

SPOUSES ANTHONY AN AND MA. FATIMA AN, PETITIONERS, VS. PHILIPPINE NATIONAL BANK, RESPONDENT.*G.R. No. 266071, April 07, 2026*

Ponente: SINGH, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-266071/>**SINGH, J.:**

This is a Petition for Review on Certiorari[1] (Petition) filed by the Spouses Anthony An and Ma. Fatima An (Spouses An) of the Decision,[2] dated June 6, 2022, and the Resolution,[3] dated January 17, 2023, of the Court of Appeals (CA) in CA-G.R. CV No. 116720 and CA-G.R. SP No. 169626. In CA-G.R. CV No. 116720, the CA affirmed the Decision,[4] dated December 7, 2020, of Branch 5, Regional Trial Court, Legazpi City (RTC), granting the Petition for the Issuance of a Writ of Possession filed by the Philippine National Bank (PNB) over a parcel of land occupied by the Spouses An. In CA-G.R. SP No. 169626, the CA partially granted the Petition for Certiorari[5] filed by PNB, and annulled the Order,[6] dated January 11, 2021, of the RTC, holding in abeyance the implementation of the writ of possession it had earlier issued.

The Facts

On September 29, 2011, the Spouses An obtained a loan from Allied Banking Corporation (Allied Bank) for PHP 2,000,000.00, with a real estate mortgage on the land located at Barrio Tahao, Legazpi City covered by Transfer Certificate of Title (TCT) No. 57956.[7] Meanwhile, on February 9, 2013, Allied Bank and PNB entered into a merger, with the PNB as the surviving entity.[8] As a result, PNB succeeded to all the rights, obligations and interests of Allied Bank.

The Spouses An failed to pay their loan obligation. Thus, PNB extrajudicially foreclosed the mortgaged property in accordance with Act No. 3135.[9] On December 15, 2015, a public auction was conducted and the property was sold to PNB as the highest bidder. A Certificate of Sale[10] was issued in favor of PNB, which was registered with the Registry of Deeds of Legazpi City on November 10, 2016.[11]

The one-year period for redemption lapsed without the Spouses An exercising their right to redeem the property. Ownership of the land was then consolidated in the name of PNB. Thus, TCT No. 57956 was cancelled, and TCT No. 085-2018000630[12] was issued in the name of PNB.

Demands to vacate the property were made by PNB on the Spouses An,[13] but they remained unheeded. Thus, PNB filed a Petition for the Issuance of a Writ of Possession[14] before the RTC. PNB claimed that the issuance of a possessory writ in its favor is a matter of right so that it could take immediate possession and control of the property, the ownership of which has been consolidated under PNB's name.[15]

The Spouses An filed an Opposition.[16] They alleged that they have been regularly paying their loan obligation to Allied Bank and thereafter to PNB. They were surprised to learn about the extrajudicial foreclosure since they never received any personal notice about the public auction. They tried to redeem the property from PNB but were refused for the reason that they have allegedly waived their right of redemption as embodied in Section 7 of

the Real Estate Mortgage. The Spouses An contended that the right of redemption is a statutory privilege and the said provision in the Real Estate Mortgage is null and void for being contrary to law.[17]

The Ruling of the RTC

In the Decision, dated December 7, 2020, the RTC granted the Petition and ordered the issuance of a writ of possession in favor of the PNB. The dispositive of the said Decision reads:

WHEREFORE, the verified petition filed by petitioner [PNB] is GRANTED. As prayed for, let a Writ of Possession be issued addressed to the Sheriff of this branch to command [the Spouses An] to vacate the premises and forthwith place petitioner [PNB] in possession of the parcel of land covered by [TCT] No. 085-2018000630 of the Register of Deeds of Legazpi City[,] formerly [TCT] No. 57956 of the Register of Deeds of Legazpi City.

SO ORDERED.[18] (Emphasis in the original)

The RTC ruled that the issuance of a writ of possession in favor of PNB is ministerial following the extrajudicial foreclosure. It found that the Certificate of Sale was registered by PNB on November 10, 2016, thus the Spouses An had until November 10, 2017 within which to redeem the property. However, they failed to exercise their right of redemption within the prescribed period. Thus, no bond is also required of PNB for the issuance of the writ.[19]

With respect to the opposition of the Spouses An, the RTC held that the arguments they raised are evidentiary in nature and should have been raised in a separate proceeding. It held that the failure of the Spouses An to redeem the property within the prescribed period binds the hand of the RTC to issue the writ of possession.[20]

The Spouses An filed a Notice of Appeal, which the RTC gave due course to in its Order,[21] dated January 7, 2021. The Spouses An's appeal before the CA was docketed as CA-G.R. CV No. 116720.

