

EN BANC

[A.C. NO. 6573, July 09, 2007]

IGNACIO J. SALMINGO, COMPLAINANT, VS. ATTY. RODNEY K. RUBICA, RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

The following facts spawned the filing of the administrative complaint at bar, for disbarment against Atty. Rodney K. Rubica (respondent), by herein complainant Ignacio J. Salmingo which he transmitted to the Chief Justice by letter of September 27, 2004.

Respondent filed on January 9, 2003 before the Regional Trial Court (RTC) of Negros Occidental a complaint for declaration of nullity of his marriage with Liza Jane Estañó^[1] (Liza Jane).

The complaint was docketed as Civil Case No. 2243-40.

The summons for Liza Jane at her given address at Blk. 25, Lot 36 Josefina St., Eroreco Subdivision, Bacolod City^[2] was returned unserved as allegedly no one could be found there.^[3] Respondent thereupon filed a Motion for Leave of Court to Effect Service of Summons by Publication,^[4] which was granted.^[5]

Summons was thus published in the Visayan Post, a weekly newspaper of general circulation in Negros Occidental.^[6]

Nothing was heard from Liza Jane, however; hence, respondent presented evidence *ex parte*^[7] before Branch 40 of the Silay RTC, without the participation of the City Prosecutor.^[8]

By Decision^[9] dated May 23, 2003, the trial court declared the marriage between respondent and Liza Jane null and void, as the evidence showed that there was a previous valid and existing marriage between Liza Jane and one Rene Jose T. Mojica.^[10] The judgment was entered as final on July 17, 2003.^[11]

In his present complaint,^[12] the complainant alleges that in prosecuting the annulment case, respondent deliberately concealed Liza Jane's address so that she could not be served with summons, thus enabling him to present evidence *ex parte*; ^[13] that respondent caused the publication of summons only in a newspaper of local circulation; ^[14] that respondent did not serve a copy of his petition on the Office of the Solicitor General and the Office of the City or Provincial Prosecutor; ^[15] and that he did not cause the registration of the decree of nullity in the Civil Registry.^[16]

Complainant thus prayed:

WHEREFORE, PREMISES CONSIDERED, it is respectfully prayed of this Court that:

1. An order be issued directing:
 - a. The setting aside [of] the Decision in Civil Case No. 2253-40;
 - b. The reopening of the case in a separate sala where the City Prosecutor shall represent the State;
 - c. Deleting the name of Rodney K. Rubica from the Roll of Attorneys and ordering him to pay for the Cost of Retrial.
2. For other relief and remedies just and equitable under the premises.^[17] (Underscoring supplied)

Respondent denied knowing Liza Jane's real address.^[18] He denied too having failed to comply with the procedural requirements in the declaration of nullity case.^[19] He in fact questioned complainant's standing to contest the decision of the trial court in the said case.^[20]

This Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.^[21]

The IBP investigating commissioner recommended that respondent be suspended for three months for gross misconduct.^[22] The IBP Board of Governors resolved to dismiss the case, however, for lack of sufficient evidence.^[23]

This Court upholds the resolution of the IBP Board of Governors.

It is settled that:

x x x In view of the nature and consequences of a disciplinary proceeding, observance of due process, as in other JUDICIAL determinations, is imperative along with a presumption of innocence in favor of the lawyer. Consequently, the burden of proof is on the complainant to overcome such presumption and establish his charges by clear preponderance of evidence.^[24] (Underscoring supplied)

To prove that respondent knew Liza Jane's true whereabouts all along, complainant alleged that respondent had been sending allowances to Liza Jane and their children at her residence.^[25] Respondent countered, however, that he had been sending allowances by depositing the same in a bank in Bacolod City through an automated teller machine (ATM) account, which deposit could be withdrawn at any ATM machine within the Philippines.^[26] This complainant failed to controvert.

On respondent's alleged non-compliance with the following provisions of the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages which took effect on March 15, 2003:^[27]

x x x x

Sec. 5. ***Contents and form of petition.*** — x x x

(4) It shall be filed in six copies. The petitioner shall serve a copy of the petition on the Office of the Solicitor General and the Office of the City or Provincial Prosecutor, within five days from the date of its filing and submit to the court proof of such service within the same period.

Failure to comply with any of the preceding requirements may be a ground for immediate dismissal of the petition.

x x x x

Sec. 6. ***Summons.***— The service of summons shall be governed by Rule 14 of the Rules of Court and by the following rules:

(1) Where the respondent cannot be located at his given address or his whereabouts are unknown and cannot be ascertained by diligent inquiry, service of summons may, by leave of court, be effected upon him by publication once a week for two consecutive weeks ***in a newspaper of general circulation in the Philippines and in such places as the court may order.*** In addition, a copy of the summons shall be served on the respondent at his last known address by registered mail or any other means the court may deem sufficient.

Sec. 8. ***Answer.*** x x x

(3) Where no answer is filed or if the answer does not tender an issue, **the court shall order the public prosecutor to investigate whether collusion exists between the parties.** x x x Sec. 19. ***Decision***

x x x x

(2) The parties, including the Solicitor General and the public prosecutor, shall be served with copies of the decision personally or by registered mail. If the respondent summoned by publication failed to appear in the action, the dispositive part of the decision shall be published once in a newspaper of general circulation.

x x x x

Sec. 23. ***Registration and publication of the decree; decree as best evidence.*** — (a) The prevailing party shall cause the registration of the Decree in the Civil Registry where the marriage was registered, the Civil Registry of the place where the Family Court is situated, and in the National Census and Statistics Office. He shall report to the court compliance with this requirement within thirty days from receipt of the copy of the Decree.

(b) In case service of summons was made by publication, the parties shall cause the publication of the Decree once in a newspaper of general