

RODOLFO MILLARE, PETITIONER, VS. ATTY. EUSTAQUIO Z. MONTERO, RESPONDENT.

A.C. No. 3283. July 13, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is a complaint for disbarment. Pursuant to paragraph 2, Section 1, Rule 139-B of the Revised Rules of Court, this Court resolved to refer it to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

On April 15, 1994, the IBP Board of Governors rendered a decision, finding respondent guilty of malpractice and recommending that he be suspended from the practice of law.

I

Pacifica Millare, the mother of the complainant, obtained a favorable judgment from the Municipal Trial Court, Bangued, Abra (MTC) which ordered Elsa Dy Co to vacate the premises subject of the ejectment case (Civil Case No. 844). Co, through respondent as counsel, appealed the decision to the Regional Trial Court, Branch 11, Bangued, Abra (RTC). She neither filed a supersedeas bond nor paid the rentals adjudged by the MTC. The RTC affirmed in toto the decision of the MTC.

The Court of Appeals (CA) dismissed Co's appeal from the decision of the RTC for failure to comply with Section 22 of B.P. Blg. 129 and Section 22(b) of the Interim Rules and Guidelines (CA-G.R. CV No. 11404). According to the CA, Co should have filed a petition for review and not an ordinary appeal (Rollo, Vol. I, p. 22).

The judgment of the MTC became final and executory on November 19, 1986.

On January 2, 1987, a Manifestation and Motion was filed by respondent as counsel for Co in CA-G.R. CV No. 11404, arguing that the decisions of the MTC and the RTC were null and void for being contrary to law, justice and equity for allowing the lessor to increase by 300% the rentals for an old house. Respondent, admitting his mistake in filing an ordinary appeal instead of a petition for review, prayed that he be allowed to file an action for annulment.

On February 23, 1987, the CA gave due course to respondent's Manifestation and Motion and let the records remain with it. However, on November 10, 1987, the said court ordered the records in CA-G.R. CV No. 11404 to be remanded to the court a quo.

On March 9, 1987, respondent filed with the CA a Petition for Annulment of Decisions and/or Reformation or Novation of Decisions of the MTC and the RTC (CA-G.R. SP No. 11690), insisting that the decisions were not in accordance with existing laws and policies. On December 17, 1987, the CA dismissed the petition for annulment or novation explaining that -

"xxx, aside from the reliefs provided in these two sections (Secs. 1 & 2, Rule 38), there is no other means

whereby the defeated party may procure final and executory judgment to be set aside with a view to the renewal of the litigation, unless (a) the judgment is void for want of jurisdiction or lack of due process of law, or (b) it has been obtained by fraud, x x x. There is no allegation in the present complaint to the effect that the judgments in the former cases were secured through fraud" (Rollo, Vol. I, p. 35; Underscoring supplied).

On January 15, 1988, respondent filed an Urgent Motion for Reconsideration and Motion to Set Motion for Reconsideration for Oral Arguments of the CA decision. The CA denied the motion. Again, respondent requested the CA to set his Motion For Oral Arguments on April 14, 1988.

In a resolution dated February 12, 1988, the CA denied the Motion for Oral Argument and in a resolution dated October 18, 1988, denied the motion for reconsideration of the February 12 Resolution.

Respondent then filed a Petition for Review on Certiorari with this Court (G.R. No. 86084) questioning the decisions of the MTC and the RTC in favor of petitioner's mother. In a Resolution dated January 4, 1989, we denied the petition for having been filed and paid late on December 12, 1988 and November 12, 1988, respectively. A motion for reconsideration from such resolution was likewise denied with finality.

Respondent filed a Motion for the Issuance of a Prohibitory or Restraining Order (dated July 6, 1988) in CA--G.R. SP No. 11690.

On April 12, 1988, the mother of complainant filed a Motion for Execution of the judgment in Civil Case No. 844. Respondent filed an Opposition to the Motion for Execution on the ground that the case was still pending review by the CA in CA-G.R. SP No. 11690 and therefore the motion for execution was premature. On August 23, 1988, the MTC ordered the issuance of a writ of execution. Respondent filed a motion for reconsideration, which was denied. The RTC affirmed the order for the issuance of the writ of execution. Thus, a writ of execution was issued on October 18, 1988.

On October 26, 1988, respondent filed a special civil action (SP CV No. 624) with the RTC, Branch 1, Bangued, Abra for certiorari, prohibition, mandamus with preliminary injunction against the MTC, Provincial Sheriff and complainant's mother, seeking to annul the writ of execution issued in MTC Civil Case No. 844 and RTC Civil Case No. 344. Respondent alleged that the order granting the writ of execution was issued with grave abuse of discretion amounting to lack of jurisdiction since a petition to annul the decisions (CA-G.R. SP No. 11690) was still pending with the CA.

On October 28, 1988, the provincial sheriff, Romulo V. Paredes, deferred the implementation of the writ of execution until the petition filed in SP CV No. 624 for certiorari was resolved. The CA denied in SP CV No. 624 respondent's Urgent Motion to Set Aside and Declare Null and Void the Writ of Execution.

From the decision of the RTC, Branch I, Abra in SP CV No. 624 denying the Petition for Certiorari, Prohibition, Mandamus with Preliminary Issuance of Prohibitory Order, respondent again filed an Appeal and/or Review by Certiorari; Etc. with the CA (CA-G.R. SP No. 17040).

II

We have no reason to reverse the findings of the IBP Board of Governors.

Under Canon 19 of the Code of Professional Responsibility, a lawyer is required to represent his client "within the bounds of the law." The Code enjoins a lawyer to employ only fair and honest means to attain the lawful objectives of his client (Rule 19.01) and warns him not to allow his client to dictate the procedure in handling the case (Rule 19.03). In short, a lawyer is not a gun for hire.

