

SECOND DIVISION

[A.C. NO. 5377, June 15, 2006]

**VICTOR LINGAN, COMPLAINANT, VS. ATTYS. ROMEO
CALUBAQUIB AND JIMMY P. BALIGA, RESPONDENTS.**

R E S O L U T I O N

CORONA, J.:

This is a complaint for disbarment^[1] filed by Victor Lingan against Attys. Romeo Calubaquib and Jimmy Baliga on November 16, 2000. Complainant alleged that respondents, both notaries public, falsified certain public documents.

The case has its roots in a complaint for annulment of title with damages^[2] filed by Isaac Villegas against complainant with the Regional Trial Court of Tuguegarao, Cagayan, docketed as Civil Case No. 5036. Respondent Calubaquib signed the verification and certification of non-forum shopping^[3] of the complaint as notary public and entered the same as Doc. No. 182; Page No. 38; Book No. CLXXII; Series of 1996. Complainant alleges that this document was falsified because according to the records of the National Archives, the document entered as Doc. No. 182; Page 38; Book No. CLXXII; Series of 1996 in respondent Calubaquib's notarial register was an affidavit of one Daniel Malayao.^[4]

The trial court decided Civil Case No. 5036 in favor of complainant^[5] and, as a result, the plaintiff there, through respondent Calubaquib, appealed it to the Court of Appeals, where it was docketed as CA-G.R. CV No. 55837.

On file with the records of this case is a special power of attorney^[6] dated September 10, 1996 executed by Isaac Villegas appointing respondent Calubaquib as his attorney-in-fact to "enter into a compromise agreement under such terms and conditions acceptable to him" which was notarized by respondent Baliga and entered as Doc. No. 548, Page No. 110; Book No. VIII; Series of 1996.^[7] Complainant alleged that this special power of attorney was also falsified because, according to respondent Baliga's notarial register, Doc. No. 548; Page No. 110; Book No. VIII; Series of 1996 pertains to an affidavit of loss of one Pedro Telan,^[8] dated August 26, 1996.

In addition, on January 2, 1995, respondent Baliga filed a petition for reappointment as notary public for and in Tuguegarao, Cagayan, which was notarized by respondent Calubaquib and entered in his notarial register as Doc. No. 31, Page No. 08, Book No. CXXX, Series of 1995. However, Notarial Register Book No. CXXX was for the year 1996 and entered there as Doc. No. 31, Page No. 08 was a cancellation of real estate mortgage dated January 11, 1996.

In his answer,^[9] respondent Baliga admitted the incorrectness of the entries and

simply attributed them to the inadvertence in good faith of his secretary to whom he had left the task of entering all his notarial documents.

Respondent Calubaquib's comment,^[10] however, contained a much lengthier account of the alleged events leading up to this case, the bulk of which was meant to cast complainant and his motives in a sinister light. In a nutshell, he made it appear that the reason for the complaint was that he (respondent) thwarted a fraudulent attempt by complainant to grab a parcel of land. He also stated that complainant had filed a case for falsification of documents against him with the Ombudsman but it was dismissed.

In the end, however, he (like his co-respondent Baliga) admitted to the mistaken entries and also ascribed the same to his "legal assistants." Similarly, by way of defense, he pointed out that the Notarial Law "provides that only contracts need to have their copies included in the notarial records. It does not require affidavits, verifications or subscriptions of petitions which are mere allegations of facts to be entered in the Notarial Register, despite widespread practice to the contrary."

Upon receipt of respondents' comments, we referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

In the course of the proceedings before the IBP, complainant alleged that respondent Calubaquib, with the help of respondent Baliga and several other persons, was trying to deprive him (complainant) of a parcel of land he had bought from Isaac Villegas' mother-in-law. According to complainant, respondent impersonated Villegas, who was in hiding due to several civil and criminal cases pending against him, by forging his signature in all documents and pleadings related to the civil case filed against him (complainant). He pointed to the incorrect notarial entries as proof of this falsification.

He presented in evidence a motion for withdrawal^[11] filed in the Court of Appeals, apparently by Villegas, disavowing any involvement in the case filed by respondent Calubaquib.

To further buttress his allegations of falsification, complainant pointed out that respondent Calubaquib seemed unable to physically produce Villegas. For example, when the Ombudsman ordered him to produce Villegas, respondent Calubaquib merely presented an affidavit^[12] supposedly executed by Villegas and sworn to before a "highly regarded [Department of Justice] official."

In the IBP's report and recommendation,^[13] dated December 7, 2001, Commissioner Rebecca Villanueva-Maala found respondents "liable for inexcusable negligence" and recommended the revocation of the commission of respondents Calubaquib and Baliga as notaries public for two years from receipt of the final decision. Commissioner Maala's report did not touch on complainant's allegations of forgery.

