THE HEIRS OF THE LATE FAUSTINA BORRES (EXCEPT VICTORIA VILLAREIZ-RADJAIE) REPRESENTED BY ARTURO V. AGUDO; THE HEIRS OF THE LATE SEGUNDINA BORRES, REPRESENTED BY LUDOVICO B. BUHA...

G.R. NO. 131023. July 17, 2007

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

These are consolidated petitions for certiorari under Rule 65 of the Rules of Court. In G.R. No. 131023, the heirs of the late Faustina Borres, et al. (the Borres heirs),[1] assail the September 25, 1997 Resolution[2] of the Regional Trial Court of Roxas City, Branch 17, granting Victoria Villareiz-Radjaie's petition for relief and the October 14, 1997 Order[3] directing Atty. Alberto Villaruz to explain why he should not be suspended from the practice of law for deceit, malpractice, and/or misconduct. Both the Resolution and the Order were issued by Judge Julius L. Abela in Civil Case No. V-6186 entitled "The Heirs of the Late Faustina Borres (except Victoria Villareiz-Radjaie), et al. v. Victoria Villareiz-Radjaie." In G.R. Nos. 131505 and 131768, petitioners Atty. Alberto Villarruz and former Judge Jose O. Alovera, respectively, assail the November 28, 1997 Order[4] issued by Judge Abela likewise in Civil Case No. V-6186, suspending them from the practice of law effective immediately for committing acts constituting deceit, malpractice, and/or misconduct.

The facts as culled from the records are as follows:

On October 4, 1929, the Court of First Instance of Capiz rendered a decision in Cadastral Case No. 15, G.L.R.O. Cadastral Records No. 480, adjudicating Lot No. 3376 of the Cadastral Survey of Panay, Capiz, in favor of Faustina, Segundina, Felisa, Micaela, Maria, and Sixto, all surnamed Borres. The Original Certificate of Title No. 17776 over the subject property was issued on October 3, 1930.

Faustina died before World War II, leaving as heirs her children, namely: Jose, Juan, Concepcion, and Dolores, all surnamed Villareiz. Herein respondent Victoria Villareiz-Radjaie (Mrs. Radjaie) is the daughter of the late Jose Villareiz who claims sole ownership over the subject property. Meanwhile, the Borres heirs assert their rights over the property as heirs of Faustina, Segundina, Felisa, Micaela, Maria, and Sixto, and as co heirs of Mrs. Radjaie.

It appears that Faustina and her siblings mortgaged the subject property in favor of Navitas Fishing Company but failed to redeem the same. Mrs. Radjaie claims that Jose personally redeemed the property and had it exclusively titled in his name on July 24, 1940 under TCT No. 4446. Thereafter, on January 30, 1962, TCT No. RT-2089 was issued as a reconstituted title of TCT No. 4446. Jose died on February 13, 1963.

On April 8, 1992, TCT No. T-24150 was issued in the name of Mrs. Radjaie. She claims sole ownership over the property which she allegedly inherited from her father. However, the Borres heirs allege that Jose fraudulently caused the reconstitution and issuance of the title exclusively in his name.

On July 6, 1992, the Borres heirs, represented by Atty. Villarruz, filed a complaint for partition and accounting[5]

against Mrs. Radjaie that was docketed as Civil Case No. V-6186. The action also sought the cancellation of TCT No. T-24150 and the declaration of the property as commonly owned by Mrs. Radjaie and the Borres heirs. The case was raffled to Branch 17 of the Regional Trial Court of Roxas City then presided by Judge Alovera.

For her alleged failure to file an answer, Mrs. Radjaie was declared in default. On October 8 and December 10, 1993, the Borres heirs presented their evidence ex-parte.

In a Decision[6] allegedly promulgated on January 30, 1995, Judge Alovera ordered the cancellation of TCT No. T-24150 and declared the subject property as commonly owned by Mrs. Radjaie and the Borres heirs. On January 31, 1995, Judge Alovera retired from the judiciary having reached the mandatory age of retirement.

On January 9, 1996, Acting Presiding Judge Delano F. Villarruz, issued an order for the issuance of a writ of execution to enforce the January 30, 1995 Decision.[7] Subsequently, possession of the subject property was turned over to the Borres heirs.

