

THIRD DIVISION

[Adm. Case No. 3066, December 03, 2001]

**J.K. MERCADO AND SONS AGRICULTURAL ENTERPRISES, INC.,
AND SPOUSES JESUS AND ROSARIO K. MERCADO,
COMPLAINANTS, VS. ATTY. EDUARDO C. DE VERA AND JOSE
RONGKALES BANDALAN, RESPONDENTS.**

R E S O L U T I O N

VITUG, J.:

A complaint for disbarment against Atty. Eduardo C. de Vera was filed by J.K. Mercado and Sons Agricultural Enterprises, Inc., and the spouses Jesus Mercado and Rosario Mercado. The complaint was an offshoot of an action, entitled "Rosario P. Mercado ('R. Mercado') vs. Jesus R. Mercado ('J. Mercado'), Mercado and Sons and Standard Fruits Corporation ('Stanfilco')," docketed Civil Case No. 17215, for dissolution and liquidation of conjugal partnership, accounting, support with support pendente lite, annulment of contract, reconveyance or recovery of possession of conjugal share, partition, damages and attorney's fees. The case was assigned to Branch 14 of the Regional Trial Court of Davao City presided over by Judge Jose Bandalan. Rosario Mercado was represented by respondent Atty. Eduardo C. de Vera.

On 15 December 1986, the case was decided in favor of Rosario Mercado who was awarded the sum of a little over P9 million. A writ of execution was issued and notices of garnishment were served on Rizal Commercial Banking Corporation ("RCBC") at Claveria, Davao City; RCBC at Tagum, Davao del Norte; and Traders Royal Bank at R. Magsaysay Avenue, Davao City, where the total amount of P1,270,734.66 was garnished.

On 26 February 1987, Rosario Mercado terminated the services of respondent and tendered the amount of P350,000.00 by way of attorney's fees. She demanded an accounting and the turn-over of the money still in the custody of respondent but the latter refused, claiming that he was entitled to P2,254,217.00 attorney's fees. Failing to recover the amount, Rosario Mercado filed a complaint for disbarment against respondent.

The matter was referred to the Integrated Bar of the Philippines ("IBP") for investigation, report and recommendation.

The IBP Board of Governors, on 23 March 1993, adopted Resolution No. X-93-41, recommending the suspension for one (1) year of Atty. Eduardo C. de Vera from the practice of law.

The Court, in its resolution of 26 October 1999, affirmed the IBP recommendation with modification that respondent Atty. Eduardo C. de Vera be suspended from the

practice of law for only six (6) months. Respondent was likewise ordered to return to Rosario Mercado the amount in excess of P350,000.00 still in his possession, without prejudice to whatever judicial action he might wish to take to recover his unsatisfied attorney's fees, if any, the resolution directing at the same time that his suspension would stand until he would have satisfactorily shown to the Court his compliance therewith.

Respondent filed a motion for reconsideration. The motion was denied with finality in the resolution of the Court, dated 02 February 2000, a copy of which was received by respondent on 22 February 2000.

The following pleadings were thereafter filed before the Court:

- a. An urgent motion, dated 13 March 2000, filed by respondent praying that the remaining period of his suspension be lifted;
- b. A motion for leave to file and admit a manifestation and motion for the issuance of a writ of execution, dated 15 March 2000, filed by Rosario Mercado;
- c. A manifestation and motion, dated 15 March 2000, filed by Rosario Mercado, praying that a writ of execution be issued compelling respondent to pay or return to her the sum of P396,692.20;
- d. A motion for leave to file and admit a manifestation, dated 27 March 2000, filed by Rosario Mercado, praying for the imposition of appropriate sanction against respondent;
- e. A letter, dated 11 February 2000, of Mr. Jose Elises, and another letter of 08 March 2000 of Capt. Edward Ranada from Davao City, inquiring whether or not respondent could practice law pending the resolution of his motion for reconsideration; and
- f. A comment and opposition, dated 31 March 2000, filed by respondent relative to the manifestation and motion for the issuance of a writ of execution filed by Rosario Mercado.

On 24 May 2000, respondent informed the Court that in compliance with its resolution of 26 October 1999, he had voluntarily returned to Rosario Mercado the amount of P114,042.28 or the excess of P350,000.00 still in his possession.

On 12 July 2000, the Court issued a resolution to the effect that the effectivity of suspension of respondent should be reckoned from his receipt on 22 February 2000 of the resolution, dated 2 February 2000, of the Court (denying with finality the motion for reconsideration). The Court took note of the court appearances of, and pleadings signed by, respondent during his period of suspension from the practice of law. Respondent was required to explain his infractions. Meanwhile, the Court resolved to remand to the IBP the issue regarding the determination of the exact amount given by complainant to respondent and the amount to be returned by respondent.

On 25 October 2000, the Court issued another resolution referring to the IBP, for

investigation, report and recommendation, the matter of respondent's alleged unauthorized practice of law.

The IBP, in its report of 08 October 2001, made the following findings:

As to the issue of how much money is still in respondent's possession -

"To summarize, respondent was able to disburse and/or account to complainant the following, to wit:

Amount deposited to complainant's TRB and Metrobank account	P300,000.00
Additional amount received by complainant, as admitted	10,000.00
Amount received by complainant from CBC garnished funds	5,000.00
Amount received by complainant by way of BPI drafts & plane fare	52,000.00
Respondent's expenses in connection with Civil Case No. 17,215 and three CA cases	<u>57,832.67</u>
	P424,832.67

"Deducting said amount from the amount received by respondent by way of garnished funds from several banks in Davao City would leave a balance of P845,901.89 (P1,270,734.56 minus P424,832.67).

"Since respondent was allowed to retain for himself the amount of P350,000.00 by way of attorney's fees and respondent voluntarily paid and/or returned to complainant the amount P114,042.28 per BPI Manager's Check 497289 in compliance with the Supreme Court directive, such amounts should be deducted or applied against respondent's accountability of P845,901.89. Therefore, respondent still has in his possession the amount of **P381,859.61**, after deducting the attorney's fees and the voluntary payment by respondent. Thus,

Amount received by respondent by way of garnished funds	P1,270,734.56
Less:	
Disbursements/Deductions as discussed above	424,832.67
Amount to be accounted for by respondent	P845,901.89
Less: (1) Respondent's attorney's fees	P350,000.00
(2) Amount voluntarily returned by respondent	<u>114,042.28</u>
Amount still in respondent's possession	P381,859.61

"Respondent is obliged to deliver to complainant the amount of P381,859.61 pursuant to Rule 16.03 of the Code of Professional Responsibility which provides that a lawyer shall deliver the funds and property of his client when due or upon demand."