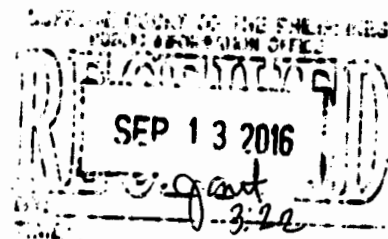




Republic of the Philippines
Supreme Court
 Manila



FIRST DIVISION

**VIRGILIO D. MAGAWAY and
 CESARIO M. MAGAWAY,**
 Complainants,

A.C. No. 7072

Present:

- versus -

SERENO, C.J.,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PERLAS-BERNABE, and
 CAGUIOA, JJ.:

**ATTY. MARIANO A.
 AVECILLA,**
 Respondent.

Promulgated:

JUL 27 2016

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DECISION

BERSAMIN, J.:

The complainants hereby seek the disbarment of the respondent for his violation of the Lawyer’s Oath, the duties of attorneys under Section 20, Rule 138 of the *Rules of Court*, the rules on notarial practice, and the *Code of Professional Responsibility*.

They aver in their affidavit-complaint dated January 2006 the following:¹

That the OCT P-2419 with a total land area of 10.5 hectares has been mortgaged (Sale with the right to repurchase) by the late Gavino Magaoay to the late Elena Gongon in the amount of Three Thousand Nine hundred (₱3,900.00) pesos on July 10, 1959 and the late Gavino Magaoay was not able to redeemed (sic) the land because he died on December 3, 1963 prior to the date of redemption;

That we have the right of ownership by virtue of right of her[e]ditary succession from the original patent holder, [the] late Gavino

¹ Rollo, pp. 5-6.

Magaway who is the registered owner of OCT P[-]2419 which was fraudulently reconstituted and fraudulently sold by virtue of the falsified deed of sale fictitiously executed by [the] late Elena Gongon, falsified request for issuance of separate titles fictitiously executed by the late Gavino Magaoay and falsified affidavit of non-tenancy fictitiously executed by the late Elena Gongon;

That OCT P-2419 whom Gavino Magaoay is the registered owner and the mortgagor was never consolidated in the name of Elena Gongon, the mortgagee;

That it was Attorney Mariano A. Avecilla who duly prepared, notarized and manipulated the Falsified Deed of Sale executed by Elena Gongon dated December 7, 1993 with her fictitious Residence Certificate Nr.927294 which was issued on February 7, 1995 at Roxas, Isabela and Affidavit of non-tenancy which was fictitiously executed by the late Elena Gongon in favor of Angelito Ramiscal Sr et al where Transfer Certificate Titles: T-238312, T-238313, T-238314 and T-238315 were derived therein and all tainted with irregularities;

That in consideration of the amount of Thirty Thousand (Php.30,000.00) pesos whom Attorney Mariano A. Avecilla and his wife Loreta had accepted from Angelito Ramiscal Sr. as a package deal in the preparation of the Falsified Deed of Sale dated December 7, 1993 and other above mentioned documents that are instrumental in the anomalous transfer of land Title in favor of the Ramiscals' (transcript of stenographic notes, RTC Branch 23, Roxas, Isabela dated June 11, 2003).

That Elena Gongon could not have thumb marked the Deed of Sale and affidavit of non-tenancy dated December 7, 1993 which was notarized by Atty. Mariano A. Avecilla because Elena Gongon had already died on May 11, 1966 and already dead for twenty seven (27) years at the date of the instruments;

That Gavino Magaoay could not have signed the request for issuance of separate titles dated April 3, 1995 and Public Land Survey Plan PSD 02-053024 dated March 1, 1995 in favor of the Ramiscals because he was unschooled and he died on December 3, 1963 so that he was already dead for thirty (30) years at the date of the instruments which was also used in the falsification and unlawful transfer of the aforementioned Transfer Certificate Titles which was manipulated by Attorney Avecilla and his wife Loreta in favor of the Ramiscals;

