

## **FIRST DIVISION**

**[ A.M. No. MTJ-99-1239 (formerly: A.M. OCA IPI No. 97-277-MTJ), July 29, 2005 ]**

**VICENTE M. BATIC, COMPLAINANT, VS. JUDGE VICTORIO L. GALAPON, JR., MUNICIPAL TRIAL COURT OF DULAG, LEYTE, RESPONDENT.**

**[A.M. No. MTJ-05-1595 (formerly: A.M. No. OCA-IPI No. 98-496-MTJ)]**

**HORST FRANZ ELLERT, COMPLAINANT, VS. JUDGE VICTORIO L. GALAPON, JR., MUNICIPAL TRIAL COURT OF DULAG, LEYTE, RESPONDENT.**

**[A.M. No. MTJ-05-1596 (formerly: A.M. OCA-IPI No. 99-670-MTJ)]**

**HORST FRANZ ELLERT, COMPLAINANT, VS. JUDGE VICTORIO L. GALAPON, JR., MUNICIPAL TRIAL COURT OF DULAG, LEYTE, RESPONDENT.**

## **DECISION**

**AZCUNA, J.:**

This involves three administrative complaints filed against Judge Victorio L. Galapon, Jr., of the Municipal Trial Court of Dulag, Leyte.

In Administrative Matter No. MTJ-99-1239 (formerly A.M. No. OCA-IPI No. 97-277-MTJ), filed on April 7, 1997, complainant Vicente M. Batic, co-accused in Criminal Case No. 12305 (entitled *People of the Philippines v. Vicente Batic and Lualhati Ellert for Grave Coercion*) charged respondent judge with graft and corruption, grave abuse of authority, gross ignorance of the law, dishonesty and conduct prejudicial to the best interest of the service. He claims that respondent issued a warrant of arrest against him and his co-accused in the aforesaid case two days before the complaint was filed. As proof, he attached a warrant of arrest dated March 18, 1997 and a complaint dated March 20, 1997.

Batic also charged respondent with engaging in unauthorized notarial practice for notarizing a Deed of Absolute Sale between a certain Antonio Caamic and Lualhati V. Ellert on January 25, 1990.

In Administrative Matter No. MTJ-05-1595 (formerly A.M. No. OCA-IPI No. 98-496-MTJ), initiated on October 1, 1997 through a letter by complainant Horst Franz Ellert, a French national and husband of Lualhati Ellert, respondent judge was charged with having prepared and notarized one Deed of Sale in the name of

Lualhati Ellert, with the document describing the latter as "single." Complainant adds that a certain Attorney Custodio P. Cañete also notarized another Deed of Sale indicating Lualhati Ellert as "single," and that this Atty. Cañete, together with his wife and respondent judge are in connivance towards depriving him of his share in their conjugal properties.

In Administrative Matter No. MTJ-05-1596 (formerly A.M. No. OCA-IPI No. 99-670-MTJ), complainant Horst Franz Ellert again filed on January 11, 1999, this time in the form of an Affidavit, a complaint charging respondent with ignorance of the law, grave misconduct and gross negligence in the performance of duties for having prematurely issued and signed a warrant of arrest against his wife and Vicente Batic on March 18, 1997, before a complaint was actually and officially received on March 20, 1997.

Upon request by the Court Administrator dated May 26, 1997, Judge Galapon filed his Answer to the first case on June 18, 1997, which Answer he adopted as his Comment to the two other complaints. He also filed an Addendum to Answer and Manifestation dated December 23, 1999.

Respondent explains that on March 17, 1997, the complainants in the aforementioned criminal case brought their statements to him and swore to them before him. The following day, March 18, the police department of Dulag, Leyte, brought the complaint in the same criminal case to respondent together with the supporting affidavits. Complainants then swore to their complaint before him. Respondent decided to immediately conduct the preliminary examination because the witnesses resided in a barangay far from the town proper of Dulag and it would be expensive for them to come back on another date. After finding probable cause, he issued an Order on the same day for the issuance of the warrant of arrest for the two accused. However, it was already late in the afternoon so the draft Order and the warrant of arrest could no longer be typed. They were typed the next day.

On March 19, 1997, respondent went on leave of absence to attend the graduation of his daughter. On March 20, 1997, he signed the Order together with the warrant and since the draft order was prepared on March 18, 1997 both order and warrant of arrest were dated March 18, 1997. He then brought the records to the table of the clerk of court, Mr. Blandino Bautista, who stamped on all of them the current date. The date "March 20, 1997" marked on the criminal complaint thus only signifies the date when the records were received by the clerk of court from him.

Regarding his act of notarization, respondent claims that he did not prepare the document and that his participation was limited to its acknowledgment, for which the corresponding fee was collected by and paid to the clerk of court. He says that he was constrained to notarize the document because the only notary public in Dulag, Leyte was not in town and the vendor was compelled to go to him because the vendee was in a hurry. He adds that he at that time sincerely believed that when no notary public is available, the Municipal Trial Courts may act as *ex-officio* notary public, provided the fees shall be for the government. He finishes his argument by saying that now that there are two notaries public in his municipality, he has refrained from notarizing any deed.

Judge Galapon contends lastly that complainant Batic, a "media man," is using his influence to besmirch and destroy his good name, that Lualhati Ellert harbors a

vicious grudge against him because he dismissed a complaint she filed against her own brother, and that Horst Ellert has filed several harassment suits against him.

Respondent attached supporting affidavits to prove the merits of his case.

