

FIRST DIVISION

[A.C. No. 9676, April 02, 2018]

IN RE:DECISION DATED SEPTEMBER 26, 2012 IN OMB-M-A-10-023-A, ETC.AGAINST ATTY.ROBELITO * B. DIUYAN

DEL CASTILLO, J.:

The Office of the Ombudsman (Mindanao) furnished the Court a copy of its September 26, 2012 Decision^[1] in Case No. OMB-M-A-10-023-A (Andrea M. Camilo v. Raul C. Brion, Agrarian Reform Program Technologist (SG-10), Municipal Agrarian Reform Office, Mati, Davao Oriental). In the said Decision, the Office of the Ombudsman noted, viz.:

On a final note, this Office finds it unsettling that the Deed of Partition submitted before the DAR was notarized by Atty. Robellito B. Diuyan on 23 July 2003, when one of the signatories therein, Alejandro F. Camilo, had earlier died on 23 August 2001. On this matter, let a copy of this Decision be furnished the Supreme Court of the Philippines for its information and appropriate action.

In a Resolution^[2] dated July 24, 2013, this Court treated the September 26, 2012 Decision in OMB-M-A-10-023-A and the Deed of Partition as an administrative complaint against respondent Atty. Robelito B. Diuyan and required the latter to file a comment thereon.^[3]

In a letter^[4] dated October 30, 2013, and by way of comment, respondent admitted notarizing the Deed of Partition in his capacity as District Public Attorney of the Public Attorney's Office in Mati City and all of Davao Oriental. He claimed that:

[The] signature as Notary Public in that [July 23, 2003] Deed of Partition subject matter of the complaint was indeed mine. I was still connected with the Public Attorney's Office as District Public Attorney at that time. I retired on April 20, 2008. My function [included] the execution and/or notarization of a document x x x.

In the case at bar, eight (8) persons appeared before me with the document deed of partition prepared by them subject matter of the complaint. I asked them one by one if the document is true and correct [and] with their Community Tax Certificates, they answered me in the affirmative and after being satisfied with their answer I notarized the document for free as they are considered as indigents. Of course, they signed it one by one in front of me.^[5]

In a Resolution^[6] dated February 3, 2014, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

A mandatory conference was set on May 29, 2014^[7] in Pasig City; however, respondent was unable to attend the same since he had not fully recovered from a debilitating stroke that he suffered in 2012; he cannot stand or walk unassisted; has difficulty speaking; and only relies on his meager monthly pension of P12,000.00. Thus, in an Order^[8] dated May 29, 2014, the mandatory conference was terminated and respondent was required to submit his Position Paper.

By way of explanation, respondent narrated in his Position Paper^[9] that:

x x x I have nothing to do with present [charge]. [A]s public officer[,], I [enjoy] the presumption of good faith and regularity in [the discharge] of my function as Chief Public Attorney in Mati and all in Davao Oriental x x x; there is no showing that I have committed any wrong since x x x becoming a lawyer and member of x x x the [I]ntegrated Bar of the Philippines, as well as [during my] 22 years of x x x service in [the Public Attorney's Office] and in my private life x x x.

With regard to the deed of partition x x x there is no showing that it was done with irregularity x x x.

On July 23, 2003 the parties in the document appeared and requested to have their document notarized for free[. A]s Public Attorney I am bound to do so [since the affiants were indigents] I x x x then read the said document and asked them if this is true and [they] answered in the positive. Then having been satisfied of their answer I let them [sign] one by one in front of me after which I notarized the same for free. [The] parties [were] personally present and acknowledged that they [were the] same parties to the document and [they showed] to me their respective CTC.^[10]

In a Report and Recommendation^[11] dated September 24, 2014, the IBP--Commission on Bar Discipline (CBD) found respondent guilty of violating the 2004 Rules on Notarial Practice. While it found no deceit or malice on the part of the respondent, and even considered the fact that respondent was a former public official with no previous record of misconduct, as well as the fact that the affiants in the subject Deed of Partition were farmers who did not have any IDs and only had Community Tax Certificates (CTCs) to present and prove their identities, the IBP-CBD nonetheless found him grossly negligent in the performance of his functions.

The IBP-CBD thus recommended as follows:

WHEREFORE, PREMISES CONSIDERED, the undersigned finds respondent guilty of breach of the 2004 Rules on Notarial Practice and accordingly, recommends revocation of his notarial commission, if any, for one (1) year, effective immediately. He is WARNED that a repetition of the same or similar acts in the future shall be dealt with more severely.^[12]

In a Resolution^[13] dated December 14, 2014, the IBP-Board of Governors (BOG) adopted the IBP-CBD's Report and Recommendation but increased the recommended penalty, to wit:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding Respondent [guilty] for violation of the 2004 Rules on Notarial Practice, Atty. Robellito R. Diuyan's notarial commission if presently commissioned is immediately REVOKED. Further, he is DISQUALIFIED from being commissioned for two (2) years and SUSPENDED from the practice of law for six (6) months.

[14]

The case is now before us for final disposition.

Issue

Whether respondent should he held administratively liable for notarizing a Deed of Partition on the basis of the affiants' CTCs.

Our Ruling

This Court finds nothing. irregular with respondent's act of notarizing the Deed of Partition on July 23, 2003 on the basis of the affiants' CTCs. The law applicable at the time of the notarization only required the presentation of the CTCs.

In *Mabini v. Atty. Kintanar*,^[15] this Court dismissed the administrative complaint filed against the lawyer therein because the lawyer complied with the notarial law extant at the time of notarizing the contested document, to wit:

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. However, a lawyer cannot be held liable for a violation 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. (Emphasis supplied; citation omitted)

Similarly, respondent notarized the Deed of Partition on July 23, 2003, or *prior* to the effectivity of the 2004 Rules on Notarial Practice,^[16] of which he is being held accountable by the IBP. However, when the Deed was notarized on July 23, 2003, the applicable law was the notarial law under Title IV, Chapter 11, Article VII of the Revised Administrative Code,^[17] Section 251 of which states:

SECTION 251. *Requirement as to notation of payment of (cedula) residence tax.* - Every contract, deed, or other document acknowledged before a notary public shall have certified thereon that the parties thereto have presented their proper (cedula) residence certificates or are exempt from the (cedula) residence tax, and there shall be entered by the notary public as a part of such certification the number, place of issue, and date of each (cedula) residence certificate as aforesaid.

In addition, Commonwealth Act (CA) No. 465^[18] also reiterated the need to present a residence certificate when acknowledging documents before a notary public, *viz.:*