

## EN BANC

[ A.C. No. 11981, July 03, 2018 ]

**LEAH B. TADAY, COMPLAINANT, VS. ATTY. DIONISIO B. APOYA, JR., RESPONDENT.**

### DECISION

#### PER CURIAM:

Before this Court is a Verified Complaint-Affidavit<sup>[1]</sup> filed before the Integrated Bar of the Philippines (*IBP*) against Atty. Dionisio B. Apoya, Jr. (*respondent*) for violating the Code of Professional Responsibility (*Code*) in authoring a fake decision of a court.

Sometime in 2011, Leah B. Taday (*complainant*), an overseas Filipino worker (*OFW*) staying in Norway, asked her parents in the Philippines, Virgilio and Natividad Taday, to seek legal services for the nullification of her marriage. Complainant's parents found respondent and contracted his legal services. On April 17, 2011, a Retainer Agreement<sup>[2]</sup> was executed between respondent and complainant's parents indicating that respondent's acceptance fee was P140,000.00, to be paid on a staggered basis.

According to complainant, respondent was informed that she was staying in Norway and respondent assured her that this would not be an issue as he can find ways to push for the resolution of the case despite her absence.

Respondent drafted a Petition for Annulment of Marriage<sup>[3]</sup> (*petition*) dated April 20, 2011, which he allegedly sent to complainant for her signature. After notarizing the petition, respondent filed it before the Regional Trial Court of Caloocan City (*RTC*). The case was then raffled to Branch 131, docketed as Civil Case No. C-22813.

On November 17, 2011, while complainant was on vacation in the Philippines<sup>[4]</sup> and after paying respondent his legal fees amounting to P14,500.00,<sup>[5]</sup> respondent delivered a Decision<sup>[6]</sup> dated November 16, 2011 which granted the annulment of complainant's marriage. The said decision was promulgated by a certain Judge Ma. Eliza Becamon-Angeles of RTC Branch 162. Complainant became suspicious as the said decision came from a different branch presided by a different judge where the case was originally filed. Complainant's family became skeptical as the said decision seemed to come too soon and was poorly crafted.

Confused with the turn of events, verifications were made to ascertain the validity of the decision. Complainant discovered that both Branch 162 and Judge Ma. Eliza Becamon-Angeles do not exist in the RTC. Frustrated with the incident, complainant, through her parents, sought the withdrawal of respondent as her counsel from the case.

However, instead of withdrawing as counsel, respondent filed an urgent motion to withdraw the petition. In its Order<sup>[7]</sup> dated June 25, 2012, the RTC Branch 131 granted the said motion and the case was dropped from the civil docket of the court.

Complainant and her parents sought the legal services of Atty. Alexander M. Verzosa (*Atty. Verzosa*) of the Verzosa Lauengco Jimenez and Abesames Law Offices for their predicament. Atty. Verzosa sent a Letter<sup>[8]</sup> dated February 26, 2013, to respondent calling his attention regarding the payment of his attorney's fees and the purported fake decision of RTC Branch 162.

In his Answer,<sup>[9]</sup> respondent denied being informed that complainant was an OFW and claimed that he was made to believe that she was merely in the Bicol province, hence, he agreed to draft the petition and gave it to complainant's parents for her signature. The petition was returned to respondent with complainant's signature so he notarized and filed it before the court.

Respondent denied delivering any decision relative to the annulment case of complainant. He asserted that the said decision was only a product of her imagination. Respondent likewise denied that he filed an urgent motion to withdraw the petition in the RTC, Branch 131. He claimed that he merely drafted the said motion and gave it to complainant's parents but he never signed it.

After the parties submitted their respective position papers, the case was submitted for decision.

#### *IBP Report and Recommendation*

In its Report and Recommendation,<sup>[10]</sup> the IBP Commission on Bar Discipline (*Commission*) found that respondent committed several violations of the Code, particularly, Rules 1.01, 1.02 and Canon 1. The Commission held that respondent notarized the Verification and Certification of Non Forum Shopping<sup>[11]</sup> of the petition, even though complainant was not personally present as she was then in Norway.

The Commission also found that respondent authored a fake decision. It opined that the said decision was fake because it bore the same format and grammatical errors as that of the petition prepared by respondent. The Commission disregarded the defense of respondent that it was complainant's parents who made the fake decision. It stressed that any reasonable mind would know that a fake decision would not benefit complainant. Moreover, complainant's parents continuously paid the legal fees of respondent, which would show their lack of intent to create the fabricated decision.

The Commission further underscored that when respondent was confronted with the fake decision, he filed an urgent motion to withdraw the petition before RTC Branch 131. It highlighted that when the new counsel of complainant questioned respondent regarding these irregularities, he did not respond.

Based on these circumstances, the Commission concluded that the fake decision originated from respondent and that he violated Rules 1.01 and 1.02, Canon I of the

Code. It recommended the penalty of suspension of two (2) years from the practice of law.

In its Resolution No. XXI-2015-100<sup>[12]</sup> dated January 31, 2015, the IBP Board of Governors (*Board*) modified the recommended penalty of two (2) years suspension to a penalty of disbarment.

Respondent filed a motion for reconsideration but it was denied by the IBP Board in its Resolution No. XXII-2016-508<sup>[13]</sup> dated September 23, 2016.

Respondent filed a second motion for reconsideration but it was also denied by the Board in its Resolution No. XXII-2017-951<sup>[14]</sup> dated April 19, 2017.

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

The Court adopts the findings of the Commission and agrees with the recommendation of the IBP Board to disbar respondent.

All those in the legal profession must always conduct themselves with honesty and integrity in all their dealings. Members of the bar took their oath to conduct themselves according to the best of their knowledge and discretion with all good fidelity as well to the courts as to their clients and to delay no man for money or malice. These mandates apply especially to dealings of lawyers with their clients considering the highly fiduciary nature of their relationship.<sup>[15]</sup>

It bears stressing that membership in the bar is a privilege burdened with conditions. A lawyer has the privilege and right to practice law during good behavior and can only be deprived of it for misconduct ascertained and declared by judgment of the court after opportunity to be heard has afforded him. Without invading any constitutional privilege or right, and attorney's right to practice law may be resolved by a proceeding to suspend or disbar him, based on conduct rendering him unfit to hold a license or to exercise the duties and responsibilities of an attorney.<sup>[16]</sup> In disbarment proceedings, the burden of proof rests upon the complainant, and for the court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof.<sup>[17]</sup>

In this case, the Court finds that respondent violated Canon 1, Rules 1.01 and 1.02 of the Code and the 2004 Rules on Notarial Practice.

*Respondent notarized the petition even though the affiant was not present*

Notarization is not an empty, meaningless and routinary act. It is imbued with public interest and only those who are qualified and authorized may act as notaries public.<sup>[18]</sup> Notarization converts a private document to a public document, making it admissible in evidence without further proof of its authenticity. A notarial document is, by law, entitled to full faith and credit upon its face. For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties.<sup>[19]</sup>

The 2004 Rules on Notarial Practice provides that a notary public should not notarize

a document unless the signatory to the document personally appeared before the notary public at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity. At the time of notarization, the signatory shall sign or affix with a thumb or other mark in the notary public's notarial register. The purpose of these requirements is to enable the notary public to verify the genuineness of the signature and to ascertain that the document is the signatory's free act and deed. If the signatory is not acting on his or her own free will, a notary public is mandated to refuse to perform a notarial act. A notary public is also prohibited from affixing an official signature or seal on a notarial certificate that is incomplete.<sup>[20]</sup>

In this case, on April 20, 2011, respondent notarized the verification and certification of non forum shopping in the petition filed before RTC Branch 131 supposedly executed by complainant as the affiant. At that time, however, complaint was not in the Philippines because she was still in Norway working as an OFW. Undoubtedly, respondent violated the notarial rules when he notarized a document without the personal presence of the affiant.

Respondent gave a flimsy excuse that he was not informed that complainant was not in the Philippines when he notarized the verification and certification on non forum shopping. Assuming *arguendo* that this is true, he should have refrained from notarizing such document until complainant personally appear before him. In addition, respondent should have explained to complainant and her parents that he can only notarize and file the petition before the court once complainant returns to the Philippines. Lamentably, instead of informing his client about the rules of notarization, respondent proceeded with the notarization of the document and gave a false assurance that the case of complainant would still continue even in her absence.

In *Gaddi v. Atty. Velasco*,<sup>[21]</sup> the Court held that for notarizing a document without ascertaining the identity and voluntariness of the signatory to the document, for affixing his signature in an incomplete notarial certificate, and for dishonesty in his pleadings, the lawyer failed to discharge his duties as notary public and breached Canon 1 and Rule 1.01 of the Code.

Similarly, in *Ferguson v. Atty. Ramos*<sup>[22]</sup> the Court held that when a lawyer affixes his signature and notarial seal on a deed of sale, he leads the public to believe that the parties personally appeared before him and attested to the truth and veracity of the contents thereof. The act of notarizing a document without the presence of the parties is fraught with dangerous possibilities considering the conclusiveness on the due execution of a document that the courts and the public accord to notarized documents.

Here, respondent notarized the verification and certification of non forum shopping even though complainant did not personally appear before him. Not only did he violate the 2004 Rules on Notarial Practice, he also violated Canon 1 and Rule 1.01 of the Code.

*Respondent authored a fake decision and delivered it to his client*

Aside from improperly notarizing a petition, respondent committed an even graver