

FIRST DIVISION

[A.M. No. RTJ-00-1598, July 30, 2002]

**WINNIE BAJET, COMPLAINANT, VS. JUDGE VIVENCIO S. BACLIG,
RESPONDENT.**

R E S O L U T I O N

KAPUNAN, J.:

On May 28, 1997, the Metropolitan Trial Court (MeTC) of Quezon City, Branch 31, rendered a decision against the defendants in Civil Case No. 14303, entitled Praxedes Pacquing Flores vs. Winnie Bajet, et al., a case for forcible entry. The MeTC ordered the defendants to vacate the two parcels of land they were occupying; to jointly and severally pay plaintiff the sum of P3,000.00 a month as reasonable compensation for the use of the premises, starting from the date of the first demand until such time defendants shall have vacated the premises; and to pay the plaintiff the sum of P3,000.00 as attorney's fees plus cost of suit.^[1]

The defendants elevated the case to the Regional Trial Court (RTC) of Quezon City. The case was docketed therein as Civil Case No. Q-97-31799 and was raffled to Branch 77 thereof, then presided by Judge Normandie B. Pizarro.^[2]

On September 11, 1997, the plaintiff-appellees filed a Motion for Execution pending appeal,^[3] alleging that the defendants-appellants failed to file a supersedeas bond and to deposit with the RTC the amount of rent due. However, counsel for defendants-appellants failed to appear on the date set for the hearing on the motion. Thus, Judge Pizarro issued an Order^[4] considering the motion submitted for resolution.

On October 9, 1997, Judge Pizarro issued an Order^[5] directing the issuance of a writ of execution.

On October 20, 1997, the defendants-appellants Winnie Bajet, et al. filed an Urgent Motion for Reconsideration^[6] of the Order of October 9, 1997 granting the motion for execution. Defendant-appellants claimed that the motion for execution did not contain proof of service to them.

Judge Pizarro, in an Order dated November 11, 1997,^[7] denied the defendants-appellants' motion for reconsideration for lack of merit.

On November 25, 1997, the Branch Clerk of Court issued a Writ of Execution^[8] pursuant to the Order dated October 9, 1997.

On November 28, 1997, the defendants-appellants filed an Omnibus Motion^[9] praying for the recall or suspension of the implementation of the writ of execution, reiterating that the motion for execution did not contain any proof of service.

In the meantime, respondent Judge Vivencio S. Baclig was assigned presiding judge of Branch 77 vice Judge Pizarro. Respondent judge denied the Omnibus Motion in an Order dated May 29, 1998.^[10]

Subsequently, defendants-appellants filed with the Court of Appeals a petition for certiorari with prayer for a temporary restraining order and writ of preliminary injunction. Petitioners (defendants-appellants) challenged the RTC Order dated October 9, 1997, directing the issuance of a writ of execution pending appeal; the Order dated November 11, 1997, denying the defendants-appellants' motion for reconsideration; and the Order dated May 29, 1998, denying the defendants-appellants' Omnibus Motion. Petitioners alleged that the RTC committed grave abuse of discretion when it acted upon the motion for execution pending appeal without proof of actual receipt of the copy of said motion by petitioners.

On October 9, 1998, the Court of Appeals rendered its Decision^[11] dismissing the petition for certiorari. The court held that while indeed the motion for execution did not contain any proof of service, petitioners were not deprived of due process since they were heard on motion for reconsideration.

On November 9, 1998, the plaintiffs-appellees filed an Ex Parte Motion for Issuance of Alias Writ of Execution,^[12] which respondent judge granted in an Order^[13] dated November 12, 1998. The motion did not contain any proof of service on the defendants-appellants.

In the meantime, the case was re-raffled to Branch 84 of the Quezon City RTC after respondent judge inhibited himself. Judge Areola, on May 31, 1999, issued an Order denying complainant's motion for reconsideration and/or to quash/lift alias writ of execution. On July 16, 1999, Judge Areola ordered the issuance of another Alias Writ of Execution. Subsequently, Judge Mariflor P. Punzalan Castillo rendered a decision affirming the decision of the Quezon City MeTC, Branch 31.^[14]

On January 28, 1999, the Office of the Ombudsman received a criminal complaint from Winnie Bajet, one of the defendants-appellants in Civil Case No. Q-97-31799, charging Judge Vivencio S. Baclig with violating the Anti-Graft and Corrupt Practices Act. Complainant added that the charge also served as her administrative complaint against respondent judge.

On February 12, 1999, the Office of the Ombudsman referred the complaint to the Office of the Court Administrator (OCA), which required respondent judge to comment.

Complainant accuses respondent judge of giving "unwarranted benefits, advantage or preference" to the plaintiff-appellant, of "manifest partiality, evident bad faith or inexcusable negligence." She also charges him with "serious neglect of duties, gross incompetence and oppression." Specifically, complainant faults respondent judge for entertaining the ex parte motion for issuance of alias writ of execution despite lack of proof of service. This is purportedly in violation of Section 4, Rule 15 of the 1997 Rules of Civil Procedure, which provides:

SEC. 4. Hearing of motion. – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

More to the point, Section 6 of the same Rule provides:

SEC. 6. Proof of service necessary. – No written motion set for hearing shall be acted upon by the court without proof of service thereof.

In addition, respondent judge allegedly failed to decide the case within the period prescribed by the Constitution.^[15]

Respondent judge claims that he acted within the bounds of law in granting the Ex Parte Motion for Issuance of Alias Writ of Execution even though the motion did not contain any proof of service. He argues that since the defendants-appellants failed to file a supersedeas bond and to deposit the rentals, "it [was] mandatory for the regional trial court to order execution of the appealed judgment. Its duty to do so is ministerial and imperative."^[16]

It bears clarifying that respondent judge is charged not with entertaining the motion for the original issuance of a writ of execution but with issuing the alias writ of execution, the motion for which did not contain any proof of service.

Alias writs of execution are usually issued in lieu of the original writ of execution that had already lapsed. Before the 1997 revision to the Rules of Civil Procedure, the lifetime of a writ of execution, under then Section 11, Rule 39 "was 60 days from its receipt by the officer required to enforce the same and after said period, the writ becomes functus officio."^[17]

Sec. 11. *Return of writ of execution.* – The writ of execution may be made returnable, to the clerk or judge of the court issuing it, at any time not less than ten (10) days nor more than sixty (60) days after its receipt by the officer who must set forth in writing on its back the whole of his proceedings by virtue thereof, and file it with the clerk or judge to be preserved with the other papers in the case. A certified copy of the record, in the execution book kept by the clerk, of an execution by virtue of which real property has been sold, or of the officer's return thereon, shall be evidence of the contents of the originals whenever they, or any part thereof, have been lost or destroyed.

Apparently, plaintiffs-appellees in Civil Case No. Q-97-31799 were of the impression that the writ of execution issued on November 25, 1997 had already lapsed when they filed their motion for an alias writ on November 9, 1998.

However, it must be noted that under the present Section 14, Rule 39, the lifetime of the writ of execution is no longer 60 days but "during the period within which the judgment may be enforced by motion, that is, within 5 years from entry thereof."^[18]

Sec. 14. *Return of writ of execution.* – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in