

EN BANC

[A.C. No. 7186, March 13, 2018]

**ROMEO A. ZARCILLA AND MARITA BUMANGLAG,
COMPLAINANTS, V. ATTY. JOSE C. QUESADA, JR., RESPONDENT.**

DECISION

PER CURIAM:

Before us is a Petition for Disbarment^[1] dated February 9, 2006 filed by complainants Romeo A. Zarcilla (*Zarcilla*) and Marita Bumanglag (*Bumanglag*) against respondent Atty. Jose C. Quesada, Jr. (*Atty. Quesada*) for gross misconduct.

The facts are as follows:

On August 5, 2002, complainant Zarcilla executed an Affidavit-Complaint^[2] against respondent Atty. Quesada and complainant Marita Bumanglag, among others, for falsification of public documents docketed as I.S. No. 02-128-SF. Zarcilla alleged that Bumanglag conspired with certain spouses Maximo Quezada and Gloria Quezada (*Spouses Quezada*) and Atty. Quesada to falsify a Deed of Sale^[3] dated April 12, 2002 by making it appear that his parents, Perfecto G. Zarcilla and Tarcela A. Zarcilla, sold a parcel of land under TCT No. T-18490 in favor of the Spouses Quezada despite knowledge that his parents were already deceased since March 4, 2001 and January 9, 1988, respectively, as per Death Certificates^[4] issued by the Office of the Municipal Civil Registrar of Santo Tomas, La Union. Said signing of deed of sale was allegedly witnessed by a certain Norma Zafe and Bumanglag, and notarized by Atty. Quesada.

Other than the alleged falsified deed of sale, Zarcilla also claimed that on March 20, 2002, the Spouses Quezada filed a petition for the administrative reconstitution of the original copy of TCT No. 18490 where they presented the Joint Affidavit of his then already deceased parents, the spouses Perfecto Zarcilla and Tarcela A. Zarcilla as the petitioners.^[5] Said Joint-Affidavit of the Spouses Quezada was again notarized by Atty. Quesada.

However, on October 9, 2002, Bumanglag executed a Counter-affidavit^[6] in the same case where she claimed to be the real owner of the property after Perfecto Zarcilla sold the same to her mother. Bumanglag also stated therein that she facilitated the sale transaction to the Spouses Quezada which, in effect, exonerated her co-respondents, including Atty. Quesada, the pertinent portion of which reads:

xxxx

6. That after the death of my mother I needed money to pay for the expenses she incurred when she was sick and need medication and all the (sic) to pay for the expenses of her burial. I offered to sell the property to Spouses MAX QUEZADA and GLORIA QUEZADA. I showed

them the Deed of Sale between PERFECTO ZARCILLA and my mother. I also showed them the paper that my mother signed giving me the land;

7. That the Spouses Quezada told me that they will buy the land provided I will be the one to transfer the said land to their name. They gave me an advance payment so that I could transfer the land to them. **I made it appear that PERFECTO ZARCILLA sold the property to the said spouses because the title of the land was still in the name of Perfecto Zarcilla. I did not have [any] criminal intent when I did it because the land no longer belong to Perfecto Zarcilla.** I did all the subsequent acts like Petition for Reconstitution in the name of Perfecto Zarcilla because then, the title was still in his name. However, there was no damage to the heirs of PERFECTO ZARCILLA because the land had long been sold to my mother and the sons and daughters no longer had no legal claim to the said land;

8. That SPOUSES MAXIMO QUEZADA & GLORIA QUEZADA did not falsify any document because I was the one who facilitated the transaction knowing that the land I was selling really belonged to me. Not one of my brothers and (sic) sisters never (sic) complained when I sold the land. I just delivered the document to the Spouses MAXIMO QUEZADA & GLORIA QUEZADA including the title in their name. I was paid the balance after the Certificate of Title in their name was finally delivered.^[7]

All other respondents in the said falsification case, except for Atty. Quesada, also filed their respective counter-affidavits where they reiterated Bumanglag's admission.^[8]

In a Resolution^[9] dated April 14, 2003, the Office of the Provincial Prosecutor of La Union held Bumanglag only to undergo trial. All other respondents, including Atty. Quesada who did not even file his counter-affidavit, were exonerated for insufficiency of evidence.

Both Zarcilla and Bumanglag filed their respective motions for reconsideration, but both were denied. Consequently, Bumanglag was indicted for four counts of falsification of public documents before the Municipal Trial Court of Sto. Tomas, La Union, docketed as Criminal Cases Nos. 3594, 3595, 3597, and 3598.

However, Zarcilla later on withdrew said cases when he learned that Bumanglag was not aware of the contents of her counter-affidavit when she signed the same. He also found out that Bumanglag was deceived by her co accused, including Atty. Quesada. Thus, upon the motion of Zarcilla, in an Order^[10] dated July 27, 2005, the court dismissed all falsification cases against Bumanglag.

In a Resolution^[11] dated June 26, 2006, the Court resolved to require Atty. Quesada to file a comment on the complaint against him.

On August 28, 2006, Atty. Quesada file a Motion for Extension of Time to File Comment^[12] due to voluminous workload. On September 18, 2006, Atty. Quesada filed a second motion for extension to file comment. In a Resolution^[13] dated November 20, 2006, the Court granted Atty. Quesada's motions for extension with a

warning that the second motion for extension shall be the last and that no further extension will be given.

On September 26, 2007, due to Atty. Quesada's failure to file a comment on the complaint against him within the extended period which expired on October 17, 2006, the Court resolved to require Atty. Quesada to (a) show cause why he should not be disciplinarily dealt with or held in contempt from such failure, and (b) comply with the Resolution dated June 26, 2006 by submitting the required comment.^[14]

Due to Atty. Quesada's failure to comply with the Show Cause Resolution dated September 26, 2007, the Court resolved to (a) impose upon Atty. Quesada, a fine of P1,000.00, and (b) require Atty. Quesada to comply with the Resolution dated June 26, 2006 by filing the comment required therein.^[15]

No payment of fine was made as of January 13, 2009 as evidenced by a Certification^[16] which was issued by Araceli Bayuga, Supreme Court Chief Judicial Staff Officer.

Again, failing to comply with the directives of the Court to pay the fine imposed against him and to submit his comment, the Court, in a Resolution^[17] dated February 16, 2009, resolved to (a) impose upon Atty. Quesada an additional fine of P1,000.00, or a penalty of imprisonment of five (5) days if said fines are not paid within 10 days from notice, and (b) order Atty. Quesada to comply with the Resolution dated June 26, 2006 to submit his comment on the complaint against him. Atty. Quesada was also warned that should he fail to comply, he shall be ordered arrested and detained by the National Bureau of Investigation until he shall have made the compliance or until such time as the Court may order.

Despite repeated notices and warnings from the Court, no payment of fine was ever made as of September 3, 2010 as evidenced by a Certification¹⁸ which was issued by Araceli Bayuga, Supreme Court Chief Judicial Staff Officer. On December 28, 2010, another Certification^[19] was issued anew showing no record of payment of fine by Atty. Quesada.

Thus, in a Resolution^[20] dated March 9, 2011, the Court resolved to (1) increase the fine imposed on Atty. Quesada to P3,000.00, or imprisonment often (10) days if such fine is not paid within the prescribed period; and (2) require Atty. Quesada to comply with the Resolution dated June 26, 2006 by submitting the required comment on the complaint.

No payment of fine was made as of July 12, 2011, as evidenced by a Certification^[21] which was issued by Araceli Bayuga, Supreme Court Chief Judicial Staff Officer.

It appearing that Atty. Quesada failed to comply with the numerous Resolutions of the Court to pay the fine imposed upon him and submit comment on the complaint against him, in a Resolution^[22] dated August 24, 2011, the Court ordered the arrest of Atty. Quesada, and directed the NBI to arrest and detain him until he shall have compli[ed] with the Court's Resolution dated March 9, 2011. Subsequently, the Court issued a Warrant of Arrest.^[23]

Apparently forced by his looming detention, after five (5) years, Atty. Quesada filed his Comment^[24] dated October 10, 2011, in compliance with Resolution dated June 26, 2006. He claimed that he is a victim of political harassment, vengeance and retribution, and that the instant case against him was filed solely for the purpose of maligning his person. Attached to his compliance was postal money order in the amount of P3,000.00 as payment for the fine imposed upon him.

