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FIRST DIVISION

[A.C. No. 5281, February 12, 2008]

MANUEL L. LEE, Complainant, vs. ATTY. REGINO B. TAMBAGO, Respondent.

R E S O L U T I O N

CORONA, J.:

In a letter-complaint dated April 10, 2000, complainant Manuel L. Lee charged respondent Atty. Regino B. Tambago with violation of the Notarial Law and the ethics of the legal profession for notarizing a spurious last will and testament.

In his complaint, complainant averred that his father, the decedent Vicente Lee, Sr., never executed the contested will. Furthermore, the spurious will contained the forged signatures of Cayetano Noynay and Loreto Grajo, the purported witnesses to its execution.

In the said will, the decedent supposedly bequeathed his entire estate to his wife Lim Hock Lee, save for a parcel of land which he devised to Vicente Lee, Jr. and Elena Lee, half-siblings of complainant.

The will was purportedly executed and acknowledged before respondent on June 30, 1965.[1] Complainant, however, pointed out that the residence certificate[2] of the testator noted in the acknowledgment of the will was dated January 5, 1962.[3] Furthermore, the signature of the testator was not the same as his signature as donor in a deed of donation[4] (containing his purported genuine signature). Complainant averred that the signatures of his deceased father in the will and in the deed of donation were "in any way (sic) entirely and diametrically opposed from (sic) one another in all angle[s]."[5]

Complainant also questioned the absence of notation of the residence certificates of the purported witnesses Noynay and Grajo. He alleged that their signatures had likewise been forged and merely copied from their respective voters' affidavits.

Complainant further asserted that no copy of such purported will was on file in the archives division of the Records Management and Archives Office of the National Commission for Culture and the Arts (NCCA). In this connection, the certification of the chief of the archives division dated September 19, 1999 stated:

> Doc. 14, Page No. 4, Book No. 1, Series of 1965 refers to an AFFIDAVIT executed by BARTOLOME RAMIREZ on June 30, 1965 and is available in this Office['s] files.[6]

Respondent in his comment dated July 6, 2001 claimed that the complaint against him contained false allegations: (1) that complainant was a son of the decedent

Vicente Lee, Sr. and (2) that the will in question was fake and spurious. He alleged that complainant was "not a legitimate son of Vicente Lee, Sr. and the last will and testament was validly executed and actually notarized by respondent per affidavit[7] of Gloria Nebato, common-law wife of Vicente Lee, Sr. and corroborated by the joint affidavit[8] of the children of Vicente Lee, Sr., namely Elena N. Lee and Vicente N. Lee, Jr. xxx."[9]

Respondent further stated that the complaint was filed simply to harass him because the criminal case filed by complainant against him in the Office of the Ombudsman "did not prosper."

Respondent did not dispute complainant's contention that no copy of the will was on file in the archives division of the NCCA. He claimed that no copy of the contested will could be found there because none was filed.

Lastly, respondent pointed out that complainant had no valid cause of action against him as he (complainant) did not first file an action for the declaration of nullity of the will and demand his share in the inheritance.

In a resolution dated October 17, 2001, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[10]

In his report, the investigating commissioner found respondent guilty of violation of pertinent provisions of the old Notarial Law as found in the Revised Administrative Code. The violation constituted an infringement of legal ethics, particularly Canon 1[11] and Rule 1.01[12] of the Code of Professional Responsibility (CPR).[13] Thus, the investigating commissioner of the IBP Commission on Bar Discipline recommended the suspension of respondent for a period of three months.

The IBP Board of Governors, in its Resolution No. XVII-2006-285 dated May 26, 2006, resolved:

> [T]o ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's failure to comply with the laws in the discharge of his function as a notary public, Atty. Regino B. Tambago is hereby suspended from the practice of law for one year and Respondent's notarial commission is **Revoked and Disqualified** from reappointment as Notary Public for two (2) years.[14]

We affirm with modification.

A will is an act whereby a person is permitted, with the formalities prescribed by law, to control to a certain degree the disposition of his estate, to take effect after his death.[15] A will may either be notarial or holographic.

