

[A.M. No. MTJ-96-1076, February 09, 2000]

VENUS P. DOUGHLAS, COMPLAINANT, VS. JUDGE FRANCISCO H. LOPEZ, JR., MCTC, LUPON BANAYBANAY, DAVAO ORIENTAL, RESPONDENT.

R E S O L U T I O N

On July 31, 1995, a sworn complaint was filed by Venus P. Douglas against Municipal Circuit Trial Court Judge Francisco H. Lopez, Jr. of Lupon, Banaybanay, Davao Oriental alleging an irregularity in the notarization of a document entitled "Extra Judicial Settlement of Estate with Special Power of Attorney" by respondent judge.

Complainant alleged that she is one of the heirs of the late Bienvenido Paquingan who owned a parcel of agricultural land located at Mahayag, Banaybanay, Davao Oriental consisting of 14.5783 hectares. Said land was covered by Transfer Certificate of Title No. T-6309. To her surprise and consternation, she recently discovered that the said land was voluntarily offered for sale under the Comprehensive Agrarian Reform Program of the Department of Agrarian Reform. The voluntary offer to sell was allegedly facilitated without the knowledge and consent of the heirs of the late Bienvenido Paquingan and by virtue of an "Extra Judicial Settlement of Estate with Special Power of Attorney" purportedly signed by the said heirs and acknowledged before respondent judge. She averred that a cursory look at the signatures therein would reveal that the same are forgeries and were signed by only one person. According to her, all the heirs of the late Bienvenido Paquingan are residing abroad so it is quite incredible that all of them arrived at the same time in Banaybanay, Davao and simultaneously secured residence certificates on the same day, March 12, 1994, as was indicated in the questioned instrument. To prove her allegations, she submitted (a) an affidavit executed by her mother and wife of the late Bienvenido Paquingan duly authenticated by Philippine Consul Antonio S. Curameng of Los Angeles, California, U.S.A. stating that the former did not return to the Philippines on March 30, 1994 to sign the questioned document; and (2) an affidavit of one Perla Bonhoc stating that Juanita Tormis, the late Bienvenido Paquingan's administrator, gave her the questioned instrument which bore the forged signatures of the heirs of the late Bienvenido Paquingan.^[1]

In his Comment, respondent judge admitted having notarized the questioned instrument but claimed that he did so only on an accommodation basis believing that the same was a government transaction. He maintained that he had been notarizing documents for the Department of Agrarian Reform in the past. He further contended that he had no participation in the drafting, preparation and final execution of the questioned document except for affixing his signature over his already typewritten name. He concluded his Comment with the resolve to be more meticulous next time around.^[2]

In a Resolution dated February 7, 1996, the Court referred the matter to Executive

Judge Ricardo M. Berba, Regional Trial Court, Branch 5, Mati, Davao Oriental for investigation, report and recommendation.

The initial investigation set for March 28, 1996 was reset to April 30, 1996 because of the absence of the complainant. On the appointed date, both parties appeared but the complainant asked for more time to secure the services of counsel. On May 23, 1996, complainant failed to appear before the investigation judge. Considering that respondent judge had already submitted his Comment dated November 14, 1995, the matter was deemed submitted for resolution.

In his report and recommendation, Investigating Judge Berba stated:

The failure of the complainant to appear despite due notice and opportunity given to her to substantiate the complaint is very strong indication that complainant is not interested in substantiating the allegations in the complaint.

The complaint against respondent judge is a matter which has to be proven by clear and convincing evidence. Complainant failed to do so. However, in the light of the explanation of respondent, the investigator submits that respondent should be admonished to be very careful in the future in order not to prejudice any party in the course of the performance of his duties as ex-officio notary public.^[3]

On October 14, 1996, this Court issued a resolution referring the case back to Executive Judge Berba "for further and thorough investigation within thirty (30) days, with notice of hearing properly served on complainant to determine the parties responsible so that proper action can be taken."^[4]

In compliance with the above resolution, notices were sent to the complainant through her representative Fe Sinsosa at Yellow St., Ma-a, Davao City and to Rosita Paquingan at 2600 Grove St., National City, California, U.S.A. Neither of them appeared at the hearing set. Consequently, Investigating Judge Berba recommended the dismissal of the complaint ratiocinating that:

Complainant alleged that the signatures appearing in the questioned documents "Extra Judicial Settlement of Estate With Special Power of Attorney" and "Waiver" both ratified before respondent judge appear to have been signed by only one person. This is belied by a mere comparison of the signatures appearing in both questioned documents and those in the aforesaid Facto de Retro Sale (sic) and Special Power of Attorney. In the absence of any competent evidence presented by complainant to support her said allegation, the presumption of regularity in the performance of official duty in favor of respondent still prevails.

Moreover, if ever as alleged heir complainant (sic) was deprived of her share in the property subject of the questioned documents, such claim may be ventilated in an appropriate forum. It is indeed very hard to arrive at the conclusion under the circumstances and evidence on record that respondent facilitated such alleged deprivation. The records do not show of any proceeding involving the said questioned documents initiated by any of the parties.^[5]