

SECOND DIVISION

[G.R. No. 93707, January 23, 2001]

**ROSITA TAN, PETITIONER, VS. ATTY. JOSE L. LAPAK,
RESPONDENT.**

DECISION

MENDOZA, J.:

This is a complaint filed by Rosita Tan against Atty. Jose L. Lapak for misconduct, based on respondent's failure to file with this Court a petition for review on certiorari of a resolution of the Court of Appeals dismissing complainant's appeal. Complainant alleged that despite the fact that this Court had granted respondent an extension of the time to file the petition for review on certiorari and she had paid respondent his fee, the latter nonetheless failed to file the petition in this Court. Complainant's letter, dated January 10, 1991, addressed to then Chief Justice Marcelo B. Fernan, stated:

Ako po ay sumusulat sa iyo upang ihingi ng tulong ang aking suliranin na may kaugnayan sa aking kaso, G.R. No. 93707 ROSITA TAN v. CA, et al. na dahilan sa kapabayaang ng aking abogado na si Atty. Jose Lapak ay hindi nakapagfile ng Certiorari nasa ngayon kanyang inihihinging palugit ay naibigay naman, at ako po ay nagbigay naman ng halagang P4,000.00 upang gawain lamang ang petition sa pagrerepaso ng Certiorari subalit inuulit pang hindi gawain.

Kgg. Na Chief Justice ako po'y pinaasa lamang ng aking abogado na wala man lamang nagawa kung ano ang nararapat. Ako naman ay isang walang karanasan sa bagay na ito ay naniwala at naghintay. Nang makausap ko po siya ay aking tinapat kung ano na at walang nadating na resulta sa ginawa niya ang sagot sa aking maghintay na lamang daw ako. Ngunit ng ako po ay pumunta sa Maynila at napadaan ako sa Korte Suprema saka ko pa lamang napag-alaman na ang aking abogado ay hindi nakapaggawa ng brief ng Certiorari at kaya napawalaan ng bisa ang aking apelasyon.

Akin pong naisip na idulog ang aking kaapihan sa Pangulo ng IBP ng Camarines Norte ang mga bagay na ito ang sagot po sa aking ay maari akong maghain ng demanda laban sa aking abogado na si Atty. Jose L. Lapak ngunit ako po ay mahirap lamang at isa pa wala akong matutustos sa aking abogado. Isa pa po wala akong pera at sapat na pinag-aralan kaya po hindi ko alam kung sino ang aking dudulungan para tumulong sa mahihirap. Kaya naisip ko pong sumulat sa opisina ninyo, para ihain ang aking karaingan. Kung inyo pong mamarapatin ako ay humihingi ng tulong sa iyo bilang pinakamataas na hustisya ang aking kaapihan.

Respondent denied the allegations against him. In his manifestation and comment, dated March 4, 1991, he contended:

- a) Ms. Rosita Tan was formerly represented by Atty. Juanito Subia in Civil Case No. 5295, Rosita Tan vs. Wilfredo Enriquez before the Regional Trial Court of Camarines Norte; said case was dismissed due to failure of Rosita Tan and his (sic) counsel to appear during the scheduled Pre-Trial of the case; . . .said Order of dismissal was however reconsidered;
- b) On November 11, 1986, Atty. Marciano C. Dating, Jr. entered his appearance for the said Rosita Tan as her original counsel, Atty. Juanito Subia, had withdrawn for reasons only known to her; . . .Atty. Marciano C. Dating, Jr. filed an Amended Complaint;
- c) That on September 20, 1988, the Court, through Hon. Luis Dictado, who heard the case, rendered a decision dismissing Rosita Tan's complaint;
- d) That on October 13, 1988, Atty. Dating, Rosita Tan's counsel, appealed from the adverse decision against her to the Court of Appeals;
- e) That Atty. Marciano Dating also withdrew later as Rosita Tan's counsel and certain Leopoldo P. San Buenaventura entered his appearance as new counsel for the said Rosita Tan in the appealed case before the Court of Appeals which was docketed as C.A. G.R. CV No. 20669;
- f) On October 26, 1989, Atty. Leopoldo E. San Buenaventura filed a Motion for Extension of Time to File Brief for Rosita Tan;... however, for reasons only known to said lawyer, he failed to file his Appellant's Brief; hence, on February 20, 1990, the Court of Appeals issued a Resolution dismissing the appeal for failure of Rosita Tan's counsel to file Appellant's Brief despite extension of time granted to him;
- g) That upon receipt by Ms. Rosita Tan of said Resolution dismissing her appeal due to the failure of her Manila lawyer to file Appellant's Brief, she came to the law office of undersigned counsel in the company of her friend, Mrs. Gloria Gatan, to employ the latter's services to seek reconsideration of the Order of dismissal and file Appellant's Brief to enable her to pursue her appeal; Rosita employed the legal services of undersigned counsel not to file a Petition for Review but to seek reconsideration of the order of dismissal of her appeal; considering then that she does not have the papers to the case on appeal, Rosita Tan agreed to pay counsel P5,000.00 to go to Manila, study the records of the case in the Court of Appeals, file a Motion for Reconsideration and prepare Appellant's Brief for her; she was able to pay P3,000.00 only instead of P5,000.00 promising to pay the balance later; consequently, the undersigned counsel filed an URGENT MOTION FOR RECONSIDERATION with the Court of Appeals....;

