

## **IN THE MATTER OF THE WILL OF ANTERO MERCADO, DECEASED. ROSARIO GARCIA, PETITIONER, VS. JULIANA LACUESTA, ET AL., RESPONDENTS.**

*G. R. No. L-4067. November 29, 1951*

Ponente: PARAS, C.J.

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### **PARAS, C.J.:**

This is an appeal from a decision of the Court of Appeals disallowing the will of Antero Mercado dated January 3, 1943. The will is written in the Ilocano dialect and contains the following attestation clause:

"We, the undersigned, lay these presents do declare that the foregoing testament of Antero Mercado was signed by himself and also by us below his name and of this attestation clause and that of the left margin of the three pages thereof. Page three the continuation of this attestation clause; this will is written in Ilocano dialect which is spoken and understood by the testator, and it bears the corresponding number in letter which compose of three pages and all of them were signed in the presence of the testator and witnesses, and the witnesses in the presence of the testator and all and each and every one of us witnesses.

"In testimony, whereof, we sign this testament, this the third day of January, one thousand nine hundred forty three, (1943) A. D.

(Sgd.) HUMERIANO EVANGELISTA (Sgd.) BOSENDO CORTES

(Sgd.) "BIBIANA ILLEGIBLE."

The will appears to have been signed by Atty. Florentino Javier who wrote the name of Antero Mercado, followed below by "A ruego del testador" and the name of Florentino Javier. Antero Meroado is alleged to have written a cross immediately after his name. The Court of Appeals, reversing the judgment of the Court of First Instance of Ilocos Norte, ruled that the attestation clause failed (1) to certify that the will was signed on all the left margins of the three pages and at the end of the will by Atty. Florentine Javier at the express request of the testator in the presence of the testator and each and every one of the witnesses; (2) to certify that after the signing of the name of the testator by Atty. Javier at the former's request said testator has written & cross at the end of his name and on the left margin of the three pages of which the will consists and at the end thereof; (3) to certify that the three witnesses signed the will in all the pages thereof in the presence of the testator and of each other.

In our opinion, the attestation clause is fatally defective for failing to state that Antero Mercado caused Atty. Florentino Javier to write the testator's name under his express direction, as required by section 618 of the Code of Civil Procedure. The herein petitioner (who is appealing by way of certiorari from the decision of the Court of Appeals) argues, however, that there is no need for such recital because the cross written by the testator after his name is a sufficient signature and the signature of Atty. Florentino Javier is a surplusage. Petitioner's theory is that the cross is as much a signature as a thumbmark, the latter having been held Sufficient by this Court in the cases of *De Gala vs. Gonzales* and *Ona*, 53 Phil. 104; *Dolar vs. Diancin*, 55 Phil. 479; *Payad vs. Tolentino*, 62 Phil. 848; *Neyra vs. Neyra*, 42 O. G. 2817; and *Lopez vs. y Liboro*, 46 O.G., 3upp. No. 1, p. 211.

It is not here pretended that the cross appearing on the will is the usual signature of Antero Mercado or even one of the ways by which he signed his name. After mature reflection we are not prepared to liken the mere sign of a cross to a thumbmark, and the reason is obvious. The cross cannot and does not have the trustworthiness of a thumbmark.

What has been said makes it unnecessary for us to determine whether there is a sufficient recital in the attestation clause as to the signing of the will by the testator in the presence of the witnesses, and by the latter in the presence of the testator and of each other.

Wherefore, the appealed decision is hereby affirmed, with costs against the petitioner. So ordered.

Feria, Pablo, Bengzon, Padilla, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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