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[A.C. No. 10132, March 24, 2015]

HEIRS OF PEDRO ALILANO REPRESENTED BY DAVID ALILANO, COMPLAINANTS, VS. ATTY. ROBERTO E. EXAMEN, RESPONDENT.

D E C I S I O N

VILLARAMA, JR., J.:

Before us is a complaint[1] for disbarment filed before the Integrated Bar of the Philippines (IBP) by the heirs of Pedro Alilano against Atty. Roberto E. Examen for misconduct and malpractice for falsifying documents and presenting these as evidence in court thus violating the Lawyer's Oath,[2] Canons 1,[3] 10[4] and 19,[5] and Rules 1.01,[6] 1.02,[7] 10.01,[8] and 19.01[9] of the Code of Professional Responsibility (CPR).

Pedro Alilano and his wife, Florentina, were the holders of Original Certificate of Title (OCT) No. P-23261 covering a 98,460 sq. m. parcel of land identified as Lot No. 1085 Pls-544-D located in Paitan, Esperanza, Sultan Kudarat. Pedro and Florentina died on March 6, 1985 and October 11, 1989, respectively.

It appears that on March 31, 1984 and September 12, 1984 Absolute Deeds of Sale[10] were executed by the Spouses Alilano in favor of Ramon Examen and his wife, Edna. Both documents were notarized by respondent Atty. Roberto Examen, brother of the vendee. Sometime in September 1984, Spouses Examen obtained possession of the property.

On January 12, 2002, the heirs of Alilano filed a suit for recovery of possession before the Regional Trial Court of Sultan Kudarat against Edna Examen and Atty. Roberto Examen.[11] It was during this proceeding that Atty. Examen introduced into evidence the March 31, 1984 and September 12, 1984 Absolute Deeds of Sale.

On November 15, 2003,[12] the heirs of Alilano filed this complaint alleging that Atty. Examen, based on *Barretto v. Cabreza*,[13] violated the notarial law when he notarized the absolute deeds of sale since a notary public is prohibited from notarizing a document when one of the parties is a relative by consanguinity within the fourth civil degree or affinity within the second civil degree. It is also alleged that Atty. Examen notarized the documents knowing that the *cedula* or residence certificate number used by Ramon Examen was not actually his but the residence certificate number of Florentina. Atty. Examen also falsely acknowledged that the two witnesses personally appeared before him when they did not. Lastly, it is alleged that despite knowing the infirmities of these documents, Atty. Examen introduced these documents into evidence violating his oath as a lawyer and the CPR.

In his defense, Atty. Examen pointed out that there was no longer any prohibition under the Revised Administrative Code for a notary public to notarize a document where one of the parties is related to him by consanguinity and affinity.[14] With regard to the use of Florentina's residence certificate as Ramon's, Atty. Examen said that he was in good faith and that it was office practice that the secretary type details without him personally examining the output.[15] In any event, he reasoned that the use of another's residence certificate is not a ground for disbarment and is barred by prescription based on IBP Resolution No. XVI-2004-13 dated January 26, 2004 where it was proposed that the Rules of Procedure of the Commission on Bar Discipline Integrated Bar of the Philippines, Section 1, Rule VIII, be revised to include a prescription period for professional misconduct: within two years from the date of the act.[16]

In its Report and Recommendation,[17] the IBP Commission on Bar Discipline (CBD) found Atty. Examen liable for breach of the Notarial Law and introducing false Absolute Deeds of Sale before court proceedings. It stated that there was ample evidence to support the complainants' contention that the Spouses Alilano did not voluntarily and knowingly convey their property, i.e. denials under oath by attesting witnesses and NBI Report by Handwriting Expert Jennifer Dominguez stating that Pedro Alilano's signature in the September 1984 Absolute Deed of Sale was significantly different from the specimen signatures. It also noted that Ramon Examen's residence certificate number, date and place of issue were also falsified since the residence certificate actually belonged to Florentina Pueblo. It thus recommended that the penalty of disbarment be imposed.

The IBP Board of Governors (BOG) in its June 26, 2007 Resolution[18] adopted the IBP CBD's report but modified the penalty to suspension from the practice of law for a period of two years and a suspension of Atty. Examen's Notarial Commission for a period of two years.

Atty. Examen moved for reconsideration. In its Notice of Resolution, the IBP BOG denied the motion for reconsideration. It also modified the penalty imposed to suspension from the practice of law for a period of one year and disqualification from re-appointment as Notary Public for a period of two years.[19]

We agree with the IBP that Atty. Examen is administratively liable and hereby impose a modified penalty.

In disbarment cases the only issue that is to be decided by the Court is whether the member of the bar is fit to be allowed the privileges as such or not.[20] It is not therefore the proper venue for the determination of whether there had been a proper conveyance of real property nor is it the proper proceeding to take up whether witnesses' signatures were in fact forged.

NO PRESCRIPTION OF ACTIONS FOR
ACTS OF ERRING MEMBERS OF THE BAR

In *Frias v. Atty. Bautista-Lozada*,[21] the Court En Banc opined that there can be no prescription in bar discipline cases. It pointed out this has been the policy since 1967 with the Court's ruling in *Calo, Jr. v. Degamo*[22] and reiterated in *Heck v.*

Santos[23] where we had the chance to state:

> If the rule were otherwise, members of the bar would be emboldened to disregard the very oath they took as lawyers, prescinding from the fact that as long as no private complainant would immediately come forward, they stand a chance of being completely exonerated from whatever administrative liability they ought to answer for. It is the duty of this Court to protect the integrity of the practice of law as well as the administration of justice. *No matter how much time has elapsed from the time of the commission of the act complained of and the time of the institution of the complaint, erring members of the bench and bar cannot escape the disciplining arm of the Court.* This categorical pronouncement is aimed at unscrupulous members of the bench and bar, to deter them from committing acts which violate the Code of Professional Responsibility, the Code of Judicial Conduct, or the Lawyer's Oath. x x x
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> Thus, even the lapse of considerable time from the commission of the offending act to the institution of the administrative complaint will not erase the administrative culpability of a lawyer…. (Italics supplied)[24]

