

SECOND DIVISION

[**A.M. No. RTJ-09-2204 (formerly A.M. OCA IPI No. 04-2137-RTJ), October 26, 2009**]

JUAN PABLO P. BONDOC, COMPLAINANT, VS. JUDGE DIVINA LUZ P. AQUINO-SIMBULAN, REGIONAL TRIAL COURT, BRANCH 41, SAN FERNANDO CITY, PAMPANGA, RESPONDENT.

DECISION

BRION, J.:

We rule on the complaint dated November 11, 2004^[1] of former Representative Juan Pablo P. Bondoc (*complainant*) of Pampanga, charging Judge Divina Luz P. Aquino-Simbulan (*respondent*), of the Regional Trial Court, Branch 41, San Fernando City, Pampanga, with partiality, gross ignorance of the law and gross misconduct in the handling of Criminal Case Nos. 12726 to 12728 entitled "*People of the Philippines v. Salvador Totaan and Flordeliz Totaan* (for: Violation of R.A. 3019 and Falsification of Public Documents)."

The Complaint

The complainant alleged that during the initial pre-trial conference on June 16, 2003, the respondent asked the lawyers of the parties "to approach the bench and suggested that the cases be settled because she did not want the accused (the *spouses Totaan*) to be administratively suspended."^[2] The respondent's action came after she had issued an order (dated June 9, 2003) administratively suspending the accused *pendente lite*. The complainant further alleged that the respondent strongly requested the complainant's counsel, Atty. Stephen David, to exert all efforts to convince the complainant and his family to settle the cases. At the continuation of the pre-trial, the respondent told the counsel for the accused, "I will give you the option to choose your date. Do you want a speedy trial of the cases because of the suspension? If you want it weekly, the court can accommodate you." At the same hearing, the "Court directed Atty. Cui-David to be prepared for the hearing of these cases considering that the accused have [*sic*] been suspended upon motion of the Private Prosecutor."^[3] Atty. Lanee Cui-David (*Atty. Lanee David*), wife of Private Prosecutor Stephen David, was co-counsel for complainant in the criminal cases. Their law firm, David Tamayo & Cui-David Law Offices, entered its appearance as counsel for the complainant on December 14, 2004.^[4]

The complainant also alleged that the respondent had been taking the cudgels for the accused with her constant reminder about her desire to "fast track the cases," cautioning that the accused had been suspended at the private prosecutors' instance; she only ceased talking about the suspension of the accused when Atty. Lanee David called attention to the fact that the Order of June 9, 2003 suspending the accused had not been implemented as of the January 8, 2004 hearing; the

respondent then answered that it was for the prosecution to check the record to see whether the suspension order had been served and implemented.^[5]

The complainant bewailed the respondent's inaction on the suspension order despite the counsel's reminders, in contrast with her persistence in requiring Ma. Hazelina Militante (*Atty. Militante*), the Ombudsman Investigator (who recommended the filing of charges or information against the accused), to appear in court even after Atty. Militante had asked to be excused from testifying since the substance of her testimony could very well be covered by official documents. The respondent ignored Atty. Militante's explanation and instead directed Atty. Lanee David to furnish Atty. Militante a copy of her Order dated December 16, 2003 requiring Atty. Militante to explain why she should not be cited in contempt for failure to follow lawful orders of the court.

Also, the complainant claimed that aside from showing partiality, bias, concern, sympathy and inclination in favor of the accused, the respondent humiliated Atty. Lanee David in open court; specifically, on November 3, 2003, the respondent gave the parties' lawyers the option to choose the date; after Atty. Juanito Velasco, counsel for accused, gave his chosen date (December 16, 2003), the respondent told Atty. Lanee David to make herself available on this date despite any scheduled hearing in other cases.

