Supreme Court E-Library

SECOND DIVISION

[A.M. No. RTJ-99-1520. November 22, 2000]

REIMBERT C. VILLAREAL, *complainant, vs.* **JUDGE ALEJANDRO R. DIONGZON, RTC Branch 11, Calubian, Leyte,** *respondent.*

SYNOPSIS

The respondent judge was charged with dishonesty by misrepresenting to Reimbert C. Villareal, herein complainant, that a deed of mortgage is the same as a *pacto de retro* sale, and for unauthorized notarization of a deed of sale with *pacto de retro*. The acts complained of happened while the respondent was still the judge of the 11th Municipal Circuit Trial Court at Villaba-Tabango, Leyte. The respondent judge denied the charges against him.

Anent the first charge, the Supreme Court held that the respondent judge did not mislead the complainant about the true nature of the subject document. Complainant has a Bachelor of Science in Education degree. Considering the education he has attained, it is improbable that he would not have understood the document he was affixing his signature on. The phraseology of a document purporting to be one of mortgage is vastly different from one of sale. Furthermore, on three occasions complainant had executed deeds of real estate mortgage in favor of Felix Sy. Ergo, he is already fully aware what the contents of a deed of real estate mortgage are, and could never be deceived.

The Court found the respondent judge guilty of the charge that he engaged in unauthorized notarial work. Circular No. 1-90 specifically delineates the power of Municipal Trial Court Judges and Municipal Circuit Trial Court Judges to act as notaries public *ex- oficio*. Judges of the Municipal Trial Courts, or Municipal Circuit Trial Courts, may perform their functions as notaries public *ex-oficio* only in the notarization of documents connected with the exercise of their official functions. They may not undertake the preparation and acknowledgment of private documents such as a deed of *pacto de retro* sale. Since

Supreme Court E-Library

respondent judge's actuation of notarizing the aforestated document bears no direct relation to the performance of his function as a judge, he acted beyond the scope of his authority as notary public *ex-oficio*. Hence, for unlawful notarization, which constitutes an unlawful practice of law, the respondent judge is ordered to pay a fine of One Thousand Pesos (₱1,000.00).

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; MUNICIPAL TRIAL COURT AND MUNICIPAL CIRCUIT TRIAL COURT JUDGES; WHEN THEY MAY PERFORM THE FUNCTIONS OF NOTARIES PUBLIC *EX-OFICIO*.** —Judges of the Municipal Trial Courts, or Municipal Circuit Trial Courts, may perform their functions as notaries public *ex-oficio* only in the notarization of documents connected with the exercise of their official functions. They may not undertake the preparation and acknowledgment of private documents such as a deed of *pacto de retro* sale. Since respondent judge's actuation of notarizing the aforestated document bears no direct relation to the performance of his function as a judge, he acted beyond the scope of his authority as notary public *ex-oficio*.

2. **ID.; ID.; ID.; MAY ACT AS NOTARY PUBLIC WHEN THERE ARE NO LAWYERS OR NOTARIES PUBLIC IN MUNICIPALITY OR CIRCUIT.** — Circular No. 1-90 was very specific when it provided that it is only when there are no lawyers or notaries public in the municipality, or circuit, that an MTC and MCTC judge may act as a notary public provided that, among other things, he issues a certification in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit. In the case at bar, there was no showing that there was a scarcity of lawyer or notary public in Villaba-Tabango, Leyte. Moreover, no certification attesting to the lack of any lawyer or notary public was made in the notarized document. Therefore, respondent judge's action as a notary public cannot qualify as an exception to Circular No. 1-90.

