

**ZENAIDA B. TIGNO, IMELDA B. TIGNO AND ARMI B. TIGNO,  
PETITIONERS, VS. SPOUSES ESTAFINO AQUINO AND FLORENTINA  
AQUINO AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.**

*G.R. No. 129416. November 25, 2004*

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**TINGA, J.:**

The controversy in the present petition hinges on the admissibility of a single document, a deed of sale involving interest over real property, notarized by a person of questionable capacity. The assailed ruling of the Court of Appeals, which overturned the findings of fact of the Regional Trial Court, relied primarily on the presumption of regularity attaching to notarized documents with respect to its due execution. We conclude instead that the document has not been duly notarized and accordingly reverse the Court of Appeals.

The facts are as follow:

On 11 January 1980, respondent spouses Estafino and Florentina Aquino (the Aquinos) filed a complaint for enforcement of contract and damages against Isidro Bustria (Bustria).[1] The complaint sought to enforce an alleged sale by Bustria to the Aquinos of a one hundred twenty thousand (120,000) square meter fishpond located in Dasci, Pangasinan. The property was not registered either under the Land Registration Act or under the Spanish Mortgage Law, though registrable under Act No. 3344.[2] The conveyance was covered by a Deed of Sale dated 2 September 1978.

Eventually, Bustria and the Aquinos entered into a compromise agreement, whereby Bustria agreed to recognize the validity of the sale, and the Aquinos in turn agreed to grant to Bustria the right to repurchase the same property after the lapse of seven (7) years.

Upon submission, the Court of First Instance of Pangasinan, Branch VII, approved and incorporated the compromise agreement in a Decision which it rendered on 7 September 1981.

Bustria died in October of 1986.[3] On 1 December 1989, petitioner Zenaida B. Tigno (Tigno), in substitution of her deceased father Isidro Bustria,[4] attempted to repurchase the property by filing a Motion for Consignation. She deposited the amount of Two Hundred Thirty Thousand Pesos (P200,000.00) with the trial court, now Regional Trial Court (RTC), Branch 55 at Alaminos, Pangasinan. On 18 December 1989, the Aquinos filed an opposition, arguing that the right to repurchase was not yet demandable and that Tigno had failed to make a tender of payment. In an Order dated 10 October 1999, the RTC denied the Motion for Consignation.[5]

In June of 1991, Tigno filed a Motion for a Writ of Execution, which was likewise opposed by the Aquinos, and denied by the RTC. Then, on 6 September 1991, Tigno filed an action for Revival of Judgment,[6] seeking the revival of the decision in Civil Case No. A-1257, so that it could be executed accordingly.[7] The Aquinos filed an answer, wherein they alleged that Bustria had sold his right to repurchase the property to them in a deed of sale dated 17 October 1985.[8]

Among the witnesses presented by the Aquinos during trial were Jesus De Francia (De Francia), the instrumental

witness to the deed of sale, and former Judge Franklin Cariño (Judge Cariño), who notarized the same. These two witnesses testified as to the occasion of the execution and signing of the deed of sale by Bustria. Thereafter, in their Formal Offer of Documentary Evidence, the Aquinos offered for admission as their Exhibit No. “8,” the deed of sale (Deed of Sale)[9] purportedly executed by Bustria. The admission of the Deed of Sale was objected to by Tigno on the ground that it was a false and fraudulent document which had not been acknowledged by Bustria as his own; and that its existence was suspicious, considering that it had been previously unknown, and not even presented by the Aquinos when they opposed Tigno’s previous Motion for Consignation.[10]

In an Order dated 6 April 1994, the RTC refused to admit the Deed of Sale in evidence.[11] A Motion for Reconsideration praying for the admission of said exhibit was denied in an Order dated 27 April 1994.[12]

