

JOSE A. ARFAPO, COMPLAINANT, VS. ATTY. TEODORO V. NANO, SR., RESPONDENT.*A.C. No. 1371. December 29, 1978*

Ponente: ANTONIO, J.

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In this administrative case, respondent Teodoro V. Nano, Sr. is charged with having prepared a deed of sale of a portion of a 15-hectare land with improvements without the knowledge and participation of the vendors, the Spouses Jose A. Arfapo and Concepcion Mapalinta, and deliberately altering the consideration of the deed of sale from P6,000.00 as agreed upon by the parties to P5,500.00, making it appear that the remaining balance of the consideration, after paying the agreed down payment of P1,500.00, was P4,000.00 instead of P4,500.00, and with having appropriated for himself the amount of P500.00 allegedly intended by the parties for the payment of the realty taxes in arrears.

In his answer dated November 25, 1974, respondent vehemently and vigorously denied the charge of malpractice against him. In defense, he alleged that on December 5, 1972, upon prior agreement, the spouses-vendors Jose A. Arfapo and Concepcion Mapalinta and spouses-vendees Newton Nano and Hildegarda Ibañez went to his law office for the purpose of signing the deed of sale of the spouses-vendors' land in favor of spouses-vendees; that the price of the land was already previously agreed upon by the parties at P5,500.00 with down payment of P1,500.00 leaving a balance of P4,000.00 payable after vendees-spouses shall have contracted with a loan from any bank after the title of the land is transferred to vendees; that taxes were never discussed by the contracting parties including respondent herein that complainant allegedly assured the respondent and vendees-spouses that he had no arrears in realty taxes over the land subject of the sale, that there were no encumbrances over the land, and that no other person was claiming any portion of the land or improvements thereof; that it was complainant who suggested the execution of a Deed of Absolute Sale instead of a contract with mortgage to guarantee the payment of the remaining balance of P4,000.00 as complainant allegedly stated that it was not necessary because he had complete confidence in the vendees-spouses; that the contracting parties went to respondent's law office and voluntarily signed the contract of sale and promissory note without raising any objection thereto; that he discovered that complainant had not been paying the annual realty taxes of the subject land from 1969 to 1973 and as a consequence, the spouses-vendees could not register their deed of sale; that under date of June 16, 1974, said vendees filed Civil Case No. 442 for specific performance and damages against complainant and his wife to compel the latter to pay all the unpaid realty taxes over the land sold by them and to settle the claims of third persons claiming payments of the coconuts they planted in a portion of complainant's land and to pay damages; that under date of August 9, 1974, respondent filed a criminal case for falsification of public document against complainant at the City Fiscal's Office at Davao City for making vendees-spouses believe that the land they bought from him and his wife was "free of any lien or encumbrances"; that it was because of the filing of the two cases against complainant by the Nano spouses (Civil Case No. 442) and by herein respondent (of the criminal case), the threat to expose him for having illegally acquired 275 hectares of land and for enriching himself through corrupt practices while he was still in the government service, that complainant is acting berserk; that

complainant, in order to dissuade respondent from exposing his ill-gotten wealth and prosecuting the falsification case against him, allegedly filed the instant disbarment case; and that the libel and slander cases filed by complainant against herein respondent, and Civil Case No. 8376 filed by said complainant against the Nano spouses for rescission of contract and damages were all dismissed.

By resolution dated December 16, 1974, this Court referred the case to the Office of the Solicitor General for investigation, report and recommendation. On December 15, 1978, the Solicitor General submitted his report, recommending dismissal of the charges. According to said report, for convenience of the parties who are all residents of Davao City, this case was indorsed to the City Fiscal of Davao City to conduct the investigation of the case, receive the evidence of the parties, testimonial and/or documentary, and submit a report thereon.

Meanwhile, on December 10, 1974, the parties amicably settled Civil Case No. 442, and on December 12, 1974, a joint affidavit was executed by the Nano spouses and Arfapo spouses, together with respondent herein, stating, among other things, that the Nano spouses, principal witnesses of respondent in the criminal complaint for falsification of public document against herein complainant and his wife, are no longer interested as witnesses in said case and in further prosecuting the same. Moreover, respondent herein likewise manifested his desistance from prosecuting the same against complainant and his wife for want of witnesses to corroborate his testimony. The said case was dismissed by the Court on December 16, 1974.

On May 12, 1975, complainant executed an "Affidavit to Dismiss the case" subscribed and sworn to before Alfredo B. Santos, First Assistant City Fiscal of Davao City, declaring among other things: (1) that he and his wife have agreed to the amicable settlement of Civil Case No. 442 for specific performance and damages filed by spouses Newton Nano and Hildegarda Ibañez against them; (2) that respondent herein agreed and consented to the dismissal of Criminal Case No. 1574 for falsification of public document filed by him against complainant herein; and (3) that he has lost interest in prosecuting the instant administrative complaint, and requesting that said complaint be dismissed.

When the administrative case was called for hearing before Fiscal Alfredo B. Santos, complainant reiterated on the witness stand the contents of his affidavit of desistance, in view of which the Fiscal stated that he has "no alternative but to recommend the dropping of this administrative case."

There is no question that the burden of proof in disbarment proceedings rests upon the complainant, and for the Court to exercise its disciplinary powers, the case against the respondent must be established by convincing evidence.[1] In the case at bar, complainant, instead of proving his affirmative allegations, submitted an affidavit of desistance, stating that he has settled his differences with the respondent, and asked for the dismissal of this administrative case. Although the desistance of complainant or the withdrawal of the charges will not necessarily curtail the authority of this Court to proceed further on the matter, such circumstance will undoubtedly render the investigation of the case difficult. In the case at bar, not only is the respondent entitled to the presumption that as an officer of the Court, he has performed his duty in accordance with his oath,[2] but also no evidence has been submitted to substantiate the charges. It appears also that the deed of sale, which complainant claims to have been altered, appears on its face to be regular and bears no traces of any alteration whatsoever.

WHEREFORE, in view of the foregoing, the Court, finding the recommendation of the Solicitor General to be meritorious, hereby **DISMISSES** the administrative charges against respondent.

Fernando, (Chairman), Barredo, Aquino, Concepcion, Jr., and Santos, JJ., concur.

[1] Gov. Candoy, Administrative Case No. 736, Oct. 23, 1967, 21 SCRA 439; Avelina Magno, et al. v. Leon

Gelleda, Administrative Case No. 767.

[2] Re Reily, 79 ALR 89, cited in In re Tionko, 43 Phil. 191.

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