

NELIA A. ZIGA, COMPLAINANT, VS. JUDGE RAMON A. AREJOLA, RESPONDENT.

A.M. No. MTJ-99-1203. June 10, 2003

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This is a complaint filed by Nelia A. Ziga against Judge Ramon A. Arejola of the Municipal Trial Court (MTC), Daet, Camarines Norte, for appearing as counsel in a land registration case without permission from the Supreme Court and asking for attorney's fees for his legal services.

Nelia Arejola-Ziga and Judge Ramon Arejola are two of the heirs of Fabiana Arejola. By virtue of inheritance, they and eight others became owners in fee simple of a 19,664 sq. m. land in Calauag, Naga City owned by Fabiana. On January 23, 1995, while respondent was employed as an attorney in the Public Attorney's Office (PAO) of Naga City, he filed in behalf of his co-heirs, an application for registration of title of the lot, docketed as Land Registration Case No. 95-142.[1]

In its decision dated October 25, 1996, the Regional Trial Court, Branch 23, Naga City, granted the petition and ordered the imperfect title of the heirs to the property confirmed and registered in the name of the heirs of Fabiana Arejola, free from liens and encumbrances of any kind whatsoever.[2] Subsequently, a substantial portion of the lot, or 17,894 sq. m., has been agreed to be sold in favor of the City of Naga, as evidenced by a Deed of Conditional Sale.[3] The remaining portion of 1,770 sq. m. is subject of a dispute between the heirs of Fabiana Arejola and Josefina Vda. De Segarra.[4]

On June 9, 1997, respondent was appointed judge of the MTC of Daet, Camarines Norte. He took his oath on August 1, 1997.

Despite his appointment, respondent Judge continued to appear in the land registration case. On October 31, 1997, he was requested by the court hearing the land registration case to submit his written authority from the Supreme Court to appear as counsel in the said case.[5] This order was reiterated on June 15, 1998.[6]

On April 6, 1998, respondent Judge wrote the City Mayor of Naga City, insisting (1) that the amounts due under the contract of sale of the property of the heirs of Fabiana Arejola should be paid by individual checks drawn out in equal proportionate amounts in favor of each heir, and (2) that his claim for contingent attorney's fees and agent's fees be segregated and paid to him in an amount equivalent to 30% of the gross selling price before any payment is made to the heirs. He further added that unless his demands are met, no contract for the absolute sale of the property would be finalized.[7]

In the present complaint, Nelia Arejola Ziga alleges that respondent should be disciplined for appearing before a court as counsel without securing the permission of the Supreme Court and for asking contingent attorney's fees and agent's commission amounting to 30% of the gross selling price of the property subject of the land registration case.

In his Comment dated August 24, 1998, respondent argues: He does not need to ask permission from the Public Attorney's Office (PAO) or from the Supreme Court since he has every right to appear before the lower court as co-heir. According to him, he has been appearing in the land registration case as representative of the heirs of Fabiana Arejola and not as counsel. Respondent explained that being one of the heirs of the late Fabiana Arejola, he is a party-litigant and therefore a party-in-interest in the land registration case. He filed the application for the confirmation of land title in his own behalf and in representation of his co-heirs. Hence, he had every right to appear and prosecute the case. The permission of the PAO was not required. Respondent further explains that since he alone actively participated in the case, he has every right to demand contribution from the other heirs who benefited from his work, to be taken from the proceeds of the sale of the property. He believes that this case was filed to harass him because of the misspelled name of the complainant in the RTC decision on the registration of land title.[8] He further claims that complainant is shown to have a disturbed mind and to be suffering from manic depression.[9]

Pursuant to the Court's Resolution on June 30, 1999, the complainant and respondent manifested their willingness to submit the case for resolution based on the pleadings.[10]

On October 2, 2000, the Court referred the case to the Executive Judge of the Regional Trial Court of Daet, Camarines Norte, for investigation, report and recommendation.

On August 13, 2001, Executive Judge Jose G. Dy submitted his report recommending that respondent be warned for using intemperate and unkind language towards complainant. Anent the alleged unauthorized practice of law, Executive Judge Dy opines that the same is without any basis. He finds that since the complainant did not question the act before the Department of Justice where PAO is a line agency, and considering that the RTC trying the case did not insist on the inhibition of respondent, the actions of the latter in appearing on his own behalf and that of his co-heirs in the land registration case is not malicious.

After the investigation report of Executive Judge Dy was noted, the Court, in a Resolution dated May 29, 2002, referred the case to the Office of the Court Administrator for evaluation, report and recommendation.

In its Memorandum dated August 20, 2002, the Office of the Court Administrator (OCA) disagreed with the findings of the Executive Judge and recommended that respondent judge be found guilty of violating the Code of Judicial Conduct and accordingly be suspended for a period of three months without pay.

The report of OCA reads:

We do not agree with the findings and recommendation of the investigating judge. It must be pointed out that Judge Dy arrived at his findings and recommendation on the basis only of the records at hand. He did not conduct any investigation but merely evaluated the pleadings and evidence submitted by the parties.

Section 35, Rule 138 of the Revised Rules of Court categorically provides that: "No judge or other official or employee of the superior courts or of the Office of the Solicitor General, shall engage in private practice as a member of the bar or give professional advice to clients." Further, Canon 5, Rule 5.07 of the Code of Judicial Conduct states that: "A judge shall not engage in the private practice of law."

....

Contrary to the findings of the investigating judge, the facts of this case clearly show that respondent Judge Arejola violated the foregoing rules prohibiting judges from engaging in private law practice.

Records disclose that respondent was appointed to the Judiciary on 9 June 1997. He assumed office on 1 August 1997. Yet, he still submitted, on 9 June 1998, a Motion for Reconsideration dated 5 June 1998 of an Order of the court in subject land registration case. Again, on 28 July 1998, Judge Arejola filed a

"Manifestation" dated 24 July 1998 in the aforesaid case. Further, he appeared as counsel in the hearing conducted on 12 August 1998. All this he did without the required permit from the Supreme Court and despite having been required, in at least two (2) occasions, by then Judge Ernesto A. Miguel, RTC, Br. 23, Naga City, before whom the case was pending, to secure the necessary permission to appear as counsel.

No less than respondent himself admitted in his comment that he indeed appeared as counsel in the land registration case but sought to justify his act by alleging that he did so to protect his rights as one of the heirs to the disputed land. He went as far as saying that as such, he need not request permission from the Supreme Court and that it was incorrect for Judge Miguel to require him to secure a permit to appear as counsel.

Time and again, the Court has imposed sanctions on judges who engage in the practice of law without first securing a permit therefor. In the case of Judge Arejola, his offense is aggravated by the fact that he stubbornly continued to appear as counsel in the land registration case despite having been twice required by the court to first apply for permission to do so.

Under Sec. 22, Rule XIV of the Civil Service Rules and Regulations, the offense of engaging in the private practice of a civil servant's profession without the necessary authorization is punishable by suspension for six (6) months to one (1) year, for the first offense.

Also, under Sec. 3, Rule 140 of the Rules of Court, violations of the Code of Judicial Conduct are serious offenses which, under Sec. 10 of the said Rule, are punishable by, among others, suspension for three (3) to six (6) months without salary and benefits.

PREMISES CONSIDERED, the undersigned most respectfully recommends that Judge Ramon A. Arejola, MTC, Daet, Camarines Norte, be FOUND GUILTY of violating the Code of Judicial Conduct and accordingly SUSPENDED for a period of three (3) months without pay.

The findings and recommendations of the Office of the Court Administrator are on the main well taken except for the recommended penalty.

