

ROSITA TAN, PETITIONER, VS. ATTY. JOSE L. LAPAK, RESPONDENT.*G.R. No. 93707. January 23, 2001*

Ponente: MENDOZA, J.

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This is a complaint filed by Rosita Tan against Atty. Jose L. Lapak for misconduct, based on respondent's failure to file with this Court a petition for review on certiorari of a resolution of the Court of Appeals dismissing complainant's appeal. Complainant alleged that despite the fact that this Court had granted respondent an extension of the time to file the petition for review on certiorari and she had paid respondent his fee, the latter nonetheless failed to file the petition in this Court. Complainant's letter, dated January 10, 1991, addressed to then Chief Justice Marcelo B. Fernan, stated:

Ako po ay sumusulat sa iyo upang ihingi ng tulong ang aking suliranin na may kaugnayan sa aking kaso, G.R. No. 93707 ROSITA TAN v. CA, et al. na dahilan sa kapabayaang ng aking abogado na si Atty. Jose Lapak ay hindi nakapagfile ng Certiorari nasa ngayon kanyang inihihinging palugit ay naibigay naman, at ako po ay nagbigay naman ng halagang P4,000.00 upang gawain lamang ang petition sa pagrerepaso ng Certiorari subalit inuulit pang hindi gawain.

Kgg. Na Chief Justice ako po'y pinaasa lamang ng aking abogado na wala man lamang nagawa kung ano ang nararapat. Ako naman ay isang walang karanasan sa bagay na ito ay naniwala at naghintay. Nang makausap ko po siya ay aking tinapat kung ano na at walang nadating na resulta sa ginawa niya ang sagot sa aking maghintay na lamang daw ako. Ngunit ng ako po ay pumunta sa Maynila at napadaan ako sa Korte Suprema saka ko pa lamang napag-alaman na ang aking abogado ay hindi nakapaggawa ng brief ng Certiorari at kaya napawalaan ng bisa ang aking apelasyon.

Akin pong naisip na idulog ang aking kaapihan sa Pangulo ng IBP ng Camarines Norte ang mga bagay na ito ang sagot po sa aking ay maari akong maghain ng demanda laban sa aking abogado na si Atty. Jose L. Lapak ngunit ako po ay mahirap lamang at isa pa wala akong matutustos sa aking abogado. Isa pa po wala akong pera at sapat na pinag-aralan kaya po hindi ko alam kung sino ang aking dudulungan para tumulong sa mahihirap. Kaya naisip ko pong sumulat sa opisina ninyo, para ihain ang aking karaingan. Kung inyo pong mamarapatin ako ay humihingi ng tulong sa iyo bilang pinakamataas na hustisya ang aking kaapihan.

Respondent denied the allegations against him. In his manifestation and comment, dated March 4, 1991, he contended:

a)

Ms. Rosita Tan was formerly represented by Atty. Juanito Subia in Civil Case No. 5295, Rosita Tan vs. Wilfredo Enriquez before the Regional Trial Court of Camarines Norte; said case was dismissed due to failure of Rosita Tan and his (sic) counsel to appear during the scheduled Pre-Trial of the case; . . .said Order of dismissal was however reconsidered;

b)

On November 11, 1986, Atty. Marciano C. Dating, Jr. entered his appearance for the said Rosita Tan as her original counsel, Atty. Juanito Subia, had withdrawn for reasons only known to her; . . . Atty. Marciano C. Dating, Jr. filed an Amended Complaint;

c)

That on September 20, 1988, the Court, through Hon. Luis Dictado, who heard the case, rendered a decision dismissing Rosita Tan's complaint;

d)

That on October 13, 1988, Atty. Dating, Rosita Tan's counsel, appealed from the adverse decision against her to the Court of Appeals;

e)

That Atty. Marciano Dating also withdrew later as Rosita Tan's counsel and certain Leopoldo P. San Buenaventura entered his appearance as new counsel for the said Rosita Tan in the appealed case before the Court of Appeals which was docketed as C.A. G.R. CV No. 20669;

f)

On October 26, 1989, Atty. Leopoldo E. San Buenaventura filed a Motion for Extension of Time to File Brief for Rosita Tan;... however, for reasons only known to said lawyer, he failed to file his Appellant's Brief; hence, on February 20, 1990, the Court of Appeals issued a Resolution dismissing the appeal for failure of Rosita Tan's counsel to file Appellant's Brief despite extension of time granted to him;

g)

That upon receipt by Ms. Rosita Tan of said Resolution dismissing her appeal due to the failure of her Manila lawyer to file Appellant's Brief, she came to the law office of undersigned counsel in the company of her friend, Mrs. Gloria Gatan, to employ the latter's services to seek reconsideration of the Order of dismissal and file Appellant's Brief to enable her to pursue her appeal; Rosita employed the legal services of undersigned counsel not to file a Petition for Review but to seek reconsideration of the order of dismissal of her appeal; considering then that she does not have the papers to the case on appeal, Rosita Tan agreed to pay counsel P5,000.00 to go to Manila, study the records of the case in the Court of Appeals, file a Motion for Reconsideration and prepare Appellant's Brief for her; she was able to pay P3,000.00 only instead of P5,000.00 promising to pay the balance later; consequently, the undersigned counsel filed an URGENT MOTION FOR RECONSIDERATION with the Court of Appeals....;

h)

Unfortunately, the Court of Appeals denied said Motion for Reconsideration in a Resolution promulgated on

May 2, 1990;

I)

That upon receipt by the undersigned counsel of said Resolution of the Court of Appeals denying the Motion for Reconsideration, the undersigned counsel summoned the appellant Rosita Tan and requested her to bring the balance of P2,000.00 so that a Petition for Review on Certiorari could be filed with the Supreme Court; however, the said appellant Rosita Tan upon knowing of the adverse Resolution of the Court of Appeals became apathetic and when she came to the law office of the undersigned she expressed her misgivings of bringing the case to the Supreme Court and told counsel that she has no more money; despite her indifference and lukewarm attitude, the undersigned counsel filed a Motion for Extension of Time to file a Petition for Review with the Supreme Court paying the docket fees therefore in behalf of said appellant; in the meantime the undersigned counsel went to Manila to make researches preparatory to the filing of the Petition for Review with the Supreme Court; ...The undersigned counsel then requested the appellant Rosita Tan to pay him the balance of P2,000.00 as per agreement for him to be able to prepare the Petition for review in Manila and file it with the Supreme Court; but said appellant hesitantly paid only P1,000.00 which was her only money available promising to pay the balance of P1,000.00 later; thereafter, the undersigned counsel went to the Court of Appeals to get certified true copies of the Resolution denying the Motion for Reconsideration; he then learned that there was already an Entry of Judgment in the case as the Resolution dismissing the appeal had already become final; the undersigned then informed Rosita Tan of her misfortune and informed her that he would study the propriety of filing an action for annulment of the decision because of his discovery of an anomaly which resulted in a mistrial; because of continuous setbacks she suffered from beginning to end; Rosita Tan said she had lost all hope and was unwilling to go any further; she then demanded the refund of P4,000.00 from the undersigned; when the undersigned gave back the P1,000.00 he received from her, she refused to receive the amount insisting that the whole amount of P4,000.00 be returned to her claiming that the undersigned counsel had not done anything for her anyway; hence the misunderstanding which culminated in her sending a letter complaint to the Honorable Chief Justice of the Supreme Court.

The case was referred to the Integrated Bar of the Philippines for investigation, report, and recommendation. On July 29, 2000, the IBP passed a resolution adopting the report and recommendation of its Investigating Commissioner Jaime M. Vibar that respondent be reprimanded and ordered to restitute to complainant the amount of P1,000.00.

In finding respondent guilty of betrayal of his client's trust and confidence, the investigating commissioner said in his report:

Regardless of the agreement on the total amount of fees, it is clear that respondent committed to prepare and file a "petition with the Supreme Court" and for which he received P1,000.00 from the complainant (annex "B", Sagot, dated May 31, 1991). Despite such commitment, he failed to file the petition.

It is not explained why the payment of PHP1,000.00 was made by complainant for the "petition" on August 8, 1990. At that time, the period to file the petition for review as contemplated by respondent and which was the subject of an extension motion, dated May 18, 1990, filed with and granted by the Hon. Supreme Court, had already expired. It is to be noted that respondent's motion sought an extension of "thirty (30) days from May 26, 1990 or up to June 25, 1990". It would appear that respondent received P1,000.00 on August 8, 1990 from complainant at a time when the remedy of a review of the dismissal order of the Court of Appeals was no longer available. Yet, complainant was never informed or favored with an explanation that a petition for review was no longer possible, or perhaps that another remedy was still open to the complainant. To aggravate his situation, respondent alleges in his comment to the complaint (at page 3) that after he received P1,000.00 from the complainant he immediately went to the Court of Appeals to get certified copies of the resolution

denying his motion for reconsideration and that thereat he discovered that an “Entry of Judgment” had already been issued. Respondent should have known that when he went to the Court of Appeals after receipt of P1,000.00, or after August 8, 1990. The period he requested from the Hon. Supreme Court to institute the petition for review had long expired.

