

ELIODORA LIPANA, PETITIONER, VS. EULALIO GARCIA, JUDGE OF FIRST INSTANCE OF CAVITE, AND ELEUTERIO BELTRAN, RESPONDENTS.*G.R. No. 48608. October 28, 1942*

Ponente: OZAETA, J.

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Respondent Eleuterio Beltran and petitioner Eliodora Lipana were attorney and client. The attorney as private prosecutor represented the client as complainant in an abortive criminal action for estafa against one Joaquin Lipana, which was dismissed by the Court of First Instance of Cavite upon motion of the provincial fiscal for lack of sufficient evidence. After the attempt of the private prosecutor to appeal to this Court from the order of dismissal had failed, the respondent attorney filed a writing in the same criminal case in the Court of First Instance of Cavite entitled "Petition, to Fix. Attorney's Fees," in which he specified the nature of the services rendered by him to the petitioner as complainant, alleged "that for all such services the complainant has not paid him a single centavo, the contract being that his services shall be paid upon the termination of the testate proceedings of Manuela Lipana, from which it was then expected said Eliodora Lipana would get, and in fact she got, a big share in the properties of said deceased," and prayed the court to fix his fees at P300 and to order the herein petitioner to pay the same immediately. The petitioner opposed that motion of the respondent on the grounds (1) that the P300 claimed by the respondent had been included in his claim filed in the testamentary proceedings Nos. 3624 and 3626 of the Court of First Instance of Cavite, (2) that the court no longer had jurisdiction to reopen the criminal case which had been finally decided and terminated, and (3) that if the latter believed he is entitled to any remuneration for his services rendered in said case, he should file a separate, independent civil action before the proper court.

Notwithstanding such opposition, the respondent judge set the motion for trial, after which he issued an order of the following tenor:

"Resultando, segijn las pruebas del abogado E. A. Beltran, y de acuerdo con el articulo 22. Regla 127 de los Reglamentos de los Juzgados. que los honorarios que reclama dicho abogado estan justificados;

"Se ordena a Eliodora Lipana pague al abogado E. A. Beltran por honorarios por sus servicios prestados a la misma en la presente causa, la suma de P175 solamente, que el Juzgado estima suficiente por dichos servicios prestados."

The petitioner now seeks the annulment of said order.

Section 22 of Rule 127 cited by the respondent judge, which is a reproduction of section 29 of Act No. 190, does not authorize the procedure followed by the respondents. The respondent attorney did not and could not claim a lawyer's lien upon the judgment of dismissal entered in the criminal case.

Said case, having been terminated and buried in the archives, could not be dug up and resuscitated in order to

superimpose thereon a new and different action. That is as plainly contrary to procedural law as it is contrary to natural law to graft a fresh limb into a dead tree.

The case for the petitioner against the respondents is too plain for argument

The order in question is annulled, with costs. So ordered.

Yulo, C. J., Moron, Paras, and Bocobo, JJ., concur.

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