



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **August 2, 2023** which reads as follows:

“A.C. No. 10095 [Formerly CBD Case No. 14-4370] (*Leonor V. Consolacion v. Atty. Gabriel L. Arguelles*).—The instant case is a Disbarment Complaint<sup>1</sup> filed by complainant Leonor V. Consolacion against respondent Atty. Gabriel L. Arguelles for deceit, malpractice, gross misconduct, grossly immoral conduct, and violation of the Lawyer’s Oath for notarizing two Deeds of Donation involving the same parties, property, and notarial register entries, but had different disposal effect since the second Deed of Donation deprived complainant of her conjugal share. Thus, complainant claimed that the second Deed of Donation is a forgery.<sup>2</sup>

Complainant is the widow of the late Francisco Consolacion Sr. (Francisco, Sr.). During their marriage, they acquired a conjugal property located at Brgy. Nanyo, Panabo Municipality, Davao del Norte, which was previously covered by Original Certificate of Title (OCT) No. P-13228 (Nanyo Property).<sup>3</sup>

On August 7, 1984, Francisco, Sr. executed a Deed of Donation in favor of their three children, namely, Francisco, Jr., Samuel (*deceased*), and Fides, involving two conjugal properties, which includes the Nanyo Property. This Deed of Donation was prepared and notarized by respondent, who is the brother-in-law of Samuel.<sup>4</sup>

The donation provided that: “[x x x] the DONOR (*Francisco, Sr.*) has one half (½) share in the conjugal properties described below, he being the conjugal owner thereof in fee simple: [x x x] ORIGINAL CERTIFICATE OF TITLE NO. P-13228 [x x x] containing an area of 4.9999 hectares [x x x] situated in the Barrio of Nanyo, Municipality of Panabo”. The donation also

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<sup>1</sup> *Rollo*, pp. 3-8.

<sup>2</sup> *Id.* at 4-5.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.* at 3-4.

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stated that three donees will receive equal pro-indiviso shares from the one-half conjugal share of Francisco, Sr.<sup>5</sup>

On November 6, 1984, the Bureau of Internal Revenue (BIR) issued a Certification confirming that the donor's taxes had been paid by Francisco, Sr., with respect to his one-half share in the Nanyo Property.<sup>6</sup>

However, in March 2007, complainant discovered that the Register of Deeds of Davao del Norte had cancelled OCT No. P-13228 and issued a new title, Transfer Certificate of Title (TCT) No. T-74199, over the Nanyo Property, but complainant's name as one-half conjugal shareholder does not appear therein. Moreover, TCT No. T-74199 is registered in the names of Francisco, Jr. and Fides with one-sixth share each, and Samuel with a two-thirds share.

Complainant claimed that after her husband, Francisco, Sr., died, their son, Samuel, connived with respondent through the submission of forged documents to the Register of Deeds to deprive complainant of her one-half conjugal share in the Nanyo Property. She claimed that respondent prepared and notarized a forged Deed of Donation to make it appear that Francisco, Sr. was the true and lawful owner of the entire Nanyo Property and that Francisco, Sr. was donating two-thirds of said property to Samuel.

The second Deed of Donation, or the alleged forged Deed of Donation (Disputed Deed) involves the same Nanyo Property and bears the same date (August 7, 1984) and the same notarial entries (Doc No. 456, Page 93, Book XLII, Series of 1984) as the original Deed of Donation executed by Francisco, Sr. Moreover, complainant asserted that the signature of Francisco, Sr. in the forged deed of donations is "clearly different" from the original.<sup>7</sup>

On the basis of the Disputed Deed, complainant alleged that another forgery surfaced – a purported BIR Certification indicating that donor's taxes had been paid by Francisco, Sr. on the entire Nanyo Property. Said Certification no longer makes any reference to Francisco, Sr.'s one-half share.<sup>8</sup>

Complainant also claimed that based on the official records of the Register of Deeds of Davao del Norte, the Disputed Deed and forged BIR Certification were submitted to them on December 3, 2001 by one Bernadith Albacite, who is respondent's secretary.<sup>9</sup>

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<sup>5</sup> Id. at 4.

<sup>6</sup> Id.

<sup>7</sup> Id. at 5.

<sup>8</sup> Id. at 5-6.

<sup>9</sup> Id. at 6.