Then, the RTC issued the assailed Order,[22] dated January 11, 2021 which held in abeyance the implementation of the writ of possession it had earlier issued in view of the appeal filed by the Spouses An.[23]

Meanwhile, PNB filed on January 25, 2021 a Comment/Opposition with Motion to Expunge (the Notice of Appeal[,]) dated [December 28,] 2020),[24] which contended that the Spouses An had no personality to oppose or intervene in the case, which is an ex parte proceeding. The Spouses An cannot be considered third parties who hold the subject property by adverse title or right. The RTC, however, in the Order,[25] dated January 28, 2021, denied PNB's Motion to Expunge the Notice of Appeal, holding that the soundness of the order granting the writ of possession is a matter of judgment and thus reviewable by ordinary appeal.[26]

PNB filed a Motion for Reconsideration of the Orders, dated January 7, 2021 and January 11, 2021, but the RTC merely noted the said Motion, ruling that it had lost jurisdiction over the case since the entire records had been forwarded to the CA.[27] PNB then filed an Ad Cautelam Motion for Reconsideration of the January 28, 2021 Order, but this was denied by the RTC in the Order,[28] dated March 12, 2021.

PNB filed a Petition for Certiorari before the CA, which was docketed as CA-G.R. SP No. 169626.

The Ruling of the CA

The Spouses An's appeal docketed as CA-G.R. CV No. 116720, and PNB's Petition for Certiorari docketed as CA-G.R. SP No. 169626 were consolidated by the CA.[29]

In the Decision, dated June 6, 2022, the CA denied the Spouses An's appeal, and granted the Petition filed by PNB. The fallo of the said Decision reads:

WHEREFORE, premises considered, the Appeal docketed as CA-G.R. CV No. 116720 filed by Spouses Anthony and Fatima An is hereby DENIED. The Decision[,] dated December 7, 2029 of the Regional Trial Court, Branch 5, Legazpi City is AFFIRMED.

Meanwhile, the Petition for Certiorari docketed as CA-G.R. SP No. 169626 filed by Philippine National Bank is partially GRANTED but only insofar as the Order[,] dated January 11, 2021[,] of the Regional Trial Court, Branch 5, Legazpi City[,] which is hereby ANNULLED and SET ASIDE. Accordingly, the Branch Sheriff is ORDERED to proceed with the implementation of the writ of possession without prejudice to the outcome of Civil Case No. 11531

SO ORDERED.[30] (Emphasis in the original)

The CA ruled that PNB has acquired an absolute right over the subject property due to the failure of the Spouses An to exercise their right of redemption within one year from the registration of the Certificate of Sale on November 10, 2016. Title was then consolidated under PNB's name, upon which TCT No. 085-2018000630 was issued in its name. Considering that PNB is the new registered owner of the subject property, then it can properly apply for the issuance of a writ of possession in its favor. Such petition is an ex parte proceeding, thus it was only ministerial on the part of the RTC to issue the said writ.[31]

The remedy against an order granting the issuance of a writ of possession is ordinary appeal. Thus, the CA held that the RTC properly gave due course to the appeal filed by the Spouses An in the Order, dated January 7, 2021. Notwithstanding, the CA found that the RTC committed grave abuse of discretion in issuing the Order, dated January 11, 2021, which held in abeyance the implementation of the writ of possession. The rule is that once the writ has been issued, there is no alternative but to enforce it without delay. Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing its issuance. The purchaser of the property is entitled to the issuance of the writ, regardless of whether there is a pending suit for annulment of the mortgage or its foreclosure. Thus, the CA ruled that PNB's Petition for Certiorari was meritorious.[32]

The Spouses An filed a Motion for Reconsideration, which the CA denied in the Resolution, dated January 17, 2023. Thus, the present Petition.

