

FIRST DIVISION

[A.M. No. MTJ-02-1428 (Formerly OCA IPI No. 01-1103-MTJ), April 09, 2003]

MAYOR ARFRAN L. QUIÑONES, COMPLAINANT, VS. JUDGE FRANCISCO H. LOPEZ JR., MUNICIPAL CIRCUIT TRIAL COURT, LUPON, DAVAO ORIENTAL, RESPONDENT.

R E S O L U T I O N

VITUG, J.:

A letter-complaint was filed by Arfran L. Quiñones, Municipal Mayor of Lupon, Davao Oriental, before the Office of the Ombudsman about an alleged conspiracy among Judge Francisco H. Lopez, Jr., Atty. Francisco G. Geronilla and Manuel B. Guiñez in the improvident filing of the latter's certificate of candidacy. The Office of the Ombudsman referred to this Court the charge against Judge Lopez pursuant to the ruling in *Maceda vs. Vasquez*^[1] to the effect that -

"Article VIII, Section 6 of the 1987 Constitution exclusively vests in the Supreme Court administrative supervision over all courts and court personnel, from the Presiding Justice of the Courts of Appeals down to the lowest municipal trial court clerk. By virtue of this power, it is only the Supreme Court that can oversee the judges' and court personnel's compliance with all laws, and take the proper administrative action against them if they commit any violation thereof. No other branch of government may intrude into this power, without running afoul of the doctrine of separation of powers.

"The Ombudsman cannot justify its investigation of petitioner on the powers granted to it by the Constitution, for such a justification not only runs counter to the specific mandate of the Constitution granting supervisory powers to the Supreme Court over all courts and their personnel, but likewise undermines the independence of the judiciary."^[2]

Hence, now before the Court is the instant administrative case against Judge Lopez.

Quiñones averred in his complaint that Manuel B. Guiñez, a mayoralty candidate in Lupon, Davao Oriental, filed his certificate of candidacy on 28 February 2001. The certificate of candidacy showed that it was subscribed and sworn to before Judge Francisco H. Lopez, Jr., on even date in Lupon, Davao Oriental. Quiñones stated that Guiñez was, in fact, confined at the St. Luke's Medical Center in Manila from 20 February 2001 to 09 March 2001 that could not have made it possible for him to appear before respondent Judge on 28 February 2001.

In his comment on the complaint, Judge Lopez admitted that he notarized the certificate of candidacy of Guiñez in Lupon while the latter was in Manila, but that

before leaving for Manila, Guiñez, a prominent businessman in the place, made arrangements for the notarization of his pre-signed certificate of candidacy when presented to him on 28 February 2001 by the other candidates belonging to the political party of Guiñez. He claimed that he was familiar with the signature of Guiñez as he, in his capacity as *ex-officio* notary public, had been notarizing documents for Guiñez.

The Office of the Court Administrator (OCA), citing Supreme Court Circular No. 1-90, opined that respondent Judge should be held accountable for notarizing the certificate of candidacy of Guiñez in the latter's absence and, indeed, for notarizing the certificates of candidacy of Guiñez and his political party members, a matter beyond the scope of his authority as being an *ex-officio* notary public. The OCA recommended that respondent Judge should be made to pay a fine of Five Thousand (P5,000.00) Pesos and be warned that a repetition of the same or similar conduct in the future would be dealt with severely.

The Court adopts the findings and recommendation of the OCA.

Circular No. 1-90, dated 26 February 1990 is clear, and it provides:

"Municipal Trial Court (MTC) and Municipal Circuit Trial Court (MCTC) judges are empowered to perform the functions 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 [Borre vs. Moya, Adm. Matter No. 1765-CFI, October 17, 1980, 100 SCRA 314; Penera vs. 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 Government and turned over to the municipal treasurer (Lapena, Jr. vs. Marcos, Adm. Matter 1969-MJ, June 29, 1982, 114 SCRA 572); and, (2) certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit."