

**ROSA K. KALAW, PETITIONER, VS. HON. JUDGE BENJAMIN RELOVA,
PRESIDING JUDGE OF THE CFI OF BATANGAS, BRANCH VI, LIPA
CITY, AND GREGORIO K. KALAW, RESPONDENTS.**

G.R. No. L-40207. September 28, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

On September 1, 1971, private respondent GREGORIO K. KALAW, claiming to be the sole heir of his deceased sister, Natividad K. Kalaw, filed a petition before the Court of First Instance of Batangas, Branch VI, Lipa City, for the probate of her holographic Will executed on December 24, 1968.

The holographic Will reads in full as follows:

My Last Will and Testament

In the name of God, Amen.

I, Natividad K. Kalaw, Filipino, 63 years of age, single, and a resident of Lipa City, living of sound and disposing mind and memory, do hereby declare this to be my last will and testament.

1. It is my will that I be buried in the cemetery of the catholic church of Lipa City. In accordance with the rites of said Church, and that my executrix hereinafter named provide and erect at the expense of my state a suitable monument to perpetuate my memory.

2. I give, devise and bequeath all my property real and personal to my beloved brother Gregorio Kalaw, to have and to hold the same as his property absolutely and unconditionally.

3. I hereby appoint my said brother Gregorio Kalaw, as sole executrix of this my last will and testament, and it is my will that said executrix be exempted from filing a bond.

In witness where of I have hereunto set my hand this 24th day of Dec., 1968.

Natividad K. Kalaw
Testatrix

Witnesses:

Lydia S. Pecio

The holographic Will, as first written, named ROSA K. Kalaw, a sister of the testatrix as her sole heir. Hence, on November 10, 1971, petitioner ROSA K. Kalaw opposed probate alleging, in substance, that the holographic Will contained alterations, corrections, and insertions without the proper authentication by the full signature of the testatrix as required by Article 814 of the Civil Code reading:

"Art. 814. In case of any insertion, cancellation, erasure or alteration in a holographic will, the testator must authenticate the same by his full signature."

ROSA's position was that the holographic Will, as first written, should be given effect and probated so that she could be the sole heir thereunder.

After trial, respondent Judge denied probate in an Order, dated September 3, 1973, reading in part:

"The document Exhibit 'C' was submitted to the National Bureau of Investigation for examination. The NBI reported that the handwriting, the signature, the insertions and/or additions and the initial were made by one and the same person. Consequently, Exhibit 'C' was the handwriting of the decedent, Natividad K. Kalaw. The only question is whether the will, Exhibit 'C', should be admitted to probate although the alterations and/or insertions or additions above-mentioned were not authenticated by the full signature of the testatrix pursuant to Art. 814 of the Civil Code. The petitioner contends that the oppositors are estopped to assert the provision of Art. 814 on the ground that they themselves agreed thru their counsel to submit the Document to the NBI FOR EXAMINATIONS. This is untenable. The parties did not agree, nor was it impliedly understood, that the oppositors would be in estoppel.

"The Court finds, therefore, that the provision of Article 814 of the Civil Code is applicable to Exhibit 'C'. Finding the insertions, alterations and/or additions in Exhibit 'C' not to be authenticated by the full signature of the testatrix Natividad K. Kalaw, the Court will deny the admission to probate of Exhibit 'C'.

"WHEREFORE, the petition to probate Exhibit 'C' as the holographic will of Natividad K. Kalaw is hereby denied."

"SO ORDERED."

From that Order, GREGORIO moved for reconsideration arguing that since the alterations and/or insertions were made by the testatrix, the denial to probate of her holographic Will would be contrary to her right of testamentary disposition. Reconsideration was denied in an Order, dated November 2, 1973, on the ground that "Article 814 of the Civil Code being clear and explicit, (it) requires no necessity for interpretation."

From that Order, dated September 3, 1973, denying probate, and the Order dated November 2, 1973 denying reconsideration, ROSA filed this Petition for Review on Certiorari on the sole legal question of whether or not the original unaltered text after subsequent alterations and insertions were voided by the Trial Court for lack of authentication by the full signature of the testatrix, should be probated or not, with her as sole heir.

Ordinarily, when a number of erasures, corrections, and interlineations made by the testator in a holographic Will have not been noted under his signature, x x x the Will is not thereby invalidated as a whole, but at most only as respects the particular words erased, corrected or interlined.[1] Manresa gave an identical commentary when he said "la omision de la salvedad no anula el testamento, segun la regla de jurisprudencia establecida en la sentencia de 4 de Abril de 1895." [2]

However, when as in this case, the holographic Will in dispute had only one substantial provision, which was altered by substituting the original heir with another, but which alteration did not carry the requisite of full authentication by the full signature of the testator, the effect must be that the entire Will is voided or revoked for the simple reason that nothing remains in the Will after that which could remain valid. To state that the Will as first written should be given efficacy is to disregard the seeming change of mind of the testatrix. But that change of mind can neither be given effect because she failed to authenticate it in the manner required by law by affixing her full signature.

