

FIRST DIVISION

[A.C. No. 7072, July 27, 2016]

**VIRGILIO D. MAGAWAY AND CESARIO M. MAGAWAY,
COMPLAINANTS, VS. ATTY. MARIANO A. AVECILLA,
RESPONDENT.**

D E C I S I O N

BERSAMIN, J.:

The complainants hereby seek the disbarment of the respondent for his violation of the Lawyer's Oath, the duties of attorneys under Section 20, Rule 138 of the *Rules of Court*, the rules on notarial practice, and the *Code of Professional Responsibility*.

They aver in their affidavit-complaint dated January 2006 the following:^[1]

That the OCT P-2419 with a total land area of 10.5 hectares has been mortgaged (Sale with the right to repurchase) by the late Gavino Magaoay to the late Elena Gongon in the amount of Three Thousand Nine hundred (P3,900.00) pesos on July 10, 1959 and the late Gavino Magaoay was not able to redeemed (sic) the land because he died on December 3, 1963 prior to the date of redemption;

That we have the right of ownership by virtue of right of her[e]ditary succession from the original patent holder, [the] late Gavino Magaway who is the registered owner of OCT P[-]2419 which was fraudulently reconstituted and fraudulently sold by virtue of the falsified deed of sale fictitiously executed by [the] late Elena Gongon, falsified request for issuance of separate titles fictitiously executed by the late Gavino Magaoay and falsified affidavit of non-tenancy fictitiously executed by the late Elena Gongon;

That OCT P-2419 whom Gavino Magaoay is the registered owner and the mortgagor was never consolidated in the name of Elena Gongon, the mortgagee;

That it was Attorney Mariano A. AVECILLA who duly prepared, notarized and manipulated the Falsified Deed of Sale executed by Elena Gongon dated December 7, 1993 with her fictitious Residence Certificate Nr.927294 which was issued on February 7, 1995 at Roxas, Isabela and Affidavit of non-tenancy which was fictitiously executed by the late Elena Gongon in favor of Angelito Ramiscal Sr. et al where Transfer Certificate Titles: T-238312, T-238313, T-238314 and T-238315 were derived therein and all tainted with irregularities;

That in consideration of the amount of Thirty Thousand (Php.30,000.00) pesos whom Attorney Mariano A. AVECILLA and his wife Loreta had accepted from Angelito Ramiscal Sr. as a package deal in the preparation

of the Falsified Deed of Sale dated December 7, 1993 and other above mentioned documents that are instrumental in the anomalous transfer of land Title in favor of the Ramiscals' (transcript of stenographic notes, RTC Branch 23, Roxas, Isabela dated June 11, 2003).

That Elena Gongon could not have thumb marked the Deed of Sale and affidavit of non-tenancy dated December 7, 1993 which was notarized by Atty. Mariano A. Avecilla because Elena Gongon had already died on May 11, 1966 and already dead for twenty seven (27) years at the date of the instruments;

That Gavino Magaoay could not have signed the request for issuance of separate titles dated April 3, 1995 and Public Land Survey Plan PSD 02-053024 dated March 1, 1995 in favor of the Ramiscals because he was unschooled and he died on December 3, 1963 so that he was already dead for thirty (30) years at the date of the instruments which was also used in the falsification and unlawful transfer of the aforementioned Transfer Certificate Titles which was manipulated by Attorney Avecilla and his wife Loreta in favor of the Ramiscals;

That Attorney Mariano A. Avecilla of Roxas, Isabela has committed serious damages to us, because we are deprived of our rights for hereditary succession over the property in question due his unprofessional, illegal, anomalous conduct and incompetence in the practice of law particularly by circum[v]enting the laws in dealing with registered land through the preparation, notarization and signing deed of sale where the parties were already dead for long time ago (sic);

That due to the unlawful manipulations of Attorney Mariano A. Avecilla, land titles tainted with irregularities were issued in favor of Angelito Ramiscal Sr. et al thus he should be prohibited to practice Law because he is incompetent and a liability in the justice system of the Republic of the Philippines that are contributory to the loosing (sic) trust and confidence by the people among some (sic) undesirable lawyers and in the administration of Justice in this country;^[2]

