

CALIXTO BALLOS, COMPLAINANT, VS. ATTY. PAQUITO G. BALASABAS, RESPONDENT.

A.C. No. 1352. January 31, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

Calixto Ballos, a forty-year old computer in a surveyor's office, charged Atty. Paquito G. Balasabas (admitted to the bar in 1962) with unethical conduct and negligence in handling defendants' appeal in an ejectment case.

Civil Case No. 1962-A of the city court of Davao City was a forcible entry case filed by Hector M. Llamas against sixteen alleged squatters on his lots located at the New Society (Sto. Niño) Village, Matina Aplaya, Davao City.

Ballos was not a defendant in that case. However, being apparently in the same situation as the defendants, he was desirous that a decision, favorable to them, should be rendered in that case. The city court adjudicated the case in favor of Llamas. The defendants were represented by Atty. Octavio Fernandez.

Not satisfied with the services of Atty. Fernandez, the defendants and Ballos replaced him and hired Atty. Balasabas. To prosecute the appeal, Ballos, in his behalf and as representative of the defendants, paid to Atty. Balasabas the total sum of P1,563.50, itemized as follows:

Date of payment and purpose

Amount Paid

June 1, 1973, for the appeal

P 483.50

June 2, 1973, for partial expenses

for registration

150.00

June 5, 1973, partial payment

of fees

80.00

June 7, 1973, partial payment

of services

- - -

300.00

June 7, 1973, for bond and other

expenses

- - -

200.00

June 13, 1973, partial payment

of services

- - -

200.00

June 25, 1973, full payment

of services

- - -

150.00

The appeal was duly perfected by Atty. Balasabas. He arranged the execution of a supersedeas bond by a surety company. The appeal was docketed in the Court of First Instance of Davao in June, 1973. As there was no movement in the case and Atty. Balasabas did not do anything to set it for hearing, Ballos sent a telegram to this Court, requesting that the lower court be directed to expedite the hearing of the case.

That telegram provoked Judge Vicente N. Cusi, Jr. to set the case for hearing on January 18, 1974. At the hearing on that date, Atty. Balasabas made his one and only appearance in the case. What transpired at that brief hearing is shown below:

"ATTY. BALASABAS: This is an appealed case, your Honor.

"COURT: I was busy with other cases. You know the case is for Branch II and there are many cases. Until I received the basic communication by indorsement from the Supreme Court, asking me if I could give the telegram preferential attention. x x x. This is the telegram:

'Due to coercion by the complainants, our case on appeal in the Court of First Instance, Sala of Judge Cusi was erroneously decided by the city court to which Hector Llamas has no title, no improvement and no award from the NAFCO on the property by first indorsement of the Presidential Assistant . . . '

This was referred to the Supreme Court. From the Supreme Court, it was referred to me. The information asking me if I could expedite action on this. Immediately, I answered:

'The records of the case are now in the possession of the undersigned and he is studying as well as the transcript for early disposition.'

Hence, I set the case for argument this morning. The one who sent the wire is (was) Calixto Ballos.

"ATTY. BALASABAS: We are very sorry, your Honor.

"COURT: There is nothing to be sorry about.

"ATTY. BALASABAS: If I was consulted, I will not allow my client to send that wire.

"COURT: I was not intending to act on this immediately because I have other records (cases) but because of the telegram, I acted. What is your argument?

"ATTY. BALASABAS: Considering, your Honor, (that) there is already a memorandum submitted by other counsel (Atty. Fernandez in the city court), I might just as well submit this case for resolution.

"COURT: Who is the other party?

"ATTY. BALASABAS: Atty. Durante.

"COURT: There is already a memorandum for plaintiff-appellee. So, both of you are submitting the case for resolution?

"ATTY. BALASABAS: Yes, your Honor.

"COURT: All right, submitted."

The next day, January 19, Judge Cusi decided the case by affirming the city court's decision against the defendants. They rehired their former lawyer, Atty. Fernandez, to appeal the case to the Court of Appeals. Again, they lost the case in that Court.