The ruling in Velasco, supra, must be held confined to such insertions, cancellations, erasures or alterations in a holographic Will, which affect only the efficacy of the altered words themselves but not the essence and validity of the Will itself. As it is, with the erasures, cancellations and alterations made by the testatrix herein, her real intention cannot be determined with certitude. As Manresa had stated in his commentary on Article 688 of the

Spanish Civil Code, whence Article 814 of the new Civil Code was derived:

"x x x No infringe lo dispuesto en este artículo del Código (el 688) la sentencia que no declara la nulidad de un testamento olografo que contenga palabras tachadas, enmendadas o entre renglones, no salvadas por el testador bajo su firma, según previene el párrafo tercero del mismo, porque, en realidad, tal omisión solo puede afectar a la validez o eficacia de tales palabras, y nunca al testamento mismo, ya por estar esa disposición en párrafo aparte de aquel que determina las condiciones necesarias para la validez del testamento olografo, ya porque, de admitir lo contrario, se llegaría al absurdo de que pequeñas enmiendas no salvadas, que en nada afectasen a la parte esencial y respectiva del testamento, vinieran a anular este, y ya porque el precepto contenido en dicho párrafo ha de entenderse en perfecta armonía y congruencia con el art. 26 de la ley del Notariado, que declara nulas las adiciones, apostillas, entrerrenglonados, raspaduras y tachados en las escrituras matrices, siempre que no se salven en la forma prevenida, pero no el documento que las contenga, y con mayor motivo cuando las palabras enmendadas, tachadas o entrerrenglonadas no tengan importancia ni susciten duda alguna acerca del pensamiento del testador, o constituyan meros accidentes de ortografía o de pureza escrituraria, sin trascendencia alguna(1).

"Mas para que sea aplicable la doctrina de excepcion contenida en este ultimo fallo, es preciso que las tachaduras, enmiendas o entrerrenglonados sin salvar, sean de palabras que no afecten, alteren ni varien de modo substancial la expresa voluntad del testador manifiesta en el documento. Asi lo advierte la sentencia de 29 de Noviembre de 1916, que declara nulo un testamento olografo por no estar salvada por el testador la enmienda del guarismo ultimo del año en que fue extendido"[3] (Italics ours).

WHEREFORE, this Petition is hereby dismissed and the Decision of respondent Judge, dated September 3, 1973, is hereby affirmed in toto. No costs.

SO ORDERED.

Plana, Gutierrez, Jr., and De La Fuente, JJ., concur.

Teehankee, J., (Chairman), concurs in a separate opinion.

Relova, J., took no part.

[1] Velasco vs. Lopez, 1 Phil. 720, 725 (1903), citing a Decision of the Supreme Court of Spain of April 4, 1895.

[2] Comentarios al Código Civil Español, Quinta edición, Tomo 5, Lib. III - Tit. III - Cap. I - Art. 688, pag. 483.

[3] Ibid.

CONCURRING OPINION

TEEHANKEE, J.:

I concur. Rosa, having appealed to this Court on a sole question of law, is bound by the trial court's factual finding that the peculiar alterations in the holographic will crossing out Rosa's name and instead inserting her brother Gregorio's name as sole heir and "sole executrix" were made by the testatrix in her own handwriting. (I find it peculiar that the testatrix who was obviously an educated person would unthinkingly make such crude alterations instead of consulting her lawyer and writing an entirely new holographic will in order to avoid any doubts as to her change of heir. It should be noted that the first alteration crossing out "sister Rosa K. Kalaw" and inserting "brother Gregorio Kalaw" as sole heir is not even initialed by the testatrix. Only the second alteration crossing out

"sister Rosa K. Kalaw" and inserting "brother Gregorio Kalaw" as "sole executrix" is initialed.) Probate of the radically altered will replacing Gregorio for Rosa as sole heir is properly denied, since the same was not duly authenticated by the full signature of the executrix as mandatorily required by Article 814 of the Civil Code. The original unaltered will naming Rosa as sole heir cannot, however, be given effect in view of the trial court's factual finding that the testatrix had by her own handwriting substituted Gregorio for Rosa, so that there is no longer any will naming Rosa as sole heir. The net result is that the testatrix left no valid will and both Rosa and Gregorio as her next of kin succeed to her intestate estate.

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