

**JULIA M. NEIBERT, IN HER CAPACITY AS ADMINISTRATRIX OF THE
DECEASED HENRY E. NEIBERT, PETITIONER, VS. GREGORIO D.
MONTEJO, JUDGE OF THE COURT OF FIRST INSTANCE OF THE CITY
OF ZA...**

G.R. No. L-17114. April 29, 1961

Ponente: BARRERA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/82a81540b296/>

BARRERA, J.:

Petitioner Julia M. Neibert, administratrix of the intestate estate of the deceased Henry E. Neibert in Special Case No. 414 of the Court of First Instance of Zamboanga City has filed this petition for mandamus and certiorari, seeking to compel the approval and elevation of her record on appeal and the review of certain orders of respondent Judge presiding said court.

Pursuant to a "notice to creditors" given by the clerk of said court in the aforementioned intestate proceedings respondents Vincent C. Neibert, Teoflla E. Neibert, and Lucille N. Enriquez filed their claims against the estate on June 22, August 10, and October 22, 1956 for P9,773.10, P7,000.00, and P33,099.20 respectively. For reasons not disclosed by the records, petitioner-administratrix filed no answer or opposition to said claims, as required under Section 10, Rule 87, of the Rules of Court. Said claims were set for hearing on June 2, 1958, on which date, petitioner-administratrix appeared and asked permission to file a written opposition to said claims, which the court denied, on the ground that almost 2 years had already elapsed from the time they were presented and no opposition was filed. Thereafter, the proceedings supposed to be had on that day were transferred to the following day, June 3. The records do not show what took place on June 3 (See Manifestation of Stenographer Villar, Annex 7).

On June 12, 1958, the court (presided by Judge Leovigildo B. Mijares) issued 3 separate orders approving said claims and ordering petitioner-administratrix to pay respondents within 30 days from notice of said orders.[1]

In the meantime, and prior to the receipt by the parties of said orders, petitioner, on July 7, 1958, filed a written opposition to said claims. On July 8, 1958, due to said written opposition, the clerk of court set the hearing of the claims and the opposition for August 25, 1958. On July 28, 1958, respondents filed a motion to dismiss the opposition, on the grounds that (1) it was filed beyond the reglementary period; (2) it was filed without leave of court; and (3) it was filed after the claims had already been heard and submitted to the court for resolution. Said motion to dismiss the opposition was set for hearing on August 16, 1958.

On August 8, 1958, pending the hearing of said motion to dismiss, the clerk of court and the parties received copy of the aforementioned 3 orders approving respondents' claims and ordering petitioner to pay the same.

On August 16, 1958, respondents' said motion to dismiss the opposition was heard. At the hearing, petitioner informed the court (presided this time by respondent Judge Gregorio D. Montejo) that in view of the fact that former Judge Mijares had already approved the claims of respondents, hearing of respondents' motion to dismiss

the opposition to said claims was no longer necessary. Respondent Judge, being under the impression that said 3 orders dated June 12, 1958 of Judge Mijares were "technically defective", having been promulgated on August 8, 1958, when said judge had ceased to be judge of the court[2] issued on the same date (August 16) an order of the following tenor:

"ORDER

"Inasmuch as the claim is approved, let the order of approval stand.

"SO ORDERED."

On August 30, 1958, petitioner, instead of appealing from the above-quoted order of respondent Judge, appealed from said 3 orders of Judge Mijares dated June 12, 1958, by filing a notice of appeal. On September 1, 1958, petitioner filed her record on appeal.

On October 29, 1958, respondents filed 2 motions, to wit: (1) motion to dismiss the appeal, and (2) motion for execution of the order of August 16, 1958, alleging as grounds thereof that the appeal taken by petitioner from the 3 orders of Judge Mijares of June 12, 1958 has no legal basis, because the order of August 16, 1958 of respondent Judge Montejo is "the only appealable and standing order" regarding the approval of said claims. To said motions, petitioner, on December 26, 1958, filed an opposition. On January 17, 1959, after hearing the oral arguments of counsel for the parties, the court directed them to file their respective memorandum within 10 days therefrom. Respondents filed their memorandum, but petitioner did not. On August 5, 1959, the court issued an order dismissing the appeal and ordering execution of the order of August 16, 1958.

On August 14, 1959, petitioner filed a motion for reconsideration of said order, to which, respondents filed an opposition on June 10, 1960. On June 11, 1960, respondent Judge denied said motion for reconsideration in an order which partly reads:

"In view of the foregoing incidents, the Court has arrived at the following conclusions, to wit:

"1. That the Court, in hearing the three claims, thru Honorable Judge Leovigildo Mijares on June 2, 1958, notice of which was duly served upon the administratrix (herein petitioner) and who filed no opposition thereto, the Court acted within its power, authority and discretion (Section 2, Rule 87, Rules of Court), and whatever irregularities, if any there was, in the filing of said claims, are considered waived by the Administratrix: first, by submitting herself to the hearing" and discretion of the Court to pass upon the said claim without objection, and second, by not filing her answer or opposition against the merits of said claims before or during said hearing. The three orders issued by Honorable Judge Leovigildo Mijares were, therefore, in order.

