



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

FRANCO B. GONZALES,  
Complainant,

A.C. No. 11396

Present:

CARPIO, J., *Chairperson*,  
PERALTA,  
PERLAS-BERNABE,  
CAGUIOA, and  
REYES, JR., *JJ.*

- versus -

Promulgated:

ATTY. DANILO B. BAÑARES,  
Respondent.

20 JUN 2018

X-----X

DECISION

PERALTA, J.:

This is an administrative complaint which Franco B. Gonzales filed against Atty. Danilo B. Bañares, for allegedly notarizing a Deed of Absolute Sale in violation of the legal requirements for notarization.

The procedural and factual antecedents of the case are as follows:

Gonzales contended that on September 23, 2010, a Deed of Absolute Sale covering three (3) parcels of land was executed between his mother, Lilia Gonzales, as the seller, and Flordeliza Soriano, as the buyer. Surprisingly, the name and signature of his father, Rodolfo Gonzales, were found in the document despite the fact that he was in Irosin, Sorsogon at the time of the supposed signing of the subject document. Gonzales likewise found out that his own name and signature appeared as witness in the

document when he was also not present at the time of said signing. He maintained that Bañares knew of these facts but still proceeded with the notarization of the document.

For his part, Bañares denied the accusations against him. The feigned innocence of Gonzales regarding the subject sale and his absence during its execution were belied and proved untrue by affidavits, one of which was executed by his own mother. He was present during the signing of the deed of sale as an instrumental witness, wrote his name, and affixed his signature in the presence of the contracting parties. Also, Bañares claimed that Rodolfo actually pre-signed the document to manifest his conformity as the seller's husband, but not as co-owner of the property.

On December 14, 2014, the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP*) recommended the suspension of Bañares from his Commission as Notary Public for a period one (1) year.<sup>1</sup> On November 28, 2015, the IBP Board of Governors passed Resolution No. XXII-2015-94,<sup>2</sup> which modified the Investigating Commissioner's findings of fact and recommendation, hence:

*RESOLVED to MODIFY the findings of facts and the recommended penalty of suspension of commission as Notary Public for one (1) year by the Investigating Commissioner and impose a stiffer penalty of six (6) months suspension from the practice of law, immediate revocation of commission as Notary Public, and disqualification for two (2) years as Notary Public against Atty. Danilo B. Bañares.*

### ***The Court's Ruling***

The Court upholds the findings and recommendations of the IBP that Bañares should be held liable for the questioned act.

Well-settled is the rule that notarization is the act that ensures the public that the provisions in the document express the true agreement between the parties. Transgressing the rules on notarial practice sacrifices the integrity of notarized documents. The notary public is the one who assures that the parties appearing in the document are indeed the same parties who executed it. This obviously cannot be achieved if the parties are not physically present before the notary public acknowledging the document since it is highly possible that the terms and conditions favorable to the vendors might not be included in the document submitted by the vendee for

---

<sup>1</sup> Report and Recommendation submitted by Commissioner Christian D. Villagonzalo; *rollo*, pp. 89-101.

<sup>2</sup> *Rollo*, pp. 87-88.



notarization. Worse, the possibility of forgery becomes real.<sup>3</sup> It should be noted that a notary public's function should not be trivialized; a notary public must always discharge his powers and duties, which are impressed with public interest, with accuracy and fidelity, and with carefulness and faithfulness. Notaries must at all times inform themselves of the facts they certify to. And most importantly, they should not take part or allow themselves to be part of illegal transactions.<sup>4</sup>

The Court cannot over-emphasize that notarization is not an empty, meaningless, routinary act. Notarization is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public.<sup>5</sup>

Here, the evidence on record highly suggest that Rodolfo was not present at the time of the execution of the Deed of Absolute Sale on September 23, 2010. There is no documentary or testimonial evidence that would prove that, together with the parties and the other witnesses to the document, he was present and personally affixed his signature on the deed before Bañares.

Moreover, it is interesting to note that Bañares himself declared that Rodolfo merely "pre-signed" the document "to manifest his conformity as the seller's husband, but not as the co-owner of the property." Such admission is contrary to his certification in the Acknowledgment of the Deed that Rodolfo Gonzales "personally appeared before him on September 23, 2010, known to him and to him known to be the same individual who executed the instrument and acknowledged that the same is his free act and voluntary deed." Rodolfo's absence at the time and place of the execution of the subject deed is made even more manifest by the lack of mention of his presence in the affidavits of the other parties to said deed.

Notarization of documents ensures the authenticity and reliability of a document. It converts a private document into a public one, and renders it admissible in court without further proof of its authenticity. Courts, administrative agencies, and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. It is not an empty routine; on the contrary, it engages public interest in a substantial degree and the protection of that interest requires preventing those who are not qualified or authorized to act as notaries public from imposing upon the courts, administrative offices, and the public.<sup>6</sup>

---

<sup>3</sup> *Anudon v. Atty. Cefra*, 753 Phil. 421, 430 (2015).

<sup>4</sup> *Sultan v. Atty. Macabanding*, 745 Phil. 12, 20 (2014).

<sup>5</sup> *Almazan, Sr. v. Atty. Suerte-Felipe*, 743 Phil. 131, 136-137 (2014).

<sup>6</sup> *Coquia v. Atty. Laforteza*, A.C. No. 9364, February 8, 2017.

Hence, a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated in said document. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.<sup>7</sup>

The 2004 Rules on Notarial Practice stresses the necessity of the affiant's personal appearance before the notary public. Rule II, Section 1 states:

SECTION 1. *Acknowledgment.* -" Acknowledgment" refers to an act in which an individual on a single occasion:

(a) **appears in person before the notary public** and presents and integrally complete instrument or document;

(b) **is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity** as defined by these Rules; and

(c) **represents to the notary public that the signature on the instrument or document was voluntarily affixed by him** for the purposes stated in the instrument or document, **declares that he has executed the instrument or document as his free and voluntary act and deed**, and, **if he acts in a particular representative capacity, that he has the authority to sign in that capacity.**<sup>8</sup>

Rule IV, Section 2(b) further states:

SEC. 2. *Prohibitions.* - x x x

(b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document –

(1) **is not in the notary's presence personally at the time of the notarization;** and

(2) **is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity** as defined by these Rules.<sup>9</sup>

Thus, a document should not be notarized unless the persons who are executing it are the very same ones who are personally appearing before the notary public. The affiants should be present to attest to the truth of the contents of the document and to enable the notary to verify the genuineness

---

<sup>7</sup> *Id.*

<sup>8</sup> Emphasis supplied.

<sup>9</sup> Emphasis supplied.



of their signature. Notaries public are enjoined from notarizing a fictitious or spurious document. In fact, it is their duty to demand that the document presented to them for notarization be signed in their presence. Their function is, among others, to guard against illegal deeds. 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.<sup>10</sup>

Indubitably, the violation of Bañares falls squarely within the prohibition of Rule 1.01 of Canon 1 of the Code of Professional Responsibility (*CPR*). Canon 1 and Rule 1.01 of the *CPR* provide:

**CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.**

Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

X X X X

Canon 1 clearly mandates the obedience of every lawyer to laws and legal processes. A lawyer, to the best of his ability, is expected to respect and abide by the law and, thus, avoid any act or omission that is contrary to the same. A lawyer's personal deference to the law not only speaks of his character but it also inspires the public to likewise respect and obey the law. Rule 1.01, on the other hand, states the norm of conduct to be observed by all lawyers. Any act or omission that is contrary to, or prohibited or unauthorized by, or in defiance of, disobedient to, or disregards the law is unlawful. Unlawful conduct does not necessarily imply the element of criminality although the concept is broad enough to include such element. To be dishonest means the disposition to lie, cheat, deceive, defraud, or betray; be unworthy; lacking in integrity, honesty, probity, integrity in principle, fairness, and straightforwardness, while conduct that is deceitful means the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts, to the prejudice and damage of the party imposed upon.<sup>11</sup>

The Court must reiterate that membership in the legal profession is a privilege that is bestowed upon individuals who are not only learned in law, but also known to possess good moral character. Lawyers should act and comport themselves with honesty and integrity in a manner beyond reproach, in order to promote the public's faith in the legal profession. To declare that lawyers must at all times uphold and respect the law is to state

---

<sup>10</sup> *Id.*

<sup>11</sup> *Jimenez v. Atty. Francisco*, 749 Phil. 551, 565-566 (2014).

the obvious, but such statement can never be over-emphasized. Since of all classes and professions, lawyers are most sacredly bound to uphold the law, it is then imperative that they live by the law.<sup>12</sup>


After a review of the records of the case, the Court finds Bañares administratively liable for notarizing the subject deed of sale without Rodolfo personally appearing before him. He cannot avoid responsibility by pointing out that he had a prior meeting with Lilia and Rodolfo, and the latter had already given him his conformity to the sale. He should have just made the necessary arrangements so that all the parties and witnesses would be present at the time of the signing of the deed.

**WHEREFORE, IN VIEW OF THE FOREGOING**, the Court **SUSPENDS** Atty. Danilo B. Bañares from the practice of law for six (6) months, **REVOKES** his notarial commission, if presently commissioned, and **DISQUALIFIES** him from being commissioned as a notary public for a period of two (2) years, all effective upon receipt of this Decision. The Court further **WARNS** him that a repetition of the same or similar offense shall be dealt with more severely.

Let copies of this Decision be included in the personal records of Atty. Danilo B. Bañares and entered in his file in the Office of the Bar Confidant.

Let copies of this Decision be disseminated to all lower courts by the Office of the Court Administrator, as well as to the Integrated Bar of the Philippines, for their information and guidance.

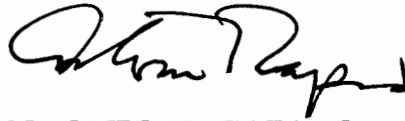
**SO ORDERED.**

  
**DIOSDADO M. PERALTA**  
Associate Justice

---

<sup>12</sup> *Id.* at 566.

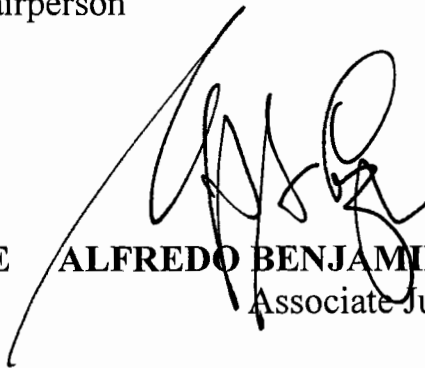
**WE CONCUR:**



**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson



**ESTELA M. PERLAS-BERNABE**  
Associate Justice



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**ANDRES B. REYES JR.**  
Associate Justice