



Republic of the Philippines  
Supreme Court  
Manila

Mic DeBatt  
MISAELO DOMINGO C. BATTUNGLE  
Division Clerk of Court  
Third Division

MAY 07 2021

THIRD DIVISION

EDGARDO A. TAPANG,  
*Complainant,*

A.C. No. 12822

Present:

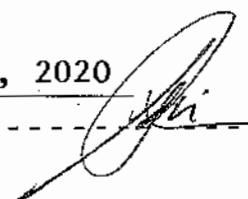
LEONEN, J., *Chairperson,*  
HERNANDO,  
INTING,  
DELOS SANTOS, and  
ROSARIO, JJ.

- versus -

Promulgated:

ATTY. MARIAN C. DONAYRE  
*Respondent.*

November 18, 2020

X----------X

DECISION

INTING, J.:

This administrative case is rooted in a verified Petition<sup>1</sup> filed by Edgardo A. Tapang (complainant) against Atty. Marian C. Donayre (Atty. Donayre) before the Integrated Bar of the Philippines (IBP)-Commission on Bar Discipline (IBP-CBD) for her alleged violation of the rule against forum shopping.

*The Antecedents*

Complainant alleged that he was the respondent in a labor case for illegal dismissal and monetary claims filed by Ananias Bacalso (Bacalso) before the Labor Arbiter (LA). The case was docketed as NLRC Case No. RAB VII-09-2458-2009.<sup>2</sup>

<sup>1</sup> Rollo, pp. 2-3.

<sup>2</sup> As culled from the complaint filed with the National Labor Relations Commission (NLRC) Decision, *id.* at 16-17.

In the Decision<sup>3</sup> dated May 14, 2010 in NLRC Case No. RAB VII-09-2458-2009, the LA dismissed the case for lack of merit, *viz.*:

x x x There is no evidence in the record showing that complainant was hired by the respondent. That he was paid remuneration in the form of salaries or wages. That, respondent exercised power of dismissal upon the complainant and that the respondent has exercised or at least has the power of control over the complainant. Obviously, there is nothing found in the record that could sustain any conclusion that there is employer-employee relationship existing between the complainant and the respondent. This being the case, complainant's complaint should be dismissed.<sup>4</sup>

There being no appeal filed by Bacalso with the National Labor Relations Commission (NLRC), the LA Decision became final and executory on June 10, 2010. Atty. Donayre, as the counsel on record for Bacalso, received a copy of the Decision on May 31, 2010.<sup>5</sup>

On July 5, 2010, Atty. Donayre filed another illegal dismissal complaint in Bacalso's behalf with the *same claims* as the earlier case against complainant before the LA docketed as NLRC RAB-VII Case No. 07-1396-10.<sup>6</sup> This prompted complainant to file a Motion to Dismiss<sup>7</sup> on the ground of *res judicata*, citing the previous dismissal of NLRC Case No. RAB VII-09-2458-2009. However, instead of acting on the motion, the LA directed the parties to submit their respective position papers.<sup>8</sup>

In the Decision<sup>9</sup> dated March 23, 2011, the LA rendered judgment in favor of Bacalso and ordered complainant to pay the former: (a) ₱77,688.00 as separation pay; (b) ₱19,422.00 as 13<sup>th</sup> month pay; and (c) ₱9,711.00 as attorney's fees.<sup>10</sup>

On appeal, the NLRC overturned the LA's ruling and dismissed

<sup>3</sup> *Id.* at 28-31-A; penned by Acting Executive Labor Arbiter (LA) Jose-G. Gutierrez.

<sup>4</sup> *Id.* at 31-A.

<sup>5</sup> *Id.* at 82.

<sup>6</sup> *Id.* at 34.

<sup>7</sup> *Id.* at 35.

<sup>8</sup> As culled from the Decision dated November 24, 2011 of the NLRC. *Id.* at 50-51.

<sup>9</sup> *Id.* at 10-15; penned by LA Arturo M. Camiller.

<sup>10</sup> *Id.* at 14.

NLRC RAB-VII Case No. 07-1396-10 on the grounds of *res judicata* and the lack of an employer-employee relationship between complainant and Bacalso.<sup>11</sup>

Hence, complainant filed the instant administrative case against Atty. Donayre for her alleged violation of the rule against forum shopping.

