

FIRST DIVISION

[A.C. No. 10315 [Formerly CBD Case No. 15-4553], January 22, 2020]

LIBRADA A. LADRERA, COMPLAINANT, VS. ATTY. RAMIRO S. OSORIO, RESPONDENT.

D E C I S I O N

LAZARO-JAVIER, J.:

The Case

Respondent Atty. Ramiro S. Osorio is charged with violation of the Code of Professional Responsibility, Lawyer's Oath, and the 2004 Rules on Notarial Practice, specifically, for notarizing documents even in the absence of the parties and despite lack of competent proofs of their identity.

The Complaint

In her *Sinumpaang Reklamo*^[1] dated December 16, 2013, complainant Librada A. Ladrera alleged that respondent Atty. Ramiro Osorio notarized the following documents: (1) *Deed of Absaloute (sic) Sale* dated June 30, 2008, (2) *Acknowledgment of Debt and Promissory Note* dated July 30, 2008, and (3) *Deed of Conditional Transfer and Waiver of Possessory Rights* dated April 24, 2009. In all three (3) documents, her name and that of her daughter Jeralyn Ladrera Kumar were indicated as buyers of a property purportedly owned by respondent's client Dalia* Valladolid-Rousan. In truth, however, neither she nor her daughter executed these documents, let alone, personally subscribed them before Atty. Osorio. During the dates in question, her daughter was living abroad.

Aside from this irregularity, the three (3) documents allegedly also bear the following defects, viz.:

1. In the *Deed of Absaloute (sic) Sale* dated June 30, 2008, the competent evidence of identity of the supposed affiants was not indicated in the deed, there was no technical description of the subject realty, and the document was executed outside respondent's notarial jurisdiction;
2. The *Acknowledgment of Debt and Promissory Note* dated July 30, 2008 was notarized on April 24, 2009; and
3. In the *Deed of Conditional Transfer and Waiver of Possessory Rights* dated April 24, 2009, the competent evidence of identity of the supposed affiants was not indicated and the notarial certification was false because the document and page number indicated pertain to another document in respondent's Notarial Book.

In his *Comment*^[2] dated July 18, 2014, Atty. Osorio counters that complainant was the "direct beneficiary" of the questioned documents as she even used them as evidence in the ejectment case Rousan filed against her and her daughter. At present, complainant continues to occupy Rousan's property, albeit, she has not paid its purchase price in full. She even refused to return the property to his client despite demand. Contrary to complainant's claim that she personally appeared before him for the purpose of subscribing the documents, she, in fact, went to his office and even brought her own witnesses when she had the documents notarized. The signatures of these witnesses were already affixed to the documents when the same were presented to him. He had already affixed his signature and notarial seal to the documents when complainant belatedly disclosed that she and her companions did not bring their respective competent proofs of identity. Consequently, he advised them to leave the documents in his possession until such time complainant and her companions could present their respective competent proofs of identity. He did not know how these documents landed in complainant's hands because he never turned them over to her. He delayed no man for money or malice as he was not even paid for notarizing the documents.

Proceedings Before the IBP-CBD

The case was referred to the Integrated Bar of the Philippines-Committee on Bar Discipline (IBP-CBD) for investigation, report and recommendation and assigned to Investigating Commissioner Jose Alfonso M. Gomos.

On June 19, 2015, the case was set for mandatory conference.^[3] Only complainant and her counsel appeared. Atty. Osorio did not attend despite notice. In order to avoid delay, the parties were required to file their respective verified position papers, including all supporting documents and/or affidavits of witnesses.

On July 21, 2015, complainant submitted her verified position paper.^[4] Atty. Osorio again failed to comply despite receipt of the Order dated June 19, 2015 requiring submission of his position papers.

IBP-CBD's Report and Recommendation

In his Report and Recommendation^[5] dated August 25, 2015, Commissioner Gomos found that respondent failed to observe due care as notary public when he notarized the documents despite the following deficiencies: (1) the absence of the persons who were supposedly involved in the document; (2) lack of competent evidence of identity of the signatories to the documents; (3) lack of authority to notarize documents executed outside his notarial jurisdiction, Quezon City; and (4) lack of the required notarial acknowledgment on the deeds of conveyance, attachment of a mere *jurat* thereto is improper.

Commissioner Gomos recommended respondent's suspension from the practice of law for one (1) year and the revocation of his notarial commission.

Resolution of the IBP Board of Governors

Under Resolution No. XXII-2016-217 dated February 25, 2016,^[6] the IBP Board of Governors adopted the recommendation with modification of the penalty, viz.:

RESOLVED to ADOPT with modification as to the penalty the report and recommendation of the Investigating Commissioner. The Board hereby imposes a penalty of IMMEDIATE REVOCATION OF NOTARIAL COMMISSION, DISQUALIFICATION FROM BEING COMMISSIONED AS A NOTARY PUBLIC FOR TWO (2) YEARS AND SUSPENSION FROM THE PRACTICE OF LAW FOR SIX (6) MONTHS, to be consistent with the prevailing jurisprudence.

Respondent's motion for reconsideration was denied under Resolution No. XXII-2017-786 dated January 27, 2017.

RULING

The Court adopts in full the Resolution of the IBP-Board of Governors.

Disciplinary proceedings against lawyers are *sui generis*. They are neither purely civil nor purely criminal which involve a trial of an action or a suit. They are rather investigations by the Court into the conduct of its officers. Public interest is their primary objective, and the real question for determination is whether or not the attorney should still be allowed the privileges as such.^[7]

The Court's primary concern here is to determine whether in discharging the duties and functions of a duly commissioned notary public, Atty. Osorio violated the Rules on Notarial Practice, the Lawyer's Oath, and the Code of Professional Responsibility. That complainant may have benefitted from these documents is not a valid defense and does not warrant the dismissal of the complaint.

Personal appearance required

It is a basic requirement in notarizing a document that the principal must be present before the notary public to personally attest to its voluntariness and due execution. This requirement gives effect to the act of acknowledgment as defined under Section 1, Rule II of the Notarial Rules, thus:

SECTION 1. Acknowledgment. - "Acknowledgment" refers to an act in which an individual on a single occasion:

- (a) **appears in person before the notary public and presents an integrally complete instrument or document;**
- (b) is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and
- (c) represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity, that he has the authority to sign in that capacity. (Emphasis supplied)

Here, complainant asserts that Atty. Osorio notarized the documents although neither she nor her daughter Kumar personally appeared before him to subscribe the same in April 2009. As proof, complainant submitted a certification from the Bureau of Immigration and Deportation (BID) stating that Kumar left the Philippines on November 3, 2006, hence, could not have possibly personally appeared before Atty. Osorio when the documents were supposedly notarized in April 2009.

Notably, the BID certification does not contain any statement that Kumar was still out of the country in April 2009. Hence, the BID certification, on its face, does not serve to negate Atty. Osorio's categorical statement that complainant's daughter did personally appear and subscribe the documents before him. The presumption of regularity accorded to Atty. Osorio in the performance of his official duty as notary public is upheld on this score.

The Court keenly notes, nonetheless, that Atty. Osorio violated some other provisions of the Notarial Law.

1. Lack of competent evidence of identity

A notary public is proscribed from performing a notarial act sans compliance with the two (2)-fold requirement under Section 2(b), Rule IV^[8] of the Notarial Rules, viz.:

SEC. 2. Prohibitions. - (a) xxx xxx xxx

(b) A person shall **not** perform a notarial act if the person involved as signatory to the instrument or document -

(1) is not in the notary's presence personally at the time of the notarization; and

(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules. (emphasis supplied)

The required personal appearance and competent evidence of identity allow the notary public to verify the identity of the principal himself or herself and determine whether the instrument, deed, or document is his or her voluntary act. Too, competent evidence of identity is necessary for filling in the details of the notarial register, viz.:

SEC. 2. *Entries in the Notarial Register.* - (a) For every notarial act, the notary shall record in the notarial register at the time of notarization the following:

(1) the entry number and page number;

(2) the date and time of day of the notarial act;

(3) xxx;

(4) xxx;

- (5) xxx;
- (6) **the competent evidence of identity as defined by these Rules if the signatory is not personally known to the notary;**
- (7) xxx;
- (8) xxx;
- (9) xxx; and
- (10)xxx.^[9] (Emphasis supplied)

In his *Comment*^[10] dated July 18, 2014, Atty. Osorio himself admits that he had already notarized the documents *before* he learned from the parties themselves that they did not have with them at that time competent proofs of identity, thus:

Third, Librada A. Ladrera was the very person who went into the Notarial Office of Atty. Ramiro S. Osorio. She was already in possession of the documents marked as Annexes "B", "C" and "D" of SINUMPAANG REKLAMO. The documents were not prepared in the Office of Atty. Ramiro S. Osorio. Librada A. Ladrera had companions and requested for the notarization of the documents marked as Annexes "B", "C", and "D". Librada A. Ladrera represented that the persons in her company are the signatories in the documents. **Respo[n]dent Atty. Ramiro S. Osorio believed in good faith that the persons with Librada Ladrera were indeed the signatories in the documents marked as Annexes "B", "C" and "D". But when asked to produce their valid identifiactions (sic) they were not able to bring out their valid identifications despite the fact respondent already had signed the documents and designated corresponding notarial numbers. The non-production of valid identifications (sic) prompted respondent Atty. Ramiro S. Osorio to retain the x x x documents until the production of valid identifications.** It was complainant Ladrera who insisted that they are the owners of the documents. As to how the documents eventually ended in the possession of Librada A. Ladrera despite impounding those documents at the office of respo[n]dent Rarniro S. Osorio is another unusual enterprising ability of Librada A. Ladrera.^[11] (emphasis ours)

By his own admission, Atty. Osorio unabashedly confesses to being reckless, thoughtless, and mindless of his sworn duties as notary public. He peremptorily notarized the documents without first requiring the parties to present competent proofs of identity. There is no showing nor any averment that he personally knew the parties so as to exempt them from presenting to him competent proofs of identity.

Atty. Osorio's claim that he did not tum over the notarized documents to complainant pending presentation of competent evidence of her identity and those of her witnesses, and that complainant probably got hold of them because of her "unusual enterprising ability" speaks volumes of Atty. Osorio's utter irresponsibility, if not sheer dishonesty. His story totally lacks credence, nay, goes against the