

MAURECIA OPUS, COMPLAINANT, VS. MUNICIPAL JUDGE VICENTE BORNIA, RESPONDENT.*Adm. Matter No. 1539-MJ. June 29, 1982*

Ponente: GUERRERO, J.

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In a letter complaint^[1] under oath filed on February 22, 1977, Maurecia Opus charged respondent Municipal Judge Vicente Bornia of Tuburan, Cebu with dishonesty, graft and corruption, abuse of authority and conduct unbecoming of a government official. It is alleged therein that on July 16, 1976, Ramon Tabotabo, a first degree cousin of respondent's wife, contracted the services of said respondent to prepare and notarize a contract of sale of the whole remaining portion of a parcel of land owned by him (Tabotabo) and declared in his name (Tax Declaration No. 13483) in favor of complainant; that respondent personally prepared a receipt in his office on the said date which was signed by Tabotabo acknowledging receipt of the amount of P28,000.00 as consideration for the sale; that said amount was handed to Tabotabo by complainant through respondent Judge; that as instructed by respondent, complainant called for the document of sale the next day but she was advised by respondent to return as the contract was not yet ready; that complainant went to see respondent almost twenty times either at his office or his residence but was always informed that the document was not yet finished; that about a month from July 16, 1976, respondent called complainant to his office and handed her a copy of a new tax declaration (Tax Declaration No. 13851) in her name covering the property bought, which document, however, contains a notation that the consideration for the sale of the land was P11,000.00, not P28,000.00; that upon verification from the records of the Office of the Provincial Assessor of Cebu, complainant found out that the contract of sale which supported the transfer from the name of Tabotabo to her name contains the statement "Area: (minus 187.5 sq.m. adjoining the road sold to another purchaser) 2.4332 Has.", making it appear that complainant bought less than the area of the whole remaining portion of the land; and, that the 187.5 sq.m. mentioned in said contract of sale was sold to another purchaser is declared in the name of Tabotabo (Tax Declaration No. 13850). In her prayer, complainant asked that this Deed of Absolute Sale executed by Tabotabo and notarized by respondent Judge be annulled or revoked, that Tabotabo be ordered to return to her the amount of P28,000.00 and the amounts she paid for back taxes on the property, and that respondent be ordered to "reimburse (her) the sum of P1,000.00 as Notarial Fee."

In his comment,^[2] respondent Judge in effect admitted that he prepared and notarized the deed of sale mentioned in the letter-complaint, but averred that it was complainant, not Ramon Tabotabo, who engaged his services in the preparation of said document. He further alleged that Tabotabo is not the first degree cousin of his wife; that he was a mere observer in the counting and handing of money from complainant to Tabotabo; that it was complainant who desired that the amount of P11,000.00 be placed on the deed as consideration for the sale; that he never told complainant to call for the document of sale the following day (July 17, 1976) because he could have handed it to her right away were it not for the fact that it had to be registered with the Office of the Register of Deeds of Cebu City and the tax declarations transferred to her name, which transactions required several days; that it was the vendor Tabotabo who called his attention to the discrepancy in the amount indicated as

consideration for the sale and asked for the correction thereof, for which reason respondent prepared a corrected Deed of Absolute Sale dated January 11, 1977, cancelling and superseding that prepared on July 16, 1976, and caused the issuance of a corrected tax declaration (Tax Declaration No. 14099) in complainant's name; and, that the area expressly excluded in the sale is a residential lot already sold to another buyer who had not paid the full amount of the purchase price thereof at that time but in whose favor a deed of conveyance was later executed, which facts were fully explained by Tabotabo to complainant and were expressly stipulated in the deed of sale in favor of the latter. Respondent also claims that he defrayed the expenses for the documentary and science stamps of the document in question and the transfer fees for the tax declarations, stating that "(m) aybe (complainant) will pay me the P1,000.00 she mentioned in her letter, but up to this writing the P120.00 which she gave me was not even sufficient for the fees abovementioned."

In a Resolution dated May 10, 1978, this Court referred the case to Executive Judge Candido Aguinaldo, Sr. of the Court of First Instance of Cebu, Branch IX at Toledo City, for investigation, report and recommendation.[3]Judge Aguinaldo has submitted his Report and Recommendation [4]dated November 29, 1978 and filed with this Court on January 17, 1980.[5]Pertinent portions thereof read as follows:

"On August 10, 1978, the Investigating Judge set the case for hearing on September 6, 1978 at 2:00 P.M. in Cebu City, and the Complainant and Respondent were duly notified accordingly. At the scheduled hearing, Respondent appeared, while the Complainant failed to appear. The hearing was then re-set to September 20, 1978 at 2:00 P.M. in Cebu City. At this hearing, Respondent appeared, while Complainant again failed to appear. Instead, she filed on said date, September 20, 1978, at 11:15 A.M. her 'Affidavit of Retraction' dated September 18, 1978, duly subscribed and sworn to before Municipal Circuit Judge Paterno D. Montesclaros of Tuburan, Cebu, on September 19, 1978. The pertinent portions of Complainant's Affidavit reads as follows:

'1. That I am the complainant in an administrative case against Vicente Bornia, then Municipal Judge of Tuburan, Cebu, which case is numbered Adm. Case No. 1539-MJ now pending investigation by the Honorable Executive Judge;

'2. That I have long desired to have said case dismissed after I realized that the claims of respondent judge are true;

'3. That it was my fault that the documents mentioned by the respondent judge were not known to me for they were not taken by me from the judge in spite of having been informed by him to go to his office;

'4. That I never knew that the first document was corrected and the corresponding tax declarations also corrected;

'5. That all these facts were not known to me for I never went to see the judge anymore;

'6. That the parcel of land subject matter of the document in question was already sold by me to a buyer who assumed all obligations with the judge who was the same one who prepared the deed of sale to said buyer from me;

'7. That I am no longer interested in the administrative case against the judge for it was all a matter of mis-understanding which have all been fully threshed out so that I now find no basis or reason for the administrative case which I now seek to be dismissed.' (Exhibit 7, Records, p. 36.)

Notwithstanding the foregoing Affidavit of Retraction of Complainant, Investigating Judge reset the case for hearing on October 11, 1978 at 2:00 P.M. in Cebu City, for which the Complainant and the Respondent, as well as Municipal Circuit Judge Paterno De Montesclaros, were duly notified.

At the scheduled hearing on October 11, 1978, Complainant again failed to appear. The Investigating Judge then

proceeded with the reception of evidence for the Respondent, who appeared for and in his behalf."

After reciting in detail the substance of respondent's evidence denying the four (4) charges imputed against him, the Investigating Judge recommended exoneration in the dispositive portion of the Report, thus:

"WHEREFORE, in view of the foregoing, the undersigned Investigating Judge hereby recommends the dismissal of the instant Administrative Complaint and the exoneration of the Respondent Judge on the ground that the charges therein have not been substantiated."

Notwithstanding the recommendation for exoneration which appear to be fully supported by the facts and evidence on record, there is indisputable evidence which the respondent Judge himself admits that he has acted as a Notary Public ex officio in notarizing the deed of sale in question.

While We have previously ruled in *Borre vs. Moya, et al.*, A.M. No. 1765-CFI, Oct. 17, 1980; *Penera vs. Mun. Judge Crescencio R. Dalocanog*, A.M. No. 2113-MJ, April 27, 1981 that as Notary Public ex officio, a Municipal Judge should notarize only documents connected with the exercise of his official duties and that he should not compete with private law practitioners or regular notaries in transacting legal conveyancing business, there are good and valid reasons not to limit the authority of a municipal judge as an ex officio notary public to the notarization of documents in connection with the performance of his official functions.

In fact, Section 76 of the Judiciary Act of 1948 expressly empowers the municipal judge in his capacity as an ex officio notary public to perform any act within the competency of a notary public. This Section states:

"Sec. 76. Miscellaneous powers of justice of the peace .- A justice of the peace shall have power within his territorial jurisdiction to solemnize marriages, authenticate merchant's books, administer oaths and take depositions and acknowledg-ment, and, in his capacity as ex-officio notary public may perform any act within the competency of a notary public." (Underlining supplied).

Moreover, it is of public knowledge that in many rural areas and communities, there are a few notaries public rendering notarial services therein and more often than not, their office hours are not fixed nor definite whereas municipal judges acting as notaries public are required to hold fixed office hours at the municipal hall, where the people can have ready access and with the least expense, instead of travelling to the provincial capital or to the bigger towns and cities where most law practitioners reside and/or hold office.

However, under the Notarial Law found in the Revised Administrative Code, Sections 231 to 252 and 2632-2633 and the Rules of Court, Rule 141, Sections 6(h) and 9, "(o) fficers acting as notaries public ex officio shall charge for their services the fees prescribed by law and account therefor as for Government funds."

Since the payment of P1,000.00 for notarial services allegedly paid by the complainant to the respondent Judge has not been substantiated in view of the failure of the complainant to appear at the scheduled hearings of the case before the Investigating Judge, even so that the complainant has executed an affidavit of desistance while respondent Judge denied receiving the amount except the sum of P120.00 for expenses for the documentary and science stamps and transfer fees for the tax declarations, there is no basis for Us to order the return of the P1,000.00 prayed for by the complainant.

It is, however, the duty of the respondent to account therefor the notarial fee prescribed by law for his services as for Government funds.

WHEREFORE, the charge against respondent Judge is hereby dismissed. He is, however, directed to account for the notarial fee fixed by law in notarizing the deed of sale in question by paying the sum to the Muni-cipal Treasurer of Tuburan, Cebu and submit proof of such payment to this Court within ten (10) days upon notice of

this Decision.

SO ORDERED.

Barredo, Makasiar, Concepcion, Jr., Abad Santos, De Castro, Plana, Escolin, Vasquez, and Gutierrez, Jr., JJ., concur.

Fernando, C.J., Teehankee, and Aquino, JJ., in the result.

Melencio-Herrera, J., on leave.

Relova, J., no part.

[1] Rollo, pp. 1-2.

[2] Rollo, p. 10.

[3] Rollo, p. 18.

[4] Rollo, pp. 52-60.

[5] Rollo, p. 45.

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