Finally, the complainant alleged that the bias, partiality, prejudice and inclination of the respondent for the accused culminated in her order on the demurrer to evidence dated September 10, 2004^[6] dismissing the charges against the accused despite the fact that the prosecution was able to prove by testimonial and documentary evidence the irregularities committed by the accused, Municipal Agrarian Reform Officer Salvador Totaan and Senior Agrarian Reform Technologist Flordeliz Totaan; they processed and approved the applications of at least thirteen (13) persons who were not qualified to become farmer-beneficiaries as they were neither farmers nor residents of the *barangay* or the municipality where the subject property is located, in violation of Section 23 of Republic Act No. 6657 (the Comprehensive Agrarian Reform Law). The complainant submitted to the Court the order on the demurrer to evidence and pertinent records of the case as the *res* under the principle of *res ipsa loquitur* and asked the Court to discipline the respondent even without formal investigation, in line with the Court's ruling in *Consolidated Bank and Trust Company v. Capistrano*.^[7]

The Respondent's Comment

The respondent submitted her comment on December 23, 2004^[8] in compliance with the directive of the Office of the Court Administrator (OCA) dated November 30, 2004. The respondent pointed out that an examination of the complaint would readily show that it was prepared by the private prosecutors, Attys. Stephen David and Lanee David, who wove a tale of lies and distortions regarding the proceedings to cover up their own shortcomings as lawyers; had they performed their duty as officers of the court and members of the bar, they would have informed the complainant that they lost because of their blunders in the prosecution of the cases.

While she admitted having asked both private prosecutor Stephen David and

defense counsel Juanito Velasco to approach the bench at the pre-trial of the cases, she claimed that the conference with both counsels was to save Atty. Stephen David from embarrassment, as he could not answer the court's queries on the civil aspects of the case. She denied brokering a settlement of the cases; had she done so, she would not have issued the suspension order. She also denied fast-tracking the hearing of the cases in favor of the accused; her only objective was to have a weekly hearing and for this purpose, she instructed Atty. Lanee David to be prepared; it was her habit to act fast on all cases before her sala.

The respondent likewise denied the charge of partiality for her failure to act on the suspension of the accused, contending that it was the duty of the private prosecutors to file a motion to cite the responsible heads of the government agencies for indirect contempt for their failure to implement lawful orders of the court. She claimed that in the absence of such motion, she assumed that the accused had already been preventively suspended.

In Atty. Militante's case, the respondent explained that there was a misunderstanding between the private prosecutors and the Ombudsman Investigator; she therefore sought Atty. Militante's appearance to find out the truth. She desisted from issuing another subpoena to Atty. Militante in view of the plea of Atty. Lanee David that Atty. Militante would no longer be called as a witness; she also wanted to avoid an open confrontation between the two lawyers. Lastly, and in reply to the charge of unfair treatment, the respondent maintained that if ever she called the attention of and might have slighted Atty. Lanee David, the reason for her action was the latter's appearance in court without preparation, to the prejudice of the accused and the government.

Related Incidents

In a supplemental complaint dated December 14, 2007,^[9] the complainant charged the respondent with conduct unbecoming a judge for her denial of the private prosecutors' motion for her inhibition on the ground that the motion did not comply with Sections 4, 5, and 6 (three-day notice rule, ten-day notice of hearing, and proof of service) of Rule 15 of the Rules of Court. The complainant claimed that the motion is non-litigable in nature and is an exception to the three-day notice rule.

Thereafter, the parties filed additional pleadings - the Opposition (dated January 10, 2005) to the Comment of the respondent dated December 21, 2004,^[10] and a Rejoinder to the Complainant's Opposition dated January 21, 2005.^[11] The complainant harped on the respondent's refusal to answer the serious charges of partiality, abuse of authority, and conduct unbecoming of a judge leveled against her. While the pleadings were essentially reiterative of previous allegations, they are significant because of the respondent's rejoinder where she requested that the complainant be made to show cause why he should not be held in contempt of court, and Attys. Stephen David and Lanee David be required to show cause why they should not be administratively sanctioned as members of the bar and as officers of the Court pursuant to A.M. No. 03-10-01-SC.^[12]

In its Report dated June 2, 2005,^[13] the OCA disclosed that the complainant had filed a special civil action for *certiorari* with the Court of Appeals (CA) raising the

same issues in the complaint questioning the validity of the order granting the demurrer to evidence of the accused Totaans.^[14] At the OCA's recommendation, the Court (Third Division) issued a Resolution on July 11, 2005^[15] provisionally dismissing the complaint for being premature, without prejudice to the final outcome of the case with the CA (CA-G.R. SP No. 8911), and deferring action on the complaint of the respondent against Attys. Stephen and Lanee David until a decision is rendered in the CA case. The Court denied the complainant's partial motion for reconsideration in a Resolution dated September 12, 2005.^[16]

On July 5, 2007, the respondent filed a manifestation with the information that the CA had rendered a decision in CA-G.R. SP No. 8911 denying the complainant's petition.^[17] On July 23, 2007, she received a copy of the CA resolution denying the complainant's motion for reconsideration. The respondent reiterated her prayer that Attys. Stephen and Lanee David be sanctioned as members of the bar.

