

BRIGIDO TOQUIB, COMPLAINANT, VS. ATTY. VALERIANO TOMOL, JR., RESPONDENT.

Adm. Case No. 554. March 25, 1970

Ponente: DIZON, J.

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DIZON, J.:

On January 3, 1969 We promulgated our decision in the above-entitled administrative case, the dispositive part of which reads as follows:

"WHEREFORE, judgment is hereby rendered suspending Attorney Valeriano Tomol, Jr. from the practice of law for one (1) year from the date this judgment becomes final.

"Let this decision be noted in respondent's record - as a member of the Bar - in this Court."

Before Us now is a Motion for Reconsideration filed by respondent on January 20 of the same year, submitting the following as grounds in support thereof:

"I. WHEN THE CLIENT IS IN POSSESSION OF THE PROPERTY IN QUESTION IN A CASE, AND THE SAID CLIENT IS THE DEFENDANT, A LAWYER IS NOT DERELICT IN HIS DUTY IF HE DOES NOT MOVE FOR THE RESETTING OF THE CONTINUATION OF THE HEARING OF THE CASE; and

II. THAT THE NEGLIGENCE FOR WHICH A LAWYER IS HELD RESPONSIBLE UNDER THE CANONS OF LEGAL ETHICS IS PERSONAL IN NATURE INASMUCH AS IT HAS TO BE COUPLED WITH AN EVIL, MALICIOUS, DISHONORABLE, OR CORRUPT MOTIVE; IT CANNOT, THEREFORE, BE A VICARIOUS RESPONSIBILITY, AND COULD NEVER ARISE BECAUSE OF CONSTRUCTIVE NOTICE, PARTICULARLY IF SUCH CONSTRUCTIVE NOTICE IS THROUGH A PERSON NOT WITHIN HIS EMPLOY AS A LAWYER."

Mindful of the fact that the present proceedings involve, on the one hand, the right of a litigant to seek redress against a member of the Bar who has, allegedly, caused him damage, either through malice or negligence, while in the performance of his duties as his counsel, and, on the other, the right of that member of the Bar to protect and preserve his good name and reputation, We have again gone over and considered the different aspects of the case.

It appears that complainant, on behalf of his father, sought to disbar respondent on the ground that in an action for the recovery of a parcel of land in the Court of First Instance of Southern Leyte (Civil Case No. R-958) in which his parents, Teodulo de Paz and Margarita de Paz, were defendants, respondent neglected to notify him or his father of the taking of the latter's deposition, for which reason he was not able to appear to give such deposition; that by reason thereof the Court considered the case submitted for decision without the defendants having been able to present evidence in their behalf; that, subsequently, respondent also failed to notify complainant or his father of the adverse decision rendered in said case, for which reason they likewise lost the right to appeal therefrom.

Respondent did not answer in spite of the fact that he was duly served with a copy of the complaint and documents attached thereto. After receiving complainant's evidence the Solicitor General, under date of February 28, 1968, submitted his report, finding the following facts to have been established:

"The Facts

Stripped of unnecessary details, the facts are: Sometime in 1957, Brigido Toquib sought to engage the professional services of respondent to defend his father Hermogenes Toquib, who was sued by the spouses Teodulo de Paz and Margarita de Paz in the Court of First Instance of Maasin, Southern Leyte for recovery of possession of a parcel of land (Case No. R-958; pp. 5, t.s.n., April 6, 1964; 5, t.s.n., April 10, 1964). Respondent told him that inasmuch as he had a partner in the law office, and it being their agreement not to accept a case singly, he (complainant) call on him at his law office to be able to talk with his partner, Atty. Antonio Veloso (p. 5, t.s.n., April 10, 1964). Complainant agreed saying that it was his desire to ask Atty. Veloso to handle the case anyway but because he did not know him, he had to see respondent (ibid.). Thereafter, the partners consented to handle the case for complainant's father and filed the corresponding answer in his behalf (pp. 6, 7, t.s.n., April 10, 1964).

Thrice the case was set for hearing during which respondent's partner, now deceased, personally appeared on the first two occasions and the respondent himself, on the last (p. 7, t. s.n., April 10, 1964). After plaintiffs had finished presenting their evidence respondent orally prayed the Court to allow him to take the deposition of complainant's father in Hinunangan where he was residing, as he was too old to journey to Maasin being already 89 years old, which motion was granted and the deposition taking set for December 22, 1960 (pp. 5, April 6, 1964; 32, April 8, 1964; pp. 8, 9, 11, April 10, 1964).

