

HEIRS OF ODYLON UNITE TORRICES, REPRESENTED BY SOLE HEIR MIGUEL B. TORRICES, COMPLAINANT, VS. ATTY. HAXLEY M. GALANO, RESPONDENT.

A.C. No. 11870. July 07, 2020

Ponente: GAERLAN, J.

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GAERLAN, J.:

This resolves the Petition for Disbarment[1] filed by the Heirs of Odylon Unite Torrices (Heirs of Torrices) against Atty. Haxley Galano (Atty. Galano) for violation of Rule 10.01 of the Code of Professional Responsibility, Oath of Lawyers and the 2004 Rules on Notarial Practice.[2]

The Antecedents

On July 23, 2012, Atty. Galano, in his capacity as a commissioned Notary Public in the Province of Cagayan, notarized a Deed of Absolute Sale purportedly executed between Dominga Unite Torrices (Dominga), married to Miguel G. Torrices (Miguel), as vendor, and Felipe U. Tamayo, married to Divina Tamayo, as vendee. The Deed of Absolute Sale involved a parcel of land under Original Certificate of Title No. P-4993(S) – Free Patent No. 367865 located at Barangay Fugu, Ballesteros, Cagayan, containing an area of 7,303 square meters. The property was sold for a consideration of P200,000.00. The Deed of Absolute Sale was entered in Atty. Galano's Notarial Register as Doc. No. 1130, Page No. 226, Book No. XXIII, Series of 2012.[3]

However, the Heirs of Torrices questioned the authenticity of the Deed of Absolute Sale, considering that the alleged vendor Dominga died on June 6, 1974, while her husband Miguel, whose signature likewise appeared on the said Deed, passed away in the early 1970s.[4] The Heirs of Torrices accused Atty. Galano of conspiring with the vendees by making it appear that Dominga and Miguel were still alive when the Deed of Absolute Sale was notarized.

This spurred a Petition for Disbarment[5] against Atty. Galano for violation of Rule 10.01 of the Code of Professional Responsibility,[6] Oath of Lawyers, and the 2004 Rules on Notarial Practice under A.M. No. 02-8-13-SC.

Atty. Galano failed to submit his answer to the petition for disbarment.[7]

IBP Report and Recommendation

On June 29, 2015, Integrated Bar of the Philippines (IBP) Commissioner Eduardo R. Robles (Commissioner Robles) issued a Report and Recommendation,[8] where he stated that Atty. Galano violated the 2004 Rules on Notarial Practice by notarizing the Deed of Absolute Sale without requiring the presence of the signatories Dominga and Miguel. Commissioner Robles likewise opined that Atty. Galano committed a violation of the Revised Penal Code by falsely affirming that the parties physically appeared before him.[9] Accordingly, Commissioner Robles recommended Atty. Galano's suspension from the legal profession for a period of three years.[10]

IBP Board of Governors Resolution

In a Resolution[11] dated June 30, 2015, the IBP Board of Governors adopted the Recommendation of IBP Commissioner Robles.

The dispositive portion of the said Resolution states:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation to be fully supported by the evidence on record and applicable laws, and considering Respondent's violation of the 2004 Rules on Notarial Practice, Ally, Haxley M. Galano is hereby SUSPENDED from the practice of law for three (3) years.[12]

Issue

The issue raised in the instant case is whether or not Atty. Galano is administratively liable for violating the rules on notarial practice, as well as Rule 10.01 of the Code of Professional Responsibility, and the Lawyer's Oath.

Ruling of the Court

The Court agrees with the finding that Atty. Galano is administratively liable, but modifies the penalty recommended by the IBP.

Essentially, the conferment of a notarial commission embodies the correlative duty to observe the basic requirements in the performance of notarial duties with utmost care to avoid the erosion of the public's confidence in the integrity of a notarized document.[13] Lest it be forgotten, notarization is an act invested with substantive public interest, as it results to the conversion of a private document into a public instrument, thereby making it admissible in evidence without further proof of its authenticity.[14] By law, a notarized document is entitled to full faith and credit.[15]

Accordingly, to preserve the sanctity of a notarized document, the Notary Public must require the presence of the parties executing the instrument.[16] In addition, the Notary Public must ensure that the parties appearing in the document are the same persons who executed it, that they signed freely and voluntarily, and that the provisions embodied in the instrument express their true agreement.[17] These may not be achieved unless the parties are physically present before the Notary Public.[18]