But the silence of respondent at the time of receipt of the amount of P1,000.00 on August 8, 1990 and the “petition with the Supreme Court” was no longer an available remedy smacks of a betrayal of a client’s cause and the trust and confidence reposed in him. If indeed his client’s cause was no longer worth fighting for, the lawyer should not have demanded a fee...and made representations that there is merit in her case. He should have dealt with his client with all candor and honesty by informing her that on August 8, 1990 the period to file the petition had already expired.

Complainant has been a victim of negligence on the part of the law firm of San Buenaventura, et al., or particularly Atty. Leopoldo San Buenaventura, for their failure to file the Appellant’s Brief in behalf of complainant within the period allowed. The dismissal of the appeal gave complainant a slim chance, if not a futile remedy, with the Hon. Supreme Court. Atty. Lapak would have been shackled in any disquisition for complainant’s cause considering that she already lost in the trial court and her appeal had been dismissed without any argument being advanced in her behalf. Atty. Lapak should have been candid with complainant. He should not have asked more at a time when nothing fruitful could be done anymore.

With respect to respondent’s offer to return the amount of P1,000.00 paid to him to file the petition for review on certiorari, the investigating commissioner stated:

...[T]his willingness to return P1,000.00 does not erase his breach of the Code of Professional Responsibility for lacking in honesty, diligence and fairness in dealing with his client as shown by the very fact that he received the amount at a time when he could no longer file the “petition with the Supreme Court”. His client deserved the information that on such date the decision of the Court of Appeals was already final. Respondent’s actuation of filing an extension motion with the Hon. Supreme Court and yet not filing an extension motion with the Hon. Supreme Court and yet not filing the pleading within the period requested and granted speaks well of respondent’s lack of candor, honesty and judicious conduct in dealing with his client or in the handling of his case. This conduct violates Canon 17, & Rule 18.03, Rule 18.04 of Canon 18 of the Code of Professional Responsibility.

The investigating commissioner recommends that respondent only be reprimanded considering his old age and the negligent conduct of complainant’s previous counsel. The commissioner reasoned that it was the negligent conduct of complainant’s previous counsel which caused the dismissal of the appeal and rendered inutile any further legal action before the Supreme Court.

The investigating commissioner’s findings are supported by the evidence. However, we hold that the appropriate sanction should be reprimand and order respondent to return the amount of P4,000.00 which he received from complainant.

Respondent advances two reasons why he did not file a petition for review on certiorari in this Court, to wit: (1) because he found that the resolution of the Court of Appeals to be appealed to the Supreme Court had become final on May 27, 1990 and (2) because complainant failed to pay the balance of P1,000.00 of his fee.

First. With respect to the first reason, Rule 18.03 thereof which provides that “A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.” Respondent alleges that upon receipt of the Court of Appeals resolution denying the motion for reconsideration which he had filed, he summoned complainant and told her that it was imperative that a petition for review on certiorari be filed with this Court.

At this point, it is important to note the material dates on record to determine if respondent's justification for his failure to file a petition for review is tenable. The resolution of the Court of Appeals dismissing complainant's appeal for failure to file an appellant's brief was promulgated on February 20, 1990. Within the reglementary period for filing an appeal, respondent filed a motion for reconsideration which the Court of Appeals denied on May 2, 1990. Respondent received a copy of this resolution (denying the motion for reconsideration) on May 11, 1990 so that respondent had 15 days from May 11, 1990, or until May 26, within which to file a petition for review on certiorari with the Supreme Court. Respondent thereafter asked for, and was granted by this Court, an extension of 30 days "counted from the reglementary period," or until June 25, 1990, within which to file the petition. As respondent failed to file the petition within the extended period, the Supreme Court issued a resolution on August 20, 1990 declaring the judgment sought to be reviewed to have become final and executory.

It is not true, therefore, that respondent failed to file a petition for review on certiorari because the judgment sought to be reviewed had become final on May 27, 1990.

When respondent summoned complainant and told her that in view of the denial of his motion for reconsideration it was imperative that a petition for review be filed with this Court, the resolution of the Court of Appeals was not yet final. In fact, this Court granted respondent's motion for extension of time to file the petition for review, because the resolution of the Court of Appeals denying the motion for reconsideration had not yet attained finality. Despite having been granted an extension, however, respondent failed to file the petition within the reglementary period. This constitutes a serious breach. Rule 12.03 of the Code of Professional Responsibility provides that "A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so."