Then, on 18 August 1994, a Decision was rendered by the RTC in favor of Tigno. The RTC therein expressed doubts as to the authenticity of the Deed of Sale, characterizing the testimonies of De Francia and Cariño as conflicting.[13] The RTC likewise observed that nowhere in the alleged deed of sale was there any statement that it was acknowledged by Bustria;[14] that it was suspicious that Bustria was not assisted or represented by his counsel in connection with the preparation and execution of the deed of sale[15] or that Aquino had raised the matter of the deed of sale in his previous Opposition to the Motion for Consignation.[16] The RTC then stressed that the previous Motion for Execution lodged by Tigno had to be denied since more than five (5) years had elapsed from the date the judgment in Civil Case No. A-1257 had become final and executory; but the judgment could be revived by action such as the instant complaint. Accordingly, the RTC ordered the revival of the judgment dated 7 September 1981 in Civil Case No. A-1257.[17]

The Aquinos interposed an appeal to the Court of Appeals.[18] In the meantime, the RTC allowed the execution pending appeal of its Decision.[19] On 23 December 1996, the Court of Appeals Tenth Division promulgated a Decision[20] reversing and setting aside the RTC Decision. The appellate court ratiocinated that there were no material or substantial inconsistencies between the testimonies of Cariño and De Francia that would taint the document with doubtful authenticity; that the absence of the acknowledgment and substitution instead of a jurat did not render the instrument invalid; and that the non-assistance or representation of Bustria by counsel did not render the document null and ineffective.[21] It was noted that a notarized document carried in its favor the presumption of regularity with respect to its due execution, and that there must be clear, convincing and more than merely preponderant evidence to contradict the same. Accordingly, the Court of Appeals held that the RTC erred in refusing to admit the Deed of Sale, and that the document extinguished the right of Bustria’s heirs to repurchase the property.

After the Court of Appeals denied Tigno’s Motion for Reconsideration,[22] the present petition was filed before this Court. Tigno imputes grave abuse of discretion and misappreciation of facts to the Court of Appeals when it admitted the Deed of Sale. He also argues that the appellate court should have declared the Deed of Sale as a false, fraudulent and unreliable document not supported by any consideration at all.

The general thrusts of the arguments posed by Tigno are factually based. As such, they could normally lead to the dismissal of this Petition for Review. However, while this Court is not ordinarily a trier of facts,[23] factual review may be warranted in instances when the findings of the trial court and the intermediate appellate court are contrary to each other.[24] Moreover, petitioner raises a substantial argument regarding the capacity of the notary public, Judge Cariño, to notarize the document. The Court of Appeals was unfortunately silent on that matter, but this Court will take it up with definitiveness.

The notarial certification of the Deed of Sale reads as follows:

#### ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)  
PROVINCE OF PANGASINAN ) S.S.  
MUNICIPALITY OF ALAMINOS )

SUBSCRIBED AND SWORN TO before me this 17th day of October 1985 at Alaminos, Pangasinan both parties known to me to be the same parties who executed the foregoing instrument.

FRANKLIN CARIÑO  
Ex-Officio Notary Public  
Judge, M.T.C.  
Alaminos, Pangasinan

There are palpable errors in this certification. Most glaringly, the document is certified by way of a jurat instead of an acknowledgment. A jurat is a distinct creature from an acknowledgment. An acknowledgment is the act of one who has executed a deed in going before some competent officer or court and declaring it to be his act or deed; while a jurat is that part of an affidavit where the officer certifies that the same was sworn before him.[25] Under Section 127 of the Land Registration Act,[26] which has been replicated in Section 112 of Presidential Decree No. 1529,[27] the Deed of Sale should have been acknowledged before a notary public.[28]

But there is an even more substantial defect in the notarization, one which is determinative of this petition. This pertains to the authority of Judge Franklin Cariño to notarize the Deed of Sale.

