

SECOND DIVISION

[A.M. No. MTJ-04-1535, March 12, 2004]

**DR. CONRADO T. MONTEMAYOR, COMPLAINANT, VS., JUDGE
JUAN O. BERMEJO, JR., METROPOLITAN TRIAL COURT, BRANCH
3, MANILA, RESPONDENT.**

D E C I S I O N

TINGA, J.:

The instant administrative case traces its roots from an unlawful detainer case^[1] filed by Benjamin and Desmond T. Montemayor against Lolita Marco. The case was raffled to Metropolitan Trial Court^[2] Judge, Hon. Juan O. Bermejo, Jr. (Judge Bermejo), the respondent herein.

The records reveal that the pre-trial conference was held on May 20, 2002. Finding no possibility of settlement, Judge Bermejo issued a *Pre-Trial Order* of even date defining the issues submitted for decision and the stipulations agreed upon, and directing the parties to submit their respective position papers within 10 days from receipt of the *Order*, after which, the case shall be deemed submitted for decision.^[3]

Accordingly, the plaintiffs submitted their *Position Paper* on June 13, 2002. More than a month later, they filed a Motion for Early Resolution dated July 30, 2002. The defendant, on the other hand, submitted her *Position Paper* only on August 14, 2002.

The plaintiffs then filed another *Motion for Early Resolution* on September 6, 2002. Acting on this motion, Judge Bermejo issued an *Order* dated September 23, 2002 declaring the case submitted for decision.

On October 10, 2002, *Judgment* was rendered in favor of the plaintiffs. Copies thereof were sent by registered mail to the parties and their respective counsels on October 16, 2002.

On December 12, 2002, the plaintiffs filed their first *Motion for Execution* and set the same for hearing on December 16, 2002. However, the motion was not included in the court calendar because December 16, 2002 apparently was not a motion day.

On December 20, 2002, the defendant filed a *Notice of Appeal*.

Subsequently, the plaintiffs' filed a Second *Motion for Execution* dated December 26, 2002 and set the same for hearing on January 3, 2003. Concomitantly, Dr. Conrado T. Montemayor (Dr. Montemayor), the complainant herein and the plaintiffs' attorney-in-fact, also filed on December 26, 2002 a *Motion to Require Defendant's Counsel to Inform the Court the Date He Received a Copy of the Judgment*^[4] and set the same for hearing on January 3, 2003. Judge Bermejo did not act on either motion.

In his *Order*^[5] dated January 6, 2003, the respondent Judge gave due course to the defendant's appeal and required the latter to post a supersedeas bond in the amount of P587,500.00 within 10 days from receipt thereof.

On January 21, 2003, the plaintiffs filed their *Third Motion for Execution*. On the same day, Dr. Montemayor filed a *Second Motion to Require Defendant's Counsel to Inform the Court the Date He Received a Copy of the Judgment*.^[6] Both motions were heard on January 31, 2003, during which, Judge Bermejo directed the plaintiffs to submit to the court an *Affidavit of Service* to the defendant of the pending motions.

Accordingly, the plaintiffs filed a *Compliance and Manifestation*^[7] on February 4, 2003 stating, among other things, that the defendant was served copies of the Motion for Execution, on December 12, 2002; *Second Motion for Execution*, on December 26, 2002; *Motion to Require Defendant's Counsel to Inform the Court the Date He Received a Copy of the Judgment*, on December 26, 2002; *Third Motion for Execution*, on January 21, 2003; *Second Motion to Require Defendant's Counsel to Inform the Court the Date He Received a Copy of the Judgment*, on January 22, 2003; and *Compliance and Manifestation*, on February 3, 2003.

The plaintiffs also filed on February 24, 2003 an *Ex-Parte Motion to Resolve All Pending Incidents* of even date. Resolving this motion, Judge Bermejo issued an *Order* dated March 12, 2003, stating that the *Motion for Execution* dated December 12, 2002, was not resolved because the day it was set for hearing, i.e., December 16, 2002, was not a motion day and because there was no proof that the defendant had already received a copy of the Judgment dated October 10, 2002. Further, the *Second Motion for Execution* dated December 26, 2002, was not acted upon considering the *Notice of Appeal* filed by the defendant and the court's own *Order* dated January 6, 2003, requiring the former to post a supersedeas bond. Anent the *Motion to Require Defendant's Counsel to Inform the Court the Date He Received a Copy of the Judgment*, the same was not acted upon because the court was then conducting a semestral inventory of its pending cases. Finally, the *Third Motion for Execution* dated January 31, 2003 was deemed submitted for resolution.

On April 24, 2003, the defendant filed an *Urgent Motion for Extension*^[8] dated April 23, 2003 claiming that she only had until April 21, 2003 within which to post a supersedeas bond and praying for an extension of 10 days, or until May 1, 2003, to post the bond. In an *Order* dated April 24, 2003,^[9] the respondent Judge granted the motion and gave the defendant until May 5, 2003 within which to post a supersedeas bond.

