

**IN RE COMPLAINT OF TERESITA MERCADO, PETITIONER, VS.
ALMARIO T. AMADOR, RESPONDENT.***Adm. Case No. 814. April 11, 1972*

Ponente: REYES, J.B.L., J.

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In a verified petition for disbarment filed with this Court, the complainant Teresita Mercado charged respondent Almario T. Amador[1] with falsification of an affidavit, notarized by him in his capacity as a notary public for and in the City of Manila, and submitted by him in his capacity as attorney for the respondents in Civil Case No. 17-V, entitled "Teresita Mercado, petitioner, vs. Aguida Nicolas and Teofilo Hilario, respondents," of the Court of First Instance of Bulacan. The brunt of the petition for disbarment is that the affidavit was submitted to deceive the trial court[2] and that respondent, "knowing that his commission as notary public had already expired on 31 December 1965, utilized Document No. 1176, Page No. 62, Book No. VIII, Series of 1964 of his notarial register for 1964, for the affidavit of Teofilo Hilario (the affidavit in question), when in fact and in truth said document number had already been entered in the said notarial book for a contract of employment between two chinese * * *".[3]

In answer to the complaint, respondent Almario denied his alleged deception upon the trial court and while admitting the affidavit as having been sworn to before him on the date appearing thereon, 31 December 1964, which was the expiry date of his notarial commission, he alleged, in defense, that the assignment of a number to the affidavit in question, which was already assigned to another document, and the omission to report said affidavit among the documents notarized by him was due to honest mistake, accident and excusable neglect.

Pursuant to a referral resolution of this Court,[4] the Office of the Solicitor-General conducted an investigation. The evidence adduced thereat showed the charges to be unfounded; the complainant, Teresita Mercado, as sole witness in her behalf, merely supposed the affidavit to have been falsified, on the bare fact that its document number was already assigned to another document. The background leading to the execution of the affidavit in question and the evidence in respondent's defense, showing the circumstances surrounding the erroneous numbering of the affidavit, destroys the complainant's bare suppositions.

Civil Case No. 17-V of the Court of First Instance of Bulacan was a petition by herein complainant Teresita Mercado to consolidate title over a parcel of land in her name, for failure of the vendors a retro, the spouses Teofilo Hilario and Aguida Nicolas, to redeem the land for P3,200.00 within the stipulated period. The court granted the petition. The therein respondents-spouses, through their counsel, herein respondent Attorney Almario T. Amador, tried to appeal but their appeal was dismissed because it was not perfected on time.

On 7 January 1965, the Hilario spouses, through herein respondent Almario, filed a pleading, entitled "Consignment and Manifestation." Attached thereto was the affidavit of Teofilo Hilario, the document which was allegedly falsified. Therein the affiant stated that he had offered Teresita Mercado P3,200.00 and incidental expenses to redeem the land but she refused to accept payment. Teresita Mercado opposed the consignment, not

because tender was not made upon her, but that redemption was premature, citing paragraph 3 of Article 1606 of the Civil Code, providing that the vendor may still exercise the right to repurchase within thirty days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right of repurchase.

On 12 August 1965, the Bulacan court issued an order sustaining the dismissal of the Hilarios' appeal but upheld their right to the reconveyance of the land. This ruling was reiterated in two subsequent orders of the court.[5]

In the investigation conducted by the Office of the Solicitor-General, respondent Almario presented Atty. Cornelio Orteza, counsel for complainant Mercado, as a hostiled witness. Atty. Orteza admitted that there had been a tender of payment, followed by consignment.[6]

The gist of the testimonies of the other witnesses for the respondent is as follows:

Peregrino Mangulabnan It was he who loaned the Hilarion spouses the sum of P3,200.00 between Christmas of 1964 and New Year of 1965.[7]

Teofilo Hilario – He affirmed the contents of his affidavit and testified that it was executed and notarized on 31 December 1964.[8]

Ciriaco Carpio As a clerk in the office of respondent, he helped in making entries in respondent's notarial reports.[9]

Respondent Almario Amador – His commission as a notary public expired on 31 December 1964; he submitted his notarial reports to the Notarial Section of the Court of First Instance of Manila on 18 January 1965; he was re-appointed, on the same day, for another term ending 31 December 1966. On 31 December 1964, he notarized about 180 documents, among them the questioned affidavit of Teofilo Hilario.[10]

He uses three (3) forms for entering documents, viz., a loose leaf form purchased from the Office of the Solicitor-General, a cloth-bound notarial register, also purchased from the same office, and a mimeographed loose leaf form, which is purchased from bookstores; the first two forms are the ones submitted to the notarial section of the Court of First Instance of Manila but the third form is used by him for his reference so as not to interrupt the functions of his office when the first two forms are not available from the Office of the Solicitor General.[11]

He is uncertain as to how the numbering of the questioned affidavit went wrong. His explanation is detailed in the report of the Office of the Solicitor-General, as follows:

"We analyze his explanations. Respondent said that after Teofilo Hilario had signed Exhibit H, because his clerks had already left he looked at the notarial book and after seeing the vacant number he put on the affidavit the number of the document, the page number, then the book number and placed the document on his table (TSN, p. 210, May 20, 1969); that after his clerks returned to the office he told them to enter the affidavit but for reason which he does not know he was surprised when it was brought out later that the document was assigned a number corresponding to another document which had previously been notarized or entered on that same day (TSN, p. 210, May 20, 1969); that the entries in his notarial book are done by his clerks (TSN. p. 211, May 20, 1969); that he was not the one who entered or made the entries in the notarial book (TSN. pp. 214-215, May 20, 1969); that the number 1176, page No. 62, Book No. VIII, Series of 1964 and the signature are all in his handwriting (TSN. p. 216, May 20, 1969); that the entries in Exhibit J of the notarial book page 62 are in the handwriting of his clerks (TSN. p. 217, May 20, 1969); that Exhibit J is a true copy of page 62 of his notarial book, Volume VIII (TSN, pp. 217-218, May 20, 1969); that it was in Exhibit J that he saw a vacant number which was not filled up and which was the one he used as number 1176 in Exhibit H (TSN. p. 218, May 20, 1969); that the entries in Exhibit I-1, the loose-leaf copy of his notarial book, page 62, December 31, 1964, for contract of employment, Doc. No. 1176 are not in his handwriting (TSN. p. 219, May 20, 1969); that in notarizing documents they enter them in three books but usually they are not being entered at once in three

books; they are entered in one book and copied by clerks in two books which are later submitted to the Notarial Section of the Court of First Instance (TSN. p. 220, May 20, 1969); that they have in their office the mimeographed form but due to the number of documents which were notarized on that day, December 31, 1964, his clerks might have entered them first in the book or in the loose-leaf copy or in the mimeographed form (TSN. p. 222, May 20, 1969); that they retain in their office for reference and filed copy the mimeographed form but the ones filed with the notarial section of the Court of First Instance of Manila are the notarial book and the notarial copy (TSN. p. 222, May 20, 1969); * * * * ; that when he notarized Exhibit H he referred to his office book because it is all the same as the loose-leaf and notarial book (TSN. pp. 236-237, Nov. 27, 1969); that he noticed in his office book that there was already a document bearing No. 1175 when he referred to it (TSN. p. 237, Nov. 27, 1969); that at the time he placed the document on the table the clerks were entering the documents in the book and loose leaf so that there was a possibility that instead of entering this affidavit they recorded instead the Contract of Employment which was already signed (TSN. p. 238, Nov. 27, 1969); that he does not remember having prepared Exhibit 1-2 in Exhibit I which is a joint affidavit of Teofilo Hilario and Agueda Nicolas, his clients (TSN. pp. 243-244, Nov. 27, 1969); that he checked the entries made by his clerks in the book but he could not discover the mistake in Exhibit I-2, entered as a joint affidavit in Exhibit I but was entered as a Special Power of Attorney in Exhibit J, marked as Exhibit J-1 (TSN. p. 246, Nov. 27, 1969); that Exhibit P-1 in Exhibit P is most likely the result of the mistake committed by the clerks after he had signed the affidavit of Teofilo Hilario on which he jotted down the number; that he does not know or (is) not sure how many affidavits of Teofilo Hilario he notarized on December 31, 1964 (TSN. p. 262, Jan. 14, 1970); that he checked very well the work of his clerk but because he made a mistake he could not help it (TSN. p. 267, Jan. 14, 1970); that now he knows it is a mistake (TSN. p. 268, Jan. 14, 1970); that he could not discover the mistake of his clerk in entering Exhibit I-2, a joint affidavit, as a Special Power of Attorney, Exhibit J-2 in Exhibit J, and his oversight of not doing so is without malice (TSN. p. 270, Jan. 14, 1970); that he checked each entry in the loose-leaf copy against the entry corresponding to the same number on the same page of his notarial book but being a human being he could not discover the mistake (TSN. p. 270, Jan. 14, 1970)."[12]

We agree with the finding of the Solicitor-General that there was no proof beyond reasonable doubt of any malice or intent on the part of the respondent to falsify the affidavit of Teofilo Hilario nor deception for its use in the trial court. The contents of the affidavit – that there was tender of payment for the redemption of the land sold by pacto de retro – were admitted, in the investigation, to be true. The trial court could not have been deceived by the affidavit in question, for the court was of the opinion that lack of tender of payment did not affect the validity of the consignment. There is no evidence at all that the affidavit was executed and notarized on any date other than the date appearing on the jurat thereof, which was on 31 December 1964, which was also the expiry date of the respondent's appointment as a notary public; there is no evidence, either, that the number assigned to the affidavit (No. 1176) was deliberately so assigned with an evil motive.

We, likewise, approve the Solicitor-General's report in its finding that respondent Almario was negligent in his duties as a notary public. In allowing his clerks to make the entries and numbering of documents in his notarial register and books, the respondent was clearly guilty of gross negligence in the discharge of his duties as a notary public, as prescribed by Section 246 of the Revised Administrative Code:

"Sec. 246. Matters to be entered therein. –The notary public shall enter in such register, in chronological order, the nature of each instrument executed, sworn to or acknowledged before him * * * * and shall give to each entry a consecutive number, beginning with number one in each calendar year. The notary shall give to each instrument executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument the page or pages of his register on which the same is recorded. No blank line shall be left between entries." (Italics supplied).

The law evidently contemplates that the entries in the bound notarial register or book and the assignment of the

consecutive number to the entries must be made by the Notary Public himself, for only thus can there be certainty of the chronological order of the entries and the correctness of the numbers assigned to each instrument entered in the register. It must not be overlooked that a notary public certifies as a public officer not only the identity of the parties who appeared before him and acknowledged execution of the instrument in which the notary has intervened; but he, the notary, likewise certifies to the date and occasion in which the acknowledgment has taken place. It is in reliance upon the correct performance of these duties that the law dispenses with other evidence concerning due execution of notarial documents. Were the notary to allow the entries in his notarial book or register to be made by other persons, or to be copied from temporary entries provisionally made in another paper, irregularities could easily occur, as in the case at bar, and the faith reposed on notarial certificates would be destroyed, and notarized documents rendered of no greater evidentiary value than private instruments. Tolerance of such irregularities would speedily undermine public confidence in the notarial system.

However, the Supreme Court has no supervisory juris-diction over notaries public and, much as this Court disapproves, as it hereby registers its disapproval and condemnation of respondent's negligence as a notary public, this case must be referred to the Court of First instance of Manila, in order that the judge thereof assigned to the duty of supervising notaries public in the City, conformably to Section 248 of the Revised Administrative Code, may take the requisite disciplinary action against respondent as Notary Public.[13]

WHEREFORE , the complaint for disbarment is hereby dismissed and the respondent absolved therefrom; but a copy of this decision is ordered furnished the Court of First Instance of Manila, together with the evidence on record, for appropriate disciplinary action against respondent Almario T. Amador, pursuant to its supervisory authority over notaries public.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] Admitted to the bar in 13 February 1961.

[2] Petition, paragraph 5.

[3] Id.; paragraph 6.

[4] On 15 April 1968.

[5] Teresita Mercado appealed the order, but on 31 May 1971 the Court of Appeals affirmed it (Annex "A" to respondent's Manifestation, dated 19 July 1971).

[6] T.S.N., page 101.

[7] T.s.n., page 132.

[8] T.s.n pages 147-149.

[9] T.s.n., page 162.

[10] Exhibits "7", "8", and "9"; T.s.n., pages 178-179.

[11] T.s.n. pages 221-222, 235.

[12] Report and Recommendation, Office of the Solicitor-General, dated 26 March 1971, pages 24-28.

[13] "Sec. 248. Supervision of judges of first instance over notaries public. – The judge of the Court of First

Instance in each judicial district shall at all times exercise supervision over the notaries public within his district and shall keep himself informed of the manner in which they perform their duties by personal inspection wherever possible, or from reports which he may require from them, or from any other available source.

"In the City of Manila such supervision shall be exercised by one of the Judges of the Court of first Instance of * * * Manila to be thereunto assigned by the judges of the branches of said Court."

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