

ESPERANZA SARMIENTO, COMPLAINANT, VS. FLORENCIO M. DAGDAG, RESPONDENT.

A.M. No. P-55. July 17, 1975

Ponente: CASTRO, J.

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CASTRO, J.:

Antonio D. Nitura, clerk of court of the Court of First Instance of Isabela, Branch IV, and Florencio M. Dagdag, a clerk in the same court, are charged in these three administrative cases with dishonesty, extortion, and misconduct in office.

In AM No. P-55, Esperanza Sarmiento, in her complaint dated February 18, 1973, charged that as a consideration for setting for hearing her pending case, a cadastral claim, the respondent Florencio Dagdag on several occasions extorted from her a total of P80, and that he also asked her to give him two bundles of tobacco leaves. In his answer dated February 13, 1973 the respondent Dagdag denied that he had ever asked the complainant for anything in connection with her pending case.

In AM No. P-99, Esperanza Sarmiento, the same complainant in P-55, alleged in her complaint dated February 18, 1973 that the respondent Antonio D. Nitura who was commissioned by the court below to receive her evidence in civil case 142, for recovery of possession of real estate, after the defendants were declared in default, dilly-dallied until he (Nitura) succeeded in extorting P20 from her, and that she later gave him the sum of P70 in consideration of Nitura's promise that he would submit his report and make the order restoring to her the possession of her land for the judge to sign, but that after several months of waiting, she discovered that Nitura had reneged on his promise. She likewise alleged that the last time the complainant approached the respondent Nitura, she gave him only P10 which, in the complainant's view, displeased the latter and prompted him to make an order, which the judge below signed, lifting the order of default based on an alleged "very late" motion for reconsideration filed by the defendants. The complainant further alleged that although more than a year had already passed, she has not yet received a copy of this order. She finally charged that in Roxas, Isabela it is an open secret that Nitura and a fellow-employee in the same sala, Florencio M. Dagdag, used to extort money from litigants and practitioners who were forced to accede so that their cases would not gather dust.

In his answer dated December 20, 1973 Nitura denied that he delayed the reception of the complainant's evidence, and asserted that, on the contrary, it was the complainant's counsel who, in the complainant's presence, requested him to schedule the reception of evidence for a later date as their witnesses were not in court. The evidence for the complainant was thereafter taken on June 8, 1971. Nitura also denied that he had ever received any remuneration from the complainant.

On the alleged delay in the submission of his report, Nitura stated that he submitted his report on June 11, 1971. He further stated that the court below could not have issued an order for or against the complainant in the civil case in question because the defendants therein filed (on August 11, 1971) a petition to vacate the order of default, which was granted on September 8, 1971. On November 12, 1971 when the defendants filed their answer, the

judge below was abroad, and on his return, he extended his leave of absence because of injuries he sustained as a result of a vehicular accident. The case of the complainant which remained pending was set for pre-trial on November 27 and December 20, 1973.

In AM No. P-98, Emerenciana Pagaragan, in her complaint dated February 23, 1973, subscribed that in civil case 145 of the Court of First Instance of Isabela, Branch IV, she petitioned the court to compel the re-sale of a lot she had sold to one Benito Pua on account of an unpaid loan of P4,350; that on July 21, 1971 she deposited the sum of P2,000 with the respondent Nitura on the strength of the latter's representation that it was so ordered by the trial court; that she discovered later, however, that there was no such court order, that the respondent, taking advantage of her being an unlettered, old woman, issued a receipt for only P1,800; that she then asked the respondent to return her money but the latter merely kept on making promises, and later told her that the money could not be returned "as a Court order approving her Manifestation is yet to be secured;" and that on account of the non-return of her money, she has not yet obtained the title to the land in litigation.

In his answer dated December 31, 1973 Nitura stated that in the "Manifestation" signed by the complainant and Benito Pua and filed with the court below on June 9, 1972 it was stipulated that the former would advance and deliver to the latter, which she did on the same day, the sum of P2,200, and that the balance of P2,150 would be paid on or before July 10, 1972; that the complainant, however, failed to pay the balance on July 10, 1972, and requested him (Nitura) to talk to Pua and transmit to the latter the sum of P2,000; and that he (Nitura) acceded and, on July 27, 1972, transmitted the money to Pua.

On the charge that he made it appear that he had received only P1,800, the respondent Nitura said that it had to be so because the complainant granted the request of her nephew, Eduardo Malangin (who appears to have witnessed the delivery of the money to the respondent by the complainant), to lend him P200; Malangin, however, later returned the P200 to the respondent.

The respondent further asserted that on August 9, 1973 the counsel of Pua manifested in open court "that despite the balance of Three Hundred Fifty Pesos (P350.00) due the petitioner Benito Pua, they are willing to surrender the controverted Title No. T-30255 and in a few days to also execute the necessary Deed of Reconveyance, "and on the same day surrendered to him (Nitura) the said certificate of title. Pua, however, failed to execute the deed of reconveyance, and so the trial court on November 23, 1973 ordered him (Pua) to do so within five (5) days from receipt of the order otherwise "the Court will direct the execution of the said Deed of Reconveyance in favor of the defendant Emerenciana Pagaragan by the Clerk of Court of this Court."

We referred these three administrative cases to the Executive Judge of the Court of First Instance of Isabela "for investigation, report and recommendation."

The two complainants in the cases at bar, however, despite due notice, failed to appear on the various dates (December 16-17, 1974, January 8, 1975, February 11 and 14, 1975) scheduled by the judge below for hearing their complaints. At the hearing scheduled on February 11, 1975 the husband of Esperanza Sarmiento came and was as an added cautionary step, instructed by the judge below to inform his wife of the next hearing. She never appeared for no apparent reason at all.

In view of these developments, the charges lodged by Esperanza Sarmiento and Emerenciana Pagaragan against the respondents Dagdag and Nitura have remained unsubstantiated.

With regard to the alleged dilly-dallying by the respondent Nitura in the reception of the evidence of the complainant Sarmiento and in the submission of his report to the court below, the record shows that the motion to declare the defendants in default in civil case 142 was filed on April 23, 1971 and was acted upon by the trial

court on April 26, 1971. The plaintiff presented her evidence on June 8, 1971 and the respondent Nitura submitted his report together with the transcript of stenographic notes consisting of twenty-three pages on June 11, 1971.

It cannot therefore be said that the respondent Nitura delayed the processing of the case of the complainant Sarmiento. The lifting of the order of default issued by the trial court, on the strength of an allegedly late motion for reconsideration filed by the defendants in civil case 142, cannot, in the nature of things, be taken against the respondent Nitura since it is not he but the judge below who is responsible for the issuance of an order of that sort.

With regard to the alleged failure of the respondent Nitura to deliver to Benito Pua the questioned sum of P2,000, it appears uncontroverted from the record that receipt thereof was acknowledged by the latter.

ACCORDINGLY, the charges against Antonio D. Nitura and Florencio M. Dagdag, in Administrative Matters Nos. P-55, P-98 and P-99, are hereby dismissed.

Makasiar, Esguerra, Munoz Palma, and Martin, JJ., concur.

Teehankee, J., is on leave.

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