On March 5, 1996, Mrs. Radjaie filed a petition for relief assailing the January 30, 1995 Decision and the January 9, 1996 Order. She alleged that she was never served with summons; that the trial court did not acquire jurisdiction over her person; that the proceedings in Civil Case No. V-6186 are null and void; and that the January 30, 1995 Decision was penned by Judge Alovera after his retirement and was never entered in the book of judgments.[8] She prayed for the issuance of a writ of preliminary mandatory injunction and "that disciplinary and contempt proceedings be taken against those involved in the perfidious anomaly to tamper with the administration of justice."[9]

Mrs. Radjaie likewise filed a disbarment complaint against Judge Alovera before the Supreme Court, docketed as Administrative Case No. 4748 and entitled "Radjaie vs. Atty. Alovera."

On March 29, 1996, Judge Abela was appointed as the new Presiding Judge of Branch 17. On June 14, 1996, he issued a resolution nullifying the January 30, 1995 Decision and the January 9, 1996 Order. Further, he ordered the issuance of a preliminary injunction upon the filing of a bond and directed the Borres heirs to surrender possession of the subject property to Mrs. Radjaie.[10]

The Borres heirs moved for reconsideration but were denied. Meanwhile, Mrs. Radjaie filed a motion to approve cash bond which was granted on August 9, 1996.[11] A writ of preliminary mandatory injunction was issued and possession of the subject property was restored to Mrs'. Radjaie on August 12, 1996.

On September 25, 1997, Judge Abela issued the assailed Resolution granting the petition for relief from order, as follows:

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> The record and the evidence amply prove the allegations in the petition that defendant was never served with summons to answer the complaint. Under such circumstance, she can not be reasonably expected to Answer the complaint.
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> Moreover, the "decision" dated January 30, 1995 was not filed with the Clerk of Court and therefore not properly rendered. (Section 1, Rule 36, Rules of Court). The decision being void, the same can never become final and cannot be executed. The assailed Order dated January 9, 1996, granting execution of the decision dated January 30, 1995 is also void and of no effect.
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> Wherefore, premises considered, the petition for relief is granted. As prayed for the defendant is ordered reinstated to the possession of the property in question. The entire proceedings in the above-entitled case is ordered set aside and defendant-petitioner thru counsel is given (fifteen) 15 days from receipt of this order to

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> Answer the complaint.
>
> SO ORDERED.[12]

Thereafter, in an Order dated October 14, 1997, Judge Abela directed Atty. Villarruz to explain why he should not be suspended from the practice of law for deceit, malpractice and/or gross misconduct, for making it appear that a hearing was conducted on December 10, 1993 when in fact no such hearing took place, and for making it appear that his pleading entitled "Offer of Exhibits" was filed with the court on January 30, 1995 when no such pleading was actually filed.[13]

Likewise, in an Order dated November 6, 1997, Judge Abela required Judge Alovera to explain why he should not be suspended from the practice of law for making it appear that he issued an Order dated January 25, 1995 admitting Atty. Villarruz's "Offer of Exhibits" when no such order could have been issued prior to.his retirement on January 31, 1995, and for submitting the January 30, 1995 Decision on August 1, 1995 when he was already retired and no longer had the authority to decide cases.[14]

Atty. Villarruz and Judge Alovera did not submit the required explanations. In separate Orders dated November 14[15] and 21,[16] 1997, they were notified that hearings would be conducted, but they failed to appear before the court.

On November 3, 1997, the Borres heirs filed before this Court a petition for certiorari with prayer for temporary restraining order in G.R. No. 131023.[17] Without giving due course to the petition, the Court issued a temporary restraining order ordering Judge Abela to cease and desist from enforcing the October 14, 1997 Order. The Court also ordered him to desist from further conducting proceedings in Civil Case No. V-6186.

Meanwhile, on November 28, 1997, Judge Abela. issued an order, the dispositive portion of which reads:

> Wherefore, premises considered, this Court hereby orders Attys. Alberto Villarruz and Jose O. Alovera, suspended from the practice of law effective immediately.
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> The Clerk of Court is hereby ordered to furnish copies of this Order to all courts in the Philippines. Let a certified copy of this Order be transmitted to the Supreme Court together with a full statement of the facts upon which this order is made.
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> SO ORDERED.[18]

Consequently, Atty. Villarruz and Judge Alovera filed their respective petitions before this Court in G.R. Nos. 131505[19] and 131768[20] assailing the order of suspension. The Court later issued temporary restraining orders in both cases, enjoining Judge Abela to cease and desist from enforcing and/or implementing such order.[21]

On January 13, 1999, the Court ordered the consolidation of G.R. Nos. 131023, 131505 and 131768.[22] Thereafter, the parties submitted their memoranda.[23]

The Borres heirs claim that the January 30, 1995 Decision has become final and executory; that Judge Abela does not have the authority to nullify said decision; and that the proper remedy is an action for annulment of judgment before the Court of Appeals.

Mrs. Radjaie claims that the January 30, 1995 Decision is non-existent; that the proceedings in Civil Case No. V-6186 are null and void; and that a petition for relief under Rule 38 of the Rules of Court is the proper remedy for assailing the aforementioned decision.

Atty. Villarruz and Judge Alovera alleged that they were denied due process, and that Judge Abela has no authority to suspend them from the practice of law.

The issues for resolution are as follows: 1) whether the petitions should be dismissed for violation of the principle of hierarchy of courts; 2) in G.R. No. 131023, whether Judge Abela committed grave abuse of discretion in granting the petition for relief and setting aside the January 30, 1995 Decision; and 3) in G.R. Nos. 131505 and 131768, whether Judge Abela committed grave abuse of discretion in suspending petitioners Atty. Villarruz and Judge Alovera from the practice of law.

The consolidated petitions are without merit.

Petitioners erred in directly filing their respective petitions before this Court for it violates the principle of judicial hierarchy of courts. It is well-settled that although the Supreme Court, Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction, such concurrence does not give the petitioners unrestricted freedom of choice of court forum.[24] Petitioners should have filed their petitions before the Court of Appeals. However, considering the peculiar circumstances of these cases and the length of time that the proceedings herein have been pending, we deem it necessary and practical to resolve the present controversy in order to avoid further delay.[25]

In G.R. No. 131023, the Borres heirs claim that the January 30, 1995 Decision has long become final and executory. They argue that Judge Abela gravely abused his discretion in giving due course to the petition for relief and setting aside the January 30, 1995 Decision.

Petitioners'claim is not well taken.

The January 30, 1995 Decision could never attain finality for being voId. It was penned by Judge Alovera after his retirement when he no longer had the authority to decide cases. We take judicial notice of this Court's Decision in Administrative Case No. 4748 dated August 4, 2000, where the Court en banc disbarred Judge Alovera for gross misconduct, violation of the lawyer's oath and the Code of Professional Responsibility, thus:

> The established facts, as quoted from the Report dated November 17, 1999 of the Office of the Bar Confidant, are as follows:
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> x x x x
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> On December 10, 1993, there were several criminal and civil actions scheduled for trial, which commenced at about 10:00 . in the morning, before Br. 17, including Civil Case No. V-6186, which was listed number four in the court calendar. Judge Alovera presided over the hearing and Teresita V. Bauzon, court stenographer of Br. 17, took down notes of the proceedings. Atty. Villaruz appeared for the accused in a criminal case before Br. 17 at the time. The court had a recess at 11:10 and resumed at 11:35 in the morning. After the hearing of criminal cases was through, Civil Case No. V-6186 was called at about 11:55 in the morning, but the plaintiffs as well as their counsel, Atty. Villaruz, were no longer inside the courtroom. The session thus adjourned at 11:57 in the morning without Civil Case No. V-6186 being heard.
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> At about 11:30 in the morning of the same date, Atty. Villaruz approached Rosa Dapat, who was the court stenographer at the time of RTC, Br. 15, Roxas City, while she was in her office.
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> Atty. Villaruz told her that Judge Alovera was requesting her to assist in the proceedings of Civil Case No. V-6186. At first she was hesitant to accede to the request as Br. 17 had also its own court stenographer. She relented though when told that Br. 17 as well as the other branches had no available court stenographer. She then went to Br. 17 and saw Atty. Villaruz standing by the door of the chambers of Judge Alovera. Atty. Villaruz motioned her to enter the chambers, which is separate from the courtroom. While inside the chambers, she saw Judge Alovera behind his desk and other people whom she did not know. Upon being told that Mrs. Dapat would be the stenographer, Judge Alovera told Atty. Villaruz to start the proceedings. Following the manifestation made by Atty. Villaruz, a witness, whom she later recognized to be Atty. Arturo Agudo, was

