

BERNARDO A. TADLIP, COMPLAINANT, VS. ATTY. FIDEL H. BORRES, JR., RESPONDENT.

A.C. No. 5708. November 11, 2005

Ponente: TINGA, J.

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TINGA, J.:

Lawyers in government service should be more sensitive in their adherence to their professional obligations under the Code of Professional Responsibility, for their disreputable conduct is more likely to be magnified in the public eye.[1] The actuations of respondent brought to light in this case bring disrepute not only to his good name, but to the government and to the State. Restoration of public trust cannot ensue without an equivocal statement from this Court that such behavior will not stand unpunished.

We consider the administrative liability of Atty. Fidel H. Borres, Jr. (respondent), a Provincial Agrarian Reform Adjudicator (PARAD) of the Department of Agrarian Reform Regional Arbitration Board (DARAB) for rendering a blatantly irregular decision.

The facts of the case are as follows:

On 3 October 1987, by virtue of Presidential Decree No. 27 (PD 27), the Ministry of Agrarian Reform issued Original Certificate of Title No. P-106 (OCT No. P-106), Emancipation Patent No. A-028380 to Eusebio E. Arce conveying to him Three Thousand Nine Hundred Eight (3,908) square meters of agricultural land situated in Mambajao, Camiguin. The land was formerly owned by Angel Madarieta.[2]

Subsequently, on 14 December 1987, a Deed of Transfer under PD 27 was executed by Angel Madarieta, as represented by his wife, Pelagia Madarieta (Madarieta) and Eusebio E. Arce.[3] The parties agreed that the land would be given to Arce in consideration of Seven Hundred Fifty (750) kerosene cans of palay.[4]

Arce died on 23 December 1993. As he was succeeded by two minor daughters ages 5 and 6 years old, herein complainant Tadlip, who is his nephew, assumed the responsibility of tilling the land. Tadlip caused the reallocation of the disputed land through the aid of the Bureau of Legal Assistance, Department of Agrarian Reform, Yuming, Mambajao, Camiguin (BLA-DAR) in a petition dated 9 October 1997 and docketed as DARAB Case No. X-861.[5]

Respondent, as PARAD of the DARAB, issued an Order[6] dated 3 April 1998 granting the petition of complainant reallocating the land to him and the heirs of Arce.

However, the title to the parcels of land was never transferred to complainant and the heirs of Arce because unknown to them, respondent rendered another Order[7] dated 26 January 1999 canceling the registration of the same OCT No. P-106 and ordering the issuance of a transfer certificate of title ex parte in favor of Madarieta in DARAB Case No. X-99-02.

As borne out by the records of the case, Madarieta filed two pleadings on 22 January 1999. The first was a

Petition[8] entitled "In the Matter of Cancellation of Original Certificate of Title No. EP-106/Emancipation Patent No. A-028380 and Retention Right" docketed as DARAB Case No. X-99-02. Madarieta based her Petition on the ground that she was not able to exercise her right of retention, the land is idle, abandoned, unattended and unproductive and that the late Eusebio Arce did not comply with the agreed monthly amortization as payment for the lot. By the nature of the pleadings filed, Madarieta obviously executed an ex parte proceeding. Hence, no attempt was made to implead Tadlip or the Arce heirs, despite the existence of their legal interest over the property and reality that a clear deprivation of such right would ensue should the petition be granted.

The second was a Complaint[9] entitled Pelagia Madarieta v. Heirs of Eusebio Arce/Bernardo A. Tadlip, docketed as DARAB Case No. X-99-04 for Cancellation of Original Certificate of Title No. EP 106 and Retention. In the said complaint, Madarieta substantially alleged the same facts and prayed for the same remedies except that she included one more allegation, that which pertains to the reallocation of the land to complainant.

Complainant alleged that the Complaint was filed by Madarieta upon the instruction of respondent, to correct the procedural flaw attending to her initial Petition.[10] Interestingly, complainant also asserts that the filing of the petition and complaint of Madarieta was not simultaneously done albeit it would seem as if they were. According to him, respondent PARAD, after rendering the Order dated 26 January 1999, advised Madarieta to file a complaint impleading complainant and the heirs of Arce so as to make it appear that the cancellation of the title of the emancipated land was regular and legal.[11] In effect, complainant maintains that the filing of the petition and the complaint by Madarieta on 22 January 1999 was not simultaneous but successive,[12] where after respondent rendered the Order for the petition, Madarieta thereafter filed the complaint at a later date but made it appear that the same was also filed on 22 January 1999.

