



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

DOMADO DISOMIMBA SULTAN,
Complainant,

A.C. No. 7919

Present:

PERALTA, J.,*
Acting Chairperson,
VILLARAMA, JR.,
REYES,
PERLAS-BERNABE,** and
JARDELEZA, JJ.

- versus -

ATTY. CASAN MACABANDING,
Respondent.

Promulgated:

October 8, 2014

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DECISION

REYES, J.:

This is an administrative complaint¹ filed on May 14, 2008 before the Office of the Bar Confidant by Domado Disomimba Sultan (complainant) against Atty. Casan Macabanding (respondent) for allegedly having notarized a falsified affidavit.

* Acting Chairperson per Special Order No. 1815 dated October 3, 2014 *vice* Associate Justice Presbitero J. Velasco, Jr.

** Additional member per Special Order No. 1816 dated October 3, 2014 *vice* Associate Justice Presbitero J. Velasco, Jr.

¹ *Rollo*, pp. 1-13.

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The Facts

According to the complainant, he ran for the position of Mayor for the Municipality of Buadipuso Buntong, Lanao del Sur in 2007. He filed his Certificate of Candidacy (COC) dated March 29, 2007 with the Commission on Elections (COMELEC) for the May 14, 2007 elections.²

Thereafter, an Affidavit of Withdrawal of Certificate of Candidacy for Municipal Mayor³ (Affidavit of Withdrawal) dated April 10, 2007 was notarized and submitted by the respondent to the COMELEC, withdrawing the complainant's candidacy without the latter's knowledge or authorization.

When the complainant learned of this, he wrote a letter⁴ dated April 18, 2007 and submitted an Affidavit⁵ to Mamangcoday Colangcag (Colangcag), Acting Election Officer of the COMELEC in Buadipuso Buntong, Lanao del Sur. The complainant alleged that he neither executed the Affidavit of Withdrawal nor authorized anybody to prepare a document to withdraw his COC. He asked that the withdrawal be ignored and that his name be retained on the list of candidates.

On May 16, 2007, the complainant filed a petition with the COMELEC to count the votes cast in his favor. The complainant also filed a criminal complaint on May 17, 2007 with the Prosecutor's Office of Marawi City against Abdulmojib Moti Mariano (Mariano) who was another candidate for the mayoralty position, the respondent, and Colangcag for Falsification of Public Documents.⁶ Information⁷ was thereby filed against the respondent and Colangcag which was docketed as Criminal Case No. 5842-08 in the Regional Trial Court of Lanao Del Sur, Marawi City.

Meanwhile, the COMELEC Second Division found merit in the complainant's petition and ordered the reinstatement of his name in the list of candidates for the position of mayor in its Resolution⁸ dated June 12, 2007. All votes cast in favor of the complainant were also counted. Thus, Mariano elevated the matter to the COMELEC *en banc*, which issued a *subpoena* requiring the National Bureau of Investigation (NBI) to study the signature appearing on the Affidavit of Withdrawal. Subsequently, the NBI transmitted its Questioned Documents Report No. 428-907⁹ to the COMELEC *en banc*, stating that the signature in the Affidavit of

² Id. at 2.

³ Id. at 15.

⁴ Id. at 16.

⁵ Id. at 17.

⁶ Id. at 2-3.

⁷ Id. at 38-39.

⁸ Id. at 51-56.

⁹ Id. at 63-65.

Withdrawal and the specimen signatures of the complainant were not written by one and the same person.¹⁰

On May 14, 2008, the complainant filed the present administrative complaint against the respondent with prayer for his disbarment. After the respondent filed his comment¹¹ on the complaint, the case was referred to the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline for investigation, report and recommendation.¹²

The respondent countered that the instant administrative case was filed against him as political harassment because his family supported the complainant's opponent, Mariano.¹³ He admitted that he notarized the affidavit after it was signed by the complainant voluntarily and in the presence of witnesses and thereafter, submitted the same to the COMELEC. However, the complainant changed his mind when Mariano, who was the only remaining mayoralty candidate, refused to pay millions of pesos to the complainant.¹⁴ The respondent withheld the identity of the witnesses allegedly to avoid problems within their family.

On July 1, 2009, the Investigating Commissioner issued a Report and Recommendation,¹⁵ recommending "that the respondent be suspended from the active practice of law for six (6) months and two (2) years as notary public."¹⁶

On May 15, 2011, the IBP Board of Governors passed Resolution No. XIX-2011-297¹⁷ adopting the recommendation of the Investigating Commissioner:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A" and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering respondent's irregular notarization and submission of complainant's Affidavit of Withdrawal of Certificate of Candidacy to the COMELEC without complainant's knowledge and authorization, Atty. Casan Macabanding is hereby **SUSPENDED** from the practice of

¹⁰ Id. at 65.

¹¹ Id. at 75-82.

¹² Id. at 103.

¹³ Id. at 117-118.

¹⁴ Id. at 119.

¹⁵ Id. at 164-168; 179-183.

¹⁶ Id. at 168, 183.

¹⁷ Id. at 163, 178.

law for six (6) months and **SUSPENDED** from being commissioned as Notary Public for two (2) years.¹⁸

The respondent filed a Motion for Reconsideration,¹⁹ which the IBP Board of Governors denied in its Resolution No. XX-2014-76²⁰ dated March 8, 2014 for being a mere reiteration of matters already threshed out and taken into consideration.²¹

Issue

WHETHER THE RESPONDENT SHOULD BE HELD ADMINISTRATIVELY LIABLE BASED ON THE ALLEGATIONS IN THE COMPLAINT.

Ruling of the Court

The Court agrees with the findings of the IBP but modify the penalty imposed.

The complainant presented the findings of the NBI which are hereunder reproduced:

FINDINGS:

Laboratory and scientific comparative examination of the specimens submitted, under stereoscopic microscope and magnifying lenses, with the aid of photographic enlargements (Comparison charts), reveal that there exist fundamental, significant differences in writing characteristics/habits between the questioned signature “DOMADO DISOMIMBA” (written in Arabic characters/alphabet), on one hand, and the sample specimen signatures “DOMADO DISOMIMBA” (written in Arabic characters/alphabet), on the other hand, such as in:

- Structural pattern of characters/elements
- Direction of strokes
- Proportion characteristics
- Other minute identifying details

¹⁸ Id.

¹⁹ Id. at 169-173.

²⁰ Id. at 177.

²¹ Id.

CONCLUSION:

Based on the above FINDINGS, the questioned signature “DOMADO DISOMIMBA” (written in Arabic characters/alphabet), on one hand, and the sample specimen signatures “DOMADO DISOMIMBA” (written in Arabic characters/alphabet), on the other hand, **WERE NOT WRITTEN** by one and the same person.²² (Underscoring and emphasis in the original)

The respondent maintained that the NBI officer who examined the complainant’s signature is not an expert in Arabic language and thus, could not give an expert opinion regarding a signature written in Arabic language.²³

On this score, the Court refers to *Mayor Abdulmojib Moti Mariano v. Commission on Elections and Domado Disomimba Sultan*,²⁴ wherein the Court resolved with finality the dismissal of Mariano’s petition before the Court alleging that the COMELEC committed grave abuse of discretion amounting to lack of jurisdiction in ordering the complainant’s reinstatement in the list of mayoralty candidates.

Mariano’s petition challenged the issuances of the COMELEC which were anchored on its finding that the affidavit of withdrawal of candidacy imputed to the complainant was forged. It was dismissed by the Court in the Resolution dated August 19, 2008. On October 9, 2008, the complainant was then proclaimed as the duly-elected mayor of Buadiposo Buntong, Lanao del Sur, having obtained the highest number of votes (4,078). Mariano filed a motion for reconsideration claiming that the COMELEC’s failure to avail of the services of an Arabic expert was tantamount to grave abuse of discretion.²⁵ The Court denied the motion and addressed the issue raised in this wise:

Contrary to petitioner’s basic stance, **a handwriting expert does not have to be a linguist at the same time.** To be credible, a handwriting expert need not be familiar with the language used in the document subject of his examination. **The nature of his examination involves the study and comparison of strokes, the depth and pressure points of the alleged forgery, as compared to the specimen or original handwriting or signatures.**²⁶ (Emphasis and underscoring ours)

²² Id. at 65.

²³ Id. at 79.

²⁴ Court *en banc* Resolution dated January 13, 2009 in G.R. No. 183842.

²⁵ Id.

²⁶ Id.

In administrative cases against lawyers, the quantum of proof required is preponderance of evidence. In *Rodica v. Lazaro*,²⁷ the Court expounded:

In *Siao v. Atty. De Guzman, Jr.*, this Court reiterated its oft[-] repeated ruling that in suspension or disbarment proceedings, lawyers enjoy the presumption of innocence, and the burden of proof rests upon the complainant to clearly prove her allegations by preponderant evidence. Elaborating on the required quantum of proof, this Court declared thus:

Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other. It means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Under Section 1 of Rule 133, in determining whether or not there is preponderance of evidence, the court may consider the following: (a) all the facts and circumstances of the case; (b) the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony; (c) the witnesses' interest or want of interest, and also their personal credibility so far as the same may ultimately appear in the trial; and (d) the number of witnesses, although it does not mean that preponderance is necessarily with the greater number.

x x x x²⁸ (Citation omitted)

The complainant adduced preponderant evidence that his signature was indeed forged in an affidavit which the respondent notarized and submitted to the COMELEC. Consequently, the respondent should be held administratively liable for his action. **“Where the notary public is a lawyer, a graver responsibility is placed upon his shoulder by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any.** The Code of Professional Responsibility also commands him not to engage in unlawful, dishonest, immoral or deceitful conduct and to uphold at all times the integrity and dignity of the legal profession.”²⁹ “It should be noted that a notary public’s function should not be trivialized and a notary public must discharge his powers and duties which are impressed with public interest, with accuracy and fidelity. A notary public exercises duties calling for carefulness and faithfulness. Notaries must inform themselves of the facts they certify to; most importantly, they should not take part or allow themselves to be part of illegal transactions.”³⁰ In fact, the

²⁷ A.C. No. 9259, August 23, 2012, 679 SCRA 1.

²⁸ Id. at 9-10.

²⁹ *Carlito Ang v. Atty. James Joseph Gupana*, A.C. No. 4545, February 5, 2014, citing *Flores v. Atty. Chua*, 366 Phil. 132, 153 (1999).

³⁰ *Maria v. Cortez*, A.C. No. 7880, April 11, 2012, 669 SCRA 87, 93-94.

respondent admitted that the affidavit was notarized in his office without the presence of the complainant.³¹

In *Carlito Ang v. Atty. James Joseph Gupana*,³² the respondent therein was suspended from the practice of law for one year; his notarial commission was revoked and he was also disqualified from reappointment as notary public for a period of two years for notarizing an affidavit of loss without the presence of the party acknowledging the document.

The same sanctions were imposed against the erring lawyer in *Agbulos v. Viray*,³³ where the respondent therein admitted “that not only did he prepare and notarize the subject affidavit but he likewise notarized the same without the affiant’s personal appearance. He explained that he did so merely upon the assurance of his client Dollente that the document was executed by complainant.”³⁴

In *Isenhardt v. Real*,³⁵ the respondent therein was subjected to similar penalties when he notarized a Special Power of Attorney (SPA) supposedly executed by the complainant. It was proven by documentary evidence that the complainant was in Germany at that time and therefore could not have appeared before the respondent to have the SPA notarized.

The complainant in *Linco v. Lacebal*³⁶ filed an administrative case against the respondent notary public for notarizing a deed of donation despite the latter’s knowledge that the purported donor had already passed away on an earlier date. For this reason, the respondent’s notarial commission was revoked and he was disqualified from being commissioned as a notary public for a period of two years. Furthermore, he was suspended from the practice of law for one year.

Thus, based on prevailing jurisprudence, the penalties meted out against a lawyer commissioned as a notary public who fails to discharge his duties as such are: the revocation of notarial commission, disqualification from being commissioned as a notary public for a period of two years, and suspension from the practice of law for one year.

³¹ *Rollo*, p. 119.

³² A.C. No. 4545, February 5, 2014.

³³ A.C. No. 7350, February 18, 2013, 691 SCRA 1.

³⁴ *Id.* at 7.

³⁵ A.C. No. 8254, February 15, 2012, 666 SCRA 20.

³⁶ A.C. No. 7241, October 17, 2011, 659 SCRA 130.

WHEREFORE, Atty. Casan Macabanding is found administratively liable for misconduct and is **SUSPENDED** from the practice of law for one (1) year. Further, his notarial commission, if any, is **REVOKED** and he is **DISQUALIFIED** from reappointment as Notary Public for a period of two (2) years, with a stern warning that repetition of the same or similar conduct in the future will be dealt with more severely. He is **DIRECTED** to report to this Court the date of his receipt of this Decision to enable it to determine when the revocation of his notarial commission and his disqualification from being commissioned as notary public shall take effect.

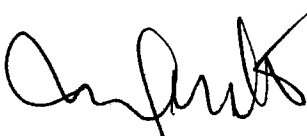
Let copies of this Decision be furnished to the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all courts all over the country. Let a copy of this Decision likewise be attached to the personal records of Atty. Casan Macabanding.

SO ORDERED.



BIENVENIDO L. REYES
Associate Justice

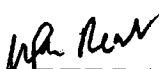
WE CONCUR:




DISODADO M. PERALTA
Associate Justice
Acting Chairperson



MARTIN S. VILLARAMA, JR.
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice