

**ILUMINADA DE GALA-SISON, AS ADMINISTRATRIX OF THE
INTESTATE ESTATE OF THE LATE GENEROSO DE GALA,
PETITIONER, VS. HON. MANOLO L. MADDELA, AS JUDGE OF THE
COURT OF FIRST INSTANCE ...**

G.R. No. L-24584. October 30, 1975

Ponente: ANTONIO, J.

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ANTONIO, J.:

Petition for certiorari to annul the orders, dated August 21, 1964 and May 10, 1965, in Special Proceeding No. 2887 of respondent Judge Manolo L. Maddela of the Court of First Instance of Quezon insofar as said orders require petitioner-administratrix to deposit the amount of P39,240.15 in her possession with a reputable banking institution.

Prior to the afore-mentioned orders in question, the Court of First Instance of Quezon, then presided over by Judge Vicente Santiago, issued an order on August 29, 1952, in Special Proceeding No. 2887, directing the administratrix (a) to include in her inventory of properties left by the deceased certain pieces of jewelry described in Exhibit "Y" of oppositor Socorro Manalo, and (b) to deposit cash in her possession amounting to P40,998.56 with a reputable banking institution. On appeal, the Court of Appeals in its decision of February 2, 1961 in case CA-G.R. No. 10711-R,[1] affirmed the lower court's order of August 29, 1952. However, on a petition for certiorari,[2] this Court, finding that the amount of P1,698.41 was spent by the petitioner Iluminada de Gala-Sison, as administratrix, which expense was approved by the court on August 2, 1950, so that the amount ordered to be deposited should be reduced by P1,698.41 to P39,240.15, rendered on July 31, 1963 a decision modifying the appealed order of August 29, 1952 to read as follows:

"Considering that the balance of P40,938.56 existing at the time of the issuance of the order appealed from, dated August 29, 1952, may no longer exist by virtue of the fact that the administratrix must have already paid to the heirs their respective allowances and shares in the inheritance, the disputed order should be modified to include only such balance of the original amount of P40,938.56 as may be in the possession of the administratrix, after deducting the expenses approved by the court and the allowances and inheritances authorized by the court to be given to the widow and the heirs."

On October 7, 1963, respondent Socorro Manalo moved for the execution of the decision of July 31, 1963, and the respondent Judge issued on October 16, 1963 an order requiring, within ten (10) days from the receipt of the order, the administratrix Iluminada de Gala-Sison (1) "to file an amended inventory including therein the pieces of jewelry listed in Socorro Manalo's Exhibit 'Y'"; and (2) "to deposit with any reputable banking institution the remainder of the amount of P40,938.56, which may be in her possession, after deducting the expenses approved by the court and the allowances and inheritances authorized by the court, as specified in its order issued in this case dated July 7, 1950, to be given to the widow and the heirs of the deceased Generoso de Gala."

Under date of November 29, 1963, the petitioner filed an Amended Inventory in compliance with the said order.

However, the petitioner-administratrix did not comply with the portion of said order which required her to deposit the remainder of the amount of P40,938.56 which may be in her possession. Instead, she filed on November 29, 1963 a Manifestation stating that "there is really no necessity for any deposit to be made with a banking institution which the probate court then believed was necessary way back on August 29, 1952 when the accountable fund was still a sizeable one," since from the remainder of said amount of P40,938.56 ordered to be deposited, several deductions should be made consisting in the following:

"(a) additional expenses in the sum of P1,698.41 which was approved by the probate court per order of 3 August 1950;

"(b) advances and allowances to petitioner as heir (she being the only surviving child of the late Generoso de Gala in the sum of P22,000.00 (the other heirs through respondent-oppositor and the surviving widow have already been given similar advances and allowances in the sums of P21,815.88 and P19,151.39);

"(c) expenses of litigation and attorney's fees already incurred and paid since 1952; and

"(d) compensation of petitioner as administratrix of the intestate estate."

