

EDESIO ADAO, COMPLAINANT, VS. ATTYS. EDWIN B. DOCENA AND RODOLFO JOJI A. ACOL, JR., RESPONDENTS.

A.C. NO. 5073. December 10, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

On January 8, 1999, an administrative complaint for disbarment was filed with this Court by Edesio Adao against Attys. Edwin B. Docena and Rodolfo Joji A. Acol, Jr., docketed as Administrative Case No. 5073.

Complainant alleged that on May 13, 1997, he was proclaimed the duly elected captain of Barangay Mabuhay, Taft, Eastern Samar in the May 12, 1997 barangay elections.

On May 22, 1997, Nerio Naputo (Naputo), the losing candidate, filed with the Municipal Trial Court (MTC), same town, an election protest.

On June 13, 1997, complainant filed a motion to dismiss the election protest on the ground that the MTC has not acquired jurisdiction over his person.

On the same day, Naputo, through his counsels, Attys. Edwin B. Docena and Rodolfo Joji A. Acol, Jr., respondents, filed with the Regional Trial Court (RTC), Branch 1, Borongan, Samar a petition for injunction with prayer for the issuance of a temporary restraining order (TRO) to prevent complainant from participating in the June 14, 1997 election for president of the Association of Barangay Captains (ABC) in Taft, Eastern Samar. Also on the same day, the RTC issued a TRO. Thus, complainant failed to participate in the ABC election.

On June 23, 1997, complainant filed his answer to the petition for injunction. Considering that the election for president of the ABC was over, respondent Atty. Docena filed a notice to dismiss the petition for injunction for being moot.

Complainant, in open court, objected to the dismissal of the petition for injunction. But the incident was not resolved.

Going back to Naputo's election protest, respondent Atty. Docena moved for an extension of time to file comment on complainant's motion to dismiss, which was thereafter granted by the MTC.

On January 8, 1999, complainant filed the present administrative complaint for disbarment against respondent lawyers, alleging that their act of filing unfounded and baseless cases against him constitutes political harassment and a violation of Rules 1.02, 1.03 and 12.02 of the Code of Professional Responsibility quoted as follows:

Rule 1.02 – A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

Rule 1.03 – A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

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

Complainant further alleged that respondents' filing of a false certification on non-forum shopping attached to their petition for injunction constitutes a violation of the rule on forum shopping.

In a Resolution dated November 22, 1999, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

The investigation was conducted by Investigating Commissioner Wilfredo E.J.E. Reyes. In his Report and Recommendation dated August 18, 2004, he recommended that respondents be admonished and reprimanded for filing a false certification on non-forum shopping, thus:

The respondents violated Supreme Court Circular No. 28-91 when they submitted a certification that their client Nerio Naputo had not commenced any other action or proceeding involving the same issue in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal, when in truth and in fact there was an election case pending before the MTC of Taft, Eastern Samar.

The respondents had taken the position that the injunction case and the election protest case are two (2) different cases. The respondents argued that there can be no violation of false certification because there is no forum shopping.

It must be pointed out however that the final resolution of the injunction case would eventually end with the determination of the winners. Hence, it would not be correct to argue that the two (2) cases are not related.

In order for the RTC to finally establish whether petitioner had the right to the injunctive relief, the court will have to determine as to who really won in the electoral contest. The determination of the winner was vested in the Municipal Trial Court.

It can also be observed that the filing of the injunction case was to prevent the participation of the complainant in the ABC election. Hence, when the objective was realized the respondents have immediately filed the motion to dismiss.

The respondents however, have shown remorse in their action and has stated in separate manifestation offered their sincere apologies to the Honorable Court for their unintentional filing of the injunction case if ever the same is to be considered as forum shopping.

In view of the foregoing circumstance, the respondents should be admonished and reprimanded for their act of filing a false certificate in violation of SC Circular No. 28-91 and for violation of the rules of forum shopping.

On November 4, 2004, the IBP Board of Governors passed CBD Resolution No. XVI-2004-470 adopting and approving the Report and Recommendation of Commissioner Reyes, thus:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering their act of filing false certification in violation of SC Circular No. 28-91 and for violation of the rules on forum-shopping, Respondents are hereby ADMONISHED and REPRIMANDED.

The fundamental issue for our resolution is whether the filing by respondents with the MTC of an election protest and with the RTC a petition for injunction against complainant constitutes forum shopping.

To begin with, the essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. A

party violates the rule against forum shopping if the elements of *litis pendentia* are present; or if a final judgment in one case would amount to *res judicata* in the other.[1]

Thus, there is forum shopping when the following elements concur: (1) identity of the parties or, at least, of the parties who represent the same interest in both actions; (2) identity of the rights asserted and relief prayed for, as the latter is founded on the same set of facts; and (3) identity of the two preceding particulars, such that any judgment rendered in the other action will amount to *res judicata* in the action under consideration or will constitute *litis pendentia*.[2]

Applying the foregoing elements to the present case, it is obvious that forum shopping does not exist. The allegations in the election protest and the petition for injunction show that, although there is an identity of parties, there is no identity of rights asserted and reliefs prayed for. In the election protest filed with the MTC, the issue is who between the parties won. Respondents prayed that Naputo be declared the rightful winner.

On the other hand, the petition for injunction, filed by the same respondents with the RTC, seeks to prevent complainant from participating in the June 14, 1997 election for president of the ABC in Taft, Eastern Samar.

It bears stressing that what was filed with the MTC by respondents was a protest, while the action they filed with the RTC was a petition for injunction. Obviously, the causes of action are different. Likewise, the reliefs prayed for are at variance with each other.

As the causes of action and the reliefs prayed for in the election protest and petition for injunction are entirely different, there can be no forum shopping.

Under Section 5, Rule 7 of the 1997 Rules of Civil Procedure, as amended, submission of a false certification on non-forum shopping constitutes indirect or direct contempt of court, without prejudice to the corresponding administrative and criminal actions.

Here, complainant opted to file an administrative case for disbarment against respondents. Unfortunately, he failed to prove his allegation that respondents submitted to the RTC a false certification on non-forum shopping for actually they did not engage in forum shopping.

WHEREFORE, the instant administrative complaint for disbarment against Attys. Edwin B. Docena and Rodolfo Joji A. Acol, Jr. is DISMISSED.

SO ORDERED.

Puno, C.J., (Chairperson), Ynares-Santiago,[*] Corona, and Azcuna, JJ., concur.

[*]Designated to sit as additional Member of the First Division under Special Order No. 474 dated October 19, 2007 issued pursuant to Administrative Circular No. 84-2007.

[1] *Mondragon Leisure and Resorts Corporation v. United Coconut Planters Bank*, G.R. No. 154187, April 14, 2004, 427 SCRA 585, citing *T’Boli Agro-Industrial Development, Inc. (TADI) v. Solilapsi*, 394 SCRA 269, 278 (2002).

[2] *PAL Employees and Loan Association, Inc. v. Philippine Airlines, Inc.*, G.R. No. 161110, March 30, 2006, 485 SCRA 632, citing *Philippine Nails and Wires Corporation v. Malayan Insurance Co., Inc.*, 397 SCRA 431 (2003).

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