

## THIRD DIVISION

**[ A.M. No. MTJ-05-1580 [FORMERLY OCA IPI NO. 04-1608-MTJ], October 06, 2010 ]**

**LOURDES B. FERRER AND PROSPERIDAD M. ARANDEZ,  
COMPLAINANTS, VS. JUDGE ROMEO A. RABACA, METROPOLITAN  
TRIAL COURT, BRANCH 25, MANILA, RESPONDENT.**

### DECISION

**BERSAMIN, J.:**

This administrative case charges Hon. Romeo A. Rabaca, then the Presiding Judge of Branch 25 of the Metropolitan Trial Court of Manila (MeTC), with ignorance of the law, disregard of the law, dereliction of duty, knowingly rendering an unjust interlocutory order, and violation of the *Code of Conduct for Government Officials*.

The complainants were the President and the Executive Director of the plaintiff in Civil Case No. 176394-CV of the MeTC, an ejectment suit entitled *Young Women's Christian Association, Inc. v. Conrado Cano*. After trial, Civil Case No. 176394-CV was decided on June 22, 2004 by respondent Judge,<sup>[1]</sup> who disposed as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the latter as follows:

- (a) to vacate the premises located at Ground Floor, YMCA, 1144 Gen. Luna St., Ermita, Manila; and surrender possession thereof to plaintiff;
- (b) to pay plaintiff the sum of Php45,211.80 representing his arrears in rentals from February 2003 to July 2003 at Php7,535.30 a month plus the further sum of Php7,535.30 a month as reasonable value for the continued use and occupation of the premises starting August 2003 until the same is finally vacated and possession thereof is turn-over to plaintiff;
- (c) to pay the plaintiff the sum of Php20,000 as attorney's fees; and
- (d) to pay the costs of suit.

SO ORDERED.

On July 12, 2004, the plaintiff's counsel filed a *motion for immediate execution*, praying that a writ of execution be issued "for the immediate execution of the aforesaid Judgment." The plaintiff cited Section 19, Rule 70 of the *Rules of Court* as

basis for its motion.<sup>[2]</sup>

In his order dated July 14, 2004, however, respondent Judge denied the *motion for immediate execution*,<sup>[3]</sup> stating:

A Notice of Appeal dated July 9, 2004, having been seasonably filed by counsel for the defendant, let the records of the above-captioned case be, as it is hereby ordered, elevated to the Regional Trial Court of Manila for appropriate proceedings and disposition.

In view thereof, no more action shall be taken on the Motion for Execution dated July 8, 2004 filed by the plaintiff thru counsel.

SO ORDERED.

According to the complainants, their counsel talked with respondent Judge about the matter. Allegedly, respondent Judge told their counsel that "if you think the court is wrong, file a motion for reconsideration." With that, the plaintiff filed a *motion for reconsideration*, which respondent Judge nonetheless denied in his order dated July 28, 2004,<sup>[4]</sup> thuswise:

Considering that the Court has already given due course to the appeal of the defendant which was perfected within the reglementary period, no more action will be taken on the Motion for Reconsideration dated July 19, 2004 filed by the plaintiff thru counsel.

The Branch Clerk of Court is hereby directed to immediately forward the records of this case to the Regional Trial Court, Manila.

SO ORDERED.

The complainants averred that respondent Judge's denial of their motions had rendered their victory inutile, and had unfairly deprived the plaintiff of the possession of the premises. They further averred that respondent Judge's refusal to perform an act mandated by the *Rules of Court* had given undue advantage to the defendant to the plaintiff's damage and prejudice.

The Court required respondent Judge to comment on the administrative complaint against him.

In his *comment* dated September 16, 2004,<sup>[5]</sup> respondent Judge denied the charges. He explained that he had honestly thought that his court had lost jurisdiction over the case pursuant to the provision of Section 9, Rule 41 of the *Rules of Court* (which provides that "in appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties") once he had given due course to the defendant's *notice of appeal*. He claimed that he had issued the orders in good faith and with no malice after a fair and impartial evaluation of the facts,

applicable rules, and jurisprudence; and that if he had thereby committed lapses in the issuance of the orders, his doing so should be considered as error of judgment on his part.

