

**INTESTATE ESTATE OF THE DECEASED LUIS C. DOMINGO, SR.,
CONSUELO DOMINGO DE LOPEZ, ADMINISTRATRIX-PETITIONER,
VS. PEDRO A. AQUINO, DECEASED, SUBSTITUTED BY SALVACION
YUSAY AQUINO...**

G.R. No. L-28078. April 29, 1971

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

An original action for certiorari challenging a judgment of the Court of Appeals as null and void for having been allegedly entered in excess of jurisdiction and/or with grave abuse of discretion.

On August 7, 1961, the Court of First Instance of Pangasinan rendered judgment approving the money claim of respondent Pedro A. Aquino against the petitioner estate by ordering the then special administratrix, Asuncion Domingo Sta. Maria, "to pay from the available funds of the estate the sum of P20,000.00 with 12% interest per annum from June 10, 1954 to Pedro A. Aquino."

Both parties appealed from the said judgment to the Court of Appeals, insofar as it was adverse to them, and on January 20, 1967, the appellate court in an extended nineteen-page decision penned by Justice Ruperto C. Martin, which dealt mainly and exhaustively with the contentions of appellant estate, found for respondent as appellant, and affirmed the lower court's judgment with modifications in favor of respondent, as follows: "IN VIEW OF THE FOREGOING, except with the modification of the order as to the payment of the corresponding interest stipulated in the promissory note (Exhibit C) the claim of Atty. Pedro A. Aquino is hereby approved and allowed, and the administratrix ordered to pay, from the available funds of the estate, the sum of P20,000.00 with compound interest at the rate of 12% per annum from July 27, 1953, plus P500.00 as attorney's fees, to Pedro A. Aquino."

According to the present petition itself, the estate's counsel of record in the appellate court, Atty. Jose A. Unson, did not receive the notice and copy of the appellate court's judgment sent to him by registered mail; but the estate's attorneys in the intestate proceedings pending in the lower court, Attys. Primicias, Del Castillo and Macaraeg, were verbally informed by respondent's counsel of the judgment rendered on appeal by the appellate court.[1]

Pursuant to said information, petitioner caused to be filed on March 9, 1967, with the appellate court an "Appearance with Motions for Substitution and to be served with a copy of the Judgment", stating, inter alia, that the former special administratrix, Asuncion Domingo Sta. Maria had long resigned as such with the permission of the intestate court, that the other co-special administrator, Atty. Luis Domingo, Jr. (who had caused the prosecution of the appeal) was removed from his trust by the intestate court's order dated May 21, 1963, for having squandered cash funds of the estate, and that as a consequence, Mrs. Consuelo Domingo de Lopez was appointed judicial administratrix and has since been administering the estate alone; that Mrs. Lopez as judicial administratrix wished to file a motion for reconsideration of the appellate court's judgment and that the clerk of

court be directed to serve copy of said judgment on her counsel instead of on Atty. Unson as the former special administrator's counsel "for purposes of starting running of time to move for re-hearing or reconsideration"; and praying that as present judicial administratrix, she be substituted in lieu of the former joint administrators and that her counsel be served with copy of the appellate court's decision.

Upon due opposition of respondent on the ground of finality of the judgment, the appellate court denied the petitioner's motion for reconsideration per its resolution of April 27, 1967.

No further move was made by petitioner thereafter until almost five months later when on September 23, 1967, after respondent had filed in the intestate court a motion for execution of the judgment, as affirmed in his favor by the appellate court, it filed the present petition. Upon the representations - contrary to the records - that the appellate court had granted "new or further relief" in favor of respondent by awarding compound interest on the sum due respondent and that Atty. Unson has ceased to be the estate's lawyer since May 21, 1963 with the removal of the former administrator, Luis Domingo, Jr. as such, the Court issued on October 3, 1967, the corresponding summons and required respondents to answer the petition.

The Court, upon urgent supplemental petition of petitioner, further issued on November 7, 1967, upon a P1,000.00 bond, a writ of preliminary injunction enjoining enforcement, through sale of the estate's properties, of the appellate court's judgment.

The Court finds no merit in the petition.

1. The records at bar amply show that Atty. Jose A. Unson was the counsel on record of the petitioner estate in the appellate court and never filed any withdrawal as such counsel. As a matter of fact, even after the removal on May 21, 1963 of Luis Domingo, Jr. as administrator of the estate, Atty. Unson filed in the appellate court his memorandum dated August 17, 1963, for the estate as appellant. While it may be true that Atty. Unson ceased as counsel for the estate and for the former administrator sometime on November 8, 1966, when the intestate court granted his motion dated November 2, 1966, to withdraw as counsel by virtue of his appointment to and assumption on February 8, 1966 of the public office of Assistant Administrator of the Sugar Quota Administration,[2] this was true only insofar as the case in the intestate court was concerned. He continued on record in the appellate court as counsel for the estate as appellant therein and did not file therein any withdrawal as counsel and neither did the petitioner inform said court of any change of counsel or of party-administrator, as required by Rule 138, section 26 of the Rules of Court. More so, no appearance of any new counsel for the estate was ever filed with the appellate court.

