

**FLAVIANO A. PELMOKA, COMPLAINANT, VS. JUDGE FELIX T. DIAZ, JR., COURT OF FIRST INSTANCE OF NUEVA ECIIJA, BRANCH IV, RESPONDENT.**

*A.C. No. 2662-CFI. November 25, 1982*

Ponente: ABAD SANTOS, J.

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**ABAD SANTOS, J.:**

In a verified complaint dated December 4, 1981, Flaviano A. Pelmoka charged Judge Felix T. Diaz, Jr. of the Court of First Instance of Nueva Ecija and Attorneys Facundo T. Bautista and Inocencio B. Garampil, Sr. with serious misconduct in connection with Civil Case No. 279-G, entitled Eustacio Nepomuceno, et al. vs. Ester Garampil, et al.

The charge against Judge Diaz is for gross ignorance of the law and judicial proceedings; failure to protect the complainant's charging lien as one of the lawyers who intervened in the afore-mentioned civil case; and partiality, bias prejudice or malicious motive.

This decision concerns Judge Diaz only who was required to file an answer to the complaint. The answer denies the allegations of the complaint with a prayer that it be dismissed. The complainant filed a reply to the answer and issues having been joined, it was ascertained that the case could be decided on the basis of the documentary evidence submitted without resorting to a formal hearing.

The Rollo of the case reveals, according to Deputy Court Administrator Romeo D. Mendoza, the following:

"Civil Case No. 279-G was a case for partition and reconveyance filed with the CFI of Nueva Ecija, Branch IV, on March 4, 1972, long before respondent judge was appointed to the Bench. When the respondent judge inherited the case in 1976, there were many side issues and/or incidents pending to be resolved, among which were: (a) Motion to exclude defendant Ester Garampil as an heir of the late Leon Arguelles; and (b) Motion for appointment of commissioners to partition the properties, both filed by herein complainant. Respondent judge issued an order denying the motion of the plaintiffs for exclusion of defendant Ester Garampil as heir so as to avoid the piecemeal adjudication of the issues raised in the case. (p. 74.) The motion of the plaintiffs for the appointment of commissioners was likewise denied by respondent judge for the reason that there was then pending before the Court of Appeals, an appeal involving the same parties and the same properties whereby the legality of a Deed of Donation concerning the same properties being litigated, is the very issue to be resolved. (p. 75.) It was for this reason that respondent judge held in abeyance the trial of Civil Case No. 279-G pending termination of the appeal before the Court of Appeals. (p. 80.)

"On May 4, 1981, a Motion to set the case for conference among the parties, was filed by defendants Serranos, Rigors and Garcias who were represented by Atty. Facundo T. Bautista. After a hearing on the aforesaid motion was held, the defendants moved for the approval of the 'Compromise Agreement' dated July 1, 1981, which was signed by all the parties to the case (except defendant Ester Garampil), as well as by all the lawyers of the said parties, namely, complainant himself, representing the plaintiffs, Atty. Facundo Bautista, representing the defendants, and Atty. Inocencio Garampil, representing defendant Ester Garampil. (pp.89-94.)

The parties agreed that they would partition the properties being litigated in the manner specified in the 'Compromise Agreement' and that they would be separately responsible for the payment of the fees of their respective lawyers. On September 21, 1981, the respondent judge issued a decision approving the said compromise agreement on July 1, 1981. (pp. 97-100.)

"Defendant Ester Garampil thereafter filed a motion to deposit in court, the purchase price of a commercial property in the amount of P250,000.00 in order that the proceeds thereof may be disposed of in accordance with the approved compromise agreement. Complainant then filed a motion for the payment of his professional fee in the amount of P57,519.00, (pp. 104-105.) which was later raised to P79,186.00 in two subsequent motions of the com-plainant. (pp. 113-119.)

"On October 22, 1981, defendant Ester Garampil filed a motion for the withdrawal of the sum of P20,000.00 (p. 109.) from the amount deposited with the court, representing partial payment of her share in the estate pursuant to the expressed agree-ment of the heirs of the deceased contained in the compromise agreement, which motion was granted by the respondent judge. (p. 110.) The other parties thereafter moved to withdraw their respective shares in the cash deposit with the court, and on the basis of the said motions, respondent judge issued the Order dated October 30, 1981, allowing the defendants to withdraw their shares, (p. 120.) and the Order dated November 20, 1981, granting the request of the other parties for the withdrawal of their res-pective shares. (pp. 135-137.)