First. As the OCA correctly observed, no hearing was conducted by the Executive Judge when the instant case was referred to him for investigation, report and recommendation. However, we find that the requirements of due process have been met. Due process does not mean or require a hearing, but simply an opportunity or right to be heard. A trial-type hearing is not always de rigueur in administrative proceedings.[11] One may be heard not solely through oral presentation but also, and perhaps many times more creditably and practicable than oral arguments, through pleadings,[12] for as long as the element of fairness is not ignored.[13] In this case, respondent was afforded ample opportunity to be heard.

Based on the records of this case, he filed his comment to the complaint filed against him and he filed a manifestation stating that he is willing to submit the instant case for resolution on the basis of the pleadings filed. In his comment, he justified his claim for payment from his co-heirs for his fruitful work. That what he was asking is attorney's fees can be clearly gleaned from the Notice of Attorney's Lien,[14] dated March 31, 1997, which he filed before the court hearing the land registration case, wherein he admitted to being "the attorney of the applicants and their lawful representative." [15] Although the notice was filed before he was appointed municipal trial judge, he continued his practice of law after his appointment without prior permission from this Court. In his letter, dated April 6, 1998, respondent Judge insisted on his claim for "attorney's fees." [16]

Also, respondent failed to refute the documents submitted by complainant stating that he signed as counsel for the heirs.[17] Against these documentary evidence, the defense of respondent, that he merely participated in the land registration case as a party-litigant and a co-heir, fails.

Second. The term "practice of law" is not limited to the conduct of cases in court or participation in court

proceedings but also includes preparation of pleadings or papers in anticipation of a litigation, giving advice to clients or persons needing the same,[18] the preparation of legal instruments and contracts by which legal rights are secured, and the preparation of papers incident to actions and special proceedings.[19]

Based on the records of the instant case, the practice of law exercised by the respondent from the time he was appointed MTC Judge on June 9, 1997 and took his oath on August 1, 1997 can be enumerated thus:

1. October 21, 1997 — Respondent signed an answer to the petition for relief from judgment filed by Josefina De Segarra.[20]

2. October 31, 1997 — Respondent appeared for the applicants in the land registration case. He was ordered by RTC Judge Ernesto Miguel to file his written authority from the Supreme Court to appear as counsel in the said case.[21]

3. April 6, 1998 — Respondent wrote a letter to Naga City Mayor Jesse Robredo, asking for the issuance of individual checks to the heirs of Fabiana Arejola, and insisting on his claim for attorney's fees.[22]

4. June 5, 1998 — Respondent filed a motion to reconsider the order of the RTC directing the suspension of the registration of the certificate of title in view of the filing by an oppositor of a petition for relief from judgment.[23]

5. June 15, 1998 Respondent appeared in the land registration case, filing the motion for reconsideration.[24]

6. July 1, 1998 Respondent requested permission from the Supreme Court, through the Court Administrator, to appear as counsel in the Land Registration Case No. 95-142 in connection with the Petition for Relief from judgment filed by an oppositor in said case.[25]

7. August 12, 1998

— Respondent appeared in the land registration case hearing on the petition for relief from judgment and on his motion for reconsideration.[26]

8. January 25, 1999 Respondent wrote Naga City Mayor Sulpicio Roco, requesting that he be paid partial advance payment of the balance on the sale of the lot. He also admitted in his letter that he is the counsel of the heirs of Fabiana Arejola in the Deed of Conditional Sale and the Petition for Relief from Judgment filed by Josefina Segarra.[27]

9. February 8, 1999 Respondent signed as authorized representative and as counsel of the heirs of Fabiana Arejola in a partial compromise agreement with the oppositor, Josefina Cedo Vda. De Segarra, and the City of Naga.[28]

10. May 20, 1999

Respondent appeared in the land registration case, agreeing to submit pre-trial brief in support of the motion to treat the petition for relief from judgment as an ordinary action for reconveyance. He was ordered by the court, through RTC Judge Corazon Tordilla, to submit his permit to appear as counsel in the case.[29]

