

**GAVINO ALDAMIZ, AS ADMINISTRATOR OF THE ESTATE OF THE
DECEASED SANTIAGO REMENTERIA Y ALDAMIZCOGEASCOA,
PETITIONER, VS. THE JUDGE OF THE COURT OF FIRST INSTANCE OF
MINDORO, THE P...**

G.R. No. L-2360. December 29, 1949

Ponente: MORAN, C.J.

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MORAN, C.J.:

This is a petition for certiorari filed by Gavino Aldamiz, administrator of the testate estate of the deceased Santiago Rementeria y Aldamizcogeoasca, to set aside the order of the Court of First Instance of Mindoro issued in the said testate estate proceedings, fixing the amount of fees for respondent Juan L. Luna, as attorney for said administrator.

The facts material to the issues raised in the petition are as follows:

Santiago Rementeria y Aldamizcogeoasca, the decedent, was a Spaniard and member of the commercial partnership "Aldamiz y Rementeria." The other members were the brothers, Gavino and Jose, surnamed Aldamiz. Santiago Rementeria died in Spain in 1937, and probate proceeding No. 705 was instituted in the same year in the Court of First Instance of Mindoro by Gavino Aldamiz represented by Atty. Juan L. Luna. Gavino Aldamiz was appointed administrator and as such was represented by respondent Atty. Juan Luna up to January 21, 1947, when the order complained of was issued. In that order it is said that "said attorney is the one who instituted this testate proceeding ten years ago and has from its incipency to the present stage of the proceeding actively intervened in the same."

On January 15, 1947, after ten years from the date of his appointment, Gavino Aldamiz, as administrator, through his attorney Juan L. Luna, submitted his accounts for the years 1944, 1945 and 1946 and also a project of partition with a view to closing the proceedings. On said date, the court approved the accounts but refused to approve the project of partition unless all debts including attorney's fees be first paid. In the project of partition, it was expressly stated that attorney's fees, debts and incidental expenses would be proportionately paid by the beneficiaries after the closure of the testate proceedings, but the court refused to sanction this clause of the project. It is for this reason that right then and there, Attorney Luna, to comply with the wishes of the court, without previously preparing and filing a written petition to have his professional fees fixed, and without previous notice to all the interested parties, submitted evidence of his services and professional standing so that the court might fix the amount of his compensation and the administrator may make payment thereof. This failure to file a written claim and to notify the interested parties thereof was not due to bad faith or fraudulent purpose but to an honest belief on the part of the respondent attorney that such requirements were not necessary under the circumstance.

In this connection, it must be stated, in justice to Attorney Luna, that during the ten years that he served as attorney for the administrator and during the twenty-five years as legal consultant to Santiago Rementeria, Gavino

Aldamiz and Jose Aldamiz individually and as a commercial partnership under the firm name "Aldamiz y Rementeria," he never took the trouble of charging them for his professional services, thus showing disinterestedness and extreme liberality on his part due to friendship and other personal considerations toward his clients. And it is to be observed further that even after ten years of active work in the testate proceeding, when he wanted to close the same and it was then time for him to demand payment for his services, he showed no interest in demanding preferring to leave the matter to future negotiation or understanding with the interested parties. And when the amount of his fees was fixed by the court and Gavino Aldamiz asked him for a substantial reduction, he answered that it was not he who had fixed the amount but the court, and advised his client to file a motion for reconsideration, with the assurance that he would offer no objection to any reduction in amount and to any extension of the time for paying what might be granted by the court. And again, when Gavino Aldamiz paid him P5,000 on account, respondent attorney told him that he would be satisfied with any additional amount that Gavino might later desire to pay him. Only subsequent occurrences which proved distasteful to the parties, led them to take steps which culminated in the filing of the instant civil action.

