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SECOND DIVISION

[A.M. No. MTJ-00-1328, February 11, 2004]

RUDY T. SALCEDO, COMPLAINANT, VS. JUDGE AMADO S. CAGUIOA AND SHERIFF BIENVENIDO C. ARAGONES, MUNICIPAL TRIAL COURT IN CITIES, BAGUIO CITY (BRANCH 3), RESPONDENTS.

R E S O L U T I O N

AUSTRIA-MARTINEZ, J.:

In an Affidavit-Complaint[1] dated September 9, 1998, Rudy T. Salcedo charged Judge Amado S. Caguioa and Sheriff Bienvenido C. Aragones, both of the Municipal Trial Court in Cities, Baguio City (Branch 3), with Partiality and Gross Inexcusable Negligence relative to Civil Case No. 10099, entitled "Peliz Loy Realty Corp. vs. Rudy T. Salcedo."

Complainant was the defendant in Civil Case No. 10099 for unlawful detainer involving a hotel known as Veny's Inn located at No. 22-24 Session Road, Baguio City. On August 18, 1998, respondent Judge rendered a decision in said case against complainant. On the same day, complainant filed a notice of appeal. On August 21, 1998, the plaintiff, Peliz Loy Realty Corp. (Peliz Loy, for brevity), filed a Motion for the Issuance of a Writ of Execution pending appeal. On August 24, 1998, complainant filed a Motion to Strike Out the Motion for Execution Pending Appeal on the ground that the motion did not contain a notice of hearing as well as a proof of service in violation of Sections 4, 5 and 6 of Rule 15 of the 1997 Rules of Civil Procedure. On the same day, respondent Judge issued an Order granting the motion for execution pending appeal. On August 25, 1998, complainant filed a Petition for Certiorari with the Regional Trial Court (RTC) of Baguio City praying for the annulment of the Order dated August 24, 1998 issued by respondent, granting the motion for execution pending appeal. Complainant filed before respondent Judge a Manifestation and Motion to Suspend the Order of August 24, 1998, praying that the execution be suspended until his application for temporary restraining order, which was pending with the RTC, has been acted upon. Nonetheless, on August 25, 1998, respondent Sheriff implemented the writ of execution.

Complainant alleges that respondent Judge issued the writ of execution without notice to him and respondent Sheriff forcibly ejected him and his family from Veny's Inn without affording them time to bring out jewelries and cash as well as personal properties and effects. He claims that jewelries amounting to P450,000.00 and cash of P200,000.00 were lost. Complainant submits that respondents conspired with Peliz Loy and its counsel, Atty. Galo R. Reyes, in the issuance and enforcement of the illegal order of execution, thereby giving Peliz Loy unwarranted benefits, advantage or preference in the discharge of their official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence.[2]

In his Comment, respondent claims that the instant administrative complaint is an offshoot of the Order, dated August 31, 1998, of the RTC of Baguio City (Branch 7) which issued a temporary restraining order (TRO) to enjoin the implementation of the writ of execution. He submits that the RTC erred in issuing the TRO because the writ has already been implemented on August 25,1998. He maintains that the writ of execution is valid and properly implemented because Section 19, Rule 70 of the 1997 Rules of Civil Procedure makes it ministerial and mandatory for the court to grant execution after a decision is rendered in an ejectment case which is adverse to defendant. He adds that the only way to stay execution is by perfecting an appeal, filing a supersedeas bond and depositing from time to time with the RTC, during the pendency of such appeal, the amount of rents or the reasonable value of the use and occupation of the property as fixed by the court of origin. He argues that complainant in this case did not file a supersedeas bond. Besides, he submits that a motion for issuance of a writ of execution is not a litigated motion.[3]

For his part, respondent Sheriff claims that he acted in accordance with his sworn duty as a sheriff and officer of the court. He contends that there is no truth to complainant's claim that he was not able to bring out his jewelries and cash because all the occupants of the building were given time to remove their personal effects.[4]

Both respondents insist that no unwarranted benefits or advantage were given to Peliz Loy. Respondent Judge claims that he merely relied on the evidence adduced and the applicable law and complainant cannot now claim that respondents acted with manifest partiality, evident bad faith or gross inexcusable negligence because the former even tolerated the dilatory motions of the latter. Respondents submit that the instant complaint is without basis and filed merely to harass them.[5]

Subsequently, in a letter[6] dated August 5, 1999, complainant prayed for the dismissal of the case against respondents considering that his dispute with Peliz Loy had been fully settled amicably to the satisfaction of the parties.