Seventeen days after Judge Cusi decided the case, or on February 5, 1974, Ballos denounced Atty. Balasabas to the President of the Philippines "as a lawyer (who) should not exist in our new society."

That denunciation was referred to this Court. Atty. Balasabas, in his answer to the complaint, branded it as malicious. During the investigation, he accounted for the sum of P1,563.50 by stating that his attorney's fees amounted to P730 and he paid P404.30 as premium. He accounted for the balance of P429.20 by stating that he posted an appeal bond of P60 and spent some unspecified amounts for getting copies of the records of the case and for the registration of the mortgage deed executed by Ballos in favor of the surety company. The respondent prepared and notarized that mortgage deed which was a sort of counterbond. It was registered in Tagum, Davao del Norte, which is fifty-five kilometers away from Davao City.

Assuming that Atty. Balasabas paid twenty pesos for docketing the appeal in the Court of First Instance and deposited fifty pesos as appeal bond (Sec. 3, Rule 40 and sec. 5[a][12], Rule 141, Rules of Court. An appeal bond of P60 would be an undertaking, not a cash bond), that would leave the sum of P359.20 as the amount which he spent in registering the mortgage and getting copies of the records of the case. (Atty. Fernandez did not turn over to him his personal records).

Ballos alleged in his complaint that Atty. Balasabas should have spent P120 for the transcripts of the testimonies in the city court. The respondent did not get those transcripts. His accounting of the balance of P429.20 is not quite clear and exact.

Apart from the hazy accounting, Ballos complains that the services rendered by the respondent were not satisfactory because he appeared in court only once and he did not submit any memorandum or oral argument.

The respondent claims that "with the perfection of the appeal and the submission of the supersedeas bond to stay the execution", he had adequately performed his commitment to his clients; that there was no necessity of filing a

new memorandum since the memorandum of Atty. Fernandez in the city court was sufficient for the purpose, and that he was not able to argue orally, although he was prepared to do so, because Judge Cusi was busy with other cases.

The issue is whether disciplinary action should be taken against the respondent in connection with his handling of the appeal.

He testified that Ballos admitted to him that he (Ballos) was constrained to file a complaint against the respondent because the defendants in the ejectment suit suspected that Ballos had misappropriated the money which they had entrusted to him. Respondent said that Ballos was willing to withdraw the complaint provided that he (the respondent) returned P500 to Ballos or provided that the respondent paid the back premiums for two years on the surety bond so that the lot mortgaged by Ballos to the bonding company could be released. The respondent rejected the proposals of Ballos. He also said that at the outset he told Ballos that the defendants had very slim chances of winning the appeal.

Ballos manifested at the commencement of the investigation that he would withdraw his complaint if the mortgage on his lot were cancelled.

After a study of the evidence and the contentions of the parties, our conclusion is that the respondent is not entitled to a complete exoneration, as recommended by the Acting Solicitor General and the investigating fiscal.

The respondent should have realized when he accepted the case and after he had received the sum of P1,563.50 (the hard-earned savings of his poor clients), that they had pinned their hopes on him for reversing the city court's unfavorable verdict. The respondent should have known that, because his clients changed lawyers, they wanted a more vigorous and aggressive advocacy of their cause. If, according to the respondent, the defendants' case was weak and could hardly prosper on appeal, he could have advised them to continue the retainer of their first lawyer, Atty. Fernandez, who was more knowledgeable about the case than the respondent.

Aside from perfecting the appeal and staying the execution pending appeal, the respondent really did nothing in the case. More-over, he did not render an unimpeachable accounting of the moneys which he had received in installments.

While the respondent does not merit disbarment or suspension, because he did not commit any gross misconduct or dishonesty, he should at least be given an admonition or warning to be more conscientious in the performance of his duties to his clients and to be more scrupulous and circumspect in handling their funds.

WHEREFORE, the respondent is admonished to be more careful and discreet in handling the funds of his clients and to be more zealous and dedicated in attending to their interests. A copy of this decision should be attached to respondent's personal record.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Concepcion, Jr., JJ., concur.

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