

Republic of the Philippines
Supreme Court
 Manila

EN BANC

**ERLINDA SISTUAL,
 FLORDELISA S. LEYSA,
 LEONISA S. ESPABO and
 ARLAN C. SISTUAL,**

Complainants,

A.C. No. 9807

Present:

SERENO, *C.J.*,
 CARPIO,
 VELASCO, JR.,
 LEONARDO-DE CASTRO,
 BRION,
 PERALTA,
 BERSAMIN,
 DEL CASTILLO,
 PEREZ,
 MENDOZA,
 REYES,
 PERLAS-BERNABE,
 LEONEN,
 JARDELEZA, and
 CAGUIOA,* *JJ.*

- versus -

ATTY. ELIORDO OGENA,
 Respondent.

Promulgated:

February 2, 2016

[Signature]

x -----x

DECISION

Per Curiam:

In a Complaint,¹ dated June 1, 2006, filed before the Integrated Bar of the Philippines (*IBP*), complainants Erlinda C. Sistual, Flordelisa² S. Leysa, Leonisa S. Espabo, and Arlan C. Sistual (*complainants*) alleged that

* On Official Leave.

¹ *Rollo*, Vol. I, pp. 101-106.

² Indicated as "Flordeliza" in some parts of the record.

respondent Atty. Eliordo Ogena (*Atty. Ogena*), who was the legal counsel of their late father, Manuel A. Sistual (*Manuel*), wilfully, unlawfully and feloniously falsified several documents which included, among others, a Special Power of Attorney (*SPA*), Extra-Judicial Settlement of Estate, Affidavit of Identification of Heirs, Deed of Donation, and a Deed of Absolute Sale by making it appear that all the children of Manuel and their mother, Erlinda Sistual (*Erlinda*), executed the documents; that as a result of the falsification of the said documents, Transfer Certificate of Title (*TCT*) No. 60467, registered in the name of “Heirs of Martin Sistual, represented by Manuel Sistual,”³ was cancelled and was subdivided into several lots; and that these lots were sold to interested buyers.

In his Answer with Affirmative/Special Defenses and Motion to Dismiss,⁴ Atty. Ogena denied the allegations. He averred that in 1987, he was engaged by Manuel to represent the heirs of Martin Sistual in a complaint for recovery of possession filed by Abid Mendal (*Abid*) and Abundio Sistual (*Abundio*);⁵ that Manuel was the representative of the Heirs of Martin Sistual; that the heirs of Martin Sistual were able to obtain a favorable decision⁶ in the said case; that pursuant to the said decision, Lot 464 was awarded to the heirs of Martin Sistual and TCT No. T-60467 was issued in their names; that when Manuel died on November 15, 1993, the heirs of Martin Sistual executed an SPA,⁷ dated December 31, 1993, designating Bienvenido Sistual (*Bienvenido*) as their attorney-in-fact; that Erlinda, the wife of Manuel, manifested her desire to represent the heirs of Martin Sistual, so her two children, Isidro Sistual and Flordelisa Sistual, also executed an SPA in her favor; that the heirs of Martin Sistual opposed the appointment of Erlinda and executed another SPA,⁸ dated October 5, 1995, in favor of Bienvenido; and that in the October 5, 1995 SPA, Atty. Ogena wrote the names of complainants Erlinda and Flordeliza Sistual but they did not sign it.

As to the incident that led to the subdivision of TCT No. T-60467, Atty. Ogena explained that Bienvenido, upon the prodding of the heirs of Martin Sistual with the exception of the complainants, caused the subdivision of the property covered by TCT No. T-60467 into several sublots identified as TCT Nos. 76078,⁹ 76079,¹⁰ 76080,¹¹ 76081,¹² 76082,¹³

³ *Rollo*, Vol. I, p. 41.

⁴ *Id.* at 226-238.

⁵ Docketed as Civil Case No. 230.

⁶ *Rollo*, Vol. I, pp. 240-246. Penned by Judge Cristeto D. Dinopol, RTC-Branch 26, Surallah, South Cotabato.

⁷ *Id.* at 247-248.

⁸ *Id.* at 250-251.

⁹ *Id.* at 257.

¹⁰ *Id.* at 258.

¹¹ *Id.* at 259.

¹² *Id.* at 260.

¹³ *Id.* at 261.

76083,¹⁴ 76084,¹⁵ 76085,¹⁶ and 76086,¹⁷ and that the corresponding subdivision plans and technical descriptions thereof were duly approved by the Regional Director, Bureau of Lands, Davao City; and that the subdivided lots were in the names of all the heirs of Martin Sistual *including the complainants*.

