



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated July 28, 2020 which reads as follows:*

**“OCA IPI No. 19-4988-RTJ – Spouses ANTONIO and ADELAIDA ATIENZA vs. Hon. EMMANUEL R. RECALDE, Presiding Judge, Regional Trial Court, Branch 38, Boac, Marinduque (in his capacity as Acting Presiding Judge, Regional Trial Court, Branch 129, Caloocan City) and Sheriff IV ROY I. CAMBIADO, Regional Trial Court, Branch 129, Caloocan City.**

**Antecedents**

On October 4, 2019, Spouses Antonio and Adelaida Atienza (Spouses Atienza) filed with the Office of the Court Administrator (OCA) an administrative complaint for gross misconduct, violation of the pertinent provisions of law and jurisprudence, and violation of the Code of Judicial Conduct against Hon. Emmanuel R. Recalde (Judge Recalde) in his capacity as Acting Presiding Judge, Regional Trial Court (RTC), Branch 129, Caloocan City, and Sheriff IV Roy I. Cambiado (Sheriff Cambiado), of the same court.

Spouses Atienza were the defendants in an action for unlawful detainer filed by Spouses Carlos Delos Santos and Ofelia Delos Santos (Spouses Delos Santos) before the Metropolitan Trial Court (MeTC), Branch 83, Caloocan City docketed as Civil Case No. 15-31075. Through its Decision<sup>1</sup> dated June 4, 2017, MeTC-Branch 83 granted the complaint and ordered Spouses Atienza to vacate and peacefully surrender the property to Spouses Delos Santos. The property is situated in Caloocan City and covered by Transfer Certificate of Title (TCT) No. 3196.

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<sup>1</sup> *Rollo*, pp. 41-51.

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On appeal,<sup>2</sup> the RTC-Branch 129, then presided by Judge Thelma Canlas Trinidad-Pe Aguirre, affirmed. Spouses Atienza elevated the case to the Court of Appeals and posted a supersedeas bond. Pending appeal, they also deposited the monthly rentals on the property. Spouses Delos Santos, however, moved for execution of the RTC decision. By Order<sup>3</sup> June 10, 2019 the RTC-Branch 129, now presided by respondent Judge Recalde, granted the motion. Thus, on June 17, 2019, the RTC-Branch 129 issued the corresponding Writ of Execution.<sup>4</sup> In accordance therewith, respondent Sheriff Cambiado, on July 2, 2019, served on Spouses Atienza the first notice to vacate,<sup>5</sup> and on August 16, 2019, the final notice to vacate.<sup>6</sup>

Spouses Atienza averred that they only received the order on the issuance of the writ of execution on July 1, 2019. The following day, they immediately moved for its reconsideration. Right on the same day, however, Sheriff Cambiado already served them copy of the writ of execution together with the first notice to vacate. The issuance of the writ of execution just seven (7) days after the order for issuance of the writ of execution was against the rules as the 15-day period to question such order had not yet lapsed. Too, they posted supersedeas bond, deposited monthly rentals, and raised as defense their claim of ownership over the property. Judge Recalde, therefore, should not have granted the motion for issuance of writ of execution. Worse, on the date of hearing on their motion for reconsideration, Judge Recalde arrogantly informed them that their motion had already been denied, without even requiring Spouses Delos Santos to file a comment thereon. On the same day, they were given the order<sup>7</sup> denying their motion for reconsideration.

Sheriff Cambiado, on the other hand, should not have issued, served, and implemented the notices to vacate. Sadder still, on August 23, 2019, Sheriff Cambiado, in conspiracy with and collusion with other persons, forcibly entered the property in dispute and demolished the same while pulling out the bakery equipment, sans any writ of demolition. When confronted, Sheriff Cambiado simply informed them that the writ of demolition was already impliedly included in the writ of execution.<sup>8</sup>

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<sup>2</sup> *Id.* at 52-55.

<sup>3</sup> *Id.* at 68-70.

<sup>4</sup> *Id.* at 85-86.

<sup>5</sup> *Id.* at 84.

<sup>6</sup> *Id.* at 95.

<sup>7</sup> *Id.* at 3-6 and 94.

<sup>8</sup> *Id.* at 6-7.

### OCA Recommendation

In its evaluation<sup>9</sup> dated January 23, 2020, Court Administrator Jose Midas P. Marquez and Assistant Court Administrator Lilian C. Barribal-Co recommended the dismissal of the present complaint for being judicial in nature and for lack of merit.

### Ruling

We ADOPT in full the factual findings, conclusion, and recommendation of the OCA.

As regards Judge Recalde, Spouses Atienza basically question the propriety of the orders he issued in his judicial capacity. Jurisprudence though is replete with cases holding that errors, if any, committed by a judge in the exercise of his adjudicative functions cannot be corrected through administrative proceedings, but should instead be assailed through available judicial remedies. Disciplinary proceedings against judges do not complement, supplement or substitute judicial remedies and, thus, cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by their erroneous orders or judgments.<sup>10</sup>

In *Atty. Tamondong v. Judge Pasal*,<sup>11</sup> the Court applied this rule when Judge Pasal was administratively charged with gross ignorance of the law, gross incompetence, gross inefficiency and/or neglect of duty, viz.:

Judge Pasal issued the Resolution dated December 23, 2013 in Special Civil Action No. 2013-184 in the exercise of his adjudicative functions, and any errors he might have committed therein cannot be corrected through administrative proceedings, but should instead be assailed through judicial remedies. The issues of jurisdiction being argued by Atty. Tamondong are judicial matters, which again can only be decided upon through judicial remedies. A party's recourse, if prejudiced by a judge's orders in the course of a trial, is with the proper reviewing court and not with the OCA, through an administrative complaint.