The Issue

Did the CA commit a reversible error in ruling that: (a) PNB is entitled to the issuance of the writ of possession; and (b) the RTC committed grave abuse of discretion in holding in abeyance the implementation of such writ?

The Ruling of the Court

The Petition is unmeritorious.

The Petition raises issues for the first time on appeal

Interestingly, the Petition for Review on Certiorari filed by the Spouses An does not discuss any substantive arguments pertaining to the propriety of the issuance of the writ of possession in favor of PNB. It also does not proffer any reason to support the RTC Order holding the implementation of such writ in abeyance. The present Petition only raises two new procedural issues: (a) that PNB failed to present in evidence that a certain Jose Marie Erwin H. Duran was authorized to file the Petition for the Issuance of a Writ of Possession with the RTC; and (b) the Petition for Certiorari of PNB was filed beyond the prescribed 60-day period.[33]

It is the rule that a party cannot raise an issue for the first time on appeal, as to allow parties to change their theory on appeal would be offensive to the rules of fair play and due process.[34] Here, the procedural issues raised by

the Spouses An in the present Petition were not raised before the RTC and the CA. Nowhere were such arguments raised in the Opposition to the Petition for Issuance of the Writ of Possession filed with the RTC, nor in the Brief[35] filed with the CA. These are new matters which the Court is precluded to rule on lest it violate PNB's right to due process of law.

Even if these issues are considered, however, the Court would still find that the CA committed no reversible in ruling that PNB is entitled to the issuance of the writ of possession, and that the RTC committed grave abuse of discretion in holding in abeyance its implementation.

First, there is no merit in the contention of the Spouses An that Jose Marie Erwin H. Duran was unauthorized to file the Petition for the Issuance of a Writ of Possession. The Verification and Certification of Non-Forum Shopping[36] attached to the said Petition was indeed signed by the said individual. The accompanying sworn Secretary's Certificate issued by Ruth Pamela E. Tanghal, PNB Assistant Corporate Secretary, states that:

I.

During the Regular Meeting of the PNB Board of Directors on February 28, 2003, at which a quorum was present and acting throughout, the Board approved the following resolution:

....

RESOLVED, AS IT IS HEREBY RESOLVED, that the Board ratify the grant of authority to Branch Managers/Heads (including Officers-in-Charge and in Acting Capacity), Account Officers with the rank of Assistant Manager (AM) and above, Assistant Vice Presidents (AVPs), Senior Assistant Vice Presidents (SAVPs), Vice Presidents (VPs), First Vice Presidents (FVPs) and other officers of higher rank to prosecute and defend cases for and/or against the Bank, which includes signing the Verification and Certification Against Forum Shopping portion of initiatory and other verified pleadings and/or documents and to appear on behalf of PNB in the Pre-Trial Conference, and other stages of proceedings where its presence is required.

....

II.

MR. JOSE MARIE ERWIN H. DURAN is an officer of the Bank assigned at the Property Management Department, Asset Management Operations Division of the Acquired Assets Management Group as its Head of Office with the rank of Vice President.[37] (Emphasis supplied)

The Secretary's Certificate evidently attests two material facts: (a) that officers of PNB with the rank of Vice President are authorized by its Board of Directors to sign the Verification and Certification of Non-Forum Shopping; and (b) Jose Marie Erwin H. Duran held the rank of Vice President at the time he signed the Verification and Certification of Non-Forum Shopping attached to the Petition for Issuance of a Writ of Possession. Thus, the Spouses An's contention that the said individual is without authority to file the Petition with the RTC is clearly baseless.

Second, Rule 65, Section 4 of the Rules of Court provides that a petition for certiorari must be filed within 60 days from receipt of the assailed order or judgment.[38]

In the Petition for Certiorari filed by PNB before the CA, PNB admitted that it received the RTC Order, dated March 12, 2021, on March 29, 2021.[39] Counting 60 days from such date, the Petition for Certiorari should have been filed on or before May 28, 2021. However, PNB only filed the Petition for Certiorari on May 31, 2021, believing that it had until May 29, 2021 to file the same (as May 29, 2021 fell on a Saturday).[40]

Notwithstanding that PNB's Petition was filed late, it remains that this issue was not brought up in the proceedings in the CA. That this matter is being raised for the first with the Court precluded PNB from advancing a reasonable or meritorious explanation for such belated filing.