called. At that instant Judge Alovera stood up and said, "All right, you just continue," and then went out of the chambers. Judge Alovera would occasionally return to the chambers in the course of the proceedings, but he would just sit down and listen while Atty. Villaruz was conducting his direct examination of the witness and presenting documentary evidence. The proceedings lasted up to 12:10 in the afternoon, with Judge Alovera making only two rulings in the course thereof, including the one he made at the end when he ordered the plaintiffs to file their written offer of evidence on January 20, 1994.

x x x x

Sometime in February of 1995, Mrs. Teresita V. Bauzon, court stenographer of Br. 17 since 1993, was asked to type the draft decision in Civil Case No. V-6186 in Judge Alovera's house. When she inquired if he can still do it, Judge Alovera told her that he had one (1) year more to decide cases. With this assurance, she typed the draft decision on a single bond paper without a duplicate as Judge Alovera was dictating it.

On August 1, 1995 at about 9:30 in the morning, retired Judge Alovera came to Br. 17, with a man and a woman, later identified as the plaintiffs in Civil Case No. V-6186, behind him. While he was approaching Nenita Aluad, he uttered to the latter, "Receive this, receive this," referring to the questioned January 30, 1995 decision, which he was holding. As he spread the decision on her table, he continued, "Because I will defend you even up to the Plaza Miranda. And give copies to these two," pointing to the plaintiffs who were at his back. Almost instantaneously, Mrs. Aluad replied, "I would not receive it because it is already August 1, 1995," and she did not argue with him anymore so as not to embarrass him for being her former superior. She then went out of the office while retired Judge Alovera, as well as the two plaintiffs were still inside. At about the same time, Mrs. Concepcion Alcazar, another employee of Br. 17 and the clerk-in-charge of civil cases and special proceedings therein, saw Judge Alovera inside the office of Br. 17 while trying to have her co-employees receive the questioned decision. Nobody, however, received the same because it was already seven (7) months after his retirement. A little later, she found the questioned decision, together with the formal offer of exhibits of January 20, 1995 and the order of January 25, 1995, on the top of her table. Although she noticed that these records were not stamped "RECEIVED" as a matter of procedure, she went on to attach the said records to the expediente of Civil Case No. V-6186. She even gave a copy of the questioned decision to one of the plaintiffs, Ireneo Borres, and to Atty. Villaruz, which was received for him by Ireneo Borres. After keeping the expediente, she then entered the questioned decision in her logbook.

The Borres heirs succeeded in having the questioned decision executed when, on January 31, 1996, the lessee of the property, which is the subject matter of Civil Case No. V-6186, surrendered possession of the said property in favor of the Borres heirs. Said transfer of possession was made pursuant to the writ of execution issued on January 19, 1996 by the Acting Presiding Judge of Br. 17, Hon. Delano F. Villaruz, through Clerk of Court Susan Mendoza Arce.

Meanwhile, complainant, who had been working in Japan together with [her] husband who is employed at the Turkish Embassy in Tokyo, Japan, learned of what happened to her property in Panay, Capiz. She was thus prompted to come back to the Philippines, which resulted in losing her job in Japan.

x x x x

Based on the foregoing findings, the Bar Confidant recommended the disbarment of respondent, declaring that it found more than sufficient evidence to sustain complainant's charge against respondent that, indeed, the January 30, 1995 decision in Civil Case No. V-6186, which divested complainant of her property in Panay, Capiz, was penned by respondent after his retirement from the judiciary on January 31, 1995.

This Court finds the recommendation of the Office of the Bar Confidant to be well-taken. Respondent has thus sufficiently demonstrated that he is morally and legally unfit to remain in the exclusive and honorable fraternity of the legal profession.