We therefore ruled in *Frias*, that Rule VIII, Section 1 of the Rules of Procedure of the IBP CBD was void and had no legal effect for being *ultra vires* and thus null and void.[25]

This ruling was reiterated in the more recent case of *Bengco v. Bernardo,*[26] where the Court stated that putting a prescriptive period on administrative cases involving members of the bar would only serve to embolden them to disregard the very oath they took as lawyers, prescinding from the fact that as long as no private complainant would immediately come forward, they stand a chance of being completely exonerated from whatever administrative liability they ought to answer for.

Atty. Examen's defense of prescription therefore is of no moment and deserves scant consideration.

THE SPANISH NOTARIAL LAW OF 1889 WAS REPEALED BY THE REVISED ADMINISTRATIVE CODE OF 1917

Prior to 1917, governing law for notaries public in the Philippines was the Spanish Notarial Law of 1889. However, the law governing Notarial Practice is changed with the passage of the January 3, 1916 Revised Administrative Code, which took effect in 1917. In 2004, the Revised Rules on Notarial Practice[27] was passed by the Supreme Court.

In *Kapunan, et al. v. Casilan and Court of Appeals,*[28] the Court had the opportunity to state that enactment of the Revised Administrative Code repealed the Spanish Notarial Law of 1889. Thus:

> It is petitioners' contention that Notary Public Mateo Canonoy, who was related to the parties in the donation within the fourth civil degree of affinity, was, under Articles 22 and 28 of the Spanish Notarial Law, incompetent and disqualified to authenticate the deed of donation executed by the Kapunan spouses in favor of their daughter Concepcion Kapunan Salcedo. Said deed of donation, according to petitioners, became a mere private instrument under Article 1223 of the old Civil Code, so that under the ruling laid down in the case of Barretto vs. Cabreza (33 Phil., 413), the donation was inefficacious. The appellate court, however, in the decision complained of held that the Spanish Notarial Law has been repealed with the enactment of Act No. 496. We find this ruling to be correct. In the case of Philippine Sugar Estate vs. Poizart (48 Phil., 536), cited in Vda. de Estuart vs. Garcia (Adm. Case No. 212, prom. February 15, 1957), this Court held that "**The old Spanish notarial law and system of conveyance was repealed in the Philippines and another and different notarial law and system became the law of the land with the enactment of Act No. 496**." [29] (Emphasis supplied)

In this case, the heirs of Alilano stated that Atty. Examen was prohibited to notarize the absolute deeds of sale since he was related by consanguinity within the fourth civil degree with the vendee, Ramon. The prohibition might have still applied had the applicable rule been the Spanish Notarial Law. However, following the Court's ruling in *Kapunan*, the law in force at the time of signing was the Revised Administrative Code, thus, the prohibition was removed. Atty. Examen was not incompetent to notarize the document even if one of the parties to the deed was a relative, his brother. As correctly observed by the IBP CBD:

> At the time of notarization, the prevailing law governing notarization was Sections 231-259, Chapter 11 of the Revised Administrative Code and there was no prohibition on a notary public from notarizing a document when one of the interested parties is related to the notary public within the fourth civil degree of consanguinity or second degree of affinity.[30]

Note must be taken that under 2004 Rules on Notarial Practice, Rule IV, Section 3(c), a notary public is disqualified among others to perform the notarial act if he is related by affinity or consanguinity to a principal within the fourth civil degree, to wit:

> SEC. 3. *Disqualifications.* – A notary public is disqualified from performing a notarial act if he:
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> x x x x
>
> (c) is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree.

That Atty. Examen was not incompetent to act as a notary public in the present case

does not mean that he can evade administrative liability under the CPR in conjunction with the provisions of the Notarial Law.

NOTARIES PUBLIC MUST PERFORM THEIR DUTIES DILIGENTLY AND WITH UTMOST CARE

In *Nunga v. Atty. Viray*,[31] this Court stated:

> …[N]otarization is **not an empty, meaningless, routinary act. It is invested with substantive public interest**, such that only those who are qualified or authorized may act as notaries public. The protection of that interest necessarily requires that those not qualified or authorized to act must be prevented from imposing upon the public, the courts, and the administrative offices in general. It must be underscored that the notarization by a notary public converts a private document into a public document making that document admissible in evidence without further proof of the authenticity thereof. 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.**[32] (Emphasis supplied; citations omitted)

Thus under the prevailing law at the time of notarization it was the duty of the notary public to comply with the requirements of the Notarial Law. This includes the duty under Chapter 11, Section 251 of the Revised Administrative Code:

> SEC. 251. *Requirement as to notation of payment of cedula [residence] tax.* – Every contract, deed, or other document acknowledged before a notary public shall have certified thereon that the parties thereto have presented their proper cedula [residence] certificates or are exempt from the cedula [residence] tax, and there shall be entered by the notary public as a part of such certification the number, place of issue, and date of each cedula [residence] certificate as aforesaid.

Under Chapter 11, Section 249 of the Revised Administrative Code provided a list of the grounds for disqualification:

> SEC. 249. *Grounds for revocation of commission.* – The following derelictions of duty on the part of a notary public shall, in the discretion of the proper judge of first instance, be sufficient ground for the revocation of his commission:
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> x x x x
>
> (f) The failure of the notary to make the proper notation regarding cedula certificates.