Rules of procedure are tools designed to promote efficiency and orderliness; they are not intended to frustrate the ends of justice. Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.[41] Procedural rules may be relaxed for the following reasons: (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) a lack of any showing that the review sought is merely frivolous and dilatory; and (f) the other party will not be unjustly prejudiced thereby.[42]

The Court may relax the 60-day period in filing a Rule 65 petition as in this case considering that what is at stake here is the property right of a purchaser in a foreclosure sale. The filing by PNB of the Petition is not frivolous but was done to protect its interest as the registered owner of the subject land, the title of which has been consolidated in its name, and upon which a writ of possession had already been issued by the RTC. Thus, to properly rule on this case, and in the interest of substantial justice, the Court may excuse PNB's belated filing (by two days) of its Petition for Certiorari with the CA.

The RTC correctly issued the writ of possession in favor of PNB

A writ of possession is a writ of execution issued to enforce a judgment to recover the possession of a piece of land. It may be issued in the extrajudicial foreclosure of mortgages under Section 7 of Act No. 3135, which reads:

Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under sec. 194 of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of court shall, upon the filing of such petition, collect the fees specified in par. 11 of sec 114 of Act No. 496, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

In *Jayag v. BDO Unibank, Inc.*, [43] the Court described the nature of and process for the issuance of a writ of possession in extrajudicial foreclosure proceedings:

It is a time-honored legal precept that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, entitlement to a writ of possession becomes a matter of right. As the confirmed owner, the purchaser's right to possession becomes absolute. There is even no need for him to post a bond, and it is the ministerial duty of the courts to issue the same upon proper application and proof of title. Furthermore, it is

settled that a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession. The trial court, where the application for a writ of possession is filed, does not need to look into the validity of the mortgage or the manner of its foreclosure. The purchaser is entitled to a writ of possession without prejudice to the outcome of the pending annulment case. Questions on the regularity and the validity of the mortgage and foreclosure cannot be invoked as justification for opposing the issuance of a writ of possession in favor of the new owner.

. . . .

In an extrajudicial foreclosure of real property, the purchaser becomes the absolute owner if no redemption is made within one year from the registration of the certificate of sale by those entitled to redeem. Being already an absolute owner, it may demand possession as a matter of right. Hence, Sec. 7 of Act No. 3135 imposes upon the trial court a ministerial duty to issue a writ of possession to such new owner upon the filing of an ex parte motion. The trial court has no discretion on this matter.[44]

As found by the RTC and affirmed by the CA, the Spouses An failed to exercise their right of redemption within one year from the registration of the Certificate of Sale. In fact, a new title over the property had already been issued in PNB's name. Ownership of the land has been consolidated in the name of PNB. Hence, the issuance of a writ of possession was purely ministerial on the part of the RTC; its issuance was a matter of course.

The rule that the issuance of a writ of possession in favor of the purchaser becomes a ministerial function is not without exceptions, such as: (a) gross inadequacy of purchase price; (b) a third party is claiming a right adverse to debtor-mortgagor; and (c) failure to pay the surplus proceeds of the sale to mortgagor.[45]

Here, the Spouses An did not allege that there was gross inadequacy of the purchase price during the auction sale, nor did they contend that PNB failed to remit any surplus proceeds from the sale. In fact, the arguments proffered by the Spouses An centered on the validity of the foreclosure proceeding itself, and their supposed failure to exercise their right of redemption. Likewise, the Spouses An cannot be considered third parties as they are in fact the debtor-mortgagors here. It is clear that this case does not fall under any of the abovementioned exceptions.

Thus, the CA did not commit a reversible error in finding that the RTC correctly ordered the issuance of a writ of possession in favor of PNB.

The filing of an appeal against the order granting the issuance of a writ of possession does not stay the implementation of such writ

Before delving on the issue as to whether the filing by the Spouses An of the appeal against the RTC Order granting the issuance of the writ of possession stayed the implementation of such writ, the Court takes this opportunity to clarify the remedies available to the debtor-mortgagor with respect to extrajudicial foreclosure under Act No. 3135, and the concomitant legal effects of filing such remedies on the implementation of the writ of possession.