On August 21, 1964, the respondent Judge issued an order, the pertinent portion of which reads:

"To resolve the foregoing contention of the administratrix, this court examined carefully the records and finds that there is no merit in her contention. First: The decision of the Supreme Court authorized the deduction of expenses, allowances and inheritance already approved by the court; whereas, the amounts now sought to be deducted have never been so authorized by this court; and Second: It now appears that the present contention of the administratrix was already raised by her in the Supreme Court, and in spite of such claim, the decision of said court did not authorize such deduction.

"An examination of the records also reveals that from the amount of P40,938.56, only the sum of P1,698.41 must be deducted specially considering that from the manifestation aforesaid the administratrix failed to assert any other deductions as justified by the decision of the Supreme Court. Hence, the amount that must be deposited by the administratrix is the amount of P39,240.15.

"WHEREFORE, this court orders the administratrix to fully comply with its order dated August 16, 1963 by depositing with any reputable banking institution the amount of P39,314.15 within ten (10) days from the receipt of this order."

On September 17, 1964, petitioner filed simultaneously (1) a motion for reconsideration of the order of August 21, 1964; (2) a motion for payment to herself the amount of P22,000.00 as her advance or allowance against her distributive share and for the approval thereof; (d) a petition for allowance and payment, from the properties and assets of the estate, of the sum of P20,000.00 as her fees and compensation as administratrix; and (4) a verified accounting of the petitioner-administratrix for approval by the court.

On May 10, 1965, the respondent Judge issued an order the dispositive portion of which reads:

"WHEREFORE, the motion for reconsideration dated September 17, 1964 is hereby denied, and the administratrix is hereby ordered anew to fully comply with the order of this Court dated August 21, 1964 by depositing with any reputable banking institution the amount of P39,340.15 within a period of ten (10) days from receipt of this order. The motion for payment of advances, dated September 17, 1964 and the petition for allowance and payment of compensation, also dated September 17, 1964 are both denied; and the accounting dated September 10, 1964 is hereby disapproved ."

On May 26, 1965, the petitioner filed a motion for new trial and/or reconsideration of the order dated May 10, 1965, alleging, among others, that the lower court erred in holding that the disbursements itemized in her verified

accounting are unsupported by receipts and that her payments of attorney's fees were for her benefit as heir; and praying that said order of May 10, 1965, be set aside and reconsidered to the end that the administratrix among others may be granted a day in court for the presentation of her evidence or receipts supporting her verified accounting and disbursements itemized therein and that thereafter her said accounting be approved; that she be allowed payment of P22,000.00 as her advance or allowance against the distributive share as similar advances and allowances had been granted to the oppositor Socorro Manalo and the surviving spouse Felisa Alabastro; and that she be granted allowance and payment of her administratrix' compensation and fees for her administration of the intestate estate.

Before action could be taken by the lower court on petitioner's motion for new trial and/or reconsideration, petitioner interposed the present petition for certiorari before this Court, alleging that respondent Judge acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the challenged orders. The gist of petitioner's contention is that she cannot be compelled to deposit in a bank what she no longer has, considering that she is entitled to the deductions which she made from the original amount, for (a) as sole surviving child of decedent, she is entitled to advances and allowances from the inheritance, and (b) as administratrix, she is to be reimbursed for her expenditures and to deduct her fees as such administratrix.

The instant petition must be dismissed. In the case at bar, there is pending before the court a quo a motion for new trial and/or reconsideration filed by the petitioner-administratrix. In said motion, she prays for a chance to submit "receipts proving the disbursements itemized in her verified accounting, and therefore begs leave for a new trial to offer such evidence". She also alleges therein that she will submit evidence which will show that her disbursements "are properly and legally chargeable to the estate". She therefore prayed for the reconsideration of the denial of her motion for payment of P22,000.00 "as her advance or allowance against her distributive share" and the payment of her fees as administratrix. It is very obvious that the court a quo should be given an opportunity to act on these matters because the correctness of the order requiring petitioner to deposit the amount of P39,240.15 with a banking institution is dependent upon the ascertainment by the court of the correctness of the account of the administratrix. Contrary to petitioner's contention, the matters relating to the advances to her as heir, her compensation as administratrix and her other disbursements cannot be considered separately from the order to deposit the amount of P39,240.15, for as the respondent court observed: "It is * * * very obvious that should said petitions be granted, she shall be relieved thereby of her obligation to deposit the amount of P39,314.15 as ordered by this Court." Our decision of July 31, 1963 which modified the appealed order of the Quezon City Court of First Instance in effect reaffirmed the authority of the probate court to pass upon the correctness of the disbursements made by the administratrix, as clearly shown by the dispositive portion thereof, which directed the deposit of the balance of the original amount of P40,938.56 in the possession of the administratrix after deducting the expenses, allowances and inheritances approved or authorized by the court.

Pursuant to Section 7 of Rule 85 of the Rules,[3] a judicial administrator is entitled, by way of compensation as such, to either (a) P4.00 per day "for the time actually and necessarily employed" by him as such administrator, or (b) a "commission upon the value of so much of the estate as comes into his possession and was finally disposed of by him" according to the schedule therein provided. The administrator may be allowed a greater or additional sum "where the estate is large, and the settlement has been attended with great difficulty, and has required a high degree of capacity on the part of the executor or administrator". It must be noted that petitioner is seeking as her compensation as administratrix an amount greater than that ordinarily allowed under the rules on the ground that the estate is large, its settlement "having been attended with great difficulty (since 1947 or almost 17 years ago) and required a high degree of capacity". In order to entitle the executor or administrator to additional compensation, the estate must be large, the settlement extraordinarily difficult, and a high degree of capacity demonstrated by him. The amount of his fee in special cases under the Rules is a matter largely in the discretion

of the probate court, which will not be disturbed on appeal, except for an abuse of discretion.[4] Whether or not the probate court abused its discretion would depend on the attendant facts. We do not have before Us any competent evidence on the basis of which We can ascertain the veracity of petitioner's claims. Upon the other hand, such evidence could be presented before the court a quo. Similarly, any review of the order of the probate court denying petitioner's motions on the ground that the different disbursements contained in her accounts "are not only unsupported by receipts but likewise not properly and legally chargeable against the estate of the deceased * * *" would involve a consideration of the supporting evidence which We do not have before Us. Indeed, petitioner alleges in her petition that it is for the purpose of submitting the "supporting proofs" to her account that she filed the motion for new trial with the court a quo. It likewise appears from the records that the court below was given almost no time to pass upon the motion, the same being dated May 26, 1965 and this petition for certiorari being dated June 1, 1965. On the basis of the foregoing facts, the present petition for certiorari is indeed premature. We consider it pertinent to state that:

" 'x x x The office of the writ of certiorari has been reduced to the correction of defects of jurisdiction solely and cannot legally be used for any other purpose. It is truly an extraordinary remedy and, in this jurisdiction, its use is restricted to truly extraordinary cases — cases in which the action of the inferior court is wholly void; where any further steps in the case would result in a waste of time and money and would produce no result whatever; where the parties, or their privies, would be utterly deceived; where a final judgment or decree would be nought but a snare and a delusion, deciding nothing, protecting nobody, a judicial pretension, a recorded falsehood, a standing menace. It is only to avoid such results as these that a writ of certiorari is issuable; and even here an appeal will lie if the aggrieved party prefers to prosecute it.' "[5]

And We have emphasized that before a petition for certiorari can be brought against an order of the trial court, all remedies available in that court must first be exhausted. Thus, a petition for certiorari may not be granted where there is an appeal or other adequate remedy, like a motion for reconsideration, which is pending in the court below.[6] The lower court must be granted by the aggrieved party sufficient opportunity to correct the error it may have committed.[7] It is true that there are several exceptions to this rule, such as where the order complained of is void for being violative of due process;[8] or there are special circumstances which warrant immediate and more direct action;[9] or where execution had been ordered and the need for relief is extremely urgent;[10] or the lower court has taken an unreasonably long time to resolve the motions before it and further delay would prejudice the party concerned;[11] or where the motion will raise the same point which has already been squarely stated before the court;[12] or the proceeding in which the order occurred is a patent nullity as the court acted without jurisdiction.[13] However, the case at bar does not fall within any of the above exceptions.