On September 7, 1996, the heirs of Dolores Sistual Tulay executed an Extrajudicial Settlement¹⁸ whereby the 1/7 share of their mother in the lot covered by TCT No. T-60467 was waived, repudiated and relinquished in favor of their father, Domingo Tulay; that the heirs of Manuel Sistual also executed an Extrajudicial Settlement¹⁹ waiving their 1/7 share in the same property in favor of their mother, Erlinda.

On April 10 and 15, 1997, the heirs of Martin Sistual including complainants executed two deeds of donation²⁰ in favor of Barangay Lamian conveying the lot covered by TCT Nos. T-76083 and T-76086 to be used for its public market.

Atty. Ogena denied that the aforementioned documents were falsified as they were actually executed and duly signed by all the parties therein; and that all the signatures of complainants appearing in the aforementioned documents were identical; that the deeds of donation were duly attested to by Barangay Captain Conrado Toledo and the barangay kagawads;²¹ and that the aforementioned documents *did not in any way prejudiced the complainants. The execution thereof did not defraud them or any of the heirs of Martin Sistual as the issuance of the nine (9) new and separate titles in the names of all the heirs, as co-owners, was beneficial and favorable to all of them.*

Finally, as to the Absolute Deed of Sale,²² dated July 18, 1989, executed by spouses Manuel and Erlinda in favor of Socorro Langub, Atty. Ogena also denied that this was falsified as this was duly executed, signed and subscribed by all the parties. Atty. Ogena submitted a copy of the said

¹⁴ Id. at 262.

¹⁵ Id. at 263.

¹⁶ Id. at 264.

¹⁷ Id. at 265.

¹⁸ Id. at 252-253.

¹⁹ Id. at 254-254A.

²⁰ Id. at 266-270.

²¹ Id. at 271-277.

²² Id. at 278.

deed of sale²³ to prove that it was duly executed and signed by Manuel and Erlinda, as the vendors; and Socorro Langub, as the vendee.

In its Report and Recommendation,²⁴ the IBP-Commission on Bar Discipline (*CBD*) stated that it is bereft of any jurisdiction to determine whether Atty. Ogena committed forgery in the aforementioned documents. It, however, *found several irregularities in the documents notarized by Atty. Ogena. First*, in the SPA, the signatures of Flordelisa Sistual and Isidro Sistual were absent and the Community Tax Certificates (*CTC*) of the signatories namely: Bernardina Sistual Anson, Jesusa Sistual Español, and Erlinda, were not indicated. In the Extrajudicial Settlement of Estate of Deceased Manuel, although all the heirs signed, only the CTC of Erlinda and Flordelisa were indicated. In the Affidavit of Identification of Heirs of Martin Sistual, the CTC of Solfia S. Maribago was absent; and in the Extrajudicial Settlement of Estate of Deceased Dolores Sistual with Waiver of Hereditary Shares, only the CTC of Domingo Tulay was indicated. Thus, the IBP-CBD recommended that Atty. Ogena's notarial commission be revoked and that he be permanently disqualified from reappointment as Notary Public; and that he be suspended from the practice of law for a period of one (*1*) year.

On December 10, 2011, the IBP Board of Governors adopted and approved with modification the Report and Recommendation of the IBP-CBD. The IBP Board of Governors revoked Atty. Ogena's commission as notary public and permanently disqualified him from reappointment as Notary Public. It, however, *deleted the penalty of suspension.*²⁵

On March 29, 2012, Atty. Ogena filed a motion for reconsideration before the IBP.

In a Resolution, dated November 10, 2012, the IBP Board of Governors denied the motion for reconsideration and affirmed with modification its earlier resolution, revoking Atty. Ogena's notarial commission indefinitely.

The Court agrees with the findings of the IBP except as to the penalty it imposed. To begin with, complainants' allegation of forgery was not clearly substantiated and there was no concrete proof that the complainants

²³ Id.

²⁴ *Rollo*, Vol. II, pp. 2-9.

²⁵ Id. at 1.

were prejudiced. They submitted a copy of the affidavits²⁶ for falsification executed by Erlinda and Flordelisa, both subscribed before the City of Prosecutor on February 20, 2006; Memoranda for Preliminary Investigation²⁷ issued by Office of the City Prosecutor, Koronadal, South Cotabato; Letter,²⁸ Memorandum,²⁹ and Order³⁰ issued by the Bureau of Lands, but these do not suffice to prove the allegation of forgery and/or falsification.

Atty. Ogena, however, violated the 2004 Rules on Notarial Practice specifically Rule IV, Section 2(b), which provides:

Section 2. Prohibitions. – (a) 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.