In this regard, Section 1 of the 2004 Rules on Notarial Practice highlights the importance of having the affiant appear in person before the Notary Public, viz.:

SECTION 1. Acknowledgment. — "Acknowledgment" refers to an act in which an individual on a single occasion:

- (a) appears in person before the notary public and presents an integrally complete instrument or document;
- (b) is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and
- (c) represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity, that he has the authority to sign in that capacity. (Emphasis supplied)

In the same vein, a Notary Public is prohibited from performing a notarial act in the absence of the signatories to the instrument. The notarization of a document in the absence of the parties is a breach of duty. This is clear from

Rule IV, Section 2(b) of the 2004 Rules on Notarial Practice which states that:

SEC. 2. Prohibitions.

x x x x

(b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document—

(1) is not in the notary's presence personally at the time of the notarization; and

(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

It becomes all too apparent that Atty. Galano transgressed the most fundamental rules in the notarization of documents. He notarized the Deed of Absolute Sale without requiring the presence of the purported vendor Dominga and her husband Miguel, whose signatures falsely appeared on the document. Worse, he committed falsehoods by stating in the notarial acknowledgment that Dominga and Miguel personally appeared before him on July 26, 2012, which was utterly impossible considering that they had been dead twenty years prior to such date of notarization. The fact of their demise was established from their respective Death Certificates which are attached to the records of the case.

Significantly, in a long line of cases, the Court sternly disciplined notaries public who notarized instruments notwithstanding the fact that the persons whose signatures appeared thereon were already dead.[19]

All told, notaries public must dutifully abide by the Lawyer's Oath and the Code of Professional Responsibility. Likewise, they must avoid committing falsehoods or consent to the doing of any. They must stand as vanguards against any illegal and immoral arrangements in the execution of documents.[20] It bears stressing that "notarization is not an empty, meaningless, routinary act,"[21] but one that is invested with substantive public interest.[22] Thus, notaries public must observe the basic requirements in the performance of their duties with utmost care and diligence.[23] Those who fail to abide by the rules must be sanctioned accordingly.

WHEREFORE, premises considered, respondent Atty. Haxley M. Galano is found GUILTY of notarizing the Deed of Absolute Sale dated July 23, 2012 in the absence of the affiants, and is SUSPENDED from the practice of law for two years. Further, his notarial commission, if still existing, is REVOKED and he is PERPETUALLY DISQUALIFIED from reappointment as Notary Public.

Atty. Haxley M. Galano is DIRECTED to report the date he receives this Resolution to enable this Court to determine when his suspension shall take effect.

Let copies of this Resolution be furnished to the Office of the Bar Confidant to be appended to respondent's personal record as attorney. Likewise, let copies be furnished to the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, J. Reyes, Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, and Delos Santos, JJ., concur.

[1] Rollo, pp. 2-6.

[2] Id. at 3.

[3] Id.

[4] Id.

[5] Id. at 2-6.

[6] CODE OF PROFESSIONAL RESPONSIBILITY

Rule 10.01 - A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

[7] Rollo, p. 119

[8] Id. at 119-120.

[9] Id.

[10] Id. 120.

[11] Id. at 117-118.

[12] Id. at 117.

[13] De Jesus v. Atty. Sanchez-Maliit, 738 Phil. 480, 491-492 (2014), citing Lustestica v. Atty. Bernabe, 643 Phil. 1, 9 (2010).

[14] Id. at 491.

[15] Atty. Bartolome v. Atty. Basilio, 771 Phil 1, 10 (2015).

[16] Anudon v. Atty. Cefra, 753 Phil. 421, 429-430 (2015).

[17] Id. at 430.

[18] Id.

[19] Atty. Linco v. Atty. Lacebal, 675 Phil. 160 (2011); Magaway v. Atty. Avecilla, 791 Phil. 385 (2016); Atty. Bartolome v. Atty. Basilio, 771 Phil 1 (2015); Ang v. Atty. Gupana, 26 Phil. 127 (2014).

[20] Magaway v. Atty. Avecilla, *supra* at 390.

[21] Atty. Linco v. Atty. Lacebal, *supra* at 167.

[22] Id.

[23] Id.

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