Complainant asserted that respondent's acts constituted deceit, malpractice, gross misconduct, grossly immoral conduct, and a violation of the Lawyer's Oath. In view of the foregoing, complainant prayed that respondent be disbarred or subjected to disciplinary action.<sup>10</sup>

In his Comment,<sup>11</sup> respondent countered that the two Deeds of Donation were willfully and voluntarily executed by the same parties who set forth their genuine signatures on both sets. He claimed that the first Deed of Donation was executed at noontime on August 7, 1984, while the second or the Disputed Deed was an amended Deed of Donation, which was executed over supper on the same date. He asserted that he did not prepare any of the Deeds of Donation. He averred that on said date, he was summoned to the house of Francisco, Sr. at Poblacion, Panabo City, Davao del Norte, firstly during noon time and then secondly during the evening, in order to oversee the execution and to notarize the subject Deeds of Donation. He contended that the second Deed of Donation was an amended version to reflect the changes which Francisco, Sr. made.<sup>12</sup>

Furthermore, respondent stressed that complainant herself affixed her signature on the second disputed Deed of Donation to signify her "marital consent". Respondent maintained that both deeds were voluntarily and willfully executed in his presence. Moreover, respondent noted that the Deed of Donation was executed in 1984, and a new title was issued in 1991, but complainant belatedly claimed in the year 2007 that a fraudulent Deed of Donation was issued, which was already 15 years after the title was cancelled. In addition, respondent strongly suggested that the subject Deeds of Donation should be examined through forensic examination to determine the authenticity of the signatures. Nonetheless, respondent admitted his oversight in failing to retrieve and cancel the copies of the first Deed of Donation.<sup>13</sup>

In her Reply Affidavit,<sup>14</sup> complainant contended that it was impossible for respondent to be summoned to Francisco, Sr.'s house located at Panabo, Davao del Norte on August 7, 1984, since the Certificate of Death of Francisco Sr., indicated that he was medically attended at Cardinal Santos Memorial Hospital at Greenhills, San Juan, Metro Manila from June 17, 1984 until his death on December 16, 1984. Thus, it was impossible for her husband to have been in Panabo City, Davao del Norte. She also claimed that it was impossible for her other son, Francisco, to have signed in the presence of respondent in Panabo City on August 7, 1984, since as per his Marriage Certificate, he got married on August 8, 1984 in Greenhills, Mandaluyong, Metro Manila.<sup>15</sup>

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<sup>10</sup> Id.

<sup>11</sup> Id. at 28-33.

<sup>12</sup> Id. at 29-32.

<sup>13</sup> Id.

<sup>14</sup> Id. at 38-39.

<sup>15</sup> Id.

In respondent's Comment to Complainant's Reply Affidavit,<sup>16</sup> he asserted that the entries in the medical certificate of Francisco, Sr. which state that he was medically attended at Cardinal Santos Memorial Hospital at Greenhills, San Juan, Metro Manila from June 17, 1984 until his death on December 16, 1984 do not prove that he was continuously medically attended during said period at that hospital. Furthermore, the Marriage Certificate of Francisco strengthens respondent's position that Francisco, Sr., was impelled by a sense of urgency on August 7, 1984 at Panabo, Davao, to settle property issues with the family, since they were all due to fly to Manila the next day. In his Position paper,<sup>17</sup> he further noted that both Deeds of Donation were executed on the same date and on the same place. However, complainant did not challenge the first Deed of Donation. Thus, respondent argued, that since the two deeds were executed on the same date, it is highly possible for Francisco, Sr. to be present at Panabo on August 7, 1984 for the first Deed of Donation, as well as during the execution of the second Deed of Donation. He further asserted that Samuel only became his brother-in-law in July 1986 when he got married to respondent's sister. But on the date the Deeds of Donation were executed, or on August 7, 1984, he was not related to any of the parties.<sup>18</sup>

### **Report and Recommendation of the Integrated Bar of the Philippines (IBP)**

Investigating Commissioner Leo B. Malagar recommended that the complaint be dismissed for lack of merit.<sup>19</sup>

*Firstly*, he found that respondent sufficiently explained the existence of the two Deeds of Donation. The Investigating Commissioner gave credence to respondent's claim that when the latter noticed that both Deeds of Donation refer to the same property, Francisco Sr. explained to him that the second Deed of Donation is an amendment to the first. Thus, the intention of the parties was to render the first deed ineffective. The Investigating Commissioner also found that no one challenged Francisco, Sr.'s wishes, as even complainant herself affixed her signature on the Disputed Deed. Moreover, respondent was able to diligently ascertain that there was no overt fraud. The signatories to the deeds and the process of execution were not imbued by any form of physical, mental or moral duress.<sup>20</sup>

*Secondly*, the Investigating Commissioner found complainant to have contradicting positions that weakened her claim. She alleged that it was impossible for her husband to have signed the second Deed of Donation or the Disputed Deed on August 7, 1984 in Panabo, Davao due to his being

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<sup>16</sup> Id. at 45-47.

