

SECOND DIVISION

[A.M. No. P-08-2552[Formerly OCA I.P.I. No. -06-2370-P], October 08, 2008]

**ROBERTO C. PASCUAL, COMPLAINANT, VS. MARILYN M. MARTIN,
CLERK OF COURT III, MUNICIPAL TRIAL COURT IN CITIES,
BRANCH 1, TARLAC CITY, RESPONDENT.**

R E S O L U T I O N

TINGA, J.:

Clerk of Court Marilyn M. Martin (respondent) of the Municipal Trial Court in Cities (MTCC) of Tarlac City, Branch I, is being charged by Roberto C. Pascual in a sworn complaint^[1] filed before the Office of the Court Administrator (OCA) for gross abuse of authority and conduct prejudicial to the service.

Complainant Pascual represented one of the plaintiffs in the unlawful detainer case entitled *RCP Realty and Development Corporation/Ramon Yu Pong Ting represented by Roberto Pascual v. Jocelyn Maun*, Civil Case No. 8777 of the MTCC of Tarlac City, Br. 1. The case was decided in favor of plaintiffs on 30 November 2005:

WHEREFORE, premises considered, defendant Jocelyn Maun or her agents, successors-in-interest, or any persons acting in her behalf, is hereby ordered to vacate the premises in question and to pay plaintiff the amount of P5,000.00 as monthly payment for use of the premises until she finally vacated [*sic*]. Defendant is further directed to pay litigation expenses in favor of plaintiff in the amount P20,000.00 plus attorney's fees of P10,000.00.

SO ORDERED.^[2]

On 27 December 2005, defendant filed a notice of appeal of the decision. Later, on 4 January 2006, plaintiffs filed a motion for immediate execution of the decision. On 10 January 2006, the MTCC ruled on both the notice of appeal and motion for execution in the following manner:

Considering the "Notice of Appeal," let the records of this case be forwarded to the Regional Trial Court of Tarlac City for further proceedings.

It appearing that defendant has not deposited the rental as enunciated in the Decision in this case, as prayed for, let a Writ of Execution be immediately issued in this case.

SO ORDERED.^[3]

Respondent Martin allegedly refused without justification to issue the writ of execution. Complainant asked respondent through a letter^[4] dated 11 January 2006 for her reasons in not issuing the writ. In her response,^[5] respondent reasoned that complainant had no legal personality to represent the plaintiff considering that there was no board resolution appointing him as plaintiff corporation's legal representative. The writ of execution could also not be issued because the court was then undergoing its annual physical inventory of cases and defendant's counsel had not yet been furnished with a copy of the order granting the issuance of the writ. In addition, defendant had filed a notice of appeal which was given due course in the same order dated 10 January 2006. Respondent added that defendant was not required to file a supersedeas bond to stay the execution pending appeal since the decision sought to be executed did not adjudge payment of back rentals. Thus, respondent concluded that there were valid reasons on her part in not issuing the writ of execution.

Before this Court, complainant alleges that the reasons respondent offered for refusing to issue the writ of execution delved into the merits of the case, a matter which is beyond her functions, and that it is not for her to determine the correctness of the order granting the motion for execution, as her duty is purely ministerial.

In her comment,^[6] respondent denies the accusations and reiterates the reasons she raised in her response to complainant's letter. This is how she recalls the antecedents, thus:

In the order dated 10 January 2006,^[7] plaintiff's motion for execution was granted and at the same time, defendant's notice of appeal was given due course. On the same day, complainant, allegedly in representation of the plaintiff, asked respondent for a copy of the writ. However, the request could not be accommodated because the physical inventory of the court's records was then going on and also because defendant had not yet been served a copy of the 10 January 2006 order. On the following day, complainant filed a formal letter demanding an explanation for respondent's refusal to issue the writ. Respondent discussed the matter with the presiding judge, Judge Marvin B. Mangino. She pointed out that: (a) the complaint in the ejectment case neither averred nor prayed for payment by defendant of reasonable rentals but the decision nevertheless ordered defendant to pay rentals of P5,000.00 per month until she vacates the premises; (b) defendant had perfected her appeal, which was why the court in the 10 January 2006 Order directed the forwarding of the case records to the Regional Trial Court (RTC) for further proceedings; (c) in the same order, the court granted complainant's motion for execution since defendant had not deposited the rentals as directed in the decision; and (d) complainant lacked authority to demand a copy of the writ of execution since there is no proof on record that plaintiff had authorized complainant to act in its behalf. As certified by Judge Mangino, he directed respondent to forward the entire records of the case to the RTC for further proceedings "despite the non-issuance of a Writ of Execution by said Clerk of Court."^[8]

Respondent, in her comment, expressed her belief that a patent error was committed in the Order of 10 January 2006 when it granted complainant's motion for issuance of writ of execution and at the same time gave due course to defendant's notice of appeal by directing the transmission of the case records to the RTC. Thus, she concludes that the order is "clearly on the border of illegality" and

"void insofar as the directive for the issuance of the writ of execution is concerned."

[9] It was in accordance with her belief that she did not issue the writ, respondent stresses. Thus she seeks the dismissal of the complaint against her for lack of merit.

[10]

After evaluation, the OCA recommended in its report^[11] dated 19 May 2006 that respondent be fined P5,000.00 and warned not to intrude into the domain reserved for the presiding judge. The OCA found that respondent refused to issue the writ primarily because she believed the 10 January 2006 Order was illegal and void. Sharing the complainant's position, the OCA observed that in refusing to issue the writ of execution respondent acted beyond her authority as the matter calls for the exercise of judicial discretion. As noted by the OCA, a Clerk of Court is the administrative assistant of the Presiding Judge and as such his duty is to assist the judge in all matters not involving the exercise of discretion or judgment of the judge. The function of ordering the execution of a judgment, being judicial, devolves upon the judge, whereas the act of issuing the writ of execution, being ministerial, can be performed by a functionary, viz, the clerk of court.^[12] In the case at bar, Judge Mangino had issued an order granting plaintiff's motion for execution and directing the issuance of a writ. Hence, according to the OCA, respondent had no choice but to issue the writ as directed.

On 7 August 2006, the Court required the parties to manifest whether they are willing to submit the case for resolution based on the pleadings filed.^[13]

Respondent filed a Manifestation^[14] expressing her willingness to submit the case for resolution. She also submitted a copy of the RTC decision^[15] dated 22 May 2006 on the unlawful detainer case appeal, where the RTC reversed and set aside the decision of the MTCC for lack of jurisdiction and personality to sue. Capitalizing on the RTC decision, respondent further argues in her manifestation that the issuance of the writ of execution would have been unjust and bereft of any legal and factual support since complainant, as the person requesting the execution, was not a party to the unlawful detainer case nor a duly authorized agent of any of the parties therein. It follows too that complainant does not have any personality or justification to institute the instant administrative complaint either. Issuing the writ in the face of evidence of its unjust and unfair repercussions would have caused more damage to the parties as well as the court where the error would have lain, respondent adds.

For his part, complainant filed a similar manifestation indicating his willingness to submit the case for resolution, but at the same time his lack of interest in pursuing the case because the parties had supposedly entered into a voluntary out-of-court settlement and also because he could no longer give full attention to the case as his profession as a private contractor required him to stay in Baguio City.^[16] Respondent however denies that the parties entered into any out-of-court settlement.^[17]

Is respondent administratively liable in failing to issue the writ of execution as ordered by the judge? The Court finds that she is.

A Clerk of Court is an essential and a ranking officer of our judicial system who performs delicate administrative functions vital to the prompt and sound