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> x x x x
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> The testimonies of Nenita M. Aluad, Teresita V. Bauzon and Concepcion Alcazar were all quite telling on how lespondent acted in a grossly reprehensible manner in having the questioned decision dated January 30, 1995 come to fore, leading ultimately to its execution divesting the complainant of her property. Respondent gravely abused his relationship with his former staff, pompously flaunting his erstwhile standing as a judge. Respondent disregarded his primary duty as an officer of the court, who is sworn to assist the courts and not to impede or pervert the administration of justice to all and sundry. In so doing, he made a mockery of the judiciary and eroded public confidence in courts and lawyers.
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> Despite the opportunities accorded to respondent to present substantial defense to refute the charges against him, he failed neither to do so nor to offer a valid explanation. When the integrity of a member of the bar is challenged, it is not enough that he denies the charges against him; he must meet the issue and overcome the evidence against him. He must show proof that he still maintains that degree of morality and integrity which at all times is expected of him.
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> Given the peculiar factual circumstances prevailing in this case, the Court finds as appropriate the recommended penalty of the Office of the Bar Confidant in its Report. Such gross misconduct of the respondent brings intolerable dishonor to the legal profession and calls for the severance of respondent's privilege to practice law for life.
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> WHEREFORE, respondent JOSE O. ALOVERA is hereby DISBARRED. The Office of the Clerk of Court is directed to strike out his name from the Roll of Attorneys and to inform all courts of this Decision.
>
> SO ORDERED.[26]

From the foregoing, it is clear that the proceedings in Civil Case No. V-6186 were attended with irregularities. The hearing on December 10, 1993 was simulated; the January 30, 1995 Decision was penned by Judge Alovera after he retired; and the decision was never entered in the book of judgments as mandated in the rules. Thus, petitioners' contention that the decision has become final and executory lacks merit.'

Under the circumstances, the Borres heirs cannot claim rights under the decision nor can they insist on its binding character. In Nazareno v. Court of Appeals,[27] we held:

> [A] decision penned by a judge after his retirement cannot be validly promulgated; it cannot acquire a binding effect as it is null and voId. Qoud ab initio non valet, in tractu temporis non convalescit.
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> In like manner, a decision penned by a judge during his incumbency cannot be validly promulgated after his retirement. When a judge retired all his authority to decide any case, i.e., to write, sign and promulgate the decision thereon also "retired" with him. In other words, he had lost entirely his power and authority to act on all cases assigned to him prior to his retirement, x x x
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> A void judgment never acquires finality. Hence, while admittedly, the petitioner in the case at bar failed to appeal timely the aforementioned decision of the Municipal Trial Court of Naic, Cavite, it cannot be deemed to have become final and executory. In contemplation of law, that void decision is deemed nonexistent. Thus, there was no effective or operative judgment to appeal from. In Metropolitan Waterworks & Sewerage System vs. Sison, this Court held that:
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> "x x x [A] void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no

> protection to those who seek to enforce. All proceedings founded on the void judgment are themselves regarded as invalId. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there were no judgment. It, accordingly, leaves the parties litigants in the same position they were in before the trial."
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> Thus, a void judgment is no judgment at all. It cannot be the source of any right nor of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, it can never become final and any writ of execution based on it is void: "x x x it may be said to be a lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head."

The above ruling was reiterated in Hilado v. Chavez[28] where we also held that no rights can be obtained or divested from a void judgment. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one. All acts performed under it and all claims flowing out of it are voId.

In this case, Mrs. Radjaie assailed the January 30, 1995 Decision by way of a petition for relief. Under Section 3, Rule 38 of the Rules of Court, a verified petition for relief must be filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered or such proceeding was taken.

The Borres heirs claim that the petition for relief was filed out of time. However, we likewise held in Hilado that where a judgment is on its face void ab initio, the limited periods for relief from judgment in Rule 38 are inapplicable. That judgment is vulnerable to attack in any way and at any time, even when no appeal has been taken.[29] So it is in this case where the decision cannot be said to have any force and effect. The decision is null and void as it was rendered in the complete absence of authority on the part of Judge Alovera. Accordingly, it is as if no decision was rendered at all.[30]

In G.R. Nos. 131505 and 131768, we find that Judge Abela did not gravely abuse his discretion in issuing the November 28, 1997 Order suspending Atty. Villarruz and Judge Alovera from the practice of law. Grave abuse of discretion may arise when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence. By grave abuse of discretion is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.[31]

There is none in this case. Judge Abela acted pursuant to Section 28 of Rule 138 and Section 16, Rule 139-B of the Rules of Court which provide that the Court of Appeals or a Regional Trial Court may suspend an attorney from practice for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the lawyer's oath, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. The suspended attorney shall not practice his profession until further action of the Supreme Court.

