

## SECOND DIVISION

[ A.C. No. 12690, April 26, 2021 ]

**SPOUSES OSCAR L. MARIANO AND LOLITA MALIWAT-MARIANO,  
RICARDO M. MALIWAT, AND ATTY. JESUS BAUTISTA,  
COMPLAINANTS, VS. ATTY. ROBERTO C. ABRAJANO AND ATTY.  
JORICO F. BAYAUUA, RESPONDENTS.**

### DECISION

**PERLAS-BERNABE, J.:**

Before the Court is a Joint Complaint-Affidavit<sup>[1]</sup> filed by complainants Spouses Oscar L. Mariano and Lolita Maliwat-Mariano (Spouses Mariano), Ricardo M. Maliwat (Ricardo), and Atty. Jesus M. Bautista (Atty. Bautista; collectively, complainants) against respondents Atty. Roberto C. Abrajano (Atty. Abrajano) and Atty. Jorico F. Bayauua (Atty. Bayauua; collectively, respondents), seeking that the latter be disbarred for allegedly engaging in unlawful, dishonest, immoral or deceitful conduct.

#### The Facts

Complainants are the attorneys-in-fact of Lany Maliwat Mariano (Lany) and her son, Jerwin Calbang (Jerwin). Lany is the erstwhile spouse of George Calbang (George), who filed a Petition<sup>[2]</sup> for Declaration of Nullity of Marriage (Petition) docketed as *Civil Case No. 4595-MN* entitled "*George Lim Calbang v. Lany Mariano-Calbang*" on September 28, 2005 before the Regional Trial Court of Malabon City, Branch 169 (RTC). Spouses Mariano are Lany's parents, Ricardo is Lany's uncle while Atty. Bautista is the counsel of Lany and Jerwin.<sup>[3]</sup>

In their joint complaint-affidavit, complainants particularly alleged that respondents, acting in conspiracy with each other, committed deceitful and unlawful acts in the preparation and filing of the Petition, in that: (1) they falsely indicated George's address therein to be in Malabon to make it appear that the venue of the action had been properly laid with the RTC when in truth, the address provided was the actual residence of one Erma S. Gimena<sup>[4]</sup> who is not related to George; (2) they falsely indicated in the Petition that Lany's residence was in Sampaloc, Manila despite the fact that she was already a permanent resident of Milan, Italy since 1991; (3) they untruthfully alleged in the Petition that no real and personal properties were acquired during the subsistence of the marriage due to the fault of Lany; (4) they made it appear that summons were personally served to Lany through a certain Jake Mariano who claimed to be her sister, when Lany had no sibling of that name; (5) they pretended to have furnished Lany, by personal service, a copy of the Motion To Order Investigation and To Set Case For Pre-Trial at the fake address of George in Malabon through a certain James Mariano; (6) they again pretended to have furnished Lany, by personal service, a copy of the pre-trial brief at her bogus address in Sampaloc, Manila; and (7) they presented George as witness and offered

in evidence his false testimony and fabricated story.<sup>[5]</sup>

Complainants further alleged that as a consequence of respondents' misuse of court processes and manipulation of proceedings before the RTC, they were able to secure a favorable judgment which, however, was prejudicial to the interests not only of Lany but also of Jerwin, Lany and George's son.<sup>[6]</sup> Complainants also asserted that respondents engaged in the unauthorized practice of law since both were employees of the Metropolitan Manila Development Authority (MMDA) at the time the Petition was filed.<sup>[7]</sup>

For his part, Atty. Bayaua denied ever being a partner of Atty. Abrajano and asserted that he only acceded to Atty. Abrajano's request to use his office space out of fraternal love to an ailing brother in the legal profession. He maintained that he had very limited participation in *Civil Case No. 4595-MN*, as he neither prepared nor signed the Petition, stressing that he merely notarized the Verification and Certification attached thereto. He further claimed that it was only upon the request of the ailing Atty. Abrajano that he signed the subsequent pleadings.<sup>[8]</sup> Finally, he explained that it was Atty. Abrajano who prepared all the pleadings, and because he trusted his lawyer friend, he no longer verified its contents. However, Atty. Bayaua admitted that he received appearance fee in exchange for signing the pleadings.<sup>[9]</sup>

As for Atty. Abrajano, records show that he died on March 7, 2007,<sup>[10]</sup> or even before the filing of the present disbarment complaint on August 7 2009.

### **The Report and Recommendation of the Integrated Bar of the Philippines (IBP)**

In a Report and Recommendation<sup>[11]</sup> dated June 28, 2010, the IBP Investigating Commissioner recommended that the case against Atty. Abrajano be dismissed in view of his death even prior to the filing of the disbarment case. On the other hand, the Investigating Commissioner recommended that Atty. Bayaua be suspended from the practice of law for two (2) months.<sup>[12]</sup>

The Investigating Commissioner found that while there was no conspiracy between respondents, Atty. Bayaua nevertheless violated Section 3,<sup>[13]</sup> Rule 7 of the Rules of Court because, by signing the pleadings presented to him by Atty. Abrajano, he in effect certified that he has read it, knew it to be meritorious, and it was not for the purpose of delaying the case. Regarding Atty. Abrajano's use of his office space, the Investigating Commissioner found that Atty. Bayaua allowed it not for purely altruistic considerations but rather because of Atty. Abrajano's connections <sup>[14]</sup> with the MMDA.<sup>[15]</sup> Moreover, the Investigating Commissioner ruled that by signing pleadings for the clients of Atty. Abrajano, Atty. Bayaua tolerated the latter's commission of unauthorized practice of law. Therefore, Atty. Bayaua violated Canon 1, Rules 1.01 and 1.02, and Canon 9 of the Code of Professional Responsibility (CPR).<sup>[16]</sup>

In a Resolution<sup>[17]</sup> dated September 28, 2013, the IBP Board of Governors adopted and approved the Investigating Commissioner's Report and Recommendation, with the modification increasing Atty. Bayaua's suspension for a period of six (6) months.

Upon Atty. Bayaua's motion for reconsideration, however, the IBP Board of Governors issued a Resolution<sup>[18]</sup> dated May 4, 2014 dismissing the case, reiterating the earlier finding that there was no clear and convincing evidence of conspiracy between him and Atty. Abrajano. In an Extended Resolution<sup>[19]</sup> dated June 2, 2014, the IBP Board of Governors explained that even if the Petition filed by Atty. Abrajano contained falsehoods and misrepresentations, Atty. Bayaua did not sign it; instead, he only notarized the Verification and Certification of George who had sworn under oath that the allegations in his Petition are true and correct to the best of his knowledge. Assuming further that Atty. Abrajano was aware of the falsehoods in the Petition, complainants failed to prove that Atty. Bayaua was similarly aware thereof. Thus, in the absence of proof of conspiracy between the respondents, Atty. Bayaua cannot be penalized for his act of notarizing the Verification and Certification since he simply relied on the oath made by the affiant that the facts stated in the Petition were true.<sup>[20]</sup>

Complainants moved for reconsideration but the same was denied by the IBP Board of Governors in a Resolution<sup>[21]</sup> dated September 28, 2017. Aggrieved, complainants filed a petition for review on *certiorari* before the Court.<sup>[22]</sup>

### **The Issue Before the Court**

The core issue for the Court's resolution is whether or not respondents should be held administratively liable.

### **The Court's Ruling**

At the outset, the Court dismisses the instant complaint, insofar as Atty. Abrajano is concerned, in view of his death prior to the filing of the same.<sup>[23]</sup>

As for Atty. Bayaua, he attempts to evade administrative liability by contending, among others, that he only acceded to Atty. Abrajano's request to use his office space out of fraternal love for an ailing brother in the legal profession, and that his participation in *Civil Case No. 4595-MN* was very limited. In particular, Atty. Bayaua maintains that: (a) it was Atty. Abrajano who prepared and signed the Petition therein, and that he merely notarized the Verification and Certification attached thereto; and (b) while he signed as counsel in all other succeeding pleadings in that case (*i.e.*, the Motion to Order Investigation And To Set Case For Pre-trial, the Pre-Trial Brief, and even the Memorandum<sup>[24]</sup>), it was nevertheless prepared by Atty. Abrajano, and that he did not anymore verify its contents because he trusted the latter.<sup>[25]</sup>

Atty. Bayaua's contentions are untenable.

Atty. Bayaua himself admitted that he signed the succeeding pleadings in *Civil Case No. 4595-MN*, and hence, practically confirmed that he is petitioner's counsel on record in the said case, and not Atty. Abrajano. His responsibility as such is thus governed by Section 3, Rule 7 of the 1997 Rules of Civil Procedure (the prevailing Rules at the time the pleadings were filed), which reads:

Section 3. *Signature and address.* — **Every pleading must be signed by the party or counsel representing him,** stating in either case his address which should not be a post office box.

**The signature of counsel constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.**

An unsigned pleading produces no legal effect. However, the court may, in its discretion, allow such deficiency to be remedied if it shall appear that the same was due to mere inadvertence and not intended for delay. Counsel who deliberately files an unsigned pleading, **or signs a pleading in violation of this Rule, or alleges scandalous or indecent matter therein, or fails to promptly report to the court a change of his address, shall be subject to appropriate disciplinary action.** (Emphases and underscoring supplied)

Notably, the magnitude of the signature of counsel on *each and every pleading* filed before the court, as well as the consequences of the failure to abide by this rule, has even been amplified in the amendments introduced to the 1997 Rules of Civil Procedure by Administrative Matter (A.M.) No. 19-10-20-SC effective May 1, 2020. [26]

Thus, Atty. Bayaua's act of signing the same is essentially a certification coming from him that he has read it, that he knew it to be meritorious, and it was not for the purpose of delaying the case. More importantly, it was his signature on these pleadings which supplied the same with legal effect and elevated their status from a mere scrap of paper to that of a court document.[27] In this case, Atty. Bayaua himself insists that somebody else, *i.e.*, Atty. Abrajano, prepared the pleadings in connection with *Civil Case No. 4595-MN* and that he did not anymore verify its contents before signing them.[28] Thus, by his own admission, Atty. Bayaua violated Section 3, Rule 7 of the 1997 Rules of Civil Procedure. This violation is an act of falsehood before the courts, which in itself is a ground for subjecting him to disciplinary action.[29] Indubitably, there is substantial evidence to hold Atty. Bayaua administratively liable in this case.[30]

As to the proper penalty to be imposed on Atty. Bayaua, it must be pointed out that "[d]isbarment is the most severe form of disciplinary sanction and, as such, the power to disbar must always be exercised with great caution, only for the most imperative reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar." [31] In this regard, case law instructs that "[w]hile the Supreme Court has the plenary power to discipline erring lawyers through this kind of proceedings, it does so in the most vigilant manner so as not to frustrate its preservative principle. The Court, in the exercise of its sound judicial discretion, is inclined to impose a less severe punishment if through it the end desired of reforming the errant lawyer is possible." [32] In this case, Atty. Bayaua's offense is not so gross as to justify removal from the legal profession; and hence, a penalty other than disbarment may satisfactorily forwarn him and the other members of the Bar to be more cautious and diligent in the practice of their profession.[33]