In the Order<sup>12</sup> dated May 22, 2013, the IBP-CBD directed Atty. Donayre to submit her verified answer to the petition filed by complainant. However, despite due notice, Atty. Donayre failed to file her verified answer with the IBP-CBD.<sup>13</sup>

Moreover, Atty. Donayre also failed to appear during the mandatory conference scheduled by the IBP-CBD on November 7, 2013.<sup>14</sup> The IBP-CBD then required the parties to submit their respective position papers, but only complainant complied with the IBP-CBD's directive.<sup>15</sup>

In the Order<sup>16</sup> dated November 19, 2014, the IBP-CBD again directed Atty. Donayre to submit her position paper within 15 days from receipt thereof. Despite receipt of the Order on December 8, 2014, Atty. Donayre still failed to file any responsive pleading, or position paper with the IBP-CBD.<sup>17</sup>

#### *The IBP Report and Recommendation*

In the Report and Recommendation<sup>18</sup> dated September 9, 2016, the Investigating Commissioner found Atty. Donayre guilty of forum shopping and recommended that she be fined in the amount of ₱2,000.00 and admonished to comply with the lawful orders of the IBP-CBD.

<sup>11</sup> See Decision dated November 24, 2011, *id.* at 48-55; penned by Commissioner Julie C. Rendoque, with Presiding Commissioner Violeta Ortiz-Bantug, concurring.

<sup>12</sup> *Id.* at 59.

<sup>13</sup> *Id.* at 144.

<sup>14</sup> *Id.* at 63.

<sup>15</sup> See complainant's Position Paper dated April 2, 2014, *id.* at 80-87.

<sup>16</sup> *Id.* at 139.

<sup>17</sup> *Id.* at 145.

<sup>18</sup> *Id.* at 144-147; signed by Investigating Commissioner Racquel Crisologo-Lara.

In the Notice of Resolution<sup>19</sup> dated September 28, 2017, the IBP Board of Governors resolved to adopt the findings of fact of the Investigating Commissioner, but recommended that Atty. Donayre be suspended from the practice of law for a period of six (6) months.

### *The Issue*

The issue for the Court's resolution is whether Atty. Donayre should be held administratively liable for violating the rule against forum shopping.

### *The Ruling of the Court*

The Court adopts the findings of fact of the IBP Board of Governors, but *modifies* its recommendation as to the proper penalty in accordance with recent jurisprudence.

"The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment."<sup>20</sup> In *Chua v. Metropolitan Bank & Trust Company*,<sup>21</sup> the Court enumerated the different ways by which forum shopping may be committed:

Forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action, but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).<sup>22</sup>

While there is no showing that Atty. Donayre was the one who

<sup>19</sup> *Id.* at 142-143.

<sup>20</sup> *Atty. Alonso, et al. v. Atty. Relamida, Jr.*, 640 Phil. 325, 334 (2010).

<sup>21</sup> 613 Phil. 143 (2009).

<sup>22</sup> *Id.* at 153-154, citing *Collantes v. Court of Appeals*, 546 Phil. 391, 400 (2007) and *Rev. Ao-As v. Court of Appeals*, 524 Phil. 645, 660 (2006).

prepared and filed Bacalso's first complaint for illegal dismissal and money claims docketed as NLRC Case No. RAB VII-09-2458-2009, the records reveal that she was the counsel on record for Bacalso when the LA dismissed the case in a Decision dated May 14, 2010. This is precisely the reason why Atty. Donayre was furnished with a copy of the LA's Decision which, notably, became final and executory on June 10, 2010.

Notwithstanding the finality of the dismissal of the earlier case, Atty. Donayre *deliberately* filed another labor case, docketed as NLRC RAB-VII Case No. 07-1396-10, based on the *same cause of action*, involving the *same parties*, and with the *same prayer* before the LA.

Atty. Donayre should have known better than to file the second labor case as the dismissal of NLRC Case No. RAB VII-09-2458-2009 had the effect of an *adjudication on the merits*. More than that, it appears that Atty. Donayre filed the second illegal dismissal case almost one month after the Decision dated May 14, 2010 attained finality. Such action clearly reveals a misplaced zealousness and malicious intent to *relitigate* the case in the hope of gaining a favorable judgment. It also demonstrates a clear *abuse* and *misuse of court processes* to the detriment not only of the winning party, but also of the administration of justice.<sup>23</sup>

By her conduct, there is no question that Atty. Donayre had violated the rule against forum shopping and the doctrine of *res judicata*<sup>24</sup> in breach of Rule 10.03, Canon 10, and Rules 12.02 and 12.04, Canon 12 of the Code of Professional Responsibility (CPR) which provide:

CANON 10 — A lawyer owes candor, fairness and good faith to the court.

x x x x

Rule 10.03 — A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

<sup>23</sup> See *In Re: G.R. No. 157659 "Mallari v. GSIS, et al."*, 823 Phil. 164 (2018).

<sup>24</sup> The elements of *res judicata* are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action identity of parties, subject matter, and causes of action. See *Spouses Torres v. Medina*, 629 Phil. 101, 110 (2010).