Doubtless, Atty. Ogena was negligent in the performance of his duty as a notary public. He failed to require the personal presence of the signatories of the documents and proceeded to notarize the aforementioned documents without the signatures of all the parties. Likewise, Atty. Ogena failed to comply with the most basic function that a notary public must do - to require the parties to present their residence certificates or any other document to prove their identities. This Court, in *Gonzales v. Atty. Ramos*,³¹ wrote:

Notarization is not an empty, meaningless routinary act. It is invested with substantive public interest. The notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. A notarial document is, by law, entitled to full faith and credit upon its face. A notary public must observe with utmost care the basic requirements in the performance of their duties; otherwise, the public's confidence in the integrity of the document would be undermined.

²⁶ *Rollo*, Vol. I, pp. 6-11.

²⁷ *Id.* at 4-5.

²⁸ *Id.* at 12.

²⁹ *Id.* at 13.

³⁰ *Id.* at 14.

³¹ 499 Phil. 345, 347 (2005).

By notarizing the aforementioned documents, Atty. Ogena engaged in unlawful, dishonest, immoral or deceitful conduct.³² His conduct is fraught with dangerous possibilities considering the conclusiveness on the due execution of a document that our courts and the public accord to notarized documents.³³ His failure to perform his duty as a notary public resulted not only in damaging complainants' rights but also in undermining the integrity of a notary public and in degrading the function of notarization. Thus, Atty. Ogena should be liable for such negligence, not only as a notary public but also as a lawyer.

Pursuant to the pronouncement in *Re: Violation of Rules on Notarial Practice*,³⁴ Atty. Ogena should be suspended for two (2) years from the practice of law and forever barred from becoming a notary public.

WHEREFORE, respondent Atty. Eliordo Ogena is **SUSPENDED** from the practice of law for two (2) years and is **BARRED PERMANENTLY** from being commissioned as Notary Public.

This decision is **IMMEDIATELY EXECUTORY**.

Let copies of this decision be furnished all courts in the country and the Integrated Bar of the Philippines for their information and guidance. Let also a copy of this decision be appended to the personal record of Atty. Eliordo Ogena in the Office of the Bar Confidant.

SO ORDERED.

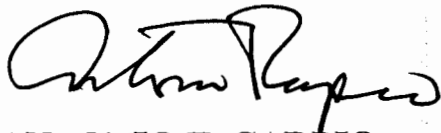


MARIA LOURDES P. A. SERENO
Chief Justice

³² *Isenhardt v. Real*, 682 Phil. 19, 24 (2012).

³³ *Gonzales v. Ramos*, supra note 31, at 351.

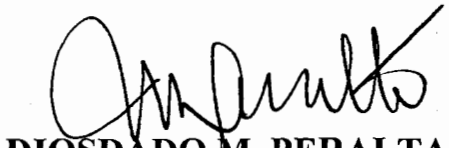
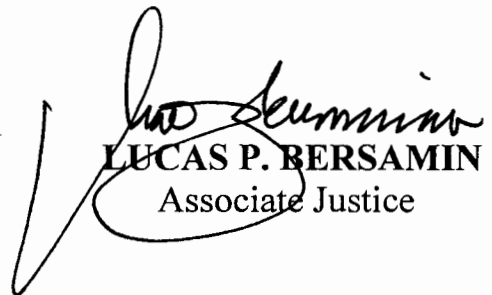
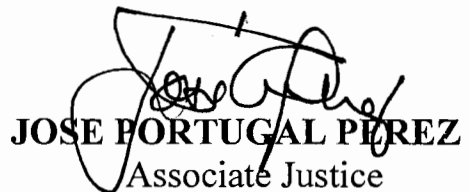



³⁴ Now A.M. No. 09-6-1-SC, January 21, 2015.



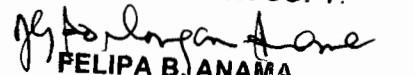
ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice


ARTURO D. BRION
Associate Justice
DIOSDADO M. PERALTA
Associate Justice
LUCAS P. BERSAMIN
Associate Justice
MARIANO C. DEL CASTILLO
Associate Justice
JOSE PORTUGAL PEREZ
Associate Justice
JOSE CATRAL MENDOZA
Associate Justice
BIENVENIDO L. REYES
Associate Justice
ESTELA M. PERLAS-BERNABE
Associate Justice
MARVIC M.V. F. LEONEN
Associate Justice
FRANCIS H. JARDELEZA
Associate Justice

(On Official Leave)
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFIED XEROX COPY:

FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT