

FIRST DIVISION

[A.C. NO. 6517, December 06, 2006]

MARCOS V. PRIETO, COMPLAINANT, VS. ATTY. OSCAR B. CORPUZ AND JUDGE FERDINAND A. FE, RESPONDENTS.

R E S O L U T I O N

CHICO-NAZARIO, J.:

This is an administrative complaint filed by Atty. Marcos V. Prieto, against respondent Judge Ferdinand A. Fe, both as a member of the bar and bench, and respondent Atty. Oscar B. Corpuz as a member of the bar, for dishonesty, serious misconduct prejudicial to the integrity and dignity of the Judiciary under Section 27, Rule 138 and Section 1, Rule 137 of the Revised Rules of Court relative to the latter's actuations in the handling of Civil Case No. 1081-BG entitled, *Yolanda M. Roque v. Atty. Marcos V. Prieto, et al.* and Civil Case No. 1518-BG entitled, *Yolanda Marquez Roque v. Atty. Marcos V. Prieto, et al.*

Complainant implies that not only did the respondent lawyer had free access to the records of Civil Case No. 1081-BG through the help of respondent Judge, he was also given the liberty to copy what perhaps would help him in his quest to win the case.

Invoking the principle of *res ipsa loquitor*, complainant objects to the fact that Civil Case No. 1518-BG was raffled to the respondent Judge, who was the former counsel of the plaintiff therein in Civil Case No. 1081-BG. Another reason for his objection is that, allegedly, some paragraphs in the complaint in Civil Case No. 1518-BG were obviously copied from Civil Case No. 1081-BG wherein the complaint was prepared by respondent Judge in his capacity as then lawyer of herein complainant (plaintiff therein). Complainant claims that the foregoing constitute misconduct which imply malice or wrongful intent, not just mere errors of judgment. He insists that the fact that respondent Judge will try the case upon a complaint in which the plaintiff was his former client and which complaint was copied from the complaint he himself prepared does not speak well of his intention as to the disposition of the case.

Complainant maintains that the act of respondent Judge in allowing the respondent lawyer to copy the complaint in Civil Case No. 1081-BG and to present it to court as the latter's work does violence to Rule 1.01, Canon 1 of the Code of Professional Responsibility which provides that a judge should be the embodiment of competence, integrity and independence. Complainant also asserts that in placing his signature in the complaint not written by him, respondent lawyer committed deceit, which serves as a ground for his disbarment.

In a Resolution dated 28 September 2005, the Second Division of this Court referred the instant administrative case to Court of Appeals Justice Josefina G. Salonga for investigation, report and recommendation within ninety (90) days from receipt

thereof.

Pursuant thereto, Justice Salonga set the case for hearing on 13 December 2005, and directed the complainant and the respondents, and their witnesses, if any, to appear before her and to submit documents relevant to the complaint.

During the scheduled hearing, the complainant and the respondent Judge, after the marking and offering of their respective documentary evidence, manifested that they would not be adducing any further evidence. Upon their motion, they were given a period of thirty (30) days within which to simultaneously file their Memoranda, after which the case will be deemed submitted for resolution.

On 13 December 2005, complainant filed his Memorandum. The respondent judge, on the other hand, filed his Memorandum on 18 January 2006 while the respondent lawyer filed his Memorandum on 20 January 2006.

In her report, Justice Salonga summarized the facts as follows:

In October 1992, Salud Andrada Marquez ("*Marquez*") mortgaged six (6) parcels of land to the Rural Bank of Luna, La Union, Inc., one of which is a parcel of land with an area of Twenty Two Thousand Five Hundred Ninety Nine Square Meters (22,599 sq. meters) located at Calumbaya, Bauang, La Union covered by Original Certificate of Title (OCT) No. FP-15344 under a Free Patent granted on 5 July 1989.

Failing to pay her debt, the bank foreclosed the mortgage. On 2 August 1993, the mortgaged properties were sold at public auction the highest bidder of which was the petitioner. Consequently, OCT No. FP-15344 was cancelled and in lieu thereof, Transfer Certificate of Title (TCT) No. T-40223 was issued in the name of the petitioner.

In the meantime, petitioner, through his attorneys-in-fact Antonio O. Prieto and Monette O. Prieto, mortgaged the aforesaid properties to Far East Bank and Trust Company.

Seeking the nullification of the mortgaged and the consequent transfer of the mortgaged properties in the name of the petitioner, Roque, Marquez' daughter, filed a complaint docketed as Civil Case No. 1081-BG with the RTC Branch 67, for Declaration of Nullity of Contracts with Damages against said petitioner, the Rural Bank of Luna, La Union, Inc. and Far East Bank and Trust Company. Respondent judge, then a practicing lawyer, was retained by Roque as her counsel of record in said case and was the one who drafted said complaint.

On 18 August 2000, the RTC Branch 67, through then Presiding Judge Jose G. Pineda, issued an order dismissing the case on the ground that Roque was not a real party in interest since her right of action has still to ripen upon the death of her mother.

On 8 November 2001, respondent judge was appointed as the presiding judge of RTC Branch 67. By reason of his appointment, he completely severed all his professional relationships with his clients, including Roque,

and turned over or relinquished all case records of his office to said clients.

Upon the demise of Marquez on 9 August 2002, Roque, who had now acquired by way of succession her mother's right of action to pursue the annulment of contracts executed over the property formerly covered by OCT No. 15344, engaged the legal services of respondent lawyer.

Thus, on 5 January 2004, respondent lawyer, as Roque's counsel, filed a complaint for Declaration of Nullity of Contracts, Reconveyance of Property, and Damages against petitioner, his attorneys-in-fact Antonio O. Prieto and Monette O. Prieto, the Rural Bank of Luna, La Union, Inc. and Far East Bank and Trust Company, Inc., now merged with the Bank of the Philippine Islands, before the Regional Trial Court of Bauang, La Union.

On 7 January 2004, the case, docketed as Civil Case No. 1518-BG, was raffled to the respondent judge. On 8 January 2004, RTC Branch 67, through Atty. Jeovannie C. Ordoño, its Branch Clerk of Court, issued summons to the defendants. The summons and copy of the complaint was duly served upon the petitioner on 20 January 2004.

Going over the individual case folders of the newly raffled cases to his court, respondent judge came across Civil Case No. 1518-BG and discovered that the plaintiff therein was Roque, his former client. Immediately, without going over the allegations of the complaint, the respondent judge issued an Order dated 23 January 2004 inhibiting himself from the case and ordered that the record of said case be transferred to the Regional Trial Court of Bauang, La Union, Branch 33 ("RTC Branch 33").

On 27 January 2004, the Branch Clerk of Court of RTC Branch 67 transmitted the entire record of Civil Case No. 1518-BG to RTC Branch 33 through its Clerk of Court, Atty. Richard T. Domingo, which was duly received by the latter.

On 30 January 2004, petitioner separately filed with the RTC Branch 67, an Objection to Competency and his Answer to the Complaint. Since the records thereof were already transmitted to RTC Branch 33, RTC Branch 67's Branch Clerk of Court had said pleadings forwarded thereto. Since then, the proceedings in Civil Case No. 1518-BG have been conducted by RTC Branch 33.

In an Order dated 22 April 2004, after the parties therein filed their Answers and the issues having been joined, Presiding Judge Rose Mary R. Molina-Alim of RTC Branch 33 set the case for pre-trial conference and ordered the submission of the parties' respective pre-trial briefs.

On 24 May 2004, petitioner filed with the RTC Branch 33 an Amended Answer together with the Authority given by his co-defendants Antonio O. Prieto and Monette O. Prieto, in his favor to appear for and in their behalf, and their Pre-Trial Brief.

In a Resolution dated 28 September 2005, the Second Division of the Supreme Court referred the instant administrative case to the undersigned for investigation, report and recommendation within ninety (90) days from receipt thereof. A copy of the said Resolution was received by the undersigned on 18 November 2005.

Pursuant thereto, in an Order promulgated on 21 November 2005, the undersigned set the case for hearing on 13 December 2005 directing the petitioner and the respondents, and their witnesses, if any, to appear before her and to submit documents relevant to the complaint.

During the scheduled hearing, the petitioner and the respondent judge, after the marking and offering of their respective documentary evidence, manifested that they will not be adducing any further evidence. Upon their motion, they were given a period thirty (30) days within which to simultaneously file their Memoranda, after which the case will be deemed submitted for resolution.

On 13 December 2005, petitioner filed his Memorandum. The respondent judge, on the other hand, filed his Memorandum on 18 January 2006 while the respondent lawyer filed his Memorandum on 20 January 2006.

In her report, Justice Salonga recommended the dismissal of the complaint against respondents, and that complainant be admonished for filing the frivolous complaint.

A reading of the records of this case clearly shows that the present administrative case is unfounded, as it is devoid of factual and legal basis. Stripped of all its verbosity, petitioner's allegations in support of his complaint against the respondents should be treated for what they really are, mere allegations founded on speculation and conjecture. In this connection, it must be stressed that in administrative proceedings, the burden of proof that the respondents committed the act complained of rests on the complainant. Failing in this, the complaint must be dismissed.

First off, the allegation of the petitioner to the effect that the respondent lawyer, through the intervention and assistance of the respondent judge, had free access to the court records Civil Case No. 1081-BG fails to find evidentiary support. Without more, petitioner deduced that the court records of Civil Case No. 1081-BG were made available to the respondent lawyer at the instance of the respondent judge simply because relevant and substantial portions of the complaint filed by the latter were re-written and adopted in Civil Case No. 1518-BG. Bare and conclusory as it is, the said allegation deserves scant consideration.

Emphatically, the mere fact that respondent lawyer had adopted relevant and substantial portions of the complaint filed by the respondent judge does not in any way bespeak of any illegal or unethical practice on his part.

For one, the respondent lawyer could have easily read and gained access