



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MARIANO AGADAN,
EDEN MOLLEJON,
ARSENIO IGME,
JOSE NUMBAR,
CECILIA LANGAWAN,
PABLO PALMA,
JOSELITO CLAVERIA,
MIGUEL FLORES, and
ALBERT GAYDOWEN,
Complainants,

- versus -

ATTY. RICHARD BALTAZAR
KILAAN,
Respondent.

A.C. No. 9385

Present:

CARPIO, *Chairperson,*
BRION,
DEL CASTILLO,
PEREZ, *and*
PERLAS-BERNABE, *JJ.*

Promulgated:
NOV 11 2013

X ----- X

RESOLUTION

DEL CASTILLO, J.:

On September 12, 2005, complainants Mariano Agadan, Eden Mollejon, Arsenio Igme, José Numbar, Cecilia Langawan, Pablo Palma, Joselito Claveria, Miguel Flores and Albert Gaydowen filed before the Integrated Bar of the Philippines – Baguio Benguet Chapter (IBP-Baguio-Benguet Chapter) a Complaint¹ against respondent Atty. Richard Baltazar Kilaan (Atty. Kilaan) for falsification of documents, dishonesty and deceit. They alleged that Atty. Kilaan intercalated certain entries in the application for issuance of Certificate of Public Convenience (CPC) to operate public utility jeepney filed before the Land Transportation Franchising and Regulatory Board – Cordillera Administrative Region (LTFRB-CAR) and docketed as Case No. 2003-CAR-688 by substituting the name of the applicant from Gary Adasing (Adasing)² to that of Joseph

¹ Rollo, pp. 3-8.

² Also referred as Odasing and Agasing in some parts of the records.

Batingwed (Batingwed);³ that Atty. Kilaan submitted false and/or insufficient documentary requirements in support of Batingwed's application for CPC; that Atty. Kilaan prepared a Decision based on the Resolution of the LTFRB Central Office which dismissed the Opposition filed by the complainants; and that the said Decision granted the application of Batingwed which was adopted by the LTFRB-CAR.

On February 27, 2006, the IBP-Baguio-Benguet Chapter formally endorsed the Complaint to the IBP Commission on Bar Discipline (CBD) for appropriate action.⁴ Acting on the Complaint, the IBP-CBD directed Atty. Kilaan to submit his Answer.⁵

In his Answer⁶ dated April 8, 2006, Atty. Kilaan denied violating the Lawyer's Oath and the Code of Professional Responsibility. He disclaimed any participation in the preparation of the Decision with respect to the application of Batingwed for CPC. He explained that it is the Regional Director of the Department of Transportation and Communication (DOTC)-CAR who approves the application and who drafts the Decision after the LTFRB-CAR signifies its favorable recommendation. He denied exercising any influence over the DOTC-CAR or the LTFRB. He claimed that Batingwed had decided to abandon his application hence he no longer submitted the necessary requirements therefor. He also disavowed any knowledge that Batingwed's application had been forwarded to the LTFRB Central Office for approval. Atty. Kilaan claimed that he knew about the favorable Decision only when Batingwed showed him the same. He narrated that considering the incomplete documents, the LTFRB mistakenly approved Batingwed's application. Thus, when it discovered its error, the LTFRB immediately revoked the grant of CPC to Batingwed.

He denied intercalating the entries in the application for CPC of Batingwed. He averred that once an application has been filed, the application and all accompanying records remain with the LTFRB and could no longer be retrieved by the applicant or his counsel; as such, it is highly improbable for him to intercalate the entries therein. Atty. Kilaan further explained that it was Adasing who paid the filing fee in behalf of Batingwed but the cashier erroneously indicated Adasing instead of Batingwed as payor. Atty. Kilaan lamented that Adasing who is not in the Philippines could not corroborate his explanation. Finally, Atty. Kilaan noted that complainants filed the instant suit in

³ Atty. Kilaan also allegedly used Adasing's case folder, assessment slip, verification page and intercalated the number of units applied from one unit to five units.

⁴ *Rollo*, p. 1.

⁵ *Id.* at 33.

