

FIRST DIVISION

[A.C. No. 9512, February 05, 2018]

ROBERTO P. MABINI, COMPLAINANT, VS. ATTY. VITTO A. KINTANAR, RESPONDENT.

DECISION

DEL CASTILLO, J.:

Before the Court is an administrative Complaint^[1] filed by Roberto P. Mabini (complainant) against Atty. Vitto A. Kintanar (respondent) for misconduct on the sole ground that he notarized a document executed by his wife, Evangeline C. Kintanar (Evangeline).

Factual Antecedents

In his Position Paper,^[2] complainant stated that sometime in November 2003, Regina Alamares (Regina) approached him and his wife, Mercedes M. Mabini (Mercedes), to sell her 3,317 square meter realty located in Daraga, Albay. Said property was identified as Lot No. 1959, and covered by Original Certificate of Title (OCT) No. 251 (1904). Regina made known to complainant and Mercedes that said title was lost but its duplicate certificate may be secured from the Register of Deeds. (RD) Complainant and Mercedes nonetheless bought the property. Later, complainant filed a petition for issuance of second owners duplicate copy of OCT 251 (1904), which the Regional Trial Court (RTC) granted. On March 2, 2005, the RD of Albay issued Transfer Certificate of Title No. T-133716 covering the property in the names of complainant and Mercedes over the property.

Complainant further averred that, in March 2012, however, respondent's wife, Evangeline, filed a complaint against him (complainant), among other persons, for reconveyance, annulment of title, damages with prayer for preliminary injunction or restraining order before the RTC of Legaspi City. Attached to said complaint was an Affidavit of Lost Owner's Duplicate Copy of Title^[3] executed by Evangeline and notarized by respondent on April 25, 2002, and registered in his notarial book under Doc. No. 172, Page No. 35; Book No. 33, Series of 2002.

According to complainant, respondent knew that he (respondent) was not authorized to notarize a document of his wife, or any of his relative within the fourth civil degree, whether by affinity or consanguinity; thus, for having done so, respondent committed misconduct as a lawyer/Notary Public.

For his part, respondent countered that the subject Affidavit purportedly executed by his wife appeared to have been notarized on April 25, 2002; as such, it was governed by Revised Administrative Code of 1917, which did not prohibit a Notary Public from notarizing a document executed by one's spouse. He likewise stated that, granting for argument's sake that he indeed notarized said Affidavit, he did not

violate the law as the document involved was a mere affidavit, not a bilateral document or contract.^[4]

Because of his demise on July 24, 2013, complainant's spouse, Mercedes, substituted him as complainant in the case.^[5] On October 26, 2013, Mercedes died. Her and complainant's children^[6] substituted her in the case.^[7]

Report and Recommendation of the IBP Investigating Commissioner

On August 25, 2015, Commissioner Almira A. Abella-Orfanel (Investigating Commissioner) found respondent guilty of misconduct and recommended his suspension. from the practice of law for six months.^[8] She opined that relatives by affinity are relatives by virtue of marriage. She stressed that "[i]f the law prohibits notarization of acts done by relative by affinity, it is but logical that the law also prohibit[s] the notarization of the root cause of such relationship, the spouse, Without the spouse, said prohibition will not exist."^[9] She added that since the law treats spouses as one upon their marriage, it follows that the notarization of the spouse's act is disallowed considering that a person cannot notarize his or her own act.

Notice of Resolution of the IBP Board of Governors (IBP-BOG)

In its Resolution No. XXII-2015-98, the IBP-BOG resolved to modify the recommendation of the Investigating Commissioner in that respondent was imposed a stiffer penalty of six months' suspension from the practice of law; immediate revocation of his commission as Notary Public; and, a two-year disqualification as Notary Public.

Issue

Whether respondent committed misconduct by notarizing his wife's affidavit of loss in 2002.

Our Ruling

It is a truism that the duties performed by a Notary Public are *not* just plain ministerial acts. They are so impressed with public interest and dictated by public policy. Such is the case since notarization makes a private document into a public one and as a public document, it enjoys full credit on its face.^[10] However, a lawyer cannot be held liable for a violation of his duties as Notary Public when the law in effect at the time of his complained act does not provide any prohibition to the same, as in the case at bench.

In *Heirs of Pedro Alilano v. Atty. Examen*,^[11] the Court explicitly decreed that the Spanish Notarial Law of 1889 was repealed by the 1917 Revised Administrative Code. It added that it was only in 2004 that the Court passed the Revised Rules on Notarial Practice, to wit:

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