

**JESUS V. OCCENA AND SAMUEL C. OCCENA, PETITIONERS, VS. HON. PAULINO S. MARQUEZ, DISTRICT JUDGE, COURT OF FIRST INSTANCE OF BOHOL, BRANCH I, RESPONDENT, I.V. BINAMIRA, CO-EXECUTO...**

*G.R. No. L-27396. September 30, 1974*

Ponente: ANTONIO, J.

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**ANTONIO, J.:**

In this petition for certiorari with mandamus, petitioners seek (1) to nullify the order of respondent Judge Paulino S. Marquez of the Court of First Instance of Bohol, Branch I, in Sp. Proc. No. 423 entitled "In the Matter of the Testate Estate of William C. Ogan," in relation to petitioners' claim for partial payment of attorney's fees in the amount of P30,000.00, dated November 2, 1966, fixing at P20,000.00 petitioners' attorney's fees, "which would cover the period March 1963 to December 1965," and directing its immediate payment minus the amount of P4,000.00 previously received by petitioners, and his second order, dated January 12, 1967, denying petitioners' motion for reconsideration and modifying the November 2, 1966 order by deleting therefrom the above-quoted phrase; (2) to direct the said court to approve the release to them as attorney's fees the amount of P30,000.00 minus the amount of P4,000.00 already advanced to them by the executrix; and (3) to allow petitioners to submit evidence to establish the total attorney's fees to which they are entitled, in case no agreement thereon is reached between them and the instituted heirs.

The gross value of the estate of the late William C. Ogan subject matter of the probate proceeding in Sp. Proc. No. 423 is more than P2 million. Petitioners, Atty. Jesus V. Occena and Atty. Samuel C. Occena, are the lawyers for the estate executrix Mrs. Necitas Ogan Occena, and they had been representing the said executrix since 1963, defending the estate against claims and protecting the interests of the estate. In order to expedite the settlement of their deceased father's estate, the seven instituted heirs decided to enter into compromise with the claimants, as a result of which the total amount of P220,000.00 in cash was awarded to the claimants, including co-executor Atty. Isabelo V. Binamira, his lawyers and his wife. A partial distribution of the corpus and income of the estate was made to the heirs in the total amount of P450,000.00. On November 18, 1966, the estate and inheritance taxes were completely settled by the executrix and the requisite tax clearance and discharge from liability was issued by the Commissioner of Internal Revenue.

Petitioners filed a Motion for Partial Payment of Attorneys' Fees, dated November 18, 1965, asking the court to approve payment to them of P30,000.00, as part payment of their fees for their services as counsel for the executrix since 1963, and to authorize the executrix to withdraw the amount from the deposits of the estate and pay petitioners. Three of the heirs, Lily Ogan Peralta, William Ogan, Jr. and Ruth Ogan, moved to defer consideration of the motion until after the total amounts for the executrix's fees and the attorney's fees of her counsel shall have been agreed upon by all the heirs. In July, 1966, five of the seven instituted heirs, namely, Lily Ogan Peralta, Necitas Ogan Occena, Federico M. Ogan, Liboria Ogan Garcia and Nancy Ogan Gibson, filed with the court a Manifestation stating that they had no objection to the release of P30,000.00 to petitioners as partial

payment of attorney's fees and recommending approval of petitioners' motion.

Their first motion dated November 18, 1965 being still unresolved, petitioners filed a second Motion for Payment of Partial Attorneys' Fees, dated July 5, 1966, praying for the release to them of the amount of P30,000.00 previously prayed for by them. Action on the matter was, however, deferred in an order dated August 6, 1966, upon the request of the Quijano and Arroyo Law Offices in behalf of heirs William Ogan, Jr. and Ruth Ogan or deferment until after all the instituted heirs shall have agreed in writing on the total attorney's fees. Petitioners filed a Motion for Reconsideration under date of September 12, 1966, asking the court to reconsider its deferment order and praying that payment to them of P30,000.00 be approved on the understanding that whatever amounts were paid to them would be chargeable against the fees which they and the instituted heirs might agree to be petitioners' total fees.

On November 2, 1966, respondent Judge issued an order fixing the total fees of petitioners for the period March, 1963 to December, 1965 at P20,000.00. Petitioners moved to reconsider that order. On January 12, 1967, respondent issued an order not only denying petitioners' Motion for Reconsideration but also modifying the original order by fixing petitioners' fees for the entire testate proceedings at P20,000.00.

