

MARCELINO PAJARIN, COMPLAINANT, VS. ELIODORO S. BALUYOT, RESPONDENT.

Adm. Case No. 763. November 29, 1972

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

In a verified petition for disbarment dated March 30, 1967, Marcelino Pajarin, of Abucay, Bataan, residing at 3724 Lubiran St., Bacood, Sta. Mesa, Manila, seeks to have Atty. Eliodoro S. Baluyot, of Abucay, Bataan, disbarred for alleged deceit, malpractice, and gross misconduct, viz.:

"FIRST SET OF DECEIT, MALPRACTICE AND GROSS MISCONDUCT

"2. - In June 18, 1962, a civil complaint by the parents of petitioner against the in-laws of respondent was filed for annulment of an Extra-judicial Adjudication with Deed of Sale, purportedly made and executed in favor of defendants [in-laws of respondent] by plaintiff Benita Sichon [mother of Petitioner], involving a parcel of land and allegedly for a consideration of P6,000. The document was guided, prepared and insidiously and illegitimately made and thereafter notarized by respondent in favor of his-in-law — taking advantage of the old age, mental weakness or ignorance, physical infirmity, and indigence of both parents of petitioner, and the trust and confidence reposed by them to respondent and his in-laws; the mother of petitioner is a first cousin to respondent's mother-in-law; and, that civil case is known as 'BENITA SICHON & EUGENIO PAJARIN, plaintiffs - versus - POLICARPIO MORALES and ISIDRA FLORES, defendants, Civil Case No. 2809, Court of First Instance of Bataan';

"3. - The case, for reasons of several postponements made by respondent underwent litigation in the CFI up to 1965, and was appealed merely for dilatory reason [as shown hereunder], and judgment in favor of plaintiffs was executed merely last February 1967. Because of these respondent's malpractices-and dishonesty, dragging petitioner and his parents into the inconveniences of a prolonged court litigation, petitioner incurred unnecessary expenses [petitioner shouldered all expenses in this case practically by himself alone] that were not fully recovered in the award by the CFI in that decision for plaintiffs; petitioner and his family suffered much — actually and morally;

"4. - Originally, respondent was to be included as one of the party defendants, being the most guilty. For without him — who prepared everything, who guided the unlettered, ignorant, old-aged parents of petitioner to believe that the deed they were then signing was merely a mortgage and not the actual truth as a deed of sale — the execution of that annulled deed of sale would have been impossible. And this is so, because respondent's in-laws were not much schooled, such that by themselves alone, they could not have possibly accomplished and consummated the design to defraud plaintiffs in that case;

"5. - Respondent, however, in spite of being the most guilty under the circumstances was not included as party defendant, because the lawyer plaintiffs' got was respondent's former classmate, who advised petitioner that the sale could be annulled even without the inclusion of respondent and so requested for respondent's exclusion;

"6. - During the trial, and so in the decision, the trial court found out that respondent did not read nor explain the deed he made and notarized and which he made plaintiffs signed and let to believe that it was a deed of mortgage and not one of sale. This considered omission was practically admitted by respondent's deliberate non-presentation of evidence to that effect during his testimony as witness for the defendants in that case. As nowhere in the records of the case did respondent endeavor to explain in his testimony as witness, that he read and explained to plaintiffs that grossly inaccurate deed of sale written in English language. Wherein the facts of persons, status, places and dates of the deaths of Miguel Sichon and Juliana Gervacio mentioned in that deed of sale, immediately manifest the fraud perpetrated by respondent. Miguel Sichon and Juliana Gervacia were husband and wife; and the former, a brother to Benita Sichon and co-owner of the lot or property in that litigation.

"In passing upon the fraud committed, the trial court said in its decision:

'If the document Exh. B was prepared under the direction of plaintiff Benita Sichon and was read and explained to her before she was made to sign, there could have been no doubt that she could have asserted that she is the sister of Miguel Sichon [in the document Miguel Sichon was made father to Benita] x x x [parenthesis supplied]

There are attendant circumstances in the transaction showing that the document, Extra-judicial Adjudication with Sale, Exh. B was executed by Benita Sichon with a vitiated consent. There are INFIRMITIES in the document which could not have occurred had Benita Sichon directed its preparation and been informed of the contents thereof.

'To start with, it appears in Exh. B that Miguel Sichon is the father of Benita Sichon, Exh. B-1, B-2 and B-4, when in truth and in fact Miguel Sichon is the brother of Benita Sichon. In the third paragraph of Exh. B it appears that the spouses Miguel Sichon and Juliana Gervacio died in 1942 in Abucay, Bataan, but the fact is, that Miguel Sichon died in the Insular Psychopathic Hospital, in Mandaluyong, Rizal, on June 29, 1933 [Exh. C], while his wife Julia Gervacio, died on February 6, 1945, in Mandaluyong, Rizal [Exh. Dj.xxx.'

