

**PILIPINAS SHELL PETROLEUM CORPORATION, PETITIONER, VS.
FIDEL P. DURLAO, JUDGE OF THE COURT OF FIRST INSTANCE OF
AGUSAN DEL NORTE AND BUTUAN CITY, BONIFACIO CANO-NOY,
JUDICIAL AD...**

G.R. No. L-44888. February 07, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Brought to focus in this petition are the following issues: (a) whether the jurisdictional facts that need to be stated in a petition for letters of administration under Section 2(a), Rule 79 of the Rules of Court include the specific assertion that the petitioner therein is an "interested person", and (b) whether the administration court may properly and validly dismiss a petition for letters of administration filed by one who is not an "interested person" after having appointed an heir of the decedent as administrator of the latter's intestate estate and set for pre-trial a claim against the said estate.

Ricardo M. Gonzalez, District Manager of Shell Philippines, Inc. for Mindanao (hereinafter referred to as Shell), filed on 8 January 1973 a petition entitled "In the Matter of the Intestate Estate of the Deceased Regino Canonoy, Petition for Letters of Administration, Ricardo M. Gonzalez, Petitioner" with the then Court of First Instance (now Regional Trial Court) of Agusan del Norte and Butuan City, praying therein that he be appointed judicial administrator of the estate of the deceased Regino Canonoy. The case was docketed as SP PROC. No. 343 and was raffled to Branch II of the trial court.

On 27 January 1973, Judge Vicente B. Echavez, Jr. of Branch II issued an Order (1) setting the hearing on the petition for 23 March 1973 at 8:30 a.m.; (2) directing that the order be published, at petitioner's expense, once a week for three (3) consecutive weeks in a newspaper with a nationwide circulation published regularly by a government agency or entity, or in any newspaper published and edited in any part of the country which is in operation during the existence of the present national emergency and of general circulation in the province of Agusan del Norte and in Butuan City, if any there be; and (3) ordering that copies of the order be sent by registered mail or personal delivery, at the petitioner's expense, to each of all the known heirs of the deceased Regino Canonoy, within the periods prescribed by Section 4, Rule 76 of the Rules of Court.[1]

In their Opposition to the issuance of letters of administration to Gonzalez filed on 21 March 1973,[2] private respondents, who are heirs of Regino Canonoy, allege that: Gonzalez "is a complete stranger to the intestate estate" of Regino Canonoy; he is "not even a creditor" of the estate; he is a resident of Davao City and thus if appointed as administrator of the estate, the bulk of which is located in Butuan City, "he would not be able to perform his duties efficiently;" and he is an employee of Shell Philippines, Inc., an alleged creditor of the estate, and so "he would not be able to properly and effectively protect the interest of the estate in case of conflicts." They, however, "propose" and pray that since Bonifacio Canonoy, one of Regino's sons, enjoys preference in appointment pursuant to Section 6, Rule 78 of the Rules of Court, he should "be appointed administrator of the

said intestate estate and the corresponding letters of administration be issued in his favor."

On 25 July 1973, after due hearing, the trial court appointed Bonifacio Canonoy as administrator of the intestate estate of Regino Canonoy,[3] having found him competent to act as such. None of the parties moved to reconsider this Order or appealed therefrom. On 23 November 1973, herein petitioner Shell, then known as Shell Philippines, Inc., filed its claim against the estate of the deceased Regino Canonoy. The duly appointed administrator, Bonifacio Canonoy, filed on 9 October 1974 a Motion to Dismiss the claim of Shell[4] which the latter contested by filing an Opposition. Shell likewise filed an amended claim against the estate.[5] On 12 May 1975, the administrator filed his Reply to the Opposition to Motion to Dismiss.[6] On 20 May 1975, he filed an Answer to the amended claim filed by Shell.[7] In the said Answer, he interposes compulsory counterclaims for the estate in the amount of P659,423.49 representing rentals for land occupied by the Shell Service Station, lighting allowances, allowances for salaries and wages of service attendants, sales commission due the deceased Regino Canonoy and reasonable attorney's fees. Petitioner filed an Answer to the Counterclaim.