3. **ID.; ID.; NOTARIZING A PRIVATE DOCUMENT CONSTITUTES AN UNLAWFUL PRACTICE OF LAW; RESPONDENT JUDGE FOUND GUILTY OF ENGAGING IN UNAUTHORIZED NOTARIAL WORK; PENALTY.** — Notarizing a private

Supreme Court E-Library

document constitutes an unlawful practice of law. We find respondent guilty of the charge against him that he engaged in unauthorized notarial work. Under the factual milieu of the case, we do not consider the act of respondent judge so serious as to warrant a severe penalty. Respondent judge was honest enough to admit that when he notarized the questioned document he was under the impression that he was still authorized to do so. But upon learning of the Supreme Court circular prohibiting municipal trial court judges from notarizing private documents in their capacity as *ex-oficio* notaries public, he immediately desisted from practicing as a notary public and ordered his Clerk of Court to surrender his notarial books to the Regional Trial Court. Hence, for unlawful notarization which constitutes an unlawful practice of law, Judge Diongzon of the Regional Trial Court at Calubian, Leyte, Branch 11 is hereby ordered to pay a FINE of One Thousand Pesos (₱1,000.00).

4. LEGAL ETHICS; NOTARY PUBLIC; ADMINISTERING AN OATH IN AFFIANT'S ABSENCE IS CENSURABLE. — We find that respondent judge was lax and careless in notarizing a document which was not signed before him by the vendee himself, Felix Sy, but by Rosita Sy who was not even empowered by a special power of attorney to represent him. It is immaterial that on three occasions Rosita Sy had previously signed for and in behalf of Felix Sy or that the latter had subsequently ratified the act of the former in signing the deed of sale with *pacto de retro* on his behalf. Parties to any document must personally present themselves before the notary public to assure their true identity. The act of a notary in administering an oath in affiant's absence, while not amounting to gross misconduct, is censurable.

APPEARANCES OF COUNSEL

Antonio A. Abilar for complainant.

D E C I S I O N

BUENA, *J.*:

Before us is a letter-complaint dated February 16, 1999 filed by Reimbert C. Villareal against Judge Alejandro R. Diongzon

Supreme Court E-Library

of the Regional Trial Court at Calubian, Leyte, Branch 11. The acts complained of happened while Judge Diongzon was still the judge of the 11th Municipal Circuit Trial Court at Villaba-Tabango, Leyte.

The antecedent facts of the case follow:

Complainant owns three (3) parcels of corn and coconut lands located in Mahanglad, Villaba, Leyte. On three (3) occasions, these parcels of land were mortgaged by complainant to Felix Sy, as evidenced by a first "Real Estate Mortgage" for a consideration of ₱20,000.00 executed on June 11, 1984,[1] a second mortgage for a consideration of ₱30,000.00 executed on October 31, 1984,[2] and a third mortgage for a consideration of ₱61,000.00 executed on March 26, 1987.[3] All of these documents were notarized by notary public Diosdado V. Omega and they were all signed by Rosita Sy for Felix Sy.

On October 10, 1988, a "Deed of *Pacto de Retro* Sale" involving the same parcels of land was executed by complainant Reimbert C. Villareal and his wife, Dale Y. Villareal as *vendors a retro*, and Felix Sy as *vendee a retro*, for a consideration of One Hundred Fifty Thousand Pesos (₱150,000.00).[4] The document was notarized by respondent, then municipal circuit trial court judge, in his capacity as notary public *ex-oficio*.

Sometime in February 1995, complainant with some companions gathered coconuts from the land subject of the *pacto de retro* sale. Complainant, among others, was subsequently charged with qualified theft by Rosita Sy. The case was filed in the 11th Municipal Circuit Trial Court of Villaba-Tabango, Leyte and docketed as Crim. Case No. 3007. The case, however, was amicably settled with complainant being allowed to "redeem the property."[5]

---

[1] Annex "3"; *Rollo*, p. 13.

[2] Annex "4"; *Ibid.*, p. 14.

[3] Annex "5"; *Ibid.*, p. 15.

[4] Exhibit "A-1"; *Ibid*, p. 2.

[5] T.S.N. dated March 24, 2000, p. 22.