In a Letter^[25] dated October 10, 2011, Atty. Ricardo S. Pangan, Jr., Regional Director of the NBI, informed the Court that Atty. Quesada voluntarily surrendered before the agents of the NBI on October 11, 2011, and claimed that he had already complied with the Resolution of the Court. Atty. Quesada submitted a copy of his comment and payment of fine, thus, on the same day, Atty. Quesada was immediately released from custody.

On February 1, 2012, the Court referred the instant case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.^[26]

During the mandatory conference before the IBP-Commission on Bar Discipline (IBP-CBD), only Bumanglag and her counsel appeared. Atty. Quesada failed to appear thereto, thus, the mandatory conference was reset to July 11, 2012. However, on July 11, 2012, Atty. Quesada failed again to appear, thus, the mandatory conference was reset anew to July 25, 2012. Meanwhile, Bumanglag informed the IBP-CBD that co-complainant Romeo Zarcilla passed away in 2005.

On July 23, 2012, Atty. Quesada requested that the mandatory conference be reset due to health reasons. He submitted his Medical Certificate dated May 2, 2012 showing that he underwent a head operation and that he is still on recovery period.

On July 25, 2012, Atty. Quesada failed again to appear, thus, the parties were directed to appear on August 23, 2012 and submit their respective verified position papers. However, on August 23, 2012, only Bumanglag and her counsel appeared, and Atty. Quesada failed to appear anew. Thus, considering that the parties were duly notified of the hearing, the case was deemed submitted for resolution.

On May 30, 2014, the IBP-CBD, in its Report and Recommendation, recommended that respondent Atty. Quesada be disbarred from the practice of law.

In a Resolution No. XXI-2015-097 dated January 31, 2015, the IBP Board of Governors resolved to adopt and approve the report and recommendation of the IBP-CBD.

RULING

We adopt the findings and recommendation of the IBP.

A disbarment case is *sui generis* for it is neither purely civil nor purely criminal, but is rather an investigation by the court into the conduct of its officers.^[27] The issue to be determined is whether respondent is still fit to continue to be an officer of the court in the dispensation of justice. Hence, an administrative proceeding for disbarment continues despite the desistance of a complainant, or failure of the complainant to prosecute the same, or in this case, the failure of respondent to answer the charges against him despite numerous notices.

However, in administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. For the Court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof. As in this case, considering the serious consequence of the disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of the administrative penalty.^[28]

Thus, in the instant case, the allegations of falsification or forgery against Atty. Quesada must be competently proved because falsification or forgery cannot be presumed. As such, the allegations should first be established and determined in appropriate proceedings, like in criminal or civil cases, for it is only by such proceedings that the last word on the falsity or forgery can be uttered by a court of law with the legal competence to do so. A disbarment proceeding is not the occasion to determine the issue of falsification or forgery simply because the sole issue to be addressed and determined therein is whether or not the respondent attorney is still fit to continue to be an officer of the court in the dispensation of justice. Accordingly, We decline to rule herein whether or not the respondent had committed the supposed falsification of the subject affidavit in the absence of the prior determination thereof in the appropriate proceeding.^[29]

We, however, noted that Atty. Quesada Violated the notarial law for his act of notarizing the: (1) Deed of Sale^[30] dated April 12, 2002 purportedly executed by and between the spouses Maximo F. Quezada and Gloria D. Quezada, the buyers, and complainant Zarcilla's parents, the spouses Tarcela Zarcilla and Perfecto Zarcilla; and the (2) Joint Affidavit^[31] dated March 20, 2002 purportedly executed by the spouses Tarcela Zarcilla and Perfecto Zarcilla for the reconstitution of TCT No. T-18490, when in both occasions the spouses Tarcela Zarcilla and Perfecto Zarcilla could no longer execute said documents and appear before Atty. Quesada since they have long been deceased as evidenced by their death certificates. Tarcela Zarcilla died on January 9, 1988, while Perfecto Zarcilla died on March 4, 2001.^[32]

Section 2 (b) of Rule IV of the 2004 Rules on Notarial Practice stresses the necessity of the affiant's personal appearance before the notary public:

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(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.

Thus, a notary public should not notarize a document unless the person who signed the same is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. Without the appearance of the person who actually executed the document in question, the notary public would be unable to verify the genuineness of the signature of the