That Attorney Mariano A. Avecilla of Roxas, Isabela has committed serious damages to us, because we are deprived of our rights for hereditary succession over the property in question due his unprofessional, illegal, anomalous conduct and incompetence in the practice of law particularly by circum[v]enting the laws in dealing with registered land through the preparation, notarization and signing deed of sale where the parties were already dead for long time ago (sic);

That due to the unlawful manipulations of Attorney Mariano A. Avecilla, land titles tainted with irregularities were issued in favor of Angelito Ramiscal Sr et al thus he should be prohibited to practice Law because he is incompetent and a liability in the justice system of the Republic of the Philippines that are contributory to the loosing (sic) trust

and confidence by the people among some (sic) undesirable lawyers and in the administration of Justice in this country;²

It appears that the notarization of the documents (specifically, the deed of sale by attorney-in-fact by Eleanor Gongon Flores represented by her attorney-in-fact Efren Vera Cruz, Sr. on August 5, 1992 in favor of Angelito Ramiscal, Sr.; the deed of sale executed by Elena Gongon on December 7, 1993 in favor of Angelito Ramiscal, Sr.; and the affidavit of non-tenancy executed by Elena Gongon on December 7, 1993) had led to the filing of two criminal cases and a civil action. The first criminal case, for *estafa through falsification of a public document*, was filed by the complainants against Angelito Ramiscal, Sr. and the respondent in the Office of the Provincial Prosecutor of Isabela, but the case was ultimately dismissed on July 15, 1998. The second criminal case, also for *falsification of a public document*, was initiated by Eleanor Gongon Flores against the Ramiscals, the respondent, and the latter's wife, Loreta Avecilla. The case was also dismissed on October 5, 2000. The civil action seeking the declaration of nullity of fraudulently reconstituted original certificate of title and all the transfer certificates of title derived therefrom, and declaration of nullity of instruments registered affecting them was brought on July 28, 1997 by the complainants as the heirs of the late Gavino Magaoay against the Ramiscals (namely, Angelito, Sr. and his children Arlene, Ervin and Angelito, Jr.) and the respondent in the Regional Trial Court (RTC) in Roxas, Isabela (Civil Case No. 23-551-97), which ultimately dismissed the complaint through a decision rendered on June 14, 2004.³ On appeal, however, the Court of Appeals, through its decision promulgated on August 29, 2008,⁴ reversed the dismissal of the case by the RTC.

After the Court referred this administrative complaint to the Integrated Bar of the Philippines (IBP) for investigation and recommendation, the IBP Board of Governors called the parties for mandatory conferences on July 30, 2007 and September 10, 2007.

In due time, IBP Investigating Commissioner Manuel M. Maramba rendered his report and recommendation dated October 24, 2008,⁵ whereby he found in favor of the complainants after giving more weight and credence to their assertions than to the denial and explanation of the respondent; and he recommended the respondent's suspension from the practice of law for one year, and the indefinite revocation of the respondent's notarial commission.

² Id.

³ Id. at 83-99; penned by Judge Bernabe b. Mendoza.

⁴ Id. at 267-281; 383-397; penned by Associate Associate Justice Sesinando E. Villon with Associate Justice (now Presiding Justice) Andres B. Reyes, Jr. and Associate Justice Jose Catral Mendoza (now a member of this Court), concurring.

⁵ Id. at 300-306.

In its Resolution No. XVIII-2009-21 dated February 19 2009,⁶ the IBP Board of Governors adopted and approved the report and recommendation with modification of the recommended penalty to suspension from the practice of law for one year and disqualification from being commissioned as notary public for two years.

