPERTIES IN PANGHULO, MALABON BY RESPONDENTS.

WHETHER OR NOT INJUNCTION WILL LIE TO RESTRAIN A CRIMINAL ACTION. [63]

Petitioner concedes that its initial failure to establish its ownership in connection with NLRC-NCR Case No. 00-05-02960-90 and the collateral suits before the RTC and the Court of Appeals may have given a color of validity to the levy and auction of the properties in the Artex Compound. Specifically, its position is that while the withdrawal of properties before the 28 January 1997 order of Labor Arbiter Mayor is valid the pullout of properties not covered by the levy, sale and certificate of sale constitutes robbery.[64]

To support this contention, Yupangco relies on the findings of the public prosecutor and the Department of Justice. It insists that the elements constituting robbery are present in this case: (1) the properties taken by respondents do not belong to them but to Yupangco, petitioner claims that there was excessive execution, which included properties not belonging to Artex, but to Yupangco; (2) the taking of said properties are unlawful because they were not among those covered by a valid writ of execution; (3) intent to gain is evidenced by the fact that the taking was illegal, and (4) violence and/or intimidation was present when the taking was made with the aid of armed men and by breaking open the padlocks and doors. Yupangco adds that a public prosecutor's determination of probable cause rests on his findings of facts which are not the proper subject of a special civil action under Rule 65, the same being limited to whether or not said public respondent acted without or in excess of its jurisdiction or with grave abuse of discretion.[65]

Yupangco depends on the 28 January 1997 and the 16 November 1998 orders of the NLRC, upholding its ownership of the disputed properties. It maintains that since it had already presented positive evidence that respondents took its properties and those not included in the levy and execution, respondents' denial and allegation of mistake in carting away said properties should be heard by the trial court, and should not be taken up in a certiorari proceeding.

For their part, respondent sheriffs claim that they did not commit any crime, as the items they took all belonged to the general class of goods described "in bulk" or "by lots" in the Notice of Levy.[66] Banking on the Court of Appeals' ruling that Yupangco was unable to prove that they took properties not listed in the Notice of Levy, respondents maintain that the presumption of regularity in the performance of their official duties had not been overturned.[67]

Lastly, respondent sheriffs point to the change in Yupangco's theory of the case by limiting the charges of robbery on items supposedly taken which were not included in the levy. They claim that Yupangco made the change in theory in order to evade charges of violating the rule against forum-shopping.[68]

On the other hand, respondent Mendoza postulates that he acquired the properties in question in good faith and by virtue of a Certificate of Sale issued by the sheriff, and thus when he withdrew the said properties from the Artex Compound, he was only doing so in the concept of owner.[69] He adds that the legal remedy available to Yupangco, if any, is not to file a complaint for robbery against respondents, but to file a civil complaint for replevin or delivery of personal property under Rule 60 of the Rules of Court, or for it to run after Artex Development Co., the former owner of the properties.[70]

While the instant petition was pending, the Court decided the case of *Yupangco Cotton Mills, Inc. v. Court of Appeals, Hon. Urbano C. Victorio, Sr. et al.*[71] In the said case, the Court ruled that there was no forum-shopping as there was no identity of parties, rights and causes of action and reliefs sought. The case before the NLRC was a labor case on which Yupangco was not a party, while the accion reivindicatoria was filed to recover the property illegally levied upon and sold at public auction. The Court held that a third party may avail himself of alternative remedies cumulatively, and one will not preclude the third party from availing himself of the alternative remedies in the event he failed in the remedy first availed of. The Court likewise annulled the sale on execution of the subject property and the subsequent sale of the same, disposing of the case as follows:

WHEREFORE, the Court REVERSES the decision of the Court of Appeals and the resolution denying reconsideration. In lieu thereof, the Court renders judgment ANNULING the sale on execution of the subject property conducted by NLRC Sheriff Anam Timbayan in favor of respondent SAMAR-ANGLO and the subsequent sale of the same to Rodrigo Sy Mendoza. The Court declares the petitioner to be the rightful owner of the property involved and remands the case to the trial court to determine the liability of respondents SAMAR-ANGLO, Rodrigo Sy Mendoza, and WESTERN GUARANTY CORPORATION to pay actual damages that petitioner claimed.[72]

Now, the ruling of the Court in this case.

The main issue for consideration is whether the Court of Appeals erred in finding that the Secretary of Justice and the State Prosecutor gravely abused their discretion in filing robbery charges against respondents, and in ordering that their resolutions be set aside and the criminal cases filed against respondents dismissed.

The petition must be denied.

The Court of Appeals granted respondents' petition on two grounds, namely; (1) lack of probable cause for filing robbery charges; and (2) forum-shopping on the part of petitioner. The Court in G.R. No. 126322 has long dismissed the charge of forum-shopping. However, the Court finds that the Court of Appeals is correct in holding that no probable cause exists in this case.

The general rule is that the determination of the existence of probable cause is the function of the prosecutor.[73] This Court has adopted a policy of non-interference in the conduct of preliminary investigations and leaves to the investigating prosecutor sufficient latitude of discretion in the determination of what constitutes sufficient evidence as will establish probable cause for the filing of information against the supposed offender.[74]

Ordinarily, the determination of probable cause is not lodged with this Court. Its duty in an appropriate case is confined to the issue of whether the determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction. This is consistent with the rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final.[75]

This policy of non-interference, however, admits several exceptions, to wit:

- To afford adequate protection to the constitutional rights of the accused (*Hernandez vs. Albano, et al.*, L-19272, January 25, 1967, 19 SCRA 95);
- When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions (*Dimayuga, et al. vs. Fernandez*, 43 Phil. 304; *Hernandez vs. Albano, supra*; *Fortun vs. Labang, et al.*, L-38383, May 27, 1981 104 SCRA 607);
- When there is a pre-judicial question which is sub judice (*De Leon vs. Mabanag*, 70 Phil. 202);
- When the acts of the officer are without or in excess of authority (*Planas vs. Gil*, 67 Phil. 62);

- Where the prosecution is under an invalid law, ordinance or regulation (*Young vs. Rafferty*, 33 Phil. 556, *Yu Cong Eng vs. Trinidad*, 47 Phil. 385,389);
- When double jeopardy is clearly apparent (*Sangalang vs. People and Alvendia*, 109 Phil. 1140);
- Where the court has no jurisdiction over the offense (*Lopez vs. City Judge*, L-25795, October 29, 1966, 18 SCRA 616);
- Where it is a case of persecution rather than prosecution (*Rustia vs. Ocampo*, CA-G.R. No. 4760, March 25, 1960);
- Where the charges are manifestly false and motivated by the lust for vengeance (*Recto vs. Catelo*, 18 L.J. [1953], cited in *Rañoa vs. Alvendia*, CA-G.R. No. 30720-R, October 8, 1962; Cf. *Guingona, et al. vs. City Fiscal*, L-60033, April 4, 1984, 128 SCRA 577); and
- Where there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied (*Salonga vs. Paño, et al.*, L-59524, February 18, 1985, 134 SCRA 438).
- Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners (*Rodriguez vs. Castelo*, L-6374, August 1, 1953). (cited in *Regalado*, Remedial Law Compendium, p. 188, 1988 Ed.)[76]

To constitute the crime of robbery, the following elements must be established: (1) the subject is personal property belonging to another; (2) there is unlawful taking of that property; (3) the taking is with the intent to gain; and (4) there is violence against or intimidation of any person or use of force upon things.[77] From the records of the case and prevailing jurisprudence, respondents cannot be held liable for robbery; nor does there exist probable cause for the filing of robbery charges against them.

In the case at bar, the determination of whether robbery was committed, most especially by respondent sheriffs, has to be related to the orderly administration of justice, and more importantly, the unhampered performance of the sheriff's role in our judicial system. Indeed, it is important to note the duty of the sheriff in implementing a writ of execution. The NLRC Manual on Execution of Judgment[78] ("Manual") requires the sheriff to serve all writs, execute all processes and carry into effect any judgment as defined therein.[79] Rule VI of the Manual provides:

RULE VITHIRD PARTY CLAM

SECTION 1. Definition— A third party claim is a claim whereby a person, not a party to the case, asserts title to or right to the possession of the property levied upon.

SECTION 2. Proceedings—If property levied upon be claimed by any person other than the losing party or his agent, such person shall make an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title and shall file the same with the sheriff and copies thereof served upon the Labor Arbiter or proper officer issuing the writ shall conduct a hearing with due notice to all parties concerned and resolve the validity of the claim within ten (10) working days from notice, and the Commission shall resolve the appeal within the same period.

However, should the prevailing party put up an indemnity bond in a sum not less than the value of the property levied, the execution shall proceed. In case of disagreement as to such value, the same shall be determined by the Commission or Labor Arbiter who issued the writ.

SECTION 3. Resolution of the Third Party Claim, Effect.— In the event the third party claim is declared to be valid, the sheriff shall immediately release the property to the third party claimant, his agent or representative and the levy on execution shall immediately be lifted or discharged. However, should the third party claim be

found to be without factual or legal basis, the sheriff must proceed with the execution of the property levied upon as if no third party claim had been filed.[80]

If a third-party claim is filed, the sheriff is not bound to proceed with the levy of the property unless he is given by the judgment creditor an indemnity bond against the claim.[81] In this case, execution of judgment was continued despite the filing of a third-party claim/notice of adverse claim by Yupangco because SAMAR was able to put up an indemnity bond as provided in the Manual and as required by the third alias writ of execution issued by Labor Arbiter Reyes.[82]

Thus, respondent sheriffs cannot be reproached, much more charged with robbery for their faithful compliance with the writ of execution, or with their duties in accordance with the Manual. With greater reason, Mendoza, who merely purchased the property from SAMAR, cannot be held liable for robbery. So long as the officer confines his acts to the mandate of the writ, he is not liable; but all of his acts that are not as justified by the writ are without authority of law.

While Yupangco's ownership of the subject properties has been settled in G.R. No. 126322, respondents' taking of the same does not constitute robbery. It is best to remember that the taking was made from 1995 to 1996, way before Yupangco was declared owner of the property. Hence, at the time the taking was done, respondents had acted by virtue of a presumptively valid levy and writ of execution. Thus, there can be no unlawful taking as the hauling of the properties was made by virtue of the alias writs of execution duly issued by the Labor Arbiter a quo.

Yupangco, however, claims that the taking was unlawful as it involved properties not included/covered by the writ of execution. The Court agrees with the Court of Appeals' finding that Yupangco was unable to identify the items taken which were allegedly not listed in the levy. When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court.[83] Indeed, the Court will not interfere with the findings of the Court of Appeals.

There was likewise no basis for Yupangco's allegation that intent to gain and use of force and violence were present in the execution. As earlier stated, at the time the execution and taking were made, the writ of execution was, essentially, legal and valid. Intent to gain cannot simply be implied from the mere execution of the judgment. Moreover, it goes beyond saying that the assistance provided by the Malabon police and other officers, which was primarily the basis for Yupangco's allegation of force and/or intimidation, was allowed by the Labor Arbiter in the writ of execution.

As discussed by the Court in G.R. No. 126322, a third party whose property has been levied upon by the sheriff to enforce a decision against a judgment debtor is afforded several alternative remedies to protect its interests. The third party may avail himself of certain remedies cumulatively, and his choice of one remedy will not preclude him from availing himself of the other remedies should he fail in the remedy first availed of.[84] Thus, a third party may file a third-party claim with the sheriff of the Labor Arbiter, and if the third-party claim is denied, the third party may appeal the denial to the NLRC.[85] Even if a third-party claim is denied, a third party may still file a proper action with a competent court to recover ownership of the property illegally seized by the sheriff.[86] This Yupangco did, and it succeeded in having itself declared owner of the subject properties.

Yupangco's reliance, however, on the 28 January 1997 order of the Labor Arbiter Mayor in NLRC-NRC Case No. 10-05985-91 is misplaced. While said order validated Yupangco's third-party claim and even declared its absolute ownership and actual possession of the subject properties, the order pertains to a case very different from the one for which the subject execution was made. Hence, it is not binding on the respondents. Neither can the finding made by Labor Arbiter Reyes in his order dated 16 November 1998 that "Artex and not Yupangco is the

judgment debtor” have any bearing on the allegations against respondents. Said orders, much like this Court’s Decision in G.R. No. 126322, were obviously issued after the questioned hauling of properties had been effected and they do not detract from the validity of respondents’ acts at the time of the levy and execution.

When petitioner filed its complaint/affidavit, it charged respondents with robbery for hauling properties located in the Artex Compound through the use of force and intimidation. When the instant case reached this Court, however, petitioner limited the charge of robbery to the properties allegedly not included in the notice of levy. Additionally, it claimed that there was excessive execution which included items not owned by Artex, but by Yupangco.

The change of theory notwithstanding, the Court still cannot see any probable cause for the filing of robbery charges. The distinction made by Yupangco is not legally workable and appears baseless. It must be borne in mind that at the time the auction sale and the subsequent sale to Mendoza were made, SAMAR had the lawful right to the properties of Artex by virtue of the finality of judgment in NLRC-NCR Case No. 00-05-02960-90. In its complaint/affidavit, Yupangco did not even question the validity of the notice of levy and execution, nor that of the auction sale which culminated in the pullout of the properties to effect execution. SAMAR acquired the properties in a sealed bidding, wherein the properties were sold in bulk or by lots, with the descriptions in the notice of levy and the certificate of sale sufficiently covering the items hauled by respondents.[87] The same is true for the sale between SAMAR and Mendoza, wherein for and in consideration of the bid price P6,000,000.00, the latter bought the chattels and personal properties listed in the notice of sale, which list was carried over in the certificate of sale.[88] Thus, all the properties which fit the descriptions contained in the notice of levy were, at that time, properly levied upon and thereafter legally taken by respondents.

Even assuming for the nonce that properties not listed in the notice of levy or certificate of sale were taken, a criminal action for robbery would still not prosper. In the case of *Aristorenas v. Molina*,[89] this Court held that a sheriff’s role in the execution of judgment is purely ministerial and he has no discretion whether or not to execute the judgment. Any objection against the levy and sale must be addressed to the judgment of the tribunal which issued the order, because it is within its jurisdiction to correct the errors or excesses of its ministerial officers and to control its own processes. Thus, the remedy of Yupangco, if any, is not the filing of a criminal action, but an action before the NLRC which had control over the respondent sheriffs.

In *Marcelo v. Sandiganbayan*,[90] this Court held that the act of a sheriff taking personal property not included in the notice of levy, without issuing a receipt therefor, or listing the same in the sheriff’s return, is not criminal in nature, the appropriate relief against the erring sheriff being a civil action for damages or an administrative complaint for the faulty implementation of the writ of execution.[91]

In addition, at the time of the withdrawal of the subject properties, Mendoza had already posted a P10,000,000.00 supersedeas bond to secure respondent sheriffs against any loss, damage or injury which Artex, or any person or entity may suffer as a consequence of any wrongful implementation and enforcement of the final judgment in the labor case *a quo*. Yupangco is protected by the same supersedeas bond. Hence, its remedy is not to run after respondents through a criminal action, but to proceed against the bonding company or Mendoza, as the case may be, which is what it actually did in Civil Case No. 95-76395.