<sup>17</sup> Id. at 103-112.

<sup>18</sup> Id.

<sup>19</sup> Id. at 165.

<sup>20</sup> Id. at 164.

medically attended in Cardinal Santos Memorial Hospital at Greenhills, San Juan, Metro Manila from June 17, 1984 until his death on December 16, 1984. However, the Investigating Commissioner noted that complainant did not question the first Deed of Donation, which was executed on the same day and on the same place. In addition, the Investigating Commissioner gave scant consideration to complainant's claim that it was impossible for her other son Francisco, to have signed in the presence of respondent in Panabo City on August 7, 1984, since as per his Marriage Certificate, he got married on August 8, 1984 in Greenhills, Mandaluyong, Metro Manila. In any event, the Certificate of Marriage did not prove that complainant's husband did not sign the second Deed of Donation or the Disputed Deed, nor did it prove that it was physically impossible for the signatories to travel to Manila the day after they signed the Disputed Deed.<sup>21</sup>

In its Resolution No. XXII-2016-203 dated February 25, 2016, the IBP Board of Governors resolved to reverse the findings of fact and recommendation of dismissal by the Investigating Commissioner. Instead, the Board resolved to reprimand the respondent for violation of Notarial Laws.<sup>22</sup>

Complainant filed a Motion for Reconsideration<sup>23</sup> and prayed that respondent be disbarred, or at least suspended from the practice of law and imposed with a penalty of fine.<sup>24</sup>

Pending resolution of this case before the Court, the respondent's counsel filed a Manifestation<sup>25</sup> informing the Court that respondent has died on December 24, 2017, as evidenced by his Death Certificate.<sup>26</sup>

### **Our Ruling**

As a general rule, the death of the respondent in an administrative case does not automatically divest this Court of jurisdiction over the case.<sup>27</sup> Jurisdiction once acquired, continues to exist until the final resolution of the case.<sup>28</sup> In *Gonzales v. Escalona (Gonzales)*,<sup>29</sup> the Court held:

This jurisdiction that was ours at the time of the filing of the administrative complainant was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the

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<sup>21</sup> Id. at 164-165.

<sup>22</sup> Id. at 158.

<sup>23</sup> Id. at 166-168.

<sup>24</sup> Id. at 168.

<sup>25</sup> Id. at 176.

<sup>26</sup> Id. at 177.

<sup>27</sup> *Re: Financial Audit Conducted in the MTC in Cities, Tagum City, Davao del Norte*, 720 Phil. 23, 51 (2013).

<sup>28</sup> *Gonzales v. Escalona*, 587 Phil. 448, 462-463 (2008).

<sup>29</sup> Id.

respondent public official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications [ x x x] If innocent, respondent public official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.<sup>30</sup>

The above rule, however, admits of exceptions. In *Gonzales*,<sup>31</sup> citing the case of *Limliman v. Judge Ulat-Marrero*,<sup>32</sup> the Court held that the death of the respondent necessitated the dismissal of the administrative case upon a consideration of any of the following factors: *first*, the observance of respondent's right to due process; *second*, the presence of exceptional circumstances in the case, on the grounds of equitable and humanitarian reasons; and *third*, the kind of penalty imposed. The Court further explained in *Gonzales*<sup>33</sup> and in the subsequent case of *Re: Financial Audit Conducted in the MTC in Cities, Tagum City, Davao del Norte*:<sup>34</sup>

The dismissal of an administrative case against a deceased respondent on the ground of lack of due process is proper under the circumstances of a given case when, because of his death, the respondent can no longer defend himself. Conversely, the resolution of the case may continue to its due resolution notwithstanding the death of the respondent if the latter has been given the opportunity to be heard, as in this case, or in instances where the continuance thereof will be more advantageous and beneficial to the respondent's heirs.