Petitioners contend that respondent Judge acted with grave abuse of discretion or in excess of jurisdiction in fixing the entire attorney's fees to which they are entitled as counsel for the executrix, and in fixing the said fees in the amount of P20,000.00. The reasons given by petitioners in support of their contention are: (1) the motion submitted by petitioners for the court's resolution was only for partial payment of their attorney's fees, without prejudice to any agreement that might later be reached between them and the instituted heirs on the question of total attorney's fees, yet respondent Judge resolved the question of total attorney's fees; (2) considering that the only question raised by petitioners for the court's determination was that of partial attorney's fees, they never expected the court to make a ruling on the question of total attorney's fees; consequently, petitioners did not have the opportunity to prove the total fees to which they were entitled, and, hence, they were denied due process of law; (3) of the seven heirs to the estate, five had agreed to petitioners' motion for partial payment to them of attorney's fees in the amount of P30,000.00, while the remaining two did not oppose the motion; (4) in his order, respondent Judge stated that he based the amount of P20,000.00 on the records of the case, but the amount of attorney's fees to which a lawyer is entitled cannot be determined on the sole basis of the records for there are other circumstances that should be taken into consideration; and (5) contrary to respondent Judge's opinion, the mere fact that one of the attorneys for the executrix is the husband of said executrix, is not a ground for denying the said attorneys the right to the fees to which they are otherwise entitled.

Only Judge Paulino S. Marquez is named respondent in the present petition, for, according to petitioners, "no proper party is interested in sustaining the questioned proceedings in the Lower Court."

In his Answer to the petition, respondent Judge alleged that (a) petitioners' proper remedy is appeal and not a special civil action, considering that there is already a final order on the motion for payment of fees; (b) petitioner Atty. Samuel Occena is the husband of executrix Necitas Ogan Occena, hence, Samuel Occena's pecuniary interest now goes against the pecuniary interest of the four heirs he is representing in the special proceeding; (c) one reason why respondent Judge ordered the deletion of the phrase containing the period March, 1963 to December, 1965 from his November 2, 1966 order is that there are miscellaneous payments appearing in the compromise agreement and in the executrix's accounting which cover expenses incurred by petitioners for the estate; (d) co-executor I.V. Binamira should be included as party respondent to comply with Section 5, Rule 65 of the Revised Rules of Court; and (e) it is the duty of respondent Judge not to be very liberal to the attorney representing the executrix, who is at the same time the wife of said counsel and is herself an heir to a sizable portion of the estate, for respondent Judge's duty is to see to it that the estate is administered "frugally," "as

economically as possible," and to avoid "that a considerable portion of the estate is absorbed in the process of such division," in order that defenses, respondent Judge alleged that the seven instituted heirs are indispensable parties in this case; that mandamus cannot control the actuations of the trial court because they involved matters of discretion; and that no abuse of discretion can be imputed to respondent Judge for trying his best to administer the estate frugally.

On the arguments that he had opposed in the lower court petitioners' motion for payment of partial attorney's fees in the amount of P30,000.00, and that since petitioners Samuel C. Occena and Jesus V. Occena are the husband and father-in-law, respectively, of executrix Necitas Ogan Occena, the latter cannot be expected to oppose petitioners' claims for attorney's fees, thus leaving the co-executor as the lone party to represent and defend the interests of the estate, Atty. I.V. Binamira, who claims to be co-executor of the Ogan estate, filed with this Court on July 27, 1967, a Motion for Leave to Intervene, which was granted in a resolution of August 9, 1967. Petitioners filed a Motion for Reconsideration of Resolution of August 9, 1967 and an Opposition to "Motion for Leave to Intervene," contending that Atty. Binamira ceased to be a co--executor upon his resignation effective October 29, 1965. On August 15, 1967, Atty. Binamira filed Intervenor's Opposition to Petition (answer in intervention) traversing the material averments of the petition.

On August 25, 1967, intervenor filed a Reply to Executrix's Opposition and Opposition to Executrix's Motion for Reconsideration. On September 18, 1967, intervenor filed Intervenor's Comments on Petitioners' Motion for Reconsideration of the Resolution dated August 9, 1967. On September 21, 1967, petitioners filed against intervenor a Petition for Contempt asking this Court to hold intervenor in contempt of court. We required intervenor to comment thereon. On October 9, 1967, petitioners filed a Supplemental Petition for Contempt. Intervenor filed on October 20, 1967, Intervenor's Comments and Counter Petition, asking this Court to dismiss petitioners' motion for indirect contempt and instead to hold petitioners guilty of indirect contempt for gross breach of legal ethics. We deferred action on the contempt motion until the case is considered on the merits. On January 15, 1968, intervenor I.V. Binamira filed an Answer to Supplemental Petition. This was followed on February 12, 1968, by another Petition for Contempt, this time against one Generoso L. Pacquiao for allegedly executing a perjured affidavit dated December 20, 1967, to aid intervenor I.V. Binamira to escape liability for his deliberate falsehoods, which affidavit intervenor attached to his Answer to Supplemental Petition. On the same date, February 12, 1968, petitioners filed against intervenor a Second Supplemental Petition for Contempt. On February 19, 1968, petitioners filed Petitioners' Manifestation Re Documentary Evidence Supporting Charges.

We shall now consider the merits of the basic petition and the petitions for contempt.

## I

The rule is that when a lawyer has rendered legal services to the executor or administrator to assist him in the execution of his trust, his attorney's fees may be allowed as expenses of administration. The estate is, however, not directly liable for his fees, the liability for payment resting primarily on the executor or administrator. If the administrator had paid the fees, he would be entitled to reimbursement from the estate. The procedure to be followed by counsel in order to collect his fees is to request the administrator to make payment, and should the latter fail to pay, either to (a) file an action against him in his personal capacity, and not as administrator,[1] or (b) file a petition in the testate or intestate proceedings asking the court, after notice to all the heirs and interested parties, to direct the payment of his fees as expenses of administration.[2] Whichever course is adopted, the heirs and other persons interested in the estate will have the right to inquire into the value of the services of the lawyer and on the necessity of his employment. In the case at bar, petitioner filed his petition directly with the probate court.

There is no question that the probate court acts as a trustee of the estate, and as such trustee it should jealously guard the estate under administration and see to it that it is wisely and economically administered and not dissipated.[3] This rule, however, does not authorize the court, in the discharge of its function as trustee of the estate, to act in a whimsical and capricious manner or to fix the amount of fees which a lawyer is entitled to without according to the latter opportunity to prove the legitimate value of his services. Opportunity of a party to be heard is admittedly the essence or procedural due process.

What petitioners filed with the lower court was a motion for partial payment of attorney's fees in the amount of P30,000.00 as lawyers for the executrix for the period February, 1963, up to the date of filing of the motion on or about November 18, 1965. Five of the seven heirs had manifested conformity to petitioners' motion, while the remaining two merely requested deferment of the resolution of the motion "until the total amount for Executrix's fees and attorney's fees of her counsel is agreed upon by all the heirs." The court, however, in spite of such conformity, and without affording petitioners the opportunity to establish how much attorney's fees they are entitled to for their entire legal services to the executrix, issued an order fixing at P20,000.00 the entire attorney's fees of petitioners.

In his Order of January 12, 1967, respondent Judge explained:

"The records of this case are before the Court and the work rendered by Atty. Samuel Occena, within each given period, is easily visible from them; his work as revealed by those records is the factual basis for this Court's orders as to attorney's fees.

"Whatever attorney's fees may have been approved by the Court on October 28, 1965 were as a result of compromise and were with the written consent of all the heirs and of all the signatories of the compromise agreement of October 27, 1965. That is not so with respect to Atty. Occena's thirty-thousand peso claim for fees; and so, this Court, after a view of the record, had to fix it at P20,000.00. The record can reflect what an attorney of record has done."

In fixing petitioners' attorney's fees solely on the basis of the records of the case, without allowing petitioners to adduce evidence to prove what is the proper amount of attorney's fees to which they are entitled for their entire legal services to the estate, respondent Judge committed a grave abuse of discretion correctable by certiorari. Evidently, such fees could not be adequately fixed on the basis of the record alone, considering that there are other factors necessary in assessing the fee of a lawyer, such as: (1) the amount and character of the services rendered; (2) the labor, time and trouble involved; (3) the nature and importance of the litigation or business in which the services were rendered; (4) the responsibility imposed; (5) the amount of money or the value of the property affected by the controversy or involved in the employment; (6) the skill and experience called for in the performance of the services; (7) the professional character and social standing of the attorney; and (8) the results secured, it being a recognized rule that an attorney may properly charge a much larger fee when it is contingent than when it is not.[4]

It should be noted that some of the reasons submitted by petitioners in support of their fees do not appear in the records of the case. For instance, they claim that in connection with their legal services to the executrix and to the estate, petitioner Samuel C. Occena had been travelling from Davao to Tagbilaran from 1965 to March, 1967, and from Davao to Cebu and Manila from 1963 to March, 1967, and that in fact he and his family had to stay for almost a year in Dumaguete City. These claims apparently bear strongly on the labor, time and trouble involved in petitioners' legal undertaking, and, consequently, should have been subject to a formal judicial inquiry. Considering, furthermore, that two of the heirs have not given their conformity to petitioners' motion, the need for a hearing becomes doubly necessary. This is also the reason why at this stage it would be premature to grant petitioners' prayer for the release to them of the amount of P30,000.00 as partial payment of their fees.