Upon joinder of the issues on Shell's claim, the trial court, this time presided over by respondent Judge Fidel P. Dumlao, set the pre-trial for 15 August 1975.[8] This was later re-set to 23 September 1975.[9]

On 18 August 1975, petitioner filed a motion to require the judicial administrator to file an inventory of the properties of the deceased.[10]

At the pre-trial held on 23 September 1975, counsel for the administrator requested for time to file a Motion to Dismiss the case. In an Order issued on that date, the court granted him ten (10) days to file the motion; opposing counsel was likewise given ten (10) days from receipt of the same to file whatever pleading he may deem proper to file, after which the motion shall be deemed submitted for resolution.[11] The motion was filed on 30 September 1975. It alleges that the court did not acquire jurisdiction over the subject matter and nature thereof because the petitioner therein, Mr. Gonzalez, is not the "interested person" contemplated by Section 2, Rule 79 of the Rules of Court.[12] Shell filed its Opposition to the Motion on 16 October 1975[13] on the ground that the trial court had acquired jurisdiction over the case to issue letters of administration as the interest of Gonzalez in the estate is not a jurisdictional fact that needs to be alleged in the petition. If at all, Gonzalez' lack of interest in the estate of the deceased only affected his competence to be appointed administrator. In an Order dated 8 November 1975, respondent Judge, finding the motion to be well-taken and meritorious, dismissed the case.[14] The motion for its reconsideration having been denied by the trial court on 23 January 1976,[15] Shell filed the instant petition which it denominated as a petition for review on certiorari under Rule 45 of the Rules of Court.

In the Resolution dated 6 December 1976, this Court required the respondents to comment on the petition;[16] the latter complied with the same on 31 January 1977.[17] Thereafter, on 7 February 1977, this Court resolved, *inter alia*, to treat the petition for review as a special civil action under Rule 65 of the Rules of Court and require the parties to submit their respective Memoranda;[18] petitioner filed its Memorandum on 4 April 1977[19] while the respondents filed theirs on 3 June 1977.[20]

The petition is impressed with merit; it must perforce be granted.

Under the peculiar circumstances of the case, the trial court clearly acted with grave abuse of discretion when it dismissed SP PROC. No. 343 after having set for pre-trial petitioner's amended claim against the estate. That said dismissal was predicated solely on the ground that petitioner therein, Ricardo Gonzalez, is not an "interested person," and that, since such interest is a jurisdictional requirement, the trial court acquired no jurisdiction over the case, serves only to compound the error.

1. Section 2, Rule 79 of the Rules of Court provides:

x x x

"SEC. 2. Contents of petition for letters of administration. - A petition for letters of administration must be filed by an interested person and must show, so far as known to the petitioner:

- (a) The jurisdictional facts;
- (b) The names, ages, and residences of the heirs, and the names and residences of the creditors, of the decedent;
- (c) The probable value and character of the property of the estate;
- (d) The name of the person for whom letters of administration are prayed.

But no defect in the petition shall render void the issuance of letters of administration."

x x x

The jurisdictional facts alluded to are: the death of the testator, his residence at the time of his death in the province where the probate court is sitting or, if he is an inhabitant of a foreign country, his having left his estate in such province.[21] These facts are amply enumerated in the petition filed by Gonzalez.[22] The fact of death of the intestate and of his residence within the country are foundation facts upon which all the subsequent proceedings in the administration of the estate rest, and that if the intestate was not an inhabitant of the state at the time of his death, and left no assets in the state, and none came into it afterwards, no jurisdiction is conferred on the court to grant letters of administration in any county.[23] Clearly, the allegation that a petitioner seeking letters of administration is an interested person, does not fall within the enumeration of jurisdictional facts. Of course, since the opening sentence of the section requires that the petition must be filed by an interested person, it goes without saying that a motion, to dismiss may lie not on the basis of lack of jurisdiction on the part of the court, but rather on the ground of lack of legal capacity to institute the proceedings.

This is precisely what happened in *Saguinsin vs. Lindayag*,[24] where the dismissal of a petition for letters of administration was affirmed because the petitioner "is not an heir of her deceased sister and, therefore, has no material and direct interest in her estate." [25] In the said case, this Court defined an interested party as one who would be benefited by the estate, such as an heir, or one who has a claim against the estate, such as a creditor; this interest must be material and direct, not merely indirect or contingent.[26]

The *Saguinsin* doctrine is not, however, without exception. An objection to a petition for letters of administration on that ground may be barred by waiver or estoppel.

