

IN THE MATTER OF THE PETITION OF PURIFICACION M. JOSON AND EROTITA M. JOSON, PETITIONERS, VS. MARIANO NABLE, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF NUEVA ECI...

G.R. No. L-3450. September 19, 1950

Ponente: MORAN, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/851ffae68c46/>

MORAN, C.J.:

This is a special civil action to set aside a decision rendered by the respondent Court admitting to probate a will allegedly executed by the deceased Tomas Joson.

Petitioners, Purificacion M. Joson and Erotita M. Joson, are the daughters of the deceased, Tomas Joson, had with his second wife, Pomposa Miguel, also deceased. The respondents, sumamed Joson, are the children and grandchildren of the deceased, Tomas Joson, had with his first wife, Eufemia de la Cruz, also deceased.

On July 19, 1945 a petition was filed with the Court of First Instance of Nueva Ecija for the probate of a supposed will left by the deceased Tomas Joson. In that petition the residence of petitioners herein was given as Dagupan Street No.83, Manila. An order was issued by the court notifying all interested parties that the hearing of the petition would take place on August 22, 1945 at 9 o'clock in the morning and said order was published in the Philippines Free Press once a week for three consecutive weeks. The petition was called for hearing on the date and time above mentioned, and nobody appeared to contest the will. Evidence was introduced to prove the authenticity and due execution of said will by the deceased Tomas Joson, and on August 22, 1945 a decision was rendered finding the will to have been executed by Tomas Joson in accordance with law. Felicisimo C. Joson, one of the respondents, was appointed executor thereof with a bond of P5,000. No appeal was taken from this decision and the regular course of the proceedings was followed for the liquidation and distribution of all the properties left by the deceased.

More than three years later, or on December 7, 1948, petitioners filed a motion to set aside the decision rendered on August 22, 1945, upon the ground, among others, that petitioners had not been notified of the hearing of the petition for probate. The court granted the motion, but upon reconsideration, the decision of August 22, 1945 was restored into full force and effect. Hence this petition for certiorari, instead of an appeal.[1]

As to whether or not petitioners were duly informed of the petition for probate, hearing for several days had been held before the respondent court, where evidence was presented by both parties, which is not now before this Court. Had an appeal been taken from the order complained of, it would have been taken to the Court of Appeals, where the evidence could be examined fully for the purpose of ascertaining whether or not petitioners were informed of the petition for probate.

But petitioners maintain that the respondent court acted without absolutely any jurisdiction in admitting the will to probate. They rely on Rule 77, section 4 which reads as follows:

"Sec. 4. Heirs, devisees, legatees, and executors to be notified by mail or personally.—The Court shall also cause copies of the notice of the time and place fixed for proving the will to be addressed to the known heirs, legatees, and devisees of the testator resident in the Philippines at their places of residence, and deposited in the post office with the postage thereon prepaid at least twenty days before the hearing, if such places of residence be known. A copy of the notice must in like manner be mailed to the person named as executor, if he be not the petitioner; also, to any person named as co-executor not petitioning, if their places of residence be known. Personal service of copies of the notice at least ten days before the day of hearing shall be equivalent to mailing."

Petitioners maintain that no notice was received by them partly because their residence was not Dagupan Street No.83 as alleged in the petition for probate. If the allegation of the petition was wrong and the true residence of petitioners was not known, then notice upon them individually was not necessary. Under the provision above quoted, individual notice upon heirs, legatees and devisees is necessary only when they are known or when their places of residence are known. In other instances, such notice is not necessary and the court may acquire and exercise jurisdiction simply upon the publication of the notice in a newspaper of general circulation. What is, therefore, indispensable to the jurisdiction of the court is the publication of the notice in a newspaper of general circulation, and the notice on individual heirs, legatees and devisees is merely a matter of procedural convenience to better satisfy in some instances the requirements of due process.

There is indeed a great difference between the consequences of lack of jurisdiction and the effects of a mere procedural error. In the first instance, the proceedings are null and void unconditionally, while in the second, the proceedings are also null and void if and when the error is shown to have caused harm.[2] In the instant case, the supposed lack of notice upon petitioners, without a showing that they were thereby prejudiced, would be considered a harmless error which -is not reversible on appeal.[3]

This is the reason why it is provided that a motion for relief under Rule 33 should be accompanied by affidavits of merits[4] which are intended as a means of evincing that, in case the relief prayed for is granted, it is not granted uselessly, for petitioner possesses sufficient evidence to establish the merits of his case. There are no such affidavits of merits accompanied to the motion filed by petitioners before the respondent court. There are conclusions stated in said motion and also a general averment of fraud. But facts, not conclusions, should be stated in an affidavit of merit,[5] and fraud must always be averred with particularity.[6]

Petitioners are furthermore guilty of laches. There is sufficient data in the record to show that petitioners had knowledge of the proceedings since August 19, 1945 and yet, without any justification whatsoever, they failed to take any move, for more than three years, against the decision of August 22, 1945.

From all the foregoing, petition is denied with costs against the petitioners.

Ozaeta, Paras, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

[1] *Monteverde vs. Jaranilla*, (60 Phil. 297).

[2] *Banco Español Filipino vs. Palanca*, (37 Phil. 921) *Perkins vs. Dizon*, (69 Phil., 186)..

[3] Rule 53, sec.3.

[4] Rule 38, sec.3.

[5] *Estrella vs. Zamora*, (5 Phil. 415); *Coombs vs. Santos*, (24 Phil. 446).

[6] Rule 15, see.12.

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.