He lastly insisted that he did not know personally the parties in Civil Case No. 176394-CV, and had absolutely no reason to give undue favor or advantage to the defendant; that the complainants did not submit evidence to show that the orders had been issued for a consideration, material or otherwise, or that his issuance of the orders had been motivated by ill-will or bad faith.

In their *reply* dated September 22, 2004,<sup>[6]</sup> the complainants contended that respondent Judge exhibited his ignorance of the law and procedure in relying on Section 9, Rule 41 of the *Rules of Court* which referred to appeals from the Regional Trial Court; that Rule 40, which contained provisions on appeal from the Municipal Trial Courts to the Regional Trial Courts, and which provided in its Section 4 that the perfection of the appeal and the effect of such perfection should be governed by the provisions of Section 9 of Rule 41, concerned appeals by notice of appeal in general; and that instead, the applicable rule should be Section 19, Rule 70 of the *Rules of Court*.

The complainants pointed out that respondent Judge apparently did not know that appeal in forcible entry and detainer cases was not perfected by the mere filing of a notice of appeal (as in ordinary actions) but by filing of a notice of appeal and a sufficient supersedeas bond approved by the trial judge executed to the plaintiff to pay the rents, damages and costs accruing down to the time of the judgment appealed from. They asserted that respondent Judge's invocation of good faith and error of judgment did not absolve him of liability, because he had grossly neglected his duties mandated by law by failing and refusing to act on their motion for immediate execution and motion for reconsideration and by giving due course to the appeal despite no supersedeas bond having been filed and approved by the trial court.

In his *memorandum* dated January 13, 2005,<sup>[7]</sup> then Court Administrator Presbitero J. Velasco, Jr., now Associate Justice of the Court, recommended that the administrative complaint against respondent Judge be re-docketed as a regular administrative matter; and that respondent Judge be fined in the amount of P5,000.00 with warning that a repetition of the same or similar act would be dealt with more severely, based on an evaluation of the charges, as follows:

**EVALUATION:** We agree with the complainants that respondent erred when he did not act on complainants' motion for immediate execution.

Section 19, Rule 70 of the 1997 Revised Rules on Civil Procedure provides:

"SEC. 19. If judgment is rendered against the defendant, execution shall issue immediately upon motion, unless an appeal has been perfected and the defendant to stay execution files a supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the

rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court. XXXX XXXX XXXX."

It is clear from the foregoing that the perfection of an appeal by itself is not sufficient to stay the execution of the judgment in an ejectment case. The losing party should likewise file a supersedeas bond executed in favor of the plaintiff to answer for rents, damages and costs, and, if the judgment of the court requires it, he should likewise deposit the amount of the rent before the appellate court from the time during the pendency of the appeal. Otherwise, execution becomes ministerial and imperative. (*Philippine Holding Corporation vs. Valenzuela, 104 SCRA 401 as cited in Hualam Construction and Development Corporation vs. Court of Appeals, 214 SCRA 612, 626*).

In the case at bar, defendant seasonably filed his Notice of Appeal dated 9 July 2004 on 13 July 2004; he however failed to file any supersedeas bond. Prior to the filing of such notice of appeal, more specifically on 12 July 2004, complainants have already filed their Motion for Execution dated 8 July 2004. Instead of acting on the Motion for Execution, respondent Judge Rabaca gave due course to the appeal in an Order dated 14 July 2004 and directed his Branch Clerk of Court to elevate the records of the case to the Regional Trial Court (RTC). The Branch Clerk of Court however failed to forward the records to the RTC. This fact is clear from Judge Rabaca's Order dated 28 July 2004 wherein he directed the Branch Clerk of Court to forward the records of the case to the Manila Regional Trial Court immediately.

From the foregoing, it is clear that when the complainant moved for the immediate execution of Judge Rabaca's decision, the latter still had jurisdiction over the case. He therefore clearly erred when he refused to act on the Motion for Execution. The relevant question that we should resolve however is whether such error is an error of judgment or an error amounting to incompetence that calls for administrative discipline.

Judge Rabaca claims that he refused to act on the complainant's Motion for execution because he honestly thought that when he gave due course to the defendant's appeal which was seasonably filed, and ordered the elevation of the records to the appellate court, his court already lost jurisdiction over the case.. In making his ruling, respondent asserts he relied on the provisions of Section 9, Rule 41 of the Rules of Court. This provision reads as follows:

In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.