

**GERONIMO C. FUENTES, COMPLAINANT, VS. JUDGE ROMUALDO G. BUNO, PRESIDING JUDGE, MUNICIPAL CIRCUIT TRIAL COURT (MCTC), TALIBON-GETAFE, BOHOL, RESPONDENT.**

*A.M. No. MTJ-99-1204 (Formerly OCA IPI No. 97-355-MTJ). July 28, 2008*

Ponente: LEONARDO-DE CASTRO, J.

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**LEONARDO-DE CASTRO, J.:**

This administrative case against Judge Romualdo G. Buno of the 4[TH] Municipal Circuit Trial Court (MCTC), Talibon-Getafe, Bohol, stemmed from a complaint filed by Geronimo C. Fuentes charging him with abuse of discretion and authority and graft and corruption.

In his complaint, Geronimo Fuentes alleged that he is one of the nine (9) heirs of Bernardo Fuentes, their father, who owned an agricultural land located at San Jose, Talibon, Bohol, and that respondent judge prepared and notarized an "Extra-Judicial Partition with Simultaneous Absolute Deed of Sale" of the said agricultural land, executed by complainant's mother Eulalia Credo Vda. de Fuentes, widow of Bernardo Fuentes, and Alejandro Fuentes, on his own behalf and on behalf of his brothers and sisters, including Geronimo Fuentes, as heirs/vendors and one Ma. Indira A. Auxtero, as vendee; that in the aforesaid document, the aforementioned agricultural land was sold, transferred/conveyed by the heirs/vendors to the vendee despite the fact that in his Special Power of Attorney (SPA), he merely appointed his brother, Alejandro Fuentes to mortgage said agricultural land but not to partition, much more to sell the same. According to complainant Geronimo Fuentes respondent judge notarized said document as ex-officio Notary Public, thereby abusing his discretion and authority as well as committing graft and corruption.

In his 1[st] Indorsement dated December 2, 1997, the then Court Administrator required the respondent to file his comment on the complaint within ten days. In compliance thereto respondent judge submitted his answer, which prayed for the dismissal of the complaint. He admitted that on December 24, 1996, while he was the Presiding Judge of the MCTC, Talibon-Getafe, stationed at Talibon, Bohol, he notarized an Extra-Judicial Partition of Real Property with Simultaneous Absolute Deed of Sale, described as Document No. 1158, Series of 1996. He explained his reasons and related the circumstances surrounding the case as follows:

- That in the last week of the month of September, 1996, Mrs. Eulalia Vda. de Fuentes, Alejandro Fuentes together with Mrs. Helen A. Auxtero and Miss Ma. Indira Auxtero came to my house and requested me to make and prepare a document of sale between the Heirs of Bernardo Fuentes and Ma. Indira Auxtero as Vendee and upon verification of the papers they presented to the undersigned it was found out that the land subject of the sale is a conjugal property of the deceased Bernardo Fuentes and Eulalia Credo Vda. de Fuentes. Being a conjugal property, the undersigned advised them to secure special power of attorney for the children of Bernardo Fuentes who are out of town.
- On the 20[th] of December, 1996 Eulalia Vda. de Fuentes and Alejandro Fuentes came back to the house bringing a special power of attorney executed by Bonifacio Fuentes, Benjamin Fuentes, Urbano Fuentes, Samuela Fuentes, Rufina Fuentes and Bernardo Fuentes, Jr. carbon copy of the said Special Power of Attorney

herewith attached as Annex "A" of the answer. All these special power of attorney empowers Alejandro Fuentes to execute a Deed of Sale of a parcel of land under Transfer Certificate of Title No. 24937 registered in the name of Bernardo Fuentes, their deceased father.

Since no special power of attorney was presented to the undersigned executed by PO2 Geronimo Fuentes, the undersigned refused to make their document of sale but Eulalia Vda. de Fuentes and Alejandro Fuentes earnestly requested the undersigned to make and prepare the necessary document saying that the special power of attorney of PO2 Geronimo Fuentes is coming and they are in urgent need of the money and because of their request, the undersigned prepared the document, and Extra-Judicial Partition of Real Property with Simultaneous Absolute Deed of Sale in favor of Ma. Indira Auxtero. That PO2 Geronimo Fuentes was included in the Deed of Sale because of the assurance of Alejandro Fuentes and Eulalia Vda. de Fuentes that the Special Power of Attorney of PO2 Geronimo Fuentes is coming.

- That after the necessary document was prepared Eulalia Vda. de Fuentes and Alejandro Fuentes together with the vendee, Ma. Indira Auxtero signed the document on December 24, 1996 and on that day the said document was notarized by the undersigned.

- That few days after the document was notarized, the undersigned learned that the Special Power of Attorney executed by PO2 Geronimo Fuentes empowered Alejandro Fuentes only to mortgage the property so Mrs. Eulalia Vda. de Fuentes, Alejandro Fuentes and the vendee, Ma. Indira Auxtero were called by the undersigned about the Special Power of Attorney executed by PO2 Geronimo Fuentes but Eulalia Fuentes and Alejandro Fuentes explained to the undersigned that they will be responsible for PO2 Geronimo Fuentes considering that the money was already spent by them and the vendee, Ma. Indira Auxtero also assured the undersigned that if PO2 Geronimo Fuentes insists to take back his share, she is willing and in fact she reserved the share of Geronimo Fuentes, hence, the transaction was completed.

- The undersigned is making and notarizing the document outside of office hour cannot be said to have abuse his discretion and authority since he was earnestly requested by Eulalia Vda. de Fuentes and Alejandro Fuentes to prepare and notarized the document with authority from his brothers and sisters and with respect to Eulalia Vda. de Fuentes, she is selling her share of the conjugal property which is one-half (1/2) of the entire parcel of land.

In the aforementioned answer, respondent judge contended that he could not be charged of graft and corruption, since in a municipality where a notary public is unavailable, a municipal judge is allowed to notarize documents or deeds as ex-officio notary public. To support his claim, he presented two certifications: one, from Atty. Azucena C. Macalolot, Clerk of Court VI of the RTC, Branch 52, Talibon, Bohol, who certified that according to their records and dockets, no petition for commission and/or renewal of commission as notary public was granted by the said court for calendar year 1996 and no appointment as notary public was issued for that year; and the other, from Mayor Juanario A. Item of Talibon, Bohol who also certified that no notary public was staying and residing in the Municipality of Talibon, Bohol during the year 1996.

Respondent judge contended that he did nothing wrong in preparing and notarizing the said document and that he acted in good faith and in obedience to the earnest plea of complainant's mother and siblings who were in urgent need of money, and with their assurance that complainant's SPA was forthcoming. In his attempt to explain his lack of malice, respondent judge narrated that after learning that the SPA only authorized his brother, Alejandro Fuentes to mortgage the property, he summoned the latter, his mother and the buyer of the land. Alejandro then assured him that they would be responsible to the complainant and that the buyer was willing to return complainant's share in the property. Respondent further questioned complainant's sincerity in filing the complaint because the latter allegedly wanted merely the respondent to persuade the buyer to return the whole property to him instead of his share only.

In its Memorandum Report, the OCA recommended that the present case be re-docketed as a regular administrative matter and that respondent be fined in the amount of P10,000.00 for unauthorized notarization of a private document, the same to be deducted from his retirement benefit. The said OCA recommendation was premised on the lack of authority of respondent judge to prepare and notarize the document in question, which had no direct relation to the performance of his official functions as a judge.

While Section 76 of Republic Act No. 296,[1] as amended, and Section 242 of the Revised Administrative Code[2] authorize MTC and MCTC judges to perform the functions of notaries public ex officio, the Court laid down the scope of said authority in SC Circular No. 1-90. Pertinently, the said Circular reads:

MTC and MCTC judges may act as notaries public ex officio in the notarization of documents connected only with the exercise of their official functions and duties [Borre v. Mayo, Adm. Matter No. 1765-CFI, October 17, 1980, 100 SCRA 314; Penera v. Dalocanog, Adm. Matter No. 2113-MJ, April 22, 1981, 104 SCRA 193]. They may not, as notaries public ex officio, undertake the preparation and acknowledgment of private documents, contracts and other acts of conveyances which bear no direct relation to the performance of their functions as judges. The 1989 Code of Judicial Conduct not only enjoins judges to regulate their extra-judicial activities in order to minimize the risk of conflict with their judicial duties, but also prohibits them from engaging in the private practice of law (Canon 5 and Rule 5.07).

However, the Court, taking judicial notice of the fact that there are still municipalities which have neither lawyers nor notaries public, rules that MTC and MCTC judges assigned to municipalities or circuits with no lawyers or notaries public may, in the capacity as notaries public ex officio, perform any act within the competency of a regular notary public, provided that: (1) all notarial fees charged be for the account of the Government and turned over to the municipal treasurer (Lapena, Jr. vs. Marcos, Adm. Matter No. 1969-MJ, June 29, 1982, 114 SCRA 572); and, (2) certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit.

The above-quoted SC Circular No. 1-90 prohibits judges from undertaking the preparation and acknowledgment of private documents, contracts and other deeds of conveyances which have no direct relation to the discharge of their official functions. In this case, respondent judge admitted that he prepared both the document itself, entitled "Extra-judicial Partition with Simultaneous Absolute Deed of Sale" and the acknowledgment of the said document, which had no relation at all to the performance of his function as a judge. These acts of respondent judge are clearly proscribed by the aforesaid Circular.

While it may be true that no notary public was available or residing within respondent judge's territorial jurisdiction, as shown by the certifications issued by the RTC Clerk of Court and the Municipal Mayor of Talibon, Bohol, SC Circular No. 1-90 specifically requires that a certification attesting to the lack of any lawyer or notary public in the said municipality or circuit be made in the notarized document. Here, no such certification was made in the Extra-Judicial Partition with Simultaneous Deed of Sale. Respondent judge also failed to indicate in his answer as to whether or not any notarial fee was charged for that transaction, and if so, whether the same was turned over to the Municipal Treasurer of Talibon, Bohol. Clearly, then, respondent judge, who was the sitting judge of the MCTC, Talibon-Getafe, Bohol, failed to comply with the aforesaid conditions prescribed by SC Circular No. 1-90, even if he could have acted as notary public ex-officio in the absence of any lawyer or notary public in the municipality or circuit to which he was assigned.

Whether or not respondent judge truly acted in good faith when he prepared and acknowledged the subject document is beside the point since he failed to strictly observe the requirements of SC Circular No. 1-90. As noted by the then Court Administrator, the document involved here is Document No. 1158, which shows that numerous documents were notarized by respondent judge in the year 1996 alone. Respondent judge was silent as to whether he charged fees when he notarized documents and if so, whether he turned over the notarial fees to the municipal

treasurer. Moreover, contrary to Rule IV, Sec. 6(a) of the Rules on Notarial Practice of 2004,[3] respondent notarized the said document without the SPA of the attorney-in-fact of the vendors which gave rise to the legal problem between the vendors and the vendee concerning the scope of authority of the aforesaid attorney-in-fact. By failing to comply with the conditions set for SC Circular No. 1-90 and violating the provision of the Rules on Notarial Practice of 2004, respondent judge failed to conduct himself in a manner that is beyond reproach and suspicion. Any hint of impropriety must be avoided at all cost. Judges are enjoined by the Code of Judicial Conduct to regulate their extra-judicial activities in order to minimize the risk of conflict with their judicial duties.[4]

Rule 140 of the Rules of Court deals with the administrative sanctions imposable on erring judges. Violation of Supreme Court rules, directives and circulars is a Less Serious Charge punishable by suspension from office or a fine of more than P10,000.00 but not exceeding P20,000.00. However, respondent judge's application for optional retirement had already been approved by the Court en banc on March 10, 1998 in Administrative Matter No. 9449-Ret. and the release of his retirement benefits was allowed provided that the amount of P20,000.00 was withheld from the said retirement benefits, pursuant to the Resolution of this Court's Third Division on June 16, 1999 in this administrative case, formerly docketed as Administrative Matter OCA IPI No. 97-355-MTJ.

WHEREFORE, respondent Judge ROMUALDO G. BUNO, now retired, of the Municipal Circuit Trial Court of Talibon-Getafe, Bohol, is found **LIABLE** for failure to comply with SC Circular No. 1-90 and the Rules on Notarial Practice. He is hereby **ORDERED** to pay a **FINE** of Twelve Thousand Pesos (P12,000.00), to be deducted from the amount withheld from his retirement benefits.

**SO ORDERED.**

Puno, C.J., (Chairperson), Carpio, Corona, and Azcuna, JJ., concur.

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[1] Sec. 76. Miscellaneous Powers of Justice of the Peace. - A justice of the peace shall have power anywhere within his territorial jurisdiction to solemnize marriages, authenticate merchants' books, administer oaths and take depositions and acknowledgment, and in his capacity as ex officio notary public, may perform any act within the competency of a notary public.

[2] Sec. 242. Officers acting as notaries public ex officio. - Except as otherwise specially provided, the following officials, and none other, shall be deemed to be notary public ex officio, and as such they are authorized to perform within the limits of their territorial jurisdiction as hereinbelow defined, all the duties appertaining to the office of the notary public:

xxx xxx xxx

(c ) Justices of the peace, within the limits of the territory over which their jurisdiction as justices of the peace and other officers who are by law vested with the office of justice of the peace ex officio shall not solely by reason of such authority, be so entitled to act in the capacity of notaries ex officio.

[3] SECTION 6. Improper Instruments or Documents. — A notary public shall not notarize:

- (a) a blank or incomplete instrument or document; or
- (b) an instrument or document without appropriate notarial certification.

[4] Gravela v. Villanueva, A.M. No. 02-1414-MTJ, January 28, 2003, 396 SCRA 105, 110.

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