In any event, the Petition, despite its obvious flaws, was decided by respondent in favor of Madarieta just four (4) days after it had been filed. Thus, OCT No. P-106 was ordered cancelled even before Tadlip or the heirs of Arce had any possible opportunity to be heard.

Complainant discovered this fact only when the DARAB-Camiguin furnished the BLA-DAR a copy of the Order in DARAB Case No. X-99-02 on 25 February 1999. Complainant filed an Urgent Motion for Reconsideration[13] but this was denied by respondent in an Order[14] dated 19 March 1999. As if complainant's travails in the hands of respondent were not enough, respondent also rendered on 17 May 1999 a Decision[15] on the Complaint in DARAB Case No. X-99-04 also adverse to complainant.

Matters were aggravated when Madarieta filed a motion for execution pending appeal on 25 May 1999.[16] The same was granted by respondent on 11 June 1999[17] despite the vehement opposition[18] of complainant who cited procedural irregularities according to the DARAB Rules of Procedure, particularly the rule that any motion for execution of the decision of the Adjudicator pending appeal shall be filed with the DARAB, and not the adjudicator.[19]

Hence, on 20 March 2002, complainant filed this instant administrative complaint. On 7 August 2002, this Court required respondent to comment on the complaint.

Respondent, in his comment dated 9 December 2002, denied all the accusations hurled against him. He related that complainant filed an "appeal and certiorari" case relative to the land dispute but instead of waiting for the result, the latter filed another case before the Ombudsman and subsequently this administrative case.

In a resolution dated 19 February 2003, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

The IBP found that respondent violated Canon I of the Code of Professional Responsibility by disregarding and

failing to apply the specific provisions of the 1994 New Rules of Procedure[20] (DARAB Rules) in disposing of DARAB Case Nos. X-99-02 and X-99-04 and recommended that respondent be suspended from the practice of law for a period of two (2) months with a warning that a repetition of the same or similar act will be dealt with more severely.[21]

We agree with the findings of the IBP but hold that the recommended penalty is quite slight for the infractions done by respondent.

This Court cannot delve into the factual or legal questions raised by complainant. We can only rule on its administrative aspect. However, for us to fully dispose of the case, the multiple violations of respondent must be subjected to scrutiny and scorn.

Respondent is not only a lawyer practicing his profession, but also a provincial adjudicator, a public officer tasked with the duty of deciding conflicting claims of the parties. He is part of the quasi-judicial system of our government. Thus, by analogy, the present dispute may be likened to administrative cases of judges whose manner of deciding cases was similarly subject of respective administrative cases.

To hold the judge liable, this Court has time and again ruled that the error must be "so gross and patent as to produce an inference of ignorance or bad faith or that the judge knowingly rendered an unjust decision." [22] It must be "so grave and on so fundamental a point as to warrant condemnation of the judge as patently ignorant or negligent." [23] Otherwise, to hold a judge administratively accountable for every erroneous ruling or decision he renders, assuming that the judge erred, would be nothing short of harassment and that would be intolerable. [24]

However, it has also been held that when the law violated is elementary, the failure to know or observe it constitutes gross ignorance of the law. The disregard of established rule of law which amounts to gross ignorance of law makes a judge subject to disciplinary action. [25]

In *Pesayco v. Layague*, [26] the Court had the opportunity to declare that:

A judge must be acquainted with legal norms and precepts as well as with procedural rules. When a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of our courts. Such is gross ignorance of the law. One who accepts the exalted position of a judge owes the public and the court the duty to be proficient in the law. . . . Basic rules of procedure must be at the palm of a judge's hands. [27]

Needless to say, respondent was sorely remiss in his duties as the PARAD of Camiguin in the disposition of cases filed by Madarieta.