Supreme Court E-Library

Thereafter, a Complaint for Annulment of Sale with *Pacto de Retro*, Accounting and Damages with Preliminary Injunction dated April 9, 1995 was filed by Spouses Reimbert Villareal and Dale Villareal against Rosita Sy and Felix Sy docketed as Civil Case No. PN-0172.[6] However, this case was dismissed in an order dated April 20, 1998,[7] for failure of the complaint to specify the amount of moral and exemplary damages sought. The motion for reconsideration filed by plaintiffs was denied in the order dated June 15, 1998.[8]

Alleging irregularity in the execution of the deed of *pacto de retro* sale, complainant Reimbert C. Villareal filed an administrative complaint against Judge Alejandro Diongzon on March 5, 1999, thus:

"Bogo, Cebu
16 February 1999

THE HONORABLE COURT ADMINISTRATOR
OFFICE OF THE COURT ADMINISTRATOR
SUPREME COURT OF THE PHILIPPINES
Padre Faura, Metro Manila

"Your Honor:

"This is to file an administrative complaint against former MTC Judge of Villaba, Leyte, HON. ALEJANDRO R. DIONGZON, now RTC Judge of Calubian, Leyte.

"The complaint is basically that Judge DIONGZON, who was an MTC Judge, notarized a Deed of *Pacto de Retro* Sale, a machine copy of which is attached as ANNEX 'A'. I, the *vendor a retro*, was present when he allowed Rosita Sy to sign for Felix Sy, *vendee a retro*. When I inquired from him he barely said that Rosita Sy is also Felix Sy.

"To make the matter detrimental to my interest, I discovered lately that the document also signed by FELIX SY and the undersigned

---

[6] Annex "K"; Exhibit "2"; *Rollo*, p. 32.

[7] *Rollo*, p. 109.

[8] *Ibid.*, p. 111.

Supreme Court E-Library

complainant was previously of (sic) that (sic) a Real Estate Mortgage, notarized by Diosdado V. Omega, a copy of the document is attached herewith as ANNEX 'B'. Judge Diongzon, however, changed the previous document of Real Estate Mortgage to that of Deed of *Pacto de Retro* Sale.

"Consulting a lawyer, I was informed that there is a big difference between a Real Estate Mortgage and that of a Deed of *Pacto de Retro* Sale. By the false representation of Judge Diongzon, I am now facing a criminal case for qualified theft since I harvested coconuts from the land previously under Real Estate Mortgage but was changed by Judge Diongzon as Deed of *Pacto de Retro* Sale.

"As a Regional Trial Court Judge, he should have informed me of the difference between the two documents. As a lawyer, he should not have allowed Rosita Sy to sign for Felix Sy. Later on, the document shall be faulty for the signatory was not the very same person who signed the document.

"It is hoped that Judge Diongzon be made to answer for his actuations as a Municipal Trial Court (sic) Judge of Villaba, Leyte. If he is promoted to that of an RTC Judge, he may have the same previous actuations when he was an MTC (sic) Judge.

"An immediate investigation of this administrative complaint is highly appreciated.

"Thank you and *Mabuhay*!

"Very truly yours,

(Sgd.) REIMBERT C. VILLAREAL
REIMBERT C. VILLAREAL
Complainant"[9]

Per its 1st Indorsement dated June 28, 1999 the Office of the Court Administrator referred the letter-complaint of Villareal to Judge Diongzon for comment.

In the Comment of Judge Diongzon, he vehemently denied the charges against him. He alleged, among other things, the following: that complainant was familiar with Felix Sy, having dealt with him previously, through Rosita Sy, the representative

[9] *Rollo*, p. 1.

Supreme Court E-Library

of the latter; that the deed of *pacto de retro* sale was executed at the instance of the complainant and his wife; that he did not change the deed of Real Estate Mortgage to a deed of Sale with *Pacto de Retro*; that he did not have a hand in the preparation of the latter document but the Clerk of Court of the MCTC, Villaba-Tabango, Leyte; that it was complainant and Rosita Sy who provided the terms and conditions of the deed of Sale with *Pacto de Retro* to the said Clerk of Court; that he notarized the said document upon the urging of the complainant who needed the money for his business; that the charge was already barred by laches.

Respondent judge, meanwhile, questioned why complainant waited eleven (11) years before writing the letter-complaint. He did not believe the reason given, *i.e.*, that complainant was facing a criminal case for Qualified Theft of coconuts from the three parcels of land because of the deed of Sale with *Pacto de Retro*, was true.

He confirmed that a case for Qualified Theft was filed against complainant Villareal before the MCTC at Villaba-Tabango, Leyte where he was the Presiding Judge at the time, and that he denied the motion to dismiss filed by Villareal. The probable reason, respondent judge deduced, for the institution of the administrative complaint against him was because he found that there was probable cause to hold the complainant for trial on the merits on the criminal case.

In the Reply to the Comment, complainant stated that he verified from the respondent judge whether a Deed of Mortgage and a Deed of *Pacto de Retro* Sale were the same, and the latter categorically informed him that these two documents were substantially the same, for, in both instances, the owner of the land will pay the amount loaned. By reason of this misrepresentation, complainant averred that he was misled into believing that there was no transfer of possession of all the parcels involved in the transaction, and that as a consequence of his mistaken belief he was facing criminal charges for qualified theft.

Supreme Court E-Library

Villareal denied that Rosita Sy was given a written authority by Felix Sy to sign for the latter at the time of the notarization of the questioned document, and that he influenced respondent judge to notarize the said document. He also mentioned that there was no truth to the allegation that the question about the contract was raised only after eleven years, as the defect therein was discovered only when he sought legal advice and that immediately thereafter, he filed the complaint.

Reimbert Villareal prayed that the complaint be fully investigated and that after the investigation, sanctions be imposed upon respondent judge.

On August 30, 1999, a compromise agreement was executed between complainant Villareal and Rosita Sy, who was acting in behalf of Felix Sy, in Criminal Case No. P-0657.[10] This agreement was to be considered as the latter's desistance from further prosecuting the case. The same was made with the approval of Prosecutor Crisologo Bitas of the Office of the Assistant Provincial Prosecutor of Palompon, Leyte.

Embodied in the compromise agreement were the following provisions:

The complainant would pay Rosita Sy Three Hundred Thousand Pesos (₱300,000.00) as the consideration to cancel the Deed of *Pacto de Retro* Sale which was executed on October 10, 1988, the genuineness and due execution of which he admitted and confirmed, and he would take immediate possession of the parcels of land described in the Deed of *Pacto de Retro* Sale after making the aforementioned payment.

Rosita Sy, on the other hand, would reconvey the properties described in the Deed of *Pacto de Retro* Sale, and would withdraw the case for qualified theft and the case for civil liabilities of the accused related to Criminal Case No. P-0657.

---

[10] *Ibid.*, pp. 113-114.

Supreme Court E-Library

On December 8, 1999, a resolution was issued by this Court ordering the referral of this case to the Court of Appeals for investigation.[11]

Hearings were conducted. Aside from the complainant and respondent judge, Ruben Pecayo, the Clerk of Court of the 11th Municipal Circuit Trial Court of Villaba, Leyte and Rosita Sy were presented as witnesses.

Ruben Pecayo testified that he was the one who prepared the deed of *pacto de retro* sale upon the instruction of respondent judge; that he prepared the document in his office; that he asked Reimbert Villareal (herein complainant) and Rosita Sy what the terms and conditions of the document would be; that when the document was presented to Villareal and Sy, respondent judge asked them, *"Husto na ni*? (Is this what you want?) to which Villareal and Sy replied, "That is already o.k."; that respondent judge then let them sign the document; that when it was Rosita Sy's turn to sign, respondent judge asked her about Felix Sy's whereabouts but the former said that she would be the one to sign for Felix Sy because she had a letter of authorization from him; that Villareal said that in the other documents, which he executed in favor of Felix Sy, it was Rosita Sy who signed for Felix Sy; that when the functions of *ex-oficio* notary public were divested from MTC judges, the notarial register of their office was surrendered to the Regional Trial Court; that he did not remember Judge Diongzon explaining to Reimbert Villareal the difference between a *pacto de retro* sale and a mortgage.

