

## TWENTY-SECOND DIVISION

[ CA-G.R. SP NO. 04633-MIN, February 04, 2015 ]

**SPOUSES ANTONIO AND JULIE CRISTY BENDITA AND ESTATE OF SPOUSES ERNINIO J. BENDITA AND MAGDALENA OGATIS-BENDITA, AND PERLA O. BENDITAS FOR HERSELF AND AS ATTY-IN-FACT FOR ANTONIO BENDITA AND JULIE CRISTY BENDITA, BY VIRTUE OF SPECIAL POWER OF ATTORNEY, PETITIONERS, VS. HONORABLE PRESIDING JUDGE, EDDIE R. ROJAS, REGIONAL TRIAL COURT, BRANCH 39 POLOMOLOK, SOUTH COTABATO, SUBSTITUTED BY HONORABLE PRESIDING JUDGE PANAMBULAN M. MIMBISA, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 37, GENERAL SANTOS CITY, AND ROGER D. COREA, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 39, POLOMOLOK, SOUTH COTABATO, SPOUSES ISIDRO D. LUMAYAG AND CLEMEN L. LUMAYAG, RESPONDENTS.**

### DECISION

**PEREZ, J.:**

This petition for *certiorari* under Rule 65 of the Rules of Court seeks to annul the Resolution dated 15 November 2010<sup>[1]</sup> and Writ of Possession dated 18 November 2010<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 39, 11<sup>th</sup> Judicial Region, Polomolok, South Cotabato, the Notice to Vacate dated 5 January 2011<sup>[3]</sup> of the Sheriff IV of the same RTC, and the Order dated 9 September 2011<sup>[4]</sup> of the RTC, Branch 37, 11<sup>th</sup> Judicial Region, General Santos City, in *Miscellaneous Case No. 515-10*, in re: Petition for Issuance of Writ of Possession under Act No. 3135, as amended.

The Resolution dated 15 November 2010 granted the *Petition*<sup>[5]</sup> for the issuance of a writ of possession in favor of Philippine National Bank (PNB) and private respondents Spouses Isidro D. Lumayag and Clemen L. Lumayag. On the other hand, the Order dated 9 September 2011 denied the *Amended Motion to Quash Writ of Possession, Notice to Vacate and the Resultant Documents filed with the Court by the Sheriff as a result of the implementation of the Notice to Vacate with Prayer to Restore/return Possession to Respondents-Movants*<sup>[6]</sup> filed by the petitioners on 19 January 2011.

The petition at bar stemmed from the following antecedents –

On 10 August 1993, petitioners spouses Antonio and Julie Cristy Bendita and the Estate of Erninio J. Bendita and Magdalena Ogatis-Bendita obtained a loan from the PNB in the amount of P6,860,000.00. As security, petitioners executed a real estate mortgage over two parcels of land located in Polomolok, South Cotabato, the first covered under TCT No. T-56170 and the second by TCT No. T-56171.<sup>[7]</sup>

When petitioners failed to pay their loan, PNB applied for extrajudicial foreclosure of the real estate mortgage before the Clerk of Court and Ex-Officio Sheriff of the RTC, Branch 39, Polomolok, South Cotabato. The foreclosure sale was set on 15 July 2004 at 1:00 o'clock in the afternoon.<sup>[8]</sup>

At the foreclosure sale, the PNB, as the highest bidder, was awarded the lots for its bid of P10,760,300.00. PNB was then issued on 14 September 2004 a Certificate of Extra-Judicial Sale<sup>[9]</sup> covering the subject lands.

After the lapse of the one year redemption period without petitioners redeeming the properties, PNB executed an Affidavit of Consolidation of Ownership and Non-Redemption<sup>[10]</sup> on 13 October 2005. This caused the cancellation of TCT Nos. T-56170 and T-56171 and the registration of the subject lands in PNB's name under TCT Nos. T-131110<sup>[11]</sup> and T-131111,<sup>[12]</sup> respectively.

On 7 January 2010, PNB, as seller, and private respondents, as buyers, executed a Deed of Conditional Sale<sup>[13]</sup> wherein private respondents agreed to buy the subject lands for the amount of P10,000,000.00 to be paid on installment basis. The following relevant terms are found in the Deed:

The vendor is selling only whatever rights and title to, interest and participation it has acquired over the property, and the Vendee hereby acknowledges full knowledge of the nature and extent of the Vendor's rights and title, interest and participation in the property.

The Vendee hereby waives her right to be placed in actual possession of the Property and agrees to have been constructively placed in possession thereof upon execution hereof. The Vendee further agrees to undertake, at her expense, the ejectment of any occupants of the Property.

x

x

x.

The Vendor shall retain ownership of and title to the Property until all obligations of the Vendee under this Deed shall have been paid, or complied with to the satisfaction of the Vendor. The Vendor shall then execute and deliver to the Vendee the final and absolute deed of sale covering the property.

On 21 July 2010, the Spouses Lumayag without impleading PNB filed a Petition<sup>[14]</sup> for the issuance of a writ of possession with RTC, Branch 39, docketed as Miscellaneous Case No. 515-10. Private respondents claimed that PNB, since the foreclosure sale, "never filed any application or motion x x x for the issuance of a writ of possession", and as the purchasers of the subject lands, they had acquired its right "to apply or move for the issuance of a writ of possession".<sup>[15]</sup>

In their opposition, petitioners countered that the "facts sufficient to entitle petitioners to the reliefs requested" are not stated in the petition, and do not give rise to this Honorable Court's ministerial duty to issue a writ of possession. Petitioners elucidated that PNB had not transmitted its right to a writ of possession to private respondents as can be gleaned from the stipulations in the Deed of

Conditional Sale.<sup>[16]</sup>

On 20 August 2010, private respondents filed a Motion for Leave to Amend Petition and to File Amended Petition.<sup>[17]</sup> In the Amended Petition,<sup>[18]</sup> PNB was impleaded as *party-petitioner*.

