

## SECOND DIVISION

[ **A.M. No. 02-1414-MTJ (Formerly OCA-IPI No. 99-817-MTJ), January 28, 2003** ]

**MARCELO E. GRAVELA, COMPLAINANT, VS. JUDGE OSMUNDO M. VILLANUEVA, MCTC-ESPERANZA, SULTAN KUDARAT, RESPONDENT.**

### RESOLUTION

#### **QUISUMBING, J.:**

Before us is the complaint-affidavit<sup>[1]</sup> dated July 12, 1999, filed by Marcelo Gravela, charging respondent Judge Osmundo M. Villanueva, Presiding Judge of the Municipal Circuit Trial Court (MCTC) of Esperanza, Sultan Kudarat, with falsification and neglect of duty.

In his affidavit, complainant alleged that he is the registered owner of a parcel of land covered by OCT No. V-19344, situated at Marquez, Esperanza, Sultan Kudarat, as evidenced by a Deed of Sale executed on September 21, 1991 by the Philippine National Bank in his favor, for a consideration of P13,500.00 and ratified on March 12, 1997 before Notary Public Henry G. Sambrano.<sup>[2]</sup>

Thereafter, complainant allegedly entered into an agreement with one Andrew Manganaan whom he authorized to secure a loan with any financial institution using the aforesaid land title as collateral. However, he was surprised to learn that on March 3, 1997, a Deed of Sale was executed covering the said parcel of land and the same Deed was notarized by the respondent. Allegedly, complainant was misrepresented by another person who pretended to be him and forged his signature.<sup>[3]</sup> He claims that respondent judge did not observe due diligence in the performance of his official functions as a judge and notary public ex-officio when he failed to ascertain the identity of the person appearing before him for the execution of the document.<sup>[4]</sup>

In his counter-affidavit,<sup>[5]</sup> respondent judge narrates that on March 3, 1997, several persons went to his office and requested him to prepare and notarize a Deed of Sale involving a parcel of land. He made the necessary inquiries about their personal circumstances and other matters related to the Deed of Sale. He then instructed his clerk to prepare the instrument and when this was done, he explained to the parties the nature and the consequence of their written acts in the dialects they were conversant with. He claims that since he did not personally know the vendor, he asked the vendor to produce any authentic document, *i.e.* residence certificate, the number of which appeared on the Deed of Sale, for identification purposes. He further states that it was only after satisfying himself that the persons before him were indeed the parties to the Deed of Sale, that he affixed his signature on the Deed.

Complainant originally filed the charges before the Office of the Ombudsman in Mindanao. In a resolution<sup>[6]</sup> dated January 27, 2000, the Deputy Ombudsman for Mindanao ruled that there is no probable cause to hold respondent liable for falsification in OMB-MIN-99-0575. He ratiocinated that at the time of the preparation and notarization of the questioned document, respondent judge was convinced that the person who appeared before him and subscribed to the document as the vendor was indeed Marcelo Gravela, the owner of the property being sold. He further noted that respondent judge asked the persons appearing before him to produce their residence certificates to satisfy himself that the persons before him were indeed the parties to the Deed of Sale. Only then did he affix his signature to the aforesaid document. Based on the foregoing, the Ombudsman dismissed the complaint.<sup>[7]</sup>

With regard to the accusation for neglect of duty in OMB-MIN-ADM-99-337, the Graft Investigation Officer of the Office of the Ombudsman for Mindanao, in an order<sup>[8]</sup> dated August 31, 1999, forwarded the administrative complaint to the Office of the Court Administrator (OCA) for proper action and disposition considering that the Supreme Court exercises administrative supervision over court employees. On November 24, 1999, the Court Administrator required respondent to file his comment to the complaint-affidavit.<sup>[9]</sup>

Attached to respondent's comment was the affidavit<sup>[10]</sup> of one Yanena D. Portillano, Clerk of Court of the 4th Municipal Circuit Trial Court of Bagumbayan. She declared that she prepares and types instruments or documents to be notarized by respondent judge as *ex-officio* notary public. She said she prepared the Deed of Sale in question. She attested that respondent judge indeed took pains in ascertaining the identity of the parties to the Deed of Sale and made sure that the individuals appearing before him were the same as those stated in the Deed.

Upon evaluation, the OCA opined that although respondent was not liable for neglect of duty, having found that he exercised the necessary diligence expected of a notary public by asking for the parties' residence certificates, he has nonetheless violated Supreme Court Circular No. 1-90, which sets forth the scope of the power of Municipal Trial Court Judges and Municipal Circuit Trial Court Judges to act as notaries public *ex officio*.

The OCA recommended that respondent judge be fined in the amount of P2,000.00 with a corresponding warning that repetition of the same or similar offense shall be dealt with more severely.

There is no denying that respondent judge indeed notarized the document in question. Pursuant to SC Circular No. 1-90, MTC and MCTC Judges are authorized to perform the functions of notaries public *ex officio*. But the Court lays down the following qualifications on the scope of this authority:

MTC and MCTC judges may act as notaries public *ex officio* in the notarization of documents connected only with the exercise of their official functions and duties [*Borne v. Mayo*, Adm. Matter No. 1765-CFI, October 17, 1980, 100 SCRA 314; *Penera v. Dalocanog*, Adm. Matter No. 2113-MJ, April 22, 1981, 104 SCRA 193.] They may not, as notaries public *ex officio*, undertake the preparation and acknowledgment of