

LUCIA JAVIER, PETITIONER, VS. J. ANTONIO ARANETA, IN HIS CAPACITY AS EXECUTOR OF THE ESTATE OF ANGELA S. TUASON AND FIDEL IBÁÑEZ, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA,...*G.R. No. L-4369. August 31, 1953*

Ponente: BAUTISTA ANGELO, J.

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On October 30, 1951, this Court dismissed the petition for certiorari interposed by Lucia Javier and dissolved the preliminary injunction issued as prayed for in said petition. Before this decision has become final, a petition was filed in this Court praying that the damages suffered by respondent resulting from the issuance of the writ be assessed either by the Supreme Court or by the court of origin. On November 21, 1951, acting favorably on said petition, this Court directed the trial court to make a finding of the damages allegedly suffered by respondent, and on August 13, 1953, this Court was furnished with a copy of the order entered by the trial court on August 12, 1953, wherein it denied the motion of respondent to assess the damages as directed by this Court and ordered that the record be forwarded to the latter Court for whatever action it may deem proper to take in the premises.

It appears that while the trial court was in the process of receiving evidence on the damages incident to the issuance of the writ of preliminary injunction, Lucia Javier, the defendant, died and because of this supervening event, the trial court entertained the view that the claim for damages should be denied because that claim should be filed against the estate of the deceased. It also appears that, when respondent pressed for action on his motion for assessment of damages, counsel for the bonding party, Alto Surety Company, opposed said move on the ground that the action contemplated is too late because the order of the trial court denying respondent's motion for reconsideration and cancelling the bond filed by the surety has already become final and unappealable; and considering that a petition for damages holding the surety liable should be filed before the judgment becomes final, the court sustained the opposition and denied the motion to assess damages. The incident is now before this Court for the corresponding appropriate action.

The finding of the trial court that the claim for damages of respondent should be denied because of the death of the debtor, Lucia Javier, and the claim should be filed against the estate of the latter, is not well taken. This result only obtains if the claim is for recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance, (Rule 3, Section 21, Rules of Court), but not when the claim is for damages for an injury to person or property, (Rule 88, Section 1, *Idem*). In the present proceeding, the claim for damages had arisen, not while the action was pending in the Court of First Instance, but after the case had been decided by the Supreme Court. Moreover, the claim of respondent is not merely for money or debt but for damages to said respondent. Thus, Chief Justice Moran, commenting on Section 1, Rule 3, says: "The above section has now removed all doubts by expressly providing that the action should be discontinued upon defendant's death if it is for the recovery of money, debt, or interest thereon, while, on the other hand, in Rule 88, Section 1, it is provided that actions to recover damages for injury to person or property, real or personal, may be

maintained against the executor or administrator of the deceased." (Moran, Comments on the Rules of Court, Vol. 1, 1952 ed., p. 109.)

On the other hand, under Rule 3, Section 17, Rules of Court, when a party dies and the claim is not thereby extinguished, the court shall order the legal representative of the deceased, or the heirs, to be substituted for him within a period of 30 days, or within such time as may be granted. Here, it appears that no step has so far been taken relative to the settlement of the estate, nor an executor or administrator of the estate has been appointed. This deficiency may be obviated by making the heirs take the place of the deceased.

The claim that the move of respondent to have the damages assessed against Lucia Javier has come late because the order of the court denying the motion for reconsideration of respondent and cancelling the bond filed by the surety has already become final and unappealable, is not also well taken, it appearing that the motion of respondent pressing for action on the motion to assess damages was filed only five days after said order has been entered. It should be noted that the original order entered by the court on April 7, 1953, was not a denial of the claim but merely a statement of its view that no action thereon can be taken in view of the death of Lucia Javier because in its opinion the claim should be filed against her estate, and the order which ordered the cancellation of the bond was entered only on May 27, 1953.

It appearing that the trial court has refrained from assessing the damages which it was directed to assess in the resolution of this Court issued on November 21, 1951, for reasons which, in the opinion of the court, are not well founded, it is the sense of this Court that the record should be remanded to the trial court for it to act as directed in said resolution.

Paras, C.J., Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Labrador, JJ., concur.
Pablo, J., took no part.

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