

ATTY. JOSE S. SANTOS, COMPLAINANT, VS. ATTY. CIPRIANO A. TAN, RESPONDENT.

Adm. Case No. 2697. April 19, 1991

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PER CURIAM:

Complainant Atty. Jose S. Santos instituted on November 20, 1984 these disbarment proceedings against respondent Atty. Cipriano A. Tan for alleged gross misconduct.

Specifically, the complainant who was then Acting Director of the Bureau of Agrarian Legal Assistance under the Ministry (now Department) of Agrarian Reform, charged the respondent with having committed acts of immorality, falsification, and bigamy.

In the said complaint, Atty. Santos stated that the respondent, while employed as Trial Attorney IV, with the Judicial Cases Division under the aforesaid Department, maintained amorous relationship with a married clerk, a certain Norma O. Pihid (nee Olea), who was then directly under him. Eventually, the respondent got married to Norma O. Pihid on April 27, 1981 before the Municipal Mayor of Meycauayan, Bulacan, purportedly in an attempt to cover up their illicit relations.[1]

The complainant, moreover, alleged that the respondent falsified his marriage contract with Norma O. Pihid by deliberately misrepresenting himself as single, thus, deceiving the said mayor into solemnizing the said marriage.[2] In the information sheet, however, prepared and filed by the respondent prior to his employment, he clearly stated therein that he was married to one Emilia Benito Tan and had begotten eight (8) children with the latter.[3]

Consequently, the complainant likewise charged the respondent with bigamy since it appears from the records of the Local Civil Registrar that he had previously contracted marriage with the said Emilia A. Benito on January 6, 1941. The complainant asserted that the said marriage continued to be valid and binding between the said contracting parties when the respondent entered into a subsequent marriage with Norma O. Pihid on April 27, 1981.[4]

Finally, the complainant averred that the respondent's second wife, Norma O. Pihid, gave birth to a child by the respondent on November 21, 1981 at the Children's Medical Center in Quezon City, as evidenced by the birth certificate of the said child indicating his name to be Noel Olea Tan.[5]

On January 9, 1985, the Court acting on the said complaint for disbarment required the respondent to submit his Answer.

The respondent in an Answer dated February 28, 1985, denied having married Norma O. Pihid on April 27, 1981 and having fathered a child by the name of Noel Olea Tan, although he admitted being married to Emilia A. Benito.[6]

As regards the charges of bigamy and falsification of official documents, the respondent argued that the same were issues that were properly the subject of a criminal case filed by the complainant against him which was

pending before the Regional Trial Court of Malolos, Bulacan, Branch VI, and therefore raised a prejudicial question in the present controversy.[7]

Anent the charge of maintaining amorous relationship with Norma O. Pihid, the respondent contended that the same charge had been previously resolved in an Order dated October 1, 1982 issued by the Minister (now Secretary) of the Ministry (now Department) of Agrarian Reform. In the said order, the allegation of immorality which was originally the content of an anonymous letter-complaint was dismissed for being devoid of merit.

The respondent, in turn, suggested that the real and actual motive behind the said complaint was traceable to the strong resentment harbored by the complainant against the former whose services as Chief Trial Attorney of the said Ministry (now Department) was extended even beyond his retirement age at the request of the then Minister (now Secretary) Conrado F. Estrella. The respondent contended that he and the complainant did not see eye to eye with respect to the handling and prosecution of agrarian cases.[8]

By way of a counter-complaint, the respondent charged the complainant with acts unbecoming of a lawyer and a member of the Philippine Bar such as obtaining and utilizing confidential documents without the necessary authorization, introducing a falsified document as evidence in a court proceeding, and executing an affidavit-complaint containing false statements. The respondent further assailed the complainant for filing the said complaint based on inadmissible and unfounded charges.[9]

On March 25, 1985, the Court resolved to refer the said complaint to the Solicitor General for investigation, report and recommendation.

The Report and Recommendation submitted by the Solicitor General on February 23, 1990, in part, states:

xxx xxx xxx

A thorough review of the record of the case duly heard before the Office of the Solicitor General in several protracted hearings, reveals the existence of a ground for disbarment against respondent.

Aside from claiming that the documents presented by complainant were allegedly unauthenticated, hearsay, self-serving, and his defense of alibi at the time of the marriage on April 27, 1981, respondent has miserably failed in refuting the same and at the same time presenting strong evidence to convince the Solicitor General of the falsity of the charges against him.

On April 27, 1981 respondent claims that he was attending a government case at the then CFI of Caloocan City (Exh. 9-A, rec.) while his alleged second wife was at the Court of Appeals on official business (Exhs. 6 & 11-A, rec.).

There are serious doubts in entertaining the aforesaid defense.