Essentially, there are three remedies available to the debtor-mortgagor in an extrajudicial foreclosure proceeding. The first is the filing of a petition under Section 8 of Act No. 3135, which reads:

Sec. 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act No. 496; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with

section 14 of Act No. 196; but the order of possession shall continue in effect during the pendency of the appeal. (Emphasis supplied)

In *Cabuhat v. Development Bank of the Philippines*,^[46] the Court described the petition under Section 8 of Act No. 3135 as a form of review that is limited in scope and purpose, thus:

A petition under Section 8 is limited to two grounds: (1) that the mortgage was not violated, meaning the debtor has not missed any payments of his loan; or (2) that the foreclosure sale did not comply with the procedural requirements under Sections 1-4 of Act No. 3135.

These grounds are exclusive. More importantly, both grounds implicitly admit the existence and validity of the mortgage [...].

A petition under Section 8 of Act No. 3135 is filed in the same proceedings where possession is requested. This is a summary proceeding under Section 7 because the issuance of a writ of possession is a ministerial function of the RTC. This possessory proceeding is not a judgment on the merits, but simply an incident in the transfer of title. Consequently, the judgment cannot produce the effect of *res judicata*.

A Section 8 proceeding is narrowly designed only to set aside the sale and/or the order granting possession under Section 7. It cannot annul the validity of the foreclosure or of the mortgage. Due to its very limited scope, it cannot entertain issues beyond the procedural irregularities in the sale.^[47] (Emphasis in the original)

The filing of the petition under Section 8 of Act No. 3135 presupposes that the debtor-mortgagor admitted the existence and validity of the mortgage, and such debtor-mortgagor is only questioning certain procedural defects in the foreclosure sale.

However, in *680 Home Appliances, Inc. v. Court of Appeals*,^[48] the Court clarified that the remedy spelled out in Section 8 of Act No. 3135 is only available when "the purchaser acquires actual possession of the property. This is required because until then the debtor, as the owner of the property, does not lose his right to possess."^[49]

Notwithstanding that Section 8 of Act No. 3135 points to the existence of a writ of possession, the Court stated in *680 Home Appliances* that this pertains only to a unique factual situation—that is, when the writ of possession was issued during the redemption period. Section 8 must be read in relation to Section 7, which allows for the issuance of a writ of possession in favor of the purchaser during the redemption period.

Thus, the remedy under Section 8 of Act No. 3135 finds no application when the redemption period has expired without the debtor-mortgagor exercising its right to redeem the property, and the purchaser in the foreclosure sale has already consolidated his ownership over the property and moved for the issuance of the writ of possession.

It is important to note that there is nothing in Section 8 of Act No. 3135 which provides that the filing of the petition will automatically stay the writ of possession. In fact, the appeal of an adverse judgment against the debtor-mortgagor will not stay the implementation of the writ of possession that had been issued in favor of the purchaser. This is the clear instruction of the last proviso in Section 8, which states that "the order of possession shall continue in effect during the pendency of the appeal."

The second remedy available to the debtor-mortgagor pertains to the filing of a separate and independent suit to question the validity of the mortgage and foreclosure sale. This remedy is available once a writ of possession has been granted to the purchaser as a matter of right, i.e., that the redemption period has lapsed without the debtor-mortgagor exercising its right to redeem the property, and title to the property has been consolidated in the name of the purchaser. In other words, this remedy only becomes available upon the preclusion of the Section 8 petition. As the Court explained in *680 Home Appliances*:

[U]pon the lapse of the redemption period without the debtor exercising his right of redemption and the

purchaser consolidates his title, it becomes unnecessary to require the purchaser to assume actual possession thereof before the debtor may contest it. Possession of the land becomes an absolute right of the purchaser, as this is merely an incident of his ownership. In fact, the issuance of the writ of possession at this point becomes ministerial for the court. The debtor contesting the purchaser's possession may no longer avail of the remedy under Section 8 of Act No. 3135, but should pursue a separate action e.g., action for recovery of ownership, for annulment of mortgage and/or annulment of foreclosure[.][50] (Emphasis supplied)

In addition, the Court stated in *Cabuhat* that "[t]he remedy of a litigant who challenges the existence of the mortgage or the validity—not the regularity—of the foreclosure is a separate action to annul them. These grounds outside Section 8 have to be threshed out in a full-blown trial." [51]

As discussed, the issuance of a writ of possession once title has been consolidated in the name of the purchaser becomes only a ministerial function of the Court, precisely because the premise of such action is now based on the ownership of the purchaser over the property.