On the date set for the taking of the deposition before the Justice of the Peace, respondent travelled to Hinunangan, taking a boat from Tacloban to Cabalian and a bus from the last mentioned place to Hinunangan, arriving there at noon (pp. 11, 12, t.s.n., April 10, 1964; pp. 3, 4, 5, t.s.n., November 19, 1964). When the case was called by the Justice of the Peace at 2:00 o'clock in the afternoon, only counsel for the plaintiff, Atty. Feliciano Nombrado, and for the defendant, the herein respondent, appeared (pp. 17, 18, t.s.n., Nov. 19, 1964). Respondent moved that the case be called later to await the defendant, complainant's father, whose deposition was to be taken (p. 18, t.s.n., Nov. 19, 1964). The Judge granted him one hour within which to wait for the would-be deponent (p. 19, t.s.n., Nov. 19, 1964). When the case was called again at 3:00 o'clock in the afternoon respondent moved for postponement because the would-be deponent had not yet arrived, but the Judge denied his motion on the ground that his authority was to take the deposition only on that date and nothing more, whereupon he informed the parties present that he would submit the corresponding report to the Court of First Instance which he did (pp. 13, 19, 20, t.s.n., Nov. 19, 1964).

On May 19, 1961, the Court of First Instance entered an order considering the case (No. R-958) submitted for decision in view of the therein defendant's failure to attend the scheduled deposition (Exhibit D-2, p. 8, Sup. Crt. rec.; p. 38, t.s.n., April 8, 1964).

On May 25, 1961, the Court of First Instance rendered judgment in favor of the plaintiffs and against the defendant declaring the former the true and real owners of the property and ordering the latter to vacate the same immediately (Exhibit E, pp. 3-5, rec., supra; p. 37, t.s.n., April 8, 1964).

Between June and August, 1961 complainant on several occasions went to see respondent inquiring about the status of the case and asking him when his turn to present evidence would be, but respondent consistently advised him to wait for the notice of hearing (pp. 9, 10, t.s.n., April 6, 1964; pp. 8, 9, t.s.n., April 8, 1964).

Sometime in June 1962, complainant's father received a writ of execution served upon him by the provincial sheriff in Case No. R-958 (p. 11, t.s.n., April 6, 1964; p. 10, t.s.n., April 8, 1964). Complainant lost no time in seeing respondent and asked him why the writ since his father had not even presented his evidence (ibid.). Respondent advised him to tell his father to accept the writ (p. 13, t.s.n., April 6, 1964).

Because respondent did not take any action in the case, complainant engaged the services of Atty. Romeo Gomez who filed a notice of appeal (p. 15, t.s.n., Apr. 6, 1964). Upon checking up the record in court complainant found that on June 7, 1961, respondent received a copy of the decision through Manuel Labrador, whom he had authorized to receive mail matters in his behalf, as evidenced by the registry receipt card, Exhibit C (p. 31, O.S.G. rec.; pp. 16, 20, 21, 22, t.s.n., April 6, 1964; p. 10, t.s.n., Nov. 19, 1964; pp. 5, 6, 7, t.s.n., Nov. 20, 1964).

Atty. Gomez advised complainant to go back to respondent to ask from him a copy of the decision (p. 15, t.s.n., April 6, 1964). When complainant went to see respondent again, the latter gave him a letter for delivery to Atty. Gomez stating that he had not received a copy of the decision and suggesting that he 'study the possibility of filing an action for the annulment of the decision, inasmuch as the reglementary period for filing a motion to vacate the judgment under the same proceedings has already expired' (Exhibit B, p. 30, O.S.G. rec.; pp. 20, t.s.n., April 6, 1964; p. 7, t.s.n., April 10, 1964)."

As stated in the report of the Solicitor General, the acts or omissions constituting negligence inquired into in the investigation of the case were: (1) respondent's failure to notify complainant or his father of the deposition set for December 22, 1960 before the Justice of the Peace of Hinunangan; (2) his failure to take steps to protect the interest of his client, and (3) his failure to notify the client or his father of the adverse decision rendered by the Court of First Instance, in order that an appeal therefrom could be taken to a higher court.