He violated Rule VI of the DARAB Rules, to wit:

SECTION 1. Issuance of Summons, Time to Answer and Submission of Evidence. Upon the filing of the complaint or petition, the hour/time, day, month, and year when it was filed shall be stamped thereon. The corresponding summons and notice of hearing to the adverse party, attaching therewith a copy of such complaint or petition, affidavit and documentary evidence if any, shall be served by personal delivery or registered mail to the defendant or respondent within two (2) days therefrom. The summons and notice of hearing shall direct the defendant or respondent to file an answer to the complaint or petition and submit counter affidavit and other documentary evidence, if any, within a non-extendible period of ten (10) days from receipt thereof furnishing a copy to the petitioner or the complainant. The summons shall also specify the date, time and place of the hearing and order the parties and their witnesses to appear at the scheduled date of hearing. The aforementioned affidavits and counter-affidavits of the witnesses shall take the place of their direct testimony. Failure of any party to submit his affidavits or counter affidavits as herein directed will be interpreted by the Adjudicator or Board as a waiver to present evidence or that he has more evidence to submit

and the case could be considered submitted for decision.

Clearly, complainant was a party in interest in the two DARAB cases filed by Madarieta as he stood to be adversely affected by the decision of respondent. Yet, he was never summoned in DARAB Case No. X-99-02, which was decided against him just four (4) days after it was filed. Evidently complainant had no reasonable opportunity to be heard before he was divested of the land over which respondent, just a few months earlier, had affirmed complainant's rights thereto.

It would be absurd to accept the reasoning of respondent that since complainant was not impleaded as a party to DARAB Case No. X-99-02, the latter was not entitled to be notified of the hearing and the eventual disposition of the case. The DARAB Rules requires the joinder of all parties-in-interest whether as defendants or respondents. Parties-in-interest are defined as "(a)ll persons who claim an interest in the dispute or subject matter thereof adverse to complainant or petitioner, or who are necessary to a complete determination or settlement of the issue involved therein." [28] Complainant, as the holder of title and possession of the property sought to be reconveyed, is ineluctably a party-in-interest.

Respondent should have dismissed Madarieta's petition for failure to implead complainant, the heirs of Arce, and all others who derive title from them. [29]

Complainant intimates that the Complaint was instituted precisely to cure the defect attending the Petition. The Court cannot conclude definitively that this remedial measure was instigated on the suggestion of the respondent. But assuming this were true, respondent's undue haste in granting the Petition just four days after it was filed practically obviated whatever curative effect the Complaint may have served, since the relief sought in the latter was the same already granted in the former. Whatever proceedings may have transpired in the hearing of the Complaint, these were a redundancy, considering that the relief prayed for had already been granted.

Furthermore, as correctly observed by the IBP Commissioner, complainant's urgent motion for reconsideration may very well be considered by respondent as a motion for intervention and yet respondent denied the same.

Remarkably, respondent, nine months prior to his Order dated 26 January 1999, has rendered an Order dated 3 April 1998 reallocating the land in question from Arce to complainant. Respondent himself had vested complainant with an interest in the lot with all the rights therewith accompanying the order of reallocation. He, therefore, cannot afterwards deny such right or interest from complainant to defend the latter's claim and subsequently cancel OCT No. P-106 unilaterally. In doing so, complainant's possession, if not ownership of the land has been adversely affected.

Complainant has also alleged that he was able to obtain positive action on his petition for reallocation only after paying the respondent One Thousand (P1,000.00) pesos. [30] He also categorically states that "there was a rumored pay-off between respondent and the Madarieta Family." [31] Admittedly through, no other evidence was given to corroborate the alleged "pay-off" and his payment of P1,000.00. Thus, we cannot deem these serious allegations as proven. Still, the dubious nature of the decisions is inescapable, and on that basis administrative liability can ensue.

Compounding respondent's liability is the fact that in granting execution pending appeal, he also disregarded Rule XII of the DARAB Rules, which states:

SECTION 2. Execution pending appeal. Any motion for execution of the decision of the Adjudicator pending appeal shall be filed before the Board, and the same may be granted upon showing good reasons under conditions which the Board may require. (Emphasis ours.)

It is unmistakably stated in unequivocal terms that execution pending appeal must be filed before the Adjudication

Board. Respondent violated this rule in rendering an order of execution pending appeal when such authority has been given to the Board alone. Even the respondent cited the said provision of the DARAB Rules in his position paper[32] and yet it seems that he merely dispensed of the rules and replaced it with his own system of procedure contrary to the DARAB Rules.