The respondent sought reconsideration of the resolution,⁷ but the IBP Board of Governors rejected his motion.⁸

In the comment he submitted to the Court,⁹ the respondent contended that his notarization of the three documents had not prejudiced anyone considering that the late Gavino Magaway, the predecessor in interest of the complainants, did not repurchase the property by April 30, 1960, as stipulated between the late Gavino Magaway, as vendor a retro, and Eleanor Gongon Flores, as the vendee a retro; that the complainants, assuming them to be the true legal heirs of the late Gavino Magaway, who had died without issue, had nothing more to inherit; that the sale of the property had been first made on August 5, 1992 by Efren Vera Cruz, Sr. as the attorney-in-fact of Eleanor Gongon Flores; that on the same date, Vera Cruz, Sr. had sold the portion of the property with an area of 8.479 hectares to Angelito Ramiscal, Sr. and his family for ₱400,000.00; that on December 7, 1993, a woman in her mid-30's, claiming herself to be an employee of the Office of the Registry of Deeds of Isabela, had accompanied an elderly woman to the respondent's law office to request him to notarize the ready-made deed of sale the elderly woman had brought with her; that he had notarized the document out of pity and kindness for the elderly woman, who had affixed her thumbprint on the document; and that the elderly woman turned out to be an impostor.

Ruling of the Court

The findings and recommendations of the IBP Board of Governors, being supported by the records, are adopted.

The function of a notary public is, among others, to guard against any illegal or immoral arrangements in the execution of public documents.¹⁰ In this case, the respondent's affixing of his notarial seal on the documents and his signature on the notarial acknowledgments transformed the deeds of sale from private into public documents,¹¹ and rendered them admissible in court

⁶ Id. at 299.

⁷ Id. at 307-338.

⁸ Id. at 411.

⁹ Id. at 430-437.

¹⁰ *Villarin v. Sabate, Jr.*, A.C. No. 3324, February 9, 2000, 325 SCRA 123, 127; citing *Valles v. Arzaga-Quijano*, A.M. No. P-99-1338, November 18, 1999, 318 SCRA 411, 414.

¹¹ Section 19(b), Rule 132 of the *Rules of Court*.

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without further proof of their authenticity because the certificate of acknowledgment constituted them the *prima facie* evidence of their execution.¹² In doing so, he proclaimed to the world that all the parties executing the same had personally appeared before him; that they were all personally known to him; that they were the same persons who had executed the instruments; that he had inquired into the voluntariness of execution of the instrument; and that they had acknowledged personally before him that they had voluntarily and freely executed the same.¹³

As a lawyer commissioned to be a notary public, the respondent was mandated to discharge his sacred duties with faithful observance and utmost respect for the legal solemnity of an oath in an acknowledgment or *jurat*.¹⁴ Indeed, such responsibility was incumbent upon him by virtue of his solemn Lawyer's Oath to do no falsehood or consent to the doing of any, and by virtue of his undertaking, pursuant to the Code of Professional Responsibility, not to engage in unlawful, dishonest, immoral or deceitful conduct and to uphold at all times the integrity and dignity of the legal profession.¹⁵ His failure to ascertain the identity of the person executing the same constituted gross negligence in the performance of his duties as a notary public.¹⁶ As such, it is now unavoidable for him to accept the commensurate consequences of his indiscretion.¹⁷

The respondent's rather convenient assertion that an impostor had appeared before him and affixed her thumbprint on the ready-made deed of sale and affidavit of non-tenancy does not sway the Court. He should have demanded that such person first prove her identity before acting on the documents she had brought for his notarization. The objective of the requirement, which was to enable him as the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the deed of sale and affidavit of non-tenancy were the party's free act and deed,¹⁸ was not to be served as casually as he did. By not ensuring that the person then appearing before him as the executor of the documents was really Elena Gongon, not the impostor, he clearly did not exercise the precautions and observe the protocols that would have easily insulated the performance of his notarial duties from forgery and falsification.