When the IBP resolved^[14] to adopt Commissioner Maala's report and recommendation, both complainant^[15] and respondent Baliga^[16] filed motions for reconsideration^[17] with this Court. Respondent Calubaquib opposed^[18]

complainant's motion for reconsideration.

In his motion for reconsideration, complainant assailed the penalty recommended by the IBP as grossly inadequate. Reiterating his allegation of forgery, he attached documents bearing Villegas' allegedly forged signature as well as documents with his supposed real signature^[19] for comparison.

In his opposition/comment, respondent Calubaquib refuted complainant's scathing accusations of fraud and abuse of his public position, and prayed for the dismissal of the complaint. In his motion for reconsideration, respondent Baliga decried the penalty imposed as disproportionate to the infraction he had committed.

The respondents having admitted responsibility for the notarial entries, the question now is whether these were the product of a mere mistake or evidence of larger scheme to defraud complainant whose allegations, if true, are serious enough to merit the disbarment of both respondents.

The missing link, as it were, between the admitted infractions of respondents and the nefarious machinations alleged by complainant is whether or not the latter was able to prove that Villegas' signature on the documents notarized by respondents was in fact forged.

Forgery cannot be presumed. It must be proved by clear, positive and convincing evidence. Mere allegation thereof is not evidence.^[20] One who alleges forgery has the burden of proving the same.^[21] We find that complainant failed to discharge this burden.

Complainant alleged mainly that Villegas could not possibly have signed the documents in question because he was a fugitive from justice, with "several civil and criminal cases pending against him." Assuming this allegation to be true, it proved nothing. The mere fact that Villegas was a fugitive from justice did not preclude the possibility that he might have secretly met with his lawyer for purposes of filing a suit. It would have been different had complainant presented evidence that Villegas was, at the time the questioned documents were executed, definitely somewhere else. But the bare argument that Villegas' being a fugitive rendered it impossible for him to sign some documents was simply too nebulous to inspire belief.

As additional evidence, complainant presented, as attachments to his motion for reconsideration, a number of documents purportedly bearing Villegas' real signature, the latest of which was the motion to withdraw allegedly filed by Villegas himself. However, the veracity of the last of those documents was vigorously contested by an affidavit also purportedly filed by Villegas. The two documents, both notarized, effectively cancelled each other out, absent some other credible proof.

It is true that there were dissimilarities between the signatures purportedly belonging to Villegas and his genuine signature on the *conforme* of the general power of attorney^[22] executed by his wife in favor of his mother-in-law. However, the fact of forgery cannot be presumed simply because there are dissimilarities between the standard and the questioned signatures.^[23] If complainant was so sure the signatures were fake, he should have submitted them for expert analysis to the National Bureau of Investigation, the Philippine National Police or some other

handwriting expert. The records are bereft of any such analysis or even any attempt to have the signatures examined.

Furthermore, all the documents on which the contested signature appeared were notarized. Notarial documents carry the presumption of regularity. To contradict them, the evidence presented must be clear, convincing and more than merely preponderant.^[24] Complainant's uncorroborated theory of an entire conspiracy of lawyers and government officials beholden to respondent Calubaquib did not constitute such evidence.

The forgery of Villegas' signature having remained unproven, we can only hold respondents liable for their omissions that have actually been proved.

In this respect, we find that the recommendations of IBP Commissioner Maala adopted by the IBP were supported by the evidence on record, particularly the documents themselves as well as the respondents' own admission.

In response, on the other hand, to respondents' feeble attempts to deflect the blame from themselves and onto their staff, we call their attention to Sections 245, 246 and 249(b) of the Notarial Law.^[25]

Sections 245 and 246 of the Notarial Law provided:

SEC. 245. Notarial Register. ¹ Every notary public shall keep a register to be known as the notarial register, wherein record shall be made of **all** his official acts as notary; and he shall supply a certified copy of such record, or any part thereof, to any person applying for it and paying the legal fees therefore. (emphasis supplied)

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SEC. 246. Matters to be entered therein. - The notary public shall enter in such register, in chronological order, the nature of each instrument executed, sworn to, or acknowledged before him, the person executing, swearing to, or acknowledging the instrument, the witnesses, if any, to the signature, the date of execution, oath, or acknowledgment of the instrument, the fees collected by him for his services as notary in connection therewith, and, when the instrument is a contract, he shall keep a correct copy thereof as part of his records, and shall likewise enter in said records a brief description of the substance thereof and shall give to each entry a consecutive number, beginning with number one in each calendar year. The notary shall give to each instrument executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument the page or pages of his register on which the same is recorded. No blank line shall be left between entries.

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In this connection, Section 249(b) stated:

SEC. 249. Grounds for revocation of commission.-The following derelictions of duty on the part of a notary public shall, in the discretion