In addition, on 14 May 1993, the DAR Region X, Macanhan, Carmen, Cagayan de Oro received an advisory through an official radiophone message addressed to all Regional Agrarian Reform Adjudicators (RARADs) and PARADs of the DAR from the then Undersecretary Lorenzo Reyes not to execute any ejection proceedings promptly appealed to the DARAB.[33] On 15 September 1993, the same undersecretary issued another official radiophone message addressed to RARAD Jimmy Tapangan of DAR Region X, Cagayan de Oro which is faithfully reproduced as follows:

"HELLO, PLEASE ADVISE OUR ADJUDICATORS NOT TO EXECUTE DECISIONS WHERE NOTICE OF APPEAL WAS FILED WITHIN THE REGLEMENTARY PERIOD INSTEAD THE RECORDS OF THE CASE SHOULD BE IMMEDIATELY FORWARDED TO THE BOARD PD SOME MEMBERS OF THE BOARD ARE CONTEMPLATING OF THROWING THE BOOKS TO THOSE WHO INSIST ON EXECUTING DECISIONS THAT ARE PROMPTLY INSPITE OF OUR PREVIOUS ADVISES NOT TO DO SO PD THE BOARD HAS CONSISTENTLY RULED IN SO MANY DECISIONS ALREADY THAT DECISIONS THAT ARE PROMPTLY APPEALED CAN NO LONGER BE EXECUTED BY THE ADJUDICATOR CONCERNED PD THESE RADIOMESSAGE IS THE OFFICIAL ADVISE VERBAL OF THE BOARD PD KEEP UP THE GOOD WORK WARMEST REGARDS END. . . "[34]

Hence, as early as 1993, the RARADs and PARADs have been aware that executions pending appeal was to be acted upon by the DARAB and not by them.

Respondent's non-observance of the DARAB Rules on notice and hearing and his grant to Madarieta of her motion for execution pending appeal in effect deprived complainant of the land he tills and the source of his income. Complainant woke up one day not knowing that the emancipated land which he thought was already reallocated to him was lost by order of respondent. He was not given the chance to defend his claim over the property. This is tantamount to deprivation of property without due process of law, a constitutional guarantee available to every individual.

The actual review of the subject issuance of the respondent should be undertaken in the proper judicial proceedings, and not by this Court at this time via an administrative action. Nevertheless, respondent's culpability under the Code of Professional Responsibility is indubitable. As a lawyer, the IBP determined, and we subscribe to such determination, that respondent violated Canon 1 of the Code of Professional Responsibility which states:

Canon 1—A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and for legal processes.

While the duty to uphold the Constitution and obey the laws is an obligation imposed upon every citizen, a lawyer assumes responsibilities well beyond the basic requirements of good citizenship. As a servant of the law, a lawyer should moreover make himself an exemplar of others to emulate.[35]

A member of the bar who assumes public office does not shed his professional obligations. Hence the Code of Professional Responsibility, promulgated on 21 June 1988, was not meant to govern the conduct of private practitioners alone, but of all lawyers including those in government service. This is clear from Canon 6 of the said Code. Lawyers in government service are public servants who owe the utmost fidelity to the public service. Thus they should be more sensitive in the performance of their professional obligations, as their conduct is subject to the ever-constant scrutiny of the public.[36]

Respondent, as a Provincial Adjudicator of the DARAB, was reposed with a higher gravamen of responsibility than a lawyer in private practice. The recommended penalty of two months suspension is too light under the circumstances, and a penalty of six (6) months' suspension more appropriate.

As held in recent cases,[37] the penalty for a judge found to be guilty of gross ignorance of the law is six (6) months. In the case at bar, after due consideration of the facts involved, the Court believes and so holds that the same penalty should be imposed upon respondent as he disregarded pertinent rules of procedure of the DARAB that led to the unjust deprivation of complainant of his property.

WHEREFORE, premises considered, respondent is hereby **SUSPENDED** from the practice of law for a period of six (6) months. Let a copy of this Resolution be furnished the Bar Confidant for appropriate annotation in the record of respondent.

SO ORDERED.

Puno, Acting C.J., (Chairman), Austria-Martinez, and Callejo, Sr., JJ., concur.
Chico-Nazario, J., on leave.

[1] R. AGPALO, COMMENTS ON THE CODE OF PROFESSIONAL RESPONSIBILITY AND THE CODE OF JUDICIAL CONDUCT 47 (2001).

[2] Rollo, p. 70.

[3]Id. at 52-54.

[4]Id. at 52.