Atty. Villarruz and Judge Alovera claim that they were denied due process as there was no verified complaint filed against them before the trial court. Likewise, Atty. Villarruz argues that the trial court did not lawfully acquire jurisdiction over him as he was not included as one of the respondents in the petition for relief. However, in the early case of Tajan v. Cusi, Jr.,[32] the Court held:

> It should be observed that proceedings for the disbarment of members of the bar are not in any sense a civil action where there is a plaintiff and the respondent is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken for the purpose of preserving courts of justice from the official ministration of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorney's alleged

> misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice. The court may therefore act upon its own motion and thus be the initiator of the proceedings, because, obviously the court may investigate into the conduct of its own officers. Indeed it is not only the right but the duty of the Court to institute upon its own motion, proper proceedings for the suspension or disbarment of an attorney, when from information submitted to it or of its own knowledge it appears that any attorney has so conducted himself in a case pending before said court as to show that he is wanting in the proper measure of respect for the court of which he is an officer, or is lacking in the good character essential to his continuance as an attorney. This is for the protection of the general public and to promote the purity of the administration of justice. (Emphasis added)

In Re: Agripino A. Brillantes,[33] disciplinary proceedings for the suspension of an attorney originated from an unverified motion. The Court, citing Tajan v. Cusi, Jr., ruled that there is no substantive justifying purpose to be served by adhering to the prescription that a complaint against a lawyer be under oath. It was held that there is substantial compliance with the requirement where the motion was filed as an offshoot of a preliminary investigation which was conducted on the basis of sworn complaints.

In this case, Mrs. Radjaie sought an investigation on the alleged anomalies in the proceedings of Civil Case No. V-6186. Such constitutes sufficient ground for Judge Abela to conduct an inquiry into the matter. Further, it must be emphasized that Atty. Villarruz and Judge Alovera were duly notified of the charges against them in the Orders dated October 14 and November 6, 1997. They were given ten days within which to explain why they should not be suspended from practice. Thereafter, they were again duly notified that hearings relative to the aforementioned orders would be conducted. During the hearings held on November 20 and 27, 1997, they were given the opportunity to answer the charges against them and to produce witnesses in their own behalf. However, they ignored the orders as well as the scheduled hearings and instead filed their respective petitions for certiorari directly before this Court.

It is well-settled that the essence of due process is that a party is given a reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. Where the opportunity to be heard, either through verbal arguments or pleadings, is accorded and the party can present its side or defend its interest in due course, there is no denial of due process. Indeed, where a party was afforded an opportunity to participate in the proceedings but failed to do so, he cannot complain of deprivation of due process.[34]

At any rate, the issue in G.R. No. 131768 has been effectively mooted as this Court has ordered Judge Alovera's disbarment in Administrative Case No. 4748.

As regards Atty. Villarruz, the records[35] show that Judge Abela transmitted to the Court a certified copy of the assailed order of suspension on December 16, 1997. As mandated by the Rules,[36] the Court shall make full investigation of the facts involved and make such order revoking or extending the suspension, or removing the attorney from his office as such, as the facts warrant. On December 22, 1997, the Court issued a temporary restraining order, "effective immediately and continuing until further orders from this Court," ordering Judge Abela to cease and desist from enforcing and/or implementing the November 28, 1997 Order in Civil Case No. V-6186, ordering complainant Alberto Villaruz suspended from the practice of law.[37]

WHEREFORE, the consolidated petitions are DISMISSED. The September 25, 1997 Resolution granting Victoria Villareiz-Radjaie's petition for relief, and the Orders dated October 14, 1997 directing Atty. Alberto Villaruz to explain why he should not be suspended from the practice of law and November 28, 1997, suspending Atty. Villaruz from the practice of law for committing acts constituting deceit, malpractice and/or gross misconduct, of the Regional Trial Court, Branch 17, Roxas City are AFFIRMED. The Temporary Restraining Orders issued, in these cases are hereby LIFTED and the Regional Trial Court is DIRECTED to resume

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proceedings in Civil Case No. V-6186.

SO ORDERED.