"7. - Attached hereto and made an integral part of this petition, are correct copies of the: [1] complaint in that Civil Case No. 2809, marked as Annex A; [2] Deed of Extra-Judicial Adjudication with Deed of Sale, purportedly executed by Benita Sichon in favor of respondent's in-laws, marked Annex "B"; [3] Decision of the CFI of Bataan in favor of plaintiffs against defendants, annulling the sale, marked Annex "C"; [4] Order of dismissal of the appeal by the Court of Appeals, marked as Annex "D" and [5] Writ of Execution by the CFI on its judgment, marked as Annex "E";

"SECOND SET OF DECEIT, MALPRACTICE AND GROSS MISCONDUCT

"8. - Respondent, notwithstanding that he knew defendants' case was defenseless, but if merely to delay further and cause additional damages to petitioner, appealed the CFI decision to the Court of Appeals. And while on appeal, respondent did what he can to prolong the enforcement of the CFI decision; in so doing, managed to delay the paying of the docket fee but which ultimately he did not pursue [as will be shown hereunder], and which nevertheless gave him the needed time he desired to delay, as he was able to delay the execution of the judgment for still more another year at the additional expenses and suffering of plaintiffs and particularly petitioner who was shouldering all the expenses of the litigation.

"9. - In his desire to gain more time and delay the enforcement of the judgment against his in-laws, no matter what act and in what manner he does it, respondent committed gross misconduct or misrepresentation to the Court of Appeals. Which is clearly depicted in the resolution dated November 14, 1966 of said Court, dismissing the case, thus:

'Atty. Eliodoro S. Baluyot, counsel for defendants-appellants Policarpio Morales and Isidra Flores, received

this Court's notice on August 9, 1966 per registry return card requiring him to pay the docketing fees of P53.00 within 15 days to expire on August 24, 1966. On August 23, 1966 [one day before expiration], defendants-appellants allegedly secured from the post office of Abucay, Bataan, money order 11628 for P53.00, and sent to this Court by registered Letter No. 306 but the stamped date on registered envelope No. 306 is October 3, 1966 or 40 days late. Examining postal money order 11628, we find it ANOMALOUS that while the place of issue, Abucay, Bataan, is rubber-stamped, yet the date is not rubber-stamped but handwritten. In the registry receipt for letter No. 306, however, the handwritten date is August 23, 1966. In short, there is a discrepancy between rubber-stamped date [October 3,1966] appearing on envelope No. 306 and registry receipt No. 306 with handwritten date August 23, 1966. But since the money order was actually received by this Court on October 5, 1966, the rubber-stamped date of October 3, 1966 is obviously the correct date of mailing.' [Italics and parenthesis supplied].

'WHEREFORE, the docketing fees having been mailed only on October 3,1966, or 40 days late, defendant-appellant's appeal is hereby dismissed and money order 11628 ordered returned to remitter.'

"10. - Meanwhile, petitioner checking on the records of the post office of Abucay, Bataan, that issued post money order No. 11628, found out that it was issued on September 28, 1966 [not August 23 as respondent wanted to appear]; in the name of Pio Morales; for the sum of P53.00 to clerk of Court of Court of Appeals, Manila; by Apolinario Tablan of Abucay, Bataan, Postal Office; and applied or purchased by respondent, in the name of Pio Morales;

"11. - This money order No. 11628 was misrepresented to have been secured on August 23, 1966 by respondent, as evidenced by his letter under date of Aug. 23,1966 addressed to the Court of Appeals; copy of which is hereto attached as annex "F" and made part hereof, but for purposes of continuity of thought is hereby quoted as:

'ELIODORO S. BALUYOT

Attomey-at-Law

Abucay, Bataan

[Letter Head]

August 23, 1966

The Clerk of Court

Court of Appeals

Manila

CFI - No. 2809

Banita Sichon, et al.

vs. Policarpio Morales, et

al.

Sir:

Enclosed herewith is Philippine Postal Money order no. 11628 in the amount of P53.00 for the payment of docket fee and legal research fee for the above-entitled case as mentioned in your letter of August 4, 1966.

Respectfully,

[Sgd.] Policarpio S. Baluyot

Counsel for the Defendants'

"[Note: This is the very letter containing the money order 11628 which is the contents of the envelope and marked registered mail from Abucay, Bataan post office, with

stamped - date Oct. 3, 1966 and another stamped - date Oct. 4, received by Manila Post Office.]

