

SECOND DIVISION

[A.C. No. 6139, November 11, 2003]

**DOMINADOR L. CABANILLA, COMPLAINANT, VS. ATTY. ANA LUZ
B. CRISTAL-TENORIO, RESPONDENT.**

D E C I S I O N

CALLEJO, SR., J.:

Dominador L. Cabanilla, married to Revelina Badua, then a 1st Lieutenant in the Signal Detachment of the Armed Forces of the Philippines, filed an application for a miscellaneous patent over a parcel of land with an area of 240 square meters located at No. 25th Street, 67-B West Rembo, Fort Bonifacio, Rizal. [1] He was allowed to construct a house on the said lot pending action on his application. [2]

When Revelina B. Cabanilla died intestate on December 6, 1986, she was survived by her husband, Dominador and their children, namely, Manuel, Jaime, Leticia, Virginia, and Marissa. [3]

In February 1988, Dominador sold his right over a 34-square-meter portion of the said house to his neighbor, Rodolfo Sabangan, for P20,000.00. Thereafter, Rodolfo brought an already-signed one-page Deed of Sale dated February 22, 1988 to Dominador for the latter's signature. [4] Dominador affixed his signature above his typewritten name. [5] When he reviewed the said deed, however, Dominador noticed that contrary to the agreement, it appeared that he was relinquishing his rights not only over the portion of the house thereon but also the lot where such portion of the house stood. Dominador, thus, made the following notation at the bottom of the said deed:

That the vendor is willing to sell his right over a portion of the house with an area of thirty-four (34) square meters with each (sic) improvement thereat. 2-20-88. [6]

Dominador also wrote on the left margin of the deed the words "Please change," and initialed the same. [7] Dominador then returned the deed to Rodolfo. A few days thereafter, Rodolfo gave Dominador a copy of the said deed. However, the deed was not revised as requested by the latter. [8] Moreover, appended to the deed as "page 2" thereof was an acknowledgment containing the names of the Cabanilla children, including Eddie Cabanilla, Johny Cabanilla, Raul Cabanilla, Diosdado Cabanilla, Ferdinand Cabanilla and David Cabanilla. It appeared in the acknowledgment that those listed therein were also vendors of the property. [9]

Dominador's application for a miscellaneous patent was granted. On March 16, 1994, the President of the Philippines issued Miscellaneous Patent No. 007602-94-2078 in favor of Dominador L. Cabanilla, who by then had already retired from the

military as a major. On September 5, 1995, Original Certificate of Title No. 2222 was issued over the property in the names of the Cabanilla spouses.^[10]

Barely a year thereafter, Dominador filed a civil complaint against Rodolfo for the annulment of the said deed of sale with the Regional Trial Court (RTC) of Makati City, docketed as Civil Case No. 95-844. However, the defendant Rodolfo Sabangan, a seaman, was on board an international sea-going vessel and could not be served with summons. His family engaged the services of respondent Atty. Ana Luz B. Cristal-Tenorio. The respondent filed on July 17, 1995, a motion for substituted service of summons.^[11] Nonetheless, the respondent prepared and filed an Answer to the Complaint for and in behalf of Rodolfo. ^[12]

On October 16, 1995, Dominador and Jaime, Raul, Manuel, David and Eddie, all surnamed Cabanilla, and Leticia C. Quirona, Marissa Cabanilla and Virginia C. Cruz executed a "Joint Affidavit of Complaint" for falsification of a document under Article 171 in relation to Article 172 of the Revised Penal Code against Rodolfo and the respondent with the Office of the City Prosecutor of Makati City, docketed as I.S. No. 95K-40216.^[13] In her Counter-Affidavit, the respondent alleged, *inter alia*, that the parties to the Deed of Sale appeared before her and acknowledged the authenticity of their signatures therein, and even showed their residence certificates which she entered in her notarial register; and that after finding that everything was in order, she proceeded to notarize the deed of sale which was prepared by the parties themselves. She also averred that she exercised due diligence in ascertaining if the signatures appearing in the deed of sale were authentic and genuine; that she was not a handwriting expert who could determine if the signatures appearing in the said document were forged or not; and that she acted in good faith when she notarized the deed.^[14]

On February 2, 1996, Assistant City Prosecutor Juan O. Bermejo, Jr. issued a Resolution dismissing the complaint in I.S. No. 95K-40216, but found probable cause for the filing of an Information for the said crime against Rodolfo. The Investigating Prosecutor stated that the respondent acted in good faith in notarizing the said deed.^[15] An Information was filed with the Metropolitan Trial Court of Manila, docketed as Criminal Case No. 237511 charging Rodolfo with falsification of a public document. A warrant was issued for his arrest.^[16]

Meanwhile, during the pre-trial in Civil Case No. 96-844 on January 3, 1997, Rodolfo failed to appear. The court issued an order declaring him as in default and authorizing Dominador to adduce his evidence *ex-parte* on January 13, 1997.^[17]

When the case was called for the reception of evidence *ex-parte* on the said date, the court discovered that it had not yet acquired jurisdiction over the defendant. The court noted that the respondent, who appeared as counsel for the defendant, was secured by the defendant's wife and not by the defendant himself. The court set aside its order declaring the defendant as in default. On "Joint Motion" of the parties, the court issued an order archiving the case for 90 days. ^[18]

Dominador and his children, as plaintiffs, filed another civil complaint against Rodolfo, et al., as defendants, with the RTC of Makati, docketed as Civil Case No. 97-574, for the annulment of the same deed of sale. The defendants filed a motion

to dismiss the case on the ground of *litis pedentia* and forum-shopping. The court issued an Order on June 27, 1997, granting the defendants' motion and dismissing the case.^[19] The plaintiffs filed a motion for reconsideration, which was, however, denied.^[20]

On March 20, 2002, Dominador executed an "Affidavit of Complaint" and filed the same with the Integrated Bar of the Philippines (IBP). He alleged, *inter alia*, that contrary to what the respondent stated in the acknowledgment portion of the deed of sale, he never met and appeared before her when she notarized the deed, and that the signatures appearing opposite their respective names were forgeries.^[21] The complainant appended to his complaint a copy of the deed of sale.^[22] He also submitted a copy of the "Joint Affidavit of Complaint" executed on October 16, 1995. ^[23] The complainant prayed for the respondent's disbarment.

In her Answer with Counterclaim, the respondent alleged, *inter alia*:

... [T]he parties to the Deed of Sale appeared before the herein Respondent and acknowledged the authenticity of their signatures before the herein Respondent entered the same document in the Notarial Register. Thereafter, Respondent, finding that everything is in order, proceeded to notarized (sic) the Deed of Sale which were prepared by the parties themselves.^[24]

The IBP referred the matter to Atty. Wilfredo E.J.E. Reyes as Investigating Commissioner for report and recommendation.

Dominador also filed a criminal complaint for perjury against the respondent with the Office of the City Prosecutor of Manila, docketed as I.S. No. 02D-14455. The case was assigned to Assistant City Prosecutor Jesse A. Tiburan for investigation.^[25]

During the hearing on December 5, 2002, only the complainants Manuel Cabanilla and Marissa Cabanilla appeared. They submitted a copy of the "Joint Affidavit of Complaint" dated October 1, 2002, where it was alleged, *inter alia*, that:

7. That after the death of our mother REVELINA B. CABANILLA last December 06, 1986 we become (sic) co-owners of the said property and our father DOMINADOR L. CABANILLA cannot sell the same without our consent and conformity.
8. That the Sale was made in violations of the existing (sic) of our rights as legitimate children of DOMINADOR L. CABANILLA AND REVELINA B. CABANILLA.
9. That this is our course of action in our own rights over the properties involved independent of the rights of the others over the conjugal property. ^[26]

The complainants Marissa Cabanilla and Manuel Cabanilla stated that they did not appear before the respondent on February 22, 1988; in fact, Manuel Cabanilla was out of the country on the said date.

On January 9, 2002, the complainants filed their Position Paper. Complainants

Dominador Cabanilla, Leticia C. Quirona, Virginia C. Cruz and Marissa Cabanilla appeared before the Investigating Commissioner and identified their signatures in their Joint Affidavit of Complaint dated October 16, 1995, and affirmed the contents thereof.

The Investigating Commissioner submitted his Report dated June 9, 2003, where he recommended that the respondent's commission as notary public be revoked, and that she be disqualified from being appointed as notary public for a period of two years. On June 21, 2003, the IBP Board of Governors approved Resolution No. XV-2003-382, affirming the said recommendation.

The only issue in this case is whether or not the respondent notarized the deed of sale without the complainant Dominador L. Cabanilla and his children (Manuel Cabanilla, et al.) appearing before her. The complainant asserts that he and Manuel Cabanilla, et al., never met the respondent or appeared before her, and that the signatures appearing on the deed of sale purporting to be theirs are forgeries. They claim that Manuel Cabanilla, et al., are not parties to the deed, and that the only parties are Dominador, as vendor and Rodolfo as vendee. Except for the numbers and dates of issue of the residence certificates purporting to be those of Dominador and Rodolfo which were handwritten in the acknowledgment of the deed, the numbers of the residence certificates of Manuel Cabanilla, et al., were not completely indicated therein.

On the other hand, the respondent asserts that although Dominador appears as the only vendor in the first page of the deed of sale, Manuel Cabanilla, et al., consented to and approved the deed. Dominador and Manuel, et al., themselves prepared the deed and brought it to her for notarization and that she ascertained the authenticity of the signatures appearing thereon before she notarized the said deed. She, likewise, contends that Rodolfo, as vendee, took possession of the property after the deed was executed. Although Dominador was able to secure title over the entire property, including that portion already sold under Original Certificate of Title No. 2222, Dominador nevertheless demanded that Rodolfo vacate the same. Failing to recover the property he had already sold to Rodolfo, Dominador filed the complaint for disbarment against the respondent on April 16, 2002, or fourteen years from the date of the deed. The respondent asserts that the only purpose for filing the affidavit-complaint is to recover the property from Rodolfo. Finally, the respondent claims that it was only on October 16, 1995, or eight years after the deed of sale was executed, that Dominador filed a criminal complaint for falsification of a document against her and Rodolfo which, however, was dismissed by Assistant Prosecutor Juan Bermejo, Jr. for lack of probable cause.

We affirm Resolution No. XV-2003-382 of the IBP Board of Governors.

Under Section 1(a) of Act 2103, a notary public taking the acknowledgment in a document or instrument is mandated to certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it and acknowledged that the same is his free act and deed. To "acknowledge before" means to avow; to own as genuine, to assert, to admit; and "before" means in front or preceding in space or ahead of.^[27] A party acknowledging must appear before the notary public.^[28]

Every contract, deed or other document acknowledged before a notary public shall have a certification thereon that the parties thereto have presented their respective residence certificates or are exempt from tax, and there shall be entered by the notary public as a part of such certification the number, place of issue and date of each residence certificate as aforementioned.^[29] The presentation of the residence certificate is required where a document is acknowledged before a notary public to ascertain the identity/identities of the person/s appearing before him and to avoid impostors.^[30] The failure of a notary public to comply with the said requirement is sufficient basis for the revocation of his commission.^[31] A notary public is mandated to exercise the functions of his office and must observe with utmost care the basic formalities and requisites in the performance of his duties. ^[32] Otherwise, the confidence of the public in the integrity of the deed would be undermined. ^[33] After all, notarization is not an empty routine. It converts a private document into a public one and renders it admissible in court without further proof of its authenticity.^[34]

A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before the said notary public to attest to the contents and truth of what are stated therein.^[35] The presence of the parties to the deed making the acknowledgment will enable the notary public to verify the genuineness of the signature of the affiant.^[36] A notary public is enjoined from notarizing a fictitious or spurious document.^[37] The function of a notary public is, among others, to guard against any illegal deed.^[38]

In this case, this Court is convinced that the respondent notarized the deed of sale without the parties therein appearing before her and acknowledging the same. The respondent failed to exercise the functions of the office and to comply with the mandates of the law.

First. The respondent notarized the deed of sale despite patent defects appearing on the face thereof. Dominador is the true and lawful owner of a right over the subject parcel of land and the house constructed thereon. In the first and second paragraphs of the deed, Dominador appears to be willing to sell his right over a portion of the land with an area of thirty-four (34) square meters, more or less, and *a portion of the house*, together with its improvements thereon. The cited paragraph reads:

That the VENDOR IS the true and lawful owner of right over a certain parcel of land located at No. 67-B, 25th Street, West Rembo, Fort Bonifacio, Makati, Metro Manila, together with its improvements thereon;

That the VENDOR is willing to sell his right over a portion of the said parcel of land, with an area of THIRTY-FOUR (34) square meters, more or less, and a portion of the house together with its improvements thereon, and the VENDEE is willing to purchase the same;^[39]

However, Dominador encircled the words "*over a portion of the land with an area of thirty-four (34) square meters*" in the second paragraph, and drew an arrow towards the phrase in the same paragraph which he encircled reading "*a portion of the house together with its improvements* " to indicate that this was exactly what he