[5] Id. at 122-124.

[6] The dispositive portion of the Order provides:

WHEREFORE, Original Certificate of Title No. EP-106, Emancipation Patent No. A-028380 issued in favor of Eusebio E. Arce is hereby ordered cancelled and/or revoked, and a new Emancipation Patents are hereby ordered issued in favor of petitioner Bernardo A. Tadlip covering an area of TWO THOUSAND NINE HUNDRED (2,900) SQUARE METERS and HEIRS OF EUSEBIO E. ARCE covering an area of ONE THOUSAND (1,000) SQUARE METERS.

The Register of Deeds of Camiguin is hereby ordered to cancel and/or revoked the registration of Original Certificate of Title No. EP-106, Emancipation Patent No. A-028380 issued in the name of Eusebio E. Arce.

SO ORDERED.

Id. at 34.

[7] Id. at 37-38.

[8]Id. at 72-74.

[9] Id. at 43-45.

[10] Complainant alleges that while the Complaint was dated 22 February 1999, it was actually only filed on 25 February 1999.

[11]Id. at 7.

[12] In his Position Paper, complainant pegs the actual date of filing of the Complaint was as 25 February 1999, although there is no definitive proof of such date of filing.

[13] Rollo, pp. 40-42.

[14] Id. at 3-44.

[15]The dispositive portion of the assailed decision reads:

WHEREFORE, premises above considered, Original Certificate of Title No. P-106, Emancipation Patent No. A-028380 issued in the name of Eusebio E. Arce is hereby ordered cancelled and/or revoked for being null and void ab initio. The Register of Deeds of Camiguin is hereby ordered to cancel the registration of the aforesaid title, and issue Transfer Certificate of Title in favor of petitioner pursuant to DAR Administrative Order No. 08, Series of 1995, P.D. No. 27, Executive Order No. 228 and R.A. No. 6657.

Respondent is hereby ordered to turn over immediately to petitioner that portion of land illegally awarded with an area of One Thousand Five Hundred Sixty Three (1,563.2) square meters, more or less, and the area of Two Thousand Three Hundred Forty Four (2,344.8) [s]quare meters, more or less, covered by retention of petitioner shall be under leasehold system.

Both parties are hereby ordered to proceed to the MARO of Mambajao, Camiguin to execute a Leasehold Contract pursuant to Section 12, of R.A. No. 6657.

SO ORDERED.

Id. at 17-18.

[16] Id. at 158-160.

[17] Id. at 164-166.

[18] Id. at 161-162.

[19] See Section 2, Rule XII, DARAB Rules.

[20] The 1994 Department of Agrarian Reform Adjudication Board New Rules of Procedure was in effect when the present controversy arose.

[21] Report and Recommendation of Investigating Commissioner Doroteo B. Aguila, Rollo, p. 238.

[22] Bengzon v. Adaoag, 320 Phil. 422 (1995) citing De la Cruz v. Concepcion, 235 SCRA 597 (1994); Roa v. Imbing, 231 SCRA 59 (1994).

[23] Id. at 427, citing Negado v. Autojay, 222 SCRA 295, 297 (1993).

[24] Rollo, p. 27.

[25] Tolentino v. Judge Cabal, 385 Phil. 631, 647 (2000) citing Bacar v. De Guzman, 271 SCRA 328 (1997); Almeron v. Sardido, 281 SCRA 415 (1997).

[26] A.M. No. RTJ-04-1889, 22 December 2004, 447 SCRA 450.

[27] Id. at 459.

[28] Rule V, Section 1 of the DARAB Rules.

[29] Supra note 21 at 237.

[30] Rollo, p. 5.

[31] Ibid.

[32] Respondent's Position Paper, Rollo, p. 108.

[33] Id. at 109.

[34] Ibid.

[35] R. AGPALO, LEGAL ETHICS 62 (1997), citing COMMENTS OF IBP COMMITTEE THAT DRAFTED THE CODE OF PROFESSIONAL RESPONSIBILITY, pp.1-2 (1980).

[36] Vitriolo v. Dasig, 448 Phil. 199, 208 (2003).

[37] Lim v. Dumlao, A.M. No. RTJ-04-1556, 31 March 2005, 454 SCRA 196; Mabutas v. Perello, A.M. Nos. RTJ-03-1817 and RTJ-04-1820, 8 June 2005.

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