It is undisputed that Franklin Cariño at the time of the notarization of the Deed of Sale, was a sitting judge of the Metropolitan Trial Court of Alaminos.[29] Petitioners point out, citing *Tabao v. Asis*,[30] that municipal judges may not undertake the preparation and acknowledgment of private documents, contracts, and other acts of conveyance which bear no relation to the performance of their functions as judges.[31] In response, respondents claim that the prohibition imposed on municipal court judges from notarizing documents took effect only in December of 1989, or four years after the Deed of Sale was notarized by Cariño.[32]

Respondent's contention is erroneous. Municipal Trial Court (MTC) and Municipal Circuit Trial Court (MCTC) judges are empowered to perform the functions of notaries public ex officio under Section 76 of Republic Act No. 296, as amended (otherwise known as the Judiciary Act of 1948) and Section 242 of the Revised Administrative Code.[33] However, as far back as 1980 in *Borre v. Moya*,[34] the Court explicitly declared that municipal court judges such as Cariño may notarize only documents connected with the exercise of their official duties.[35] The Deed of Sale was not connected with any official duties of Judge Cariño, and there was no reason for him to notarize it. Our observations as to the errant judge in *Borre* are pertinent in this case, considering that Judge Cariño identified himself in the Deed of Sale as "Ex-Officio Notary Public, Judge, MTC:"

[A notary ex officio] should not compete with private law practitioners or regular notaries in transacting legal conveyancing business.

In the instant case, it was not proper that a city judge should notarize documents involving private transactions and sign the document in this wise: "GUMERSINDO ARCILLA, Notary Public Ex-Officio, City Judge" (p. 16, Rollo, Annex D of Complaint). In doing so, he obliterated the distinction between a regular notary and a notary ex officio.[36]

There are possible grounds for leniency in connection with this matter, as Supreme Court Circular No. I-90 permits notaries public ex officio to perform any act within the competency of a regular notary public provided that certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit. Indeed, it is only when there are no lawyers or notaries public that the exception applies.[37] The facts of this case do not warrant a relaxed attitude towards Judge Cariño's improper notarial

activity. There was no such certification in the Deed of Sale. Even if one was produced, we would be hard put to accept the veracity of its contents, considering that Alaminos, Pangasinan, now a city,[38] was even then not an isolated backwater town and had its fair share of practicing lawyers.

There may be sufficient ground to call to task Judge Cariño, who ceased being a judge in 1986, for his improper notarial activity. Perhaps though, formal sanction may no longer be appropriate considering Judge Cariño's advanced age, assuming he is still alive.[39] However, this Decision should again serve as an affirmation of the rule prohibiting municipal judges from notarizing documents not connected with the exercise of their official duties, subject to the exceptions laid down in Circular No. 1-90.

Most crucially for this case, we should deem the Deed of Sale as not having been notarized at all. The validity of a notarial certification necessarily derives from the authority of the notarial officer. If the notary public does not have the capacity to notarize a document, but does so anyway, then the document should be treated as unnotarized. The rule may strike as rather harsh, and perhaps may prove to be prejudicial to parties in good faith relying on the proffered authority of the notary public or the person pretending to be one. Still, to admit otherwise would render merely officious the elaborate process devised by this Court in order that a lawyer may receive a notarial commission. Without such a rule, the notarization of a document by a duly appointed notary public will have the same legal effect as one accomplished by a non-lawyer engaged in pretense.

The notarization of a document carries considerable legal effect. Notarization of a private document converts such document into a public one, and renders it admissible in court without further proof of its authenticity.[40] Thus, notarization is not an empty routine; to the contrary, it engages public interest in a substantial degree and the protection of that interest requires preventing those who are not qualified or authorized to act as notaries public from imposing upon the public and the courts and administrative offices generally.[41]

On the other hand, what then is the effect on the Deed of Sale if it was not notarized? True enough, from a civil law perspective, the absence of notarization of the Deed of Sale would not necessarily invalidate the transaction evidenced therein. Article 1358 of the Civil Code requires that the form of a contract that transmits or extinguishes real rights over immovable property should be in a public document, yet it is also an accepted rule that the failure to observe the proper form does not render the transaction invalid. Thus, it has been uniformly held that the form required in Article 1358 is not essential to the validity or enforceability of the transaction, but required merely for convenience.[42] We have even affirmed that a sale of real property though not consigned in a public instrument or formal writing, is nevertheless valid and binding among the parties, for the time-honored rule is that even a verbal contract of sale or real estate produces legal effects between the parties.[43]

Still, the Court has to reckon with the implications of the lack of valid notarization of the Deed of Sale from the perspective of the law on evidence. After all, the case rests on the admissibility of the Deed of Sale.

Clearly, the presumption of regularity relied upon by the Court of Appeals no longer holds true since the Deed of Sale is not a notarized document. Its proper probative value is governed by the Rules of Court. Section 19, Rule 132 states:

Section 19. Classes of documents.—For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a)

The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

(b)

Documents acknowledged before a notary public except last wills and testaments; and

(c)

Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private. (Emphasis supplied.)

The Deed of Sale, invalidly notarized as it was, does not fall under the enumeration of public documents; hence, it must be considered a private document. The nullity of the alleged or attempted notarization performed by Judge Cariño is sufficient to exclude the document in question from the class of public documents. Even assuming that the Deed of Sale was validly notarized, it would still be classified as a private document, since it was not properly acknowledged, but merely subscribed and sworn to by way of jurat.

Being a private document, the Deed of Sale is now subject to the requirement of proof under Section 20, Rule 132, which states:

Section 20. Proof of private document.—Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

(a)

By anyone who saw the document executed or written; or

(b)

By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which is claimed to be.

The Deed of Sale was offered in evidence as authentic by the Aquinos, who likewise insist that its enforceability militates against Tigno's claim. Correspondingly, the burden falls upon the Aquinos to prove its authenticity and due execution. The Court of Appeals clearly erred in not appreciating the Deed of Sale as a private document and in applying the presumption of regularity that attaches only to duly notarized documents, as distinguished from private documents.

Did the RTC err then in refusing to admit the Deed of Sale? We hold that it did not. Section 20, Rule 132 provides ample discretion on the trier of fact before it may choose to receive the private document in evidence. The RTC wisely refused to admit the Deed of Sale, taking great lengths as it did to explain its doubts as to its veracity. The RTC was not convinced of the proffered proof by the Aquinos, and the exercise of its sound discretion as the primary trier of fact warrants due respect.

The most telling observation of the RTC relates to the fact that for the very first time respondents alleged the existence of the Deed of Sale when they filed their answer to petitioner's current action to revive judgment.<sup>[44]</sup> Prior to the initiation of the present action, Tigno had tried to operationalize and implement the Compromise Agreement through two judicial means: consignment and execution of judgment. The Aquinos duly opposed these prior attempts of the petitioner to exercise the right to repurchase, but they did not raise then the claim that such right to repurchase was already extinguished by the Deed of Sale. Tigno attempted to exercise the right to repurchase only a few years after the execution of the Deed of Sale to which respondents themselves were signatories. Thus, it is incredulous that the Aquinos did not invoke the Deed of Sale when they opposed in court petitioner's successive attempts at consignment and execution of judgment. The Deed of Sale, if in existence and

valid, would have already precluded Tigno's causes of action for either consignation or execution of judgment. The only believable conclusion, as drawn by the RTC, was that the Deed of Sale had yet to be created when petitioner moved in 1990 for consignation and execution of judgment—an existential anomaly if we were to agree with the respondents that such document had been signed and notarized back in 1985.

The dubiousness in origin of the Deed of Sale is not alleviated by the other observations of the RTC. It also pointed to certain incredible aspects in the Aquinos' tale of events. It noted that no receipts were ever presented by the respondents to evidence actual payment of consideration by them to Bustria, despite the allegation of the respondents that the amount was covered by seven (7) receipts.[45] The Aquinos claimed that Bustria kept all the receipts, an assertion which the RTC found as unbelievable, citing ordinary human nature to ask for receipts for significant amounts given and to keep the same.[46] In itself, the absence of receipts, or any proof of consideration, would not be conclusive since consideration is always presumed. However, given the totality of the circumstances surrounding this case, the absence of such proof further militates against the claims of the Aquinos.

We can appreciate in a similar vein the observation of the Court of Appeals that Bustria did not bother to seek his lawyer's assistance as regards the execution of the Deed of Sale, considering that the subject property had previously been fiercely litigated. Although the Court of Appeals was correct in ruling that the document would not be rendered null or ineffective due to the lack of assistance of counsel, the implausibility of the scenario strikes as odd and therefore reinforces the version found by the RTC as credible.

The Court likewise has its own observations on the record that affirm the doubts raised by the Court of Appeals. Isidro Bustria, who would die in 1986, was already ninety-three (93) years old when he allegedly signed the Deed of Sale in 1985. Still, the Aquinos asserted before the RTC that Bustria traveled unaccompanied from his home in Dasol, Pangasinan, passing through two towns to Alaminos, to execute the Deed of Sale. Without discrediting the accomplishments of nonagenarians capable of great physical feats, it should be acknowledged as a matter of general assumption that persons of Bustria's age are typically sedentary and rarely so foolhardy as to insist on traveling significant distances alone.

Also of note is the fact that there are glaring differences as to the alleged signature of Bustria on the Deed of Sale and as it otherwise appears on the judicial record. Bustria's signature in the 1981 Compromise Agreement is noticeably shaky which is not surprising, considering that it was subscribed when Bustria was eighty-nine (89) years old. However, Bustria's signature on the Deed of Sale, which if genuine was affixed when he was already ninety-three (93) years old, is remarkably steady in its strokes. There are also other evident differences between Bustria's signature on the Deed of Sale and on other documents on the record.

Admittedly, these doubts cast above arise in chief from an appreciation of circumstantial evidence. These have to be weighed against the findings of the Court of Appeals that the fact that Bustria signed the Deed of Sale was established by the respective testimonies of witnesses De Francia and Judge Cariño. In its own appreciation of these testimonies, the RTC alluded to notable inconsistencies in their testimonies. As a final measure of analysis, the Court shall now examine whether the appellate court was in error in reversing the conclusion of the RTC on these testimonies.

The inconsistencies cited by the RTC were that De Francia testified that Judge Cariño himself prepared and typed the Deed of Sale in his office, where the document was signed,[47] while Judge Cariño testified that he did not type the Deed of Sale since it was already prepared when the parties arrived at his office for the signing.[48] On this point, the Court of Appeals stated with utter nonchalance that a perusal of the record revealed no material or substantial inconsistencies between the testimonies of Judge Cariño and De Francia.

Strangely, the appellate court made no comment as to the inconsistency pointed out by the RTC as to who

prepared the Deed of Sale. If the only point of consideration was the due execution of the Deed of Sale, then the Court of Appeals should have properly come out with its finding. Other variances aside, there are no contradictions in the testimonies of Judge Cariño and De Francia on the question of whether or not Bustria signed the Deed of Sale.

However, as earlier established, the Deed of Sale is a private document. Thus, not only the due execution of the document must be proven but also its authenticity. This factor was not duly considered by the Court of Appeals. The testimonies of Judge Cariño and De Francia now become material not only to establish due execution, but also the authenticity of the Deed of Sale. And on this point, the inconsistencies pointed out by the RTC become crucial.

The matter of authenticity of the Deed of Sale being disputed, the identity of the progenitor of this all-important document is a material evidentiary point. It is disconcerting that the very two witnesses of the respondent offered to prove the Deed of Sale, flatly contradict each other on the basis of their own personal and sensory knowledge. Worse, the purported author of the Deed of Sale disavowed having drafted the document, notwithstanding the contrary testimony grounded on personal knowledge by the documentary witness.

Establishing the identity of the person who wrote the Deed of Sale would not ordinarily be necessary to establish the validity of the transaction it covers. However, since it is the authenticity of the document itself that is disputed, then the opposing testimonies on that point by the material witnesses properly raises questions about the due execution of the document itself. The inconsistencies in the testimonies of Judge Cariño and De Francia are irreconcilable. It is not possible to affirm the testimony of either without denigrating the competence and credibility of the other as a witness. If Judge Cariño was truthful in testifying that he did not write the Deed of Sale, then doubt can be cast as to the reliability of the notarial witness De Francia. It takes a leap of imagination, a high level of gumption, and perverse deliberation for one to erroneously assert, under oath and with particularities, that a person drafted a particular document in his presence.

However, if we were to instead believe De Francia, then the integrity of the notary public, Judge Cariño, would be obviously compromised. Assuming that Judge Cariño had indeed authored the Deed of Sale, it would indeed be odd that he would not remember having written the document himself yet sufficiently recall notarizing the same. If his testimony as to authorship of the document is deemed as dubious, then there is all the reason to make a similar assumption as to his testimony on the notarization of the Deed of Sale.

These inconsistencies are not of consequence because there is need to indubitably establish the author of the Deed of Sale. They are important because they cast doubt on the credibility of those witnesses of the Aquinos, presented as they were to attest to the due execution and authenticity of the Deed of Sale. The Court of Appeals was clearly in error in peremptorily disregarding this observation of the RTC.

As a result, we are less willing than the Court of Appeals to impute conclusive value to the testimonies of de Francia and Judge Cariño. The totality of the picture leads us to agree with the trial court that the Deed of Sale is ineluctably dubious in origin and in execution. The Court deems as correct the refusal of the RTC to admit the Deed of Sale, since its due execution and authenticity have not been proven. The evidence pointing to the non-existence of such a transaction is so clear and convincing that it is sufficient even to rebut the typical presumption of regularity arising from the due execution of notarial documents. However, for the reasons stated earlier, the Deed of Sale is ineluctably an unnotarized document. And the lower court had more than sufficient basis to conclude that it is a spurious document.

Since the validity of the Deed of Sale has been successfully assailed, Tigno's right to repurchase was not extinguished at the time of the filing of the Petition for revival of judgment, as correctly concluded by the RTC.

The Court of Appeals being in error when it concluded otherwise, the reinstatement of the RTC Decision is warranted.

WHEREFORE, the Petition is GRANTED. The assailed Decision dated 23 December 1996 and Resolution dated 9 June 1997 of the Court of Appeals in CA-G.R. CV No. 49879 is REVERSED, and the Decision dated 18 August 1994 of the Regional Trial Court of Alaminos, Pangasinan, Branch 55, in Civil Case No. A-1918 is REINSTATED. Costs against respondents.

**SO ORDERED.**

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] Docketed as Civil Case No. A-1257.

[2] CA Rollo, p. 31.

[3] Rollo, p. 17.

[4] Petitioner Zenaida B. Tigno herself died on 28 September 1993, and is now substituted in this action by her children Imelda B. Tigno and Armi B. Tigno. Her husband, Camilo D. Tigno, had also died on 21 March 1997. Id. at 8.

[5] Tigno appealed such denial to the Court of Appeals, but subsequently withdrew her appeal in March of 1991. Id. at 11.

[6] Docketed as Civil Case No. A-1918.

[7] Id. at 27.

[8] Id. at 29.

[9] Captioned "Sale/Renunciation of Right to Repurchase." Id. at 12.

[10] Id. at 12.

[11] Id. at 32. Order penned by Judge V. Bantugan.

[12] Id. at 32-33.

[13] Id. at 49.

[14] Ibid.

[15] Id. at 49-50.

[16] Id. at 50.

[17] Id. at 53.

[18] Docketed as CA-G.R. CV No. 49879.

[19] Rollo, pp. 12-13.

[20] Penned by Justice M. Gonzaga-Reyes, concurred in by Justices R. Mabutas, Jr. and P. Aliño-Hormachuelos.

[21] Rollo, p. 80.

[22] Id. at 91-92.

[23] See e.g., *Republic v. Alagad*, G.R. No. 66807, 26 January 1989, 169 SCRA 455.

[24] See e.g., *Lee Eng Hong v. Court of Appeals*, 311 Phil. 423 (1995).

[25] S. GUEVARRA, *LEGAL FORMS ANNOTATED* 40 (8th rev. ed., 1966); citing *Bouvier*. For an extended disquisition on the differences between a jurat and an acknowledgment, see *Gamido v. New Bilibid Prisons (NBP) Officials*, 312 Phil. 100, 104.

[26] Act No. 496 (1902).

[27] “Amending and Codifying the Laws Relative to Registration of Property and for Other Purposes.”

[28] The provision reads:

Deeds, conveyances, mortgages, leases, releases and discharges affecting lands, whether registered under this act or unregistered shall be sufficient in law when made substantially in accordance with the following forms, and shall be as effective to convey, encumber, lease, release, discharge or bind the lands as though made in accordance with the more prolix forms heretofore in use: Provided, That every such instrument shall be signed by the person or persons executing the same, in the presence of two witnesses, who shall sign the instrument as witnesses to the execution thereof, and shall be acknowledged to be his or their free act and deed by the person or persons executing the same, before the judge of a court of record, or clerk of a court of record, or a notary public, or a justice of the peace, who shall certify to such acknowledgment substantially in the form next hereinafter stated. (Emphasis supplied.)

[29] Rollo, p. 17. See also TSN dated 25 May 1993, p. 3.

[30] 322 Phil. 630 (1996).

[31] Rollo, p. 17.

[32] Id. at 123.

[33] See *Ellert v. Hon. Galapon Jr.*, 391 Phil. 456 (2000).

[34] A.M. No. 1765-CFI, 17 October 1980, 100 SCRA 314.

[35] Id. at 321.

[36] Id. at 321.

[37] *Balayon v. Ocampo*, A.M. No. MTJ-91-619, 29 January 1993, 218 SCRA 13.

[38] Per Republic Act No. 9025 (2001).

[39] Hon. Cariño was sixty-six (66) years old when he testified before the RTC on 25 May 1993, thus he would be at least seventy-seven (77) years old as of this writing. See TSN dated 25 May 1993, p. 2.

[40] *Joson v. Baltazar*, A.C. No. 575, 14 February 1991, 194 SCRA 114, 119, citing *Aspacio v. Inciong*, 161 SCRA 181(1988); *Bermejo v. Barrios*, 31 SCRA 764 (1970). See also *BA Finance Corporation v. IAC*, G.R. No. 76497, 20 January 1993, 217 SCRA 261, 274; *Cabanilla v. Cristal-Tenerio*, A.C. No. 6139, 11 November 2003, 415 SCRA 353, 361.

[41] Id.

[42] See *Republic v. Sandiganbayan*, G.R. Nos. 108292, 108368, 108548-49, 108550, 10 September 1993, 226 SCRA 314, 322-323, citing 4 Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, 546 Phil. (191). See also *Agasen v. Court of Appeals*, 382 Phil. 391 (2000), *Tape v. Court of Appeals*, G.R. No. 111952, 26 October 1994. “The codal provisions do not require accomplishment of acts or contracts in a public instrument in order to validate the act or contract but only to insure its efficacy so that after the existence of the act or contract has been admitted, the party bound may be compelled to execute the document.” *Hawaiian Philippine Co. v. Hernaez*, 45 Phil. 746 (1924).

[43] See *Bucton v. Gabar*, 154 Phil. 447 (1974); citing *Couto v. Cortes*, 8 Phil., 459, 460 (1907); *Guerrero v. Miguel*, 10 Phil., 52, 53 (1908). See also Art. 1405, New Civil Code.

[44] *Rollo*, p. 50.

[45] *Id.* at 51.

[46] *Ibid.*

[47] *Id.* at 48-49.

[48] *Id.* at 49.

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