It appears that the notarization of the documents (specifically, the deed of sale by attorney-in-fact by Eleanor Gongon Flores represented by her attorney-in-fact Efren Vera Cruz, Sr. on August 5, 1992 in favor of Angelito Ramiscal, Sr.; the deed of sale executed by Elena Gongon on December 7, 1993 in favor of Angelito Ramiscal, Sr.; and the affidavit of non-tenancy executed by Elena Gongon on December 7, 1993) had led to the filing of two criminal cases and a civil action. The first criminal case, for *estafa through falsification of a public document*, was filed by the complainants against Angelito Ramiscal, Sr. and the respondent in the Office of the Provincial Prosecutor of Isabela, but the case was ultimately dismissed on July 15, 1998. The second criminal case, also for *falsification of a public document*, was initiated by Eleanor Gongon Flores against the Ramiscals, the respondent, and the latter's wife, Loreta Avecilla. The case was also dismissed on October 5, 2000. The civil action seeking the declaration of nullity of fraudulently reconstituted original certificate of title and all the transfer certificates of title derived therefrom, and declaration of nullity of instruments registered affecting them was brought on July 28, 1997 by the complainants as the heirs of the late Gavino Magaoay against the Ramiscals (namely, Angelito, Sr. and his children Arlene, Ervin and Angelito, Jr.) and the

respondent in the Regional Trial Court (RTC) in Roxas, Isabela (Civil Case No. 23-551-97), which ultimately dismissed the complaint through a decision rendered on June 14, 2004.^[3] On appeal, however, the Court of Appeals, through its decision promulgated on August 29, 2008,^[4] reversed the dismissal of the case by the RTC.

After the Court referred this administrative complaint to the Integrated Bar of the Philippines (IBP) for investigation and recommendation, the IBP Board of Governors called the parties for mandatory conferences on July 30, 2007 and September 10, 2007.

In due time, IBP Investigating Commissioner Manuel M. Maramba rendered his report and recommendation dated October 24, 2008,^[5] whereby he found in favor of the complainants after giving more weight and credence to their assertions than to the denial and explanation of the respondent; and he recommended the respondent's suspension from the practice of law for one year, and the indefinite revocation of the respondent's notarial commission.

In its Resolution No. XVIII-2009-21 dated February 19 2009,^[6] the IBP Board of Governors adopted and approved the report and recommendation with modification of the recommended penalty to suspension from the practice of law for one year and disqualification from being commissioned as notary public for two years.

The respondent sought reconsideration of the resolution,^[7] but the IBP Board of Governors rejected his motion.^[8]

In the comment he submitted to the Court,^[9] the respondent contended that his notarization of the three documents had not prejudiced anyone considering that the late Gavino Magaway, the predecessor in interest of the complainants, did not repurchase the property by April 30, 1960, as stipulated between the late Gavino Magaway, as vendor a retro, and Eleanor Gongon Flores, as the vendee a retro; that the complainants, assuming them to be the true legal heirs of the late Gavino Magaway, who had died without issue, had nothing more to inherit; that the sale of the property had been first made on August 5, 1992 by Efren Vera Cruz, Sr. as the attorney-in-fact of Eleanor Gongon Flores; that on the same date, Vera Cruz, Sr. had sold the portion of the property with an area of 8.479 hectares to Angelito Ramiscal, Sr. and his family for P400,000.00; that on December 7, 1993, a woman in her mid-30's, claiming herself to be an employee of the Office of the Registry of Deeds of Isabela, had accompanied an elderly woman to the respondent's law office to request him to notarize the ready-made deed of sale the elderly woman had brought with her; that he had notarized the document out of pity and kindness for the elderly woman, who had affixed her thumbprint on the document; and that the elderly woman turned out to be an impostor.

Ruling of the Court

The findings and recommendations of the IBP Board of Governors, being supported by the records, are adopted.

The function of a notary public is, among others, to guard against any illegal or immoral arrangements in the execution of public documents.^[10] In this case, the respondent's affixing of his notarial seal on the documents and his signature on the notarial acknowledgments transformed the deeds of sale from private into public