



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated July 13, 2022, which reads as follows:

“G.R. No. 255813 (Spouses Kazimierz Dudek and Jeanjel* Dudek, petitioners, versus Spouses Emma May and Joel Panugaling, respondents.)**
– The Court resolves to:

- (1) **NOTE** the Entry of Appearance dated May 16, 2022, filed by Atty. Sylvan Gerald L. Sabio of Sabio Law Office, counsel of respondents, and **GRANT** his request that he be furnished with copies of all pleadings, notices and other court processes in this case at Unit F 2nd Floor 2 Uptown Corner Building, B-2, L-2 Golden Glow North Commercial PN Roa Avenue (Now Macapagal Road), Upper Carmen, Cagayan de Oro City; and
- (2) **NOTE WITHOUT ACTION** the attached comment/opposition to the petition for review on *certiorari*.

Before the Court is a Rule 45 *certiorari* Petition¹ assailing the Court of Appeals² (CA) Decision³ dated August 23, 2019 and Resolution⁴ dated November 26, 2020 in CA-G.R. SP No. 09195-MIN. The CA Decision denied the appeal of herein petitioners and affirmed the Decision⁵ dated October 9, 2018 in Civil Case No. CV-ORD-2018-719 of the Regional Trial Court (RTC), Branch 41, Cagayan de Oro City, which granted the petition for *mandamus* filed by respondents, directing Judge Wilfred R. Yacapin, Sr. of the 6th Municipal Circuit Trial Court (MCTC) of Villanueva-Tagoloan, Misamis Oriental to issue

* Also appears as “Jean” in some parts of the *rollo*.

** Appears as “Emma Mae” in some parts of the *rollo*.

¹ *Rollo*, pp. 9-23, excluding Annexes.

² Twenty-Third Division and Special Former Twenty-Third Division.

³ *Rollo*, pp. 93-102. Penned by Associate Justice Florencio M. Mamauag, Jr., with Associate Justices Oscar V. Badelles and Angelene Mary W. Quimpo-Sale concurring.

⁴ Id. at 110-111. Penned by Associate Justice Oscar V. Badelles, with Associate Justices Evalyn M. Arellano-Morales and Angelene Mary W. Quimpo-Sale concurring.

⁵ Id. at 58-62. Penned by Presiding Judge Jeoffre W. Acebido.

a writ of execution in accordance with the Decision dated July 20, 2016⁶ of the RTC, Branch 21, Cagayan de Oro City in Civil Case No. CV-ORD-2015-071. The CA Resolution denied the motion for reconsideration filed by petitioners.

Petitioners point out in their Petition that respondents' *mandamus* petition should have been dismissed outright because the latter have a clear, speedy and adequate remedy in the ordinary course of law by filing a motion to set aside the MCTC's relocation survey Order.⁷ Also, petitioners insist that respondents are not entitled to a writ of execution in excess of the share that respondent Emma May Panugaling (Emma May) inherited in the land, and the MCTC has the inherent and residual power to conduct a relocation survey to determine such share.⁸

The CA responded to petitioners' argument that respondents had failed to allege that they have no other plain, speedy and adequate remedy in the ordinary course of law in this wise:

[Petitioners] are mistaken. When the MCTC entertained a new matter and proceeded to issue an Order directing the conduct of a relocation survey instead of the Writ of Execution, [respondents] were left in a situation where there is no more plain, speedy and adequate remedy that was available to them in the ordinary course of law to protect their rights. Besides, to follow [petitioners'] line of reasoning would be tantamount to allowing the reopening of the case to a new litigation. Consequently, even if the petition fails to allege this, since it could be discerned from the allegations in the petition that [respondents] were without any other plain, speedy and adequate remedy in law, the same is, in the opinion of the court, not fatal to the petition. [Respondents'] act of availing of the remedy of *Mandamus* is a necessity so that the ultimate objective of a successful litigation which is the execution and satisfaction of the judgment is achieved.⁹

The Court cannot but agree with the CA. Indeed, as observed by the CA, under Section 3, Rule 65 of the Rules of Court, a petition for *mandamus* is the proper remedy to a person whose right has been violated by reason of the unlawful neglect of a ministerial duty on the part of a tribunal, corporation, board, officer, or person.¹⁰ Section 3, Rule 65 provides:

SEC. 3. *Petition for mandamus.* — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper

⁶ Stated as "June 20, 2016" in the RTC Decision, *id.* at 58.