11. July 27, 1999 — He signed a pre-trial brief for the heirs of Fabiana Arejola.[30]

12. October 19, 1999 — RTC Judge Corazon Tordilla ordered respondent disqualified from appearing in the land registration case in view of the latter's failure to submit to the court a permit to appear as counsel. All pleadings submitted by him were not acted upon by the said court by reason of such disqualification.[31]

His rationalization that he represented the heirs as a co-heir and not as counsel is hair-splitting. The respondent's act of writing pleadings and defending the rights of his co-heirs amounts to private practice of law. The tenor of

the letters and pleadings, taken with his acts of appearing, representing and defending the rights of the heirs over the property, show that respondent, as representative of the heirs, was defending the latter's rights over the disputed property, and these constituted private practice of law.

It should be clarified that prohibited "private practice" of a profession is more than an isolated court appearance, for it consists in frequent or customary action, a succession of acts of the same nature habitually or customarily holding one's self to the public as a lawyer.[32] It is evident that the instances when respondent appeared and represented his co-heirs are not isolated, thus, constituting the "private practice" of the law profession as contemplated by law.

Under Rule 138, Section 35 of the Revised Rules of Court, judges are prohibited from engaging in the private practice of law or giving professional advice to clients. This is reiterated in Canon 5 of the Code of Judicial Conduct which enjoins members of the bench to regulate their extra-judicial activities to minimize the risk of conflict with their judicial duties. Rule 5.07 of the Code in particular states:

A judge shall not engage in the private practice of law. Unless prohibited by the Constitution or law, a judge may engage in the practice of any other profession provided that such practice will not conflict or tend to conflict with judicial functions.

These provisions are based on public policy for there is no question that the rights, duties, privileges and functions of the office of an attorney-at-law are inherently incompatible with the high official functions, duties, powers, discretion and privileges of a judge. It also aims to ensure that judges give their full time and attention to their judicial duties, prevent them from extending special favors to their own private interests and assure the public of their impartiality in the performance of their functions. These objectives are dictated by a sense of moral decency and desire to promote the public interest.[33]

Third. Respondent failed to obtain a written permission to appear as counsel in the land registration case from the head of the Department, which is this Court, as required by Rule XVIII, Section 12 of the Revised Civil Service Rules,[34] thus:

Sec. 12. No officer or employee shall engage directly in any private business, vocation, or profession or be connected with any commercial, credit, agricultural, or industrial undertaking without a written permission from the head of the Department: Provided, That this prohibition will be absolute in the case of those officers and employees whose duties and responsibilities require that their entire time be at the disposal of the Government; Provided, further, That if an employee is granted permission to engage in outside activities, time so devoted outside of office hours should be fixed by the agency to the end that it will not impair in any way the efficiency of the officer or employee: And provided, finally, that no permission is necessary in the case of investments, made by an officer or employee, which do not involve real or apparent conflict between his private interests and public duties, or in any way influence him in the discharge of his duties, and he shall not take part in the management of the enterprise or become an officer of the board of directors. (Emphasis ours)

As a Civil Service employee, he cannot engage in private practice without the written permission from this Court. The public expects him to devote full time to his judicial work. As a general rule, the appointment or election of an attorney to a government office disqualifies him from engaging in the private practice of law. The reason for the disqualification is that a public office is a public trust, and a public officer or employee is obliged not only to perform his duties with the highest degree of responsibility, integrity, loyalty, and efficiency but also with exclusive fidelity. The disqualification is intended to preserve the public trust in a public office, avoid conflict of interests or a possibility thereof, assure the people of impartiality in the performance of public functions and thereby promote the public welfare.[35]

Also, Section 7 of the Code of Conduct and Ethical Standards for Public Officials and Employees (R.A. No. 6713) prohibits a public officer from undertaking certain business transactions or doing certain acts which may compromise his position as a public official. This provision applies to judges. The said section reads in part:

Sec. 7. Prohibited Acts and Transactions. — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful.

(a) . . .

(b) Outside employment and other activities related thereto. — Public officials and employees during their incumbency shall not:

. . . .

(2) Engage in the private practice of their profession unless authorized by the Constitution or by law, Provided, that such practice will not conflict or tend to conflict with their official functions;. . .

There is no dispute that when respondent agreed to file the complaint in behalf of the heirs of Fabiana Arejola, he was not yet a member of the judiciary. He was a lawyer of the Public Attorney's Office (PAO) in Naga City. He claimed that he was authorized to engage in practice in behalf of his relatives but presented no documentary authority. The Court takes judicial notice of PAO Memorandum Circular No. 1, Series of 1998, amending Sec. 5, Art. II of the Memorandum Circular No. 5, Series of 1997. It states thus:

Sec. 5-A. Other Persons Qualified for Assistance. — Immediate members of the family and relatives within the 4th civil degree of consanguinity or affinity of PAO lawyers may avail of his services regardless of qualification under the indigency test, with the approval of the Regional Director, if the case is within his region or the Chief Public Attorney, if the case is outside of his region and provided further that the lawyer files a leave of absence on the day of the hearing.

Hence, while PAO lawyers may represent their family and relatives, they are required to get the approval of either the Regional Director or the Chief Public Attorney. However, considering that respondent filed the application for registration of title in behalf of his co-heirs in 1995 before he was appointed to the Bench, said circular does not apply to him. Despite this, respondent is not exculpated from liability.

While respondent insists that he performed the alleged acts of private practice before he joined the judiciary, he failed to mention that even after he assumed office as a municipal judge on August 1, 1997, he continued to act as counsel for the heirs.

Respondent was twice required by the RTC judge presiding over the land registration case[36] to submit his written authority from the Supreme Court to appear as counsel, to which he did not comply.

On July 1, 1998, respondent requested the Court Administrator for authority to appear as counsel of his co-heirs, in LRC Case No. 95-142.[37] On July 15, 1998, he was required by then Court Administrator Alfredo Benipayo to furnish the Court with copy of the pleadings he filed, and to state the date of filing of each, the stage of the proceedings and the background of the case.[38] Unfortunately, however, he did not comply.

The fact that respondent made a request for authority to appear as counsel in the said case is an admission not only that he was appearing as counsel but also that he was aware that he needed the permission of this Court to do so.

The Court always emphasizes the importance of the role played by judges in the judicial system, thus:

The integrity of the Judiciary rests not only upon the fact that it is able to administer justice but also upon the perception and confidence of the community that the people who run the system have done justice. At times, the strict manner by which we apply the law may, in fact, do justice but may not necessarily create confidence among the people that justice, indeed, is served. Hence, in order to create such confidence, the people who run the judiciary, particularly judges and justices, must not only be proficient in both the substantive and procedural aspects of the law, but more importantly, they must possess the highest integrity, probity, and unquestionable moral uprightness, both in their public and private lives. Only then can the people be reassured that the wheels of justice in this country run with fairness and equity, thus creating confidence in the judicial system.[39]

Under Section 9 (3) of the amended Rule 140 of the Rules of Court, which took effect on October 1, 2001, an unauthorized practice of law of a judge constitutes a less serious charge. Under Section 11, if a judge is guilty of a less serious charge, he may be imposed either (a) suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months, or (b) a fine of more than P10,000.00 but not exceeding P20,000.00.

The OCA recommended that respondent should be suspended for a period of 3 months without pay. Considering that Rule 140 as amended took effect only in 2001 and this is respondent's first offense[40], in lieu of suspension, we find the imposition of fine amounting to P10,000.00, just and reasonable.

WHEREFORE, the Court finds Judge Ramon A. Arejola of the Municipal Trial Court, Daet, Camarines Norte LIABLE for illegal practice of law, in violation of the Code of Judicial Conduct, the Revised Rules of Court, the Revised Civil Service Rules, and Code of Conduct and Ethical Standards for Public Officials and Employees. He is ordered to pay a FINE in the amount of Ten Thousand Pesos (P10,000.00) and WARNED that a repetition of the same or similar acts or omissions will be dealt with more severely.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, and Callejo, Sr., JJ., concur.

