

## FIRST DIVISION

[ A.M. NO. RTJ-05-1900 (A.M. OCA IPI NO. 02-1575-RTJ), January 28, 2005 ]

**SHIRLEY LORIA TOLEDO AND ROSIE LORIA DAJAC,  
COMPLAINANTS, VS. JUDGE ALFREDO E. KALLOS, RESPONDENT.**

### RESOLUTION

**DAVIDE, JR., C.J.:**

For our resolution is the verified complaint, written in the vernacular and dated 21 August 2002, of siblings Shirley Loria Toledo and Rosie Loria Dajac against respondent Judge Alfredo E. Kallos, Presiding Judge of the Regional Trial Court (RTC) of Legazpi City, Branch 10, for violation of the Code of Judicial Conduct, the Code of Professional Responsibility, and Article 1491 (5) of the Civil Code.

Prior to his appointment as a judge in March 1995,<sup>[1]</sup> Judge Kallos was complainants' counsel of record in Civil Case No. 4879 filed with the RTC of Legazpi City, Branch 4, involving the recovery of hereditary shares with damages. On 25 March 1979, a judgment was rendered ordering the defendants to, among other things, turn over to herein complainants, the plaintiffs therein, the possession and ownership of the total area of 4,514 square meters of "lot 2082 Albay Cadastre." On appeal, the decision was affirmed by the Court of Appeals and became final and executory on 16 December 1985.<sup>[2]</sup>

Several years thereafter, or in February 2002, the respondent filed in the same action, Civil Case No. 4879, before the RTC of Legazpi, Branch 4, an Omnibus Motion<sup>[3]</sup> praying, *inter alia*, for the issuance an order constituting in his favor an attorney's lien to the extent of one-third over the lot awarded in favor of the complainants representing his attorney's fee. He based his motion on a written contingency agreement on attorney's fees for professional services rendered whereby he is entitled to one-third share of what would be awarded to the complainants. He claimed that this agreement had already been implemented when "one of the three (3) lots levied upon by the sheriff to answer for the award of damages was given to (him) as his one-third share while the other two lots went to the plaintiffs as their two-third share ... [as] evidenced by the Definite Deed of Sale and Transfer Certificate of Titles Nos. T-77728, T-77458 and T-77459." However, he misplaced a copy of said written agreement.

In the meantime, or on 5 September 2002, the complainants filed before this Court, through the Office of the Court Administrator, the subject verified complaint. Here, complainants pray for three things. First, they pray for an order directing the respondent to stop demanding his "1/3 share attorney's fees." They assert that the respondent has no basis for his claim because he failed to show in court proof of the alleged written contingency fee agreement. They also belie respondent's insistence in his Omnibus Motion that the said agreement had already been implemented

when, on execution, one of three lots levied upon by the sheriff was given to him as his 1/3 share. They emphasize that all the lots levied by the sheriff were given to them. However, the respondent "forced" them to sign a Deed of Absolute Sale on 16 January 1990 involving a parcel of land valued in the document at P10,000, but actually worth more than P500,000, in payment of his attorney's fees. While they did not want to sign the document because respondent appeared in their case only during execution, they were constrained to do so for fear that something adverse might happen to their case, as the respondent so warned them. The latter told them that they would not have won the case were it not for his services.

The complainants thus seek, as their second prayer, the recovery of the property involved in said Deed of Absolute Sale. They argue that pursuant to Article 1491(5) of the Civil Code, lawyers are prohibited from buying their client's properties when the same are still the object of litigation. To prove that the respondent was still their counsel when the sale took place, the complainants attached to their complaint the Motion to Terminate Services dated 23 June 1994, which was based on respondent's being remiss in his duties and responsibilities as their lawyer, and the Order of the court dated 29 June 1994, approving the termination.

Third, the complainants pray for the removal of the respondent from his position as RTC judge for his alleged abusive conduct unbecoming a judge.

