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WHEREFORE, respondent Judge Alex L. Quiroz is hereby *REPRIMANDED*, with a stern warning that a repetition of the same or similar act would be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., Puno, Kapunan, and *Ynares-Santiago, JJ.*, concur.

FIRST DIVISION

[A.M. No. RTJ-00-1543. August 4, 2000]

(formerly OCA IPI No. 98-543-RTJ)

TERESITA JASON, *complainant, vs.* **JUDGE BRICCIO C. YGAÑA, Branch Clerk of Court, LEILANI M. RODRIGUEZ, and Sheriff MARIO S. PANGILINAN,** *respondents.*

SYNOPSIS

For the issuance and implementation of a writ of execution in an appealed ejectment case, the decision on which has been rendered final, Judge Briccio C. Ygaña, Clerk of Court Leilani M. Rodriguez and Sheriff Mario S. Pangilinan of the Regional Trial Court of Pasig City, Branch 153, were charged with ignorance, negligence, incompetence, grave abuse of duty and improvident issuance and implementation of a writ of execution before the Office of the Court Administrator (OCA). According to complainant, the implementation or execution of the final decision must come from the court of origin and not the appellate court. After an evaluation, the OCA recommended that Judge Ygaña be fined and warned for gross ignorance of the law. Meantime, the complaint against Rodriguez and Pangilinan were recommended to be dismissed for lack of merit.

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The rule on Forcible Entry and Unlawful Detainer does not authorize the appellate court which has resolved the appeal to execute its own judgment. What is authorized is the execution of the judgment by the court of origin even before remand to the latter by the appellate court of the records of the case solely on the basis of the certified true copy of the judgment of the appellate court and of the entry thereof. Respondent judge, as opined by the Court Administrator, seemed to be totally unaware of said law. A judge is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules; it is imperative that he be conversant with basic legal principles. Respondent Clerk of Court, as a lawyer, cannot be exonerated solely on the basis of having performed a ministerial duty. Being a lawyer and a clerk of court, she was expected to know the basic law and doctrine on execution of judgment in ejectment cases appealed from the courts of origin.

SYLLABUS

1. **REMEDIAL LAW; EJECTMENT; APPEALED EJECTMENT CASES WHICH HAVE BECOME FINAL AND EXECUTORY SHOULD BE REMANDED TO THE TRIAL COURT FOR EXECUTION; EXCEPTION.**— Since [the court's] decision in SCA 1480 affirmed *in toto* the decision of the Metropolitan Trial Court of Pasig City in an ejectment case, Civil Case No. 5335, and the affirming decision had become final and executory, the case should have been remanded to the Metropolitan Trial Court for execution. This issue has long been resolved. In *Sy v. Romero* (214 SCRA 187, 195 [1992]), we explicitly stated: . . . In an ejectment case, the appellate court which affirms a decision brought before it on appeal cannot decree its execution in the guise of an execution of the affirming decision. The only exception to that is when said appellate court grants an execution pending appeal.

2. **ID.; ID.; COURT OF ORIGIN, AUTHORIZED TO EXECUTE ITS JUDGMENT BASED SOLELY ON A CERTIFIED TRUE COPY OF THE JUDGMENT OF THE APPELLATE COURT AND OF THE ENTRY THEREOF.**— Nothing in this section authorizes the appellate court which has resolved the appeal to order the execution of its own judgment. What is authorized is the execution of the judgment by the court of

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origin even before remand to the latter by the appellate court of the records of the case solely on the basis of the certified true copy of the judgment of the appellate court and of the entry thereof.

3. **JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; DISREGARD BY JUDGE OF RULE ON EXECUTION OF JUDGMENT.**— Howsoever viewed, respondent Judge Ygaña either deliberately disregarded our ruling in *City of Manila v. Court of Appeals* (204 SCRA 262, 269 [1991], and *Sy v. Romero* (*supra*), or was totally unaware thereof. The Court Administrator is of the opinion that it was more of the latter and considers it "gross ignorance of the law." We agree for we cannot expect a judge to deliberately disregard on unequivocal rule on execution of judgment and a doctrine laid down by this Court. Time and again we have stressed that a judge is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules; it is imperative that he be conversant with basic legal principles. Canon 4 of the Canons of Judicial Ethics requires that the judge should be studious of the principles of law, and canon 18 mandates that he should administer his office with due regard to the integrity of the system of the law itself, remembering that he is not a depository of arbitrary power, but a judge under the sanction of law. (*Estoya v. Abraham Singson*, 237 SCRA 1, 21 [1994], citing authorities).

4. **ADMINISTRATIVE LAW; COURT PERSONNEL; CLERKS OF COURT; EXPECTED TO KNOW THE BASIC LAW AND DOCTRINES ON EXECUTION OF JUDGMENT IN APPEALED EJECTMENT CASES; CASE AT BAR.**— Respondent Branch Clerk of Court Rodriguez, as a lawyer, cannot be exonerated solely on the basis of having performed a ministerial duty. Being a lawyer and a Clerk of Court for sometime she was expected to know the basic law and doctrines on execution of judgment in ejectment cases appealed from the courts of origin. She ought to know that her court cannot issue a writ of execution on its final judgment affirming that of the court of origin. Consequently, she could have called the attention of respondent Judge Ygaña. Her failure to do so amounted to neglect of duty for which she should be censured.

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RESOLUTION

DAVIDE, JR., *C.J.:*

Complainant was a defendant in an ejectment case, Civil Case No. 5335, entitled *Alberto Huang v. Teresita Jason,* of Branch 69 of the Metropolitan Trial Court of Pasig City. On 18 July 1997, a decision was rendered therein the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, judgment is rendered in favor of the plaintiff and against the defendant, ordering the latter and all persons claiming rights under her to:
>
> 1. vacate and peacefully surrender possession to the plaintiff one of the twin units she is occupying located at Lot 2-E Andrea Village, Rosario, Pasig City;
> 2. pay plaintiff the sum of ₱4,000.00 per month from the date of the filing of the complaint until she vacates the same for the reasonable use of said premises;
> 3. pay plaintiff the sum of ₱10.00.00 as and by way of attorney's fees; and
> 4. pay the costs of suit.
>
> SO ORDERED. (See Annex "B" of Complaint.)

Complainant appealed the decision to the Regional Trial Court (RTC) of Pasig City. The appeal was docketed as Special Civil Action (SCA) No. 1480 and raffled to Branch 153. Respondents Judge Briccio C. Ygaña, Leilani M. Rodriguez and Mario P. Pangilinan are the Presiding Judge, Clerk of Court and Sheriff IV, respectively, of said Branch.

On 4 August 1997 the RTC, Branch 153, per respondent Judge Ygaña, rendered decision in SCA No. 1480 affirming *in toto* the decision in Civil Case No. 5335. Complainant did not appeal from the decision. However, on 13 March 1998, she filed with the RTC of Pasig City a complaint for "Annulment of Deed of Conditional Sale of House and Lot, Re-Awarding of Subject House and Lot, with Prayer for Preliminary

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Injunctions" against the Social Security System and others including Alberto Huang, the plaintiff in the ejectment case. The case was docketed as Civil Case No. 66714, and was assigned to Branch 154 of said court. On 24 March 1998 the Pairing Judge of Branch 154 issued a *status quo* order.

On 9 February 1998 plaintiff Alberto Huang filed a Motion for immediate Execution in SCA No. 1480 which respondent Judge Ygaña granted on 6 April 1998.

On 7 April 1998, respondent Clerk of Court Rodriguez issued a Writ of Execution (Annex "B" of Complaint), which was assigned to respondent Pangilinan for implementation. On 8 April 1998 Pangilinan levied on execution some personal properties of the complainant; issued a Notice to Vacate giving complainant a period of five days within which to vacate the premises and prepared a Notice of Levy and Sheriff's Sale.

On 21 April 1998 complainant filed with the Office of the Court Administrator the complaint in this case charging respondents with ignorance, negligence, incompetence, grave abuse of duty, improvident issuance and implementation of a writ of execution, drastic execution of said writ in a manner most prejudicial to the best interest of service and property rights of complainant and her family.

Complainant alleges in her complaint that the writ of execution was improvidently issued because of the pendency before Branch 54 of the RTC of Pasig City of Civil Case No. 66714. Besides, the implementation or execution of the final decision must come from the court of origin and not the appellate court. Complainant further avers that the writ of execution, notice to vacate and notice of levy and sheriff's sale were not properly served as these were merely served on the same date on 8 April 1998 to her children who were mostly minors and who did not know what to do with these court processes. Respondent sheriff together with SPO1 Arsenio Reyes and Soliven, younger brother of the plaintiff, levied and took some of complainant's belongings listed in the Notice of Levy and Sheriff's Sale in the absence of complainant.

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In separate indorsements to the respondents, the OCA required the latter to comment on the complaint.

In his Comment of 20 July 1998, respondent Judge Ygaña prays that the complaint be dismissed for being baseless and devoid of merit. He explains that considering no appeal was interposed by complainant from the decision he rendered, the same became final and executory. The plaintiff filed a motion for immediate execution, which was set for hearing on 20 February 1998. Despite notice, complainant failed to appear on that date, and despite the five-day period given her to comment on or object to the motion, she again failed to do so. Instead, on 2 April 1998, she filed a written compliance to which was attached a copy of her complaint in Civil Case No. 66174. Since the motion for execution was well taken and complainant's compliance contained no allegation in opposition to the motion, he granted the motion.

Respondent Judge further maintains that the writ of execution was properly issued "pursuant to Circular No. 24-94, now Section 1 of Rule 39 of 1997 Rules of Civil Procedure."

In her Comment dated 22 July 1998, respondent Leilani Rodriguez alleged that it was her ministerial duty to issue the writ of execution pursuant to the Order of the Court of 6 April 1998. Thus, she only acted within the confines of her duties in her official capacity as Branch Clerk of Court and further alleges that under Circular No. 24-94 now incorporated under Section 1, Rule 30 [which should be Rule 39] of the 1997 Rules on Civil Procedure, it is "the judgment obligee . . . is given the option to file motion for execution with the court of origin and the appellate court and the appellate court could only direct the court of origin to issue the writ of execution again on motion in the same case." In this case plaintiff did not exercise the option; instead he filed a Motion for Immediate Execution with the appellate court on 12 February 1998.

Further, respondent Rodriguez asserts that complainant was afforded ample opportunity to oppose the issuance of the writ; yet, she did not.

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In his comment, respondent Sheriff Pangilinan claims that he properly served all the alleged documents to complainant's son Michael who is of legal age; he gave her five (5) days within which to vacate the premises; in fact complainant padlocked the premises thereby compelling him to secure a special order from the court to break open. However, the order was rendered academic when complainant voluntarily vacated the premises. He properly implemented the writ of execution.

We referred the case to the OCA for evaluation, report and recommendation. It submitted its report and recommendation on 8 February 2000.

In the resolution of 1 March 2000 we ordered the docketing of this case as a regular administrative proceeding and required the parties to manifest if they are willing to submit this case for resolution on its merits on the basis of the pleadings already filed. In their separate manifestations all the parties responded in the affirmative.

In its Evaluation the OCA made the following findings and conclusions:

EVALUATION: We find respondent judge administratively liable. But first, we would like to correct the contention of complainant that respondent judge should have suspended the proceedings due to the pendency of Civil Case No. 66714 which seeks to annul the deed of conditional sale covering the premises subject of the ejectment case. It is an established rule that suits or actions for the annulment of sale, title or documents do not abate any ejectment action respecting the same property (*Corpus vs. Court of Appeals*, 274 SCRA 275, 280). This principle is based on the premise that an ejectment suit involves only the issue of material possession to possession *de facto*. (*Punio vs. Go,* 296 SCRA 1, 6). But this notwithstanding, complainant is correct in asserting that the writ of execution should have been issued by the court of origin. In *Salientes vs. Intermediate Appellate Court* (246 SCRA 150, 160-161, citing *Sy vs. Romero*, 214 SCRA 187) it was held that:

> "x x x [a]lthough the decision in the ejectment case binds the petitioner, the execution thereof, or the issuance of the demolition order, falls within the jurisdiction of the City Court

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now the Metropolitan Trial Court of Kalookan City which rendered the decision in Civil Case no. 13199. In an ejectment case, the appellate court, which affirmed the decision brought before it on appeal cannot decree its execution in the guise of an execution of the affirming decision. The only exception is unless said appellate court grants an execution pending appeal."

It cannot be said that the writ of execution in this case was issued by respondent judge pending appeal because according to him the decision was already final and executory. As such, respondent should have remanded the case to the Metropolitan Trial Court, Branch 69 of Pasig City for execution. (*City of Manila vs. Court of Appeals,* 204 SCRA 362, 369).

As to respondent clerk of court and respondent sheriff, we find no fault on their part.

The function of ordering the execution of a judgment devolves upon the judge whereas the act of issuing the writ of execution can be performed by another person, *viz.*, the clerk of court. As the rule now stands the clerk of court may, under the direction of the court or judge, make out and sign all writs and processes issuing from the court. (*Viray vs. Court of Appeals*, 286 SCRA 475). in this case, respondent judge issued an order granting the plaintiff's Motion for Immediate Execution and directing the issuance of a writ. (Annex A of Comment of Respondent Clerk of Court). Hence, respondent Clerk of Court was left with no choice but to issue the writ as directed.

As to respondent sheriff, it appears that he properly served the writ of execution. It appears from both the Notice to Vacate and the Writ of Execution that these were served on a certain Michael Jason. (Annexes A and B. respectively, of respondent sheriff's Comment). The complaint did not specifically assail the capacity of this Michael Jason, either before the respondent judge or in this administrative case, to receive the notice and the writ. All she said was that these court processes were served on her children "who were mostly minors." (Complaint, p. 3). This is not enough to hold respondent sheriff liable. It has been said that a sheriff's report, as a document, is clothed with presumption of regularity and since it was not objected to by complainant, it must be upheld. (*Sy vs. Yerro*, 253 SCRA 340, 345).

As to the implementation of the writ, we likewise find respondent sheriff faultless. Complainant is complaining that respondent sheriff levied her personal property which disregarded the five-day grace

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period provided in the notice to vacate. It must be remembered that the Writ of Execution and the Notice to Vacate were served on the same day, April 8, 1998. Having properly served the writ, respondent was duty bound to implement the same by levying the personal property of complainant in order to satisfy the money judgment. Well-settled is the rule that when a writ is placed in the hands of the sheriff, it is his ministerial duty to proceed with reasonable celerity and promptness to execute in accordance with its mandate. (*Onquit vs. Binamira-Parcia*, 297 SCRA 354, 264). The grace period referred to by complainant is given to them only with respect to that part of decision ordering them to vacate the premises. (*San Manuel Wood products, Inc. vs. Tupas*, 249 SCRA 466, 476). If we accept the opinion of complainant it is quite possible that respondent sheriff would not be able to levy anything since herein complainant would use the grace period to defeat the judgment by hiding his property.

Finally, the fact that respondent erred in granting the Motion for Immediate Execution does not necessarily mean that since the acts of respondent clerk of court and respondent sheriff are based on the said erroneous order, they too similarly erred. In the first place, on its face there is nothing patently erroneous in the order of respondent as to put the other respondents on guard. Second, they merely implemented the order of respondent judge for which they can not be blamed. (*Bobis vs. Provincial Sheriff of Camarines Norte*, 121 SCRA 28, 39).

The OCA then recommended that:

1. . . . respondent Judge Briccio C. Ygaña be FINED in the amount of ₱3,000 for gross ignorance of the law with a WARNING that a repetition of the same offense in the future shall be dealt with more severely, and

2. . . . the complaint against Branch Clerk of Court Leilani M. Rodriguez and Sheriff Mariano S. Pangilinan be DISMISSED for lack of merit.

We agree with the conclusion of the Office of the Court Administrator that respondent Judge Ygaña is liable for gross ignorance of the law. Since his decision in SCA 1480 affirmed *in toto* the decision of the Metropolitan Trial Court of Pasig City in an ejectment case, Civil Case No. 5335, and the affirming decision had become final and executory, the case

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should have been remanded to the Metropolitan Trial Court for execution.

This issue has long been resolved. In *City of Manila vs. Court of Appeals*, (204 SCRA 362, 569 [1991]) we held:

> The rule is that if the judgment of the metropolitan trial court is appealed the regional trial court and the decision of the latter is itself elevated to the Court of Appeals, whose decision thereafter become final, the case should be remanded through the regional trial court to the metropolitan trial court for execution. The only exception is the execution pending appeal, which can be issued by the regional trial court under Section 8 of Rule 70 or the Court of Appeals or the Supreme Court under Section 10 of the same Rule.

In *Sy v. Romero,* (214 SCRA 187,195 [1992]) we explicitly stated:

> . . . In an ejectment case, the appellate court which affirms a decision brought before it on appeal cannot decree its execution in the guise of an execution of the affirming decision. The only exception to that is when said appellate court grants an execution pending appeal.

It may be pointed out that Section 21 of Rule 70 (Forcible Entry and Unlawful Detainer) of the 1997 Rules of Civil procedure provides:

> SEC. 21. *Immediate execution on appeal to Court of Appeals on Supreme Court.* — The judgment of the Regional Trial Court against the defendant shall be immediately executory without prejudice to a further appeal that may be taken therefrom.

This section authorizes the Regional Trial Court to issue a writ of execution pending appeal. This section presupposes that the defendant is still unsatisfied with the judgment of the Regional Trial Court and decides to appeal therefrom to a superior court. This section replaces Section 10 of the former rule (HERRERA, REMEDIAL LAW, Vol. III, [1999 ed.], 508).

Respondents Judge Ygaña and Clerk of Court Rodriguez invoke Section 1 of Rule 39 of the 1997 Rules of Civil Procedure, which incorporates Circular No. 24-94 issued on 8 April 1994 by then Chief Justice Andres R. Narvasa. Unfortunately, the Section gives them no refuge. Said section reads:

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SEC. 1. *Execution upon judgments or final orders.* — Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected. (1a).

If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party.

The appellate court may, on motion in the some case, when the interest of justice so requires, direct the court of origin to issue the writ of execution. (n)

Nothing in this section authorizers the appellate court which has resolved the appeal to order the execution of its own judgment. What is authorized is the execution of the judgment by the court of origin even before remand to the latter by the appellate court of the records of the case solely on the basis of the certified true copy of the judgment of the appellate court and of the entry thereof. The reasons for the new rule areas follows:

The second paragraph of this on is an innovation in response to complaints over delay caused by the former procedure in obtaining a writ of execution of a judgment, which has already been affirmed on appeal, with notice to the parties. As things then stood, after the entry of judgment in the appellate court, the prevailing party had to wait for the records of the case to be remanded to the court of origin when and where he could then move for the issuance of a writ of execution. The intervening time could sometimes be substantial, especially if the court *a quo* is in a remote province, and could also be availed of by the losing party to delay or thwart actual execution.

The third paragraph of this section, likewise a new provision, is due to the experience of the appellate courts wherein the trial court, for reasons of its own or other unjustifiable circumstances, unduly delays or unreasonably refuses to act on the motion for execution or issue the writ therefor. On motion in the same case while the records are still with the appellate court, or even after the same have been remanded to the lower court, the appellate court can direct the issuance

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of the writ of execution since such act is merely in the enforcement of its judgment and which it has the power to require. (REGALADO, REMEDIAL LAW COMPENDIUM, Vol. I [seventh revised ed., 1999], 399-400).

Howsoever viewed, respondent Judge Ygaña either deliberately disregarded our ruling in *City of Manila v. Court of Appeals, (supra)*, and *Sy v. Romero (supra)*, or was totally unaware thereof. The Court Administrator is of the opinion that it was more of the latter and considers it "gross ignorance of the law." We agree for we cannot expect a judge to deliberately disregard an unequivocal rule on execution of judgment and a doctrine laid down by this Court. Time and again we have stressed that a judge is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules; it is imperative that he be conversant with basic legal principles. Canon 4 of the Canons of Judicial Ethics requires that the judge should be studious of the principles of law, and Canon 18 mandates that he should administer his office with due regard to the integrity of the system of the law itself, remembering that he is not a depository of arbitrary power, but a judge under the sanction of law. (*Estoya v. Abraham Singson*, 237 SCRA 1, 21 (1994), citing authorities).

For failure to know and apply a basic law or rule on execution of judgment in ejectment cases, respondent Judge Ygaña cannot avoid administrative sanction. The fine of ₱3,000 recommended by the Court Administrator is too light. It is hereby increased to ₱10,000.

Respondent Branch Clerk of Court Rodriguez, as a lawyer, cannot be exonerated solely on the basis of having performed a ministerial duty. Being a lawyer and a Clerk of Court for sometime she was expected to know the basic law and doctrines on execution of judgment in ejectment cases appealed from the courts of origin. She ought to know that her court cannot issue a writ of execution on its final judgment affirming that of the court of origin. Consequently, she could have caught the attention of respondent Judge Ygaña. Her failure to do so amounted to neglect of duty for which she should be censured.

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Sheriff Pangilinan, however, may be exonerated because he merely implemented the writ of execution and at the same time he cannot be expected to hold the same degree of discretion as his co-respondents.

WHEREFORE, respondents (a) Judge Briccio C. Ygaña is hereby *FINED* in the amount of Ten Thousand Pesos (₱10,000) for gross ignorance of the law; (b) Branch Clerk of Court Leilani M. Rodriguez is *CENSURED* for neglect of duty; and (c) Sheriff Mario Pangilinan is exonerated and the case against him ordered dismissed.

Let copies of this resolution be attached to the personal records of respondents in the Office of the Court Administrator.

SO ORDERED.

Puno, Kapunan, Pardo, and *Ynares-Santiago, JJ.*, concur.

FIRST DIVISION

[G.R. No. 113446. August 4, 2000]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellant, vs.* **ELMER FEGIDERO *y* CORDOVA,** *accused-appellant.*

SYNOPSIS

This is an appeal from a decision of the Regional Trial Court in Manila convicting Elmer Fegidero of the crime of robbery with homicide, The incident happened in the evening of March 21, 1993. Emilio Castro was robbed of personal belongings and killed on the occasion of said robbery. Prosecution witnesses identified Fegidero as the person who alighted from the passenger jeepney where the robbery took place, clutching the bag of the victim. In this action, Fegidero questioned the sufficiency of