The Court adheres to the view that a preliminary investigation serves not only the purposes of the State, but more importantly, it is a significant part of freedom and fair play which every individual is entitled to.[92] It is thus the duty of the prosecutor or the judge, as the case may be, to relieve the accused of going through a trial once it is determined that there is no sufficient evidence to sustain a finding of probable cause to form a sufficient belief that the accused has committed a crime. In this case, absent sufficient evidence to establish probable cause for the

prosecution of respondents for the crime of robbery, the filing of informations against respondents constitute grave abuse of discretion.

To repeat, Yupangco may have been greatly inconvenienced by the turn of events, but there is simply no sufficient basis for the filing of criminal charges against the respondents. However, Yupangco is not left without any remedy. As can be seen from the foregoing discussion, Yupangco still has a venue to ventilate its grievance against respondents, with the Court in G.R. No. 126322 paving the way for the continuation of its action for recovery and damages against respondents.

WHEREFORE, the petition is DISMISSED and the assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 46811 are AFFIRMED. Costs against the petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Promulgated by the Second Division, penned by Associate Justice Demetrio G. Demetria, JJ. Ramon A. Barcelona and Bernardo P. Abesamis, concurring.

[2] Id. at 63.

[3] Complaint/Affidavit of Marilyn Bartolome, CA Rollo, pp. 194-195.

[4] Samahang Manggagawa ng Artex (SAMAR-ANGLO), represented by its local President, Rustico Cortez v. Artex Development Co., Inc. and/or Jesus Typoco.

[5] Rollo, p. 4.

[6] Id. at 4-5.

[7] Id. at 5.

[8] CA Rollo, pp. 98-101.

[9] Id. at 100.

[10] Id. at 102-103.

[11] Id. at 12.

[12] Id. at 6.

[13] Id. at 104.

[14] Id. at 105-108

[15] Id. at 14.

[16] Id. at 111-113.

[17] As required in the alias writ of execution.

[18] Certificate of Sale, CA Rollo, p. 114. SAMAR bought all of the levied properties subject of the sale for P6,000,000.00 in a sealed bidding.

[19] Deed of Sale, id. at 117.

[20] Id. at 15.

[21] Id. at 120-129.

[22] Id. at 130-132.

[23] Id. at 133-141.

[24] Answer and Joint Counter-Affidavit of Sheriffs Elpidio Cervantes and Anam Timbayan, Id. at 209.

[25] Entitled Yupangco Cotton Mills, Inc. v. Samahang Manggagawa ng Artex (SAMAR-ANGLO) represented by its Local President Rustico Cortez, Western Guarantee Corporation and Rodrigo Sy Mendoza, Id. at 142-156.

[26] Id. at 157.

[27] Id. at 159-163.

[28] Id. at 211.

[29] Id. at 211.

[30] Id. at 166.

[31] Id. at 210.

[32] Id. at 167-173.

[33] Id. at 194-198.

[34] Id. at 213-222.

[35] Cervantes, the NLRC Enforcement Officer, was impleaded as he was the one who issued the memorandum in response to the request for sheriff's assistance.

[36] CA Rollo, pp. 200-212.

[37] Id. at 60-64.

[38] Id. at 62.

[39] Id. at 63.

[40] Decision dated 29 March 1996, CA Rollo, pp. 167-173.

[41] Docketed as G.R. No. 126322, entitled Yupangco Cotton Mills, Inc. v. Court of Appeals, et al., CA Rollo, p. 192.

[42] Rollo, p. 12.

[43] CA Rollo, pp. 52-56.

[44] Id. at 55.

[45] Id. at 55-56.

[46] Id. at 57-58.

[47] Id. at 58.

[48] Andelio C. Tuling, et al v. Artex Development Co., Inc., and/or Meynardo Vinuya, Yupangco Cotton Mills,

Third Party Claimant, NLRC-NCR Case No. 10-05985-91, CA Rollo, pp. 308-338.

[49] Id at 334.

[50] Id at 337.

[51] Id at 337-338.

[52] Id. at 347.

[53] Order dated 16 November 1998, as cited by petitioner, Rollo, p. 296.

[54] Rollo, p. 60.

[55] 206 Phil. 26 (1983).

[56] Rollo, p. 56.

[57] Id. at 56.

[58] Citing Consolidated Bank and Trust Corp. v. Court of Appeals, G.R. No. 80063, 23 January 1991, 193 SCRA 169.

[59] Rollo, pp. 57-60, see note 39.

[60] Id. at 57.

[61] Id. at 60.

[62] Id. at 63.

[63] Id. at 13-14.

[64] Id. at 14-15.

[65] Id. at 22-23.

[66] Id. at 310.

[67] Id. at 312.

[68] Id. at 312.

[69] Id. at 325.

[70] Id. at 326.

[71] G.R. No. 126322, supra note 13, promulgated on 16 January 2002; 424 Phil. 469. The case dealt with the petition for review of the decision of the Court of Appeals dismissing the petition of Yupangco, ruling that Yupangco was guilty of forum-shopping and that the proper remedy was appeal in due course and not certiorari or mandamus. The petition with the Court of Appeals involved the dismissal by the RTC of Yupangco's reivindicatoria action.

[72] Id. at 481.

[73] Serapio v. Sandiganbayan, 444 Phil. 499, 532 (2003).

[74] Id. citing Raro v. Sandiganbayan, 335 SCRA 581 (2000).

[75] Roberts, Jr. v. Court of Appeals, G.R. No. 113930, 5 March 1996, 254 SCRA 307, 345.

[76] Id. at 345-346, citing Brocka v. Enrile, G.R. Nos. 69863-65, December 10, 1990, 192 SCRA 183,188-189.

[77] People v. Taño, 387 Phil. 465, 484 (2000). Art. 293 of the Revised Penal Code provides:

Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery.

[78] Issued on 24 February 1993.

[79] Section 1 of the Manual.

[80] Rule VI was patterned after Sec. 17, Rule 39 of the Revised Rules of Court (Co Tuan v. National Labor Relations Commission, 289 SCRA 415, 22 April 1998), which provides:

SEC. 17. Proceedings where property claimed by third person.—If the property levied on be claimed by any other person than the judgment debtor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serve the same upon the officer making the levy, and a copy thereof upon the judgment creditor, the officer shall not be bound to keep the property, unless such judgment creditor or his agent, on demand of the officer, indemnify the officer against such claim by a bond in a sum not greater than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution.

The officer is not liable for damages, for the taking or keeping of the property, to any third-party claimant unless a claim is made by the latter and unless an action for damages is brought by him against the officer within one hundred twenty (120) days from the date of the filing of the bond. But nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property by any proper action.

When the party in whose favor the writ of execution runs, is the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or levying officer is sued for damages as a result of the levy, he shall be represented by the Solicitor General and if held liable therefore, the actual damages adjudged by the court shall be paid by the National Treasurer out of such funds as may be appropriated for the purpose.

[81] Sec. 2 of the Manual.

[82] CA Rollo, p. 113.

[83] Philippine Lawin Bus Co. v. Court of Appeals, 425 Phil. 147, 154 citing Atillo v. Court of Appeals, 334 Phil. 546 (1997).

[84] Yupangco Cotton Mills, Inc. v. Court of Appeals, *supra* note 71 at 476.

[85] Section 2, Rule VI of the Manual .

[86] *Supra* note 84.

[87] The list of properties covered by the sale is found in the Certificate of Sale, CA Rollo, pp. 114-1116.

[88] Id. at 117-119.

[89] 316 Phil. 178, 181-182 (1995).

[90] G.R. No. 69983, 14 May 1990, 185 SCRA 346.

[91] Id. at 351.

[92] *Salonga v. Cruz Paño*, No. L-59524, 18 February 1985, 134 SCRA 438, 462.

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