At the time respondent's evidence was submitted to the court, the interested parties who were residing in the Philippines were Gavino Aldamiz and his brother Jose Aldamiz. The others were then residing in Spain. No written claim had ever been filed for respondent's fees, and the interested parties had not been notified thereof nor of the hearing, not even Gavino Aldamiz who did not know when he was called to testify that he would testify in connection with respondent's fees. The Court, after considering the whole evidence presented, issued its order of January 21, 1947, awarding respondent Attorney Luna, in payment of his professional services, an aggregate sum of P28,000 in the following manner:

- For the institution, preparation of the pleadings in the voluminous probate case, allowance of the will, project of partition and the final closing of this proceeding,—P15,000;
- For the registration of a parcel of land of seventy-eight hectares in favor of the testate,—P5,000;
- For three naturalization cases at the rate of P1,000 each,—P3,000; and
- For services rendered in the deduction of inheritance tax from P28,000 to P433.40—P5,000.

The Court ordered payment of these amounts within thirty days. Petitioner Gavino Aldamiz received copy of this order on February 21, 1948. Out of the total amount of P28,000, petitioner was able to pay P5,000 only, and upon his failure to pay the balance of P23,000 after several demands made upon him by respondent attorney, the latter on April 17, 1948, filed an ex-parte motion for execution, which was granted by the respondent Court on April 19, 1948. Pursuant to the order of execution, the respondent Sheriff levied on execution on two parcels of land belonging, not to the testate estate of Santiago Rementeria y Aldamizcogeoasca, but to the commercial partnership "Aldamiz y Rementeria" with a total area of three hundred fifty seven (357) hectares, more or less, and assessed at one hundred eighty-two thousand, three hundred and sixty pesos (P182,360), which was sold at a public auction on July 20, 1948, in favor of respondent attorney for only twenty thousand pesos (P20,000). This sale was made after preliminary injunction had been issued by this court in the instant case.

We believe and so hold that the order of the respondent court issued on January 21, 1948, fixing the amount of respondent attorney's fees is null and void. The correct procedure for the collection of attorney's fees, is for the counsel to request the administrator to make payment and file an action against him in his personal capacity and not as an administrator should he fail to pay. (*Palileo vs. Mendoza*, G. R. No. 47106, 40 Off. Gaz. [8th Supp.], 132.)^[1] If judgment is rendered against the administrator and he pays, he may include the fees so paid in his account to the court. (*Uy Tioco vs. Imperial*, 53 Phil., 802.) The attorney also may, instead of bringing such an action, file a petition in the testate or intestate proceeding "asking that the court, after notice to all persons

interested, allow his claim and direct the administrator to pay it as an expense of administration." (Italics ours.) *Escueta vs. Sy Juilliong*, 5 Phil., 405.)

In the instant case, as above stated, no written petition for the payment of attorney's fees has ever been filed by respondent attorney and the interested parties had not been previously notified thereof nor of the hearing held by the court. Consequently, the order issued by the respondent court on January 21, 1947, and all subsequent orders implementing it, are null and void, as having been issued in excess of jurisdiction.

We also hold that the order of execution issued on April 19, 1948, is null and void, not only because it was intended to implement the order of January 21, 1947, which in itself was null and void, but because a writ of execution is not the proper procedure allowed by the Rules of Court for the payment of debts and expenses of administration. The proper procedure is for the court to order the sale of personal estate or the sale or mortgage of real property of the deceased and all debts or expenses of administration should be paid out of the proceeds of the sale or mortgage. The order for the sale or mortgage should be issued upon motion of the administrator and with the written notice to all the heirs, legatees and devisees residing in the Philippines, according to Rule 89, section 3, and Rule 90, section 2. And when sale or mortgage of real estate is to be made, the regulations contained in Rule 90, section 7, should be complied with.

Execution may issue only where the devisees, legatees or heirs have entered into possession of their respective portions in the estate prior to settlement and payment of the debts and expenses of administration and it is later ascertained that there are such debts and expenses to be paid, in which case "the court having jurisdiction of the estate may, by order for that purpose, after hearing, settle the amount of their several liabilities, and order how much and in what manner each person shall contribute, and may issue execution if circumstances require" (Rule 89, section 6; see also Rule 74, section 4; Italics ours). And this is not the instant case.