Advocacy, within the bounds of the law, permits the attorney to use any arguable construction of the law or rules which is favorable to his client. But the lawyer is not allowed to knowingly advance a claim or defense that is unwarranted under existing law. He cannot prosecute patently frivolous and meritless appeals or institute clearly groundless actions (Annotated Code of Professional Responsibility 310 [1979]). Professional rules impose limits on a lawyer's zeal and hedge it with necessary restrictions and qualifications (Wolfram, *Modern Legal Ethics* 579-582 [1986]).

Under Canon 12 of the Code of Professional Responsibility, a lawyer is required to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice. Implementing said Canon are the following rules:

"Rule 12.02. - A lawyer shall not file multiple actions arising from the same cause.

xxx xxx xxx

"Rule 12.04. - A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse court processes."

It is unethical for a lawyer to abuse or wrongfully use the judicial process, like the filing of dilatory motions, repetitious litigation and frivolous appeals for the sole purpose of frustrating and delaying the execution of a judgment (Edelstein, *The Ethics of Dilatory Motions Practice: Time for Change*, 44 *Fordham L. Rev.* 1069 [1976]; *Overmeyer v. Fidelista and Deposit Co.*, 554 F. 2d 539, 543 [2d Cir. 1971]).

The rights of respondent's client in Civil Case No. 844 of the MTC were fully protected and her defenses were properly ventilated when he filed the appeal from the MTC to the RTC. But respondent thereafter resorted to devious and underhanded means to delay the execution of the judgment rendered by the MTC adverse to his client. The said decision became executory even pending its appeal with the RTC because of the failure of Co to file a supersedeas bond and to pay the monthly rentals as they fell due. Furthermore, his petition for annulment of the decisions of the MTC and RTC which he filed with the CA (CA-G.R. No. 11690) was defective and dilatory. According to the CA, there was no allegation therein that the courts had no jurisdiction, that his client was denied due process, or "that the judgments in the former cases were secured through fraud."

As ruled in *Regidor v. Court of Appeals*, 219 SCRA 530 (1993):

"A judgment can be annulled only on two grounds: (a) that the judgment is void for want of jurisdiction or for lack of due process of law, or (b) that it has been obtained by fraud. x x x" (at p. 534).

Moreover, when the CA ordered that the records of the case be remanded, respondent knew very well that the decision of the MTC was already ripe for execution.

This Court, in *People of Paombong, Bulacan v. Court of Appeals*, 218 SCRA 423 (1993), ruled:

"xxx [w]hen the judgement of a superior court is remanded to the trial court for execution, the function of the trial court is ministerial only; the trial court is merely obliged with becoming modesty to enforce that judgment and has no jurisdiction either to modify in any way or to reverse the same. xxx" (at p. 430).

(See also *Valenzona v. Court of Appeals*, 226 SCRA 306 [1993] and *Garbo v. Court of Appeals*, 226 SCRA 250 [1993]).

Respondent filed a total of six appeals, complaints or petitions to frustrate the execution of the MTC judgment in Civil Case No. 844, to wit:

(1) Civil Case No. 344 - Appeal from the decision rendered in Civil Case No. 844 of the Municipal Trial Court,

Bangued, Abra, with the Regional Trial Court, Abra;

(2) CA-G.R. CV No. 11404 - Appeal from the decision of the Regional Trial Court, Abra;

(3) CA-G.R. SP No. 11690 - An Action For the Annulment of Decisions And/Or Reformation or Novation of Decisions filed with the Court of Appeals;

(4) G.R. No. 86084 - Petition For Review On Certiorari filed with the Supreme Court;

(5) CA-G.R. SP No. 17040 - Appeal And/Or Review By Certiorari, Etc. filed also with the Court of Appeals; and,

(6) SP Civil Action No. 624 - Petition For Certiorari, Prohibition, Mandamus with Preliminary Issuance of Prohibitory Order filed with the Regional Trial Court, Branch I, Bangued, Abra.

Judging from the number of actions filed by respondent to forestall the execution of the same judgment, respondent is also guilty of forum shopping.

In Villanueva v. Adre 172 SCRA 876 (1989), the Court explained that forum shopping exists when, by reason of an adverse decision in one forum, defendant ventures to another for a more favorable resolution of his case. In the case of Gabriel v. Court of Appeals, 72 SCRA 272 (1976), this Court explained that:

"Such filing of multiple petitions constitutes abuse of the Court's processes and improper conduct that tends to impede, obstruct and degrade the administration of justice and will be punished as contempt of court. Needless to add, the lawyer who filed such multiple or repetitious petitions (which obviously delays the execution of a final and executory judgment) subjects himself to disciplinary action for incompetence (for not knowing any better) or for willful violation of his duties as an attorney to act with all good fidelity to the courts and to maintain only such actions as appear to him to be just and are consistent with truth and honor" (at p. 275).

By having willfully and knowingly abused his rights of recourse in his efforts to get a favorable judgment, which efforts were all rebuffed, respondent violated the duty of a member of the Bar to institute actions only which are just and put up such defenses as he perceives to be truly contestable under the laws (Garcia v. Francisco, 220 SCRA 512 [1993]). As correctly noted by the Committee on Bar Discipline "in filing a number of pleadings, actions and petitions, respondent `has made a mockery of the judicial processes' and disregarded canons of professional ethics in intentionally frustrating the rights of a litigant in whose favor a judgment in the case was rendered, thus, `abused procedural rules to defeat ends of substantial justice'" (Report and Recommendation, IBP Committee on Bar Discipline, p. 2).

WHEREFORE, respondent is SUSPENDED for one year.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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