The Court declared that **an administrative complaint is not the appropriate remedy for every act of a judge deemed aberrant or irregular where a judicial remedy exists and is available. The acts of a judge in his judicial capacity are not**

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<sup>9</sup> *Id.* at 106-109.

<sup>10</sup> *Chua v. Judge Madrona*, 742 Phil. 98, 108 (2014).

<sup>11</sup> 820 Phil. 220, 230 (2017).

**subject to disciplinary action. A judge cannot be civilly, criminally, or administratively liable for his official acts, no matter how erroneous, provided he acts in good faith.**

The Court also expounded in *Flores v. Abesamis* that:

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 a 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.

**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 exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil, or administrative liability may be said to have opened, or closed.**

In the present administrative complaint, Atty. Tamondong admitted that he already filed an appeal of Judge Pasa's Resolution dated December 23, 2013 in Special Civil Action No. 2013-184 before the Court of Appeals. Absent any showing that Atty. Tamondong has exhausted all available judicial remedies and that there is already an entry of judgment in the appropriate judicial action or proceeding, the Court cannot proceed to inquire herein into Judge Pasa's administrative liability in relation to said Resolution.

**Moreover, Atty. Tamondong failed to offer proof that in issuing the Resolution dated December 23, 2013 in Special Civil Action No. 2013-184, Judge Pasa was acting in bad faith and unduly favoring Abada's heirs. Mere imputation of bias and partiality against a judge is insufficient because bias and**

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**partiality can never be presumed. Also, bad faith or malice cannot be inferred simply because the judgment is adverse to a party.** (Emphasis supplied)

So must it be.

As for Judge Recalde's alleged arrogance, bias, and partiality, there is absolutely no evidence to prove the same.

Going now to the complaint against Sheriff Cambiado, it bears stress that the implementation of a writ of execution is a ministerial act of the sheriff. An act is ministerial if done by an officer or tribunal who performs in the context of a given set of facts, in a prescribed manner and without regard to the exercise of his own judgment, upon the propriety or impropriety of the act done. Sheriffs do not exercise any discretion when implementing a writ of execution.<sup>12</sup> Thus, Sheriff Cambiado is duty bound to implement the Writ of Execution dated June 17, 2019. To do so, he had to issue and serve notice on Spouse Atienza the twin notices to vacate in compliance with his duty under the rules. For sure, Sheriff Cambiado cannot be faulted, let alone, charged with irregularity for the acts he did in compliance with his ministerial duty as such.

Regarding the purported demolition of the property in dispute, it is true that a separate writ is needed to demolish a property subject of the writ of execution, but here, aside from Spouses Atienzas' bare allegations, no evidence was presented to prove the supposed unlawful act. Spouses Atienza presented several photographs which depict the property in dispute. These photos, however, do not prove at all that Sheriff Cambiado indeed demolished said property, intentionally or otherwise. Spouses Atienza also claimed that Sheriff Cambiado arrogantly told them that demolition is necessarily included in the writ of execution. But, as with their other allegations, there was also nothing to support Spouses Atienza's claim that Sheriff Cambiado uttered these words. More, as noted by the OCA, even if it is true that the property sustained some damage in the process of collecting the bakery supplies inside, the same cannot be said to be intentional and would not amount to demolition as Spouses Atienza claim.

**WHEREFORE**, the administrative complaints for gross misconduct, violation of the Code of Judicial Conduct, and violation of the pertinent provisions of law and jurisprudence against Hon. Emmanuel R. Recalde and Sheriff Roy I. Cambiado are **DISMISSED** for being judicial in nature and for lack of merit.

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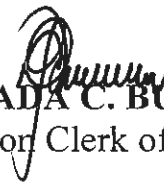

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<sup>12</sup> *Santos v. Leaño, et. al.*, 781 Phil. 342, 355 (2016).

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court 

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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Sps. Antonio & Adelaida Atienza  
Complainants  
No. 6 Cairo Street, Vista Verde North  
Caybiga, 1420 Caloocan City

Hon. Emmanuel R. Recalde  
Respondent – Presiding Judge  
Regional Trial Court, Branch 38  
Boac, 4900 Marinduque

Mr. Roy I. Cambiado  
Respondent – Sheriff IV  
Regional Trial Court, Branch 129  
1400 Caloocan City

Hon. Jose Midas P. Marquez (x)  
Court Administrator  
Hon. Raul B. Villanueva (x)  
Hon. Jenny Lind R. Aldecoa-Delorino (x)  
Hon. Leo Tolentino Madrazo (x)  
Deputy Court Administrators  
Hon. Lilian Barribal-Co (x)  
Hon. Maria Regina A. F. M. Ignacio (x)  
Assistant Court Administrators  
OCA, Supreme Court

Office of Administrative Services (x)  
Legal Office (x)  
Court Management Office (x)  
Financial Management Office (x)  
Docket & Clearance Division (x)  
OCA, Supreme Court

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