

JUSTA MONTEREY, COMPLAINANT, VS. EUSTAQUIO V. ARAYATA AND TERESO MA. MONTOYA, RESPONDENTS.*Per. Rec. Nos. 3527, 3408. August 23, 1935*

Ponente: IMPERIAL, J.

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It is alleged in the charges filed against Attorney Eusta quio V. Arayata (1) that on August 27, 1931, while practicing his profession, he prepared and drew up in his favor a deed of sale of the land described in transfer certificate of title No. 7591, for the sum of P4,000, stating therein that the person who executed the document and sold the land to him was his father, Arcadio Arayata, when he knew positive ly that this alleged vendor had already died on November 5, 1916; that knowing the document to be fictitious, he appear ed before notary public Tereso Ma. Montoya and made the latter legalize said document and state that Arcadio Ara yata personally appeared before him, although said fact was not true; and he later succeeded in having the register of deeds cancel the transfer certificate of title issued to Ar cadio Arayata and issue transfer certificate of title No. 8370 in his favor; and (2) that on June 5, 1933, being legally married to Aurora L. Saguil, he filed an application to marry Engracia F. Ortega, stating therein under oath that he was single when in fact he was married, said marriage not having been dissolved.

The charge filed against attorney and notary public Te reso Ma. Montoya consists in having ratified the deed of sale and having stated that Arcadio Arayata personally ap peared before him and confirmed the sale, knowing fully well that said person is already dead and therefore could do neither the one nor the other.

The investigation was finally conducted by the Judge of the Court of First Instance of the Province of Cavite, who recommended "that a disciplinary action be taken against Arayata and that Montoya be exonerated, it having been clearly established that the latter, in ratifying the document, acted in good faith and relied on Arayata's assurance that the old man then with him was really the vendor Arcadio Arayata who ratified all the contents of the instrument. We concur in the appreciation of the facts and we are of the opinion that said notary public and attorney should really be exonerated^and held innocent.

The established facts show that the respondent Arayata is the son of Arcadio Arayata who died on November 5, 1916, leaving a widow and five children; that Arcadio Ara yata in life, purchased from the Bureau of Lands lot No. 3448' of the Hacienda de Santa Cruz de Malabon, for which transfer certificate of title No. 7591 was issued to him; that on August 27, 1931, many years after Arcadio Arayata's death, the respondent attorney prepared the deed, Exhibit A, stating therein that his father sold the land in question to him for the sum of ?4,000; that after affixing the names of the alleged vendor and the two witnesses, the respondent brought an old man and the two witnesses before notary public Tereso Ma. Montoya and requested the1 latter to ra tify said document, assuring him that the old man was the grantor and vendor and the other two were the instru mental witnesses thereto; that the notary honestly believing said information, legalized and registered the document after verifying from the old man that he ratified the con tents thereof; that the transfer was invalid and the docu ment not genuine because another, not Arcadio Arayata, signed it; that the respondent later applied for and ob tained transfer certificate of

title No. 8370 of said land from the registry of deeds of Cavite after the former title was cancelled; that sometime later, or on April 11, 1933, the respondent sold a portion of said land having an area of two and one-half (2½) hectares to Sinforosa Torres, married to Basilio Sorosoro, for the sum of P500.

With regard to the second charge, it likewise appears established that on June 5, 1933, the respondent, being legally married to Aurora L. Saguil and said marriage not having been dissolved, signed under oath an application to marry Engracia F. Ortega stating therein that he was single, he being in fact married; the application was registered and duly considered and on September 25, 1933, the register of the Province of Cavite issued the corresponding license upon payment by the respondent of the sum of P2; for some unknown reasons the marriage applied for was not solemnized; the respondent's wife, nevertheless, filed a complaint for bigamy against the former, which is now pending in the justice of the peace court of Santa Rosa, Laguna, for which reason the investigator is of the opinion, and so recommends, that no action should be taken on the second charge. The recommendation is well founded and has our approval.

In his first answer, respondent Arayata admitted that the sale had been made by his father who was his true predecessor in interest, but alleged that nobody, including the complainant, could complain of the transfer because none was prejudiced, he being the true and only heir. In his second answer, however, and in the course of the investigation, he set up another defense alleging that the person who had really sold him the land was his uncle Januario Arayata who, in the deed and relative to the land, assumed the name of Arcadio Arayata. He further alleged that it was his said uncle who signed the deed of transfer and ratified it before notary Montoya. We find this second new defense improbable and unestablished.

The acts committed by the respondent Arayata relative to the deed of sale Exhibit A, and his statements to notary Montoya with regard to said document, constitute malpractice and unprofessional conduct under the provisions of section 21 of the Code of Civil Procedure, meriting for him a disciplinary action mitigated in this case by the circumstance that he was apparently the heir entitled to the ownership of the land and that the complainant has neither real nor direct interest in the transaction complained of by her.

For the foregoing reasons, we hold Attorney Eustaquio V. Arayata guilty of malpractice and suspend him from the practice of his profession for one (1) month, hereby reprimanding him for having prepared and executed the deed of sale in question. So ordered.

Avanceña, C.J., Malcolm, Villa-Real, Abad Santos, Hull, Vickers, Butte, Goddard, and Diaz, JJ., concur.

Respondent suspended for one month and reprimanded.

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