

FIRST DIVISION

[A.M. No. MTJ-99-1204 (Formerly OCA IPI No. 97-355-MTJ), July 28, 2008]

GERONIMO C. FUENTES, COMPLAINANT, VS. JUDGE ROMUALDO G. BUNO, PRESIDING JUDGE, MUNICIPAL CIRCUIT TRIAL COURT (MCTC), TALIBON-GETAFE, BOHOL, RESPONDENT.

DECISION

LEONARDO-DE CASTRO, J.:

This administrative case against Judge Romualdo G. Buno of the 4TH Municipal Circuit Trial Court (MCTC), Talibon-Getafe, Bohol, stemmed from a complaint filed by Geronimo C. Fuentes charging him with abuse of discretion and authority and graft and corruption.

In his complaint, Geronimo Fuentes alleged that he is one of the nine (9) heirs of Bernardo Fuentes, their father, who owned an agricultural land located at San Jose, Talibon, Bohol, and that respondent judge prepared and notarized an "Extra-Judicial Partition with Simultaneous Absolute Deed of Sale" of the said agricultural land, executed by complainant's mother Eulalia Credo Vda. de Fuentes, widow of Bernardo Fuentes, and Alejandro Fuentes, on his own behalf and on behalf of his brothers and sisters, including Geronimo Fuentes, as heirs/vendors and one Ma. Indira A. Auxtero, as vendee; that in the aforesaid document, the aforementioned agricultural land was sold, transferred/conveyed by the heirs/vendors to the vendee despite the fact that in his Special Power of Attorney (SPA), he merely appointed his brother, Alejandro Fuentes to mortgage said agricultural land but not to partition, much more to sell the same. According to complainant Geronimo Fuentes respondent judge notarized said document as *ex-officio* Notary Public, thereby abusing his discretion and authority as well as committing graft and corruption.

In his 1st Indorsement dated December 2, 1997, the then Court Administrator required the respondent to file his comment on the complaint within ten days. In compliance thereto respondent judge submitted his answer, which prayed for the dismissal of the complaint. He admitted that on December 24, 1996, while he was the Presiding Judge of the MCTC, Talibon-Getafe, stationed at Talibon, Bohol, he notarized an Extra-Judicial Partition of Real Property with Simultaneous Absolute Deed of Sale, described as Document No. 1158, Series of 1996. He explained his reasons and related the circumstances surrounding the case as follows:

1. That in the last week of the month of September, 1996, Mrs. Eulalia Vda. de Fuentes, Alejandro Fuentes together with Mrs. Helen A. Auxtero and Miss Ma. Indira Auxtero came to my house and requested me to make and prepare a document of sale between the Heirs of Bernardo Fuentes and Ma. Indira Auxtero as Vendee and upon verification of the papers they presented to the undersigned it

was found out that the land subject of the sale is a conjugal property of the deceased Bernardo Fuentes and Eulalia Credo *Vda.* de Fuentes. Being a conjugal property, the undersigned advised them to secure special power of attorney for the children of Bernardo Fuentes who are out of town.

2. On the 20th of December, 1996 Eulalia *Vda.* de Fuentes and Alejandro Fuentes came back to the house bringing a special power of attorney executed by Bonifacio Fuentes, Benjamin Fuentes, Urbano Fuentes, Samuela Fuentes, Rufina Fuentes and Bernardo Fuentes, Jr. carbon copy of the said Special Power of Attorney herewith attached as Annex "A" of the answer. All these special power of attorney empowers Alejandro Fuentes to execute a Deed of Sale of a parcel of land under Transfer Certificate of Title No. 24937 registered in the name of Bernardo Fuentes, their deceased father.

Since no special power of attorney was presented to the undersigned executed by PO2 Geronimo Fuentes, the undersigned refused to make their document of sale but Eulalia *Vda.* de Fuentes and Alejandro Fuentes earnestly requested the undersigned to make and prepare the necessary document saying that the special power of attorney of PO2 Geronimo Fuentes is coming and they are in urgent need of the money and because of their request, the undersigned prepared the document, and Extra-Judicial Partition of Real Property with Simultaneous Absolute Deed of Sale in favor of Ma. Indira Auxtero. That PO2 Geronimo Fuentes was included in the Deed of Sale because of the assurance of Alejandro Fuentes and Eulalia *Vda.* de Fuentes that the Special Power of Attorney of PO2 Geronimo Fuentes is coming.

