

RENTOR ALBANO, COMPLAINANT, VS. MUNICIPAL JUDGE PATROCINIO C. GAPUSAN OF DUMALNEG, ILOCOS NORTE, RESPONDENT.

Adm. Matter No. 1022-MJ. May 07, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

Redentor Albano in a verified complaint dated August 18, 1975 charged Municipal Judge Patrocinio C. Gapusan of Dumalneg and Adams, Ilocos Norte (1) with incompetence and ignorance of the law for having prepared and notarized a document providing for the personal separation of husband and wife and the extrajudicial liquidation of their conjugal partnership and (2) with having allegedly influenced Judge Zacarias A. Crispin of the Court of First Instance of Ilocos Norte in deciding two criminal cases.

Malpractice as a notary. — In 1941 or five years before his appointment to the bench, respondent Gapusan notarized a document for the personal separation of the spouses Valentina Andres and Guillermo Maligta of Barrio 6, Vintar, Ilocos Norte and for the extrajudicial liquidation of their conjugal partnership.

It was stipulated in that document that if either spouse should commit adultery or concubinage, as the case may be, then the other should refrain from filing an action against the other.

Judge Gapusan denied that he drafted the agreement. He explained that the spouses had been separated for a long time when they signed the separation agreement and that the wife had begotten children with her paramour. He said that there was a stipulation in the agreement that the spouses would live together in case of reconciliation. His belief was that the separation agreement forestalled the occurrence of violent incidents between the spouses.

Albano in filing the malpractice charge is in effect asking this Court to take belated disciplinary action against Judge Gapusan as a member of the bar or as a notary. (He was admitted to the bar in 1937).

There is no question that the covenants contained in the said separation agreement are contrary to law, morals and good customs (*Biton vs. Momongan*, 62 Phil. 7). Those stipulations undermine the institutions of marriage and the family. "Marriage is not a mere contract but an inviolable social institution". "The family is a basic social institution which public policy cherishes and protects." (Arts. 52 and 216, Civil Code). Marriage and the family are the bases of human society throughout the civilized world (*Adong vs. Cheong Seng Gee*, 43 Phil. 43; *Ramirez vs. Gmur*, 42 Phil. 855, 864; *Goitia vs. Campos Rueda*, 35 Phil. 252, 254; *Brown vs. Yambao*, 102 Phil. 168).

To preserve the institutions of marriage and the family, the law considers as void "any contract for personal separation between husband and wife" and "every extrajudicial agreement, during the marriage, for the dissolution of the conjugal partnership" (Art. 221, Civil Code). Before the new Civil Code, it was held that the extra-judicial dissolution of the conjugal partnership without judicial sanction was void (*Quintana vs. Lerma*, 24 Phil. 285; *De Luna vs. Linatoc*, 74 Phil. 15).

A notary should not facilitate the disintegration of a marriage and the family by encouraging the separation of the

spouses and extrajudicially dissolving the conjugal partnership. Notaries were severely censured by this Court for notarizing documents which subvert the institutions of marriage and the family (*Selanova vs. Mendoza*, Adm. Matter No. 804-CJ, May 19, 1975, 64 SCRA 69; *Miranda vs. Fuentes*, Adm. Case No. 241, April 30, 1966, 16 SCRA 802; *Biton vs. Momongan*, *supra*; *Panganiban vs. Borromeo*, 58 Phil. 367; *In re Santiago*, 70 Phil. 66; *Balinon vs. De Leon*, 94 Phil. 277).

Respondent Gapusan as a member of the bar should be censured for having notarized the void separation agreement already mentioned.

However, his notarization of that document does not warrant any disciplinary action against him as a municipal judge (he was appointed in 1946 as justice of the peace) especially considering that his appointment to the judiciary was screened by the Commission on Appointments (See *Ty vs. San Diego*, Adm. Matter No. 169-J, June 29, 1972).

Alleged misconduct in influencing CFI Judge. — Albano complains that Judge Gapusan took advantage of his intimacy with Judge Crispin. He implies that by reason of that intimacy Judge Crispin acquitted of frustrated murder the defendants in Criminal Case No. 102-III, *People vs. Freddie Gapusan Gamboa, et al.* and convicted Albano (complainant herein) of double frustrated murder with triple attempted murder in Criminal Case No. 70-III.

Albano said that Freddie Gapusan, an accused in the first criminal case above-mentioned and a complaining witness in the other case against Albano, is a relative of Judge Gapusan. He revealed that after the acquittal decision was rendered by Judge Crispin in Criminal Case No. 102-III, the relatives of the accused in that case were saying that their relationship to Judge Gapusan, a friend of Judge Crispin, proved to be "worthwhile and useful".

Judge Gapusan admitted in his answer that he is close to Judge Crispin because they used to be members of the Municipal Judges League (when it was headed by Judge Crispin) and because the latter used to be an Executive Judge (with supervision over municipal judges). Respondent said that his association with Judge Crispin "was purely official".

Judge Gapusan also admitted that Freddie Gapusan is his distant relative. He denied that he influenced Judge Crispin in rendering his decision in the two criminal cases.

It is manifest that Albano's imputation that Judge Gapusan influenced Judge Crispin is anchored on mere suspicion. If he has any evidence that Judge Crispin committed any irregularity due to the alleged influence exerted by Judge Gapusan then Albano should have complained against Judge Crispin's actuations. He should not vent his ire on Judge Gapusan alone.

"When an officer or court allows itself to enter upon the sea of suspicion, it permits itself to enter upon a sea which has no shore, and the embarkation is without a rudder or compass to control the direction or to ascertain its bearing." (*Dy Keng vs. Collector of Customs*, 40 Phil. 118, 123).

A person has freedom to choose his friends and to hobnob with them. It is not a crime nor unethical per se for a municipal judge to fraternize with a Judge of the Court of First Instance. Whether the fraternization resulted in an unjust verdict rendered by the Judge of the Court of First Instance due to the sinister or corruptive influence of the municipal judge cannot be shown by mere inference or conjecture. It should be substantiated by solid evidence. The unjustness of the decision should be indubitably established.

The second charge should be dismissed for being speculative and unfair to Judge Crispin. (He retired in

September, 1975).

Wherefore, the respondent, as a member of the bar, is censured for having notarized the above-mentioned void agreement.

The second charge is dismissed.

So ordered.

Fernando, Actg. C.J., Antonio, and Martin, JJ., concur.

Barredo, J., concurs, because the offense was committed thirty-five years ago. Otherwise, there should have been a heavier sanction.

Concepcion, Jr., J., is on leave.

Martin, J., was designated to sit in the Second Division.

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