"In his complaint, complainant charged res-pondent judge with gross ignorance of the law and judicial proceedings committed in the following manner: (a) unduly delaying the disposition of Civil Case No. 279-G when respondent judge denied plaintiffs' motion for the appointment of commission-ers to partition the properties; (b) not resolving plaintiffs' motion to exclude defendant Ester Garampil as heir of deceased Leon Arguelles despite early pro-nouncement of Judge Placido Ramos, respondent judge's predecessor, that Ester Garampil is not an heir of the deceased; (c) approving the compromise agreement of partition entered into by all the parties; (d) allowing Ester Garampil to withdraw the amount of P20,000.00 from the cash deposit with the court, considering that she is not an heir of the deceased; and (e) ignoring complainant's motion for payment of his fees out of the money deposited with the court.

"The complainant further alleged that the res-pondent judge failed to protect his charging lien or his attorney's fees when he allowed plaintiffs to with-draw their share from the said deposit. He likewise charged respondent judge with bias and partiality when he allowed all the parties to withdraw their respective shares while the complainant was not allowed to do the same in so far as his charging lien is concerned.

"Respondent judge, in his Answer dated January 13, 1982, (pp. 62-71.) denied all the charges in the complaint. The respondent judge alleged that Civil Case No. 279-G was a case for reconveyance and partition of the estate of deceased Leon Arguelles which had been heard and tried by no less than four (4) judges before him. When he inherited the case in 1976, there were several side issues and/or incidents pending to be resolved and while all these side issues were pending before the court a quo, an appeal in-volving the same parties and the same properties being litigated, was then pending before the Court of Appeals. It was for this reason that the respondent judge denied complainant's motion for appointment of a commissioner as well as his motion to exclude de-fendant Ester Garampil as an heir.

"Respondent judge also stated that he allowed the parties, including defendant Ester Garampil who is not a compulsory heir, to withdraw their res-pective shares from the cash portion of the estate in order to implement the compromise agreement entered into by all the parties and their respective lawyers.

"With respect to the charge of the complainant that the respondent judge failed to protect his charging lien or his attorney's fees, the respondent judge ex-plained that he did not grant complainant's motion for payment of his professional fees because he could not ascertain the exact amount of complainant's just, reasonable and fair fee, considering that his claim of P79,186.00 was contested by the plaintiffs as being exorbitant."

Deputy Court Administrator Mendoza has assessed the charges against Judge Diaz in the light of the record as follows:

"The respondent judge cannot be faulted for dis-missing complainant's motion for appointment of commissioners as well as his motion to exclude de-fendant Ester Garampil as an heir. The respondent judge had to dismiss the said motions to avoid piece-meal adjudication of the issues raised before him. In fact, respondent judge even suspended the trial of the case until after the Court of Appeals shall have resolved the issue pending before it which involved the same parties and the same properties being litigated.

"The respondent judge was likewise justified in granting the motion of the parties to withdraw their respective shares from the cash portion of the estate. The respondent judge only implemented the compromise agreement entered into by all the parties and signed by all their respective lawyers including complainant here-in. With respect to complainant's professional fees, it was specified in the compromise agreement that the parties would be separately responsible for the payment of the fees of their respective lawyers. Since the plaintiffs (complainant's clients), refused to pay complainant's claim for attorney's fee in the amount of P79,186.00 on the ground that the same is exorbitant, the remedy of the complainant is to file a separate action for recovery of his fees where the parties will be afforded the chance to prove their respective claims and defenses.

"In the case of Bongco vs. Judge Serapio, (Adm. Matter No. 1804-CAR, Feb. 28, 1980.) this Court held that where it does not appear from the facts in an administrative complaint that the assailed judicial acts of respondent judge were corrupt or inspired by an in-tention to violate the law, or were done in persistent disregard of well known legal rules, the complaint should be dismissed for lack of merit."

The assessment is well taken except in respect of the failure of the respondent to protect the complainant's right to collect his pro-fessional fees.

The respondent should not have allowed the clients of the complainant to withdraw their shares from the cash deposit with-out extending ample protection to the latter's claim. This error was compounded by his order allowing even Ester Garampil to withdraw her share when she did not sign the compromise agree-ment of July 1, 1981.

It was grossly unfair for the respondent to leave the com-plainant holding an empty bag, so to speak, after he had rendered his professional services as counsel to the plaintiffs. True it is that the compromise agreement stipulates that the parties shall be separately responsible for the payment of the fees for their respective lawyers; nevertheless, the respondent should not have improvidently allowed the clients of the complainant to withdraw their shares without first determining his reasonable fees.

A lawyer has the right to claim the fruits of his labor. He has the equitable right to be paid his fees out of the judgment which he has obtained from a court of justice. Any allegation of exorbitant or excessive fees should have been resolved by the respondent Judge on the basis of quantum meruit. Or the respondent could have in-quired from the plaintiffs what they considered as reasonable attorney's fees for the services of complainant, direct the pay-ment of such "reasonable amount" as partial payment of his attorney's fees, and set for hearing the disputed difference between the claim of the complainant and the amount considered reasonable by the plaintiffs.

WHEREFORE, for his failure to protect the complainant's charging lien, the respondent is hereby reprimanded.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.

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