The Court has long held in a line of cases that the filing of an independent action to annul the mortgage or invalidate the foreclosure proceeding does not stay the implementation of the writ of possession. In *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*, [52] the Court stated that:

Furthermore, it is settled that a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession. The trial court, where the application for a writ of possession is filed, does not need to look into the validity of the mortgage or the manner of its foreclosure. The purchaser is entitled to a writ of possession without prejudice to the outcome of the pending annulment case. [53] (Emphasis supplied)

Thus, it is not proper to hold in abeyance the issuance of the writ absent an injunctive order. [54] Similar to an appeal of the judgment in a petition filed under Section 8 of Act No. 3135, the filing of an action for annulment of the mortgage or the foreclosure sale should not stay the implementation of the writ of possession.

The third remedy available to the debtor-mortgagor is the filing of an appeal against the order granting the issuance of the writ of possession. The Court held in *Metropolitan Bank and Trust Company v. Tan* [55] that an order granting the issuance of a writ of possession is a final judgment that is appealable:

Finally, we agree with Metrobank's contention that the trial court's order granting the writ of possession is final. The proper remedy for respondents is an appeal and not a petition for certiorari. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctable by an appeal if the aggrieved party raised factual and legal issues; or a petition for review under Rule 45 of the Rules of Court if only questions of law are involved. [56] (Emphasis supplied)

Indeed, it has been held that "[t]he soundness of the order granting the writ of possession is a matter of judgment, with respect to which the remedy of the party aggrieved is ordinary appeal." [57]

Notwithstanding that the nature of a petition for the issuance of a writ of possession partakes of an *ex parte* proceeding, or one where "the court hears only one side of the controversy" and "without notice to or contestation by any party adversely affected," [58] the Court has recognized that an adverse party, such as a third party which has possession of the property, may still oppose the petition, and thereafter appeal the order granting such petition.

Ordinarily, when an appeal is filed within the prescribed period, such would stay the execution of the assailed judgment. It is the rule that only a final judgment may be the subject of execution. [59] Indeed, Rule 39, Section 1 of the Rules of Court provides that execution is a matter of right with respect to a judgment that disposes of the action where the period of appeal has expired or if no appeal has been perfected. [60]

However, the Court now categorically holds that this rule is not applicable to an appeal filed to assail an order granting the issuance of a writ of possession under Section 7 of Act No. 3135.

First, this is in line with the longstanding principle enunciated by the Court that the issuance of a writ of possession is only ministerial and should issue as a matter of right to the purchaser upon expiration of the redemption period and consolidation of the title in the name of the purchaser. If the Court rules that an appeal stays the implementation of the writ of possession, then this principle is rendered nugatory. It would be incongruous to hold that a ministerial duty exercised by the RTC in issuing the writ of possession may easily be suspended by the filing of an appeal. More so, it would defeat the possessory right of the purchaser as the registered owner of the property.

Second, notwithstanding the presence of the remedy of appeal, the nature of a petition for issuance of a writ of possession under Section 7 of Act No. 3135 shows that certain remedial law concepts such as those found in Rule 39 of the Rules of Court may be inapplicable. In *Rayo v. Metropolitan Bank and Trust Company*,^[61] the Court characterized this kind of petition in this wise:

An ex parte petition for the issuance of a writ of possession under Section 7 of Act No. 3135 is not, strictly speaking, a "judicial process" as contemplated in Article 433 of the Civil Code. It is a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale. It is not an ordinary suit filed in court, by which one party "sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong." It is a non-litigious proceeding authorized in an extrajudicial foreclosure of mortgage pursuant to Act No. 3135, as amended, and is brought for the benefit of one party only, and without notice to, or consent by any person adversely interested. It is a proceeding where the relief is granted without requiring an opportunity for the person against whom the relief is sought to be heard. No notice is needed to be served upon persons interested in the subject property.^[62]

Thus, the unique nature of the petition for the issuance of a writ of possession under Section 7 of Act No. 3135, which is a summary, non-adversarial, and ex parte proceeding, does not call for the full application of the Rules of Civil Procedure, i.e., that summons is served, the opposing party is given the opportunity to answer the petition, and pre-trial and trial are conducted. The Court has recognized that there are certain provisions of the Rules of Court that are made to suppletorily apply in extrajudicial proceedings, such as Rule 39, Section 33^[63] providing that the award of possession to the purchaser of the mortgaged property may be precluded if a third party is in actual possession of such property.^[64] However, the rule enjoining the execution of a final judgment pending appeal is not one of those that may be suppletorily applied in an extrajudicial foreclosure proceeding as it will defeat the primary purpose of such ex parte proceeding and erode the nature of the writ of possession as a writ of execution.