Upon the defendant's posting of a supersedeas bond, Judge Bermejo issued an *Order*^[10] dated May 5, 2003 directing the Branch Clerk of Court to transmit the entire records of the case to the Regional Trial Court for further proceedings in connection with the defendant's appeal.

Incensed by the foregoing proceedings, Dr. Montemayor filed with the Office of the Court Administrator (OCA) the instant *Administrative Complaint*^[11] charging Judge Bermejo with gross incompetence and inefficiency, gross negligence, gross ignorance of the law, gross misconduct, and/or conduct prejudicial to the best interest of the service.

In the instant complaint, Dr. Montemayor asserts that the respondent Judge failed to decide the case within the period provided under Section 11, Rule 70 of the 1997 Rules of Civil Procedure (Rules of Court). He alleges that Judge Bermejo "did not bother to check defendant's preposterous claim that she received a copy of the Judgment only on December 5, 2002, even if it was released more than forty-five (45) days earlier on October 16, 2002."^[12] He stresses that even if the defendant received a copy of the Judgment on December 5, 2002, still, Judge Bermejo should have reckoned the period to appeal from the time the defendant's counsel received a copy of the *Judgment* and not when the defendant received it herself. What is more, the registry return card showing the date the defendant's counsel received a copy of the *Judgment* was missing from the records.

Dr. Montemayor adds that the *Order* dated January 6, 2003 giving due course to the defendant's appeal and requiring the latter to post a supersedeas bond within 10 days from receipt thereof was released by registered mail more than one month later on February 11, 2003,^[13] and personal service thereof was made on April 9, 2003, or more than three months after the issuance thereof. The motive for the belated service was purportedly to give the defendant more time to post a supersedeas bond. Dr. Montemayor also faults the respondent Judge for granting the defendant's *Urgent Motion for Extension* to post a supersedeas bond in violation of Section 13, Rule 70 of the Rules of Court.

Moreover, Judge Bermejo did not resolve the three (3) *Motions for Execution* and two (2) *Motions to Require Defendant's Counsel to Inform the Court the Date He Received a Copy of the Judgment*.

Dr. Montemayor also avers that Judge Bermejo prevented the transmittal of the records of the case to the appellate court within 15 days from the perfection of the appeal in violation of Section 6, Rule 40 of the Rules of Court. According to him, it was only after the respondent Judge received the defendant's supersedeas bond that the former issued the *Order* dated May 5, 2003 directing the Branch Clerk of Court to transmit the records of the case to the appellate court.^[14]

Required to comment, Judge Bermejo vigorously disputes Dr. Montemayor's allegations.

In his *Comments*^[15] dated August 11, 2003, he explains that he did not act on the plaintiffs' *Motion for Early Resolution* dated July 30, 2002 because there was yet no proof that the defendant already received the *Order* of May 20, 2002 requiring the parties to submit their respective position papers, the affidavits of their witnesses and other documentary evidence. Indeed, after the defendant filed her *Position Paper* on August 14, 2002, he issued an *Order* on September 23, 2002 declaring the case submitted for decision. Hence, the *Judgment* rendered on October 10, 2002 was well within the prescribed period of 30 days under the 1991 Revised Rule on Summary Procedure (Rule on Summary Procedure).

Judge Bermejo says that he did not act on the first *Motion for Execution* because the court had not yet received the registry return receipts of the service of judgment at that time. Furthermore, December 16, 2002, the hearing date the plaintiffs requested, was not a motion day. He also did not act upon the *Second Motion for Execution and the Motion to Require Defendant's Counsel to Inform the Court the Date He Received a Copy of the Judgment* both filed on December 26, 2002 because at that time, the court was conducting a semestral inventory of pending cases, and

also because the defendant had already filed a *Notice of Appeal* on December 20, 2002.

Judge Bermejo denies that he did not act on the *Third Motion for Execution and the Second Motion to Require Defendant's Counsel to Inform the Court the Date He Received a Copy of the Judgment* which were set for hearing on January 31, 2003. He claims that he issued an *Order* on the same date requiring Dr. Montemayor to submit to the court an Affidavit of Service of said motions on the defendant. He further claims that he even advised Dr. Montemayor's counsel in open court to find out the registry receipt number of the registered mail containing the court's *Judgment* addressed to the defendant's counsel to enable Dr. Montemayor to secure a certification from the Philippine Postal Office regarding the date the defendant's counsel received a copy of the *Judgment*. In any event, the respondent Judge asserts that he resolved the plaintiffs' *Ex-Parte Motion to Resolve All Pending Incidents* in the *Order* dated March 12, 2003.

