

ARSENIO V. MENDOZA, PETITIONER, VS. ARSENIO MERCADO, RESPONDENT.

A.C. No. 1484. June 19, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

On July 1, 1975, Arsenio V. Mendoza filed a complaint, charging Arsenio Mercado, an assistant provincial fiscal of Bulacan, with professional incompetence because in 1957 he notarized a deed of donation mortis causa which in 1974 was declared void by the Court of First Instance of Bulacan for not having been executed in the form of a last will and testament.

In that instrument, Agueda Mendoza donated to her sister, Felisa P. Mendoza, her share in a house and lot with an area of nine hundred seventy-two square meters, located at Sta. Maria, Bulacan.

Allegedly because of the nullity of the deed of donation, the devise of that share to complainant Arsenio V. Mendoza and Generoso Mendoza in the last will and testament of the donee, Felisa P. Mendoza, became ineffectual or inoperative.

However, the decision of the Court of First Instance of Bulacan, declaring the donation void, is pending appeal in Mendoza vs. Mendoza, CA-G.R. No. 57057-R. In that case, herein complainant Arsenio V. Mendoza, as a defendant, contended that the donation is valid because it was executed in accordance with law.

The issue raised by the parties herein in the Solicitor General's Office is whether respondent Mercado prepared the said deed of donation mortis causa or merely notarized it.

The Solicitor General found that the deed of donation was prepared by lawyer Dioscoro M. Juan (he died in 1961), the mayor of Bocaue, Bulacan, an alleged relative of complainant Mendoza. and that Mercado acted in good faith in notarizing it.

Professional incompetence is not among the grounds for disbarment specified in Section 27, Rule 138 of the Rules of Court. It is true that the enumeration of the grounds for disbarment in Section 27 is not exclusive and that there may be a case where a lawyer should be disbarred for inexcusable ignorance of the law.

Nevertheless, in the instant case, we are satisfied that disciplinary action should not be taken against the respondent for having ratified a deed of donation mortis causa which was not in the form of a will.

One has only to read the decided cases on the controversial issue of when a donation should be regarded as inter vivos and when mortis causa in order to know that some lawyers are excusably unfamiliar with the rule that the donation mortis causa has ceased to be an independent legal concept in the Civil Code and that it should have the form of a last will and testament (See *Alejandro vs. Geraldez*, L-33849 and *Diaz vs. Geraldez*, L-33968, August 18, 1977; 78 SCRA 245).

"An attorney-at-law is not expected to know all the law. For an honest mistake or error, an attorney is not liable."

Chief Justice Abbott said that "no attorney is bound to know all the law; God forbid that it should be imagined that an attorney or a counsel, or even a judge, is bound to know all the law" (Montorious vs. Jefferys, 2 Car. & P. 113, cited in *In re Filart*, 40 Phil. 206, 208).

WHEREFORE, the complaint for disbarment is dismissed.

SO ORDERED.

Barredo (Chairman), Concepcion Jr., Abad Santos, and De Castro., JJ., concur.

[1]De Castro J., was designated to sit in the Second Division.

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