It is alleged by respondents that petitioner is guilty of laches. True that petitioner failed to appeal from the order of January 21, 1947, within the time provided by the Rules and the instant petition for certiorari was filed one (1) year, four (4) months and fourteen (14) days after petitioner had received a copy of said order. And we have held in *Profeta vs. David*, 40 Off. Gaz., 14th Supp., p. 152,[1] that orders issued without previous notice to parties will be deemed cured if said parties fail to appeal within the time provided by the rules and their appeal is lost due to their own negligence. But here, aside from petitioner, there are interested parties who have never been notified of the order complained of, and as to them, said order has not yet become final and executory. And with respect to petitioner, he has not lost his appeal through his own negligence. When he received notice of the order of the Court fixing respondent's fees in the amount of P28,000, he immediately wrote his lawyer a letter asking for a substantial reduction and extension of time to pay. The lawyer answered advising him to file his motion for reconsideration within thirty days, but he received his lawyer's letter after said period had expired. And petitioner had no other attorney to advise him except respondent who was his adversary on the matter now in dispute. After receiving said letter, he again sought equitable compromise with respondent attorney and later paid him P5,000, and respondent then told him that he would be satisfied with whatever additional amount petitioner might desire to pay him. And petitioner would perhaps have taken no action were it not because without previous notice to him, the respondent attorney asked authority from the court to sell two parcels of land totalling 13 hectares, for the payment of said professional fees and later, on July 26, 1947, respondent attorney, again without previous notice to petitioner, filed a motion for execution for the same purpose. Both motions were, however, abandoned. But a second motion for execution was filed by respondent without petitioner's knowledge, which was granted by the Court on April 19, 1948. Respondent Sheriff levied on two parcels of land belonging to the partnership "*Aldamiz y Rementeria*" with a total area of 357 hectares and assessed at P182,360 and the sale was announced by the sheriff for July 20, 1948. Two motions for reconsideration were filed by petitioner, one on June 16, 1948,

and the other on June 28, 1948, asking that the order of January 21, 1947, and the order of execution of April 19, 1948 be set aside, but both motions were denied and the last order of denial is dated July 1, 1948. The petition in the instant case was filed on July 17, 1948. We hold that under the circumstances, particularly the fiduciary relation between petitioner and respondent attorney, the former is not guilty of laches.

Respondents maintain that the case for the petitioner is one of pure technicality, premised upon a supposed failure of the respondent attorney to follow a supposed procedure. It is said that the amount of P28,000 fixed and allowed by respondent court as professional fees of the respondent attorney is not unconscionable or unreasonable because the entire estate was worth P315,112 and now it is worth about half a million pesos because of many improvements existing thereon. It appears, however, that due to lack of notice upon the interested parties mistakes have been committed by the court which could have been avoided. For instance, the court awarded fees for services rendered not to the testate estate but to other persons, such as the supposed services in connection with the petitions for naturalization filed in behalf of Gavino Aldamiz and Jose Aldamiz and the application for registration of a parcel of land of 78 hectares filed not in favor of the testate estate but of the partnership "Aldamiz y Rementeria." These services evidently could not be charged against the estate of Santiago Rementeria. And furthermore, due to lack of preparation on the part of respondent attorney, it appears that while he was testifying to his professional services he was apparently not sure of being able to recite them all for at the end of his testimony he said: "Son los servicios que me acuerdo ahora. * * *" Had he been afforded ample time to recollect the nature and details of his long and continuous services, considering his high professional standing as recited by the respondent court in its disputed order and the increased value of the estate then, perhaps, a more reasonable compensation would have been fixed, or, at least, the court could have rendered a decision with full knowledge of all the facts and with justice to all the parties concerned.

For all the foregoing, the order of the respondent court of January 21, 1947, and all the subsequent orders implementing it, particularly the order of execution issued by the court on April 19, 1948, and the sale made by the sheriff on July 20, 1948, in favor of respondent attorney, are null and void and are hereby set aside, with costs against respondents. It is so ordered.

Ozaeta, Pablo, Bengzon, Padilla, Tuason, Reyes, and Torres, JJ., concur.

[1] 70 Phil., 297.

[1] 71 Phil., 582.

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