

## FIRST DIVISION

[ G.R. No. 164246, January 15, 2014 ]

**HERMINIA ACBANG, PETITIONER, VS. HON. JIMMY H.F. LUCZON, JR., PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 01, SECOND JUDICIAL REGION, TUGUEGARAO CITY, CAGAYAN, AND SPOUSES MAXIMO LOPEZ AND HEIDI L. LOPEZ, RESPONDENTS.**

### D E C I S I O N

**BERSAMIN, J.:**

To stay the immediate execution of the judgment in an ejectment case, the defendant must perfect an appeal, file a *supersedeas* bond, and periodically deposit the rentals becoming due during the pendency of the appeal. Otherwise, the writ of execution will issue upon motion of the plaintiff.

#### The Case

By petition for prohibition, the petitioner, a defendant-appellant in Civil Case No. 6302 of the Regional Trial Court (RTC), Branch 1, in Tuguegarao City, Cagayan, assails the order issued on March 31, 2004 by respondent Judge Jimmy H.F. Luczon, Jr. (Judge Luczon) granting the motion for execution against her and her co-defendants on the ground that she had not posted any *supersedeas* bond to stay the execution.<sup>[1]</sup>

#### Antecedents

Respondent Spouses Maximo and Heidi Lopez (Spouses Lopez) commenced an ejectment suit against the petitioner, her son Benjamin Acbang, Jr. and his wife Jean (Acbangs) in the Municipal Trial Court (MTC) of Alcala, Cagayan (Civil Case No. 64). The defendants did not file their answer. Thus, the MTC rendered its decision on January 12, 2004 in favor of the Spouses Lopez, disposing thusly:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and as against defendants as follows:

- a) The plaintiffs are the true and lawful owners of the land covered by Transfer Certificate of Title No. T-139163.
- b) The defendants are directed to vacate immediately the land in suit which is covered and described in TCT No. T-139163, copy of the title is marked as Annex "A" of the complaint.
- c) The defendants are hereby ordered to pay jointly and severally to the plaintiffs the amount of P5,000.00 as attorney's fees.
- d) The defendants are ordered to pay the costs.<sup>[2]</sup>

The petitioner appealed to the RTC.

In the meantime, the Spouses Lopez moved for the execution of the decision pending appeal in the RTC,<sup>[3]</sup> alleging that the defendants had not filed a *supersedeas* bond to stay the execution. The Acbangs opposed the motion for execution pending appeal,<sup>[4]</sup> insisting that the failure of the Spouses Lopez to move for the execution in the MTC constituted a waiver of their right to the immediate execution; and that, therefore, there was nothing to stay, rendering the filing of the *supersedeas* bond unnecessary.

In his assailed order dated March 31, 2004, Judge Luczon granted the motion for immediate execution, *viz*:

The Motion for Execution is hereby granted, there being no Motion to Fix Supersedeas bond filed by [the Acbangs] as of the date of the filing of the Motion.

The opposition of [the spouses Lopez] on the appeal taken by [the Acbangs] is hereby denied because under the rules the losing [sic] party may appeal the case even if they did not post their supercedeas [sic] bond. [The spouses Lopez] then are given 15 days from today within which to file their memorandum and [the Acbangs] are also given similar period to file their reply on the memorandum of [the spouses Lopez]. Afterwhich (sic) the case shall be submitted for decision with or without the memorandum from the parties.

SO ORDERED.<sup>[5]</sup>

The petitioner moved for reconsideration,<sup>[6]</sup> stressing that the filing of the *supersedeas* bond was for the purpose of staying the execution; and that she as a defendant would not be placed in a position to stay the execution by filing a *supersedeas* bond unless she was first notified of the filing of the motion for immediate execution.

The RTC denied the petitioner's motion for reconsideration on April 26, 2004,<sup>[7]</sup> *viz*:

The Motion for Reconsideration filed by defendant Herminia Acbang is denied, for the reason that the Court finds no cause or reason to recall the order granting appellees' motion for execution.

There was no *supersedeas* bond filed by [the Acbangs], so the execution of the decision is proper.

As the office of the *supersedeas* bond is to stay the execution of the decision, the same should be filed before the Motion For Writ of Execution is filed.

IT IS SO ORDERED.<sup>[8]</sup>

The petitioner then brought the petition for prohibition directly in this Court on July 2, 2004, submitting that Judge Luczon thereby committed grave error in granting the motion for immediate execution of the Spouses Lopez without first fixing the *supersedeas* bond as prayed for by the Acbangs.

It appears that the RTC rendered its decision in Civil Case No. 6302 on July 30, 2004,<sup>[9]</sup> finding that the petitioner had not received the summons, and that the