- h) Unfortunately, the Court of Appeals denied said Motion for Reconsideration in a Resolution promulgated on May 2, 1990;
- I) That upon receipt by the undersigned counsel of said Resolution of the Court of Appeals denying the Motion for Reconsideration, the undersigned counsel summoned the appellant Rosita Tan and requested her to bring the balance of P2,000.00 so that a Petition for Review on Certiorari could be filed with the Supreme Court; however, the said appellant Rosita Tan upon knowing of the adverse Resolution of the Court of Appeals became apathetic and when she came to the law office of the undersigned she expressed her misgivings of bringing the case to the Supreme Court and told counsel that she has no more money; despite her indifference and lukewarm attitude, the undersigned counsel filed a Motion for Extension of Time to file a Petition for Review with the Supreme Court paying the docket fees therefore in behalf of said appellant; in the meantime the undersigned counsel went to Manila to make researches preparatory to the filing of the Petition for Review with the Supreme Court; ...The undersigned counsel then requested the appellant Rosita Tan to pay him the balance of P2,000.00 as per agreement for him to be able to prepare the Petition for review in Manila and file it with the Supreme Court; but said appellant hesitantly paid only P1,000.00 which was her only money available promising to pay the balance of P1,000.00 later; thereafter, the undersigned counsel went to the Court of Appeals to get certified true copies of the Resolution denying the Motion for Reconsideration; he then learned that there was already an Entry of Judgment in the case as the Resolution dismissing the appeal had already become final; the undersigned then informed Rosita Tan of her misfortune and informed her that he would study the propriety of filing an action for annulment of the decision because of his discovery of an anomaly which resulted in a mistrial; because of continuous setbacks she suffered from beginning to end; Rosita Tan said she had lost all hope and was unwilling to go any further; she then demanded the refund of P4,000.00 from the undersigned; when the undersigned gave back the P1,000.00 he received from her, she refused to receive the amount insisting that the whole amount of P4,000.00 be returned to her claiming that the undersigned counsel had not done anything for her anyway; hence the misunderstanding which culminated in her sending a letter complaint to the Honorable Chief Justice of the Supreme Court.

The case was referred to the Integrated Bar of the Philippines for investigation, report, and recommendation. On July 29, 2000, the IBP passed a resolution adopting the report and recommendation of its Investigating Commissioner Jaime M. Vibar that respondent be reprimanded and ordered to retribute to complainant the amount of P1,000.00.

In finding respondent guilty of betrayal of his client's trust and confidence, the investigating commissioner said in his report:

Regardless of the agreement on the total amount of fees, it is clear that respondent committed to prepare and file a "petition with the Supreme Court" and for which he received P1,000.00 from the complainant (annex "B", Sagot, dated May 31, 1991). Despite such commitment, he failed to file the petition.

It is not explained why the payment of PHP1,000.00 was made by complainant for the "petition" on August 8, 1990. At that time, the period to file the petition for review as contemplated by respondent and which was the subject of an extension motion, dated May 18, 1990, filed with and granted by the Hon. Supreme Court, had already expired. It is to be noted that respondent's motion sought an extension of "thirty (30) days from May 26, 1990 or up to June 25, 1990". It would appear that respondent received P1,000.00 on August 8, 1990 from complainant at a time when the remedy of a review of the dismissal order of the Court of Appeals was no longer available. Yet, complainant was never informed or favored with an explanation that a petition for review was no longer possible, or perhaps that another remedy was still open to the complainant. To aggravate his situation, respondent alleges in his comment to the complaint (at page 3) that after he received P1,000.00 from the complainant he immediately went to the Court of Appeals to get certified copies of the resolution denying his motion for reconsideration and that thereat he discovered that an "Entry of Judgment" had already been issued. Respondent should have known that when he went to the Court of Appeals after receipt of P1,000.00, or after August 8, 1990. The period he requested from the Hon. Supreme Court to institute the petition for review had long expired.

But the silence of respondent at the time of receipt of the amount of P1,000.00 on August 8, 1990 and the "petition with the Supreme Court" was no longer an available remedy smacks of a betrayal of a client's cause and the trust and confidence reposed in him. If indeed his client's cause was no longer worth fighting for, the lawyer should not have demanded a fee...and made representations that there is merit in her case. He should have dealt with his client with all candor and honesty by informing her that on August 8, 1990 the period to file the petition had already expired.

Complainant has been a victim of negligence on the part of the law firm of San Buenaventura, et al., or particularly Atty. Leopoldo San Buenaventura, for their failure to file the Appellant's Brief in behalf of complainant within the period allowed. The dismissal of the appeal gave complainant a slim chance, if not a futile remedy, with the Hon. Supreme Court. Atty. Lapak would have been shackled in any disquisition for complainant's cause considering that she already lost in the trial court and her appeal had been dismissed without any argument being advanced in her behalf. Atty. Lapak should have been candid with complainant. He should not have asked more at a time when nothing fruitful could be done anymore.