

ATTY. MANUEL F. CONCEPCION, PETITIONER, VS. ATTY. JESUS V. AGANA AND HON. JUDGE ERASTO SALCEDO RTC BRANCH 31, TAGUM, DAVAO DEL NORTE (ATTY. SALCEDO), RESPONDENTS.

ADM. NO. RTJ-96-217. February 17, 1997

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

The complaint, filed on August 5, 1996, seeks the dismissal from the service of respondent judge on account of his dishonest and deceitful conduct when he was a practicing lawyer.

The complainant alleged, among others, that the respondent judge, then Atty. Salcedo, connived with his co-respondent, Atty. Agana, to cause the cancellation of a notice of lis pendens to the prejudice of his clients who had discharged him by then and replaced him with the complainant.

In its report dated September 6, 1996, the Office of the Court Administrator (OCA), made the observation that the instant complaint is a mere rehash of the complaint for disbarment docketed as A.M. No. RTJ-95-1312 entitled, "Landless Farmers Tribal Development, Inc. represented by Helen Balani vs. Atty. Jesus Agana and Atty. Erasto Salcedo, now a Judge (of) RTC, Branch 31, Tagum Davao del Norte," which We resolved to dismiss for utter lack of merit on May 15, 1995. A.M. No. RTJ-95-1312, when endorsed to the Office of the Bar Confidant by OCA, was recommended for dismissal on the ground of res judicata, with respect to Atty. Agana, considering that it involved the same subject matter, issues, and parties in Administrative Case No. 4040 which We already dismissed in our resolution dated October 13, 1993. As regards Atty. Salcedo, he had ceased to be under the jurisdiction of the Office of the Bar Confidant upon his appointment as Presiding Judge of RTC, Tagum, Davao del Norte, Branch 31. After OCA submitted its Memorandum relative to the complaint for disbarment against respondents Atty. Agana and Judge Salcedo, We dismissed A.M. RTJ-95-1312 as aforementioned.

For a clearer picture, We restate the pertinent antecedents.

Administrative Case No. 4040 captioned "Helen C. Balani, et. al. vs. Atty. Jesus V. Agana" was dismissed after respondent lawyer filed his comment since this Court found no prima facie case against him. Administrative Matter No. RTJ-95-1312, filed against Atty. Agana anew, with the respondent judge included as co-respondent, was dismissed in 1995 for utter lack of merit. Before us now is a complaint basically echoing the allegations in A.M. No. RTJ-95-1312 and filed against the same parties. However, unlike in the previous cases, Atty. Manuel Concepcion, who is Helen Balani's counsel, appears to be the complainant in this case, not Helen Balani herself.

Applying the principle: "bar by former judgment", We rule, once again, to dismiss the instant complaint. Quoted hereunder is the comparative study presented by the Office of the Court Administrator anent the complaint in A.M. G.R. No. RTJ-95-1312 and the complaint under consideration:

. "Complaint in A.M. No. RTJ-95-1312

Instant complaint.

'2. That Respondents Atty. JESUS AGANA has his law office at R & T Building, Taal-Capistrano Sts., Cagayan de Oro City; Atty. Erasto Salcedo, no a Judge, has his office in the Regional Trial Court, Br. 31, Tagum, Davao del Norte, where summons and processes of the Court may be served;

'2. Respondent, Atty. Jesus Agana has his law office at R&T Building, Taal-Capistrano Sts., Cagayan de Oro City; Atty. Erasto Salcedo Hon. Judge has his office in the Regional Trial Court, Br. 31, Tagum, Davao del Norte, where summons and processes of the Commission may be served;

'3. That complaint is the President of the Landless Farmers Tribal Development, Inc., a duly organized and registered non-stock corporation under the laws of the Republic of the Philippines, whose members are farmers of the national cultural minorities, who have occupied and cultivated a public land, Lot 3047 covering an area of two hundred (200) hectares, more or less, since early 1950s, pursuant to Section 44 of the Public Land Act;

'3. Complaint is counsel for Helen Balani, President of the Landless Farmers Tribal Development, Inc., a duly organized and registered non-stock corporation under the laws of the Republic of the Philippines, whose members and farmers of the national cultural minorities, who have occupied, cultivated and planted a public land, Lot 3047, covering an area of 200 hundred hectares, more or less, since early 1950s, pursuant to Section 44 of the Public Land ACT;

'4. That on July 22, 1981, a certain TIMOTEO QUIMPO without the knowledge of the occupants in Lot 3047, secured the decree of registration on same, for which OCT No. 0-792 was issued and registered with the Register of Deeds, Cagayan de Oro City, copy of which is attached hereto as ANNEX 'A;'

'4. On July 22, 1981, a certain TIMOTEO QUIMPO, without the knowledge of the occupants on said public land, Lot 3047, secured the decree of registration on same, for which the Register of Deeds, Cagayan de Oro City, issued OCT No. 0-792, copy of which is attached, hereto as ANNEX 'A' on its application for Registration of Title is attached hereto as ANNEX 'B;'

'5. That on May 11, 1982, respondent Atty. Erasto Salcedo, as counsel for occupants in Lot 3047, seasonably caused the annotation of the notice of lis pendens, Petition for Review on the decree of registration of OCT No. 0-792, pursuant to Section 332, PD 1529, which appear encircled on ANNEX 'A' as ANNEX 'A-1;'

'5. On May 11, 1982, Helen Balani, head and leader of the cultural minority farmers, hired Atty. Erasto Salcedo to cause the annotation of the notice of lis pendens, Entry No. 98909, Petition for Review on the decree of registration of OCT No. 0-792, pursuant to Sec. 32, PD 1529, which appear encircled as ANNEX 'A-1;'

'6. That pursuant to an alleged Barter-Agreement Xavier University, Inc. and TIMOTEO QUIMPO, TCT No. T-51944 was issued by the Register of Deeds, Cagayan de Oro City on March 25, 1988, copy of which is 'B,' and the lis pendens carried over, appear on ANNEX 'B' as ANNEX 'b-1;'

'6. Despite the 'notice of lis pendens' Xavier University, Inc. acquired the property, Lot 3047, from Timoteo Quimpo, for which on March 25, 1988 TCT NO. T-51944 and TCT No. T-51945 was issued by the Register of Deeds, Cagayan de Oro City, copy of TCT No. T-51944 is attached hereto as ANNEX 'C;

'7. That respondent Atty. Erasto Salcedo was discharged as counsel for occupants in Lot 3047, by HELEN BALANI (Complainant) on February 27, 1992;

'7. On February 27, 1992, Helen Balani, et al., discontented and suspicious of Atty. Erasto Salcedo, filed with the Court of Appeals a Motion to Discharge him, which the Court of Appeals granted pursuant to Resolution dated 18 March 1992, copy of which is attached hereto as ANNEX 'D

'8. That on April 27, 1992, Xavier University, Agana filed in Regional Trial Court, Br. 23, Cagayan de Oro City,

a Petition for Cancellation of Notice of Lis Pendens annotated on TCT No. T-51944, supported by a 'PETITION' executed by praying that said annotation on OCT No. 0-792 and subsequent TCT No. 51944 and TCT No. 51945 be cancelled, copy of which is attached hereto as ANNEX 'C;'

'8. On April 27, 1992, Atty. Jesus Agana, as counsel for Xavier University, Inc., filed in Regional Trial Court, Br. 23, Cagayan Oro City, a PETITION for cancellation of the notice of lis pendens annotated on Xavier University, Inc. TCT No. T-51944 and TCT No. 51945, supported by a PETITION, executed by Atty. Erasto Salcedo without the knowledge of Helen Balani, Abundio Caballero, et al. and not verified by them who cause(d) the annotation of the notice of lis pendens on May 11, 1982. Copy of PETITION for cancellation is attached hereto as ANNEX 'E,' unverified PETITION executed by Atty. Salcedo, as ANNEX 'F'

'9. That as a result, on the strength of said 'PETITION,' Regional Trial Court, Br. 23 issued Order dated June 11, 1992, copy of which is attached hereto as ANNEX 'D,' quoted hereunder:

'9. On the strength of the unverified 'PETITION,' it is strange that the Regional Trial Court, Br. 23, granted the cancellation of the notice of lis pendens, EX-PARTE, manifest in the Order dated June 11, 1992, copy of which is attached hereto as ANNEX 'G;'

'x x x Hence, the entry of notice of lis pendens on OCT No. 0-792, under Entry No. 98909, which was carried over to Transfer Certificate of Title No. T-51944 and T-51945, with latter titles being the products from the old title, Original Certificate of Title No. 0-792, the same are hereby ordered cancelled. x x x'

[Note: This could not be re-alleged as said Petition for Certiorari was dismissed on August 14, 1994. A motion for reconsideration of said decision dismissing the petition was denied on February 24, 1995 as it was filed 33 days late. (Footnote No. 3, page 2, OCA Memorandum, Rollo, A.M. No. RTJ-95-13120)]

'10. That on August 28, 1992, Complainants through counsel filed a Petition for Certiorari, docketed (as) CA-G.R. SP No. 28776, which presently is still pending resolution with the COURT OF APPEALS, Ninth Division;

'10. Based on the foregoing paragraphs 5, 6, 7, 8, and 9, Complainant charges:-

'Atty. Jesus Agana and Atty. Erasto Salcedo connived, schemed and collaborated to engage in dishonest and deceitful conduct, did not observe the rules of procedure and misuse them to defeat the ends of justice, for corrupt motive or interest encourage the suit or proceeding, in violation of Rule 1.01, Rule 1.03, Rule 10.01, Rule 10.03 of the Code of Professional Responsibility and their oath of office as attorney and member of the BAR, committed under the following facts and circumstances:

'11. That under the foregoing paragraphs 5 and 8, Complainant charges Atty. Jesus Agana and Atty. Erasto Salcedo of wanton falsehood, (and that they) connived, schemed and confederated to secure by deceitful means the cancellation of the notice of lis pendens on OCT 0-792, TCT No. T-51944 and TCT No. 51945, in absolute violation of the Code of Professional Responsibility, Rule 1.01, Rule 1.03, Rule 10.01, Rule 10.03, Rule 10.01, Rule 10.03, and their Oath of Office as attorney and member of the Bar, under the following facts and circumstances:

'

11a. That Atty. Agana filed the Petition for Cancellation of Notice of Lis Pendens, fully aware that Xavier University, Inc. has absolutely no legal capacity to sue, knowing fully well the applicable Sec. 24 of Rule 14 and Sec. 77 of PD 1529, on the matter of cancellation of lis pendens, to wit: [sections copied verbatim]

'10a. That Atty. Jesus Agana filed the Petition for cancellation of Notice of lis pendens, fully aware the Xavier

University, Inc. has no legal capacity to sue, knowing the well-known Sec. 24 of Rule 14 of the Rules of Court, and Sec. 77 of PD 1529, on the matter of cancellation of notice of lis pendens: [sections copied verbatim]

'111. (first part) That Atty. Erasto Salcedo deceived and mislead the Court that the Petition was in conformity with Sec. 24, Rule 14 and Sec. 77, PD 1529; knowingly did not observed and (did) misuse the rules x x x

'11b. That Atty. Jesus Agana knew that the adverse party contemplated in said Sec. 24 and Sec. 77 is TIMOTEO QUIMPO, who has the legal capacity to sue and file the Petition for Cancellation of Lis Pendens;

'10b. Atty. Agana knew that the adverse party contemplated in Sec. 24 and Sec. 77 is TIMOTEO QUIMPO, who has he legal capacity to use (sic) and file the Petition for Cancellation of the notice of lis pendens annotated on its OCT 0-792;

'11c. That Atty. Jesus Agana knew that Xavier University, Inc. who acquired the property aware of the notice of lis pendens annotated on OCT No. 0-792, subjects its acquisition to the outcome of the lis pendens;

'10c. Atty. Jesus Agana knew the well-known jurisprudence, that Xavier University, Inc., who acquired the property aware of the notice of lis pendens annotated on OCT No. 0-792, a mere purchaser pendente lite, subjects its acquisition to the eventuality of the Petition for Review (lis pendens), Xavier University, Inc. is not only estoppel to file the petition but also has no legal capacity to file the PETITION;

'11D. That Atty. Jesus Agana served copy of the Petition for Cancellation on Atty. Erasto Salcedo, who, he very well knew was no longer counsel for Abundio Caballero, et al., occupants of Lot 3047, having been discharged by Complainant, the leader and president of the Association;

'10d. Atty. Jesus Agana served copy of the petition foe cancellation on Atty. Erasto Salcedo, who he very well knew was no longer counsel for Helen Balani, Abundio Caballero, et al, based on the Motion to Discharge filed with the Court of Appeals and granted pursuant to Resolution, copy which is attached hereto as ANNEX 'D;'

'11e. That Atty. Jesus Agana Jesus Agana knew that the undersigned substituted Atty. Erasto Salcedo;

'10e. Atty. Jesus Agana knew that Complainant substituted Atty. Erasto Salcedo as counsel for Helen Balani, Abundio Caballero, et al. (Pls. See ANNEX 'E') Regional Trial Court, Br. 23;

'11f. That Atty. Jesus Agana, knowing fully well that the lis pendens was a trial in Regional Trial court, Br. 18, filed surreptitiously the Petition for Cancellation in Regional Trial Court, Br. 23, which he knew has no jurisdiction over the case;

'10f. Atty. Agana knew fully well that the petition for review (lis pendens) was on trial in Regional Trial Court, Br. 18, yet surreptitiously filed the Petition in Regional Trial Court, Br. 23, which he knew has no jurisdiction over the case, in violation of Sec. 108 PD 1529, i.e., the petition should be filed in the original case in which the decree of the registration was entered;

'11g. That Atty. Jesus Agana, with corrupt motive, deceitfully saw to it that the undersigned was not furnished with copy of the Petition for Cancellation;

'10g. Atty. Jesus Agana and Atty. Erasto Salcedo with corrupt motive connived, schemed and collaborated to see to it that the herein Complainant would not be served copy of this PETITION (ANNEX 'E');

'11h. That Atty. Jesus Agana and Atty. Erasto Salcedo deceived and mislead the Regional Trial Court, Br. 23, to issue Order, ANNEX 'D,' on the strength of the unverified PETITION;

'10h. Atty. Jesus Agana and Atty Erasto Salcedo deceived and mislead the Regional Trial Court, Br. 23, to issue

Order (ANNEX 'G'), on the strength of the null and void unverified PETITION (ANNEX 'F');

'11i. That Atty. Erasto Salcedo's knowing fully well that he was already discharged by Complainant on February 27, 1992 and no longer counsel for Abundio Caballero et al., executed the PETITION, ANNEX 'D' on June 1, 1992

'10j. Atty. Erasto Salcedo, by executing the PETITION (ANNEX 'G') misrepresented that he was the counsel for Helen Balani, et al., knowing fully well that he was already discharged as counsel;

'11j. That Atty. Erasto Salcedo's allegation in the said PETITION is wanton falsehood, without factual and legal basis, knowing for a fact that, the lis pendens, he caused to be registered on May 11, 1982 was on trial in Regional Trial Court, Br. 18.

'10i. The allegations in the PETITION is (sic) wanton falsehood, knowing for a fact that the Petition of Review Helen Balani, Abundio Caballero, et al. caused to be registered in May 11, 1982 was on trial in Regional Trial Court, Br. 18, which copy of pleadings and order are attached hereto as ANNEXES 'H,' 'H-1,' 'H-2,' (and_ 'G-3' (sic);

'11k. That Atty. Erasto Salcedo in executing the PETITION misrepresented that he was still the counsel for Abundio Caballero, et al.;

101. Atty. Erasto Salcedo discharged by Helen Balani, Abundio Caballero, et al. in retaliation, connived, schemed and confederated with Atty. Jesus Agana that he execute the PETITION (ANNEX 'F') unverified by Helen Balani, et al. and submit the same to him (Atty. Agana) as supporting document to his PETITION (ANNEX 'E')- when in good fidelity and loyalty to his former clients he should have refrained;

111. (second part) That Atty. Erasto Salcedo x x x submitt(ed) the Petition unverified by Abundio Caballero, et al., the party who caused the lis pendens to be registered;

'10k. (first part) x x x Atty. Erasto Salcedo, as counsel for Helen Balani, Abundio Caballero, et al. (who0 seasonably cause(d) the annotation of the notice of lis pendens x x x

'11m. That Atty. Salcedo's Petition, in its entirety, is a wanton falsehood, deceitful and mislead the Court to admit it as its key evidence in issuing the Order, ANNEX 'E,' to cancel the notice of lis pendens;

'10m. It is underscored, the Order (ANNEX 'G') granting the cancellation, was anchored on Atty. E. Salcedo's null and void petition ANNEX 'F';

'11n. That Atty. Erasto Salcedo, for corrupt motive forestalled and delayed the enforcement of the lis pendens (Petition for Review) for the duration of almost ten (10) years;"

'10k. (second part0 On may 11, 1992, Atty. Erasto Salcedo x x x for corrupt motive delayed and forestalled its prosecution for the duration of ten (10) years, and, instead on June 1, 1992 executed the PETITION for its cancellation."

'11a. That Atty. Agana filed the Petition for Cancellation of Notice of Lis Pendens, fully aware that Xavier University, Inc. has absolutely no legal capacity to sue, knowing fully well the applicable Sec. 24 of Rule 14 and Sec. 77 of PD 1529, on the matter of cancellation of lis pendens, to wit: [sections copied verbatim]

'10a. That Atty. Jesus Agana filed the Petition for cancellation of Notice of lis pendens, fully aware the Xavier University, Inc. has no legal capacity to sue, knowing the well-known Sec. 24 of Rule 14 of the Rules of Court, and Sec. 77 of PD 1529, on the matter of cancellation of notice of lis pendens: [sections copied verbatim]

'111. (first part) That Atty. Erasto Salcedo deceived and mislead the Court that the Petition was in conformity with Sec. 24, Rule 14 and Sec. 77, PD 1529; knowingly did not observed and (did) misuse the rules x x x

'11b. That Atty. Jesus Agana knew that the adverse party contemplated in said Sec. 24 and Sec. 77 is TIMOTEO QUIMPO, who has the legal capacity to sue and file the Petition for Cancellation of Lis Pendens;

'10b. Atty. Agana knew that the adverse party contemplated in Sec. 24 and Sec. 77 is TIMOTEO QUIMPO, who has he legal capacity to use (sic) and file the Petition for Cancellation of the notice of lis pendens annotated on its OCT 0-792;

'11c. That Atty. Jesus Agana knew that Xavier University, Inc. who acquired the property aware of the notice of lis pendens annotated on OCT No. 0-792, subjects its acquisition to the outcome of the lis pendens;

'10c. Atty. Jesus Agana knew the well-known jurisprudence, that Xavier University, Inc., who acquired the property aware of the notice of lis pendens annotated on OCT No. 0-792, a mere purchaser pendente lite, subjects its acquisition to the eventuality of the Petition for Review (lis pendens), Xavier University, Inc. is not only estoppel to file the petition but also has no legal capacity to file the PETITION;

'11D. That Atty. Jesus Agana served copy of the Petition for Cancellation on Atty. Erasto Salcedo, who, he very well knew was no longer counsel for Abundio Caballero, et al., occupants of Lot 3047, having been discharged by Complainant, the leader and president of the Association;

'10d. Atty. Jesus Agana served copy of the petition foe cancellation on Atty. Erasto Salcedo, who he very well knew was no longer counsel for Helen Balani, Abundio Caballero, et al, based on the Motion to Discharge filed with the Court of Appeals and granted pursuant to Resolution, copy which is attached hereto as ANNEX 'D;'

'11e. That Atty. Jesus Agana Jesus Agana knew that the undersigned substituted Atty. Erasto Salcedo;

'10e. Atty. Jesus Agana knew that Complainant substituted Atty. Erasto Salcedo as counsel for Helen Balani, Abundio Caballero, et al. (Pls. See ANNEX 'E') Regional Trial Court, Br. 23;

'11f. That Atty. Jesus Agana, knowing fully well that the lis pendens was a trial in Regional Trial court, Br. 18, filed surreptitiously the Petition for Cancellation in Regional Trial Court, Br. 23, which he knew has no jurisdiction over the case;

'10f. Atty. Agana knew fully well that the petition for review (lis pendens) was on trial in Regional Trial Court, Br. 18, yet surreptitiously filed the Petition in Regional Trial Court, Br. 23, which he knew has no jurisdiction over the case, in violation of Sec. 108 PD 1529, i.e., the petition should be filed in the original case in which the decree of the registration was entered;

'11g. That Atty. Jesus Agana, with corrupt motive, deceitfully saw to it that the undersigned was not furnished with copy of the Petition for Cancellation;

'10g. Atty. Jesus Agana and Atty. Erasto Salcedo with corrupt motive connived, schemed and collaborated to see to it that the herein Complainant would not be served copy of this PETITION (ANNEX 'E');

'11h. That Atty. Jesus Agana and Atty. Erasto Salcedo deceived and mislead the Regional Trial Court, Br. 23, to issue Order, ANNEX 'D,' on the strength of the unverified PETITION;

'10h. Atty. Jesus Agana and Atty Erasto Salcedo deceived and mislead the Regional Trial Court, Br. 23, to issue Order (ANNEX 'G'), on the strength of the null and void unverified PETITION (ANNEX 'F');

'11i. That Atty. Erasto Salcedo's knowing fully well that he was already discharged by Complainant on February

27, 1992 and no longer counsel for Abundio Caballero et al., executed the PETITION, ANNEX 'D' on June 1, 1992

'10j. Atty. Erasto Salcedo, by executing the PETITION (ANNEX 'G') misrepresented that he was the counsel for Helen Balani, et al., knowing fully well that he was already discharged as counsel;

'11j. That Atty. Erasto Salcedo's allegation in the said PETITION is wanton falsehood, without factual and legal basis, knowing for a fact that, the lis pendens, he caused to be registered on May 11, 1982 was on trial in Regional Trial Court, Br. 18.

'10i. The allegations in the PETITION is (sic) wanton falsehood, knowing for a fact that the Petition of Review Helen Balani, Abundio Caballero, et al. caused to be registered in May 11, 1982 was on trial in Regional Trial Court, Br. 18, which copy of pleadings and order are attached hereto as ANNEXES 'H,' 'H-1,' 'H-2,' (and_ 'G-3' (sic);

'11k. That Atty. Erasto Salcedo in executing the PETITION misrepresented that he was still the counsel for Abundio Caballero, et al.;

101. Atty. Erasto Salcedo discharged by Helen Balani, Abundio Caballero, et al. in retaliation, connived, schemed and confederated with Atty. Jesus Agana that he execute the PETITION (ANNEX 'F') unverified by Helen Balani, et al. and submit the same to him (Atty. Agana) as supporting document to his PETITION (ANNEX 'E')- when in good fidelity and loyalty to his former clients he should have refrained;

111. (second part) That Atty. Erasto Salcedo x x x submitt(ed) the Petition unverified by Abundio Caballero, et al., the party who caused the lis pendens to be registered;

'10k. (first part) x x x Atty. Erasto Salcedo, as counsel for Helen Balani, Abundio Caballero, et al. (who0 seasonably cause(d) the annotation of the notice of lis pendens x x x

'11m. That Atty. Salcedo's Petition, in its entirety, is a wanton falsehood, deceitful and mislead the Court to admit it as its key evidence in issuing the Order, ANNEX 'E,' to cancel the notice of lis pendens;

'10m. It is underscored, the Order (ANNEX 'G') granting the cancellation, was anchored on Atty. E. Salcedo's null and void petition ANNEX 'F';'

'11n. That Atty. Erasto Salcedo, for corrupt motive forestalled and delayed the enforcement of the lis pendens (Petition for Review) for the duration of almost ten (10) years;''

'10k. (second part0 On may 11, 1992, Atty. Erasto Salcedo x x x for corrupt motive delayed and forestalled its prosecution for the duration of ten (10) years, and, instead on June 1, 1992 executed the PETITION for its cancellation."

In the case of Nabus v. Court of Appeals (193 SCRA 732, 739 [1991]) we have succinctly defined "bar by former judgment", to wit:

"xxx (T)here is 'bar by former judgment' when, between the first case where the judgment was rendered, and the second case where such judgment is invoked, there is identity of parties, subject matter and cause of action. When the three identities are present, the judgment on the merits rendered in the first constitutes an absolute bar to the subsequent action. It is final as to the claim or demand in controversy, including the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose xxx"

There is no question that the instant complaint presents the same subject matter regarding the alleged misconduct

of the respondent judge when he was a practicing lawyer which We already dismissed in 1995. The fact that the present complaint is filed by Atty. Concepcion, not Helen Balani, does not remove it from the ambit of the legal concept "bar by former judgment" inasmuch as the requirement of identity of parties is satisfied even if the parties are not physically identical as long as they are substantially the same, i.e., there is privity between the parties (see *Sunflower Umbrella Manufacturing Co. Inc. v. De Leon*, 237 SCRA 153, 165 [1994]). Neither does the fact that the mode of the complaint now seeks a dismissal rather than disbarment of the respondent judge preclude the application of the said rule inasmuch as "the test of identity of causes of action is not in the form of an action but on whether the same evidence would support and establish the former and the present causes of action." (see *Gutierrez v. Court of Appeals*, 193 SCRA 437, 446 [1991] citing *Sangalang v. Caparas*, 151 SCRA 53 [1987]). Considering that in A.M. No. RTJ-95-1312 and in this complaint, there is identity of parties, subject matter and causes of action, it is clear that our dismissal of the former case for utter lack of merit in 1995 bars another adjudication as regards the instant complaint. The complainant, being a lawyer, ought to remember that:

"xxx xxx xxx

The general rule precluding the relitigation of material facts or questions which were in issue and adjudicated in former action are commonly applied to all matters essentially connected with the subject matter of the litigation. Thus, it extends to questions 'necessarily involved in an issue, and necessarily adjudicated, or necessarily implied in the final judgment, although no specific finding may have been made in reference thereto, and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties, and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself. Reasons for the rule are that a judgment is an adjudication on all the matters which are essential to support it, and that every proposition assumed or decided by the court leading up to the final conclusion and upon which such conclusion is based is as effectually passed upon as the ultimate question which is finally solved.' (*Lopez v. Reyes*, 76 SCRA 179, 186-187 [1977]) (Citations omitted) (Emphases supplied)." (*Smith Bell and Company (Phils.), Inc. v. Court of Appeals*, 197 SCRA 201, 210 [1991]).

WHEREFORE, in view of all the foregoing, the instant complaint is DISMISSED for LACK OF MERIT and Atty. Manuel F. Concepcion is advised to be more solicitous in filing complaints of this nature to avoid a waste of this Court's time and effort.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Vitug and Kapunan, JJ., concur.

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