"12. - As noted, the above-letter dated Aug. 23, 1966 which contained the money order 11628 and which, in turn, was the contents of that envelope bearing a stamped-date of Oct. 3, 1966, Abucay, Bataan and another stamped-date of Oct. 4, 1966, received, Manila Post Office, thus - synchronizing with the date of Oct. 5, 1966 the time that the Court of Appeals received the letter. Attached hereto and made part hereof is a photocopy of [both sides] of that envelope marked as Annex G and G-I and made part of this petition;

"13. - Respondent, as could be seen from the foregoing, managed in his own unique way to get, for that said letter, a registry receipt no. 306 with a mailing-date of Aug. 23, 1966; and the reason why it was so done, is obviously to make the filing of the docket fee comes within the reglementary period, expiring on Aug. 23, 1966;

"14- For if this be not done, respondent will be late in filing said docket fee by 34 days if the actual date of securing that postal money order 11628 [Sept. 28, 1966] is reckoned with; and if Oct. 3, 1966 [the stamped-date of that envelope] is followed, it will be just the same late by 40 days as found by the Court of Appeals. In other words, respondent have to do something and in so doing evidently committed not only a deceit or fraud by such grave misconduct or misrepresentation, but even falsification.

"15. - The foregoing misconduct or misrepresentation, deceit, or fraud, which patently is a falsification that could evidently be committed by respondent either by himself or with the help of the postal officer of Abucay, Bataan, and for which a criminal case could be filed, render or make respondent unfit to hold and continue his office as a lawyer and practice the legal profession. For he clearly reflects a dangerous court officer to whom trust and confidence is usually reposed with, as in this case, by hapless and innocent persons;

"16. - This foregoing misconduct or misrepresentation or deceit, is also a violation of respondent's oath of office as a lawyer, to which he had sworn not only to do away with falsehood or consent to the doing of any, but even more — a transgression of his sworn duty to help in the clean administration of justice as has always been a reminder to lawyers taking oath by this Honorable Tribunal;

"IN VIEW OF THE FOREGOING, and in accordance with Sections 27 to 30 of Rule 138 of the Revised Rules of Court in conjunction with the pertinent provisions of the canons of legal ethics, it is most respectfully prayed that respondent be removed or disbarred from further practicing the law profession.

"And for this purpose and reason of public example, it is also prayed that respondent be made to pay petitioner reasonable exemplary damages.

"Petitioner further prays for such other relief as may be just and equitable within the premises."

Despite the fact that the respondent was duly furnished by this Court on June 19, 1967, with a copy of the foregoing petition for disbarment and ordered to answer the same, he failed to file an answer thereto.

In a resolution dated August 7, 1967, this Court referred this case to the Solicitor General for investigation.

This case was accordingly set for hearing by the Solicitor General on various dates with the parties and/or their respective counsel in attendance. However, the proceedings went only as far as the markings of complainant's annexes A, B, C, and D of his complaint [pp. 8-18, S.C. Rollo] as Exhibits A, B, C, and D, respectively, and his filing the corresponding certified copies therefor [enclosed in his "COMPLIANCE" dated February 27, 1968].

On February 11, 1970, the complainant Marcelino Pajarin filed with the Solicitor General a sworn "Withdrawal of Complaint" dated February 11, 1970, which is reproduced hereinbelow for ready reference:

"REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF JUSTICE
OFFICE OF THE SOLICITOR GENERAL
MANILA

"MARCELINO PAJARIN,

Complainant,

- versus -

Adm. Case. No. 763

"ELIODORO S. BALUYOT

Respondent.

WITHDRAWAL OF COMPLAINT

"COMPLAINANT, assisted by counsel, respectfully manifests that he is voluntarily desisting from the prosecution of the above entitled case, considering that respondent who is related to complainant, has fully explained himself to the satisfaction of the latter; moreover, complainant is now wholly convinced that all this is more of a misunderstanding between him and the respondent, and he feels he cannot morally proceed with the prosecution of this case and that it would be for the best interests of all concerned if the case is immediately terminated by the withdrawal of the case.

"WHEREFORE, it is respectfully prayed that this case be considered WITHDRAWN or DISMISSED.

"Manila, Philippines, Feb. 11, 1970.

(Sgd.) MARCELINO PAJARIN

Complainant

3724 Bacood, Sta. Mesa

Manila

"Assisted by:

[Sgd] AVELINO R. LAZARO

Counsel for Complainant

407 El Hogar Filipino Bldg.

Juan Luna, Manila

"SUBSCRIBED AND SWORN to before me this 11th day of February, 1970 in the City of Manila.

[Sgd.] LEONARDO A. CRUZ

Solicitor

Office of the Solicitor General"

In his report and recommendation dated August 2, 1972, the Solicitor General, in view of the foregoing, recommends dismissal of this administrative case.

WHEREFORE, finding the recommendation of the Solicitor General well founded, and in view of the total absence of evidence to sustain the charges against the respondent, this case is hereby dismissed.

Concepcion, C.J., Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, and Antonio, JJ., concur.

Makasiar, J., no part.

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