

SABINO AGUILOS, PETITIONER, VS. CONRADO BARRIOS AND ELENO AGUJETAS, RESPONDENTS.

G. R. No. 47816. June 10, 1941

Ponente: MORAN, J.

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MORAN, J.:

In civil case No. 10919 of the Court of First Instance of Iloilo, petitioner Sabino Aguilos as defendant therein against whom a condemnatory judgment was rendered, was allowed to appeal as pauper, and, pending the perfection of his appeal, the court, upon verbal motion of the prevailing party without notice to petitioner, ordered execution of said judgment on July 20, 1940. The validity of this order is now challenged in this petition for certiorari.

Rule 39, section 2, of the Rules of Court provides that "before the expiration of the time to appeal, execution may issue, in the discretion of the court, on motion of the prevailing party with notice to the adverse party, upon good reasons to be stated in a special order." The requirement about motion by the prevailing party and notice to the adverse party, which was not complied with in the instant case, is mandatory and is precisely an innovation introduced in the new rules to remove the doubt suggested in *Gamay vs. Gutierrez David* (48 Phil., 768), and to restate the doctrine laid down in *Monteverde vs. Jaranilla* (60 Phil., 297, 307).

Respondent judge contends that as the verbal motion of the prevailing party has been made of record through stenographic notes, petitioner should have taken notice, as in fact he did take notice, thereof; and, therefore, the requirement of the Rules is complied with. Such contention is untenable in its entirety. According to Rule 26, section 2, "all motions shall be made in writing except motions for continuance made in the presence of the adverse party, or those made in the course of a hearing or trial." The verbal motion presented in this case is, therefore, insufficient. Furthermore, the notice required by Rule 39, section 2, "shall be served by the applicant to all parties concerned, at least three days before the hearing thereof, together with a copy of the motion and of any affidavits and other papers accompanying it," according to Rule 26, section 4. And as we have once held, a party has "a right to rely upon the rules of court and to expect that she would be given notice as required thereby," and the fact that the party was present in court when the proceeding was had, does not justify the omission of the written notice as required to be observed by the rules. (*Duran vs. Arboleda*, 20 Phil., 253, 255-256.)

Besides, no special reason are stated in the order of execution here challenged. The requirement as to special reasons is one the importance of which trial courts must not overlook. If the judgment is executed and, on appeal, the same is reversed, although there are provisions for restitution, oftentimes damages may arise which cannot be fully compensated. Accordingly, execution should be granted only when these considerations are clearly outweighed by superior circumstances demanding urgency, and the provision contained in Rule 39, section 2, requires a statement of those circumstances as a security for their existence.

We hold that the respondent court exceeded its jurisdiction in issuing the order of execution complained of.

Order is reversed, with costs against respondents.

Avanceña, C. J., Diaz, Laurel, and Horrilleno, JJ., concur.

Order reversed.

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