By his neglect, the respondent undermined the confidence of the public on the worth of notarized documents. He thus breached Canon I of the *Code of Professional Responsibility*, by which he as an attorney

¹² Section 30, Rule 132 of the *Rules of Court*; *Nadayag v. Grageda*, A.C. No. 3232, September 27, 1994, 237 SCRA 202, 206.

¹³ Section 1, Public Act No. 2103 (*An Act Providing for the Acknowledgment and Authentication of Instruments and Documents Within the Philippine Islands*).

¹⁴ *Maligsa v. Cabanting*, A.C. No. 4539, May 14, 1997, 272 SCRA 408, 414.

¹⁵ *Flores v. Chua*, A.C. No. 4500, April 30, 1999, 306 SCRA 465, 484-485.

¹⁶ *Dela Cruz v. Zabala*, A.C. No. 6294, November 17, 2004, 442 SCRA 407, 413.

¹⁷ *Id.*

¹⁸ *Vda. de Rosales v. Ramos*, A.C. No. 5645, July 2, 2002, 383 SCRA 498, 505.

commissioned to serve as a notary public was required to uphold the Constitution, obey the laws of the land, and promote respect for the law and legal processes.¹⁹

The respondent's argument that no person had been prejudiced by the execution of the documents was undeserving of consideration. There was no denying that the notarization of the deed of sale and affidavit of non-tenancy adversely affected the rights of the complainants and Eleanor Gongon Flores on their existing interest in the property involved in such instruments.

Time and again, the Court has reminded notaries public of the importance attached to the act of notarization. We must stress yet again that notarization is not an empty, or perfunctory, or meaningless act, for it is invested with substantial public interest. Courts and other public offices, and the public at large could rely upon the recitals of the acknowledgment executed by the notary public.²⁰ For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.²¹

In *Lanuzo v. Bongon*²² and *Linco v. Lacebal*,²³ we have ruled that the notarial commission of a notary public who fails to faithfully discharge his duties as such should be revoked, and he should be further disqualified from being commissioned as such for a period of two years. The notary public in such situation may further be suspended from the practice of law for one year. In this case, the same penalties should be imposed on the respondent. Indeed, his acts manifested breach of the vow he took under his Lawyer's Oath to do no falsehood, and to delay no man for money or with malice.

WHEREFORE, the Court **REVOKES** the notarial commission of respondent **ATTY. MARIANO A. AVECILLA** effective immediately; **DISQUALIFIES** him from reappointment as Notary Public for a period of two years effective immediately; **SUSPENDS** him from the practice of law for a period of one year effective immediately with the **WARNING** that the repetition of the same or similar acts shall be dealt with more severely; and **DIRECTS** him to report the date of receipt of this decision in order to determine when his suspension shall take effect.

¹⁹ *Aquino v. Manese*, A.C. No. 4958, April 3, 2003, 400 SCRA 458, 463.

²⁰ *Supra* note 18, at 499.

²¹ *Linco v. Lacebal*, A.C. No. 7241, October 17, 2011, 659 SCRA 130, 135.

²² A.C. No. 6737, September 23, 2008, 566 SCRA 214, 218.


²³ *Supra* note 21.

Let copies of this decision be furnished to the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all courts throughout the country. Let a copy of this decision be attached to the personal records of **ATTY. MARIANO A. AVECILLA**.

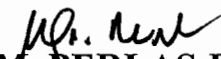
SO ORDERED.

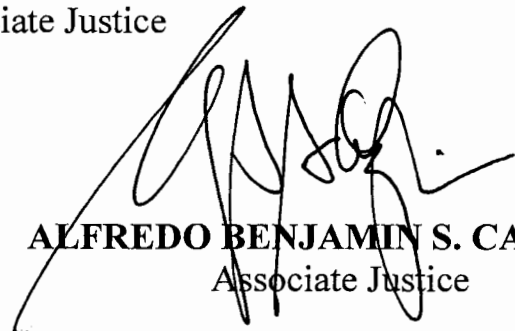

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice