

**IN THE MATTER OF THE PROBATE OF THE LAST WILL AND
TESTAMENT OF JOSE VENZON. VALENTINA CUEVAS, PETITIONER
AND APPELLEE, VS. PILAR ACHACOSO, OPPOSITOR AND
APPELLANT.**

G. R. No. L-3497. May 18, 1951

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from an order of the Court of First Instance of Zambales admitting to probate the last will and testament of the late Jose Venzon.

On January 19, 1946, Jose Venzon died in Iba, Zambales, leaving a will. In said will the deceased instituted as his heirs, Valentina Cuevas, his widow and Rosario Asera Venzon, his daughter. He named therein his widow as executrix of the will. On February 1, 1946, Valentina Cuevas filed a petition for the probate of said will.

On May 10, 1946, one Pilar Achacoso filed an alternative petition for the probate of a previous will executed by the deceased praying therein that, if the will submitted by the widow be rejected, the other will be admitted to probate in lieu thereof. In the previous will there are other heirs instituted, among them petitioner Pilar Achacoso. Pilar Achacoso objected to the probate of the second will executed by the deceased on October 10, 1945. After due hearing, the court found that the latter will was executed in accordance with law and ordered that it be admitted to probate. Pilar Achacoso took the case to the Court of Appeals, but the latter certified it to this Court on the ground that it involves purely questions of law.

"The main error assigned refers to the alleged lack of attestation clause in the will under consideration, or to the fact that, if there is such attestation clause, the same has not been signed by the instrumental witnesses, but by the testator himself, and it is claimed that this defect has the effect of invalidating the will.

The will in question, after reciting in separate paragraphs, and under correlative numbers, the provisions of the will, winds up with the following clause:

"IN WITNESS WHEREOF, I sign this testament or last will in the municipality of Iba, Zambales, Philippines, this 10th day of October, 1945, in the presence of the three witnesses, namely Dr. Nestorio Trinidad, Don Baldomero Achacoso, and Mr. Proceso Cabal as instrumental witnesses to my signing; this testament is written in three (3) sheets marked by letter 'A', 'B' and 'C' consecutively on top of each sheet and upon my request and in my presence and also in the presence of each of the aforesaid instrumental witnesses, they also signed this testament already referred to.

I hereby manifest that every sheet of the aforesaid testament, on the left-hand margin as well as the testament itself have been signed by me as also each of the witnesses has also signed in my presence and in the presence of each other.

(Sgd.) JOSE VENZON

Witnesses:

(Sgd.) NESTORIO TRINIDAD

(Sgd.) BALDOMERO L. ACHACOSO

(Sgd.) PROCESO CABAL

The clause above quoted is the attestation clause referred to in the law which, in our opinion, substantially complies with its requirements. The only apparent anomaly we find is that it appears to be an attestation made by the testator himself more than by the instrumental witnesses. This apparent anomaly, however, is not in our opinion serious nor substantial as to affect the validity of the will, it appearing that right under the signature of the testator, there appear the signatures of the three instrumental witnesses,

"Instrumental witness, as denned by Escriche in his *Diccionario Razonado de Legislacion y Jurisprudencia*, Vol. 4, p. 1115, is one who takes part in the execution of an instrument or writing" (In re will of Tan Diuco, 45 Phil, 807, 809). An instrumental witness, therefore, does not merely attest to the signature of the testator but also to the proper execution of the will. The fact that the three instrumental witnesses have signed the will immediately under the signature of the testator, shows that they have in fact attested not only to the genuineness of his signature but also to the due execution of the will as embodied in the attestation clause.

The attestation clause in question bears close similarity with the attestation clause in the will involved in *Aldaba vs. Roque*, (43 Phil., 378). In that case, the attestation clause formed part of the body of the will and its recital was made by the testatrix herself and was signed by her and by the three instrumental witnesses. In upholding the validity of the will, the court said:

"In reality, it appears that it is the testatrix who makes the declaration about the points in the last paragraph of the will; however, as the witnesses, together with the testatrix, have signed the said declaration, we are of the opinion and so hold that the words above quoted of the testament constitute a sufficient compliance with the requirements of Act No. 2645."

As was said in one case, "the object of the solemnities surrounding the execution of the wills is to close the door against bad faith and fraud, to avoid substitution of wills and testaments and to guarantee their truth and authenticity. Therefore the laws on this subject should be interpreted in such a way as to attain these primordial ends. But on the other hand, also one must not lose sight of the fact that it is not the object of the law to restrain and curtail the exercise of the right to make a will. So when an interpretation already given assures such ends, any other interpretation whatsoever, that adds nothing but demands more requisites entirely unnecessary, useless and frustrative of the testator's will, must be disregarded." In re will of Tan Diuco, *supra*, p. 811.) (Italics supplied.)

Expressive of this liberal view of interpretation, are also the following rules embodied in the new Civil Code. These provisions, although not directly applicable, are however, significant because they project the point of view of our legislature when it adopted them having in view the existing law and jurisprudence on the matter.

"ART. 788. If a testamentary disposition admits of different interpretations, in case of doubt, that interpretation by which the disposition is to be operative shall be preferred."

"ART. 791. The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render any of the expressions inoperative; and of two modes of interpreting a will, that is to be preferred which will prevent intestacy."

Wherefore, the order appealed from is hereby affirmed, with costs against the appellant.

Paras, C. J., Feria and Tuason, JJ., concur.

JUGO, J.:

I concur in the result.

CONCURRING AND DISSENTING

MONTEMAYOR, J., with whom concur Bengzon and Padilla, JJ.,

The facts in this case are correctly related in the learned majority decision penned by Mr. Justice Bautista Angelo. The main issue involved is well stated in that portion of the majority decision which for purposes of reference I quote below:

"The main error assigned refers to the alleged lack of attestation clause in the will under consideration, or to the fact that, if there is such attestation clause, the same has not been signed by the instrumental witnesses, but by the testator himself, and it is claimed that this defect has the effect of invalidating the will.

"The will in question, after reciting in separate paragraphs, and under correlative numbers, the provisions of the will, winds up with the following clause:

'In witness whereof, I sign this testament or last will in the municipality of Iba, Zambales, Philippines, this 10th day of October, 1945, in the presence of the three witnesses, namely Dr. Nestorio Trinidad, Don Baldomero Achacoso, and Mr. Proceso Cabal as instrumental witnesses to my signing; this testament is written in three (3) sheets marked by letter "A", "B" and "C" consecutively on top of each sheet and upon my request and in my presence and also in the presence of each of the aforesaid instrumental witnesses, they also signed this testament already referred to.

'I hereby manifest that every sheet of the aforesaid testament, on the left-hand margin as well as the testament itself have been signed by me as also each of the witnesses has also signed in my presence and in the presence of each other.

(Sgd.) JOSE VENZON

Witnesses:

(Sgd.) NESTORIO TRINIDAD

(Sgd.) BALDOMERO L. ACHACOSO

(Sgd.) PROCESO CABAL' "

The majority opinion correctly states that the clause of the will above-quoted "appears to be an attestation made by the testator himself more than by the instrumental witnesses." I go further and say that it is an attestation by the testator only, and not by the witnesses. The three witnesses—Trinidad, Achacoso, and Cabal—signed under the signature of Jose Venzon under the word "witnesses." Nothing can be more clear than that they merely witnessed the signature of the testator, nothing more.

In an ordinary attestation clause to a will, as may be seen or verified from any legal form, the attestation clause invariably contains a certification, affirmation or solemn statement made by the witnesses and signed by them, to the effect that the testator signed the will and every page thereof, in their presence, and that they also signed in the

same manner and in the presence of each other. In other words, it is they (witnesses) who speak and certify and attest. They are the ones who assure all persons interested, including the probate court that the attestation clause signed by them contains a true and faithful certificate or guarantee of the signing of the will by the testator and by themselves as required by law, and that they were in a position to do so because they signed last.

Now, let us examine the clause of the will above-quoted. As the majority opinion states, it is the testator that speaks and not the attesting witnesses. He certifies that not only he signed the will and every page thereof in the presence of three witnesses, but that said three witnesses also signed in his presence and in the presence of each other. Then he signed said clause and the will, and thereafter, the three witnesses signed under the word "witnesses", evidently giving us to understand that they saw him sign, nothing more.

From our everyday experience and observation, in ordinary written contracts or deeds, the witnesses who sign at the foot of the instrument and after the signatures of the parties to the contract or deed merely witness the signatures of said parties, nothing beyond that. The law does not require, and they do not certify that they signed in the presence of each other, much less, that the instrument or deed has been executed according to legal requirements. They have nothing to do or to say about the truth or falsity of the statements contained in the body of the document. For all they know the vendor may not be the owner of the land he is selling, and the vendee may not in fact have paid the amount stated as received by the vendor that they know and impliedly affirm and attest is that they saw the parties sign the deed. And that is exactly what took place in the execution of the will in question. The witnesses signed merely as witnesses to the signature of the testator. They neither expressly nor impliedly affirmed or certified that the assertions about the signing of the will and every page thereof, contained in the so-called attestation clause, are true, for the obvious reason that said clause is not their own, neither have they signed it. .

Let us apply a simple test. Supposing that the statements contained in the so-called attestation clause in this case contained a false narration of facts. Can and may said three witnesses or anyone of them be properly and justly accused of falsification? I seriously doubt it. They can truthfully and correctly say in their defense that they made no certificate, statement or narration, whether false or true. The certificate and attestation was made only by the testator himself and not by them (witnesses). As admitted and stated in the majority opinion, it was he (testator) who spoke, not they (witnesses). It may be that the testator, as it were, took the very words out of their mouths, but the utterance and the affirmation were his, not theirs. He erroneously assumed their role as attesting witnesses. But that is far from fulfilling the requisites of the law that demands such utterance, assurance and affirmation from three witnesses and from no one else.

Incidentally, it may be stated that what the testator states in said clause could not have been all true. He says and certifies that the three witnesses signed the will in his presence and in the presence of each other. Then he signed said certificate or statement or clause. How could he truthfully and correctly say all this when at the time that he was making the statement or certificate and at the very instant that he signed the same the three witnesses had not yet signed (in his presence and in the presence of each other), for the simple reason that they signed last, and, naturally, after the testator had made and signed his premature and untrue statement and affirmation. The sequence is obviously wrong. In other words, the testator was basing his statement and certificate upon a mere future presumption and expectation.

The majority bolsters its stand by citing the case of *Aldaba vs. Roque*, 43 Phil., 378, where a similar attestation clause was signed by the testatrix herself, and this Court held that inasmuch as the witnesses signed with the testatrix, it was a sufficient compliance with the requirements of the law on wills. I am afraid that the doctrine laid down in that case of *Aldaba vs. Roque*, supra, constitutes a wide departure from the well established rule about the due execution of wills and, for the guidance of prospective testators, the bench and the bar, it is about time that

we revised said doctrine. We should strictly comply with the requirements of the law about the execution of wills so as to effectively close the door to fraud, deceit, and duress. When the law requires that the attesting witnesses make the attestation and formal declaration, we should insist that they and not someone else, even the testator, assume that role. Of what value can the statement or attestation or certificate about the signatures on the will, made by the testator be? Absolutely none. It will be remembered that a will is a peculiar instrument in the sense that it comes to life and goes into effect only after the death of the testator, not before. Naturally, in the probate of a will, the testator can never be a witness to establish and support the truth of the statement contained in his certificate or attestation. In other words, in a contested will where evidence is required to prove the due execution of the testament, a certificate or affirmation made by the testator himself, besides being unnecessary and not required by law, becomes an empty and ineffective attestation because the attestator himself is no longer available to support it by his declaration under oath in court. That is why the law requires as attesting witnesses, three other persons who might be expected to be yet alive and available when the will is presented for probate. And when the will is contested the law further requires all the said three witnesses to appear in court and testify and ratify the statement contained in the attestation clause.

So, in the case of *In Re Will of Tan Diuco*, 45 Phil. 807, this Court speaking of attesting witnesses said that the three witnesses should sign the attestation clause "inasmuch as they alone can certify the facts to be stated in said clause, for having taken a direct part therein, as they saw the testator sign the will, or the person requested by him to sign all the sheets of the will, that* is, the document constituting his last will and testament, and affirm that it was signed under his express direction in the presence of said witnesses and that all the sheets

To consider the words and statements contained in the so-called attestation clause in the present case, as made and uttered by the three witnesses just because they signed their names under the testator's signature, as witnesses to his signing the document, is to ascribe and impute to them as their act and declaration an act clearly not their own, and to put into their mouths words and statements never uttered or spoken by them; it is to give to the clause and the signatures under it, a significance and meaning and effect not warranted by normal and reasonable understanding and interpretation.

Under the interpretation given to the clause in question by the majority opinion as well as the interpretation given by this Court to a similar clause in the case of *Aldaba vs. Roque*, supra, in a case where a testator makes and signs a similar attestation clause, any three persons who may happen to have been in the same room where the testator was, and have seen him or were in a position to have seen him affix his signature to his intended last will and testament, may afterwards leave the room and go to their respective homes, towns and provinces; and subsequently, indeed, even after the death of the testator, when the person or persons who prepared the will came to realize the necessity of attesting witnesses, they could send the document to said witnesses in the places where they may be found, one after the other and request said three persons to sign as attesting witnesses; and each of said three persons may honestly, truthfully and without any mental reservation, sign his name to the document as a witness for the reason that he had actually witnessed the signature of the testator, for after all, that is all that he impliedly certifies by his signature as a witness, and yet, such signatures of the witnesses under such circumstances would not only be without the contemplation of law but would also expressly and openly violate its requirements, for the law provides that the attesting witnesses must certify and attest that they signed as witnesses in the presence of the testator and in the presence of each other, facts which are absolutely and completely wanting in the example given.

The foregoing are the reasons why I am of the opinion that the interpretation given by the majority to the so-called attestation clause in the present case, as well as the interpretation given by this Court to a similar attestation clause in the case of *Aldaba vs. Roque*, supra, are not exactly correct and warranted.

In the possibility that the testator in the present case, or the person or persons who prepared the will had relied upon the ruling laid down in the case of *Aldaba vs. Roque*, supra, and that it would now be unfair to reject the present will when in its preparation a ruling by this Court has¹ been followed, I am willing to admit said will to probate and I concur in the result of the majority opinion; but I dissent insofar as it holds out and regards the interpretation given by it of the clause in question, as a doctrine that may be followed in future cases, especially from now on. I also believe and hold that for the reasons stated in this concurring and dissenting opinion, the doctrine laid down in the case of *Aldaba vs. Roque*, supra, should be abandoned.

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