

ERNESTO M. NOMBRADO, PETITIONER, VS. ATTY. JUANITO T. HERNANDEZ, RESPONDENT.*Adm. Case No. 555. November 25, 1968*

Ponente: MAKALINTAL, J.

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This is an administrative case for disbarment instituted by Ernesto M. Nombrado against Juanito T. Hernandez, a member of the Philippine Bar, charging to latter with malpractice on two counts, namely: (1) for having appeared as counsel for Crispin Nazareno in a civil case for forcible entry against Arsenio Pansaon, his former client, being the offended party and complainant, in a criminal case for serious physical injuries wherein Eufemio Velasco (Nazareno), a son of Crispin, was the accused; and (2) for having appeared as counsel for the accused and also for the complaining witness in Criminal Case No. 329 of the Justice of the Peace Court (now municipal Court) of Baganga, Davao (now Davao Oriental).

In our resolution of January 14, 1963, we referred this case for investigation to the Solicitor General, who in turn endorsed it to the Provincial Fiscal of Davao for the same purpose, both complainant and respondent being residents of Baganga, Davao Oriental. When the case was set for hearing by the First Assistant Provincial Fiscal of Davao respondent manifested and requested that since the charges were the same as- those filed by the same complainant against him in Disbarment Case No. 37 of the Court of First Instance of Davao, wherein a decision had already been rendered, the records of said proceeding, together with the evidence adduced by the parties, be forwarded to this Court, through the Solicitor General, for final disposition. Complainant in turn submitted his evidence in support of the charges against respondent.

With respect to the first count, it is undisputed that sometime in 1952 respondent was engaged by Arsenio Pansaon as his counsel in the prosecution of a criminal case for serious physical injuries entitled "People vs. Eufemio Nazareno" of the Justice of the Peace Court of Baganga, Davao. In that case the accused was charged with having mauled Arsenio Pansaon when the latter was seen within the perimeter of the land then being disputed between said Arsenio Pansaon and Eufemio's father, Crispin Nazareno. However, the case was dismissed when the complaining witness failed to appear on the day of the trial. Several years thereafter Crispin Nazareno, through respondent, filed a complaint for forcible entry against Arsenio Pansaon and two other persons, involving the same parcel of land which was the root cause of the mauling incident. The defendants moved to disqualify respondent from appearing as counsel for the plaintiff on the ground that he had previously acted as counsel for Arsenio Pansaon in the criminal case for physical injuries, but the motion was subsequently withdrawn. In the Justice of the Peace Court the plaintiff lost, but won in the Court of First Instance of Davao on appeal.

When Disbarment Case No. 37 against respondent was heard in the Court of First Instance of Davao, Arsenio Pansaon testified for petitioner and said that perhaps he lost the forcible entry case because respondent had become privy to valuable information about his claim of ownership of the parcel of land in question in the course of their attorney-and-client relationship and must have used such information against him, including a document obtained by respondent from notary public Abellanosa. Respondent denied the truth of the foregoing testimony

and in turn declared that the only information he obtained from complainant Pansaon was about the mauling incident itself - how it happened and why he sustained the injuries; that he did not ask Pan-saon for any papers or documents in connection with that criminal case, except a medical certificate issued to him by the attending physician; that in handling the forcible entry case for Crispin Nazareno against his former client, he did not use against the latter any fact or information he acquired in the course of their attorney-and-client relationship; and that if there was any document he pre-sented in the forcible entry case it came from Crispin Nazareno and not from notary public Abellanos.

The Solicitor General is of the opinion, and we find no reason to disagree with him, that even if respondent did not use against his client any information or evidence acquired by him as counsel it cannot be denied that he did become privy to information regarding the ownership of the parcel of land which was later litigated in the forcible entry case, for it was the dispute over the land that triggered the mauling incident which gave rise to the criminal action for physical injuries. This Court's remarks in *Hilado vs. David*, 84 Phil. 571, are apropos:

"Communications between attorney and client are, in a great number of liti-gations, a complicated affair, consisting of entangled relevant and irrelevant, secret and well known facts: In the complexity of what is said in the course of dealings between an attorney and client, inquiry of the nature suggested would lead to the revelation, in advance of the trial, of other matters that might only further prejudice the complainant's cause."

Whatever may be said as to whether or not respondent utilized against his former client information given to him in a professional capacity, the mere fact of their pre-vi-ous relationship should have precluded him from appearing as counsel for the other side in the forcible entry case. In the same case of *Hilado vs. David*, supra, this Tribunal further said:

"Hence the necessity of setting down the existence of the bare relationship of attorney and client as the yardstick for testing incompatibility of interests. This stern rule is designed not alone to prevent the dishonest practitioner from fraudulent conduct, but as well to protect the honest lawyer from unfounded suspicion of unprofessional practice. x x x It is founded on principles of public policy, of good taste. As has been said in another case, the question is not necessarily one of the rights of the parties, but as to whether the attorney has adhered to proper professional standard. With these thoughts in mind, it behooves attorneys, like Caesar's wife, not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing. Only thus can litigants be encouraged to entrust their secrets to their attorneys which is of paramount importance in the administration of Justice."

This Court went even further in *San Jose vs. Cruz*, 57 Phil. 792, wherein the respondent was charged with mal-practice for having represented a new client whose interests were opposed to those of his former client in another case:

"x x x . An attorney owes loyalty to his client not only in the case in which he has represented him but also after the relation of attorney and client has terminated and it is not good practice to permit him afterwards to defend in another case other person against his former client under the pretext that the case is distinct from, and independent of the former case." [1]

Under the first count, respondent has shown a departure from the strict norms of professional conduct laid down for members of the bar.

Under the second count, it appears that respondent was counsel for the defendants Sotero Pontawe and Teofilo Aumada in Criminal Case No. 329 for theft of large cattle before the Justice of the Peace Court of Baganga. Before the scheduled hearing on September 18, 1959, upon request of complaining witness Ramon Morales, respondent prepared a motion to dismiss on the ground that the "real accused in this case are not the above-named persons." Notwithstanding the motion to dismiss, the complaining witness was cited to appear on September 25,

1959 "to find out why Mr. Ramon Morales, the complainant of Criminal Case No. 329, did not appear on September 18, 1959, the date designated for pre-liminary investigation proper of this case, and to find out whether the manifestation of counsel of the defense that there is such amicable settlement in this case, Criminal Case No. 329, is true." During the hearing on September 25, 1959, a heated exchange of argument arose between respondent and the private prosecutor, Atty. Danao, because of the latter's insistence on calling Morales to the Witness stand despite his expressed desistance to prosecute the criminal case. Respondent manifested his intention to "intervene in behalf of the complaining party in connection with the action of Atty. Danao in this particular case."

We concur with the Solicitor General's view that under the foregoing circumstances, respondent's act of preparing the motion to dismiss and stating in the course of the hearing thereof that he was intervening "in behalf of the complaining party", did not constitute simultaneous appearance in behalf of the contending parties since there was no longer any conflict to speak of, the complainant having desisted from prosecuting the case against the accused. Consequently, there was nothing improper in respondent's conduct.

Upon the facts established in connection with the first count the Solicitor General has recommended that the penalty of reprimand and warning be administered, citing the decision of this Court in a comparable case, *Caoibes vs. de la Rosa*, 27 Phil. 265. We believe the recommendation is justified.

WHEREFORE, respondent Juanito T. Hernandez is hereby reprimanded and warned that a repetition of unprofessional conduct on his part will be dealt with more severely. Let this decision be noted in respondent's record as a member of the Bar.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Sanchez, Castro, Fernando, and Capistrano, JJ., concur.

[1] Reiterated in *Sumangil vs. Santo Roman*, 84 Phil. 777.

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