

LUZVIMINDA V. LIPATA, PETITIONER, VS. JUDGE EDUARDO C. TUTAAN, COURT OF FIRST INSTANCE OF RIZAL, QUEZON CITY BRANCH V (REGIONAL TRIAL COURT AT QUEZON CITY, BRANCH 84), JOCELYN O...

G.R. No. 61643. September 29, 1983

Ponente: AQUINO, J.

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AQUINO, J.:

This is a contempt incident against Luzviminda V. Lipata for not obeying an alias writ of execution. Judge Eduardo C. Tutaan in his decision of September 24, 1981 ordered Luzviminda (married to Leonardo G. Lipata) and her stepmother to deliver to the alleged vendees, the spouses Jocelyn O. Agcaoili and Jose J. Agcaoili, the two-storey house of strong materials, eight by nine meters, located at 1884 Obisis Street, Pandacan, Manila (the issue of improper venue was not raised) and to pay the latter P800 a month as rental from July 1, 1980 and P4,500 as damages and attorney's fees.

That decision became final and executory. Judge Tutaan dismissed the appeal of Luzviminda and her stepmother because their record on appeal, due on December 26, 1981, was filed on January 4, 1982. Their two petitions for certiorari in the Court of Appeals, assailing the disallowance of their appeal, were dismissed (CA-G.R. Nos. 13657-Sp and 14608-Sp, August 23, 1982).

In a 2nd indorsement to Deputy Court Administrator Arturo B. Buena dated June 17, 1982, Judge Tutaan justified his decision and the writ of execution.

In an unverified motion dated June 7, 1982, the Agcaoili spouses prayed that Luzviminda and her step-mother be cited or declared in contempt of court and committed to prison until they complied with the decision because, according to the deputy sheriff's return of the alias writ of execution, they failed to obey the decision of Judge Tutaan. The motion was set for hearing on June 11, 1982.

It was resolved in Judge Tutaan's order of August 2, 1982 wherein he adjudged Luzviminda in contempt of court because she failed to comply with the writ of execution. She was "sentenced to be confined to the city jail of Quezon City until she shall have complied with the decision" that she should vacate her Pandacan residence and surrender the same to the Agcaoili spouses. Petrolman Valle was directed to serve the warrant of arrest not later than five o'clock in the afternoon of that same day, August 2.

She was arrested but released allegedly upon her oral request for an extension. She was re-arrested on September 1, 1982 and confined in jail.

On September 8, 1982, Luzviminda filed her petition for certiorari and prohibition in this Court. A mandatory restraining order was issued to enjoin the enforcement of the Order of August 2, 1982.

We hold that the contempt order is void. It is not sanctioned by the Rules of Court. It is not contempt of court for

a judgment debtor to disobey the writ of execution. It was the sheriff's duty to enforce the writ. He did not perform his duty, as ordained in Rule 39 of the Rules of Court which provides:

"SEC. 8. Issuance, form and contents of a writ of execution. - The writ of execution must issue in the name of the Republic of the Philippines from the court in which the judgment or order is entered; must intelligently refer to such judgment or order, stating the court, province, and municipality where it is of record, and the amount actually due thereon if it be for money; and must require the sheriff or other proper officer to whom it is directed substantially as follows:

x x x x x x x x

"(d) If it be for the delivery of the possession of real or personal property, to deliver the possession of the same, describing it, to the party entitled there-to, and to satisfy any costs, damages, rents, or profits covered by the judgment out of the personal property of the person against whom it was rendered, and if sufficient personal property cannot be found, then out of the real property."

Thus, "a person cannot be punished for contempt because of his alleged disobedience of an order of court not addressed to him. A writ of execution issued by a justice of the peace to the sheriff, directing the latter to place the plaintiff in possession of property held by the defendant, is not an order addressed to the defendant." The delivery of the real property pertains to the sheriff alone to whom the law entrusts the execution of judgments. (U. S. vs. Ramayrat, 22 Phil. 183). Same holding in Quizon vs. Philippine National Bank, 85 Phil. 459; Mendoza vs. Alano and Salceda, 112 Phil. 445; Gatchalian vs. Arlegui and Tan Tee vs. Arlegui, L-36515 and L-41360, February 17, 1977, 75 SCRA 234 and Fuentes vs. Leviste, L-47363, October 28, 1982, 117 SCRA 958.

"Courts should be slow in jailing people for noncompliance with their orders. Only in cases of clear and contumacious refusal to obey should the power be exercised". The power to punish for contempt should be exercised on the preservative and not on the vindictive principle, on the corrective and not on the retaliatory idea of punishment (Gamboa vs. Teodoro, 91 Phil. 270; People vs. Alarcon, 69 Phil. 265).

WHEREFORE, respondent Judge's contempt order is reversed and set aside. The temporary restraining order is made permanent. Costs against private respondents.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.
De Castro, J., sick leave.

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