

**ROSARIO VDA. DE LAIG, ROMEO, JOSE, NESTOR AND BENITO, JR.,
ALL SURNAMED LAIG, MINORS, ASSISTED BY ROSARIO VDA. DE
LAIG, THEIR GUARDIAN, AD LITEM, PETITIONERS, VS. COURT OF
APPEA...**

G.R. No. L-26882. November 21, 1978

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

A motion dated May 5, 1978 was filed on May 10, 1978 by respondent Carmen Verso thru counsel Atty. Pedro A. Venida for the reconsideration of the decision promulgated on April 5, 1978.

On May 31, 1978, a petition was filed by Atty. Jose Lapak in his behalf and in behalf of his father, praying for the recall of said decision.

Required to comment, petitioners herein, the heirs of Atty. Benito Laig, thru counsel, filed on June 22, 1978 their comment on respondent Verso's motion for reconsideration while their comment on the petition of Atty. Jose Lapak was filed on July 5, 1978.

On July 14, 1978, a supplementary motion for reconsideration of respondent Verso was filed by Atty. Jose Lapak (Atty. Jose Lapak signed the supplementary motion in this manner:

PEDRO A. VENIDA AND JOSE LOZADA LAPAK

By: (Sgd.) Jose Lozada Lapak

Counsels for respondent Carmen Verso

On the same day, Atty. Jose Lapak filed a rejoinder (reply) to petitioner's comment on his petition.

On July 24, 1978, respondent Verso replied to petitioner's comment on her motion for reconsideration.

Petitioners filed on August 7, 1978 their comment to respondent Verso's supplementary motion for reconsideration and rejoinder to Atty. Jose Lapak's rejoinder (reply) to their comment, to which Atty. Lapak replied on August 14, 1978.

I.

Re: Motion for reconsideration of respondent Carmen Verso

In her motion for reconsideration, respondent Carmen Verso interposed the following grounds: (1) that the decision of this Court is contrary to law, and (2) that certain facts were overlooked by this Court and were substituted by hypotheses, assumptions and conjectures.

1. Respondent Verso contends that there is no double sale in this case within the context of Article 1544,

paragraph 2, of the New Civil Code; because the first sale of the property in question made by Petre Galero in favor of Atty. Benito Laig was void ab initio, for being in violation of Article 1491, paragraph 5, of the New Civil Code.

This ground was not raised by respondents Verso and Galero in the trial court. It was raised, though not squarely, in the Court of Appeals, which regarded it as not worthy of consideration, for it is clearly without merit (pp. 31-37, Brief for Respondent?Appellee Carmen Verso, CA rec.). If it were meritorious, because crucial or decisive of the case, the Court of Appeals would have devoted the necessary time and space to discuss it.

But to satisfy respondent Verso, WE shall discuss it.

That Article provides:

"Article 1491. The following persons cannot acquire by purchase, even at a public or judicial action, either in person or through the mediation of another:

xxx xxx xxx

"(5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession" (Italics supplied).

At the outset, it must be noted that only one-half [1/2] of the property in question was sold by Petre Galero to Atty. Laig; because the other one-half (1/2) was given to him as contingent attorney's fees for his legal services as counsel of Petre Galero.

The first sale of the one-half (1/2) of the property in question in favor of Atty. Laig was not in violation of Art 1491, paragraph 5. The prohibition in said article applies only to a sale or assignment to the lawyer by his client of the property which is the subject of litigation. In other words, for the prohibition to operate, the sale or assignment of the property must take place during the pendency of the litigation involving the property.

In the case at bar, Atty. Laig was the lawyer of Petre Galero in Civil Case No. 164-R-14 entitled, "Petre Galero vs. Mario Esucta and Florencio Caramoan," for the recovery of the property in question which was then in the possession of the defendants therein. The case was decided in favor of Petre Galero and became final on March 27, 1948 as alleged by the petitioners, which was not disputed by the respondents. And as stated by the Court of Appeals in its decision of December 2, 1954 affirming the conviction of Petre Galero in Criminal Case No. 533, entitled "People of the Philippines vs. Petre Galero":

"Benito K. Laig fue el abogado del apelante Petre Galero en cierta causa civil que se inco? durante la ocupacion japonesa, en el Juzgado de Primera Instancia de Camarines Norte y despues se apel? asla Corte de Apelaciones donde se fall? definitivamente a favor del apelante el año 1948" (Al Pueblo de Filipinas, QuerellanteApelado vs. Petre Galero, Acusado-Apelante, CA-G.R. No. 12043-R; italics supplied).

If said decision in the civil case was not yet final when one-half of the property was sold to Benito Laig in 1948, then Petre Galero would have interposed it as a defense in the criminal case against him at least insofar as the said one-half was concerned.

Thus, when the one-half portion of the property in question was sold by Petre Galero to Atty. Laig on June 1, 1948, the decision in Civil Case No. 164-R-14 was already final and therefore the property in question was no longer subject of litigation. Hence, Atty. Laig was no longer prohibited from buying the property in question because "attorneys are only prohibited from buying their clients' property which is the subject of litigation" (*Araneta vs. Tuazon, et al.*, 91 Phil. 786 [1952]; italics supplied).

Consequently, the sale having taken place after the finality of the favorable judgment in the said civil case and not during the pendency of the litigation, there was no violation of Article 1491, paragraph 5, Hence, the first sale to Atty. Laig of the property in question is valid.

Furthermore, any question on the validity of the sale of the one-half of the property in question has been foreclosed by the final decision in Criminal Case No. 533 which upheld the genuineness and in effect the validity of the sale made by Petre Galero in favor of Atty. Laig. In the criminal case, the testimony of Petre Galero and his witnesses were not believed by the trial court and the Court of Appeals by reason of facts and circumstances revealed by their testimonies as well as their exhibits. For one, the Court of Appeals noted that from the signature of Petre Galero, there is no indication that he is unlettered. It likewise noted the incredibility of the claim that Atty. Laig agreed to collect his attorney's fees from the fruits of the coconuts and wait for at least seven years instead of acquiring the same.

In said criminal case, the Court of Appeals stated:

"La defensa trato de probar, por medio de los testimonios del acusado y de su testigo Claudio Moratalia, de que dicho acusado nunca vendio al abogado Benito K. Laig el terreno en cuestion. El apelante, en sintesis, declaro que el no firmo ningun documento de venta a favor del abogado Benito K. Laig sobre el citado terreno; que el no comparecio ante el notario publico Manuel Moreno; que el mes de junio de 1948 el firmo un documento, que es el mismo exhibit A, en la casa de Carmen Verso que, segun el abogado K. Laig, era un contrato en que el (apelante) se obligaba a dar dicho abogado cierta participacion en los productos de los cocos y otras plantas que llegue sembrar en el terreno en cuestion, como pago de los honorarios del citado abogado; y que al firmar el referido documento no se entero de su contenido puesto que el no sabe leer y no se le habia leído el mismo.

"El testigo Claudio Moratalia trato de corroborar la declaracion del apelante y, entre otras cosas, dijo que el estuvo presente cuando se otorgo un contrato en la casa de Carmen Verso, entre el apelante y su abogado Benito K. Laig, en el que aquel se obligaba a dar participacion al ultimo de los productos del terreno en cuestion, en concepto de honorarios profesionales; que el referido contrato es el mismo exhibit A en donde aparece su firma como uno de los testigos instrumentales; que el tambien firmo otro contrato celebrado entre el y apelante, en virtud del cual el trabajaria como aparcerero en el terreno en cuestion, donde a dicho apelante cierta participacion de los productos que pueda cosechar, cuyo documentos es el exhibit F; y que el no se entero tanto del contenido del exhibit A como del exhibit F porque el no sabe leer y dichos documentos no se las habian leído.

"No estamos convencidos de la veracidad de las declaraciones del apelante y de su testigo ya mencionado. Sospechamos de que ambos faltaron a la verdad al afirmar de que ellos no saben leer y por esto no se enteraron

del contenido del documento exhibit A pues notamos que sus firmas estan bastante bien hechas y no se parecen a la de un analfabete. Segun ellos dos, en vista de que el apelante no tenia dinero para pagar los honorarios que le habia requerido el abogado Laig, dicho apelante se comprometio a mendar cultivar su terreno y de los productos de los cocoteros y otras plantas que se siembren en el mismo se pagarian, paulatinamente, dichos honorarios del abogado Laig; y que este les hizo creer entonces que el documento exhibit A, que se firmo en la casa de Carmen Verso, contenia el referido contrato. Como ha dicho muy bien el juez sentenciador, esta declaracion fantastica, pues es increible de que el abogado Laig, despues de haber trabajado por varios años por el asunto del apelante, que lo habia ganado, hiciera una proposicion tan descabellada, a saber, de que el tendria que esperar hasta que los cocos que se siembren en el terreno diesen frutos (unos siete años) a fin de que pueda cobrar sus honorarios. Pero aun siguiendo la misma teoria de la defensa, se ve la mala fe del apelante, pues antes de poder cumplir con su supuesta obligacion sobre el pago de los honorarios de su abogado, ya habia vendido su terreno con el evidente proposito de defraudar a los herederos de este.

"La declaracion del testigo Claudio Moratalia es aun mas increible. Segun el, el mismo dia en que firmo como testigo en el documento Exhibit A, tambien firmo un contrato con el apelante de trabajar como aparcerero en el terreno en cuestion, cuyo contrato es el mismo exhibit F. Esta declaracion es manifiestamente falsa, puesto que el exhibit A se otorgo el 1.o de junio de 1948 y el exhibit F se otorgo el 26 de dicho mes, que es un contrato de aparceria entre el testigo y el finado abogado Laig de cuyo contrato no tenia ninguna participacion el apelante.

"Otro testigo de la defensa, Arsenio C. Camino declaro de que el abogado Laig le mando ratificar la escritura de venta exhibit A, sin la presencia del aqui apelante Petre Galero, pero cuando el se fijo de que en la clausula de ratificacion aparece el nombre del municipio de Daet, el se nego a ratificarlo puesto que su comision, como notario publico, no se extendia a dicho municipio. Esta declaracion carece de importancia, pues el testigo dijo que el no pudo leer el cuerpo del documento y bajo este supuesto es increible que el pueda estar seguro de que el referido documento fuese el mismo exhibit A.

