

THIRD DIVISION

[G.R. NO. 131023, July 17, 2007]

THE HEIRS OF THE LATE FAUSTINA BORRES (EXCEPT VICTORIA VILLAREIZ-RADJAIE) REPRESENTED BY ARTURO V. AGUDO; THE HEIRS OF THE LATE SEGUNDINA BORRES, REPRESENTED BY LUDOVICO B. BUHAT; THE HEIRS OF THE LATE FELISA BORRES, REPRESENTED BY ATTORNEY-IN-FACT ARTURO V. AGUDO; THE HEIRS OF THE LATE MICAELA BORRES, REPRESENTED BY CONCEPCION BOLIVAR DARADAR; THE HEIRS OF THE LATE MARIA BORRES (WHO DIED SINGLE AND WITHOUT ISSUE); AND THE HEIRS OF THE LATE SIXTO BORRES, REPRESENTED BY IRENEO B. BORRES, PETITIONERS, VS. HON. JULIUS L. ABELA, PRESIDING JUDGE OF BRANCH 17 OF THE REGIONAL TRIAL COURT IN ROXAS CITY, SUSAN MENDOZA-ARCE, CLERK OF COURT AND PROVINCIAL SHERIFF EX-OFFICIO OF THE REGIONAL TRIAL COURT IN ROXAS CITY, AND VICTORIA VILLAREIZ-RADJAIE, RESPONDENTS.

[G.R. NO.131505.]

ATTY. ALBERTO A. VILLARRUZ, PETITIONER, VS. HON JULIUS L. ABELA, PRESIDING JUDGE OF RTC BRANCH 17 IN ROXAS CITY, ATTY. SUSAN M. ARCE, RTC CLERK OF COURT, NENITA M. ALUAD, LEGAL RESEARCHER, AND VICTORIA VILLAREIZ-RADJAIE, RESPONDENTS.

[G.R. NO.131768.]

JUDGE JOSE O. ALOVERA (RETIRED), PETITIONER, VS. VICTORIA VILLAREIZ-RADJAIE AND JUDGE JULIUS L. ABELA, RESPONDENTS.

DECISION

YNARES-SANTIAGO, J.:

These are consolidated petitions for *certiorari* under Rule 65 of the Rules of Court. In **G.R. No. 131023**, the heirs of the late Faustina Borres, et al. (the Borres heirs),^[1] assail the September 25, 1997 Resolution^[2] of the Regional Trial Court of Roxas City, Branch 17, granting Victoria Villareiz-Radjaie's petition for relief and the October 14, 1997 Order^[3] directing Atty. Alberto Villaruz to explain why he should not be suspended from the practice of law for deceit, malpractice, and/or misconduct. Both the Resolution and the Order were issued by Judge Julius L. Abela in Civil Case No. V-6186 entitled "*The Heirs of the Late Faustina Borres (except Victoria Villareiz-Radjaie), et al. v. Victoria Villareiz-Radjaie.*" In **G.R. Nos. 131505** and **131768**, petitioners Atty. Alberto Villaruz and former Judge Jose O. Alovera,

respectively, assail the November 28, 1997 Order^[4] issued by Judge Abela likewise in Civil Case No. V-6186, suspending them from the practice of law effective immediately for committing acts constituting deceit, malpractice, and/or misconduct.

The facts as culled from the records are as follows:

On October 4, 1929, the Court of First Instance of Capiz rendered a decision in Cadastral Case No. 15, G.L.R.O. Cadastral Records No. 480, adjudicating Lot No. 3376 of the Cadastral Survey of Panay, Capiz, in favor of Faustina, Segundina, Felisa, Micaela, Maria, and Sixto, all surnamed Borres. The Original Certificate of Title No. 17776 over the subject property was issued on October 3, 1930.

Faustina died before World War II, leaving as heirs her children, namely: Jose, Juan, Concepcion, and Dolores, all surnamed Villareiz. Herein respondent Victoria Villareiz-Radjaie (Mrs. Radjaie) is the daughter of the late Jose Villareiz who claims sole ownership over the subject property. Meanwhile, the Borres heirs assert their rights over the property as heirs of Faustina, Segundina, Felisa, Micaela, Maria, and Sixto, and as co heirs of Mrs. Radjaie.

It appears that Faustina and her siblings mortgaged the subject property in favor of Navitas Fishing Company but failed to redeem the same. Mrs. Radjaie claims that Jose personally redeemed the property and had it exclusively titled in his name on July 24, 1940 under TCT No. 4446. Thereafter, on January 30, 1962, TCT No. RT-2089 was issued as a reconstituted title of TCT No. 4446. Jose died on February 13, 1963.

On April 8, 1992, TCT No. T-24150 was issued in the name of Mrs. Radjaie. She claims sole ownership over the property which she allegedly inherited from her father. However, the Borres heirs allege that Jose fraudulently caused the reconstitution and issuance of the title exclusively in his name.

On July 6, 1992, the Borres heirs, represented by Atty. Villarruz, filed a complaint for partition and accounting^[5] against Mrs. Radjaie that was docketed as Civil Case No. V-6186. The action also sought the cancellation of TCT No. T-24150 and the declaration of the property as commonly owned by Mrs. Radjaie and the Borres heirs. The case was raffled to Branch 17 of the Regional Trial Court of Roxas City then presided by Judge Alovera.

For her alleged failure to file an answer, Mrs. Radjaie was declared in default. On October 8 and December 10, 1993, the Borres heirs presented their evidence *ex-parte*.

In a Decision^[6] allegedly promulgated on January 30, 1995, Judge Alovera ordered the cancellation of TCT No. T-24150 and declared the subject property as commonly owned by Mrs. Radjaie and the Borres heirs. On January 31, 1995, Judge Alovera retired from the judiciary having reached the mandatory age of retirement.

On January 9, 1996, Acting Presiding Judge Delano F. Villarruz, issued an order for the issuance of a writ of execution to enforce the January 30, 1995 Decision.^[7] Subsequently, possession of the subject property was turned over to the Borres

heirs.

On March 5, 1996, Mrs. Radjaie filed a petition for relief assailing the January 30, 1995 Decision and the January 9, 1996 Order. She alleged that she was never served with summons; that the trial court did not acquire jurisdiction over her person; that the proceedings in Civil Case No. V-6186 are null and void; and that the January 30, 1995 Decision was penned by Judge Alovera after his retirement and was never entered in the book of judgments.^[8] She prayed for the issuance of a writ of preliminary mandatory injunction and "that disciplinary and contempt proceedings be taken against those involved in the perfidious anomaly to tamper with the administration of justice."^[9]

Mrs. Radjaie likewise filed a disbarment complaint against Judge Alovera before the Supreme Court, docketed as Administrative Case No. 4748 and entitled "*Radjaie vs. Atty. Alovera*."

On March 29, 1996, Judge Abela was appointed as the new Presiding Judge of Branch 17. On June 14, 1996, he issued a resolution nullifying the January 30, 1995 Decision and the January 9, 1996 Order. Further, he ordered the issuance of a preliminary injunction upon the filing of a bond and directed the Borres heirs to surrender possession of the subject property to Mrs. Radjaie.^[10]

The Borres heirs moved for reconsideration but were denied. Meanwhile, Mrs. Radjaie filed a motion to approve cash bond which was granted on August 9, 1996.^[11] A writ of preliminary mandatory injunction was issued and possession of the subject property was restored to Mrs'. Radjaie on August 12, 1996.

On September 25, 1997, Judge Abela issued the assailed Resolution granting the petition for relief from order, as follows:

x x x x

The record and the evidence amply prove the allegations in the petition that defendant was never served with summons to answer the complaint. Under such circumstance, she can not be reasonably expected to Answer the complaint.

Moreover, the "decision" dated January 30, 1995 was not filed with the Clerk of Court and therefore not properly rendered. (Section 1, Rule 36, Rules of Court). The decision being void, the same can never become final and cannot be executed. The assailed Order dated January 9, 1996, granting execution of the decision dated January 30, 1995 is also void and of no effect.

Wherefore, premises considered, the petition for relief is granted. As prayed for the defendant is ordered reinstated to the possession of the property in question. The entire proceedings in the above-entitled case is ordered set aside and defendant-petitioner thru counsel is given (fifteen) 15 days from receipt of this order to Answer the complaint.

SO ORDERED.^[12]

Thereafter, in an Order dated October 14, 1997, Judge Abela directed Atty. Villarruz to explain why he should not be suspended from the practice of law for deceit, malpractice and/or gross misconduct, for making it appear that a hearing was conducted on December 10, 1993 when in fact no such hearing took place, and for making it appear that his pleading entitled "Offer of Exhibits" was filed with the court on January 30, 1995 when no such pleading was actually filed.^[13]

Likewise, in an Order dated November 6, 1997, Judge Abela required Judge Alovera to explain why he should not be suspended from the practice of law for making it appear that he issued an Order dated January 25, 1995 admitting Atty. Villarruz's "Offer of Exhibits" when no such order could have been issued prior to his retirement on January 31, 1995, and for submitting the January 30, 1995 Decision on August 1, 1995 when he was already retired and no longer had the authority to decide cases.^[14]

Atty. Villarruz and Judge Alovera did not submit the required explanations. In separate Orders dated November 14^[15] and 21,^[16] 1997, they were notified that hearings would be conducted, but they failed to appear before the court.

On November 3, 1997, the Borres heirs filed before this Court a petition for *certiorari* with prayer for temporary restraining order in G.R. No. 131023.^[17] Without giving due course to the petition, the Court issued a temporary restraining order ordering Judge Abela to cease and desist from enforcing the October 14, 1997 Order. The Court also ordered him to desist from further conducting proceedings in Civil Case No. V-6186.

Meanwhile, on November 28, 1997, Judge Abela issued an order, the dispositive portion of which reads:

Wherefore, premises considered, this Court hereby orders Attys. Alberto Villarruz and Jose O. Alovera, suspended from the practice of law effective immediately.

The Clerk of Court is hereby ordered to furnish copies of this Order to all courts in the Philippines. Let a certified copy of this Order be transmitted to the Supreme Court together with a full statement of the facts upon which this order is made.

SO ORDERED.^[18]

Consequently, Atty. Villarruz and Judge Alovera filed their respective petitions before this Court in G.R. Nos. 131505^[19] and 131768^[20] assailing the order of suspension. The Court later issued temporary restraining orders in both cases, enjoining Judge Abela to cease and desist from enforcing and/or implementing such order.^[21]

On January 13, 1999, the Court ordered the consolidation of G.R. Nos. 131023, 131505 and 131768.^[22] Thereafter, the parties submitted their memoranda.^[23]

The Borres heirs claim that the January 30, 1995 Decision has become final and executory; that Judge Abela does not have the authority to nullify said decision; and that the proper remedy is an action for annulment of judgment before the Court of

Appeals.

Mrs. Radjaie claims that the January 30, 1995 Decision is non-existent; that the proceedings in Civil Case No. V-6186 are null and void; and that a petition for relief under Rule 38 of the Rules of Court is the proper remedy for assailing the aforementioned decision.

Atty. Villarruz and Judge Alovera alleged that they were denied due process, and that Judge Abela has no authority to suspend them from the practice of law.

The issues for resolution are as follows: 1) whether the petitions should be dismissed for violation of the principle of hierarchy of courts; 2) in **G.R. No. 131023**, whether Judge Abela committed grave abuse of discretion in granting the petition for relief and setting aside the January 30, 1995 Decision; and 3) in **G.R. Nos. 131505** and **131768**, whether Judge Abela committed grave abuse of discretion in suspending petitioners Atty. Villarruz and Judge Alovera from the practice of law.

The consolidated petitions are without merit.

Petitioners erred in directly filing their respective petitions before this Court for it violates the principle of judicial hierarchy of courts. It is well-settled that although the Supreme Court, Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of *certiorari*, prohibition, mandamus, *quo warranto*, *habeas corpus* and injunction, such concurrence does not give the petitioners unrestricted freedom of choice of court forum.^[24] Petitioners should have filed their petitions before the Court of Appeals. However, considering the peculiar circumstances of these cases and the length of time that the proceedings herein have been pending, we deem it necessary and practical to resolve the present controversy in order to avoid further delay.^[25]

In **G.R. No. 131023**, the Borres heirs claim that the January 30, 1995 Decision has long become final and executory. They argue that Judge Abela gravely abused his discretion in giving due course to the petition for relief and setting aside the January 30, 1995 Decision.

Petitioners' claim is not well taken.

The January 30, 1995 Decision could never attain finality for being *void*. It was penned by Judge Alovera after his retirement when he no longer had the authority to decide cases. We take judicial notice of this Court's Decision in Administrative Case No. 4748 dated August 4, 2000, where the Court *en banc* disbarred Judge Alovera for gross misconduct, violation of the lawyer's oath and the Code of Professional Responsibility, thus:

The established facts, as quoted from the Report dated November 17, 1999 of the Office of the Bar Confidant, are as follows:

x x x x

On December 10, 1993, there were several criminal and civil actions scheduled for trial, which commenced at about 10:00 . in