

MAXIMA C. LOPEZ, COMPLAINANT, VS. MANUEL B. CASACLANG, RESPONDENT.

Adm. Case No. 549. August 26, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is a proceeding for disbarment.

Respondent Manuel B. Casaclang, a member of the Bar, is charged by Maxima C. Lopez with malpractice on three counts, namely: (1) for having improperly notarized a document purporting to be a deed of transfer of rights over a piece of land by complainant in favor of Demetria B. Casaclang, respondent's mother, in the absence of the person executing said document and of the two witnesses, contrary to what is recited in the acknowledgment; (2) for having notarized a falsified general power of attorney; and (3) for having prepared an affidavit and taken the verification of the affiants, knowing the contents thereof to be false.

In our resolution of December 14, 1962 we referred the case to the Solicitor-General for investigation. He submitted his report on June 16, 1968, recommending dismissal of the charges, but with an admonition to respondent to be more careful in the performance of his notarial duties.

On the first count it appears that in 1957 complainant, then a public school teacher in Manila, applied for the right to purchase a 460 square-meter lot from the People's Homesite and Housing Corporation. Her application was approved in 1958, whereupon she made a down payment of P460.00. In June of that year, according to her testimony at the investigation, she was transferred to Binmaley, Pangasinan, where respondent's father, Pedro Casaclang, was District Supervisor and therefore her superior in the service. The latter's wife became interested in the lot and asked complainant to transfer it to her. She refused in the beginning, but later on the two of them went to the PHHC office to inquire as to the feasibility of such transfer. The PHHC manager advised her against it, and the next thing she knew was that sometime in the early part of 1962 her rights to the land had been transferred to respondent's parents by virtue of a deed to that effect prepared by said respondent. She said she did not remember having signed the document, but was positive that she and the two witnesses thereto did not sign it before respondent as notary public, although on cross-examination she admitted that her signature seemed or looked genuine. On their part the witnesses - Marceline L. Delgado and Emilia J. Lopez - testified in the same vein, that is, although the signatures were theirs they did not appear before respondent for the signing and notarial acknowledgment.

Respondent's testimony is that when his mother and complainant went to the PHHC office in connection with the intended transfer of rights, they were advised to go back to Pangasinan to have the corresponding document signed by respondent's father as one of the transferees. The parties then applied to have respondent prepare it, which he did, after which he explained its contents to the parties - complainant and respondent's parents - who thereupon signed the same, together with the witnesses.

The genuineness of the signatures is not seriously in question. In fact, in the preliminary investigation of the

charge of falsification (of the same document) filed by complainant against respondent and his father before the Assistant Fiscal in Lingayen, Pangasinan, her signature as well as the signatures of the two witnesses were categorically admitted by them to be genuine, although they denied having signed in respondent's presence.

The Solicitor-General is of the opinion that upon the evidence of record respondent's version is more deserving of credence. We see no reason to disagree. First, it has been held that mere preponderance of evidence is not sufficient to overcome the import of the certification by a notary that the grantor in a document acknowledged the fact of its execution before him. (*Robinson v. Villafuerte*, 18 Phil. 171; *Jocson v. Estacion*, G. R. No. L-41867, July 22, 1935.) To accomplish this result the evidence to the contrary must be clear, strong and convincing.

In any event, considering that the signatures on the document in question are genuine, even if respondent did notarize the same in complainant's absence the irregularity is not serious enough to warrant disbarment or suspension. It merely suggests lack of caution, not culpable malpractice. (*Ramirez v. Ner*, Ad. Case No. 500, Sept. 27, 1967). Nor does the fact that respondent's mother was a party make his act any more blameworthy, the transaction being above board and untainted with fraud or trickery.

On the second count respondent is charged with having notarized a falsified general power of attorney purportedly executed by one Teofila S. Banigued, authorizing respondent's father to follow up her application for certain benefits due her deceased husband from the mutual aid system of the Philippine Public School Teachers' Association.

It appears from the evidence, and so found by the Solicitor-General, that the signature purporting to be that of Teofila S. Banigued had been written, with her consent, by her aunt-in-law, Alejandra Banigued. Respondent's narration of events is as follows: Teofila S. Banigued and her family were his clients. One day Alejandra and Santiago Banigued, complainant's brother-in-law, came to his office and requested him, in the name of Teofila who could not then come because she was ill, to prepare the power of attorney in question. He prepared a draft and gave it to them unsigned. Subsequently he dropped at Teofila's place on his way to Dagupan and inquired about the document he had drafted. Teofila sent for her sister-in-law Alejandra. When the latter arrived she had with her signed copies of the power of attorney. Respondent asked if she was the one who signed above the typewritten name Teofila S. Banigued. Alejandra answered yes, saying that Teofila could not herself sign because she was indisposed. Then respondent explained the contents of the document to Teofila, who expressed her conformity thereto and affirmed that she had indeed authorized her sister-in-law to sign her name for her. Respondent thereupon took the document with him for notarization, and later gave it to his father who was the attorney-in-fact named therein. That Teofila had really given such authority to Alejandra was confirmed by both of them when they testified in this case as well as in the preliminary investigation of the charge of falsification filed against respondent before the Assistant Fiscal of Pangasinan.

The third count refers to an affidavit prepared by and subscribed and sworn to before respondent, the allegation being that he knew the contents thereof to be false. The affiants were Justino Z. Flores and Romeo B. Manaois. The fact sworn to by them is that Maria G. Lopez, a daughter of complainant, was born on April 5, 1944, which was false, since the correct date of birth is April 5, 1946.

Respondent, testifying in his own behalf, said that he prepared the affidavit at the instance of complainant herself, who came to his office with Flores and Manaois and furnished him the facts to be stated. He was not related in any manner to complainant and did not know that the recitals in the affidavit were untrue. Complainant told him that its purpose was to enable her daughter to enter the College of Nursing in Baguio City, the latter's birth certificate not being then available. Respondent had no interest whatsoever in the matter of her studies and had no reason therefore to compound the falsity. If anybody at all was guilty thereof it was complainant herself, because it was

she who supplied respondent the facts to be stated.

We believe that under the facts established by the record the penalty of disbarment or suspension is not warranted. However, in connection with the second charge respondent is guilty of a certain degree of laxity and carelessness in notarizing a power-of-attorney which, although duly acknowledged by the parties, was known to him not to have been signed by the principal but by another upon her authority, without such fact being made to appear on the face of the document itself.

Wherefore, respondent Manuel B. Casclang is hereby reprimanded, and warned to be more careful in the performance of his notarial duties. Let this decision be noted in respondent's record as a member of the Bar.

Concepcion, C.J., Reyes, Dizon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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