In a Resolution dated June 2, 2008, the Court (Second Division) required Attys. Stephen and Lanee David to show cause why no disciplinary action should be taken against them for violation of A.M. No. 03-10-01-SC and the Code of Professional Responsibility.^[18]

On June 27, 2008, the respondent filed a manifestation and motion stating that the Court, in a Resolution dated January 16, 2008, denied the complainant's petition for review on *certiorari* in G.R. No. 178703 assailing the CA decision in CA-G.R. SP No. 8911.^[19] Accordingly, the respondent prayed for the permanent dismissal of the present administrative matter and requested that her complaint against Attys. Stephen and Lanee David be acted upon and given due course.

On July 17, 2008, Attys. Stephen and Lanee David submitted their explanation.^[20] The two lawyers disputed the respondent's claim that they orchestrated the filing of the complaint. They stressed that it was the complainant's decision to file the case against the respondent, in the same manner that it was his decision to prosecute the accused despite the respondent's request that the complainant withdraw the cases against them. They contended that since the matter brought before the court involves conduct violating the Canons of Judicial Ethics, the final outcome on the merits of the case filed before the CA and this Court should not be determinative of the innocence or guilt of the respondent on the administrative charges against her.

Attys. Stephen and Lanee David insisted that the reason the complainant filed the administrative case against the respondent is the respondent's bias and favoritism towards the accused Totaans, shown by the respondent's request for Atty. Stephen David to ask his client (the complainant) to withdraw the case against the accused; after the respondent was informed of the decision of the complainant to proceed with the cases, the attitude of the respondent toward them changed and her actions became harsh. Because of the respondent's bias and favoritism towards the accused, they were compelled to move for the respondent's inhibition from the case against the accused Totaans.

Attys. Stephen and Lanee David further explained that the respondent's complaint against them may be attributed to their zeal and enthusiasm in prosecuting their client's case; this notwithstanding, they endeavored to observe discipline and self-

restraint, and to maintain their high respect for the court and for the orderly administration of justice.

On July 29, 2008, the respondent filed her comment to the explanation of Attys. Stephen and Lanee David.^[21] She pointed out that the comment was a mere rehash of the allegations in the complaint against her, for which reason she was repleading all her statements in her previous submissions^[22] controverting the two lawyers' baseless and malicious averments.

On December 17, 2008, the Court (Second Division) resolved to dismiss the administrative complaint against the respondent and to require Attys. Stephen and Lanee David to show cause why they should not be disciplined or held in contempt for violating A.M. No. 03-10-01-SC.^[23]

In a Resolution dated June 22, 2009,^[24] the Court took note of the following:

1. the manifestation filed by Attys. Stephen David and Lanee David that they were adopting the explanation they submitted pursuant to the Court's Resolution of June 2, 2008, as compliance with the Resolution dated December 17, 2008; and
2. the manifestation and motion of the respondent that her complaint against the lawyers David be deemed submitted for resolution.

On the same day, the Court referred the matter to the OCA for evaluation, report and recommendation.^[25]

The OCA Report

On August 13, 2009, the OCA submitted its report with the recommendation that Attys. Stephen David and Lanee David be found guilty of indirect contempt for violating A.M. No. 03-10-01-SC and be fined P1,000.00 each.

The OCA found that the administrative complaint against the respondent could not have been filed without the active prodding and instigation of the two lawyers. The OCA noted that the complainant never personally appeared during the hearings of Criminal Case Nos. 12726 to 12728 where Attys. Stephen and Lanee David represented him. The OCA concluded that Attys. Stephen and Lanee David were the primary sources of the allegations in the complaint which involved intricate courtroom proceedings that the complainant did not personally witness. The OCA faulted the two lawyers for their continued emphasis in their July 17, 2008 explanation on the respondent's alleged "questionable behavior and conduct" despite the CA decision of May 31, 2007 in CA-G.R. SP No. 8911 affirming the respondent's findings in her order of September 10, 2004 in Criminal Case Nos. 12726 to 12728.

The Court's Ruling