3. That after the necessary document was prepared Eulalia *Vda.* de Fuentes and Alejandro Fuentes together with the vendee, Ma. Indira Auxtero signed the document on December 24, 1996 and on that day the said document was notarized by the undersigned.
4. That few days after the document was notarized, the undersigned learned that the Special Power of Attorney executed by PO2 Geronimo Fuentes empowered Alejandro Fuentes only to mortgage the property so Mrs. Eulalia *Vda.* de Fuentes, Alejandro Fuentes and the vendee, Ma. Indira Auxtero were called by the undersigned about the Special Power of Attorney executed by PO2 Geronimo Fuentes but Eulalia Fuentes and Alejandro Fuentes explained to the undersigned that they will be responsible for PO2 Geronimo Fuentes considering that the money was already spent by them and the vendee, Ma. Indira Auxtero also assured the undersigned that if PO2 Geronimo Fuentes insists to take back his share, she is willing and in fact she reserved the share of Geronimo Fuentes, hence, the transaction was completed.

5. The undersigned is making and notarizing the document outside of office hour cannot be said to have abuse his discretion and

authority since he was earnestly requested by Eulalia Vda. de Fuentes and Alejandro Fuentes to prepare and notarized the document with authority from his brothers and sisters and with respect to Eulalia Vda. de Fuentes, she is selling her share of the conjugal property which is one-half (1/2) of the entire parcel of land.

In the aforementioned answer, respondent judge contended that he could not be charged of graft and corruption, since in a municipality where a notary public is unavailable, a municipal judge is allowed to notarize documents or deeds as *ex-officio* notary public. To support his claim, he presented two certifications: one, from Atty. Azucena C. Macalolot, Clerk of Court VI of the RTC, Branch 52, Talibon, Bohol, who certified that according to their records and dockets, no petition for commission and/or renewal of commission as notary public was granted by the said court for calendar year 1996 and no appointment as notary public was issued for that year; and the other, from Mayor Juanario A. Item of Talibon, Bohol who also certified that no notary public was staying and residing in the Municipality of Talibon, Bohol during the year 1996.

Respondent judge contended that he did nothing wrong in preparing and notarizing the said document and that he acted in good faith and in obedience to the earnest plea of complainant's mother and siblings who were in urgent need of money, and with their assurance that complainant's SPA was forthcoming. In his attempt to explain his lack of malice, respondent judge narrated that after learning that the SPA only authorized his brother, Alejandro Fuentes to mortgage the property, he summoned the latter, his mother and the buyer of the land. Alejandro then assured him that they would be responsible to the complainant and that the buyer was willing to return complainant's share in the property. Respondent further questioned complainant's sincerity in filing the complaint because the latter allegedly wanted merely the respondent to persuade the buyer to return the whole property to him instead of his share only.

In its Memorandum Report, the OCA recommended that the present case be re-docketed as a regular administrative matter and that respondent be fined in the amount of P10,000.00 for unauthorized notarization of a private document, the same to be deducted from his retirement benefit. The said OCA recommendation was premised on the lack of authority of respondent judge to prepare and notarize the document in question, which had no direct relation to the performance of his official functions as a judge.

While Section 76 of Republic Act No. 296,^[1] as amended, and Section 242 of the Revised Administrative Code^[2] authorize MTC and MCTC judges to perform the functions of notaries public *ex officio*, the Court laid down the scope of said authority in SC Circular No. 1-90. Pertinently, the said Circular reads:

MTC and MCTC judges may act as notaries public *ex officio* in the notarization of documents connected only with the exercise of their official functions and duties [*Borre v. Mayo*, Adm. Matter No. 1765-CFI, October 17, 1980, 100 SCRA 314; *Pennera v. Dalocanog*, Adm. Matter No. 2113-MJ, April 22, 1981, 104 SCRA 193]. They may not, as notaries public *ex officio*, undertake the preparation and acknowledgment of private documents, contracts and other acts of conveyances which bear