"2. That, however, by virtue of the orders rendered by this Court on August 16, 1958, confirming and ratifying motu proprio the approval of each and every one of the three claims made within the statutory period for the Court . to amend, modify, confirm or ratify its previous order, the order issued by Honorable Judge Leovigildo Mijares, then, ceased to be final and an appealable order. The final and appealable order rendered, therefore, by this Court governing the approval of the claim, is the order of August 16, 1958. The case cited, by claimants in their memorandum is, in the opinion of this Court, applicable and proper in the present case. 'An order annulling a decree in a land registration .case on the ground of fraud, is not final, for it leaves something to be done in the trial for a complete disposition of the case therein' (Villados vs. San Pedro, 49 Phil., 596); But if the order, instead of annulling ratifies the decree, there can be no doubt that it is final and appealable (Santos vs. Pecson, 79 Phil., 261; 45 Off. Gaz., 1278). Since, no appeal has been taken against said order of August 16, 1958, the same is now final and executory.

"3. That since the answer or opposition of the Administratrix against the claims was filed beyond the time

prescribed by law p (Sec. 10, Rule 87, Rules of Court), said opposition or answer cannot be considered part of the records of these proceedings, much less of the record on appeal of the Administratrix.

"4. That there being no answer or opposition against the merits of the claims as it may be considered withdrawn by virtue of the manifestation of counsel for the Administratrix quoted above, the notice to creditors included in the record on appeal like the opposition or answer, which have all been objected to by claimants, cannot be considered part of the record on appeal and, as such, should be detached therefrom, as it is hereby so ordered. Consequently, there having no basis for an appeal to the order of this Court dated June 12, 1958, because without answer or opposition against the merits of the claims, there could be no issues to be considered or passed upon by the appellate Court.

"WHEREFORE, the motion for reconsideration is hereby denied, and the order dismissing the appeal is hereby confirmed and ratified.

"Let an order of execution be issued against the Administratrix for the satisfaction of the payment of the three claims approved by this Court in its said order of August 16, 1958.

"IT IS SO ORDERED."

On June 28, 1960, petitioner filed with us this present petition for mandamus and certiorari with a prayer for a writ of preliminary injunction to restrain respondent Judge from further proceeding with the case. In due time, we issued the preliminary injunction prayed for, upon petitioner's filing a bond of P5,000.00.

There is merit in the petition.

It appears that the 3 orders dated June 12, 1958 (of then incumbent Judge Mijares) approving the claims of respondents against the intestate estate and ordering petitioner administratrix to pay the same, are valid orders, having been issued by said Judge Mijares who heard the claims, while he was still incumbent judge of the court. Consequently, there was no necessity for respondent Judge Montejo's issuance of the order of August 16, 1958 ratifying said 3 orders dated June 12, 1958 of Judge Mijares.[3] Respondent Judge Montejo's issuance of said ratifying order is, to say the least, superfluity. For it is elementary that what is valid need not be ratified. Said ratifying order did not make said 3 valid orders of June 12, 1958 any more valid than they already were, much less, did it make them invalid. And, since petitioner had timely appealed from said orders by filing her notice of appeal on August 30, 1958, her record on appeal on September 1, 1958, and deposited the required appeal bond of P60.00 (within the reglementary period of 30 days from notice of said orders on August 8, 1958), respondent Judge Montejo clearly committed a reversible error in issuing the order in question (of June 11, 1960) dismissing petitioner's appeal and granting execution of the order of August 16, 1958.

Wherefore, petitioner's petition is hereby granted and the preliminary injunction heretofore issued by this Court made permanent. The order of the trial court dated June 11, 1960 complained of is set aside and respondent Judge commanded to approve petitioner's appeal from the orders of June 12, 1958, and to immediately elevate the records ! of the case to the Court of Appeals for determination in accordance with law. With costs against the respondents. It is so ordered.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, and Dizon, JJ., concur.

[1] These orders were signed on June 12, 1958 at Masbate, Masbate to which Judge Mijares had been transferred, and received and promulgated by the Clerk of Court of the First Instance of Zamboanga City only on August 8, 1958.

[2] Respondent Judge Montejo became incumbent Judge of the Court of First Instance of Zamboanga City on

June 19, 1958 7 days after then incumbent Judge Mijares had signed the said 3 orders of June 12, 1958.

[3] "Whenever a judge appointed or assigned in any province or branch of a court in a province shall leave the province by transfer or assignment to another court of equal jurisdiction without having decided a case totally heard by him and which was duly argued or opportunity given for argument to the parties or their counsel, it shall be lawful for him to prepare and sign his decision in said case anywhere within the Philippines and send the same by registered mail to the clerk of the Court to be filed in the court as of the date when the same was received by the clerk, in the same manner as if the judge had been present in the court to direct the filing of the judgment: Provided, however, That if a case has been heard only in part, the Supreme Court, upon petition of any of the parties to the case and recommendation of the respective district judge, may also authorize the judge who has partly heard the case to continue hearing and to decide said case notwithstanding his transfer or appointment to another court of equal jurisdiction." (See 51, par. 2, Judiciary Act, as amended.)

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.