The law provides for certain formalities that must be followed in the execution of

wills. The object of solemnities surrounding the execution of wills is to close the door on bad faith and fraud, to avoid substitution of wills and testaments and to guarantee their truth and authenticity.[16]

A notarial will, as the contested will in this case, is required by law to be subscribed at the end thereof by the testator himself. In addition, it should be attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.[17]

The will in question was attested by only two witnesses, Noynay and Grajo. On this circumstance alone, the will must be considered void.[18] This is in consonance with the rule that acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.

The Civil Code likewise requires that a will must be acknowledged before a notary public by the testator and the witnesses.[19] The importance of this requirement is highlighted by the fact that it was segregated from the other requirements under Article 805 and embodied in a distinct and separate provision.[20]

An acknowledgment is the act of one who has executed a deed in going before some competent officer or court and declaring it to be his act or deed. It involves an extra step undertaken whereby the signatory actually declares to the notary public that the same is his or her own free act and deed.[21] The acknowledgment in a notarial will has a two-fold purpose: (1) to safeguard the testator's wishes long after his demise and (2) to assure that his estate is administered in the manner that he intends it to be done.

A cursory examination of the acknowledgment of the will in question shows that this particular requirement was neither strictly nor substantially complied with. For one, there was the conspicuous absence of a notation of the residence certificates of the notarial witnesses Noynay and Grajo in the acknowledgment. Similarly, the notation of the testator's old residence certificate in the same acknowledgment was a clear breach of the law. These omissions by respondent invalidated the will.

As the acknowledging officer of the contested will, respondent was required to faithfully observe the formalities of a will and those of notarization. As we held in *Santiago v. Rafanan*:[22]

> The Notarial Law is explicit on the obligations and duties of notaries public. They are required to certify that the party to every document acknowledged before him had presented the proper residence certificate (or exemption from the residence tax); and to enter its number, place of issue and date as part of such certification.

These formalities are mandatory and cannot be disregarded, considering the degree of importance and evidentiary weight attached to notarized documents.[23] A notary public, especially a lawyer,[24] is bound to strictly observe these elementary requirements.

The Notarial Law then in force required the exhibition of the residence certificate upon notarization of a document or instrument:

> 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 certificate or are exempt from the [*cedula*] residence tax, and there shall be entered by the notary public as a part of such certificate the number, place of issue, and date of each [*cedula*] residence certificate as aforesaid.[25]

The importance of such act was further reiterated by Section 6 of the Residence Tax Act[26] which stated:

> When a person liable to the taxes prescribed in this Act acknowledges any document before a notary public xxx it shall be the duty of such person xxx with whom such transaction is had or business done, to require the exhibition of the residence certificate showing payment of the residence taxes by such person xxx.

In the issuance of a residence certificate, the law seeks to establish the true and correct identity of the person to whom it is issued, as well as the payment of residence taxes for the current year. By having allowed decedent to exhibit an expired residence certificate, respondent failed to comply with the requirements of both the old Notarial Law and the Residence Tax Act. As much could be said of his failure to demand the exhibition of the residence certificates of Noynay and Grajo.

On the issue of whether respondent was under the legal obligation to furnish a copy of the notarized will to the archives division, Article 806 provides:

> Art. 806. Every will must be acknowledged before a notary public by the testator and the witness. **The notary public shall not be required to retain a copy of the will, or file another with the office of the Clerk of Court.** (emphasis supplied)

Respondent's failure, inadvertent or not, to file in the archives division a copy of the notarized will was therefore not a cause for disciplinary action.

Nevertheless, respondent should be faulted for having failed to make the necessary entries pertaining to the will in his notarial register. The old Notarial Law required the entry of the following matters in the notarial register, in chronological order:

1. nature of each instrument executed, sworn to, or acknowledged before him;
2. person executing, swearing to, or acknowledging the instrument;
3. witnesses, if any, to the signature;
4. date of execution, oath, or acknowledgment of the instrument;
5. fees collected by him for his services as notary;
6. give each entry a consecutive number; and
7. if the instrument is a contract, a brief description of the substance of the instrument.[27]

In an effort to prove that he had complied with the abovementioned rule, respondent contended that he had crossed out a prior entry and entered instead the will of the decedent. As proof, he presented a photocopy of his notarial register. To reinforce his claim, he presented a photocopy of a certification[28] stating that the archives division had no copy of the affidavit of Bartolome Ramirez.