"Sostenemos pues que las pruebas de la defensa son insuficientes para desvirtuar la presuncion legal de que la escritura de venta exhibit A es genuina. Esta presuncion esta robustecido por la circunstancia de que algunos dias despues del otorgamiento de dicha escritura, el finado abogado Laig celebro contratos con Claudio Moratalia (exhibit F) y Florencio Octavio (exh. F-1) para que estos dos trabajen como aparceros suyos en el terreno en cuestion, lo cual demuestra que el citado abogado compro realmente dicho terreno del aqui apelante y por este tomo posesion del mismo por medio de sus citados aparceros.

"En relacion con la alegacion, en la solicitud exhibit D, de que el apelante perdio, durante la ocupacion japonesa, el duplicado para el dueño del certificado original de titulo No. 1097, el apelante dio de entender de que el hizo dicha alegacion porque no sabia donde se encontraba el citado titulo. El declaro de que antes de la guerra otorgo una escritura de venta a favor de un tal Macario Isocta sobre el terreno objeto del citado certificado original de titulo, pero no se acuerda si el incluyo este certificado con la citada escritura cuando la misma fue entregada a dicho Macario Isocta. Este sujeto fue uno de los adversarios del apelante en la causa civil referente al terreno en cuestion. Aun admitiendo, como cierta, la declaracion del apelante de que el ya no se acuerdo del paradero del certificado de titulo en cuestion, sostenemos que el mismo cometio una falsedad al afirmar de que dicho certificado de titulo le tuvo en su poder y lo perdio durante la ocupacion japonesa. Teniendo en cuenta todas las circunstancias del caso estamos convencidos que el apelante, por lo menos, sabia de que el no tuvo en su poder el mencionado certificado de titulo, y que el afirmar de que lo habia perdido durante la ocupacion japonesa lo hizo, de mala fe, con el proposito de inducir al juzgado para que ordene la

expedicion de un nuevo duplicado para el dueño de dicho certificado de titulo, a fin de que el logre su proposito de poder vender el terreno en cuestion a otra persona, defraudando de este modo a los herederos del finado Benito K. Laig" (pp. 4-7, *El Pueblo de Filipinas, Querellante-Apelado vs. Petre Galero, Acusado-Apelante*, CA-G.R. No. 12043-R, December 2, 1954; italics supplied).

With respect to the other one-half (1/2) of the property in question, which was given to Atty. Laig as his attorney's fees on a contingent basis, WE find nothing wrong in this for the reason that contingent fees are recognized in this jurisdiction (Canon 13 of the Canons of Professional Ethics adopted by the Philippine Bar Association in 1917 [Appendix B, Revised Rules of Court]), which contingent fees may be a portion of the property in litigation.

In the case of *Albano vs. Ramos* (20 SCRA 171 [1967]), where the contingent fees agreed upon was one-third (1/3) of whatever lands and damages might be recovered, this Court said that "the question of how Atty. Coloma may recover her share in the lands awarded to plaintiffs is a closed one, and was settled by the Court of Appeals in its decision affirming the order of the lower court a quo to the effect that the recovery of such share should be the subject of a separate action" (see also *Coto Labor Union [NLU] vs. Espinas*, 15 SCRA 109 [1965]; *Recto vs. Harden*, 100 Phil. 427 [1956]; *Grey vs. Insular Lumber Co.*, 97 Phil. 833 [1955]; *Magno vs. Viola and Sotto*, 61 Phil. 80 [1934]; *Quitoriano and Velasco vs. Centeno*, 59 Phil. 646 [1936]; *Lutero vs. Esler*, 52 Phil. 218 [1928]; *Felices vs. Madrilejos and Bantigui*, 51 Phil. 24 [1927]; *Ulanday vs. Manila Railroad Co.*, 45 Phil. 540 [1923]).

2. The second contention of the counsel for respondent Verso that OUR main decision was based on hypotheses, assumptions and conjectures, finds no support in the records. The alleged hypotheses, assumptions and conjectures are disputed by the facts and circumstances delineated in OUR main decision from which natural and logical inferences and conclusions were drawn. WE find no cogent reason to reconsider the challenged findings and conclusions.

The issues and arguments raised in the supplementary motion for reconsideration of respondent Verso filed by Atty. Jose Lapak are likewise without merit, for they are substantially identical with the issues and arguments raised by respondent Verso in her motion for reconsideration filed by Atty. Pedro A. Venida.

II.

Re: Petition of Atty. Jose Lapak in his behalf and in behalf of his late father, respondent Atty. Baldomero Lapak.

A. Re: Respondent Register of Deeds Atty. Baldomero Lapak.

In his petition (which is practically a motion for reconsideration) for himself and on behalf of his father, Atty. Baldomero Lapak, as defendant Register of Deeds, Atty. Jose Lapak claims that his father was denied due process by this Court.

This claim is baseless and respondent Atty. Baldomero M. Lapak has no personality to file even a motion for reconsideration; because he was declared in default for failure to file his answer in the trial court aside from the other facts and circumstances appearing of record.

Petitioner Rosario Vda. de Laig, together with her minor children, filed the original complaint on April 13, 1954 before the Court of First Instance of Camarines Norte against respondents Carmen Verso, Petre Galero, the Register of Deeds of Camarines Norte, the Director of Lands and the Secretary of Agriculture and Natural Resources for the annulment of the sale in favor of Carmen Verso, or in the alternative, for the reconveyance of the property in question to the petitioners.

This original complaint included as defendant the Register of Deeds of Camarines Norte in the title of the case and in paragraph II thereof without specifying his name (pp. 2-3, ROA, pp. 76-77, rec.); but paragraphs XII, XIII

and XV of the same original complaint referred to him "x x as defendant Register of Deeds B.M. Lapak x x x " (pp. 7-9, ROA, pp. 79-80, rec.; italics supplied).

In the amended complaint of November 8, 1958, the name Baldomero Lapak was already specifically stated in paragraph II (pp. 63-64, ROA; p. 107, rec.) and in paragraphs XII, XIII and XV (pp. 67-69, ROA, pp. 109-110, rec.), which are re-statements of the same paragraphs XII, XIII and XV of the original complaint.

Both the original and amended complaints imputed malice and conspiracy to Atty. Baldomero Lapak, assisted by his son, Atty. Jose L. Lapak, in facilitating the issuance of a second owner's duplicate copy of Certificate of Title No. 1097 in favor of respondent Petre Galero and in cancelling Original Certificate of Title No. 1097 and issuing in lieu thereof Transfer Certificate of Title No. T-1055 in favor of respondent Carmen Verso. This participation of Atty. Baldomero Lapak is clearly alleged in both the original and amended complaints which prayed, among others, ". . . That the defendants be ordered to pay jointly and severally, the herein plaintiffs the sum of P5,000.00 as liquidated damages and attorney's fees x x x and the costs of this suit x x x " (pp. 10, 70-71, ROA; pp. 80, 110-111, rec.; italics supplied).

The original complaint alleges:

"II

"That defendant Carmen Verso is of legal age, single, and a resident of, and with postal address at, Labo, Camarines Norte, the place where she may be served with summons; defendant Petre Galero is likewise of age, married, and a resident of and with postal address at Labo, Camarines Norte, the place where he may be served with summons; defendant the Register of Deeds may be served with summons in Daet, Camarines Norte; defendant, the Director of Lands may be served with summons in Manila; defendant the Secretary of Agriculture and Natural Resources may also be served with summons in Manila, Philippines;

xxx xxx xxx

"XII

"That at the time defendant Petre Galero, by means of false representations, applied for the issuance of another Owner's Duplicate Certificate of Title of HOMESTEAD PATENT NO. 1097, before this Honorable Court, defendant Register of Deeds B.M. Lapak, a relative of Atty. Jose L. Lapak, officially knew that the land in question was purchased by the late Benito K. Laig on June 1, 1948; yet notwithstanding such official knowledge, in order to facilitate and help his co-defendants Petre Galero and Carmen Verso, assisted by said Atty. Jose L. Lapak, in consummating the unlawful sale, refrained from objecting to the issuance of another Owner's Duplicate Certificate of Title of HOMESTEAD PATENT NO. 1097, which it was his duty to do;

"XIII

"That notwithstanding his official knowledge that the property in question was already sold to the deceased Benito K. Laig, when the sale which he, by acts and omission facilitated in favor of defendant Carmen Verso was presented for registration, the defendant Register of Deeds Mr. B.M. Lapak, caused, knowingly, the cancellation of Original Certificate of Title No. 1097 (Homestead Patent) in the name of defendant Petre Galero and the issuance in lieu thereof of Transfer Certificate of Title No. T-1055 in favor of defendant Carmen Verso on October 14, 1952;

xxx xxx xxx

"XV

"That the sale of the property in question by defendant Petre Galero in favor of his co-defendant Carmen Verso, the recommendation by co-defendant Director of Lands and its subsequent approval by the co-defendant Secretary of Agriculture and Natural Resources, and the cancellation of Original Certificate of Title No. 1097 and the issuance in lieu thereof Transfer Certificate of Title No. T-1055 by the defendant Register of Deeds B.M. Lapak in favor of defendant Carmen Verso are fraudulent and unlawful and should be declared null and void." (pp. 2-9, ROA; pp. 76-80, rec., italics supplied).

The above allegations were reiterated in the amended complaint which specifically mentioned Atty. Baldomero Lapak by name as the defendant Register of Deeds in paragraph II thereof, to wit: "x x x defendant Baldomero Lapak, as Register of Deeds may be served with summons in Daet, Camarines Norte x x x " (pp. 63-64, ROA, p. 107, rec.; underscoring supplied) as well as in paragraphs XII, XIII and XV (pp. 67-69, ROA; pp. 109-110, rec.), which restated the same paragraphs XII, XIII and XV of the original complaint.

These imputations of malice and conspiracy regarding the participation of Atty. Baldomero Lapak as Register of Deeds (and of his son, Atty. Jose L. Lapak) were known to Atty. Baldomero M. Lapak and Atty. Jose L. Lapak. As counsel of Carmen Verso, Atty. Jose L. Lapak filed an answer in her behalf. Copies of both original and amended complaints were likewise sent to his father, Atty. Baldomero Lapak, who failed to file his answer and was accordingly declared in default by the lower court (pp. 72-74, ROA, pp. 111-112, rec.).

Since Atty. Baldomero Lapak knew of the imputations against him in both original and amended complaints as he was served a copy of the complaint together with the summons, he should have answered the complaint. Or, at least, his son, Atty. Jose Lapak, who knew that his father was made co-defendant in the case, should have likewise filed an answer in behalf of his father. If Atty. Jose Lapak could defend Carmen Verso who is not related to him, then there is no reason why he could not defend his father, who was alleged to have connived with Petre Galero and Carmen Verso, with his active assistance. Atty. Jose Lapak did not even file a motion to set aside the order of default against his father, so that he could file an answer in his behalf. Such failure or omission on the part of father and son, both lawyers, can only signify their waiver of their right to due process.

It cannot therefore be claimed that there was a denial of due process with respect to Baldomero Lapak, because he had all the opportunity to defend himself. He was summoned and was served a copy of the complaint, but he failed to file an answer and therefore he was declared in default on June 15, 1959 (p. 73, ROA; p. 112, rec.). Even after he was declared in default, he failed to seek the appropriate remedy to set aside the order of default. And even his son, Atty. Jose Lapak, who also had all the opportunity to defend him, failed to do so. He waited until his father was found liable by this Court before filing his instant petition on May 31, 1978 -- over 24 years from the filing of the original complaint on April 13, 1954 and the filing of the answer of Carmen Verso on May 3, 1954 as

well as over 18 years from the time his father was declared in default on June 15, 1959.

Before his father was declared in default on June 15, 1959, he and his father had over five years to file his answer to the original complaint which was filed on April 13, 1954, or over 6 months from the filing on November 28, 1958 of the amended complaint.

Having been declared in default, Baldomero Lapak lost his standing in court. For WE have already ruled that "a defendant in default loses his standing in court and consequently cannot appear in court, adduce evidence, and be heard, and is not entitled to notice. The only exception is when the defendant in default files a motion to set aside the order of default on the grounds provided for in Section 3, Rule 18, 'in which event he is entitled to notice of all further proceedings regardless of whether the order of default is set aside or not'" (Republic vs. Court of First Instance of Manila, 68 SCRA 231 [1975]; Tan vs. Dimayuga, 5 SCRA 712 [1962]; Lim Toco vs. Go Fay, 80 Phil. 166 [1948]; Section 9, Rule 13, Rules of Court).

Not having filed a motion to set aside the order of default, Baldomero Lapak never regained his standing in court and therefore he is no longer entitled to appear in court; nor to be heard; nor is he entitled to notice of the proceedings. If he is not entitled to notice of the proceedings in the case and to be heard in the trial court he is also not entitled to notice of the proceedings nor to be heard on appeal as appellee. Thus, he would still be in the same position on appeal as where he was in the lower court. He would have no better right than what he had in the court below. Consequently, he cannot claim lack of due process. As held by this Court in the case of Lim Toco vs. Go Fay:

"The reason why the defaulting defendant is not entitled to notice is because it would be useless or of no purpose to do so, since the defendant cannot appear and be heard in the suit in anyway. If the defendant in default has the right to appear and be heard on appeal, there would be no reason why he should not be given notice of the proceedings in order that he may have exercised said right as appellant or appellee. There is absolutely no reason for denying a defaulted defendant the right to be heard before, and granting him that right after, the judgment on the merits. If he is out of or has no standing in court before judgment on the merits, he can not be considered as no longer in default after said judgment. And if he can not appear and be heard in the suit he can not x x x appear and be heard as appellee, because an appeal is a continuation of the same case or suit commenced in the lower court. The jurisdiction of the latter is, by appeal, transferred to the appellate court. The rendition of the judgment by the trial court and the appeal therefrom by the adverse party does not confer upon any of them more right than he had before the judgment in so far as their standing in court or intervention in the proceeding is concerned" (80 Phil. 166, 169-170; italics supplied).

In sum, therefore, a party declared in default who never regained his standing in court cannot successfully invoke denial of due process; because his deprivation of the right to a hearing was but the legal consequence of the order of default caused by his very own omission to file an answer and motion to lift the order of default.

The claim of Atty. Jose L. Lapak that the decision of the Court of Appeals affirming the decision of the Court of First Instance, particularly that portion absolving the late Atty. Baldomero M. Lapak from any liability, became final by reason of the fact that the petition filed by petitioner Laig in the Supreme Court did not include Atty. Baldomero M. Lapak, is clearly unfounded. The caption of the petition clearly includes Atty. Baldomero M. Lapak because he is included in the term "et als." The caption reads:

"Rosario Vda. de Laig,
et als., Petitioner,

-versus-

G.R. No. L-26882

Court of Appeals and
Carmen Verso, et als.,
Respondents."

And the allegations in the body of the petition for review before the Supreme Court clearly shows that the pronouncement of the Court of First Instance as affirmed by the Court of Appeals that Atty. Baldomero M. Lapak has no liability was being questioned in the petition, thus:

"Lastly, we contend and so respectfully submit that the Court of Appeals erred in not finding Atty. Baldomero Lapak guilty of malice and/or gross negligence in the performance of his duties as Register of Deeds of Camarines Norte because -?

“(a) As Register of Deeds, he was informed that the parcel of land in question was sold by Petre Galero to Atty. Benito K. Laig (Exhs. K, B, B-1, p. 38, appellants' brief);

“(b) His son, Atty. Jose L. Lapak, personally served him with a copy of the petition of Petre Galero, his client, much later, praying the court to cancel the owner's copy of Original Certificate of Title No. 1097 on the ground that he lost it during the Japanese Occupation;

“(c) It was his duty to inform the court of the fact that petitioner Rosario Vda. de Laig informed his office that Petre Galero had sold the land to Atty. Benito K. Laig and that the owner's copy of the title was not really lost and/or to inform petitioner Rosario Vda. de Laig of such petition filed by his own son, and/or to inform his own son, Atty. Jose L. Lapak, that there was such claim covering the property, subject-matter of his petition;

“(d) It was his duty to the court as officer of the law and as Register of Deeds to inform the court of the information he received which might guide the court in acting on the petition of Petre Galero, failing in which, he cannot exempt himself from liability;

“(e) In fact, Atty. Baldomero M. Lapak was declared in default because he did not even bother to answer the complaint” (pp. 14-15, Petition for Review on Certiorari, pp. 20-21, rec.; italics supplied).

And also in the prayer of the petition, thus:

"IN VIEW OF THE FOREGOING, your petitioners most respectfully pray that a writ of certiorari be issued directing the respondent Court of Appeals to certify and send the records of the case to this Honorable Tribunal for review; and that after due hearing, the judgment of the Court of Appeals be reversed, and another one be issued x x x finding respondents public officials guilty of negligence and ordering them to pay the petitioners jointly and severally damages the amount of which is left to the sound discretion of the court, plus costs; x x"

(p. 22, Petition for Review on Certiorari, p.s 28, rec.; italics supplied).

And this liability of Atty. Baldomero M. Lapak was extensively discussed in the petitioners' brief filed before this Court.

It must also be noted that in the Court of Appeals, the appeal was captioned also as Rosario Vda. de Laig, et als., Plaintiffs-Appellants, vs. Carmen Verso, et als., Defendants-Appellees; and the brief for the Plaintiffs-Appellants raised as her second and fifth assignments of error the actuations, inaction and negligence of Atty. Baldomero M. Lapak with respect to the petition for the issuance and the subsequent issuance of the second owner's duplicate certificate of title; and the Court of Appeals in disposing of the appeal, ruled upon them and affirmed the trial court's exoneration of Atty. Baldomero M. Lapak (see pp. 32, 49-51, 74, 129, 132-134, 149-154, rec.).

B. Re: Atty. Jose L. Lapak.

With respect to his own petition, it must be noted that Atty. Jose L. Lapak has likewise no personality to intervene and participate because he is not a party in this case. The findings of this Court in this case affecting him were necessary, for the allegations in the original and amended complaint and the evidence of record clearly show that his participation was essential to the success of Petre Galero in securing the second owner's duplicate certificate of title and of Verso in registering the sale in her favor and in securing the issuance of a new transfer certificate of title in her name by his father, Atty. Baldomero M. Lapak, the then Register of Deeds.

But this notwithstanding, WE will pass upon his complaints and deal with his pretended hurt feelings, innocence, nobility and concern for his father's honor.

OUR finding with respect to the liability of Atty. Jose L. Lapak is based on the averments in the complaints and the proof extant in the record. However, because he was not a party to the case and therefore was not able to present his side, he was not included in the dispositive part of the decision. Said findings with respect to him are preparatory to the filing of the appropriate action against him, in which he will have the chance to be heard in his defense.

From the time he received a copy of the complaint as counsel for respondent Verso, Atty. Jose L. Lapak was already on notice that he should defend himself, because of his participation as alleged in paragraphs VI, VIII, IX, XI and XII of the original and amended complaints quoted hereunder -

"VI

"That after the sale of the parcel of land in question in favor of Benito K. Laig, defendant Petre Galero, assisted by his lawyer Jose L. Lapak, executed sworn statements and declared under oath before this Honorable Court, that the Owner's Duplicate Certificate of Title of HOMESTEAD PATENT NO. 1097 was lost in his possession during the war, and because of such misrepresentations, the said defendant was able to secure another Owner's Duplicate Certificate of Title of HOMESTEAD PATENT NO. 1097;

xxx xxx xxx

"VIII

"That the sale in favor of defendant Carmen Verso was prepared by, and acknowledged before Notary Public Jose L. Lapak, the same lawyer who represented defendant Petre Galero in obtaining another Owner's Duplicate Certificate of Title of HOMESTEAD PATENT NO. 1097, and the same lawyer who defended the defendant Petre Galero before this Honorable Court in Criminal Case No. 533, entitled 'People of the Philippines vs. Petre Galero.'

"IX

"That the defendant Carmen Verso, assisted by Atty. Jose L. Lapak, on August 8, 1952, requested the defendant Director of Lands and the defendant Secretary of Agriculture and Natural Resources for the approval of the sale in her favor; that such request was subsequent her the request of the herein plaintiffs for the approval of the sale covering the same property in favor of the late Benito K. Laig;

"XI

"That defendant Carmen Verso, with full knowledge of the fact that the property she bought from defendant Petre Galero was already the property of the late Benito K. Laig, and that the sale was fraudulent sale, once in possession of the approval of the defendant Secretary of Agriculture and Natural Resources, assisted by attorney and notary public Jose L. Lapak, she registered the deed of sale executed in her favor by defendant Petre Galero on or about the latter part of 1952;

"XII

"That at the time defendant Petre Galero, by means of false representations, applied for the issuance of another Owner's Duplicate Certificate of Title of HOMESTEAD PATENT NO. 1097, before this Honorable Court, defendant Register of Deeds B.M. Lapak, a relative of Atty. Jose L. Lapak, officially knew that the land in question was purchased by the late Benito K. Laig on June 1, 1948; yet notwithstanding such official knowledge, in order to facilitate and help his co-defendants Petre Galero and Carmen Verso, assisted by said Atty. Jose L. Lapak, in consummating the unlawful sale, refrained from objecting to the issuance of another Owner's Duplicate Certificate of Title of HOMESTEAD PATENT NO. 1097, which it was his duty to do; x x x" (pp. 4-7, 65-68, ROA; pp. 77-79, 108-109, rec.; italics supplied).

When he filed on May 3, 1954 the answer of Verso, he should have immediately taken the necessary action to protect himself instead of remaining silent. His inaction and silence cast doubt on his pretended innocence with respect to the actuations of Galero, Verso and his father, Atty. Baldomero M. Lapak, the then Register of Deeds. He is a lawyer, not a layman.

The following undisputed facts and circumstances on record show -- made more convincing by his silence and inaction and failure to defend his own father and himself in the trial and on appeal -- the connivance of Atty. Jose L. Lapak with his father, Atty. Baldomero M. Lapak, Carmen Verso and Petre Galero.

1. Atty. Jose L. Lapak assisted Petre Galero in his petition for the issuance of a second duplicate owner's certificate of title, falsely declaring under oath as ground thereof that "x x the Owner's Duplicate Certificate of

Title x x x was lost in his possession during the war x x x." Because of this misrepresentation -- aided by the silence of Atty. Baldomero M. Lapak, who had notice of the petition and had knowledge of the prior sale between Petre Galero and Carmen Verso -- Petre Galero was able to secure a second duplicate owner's certificate of title (par. VI, pp. 4, 65, ROA; pp. 77, 108, rec.).

2. Thereafter, Atty. Jose L. Lapak prepared and notarized the deed of sale for the price of only P600.00 of 21.9949 hectares land with coconut trees covered by the aforesaid title between Petre Galero and Carmen Verso (par. VIII, pp. 5, 66, ROA; pp. 78, 108, rec.).

3. Then, Atty. Jose L. Lapak helped Carmen Verso in seeking the approval of the Secretary of Agriculture and Natural Resources of the said sale (par. IX, pp. 5, 66, ROA; pp. 78, 108, rec.) as obviously shown by the fact that in her letter sent to the Secretary for that purpose, she gave her address as "c/o Atty. Jose L. Lapak, Daet, Camarines Norte" (pp. 22, 107, Folder of Exhibits, Civil Case No. 577).

4. After the approval, Atty. Jose L. Lapak aided Carmen Verso and registered the questionable Deed of Sale with the then incumbent Register of Deeds Atty. Baldomero M. Lapak, his father, who allowed it. (par. XI, pp. 6, 67 ROA; pp. 78, 109, rec.).

The presence and participation of Atty. Jose L. Lapak in all the aforesaid proceedings and transactions that finally led to the fraudulent issuance of Transfer Certificate of Title No. T-1055 in favor of respondent Carmen Verso and to the prejudice of the heirs of the Late Benito K. Laig, herein petitioners, over the said land of about 22 hectares with coconut trees point to the collusion aforesaid. Atty. Baldomero M. Lapak, who officially knew of the prior sale between Petre Galero and Carmen Verso, should have reacted accordingly as Register of Deeds and as a lawyer to protect the integrity of torrens title as well as his own integrity and that of his office. His oath as a member of the Philippine Bar required him to "do no falsehood, nor consent to the doing of any in court x x" nor "x x x wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same x x x" (Sec. 3, Rule 138, Rules of Court). If there were no collusion, then Atty. Baldomero M. Lapak should have frustrated the fraudulent scheme with respect to the said land in the four clear opportunities he had: First, in the petition for issuance of a second owner's duplicate certificate of title; Second, in the application for registration of the fraudulent deed of sale which was filed in his own office; Third, in the application for the cancellation of Original Certificate of Title No. 1097 in the name of Petre Galero; and Fourth, the issuance in lieu thereof of transfer certificate of title over the said parcel of almost 22 hectares with coconut trees in the name of Carmen Verso.

Moreover, the silence and inaction of Atty. Baldomero M. Lapak while all these things were taking place fortify our conclusion on their collusion; because no well-intentioned lawyer-father would permit his lawyer-son to participate in the aforesaid dubious scheme; if no connivance existed. At the very least, Atty. Baldomero M. Lapak should have informed his son of the prior sale of Petre Galero to Atty. Benito Laig over the same land of close to 22 hectares with coconut trees; so that his son, Atty. Jose L. Lapak, should not have participated in that illegal transaction between Petre Galero and Carmen Verso, who was shown in the main decision to have knowledge of the prior sale by Petre Galero to Atty. Benito Laig.

5. WE find significant the fact that Atty. Jose L. Lapak, after serving several months, resigned from his position as clerk of court of the Court of First Instance of Camarines Norte, to act as defense counsel of Petre Galero in Criminal Case No. 533 for estafa through falsification of public document (p. 1, t.s.n. of Crim. Case No. 533). Atty. Baldomero M. Lapak represented Petre Galero during the preliminary investigation of said criminal case while his son, Atty. Jose L. Lapak, represented Petre Galero during the trial of the case (pp. 15 & 17, Crim. Case wrapper, Vol. II of Crim. Case No. 533). In said criminal case, the subject matter of the offense of estafa through

falsification of public document was the deed of sale entered into by and between Petre Galero and Carmen Verso, which deed of sale was effected and consummated with the active participation of Atty. Jose L. Lapak, who assisted Petre Galero in filing the petition for the issuance of a second owner's duplicate certificate of title (Exh. E, p. 7. Folder of Exhibits, Civil Case No. 577).

The above reactions of Atty. Jose L. Lapak and his concern for Petre Galero -- resigning from his new job only to act as defense counsel for Galero -- as well as the concern of Atty. Baldomero Lapak -- representing Petre Galero in the preliminary investigation -- are of dubious implications. Were they making sure that Petre Galero -- who as aforesaid fraudulently sold in 1952 to Carmen Verso the coconut land of about 22 hectares for the very low price of P600.00, with the assistance of Atty. Jose L. Lapak -- would not implicate them -- father and son?

Petre Galero died in 1958 while serving sentence for estafa thru falsification of public document before the trial of this civil case began on August 4, 1960. He filed his answer without any lawyer assisting him.

Moreover, it is curious why the provincial fiscal did not include Atty. Baldomero M. Lapak and Atty. Jose L. Lapak in the prosecution of Petre Galero in the criminal case, despite the existence of a prima facie case against them.

6. The collusion among the aforesaid respondents is further revealed by the gross inadequacy of the purchase price paid by respondent Verso to Petre Galero which is a badge of fraud. In the first sale of the same parcel of land, of almost 22 hectares with coconut trees, Atty. Laig paid the amount of P1,500.00 for the one-half of the land the consideration of the other half being the legal services rendered by him to Petre Galero. Obviously then, the other half was likewise worth that much. Hence, the entire land of about 22 hectares with coconut trees was worth no less than P3,000.00 on June 1, 1948. More than four years thereafter, on July 19, 1952, respondent Verso, in the second sale made by Petre Galero, paid the measly sum of P600.00 for the entire lot, or approximately P28.00 per hectare, much less than the government price then for uncultivated or unimproved public lands.

A note on the present posture of Atty. Jose Lozada Lapak. His sudden protestation of concern for the name, honor and integrity of his late father Atty. Baldomero M. Lapak and of his own would seem hollow, if not hypocritical.

As heretofore stated, as early as May 3, 1954 when he assisted respondent Carmen Verso in the filing of her answer to the complaint filed by the Laigs, he had already knowledge of the imputations of malice and connivance earlier enumerated, against him and his father, Atty. Baldomero M. Lapak. He should have filed the necessary answer for his father and then and there deny and rebut the aforesaid imputations of malice and conspiracy, as well as take the necessary actions to protect himself from any adverse inferences that may arise from the aforesaid imputations against him by filing either a motion to intervene in the case or to strike out the allegations of the complaint imputing malice and conspiracy to him -- not being a party to the case. But what did he do? After filing on May 3, 1954 the answer for respondent Verso to the complaint, he disappeared from the case without any formal withdrawal; and Atty. Pedro A. Venida took over the defense of Verso during the trial and on appeal. Despite the serious allegations of malice and conspiracy against him and his father, he conveniently remained quiet for over 24 years from the filing of the complaint on April 13, 1954 and the filing of Verso's answer to the complaint on May 3, 1954. And now that this Court, upon review, not only found as true the acts imputed to his late father, Atty. Baldomero M. Lapak, but also his (Atty. Jose L. Lapak's) own involvement, he appears to be touched to the quick, with profuse protestation of injured feelings because his and his father's name, honor and integrity had been assailed in the challenged decision, spiced with professions of his paternal loyalty, nobility and innocence which he could have properly and timely demonstrated twenty-four years ago, when his father was still alive through several avenues then opened to him.

As hereinbefore intimated, the silence of Atty. Baldomero M. Lapak despite receipt of the original and amended complaint is intriguing as it invites unflattering questions.

On the surface, the aforesaid failure of Atty. Jose L. Lapak to secure a lawyer for himself and his father, in the face of his ability to defend the cause of respondent Verso, who is not his relative, defies understanding, if it does not merit condemnation by his own father and by the other members of their family or clan.

WHEREFORE, THE MOTION FOR RECONSIDERATION OF RESPONDENT CARMEN VERSO AND THE PETITION OF ATTY. JOSE LOZADA LAPAK ARE HEREBY DENIED, FOR LACK OF MERIT.

SO ORDERED.

Teehankee, (Chairman), Muñoz Palma, Fernandez, and Guerrero, JJ., concur.

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