Petitioners opposed the motion alleging that 1) private respondents had no right to ask for a writ of possession; 2) PNB “abandoned and lost the right” to avail of the writ of possession as stipulated in the deed; 3) PNB’s Regional Asset Management Head, Jesus T. Galacio, had no corporate authority to sign the certification against forum shopping.<sup>[19]</sup>

Thereafter, private respondents filed their Reply<sup>[20]</sup> to the opposing petitioners.

Eventually, on 18 November 2010, the RTC, Branch 39, rendered a Resolution<sup>[21]</sup> giving due course to private respondents’ Petition for issuance of a writ of possession in favor of PNB and the Spouses Lumayags. The RTC’s ratiocination for granting the petition is quoted hereunder, *viz* –

While as regards the initial petition filed by petitioners-spouses Lumayag, the Court harbored reservation on the propriety of issuing a writ of possession, the amended petition has altogether erases (sic) said doubts as it is already sufficient in form and substance. Records show that co-petitioner PNB is the creditor-mortgagee of the subject property, the purchaser in its public auction x x x it had consolidated its title thereon after respondents failed to redeem the property. Being the purchaser in the said sale, the issuance of the writ of possession is merely a ministerial function of the Court, and it has no discretion on the matter. x x x.<sup>[22]</sup>

Petitioners filed a Motion for Reconsideration.<sup>[23]</sup>

On 29 December 2010, the RTC, Branch 39, rendered an Order<sup>[24]</sup> denying the Motion for Reconsideration for utter lack of merit.

The RTC, Branch 39, subsequently issued a Writ of Possession<sup>[25]</sup> commanding the Court Sheriff and other Officers of the Court “to place x x x Philippine National Bank and Sps. Isidro & Clemen Lumayag, or their authorized representative in possession of the property herein before described and to eject therefrom all adverse occupants, especially Sps. Antonio & Julie Cristy Bendita and Estate of Erninio J. Bendita & Magdalene Ogatis-Bendita and all persons claiming rights under them, including their assigns, agents and representative found thereat”.

Pursuant to said writ, the Sheriff IV of the RTC, Branch 39, served the Notice to Vacate<sup>[26]</sup> against petitioners on 5 January 2011. Petitioners then gained the complete possession and control of the subject lands.<sup>[27]</sup>

Meanwhile, petitioners filed a Motion for Inhibition<sup>[28]</sup> of the presiding judge of RTC, Branch 39, Judge Eddie R. Rojas. On 11 January 2011, Judge Rojas issued an Order<sup>[29]</sup> voluntarily inhibiting himself from further hearing the case.

Consequently, the case was raffled to the RTC, Branch 37, of General Santos City.  
[30]

On 19 January 2011, petitioners filed an Amended Motion to Quash Writ of Possession, Notice to Vacate and the Resultant Documents filed with the Court by the Sheriff as a Result of the Implementation of the Notice to Vacate with Prayer to Restore/Return Possession to Respondents-Movants<sup>[31]</sup> maintaining that private respondents do not have the legal right to ask for a writ of possession.

On 9 September 2011, the RTC, Branch 37, issued an Order<sup>[32]</sup> denying the amended motion, thus –

WHEREFORE, premises considered, and given the above stated constraint, this instant Amended Motion to Quash Writ of Possession, etc. is hereby Denied.

The remedy of respondents-movants is to elevate this case to the Higher Courts as provided under the rules.

SO ORDERED.

In so ruling, the RTC, Branch 37, justified –

This is a case that has been decided on its merits by the Court of origin which had the opportunity to confront the parties, hear their testimonies, observed their demeanor and read their pleadings and listened to their arguments in depth and at full length. It has issued its resolution based on its understanding of the facts and the law and its perception of its attendant circumstances. It issued its resolution armed with a full measure of the conflicting arguments and sustained this stand with equal conviction in denying respondent-movants['] Motion for Reconsideration.

For reasons of propriety, mutuality of respect and coordinate rank, and jurisdiction among Regional Trial Court[s,] this Court, notwithstanding its own views or personal resolve, is not inclined to grant the motion as it would amount to the [r]eversal of the Resolution of Branch 39 of the Regional Trial Court. The denomination of this pleading as an Amended Motion does not change the character of the RELIEF it seeks from this Court. [T]he reversal of the Resolution of the Court of [o]rigin, a right or prerogative vested with the appellate court.<sup>[33]</sup>

Petitioners undertook the present recourse asserting that the RTC, Branches 39 and 37, and the Sheriff IV of RTC, Branch 39, have acted in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction –

I. IN GRANTING THE PETITION FOR WRIT OF POSSESSION TO LUMAYAGS WHO HAD NO PERSONALITY AND LEGAL STANDING TO FILE THE PETITION FOR WRIT OF POSSESSION.

II. IN GRANTING THE PETITION FOR WRIT OF POSSESSION WHEN THE BANK DID NOT ACTUALLY JOIN IN FILING THE AMENDED PETITION FOR WRIT OF POSSESSION, OR AUTHORIZED ANYONE