When called to testify, Rosita Sy said that complainant is her cousin; that she and Villareal went to the office of Judge Diongzon to prepare a deed of *pacto de retro* sale; that it was Ruben Pecayo who prepared the document; that she and Villareal furnished Pecayo with the terms and conditions of the deed of *pacto de retro* sale; that complainant did not object when she signed for Felix Sy; that she was given a written authority by Felix Sy.

---

[11] *Ibid.*, p. 50.

Supreme Court E-Library

When the hearings were terminated, both parties were directed to submit their memoranda.

In addition to the allegations in the complaint and reply to the comment, complainant Villareal in his memorandum stated that respondent judge, in allowing Rosita Sy, who is of Chinese citizenship, to sign for Felix Sy without being authorized by law nor by a public instrument such as a Special Power of Attorney, violated the Code of Conduct and Ethical Standards for Public Officials and Employees.

In his memorandum, respondent judge Diongzon added that the administrative charge against him was absurd because "the Deed of *Pacto de Retro* Sale that complainant claimed to have been anomalously executed before (him) is the very document that complainant later on admitted and confirmed as having been genuinely and duly executed. This inconsistent attitude of complainant towards Annex "A" of the letter-complaint is unmistakably impressed on the so-called Compromise Agreement (Exh. 1 — respondent) . . ."[12]

He likewise added that the Compromise Agreement may be regarded as illegal because it somehow traverses the basic rule of criminal procedure that criminal cases cannot be the subject of compromise agreements. If the compromise agreement would be considered illegal then the parties thereto are in *pari delicto* and the complainant and his lawyer cannot now be allowed to abandon, withdraw and deny their acts of admitting, and confirming the genuineness and due execution of the questioned Deed of *Pacto de Retro* Sale. On the other hand, if the said agreement would be regarded as valid, then the principle of estoppel by deeds operates against complainant.

Associate Justice Oswaldo D. Agcaoili of the Court of Appeals, on September 25, 2000, submitted his report and recommendation.

In a nutshell, complainant charges respondent judge with:

(1) dishonesty by misrepresenting to complainant that a deed of mortgage is the same as a *pacto de retro* sale, and

[12] *Ibid.*, p. 99.

Supreme Court E-Library

(2) unauthorized notarization of a deed of sale with *pacto de retro* which is a private document.

Anent the first charge, we do not find that respondent judge misled the complainant about the true nature of the subject document when he (Judge Diongzon) was asked whether a Deed of Mortgage and a Deed of *Pacto de Retro* Sale were the same. Complainant never even asked Judge Diongzon to differentiate the two documents.

Ruben C. Pecayo testified thus:

"Justice Agcaoili

"Q Is it true that complainant Villareal asked his Honor, Judge Diongzon, to explain the difference between a deed of mortgage and a sale on *pacto de retro*?

"A I was in their hearing distance, and I recall that he has not."[13]

In fact, there was no need for Villareal to verify from Judge Diongzon what the difference between the two documents was, for it was he himself and Rosita Sy who went to the office of Judge Diongzon to tell him that they wanted a deed of *pacto de retro* sale prepared, and it was they who provided Ruben Pecayo with the terms and conditions of the said document, thus proving that complainant already has a knowledge of what constitutes a deed of *pacto de retro* sale prior to conferring with Judge Diongzon.

Complainant, likewise, alleges that Judge Diongzon changed the Deed of Real Estate Mortgage to a Deed of *Pacto de Retro* Sale.

We could not ascertain how that was achieved without the knowledge and consent of Villareal.

Complainant has a Bachelor of Science in Education degree. Considering the education he has attained, it is improbable that he would not have understood the document he was affixing

---

[13] T.S.N. dated Mach 24, 2000, p. 68.

Supreme Court E-Library

his signature on. The phraseology of a document purporting to be one of mortgage is vastly different from one of sale.

Moreover, on three occasions complainant had executed deeds of real estate mortgage in favor of Felix Sy. Ergo, he is already fully aware what the contents of a deed of real estate mortgage are, and could never be, deceived. Thus, it is futile for Villareal to deny knowledge of the deed of *pacto de retro* sale that bears his signature.

