

FIRST DIVISION

[A.C. No. 9334, July 28, 2020]

CONRADO ABE LOPEZ, COMPLAINANT, VS. ATTY. ARTURO C. MATA, ATTY. WILFREDO M. SENTILLAS, AND ATTY. GINES N. ABELLANA, RESPONDENTS.

DECISION

LAZARO-JAVIER, J.:

The Case

By Complaint dated December 28, 2011, complainant Conrado Abe Lopez charged respondents Atty. Arturo C. Mata, Atty. Wilfredo M. Sentillas, and Atty. Gines N. Abellana with dishonesty, malpractice, and violation of the 2004 Rules on Notarial Practice with prayer for disbarment.

The Complaint Affidavit

Complainant^[1] essentially alleged:

Moises Legaspino married twice during his lifetime. During his first marriage, he sired Francisco, Basilia, Amando, Mamerto, and Honorata, all surnamed Legaspino. When Moises' first wife died, he got married to Victoria Lopez who had a son, Restituto Lopez, his (Conrado's) adoptive father.

Moises and Victoria passed away, leaving a 49,817 square meter parcel of land to their heirs. Half of the property was adjudicated to Moises' children from his first marriage, while the other half, to Restituto^[2] Meanwhile, Honorata died without a will, leaving her share in the property to her children Basilio, Pedro, Victoriano, Crisostomo, Regulada, Juan and Patricia, all surnamed Lucmayon.^[3] Eventually, the shares of Moises' other children from his first marriage were consolidated in the name of Honorata's son Pedro.^[4] As a result, the property was divided in the following manner:

1) 20,637 square meters to Spouses Pedro Lucmayon and Anastacia Sacayan by virtue of the sales in their favor including the 712 square meters as Pedro's share being the direct heir of Honorata Legaspino Lucmayon;

2) 24,908 square meters to Honorata Lopez and Conrado Lopez being the heirs of Restituto Lopez; and

3) 712 square meters each for Basilio Lucmayon, Victoriano Lucmayon, Patricia Lucmayon, Crisostomo Lucmayon, Regulada Lucmayon Monteroso, and Juan Lucmayon.^[5]

On December 29, 1953, Restituto executed the "*Katapusang Pamigon (Testamento Intervivos*" (Katapusang Panugon) wherein he bequeathed to Conrado the 24,908 sqm property he inherited, identified as Lot No. 1696 -H^[6] erroneously written as Lot No. 1718.^[7] But since Conrado was then only eight (8) years old, Restituto kept possession of the document. After Restituto died, the document was left in the possession of Conrado's mother Honorata Abe Lopez.^[8]

Fast forward to the early 2000s, Judge Rogelio Lucmayon, Presiding Judge of MTCC Branch 1, Mandaue, City and son of Pedro Lucmayon, asked Conrado to execute a special power of attorney (First SPA) in favor of his (Judge Lucmayon's) friends^[9] because he wanted to sell the property they inherited to Cebu Progress Development Company. Complainant acceded to the request and executed the First SPA on July 12, 2004 before Atty. Arturo C. Mata.^[10]

On October 11, 2004, Judge Lucmayon requested anew for Conrado to execute another SPA (Second SPA), this time naming him (Judge Lucmayon) as Attorney-in-Fact. Though Conrado admitted to signing the document, he did not personally appear before the notary public to have the Second SPA notarized. It was Judge Lucmayon who had it notarized by Atty. Wilfredo M. Sentillas.^[11]

On October 28, 2004, Judge Lucmayon asked Conrado a third time to sign an SPA (Third SPA) which was purportedly required by the vendees before paying for the property in full. Conrado was not aware that the Third SPA contained a "Waiver of Rights, Interest, Possession, and Ownership over Lot No. 1696-H." Just like the Second SPA, he did not personally appear before notary public Atty. Arturo C. Mata.^[12]

After Conrado signed all the documents requested by Judge Lucmayon, the latter asked him for the Katapusang Panugon.^[13] To his surprise, Judge Lucmayon commented that he had no share in Lot 1696-H because the figures " 1696" were only written in pen under the typewritten words "Lot No. 1718." But he could not have been the one who wrote those figures since he was only eight (8) years old when the Katapusang Panugon was executed. In fact, he only got hold of the document just before his mother died in 1982.^[14]

Later, Conrado discovered the existence of a Deed of Sale dated June 28, 2004 where he allegedly sold his share in Lot No. 1696-H to one Loreto Lecanda.^[15] The Deed of Sale was notarized by Atty. Gines N. Abellana, albeit complainant denied signing the document, let alone personally appearing before Atty. Abellana to have it notarized. Per Certification dated December 6, 2011 of the Notarial Section, Office of the Clerk of Court, Cebu City, Atty. Abellana did not file his notarial report for 2004.^[16]

Hence, complainant charged Attys. Mata, Sentillas and Abellana with dishonesty, malpractice and violation of the 2004 Rules on Notarial Practice.

Meanwhile, Pedro Lucmayon filed a case against Conrado for Quieting of Title (Civil Case No. T-1937) attaching the documents notarized by respondents.

On the other hand, by Complaint Affidavit^[17] dated September 23, 2009, Conrado

charged Judge Lucmayon, Atty. Sentillas and Atty. Mata with Falsification of Public Document and Use of Falsified Document before the Office of the City Prosecutor, Cebu. The complaint got dismissed per Amended Resolution^[18] dated September 14, 2010.

Respondents' Answers

Atty. Wilfredo M. Sentillas invoked the presumption of regularity. He asserted that since Conrado admitted having signed the Second SPA, it is presumed that he did so before the presence of a notary public.^[19] Conrado resorted to filing the present complaint to malign his name after failing to obtain a favorable result from the Office of the City Prosecutor.^[20]

Atty. Arturo C. Mata, on the other hand, countered that Conrado had no cause of action because he voluntarily signed the "Waiver of Rights, Interest, Possession, and Ownership of Lot No. 1696-H"^[21] and allowed Judge Lucmayon to look for a notary public to notarize the document. The name of Atty. Wilfredo M. Sentillas, with whom he shared the same office, was already stamped on the document as the notary. But upon Judge Lucmayon's request, he notarized the document instead.

He honestly believed that Conrado was among the three (3) persons who were with Judge Lucmayon at the time the document was presented to him for notarization. Out of respect for Judge Lucmayon before whom he appeared for some cases and who was a close friend of Atty. Sentillas, he no longer required Judge Lucmayon and his companions to sign the document again nor asked any questions.^[22]

Lastly, **Atty. Gines N. Abellana** neither denied nor admitted the charges because the complaint he received allegedly lacked page five (5). He nevertheless averred that the non-submission of his 2004 Notarial Report and the absence of copy of the Deed of Sale dated June 28, 2004 he notarized in the Notarial Section of the Office of the Clerk of Court, RTC Cebu, City were immaterial to the charges against him.^[23] More, the complaint did not contain any verification and certification against forum shopping.^[24]

Report and Recommendation of the Integrated Bar of the Philippines Commission on Bar Discipline (IBP - CBD)

In its Report and Recommendation dated October 26, 2013,^[25] the IBP - CBD recommended:

WHEREFORE, premises considered, it is respectfully recommended that:

The notarial commissions of respondents Mata, Sentillas and Abellana be revoked and they be disqualified from reappointment as notary public for a period of two (2) years and be suspended from the practice of law for a period of three (3) months. They are likewise warned that a repetition of the same or similar offense on the future shall be dealt with more severely.

According to the IBP - CBD, Atty. Sentillas failed to secure competent proof of affiant's identity when he notarized the Second SPA.

Atty. Mata, on the other hand, failed to ensure it was indeed Conrado who was with Judge Lucmayon when he notarized the Third SPA. Too, he admitted not asking for competent proof of identity out of respect for Judge Lucmayon.

Lastly, Atty. Abellana had been remiss in his duty to submit his 2004 Notarial Report as shown by Certification dated December 6, 2011. Worse, the Deed of Absolute Sale dated June 28, 2004 notarized and designated as Doc. No. 16, Page No. 5, Book No. 41, Series of 2004 was never submitted to the Clerk of Court nor the Executive Judge. This cast doubt on whether Conrado indeed executed said document.

Resolutions of the IBP - Board of Governors (BOG)

By Resolution^[26] dated October 11, 2014, the IBP Board of Governors affirmed with modification. Atty. Mata and Atty. Sentillas' recommended suspension from the practice of law was increased to six (6) months while Atty. Abellana's to three (3) years in view of a previous sanction, thus:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A," and for Respondents' failure to exercise due diligence in the performance of their duties as Notaries Public in violation of the 2004 Rules on Notarial Practice, Respondents' notarial commissions are ***immediately REVOKED***. Further, **they are DISQUALIFIED for reappointment as a notary public for two years. Atty. Arturo C. Mata and Atty. Wilfredo M. Sentillas are hereby SUSPENDED from the practice of law for six (6) months.** In view of his previous sanction, where a stern warning was made that a commission of another unethical conduct would cause the imposition of higher sanction, Atty. Gines N. Abellana is SUSPENDED from practice of law for three (3) years.^[27]

Respondents Atty. Sentillas'^[28] and Atty. Abellana's^[29] Motion for Reconsideration was denied under Resolution^[30] dated May 28, 2016.

Meanwhile, on September 13, 2016, respondents filed a Motion to Dismiss Administrative Complaint^[31] on ground that Civil Case No. T-1937, the main reason for filing this administrative case, was amicably settled on June 10, 2016. The settlement was approved by the Regional Trial Court (RTC), Branch 59, Toledo City on July 27, 2016. Complainant likewise executed an Affidavit of Desistance dated June 10, 2016 alleging that respondents were innocent notaries public.

On February 6, 2017, the IBP elevated the entire records for the Court's consideration since the IBP Resolution was merely recommendatory in nature and does not attain finality without the Court's final action.

Issue

Should respondents be sanctioned for violation of the 2004 Rules on Notarial

Ruling

The Court adopts the IBP - CBD's factual findings but modifies the recommended penalty.

Notarization is not an empty, meaningless, or routinary act. It is impressed with substantial public interest, and only those who are qualified or authorized may be commissioned. It is not a purposeless ministerial act of acknowledging documents executed by parties willing to pay fees for notarization.^[32] A notary public exercises duties calling for carefulness and faithfulness. Notaries must inform themselves of the facts they certify to; most importantly, they should not take part or allow themselves to be part of illegal transactions.^[33]

In the performance of his or her duties, a notary public must observe the highest degree of care in complying with the basic requirements to preserve the public's confidence in the integrity of the notarial system.^[34] This is because notarization of a private document converts it into a public instrument making it admissible in court without further proof of its authenticity. A notarial document is by law entitled to full faith and credit on its face and, for this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties, lest, the public's confidence in the integrity of the document will be undermined.^[35]

Here, respondents miserably failed to live up to their duties as notaries public when they committed irregularities relative to the notarization of the Second SPA, Third SPA, and the Deed of Sale dated June 28, 2004.

Atty. Sentillas and Atty. Mata failed to ascertain the identity of the "Conrado Lopez" who allegedly appeared before them.

a. Atty. Wilfredo M. Sentillas

Section 2(b), Rule IV of the 2004 Rules on Notarial Practice provides:

SECTION 2. Prohibitions. — (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.^[36] (emphasis added)

Here, Conrado admitted having signed the Second SPA naming Judge Lucmayon as Attorney-in-Fact but nevertheless disclaimed personally appearing before Atty. Sentillas when it was notarized. Against this allegation, Atty. Sentillas simply invoked in his favor the presumption of regularity in the performance of official duties.^[37]