

ROMANA R. MALIGSA, COMPLAINANT, VS. ATTY. ARSENIO FER CABANTING, RESPONDENT.

A.C. No. 4539. May 14, 1997

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PER CURIAM:

ATTY. ARSENIO FER CABANTING is charged by Romana R. Maligsa in a verified affidavit-complaint for disbarment with conduct unbecoming a lawyer for certifying under oath a Deed of Quitclaim dated 5 May 1992[1] over a piece of property subject of a pending civil case before the Regional Trial Court — Br. 45, Urdaneta, Pangasinan, docketed as Civil Case No. U-5434.[2]

On 11 March 1996 we required respondent to comment on the complaint. He failed to comply despite service upon him of our Resolution together with copy of the complaint.

On 22 October 1996 we considered the failure of respondent Atty. Arsenio Fer Cabanting to file his comment as waiver of his right to do so and directed the case submitted for decision.

On the basis of the complaint and the supporting documents, this Court finds sufficient legal basis for disciplinary action against respondent for making it appear in the Acknowledgment of the Deed of Quitclaim in question that the affiant therein signed the document and acknowledged the contents thereof before him as Notary Public on 5 May 1992 when in truth and in fact the affiant did not and could not have done so.

The evidence clearly discloses that on 5 May 1992 a Deed of Quitclaim was purportedly executed by one Irene Maligsa in favor of Juanito V. Abaoag over a parcel of land located in Cablong, Pozorrubio, Pangasinan.[3] The subject document was notarized by respondent on the same date. The document was apparently used as evidence against complainant in a pending civil case for annulment of OCT No. P-31297, quieting of title with prayer for issuance of a writ of preliminary injunction and/or temporary restraining order plus damages.

The complainant alleges that the Deed of Quitclaim could not have been executed and notarized on 5 May 1992 because the affiant Irene Maligsa died on 21 April 1992 or sixteen (16) days earlier.[4] Moreover, Irene Maligsa could not have signed the document because she "never knew how to write as she uses the thumb mark in every transaction she entered." [5]

Section 1 of Public Act No. 2103 [6] provides —

- (a) The acknowledgment shall be made before a notary public or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed. The certificate shall be made under the official seal, if he is by law required to keep a seal, and if not, his certificate shall so state.

Furthermore, the Acknowledgment contained in the questioned document specifically provides "BEFORE ME personally appeared IRENE MALIGSA x x x x" [7] Clearly, the party acknowledging must personally appear

before the Notary Public or any other person authorized to take such acknowledgment of instruments or documents.

In the case before us, it would have been physically and legally impossible for the affiant Irene Maligsa to have executed the alleged Deed of Quitclaim on 5 May 1992 and to have personally subscribed to its authenticity and validity before respondent notary public on the same date, affiant having died on 21 April 1992. Also, it behooves respondent as a notary public to require the personal appearance of the person executing a document to enable the former to verify the genuineness of the signature of the affiant.

Quite importantly, this is not the first time that respondent has been involved in an act of malpractice in violation of his oath as a lawyer and the Canons of Professional Ethics.

In the consolidated administrative cases of *Valencia v. Cabanting*,^[8] the Court suspended respondent Atty. Arsenio Fer Cabanting for six (6) months from the practice of law. In those cases respondent purchased his client's property which was still the subject of a pending certiorari proceeding contrary to the prohibition stated in Art. 1491 of the New Civil Code and Art. II of the Canons of Professional Ethics. Under the circumstances, a recollection of the basic principles of professional ethics in the practice of law is apropos.

A lawyer shall at all times uphold the integrity and dignity of the legal profession. The bar should maintain a high standard of legal proficiency as well as of honesty and fair dealing. A lawyer brings honor to the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients. To this end a member of the legal fraternity should refrain from doing any act which might lessen in any degree the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession. ^[9]

Notarization is not an empty routine; to the contrary, it engages public interest in a substantial degree and protection of the interest requires preventing those who are not qualified or authorized to act as notaries public from imposing upon the public and the courts and the administrative offices generally.^[10] Notarization of a private document converts the document into a public one making it admissible in court without further proof of its authenticity.

As a lawyer commissioned as notary public, respondent is mandated to subscribe to the sacred duties appertaining to his office, such duties being dictated by public policy and impressed with public interest. Faithful observance and utmost respect of the legal solemnity of an oath in an acknowledgment or jurat is sacrosanct. Simply put, such responsibility is incumbent upon respondent and failing therein, he must now accept the commensurate consequences of his professional indiscretion. By his effrontery of notarizing a fictitious or spurious document, he has made a mockery of the legal solemnity of the oath in an Acknowledgment.

A lawyer may be disbarred or suspended for any misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, in honesty, probity and good demeanor or unworthy to continue as an officer of the court. ^[11] Considering the serious nature of the instant offense and in light of his prior misconduct hereinbefore mentioned for which he was penalized with a six (6) month suspension from the practice of law, with a warning that repetition of the same or similar act would be dealt with more severely, the contumacious behavior of respondent in the instant case which grossly degrades the legal profession indeed warrants the imposition of a much graver penalty.

ACCORDINGLY, the Court finds respondent ATTY. ARSENIO FER CABANTING guilty of grave misconduct rendering him unworthy of his continued membership in the legal profession; consequently, he is ordered DISBARRED from the practice of law and his name stricken off the Roll of Attorneys effective immediately.

Let copies of this Resolution be furnished all the courts of the land as well as the Integrated Bar of the Philippines,

the Office of the Bar Confidant and recorded in the personal files of respondent.
SO ORDERED.

Narvasa, C.J., Regalado, Davide Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Hermosisima Jr., Panganiban, and Torres Jr., JJ., concur.
Padilla, J., is on leave.

[1] Purportedly executed by Irene Maligsa, Annex "A," Records.

[2] Affidavit-Complaint, p. 2, Records.

[3] Deed of Quitclaim was allegedly executed for and in consideration of one (1) peso.

[4] Certificate of Death of Irene Maligsa Cariaso issued by Local Civil Registrar, City of Manila, Annex "B-2," Records.

[5] Deed of Absolute Sale dated 3 July 1985 in favor of Romana Maligsa, Annex "C," Records.

[6] "An Act Providing for the Acknowledgment and Authentication of Instruments and Documents Without the Philippine Islands," enacted 26 January 1912.

[7] See Note 1.

[8] *Paulino Valencia v. Atty. Arsenio Fer Cabanting*; *Constancia L. Valencia v. Atty. Dionisio C. Antiniw*, Atty. Eduardo U. Jovellanos and Atty. Arsenio Fer Cabanting; *Lydia Bernal v. Atty. Dionisio C. Antiniw*, Adm. Cases Nos. 1302, 1391 and 1543, 26 April 1991, 196 SCRA 302.

[9] *Marcelo v. Atty. Adriano S. Javier Sr.*, Adm. Case No. 3248, 18 September 1992, 214 SCRA 1.

[10] *Joson v. Atty. Gloria M. Baltazar*, Adm. Case No. 575, 14 February 1991, 194 SCRA 114; *Nadayag v. Atty. Jose A. Grageda*, Adm. Case No. 3232, 27 September 1994, 237 SCRA 202.

[11] See Note 8.

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