Respondent judge avers that complainant brought the administrative case against him out of spite because a criminal case for qualified theft was filed against the latter, and because of the latter's failure to get a favorable judgment in the civil case he filed for the annulment of the questioned sale.

We find that there is some truth to respondent judge's averment.

It is to be noted that the deed of *pacto de retro* sale was executed on October 10, 1988, but it was only on March 5, 1999, that the administrative case was filed against respondent judge.

Like respondent judge, we are in a quandary as to why it took complainant more than ten (10) years to file an administrative case. For such unexplained delay, complainant's credibility has immensely suffered. His action has inexorably become stale and his motives in filing the complaint have seriously been put in issue.

A deed of *pacto de retro* sale is undoubtedly a private document. Notarizing a private document constitutes an unlawful practice of law.

We find respondent guilty of the charge against him that he engaged in unauthorized notarial work.

Circular No. 1-90 specifically delineates the power of Municipal Trial Court Judges and Municipal Circuit Trial Court Judges to act as notaries public *ex-oficio*, thus:

Supreme Court E-Library

"Municipal trial court (MTC) and municipal circuit trial court (MCTC) judges are empowered to perform the functions of notaries public ex-oficio under Section 76 of Republic Act No. 296, as amended (otherwise known as the Judiciary Act of 1948) and Section 242 of the Revised Administrative Code. But the Court hereby lays down the following qualifications on the scope of this power:

"MTC and MCTC judges may act as notaries public *ex-oficio* in the notarization of documents connected only with the exercise of their official functions and duties [*Borre 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-oficio*, undertake the preparation and acknowledgment of private documents, contracts and other acts of conveyances which bear no direct relation to the performance of their functions as judges. The 1989 Code of Judicial Conduct not only enjoins judges to regulate their extra-judicial activities in order to minimize the risk of conflict with their judicial duties, but also prohibits them from engaging in the private practice of law (Canon 5 and Rule 5.07).

"However, the Court, taking judicial notice of the fact that there are still municipalities which have neither lawyers nor notaries public, rules that MTC and MCTC judges assigned to municipalities or circuits with no lawyers or notaries public may, in the capacity as notaries public *ex-oficio*, perform any act within the competency of a regular notary public, provided that: (1) all notarial fees charged be for the account of the Government and turned over to the municipal treasurer (*Lapena, Jr. vs. Marcos*, Adm. Matter No. 1969- MJ, June 29, 1982, 114 SCRA 572); and, (2) certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit."[14]

Judges of the Municipal Trial Courts, or Municipal Circuit Trial Courts, may perform their functions as notaries public *ex-oficio* only in the notarization of documents connected with the exercise of their official functions. They may not undertake the preparation and acknowledgment of private documents such as a deed of *pacto de retro* sale.

---

[14] *Ellert vs. Judge Galapon, Jr.*, A.M. No. MTJ-00-1294, July 31, 2000.

Supreme Court E-Library

Since respondent judge's actuation of notarizing the aforestated document bears no direct relation to the performance of his function as a judge, he acted beyond the scope of his authority as notary public *ex-oficio*.

Circular No. 1-90 was very specific when it provided that it is only when there are no lawyers or notaries public in the municipality, or circuit, that an MTC and MCTC judge may act as a notary public provided that, among other things, he issues a certification in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit.

In the case at bar, there was no showing that there was a scarcity of lawyer or notary public in Villaba-Tabango, Leyte. Moreover, no certification attesting to the lack of any lawyer or notary public was made in the notarized document. Therefore, respondent judge's action as a notary public cannot qualify as an exception to Circular No. 1-90.

We find that respondent judge was lax and careless in notarizing a document which was not signed before him by the vendee himself, Felix Sy, but by Rosita Sy who was not even empowered by a special power of attorney to represent him. It is immaterial that on three occasions Rosita Sy had previously signed for and in behalf of Felix Sy or that the latter had subsequently ratified the act of the former in signing the deed of sale with *pacto de retro* on his behalf. Parties to any document must personally present themselves before the notary public to assure their true identity. The act of a notary in administering an oath in affiant's absence, while not amounting to gross misconduct, is censurable.[15]

We note, however, that there are circumstances which, in our view, alleviates the liability of respondent judge. He has been in the service as a judge for almost thirty-two (32) years, first as a Municipal Court judge from July 1, 1968 to December 31, 1995 and then as a Regional Trial Court judge from January 1, 1996 to the present. In such a long span of time, he has

---

[15] *Evalla vs. Mago*, 76 SCRA 122 [1977].

