

EMELITA SOLARTE, COMPLAINANT, VS. ATTY. TEOFILO F. PUGEDA, RESPONDENT.*A.C. No. 4751. July 31, 2000*

Ponente: QUISUMBING, J.

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Before us is an administrative charge for gross misconduct, filed by complainant Emelita Solarte against a member of the bar, respondent Atty. Teofilo F. Pugeda. Respondent was a municipal judge in the 1960s when, as notary public ex officio, he allegedly notarized certain documents involving the sale of land situated in Cavite, particularly two deeds of sale dated circa 1964 and 1967 involving parcels of land located at General Trias.

The lots belonged to Catalino Nocon, and was the subject of an extrajudicial partition made by Catalino and his children. One of the children, Herminia, was not a signatory thereto because she was still a minor at that time.

Complainant claimed an interest in the lots sold because she was a descendant of the original owner, Catalino Nocon. Complainant's paternal grandfather, Felimon, was one of Catalino's children. Some 30 years after the sale thereof, or in mid-1990s complainant requested respondent for copies of the aforesaid deeds of sale. She suspected them to be spurious and wanted to have them examined by the NBI. Unable to obtain copies from respondent, she went to Herminia Nocon, another child of Catalino, who did not give her copies but allowed her to look at the documents. Complainant recorded the contents of the document on video and retyped the contents.

Complainant avers that respondent Pugeda could not have legally notarized a document to which he also acted as witness. She also cites as irregular or anomalous the absence of the vendee's signature in one of the deeds of sale. Complainant claims that respondent and his wife are in fact administering the property at General Trias and they were responsible for the wrongful partition of the property belonging to complainant's kin. According to complainant, the acts of respondent constitute gross misconduct.

Complainant alleges in particular that respondent participated in the fraudulent partition and sale of the property of Catalino. She discovered the fraud only recently according to her, when she sought the titling of his father's portion of the property. She now assails the validity of the partition made by Catalino and his children – particularly since Herminia was not a signatory thereto and the deeds of sale pertaining to the property.

In his comment, respondent countered that, first, he was no longer under any obligation to provide petitioner with the documents she was asking for because he is no longer a notary public ex officio. He says he was willing to look for the documents he notarized some 30 years ago, but petitioner was impatient and had left for the United States of America before he could find the documents.

Second, respondent says there is nothing in the law that prohibits the notary public from signing as witness the same documents he notarized.

Third, as municipal judge, he avers he was empowered to notarize documents under the Judiciary Act of 1948 and the Revised Administrative Code. The documents in question were notarized in the 1960s. According to

respondent, this was before the Supreme Court declared in 1980,[1] that an ex officio notary public can only notarize documents if such notarization is in connection with the exercise of his official functions and duties.

Fourth, respondent denies that he or his wife was responsible for the partition of the lot subject of the deeds of sale, so neither of them can be faulted therefor.

Attached to respondent's comment are copies of the decision of the Court of First Instance of Cavite, Branch 1, in Civil Case No. TM-273, and of the decision of the Court of Appeals in CA-G.R. No. 49757-R. Both decisions upheld the validity of the partition and the deeds of sale.

The complaint, together with respondent's comment, was referred to the IBP for investigation, report and recommendation. The IBP recommends that the charge be dismissed, thus:

"It appears that complainant was not a party to the documents which respondent notarized and witnessed. The respondent cannot be faulted for failure of the National archives to provide complainant with copies of the requested documents. Nowhere in the records is it shown that respondent and his wife had a hand in the partition and sale of the properties. Further, there is no prohibition for a notary public to witness a document which he ratified nor for his wife to sign as witness." [2]

We agree with the foregoing recommendation of the IBP.

Nothing in the law prohibits a notary public from acting at the same time as witness in the document he notarized.[3] The only exception is when the document to be notarized is a will.[4]

Complainant offered no proof, but only mere allegations, that (1) respondent was involved in the partition of the subject property, and that (2) respondent employed fraud to effect such partition. Such a grave charge against a member of the bar and former municipal judge needs concrete substantiation to gain credence. It could not prosper without adequate proof.

We note with dismay complainant's effort to mislead this Court when she claimed in her petition that she discovered the fraudulent partition of the property only recently. For the records show that on June 7, 1967, Purificacion Alfaro, petitioner's paternal grandmother, along with her children, had filed an action for partition and annulment of document before the Court of First Instance of Cavite.[5] Purificacion and her co-plaintiffs lost their case in the trial court and again in the Court of Appeals, which rendered its decision on July 31, 1979.[6] Complainant was not unaware of that case.[7] In fact, she was wondering why respondent also knew of the case when he was merely the notary public who notarized the documents.

Ultimately, what complainant wants is to annul the partition and the sale of the subject property. However, both matters were already brought before and upheld by the courts as far back as 1979. After the lapse of more than 20 years, without any appeal having been interposed, the judgment of the Court of Appeals in CA-G.R. No. 49757-R upholding the validity of the partition and the deeds of sale has already attained finality. Complainant cannot now resurrect issues involved in said case. This administrative charge against respondent lawyer, who as municipal judge notarized the documents involved, is utterly without merit.

WHEREFORE, as recommended, the instant complaint is DISMISSED.

SO ORDERED.

Mendoza, Buena, and De Leon, Jr., JJ., concur.
Bellosillo (Chairman), J., on official leave.

- [1] *Borre v. Moya*, 100 SCRA 314, 321 (1980)
- [2] IBP Report, pp. 3-4.
- [3] *Mahilum v. Court of Appeals*, 17 SCRA 482, 486 (1966)
- [4] *Cruz v. Villasor*, 54 SCRA 31, 33 (1973)
- [5] Rollo, p. 43.
- [6] *Id.* at 52.
- [7] Rollo, pp. 63-64.

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