Third, as discussed, the filing of a petition under Section 8 of Act No. 3135, and the subsequent appeal against the judgment sustaining the issuance of the writ of possession under Section 7, will not stay the execution of the writ. Likewise, the filing of the separate action seeking the annulment of the mortgage and the foreclosure sale will not stay the implementation of the writ. Uniformity calls for the consistent application of the same rule for remedies available to the debtor-mortgagor. To hold otherwise would result in different treatments of essentially similar actions which assail the issuance of the writ of possession.

In summary, the remedies available to the debtor-mortgagor, and the effect of filing such remedies on the implementation of the writ of possession are, as follows:

- 1.

During the redemption period and the purchaser acquires actual possession of the property: The

debtor-mortgagor may file a petition with the same RTC which issued the writ of possession to question the issuance of such writ based on the following grounds: (a) the mortgage was not violated, i.e., the debtor-mortgagor did not miss any payments of the loan; or (b) the foreclosure sale did not comply with the procedural requirements under Act No. 3135. The filing of the petition will not stay the implementation of the writ. More so, an appeal filed by the debtor-mortgagor from the judgment sustaining the issuance of the writ will also not stay its implementation, in accordance with Section 8 of Act No. 3135.

2.

After the lapse of the redemption period and title over the property has been consolidated in the name of the purchaser, but the purchaser does not have actual possession of the property:

a.

Appeal the order granting the issuance of a writ of possession: Since the order granting the issuance of a writ of possession is a final order or judgment, the debtor-mortgagor may file an appeal notwithstanding the ex parte nature of the proceedings in the petition for the issuance of the writ of possession. In line with the ministerial function of the RTC to issue the writ and to uphold the possessory right of the purchaser as the registered owner, the filing of an appeal will not stay the execution of the writ issued in favor of the purchaser.

b.

Filing of a separate suit for annulment of the mortgage and foreclosure sale: The debtor-mortgagor may file a separate and independent action to annul the mortgage and the foreclosure sale. Here, the debtor-mortgagor assails the existence of the mortgage itself, and the validity, not the irregularity, of the foreclosure sale. The filing of the separate action will not stay the issuance of the writ of possession, without prejudice to the outcome of the pending annulment case.

Applying the above guidelines in this case, the Court rules that the RTC erred in holding in abeyance the implementation of the writ of possession it had earlier issued in favor of PNB. The mere filing of the appeal by the Spouses An did not stay the implementation of such writ. The RTC should have taken into consideration the character of the proceedings under Act No. 3135, and the nature of the writ of possession issued under such law. Thus, the RTC had no legal basis to issue the Order, dated January 11, 2021.

Grave abuse of discretion refers to "judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction." [65] There is grave abuse of discretion when "[t]he trial court manifestly disregarded the basic rules and procedures, or acted with obstinate disregard of basic and established rule of law or procedure." [66]

The issuance of a writ of possession is purely ministerial on the part of the RTC. Its issuance is a matter of course. The filing of an appeal to question the order of the RTC granting the issuance of the writ will not stay its execution. Hence, the RTC disregarded the basic principles and procedural rules governing extrajudicial foreclosure proceedings under Act No. 3135 when it held in abeyance the implementation of such writ.

Thus, the Court finds that the CA did not commit a reversible error in ruling that the RTC committed grave abuse of discretion in issuing the Order, dated January 11, 2021, which held in abeyance the implementation of the writ of possession it had earlier issued in favor of PNB.

ACCORDINGLY, the Petition for Review on Certiorari is DENIED. The Decision, dated June 6, 2022, and the

Resolution, dated January 17, 2023, of the Court of Appeals in CA-G.R. CV No. 116720 and CA-G.R. SP No. 169626 are AFFIRMED.

SO ORDERED.