CANON 12 — A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

X X X X

Rule 12.02 — A lawyer shall not file multiple actions arising from the same cause.

X X X X

Rule 12.04 — A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse court processes.

Worse, the records further show that Atty. Donayre had *unjustifiably* failed to comply with the IBP's directives to file her verified answer,<sup>25</sup> to attend the mandatory conference,<sup>26</sup> and to submit her position paper<sup>27</sup> despite having received due notice thereof.<sup>28</sup> As an officer of the Court, Atty. Donayre is expected to know that the directives of the IBP, as the investigating arm of the Court in administrative cases against lawyers, are *not* mere requests but are lawful orders which should be complied with promptly and completely.<sup>29</sup>

Atty. Donayre's blatant noncompliance with these directives clearly indicates a lack of respect for the Court and the IBP's rules and procedures, which, in itself, is tantamount to willful disobedience of the lawful orders of the Supreme Court,<sup>30</sup> in violation of Canon 1 of the CPR which states:

CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land, and promote respect for law and legal processes.

It also constitutes a breach of the Lawyer's Oath which imposes upon all members of the Bar the duty "[t]o support the Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein x x x."

<sup>25</sup> See Order dated May 22, 2013 of the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD), *rollo*, p. 59.

<sup>26</sup> See Notice of Mandatory Conference/Hearing dated October 11, 2013, *id.* at 60.

<sup>27</sup> See Order dated November 19, 2014 of the IBP-CBD, *id.* at 139.

<sup>28</sup> *Id.* at 144-145.

<sup>29</sup> See *Radial Golden Marine Services Corporation v. Atty. Cabugoy*, A.C. No. 8869 (Resolution), June 25, 2019.

<sup>30</sup> *Id.*

In the recent case of *Villanueva v. Atty. Alentajan*,<sup>31</sup> the Court found the respondent lawyer guilty of engaging in forum shopping and suspended him from the practice of law for three months.

In *Radial Golden Marine Services Corporation v. Atty. Cabugay*,<sup>32</sup> the Court ruled that the respondent lawyer's nonchalant attitude in complying with the IBP's directives, as well as the Court's Resolutions, constituted willful disobedience of the lawful orders of the Supreme Court. Thus, the Court suspended the respondent lawyer from the practice of law for two (2) years, even though the allegations against him were wholly unsubstantiated which would have warranted the dismissal of the case.

It is well settled that "[t]he determination of the appropriate penalty to be imposed on an errant lawyer involves the exercise of sound judicial discretion based on the facts of the case."<sup>33</sup> Given the factual milieu of this case, the Court deems it proper to suspend Atty. Donayre from the practice of law for a period of two (2) years for violation of the rule against forum shopping and the doctrine of *res judicata*, as well as for her willful disobedience of the lawful orders of the Supreme Court.

**WHEREFORE**, the Court finds respondent Atty. Marian C. Donayre **GUILTY** of violating Canon 1, Rule 10.3, Canon 10, and Rules 12.02 and 12.04, Canon 12 of the Code of Professional Responsibility and the Lawyer's Oath.

Accordingly, respondent Atty. Marian C. Donayre is **SUSPENDED** from the practice of law for a period of two (2) years with a **STERN WARNING** that a repetition of similar acts will be dealt with more severely.

The suspension from the practice of law shall take effect immediately upon receipt of this Decision by respondent Atty. Marian C. Donayre. She is **DIRECTED** to immediately file a Manifestation to the Court that her suspension has started, copy furnished all courts and quasi-judicial bodies where she has entered her appearance as counsel.

<sup>31</sup> A.C. No. 12161, June 8, 2020.

<sup>32</sup> *Radial Golden Marine Services Corporation v. Atty. Cabugoy*, *supra* note 29.

<sup>33</sup> *Venterez v. Atty. Cosme*, 361 Phil. 479, 490 (2007), citing *Endaya v. Atty. Oca*, 457 Phil. 314, 329 (2003).

Let copies of this Decision be furnished the Office of the Bar Confidant to be appended to respondent Atty. Marian C. Donayre's personal record, the Office of the Court Administrator, and the Integrated Bar of the Philippines for their information and guidance.

**SO ORDERED.**

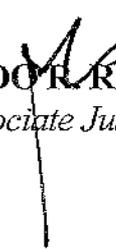
  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

WE CONCUR:

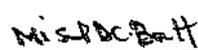
  
**MARVIC M.V.F. LEONEN**  
*Associate Justice*

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

  
**EDGARDO L. DELOS SANTOS**  
*Associate Justice*

  
**RICARDO R. ROSARIO**  
*Associate Justice*

CERTIFIED TRUE COPY

  
**LISABEL DOMINGO C. BATTUNG III**  
Division Clerk of Court  
Third Division

MAY 07 2021

