

THIRD DIVISION

[G.R. No. 118691, April 17, 1997]

**ALEJANDRO BAYOG AND JORGE PESAYCO, JR., PETITIONERS,
VS. HON. ANTONIO M. NATINO, PRESIDING JUDGE, REGIONAL
TRIAL COURT, BRANCH 12, SAN JOSE, ANTIQUE AND ALBERTO
MAGDATO, RESPONDENTS.**

R E S O L U T I O N

DAVIDE, JR., J.:

In our Decision in this case promulgated on 5 July 1996, we ordered Judge Deogracias K. Del Rosario of the Third Municipal Circuit Trial Court of Patnoñgon-Bugasong-Valderrama, Antique, and Atty. Marcelo C. Josue to show cause, within ten days from receipt of a copy of the said decision, why they should not be disciplinarily dealt with for gross ignorance of law and violation of Canon 18 of the Code of Professional Responsibility, respectively.

The following findings in the decision compelled the issuance of this "show-cause" order on Judge Del Rosario:

It must be noted that despite the effectivity of the Revised Rule on Summary Procedure on 15 November 1991, the MCTC Judge still applied the previous Rule on Summary Procedure in his 15 December 1992 order. While it may be true that this did not affect the outcome of the case, judges are expected to keep abreast of and be conversant with the rules and circulars adopted by this Court which affect the conduct of cases before them.

Moreover, while it may be said that the MCTC correctly applied the Rule on Summary Procedure in Civil Case No. 262 since BAYOG's complaint for ejectment therein suppressed the fact of an agrarian relationship between him and MAGDATO, it should not have refrained from taking cognizance of MAGDATO's Answer. Although filed late, the Answer asserted that the MCTC had no jurisdiction over the case in light of the agricultural tenancy relationship between BAYOG and MAGDATO, which is clearly evidenced by their Agricultural Leasehold Contract and the Certificate of Agricultural Leasehold issued in MAGDATO's favor by then President Marcos. While this assertion, per se, did not automatically divest the MCTC of its jurisdiction over the ejectment case, nevertheless, in view of MAGDATO's defense, the MCTC should have heard and received the evidence for the precise purpose of determining whether or not it possessed jurisdiction over the case. And upon such hearing, if tenancy was shown to be at issue, the MCTC should have dismissed the case for lack of jurisdiction. Verily, if indeed MAGDATO were an agricultural lessee under agrarian law, then the MCTC was devoid of jurisdiction over the

ejection case.

The MCTC should have met and ruled squarely on the issue of jurisdiction, instead of simply adopting a strange theory that it could not take cognizance of the answer belatedly filed without exceeding its jurisdiction under Section 36 of B.P. Blg. 129. Plainly, there is nothing in the said section which bars the MCTC from taking cognizance of the answer. The Revised Rule on Summary Procedure, as well as its predecessor, does not provide that an answer filed after the reglementary period should be expunged from the records. As a matter of fact, there is no provision for an entry of default if a defendant fails to file his answer. It must likewise be pointed out that MAGDATO's defense of lack of jurisdiction may have even be raised in a motion to dismiss as an exception to the rule on prohibited pleadings in the Revised Rule on Summary Procedure. Such a motion is allowed under paragraph (a) of Section 19 thereof, which reads:

SEC. 19. Prohibited pleadings and motions. -- The following pleadings, motions, or petition shall not be allowed in the case covered by this Rule:

(a) Motion to dismiss the complaint or to quash the complaint or information except on the ground of lack of jurisdiction over the subject matter, or failure to comply with the preceding section;

. . .Worse, in its Order of 20 September 1993, the MCTC ordered MAGDATO "to remove his house ... before judgment becomes final and executory," and the Provincial Sheriff "to demolish and destroy [MAGDATO'S] house on the ... land of [BAYOG] in case [MAGDATO] should fail to remove the same ... before judgment against him becomes final and executory. This was clearly in violation of Section 8, Rule 70 of the Rules of Court and Section 21 of the Revised Rule on Summary Procedure. Such orders of "removal" and "demolition" before the judgment becomes final and executory were obviously intended to render futile any appeal which MAGDATO could interpose therefrom pursuant to Section 21 of the Revised Rule on Summary Procedure.

Compounding this palpably oppressive and capricious Order, the MCTC, in its Order of Execution of 16 December 1993, directed the Provincial Sheriff "to demolish and destroy defendant's [MAGDATO's] home standing in the above-described parcel of land in case defendant should fail to remove the same therefrom before judgment against him becomes final and executory." And, in strict obedience to this said order, Sheriff IV Amando S. Lapos, acting for the Ex-Officio Provincial Sheriff, accompanied by Edgar Tondares (Sheriff IV), the Barangay Captain of Centro Pojo, members of the Philippine National Police (PNP) of Bugasong, Antique, as security escorts, and BAYOG himself, served on MAGDATO the order of execution on 24 January 1994 and forthwith ejected MAGDATO from the land in question and demolished and destroyed MAGDATO's house.

This was a clear abuse of authority or misuse of the strong arm of the law. No demolition of MAGDATO's house could have been validly effected on the day of service of the order of execution. MAGDATO should have