

INTESTATE ESTATE OF ARSENIO E. AFAN, DECEASED. MARIAN AFAN, PETITIONER AND APPELLEE, VS. APOLINARIO S. DE GUZMAN, CREDITOR AND APPELLANT.

G.R. No. L-14713. April 28, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal, taken by Apolinario S. de Guzman, from an order of the Court of First Instance of Manila, dated July 27, 1957.

It appears that, on July 12, 1957, De Guzman filed, in this special proceeding for the settlement of intestate estate of Arsenio E. Afan, a claim for P1,000, allegedly due from the latter, with interest thereon, within 30 days from August 16, 1949, as set forth in a promissory note then issued by Afan. On July 22, 1957, the administratrix of his estate objected to the consideration of the claim upon the ground, among others, that it had been filed long after the expiration of the period for the presentation of claims against said estate. For this reason, the lower court issued the order appealed from, refusing to entertain the aforementioned claim. De Guzman invokes, in support of his appeal, section 2, Rule 87 of the Rules of Court, reading:

"Time within which claims shall be filed.—In the notice provided in the preceding section, the court shall state the time for the filing of claims against the estate, "which shall not be more than twelve nor less than six months after the date of the first publication of the notice. However, at any time before an order of distribution is entered, on application of a creditor who has failed to file his claim within the time previously limited, the court may, for cause shown and on such terms as are equitable, allow such claims to be, filed within a time not exceeding one month."

Relying upon this provision, De Guzman maintains that the lower court should have entertained his claim, the same having been filed prior to the distribution of the estate of the deceased. This pretense is not borne out, however, by the rule above quoted.

The second sentence thereof clothes the court with authority to permit the filing: of a claim after the lapse of the period stated in the first sentence, but prior to said distribution, subject to the following conditions, namely: (1) there must be an application therefor; (2) a cause must be shown why the permission should be granted; and (3) the extension of time granted for the filing of the claim shall not exceed one (1) month.

De Guzman has not sought permission to file his claim. Moreover, the same does not allege any reason why he should be excused for his failure to file the claim in this proceeding within the period stated in the Rules of Court. Again, whether or not the reasons given—and none were set forth in De Guzman's claim—are sufficient, rests upon the discretion of the court (*Roguera vs. Tanodra*, 81 Phil., 404; *Umpig, et al. vs. De Gala, et al.*, 96 Phil., 77.; 50 Off. Gaz., 5305), and the record before us does not show that the lower court has abused its discretion in acting as it did in the present case. De Guzman now alleges, for the first time, a "cause" why the lower court should allegedly have considered his claim. He says, in his brief (p. 6, thereof) that "he had no actual knowledge of the

fact that the estate of the deceased * * * was then already (in the process of settlement * * *." He did not explain why he refrained from making such averment either in his claim or in the motion, filed by him in the lower court, for a reconsideration of the order appealed from. The reason is, however, not difficult to surmise—he had actual knowledge of the present proceeding long before the filing of his claim therein on July 27, 1957. To be precise, he was aware of its existence as early as August, 1955.

In this connection, it appears that, during the lifetime of Afan, or on May 24, 1950, De Guzman instituted, against him, Civil Case No. 1148 of the Court of First Instance of Rizal, to recover the amount of the promissory note above referred to. On appeal, the decision of said court in favor of De Guzman was set aside, and a trial de novo ordered, by the Court of Appeals, in case CA-G.R. No. 7340-E. Sometime after the records had been remanded to the lower court, Afan died. On August 15, 1955, that court issued an order requiring counsel for his heirs "to submit to the court the number of the intestate estate proceedings of the deceased Arsenio R. Afan now pending in the Court of First Instance of Manila." This order was complied with on August 30, 1955, by the filing with the Court of First Instance of Rizal, in said Case No. 1148, of a "notification" containing the required information, copy of which "notification" was served upon counsel for De Guzman, as plaintiff therein. On January 18, 1956, his counsel filed in said case a motion for the appointment of a legal representative of the deceased Afan, to substitute him as defendant therein. Accordingly, on January 21, 1956, said court gave De Guzman five (5) days within which to submit the names of the legal heirs of Afan who may be appointed as his legal representative. On January 24, 1956 De Guzman filed, therefore, with the aforementioned court, a statement, entitled "compliance", setting forth the names, ages and addresses of the heirs of the deceased, "as shown by the records in. Special Proceedings No. 26858, entitled 'Intestate estate of Arsenio R. Afan before the Court of First Instance Manila,' with the prayer that said "heirs be substitute as party defendants" in Case No. 1148, "in place of the deceased Arsenio R. Afan." Yet, De Guzman choose not to file his claim in such proceeding until July 27, 1957, one year and a half after the filing of his aforementioned "compliance."

Instead of furnishing a "cause" for the extension of the reglementary period for the filing of his claim, this omission on the part of De Guzman fully justifies the denial of such extension and the order appealed from. We have already held that failure to file a claim within the time provided therefor upon the sole ground that the claimant was negotiating with one of the heirs for payment, is not sufficient to justify extension (In Re: Estate of De Dios, 24 Phil., 573, 576; see also Santos vs. Manarang, 27. Phil., 209), and that, where a claimant knew of the death of the decedent and for four (4) or five (5) months thereafter he did nothing to present his claim, this can hardly be considered as a good excuse for such neglect (In Re: Estate of Tiangco, 39 Phil., 967).

Wherefore, the order appealed from is hereby affirmed with costs against appellant Apolinario S. de Guzman.

It is so ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Barrera, and Gutierrez David, JJ., concur.
Padilla, Reyes, J.B.L., and Endencia, JJ., took no part.

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