

**VICTORINO SIMON, COMPLAINANT, VS. JUDGE ALIPIO M. ARAGON,
MUNICIPAL CIRCUIT TRIAL COURT, SAN PABLO, ISABELA,
RESPONDENT.**

A.M. No. MTJ-05-1576 (OCA-IPi No. 02-1323-MTJ). February 03, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

MTC and MCTC judges may act as Notaries Public ex officio in the notarization of documents connected only with the exercise of their official functions and duties. They may not, as Notaries Public ex officio, undertake the preparation and acknowledgment of private documents, contracts and other acts of conveyances which bear no direct relation to the performance of their functions as judges.[1]

In a complaint[2] dated October 18, 2002, Victorino Simon charged respondent, Judge Alipio M. Aragon, the presiding judge of the Municipal Circuit Trial Court of San Pablo and Cabagan, Isabela, with conduct unbecoming of an officer. Complainant alleged that the respondent judge was engaged in unauthorized notarial practice having undertaken the preparation and acknowledgment of private documents, contracts and other acts of conveyances which bore no direct relation to the performance of his functions as a member of the judiciary.

Simon further averred that, contrary to the requirements of Circular No. 1-90,[3] the documents notarized by the respondent judge did not contain any certification attesting to the lack of any lawyer or notary public in San Pablo, Isabela. In support thereof, he attached several affidavits, deeds of absolute sale and other documents[4] notarized by the respondent judge from 1986 to 2000.

In his comment,[5] respondent judge admitted that he notarized the documents annexed to the complaint, but explained that he was constrained to do so as there was no lawyer or notary public in San Pablo, Isabela from 1983 to 1992. He clarified that, upon learning of Circular No. 1-90 sometime in 1993, he immediately and voluntarily desisted from further notarizing private documents. He further claimed that he never profited from his acts of notarization since the parties paid the notarial fees with the Office of the Municipal Treasurer of San Pablo, Isabela as evidenced by a certification[6] issued by the Clerk of Court of the First Municipal Circuit Trial Court of San Pablo-Sta. Maria, San Pablo, Isabela.[7]

Respondent judge maintained that he could not be considered as having violated Circular No. 1-90 during the period 1983 to February 25, 1990, since the said circular has not yet been promulgated. He argued that he could not be held liable for violating a circular that is not yet in existence.

On June 23, 2003, the complaint was referred to the Executive Judge of the Regional Trial Court of Cabagan, Isabela for investigation, report and recommendation.[8]

In his report[9] dated August 20, 2004, Judge Isaac R. De Alban of the Regional Trial Court of Cabagan, Isabela, Branch 22, found that the respondent judge indeed violated Circular No. 1-90 for having notarized private documents without the requisite certification that there is no notary public in his municipality or circuit. However,

Judge Alban recommended that Circular No. 1-90 which was promulgated on February 26, 1990, should be applied prospectively or only to documents notarized by the respondent judge after February 26, 1990.

Judge Alban recommended that the respondent judge be meted a fine of One Thousand Pesos (P1,000.00) each for the seven (7) documents that he notarized after the effectivity of Circular No. 1-90.

On October 6, 2004, we referred[10] this case to the Office of the Court Administrator for evaluation, report and recommendation. On January 3, 2005, the Office of the Court Administrator submitted its report-memorandum[11] adopting the recommendation of the investigating judge.

After a review of the records of this case, we find the respondent judge guilty of engaging in unauthorized notarial work.

Circular No. 1-90 specifically delineates the power of Municipal Trial Court judges and Municipal Circuit Trial Court judges to act as notaries public ex-officio, thus:

Municipal Trial Court (MTC) and Municipal Circuit Trial Court (MCTC) judges are empowered to perform the function of Notaries Public ex officio under Section 76 of Republic Act No. 296, as amended [otherwise known as the Judiciary Act of 1948] and Section 242 of the Revised Administrative Code. But the Court hereby lays down the following qualifications on the scope of this power:

MTC and MCTC judges may act as Notaries Public ex officio in the notarization of documents connected only with the exercise of their official functions and duties [Borne v. Mayo, Adm. Matter No. 1765-CFI, October 17, 1980, 100 SCRA 314; Penera v. Dalocanog, Adm. Matter No. 2113-MJ, April 22, 1981, 104 SCRA 193]. They may not, as Notaries Public ex officio, undertake the preparation and acknowledgment of private documents, contracts and other acts of conveyances which bear no direct relation to the performance of their functions as judges. The 1989 Code of Judicial Conduct not only enjoins judges to regulate their extra-judicial activities in order to minimize the risk of conflict with their judicial duties, but also prohibits them from engaging in the private practice of law [Canon 5 and Rule 5.07].

However, the Court taking judicial notice of the fact that there are still municipalities which have neither lawyers nor notaries public, rules that MTC and MCTC judges assigned to municipalities or circuits with no lawyers or notaries public may, in the capacity as notaries public ex officio, perform any act within the competency of a regular notary public: Provided, That: [1] all notarial fees charged be for the account of the Government and turned over to the municipal treasurer (Lapena, Jr. v. Marcos, Adm. Matter No. 1969-MJ, June 29, 1982, 114 SCRA 572); and [2] certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit.

For MTC and MCTC judges assigned to municipalities or circuits with no lawyers or notaries public to validly perform any act of a regular notary public, two requisites must concur:

1. All notarial fees charged must be for the account of the Government and turned over to the municipal treasurer; and
2. Certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit.

While it is true that the respondent judge should not be held liable for notarizing private documents in violation of Circular No. 1-90 prior to its effectivity, a review of the records of this case revealed that after February 26, 1990, the respondent judge notarized seven (7) private documents without certifying the lack of any lawyer or notary public in such municipality or circuit.

The private documents notarized by private respondent after the effectivity of Circular No. 1-90 which did not

contain the required certification are the following:

DATE OF NOTARIZATION DESCRIPTION OF DOCUMENT

1. January 28, 1991

Deed of Absolute Sale between Luciano Dabo and Antonia Dabo[12]

2. March 8, 1991

Affidavit of Extrajudicial Settlement Executed by Gloria Castaneda[13]

3. March 25, 1991

Affidavit of Extrajudicial Settlement Executed by Emma Viernes Vda. De Rivera[14]

4. May 21, 1991

Extrajudicial Settlement of Estate and Sale Between Orlando Soriano and Vicente A. Curag[15]

5. February 5, 1996

Affidavit Executed by Vicente C. Ibanez[16]

6. February 5, 1996

Affidavit of Waiver of Rights Executed by Manuel Soriano[17]

7. February 2, 2000

Affidavit Executed by Norma-Aragon Soriano[18]

Undoubtedly, respondent judge acted beyond the scope of his authority as notary public ex-officio when he notarized the aforesated documents not in connection with the exercise of his functions[19] and without complying with the requirement of certification as to lack of a notary public within his municipality or circuit.[20]

In *Doughlas v. Lopes, Jr.*,[21] the respondent judge was fined the amount of One Thousand Pesos (P1,000.00) for unauthorized notarization of a private document. Since in the instant case, the respondent judge committed seven (7) acts of unauthorized notarization, we adopt the recommendation of the Office of the Court Administrator that the respondent judge be fined Seven Thousand Pesos (P7,000.00).

WHEREFORE, in view of all the foregoing, we find respondent Judge Alipio M. Aragon GUILTY of violation of Circular No. 1-90 for unauthorized notarization of private documents, and is hereby FINED the amount of SEVEN THOUSAND PESOS (P7,000.00).

SO ORDERED.

Davide, Jr., C.J. (Chairman), Quisumbing, Carpio and Azcuna, JJ., concur.

[1] Power of Municipal Trial Court Judges and Municipal Circuit Trial Court Judges to Act as Notaries Public Ex Officio. Promulgated on 26 February 1990.

[2] Rollo, pp. 1-13.

[3] See note 1.

[4] Annexes "A" to "BB" of the complaint, Rollo, pp. 14-41.

[5] First Indorsement dated November 12, 2002 signed by Court Administrator Presbitero J. Velasco, Jr., Rollo, p. 128.

[6] Annex "1" of Comment of Respondent, Rollo, pp. 154-155.

[7] Comment of Respondent dated December 21, 2002, Rollo, pp. 137-153.

[8] Id., pp. 277-278.

[9] Id., pp. 413-416.

[10] Id., p. 521.

[11] Id., pp. 525-530.

[12] Id., p. 39.

[13] Id., p. 37.

[14] Id., p. 38.

[15] Id., p. 36.

[16] Id., p. 40.

[17] Id., p. 41.

[18] Id., p. 14.

[19] Ellert v. Judge Galapon, Jr., 391 Phil. 456, 464 (2000).

[20] Quinones v. Lopez, Jr., A.M. No. MTJ-02-1428, 9 April 2003, 401 SCRA 35, 38.

[21] 382 Phil. 8, 14 (2000).

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