Private respondents herein did not file a motion to dismiss the petition filed by Gonzalez on the ground of lack of capacity to sue;[27] they instead filed an Opposition which, unfortunately, did not ask for the dismissal of the petition but merely opposed the issuance of letters of administration in favor of Gonzalez because, among other reasons, he is a stranger to the estate. The Opposition also proposed that Bonifacio Canonoy, one of the children of the deceased Regino Canonoy, be appointed administrator of the latter's intestate estate. The failure to move for a dismissal amounted to a waiver of the above-mentioned ground. Section 8, Rule 15 of the Rules of Court provides that:

"A motion attacking a pleading or a proceeding shall include all objections then available, and all objections not so included shall be deemed waived."

However, if a motion to dismiss is not filed, as what obtains in this case, any of the grounds available for such a motion, except for improper venue, may be pleaded as an affirmative defense, and a preliminary hearing thereon

may be had as if a motion to dismiss had been filed.[28] Excepted from the above rules are the following grounds: (a) failure to state a cause of action which may be alleged in a later pleading if one is permitted, or by a motion for judgment on the pleadings, or at the trial on the merits, and (b) lack of jurisdiction over the subject matter of the action,[29] subject to the exception as hereinafter discussed.

In *Insurance Company of North America vs. C.F. Sharp & Co., Inc.*,[30] this Court ruled:

"Finally, appellant would contend that plaintiff has no capacity to sue and is not the real party in interest. It is now too late to raise these objections here. These should have been asserted in the motion to dismiss filed by defendant below. Not having been included therein, they are now barred by the rule on omnibus motion."

By proposing that Bonifacio Canonoy be appointed as administrator instead of Mr. Gonzalez, private respondents have in fact approved or ratified the filing of the petition by the latter.

In *Eusebio vs. Valmores*,[31] We held that:

x x x

"The evidence submitted in the hearing does not satisfactorily prove that the petitioner was legally adopted; hence, he did not have any interest in the properties of the deceased Rosalia Saquitán. Under ordinary circumstances, such defect would authorize the dismissal of the proceedings especially in view of the fact that the surviving spouse of Rosalia Saquitán had filed an affidavit of adjudication under the provisions of Section 1 of Rule 74 of the Rules. Counsel for Domingo Valmores, however, had not objected to the application for the appointment of an administrator; he only objected to the appointment of the said stranger Eusebio as administrator, claiming to have the right as surviving spouse to be appointed as such administrator. By this act of Domingo Valmores, surviving spouse of the deceased, therefore, the fatal defect in the petition may be considered, as cured. In other words, the filing of the petition for the appointment of an administrator may be considered as having been ratified by the surviving husband, Domingo Valmores, and for this reason the proceedings may not be dismissed."

2. There can be no dispute that the trial court had acquired jurisdiction over SP PROC. No. 343. Immediately after the filing of the case, the trial court complied with Section 3, Rule 79 of the Rules of Court by issuing the Order dated 27 January 1973. At the initial hearing on 25 July 1973, petitioner Gonzalez established the jurisdictional requirements by submitting in evidence proof of publication and service of notices of the petition. Thereafter, it heard the evidence on the qualifications and competence of Bonifacio Canonoy, then appointed him as administrator and finally directed that letters of administration be issued to him, and that he take his oath of office after putting up a surety or property bond in the amount of P5,000.00.[32]

It is to be presumed that Bonifacio Canonoy immediately qualified as administrator because in that capacity, he filed a motion to dismiss petitioner's claim against the estate,[33] a Reply to the Opposition to the motion to dismiss[34] and an Answer to petitioner's amended claim against the estate wherein he interposed a counterclaim,[35] praying thus:

"WHEREFORE, it is most respectfully prayed of this Honorable Court to dismiss the above-mentioned 'Amended Claim Against the Estate' and to order the claimant to pay unto the intestate estate of Regino Canonoy the said sum of P659,423.49, together with the interest thereon at the legal rate beginning from the date hereof, the reasonable attorney's fees for the prosecution of this counterclaim, and costs;

OR, IN THE ALTERNATIVE, in the event that any sum is found due from and payable by the said intestate estate of Regino Canonoy in favor of the said claimant, the said amount be deducted from the above-mentioned sum and, thereafter, to order the claimant to pay the balance remaining unto the said intestate estate of Regino Canonoy, together with interest thereon at the legal rate beginning from date hereof, the reasonable attorney's

fees for the prosecution of this counterclaim, and costs."

Clearly, therefore, not only had the administrator and the rest of the private respondents voluntarily submitted to the jurisdiction of the trial court, they even expressly affirmed and invoked such jurisdiction in praying for reliefs and remedies in their favor, namely: (a) denial of Gonzalez' prayer to be appointed as administrator, (b) appointment of Bonifacio Canonoy as administrator, (c) denial of petitioner Shell's amended claim against the estate, and (d) the granting of the counterclaim. Hence, they cannot now be heard to question the jurisdiction of the trial court. While it may be true that jurisdiction may be raised at any stage of the proceedings, a party who has affirmed and invoked it in a particular matter to secure an affirmative relief cannot be allowed to afterwards deny that same jurisdiction to escape penalty.

In *Tijam, et al. vs. Sibonghanoy, et al.*,^[36] this Court held:

"It has been held that a party can not invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (*Dean vs. Dean*, 136 Or. 694, 86 A.L.R. 79). In the case just cited, by way of explaining the rule, it was further said that the question whether (sic) the court had jurisdiction either of the subject-matter of the action or of the parties was not important in such cases because the party is barred from such conduct not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such a practice can not be tolerated -- obviously for reasons of public policy.

Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court (*Pease vs. Rathbun-Jones etc.*, 243 U.S. 273, 61 L.Ed. 715, 37 S.Ct. 283; *St. Louis etc. vs. McBride*, 141 U.S. 127, 35 L.Ed. 659). And in *Littleton vs. Burgess*, 16 Wyo. 58, the Court said that it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty."

The respondent Judge should have lent his ears to *Tijam vs. Sibonghanoy* instead of peremptorily granting the motion to dismiss in an Order which does not even care to expound on why the court found the said motion to be meritorious. He exhibited undue haste in removing the case from his docket and in abdicating judicial authority and responsibility. Howsoever viewed, he committed grave abuse of discretion.

WHEREFORE, the instant petition is hereby GRANTED and the Order of respondent Judge of 8 November 1975 in SP PROC. No. 343 is hereby SET ASIDE. The court below is further ordered to hear and decide petitioner's claim against the estate in said case, unless supervening events had occurred making it unnecessary, and to conduct therein further proceedings pursuant to the Rules of Court until the case is closed and terminated.

Costs against private respondents.

IT IS SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

[1] Annex "B" of Petition.

[2] Annex "C", Id.

[3] Annex "D" of Petition.

[4] Annex "F", Id.

- [5] Annexes "G" and "H", Id.
- [6] Annex "I" of Petition.
- [7] Annex "J", Id.
- [8] Annex "L", Id., though not found in the records.
- [9] Annex "M", Id.
- [10] Annex "N", Id.
- [11] Annex "P" of Petition.
- [12] Annex "Q", Id.
- [13] Annex "R", Id.
- [14] Annex "S", Id.
- [15] Annex "V", Id.
- [16] Rollo, 116.
- [17] Id., 121.
- [18] Rollo, 129.
- [19] Id., 135.
- [20] Id., 163.
- [21] MORAN, M., Comments on the Rules of Court, vol. 3, 1980 ed., 408-409, citing Diez vs. Serra, 51 Phil. 283; Santos vs. Castillo, 64 Phil. 211; Fernando vs. Crisostomo, L-2693, 27 December 1951.
- [22] Annex "A" of Petition.
- [23] Diez vs. Serra, supra., citing R.C.L., par. 81.

[24] 6 SCRA 874.

- [25] The motion to dismiss was "for lack of interest in the estate," which this Court considered to mean "lack of legal capacity" to institute the proceedings.
- [26] Citing Trillana vs. Crisostomo, G.R. No. L-3378, 22 August 1951; Espinosa vs. Barrios, 70 Phil. 311.
- [27] Section 1(d), Rule 16, Rules of Court.
- [28] Section 5, Rule 16, Rules of Court.
- [29] Section 2, Rule 9, Id.

[30] 18 SCRA 462.

- [31] 97 Phil. 163.
- [32] Rollo, 51.
- [33] Id., 54-56.

[34] Id., 65-66.

[35] Id., 67-73.

[36] 23 SCRA 29; see also *Tajonera vs. Lamaroza*, 110 SCRA 438; *Nieva vs. Manila Banking Corp.*, 124 SCRA 453; *Royales vs. IAC, et al.*, 127 SCRA 470; *PNB vs. IAC, et al.*, 143 SCRA 299; *Tejones vs. Gironella*, 159 SCRA 100; *Martinez, et al. vs. dela Merced, et al.*, 174 SCRA 182.

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