2. Notice and copy of the appellate court's decision of January 20, 1967, were therefore duly served by registered mail on the estate's counsel of record at his address of record at 307 Trinity Building, San Luis, Ermita, Manila, in accordance with Rule 13, section 8 of the Rules of Court.[3] And in accordance with said Rule, service by registered mail of the appellate court's decision upon the petitioner's counsel of record was deemed completed and effected upon the addressee's failure to claim his mail on the fifth day after the first notice of the postmaster.[4] This has ever since been the prevailing rule in the interests of public policy and sound, administration of justice, as most recently affirmed in *Fojas vs. Navarro*,[5] citing a long line of applicable precedents.

3. The present administratrix gives no satisfactory explanation as to her failure to substitute herself vice Luis Domingo, Jr., since the latter's removal on May 21, 1963, when she became the sole administrator (which she previously shared with Luis from December 21, 1961), or to then engage new counsel vice Atty. Unson in the appellate court. Her very motion for substitution filed on March 9, 1967 with the appellate court after its decision of January 20, 1967 recognized the fact that the appellate court had already duly handed down its adverse decision and merely expressed her wish to belatedly file a motion for reconsideration on behalf of the petitioner estate.

After the appellate court's denial of her motion on April 27, 1967, she was apparently resigned to the futility of filing any such motion, in view of the finality of the appellate court's decision - for such motion was never filed.

4. One vital factor that the present administratrix, Mrs. Lopez, has obviously failed to appreciate, wittingly or otherwise, is that the party in the subject case was the intestate estate of the deceased Luis C. Domingo, Sr. and that Atty. Unson represented the estate as counsel in the said case. The fact that his services were engaged by Luis Domingo, Jr. in his (Luis') official capacity as administrator, did not make him the personal counsel of Luis. Thus, notwithstanding Luis' removal as administrator, Atty. Unson continued to represent the estate as counsel in the appellate court. He continued to be authorized to represent the estate as its counsel, until the new administrator should terminate his services, which she never did.

5. The representations made by the present administrator and her counsel in the petition at bar - filed almost five months after the appellate court's denial of her belated motion for substitution and to be served with copy of its decision - to the effect that the appellate court had granted respondent "new and further relief" in its decision by the award of compound interest on the sum due respondent are deplorable. They failed to set out before the Court the full facts, viz, that respondent had duly prayed for the award of compound interest by the intestate court in accordance with the very stipulation of the promissory note sued upon; that respondent had duly moved the intestate court to reconsider its decision failing to provide for such compound interest; that the intestate court, in denying respondent's motion, merely stated "that the issue may just as well be decided in the appellate court, since both parties had indicated their intention to appeal; and that respondent in fact filed his appeal from this adverse portion of the intestate court's decision, as well as the non-award of the stipulated attorney's fees of P500.00. The appellate court therefore properly modified the intestate court's decision by awarding such compound interest and attorney's fees as prayed for in the errors assigned in respondent's brief as appellant.

6. It results clearly that the petition, alleging and praying that the appellate court's decision of January 20, 1967, be declared null and void for having been rendered and entered in excess of or without jurisdiction or that this Court send for the records from the appellate court "for purposes of review and thereafter render its own decision reversing the judgment [of the appellate court]" notwithstanding its long having become final and executory, is utterly untenable and without legal justification.

7. Petitioner's counsel are reminded of this Court's admonition in *Pajares vs. Abad Santos*,^[6] and other cases cited therein, to wit, that "the cooperation of litigants and their attorneys is needed so that needless clogging of the court dockets with unmeritorious cases may be avoided. There must be more faithful adherence to Rule 7, section 5 of the Rules of Court which provides that 'the signature of an attorney constitutes a certificate by him that he has read the pleading and that to the best of his knowledge, information and belief, there is good ground to support it; and that it is not interposed or delay' and expressly admonishes that 'for a willful violation of this rule, an attorney may be subjected to disciplinary action.'"

WHEREFORE, the petition is ordered dismissed and petitioner's counsel shall pay treble costs. The writ of preliminary injunction issued on November 7, 1967 is hereby dissolved and upon promulgation of this decision, respondent may proceed immediately with the enforcement and execution by the intestate court of the appellate court's judgment of January 20, 1967, in his favor. This decision shall be noted in the personal record of the counsel for petitioner and of their associate attorney, Teodoro P. Regino, who signed and verified the petition.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.

[1] Par. 14, petition.

[2] Annex M, petitioner's reply.

[3] "Section 8. Completeness of service. -- Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of five (5) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time.

[4] Attached in the appellate court's record is the Manila postmaster's certification dated March 14, 1967, that Atty. Unson did not claim Registry Letter No. 156 from the post office and that the same was returned to the appellate court on March 9, 1967.

[5] L-26365, April 30, 1970.

[6] 30 SCRA 748 (Nov. 29, 1969), emphasis copied.

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