[1] Entitled, "Application for Registration of Title of Lot 1883, Cad. 290, Naga Cadastre, Heirs of Fabiana Arejola, represented by Atty. Ramon A. Arejola, Applicants." Petition, pp. 1-5; Rollo, pp. 115-119.

[2] RTC Decision, p. 5; Rollo, p. 124.

[3] Rollo, p. 125.

[4] Partial Compromise Agreement with Motion, p. 1; Rollo, p. 141.

[5] Rollo, p. 10.

[6] Rollo, p. 9.

[7] Rollo, pp. 6-7.

[8] Nelia Ziga was spelled "Lilia" Ziga.

[9] Rollo, pp. 19-22.

[10] Manifestation filed by complainant on August 6, 1999 (Rollo, p. 213); Manifestation filed by respondent on August 16, 1999 (Rollo, p. 221).

[11] See *Richards vs. Asoy*, 152 SCRA 45,49(1987).

[12] See Paat vs. Court of Appeals, 266 SCRA 167, 178-179 (1997).

[13] Adamson & Adamson, Inc. vs. Amores, 152 SCRA 237, 250 (1987).

[14] Rollo, pp. 93-94.

[15] Rollo, p. 93.

[16] Rollo, pp. 6-7.

[17] Letter to Mayor Sulpicio Roco, dated January 25, 1999 (Rollo, p. 148); Partial Compromise Agreement, dated February 8, 1999 (Rollo, pp. 141-142).

[18] Carual vs. Brusola, 317 SCRA 54, 65 (1999), citing Dia-Anonuevo vs. Bercacio, 68 SCRA 81 (1975).

[19] Ulep vs. Legal clinic, Inc., 223 SCRA 378, 397 (1993); Philippine Lawyers Association vs. Agrava, 105 Phil. 173, 176-177 (1959).

[20] Rollo, pp. 226-228.

[21] Rollo, p. 10.

[22] Rollo, pp. 6-7.

[23] Rollo, pp. 65-66.

[24] Rollo, p. 9.

[25] Rollo, p. 57.

[26] Rollo, pp. 81-92.

[27] Rollo, p. 148.

[28] Rollo, pp. 141-142.

[29] Rollo, p. 214.

[30] Rollo, pp. 215-216.

[31] Rollo, p. 252.

[32] Office of the Court Administrator vs. Ladaga, 350 SCRA 326, 331 (2001), citing People vs. Villanueva, 121 Phil. 894 (1965).

[33] Tuzon vs. Purugganan, A. M. No. RTJ-01-1662, November 26, 2001, citing Carual vs. Brusola, 317 SCRA 54 (1999); Tabao vs. Asis, 252 SCRA 581 (1996); Omico Mining and Industrial Corp. vs. Vallejos, 63 SCRA 285 (1975).

[34] See Office of the Court Administrator vs. Ladaga, 350 SCRA 326, 332 (2001); Abeto vs. Garcesa, 251 SCRA 539, 541 (1995).

[35] Agpalo, Ruben E., LEGAL AND JUDICIAL ETHICS, Seventh Ed., 2002, p. 588.

[36] By Judge Ernesto Miguel on October 31, 1997 (Rollo, p. 10); By Judge Corazon Tordilla on May 20, 1999 (Rollo, p. 214).

[37] Rollo, p. 57.

[38] Rollo, p. 58.

[39] *Sadik vs. Casar*, 266 SCRA 1, 14-15 (1997), citing *Talens-Dabon vs. Arceo*, 259 SCRA 354 (1996).

[40] The case filed against him in A.M. No. IPI-99-677-MTJ for gross misconduct and dishonesty was dismissed on October 24, 2001.

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