A glance at the daily time records (Exhs. 9-A and 11-A, rec.) reveals that both entries of respondent and Norma Olea were indicated on the line covering April 26, 1981; secondly, penmanship of the alleged entries for April 27, 1981 are the same; thirdly, the indicated time in's of respondent and Norma Olea were the same, i.e., 8:01 a.m.; fourthly, probability that they were together is high because they were both out of the office.

Assuming, arguendo, respondent's alibi that they were married in Meycauayan, Bulacan, it was highly probable and possible for both to proceed to Meycauayan, Bulacan on April 27, 1981 since the places where they were allegedly then is [sic] not impossibly far from Meycauayan, Bulacan.

Respondent even failed to specify the alleged government case he was attending at the CFI of Caloocan either by mentioning the title of the case or by presenting other evidence aside from his self-serving testimony.

With respect to the Birth Certificate (Exh. A) of respondent's alleged son, the former has not made a

categorical denial that Noel Olea Tan is NOT his son. He only argues that the birth certificate is not authentic. Evidence for complainant, however, shows that Exhibit A-5 was presented to show the authenticity of the Birth Certificate contrary to respondent's claim (pls. see Certification dated July 24, 1985 found at the back of the Birth Certificate). Likewise, respondent has not made any categorical denial of his amorous relationship with Norma Olea despite the existence of his first marriage with Emilia Benito Tan.

For immorality to be a ground for disbarment, it must be so gross, e.g., it is so corrupt and false as to constitute a criminal act or so unprincipled or disgraceful as to be reprehensible to a high degree (*Reyes v. Wong*, 63 SCRA 667 [1975]).

The circumstances of the case definitely has put respondent's moral character in doubt despite non-conviction of the criminal case for bigamy against respondent. The reputation of a lawyer must be such that he be of good moral character during the continuance of his practice and the exercise of the privilege.

The findings are clear and con-vincing that respondent entered into a second marriage despite the existence of his first marriage and that he begot a child with the second woman. Definitely, such factual findings have put serious doubt on respondent's moral character. Respondent's main defense of alibi is rather too weak a reason that he did not engage in an immoral act. As earlier said, respondent has neither categorically denied that Norma Olea is his wife nor Noel Olea Tan is his son with Norma.

It appears, however, that respondent has retired from government service on March 27, 1983. He was sixty-five (65) years old on September 16, 1982 (Exh. 13, rec.), and therefore, at the time of the rendition of this report, respondent is now seventy two (72) years old.

Considering that respondent has retired and is in the twilight of his life, disbarment would be too harsh a penalty to impose on respondent. Suspension from the practice of law would be proper for humanitarian reasons if respondent is still actively engaged in practice.

IN VIEW OF THE FOREGOING CONSIDERATIONS, it is respectfully recommended that respondent be adjudged guilty of immoral conduct, unbecoming of a lawyer, and accordingly impose the penalty of one (1) year suspension from the active practice of law.[10]

We agree with the said findings of the Solicitor General including his favorable and compassionate consideration of the advanced age of the respondent. Specifically, Rule 1.01 of Canon I of the Code of Professional Responsibility provides that "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."

Whatever the alleged motives of the complainant are, the respondent has failed to controvert and refute the charges made by the former. Even granting *arguendo* that the complainant was not well-motivated in instituting these disbarment proceedings, the same does not exculpate him from any liability resulting from his grossly immoral conduct.

As regards the respondent's counter-complaint, the Solicitor General in compliance with the Court's Resolution dated October 1, 1990, submitted his Supplemental Report and Recommendation on November 22, 1990, and found that the charges against the complainant for acts unbecoming a member of the Philippine Bar were all unsubstantiated. We agree with his findings and recommendation on this regard which state:

No misconduct has been committed by Atty. Santos contrary to Atty. Tan's accusations which will warrant disciplinary action. If at all, Atty. Tan's charges were merely in defense of the charges against him (immorality) which the Solicitor General has found to be supported by the evidence. (cf.: Report and Recommendation dated February 23, 1990, pp. 46-52, Records-Adm. Cases)

IN VIEW OF THE FOREGOING CONSIDERATIONS, it is respectfully recommended that Atty. Tan's counter-complaint against Atty. Santos be DISMISSED for being unsubstantiated.[11]

WHEREFORE, finding respondent Atty. Cipriano A. Tan guilty of immoral conduct in disregard of the Code of Professional Responsibility, he is hereby **SUSPENDED** from the active practice of law for a period of one (1) year. The counter-complaint against complainant Atty. Jose S. Santos is hereby **DISMISSED** for lack of merit.

Let this Decision be spread upon the personal records of the respondent and copies thereof furnished to all courts.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

[1] Rollo, 12.

[2] Id., 6.

[3] Id., 5.

[4] Id., 2-3.

[5] Id., 8.

[6] Id., 13.

[7] Id., 17-18.

[8] Id., 14.

[9] Id., 18-19.

[10] Id., 48-32.

[11] Supplemental Report and Recommendation, 4.

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