The filing of a petition for review is similar to the filing of an appellant's or appellee's brief. In *Mariveles v. Mallari*,^[1] it was held that the lawyer's failure to file an appellant's brief despite numerous extensions of time to file the same constitutes a blatant violation of Rule 12.03 of the Code of Professional Responsibility. As already noted, this Rule provides that after obtaining extensions of time to file pleadings, memoranda, or briefs, a lawyer should not let the period lapse without submitting the same or offering an explanation for his failure to do so.

In *Re: Santiago F. Marcos*,^[2] the Court considered a lawyer's failure to file a brief for his client as amounting to inexcusable negligence. Said the Court:

An attorney is bound to protect his client's interest to the best of his ability and with utmost diligence. (*Del Rosario v. CA*, 114 SCRA 159). A failure to file a brief for his client certainly constitutes inexcusable negligence on his part. (*People v. Villar*, 46 SCRA 107) The respondent has indeed committed a serious lapse in the duty owed by him to his client as well as to the Court not to delay litigation and to aid in the speedy administration of justice. (*People v. Daban*, 43 SCRA 185; *People v. Estocada*, 43 SCRA 515).

At any rate, even assuming that the resolution of the Court of Appeals expired on May 27, 1990, he should not have asked on August 8, 1990 for the balance of P5,000.00 which complainant had agreed to pay since the resolution had already become final at that time. As the investigating commissioner pointed out in his report:

To aggravate his situation, respondent alleges in his comment to the complaint (at page 3) that after he received P1,000.00 from the complainant he immediately went to the Court of Appeals to get certified copies of the resolution denying his motion for reconsideration and that thereat he discovered that an "Entry of Judgment" had already been issued. Respondent should have known that when he went to the Court of Appeals after receipt of P1,000.00, or after August 8, 1990, (t)he period he requested from the Hon. Supreme Court to institute the petition for review had long expired.^[3]

It would, therefore, appear that if an entry of judgment had been made in the Court of Appeals, it was precisely

because respondent failed to file a petition for review with the Supreme Court within the extended period granted him. He cannot, therefore, excuse his breach of the duty to his client by his own negligent act.

Second. Respondent asserts that complainant only engaged his services to pursue her appeal in the Court of Appeals which was dismissed due to the failure of complainant's former counsel, Atty. Leopoldo E. San Buenaventura, to file the appellant's brief. Whether or not he was engaged to represent complainant only in the Court of Appeals and not also in the Supreme Court is immaterial. For the fact is that respondent already commenced the representation of complainant in the Supreme Court by filing a motion for extension of the time to file a petition for review. In fact, according to respondent, upon receipt of the Court of Appeals resolution denying reconsideration of the dismissal of complainant's appeal, respondent summoned complainant to his office precisely to tell her that it was imperative that a petition for review be filed with the Supreme Court. Once he took the cudgels of his client's case and assured her that he would represent her in the Supreme Court, respondent owed it to his client to do his utmost to ensure that every remedy allowed by law was availed of. As this Court has held:

It is axiomatic that no lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment, subject, however, to Canon 14 of the Code of Professional Responsibility. Once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care and devotion. Elsewise stated, he owes entire devotion to the interest of his client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, saved by the rules of law legally applied. This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense.[4]

Third. Nor can respondent excuse himself for his failure to file the petition for review on certiorari on the ground that complainant failed to pay what she promised to pay. Complainant agreed to pay P5,000.00. Of this amount, she paid respondent P3,000.00 and later P1,000.00, leaving only a balance of P1,000.00. Even if this balance had not been paid, this fact was not sufficient to justify the failure of respondent to comply with his professional obligation which does not depend for compliance on the payment of a lawyer's fees.

As respondent utterly failed to comply with his professional commitment to complainant, it is, therefore, not just for him to keep the legal fee of P4,000.00 which complainant paid him. He has not rightfully earned that fee and should return it to complainant.

WHEREFORE, Atty. Jose L. Lapak is REPRIMANDED and ORDERED to refund to complainant Rosita Tan the amount of P4,000.00. He is admonished henceforth to exercise greater care and diligence in the performance of his duties towards his clients and the courts and warned that repetition of the same or similar offense will be more severely dealt with.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] 219 SCRA 44 (1993).

[2] 156 SCRA 844 (1987).

[3] IBP Report and Recommendation, p. 10.

[4] Santiago v. Fojas, 248 SCRA 68 (1995).

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