

[WITH AMENDED DECISION OF JULY 24, 1962]

G.R. No. L-16959. January 30, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from an order of the Court of First Instance of Pampanga, Hon. L. Pasicolan, presiding, ordering Donata Montemayor, administratrix-appellant to pay unto the heirs of the late Atty. Eduardo D. Gutierrez or to their counsel, P9,600.00 with legal interest from the promulgation of the decision of the Court of Appeals in C. A.-G. R. No. 19246-R, until fully paid, without prejudice to her securing a reimbursement of said sum from the heirs of her deceased co-sureties.

The facts of the case may be briefly stated as follows: Herein administratrix-appellant, Donata Montemayor was appointed administratrix of the estate of her late husband, Olodualdo Vitug, and before she assumed office as administratrix, she filed a bond the terms of which were as follows:

"(a) To make and return to the court within three months, a true and complete inventory of all goods, chattels, rights, credits and estate of the deceased which shall come to his possession or knowledge or to the possession of any other person for him;

"(b) To administer according to these rules, and, if an executor, according to the will of the testator, all goods, chattels, rights, credits, and estate which shall at any time come to his possession or to the possession of any other firm for him and from the proceeds to pay and discharge all debts, legacies, and charges on the same, or such dividends thereon, as shall be decreed by the court;

"(c) To render a true and just account of his administration to the court within one year, and at any other time when required by the court;

"(d) To perform all orders of the court by him to be performed." (pp. 42-43, R.A.; pp. 4-5, brief for administratrix-appellant).

Atty. Eduardo D. Gutierrez served as counsel of the administratrix of the estate for the period from June, 1936 to December, 1953. Before the employment of said Atty. Gutierrez, a project of partition had already been approved by the court as early as August 28, 1933, wherein the administratrix renounced her rights to the conjugal properties in favor of her children and the children of the deceased by a previous marriage, and, in return for which, the heirs or the children, renounced in favor of the widow the private properties of her husband. A house valued at P16,500.00 and another at P235.00, with accessories valued at P2,000.00 in addition to a Fordson tractor, were not partitioned and were left in the hands of the administratrix for future partition. It so happened, however, that the personal properties were lost, destroyed or looted during World War II. Three cases were filed against the administratrix and the heirs for the recovery of alleged share or participation in the real properties already partitioned, and these gave occasion to the employment of the services of Atty. Gutierrez by the administratrix.

When the claim for attorney's fees was brought, the bondsmen for the administratrix had died. The Court of First

Instance declared that no claim for attorney's fees could be allowed, but on appeal to the Court of Appeals (G. A.-G. R. No. 19246-R), this court declared that the administratrix is liable to pay P9,600.00 attorney's fees. It is in execution of this judgment that this sum was ordered by the court below to be paid by the administratrix, personally, with right to reimbursement from the heirs of the deceased bondsmen.

That services were rendered by the deceased Atty. Eduardo D. Gutierrez is not questioned. Neither is it denied that services were rendered on behalf of the estate under administration. Nor is there any finding or claim that the administratrix was guilty of any malfeasance, mismanagement or violation of her duties as administratrix; so, it is claimed on this appeal that as there exist no more funds in her possession belonging to the estate, the said attorney's fees should be apportioned among the heirs who have already received their shares of the estate of the deceased Clodualdo Vitug.

We find this claim to be well founded. The expenses of administration incurred by an administratrix have to be borne out of the properties under administration, or out of the income derived therefrom. The administratrix can be held personally responsible only for any malfeasance, maladministration or violation of any of her duties as administratrix.

"The undertaking of administrators and their bondsmen is faithfully to administer the estate and cause to be made just and true accounts, and to make due and proper settlements thereof, from time to time, according to law or the lawful order, sentence, or decree of any court having jurisdiction of the parties and subject matter. Harper vs. Betts, 60 ALR 484, 177 Ark 977, 8 SW2d 464; (Permanent A.L.R. Digest, Vol. 6, p. 51.)"

"Under the usual tenor of an administration bond, the principal and his sureties are only bound to pay creditors, legatees, or heirs, according to assets which come to hand and the resources which arise in the course of an honest, prudent, and well advised administration." (34 CJS, 1165).

Such being the case, it is unfair that she should bear personally the fees of counsel for services rendered to her as administratrix in the course of the administration. The Rules provide that an estate left by a deceased may be partitioned even before the termination of the administration proceedings, like in this case, and the heirs receiving shares should be responsible for the expenses proportionately.

"Sec. 5.—If such contingent claim becomes absolute and is presented to the court, or to the executor or administrator, within two years from the time limited for other creditors to present their claims, it may be allowed by the court if not disputed by the executor or administrator, and, if disputed, It may be proved and allowed or disallowed by the court as the facts may warrant. If the contingent claim is allowed, the creditor shall receive payment to the same extent as the other creditors if the estate retained by the executor or administrator is sufficient. But if the claim is not so presented, after having become absolute, within said two years, and allowed, the assets retained in the hands of the executor or administrator, not exhausted in the payment of claims, shall be distributed by the order of the court to the persons entitled to the same; but the assets so distributed may still be applied to the payment of the claim when established, and the creditor may maintain an action against the distributees to recover his debt, and such distributees and their estates shall be liable for the debt in proportion to the estate they have respectively received from the property of the deceased."

"Sec. 6.—Where devisees, legatees, or heirs have entered into possession of portions of the estate before the debts and expenses have been settled and paid, and have become liable to contribute for the payment of such debts and expenses, 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, Secs. 5 and 6).

In accordance with these provisions, the administratrix in the case at bar should not be required to pay personally

the counsel's attorney's fees. Neither should her bondsmen or her bond be responsible as there is nothing in her acts as would constitute a violation of the guaranty assumed by them in their bond.

"A surety on the official bond of an administrator or executor, where there is no statute or stipulation in the bond to the contrary, obligates himself only to account for losses occasioned by the failure of the fiduciary to use due diligence in pursuing and collecting claims owing to the estate, and to make proper application of the assets that come into his hands. State ex rel. Farmer vs. Citizens' Trust & Co. 8 ALR79, W Va 729, 100 SE 635."

"It has been held that surety on an administrator bond is bound only for faithful administration of the state, and not for the return of money which the administrator in good faith spent and which he is unable to repay." (34 CJS 1186).

For the foregoing considerations, the order appealed from should be, as it is hereby, set aside, and another entered, ordering that the fees payable to the estate of the deceased Atty. Eduardo D. Gutierrez be apportioned among the heirs. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

AMENDED DECISION

LABRADOR, J.:

The heirs of Eduardo D. Gutierrez, heirs-appellees herein, seek the reconsideration of the decision of this Court in which the administratrix was exempted from personal liability for counsel's attorney's fees, reserving to the heirs of the deceased counsel Eduardo D. Gutierrez the right to demand payment of the fees of their deceased predecessor from the heirs of the deceased Clodualdo Vitug. Considering that the said attorney's fees were due because administratrix Donata Montemayor had contracted the services of said counsel and is, therefore, indirectly responsible to the heirs-appellees for the payment of the fees of the above-mentioned counsel, the decision is hereby modified to read as follows:

"For the foregoing considerations, the order appealed from is hereby modified by declaring the administratrix Donata Montemayor responsible, in her capacity as administratrix, to the heirs of the deceased Attorney Eduardo D. Gutierrez, for the payment of the fees adjudged by the court to be due to the latter, with the corresponding duty and right on the part of said administratrix to secure the sums needed for the payment of said fees from the heirs, who have been declared responsible in proportion to the shares received."

Bengzon, C. J., Padilla, Concepcion, Barrera, Paredes, and Dizon, JJ., concur.

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