In his Comment dated 25 November 2002, the respondent denies the allegations against him and asserts that he is only claiming what is due him. He vehemently denies that he appeared in the case only during the execution stage, pointing to the Minutes of Hearing and the Order, both dated 05 October 1973, which show that he entered his appearance as counsel for the complainants as early as 5 October 1973, or two months after the complaint was filed. He continuously handled the case from then on, as shown by copies of the minutes of the hearings and orders issued by the RTC, until a favorable judgment was rendered on 25 March 1979 and the subject properties were levied upon on execution to satisfy the judgment. He insists that he was never remiss in the performance of his duties and responsibilities as complainants' counsel.

The respondent further alleges that the existence of the agreement on attorney's fees was admitted by complainant Shirley Loria Toledo as evidenced by the order issued by the court on 01 March 2002, which states that Ms. Toledo came to the court informally informing it that she had a copy of the contract on attorney's fees.

[4]

As regards the Deed of Absolute Sale, respondent admits that he was still complainants' lawyer when the lot was transferred in his name. The lot was given to him by the complainants and their mother, pursuant to their written contingency agreement, as his 1/3 share in the three parcels of land levied upon by the sheriff to settle the accrued rentals awarded in the second paragraph of the dispositive portion of the decision. He did not pay for it. The figure appearing on the document was written only to facilitate the transaction. He never compelled the complainants and their mother to sell to him the parcel of land. Neither did he tell them that nothing would happen to their case without him.

Finally, the respondent asserts that his claim for attorney's fees is still being litigated in Civil Case No. 4879. Thus, the instant complaint is premature.

In their Rejoinder dated 7 January 2003, the complainants insist that there is no basis for respondent's claim for attorney's fees for the following reasons: (1) the respondent failed to present the agreement on attorney's fees; (2) attorney's fees were not awarded by the RTC or the Court of Appeals; and (3) Civil Case No. 4879 is in its execution stage.

After evaluating the pleadings submitted by the parties, the Court Administrator found<sup>[5]</sup> that respondent was, indeed, complainants' counsel in Civil Case No. 4879, and he should therefore be compensated for his services. The act of demanding payment for his attorney's fees is not a ground for administrative liability. However, he can be allowed only fair and reasonable attorney's fees under Canon 20 of the Code of Professional Responsibility. As to this, the Court Administrator stated:

On the question of whether respondent violated Article 1491(5) of the Civil Code, the Court Administrator found that this may be fairly resolved in an investigation, there being a factual dispute, and recommended that the complaint be referred to an Associate Justice of the Court of Appeals pursuant to Section 3, Rule 140 of the Rules of Court. On the basis of this recommendation, we referred the matter to Associate Justice Jose Mendoza of the Court of Appeals for investigation, report, and recommendation.

In his Report,<sup>[6]</sup> Justice Mendoza found that the respondent indeed represented the complainants in Civil Case No. 4879. Like the Court Administrator, he expresses the view that the act of demanding attorney's fees for services rendered is not a ground for administrative sanction. He finds that when the respondent made the demand, he did so as a lawyer who obtained a favorable judgment for his client, and not as a judge. As a lawyer, it is but just that he be fairly compensated for his services. And his filing of a claim for attorney's fees in Civil Case No. 4879 was an appropriate legal remedy. Considering the pendency of such claim, Justice Mendoza recommends the suspension of the determination of the instant administrative complaint until the rendition of a final judicial ruling on the matter of respondent's attorney's fees; thus:

As the said issue is still being litigated in the Regional Trial Court in Civil Case No. 4879, it is the view of the undersigned that the complaint is still premature ....

In other words, the complaint is not yet ripe for administrative evaluation. The hearing on the matter being conducted by the court below should be allowed to run its course as that court is the appropriate forum for a ruling on the dispute....

...To make a determination at this time on whether the respondent violated Article 1491 (A) would be to preempt the lower court in its resolution of the issue. Any recommendation by the undersigned in this administrative case and subsequent resolution by the Honorable Supreme Court on the matter would certainly affect or influence the thinking of the trial court before which the matter is pending. In such a case, it will be unfair to either party. At any rate, the party who would feel aggrieved might still elevate the decision to the higher courts.