Judge Bermejo also denies that the registry return card indicating the date the defendant's counsel received a copy of the *Judgment* was missing from the records. He says that at the time the defendant filed her *Notice of Appeal*, the court had not yet received the registry return card.

Respondent Judge admits that he gave due course to the *Notice of Appeal* of the defendant in an *Order* dated January 6, 2003 and required the latter to post a supersedeas bond within 10 days from receipt of the same. He alleges that to ensure that the defendant would receive a copy of the *Order*, he even required the Sheriff to personally serve it to the defendant, and ordered another copy to be sent by registered mail. The respective counsels of the parties were also furnished copies of the said *Order* both by personal service and by registered mail. The Judge does not deny, however, that when Dr. Montemayor filed the *Compliance and Manifestation* on February 4, 2003, the court was still waiting for the defendant to post a supersedeas bond.

Judge Bermejo rationalizes the granting of the defendant's *Urgent Motion for Extension* of time to post a supersedeas bond since the bond had already been processed and was ready for signature, but the signatories and approving officials of the bonding company were not available because of the Lenten season. He maintains that the said motion for extension is not a prohibited pleading under the Rules of Court, and that the granting thereof was made in good faith and in the interest of justice.

He further denies that he prevented the transmittal of the records of the case to the appellate court. Given that the defendant had not yet posted the supersedeas bond, and there was no proof to convince him that the latter had already received a copy of the *Order* requiring her to file the bond, the court could not transmit the records.

In his *Reply* dated August 21, 2003, Dr. Montemayor points out that copies of the *Judgment* were sent to the parties by registered mail on October 16, 2002, as certified by the Branch Clerk of Court, and not on October 11, 2002, as claimed by Judge Bermejo.^[16]

He also disputes the respondent Judge's claim that he did not act on the first *Motion for Execution* because there was yet no proof of receipt of the *Judgment* by the defendant's counsel. Dr. Montemayor highlights the fact that the first *Motion for Execution* was already pending at the time the *Notice of Appeal* was filed. He also

notes that while Judge Bermejo required the plaintiffs to submit an Affidavit of Service relative to the *Second Motion to Require Defendant's Counsel to Inform the Court the Date He Received a Copy of the Judgment*, he did not require the same of the defendant when she filed her Notice of Appeal. Finally, Dr. Montemayor denies that Judge Bermejo resolved all pending incidents in the *Order* dated March 12, 2003, because the Judge did not act on the plaintiffs' *Third Motion for Execution*.

On September 11, 2003, the respondent Judge filed a Rejoinder maintaining that Judgment was rendered well within the 30-day period required under the Rule on Summary Procedure. Thereafter, he filed a *Manifestation* asking that the present administrative case be submitted for resolution without further argument from the parties.

In his Reply to Rejoinder, Dr. Montemayor submits a Certification from the Manila Central Post Office stating that the defendant received the mail matter containing a copy of the *Judgment* on October 17, 2002.^[17] Another Certification from the Makati Central Post Office^[18] stating that the defendant's counsel received a copy of the *Judgment* on October 18, 2002, Dr. Montemayor claims, contradicts Judge Bermejo's allegation that the court received no proof that the defendant's counsel had received a copy of the *Judgment*.

Required to evaluate the complaint, the OCA submitted its *Report and Recommendation* on November 11, 2003 finding merit in the complaint and recommending that Judge Bermejo be fined in the amount of P5,000.00 for failing to decide the case within the period fixed by law.

The respondent Judge maintains that he is not liable for delay in the rendition of judgment. In essence, he argues that since the *Order* deeming the case submitted for resolution was issued on September 23, 2002, the rendition of judgment on October 10, 2002 was made within the mandatory 30-day period.

The Court is not persuaded.

Section 11, Rule 70 of the Rules of Court provides a period of 30 days for the court to render judgment in forcible entry and unlawful detainer cases. This period shall be counted from the receipt of the affidavits and position papers, or the expiration of the period for filing the same.

Section 11, Rule 70 echoes Section 10 of the Rule on Summary Procedure which governs unlawful detainer cases, among others.^[19] The latter provision similarly mandates the resolution of such cases within 30 days after receipt of the last affidavits and position papers, or the expiration of the period for filing the same.

Clearly, the reckoning point from which the mandatory period for rendition of judgment should be computed is the receipt of the last affidavits and position papers of the parties, or the expiration of the period for filing the same, as provided by the Rules, *not* from the issuance of the order by the judge deeming the case submitted for resolution. The reckoning point is fixed by law, not by the judge. A judge cannot by himself choose to prolong the period for deciding cases beyond that authorized by the law.^[20]

The records do not reveal when the parties received Judge Bermejo's *Order* requiring them to submit their respective affidavits and position papers. Assuming, however, that the court received the defendant's *Position Paper* on August 14, 2002,