⁷ *Rollo*, p. 16.

⁸ *Id.* at 17-18.

⁹ *Id.* at 99.

¹⁰ *Id.*

court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

x x x x

The MCTC has the ministerial duty to enforce the final and executory judgment in favor of respondents, and public policy dictates this duty, as the Court noted in *Mejia-Espinoza, et al. v. Cariño*,¹¹ viz.:

x x x We have repeatedly held that once a judgment becomes final, the prevailing party is entitled as a matter of right to a writ of execution and its issuance is the trial court's ministerial duty. x x x

x x x Public policy dictates that once a judgment becomes final, executory, and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. Unjustified delay in the enforcement of a judgment sets at naught the role of courts in disposing justiciable controversies with finality.¹²

As to petitioners' other argument that a writ of execution cannot be issued in this case beyond respondent Emma May's share, as legal heir, in the subject land, the CA rebuffed the same in this wise:

In the mind of the [CA], [petitioners] are grasping at straws to evade the consequences and adverse outcome of Civil Case No. 2014-357 [(docket number of the original MCTC case)]. [The CA] cannot but observe that [petitioners], from one creative endeavor to another, permissible or not, have attempted to make last-ditch efforts to thwart the necessary consequences of their act of dispossessing the Sps. Panugaling of the property from the latter's lawful possession. They cannot now escape from the consequences of the final and executory decision in that action by the simple expediency of asserting that [respondent] Emma May is not entitled to the whole parcel of land in litigation and therefore, the possession of the whole property should not be surrendered to them.¹³

Petitioners should know that in a forcible entry case, only physical possession is in issue. Certainly, they have appropriate remedies to enforce whatever ownership rights they may have in the property in dispute. However, for now, they are left with no option but to abide by the final and executory judgment decreed against them.

¹¹ 804 Phil. 248 (2017).

¹² Id. at 258-259. Citations omitted.

¹³ *Rollo*, p. 100.

WHEREFORE, the instant Petition is **DENIED**. The Decision dated August 23, 2019 and Resolution dated November 26, 2020 of the Court of Appeals in CA-G.R. SP No. 09195-MIN are **AFFIRMED**.

SO ORDERED.”

By authority of the Court:

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court 7/13/23

Atty. Jim. L. Amarga
Counsel for Petitioners
Purok 4, Gusa
9000 Cagayan de Oro City

PHILIPPINE JUDICIAL ACADEMY
Research Publications and Linkages Office
Supreme Court, Manila
[research_philja@yahoo.com]

COURT OF APPEALS
9000 Cagayan de Oro City
(CA G.R. SP No. 09195-MIN)

PUBLIC INFORMATION OFFICE
Supreme Court, Manila
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Atty. Sylvan Gerald L. Sabio
Sabio Law Office
2nd Floor 2 Uptown cor., bldg., B-2, L-2
Golden Glow North
Commercial PN Roa Avenue
(Now Macapagal Road)
Upper Carmen, Cagayan de Oro City

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Supreme Court, Manila

The Presiding Judge
REGIONAL TRIAL COURT
Branch 41
9000 Cagayan de Oro City
(Civil Case No. CV-ORD-2018-719)

The Presiding Judge
REGIONAL TRIAL COURT
Branch 21
9000 Cagayan de Oro City
(Civil Case No. CV-ORD-2015-071)

The Presiding Judge
MUNICIPAL CIRCUIT TRIAL COURT OF
Villanueva-Tagoloan
Misamis Oriental

G.R. No. 255813

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