

MAXIMINO GAMIDO Y BUENAVENTURA, PETITIONER, VS. NEW BILIBID PRISONS (NBP) OFFICIALS, RESPONDENTS.

G.R. No. 114829. March 01, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In the Resolution of 7 September 1994, we required Atty. Icasiano M. dela Rea of No. 42 National Road corner Bruger Subdivision, Putatan, Muntinglupa, Metro Manila, to show cause why no disciplinary action should be taken against him for making it appear in the jurat of the petition in this case that the petitioner subscribed the verification and swore to before him, as notary public, on 19 April 1994, when in truth and in fact the petitioner did not.

In his Explanation of 23 December 1994 which was received by this Court on 25 January 1995, Atty. Icasiano M. dela Rea admitted having executed the jurat without the presence of petitioner Gamido. He alleges:

Firstly, I must honestly admit that I notarized it not in his presence. I did it in the honest belief that since it is jurat and not an acknowledgement, it would be alrights [sic] to do so considering that prior to April 19, 1994 and thereafter, I know Mr. Gamido since I have been in and out of New Bilibid Prisons, not only because my office is here only across the Municipal Building of Muntinlupa, Metro Manila but because I handled a number of cases involving prisoners and guards of NBP as well as some of its personnels [sic]. That in fact, I attempted to have the document personally signed by him but considering that I have to strictly observe rules and regulations of the NBP, particularly on visit, I did not pursue anymore my intention to have it notarized before me.

Secondly, that in notarizing the document, I honestly feel and by heart and in good faith, that as a notary public and as a practicing lawyer, I could modestly contribute in the orderly administration of justice. The Gamido family use to come in the office and in fact hiring the legal services of the undersigned but I refused to handle since I am already pre-occupied in other cases of similar importance. That on December 13, 1994 I receive a letter from Mr. Gamido, last paragraph of which is read as follows:

“Sanay po Atty. ay maawa kayo sa akin na nagdudusa nang walang kasalanan. Alang alang po sa kaawa awa kong pamilya, kailangan ang aking kalinga. Ang tulong ninyo ang siyang daan upang ako ay makaalis sa pagpapahirap nang mga taong walang puso at kaluluwa, walang awa sa kapua, at sa sambayang Pilipino.”

Then he apologizes to the Court and assures it that henceforth he would be more careful and circumspect:

That I am praying for an apology to the Hon. Supreme Court if what I did was wrong and the Hon. Supreme Court is assured that perhaps what transpired was a wrong judgment or honest mistake. That the Hon. Chairman and its Hon. Members are assured that when I signed the petition not in Gamido's presence it is never intended to do a wrong, to commit illegal or criminal acts but merely in the honest and sincere belief that it is valid and legal. The Hon. Supreme Court is assured that it is never intended for malice or for money.

This Hon. Chairman and its Hon. Members are further assured that from hereon, I am more careful and

circumspect in the exercise of this noble and grand profession and that no amount or consideration will sway or change this conviction. This is my life. This is the life of my family.

Atty. dela Rea's explanation is unsatisfactory; however, his spontaneous voluntary admission may be considered in mitigation of his liability.

As a notary public for a long time, as evidenced by the fact that his questioned jurat is indicated to have been entered in Book 45 of his notarial register, he should know the similarities and differences between a jurat and an acknowledgement.

A jurat which is normally in this form:

Subscribed and sworn to before me in _____, this ____ day of _____, affiant having exhibited to me his Community (before, Residence) Tax Certificate No. _____ issued at _____ on _____.

“is that part of an affidavit in which the officer certifies that the instrument was sworn to before him (Theobald vs. Chicago Ry. Co., 75 Ill. App. 208). It is not a part of a pleading but merely evidences the fact that the affidavit was properly made (Young vs. Wooden, 265 SW 24, 204 Ky. 694).” (LORENZO M. TAÑADA and FRANCISCO A. RODRIGO, *Modern Legal Forms*, vol. I, sixth ed., 1985 printing, 31). The jurat in the petition in the case also begins with the words “subscribed and sworn to me.”

To subscribe literally means to write underneath, as one's name; to sign at the end of a document (Black's Law Dictionary, Fifth ed., 1279). To swear means to put on oath; to declare on oath the truth of a pleading, etc. (Id., 1298). Accordingly, in a jurat, the affiant must sign the document in the presence of and take his oath before a notary public or any other person authorized to administer oaths.

As to acknowledgment, Section 1 of Public Act No. 2103 provides:

(a) The acknowledgement 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. (See Lorenzo M. Tañada and Francisco A. Rodrigo, *Modern Philippine Legal Forms*, vol. II, 1964 Fifth ed., 735).

It is obvious that the party acknowledging must likewise appear before the notary public or any other person authorized to take acknowledgments of instruments or documents.

The claim or belief of Atty. dela Rea that the presence of petitioner Gamido was not necessary for the jurat because it is not an acknowledgment is patently baseless. If this had been his belief since he was first commissioned as a notary public, then he has been making a mockery of the legal solemnity of an oath in a jurat. Notaries public and others authorized by law to administer oaths or to take acknowledgments should not take for granted the solemn duties appertaining to their offices. Such duties are dictated by public policy and are impressed with public interest.

His prior acquaintance and friendship with petitioner Gamido provides no excuse for non-compliance with his duty. If Atty. dela Rea were faithful to his duty as a notary public and if he wanted to accommodate a friend who was inside a prison, he could have gone to the latter's cell since he openly admitted that he has “been in and out of New Bilibid Prisons, not only because [his] office is here only across the Municipal Building of Muntinlupa, Metro Manila but because [he] handled a number of cases involving prisoners and guards of NBP as well as some

of its personnels [sic].”

Administratively, as a lawyer commissioned as a notary public, Atty. Icasiano M. dela Rea committed grave misconduct when he agreed to prepare the jurat in the petition in this case in the absence of petitioner Gamido, thereby making it appear that the latter personally signed the certification of the petition and took his oath before him when in truth and in fact the said petitioner did not.

WHEREFORE, for grave misconduct, ATTY. ICASIANO M. DELA REA is hereby FINED in the sum of FIVE THOUSAND PESOS (P5,000.00), without prejudice to criminal prosecution as may be warranted under the circumstances. He is WARNED that the commission of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Quiason, and Kapunan, JJ., concur.

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