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FIRST DIVISION

[A.M. No. MTJ-96-1076. February 9, 2000]

VENUS P. DOUGHLAS, *complainant, vs.* **JUDGE FRANCISCO H. LOPEZ, JR, MCTC, Lupon Banaybanay, Davao Oriental,** *respondent.*

SYNOPSIS

Complainant is one of the heirs of the late Bienvenido Paquingan who owned a parcel of agricultural land in Mahayag, Banaybanay, Davao Oriental. Allegedly, said land was voluntarily offered for sale under the CARP without their knowledge and consent. An "Extra Judicial Settlement of Estate with Special Power of Attorney" was purportedly signed by the heirs of the late Paquingan, notarized by herein respondent judge who, on the other hand, claimed that he did so only on an accommodation basis believing that the same was a government transaction. Further, he had no other participation in the document except for affixing his signature over his already typewritten name.

MTC and MCTC judges assigned to municipalities or circuits with no lawyers or notaries public may, in their capacity as notaries public *ex officio*, perform any act within the competency of a regular notary public provided, that a certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit. Here, there was evidence that there were notaries within the circuit of respondent judge but, assuming there were none, he should have issued the required certification.

SYLLABUS

JUDICIAL ETHICS; POWER OF MTC AND MCTC JUDGES TO ACT AS NOTARIES PUBLIC *EX OFFICIO*; LIMITATIONS.— Time and again, the Court has enjoined strict observance of Circular No. 1-90 on the power of Municipal Trial Court (MTC) and Municipal Circuit Trial Court (MCTC) judges to act as notaries public *ex officio*. Under Section 76 of Republic Act No. 296, as amended, and Section 242 of the Revised Administrative Code, MTC and MCTC judges are empowered to perform the

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functions of notaries public *ex officio.* In Circular No. 1-90 however, the Court laid down the following qualifications on the scope of said power, *viz*: 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. They may not, as notaries public *ex officio*, 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. 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 officio,* 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; and (2) certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit.

RESOLUTION

KAPUNAN, *J.*:

On July 31, 1995, a sworn complaint was filed by Venus P. Doughlas against Municipal Circuit Trial Court Judge Francisco H. Lopez, Jr. of Lupon, Banaybanay, Davao Oriental alleging an irregularity in the notarization of a document entitled "Extra Judicial Settlement of Estate with Special Power of Attorney" by respondent judge.

Complainant alleged that she is one of the heirs of the late Bienvenido Paquingan who owned a parcel of agricultural land located at Mahayag, Banaybanay, Davao Oriental consisting of 14.5783 hectares. Said land was covered by Transfer Certificate of Title No. T-6309. To her surprise and consternation, she recently discovered that the said land was voluntarily offered for sale under the Comprehensive Agrarian Reform Program of the Department

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of Agrarian Reform. The voluntary offer to sell was allegedly facilitated without the knowledge and consent of the heirs of the late Bienvenido Paquingan and by virtue of an "Extra Judicial Settlement of Estate with Special Power of Attorney" purportedly signed by the said heirs and acknowledged before respondent judge. She averred that a cursory look at the signatures therein would reveal that the same are forgeries and were signed by only one person. According to her, all the heirs of the late Bienvenido Paquingan are residing abroad so it is quite incredible that all of them arrived at the same time in Banaybanay, Davao and simultaneously secured residence certificates on the same day, March 12, 1994, as was indicated in the questioned instrument. To prove her allegations, she submitted (a) an affidavit executed by her mother and wife of the late Bienvenido Paquingan duly authenticated by Philippine Consul Antonio S. Curameng of Los Angeles, California, U.S.A. stating that the former did not return to the Philippines on March 30, 1994 to sign the questioned document; and (2) an affidavit of one Perla Bonhoc stating that Juanita Tormis, the late Bienvenido Paquingan's administrator, gave her the questioned instrument which bore the forged signatures of the heirs of the late Bienvenido Paquingan.[1]

In his Comment, respondent judge admitted having notarized the questioned instrument but claimed that he did so only on an accommodation basis believing that the same was a government transaction. He maintained that he had been notarizing documents for the Department of Agrarian Reform in the past. He further contended that he had no participation in the drafting, preparation and final execution of the questioned document except for affixing his signature over his already typewritten name. He concluded his Comment with the resolve to be more meticulous next time around.[2]

In a Resolution dated February 7, 1996, the Court referred the matter to Executive Judge Ricardo M. Berba, Regional Trial Court, Branch 5, Mati, Davao Oriental for investigation, report and recommendation.

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[1] *Rollo*, pp. 4-5.

[2] *Id.*, at 18-20.

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The initial investigation set for March 28, 1996 was reset to April 30, 1996 because of the absence of the complainant. On the appointed date, both parties appeared but the complainant asked for more time to secure the services of counsel. On May 23, 1996, complainant failed to appear before the investigation judge. Considering that respondent judge had already submitted his Comment dated November 14, 1995, the matter was deemed submitted for resolution.

