

FIRST DIVISION

[A.M. No. MTJ-05-1576 (OCA-IPI No. 02-1323-MTJ), February 03, 2005]

VICTORINO SIMON, COMPLAINANT, VS. JUDGE ALIPIO M. ARAGON, MUNICIPAL CIRCUIT TRIAL COURT, SAN PABLO, ISABELA, RESPONDENT.

D E C I S I O N

YNARES-SANTIAGO, J.:

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. They may not, as Notaries Public *ex officio*, undertake the preparation and acknowledgment of private documents, contracts and other acts of conveyances which bear no direct relation to the performance of their functions as judges.^[1]

In a complaint^[2] dated October 18, 2002, Victorino Simon charged respondent, Judge Alipio M. Aragon, the presiding judge of the Municipal Circuit Trial Court of San Pablo and Cabagan, Isabela, with conduct unbecoming of an officer. Complainant alleged that the respondent judge was engaged in unauthorized notarial practice having undertaken the preparation and acknowledgment of private documents, contracts and other acts of conveyances which bore no direct relation to the performance of his functions as a member of the judiciary.

Simon further averred that, contrary to the requirements of Circular No. 1-90,^[3] the documents notarized by the respondent judge did not contain any certification attesting to the lack of any lawyer or notary public in San Pablo, Isabela. In support thereof, he attached several affidavits, deeds of absolute sale and other documents^[4] notarized by the respondent judge from 1986 to 2000.

In his comment,^[5] respondent judge admitted that he notarized the documents annexed to the complaint, but explained that he was constrained to do so as there was no lawyer or notary public in San Pablo, Isabela from 1983 to 1992. He clarified that, upon learning of Circular No. 1-90 sometime in 1993, he immediately and voluntarily desisted from further notarizing private documents. He further claimed that he never profited from his acts of notarization since the parties paid the notarial fees with the Office of the Municipal Treasurer of San Pablo, Isabela as evidenced by a certification^[6] issued by the Clerk of Court of the First Municipal Circuit Trial Court of San Pablo-Sta. Maria, San Pablo, Isabela.^[7]

Respondent judge maintained that he could not be considered as having violated Circular No. 1-90 during the period 1983 to February 25, 1990, since the said circular has not yet been promulgated. He argued that he could not be held liable for violating a circular that is not yet in existence.

On June 23, 2003, the complaint was referred to the Executive Judge of the Regional Trial Court of Cabagan, Isabela for investigation, report and recommendation.^[8]

In his report^[9] dated August 20, 2004, Judge Isaac R. De Alban of the Regional Trial Court of Cabagan, Isabela, Branch 22, found that the respondent judge indeed violated Circular No. 1-90 for having notarized private documents without the requisite certification that there is no notary public in his municipality or circuit. However, Judge Alban recommended that Circular No. 1-90 which was promulgated on February 26, 1990, should be applied prospectively or only to documents notarized by the respondent judge after February 26, 1990.

Judge Alban recommended that the respondent judge be meted a fine of One Thousand Pesos (P1,000.00) each for the seven (7) documents that he notarized after the effectivity of Circular No. 1-90.

On October 6, 2004, we referred^[10] this case to the Office of the Court Administrator for evaluation, report and recommendation. On January 3, 2005, the Office of the Court Administrator submitted its report-memorandum^[11] adopting the recommendation of the investigating judge.

After a review of the records of this case, we find the respondent judge guilty of engaging in unauthorized notarial work.

Circular No. 1-90 specifically delineates the power of Municipal Trial Court judges and Municipal Circuit Trial Court judges to act as notaries public *ex-officio*, thus:

Municipal Trial Court (MTC) and Municipal Circuit Trial Court (MCTC) judges are empowered to perform the function of Notaries Public *ex officio* under Section 76 of Republic Act No. 296, as amended [otherwise known as the Judiciary Act of 1948] and Section 242 of the Revised Administrative Code. But the Court hereby lays down the following qualifications on the scope of this power:

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 [*Borne v. Mayo*, Adm. Matter No. 1765-CFI, October 17, 1980. 100 SCRA 314; *Penera 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 no direct relation to the performance of their functions as judges. The 1989 Code of Judicial Conduct not only enjoins judges to regulate their extra-judicial activities in order to minimize the risk of conflict with their judicial duties, but also prohibits them from engaging in the private practice of law [Canon 5 and Rule 5.07].

However, the Court taking judicial notice of the fact that there are still municipalities which have neither lawyers nor notaries public, rules that MTC and MCTC judges assigned to municipalities or circuits with no lawyers or notaries public may, in the capacity as notaries public *ex officio*, perform any act within the competency of a regular notary public: *Provided*, That: [1] all notarial fees charged be for the account of the