Austria-Martinez, Chico-Nazario and Nachura, JJ., concur.

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[1] The Heirs of the Late Faustina Borres (except Victoria Villareiz-Radjaie), represented by Arturo V. Agudo; The Heirs of the Late Segundina Borres, represented by Ludivico Buhat; The Heirs of the Late Felisa Borres, represented by Attorney-in-fact Arturo V. Agudo; The Heirs of the Late Micaela Borres, represented by Concepcion Bolivar Daradar; The Heirs of the Late Maria Borres (who died single andwithout issue); and the Heirs of the Late Sixto Borres, represented by Ireneo B, Borres.

[2] Rollo (G.R. No. 131023), pp. 79-81.

[3] Id. at 82.

[4] Rollo (G.R. No. 131768), pp. 14-16.

[5] Rollo (G.R. No. 131023), pp. 141-154.

[6] Id. at 25-30.

[7] Id. at 31.

[8] Under Section 2, Rule 36 of the Rules of Court, "if no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the Clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry."

[9] Rollo (G.R. No. 131023), p. 40.

[10] Id. at 56-58.

[11] Id. at 69.

[12] Id. at 81.

[13] Id. at 82.

[14] Rollo (G.R. No. 131768), p. 12.

[15] Rollo (G.R. No. 131505), p. 30.

[16] Rollo (G.R. No. 131768), p. 13.

[17] Rollo (G.R. No. 131023), pp. 3-23.

[18] Rollo (G.R. 131505), pp. 34-35.

[19] Id. at 3-26.

[20] Rollo (G.R. 131768), pp. 4-11.

[21] Rollo (G.R. No. 131505), pp. 71-73.

[22] Rollo (G.R. No. 131768), p. 94.

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[23] Memorandum for Respondent Victoria Villareiz-Radjaie, rollo (G.R. No. 131023), pp. 301-349;Consolidated Memorandum of the Petitioners in G.R. No. 131023 and G.R. No. 131505, id. at 808-831;Memorandum for Public Respondent Judge Julius Abela, id. at 833-857; and Memorandum of PetitionerJudge Jose Alovera, rollo (G.R. No. 131768), pp. 709-728.'

[24] Yaredv. Ilarde, 391 Phil. 722, 733 (2000).

[25] See Ouano v. PGTT International Investment Corporation, 434 Phil. 28, 35 (2002).

[26] Radjaie v. Atty. Alovera, 392 Phil. 1, 8-18 (2000).

[27] 428 Phil. 32, 40-42(2002).

[28] G.R. No. 134742, September 22, 2004, 438 SCRA 623, 649.

[29] Id.

[30] See Metropolitan Waterworks & Sewerage System v. Sison, G.R. No. L-40309, August 31, 1983 124 SCRA 394, 404.

[31] Banal III v. Panganiban, G.R. No. 167474, November 15, 2005,475 SCRA 164, 174.

[32] G.R. No. L-28899, May 30, 1974, 57 SCRA 154, 159-160.

[33] Adm. Case No. 1245, March 12, 1977, 76 SCRA 1,12.

[34] Villaluzv. Ligon, G.R. No. 143721, August 31, 2005, 468 SCRA 486, 500-501.

[35] Rollo (G.R. No. 131023), p. 329.

[36] Rule 138, Sec. 29. Upon suspension by Court of Appeals or Court of First Instance, further proceedings in Supreme Court. - Upon such suspension, the Court of Appeals or the Court of First Instance shall forthwith transmit to the Supreme Court a certified copy of the order of suspension and a full statement of the facts upon which the same was based. Upon receipt of such certified copy and statement, the Supreme Court shall make full investigation of the facts involved and make such order revoking or extending the suspension, or removing the attorney from his office as such, as the facts warrant.

Rule 139-B. Sec. 17. Upon suspension by Court of Appeals or Regional Trial Court, further proceedings in Supreme Court. - Upon such suspension, the Court of Appeals or a Regional Trial Court shall forthwith transmit to the Supreme Court a certified copy of the order of suspension and a full statement of the facts upon which the same was based. Upon the receipt of such certified copy and statement, the Supreme Court shall make a full investigation of the case and may revoke, shorten or extend the suspension, or disbar the attorney as the facts may warrant.

[37] Rollo (G.R. No. 131505), p. 71.

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