Consistent with the policy of the Court to proceed with investigations on complaints for misconduct and similar charges against a judge or court personnel despite desistance by complainant or withdrawal of complaint, the Court in a Resolution,[7] dated October 25, 2000, docketed the case as a regular administrative matter and required the parties to manifest whether they were willing to submit the case for resolution based on the pleadings filed.

In compliance, respondent Judge filed his letter-manifestation[8] dated November 28, 2000 praying for a favorable resolution. Complainant filed his Compliance[9] dated December 13, 2000 manifesting his willingness to have the case submitted for resolution based on the pleadings.

Upon a show cause order[10] of the Court dated September 8, 2003, respondent Sheriff filed on November 20, 2003 his manifestation of willingness to submit the case for resolution on the basis of the pleadings filed.[11]

In its Evaluation Report, the Office of the Court Administrator (OCA), applying *Kaw vs. Anunciacion*, Jr.[12], opines that respondent judge committed Gross Ignorance of

the Law when he issued the Order granting the motion for execution pending appeal without hearing and notice to complainant, since the purpose of Sections 4, 5, and 6 of Rule 15 of the 1997 Rules of Civil Procedure in requiring that the motion shall be in writing and notice of the hearing thereof shall be served upon the adverse party is to give the latter the opportunity to argue against the motion so that he could avail of a remedy. Thus, the OCA recommends to the Court that respondent Judge be fined P5,000.00.

With respect to the charge against respondent Sheriff, the OCA opines that a sheriff, in the exercise of ministerial functions, cannot be held liable for implementing the writ of execution issued by the court since there is no proof that he oppressively disregarded procedural rules. The OCA adds that the allegation that "jewelries amounting to P450,000.00 and cash of P200,000.00 were lost" is unsubstantiated since nary an iota of proof, testimonial or otherwise, was adduced to prove the same. Thus, the OCA recommends that the charge against respondent Sheriff be dismissed for insufficiency of evidence.

We do not agree with to the OCA's finding that respondent Judge is administratively liable for Gross Ignorance of Law.

It is plain from the complaint that the error attributable to respondent Judge pertains to the exercise of his adjudicative functions. Settled is the rule that errors committed by a judge in the exercise of his adjudicative functions cannot be corrected through administrative proceedings, but should instead be assailed through judicial remedies. In the recent case of *Bello III vs. Diaz*,[13] we reiterated that disciplinary proceedings against judges do not complement, supplement or substitute judicial remedies, whether ordinary or extraordinary; an inquiry into their administrative liability arising from judicial acts may be made only after other available remedies have been settled. We extensively quoted therein the rationale for the rule as laid down in *Flores vs. Abesamis*,[14] to wit:

> As everyone knows, the law provides ample judicial remedies against errors or irregularities being committed by a Trial Court in the exercise of its jurisdiction. The ordinary remedies against errors or irregularities which may be regarded as normal in nature (i.e., error in appreciation or admission of evidence, or in construction or application of procedural or substantive law or legal principle) include a motion for reconsideration (or after rendition of judgment or final order, a motion for new trial), and appeal. The extraordinary remedies against error or irregularities which may be deemed extraordinary in character (i.e., whimsical, capricious, despotic exercise of power or neglect of duty, etc.) are, *inter alia*, the special civil action of certiorari, prohibition or mandamus, or a motion for inhibition, a petition for change of venue, as the case may be.
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> Now, the established doctrine and policy is that disciplinary proceedings and criminal actions against Judges are not complementary or suppletory of, nor a substitute for, these judicial remedies, whether ordinary or extraordinary. Resort to and exhaustion of these judicial remedies, as well as the entry of judgment in the corresponding action or proceeding, are pre-requisites for the taking of other measures against the persons of the judges concerned, whether of civil, administrative, or criminal nature. It is only after the available judicial remedies have been