In *Judicial Audit Report, Branches 21, 32 and 36*, we recognized the dismissal of an administrative case by reason of the respondent's death for equitable and humanitarian considerations; the liability was incurred by reason of the respondent's poor health. We had occasion, too, to take into account the imposable administrative penalty in determining whether an administrative case should be continued. We observed in several cases that the penalty of fine could still be imposed notwithstanding the death of the respondent, enforceable against his or her estate.<sup>35</sup>

In the instant case, this Court finds that respondent's right to due process would be violated if he would be administratively charged since his death supervened while the instant case is still pending review. Accordingly, in Our recent Resolution in *Re: Investigation Report on the Alleged Extortion Activities of Presiding Judge Godofredo B. Abul*,<sup>36</sup> We held that:

<sup>30</sup> Id. at 463.

<sup>31</sup> Supra.

<sup>32</sup> 443 Phil. 732, 736 (2003).

<sup>33</sup> Supra.

<sup>34</sup> Supra.

<sup>35</sup> Id. at 51-52.

<sup>36</sup> A.M. No. RTJ-17-2486 (Resolution), September 8, 2020.

**Thus, the Court so now holds that the death of a respondent in an administrative case before its final resolution is a cause for its dismissal. Otherwise stated, the non-dismissal of a pending administrative case in view of the death of the respondent public servant is a transgression of his or her Constitutional rights to due process and presumption of innocence.** Simply put, upon the death of the respondent public servant awaiting final judgment, the dismissal of the administrative case against him/her should necessarily follow.<sup>37</sup> (Emphasis in the original)

In the same Resolution, We further explained, thus:

*The Third Ground: Due Process*

The instant administrative complaint against the late Judge Abul should be dismissed in view of the Constitutional principle of due process, which is one of the recognized exceptions to the general rule that the death of the respondent does not preclude a finding of administrative liability. To reiterate, *Gonzales v. Escalona* states that the exceptions are: “*first*, the observance of respondent’s right to due process; *second*, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and *third*, it may also depend on the kind of penalty imposed.”

If We were to sustain Our earlier ruling to forfeit all of his retirement benefits, **Judge Abul can no longer file any motion or pleading to question the ruling because of his death. Likewise, he can no longer exercise his right to due process, nor can he exhaust other possible remedies available to him. Similarly, he cannot ask for clemency in the future, an option which other respondents who did not meet the same fate can take advantage of if the circumstances permit. In other words, had death not supervened, Judge Abul could have exerted efforts to protect his rights in keeping with the principle of due process. Thus, it is only right to dismiss the administrative case against him, particularly since the spirit of due process encompasses all stages of the case, that is, from the investigation phase until the finality of the decision. In other words, a respondent public officer should be given the opportunity to be heard throughout the whole proceedings. Indeed, “[t]he essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one’s side, or an opportunity to seek a reconsideration of the action or ruling complained of.”**

Besides, the Constitution did not limit or qualify as to what kind of case, whether criminal, civil or administrative, should the principle of due process be applied to. To further assume an already deceased respondent to “participate” in the administrative proceedings would be absurd, precisely because he/she already lost the opportunity to be heard. Hence, to continue adjudicating his/her case amidst his/her death

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<sup>37</sup> *Re: Investigation Report on the Alleged Extortion Activities of Presiding Judge Godofredo B. Abul, Jr., Branch 4, Regional Trial Court, Butuan City, Agusan Del Norte, id.*

would be a denial of due process.<sup>38</sup> (Emphasis supplied; citations omitted)

In the same vein, herein respondent could no longer exercise his right to due process by seeking any reconsideration, or avail of any opportunity to be heard, or exhaust any possible remedy to explain his side in view of his death. Due to his demise while his case is still pending review, he could no longer exert efforts to protect his rights in keeping with the principle of due process. Thus, this Court finds it proper to dismiss the instant case.

Finally, it must be mentioned that Section 12, Canon VI of the newly-issued Code of Professional Responsibility and Accountability<sup>39</sup> now explicitly declares that the death of the lawyer during the pendency of the case shall cause its dismissal.

**WHEREFORE**, the Complaint for Disbarment against Atty. Gabriel L. Arguelles is **DISMISSED** by reason of his supervening death.

**SO ORDERED.”**

**By authority of the Court:**

*Maria Teresa B. Sibulo*  
**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
and Acting Division Clerk of Court *asst*  
**180**

**AUG 14 2023**

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<sup>38</sup> Id.

<sup>39</sup> A.M. No. 22-09-01-SC dated April 11, 2023.

*ATF*