

**INTESTATE ESTATE OF THE DECEASED HONOFRE LEYSON,
DECEASED. VICTORIO L. RODRIGUEZ, ADMINISTRATOR AND
APPELLANT, AND MARGARITA LEYSON LAURENTE, HEIRESS AND
APPELLANT, VS. PABLO M....**

G.R. No. L-4090. January 31, 1952

Ponente: TUASON, J.

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TUASON, J.:

This appeal is from an order of the Court of First Instance of Manila, Honorable Rafael Amparo, Judge, authorizing the cancellation of the bond of Pablo M. Silva who had resigned as joint administrator of the intestate estate of Honofre Leyson, deceased, and allowing Silva P600 as compensation for his services. The appellants are the remaining administrator and an heir of the deceased.

The appeal was elevated to this Court on the appellants' manifestation that they would raise only questions of law. Following are the assignments of error:

The lower court erred in issuing its order of August 19, 1949, granting Pablo M. Silva's motion filed on August 9, 1949, and ordering the cancellation of his bond and authorizing him to collect from the estate the sum of P600.00 as his administrator's fees, inasmuch as said order is not in accordance with the provisions of section 7, Rule 86 of the Rules of Court.

That taking for granted, but without admitting that the compensation of the administrators from their appointment up to the issuance of the order dated August 19, 1950, granting the resignation of Mr. Pablo M. Silva that the sum of P600 is reasonable, the lower court, however, erred in not providing that, in view of the fact that in this proceeding there are two administrators, said amount of P600.00 should be apportioned between the two administrators according to the services actually rendered by them respectively, in accordance with the provision of Section 7, par. 2, Rule 86 of the Rules of Court, and that the sum of P100.00 already received by the appellee be deducted from any amount that may finally be conceded to him.

Lastly, the lower court erred in cancelling Mr. Pablo M. Silva's administrator bond, inasmuch as few months before the issuance of said order dated August 19, 1950, granting his resignation, he secured the cancellation of Transfer Certificate of Title No. 13 (6947) Quezon City, and Transfer Certificate of Title No. 11778-Manila, issued in the name of Honofre Leyson, and in their stead another titles were issued in the name of Pablo M. Silva, the herein appellee, in a doubtful manner.

The first two assignments of error raise the same question or allied questions and may well be considered together. This question is, may the court fix an administrator's or executor's fee in excess of the fees prescribed by Section 7 of Rule 86, which follows?

SEC. 7. What expenses and fees allowed executor or administrator. Not to charge for services as attorney. Compensation provided by to will controls unless renounced. An executor or administrator shall be allowed the necessary expenses in the care, management, and settlement of the estate, and for his services, four pesos per

day for the time actually and necessarily employed, or a commission upon the value of so much of the estate as comes into his possession and is finally disposed of by him in the payment of debts, expenses, legacies, or distributive shares, or by delivery to heirs or devisees, of two per centum of the first five thousand pesos of such value, one per centum of so much of such value as exceeds five thousand pesos and does not exceed thirty thousand pesos, one-half per centum of so much of such value as exceeds thirty thousand pesos and does not exceed one hundred thousand pesos, and one-quarter per centum of so much of such value as exceeds one hundred thousand pesos. But in any special case, where the estate is large, and the settlement has been attended with great difficulty, and has required a high degree of capacity on the part of the executor or administrator, a greater sum may be allowed. If objection to the fees allowed be taken, the allowance may be reexamined on appeal.

If there are two or more executors or administrators, the compensation shall be apportioned among them by the court according to the services actually rendered by them respectively.

When the executor or administrator is an attorney he shall not charge against the estate any professional fees for legal services rendered by him.

When the deceased by will makes some other provision for the compensation of his executor, that provision shall be a full satisfaction for his services unless by a written instrument filed in the court he renounces all claim to the compensation provided by the will.

It will be seen from this provision that a greater sum may be allowed "in any special case, where the estate is large, and the settlement has been attended with great difficulty, and has required a high degree of capacity on the part of the executor or administrator." And so it has been held that "the amount of an executor's fee allowed by the Court of First Instance in any special case under the provisions of Section 680 of the Code of Civil Procedure is a matter largely in the discretion of the probate court, which will not be disturbed on appeal, except for an abuse of discretion." (Rosenstock, vs. Elser, 48 Phil. 709.)

The order of which the appellants complain does not state the work performed by the appellee, but the inventory shows the appraised value of the estate to be P22,116.46, itemized as follows:

Cash on deposit in the Philippine National Bank

P8,159.43

Accounts receivable

500.00

Real Estate

12,061.03

Personal Property

1,291.00

And it is stated in the appellee's brief that prior to his appointment and that of Victorio L. Rodriguez as joint administrators, Justa Gomez, the decedent's cousin with whom Leyson lived was special administratrix; that during Justa Gomez's incumbency which lasted till December 8, 1947, the lease holdings of the said estate were renting about 900.00 a month; that after appellee's appointment, and through his initiative, their income was increased to P1,300.00 and two parcels of land located in San Juan, Rizal, were paid for in full and the corresponding certificates of title secured. It is also asserted, and not denied, that the appellee was instrumental in the gathering of decedent's personal effects, and that as the result of his motion a court order, whereby Margarita Leyson Laurente, one of the now appellants, had been authorized to withdraw from the bank P3,400 as advance payment of her share of the inheritance, was reconsidered and set aside. The fact that the appellee is an attorney-at-law has served the estate in good stead, and this ought not to be lost sight of. Although being a lawyer is by itself not a factor in the assessment of an administrator's fee, it should be otherwise when as in this case the administrator was able to stop what appeared to be an improvident disbursement of a substantial amount without having to employ outside legal help at an additional expense to the estate.

The appellant having announced that no questions of fact would be discussed is estopped from contesting the above allegations. On the basis of the services thus specified, coupled with the fact that the appellee worked as co-administrator for about two years, we do not think that the probate court committed an abuse of discretion in granting him P600.00 or P700.00 as fee independent of the fee that might be allowed the other administrator.

As to the cancellation of the appellee's bond, which is the subject of the third ground for appeal, there is no showing that De Silva was guilty of misappropriation or of any of the acts of commission or omission for which his bond could be held liable under Rule 86. The sole ground for the insistence that this cancellation should have been withheld is that the appellee is in possession of a residential lot in Cubao, Quezon City, which belonged to the deceased Honofre Leyson. But the appellee claims that this lot was sold to him by Leyson on March 2, 1945. Certainly it was already in his possession when he and appellant Rodriguez took over the administration from the special administratrix. This land therefore did not come into De Silva's hands in pursuance or in the course of his administration, and neither was it included in the inventory prepared by or in conjunction with one of the appellants. Even granting then, for the sake of argument, that De Silva has no valid title to this lot, the sureties are not chargeable for it on the bond. De Silva's liability, is personal and exclusive of the sureties who are the parties mostly affected by the third assignment of error.

Moreover, there is a pending suit over this property and that suit affords the estate ample protection against the said property being alienated pending final disposition of the litigation.

Upon the foregoing consideration, the order appealed from is affirmed, with costs.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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