WHEREFORE, the instant petition is hereby dismissed, with costs against the petitioner.

Barredo, (Acting Chairman), Aquino, Concepcion, Jr., and Martin*, JJ., concur.

Fernando, (Chairman), J., on leave.

[*] Designated to sit in the Second Division.

[1] Intestate Estate of the Deceased Generoso de Gala, I luminada de Gala-Sison, Administratrix-Appellant, vs. Socorro Manalo de Gala, Oppositor-appellee.

[2] G.R. No. L-18181, entitled Intestate Estate of the Deceased Generoso de Gala, I luminada de Gala-Sison, Petitioner, vs. Socorro Manalo, Respondent.

[3] Section 7, Rule 85, of the Revised Rules of Court provides:

"SEC. 7. What expenses and fees allowed executor or administrator. Not to charge for services as attorney. Compensation provided by will controls unless renounced.— An executor or administrator shall be allowed the necessary expenses in the care, management, and settlement of the estate, and for his services, four pesos per day for the time actually and necessarily employed, or a commission upon the value of so much of the estate as comes into his possession and is finally disposed of by him in the payment of debts, expenses, legacies, or distributive shares, or by delivery to heirs or devisees, of two per centum of the first five thousand pesos of such value, one per centum of so much of such value as exceeds five thousand pesos and does not exceed thirty thousand pesos, one-half per centum of so much of such value as exceeds thirty thousand pesos and does not exceed one hundred thousand pesos, and one-quarter per centum of so much of such value as exceeds one hundred thousand pesos. But in any special case, where the estate is large, and the settlement has been attended with great difficulty, and has required a high degree of capacity on the part of the executor or administrator, a greater sum may be allowed. If objection to the fees allowed be taken, the allowance may be re-examined on appeal.

"If there are two or more executors or administrators, the compensation shall be apportioned among them by the court according to the services actually rendered by them respectively.

"When the executor or administrator is an attorney, he shall not charge against the estate any professional fees for legal services rendered by him.

"When the deceased by will makes some other provision for the compensation of his executor, that provision shall be a full satisfaction for his services unless by a written instrument filed in the court he renounces all claim to the compensation provided by the will."

[4] Rodriguez, et al. vs. Silva, 90 Phil. 752, 759.

[5] Albert vs. The Court of First Instance of Manila (Br. VI), et al., 23 SCRA 949, 965-966, quoting Herrera v. Barreto, 25 Phil. 245, 271.

[6] Maritime Company of the Philippines vs. Paredes, 19 SCRA 569.

[7] Sy It vs. Tiangco, 4 SCRA 436; Del Pilar Transit v. Public Service Commission, 31 SCRA 372; Associated Labor Union vs. Ramolete, 13 SCRA 582.

[8] Vigan Electric Light Co., Inc. vs. Public Service Commission, 10 SCRA 46.

[9] Mature vs. Court of Appeals, 26 SCRA 768; Uy Chu vs. Imperial, et al. 44 Phil. 27; Matutina vs. Buslon, 109 Phil. 140.

[10] Socco vs. Vda. de Leary, 12 SCRA 326; Luzon Surety Co. vs. Marbella, Sept. 30, 1960.

[11] Vivo vs. Cloribel, 18 SCRA 713.

[12] Fortich-Celdran vs. Celdran, 19 SCRA 502.

[13] Malayang Manggagawa sa Esso (PFPW), et al. vs. Esso Standard Eastern Inc., et al., 14 SCRA 801.

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