

**JOSE P. MARIANO AND FRANCISCO M. BAUTISTA, COMPLAINANTS,
VS. RTC JUDGE JOSE S. PEÑAS, JR. AND ATTY. ROGELIO R. UDARBE,
RESPONDENTS.**

Adm. Case No. 3247. February 10, 1992

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

These administrative complaints against Judge Jose S. Peñas, Jr. and Attorney Rogelio R. Udarbe date back to the time when Judge Peñas was still a practising lawyer and involve an allegedly falsified deed of sale which Attorney Udarbe supposedly prepared and Judge Peñas notarized without observing the requirements of the notarial law.

The complainant Jose P. Mariano, is an adopted son of the spouses Don Macario Mariano and Doña Irene Mariano, who owned extensive real properties in Iriga City, Camarines Sur. Francisco M. Bautista is a judgment creditor of the Marianos. The complainants have charged respondent Judge Peñas and Attorney Udarbe with "malpractice and serious violation of the law and the canons of professional ethics" for having allegedly conspired with Rolando S. Relucio, second husband of the widow, Irene Mariano, to strip her estate of valuable pieces of real property, by forging a deed of sale of said property in favor of her second husband's brother, Raul Santos, to the prejudice of her legal heirs and creditors. Allegedly indicative of the spurious character of the deed of sale are the following circumstances:

1. there is no original of the deed of sale;
2. only a carbon copy containing erasures, was produced;
3. the ink used by the parties in signing it are of different colors;
4. different typewriters were used in typing the first and second pages of the document; and
5. the deed falsely states that Irene P. Mariano's adopted children, Jose and Erlinda Mariano, have no undivided shares in the parcels of land sold.

Commenting on the complaint, Judge Peñas alleged that the filing of the charge against him is premature because the deed of sale in question is also the subject of pending actions for annulment and rescission (Civil Cases Nos. 88-1506 and 88-1507. Regional Trial Court, Branches 21 and 23, Fifth Judicial Region). He denied having prepared, forged, and falsified the deed of sale. He denied that the document has no original, for the truth is that there was an original but it was lost in the course of transferring his law office from one place to another five times in the past few years. The copies submitted to the Office of the Clerk of Court must have been destroyed also when that office was razed to the ground on June 26, 1976. He laments the filing of this administrative case against him and the publicity that has been given to it to spite and harass him, and place him in public contempt and ridicule (pp. 13-18, Rollo of Adm. Matter No. RTJ-88-226).

Commenting on the charge against him, Attorney Rogelio R. Udarbe denied having participated in the "execution or notarization of the document" in question. He alleged that he "simply assisted in effecting the registration" of the deed of sale "unaware of any defect in the document." (p. 30, Rollo of AC-3247.) Despite the alleged defects in the document (erasures, different colors of ink used in signing it and the different typewriters used in writing it), the National Land Registration and Deeds Administration (NLRDA), upon consulta by the Registrar of Deeds of Naga City, authorized its registration. Since the certificates of title were issued in the name of the seller, Irene Mariano, as a "widow," it is not true that her heirs have been deprived of their shares in the property, or that the judgment creditor, Francisco M. Bautista was cheated of his judgment for the notice of levy upon the property was carried over to the title that was issued to the vendee. Furthermore, in view of the pendency of the civil cases for annulment and rescission of the sale, this administrative complaint against him is premature (pp. 30-32, Rollo of Administrative Case No. 3247).

By a resolution dated December 5, 1988 (p. 37, Rollo of RTJ 88-226.) the Court resolved to consolidate the two administrative cases and on July 24, 1989, referred both complaints to Associate Justice Jorge S. Imperial of the Court of Appeals for investigation, report and recommendation. However, Justice Imperial asked to be excused because Judge Peñas, Jr. was the counsel for Rolando Relucio, et al. in Civil Case No. 7926 (570) which he decided against the complainant Bautista.

The Court granted Justice Imperial's request and transferred these cases to Court of Appeals Associate Justice Pedro A. Ramirez for investigation, report and recommendation.

On September 5, 1991, Associate Justice Ramirez submitted his report. After carefully perusing the report, we agree with his opinion that the complaints have no merit.

The records of this case are bereft of proof that the deed of absolute sale (Exh. A) of Irene Mariano's properties is a falsified document. There is nothing in the testimony of the complainant, Francisco M. Bautista and his witnesses, Zenaida Z. Torres, NBI document examiner, and Attorney Greta F. Paraiso, Registrar of Deeds of Naga City, to show that the vendor's signature in Exhibit A is forged. The NBI document examiner, Zenaida Torres, admitted that she was not able to determine the genuineness of the signatures in the questioned document (Exh. A) because she was not provided with sufficient specimen signatures of the vendor and the notary public (pp. 50-51, t.s.n., February 13, 1990).

With regard to respondent Attorney Udarbe, the records do not show that he participated in the preparation and notarization of Exhibit A. According to him, he only followed up its registration as counsel for Rolando Relucio and Raul Santos (pp. 8-15, t.s.n., March 20, 1990). A consulta was raised by the Registrar of Deeds to the Administrator of the National Land Titles and Deeds Registration inquiring as to the registrability of Exhibit A. The document was registered after the consulta was resolved in favor of its registration (pp. 66-69, Annex A-2, Rollo of A.C. No. 3247).

The other allegation that the deed of absolute sale was antedated by Judge Peñas so that the property could not be seized to satisfy the judgment for complainant Bautista against Irene P. Mariano (now Relucio), was likewise not substantiated.

Respondent Judge Peñas not only certified on the last page of the deed of sale (Exh. A), that the vendor, Irene P. Mariano, personally appeared before him on April 15, 1975 and acknowledged that the document was her free and voluntary act and deed, but he also testified that Irene herself brought the document to him already prepared and ready for notarization only (pp. 57-58, 61-63, t.s.n., July 11, 1990).

As an officer of the court, a lawyer is presumed to have performed his duty in accordance with his oath (Atienza

vs. Evangelista, 80 SCRA 338). A recital in a public document, celebrated with all the legal formalities under the safeguard of a notarial certificate, is evidence against the parties, and a high degree of proof is necessary to overcome the legal presumption that such recital is true (Valencia vs. Tantoco, 99 Phil. 824, citing Naval vs. Enriquez, 3 Phil. 669; Asido vs. Guzman, 37 Phil. 652). To overthrow a notarial certification, the oral evidence must be clear and convincing, and should be sustained by proof of facts or circumstances connected with the execution of the instrument, which in themselves tend to disclose a reasonable probability that the attack upon its genuineness or its efficacy is well founded (Castillo vs. Castillo, 95 SCRA 40; Asido vs. Guzman, supra).

Incidentally, Bautista's charge that the respondents conspired to frustrate the satisfaction of the money judgment in his favor in CA-G.R. CV No. 76776, has been rendered moot by his admission that he has already collected said judgment, with interest, in the total sum of P1,060,000 (p. 25, t.s.n., February 13, 1990).

WHEREFORE, the complaints for "malpractice and serious violation of the law and the canons of professional ethics x x x" against respondents Judge Jose S. Peñas, Jr. and Attorney Rogelio R. Udarbe are DISMISSED for lack of merit.

SO ORDERED.

Narvasa, C.J., Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Medialdea, Regalado, Davide, Jr., Romero, and Nocon, JJ., concur.

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