

**ATTY. MINIANO B. DELA CRUZ, COMPLAINANT, VS. ATTY.
ALEJANDRO P. ZABALA, RESPONDENT.**

A.C. No. 6294. November 17, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

In his Letter-Complaint for Disbarment filed before the Committee on Bar Discipline of the Integrated Bar of the Philippines, complainant Atty. Miniano B. Dela Cruz charged respondent, Atty. Alejandro P. Zabala, for violating his oath as a notary public.

Complainant alleged that respondent notarized with unknown witnesses, a fake deed of sale allegedly executed by two dead people, in gross violation of his oath as a Commissioned Notary Public in Quezon City.[1]

Complainant averred that he was retained by a certain Demetrio C. Marero last December 21, 1996, to finance and undertake the filing of a Petition for the Issuance of a Second Duplicate Original of the Owner's copy of Original Certificate of Title (OCT) No. 4153, in the names of Sps. Pedro Sumulong and Cirila Tapales before the Regional Trial Court of Antipolo City, Branch 72. The court issued an Order approving the said petition on March 10, 1997.[2]

On May 20, 1997, complainant purchased the said property from Marero and had the title transferred to him and his wife. OCT No. 4153 was then cancelled and replaced by Transfer Certificate of Title (TCT) No. 330000.[3]

The next day, complainant requested a certain Mrs. Adoracion Losloso and Mr. Nestor Aguirre to register the title in the former's name at the Assessor's Office of Antipolo City. However, they were unable to do so because the property was already registered in the name of Antipolo Properties, Inc., under TCT No. N-107359.[4]

On May 27, 1997, respondent notarized a Deed of Absolute Sale over the land covered by OCT No. 4153, executed by Cirila Tapales and Pedro Sumulong in favor of the complainant and his wife.[5]

On December 9, 1997, Mr. Marero filed a Complaint for Reconveyance of Title of the land, subject of the Deed of Sale which was notarized by respondent, with damages against the complainant and his wife. The Deed of Sale was the same document Marero used when he filed a complaint for Estafa thru Falsification of Public Document docketed as I.S. No. 98-16357 before the Quezon City Prosecutor's Office and in a disbarment case docketed as Adm. Case No. 4963 against complainant.[6]

Purportedly, to clear his name, complainant filed this complaint for disbarment against respondent. According to complainant, respondent notarized an irregular document where one of the parties to the transaction was already dead, grossly violating his oath as a notary public.[7]

The IBP then required the respondent to file his answer to the said allegations.

Respondent, in his Answer alleged that as a notary, he did not have to go beyond the documents presented to him for notarization. In notarial law, he explains, the minimum requirements to notarize a document are the presence

of the parties and their presentation of their community tax certificate. As long as these requirements are met, the documents may be notarized. Furthermore, he adds, when he notarized the Deed of Sale, he had no way of knowing whether the persons who appeared before him were the real owners of the land or were merely poseurs.[8]

Thereafter, the parties were ordered to appear before the IBP Commission on Bar Discipline on July 31, 2001 and August 21, 2001, and required to submit their position papers.

The IBP Commission on Bar Discipline, in its Report dated September 29, 2003, recommended that respondent be reprimanded for violating Canon 5 of the Code of Professional Responsibility.[9] The allegations with respect to the prayer for disbarment were recommended for dismissal for insufficiency of evidence. The Commissioner held that complainant failed to establish by convincing proof that respondent had to be disbarred because of his notarial negligence. The alleged failures of respondent did not indicate a clear intent to engage in unlawful, dishonest, immoral or deceitful conduct, according to the Commission's Report.

Noteworthy, however, respondent did not deny that he notarized the cited Deed of Sale under the circumstances alleged by complainant. It appears that there was negligence on respondent's part which, in our view, is quite serious. Thus, we cannot conclude that he did not violate the Notarial Law,[10] and our rules regarding Notarial Practice.[11] Nor could we agree that, as recommended by the IBP, he should only be reprimanded. At least his commission as Notary Public should be revoked and for two years he should be disqualified from being commissioned as such.

