

## **BRIGIDO TOQUIB, COMPLAINANT, VS. ATTY. VALERIANO TOMOL, JR., RESPONDENT.**

*Adm. Case No. 554. January 03, 1969*

Ponente: SANCHEZ, J.

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### **SANCHEZ, J.:**

The problem before Us is whether or not respondent has lived up to his lawyer's oath that he would conduct himself as a lawyer, in the words of Section 3, Rule 138 of the Rules of Court, "to the best of my knowledge and discretion."

The facts that gave rise to this case are the following:

Respondent attorney, Valeriano Tomol, Jr., was counsel for complainant's father, octogenarian Hermogenes Toquib, defendant in Civil Case No. R-958 of the Court of First Instance of Southern Leyte, entitled "Teodulo de Paz, et al., plaintiffs, versus Hermogenes Toquib, defendant," for recovery of possession of a parcel of land.

After plaintiffs closed their evidence in the court below, respondent moved that the deposition of defendant Hermogenes Toquib be taken in view of his advanced age and inability to attend the hearing at Maasin. The lower court granted his motion. But at 2:00 o'clock p.m. of December 22, 1960, the scheduled date of the taking of the deposition before the Justice of the Peace of Hinunangan, defendant Toquib did not appear. When at 3:00 o'clock in the afternoon the would-be deponent was still not available, respondent moved for postponement. The judge denied his motion, informed the parties then present that he would submit a report to the Court of First Instance, which he did.

On May 19, 1961, the Court of First Instance issued an order considering the case submitted for decision in view of defendant's failure to attend the scheduled deposition.

On May 25, 1961, the same court rendered judgment in favor of plaintiffs declaring them the true and real owners of the real property in dispute, ordering defendant to vacate the same, and to pay damages for the occupation thereof.

Between June and August, 1961, complainant, on several occasions, went to see respondent inquiring about the status of the case and asking when his father's turn to present evidence would come. Respondent, however, consistently advised him to wait for the notice of hearing.

Sometime in June, 1962, complainant's father received a writ of execution served upon him by the provincial sheriff. Complainant promptly went to see respondent, asked him the reason therefor, since his father had not even presented his evidence. Respondent advised complainant to tell his father to accept the writ.

Because respondent did not take any action in the case, complainant engaged the services of Atty. Romeo Gomez who filed a notice of appeal. Complainant checked the record of this case, found that respondent, as early as June 7, 1961, received copy of the decision through Manuel Labrador whom he authorized to receive mail matters in

his behalf.

Atty. Gomez advised complainant to go back to respondent to ask him for a copy of the decision. Respondent gave complainant for delivery to Atty. Gomez a letter dated July 1, 1962. In that letter, respondent stated that he had not received copy of the decision but suggested that Atty. Gomez "study the possibility of filing an action for annulment of the decision inasmuch as the reglementary period for filing a motion to vacate the judgment under the same proceedings has already lapsed."

Came the administrative complaint before this Court. We gave due course. By resolution of December 3, 1962, we required respondent to answer in 10 days from notice. That resolution was received by respondent on January 14, 1963. Respondent simply filed a petition praying that complainant be ordered to furnish him copies of certain documents. But even after his request was granted, respondent did not as much as bother to file his answer to the administrative complaint as required in Our aforesaid resolution of December 3, 1962.

Following the investigation, the Solicitor General filed his report recommending that respondent be suspended from his office as lawyer for a period of six (6) months. Having on file the Solicitor General's complaint and the answer thereto pursuant to Section 5, Rule 139 of the Rules of Court, as well as the memoranda of the parties, the case is now before Us for decision.

For two reasons, respondent must be suspended.

First. The failure of defendant's deposition of December 22, 1960 should have brought home to respondent the precarious situation in which his client was then found. He knew that the only evidence on record in the civil case is that presented by plaintiffs. It should have dawned upon him then that as a lawyer who controlled matters of legal procedure for his client, it was properly his duty to make representations to the court to withhold action on the case and to ask for another date for the taking of defendant's deposition. He failed to do so. His excuse that "he had not yet conferred and agreed with complainant as to the date of the availability of his father's presence," is poor, indeed. He should have thought that the case could not remain in the calendar indefinitely; and that the judge could have declared the case submitted for decision for lack of proper representations on his part for the presentation of defendant's evidence. He did nothing between December 22, 1960 to May 19, 1961. In effect, the court, on May 19, 1961, declared the case submitted for decision. In the ordinary course of business, he must have received a copy of this order. Again, he did nothing.

Between June and August, 1961, complainant inquired from respondent about the status of this case, asked him when defendant's turn to present evidence would take place. And yet, respondent consistently advised him to wait for the notice of hearing.

The Solicitor General in his report stated: "Respondent's inaction evinces neglect on his part to protect the interest of his client."

Second. Copy of the decision of May 25, 1961 was served upon respondent through Manuel Labrador, on June 7, 1961.

Respondent would want to shake off the ill-effects of this fact by saying that Labrador had no authority from him to receive registered mails. It was wrong for him to say so.

At that time, respondent was Mayor of Silago. Manuel Labrador was an employee of the Silago post office. Labrador testified that there was an arrangement between him and respondent that Labrador would give to respondent's secretary all mail matters addressed to respondent. Labrador admitted that he received in behalf of respondent the mail covering the decision of the case addressed to respondent and delivered it to the latter's

secretary. He averred that he delivered mail matters for respondent in identical manner countless of times. Not that Labrador is not telling the truth. For, respondent himself corroborated Labrador. Respondent declared that whatever mails were addressed to him were to be delivered to his secretary by Manuel Labrador.

Respondent took no steps to protect the interests of his client on the face of that adverse decision. Which he could have very well done. Because, respondent stayed at Silago since he was elected Mayor thereof in 1959. Silago is only 17 kilometers from Hinunangan, residence of complainant and his father. He did not as much as notify his client thereof. He had allowed the statutory period for appeal to lapse. He did not even procure from the court relief from such judgment.

This is not a case of simple laxity nor of mere failure to serve a client's interests. It goes farther. It is the attorney's insensibility to the misfortune of his client brought about by an adverse decision occasioned by the attorney's own gross negligence. Surely enough, such indifference is notches below the standard required of his office as a lawyer.

Canon 15 of the Canons of Professional Ethics warns that "(t)he lawyer owes 'entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability,' to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied." He failed in his devotion to the interest of his client.[1] Worse, his conduct which, in the language of this Court in *Blanza vs. Arcangel*, Adm. Cases 492, September 5, 1967, should be up to the level of "par excellence," is, on the contrary, even reprehensible.

WHEREFORE, judgment is hereby rendered suspending Attorney Valeriano Tomol, Jr. from the practice of law for one (1) year from the date this judgment becomes final.

Let this decision be noted in respondent's record—as a member of the Bar—in this Court.

Costs against respondent.

### **SO ORDERED.**

Concepcion, C.J., Makalintal, Zaldivar, Ruiz Castro, Fernando and Capistrano, JJ., concur.

Reyes, J.B.L., and Dizon, JJ., took no part.

Respondent suspended from the practice of law.

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[1] *Javellan vs. Lutero*, L-23956, July 21, 1967.

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