

SECOND DIVISION

[Adm. Case No. 5036, January 13, 2003]

RIZALINO C. FERNANDEZ, COMPLAINANT, VS. ATTY. DIONISIO C. ISIDTO, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

This is a complaint against respondent Atty. Dionisio C. Isidto for misconduct and violation of the lawyer's oath.

Complainant Rizalino C. Fernandez is the son of Vicente K. Fernandez, plaintiff in Civil Case No. 3726, entitled "Vicente K. Fernandez v. Cresencia Dahildahil," filed in the Regional Trial Court, Branch 43, Bacolod City. He alleges that on February 24, 1997, judgment was rendered by the trial court declaring his father to be the owner of Lot Nos. 3, 4, and 5 of the Bacolod Cadastre covered by TCT No. 29264 and ordering defendant Cresencia Dahildahil to surrender possession of the lots to the plaintiff. According to complainant, the decision became final on October 3, 1998 as defendant Dahildahil, who had filed a notice of appeal, decided not to pursue her appeal upon the advice of respondent Atty. Isidto.

Complainant claims that on May 24, 1999, the trial court issued a writ of execution, but respondent moved to quash the same on the ground of the pendency of another case filed in Branch 11 of the same court. It appears that respondent had filed on October 26, 1998 a complaint, entitled "William Ko, Sio Bee Ko, and Chona Ko v. Rizalino Fernandez, Virginia Fernandez, Elena Fernandez, Vicky Fernandez, Vivian Fernandez and Venancia Fernandez" and docketed as Civil Case No. 98-10520, in which he sought the cancellation of a certificate of title issued in the name of Vicente K. Fernandez (TCT No. 29264), which had been declared valid in Civil Case No. 3726.

On August 18, 1999, the trial court denied respondent's motion to quash on the ground that the action instituted by respondent in behalf of the children of Cresencia Dahildahil was barred by the judgment of February 24, 1997 in Civil Case No. 3726. Respondent filed a supplemental motion to quash the writ, but it was similarly denied by the trial court on December 9, 1999. Meanwhile, on motion of the children of Vicente K. Fernandez, as defendants in Civil Case No. 98-10520, the trial court dismissed the complaint filed by respondent as it was barred by the judgment in Civil Case No. 3726. Respondent filed a notice of appeal and, on his motion, the Court of Appeals granted him an extension to file the appellants' brief. Nonetheless, for unknown reasons, respondent failed to file the appellants' brief, as a result of which the appeal was dismissed.

Complainant claims that respondent's actions were calculated to delay the execution of the decision of Civil Case No. 3726.

Respondent denies the allegations made against him. He claims that although it was upon his advice that Dahildahil did not pursue her appeal in Civil Case No. 3726, he nevertheless filed Civil Case No. 98-10520 in behalf of Dahildahil's children because he honestly believed that they had a valid ground for seeking the cancellation of the certificate of title in the name of Vicente K. Fernandez. He contended that the decision in Civil Case No. 3726 did not constitute a bar to the filing of Civil Case No. 98-10520 as the two cases involved different parties and causes of action.^[1]

Complainant filed a Reply and Supplemental Reply to respondent's comment, after which the case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation. In its Resolution No. XV-2002-404, dated August 3, 2002, the IBP Board of Governors approved the recommendation of its Investigating Commissioner, Pedro A. Magpayo, Jr., that respondent be suspended from the practice of law for a period of one year for "misu[sing] the [R]ules [of] Procedure to impede the noble ends of justice."

The investigating commissioner's report reads in pertinent parts:

The records sufficiently establish that Vicente Fernandez (father of complainant) filed Civil Case No. 3726 (hereinafter referred to as the first case) in the Regional Trial Court of Bacolod City on October 10, 1985 against Cresencia Dahildahil (common law wife of Ko Chun) involving Lots 3, 4, and 5 all of Bacolod Cadastre covered by TCT No. 29264 of the Registry of Deeds of Bacolod City. The action was for recovery of possession and sum of money.

The case suffered considerable delay due to one reason or another stated in the trial court's decision of February 24, 1997. Finally, after eleven (11) long years of litigation, the trial court resolved the main issue that "plaintiff presented sufficient evidence to prove his ownership of Lot 3, 4, and 5, Block 1, evidenced by TCT No. 29264" (page 18 Decision; Annex A of Complainant's Position Paper) and ordered the defendant Dahildahil to return possession of the property to plaintiff.

The decision was appealed by Dahildahil to the Court of Appeals. But, later, she abandoned her appeal (CA G.R. No. 56999) and did not pursue it on the advice of herein respondent (Comment of Respondent dated August 5, 1999). Consequently, the Court of Appeals dismissed the appeal which dismissal became final on October 3, 1998.

On October 26, 1998, or 23 days after the dismissal of the appeal, Civil Case No. 98-10520 (hereinafter referred to as the second case) was instituted by Dahildahil's children against the heirs of Vicente Fernandez, including the complainant, for cancellation of title of the same property litigated in Civil Case No. 3726 (first case) and adjudged by the court as belonging to Vicente Fernandez, upon the advice of herein respondent (Respondent's Position Paper on page 2).

At this juncture, it is worth mentioning that [the] plaintiffs in the second case (children of Dahildahil by the late Ko Chun) merely adopted as their cause of action the defense put up by their mother in the first case.

. . . .

When the final judgment in the first case (Civil Case No. 3726) was being executed by the prevailing party, the defendant Dahildahil, thru respondent, vigorously opposed the move on the ground that the pendency of the second case (Civil Case No. 98-10520) "poses a civil prejudicial question which must be resolved before any further proceedings," or execution, can be taken in the first case.

With equal vigor, the trial court rejected this position. It ruled that precisely "there being identity of parties – plaintiffs and defendants in Civil Case No. 98-10520 (second case) are mere successors-in-interest of the parties at bar; [as the] cause[s] of action and subject matter [of the two cases are the same], the finding of this Court having become final and executory, res judicata sets in and Civil Case No. 98-10520 is barred by prior judgment" (Resolution dated August 19, 1999; Annex A of the Supplemental Reply).

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Notwithstanding all the foregoing, however, with evident obduracy, respondent continued to resist execution of the judgment in the first case [by filing a supplemental motion to quash the writ of execution] reasoning out this time around that the judgment in the first case will operate only as against Dahildahil but not [as] against her children (plaintiffs in the second case), who were not parties to the first case (Supplemental Motion to Quash Writ of Execution dated August 20, 1999).

Once more the trial court repudiated this feeble stand of the respondent and [denied Dahildahil's Supplemental Motion to Quash Writ of Execution].

Under the Revised Rules of Court, a lawyer shall "counsel or maintain such actions or proceedings as appear to him to be just, and such defenses only as he believes to be honestly debatable under the law." (Rule 138, Sec. 20, C)

The persistent obstruction engineered by the respondent to the execution of the final judgment in the first case coupled with his filing of the second case which was primarily intended to relitigate the settled issue of ownership of subject property is clearly transgressive of this rule.

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The Resolution of August 19, 1999 (which resolve[d] respondent's "motion to quash writ of execution" in the first case) and the Order of December 9, 1999 (which resolve[d] the motion for reconsideration filed by respondent of the August 19, 1999 resolution) as well as the Order dated August 3, 2000 (which resolve[d] the "motion to dismiss" and the "Opposition" thereto filed in the second case), discussed thoroughly the