In Administrative Matter No. MTJ-99-1239, Court Administrator Alfredo L. Benipayo found in his Agenda Report dated September 23, 1999 that respondent's explanation regarding the disparity on the dates appearing in the documents comprising the record of Criminal Case No. 12305 was plausible and satisfactory. He said that the fact that the warrant of arrest was dated March 18, 1997 while the criminal complaint was filed on March 20, 1997, was an innocuous procedural lapse. The important thing was that the warrant of arrest was not issued or released for implementation before the filing of the complaint.

However, citing Circular No. 1-90, the Court Administrator found respondent to have exceeded his authority in acting as notary public *ex-officio* and notarizing the Deed of Absolute Sale because when he did so, there was a notary public in respondent's station at Dulag, Leyte in the person of Atty. Celerino Refuerzo. The fact that Atty. Refuerzo was temporarily out of town on January 25, 1990, the date he notarized the questioned Deed of Absolute Sale, did not make the situation fall under the exception contemplated in the Circular. Moreover, the notarized document contained no certification "attesting to the lack of any lawyer or notary public in such municipality or circuit" as required in proviso No. 2 of the exception.

Therefore, the Court Administrator recommended that the case be re-docketed as a regular Administrative Matter and that respondent be ordered to pay a fine of Three Thousand Pesos (P3,000) for unauthorized notarization of a private document, with a warning that commission of the same or similar acts in the future shall be dealt with more severely.

This matter was later consolidated by the Court on August 28, 2000 with Administrative Matter No. MTJ-05-1596 upon recommendation by Court Administrator Alfredo L. Benipayo, in his July 24, 2000 Agenda Report finding that the complaint of Mr. Ellert was the same as that of Mr. Batic regarding the issuance of the warrant of arrest. Then, on October 16, 2000, the Court resolved to refer the administrative cases to the Executive Judge of the Regional Trial Court of Tacloban City for investigation, report and recommendation.

In Administrative Matter No. MTJ-05-1595, the Officer-in-Charge of the Office of the Court Administrator Bernardo T. Ponferrada, in his May 11, 2000 Agenda Report, finding issues of fact, recommended that the case be referred to the Executive Judge of the Regional Trial Court of Tacloban City for investigation, report and recommendation. This was adopted by the Court in its June 26, 2000 resolution.

On March 18, 2004, Executive Judge Santos T. Gil of the Regional Trial Court of Tacloban City submitted his investigation report. He declined conducting an investigation regarding Administrative Matter No. MTJ-05-1596 because it was the same as Administrative Matter No. MTJ-00-1294 (formerly OCA-IPI-00859-MTJ) which was already resolved by the Court. He also did not conduct an investigation regarding Administrative Matter No. MTJ-99-1239 because the same had already been resolved by the Court Administrator on September 23, 1999.

However, regarding the notarization of the Deed of Sale between Antonio Caamic and Lualhati V. Ellert, Judge Gil noted that this was not excusable. Nevertheless, in light of the fact that on January 25, 1990 when the Deed was notarized, Circular No. 1-90 had not yet been issued,<sup>[1]</sup> and since at that time the prohibitions in law as to whether municipal judges can notarize documents were still unclear, Judge Gil said that Judge Galapon in good faith believed that he had the authority to notarize the document. Thus, he recommended that the case against respondent be dismissed.

Judge Gil also discussed the effects of respondent having stated in the Deed that Lualhati Ellert was "single," but this matter should be ventilated in the proper court.

On June 7, 2004, we referred the cases to the Office of the Court Administrator for its evaluation, report and recommendation.

On October 27, 2004, the Office of the Court Administrator submitted its Memorandum. It held that the complaints should be dismissed with respect to respondent's issuance of the warrant of arrest because the inconsistency of the dates in the warrant and criminal complaint are simply procedural lapses made in good faith. However, with regard to the notarization of a Deed of Absolute Sale, it disagreed with the findings and recommendation of Investigating Judge Gil that respondent judge should be exonerated. It reasoned that the rule on the power of the MTC and MCTC judges to act as notaries public *ex-officio* has been established even before the issuance of Circular No. 1-90 dated 26 February 1990. It cited the cases of *Borre v. Moya*,<sup>[2]</sup> and *Penera v. Dalocanog*,<sup>[3]</sup> wherein the Court ruled that judges are empowered to perform the functions of notaries public *ex-officio*, but such authority is limited to the notarization of only those documents connected with the exercise of their official functions. It added that this instance not being the first that respondent committed the infraction, having been found in A.M. No. MTJ-00-1294 (formerly OCA IPI No. 00-859-MTJ — Horst Franz Ellert vs. Judge Galapon, Jr., July 31, 2000) to have engaged in unauthorized notarial work, he should be fined the amount of Eleven Thousand Pesos (P11,000).

We agree in part with the recommendations of the OCA.

Section 2, Art. III, of the Constitution lays down the requirements for the issuance of a warrant of arrest, *i.e.*, a warrant of arrest shall issue only upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce.<sup>[4]</sup> In the case at hand, the question is not even whether these requisites were met. The question is whether or not Judge Galapon abused his authority when there appeared a discrepancy between the dates the complaint and the warrant of arrest were issued in the criminal case involving the complainants.

We believe that respondent judge has sufficiently explained why the warrant of arrest he issued is dated earlier than the complaint. As stressed in his Answer, and as supported by the affidavit of his clerk of court, he issued the order for the issuance of the warrant of arrest after conducting a preliminary examination and finding probable cause *only* after complainants therein swore to their complaint before him earlier in the same day. Thus, the complaint was actually received by the court on March 18, 1997, and then was put in the possession of the clerk of court on March 20, 1997. The date March 20, 1997 stamped on the complaint