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embodied in any statutory enactment and are a mere part of Army regulations issued by the President as commander-in-chief. Such regulations are only directory, as far as civil courts are concerned." Also: "Applying the above time-tested and time-honored principles, it is our view, and we so hold, that while the provisions of par. 4 of Executive Order 106 may bind the military compulsorily, they do not so bind the judicial tribunals. Nor is any modicum of judicial power vested in the military by the mere commitment of an accused to his commanding officer for safe-keeping, for the duty of an officer in executing the mandate of a judicial order 'is purely ministerial, and his power with respect thereto is limited to compliance with its terms.'" Undoubtedly, they are steps in the right direction, but for reasons which for me are of decisive weight, I must say that they do not go far enough. Hence, this brief concurring opinion.

[Adm. Case No. 930. December 17, 1970]

CAYETANO SAMONTE, *complainant, vs.* ATTY. FRANCISCO E. RODRIGO, JR., *respondent.*

SYLLABUS

1. **LEGAL ETHICS; DISBARMENT PROCEEDING; CHARGE OF VIOLATION OF LAWYER'S OATH; FALSE STATEMENT IN THE ACKNOWLEDMENT CLAUSE THAT PARTY EXHIBITED HIS RESIDENCE CERTIFICATE; NOT DELIBERATE FALSEHOOD NOR WILLFUL DISOBEDIENCE OF LAW IN CASE AT BAR.**— No deliberate falsehood or willful disobedience of law was committed by respondent attorney despite the fact that he falsely stated in the acknowledgment clause that the testator exhibited his residence certificate to him when in fact he did not. Reasons: (a) the testator, being a man of integrity and well known to respondent and his family, respondent attorney had no reason to doubt him when he said that he had secured a residence certificate but had forgotten it at Bulacan, Bulacan. It would have been quite difficult for the 82-year old testator to have gone back to

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Bulacan, Bulacan just to get his cedula and return to Quezon City; (b) respondent attorney obtained the number, date and place of issue of testator's residence certificate from testator's own income tax return which was exhibited to him. No cogent reason appears why respondent could not rely on the truth and veracity of the acknowledgment at the end of the testator's income tax return, subscribed before no less than the Collection Agent of the BIR at Bulacan, Bulacan, in charge of issuing residence certificates. The requirement of physical exhibition of the residence certificate is not absolute, its main purpose being to assure payment of the tax by the persons called upon to do so, and as additional identification of the affiant. These purposes have been well achieved in the case at bar; and (c) the dismissal of the complaint for falsification filed by complainant against respondent weighs strongly against said respondent's guilt in the present case.

2. **ID.; ID.; ID.; ID.; ID.; PERFORMANCE OF DUTIES AS NOTARY PUBLIC.**— Respondent's above act nonetheless connotes a certain degree of lack of resourcefulness in the performance of his duties as a notary public, for he could have contrived of some means by which the needed residence certificate could be exhibited to him. The act committed by the respondent in the case at bar, namely, that of notarizing a will the acknowledgment clause whereof recites that the testator exhibited his residence certificate, when in truth he did not, considered in light of the facts that respondent acted in good faith and readily admitted the truth before this Court, is less serious than those in the cases of *Ner* and *Casaclang*. In the premises we believe that an admonition will be sufficient, if only to remind respondent and other notaries public of the delicate nature of their sworn duties.

DECISION

VILLAMOR, *J.:*

Complainant seeks in his sworn letter-complaint the disbarment of Atty. Francisco E. Rodrigo, Jr. on the charge that the latter, in notarizing the last will and testament of Faustino Samonte, complainant's father, falsely stated in the acknowledgment

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clause that the testator exhibited his residence certificate. Attached to the complaint as annexes are a copy of the will and a certificate by the BIR Collection Agent of Bulacan, Bulacan, to the effect that the residence certificate in question "has not been taken by the said Faustino Samonte; that both the original and duplicate copies have not been signed by said Faustino Samonte; that both original and duplicate copies bear no thumbmark; and that both original and duplicate copies are still intact in the booklet."

In his answer respondent admits that the residence certificate of the late Faustino Samonte was not actually shown to him, but he alleges that he obtained the data concerning the number, date and place of issue of the residence certificate from a copy of the testator's income tax return, which was shown to him. Respondent further alleges that being a client of the law firm of which he is an associate, a fellow resident of Bulacan, Bulacan, and a close personal friend of respondent's parents, Ex-Senator and Mrs. Francisco Soc Rodrigo, the testator was well known to him. Hence, he had no reason to doubt the truth of the testator's word that he had secured a residence certificate but had left it in Bulacan. Respondent explains that he could hardly ask the testator, who was 82 years old, to travel back to Bulacan, look for his residence certificate, and return to Quezon City where the will was being signed, attested and acknowledged, considering, particularly, that, as stated above, the necessary data in the residence certificate appear in the testator's income tax return, a copy of which is attached to the answer.

We set the hearing of the case for October 7, 1970, at which complainant's counsel and respondent appeared. The parties were allowed to submit their respective memoranda, which are now before this Court.

The correctness of the number, date and place of issue of the testator's residence certificate is not disputed. Indeed, a comparison between such data as they appear in the will and in the testator's income tax return leaves no room for doubt that they are identical. Complainant nonetheless insists that respondent, in stating in the acknowledgment clause that the

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testator exhibited to him his residence certificate, not only deliberately stated a falsehood but also violated Section 6 of Commonwealth Act 465, which imposes upon the notary public the duty "to require the exhibition of the residence certificate showing the payment of the residence taxes by such person"; hence, respondent violated his lawyer's oath to "do no falsehood" and to "obey the laws."

The particular circumstances of this case preclude us from concluding that a deliberate falsehood and a willful disobedience of law were committed by respondent. In the first place, the testator, a man admittedly respected in his community for his integrity, was well known to respondent and his family. Consequently, respondent had no reason not to believe him when he said that he had secured a residence certificate but had forgotten to take it with him. Respondent's allegation that, having failed to bring his cedula, the testator, who was over 80 years of age at the time, would have undergone unnecessary travail and difficulty if he had been compelled to go back to Bulacan to fetch his said cedula, then return to Quezon City, appears to be plausible. In the second place, the required data in the residence certificate appear in the testator's income tax return, which was shown to respondent. Incidentally, the said tax statement was subscribed and sworn to before Mr. Vicente G. Manalo, the BIR Collection Agent of Bulacan, Bulacan, who now ironically certifies that the residence certificate described in the statement had neither been signed, thumbmarked, nor taken by Faustino Samonte. It will be noted that Mr. Manalo does not certify to the lack of payment of the residence certificate by or in behalf of Faustino Samonte. The date of filing of the income tax return was April 15, 1968; so is the date of the residence certificate appearing therein. It was thus the last day for filing income tax returns. In the circumstances it is fair to assume that Faustino Samonte's representative had to pay for — if not secure forthwith — a residence certificate for the old man right at the BIR office in order that its pertinent data could be noted down in the tax statement which he had to file that day. Besides, respondent cannot entirely be blamed for relying on the income tax return; he had the right to presume that Mr. Manalo had regularly

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performed his official duty when he signed the *jurat* therein containing the number, date and place of issue of Faustino Samonte's residence certificate. No cogent reason appears why respondent could not rely on the truth and veracity of the acknowledgment at the end of the testator's income tax return, subscribed before no less than the Collection Agent of the BIR at Bulacan, Bulacan, in charge of issuing residence certificates. At any rate, the requirement of physical exhibition of the residence certificate is not absolute, its main purpose being to assure payment of the tax by the persons called upon to do so, and as additional identification of the affiant. As regards the first, the Collection Agent had, by his subscribing the acknowledgment in the income tax return, given assurance of payment of the tax; and as regards the second, respondent states that the testator had been his and his father's client in several cases. What is strange and apparently unexplainable is the turn-about face on the part of the Collection Agent by executing a certificate to the effect that the residence certificate in question has never been issued. The cedula having been apparently paid for, it became the ministerial duty of said official to issue the same. At any rate, the blank forms — original and duplicate — of the same have not been produced or presented, if only to show that the certificate has actually not been issued. In the third place, complainant had previously filed with the Office of the City Fiscal of Quezon City a complaint for falsification predicated on the very incident subject matter of the present administrative proceeding, but that complaint was dismissed on respondent's motion. While the dismissal of that criminal complaint is not a bar to the present case, we feel that it is strongly persuasive in the determination of the present issue.

The act committed by respondent certainly does not call for the penalty of suspension or disbarment in view of respondent's clearly proven good faith. This circumstance takes this case away from the ambit of our ruling in Calo *vs.* Degamo, Adm. Case No. 516, June 27, 1967 (20 SCRA 447), cited by complainant, where the respondent, in order to merit appointment to the position of chief of police, falsely denied under oath in his information sheet the existence of any criminal or police record.

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Nonetheless, respondent's act connotes a certain degree of lack of resourcefulness in the performance of his duties as a notary public, for he could have contrived of some means by which the needed residence certificate could be exhibited to him. In Ramirez *vs.* Ner, Adm. Case No. 500, September 27, 1967 (21 SCRA 267), where the respondent notarized a deed of sale whose acknowledgment clause recited falsely that both the vendor and the vendee personally appeared before him, this Court reprimanded the respondent and admonished him to be more careful. And in Lopez *vs.* Casaclang, Adm. Case No. 589, August 26, 1968 (24 SCRA 731), where the respondent notarized a power of attorney which, although duly acknowledged by the parties, was known to him not to have been signed by the principal but by another upon her authority, without such fact being made to appear on the face of the document, the respondent was reprimanded and warned to be more careful in the performance of his notarial duties. The act committed by respondent in the case at bar, namely, that of notarizing a will the acknowledgment clause whereof recites that the testator exhibited his residence certificate, when in truth he did not, considered in light of the facts that respondent acted in good faith and readily admitted the truth before this Court, is less serious than those in the cases of *Ner* and *Casaclang*. In the premises we believe that an admonition will be sufficient, if only to remind respondent and other notaries public of the delicate nature of their sworn duties.

IN VIEW OF THE FOREGOING, respondent is hereby admonished to be more careful in the discharge of his notarial duties, and he is warned that if he commits again the same or similar act, he will be dealt with more severely.

Reyes, J.B.L., Makalintal, Zaldivar, Ruiz Castro, Teehankee and *Barredo, JJ.*, concur.

Concepcion, C.J. and *Fernando, J.*, did not take part. *Dizon* and *Makasiar, JJ.*, are on leave.