Anent the first point of inquiry, the Solicitor General says the following in his report:

"In regard to the first point of inquiry, complainant claims that respondent never notified him of the scheduled deposition and that everytime he came to see him to inquire for the date when evidence in behalf of his father would be adduced, respondent's invariable answer was for him to wait for the notice of hearing but which never received (pp. 9, 10, t.s.n., April 6, 1964; p. 32, April 8, 1964). Respondent, however, testified that on the date of the last hearing in the Court of First Instance, during which he orally moved that he be allowed to take the deposition of complainant's father in Hinunangan before the Justice of the Peace, which motion was granted, he notified the complainant who was present in Court, of the date set for the taking of the deposition of his father on December 22, 1960; that on that date he proceeded to Hinunangan, taking a boat from Tacloban to Cabalian and a bus from the last mentioned place to Hinunangan where he arrived at noon of the same day; that when the case was called at 2:00 o'clock in the afternoon, complainant or his father was not present; that he asked that the case be called later to await them; that when the case was called again an hour later, he asked that the taking of the deposition be postponed but in view of the objection of counsel for the plaintiffs the Judge denied his motion for postponement, claiming that his authority was only to take the witness' deposition; and that when he saw complainant in the public market and asked him why he and his father failed to appear in court, complainant said that he forgot all about it (pp. 11, 12, 13, t.s.n., April 10, 1964; pp. 3, 4, 5, 18, t.s.n., November 19, 1964).

"We are inclined to believe that respondent really informed complainant of the date set for the taking of his father's deposition otherwise respondent who was residing in Silago would not have journeyed all the way from Tacloban to Cabalian by boat and to Hinunangan by bus on the said date.

"However, we do not find respondent totally blameless. He himself said that after the Justice of the Peace of Hinunangan had denied his motion for postponement of the taking of the deposition of complainant's father on December 22, 1960, and had informed the parties present that he would make a report to the Court of First Instance, he thought that proper notice would be sent to the parties by the Court. But when questioned by the investigating Solicitor if he asked the Court of First Instance for another date to take the deposition of the witness, he answered he did not. Respondent's inaction evinces neglect on his part to protect the interest of his client."

We concur with the finding made and the conclusion arrived at by the Solicitor General, as set forth in the

above-quoted portion of his report. We feel, however, that something more must be said about matters related thereto.

It is, of course, obvious that complainant's credibility has not been enhanced by his claim that respondent had not notified him at all regarding the date set for the taking of the deposition of his father - a claim correctly overruled by the Solicitor General. Indeed, were it true that respondent had failed to give proper notice to complainant or his father, his going to Hinunangan and his appearance before the Justice of the Peace of said municipality on December 22, 1960 - which for him meant a long trip by land and sea - would have been completely senseless. As he did so, the presumption must be that he had duly notified his client, through the latter's son, the complainant, of the date and place fixed for the taking of the deposition and had, therefore, reasonable grounds to expect that the deponent would be present there.

We are also of the belief that, upon the record, the justice of the peace was not entirely blameless. In view of deponent's non-appearance, it would have been perfectly within his Honor's prerogative to postpone - as, indeed, respondent prayed him to do - the taking of the deposition to some future date, instead of denying respondent's motion for postponement and forthwith considering the matter closed, and submitting thereafter the corresponding report to the Court of First Instance.

On the other hand, the actions taken in the premises by the Court of First Instance: (a) issuing on May 19, 1961 an order considering the case (Civil Case No. R-958) submitted for decision in view of the failure of one of the therein defendants to attend the scheduled deposition, and (b) the rendition on the 25th of the same month of a judgment in favor of the plaintiffs declaring them to be the true and real owners of the property in question and ordering the defendants to vacate the same immediately, were - procedurally speaking - wrong, if not irregular. Instead of taking such drastic steps, the said court should have either issued an order requiring the defendants to show cause why the case should not be deemed submitted for decision, or set the case for a resumption of the trial. Either procedural step was proper considering firstly, that even if the deposition had been taken as scheduled, it was still necessary thereafter to set the case for trial to enable the defendants to formally present said deposition as part of their evidence; and secondly, that from the date set for the taking of the deposition (December 22, 1960) to the date when the Court entered the order considering the case submitted for decision (May 19, 1961), only a little less than five months had elapsed. The error of the court was further compounded and became more prejudicial by the rendition of judgment on May 25, 1961, without further proceedings.

The shortcomings of the courts discussed above do not, of course, absolve respondent of the charge of negligence in the performance of his duties as counsel of complainant's parents. Indeed, it is quite clear from the foregoing that after the Justice of the Peace of Hinunangan had refused to postpone the taking of the deposition of complainant's father, (1) respondent could have proceeded to give notice of the taking of the deposition of his client in accordance with Rule 24 of the Rules of Court, and (2) after said justice of the peace had submitted his report to the Court of First Instance, respondent could have asked the latter either to set another date for the taking of the deposition aforesaid or to set the case for trial for the presentation of such evidence as was at his disposal to support his client's case. While, to a certain degree, he was right in waiting for a court notice concerning the continuation of the trial, this did not relieve him of his duty, as defendant's counsel, to seek from the court the reliefs already mentioned. Instead, he allowed the period of several months to elapse without taking any step in the premises, his inaction having prompted the Court of First Instance to declare the case submitted for decision and, subsequently, to render its decision therein.

The question of whether or not notice of the judgment aforesaid was duly served on respondent is, upon the evidence of record, not free from doubt.

It is not disputed that, as evidenced by the registry return card Exhibit C, the registered matter supposed to contain the decision rendered by the Court of First Instance in Civil Case No. R-958 was received by Manuel Labrador, postmaster of the municipality of Hinunangan. Equally beyond question is the fact that Labrador was not connected in any capacity whatsoever with respondent's law office. At the time material to this particular question, respondent was the municipal mayor of Silago to which position he had been elected in 1959. While there seems to be no concrete evidence showing that the office of respondent as mayor and that of Labrador as postmaster were located in the same building, it is justified to presume, We believe, that they were in fact located in the same building or in buildings relatively near to one another. These facts are relevant in the determination of the conflicting claims of the parties on the question of whether postmaster Labrador was or was not authorized by respondent to receive registered letters addressed to him. Labrador says that he was, but respondent denies it. We, therefore, have respondent's word against Labrador's. It may be contended that the latter's word is more credible because he is not biased, having nothing to gain or lose in the present proceedings. This is, however, more apparent than real because if, as respondent claims, he had never authorized Labrador to receive any mail matter, registered or otherwise, on his behalf, and this notwithstanding Labrador received the registered letter to which the return card Exhibit C refers, it is clear that he could be called to account for such unauthorized act. He was, therefore, naturally interested in maintaining that respondent had given him such authority. If their offices were in the same building or in different buildings but relatively near each other, what need was there for respondent to give such authority to Labrador when he had the municipal secretary or any clerk in his office as mayor who could accept delivery of mail matters from the post office on his behalf?

On the other hand, it is likewise obvious that respondent is vitally interested in showing that he had not given such authority to Labrador because if he did, the inevitable conclusion would be that Labrador's act is binding upon him.

Assuming that, in the light of these circumstances, Labrador's testimony could merit more weight than that of respondent, We ask: Is it sufficient to justify a finding of guilt against respondent in connection with the matter under discussion? We believe it is not.

Moreover, even assuming that such authority was in fact given to Labrador, the latter could go no farther than to testify that he delivered the registered letter containing the decision of the Court not to respondent himself, but to a certain Francisco Celleza, municipal secretary of Hinunangan. Assuming again that the latter actually received the, registered letter from postmaster Labrador, is there positive evidence in the record showing that he, Celleza, thereafter delivered it to respondent? There is none. The most that complainant's side could possibly say in this regard is that it must be presumed that Celleza did deliver said registered letter to respondent. This presumption is not of strong validity, considering that respondent could not have possibly remained passive or inactive after receiving the adverse decision of the Court. There is no indication of any kind in the record that he had turned hostile to his own client and that he had ever intended to deprive the latter of his right to appeal from said decision. That for a considerable time after Labrador received the registered letter containing the decision of the court respondent had taken no step to move for its reconsideration or to appeal therefrom, would seem to bolster respondent's contention that he had no actual knowledge at all of that decision until complainant told him about the writ of execution issued by the court. From the foregoing, it is obvious that there is a missing link in the chain of evidence necessary to hold respondent liable of actually having received the decision mentioned heretofore and of having, thereafter, through negligence or malice, failed to notify his client about it and to take proper steps to protect his rights.

It has been said that charges meriting disciplinary actions against a member of the Bar generally involve the motives that induced him to commit the act or acts charged and that, to justify disbarment or suspension the case

against him must be clear and free from doubt, not only as to the act charged but as to his motive. As punishment by disbarment or suspension, will deeply affect a lawyer's professional life, neither should be imposed unless the case against him is free from doubt not only as to the act charged but as to his motive. In the case at bar, the question of whether or not respondent actually received the decision rendered by the Court of First Instance would seem to be fairly debatable. Besides, as far as the record discloses, respondent had no motive or reason at all to maliciously refrain from advising his client of the rendition of the adverse decision and to take corresponding steps in the case to protect his rights.

It is, therefore, our considered view that respondent may be found guilty, as he is hereby found guilty only of negligence in the performance of his duties as attorney of record of the spouses Teodulo de Paz and Margarita de Paz, as above indicated for which he is hereby reprimanded, with warning that any similar misconduct will be punished more drastically. Let this judgment be recorded in respondent's personal record as a member of the Bar.

To the extent above indicated, the original decision rendered in this case is modified.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

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