## II

As stated above, petitioners have filed petitions for indirect contempt of court against intervenor I.V. Binamira charging the latter of having made false averments in this Court.

We have carefully considered these charges and the answers of intervenor, and, on the basis of the evidence, We conclude that intervenor I.V. Binamira has deliberately made false allegations before this Court which tend to impede or obstruct the administration of justice, to wit:

1. To bolster his claim that the executrix, without approval of the court, loaned P100,000.00 to the Bohol Land Transportation Company, Inc., intervenor submitted as Annex 5 of his Answer to Supplemental Petition a so-called "Real Estate Mortgage" which he made to appear was signed by Atty. Vicente de la Serna and the executrix. The certification of the Deputy Clerk of Court (Annex A-Contempt) shows that what intervenor claims to be a duly executed mortgage is in reality only a proposed mortgage not even signed by the parties.
2. Intervenor, in his Intervenor's Opposition to Petition, also stated that in December, 1965, the executrix, without the court's approval or of the co-executor's consent, but with petitioners' consent, loaned P100,000.00 to the Bohol Land Transportation Company, Inc. out of the estate's funds. The record shows that only P50,000.00 was loaned to the company to protect the investment of the estate therein, and that the same was granted pursuant to a joint motion signed, among others, by intervenor, and approved by the court.
3. To discredit petitioner Samuel C. Occena and his wife, the executrix, intervenor stated in his Intervenor's Opposition to Petition that less than a month after the loan of P100,000.00 had been granted to the transportation company, petitioner Samuel C. Occena was elected president by directors of his own choosing in the Bohol Land Transportation Company, Inc., insinuating that in effect the executrix loaned to her husband the said sum of money. The certification of the corporate secretary of the Bohol Land Transportation Company, Inc. (Annex D-Contempt) states that petitioner Samuel C. Occena was not the president of the company at the time, nor did he act as president or treasurer thereof, and that the president was Atty. Vicente de la Serna. This last fact is also shown in intervenor's own Annex 5 of his Answer to Supplemental Petition.
4. In intervenor's Opposition to this petition for certiorari, he stated that contrary to the executrix's statement in the 1965 income tax return of the estate that an estate income of P90,770.05 was distributed among the heirs in 1965, there was in fact no such distribution of income. The executrix's project of partition (Annex E-Contempt) shows that there was a distribution of the 1965 income of the estate.
5. To discredit petitioners and the executrix, intervenor alleged in his Intervenor's Opposition to Petition that petitioners caused to be filed with the court the executrix's verified inventory which failed to include as assets of the estate certain loans granted to petitioner Samuel C. Occena in the sum of P4,000.00 and to the executrix various sums totalling P6,000.00. The letters written by the late W.C. Ogan to his daughter, the executrix (Annexes F, G, and H-Contempt), show that the said sums totalling P10,000.00 were in reality partly given to her as a gift and partly for the payment of certain furniture and equipment.
6. Intervenor, in order to further discredit petitioners and the executrix, stated in his Reply to Executrix's Opposition and Opposition to Executrix's Motion for Reconsideration that the executrix and petitioners refused to pay and deliver to him all that he was entitled to under the compromise agreement. The receipt dated October 29, 1965, signed by intervenor himself (Annex I-Contempt), shows that he acknowledged receipt from petitioner Samuel C. Occena, lawyer for the executrix, the sum of P141,000.00 "in full payment of all claims and fees against the Estate, pursuant to the Agreement dated October 27, 1965."
7. In his Reply to Executrix's Opposition and Opposition to Executrix's Motion for Reconsideration, intervenor

alleged that he signed Atty. Occena's prepared receipt without receiving payment, trusting that Atty. Occena would pay the amount in full, but later Atty. Occena withheld Chartered Bank Check No. 55384 for P8,000.00 drawn in favor of intervenor and P15,000.00 in cash. A receipt signed by intervenor I.V. Binamira (Annex K-Contempt) shows that he acknowledged receipt of the check in question in the amount of P8,000.00 "intended for Mrs. Lila Ogan Castillo x x x" Anent the sum of P15,000.00 in cash, Annex J-Contempt (Reply to the Opposition for Authority to Annotate Interest, etc. filed by intervenor with the probate court) shows that intervenor, as movant, himself had alleged that "no check was issued to movant, but withdrawn amount of P15,000.00 was included in purchasing Manager's check No. 55398 for the Clerk of Court (deposit) for P75,000.00," for the said amount was voluntarily extended by intervenor as a favor and gesture of goodwill to form part of the total cash bond of P75,000.00 deposited with the Clerk of Court, as shown by a receipt signed by Atty. Samuel C. Occena (Annex K-11-Contempt) which forms part of the record in the court below.

8. In his intervenor's Comments and Counter-Petition, intervenor denied the truth of petitioners' claim that intervenor had voluntarily and willingly extended the sum of P15,000.00 as a favor and gesture of goodwill to form part of the P75,000.00-deposit. In the Opposition to Motion of Executrix for Reconsideration of Order of February 19, 1966, dated April 16, 1966 (Annex K-2-Contempt), intervenor had, however, admitted that "out of the goodness of his heart ... in the nature of help," he had "willingly extended as a favor and gesture of goodwill" the said sum of P15,000.00.

9. To impugn the claim of petitioner Samuel C. Occena that he stayed in Dumaguete City for almost one year to attend to the affairs of the estate, intervenor, in his intervenor's Opposition to Petition, alleged that said petitioner's stay in Dumaguete City was not to attend to the affairs of the estate, but to enable him to teach in Silliman University. The certification of the Director of the personnel office of Silliman University, dated December 4, 1967 (Annex V-Contempt) is, however, to the effect that their "records do not show that Atty. Samuel C. Occena was teaching at Silliman University or employed in any other capacity in 1963, or at any time before or after 1963."

The foregoing are only some of the twenty-one instances cited by petitioners which clearly show that intervenor had deliberately made false allegations in his pleadings.

We find no rule of law or of ethics which would justify the conduct of a lawyer in any case, whether civil or criminal, in endeavoring by dishonest means to mislead the court, even if to do so might work to the advantage of his client. The conduct of the lawyer before the court and with other lawyers should be characterized by candor and fairness. It is neither candid nor fair for a lawyer to knowingly make false allegations in a judicial pleading or to misquote the contents of a document, the testimony of a witness, the argument of opposing counsel or the contents of a decision. Before his admission to the practice of law, he took the solemn oath that he will do no falsehood nor consent to the doing of any in court, nor wittingly or willingly promote or sue any false, groundless or unlawful suit, and conduct himself as a lawyer with all good fidelity to courts as well as to his clients. We find that Atty. Binamira, in having deliberately made these false allegations in his pleadings, has been recreant to his oath.

The charges contained in the counter-petition for indirect contempt of intervenor I.V. Binamira against petitioners have not been substantiated by evidence, and they must, therefore, be dismissed.

We note that no further action was taken on the petition for contempt filed by petitioners against Generoso L. Pacquiao, who executed the affidavit attached to intervenor's Answer to Supplemental Petition, the contents of which petitioners claim to be deliberate falsehoods. The said respondent Pacquiao not having been afforded an opportunity to defend himself against the contempt charge, the charge must be dismissed.

WHEREFORE, (1) the petition for certiorari is granted, and the court a quo is directed to hold a hearing to determine how much the total attorney's fees petitioners are entitled to, and (2) Atty. Isabelo V. Binamira, who appeared as intervenor in this case, is hereby declared guilty of contempt and sentenced to pay to this Court within ten (10) days from notice hereof a fine in the sum of Five Hundred Pesos (P500.00). Costs against intervenor.

Fernando, (Chairman), Barredo, Fernandez, and Aquino, JJ., concur.

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[1] Aldamis vs. Judge of the Court of First Instance, 85 Phil., 228; Palileo vs. Mendoza, 70 Phil., 292.

[2] Escueta vs. Sy Juiliong, 5 Phil., 405; Piliin, vs. Joson, et al., 61 Phil., 26.

[3] Tambunting de Tengco vs. San Jose, etc., et al., 97 Phil., 491 503.

[4] Francisco vs. Matias, L-16349, January 31, 1964 10 SCRA 89, 98, citing Haussermann vs. Rahmeyer, 12 Phil., 350; Martinez vs. Banogon, et al., L-15698, April 30, 1963, 7 SCRA 913, 916, citing Delgado vs. De la Rama, 43 Phil. 419.

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