Caguioa (Chairperson), Inting, Gaerlan, and Dimaampao, JJ., concur.

[*] Also referred to as Fatima An in some parts of the rollo.

[1] Rollo, pp. 3-14.

[2] Id. at 19-31. Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Geraldine C. Fiel-Macaraig and Jennifer Joy C. Ong of the Sixth Division, Court of Appeals, Manila.

[3] Id. at 33-34. Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Geraldine C. Fiel-Macaraig and Jennifer Joy C. Ong of the Former Sixth Division, Court of Appeals, Manila.

[4] Id. at 101-110. Penned by Presiding Judge Mel-Gerald N. Nieva.

[5] Id. at 164-202.

[6] Id. at 113.

[7] Id. at 67-73.

[8] Id. at 76-85.

[9] Approved March 6, 1934, An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages.

[10] Rollo, pp. 74-75.

[11] Id. at 21.

[12] Id. at 86-87.

[13] Id. at 88-91.

[14] Id. at 92-97.

[15] Id. at 21.

[16] Id. at 48-51.

[17] Id. at 21.

[18] Id. at 111.

[19] Id. at 106-109.

[20] Id. at 109-110.

[21] Id. at 112.

[22] Id. at 113.

[23] Id. at 23.

[24] Id. at 115-121.

[25] Id. at 123.

[26] Id.

[27] Id. at 142.

[28] Id. at 163.

[29] Id. at 207-208.

[30] Id. at 31.

[31] Id. at 27-28.

[32] Id. at 29-30.

[33] Id. at 10-13.

[34] *Spouses Angeles v. Traders Royal Bank*, 901 Phil. 779, 790 (2021) [Per J. Leonen, Third Division].

[35] *Rollo*, pp. 216-220.

[36] Id. at 84.

[37] Id. at 99.

[38] RULES OF COURT, Rule 65, sec. 4 states:

The petition shall be filed not later than [60] days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than [60] days counted from the notice of the denial of the motion.

[39] *Rollo*, p. 170.

[40] Id. at 205.

[41] *Barnes v. Hon. Quijano Padilla*, 500 Phil. 303, 311 (2005) [Per J. Austria-Martinez, Second Division].

[42] *Malixi v. Baltazar*, 821 Phil. 423, 448 (2017) [Per J. Leonen, Third Division].

[43] 910 Phil. 236 (2021) [Per C.J. Gesmundo, First Division].

[44] Id. at 244-246.

[45] Id. at 244-245.

[46] 788 Phil. 596 (2016) [Per J. Brion, Second Division].

[47] Id. at 605-606.

[48] 744 Phil. 481 (2014) [Per J. Brion, Second Division].

[49] Id. at 495.

[50] Id.

[51] *Cabuhad v. Development Bank of the Philippines*, 788 Phil. 596, 606 (2016) [Per J. Brion, Second Division].

[52] 654 Phil. 382 (2011) [Per J. Carpio, Second Division].

[53] Id. at 394.

[54] Philippine National Bank v. Fontanoza, 920 Phil. 370, 382 (2022) [Per J. Hernando, Second Division].

[55] 578 Phil. 464 (2008) [Per J. Carpio, First Division].

[56] Id. at 474.

[57] Sagarbarria v. Philippine Business Bank, 611 Phil. 269, 279 (2009) [Per J. Nachura, Third Division].

[58] Spouses Arquiza v. Court of Appeals, 498 Phil. 793, 806 (2005) [Per J. Callejo, Sr., Second Division].

[59] Diesel Construction Company, Inc. v. Jollibee Foods Corp., 380 Phil. 813, 818 (2000) [Per J. Panganiban, Third Division].

[60] RULES OF COURT, Rule 39, sec. 1 states:

Execution shall issue as a matter of right, or 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.

[61] 564 Phil. 528 (2007) [Per J. Quisumbing, Second Division].

[62] Id. at 537.

[63] RULES OF COURT, Rule 39, sec. 33 states:

If no redemption be made within one [] year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one [] year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor.

[64] See Villanueva v. Cherdan Lending Investors Corporation, 647 Phil. 494, 502 (2010) [Per J. Nachura, Second Division].

[65] Gacad, Jr. v. Hon. Corpuz, 927 Phil. 259, 267 (2022) [Per J. Hernando, First Division].

[66] Id. at 267-268.

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