

REV. FATHER LUCIO V. GARCIA, PETITIONER, VS. HON. CONRADO M. VASQUEZ, RESPONDENT.*G.R. No. L-26808. March 28, 1969*

Ponente: FERNANDO, J.

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Petitioner in this certiorari proceeding was averse to paying the docket fees in the amount of P940.00 for the probate of a will of the decedent, Glicería A. del Rosario. He was of the belief that no such fee should be collected as previously another alleged will of the same deceased was filed for probate by another party with the corresponding docket fee for having been paid. He would assert, as set forth in the petition, "that after [such payment] by the original petitioner, Consuelo Gonzales, there is no more need for [him] to pay additional or separate docket fees for their petitions, since they all refer to the settlement of only one estate, the Estate of Glicería A. del Rosario." [1]

Petitioner had to pay just the same, his belief that he would be thus exempted having failed to command the assent of respondent Judge, the Honorable Conrado M. Vasquez, who issued the following order of November 6, 1965: "'Oppositor, Father Lucia Garcia is hereby ordered to pay the corresponding fees of the filing of his petition for allowance of will and issuance of letters of administration with the will annexed, dated September 30, 1965 within fifteen (15) days from notice hereof, failure of which the said petition will be considered dismissed.'" [2] Payment was made by him on December 2, 1965, coupled with a reservation that he would seek a definite ruling from us.

Hence this petition for certiorari filed on November 9, 1966, the sole question raised being the alleged error of the respondent Judge in ordering the payment of the aforesaid docket fee considering that previously, with reference to an alleged will of the same estate of the decedent in connection with the petition for probate filed, such a fee had been collected. It is petitioner's contention that the challenged order of respondent Judge amounted to a grave abuse of discretion correctible by certiorari.

Respondent Judge did not even bother to answer the petition. It is understandable why. On its face, it is obviously without merit. A petition for probate of a will having been filed by petitioner, he could not escape the payment of the corresponding docket fee. The argument based on the allegation that there was such a previous payment in connection with another will of the same decedent sought to be probated does not carry the day. It is bereft of any persuasive force.

Petitioner should have been aware that there is no escape from the payment of the corresponding docket fee, otherwise, the Court is not called upon to act on a complaint or petition. Nor does it suffice to vary the rule simply because there is only one decedent whose estate is thus to be disposed of by will that must first be probated. It is not farfetched or implausible that a decedent could have left various wills. Under such circumstances, there is nothing inherently objectionable in thus exacting the payment of a docket fee, every time a will is sought to be probated. Petitioner here could have sought the probate of the will presented by him in the same proceeding. He did not; he filed instead a separate action.

One last point. The Rules of Court require that for all clerical services in the allowance of will, the "fees payable out of the estate shall be collected in accordance with the value of the property involved * * *." [3] The specific legal provision is thus clear and unmistakable. It is the clerical service in the allowance of the will that has to be paid for. The docket fees exist for that purpose and must be collected at the outset. There is no exception according to the above legal provision. It needs no interpretation. It must be applied in accordance with the specific language thus employed. [4] Respondent Judge acted in accordance with the clear tenor of the controlling legal norm. The alleged grievance of petitioner that there was a grave abuse of discretion does not merit any attention. As a matter of fact, on this point, respondent Judge had no discretion to abuse. The docket fees had to be paid. There is no escape for petitioner.

WHEREFORE, this petition for certiorari is denied, with costs against petitioner.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Capistrano, and Teehankee, JJ., concur.

Barredo, J., reserves his vote.

[1] Petition, p. 3.

[2] Ibid, p. 3.

[3] Rule 141, Section 5, par. (e).

[4] Cf. *Lizarraga Hermanos v. Yap Tico*, 24 Phil.504 (1913); *People v. Mapa*, L-22301, August 30, 1967; *Pacific Oxygen & Acetylene Co. v. Central bank*, L-21881, March 1, 1968, *Dequito v. Lopez*, L-27757, March 28, 1968; *Padilla v. City of Pasay*, L-24039, June 29, 1968.

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