

TOMAS ALCORIZA, COMPLAINANT, VS. ATTY. ALBERTO LUMAKANG AND ATTY. PABLO SALAZAR, RESPONDENTS.

A.C. No. 249. November 21, 1978

Ponente: BARREDO, J.

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BARREDO, J.:

Administrative complaint for disciplinary action against Attys. Pablo Salazar and Alberto Lumakang. Respondents were required to answer and after they filed their answers, the case was referred to the Solicitor General for investigation and recommendation. The Solicitor General has submitted the following report:

"REPORT AND RECOMMENDATION

This case was referred to the Office of the Solicitor General, for investigation, report and recommendation. Since the respondents were residents of Davao City, the case was, therefore, referred in turn by this Office to the City Attorney of Davao City, for investigation and report. In a letter dated March 14, 1957, City Attorney A.L. Noel submitted the report of then special counsel, now Fiscal Leo D. Medialdea, which he approved and adopted as his own, the original of which, together with the original records of the case, is missing in our files due to the retirement of the Solicitor then assigned to the case (Sol. Adolfo Brillantes), hence only a duplicate original of said letter, together with a true copy of the original records of this case, is hereto attached. For convenience, the said report is quoted as follows:

'xxx xxx xxx

'After going over the records of the case together with the transcript of stenographic notes marked as Annex 'A', it appears that the whole case emanated from the decision of the Municipal Court of Davao City in Civil Case No. 1845 for sum of money, between one Juana V. Antonio, et al., plaintiffs, vs. Tomas Alcoriza, defendant, ordering the defendant to pay the plaintiffs the sum of P251.50, plus the legal rate of interest beginning the date of the filing of the complaint until the date of complete payment. The defendant is also ordered to pay an amount equivalent to 25% of the amount due, in the concept of attorney's fees, and the legal cost of the suit. It also appears in the decision that the trial was conducted in the absence of the defendant and/or his counsels despite the fact that they have been duly notified.

Atty. Alberto Lumakang, one of the respondents in Administrative Case No. 249, explains his failure to appear in the trial of Civil Case No. 1845, wherein he appears as one of the attorneys on record as follows:

'Early in the morning as usual as I used to, I reported to the office at 7:30 believing that Tomas Alcoriza would come to the office. I waited for him until 9:00. I know that the hearing of Judge Hofileña will be 9:00 and that as I said if he will not appear in my office I will not appear for him as I would be going there without any preparation, so that on that day though I was jittery I did not go to the court. I stayed in the office waiting for Alcoriza.' (Transcript of the stenographic notes. T. S.N. p. 28, Annex 'A'.)

'It appears that the reason of Atty. Lumakang for his failure to appear in representation of his client, Tomas Alcoriza, in the trial of his case on October 27, 1955, is not wholly laudable. The undersigned believes that although Atty. Lumakang was not prepared to enter into trial on that day, still he could do things to protect the interest of his client by appearing for him in court. However, it is not considered that this inaction of Atty. Lumakang would constitute so serious a ground as to warrant disciplinary action in view of the lack of interest which his client has shown in the premises. Instead, Atty. Lumakang for his failure to appear should be reprimanded for his inaction as it would tend to diminish trust and confidence which the public is supposed to repose in the office of a lawyer. In order to be free from any complaint from his client he should have appeared on October 27, 1955 primarily to protect the interest of his client and secondarily to explain to the court the predicament he was in.

'Respondent Pablo Salazar should be exonerated of charges preferred against him by Tomas Alcoriza, because the records of Civil Case No. 1845 show that Atty. Alberto Lumakang took over from him the active handling of the case since August 20, 1955 until October 27, 1955, date of rendition of judgment giving rise to this Administrative Case No. 249.'

"The undersigned concur in toto with the foregoing report and recommendation, the same being justified by the evidence adduced at the hearing.

R E C O M M E N D A T I O N

"IN VIEW OF THE FOREGOING, the undersigned respectfully recommends that Atty. Alberto Lumakang be reprimanded as above-indicated and Atty. Pablo Salazar be exonerated of the charges filed against him." (Pp. 59-61, Record.)

Required to comment on the foregoing report by Our resolution of September 2, 1964, Atty. Lumakang explained that:

"x x x. The respondent asked Tomas Alcoriza why he did not go to the office or to the Court to attend to the trial of his case, Tomas Alcoriza merely answered that he is busy. The respondent told Tomas Alcoriza that the Judge has become impatient because of the many postponement so that an order was issued giving you last

postponement and that if you will be absent again on the day of the trial the Court will proceed to try the case ex parte. Tomas Alcoriza assured the respondent that he will go to the office and he and the respondent will go to Court together on the day of the trial, and in parting the respondent told Tomas Alcoriza that if you will not come to the office on the date of the trial then the respondent will not appear in Court as his appearance would only be useless.

"The respondent began to suspect that the defendant Tomas Alcoriza has already lost his interest in the case aforesaid because of his refusal to attend to the trial every time the case is called for hearing. This suspicion came true because on the date set for hearing of his case in accordance with the provision of the order of last postponement, Tomas Alcoriza did not appear at the office of the respondent neither to the Court. Such being the case, it is the honest belief of the respondent that a lawyer cannot be more interested in his client's case than the client himself. So, on the day of the hearing the respondent did not go to the Court any more because there was nothing or no interest at all to be protected. The defendant, now complainant, having lost interest or have shown lack of interest in his case in the Municipal Court, therefore, the respondent has every reason not to go to the Court because the respondent could not be expected to be more interested in the case than Tomas Alcoriza himself. The lack of interest or loss of interest of Tomas Alcoriza in his case was shown in the findings of the City Fiscal of Davao which findings was also adopted by the Solicitor General in his report and recommendation, quote:

'However, it is not considered that this inaction of Atty. Lumakang would constitute so serious a ground as to warrant disciplinary action in view of the lack of interest which his client has shown in the premises.' (italics supplied)." (Pp. 64-65, Record.)

When the case was set for hearing, Atty. Lumakang waived oral argument, hence the case was deemed submitted for decision.

We have reviewed the record and We find the report and recommendation of the Solicitor General to be in order and amply justified by the circumstances on record.

WHEREFORE, the instant administrative case is dismissed insofar as Atty. Pablo Salazar is concerned, and Atty. Alberto Lumakang is hereby reprimanded and admonished to be more careful in attending to the cases of his clients so as to avoid any similar incident as that complained of. Let this decision be entered in the respective records of each of the respondents.

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

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