⁶ *Id.* at 40-46.



retaliation for the dismissal of their Opposition to the application for CPCs which he filed on behalf of his other clients.

The case was set for mandatory conference⁷ after which the parties submitted their respective Position Papers.⁸ In their Position Paper, complainants further alleged that the Verification in Batingwed's application for CPC was notarized by Atty. Kilaan as "Doc. No. 253, Page No. 51, Book No. VIII, Series of 2003." However, upon verification of Atty. Kilaan's Notarial Registry submitted to the Regional Trial Court Clerk of Court in Baguio City, the said notarial entry actually refers to a Deed of Sale and not the Verification of Batingwed's application. Also, complainants belied Atty. Kilaan's allegation that Adasing is presently abroad by presenting the Affidavit of Adasing claiming that he never left the country.

In his Report and Recommendation, the Investigating Commissioner⁹ found complainants to have miserably failed to prove that Atty. Kilaan intercalated the entries in the application for CPC of Batingwed. Their allegation was based on mere suspicion devoid of any credible proof, viz:

At the onset, it is very difficult to prove that it was respondent himself who was responsible for any intercalation, particularly the substitution of Joseph Batingwed's application folder in lieu of Gary Odasing's. Indeed, that is a grave charge, and based on the evidence presented by complainants, all that they can muster is a suspicion that cannot be confirmed. Of course, this has to be pointed out – anyone who had access to the case folder could have possibly been responsible for whatever intercalation that may have occurred. That being said, this Office is not prepared to make that leap into conjecture and conclude that it was respondent's doing.

Besides, the Certification of the Receiving Clerk of the DOTC-CAR dated 18 October 2006 – which notably was submitted by complainants – stated that the application of Gary Odasing was continued by Joseph Batingwed. Complainants have not alleged that the same constitutes a violation of the rules and procedures of LTFRB. Thus, it may be presumed to have been done in the regular course of business.¹⁰

However, the Investigating Commissioner did not totally absolve Atty. Kilaan as he found him liable for violating the Notarial Law considering that the Verification of Batingwed's application which he notarized and denominated as "Doc. No. 253, Page No. 51, Book No. VIII, Series of 2003" was actually recorded as a Deed of Sale in his Notarial Register. In addition, the Investigating

⁷ Id. at 106.

⁸ Id. at 115-133; 163-175.

⁹ Commissioner Jose Roderick F. Fernando.

¹⁰ Report and Recommendation, p. 5.



Commissioner noted that Atty. Kilaan lied under oath when he alleged that Adasing was abroad as this was squarely belied by Adasing in his Affidavit. The Investigating Commissioner held thus:

Respondent must be punished for making it appear that he notarized a document – the Verification – when in truth and in fact, the entry in his Notarial Registry shows a different document. Thus, it is but proper to suspend respondent's privilege of being commissioned as a Notary Public.

Not only that. Despite knowing that the Verification was not properly notarized, respondent, as counsel for the applicant, proceeded to file the defectively verified Petition with the LTFRB-Baguio City. Clearly, there was falsehood committed by him, as there can be no other conclusion except that respondent antedated the Verification.

x x x x

Lastly, this cannot end without this being said. Respondent made matters worse by alleging in his Answer to the instant administrative complaint that Gary Odasing was abroad – which seemingly was drawn up more out of convenience than for truth. Now, that allegation had been completely rebuffed and found to be untrue by the execution of an Affidavit by Gary Odasing himself. x x x It is therefore an affront to this Office that respondent would attempt to defend himself by pleading allegations, which were seemingly made deliberately, and which were later found to be untrue. Clearly, respondent tried, albeit vainly, to deceive even this Office.¹¹

The Investigating Commissioner recommended, viz:

WHEREFORE, it is the recommendation of the undersigned that respondent's notarial commission, if still existing, be REVOKED immediately and that he be further PROHIBITED from being commissioned as a notary public for TWO (2) YEARS.

Moreover, it is likewise recommended that respondent be SUSPENDED from the practice of law for a period of TWO (2) MONTHS.¹²

In its September 19, 2007 Resolution No. XVIII-2007-82, the IBP Board of Governors adopted and approved the Report and Recommendation of the Investigating Commissioner with modification that Atty. Kilaan's Notarial Commission be revoked and that he be disqualified from being appointed as Notary Public for two years, thereby deleting the penalty of suspension from the practice of law. Respondent moved for reconsideration but it was denied by the



¹¹ Report and Recommendation, pp. 8-10.

¹² Id. at 10.

IBP Board of Governors in its Resolution No. XX-2012-41 dated January 15, 2012.

After a careful review of the records, we find that Atty. Kilaan committed the following infractions: 1) violation of the Notarial Law; 2) violation of the Lawyer's Oath; and 3) violation of the Code of Professional Responsibility.

In his Motion for Reconsideration filed before the IBP Board of Governors, Atty. Kilaan passed on the blame to his secretary for the inaccuracies in the entries in his Notarial Register. He asserted that being a private practitioner, he is burdened with cases thus he delegated to his secretary the job of recording the documents which he notarized in his Notarial Register. He argued that the revocation of his notarial commission and disqualification for two years is too harsh a penalty considering that he is a first-time offender; he prayed for leniency considering that his family depended on his income for their collective needs.

It is settled that it is the notary public who is personally accountable for the accuracy of the entries in his Notarial Register. The Court is not persuaded by respondent's explanation that he is burdened with cases thus he was constrained to delegate the recording of his notarial acts in his Notarial Register to his secretary. In fact, this argument has already been rebuffed by this Court in *Lingan v. Attys. Calubaquib and Baliga*,¹³ viz:

Sections 245 and 246 of the Notarial Law provided:

SEC. 245. Notarial Register. — Every notary public shall keep a register to be known as the notarial register, wherein record shall be made of all his official acts as notary; and he shall supply a certified copy of such record, or any part thereof, to any person applying for it and paying the legal fees [therefore]. (emphasis supplied)

xxx

xxx

xxx

SEC. 246. Matters to be entered therein. — The notary public shall enter in such register, in chronological order, the nature of each instrument executed, sworn to, or acknowledged before him, the person executing, swearing to, or acknowledging the instrument, the witnesses, if any, to the signature, the date of execution, oath, or acknowledgment of the instrument, the fees collected by him for his services as notary in connection therewith, and, when the instrument is a contract, he shall keep a correct copy thereof as part of his records, and shall likewise



¹³ 524 Phil. 60, 68-70 (2006). Citations omitted.

enter in said records a brief description of the substance thereof and shall give to each entry a consecutive number, beginning with number one in each calendar year. The notary shall give to each instrument executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument the page or pages of his register on which the same is recorded. No blank line shall be left between entries.

xxx xxx xxx

In this connection, Section 249(b) stated:

SEC. 249. Grounds for revocation of commission. – The following derelictions of duty on the part of a notary public shall, in the discretion of the proper judge of first instance, be sufficient ground for the revocation of his commission:

xxx xxx xxx


- (b) The failure of the notary to make the proper entry or entries in his notarial register touching his notarial acts in the manner required by law.

xxx xxx xxx

From the language of the subsection, it is abundantly clear that the notary public is personally accountable for all entries in his notarial register. Respondents cannot be relieved of responsibility for the violation of the aforesaid sections by passing the buck to their secretaries, a reprehensible practice which to this day persists despite our open condemnation. Respondents, especially Calubaquib, a self-proclaimed “prominent legal practitioner,” should have known better than to give us such a simple-minded excuse.

We likewise remind respondents that notarization is not an empty, meaningless or routinary act but one invested with substantive public interest, such that only those who are qualified or authorized to do so may act as notaries public. The protection of that interest necessarily requires that those not qualified or authorized to act must be prevented from inflicting themselves upon the public, the courts and the administrative offices in general.

Notarization by a notary public converts a private document into a public one and makes it admissible in evidence without further proof of its authenticity. Notaries public must therefore observe utmost care with respect to the basic requirements of their duties.

In *Gemina v. Atty. Madamba*,¹⁴ we have also ruled that – 

¹⁴ A.C. No. 6689, August 24, 2011, 656 SCRA 34, 41-43. Citations omitted.

x x x The inaccuracies in his Notarial Register entries and his failure to enter the documents that he admittedly notarized constitute dereliction of duty as a notary public. He cannot escape liability by putting the blame on his secretary. The lawyer himself, not merely his secretary, should be held accountable for these misdeeds.

A notary public is empowered to perform a variety of notarial acts, most common of which are the acknowledgement and affirmation of documents or instruments. In the performance of these notarial acts, the notary public must be mindful of the significance of the notarial seal affixed on documents. The notarial seal converts a document from a private to a public instrument, after which it may be presented as evidence without need for proof of its genuineness and due execution. Thus, notarization should not be treated as an empty, meaningless or routinary act. 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.

Canon 1 of the Code of Professional Responsibility requires every lawyer to uphold the Constitution, obey the laws of the land, and promote respect for the law and legal processes. The Notarial Law and the 2004 Rules on Notarial Practice, moreover, require a duly commissioned notary public to make the proper entries in his Notarial Register and to refrain from committing any dereliction or any act which may serve as cause for the revocation of his commission or the imposition of administrative sanctions.

Under the 2004 Rules on Notarial Practice, the respondent's failure to make the proper entry or entries in his Notarial Register of his notarial acts, his failure to require the presence of a principal at the time of the notarial acts, and his failure to identify a principal on the basis of personal knowledge by competent evidence are grounds for the revocation of a lawyer's commission as a notary public.

Indeed, Rule VI, Sections 1 and 2 of the 2004 Rules of Notarial Practice require a notary public to keep and maintain a Notarial Register wherein he will record his every notarial act. His failure to make the proper entry or entries in his notarial register concerning his notarial acts is a ground for revocation of his notarial commission.¹⁵ As mentioned, respondent failed to make the proper entries in his Notarial Register; as such, his notarial commission may be properly revoked.

Aside from violating the Notarial Law, respondent also violated his Lawyer's Oath and the Code of Professional Responsibility by committing falsehood in the pleadings he submitted before the IBP. His claim that Adasing was abroad hence could not corroborate the explanation made by Batingwed was proved to be untruthful when complainants submitted the Affidavit of Adasing

¹⁵ See Section 11(b)(2), Rule XI, 2004 Rules of Notarial Practice.

insisting that he never left the country. Canon 10, Rule 10.01 of the Code of Professional Responsibility expressly provides that “[a] lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.” In the same vein, Canon 1, Rule 1.01 mandates that “[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.” Respondent failed to observe these Rules and hence must be sanctioned.

Under the circumstances, we find Atty. Kilaan’s suspension from the practice of law for three (3) months and the revocation and disqualification of his notarial commission for a period of one (1) year appropriate.

IN VIEW WHEREOF, the notarial commission of Atty. Richard Baltazar Kilaan, if still existing, is hereby **REVOKED**, and he is **DISQUALIFIED** from being commissioned as notary public for a period of one (1) year. He is also **SUSPENDED** from the practice of law for three (3) months effective immediately, with a **WARNING** that the repetition of a similar violation will be dealt with more severely. He is **DIRECTED** to report the date of his receipt of this Resolution to enable this Court to determine when his suspension shall take effect.

Let a copy of this Resolution be entered in the personal records of respondent as a member of the Bar, and copies furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all courts in the country.

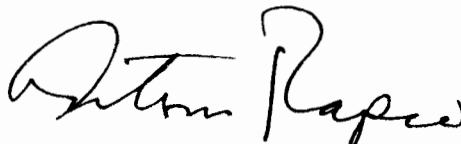
SO ORDERED.



MARIANO C. DEL CASTILLO

Associate Justice

WE CONCUR:

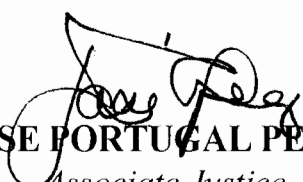


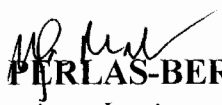
ANTONIO T. CARPIO

Associate Justice

Chairperson


ARTURO D. BRION
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