Supreme Court E-Library

never been subjected to any administrative complaint. He also appears to have acted without any willful or deliberate attempt to flout the law.

Quoted below from respondent judge's memorandum is the following:

"To start with, it should be noted that the Justices of the Peace which were converted later on into Municipal Courts by Section 2 of Republic Act No. 3820, Section 9 of Republic Act 3828 and Resolution of the Supreme Court dated December 23, 1963 amending Section 1, Rule 5 of the New Rules of Court, are frontier courts now classified as First Level Courts. The hard fact is that the First Level Courts are close to the people and that is probably the reason why the people love to transact business with it.

"It is probably for the above reasons that Section 76 of the Judiciary Act of 1948 as amended conferred upon the Justices of the Peace miscellaneous powers such as follows:

> 'Sec. 76. Miscellaneous Powers of the Justice of the Peace. — A Justice of the Peace shall have power anywhere within his territorial jurisdiction to solemnize marriage, authenticate merchant's books, administer oath and take depositions and acknowledgment, and, in his capacity as *ex-oficio* notary public, may perform any act within the competency of a Notary Public.'

"As is clear from the above-quoted provision that the First Level Courts Judges, in their capacity as *ex-oficio* Notary Public, may perform any act within the competence of a regular Notary Public, it should be stated here that almost all, if not all, Judges of the First Level Courts have exercised the above-mentioned miscellaneous powers. However, they collected fees (duly receipted) only as those prescribed by the Rules of Court.

"But due to the paucity of references distributed to the First Level Courts when the Judiciary was under the Department of Justice, the Judges of the First Level Courts especially those assigned in the far flank (sic) sections of the country, could not easily catch up with how Section 76 of the Judiciary Act of 1948 evolved. Frankly, even as the Administrative Supervision was transferred to the Hon. Supreme Court, most of the Judges in the First Level Courts continued to exercise said miscellaneous powers, including the respondent herein. Thus, when the complainant and Rosita Sy came to his Office on

Supreme Court E-Library

October 10, 1988 and asked him to acknowledge Annex A of the letter-complaint, with honest intention and in good faith based on his understanding of said Section 76 of Judiciary Act of 1948, respondent notarized the document without any feeling of guilt nor (sic) remorse. However, in 1990, respondent came across a Supreme Court Resolution holding that Municipal Court Judges cannot act as regular Notary Public. Immediately hence, respondent instructed said Ruben Pecayo, MCTC Clerk of Court, to surrender all the Notarial Books kept in his Office to the Clerk of Court of Branch 17, RTC, Palompon, Leyte. It was so done."[16]

Under the factual milieu of the case, we do not consider the act of respondent judge so serious as to warrant a severe penalty. Respondent judge was honest enough to admit that when he notarized the questioned document he was under the impression that he was still authorized to do so. But upon learning of the Supreme Court circular prohibiting municipal trial court judges from notarizing private documents in their capacity as *ex-oficio* notaries public, he immediately desisted from practicing as a notary public and ordered his Clerk of Court to surrender his notarial books to the Regional Trial Court.

WHEREFORE, in view of the foregoing, the complaint for dishonesty against respondent Judge Alejandro R. Diongzon is *DISMISSED*. However, for unlawful notarization which constitutes an unlawful practice of law, Judge Diongzon of the Regional Trial Court at Calubian, Leyte, Branch 11 is hereby ordered to pay a *FINE* of One Thousand Pesos (₱1,000.00). He is further warned that a repetition of the same or similar infractions would be dealt with more severely.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and *De Leon, Jr., JJ.*, concur.

---

[16] *Rollo*, pp. 106-107.