

FIDEL SANTOS, COMPLAINANT, VS. ATTY. EDUARDO V. VILLAFUERTE, RESPONDENT.

Adm. Case No. 596. February 29, 1972

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Respondent Eduardo V. Villafuerte, a Member of the Philippine Bar, is charged this administrative case by complainant Fidel Santos with having participated in a fraudulent transaction, as related in the complainant's affidavit of October 23, 1963, the pertinent allegations in which are as follows:

- "1. That I, and my sisters Corazon, Celia, Lilia and Belen, all surnamed Santos are the exclusive heirs of the late SEGUNDA CARALDE who died intestate on April 17, 1963;
2. That on July 18, 1960, our late decedent SEGUNDA CARALDE executed an instrument entitled "PAGHAHATI-HATI SA LABAS NG HUKUMAN NA MAY KALOOB PALA" naming us and a certain APOLONIO among others as the beneficiaries, which document was ratified before a notary public by the name of EDUARDO VILLAFUERTE, and entered as Doc. 499; Page No. 101; Book No. I; Series of 1960.
3. That on November 11, 1962, APOLONIO REYES with intent to defraud affiant herein and his sisters, and with the direct intervention of EDUARDO VILLAFUERTE made it appear in a public instrument that the late SEGUNDA CARALDE executed an instrument entitled "BILIHANG TULUYAN NG KARAPATAN SA LUPA" allegedly in favor of APOLONIO REYES, which was again ratified by EDUARDO VILLAFUERTE and entered in the latter's notarial register as Doc. No. 114; Page 24; Book No. V; Series of 1962; photostatic copy of which is herewith attached as Annex B; and the copy of the document referred to in par. 2 hereof as Annex A;
4. That the signature of SEGUNDA CARALDE in Annex 13 was forged as found by the N.B.I., copy of the latter's finding is herewith attached as Annex C;
5. That as a result of the fraudulent document, affiant herein and his sisters were deprived of the parcel of land mentioned in the falsified document;"

After the respondent filed his answer the matter was referred to the Office of the Solicitor General for investigation and recommendation. On March 28, 1967 the Solicitor General, pursuant to Sec. 5 of Rule 139 of the Revised Rules of Court, lodged a formal complaint against the respondent, charging him with malpractice and/or unprofessional conduct, substantially upon allegations similar to those recited in the complainant's affidavit hereinabove reproduced. The respondent again filed his answer to the complaint of the Solicitor General and then moved to refer the case to a commissioner so that he could introduce additional evidence pursuant to Sec. 7 of Rule 139.

It appears that Segunda Caralde, who died intestate and without issue on April 17, 1963, was the wife and later on surviving spouse of Victorio de los Reyes (also referred to as Victoriano Reyes) who died on September 18, 1958. Victorio had a son by a previous marriage namely, Apolonio Reyes, the party with whom the respondent is

alleged to have connived in the execution of the questioned document. During their marriage the said spouse acquired a rice field (Cad. Lot No. 2605) in San Ildefonso, Bulacan, with an area of 35,517 square meters, which land was part of the Buenavista Estate.

In the document of July 18, 1960, executed in the Tagalog language, Segunda Caralde named her stepson Apolonio Reyes and certain collateral relatives, among them complainant Fidel Santos and his sisters, Celia, Lilia and Belen as the beneficiaries. The document was in the nature of an extrajudicial partition and donation of Lot No. 2605; an undivided one-half (consisting of the conjugal share of Victorio de los Reyes) as well as the other half (consisting of the share of Segunda Caralde, together with the house thereon situated) in favor of Apolonio Reyes, except a 517 square-meter portion of this other half which was divided into three parts, one of which was given to Fidel Santos and his sisters, and the rest to still other parties. The document, however, was signed only by Segunda Caralde herself and by Apolonio Reyes, but not by the other beneficiaries. The notarial acknowledgment was duly accomplished by the herein respondent and noted in his notarial register.

It was provided that the donation to the Santos brothers and sisters would be effective upon Segunda Caralde's death and that they had one (1) year from notice of its execution within which to express their acceptance, otherwise Apolonio Reyes would be entitled to the portion donated. Such acceptance has not been proven.

The document subject of this administrative complaint appears to have been executed on November 11, 1962 by Apolonio Reyes and Segunda Caralde and also ratified by herein respondent as Notary Public, allegedly with knowledge his part that the signature of Segunda Caralde was forged. The document, also in the Tagalog language, is entitled "Bilihang Tuluyan Ng Karapatan Sa Lupa," or a deed of absolute sale of rights over land, with Segunda Caralde as vendor and Apolonio Reyes as vendee, covering a portion of Lot No. 2605 with an area of 5,517 square meters, in consideration of the sum of P1,000.00

The only evidence in support of the allegation that the signature of Segunda Caralde on the instrument of November 11, 1962 is a forgery is the opinion of Antonio Rotor, Senior Document Examiner of the National Bureau of Investigation, embodied in his report of August 2, 1963, wherein he made a finding that the said signature "is not authentic," on the basis of a comparison he had made between the said signature and the admittedly genuine one appearing on the instrument executed on July 18, 1960. The specimen signatures submitted to him for examination were not on the original documents themselves but only on photostatic copies thereof. However, in the investigation conducted by the commissioner appointed by this Court, the respondent produced not only the signed duplicates of the said documents but also a signed duplicate of still another document executed on March 14, 1962, also by Apolonio Reyes and Segunda Caralde, and ratified by respondent Eduardo Villafuerte.

It would appear indeed that while the signatures of Segunda Caralde on the two later documents, namely those of March 14 and November 11, 1962, are similar to each other and undoubtedly were written by the same hand, they do differ in some aspects from the signature of Segunda Caralde on the earlier document of July 18, 1960. The undisputed evidence, however, shows that in 1962 Segunda Caralde was already a very sick old woman, bedridden with ashma which later developed into pulmonary tuberculosis of which she died in April 1963. Her physical condition then could conceivably account for the deterioration in her handwriting.

The document of March 14, 1962 furnishes what We believe is a vital key to the question of the alleged forgery in this case. The circumstances as to how the said document came to be prepared were explained by Atty. Pacifico Samaniego, Legal Officer of the Land Authority (formerly Land Tenure Administration) and in 1962 the supervisor of the Buenavista Estate Agency of said office in San Ildefonso, Bulacan. He knew both Apolonio Reyes and Segunda Caralde, then residents of Sumandig in the same municipality. Early in 1962, according to

Atty. Samaniego, Apolonio Reyes came to his office and presented to him a document, which was identified as the one executed on July 18, 1960. Upon reading it, he said, he noticed that it did not conform with the rules and regulations of the Land Tenure Administration, under which lands pertaining to the Buenavista Estate could not be the subject of outright donation or sale but only of waiver of rights. Consequently he advised Apolonio Reyes to have the document changed and even made an appointment with him to go to the house of Segunda Caralde. When they did go there Atty. Samaniego advised the old woman that the document was defective and she, in turn, requested him to prepare another document, which she would instruct Atty. Villafuerte to get from him personally. So it was that when he went back to his office he had one of his clerks prepare another document in conformity with the rules and regulations of his office. That was the document of March 14, 1962. It was an "extrajudicial partition with waiver," dividing Lot No. 2605 between Segunda Caralde and Apolonio Reyes as sole heirs of the deceased Victorio de los Reyes and, on the part of Segunda Caralde, waiving her entire share in Apolonio's favor except an area of 5,000 square meters. Respondent Villafuerte called for the document in accordance with Segunda Caralde's instruction and then took it to her house and had it signed by her in the presence of two witnesses, namely, Jose Sayco and Cornelio Ramos. Both of these witnesses testified that Segunda Caralde affixed her signature in their presence. There is here no question as to genuineness of the said signature.

When this document of March 14, 1962 was presented to the Land Tenure Administration it was discovered that it did not dispose of the entire area of the property subject of the extrajudicial partition: 30,000 square meters went to Apolonio Reyes and 5,000 square meters to Segunda Caralde, thereby leaving 517 square meters undisposed of. For that reason respondent Villafuerte prepared a third document, which Apolonio Reyes and Segunda Caralde again signed on November 11, 1962. This is the document where Segunda Caralde's signature is alleged to have been forged with Villafuerte's connivance. It purports to be a definite deed of sale by Segunda Caralde in favor of Apolonio Reyes of the share allotted to the former in the document of March 14, 1962, with the area thereof duly corrected and changed from 5,000 to 5,517 square meters, in consideration of P1,000.00.

The fact that the signature of the vendor in said document was affixed by Segunda Caralde herself is confirmed by the testimony of the respondent, of Apolonio Reyes, and of Aniceto Reyes, one of the two instrumental witnesses. The other instrumental witness, Alfonso A. Cruz was, according to the record, somewhere in Mindoro and could not be presented to testify.

In the resolution of the question of whether the questioned signature of Segunda Caralde is genuine, the following circumstances should be considered: 1) The only evidence in support of the allegation that the said signature was forged is the report of the NBI Document Examiner based upon its comparison with only one specimen of Segunda Caralde's genuine signature and calling attention to a number of dissimilarities between the two; 2) On the other hand, the genuineness of the questioned signature, as has stated, is confirmed by the testimony not only of the respondent himself and of the other party to the document Apolonio Reyes, but also of one of the instrumental witnesses; 3) It is significant that the questioned signature is very similar to that appearing on the document of March 14, 1962, the genuineness of which is not only unquestioned but has been directly established by the testimony of the two instrumental witnesses and circumstantially by that of Atty. Pacifico Samaniego, Legal Office of the Land Authority and Supervisor of the Buenavista Estate Agency of the said office in San Ildefonso, Bulacan, who was the one who had this document prepared by his clerk after consultation with Segunda Caralde; and 4) The dissimilarities between the specimen signature on the document of July 18, 1960 and the signatures appearing on the documents of March 14 and November 11, 1962, respectively, find plausible explanation in the fact that the first was written when Segunda Caralde was still in relatively good health, while the other two were written when she was already sick and bedridden. The tremor in the handwriting is very noticeable, particularly in the document of November 11, 1962, which is the one questioned in this administrative

case.

It is pointed out by the complainant that the residence certificate of Segunda Caralde referred to in the notarial acknowledgment in the questioned document is dated July 12, 1960, and that it is the same residence certificate used in the first document executed by her on July 18, 1960. Respondent testified that when he prepared the document of November 11, 1962 he did inquire from Segunda Caralde if she had a residence certificate for that year, but she said she could not get one because she was sick and could not travel all the way to town for that purpose. According to the respondent, he had a choice of either resorting to the usual practice in the place of purchasing a residence certificate by simply paying the price for it to the municipal treasurer without the purchaser's having to be present, or utilizing the old residence certificate which he assured himself had been obtained in the regular manner; and he preferred the second alternative. The procedure thus followed was no doubt irregular and questionable, but falls short of proving the charge of forgery.

IN VIEW OF THE FOREGOING CONSIDERATION , We are convinced that the allegation of forgery with respect to the signature of Segunda Caralde and the charge of connivance in the commission thereof against respondent Villafuerte has not been substantiated by sufficient evidence to warrant disciplinary action against him. In fact Apolonio Reyes with whom respondent is supposed to have connived, was accused of falsification of public document in connection with the same signature here involved, but the Court of First Instance of Bulacan, upon petition of the special counsel in charge of the prosecution, dismissed the case on June 1, 1964.

It may be added that whatever remedy the complainant Fidel Santos may have with respect to the share allotted to him and his sisters in the property referred in their complaint, pursuant to the document of July 18, 1960, should be sought in the proper civil action if any.

The complaint is dismissed and the respondent exonerated of the charge, but is hereby admonished to be more careful in the performance of his duties as notary public. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

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