In his report and recommendation, Investigating Judge Berba stated:

> The failure of the complainant to appear despite due notice and opportunity given to her to substantiate the complaint is very strong indication that complainant is not interested in substantiating the allegations in the complaint.
>
> The complaint against respondent judge is a matter which has to be proven by clear and convincing evidence. Complainant failed to do so. However, in the light of the explanation of respondent, the investigator submits that respondent should be admonished to be very careful in the future in order not to prejudice any party in the course of the performance of his duties as *ex-oficio* notary public.[3]

On October 14, 1996, this Court issued a resolution referring the case back to Executive Judge Berba "for further and thorough investigation within thirty (30) days, with notice of hearing properly served on complainant to determine the parties responsible so that proper action can be taken." [4]

In compliance with the above resolution, notices were sent to the complainant through her representative Fe Sinsosa at Yellow St., Ma-a, Davao City and to Rosita Paquingan at 2600 Grove St., National City, California, U.S.A. Neither of them appeared at the hearing set. Consequently, Investigating Judge Berba recommended the dismissal of the complaint ratiocinating that:

> Complainant alleged that the signatures appearing in the questioned documents "Extra Judicial Settlement of Estate With Special Power of Attorney" and "Waiver" both ratified before respondent judge appear to

[3] *Id.*, at 74.

[4] *Id.*, at 78.

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have been signed by only one person. This is belied by a mere comparison of the signatures appearing in both questioned documents and those in the aforesaid *Facto de Retro* Sale (sic) and Special Power of Attorney. In the absence of any competent evidence presented by complainant to support her said allegation, the presumption of regularity in the performance of official duty in favor of respondent still prevails.

Moreover, if ever as alleged heir complainant (sic) was deprived of her share in the property subject of the questioned documents, such claim may be ventilated in an appropriate forum. It is indeed very hard to arrive at the conclusion under the circumstances and evidence on record that respondent facilitated such alleged deprivation. The records do not show of any proceeding involving the said questioned documents initiated by any of the parties.[5]

On December 6, 1999, the Office of the Court Administrator, pursuant to earlier resolution, submitted its memorandum which we quote in part:

We agree with the findings of the Investigating Judge that the accusation of forgery cannot be substantiated without the full cooperation of complainant. Mere suspicion without proof cannot be a basis for conviction. Moreover, complainant's repeated failure to appear or communicate despite notice gives rise to the presumption that she deliberately failed to prosecute her case.

The foregoing notwithstanding, we find respondent guilty of unauthorized notarization of a private document. It is well settled that municipal judges may not engage in notarial work except as notaries public *ex-officio*. As notaries public *ex-officio*, they may engage only in the notarization of documents connected with the exercise of their official functions. They may not, as such notaries public *ex-officio*, undertake the preparation and acknowledgment of private documents, contracts and other acts of conveyance, which bear no relation to the performance of their functions as judges. (*Balayon, Jr. vs. Ocampo*, 218 SCRA 13).

However, taking judicial notice of the fact that there are still municipalities which have neither lawyers nor notaries public, the Supreme Court ruled that MTC and MCTC judges assigned to municipalities or circuits with no lawyers or notaries public may, in their capacity as notaries public *ex-officio*, perform any act within the competency of a regular notary public, provided that (1) all notarial fees charged be for the account

[5] Report and Recommendation dated May 28, 1999, pp. 5-6.

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of the Government and turned-over to the municipal treasurer and (2) certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit. (*ibid.*).

Two of the documents submitted by one Herman P. Periquet, the DAR personnel who frequently asks respondent Judge to notarize DAR documents, show that there are notaries public in the MCTC of Lupon-Banaybanay, to wit:

1. The *Pacto de Retro* sale executed by and between Rosita Paquingan and Juanita Tormis last October 25, 1985 was notarized by Atty. Russia S. Mangampo; and

2. The first Special Power of Attorney executed by the heirs of Bienvenido Paquingan in favor of Juanita Tormis last March 12, 1994 was notarized by Atty. Leonardo M. Barnes.

Respondent Judge had therefore no right to notarize the "Extra Judicial Settlement with Special Power of Attorney," a private document, which is not related to the performance of his official function as a judge.

Wherefore, it is respectfully recommended that the complaint of forgery be DISMISSED and that Judge Francisco H. Lopez, Jr. be FINED One Thousand Pesos (₱1,000.00) for unauthorized notarization of a private document.

Time and again, the Court has enjoined strict observance of Circular No. 1-90 on the power of Municipal Trial Court (MTC) and Municipal Circuit Trial Court (MCTC) judges to act as notaries public *ex officio*. Under Section 76 of Republic Act No. 296, as amended, and Section 242 of the Revised Administrative Code, MTC and MCTC judges are empowered to perform the functions of notaries public *ex officio*. In Circular No. 1-90 however, the Court laid down the following qualifications on the scope of said power, *viz*:

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 [*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 officio*, 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

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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 officio*, 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.

The reasons that warranted the issuance of said circular need no longer be stated. 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.[6]

Here, as reported by the Court Administrator in his Memorandum, dated December 6, 1999, two documents submitted by a DAR employee who frequently requested respondent judge to notarize DAR documents, were notarized by lawyers in the town of Banaybanay, one in 1985 and the other in 1994, signifying that there were notaries within the circuit of the respondent judge. Assuming that there were none, he should have issued a certification in the document he notarized attesting to that fact, which he did not.

WHEREFORE, premises considered, the complaint for forgery is hereby *DISMISSED*, however, respondent judge FRANCISCO H. LOPEZ, JR. is hereby ordered to pay a fine of ONE THOUSAND PESOS (₱1,000.00) for unauthorized notarization of a private document. He is *STERNLY WARNED* that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., Puno, Pardo, and *Ynares-Santiago, JJ.*, concur.

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[6] Canon 5 and Rule 5.07.