

Title: **\*\*In the Matter of the Will of Antero Mercado, Rosario Garcia vs. Juliana Lacuesta, et al.\*\***

Facts:

The case pertains to the will of Antero Mercado, deceased, dated January 3, 1943, which was written in the Ilocano dialect. The procedural posture commenced when the will was submitted for probate to the Court of First Instance of Ilocos Norte which allowed the will. However, the decision was appealed to the Court of Appeals which disallowed the will, prompting the petitioner, Rosario Garcia, to further escalate the matter to the Supreme Court via certiorari.

The attestation clause of the will was a point of contention. Specifically, the clause failed to explicitly state certain requirements as prescribed by law: that the will was signed on all left margins and at the end by Atty. Florentino Javier at the express request of the testator and in the presence of the testator and witnesses; that the testator wrote a cross after his name and on the left margin of the three pages and at the end; and that the three witnesses signed the will in all the pages in the presence of the testator and each other.

Issues:

1. Whether the cross made by the testator constituted a sufficient signature to validate the will, given that it was not the testator's usual form of signature.
2. Whether the attestation clause was defective in failing to state that Atty. Florentino Javier signed the testator's name under the testator's express direction.

Court's Decision:

The Supreme Court affirmed the decision of the Court of Appeals, holding that the attestation clause was fatally defective. The Court distinguished the sign of the cross from a thumb mark, stating that the cross does not possess the trustworthiness of a thumb mark. Furthermore, the Court held that the attestation clause must explicitly state that the name of the testator was signed at his express directive as required by section 618 of the Code of Civil Procedure. As a result, the will was disallowed.

Doctrine:

The doctrine established in this case is that a mere cross is not equivalent to a thumbmark when it comes to the signature required for a will's attestation clause. Additionally, the Court reiterated the requirement that the attestation clause must expressly state that the name of the testator was signed under his express direction, as per section 618 of the Code

of Civil Procedure.

Class Notes:

1. A signature on a will must be the usual signature of the testator or another recognized form of signature, such as a thumbmark.
2. An attestation clause must expressly state compliance with the requirements stipulated in the law, specifically the involvement and presence of the testator and the witnesses during the signing of each page of the will.
3. A cross made by the testator does not have the equivalent effect of a thumb mark or usual signature unless it is typically used or recognized as their signature.
4. Relevant Provision: "Section 618 of the Code of Civil Procedure" - the statute specifies the required contents of an attestation clause in a will.

Historical Background:

In the early to mid-20th century, the codification of Civil Procedure in the Philippines was still heavily influenced by the American legal system due to the colonial history of the islands. The standards for wills, including the requirements for execution and attestation, were strict to ensure the authenticity and reliability of the testamentary document. The decision in this case reflects the judiciary's adherence to these standards and highlights the importance of formalities in the probate process to prevent fraud and undue influence.