The IBP noted that on its face, the Deed of Sale was not executed by the purported vendee and that only Pedro Sumulong appeared and executed the deed even though the property was co-owned by Pedro Sumulong and Cirila Tapales. In addition, a copy of the title was not attached to the said Deed of Sale when it was presented for notarization. The aforementioned circumstances should have alerted respondent. Given the ease with which community tax certificates are obtained these days, respondent should have been more vigilant in ascertaining the identity of the persons who appeared before him.

We have empathically stressed that notarization is not an empty, meaningless routinary act. It is invested with substantive public interest. It must be underscored that the notarization by a notary public converts a private document into a public document, making that document admissible in evidence without further proof of authenticity thereof. A notarial document is, by law, entitled to full faith and credit upon its face. For this reason, a notary public must observe with utmost care the basic requirements in the performance of their duties; otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.[12]

Section 1 of Public Act No. 2103 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 his official seal, if he is by law required to keep a seal, and if not, his certificate shall so state. [Emphasis ours.]

A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. These acts of the affiants cannot be delegated because what are stated therein are facts they have personal

knowledge of and are personally sworn to. Otherwise, their representative's names should appear in the said documents as the ones who executed the same.[13]

The function of a notary public is, among others, to guard against any illegal or immoral arrangements.[14] By affixing his notarial seal on the instrument, he converted the Deed of Absolute Sale, from a private document into a public document. In doing so, respondent, in effect, proclaimed to the world that (1) all the parties therein personally appeared before him; (2) they are all personally known to him; (3) they were the same persons who executed the instruments; (4) he inquired into the voluntariness of execution of the instrument; and (5) they acknowledged personally before him that they voluntarily and freely executed the same.[15] As a lawyer commissioned to be a notary public, respondent is mandated to discharge his sacred duties with faithful observance and utmost respect for the legal solemnity of an oath in an acknowledgment or jurat.[16] Simply put, such responsibility is incumbent upon him, he must now accept the commensurate consequences of his professional indiscretion. His act of certifying under oath an irregular Deed of Absolute Sale without ascertaining the identities of the persons executing the same constitutes gross negligence in the performance of duty as a notary public.

WHEREFORE, this Court finds respondent Atty. Alejandro P. Zabala GUILTY of gross negligence in his conduct as a notary public. His notarial commission, if still existing, is hereby REVOKED and he is DISQUALIFIED from being commissioned as a notary public for a period of two (2) years. He is DIRECTED to report the date of his receipt of this Resolution to the Court within five (5) days from such receipt. Further, he is ordered to SHOW CAUSE why he should not be subject to disciplinary action as a member of the Bar.

Let copies of this Resolution be furnished to all the courts of the land as well as the Integrated Bar of the Philippines, and the Office of the Bar Confidant. Let this Resolution be also made of record in the personal files of the respondent.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 1-3.

[2] Id. at 9

[3] Id. at 14.

[4] Id. at 15.

[5] Id. at 21.

[6] Id. at 3.

[7] Ibid.

[8] Id. at 54.

[9] Id. at 71.

[10] Sec. 125, Public Act No. 1189. See also Sec. 246, Revised Administrative Code; Sec. 163, Local Government Code of 1991; and Art. 248(a), Rules and Regulations implementing the Local Government Code of 1991.

[11] 2004 Rules on Notarial Practice, A.M. No. 02-8-13-SC.

[12] Coronado v. Felongco, Adm. Case No. 2611, 15 November 2000, 344 SCRA 565, 568-569.

[13] Villarin v. Sabate, Jr., Adm. Case No. 3324, 9 February 2000, 325 SCRA 123, 128.

[14] Cabanilla v. Cristal-Tenorio, Adm. Case No. 6139, 11 November 2003, 415 SCRA 353, 361.

[15] Arrieta v. Llosa, Adm. Case No. 4369, 28 November 1997, 282 SCRA 248, 252.

[16] Villarin v. Sabate, Jr., *supra*.

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