

IN RE JUDICIAL APPROVAL OF THE ACKNOWLEDGMENT OF A NATURAL CHILD. ZENAIDA JIRO-MORI (MINOR) THROUGH HER GUARDIAN AD LITEM LORENZA J. VDA. DE BALAGTAS, PETITIONER AND APPELLANT.

G.R. No. L-1672. April 28, 1949

Ponente: REYES, J.

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REYES, J.:

On April 4, 1946, the minor Zenaida Jiro-Mori, through her mother and guardian ad litem Lorenza Jiro Vda. de Balagtas, filed a petition in the Court of First Instance of Rizal, accompanied by a certified copy of a notarial document dated December 26, 1944, on file in the office of the local civil registrar of Manila, which purports to be a recognition by a Japanese citizen named M. Mori of the filiation of a child then still in the womb of its mother, the said Lorenza Jiro Vda. de Balagtas. The petition alleges that petitioner is the child referred to in the document and asks that the court approve the acknowledgment made therein in accordance with the second paragraph of article 133 of the Civil Code.

After hearing, with previous notice to the provincial fiscal of Rizal, who, however, did not appear to contest the petition, the court rendered an order of the following tenor:

"This concerns a petition praying that a document, purporting to acknowledge Zenaida Jiro-Mori, a minor, be judicially approved.

"Considering that the relief applied for cannot be had by the mere filing of a petition of this nature, but by the institution of an ordinary civil action, the Court is constrain (constrained) to dismiss this petition, without prejudice, however, to the filing of an appropriate action by the petitioner."

From the order of dismissal, appeal was taken to the Court of Appeals, but that court has certified the case to us as the issue involved is purely one of law.

The provision of law on which petitioner relies (second paragraph of article 133, Civil Code) says:

"The approval of the court, to be granted after hearing the prosecuting officer, shall be necessary to the acknowledgment of a minor, unless such acknowledgment be made in a certificate of birth or in a will."

Commenting on this provision, Manresa expresses the opinion that it permits the acknowledgment of a child still unborn (I Manresa, 6th ed., p. 625).

But this Court has already held that, for the purposes of the provision, an acknowledgment before a notary is insufficient and that there must be a judicial proceeding in the regular way. (*Legare vs. Cuerques*, 34 Phil., 221, 226.)

Counsel for petitioner believes that the law may be substantially complied with by merely having the court approve an acknowledgment previously made in a notarial document. But the danger of such a procedure when

applied to this case may easily be conceived. According to counsel, the acknowledging parent is "reputedly rich and may have properties left in the Philippines." But it is not known where he is. At least, neither he nor any of his legal successors, if he is already dead, has been cited to appear. With no assurance that the instrument of acknowledgment sought to be approved is genuine or has not been illegally obtained and with no adverse party present to impugn its validity, it would be possible, through the procedure advocated by counsel, for an impostor to become heir to a fortune in the absence of its owner.

We see no error in the order appealed from. It is, therefore, hereby confirmed.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Bengzon, Briones, Tuason, and Montemayor, JJ., concur.

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