

## THIRD DIVISION

[ A.C. NO. 3441, August 11, 2005 ]

**JUDGE GERVACIO A. LOPENA, PETITIONER, VS. ATTY. ARTEMIO P. CABATOS, RESPONDENT.**

### DECISION

**CARPIO-MORALES, J.:**

Atty. Artemio P. Cabatos (respondent) was administratively charged<sup>[1]</sup> by Judge Gervacio A. Lopena (complainant) of the Municipal Circuit Trial Court (MCTC) of Tagbilaran-Clarin, Bohol of SERIOUS BREACH OF PROFESSIONAL ETHICS and GRAVE MISCONDUCT allegedly committed as follows:

- 1) Respondent knowingly falsified a Deed of Donation<sup>[2]</sup> purportedly executed by one Crispina Panis by notarizing the same on June 24, 1981 when the donor had died on January 15, 1981, and
- 2) Respondent "showed a grave disrespect to the courts and the administration of justice" by holding, together with his followers, a parade/rally on September 21, 1984 around the principal streets of Tagbilaran City, directed against complainant who had convicted respondent's close relatives in three criminal cases and denied the applications for probation of two of the convicts.

Acting on this Court's Resolution of February 14, 1990,<sup>[3]</sup> respondent submitted his COMMENT, by letter of April 19, 1990,<sup>[4]</sup> claiming that he had been away from his place of birth, Panaytayon, Tubigon, Bohol since 1958, hence, when he notarized the questioned deed of donation, he "really did not recognize the person of Cristina Panis," but he was led by one Gregorio Ricafort to believe that "the old woman before him at the time was the said Crispina Panis."

Respondent informed that his notarization of the questioned document in fact resulted to his indictment in court for reckless imprudence resulting in falsification of public document, which case was pending trial.

As for the charge of having conducted a rally/parade, respondent claimed that the same was staged by PDP Laban and BAYAN of Bohol as a protest against complainant who showed bias in presiding over the trial of the criminal cases against members of the Cabatos family and "disregarding the evidence in convicting them."

By Comment/Reply<sup>[5]</sup> to respondent's COMMENT, complainant countered that one of the witnesses to the questioned document was respondent's father, Geronimo Cabatos,<sup>[6]</sup> a permanent resident of Panaytayon who knew as he was related by blood to Crispina Panis,<sup>[7]</sup> hence, it is incredible for respondent not to know of Panis'

death on January 15, 1981 or that "he did not know the person of . . . Panis [even if] he ha[d] been away from his place of birth since 1958."

This Court referred the case to the Integrated Bar of the Philippines (IBP) by Resolution of June 4, 1990.<sup>[8]</sup>

The *rollo* shows that complainant had been manifesting his zeal in pursuing the case, but until March 19, 2002 when a Commissioner of the IBP Commission on Bar Discipline issued a Notice of Hearing<sup>[9]</sup> directing the parties to appear at the IBP Building on April 19, 2002, the case appears to have in the interim remained dormant.

Due to the unavailability of complainant and the IBP Investigating Commissioner on the scheduled hearings on April 19, 2002<sup>[10]</sup> and June 7, 2002, respectively, they were reset to June 28, 2002.<sup>[11]</sup>

Before the June 28, 2002 scheduled hearing, complainant filed before the IBP a MANIFESTATION COUPLED WITH MOTION FOR JUDGMENT ON THE PLEADING<sup>[12]</sup> wherein he expressed "wonder . . . why it took the Committee on Bar Discipline of the IBP over ten (10) long years to set th[e] case for hearing."

In the same Manifestation *cum* Motion, complainant informed that his two witnesses, Aniceta P. Tarle, a daughter of the deceased Crispina Panis, and Ricafort (who, as reflected above, respondent claimed to have led him to believe that "the old woman" presented before him was Panis) had died.

Complainant further informed that he and respondent were principal sponsors at a wedding, hence, he had not pressed for the early investigation of the case.

Nonetheless, complainant prayed that the case be decided on the basis of the pleadings.

Respondent, whose comment on complainant's above-said Manifestation *cum* Motion was sought by the IBP by Order of June 28, 2002,<sup>[13]</sup> filed a Motion to Dismiss<sup>[14]</sup> manifesting that he was joining complainant's motion to have the case resolved on the basis of the pleadings, and informing that the criminal complaint lodged against him in connection with his notarization of the questioned document was dismissed, he having proved

- i) that when he notarized the subject Deed of Donation - one among six similar documents executed in favor of Barangay Panaytayon, Tubigon, Bohol, for purposes of a school site - someone represented to respondent as "Crispina Panis;"
- ii) that she turned [out] to be the daughter of Crispina Panis, and that she ha[d] been instructed by Gregorio Ricafor[t] who prepared the document to affix the same Crispina Panis in the document;
- iii) that the donation turned out to be the will and resolve of the heirs of Crispina Panis[.]

Respondent accordingly prayed for the dismissal of the case.

IBP Commissioner on Bar Discipline Victoria O. de los Reyes, to whom the case was reassigned, issued a Notice of Hearing<sup>[15]</sup> setting the case for hearing on October 10, 2002 but not one of the parties showed up. While the IBP received on October 4, 2002 complainant's Reiterative Manifestation dated September 30, 2002,<sup>[16]</sup> it resolved to deny the Motion for Judgment on the Pleadings, by Order of October 10, 2002<sup>[17]</sup> upon its finding of a need for complainant to substitute his charges.

The IBP later received on October 6, 2002 a REITERATIVE MANIFESTATION (RE: COMPLAINANT'S MOTION FOR JUDGMENT ON THE PLEADINGS)<sup>[18]</sup> alleging, among other things,

- b) that respondent never personally knew the late Crispina Panis nor his relationship to her, considering that from 1958 (when respondent set foot on secondary education) respondent left his native place and resided in a convent with a parish priest (now Msgr. Saturnino Felicitas) as an altar boy and convent helper, until respondent graduated from two (2) college courses;
- c) that, in fact, the fact of death of said Crispina Panis was known to respondent only when he became one of the accused in a complaint for "falsification of public document" filed with the MCTC of Tubigon-Clarín, Bohol[.]

The case was set anew for complainant to present evidence on November 11, 2002 during which, again, none of the parties appeared, drawing the Commission to consider the case submitted for resolution by Order of even date.<sup>[19]</sup>

Commissioner de los Reyes submitted her REPORT and RECOMMENDATION<sup>[20]</sup> the pertinent portion of which read:

x x x

In view of the failure of the complainant to substantiate his serious charges against the respondent, it is respectfully recommended that this charge for disbarment be dismissed. There is no question that the complainant waived his right to present his evidence despite the opportunity given him by this Commission and in effect deprived the respondent the right to confront him and his witnesses.

However, this Commission would like to point out that there is no issue that respondent Atty. Cabatos did not exercise that degree of diligence required of him as a Notary Public.

It has been held in the case entitled **Flores v. Chua**, 306 SCRA 465, that where the notary public is a lawyer, a graver responsibility is placed upon his shoulder by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any. And in the case **Nunga v. Viray**, 306 SCRA 487, the Honorable Court ruled that notaries public