

ELEMAR G. BOTE, COMPLAINANT, VS. JUDGE GEMINIANO A. EDUARDO, MTC, GEN. TINIO, NUEVA ECIJA, RESPONDENT.

A.M. NO. MTJ-04-1524 (FORMERLY OCA IPI NO. 99-676-MTJ). February 11, 2005

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is the sworn complaint,[1] dated March 9, 1999, of Elemar G. Bote, charging respondent Judge Geminiano A. Eduardo, Presiding Judge of the Municipal Trial Court of General Tinio, Nueva Ecija, with serious neglect of duty and grave misconduct.

Complainant and his wife bought a parcel of land located at Brgy. Padolina, Gen. Tinio, Nueva Ecija, from one Loreto de Guzman on September 16, 1985.[2] Although the deed of sale had been prepared, the spouses failed to immediately pay the full purchase price of P50,000, hence the seller postponed the notarization of the deed.[3] A few months later, after they paid the purchase price, the seller presented the deed for notarization to respondent. Respondent, however, erroneously dated it March 19, 1985, instead of March 19, 1986.[4] Because of the error, civil and criminal cases were filed against complainant and a warrant issued for his arrest.[5]

Over the years, complainant made many requests on respondent to rectify the error but the latter did not.[6] On August 3, 1998, complainant sent a final demand letter[7] where he attached a certified copy of the notarial register.[8] He hoped to convince respondent that the request was justified, but instead, respondent issued a certification that the deed was really notarized on March 19, 1985.[9]

Aggrieved, complainant filed the instant administrative complaint. He deplored the certification, pointing to the entry in the notarial register, which indubitably showed that the deed of sale was notarized on March 19, 1986.[10] Complainant charged respondent with serious neglect of duty and grave misconduct for his malicious refusal to rectify his error.[11]

In his Comment, respondent insisted on the accuracy of the date of notarization. He argued that the deed was the best evidence of the date of notarization and that the Court need not look at the notarial registry. He questioned the entry in the notarial registry, stating that it was of doubtful veracity because it was not in his handwriting.[12]

Respondent likewise averred that the deed was undated when he notarized it. He surmised that one of the parties to the deed inserted the purported date of execution as September 16, 1985, since it was not in his handwriting.[13] Towards the end of his comment, however, respondent declared that his clerk filled up dates in documents and the entries in the notarial register for him.[14]

Upon the recommendation[15] of the Office of the Court Administrator (OCA), in a Resolution[16] dated September 13, 2000, we deferred action on the complaint to wait for the decisions in the civil and criminal cases against complainant relative to the subject deed of sale. After two years, the OCA twice directed complainant to inform the Court of the status of the said cases, but complainant did not reply.

On November 18, 2003, the OCA issued its findings declaring respondent administratively liable. In its

Memorandum, the OCA recommended that a fine of P10,000 be imposed upon respondent, to be deducted from his retirement benefits.[17]

The finding by the OCA that respondent was negligent in the notarization of the deed of sale is borne by the records.[18] The deed was, without doubt, prepared in 1985. This is what appears on the deed several times. The date September 16, 1985, the date of issuance of the vendor's residence certificate, was also typewritten on the deed. Presumably, respondent checked the vendor's residence certificate and ascertained its veracity because respondent specifically referred to this residence certificate and certified that it was correct. After all, the law requires every contract, deed, or other document acknowledged before a notary public to have a certification that the parties have presented their respective residence certificates and for the notary public to enter, as a part of such certification, the number, place of issue and date of each residence certificate.[19]

Respondent claimed that he notarized the deed on March 19, 1985. But he could not have possibly notarized the deed, with the vendor's residence certificate's date of issue already typewritten, six months before the residence certificate was issued. More convincing is complainant's assertion that respondent notarized the deed on March 19, 1986, except that in filling in the date of notarization, respondent did not notice that the year 1985 was already typed in.

That the deed was notarized on March 19, 1986, is further proven by the entry in the notarial register. A notarial register is prima facie evidence of the facts there stated.[20] It has the presumption of regularity and to contradict the veracity of the entry, evidence must be clear, convincing, and more than merely preponderant.[21] Here, respondent had not been able to successfully assail the veracity of the entry. He contended that it was not in his handwriting, but he himself had declared that his clerk made the entries in the register for him, thus revealing why the entry was not in his handwriting.[22]

Respondent was likewise negligent when he notarized the deed with unfilled spaces and incomplete entries, making uncertified and fraudulent insertions easy to accomplish. Notarization is not an empty, meaningless, routinary act.[23] It is invested with such substantial public interest that only those who are qualified or authorized may act as notaries public.[24] Notarization converts a private document into a public document, making that document admissible in evidence without further proof of its authenticity. For this reason, notaries must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.[25]

Respondent's lack of due care in the performance of his delicate task as ex officio notary public clearly rendered him administratively liable. Nonetheless, the Court could not agree with the OCA's recommended penalty. Even considering that respondent consistently refused to recognize his error after he has been informed of it, the Court believes that respondent's infraction would not warrant a stiff fine of P10,000.[26] Rather, considering the circumstances, a fine of P5,000 would have been more appropriate,[27] for simple negligence.

On record, however, we find that respondent already passed away on June 11, 2001.[28] Thus, in this case, for humanitarian reasons,[29] we find it inappropriate to impose any administrative liability of a punitive nature. Even a fine lower than that recommended by OCA, in our view, could no longer be imposed under the circumstances of this case. OCA's recommendation was contained in its finding of administrative liability only on November 18, 2003, a year and a half after respondent's demise. As well said in *Apiag v. Judge Cantero*,[30] involving also gross misconduct and neglect, "[f]or such conduct, this Court would have imposed a penalty. But in view of his death prior to the promulgation of this Decision, dismissal of the case is now in order." It behooves us now to declare the instant complaint DISMISSED, CLOSED and TERMINATED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio and Azcuna, concur.

[1] Rollo, pp. 1-2.

[2] Id. at 1, 3, 5.

[3] Id. at 3.

[4] Id. at 3, 5, 10.

[5] Id. at 3.

[6] Ibid.

[7] Id. at 6.

[8] Id. at 10.

[9] Id. at 7.

[10] Id. at 3.

[11] Id. at 1.

[12] Id. at 15-16.

[13] Id. at 16.

[14] Ibid.

[15] Id. at 18-20.

[16] Id. at 21-22.

[17] Id. at 31.

[18] Id. at 28-31.

[19] Cabanilla v. Cristal-Tenorio, Adm. Case No. 6139 (Formerly CBD 02-954), 11 November 2003, 415 SCRA 353, 360-361; Article VII, Section 251, Revised Administrative Code.

[20] Caoili v. Court of Appeals, G.R. No. 128325, 14 September 1999, 314 SCRA 345, 361; Section 23, Rule 132, Rules of Court.

[21] Gevero v. Intermediate Appellate Court, G.R. No. 77029, 30 August 1990, 189 SCRA 201, 206.

[22] Rollo, p. 16.

[23] Tabas v. Mangibin, A.C. No. 5602, 3 February 2004, 421 SCRA 511, 514.

[24] Zaballero v. Montalvan, Adm. Case No. 4370, 25 May 2004, pp. 6-7.

[25] Ocampo-Ingcoco v. Yrreverre, Jr., Adm. Case No. 5480, 29 September 2003, 412 SCRA 182, 188.

[26] See Morales, Sr. v. Dumlao, A.M. No. MTJ-01-1339, 13 February 2002, 376 SCRA 573.

[27] Id. at 578.

[28] Rollo, p. 36.

[29] See Judicial Audit Report, RTC, Brs. 21, 35 & 36 & MTCC, Brs. 1 & 2, Santiago City; RTC, Br. 17, Ilagan, Isabela, A.M. No. 98-3-119-RTC, 18 October 2000, 343 SCRA 427, 441.

[30] A.M. No. MTJ-95-1070, 12 February 1997, 268 SCRA 47, 64.

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