

## EN BANC

**[ A.M. No. MTJ-95-1053, January 02, 1997 ]**

**SPOUSES MAKADAYA SADIK AND USODAN SADIK,  
COMPLAINANTS, VS. JUDGE ABDALLAH CASAR, RESPONDENT.  
D E C I S I O N**

**PER CURIAM:**

The case before us stemmed from a verified complaint filed by Spouses Makadaya and Usodan Sadik charging Judge Abdallah Casar, Municipal Circuit Trial Court of Kolambugan-Tangcal, Lanao del Norte with misconduct and misappropriation.

Judge Casar filed his answer dated February 28, 1995 averring that the complaint is merely for harassment and intended to ruin his reputation.

In the resolution of August 14, 1995, this Court referred this case to Executive Judge Valerio M. Salazar of the Regional Trial Court of Iligan City and Lanao del Norte, Branch 6 for investigation, report and recommendation.

In his Report and Recommendation dated November 25, 1995, the Investigating Judge made the following findings:

"The basic facts are not in dispute, to wit:

1. On February 14, 1985, one Lekiya Paito filed an application for life insurance with the Great Pacific Life Assurance Corporation (Grepalife) in Cotabato City, Exh. 5. The application was approved and Policy No. 0503033 was issued in her name for the amount of P30,000.00 with an accidental death benefit rider. Named as beneficiaries were her daughters, Linang Minalang and Makadaya Sadik. She paid the initial premium of P410.00.
2. On October 12, 1985, Lekiya Paito died in Pagayawan, Tamparan, Lanao del Sur.
3. The beneficiaries and/or through their representatives sought for and obtained the assistance of respondent, who was then a trial attorney of the Bureau of Forest Development, Cotabato City, to pursue the approval of their claim for payment of the insurance benefits with Grepalife. Respondent made the necessary follow-ups but in due course Grepalife denied the claim on the grounds of misrepresentation and concealment.
4. On October 10, 1986, respondent, as counsel for the beneficiaries, filed a complaint in the Regional Trial Court, Br. 13, Cotabato City which was docketed therein as Civil Case No. 2747 entitled: 'Makadaya L. Sadik and Linang Minalang, plaintiffs versus Great Pacific Life Assurance Corporation, defendant' for Specific Performance.

5. On November 17, 1989, the Regional Trial Court rendered a decision in favor of plaintiffs and against the defendant ordering the latter to pay to the former the sum of P30,000.00 as 'benefit due them under Insurance Policy No. 503033.' The court denied plaintiffs' claim for double indemnity of P60,000.00 under the accidental death rider. At this time, respondent was already the Presiding Judge of the 5th Municipal Circuit Trial Court of Kolambugan-Maigo (now, MCTC of Kolambugan-Tangcal), having assumed such office on September 1, 1989, Exh. 7.

6. Upon receipt of the decision, respondent as counsel for plaintiffs filed a notice of appeal to the Court of Appeals even as defendant likewise filed an appeal. Respondent represented the plaintiffs in the appeal. On September 22, 1992, the Court of Appeals affirmed in toto the decision of the lower court. Defendant elevated the case on petition for review to the Supreme Court which dismissed the petition.

7. After the dismissal of its petition by the Supreme Court, Grepalife filed a Manifestation dated 6 July 1993 with the Regional Trial Court, Br. 13, Cotabato City declaring its willingness to pay the judgment award and depositing with said court RCBC check No. 62837 in the amount of P30,000.00 payable to the plaintiffs. Copy of the manifestation was furnished to 'Atty. Abdallah M. Casar, Counsel for the Plaintiffs, Kolambugan, Lanao del Norte' (pp. 44 & 55, Records).

8. On October 1, 1992, respondent collected the check from the Clerk of Court of the Regional Trial Court, Br. 13, Cotabato City and thereafter cashed it.

9. Respondent did not deliver the said money judgment to the plaintiffs.

10. On January 26, 1995, complainants filed their administrative complaint.

Respondent admitted that he retained the sum of P30,000.00 representing the judgment award in Civil Case No. 2747 and that he did not deliver it to the plaintiffs. He interposes the following defenses:

1. He is not guilty of any misconduct because he accepted the case long before he became a judge;

2. He did not misappropriate the money he collected from the court. It is intact but he has the right to retain the amount of P30,000.00 until he is paid his expenses pursuant to Section 137, Rule 138 on attorney's lien;

3. The complainant, Makadaya Sadik is not the real Makadaya Sadik, plaintiff in Civil Case No. 2747 and being an impostor she is not entitled to the money.

There is no dispute that when respondent agreed to file the complaint in behalf of Makadaya Sadik and Linang Minalang, he was not yet a member of the judiciary. He was a trial attorney of the Bureau of Forest Development. He claimed that he was authorized to engage in practice in behalf of relatives but presented no documentary authority. He continued to represent the plaintiffs in Civil Case No. 2747 when he joined the Citizens Legal Assistance Office in a private capacity. In fact he took pains to emphasize that he handled the case not as a CLAO lawyer (tsn, p. 39; 11-13-95) although in his notices of change of address, he gave his new addresses as follows: 'Atty. Abdallah M. Casar, CLAO, Capitol, Pigcarangan, Tubod, Lanao del Norte' Exh. 10 and 'CLAO, Kabacan District Office, Municipal Hall Bldg., Kabacan, Province of

Cotabato' Exh. 11. (pp. 119-120, Records). Similarly in his Memorandum dated 24 October 1988, he signed as 'Attorney for Plaintiffs, CLAO, Kabacan, Cotabato,' Exh. B (pp. 89-96, Records). In those instances, while he was actually prosecuting the case in his private capacity, he gave the impression that he was handling the case for the CLAO. By his own admission, he was engaged in a private practice while employed as trial attorney with the BFD and citizen's attorney with the CLAO. He failed to produce proof of authority. But as he correctly states, those were acts performed before he joined the judiciary. However, he failed to mention that even after he became a municipal judge, he continued to act as counsel for the plaintiffs in Civil Case No. 2747 on appeal to the Court of Appeals and the Supreme Court. He assumed office on September 1, 1989. The decision of the Regional Trial Court was rendered on November 17, 1989. He filed an appeal in behalf of the plaintiffs even as Grepalife also appealed. He testified:

'Q. After that what happened?

A. The case' decision was affirmed by the Court of Appeals and eventually appealed again to the Supreme Court where I made several manifestations'. (tsn, p. 36; 11/13/95)

He actively handled the case on appeal. He violated Rule 5:07 of the Code of Judicial Conduct which states that 'A judge shall not engage in the private practice of law.' He reasoned out that he was forced to continue as counsel for the plaintiffs because he failed to get in touch with them after he received the decision of the lower court. He even went to Davao to look for them but failed. A transparent and flimsy justification. At that time he was stationed in Kolambugan, Lanao del Norte. He knew that plaintiffs are from Pagayawan, Tamparan, Lanao del Sur. He is himself a native of Tatayawon, Tamparan. He could have easily went to his hometown or sent someone there to get in touch with plaintiffs. He did not have to go to Davao which is much further from Kolambugan than Tamparan. At any rate failure to contact his clients is not reason enough to continue as counsel for plaintiffs on appeal. The least which he should have done was to secure permission from the Supreme Court before proceeding with the case on appeal.

He also denies having converted and misappropriated the judgment award of P30,000.00. He claims the amount is intact but he has the right to retain the same until he is paid for his expenses pursuant to Sec. 37, Rule 138 of the Rule of Court. He declared:

'A. They failed to come and for all these, I estimated my expenses to be more than Thirty Thousand (P30,000.00) Pesos.

Q. What is your right in getting the amount of P30,000.00?

A. Well, pursuant to Rule 138, Section 37 of the Rules of Court known as attorney's liens by virtue of that I have the right to retain the amount until payment of my expenses was paid . . .' (sic) (tsn, pp. 38-39; 11/13/95).

This is ridiculous. The judgment award is only P30,000.00 but he spent more than P30,000.00 to recover it. Thus despite winning the case, the client could not collect a single cent and will still have to pay his lawyer. This may be one reason why the ordinary layman holds an unflattering perception of lawyers.

His evidence fails to prove the amount of expenses claimed by him. He said that to

follow-up the claim, he went to Manila six times spending for fare alone P3000.00 for each trip. When the case was on appeal to the Supreme Court, he went to Manila to follow-up thrice (tsn, p. 38; 11/13/95). Except for his uncorroborated testimony, there are only two documents showing he was indeed in Manila. Those are Exhs. 26 and 32 indicating that he personally served those letters to Grepalife in Manila. But there is no evidence that he went there for this purpose alone. It is highly probable that the visit to Grepalife was merely one of his purposes in going to Manila. On the other hand, his claim that he went to Manila three times to follow-up the case while it was pending with the Supreme Court is unworthy of credence. He was then already a municipal judge. He could not have openly exposed himself to the Supreme Court as being engaged in private practice. Besides there is no reason to follow-up in person any case with the Supreme Court. Similarly, his claims that he spent a lot of money in looking for witnesses and trying to trace the whereabouts of his clients are self-serving, devoid of corroboration and unsupported by document evidence. Finally, he presented the receipts for the payment of docket fees in the amount of P580.00, Exhs. 28 and 29, which he alleges was paid by him out of his own pocket. Standing alone, those receipts do not prove his claim. The normal practice is for the client to advance to his lawyer the amount for the filing fees. It is the lawyer who pays the docket fees and he can easily procure the issuance of the receipts in his own name. Complainant Makadaya Sadik declared that her husband took care of the payment of the docket fees. Respondent did not cross-examine Usodan Sadik on this point.

In sum, respondent failed to show by clear and convincing evidence that he did indeed spend more than P30,000.00 to prosecute the insurance claim. His various claims of expenses for travels to Manila, to find witnesses and to look for his clients are all designed to inflate his demand for reimbursement and justify his withholding of the judgment award from his clients. To be generous, the sum of P6,000.00 corresponding to his trips to Manila in March and May, 1986 may be allowed. Added to that may be his claim for attorney's fees, although to be generous again, he is not really entitled to it. From the testimonies of both Usodan Sadik and respondent, it appears that there was an agreement for the payment of P10,000.00 if respondent succeeds in recovering the sum of P60,000.00 under the accidental death rider. But this amount was not obtained and only the basic claim of P30,000.00 was adjudged by the court. It is logical to assume that in such case, the amount of attorney's fees should also be proportionally reduced to P5,000.00. Thus his total claim is not more than P11,000.00. Nonetheless, it appears that his reliance on Section 37, Rule 138 of the Rules of Court is nothing more than an afterthought. If indeed, he was claiming attorney's lien pursuant to said section, then he should have known that to be entitled thereto he must comply with certain pre-conditions. Said section provides that with respect to judgments for payment of money, like in Civil Case No. 2747, a lawyer shall have a lien thereto 'from and after the time when he shall have caused a statement of his claim of such lien to be entered upon the records of the court rendering such judgment . . . and shall have caused written notice thereof to be delivered to his client and the adverse party.' From July, 1993 when he learned of the dismissal of Grepalife's petition by the Supreme Court until now, he did not file the necessary pleadings to enforce his alleged lien. It surfaces only when the administrative case was filed.

His last line of defense is that the complainant Makadaya Sadik is not the real Makadaya Sadik who is the beneficiary of Lekiya Paito and plaintiff in Civil Case No. 2747. He declared:

"A. As far as I know they were recruited as witnesses.

COURT: Q. You said 'they, are you referring to Usodan Sadik and Makadaya Sadik?

A. Yes, Your Honor, because of the failure of the beneficiaries to come to Court.

COURT: Proceed.

Judge Casar: Q. Do you have any evidence for that, that Makadaya Sadik or referring to these persons who are complainants, Usodan Sadik and Makadaya Sadik were recruited to testify in this case, but these are not the true complainants?

A. Yes.

Q. Who recruited them?

A. The claimants.' (tsn, pp. 21-22; 11/13/95).

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COURT: WHO FAILED TO APPEAR?

A. Makadaya Sadik and Linang Minalang despite notice. The claimants failed to appear and procured another persons (sic) who are impostors. This Kunug Minalang and Sadik Paito took charge of the witnesses and they presented another witnesses (sic).

COURT: I DO NOT UNDERSTAND THIS. ANOTHER WITNESSES OR ANOTHER PERSON WAS PRESENTED TO TESTIFY AS LINANG MINALANG AND SADIK?

A. At that time we needed more witnesses so the parties and Barogong Paito agreed to testify but two persons who are principal witnesses failed to come.

COURT: SO WHEN THEY FAILED TO COME, WHAT DID SADIK PAITO DO?

A. They took charge of presenting another witnesses (sic).

Q. WHAT DO YOU MEAN BY 'TOOK CHARGE', YOU MEAN, THEY PRESENTED TO YOU PERSONS WHO WERE NOT REALLY LINANG MINALANG AND MAKADAYA SADIK?

A. They told me that instead of them who could not go to court, they faked another persons ( sic ).

Q. AND THESE PERSONS WHO WERE FAKED APPEARED AND TESTIFIED AS LINANG MINALANG AND MAKADAYA SADIK?

A. As a matter of fact, only Makadaya Sadik took the stand because Linang Minalang failed to come.

Q. MAKADAYA SADIK TESTIFIED IN COURT?