FELIX AZUELA, PETITIONER, VS. COURT OF APPEALS, GERALDA AIDA CASTILLO SUBSTITUTED BY ERNESTO G. CASTILLO, RESPONDENTS.

G.R. NO. 122880. April 12, 2006

Ponente: TINGA, J.

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TINGA, J.:

The core of this petition is a highly defective notarial will, purportedly executed by Eugenia E. Igsolo (decedent), who died on 16 December 1982 at the age of 80. In refusing to give legal recognition to the due execution of this document, the Court is provided the opportunity to assert a few important doctrinal rules in the execution of notarial wills, all self-evident in view of Articles 805 and 806 of the Civil Code.

A will whose attestation clause does not contain the number of pages on which the will is written is fatally defective. A will whose attestation clause is not signed by the instrumental witnesses is fatally defective. And perhaps most importantly, a will which does not contain an acknowledgment, but a mere jurat, is fatally defective. Any one of these defects is sufficient to deny probate. A notarial will with all three defects is just aching for judicial rejection.

There is a distinct and consequential reason the Civil Code provides a comprehensive catalog of imperatives for the proper execution of a notarial will. Full and faithful compliance with all the detailed requisites under Article 805 of the Code leave little room for doubt as to the validity in the due execution of the notarial will. Article 806 likewise imposes another safeguard to the validity of notarial wills - that they be acknowledged before a notary public by the testator and the witnesses. A notarial will executed with indifference to these two codal provisions opens itself to nagging questions as to its legitimacy.

The case stems from a petition for probate filed on 10 April 1984 with the Regional Trial Court (RTC) of Manila. The petition filed by petitioner Felix Azuela sought to admit to probate the notarial will of Eugenia E. Igsolo, which was notarized on 10 June 1981. Petitioner is the son of the cousin of the decedent.

The will, consisting of two (2) pages and written in the vernacular Pilipino, read in full:

> HULING HABILIN NI EUGENIA E. IGSOLO
>
> SA NGALAN NG MAYKAPAL, AMEN:
>
> AKO, si EUGENIA E. IGSOLO, nakatira sa 500 San Diego St., Sampaloc, Manila, pitongput siyam (79) na gulang, nasa hustong pagi-isip, pag-unawa at memoria ay nag-hahayag na ito na ang aking huling habilin at testamento, at binabali wala ko lahat ang naunang ginawang habilin o testamento:
>
> Una-Hinihiling ko na ako ay mailibing sa Sementerio del Norte, La Loma sang-ayong sa kaugalian at patakaran ng simbahang katoliko at ang taga-pag-ingat (Executor) ng habiling ito ay magtatayo ng bantayog upang silbing ala-ala sa akin ng aking pamilya at kaibigan;

Pangalawa-Aking ipinagkakaloob at isinasalin ang lahat ng karapatan sa aking pamangkin na si Felix Azuela, na siyang nag-alaga sa akin sa mahabang panahon, yaong mga bahay na nakatirik sa lote numero 28, Block 24 at nakapangalan sa Pechaten Korporasyon, ganoon din ibinibigay ko ang lahat ng karapatan sa bahay na nakatirik sa inoopahan kong lote, numero 43, Block 24 na pag-aari ng Pechaten Corporation. Ipinagkakaloob kong buong buo ang lahat ng karapatan sa bahay at lupa na nasa 500 San Diego St., Lot 42, Block 24, Sampaloc, Manila kay Felix Azuela at ang pagkakaloob kong ito ay walang pasubali't at kondiciones;

Pangatlo- Na ninunumbrahan ko si VART PAGUE na siyang nagpapatupad ng huling habiling ito at kagustuhan ko rin na hindi na kailanman siyang mag-lagak ng piyansiya.

Aking nilagdaan ang Huling Habilin na ito dito sa Maynila ika 10 ng Hunyo, 1981.

(Sgd.)

EUGENIA E. IGSOLO
(Tagapagmana)

PATUNAY NG MGA SAKSI

Ang kasulatang ito, na binubuo ng ____ dahon pati ang huling dahong ito, na ipinahayag sa amin ni Eugenia E. Igsolo, tagapagmana na siya niyang Huling Habilin, ngayon ika-10 ng Hunyo 1981, ay nilagdaan ng nasabing tagapagmana sa ilalim ng kasulatang nabanggit at sa kaliwang panig ng lahat at bawa't dahon, sa harap ng lahat at bawa't sa amin, at kami namang mga saksi ay lumagda sa harap ng nasabing tagapagmana at sa harap ng lahat at bawa't isa sa amin, sa ilalim ng nasabing kasulatan at sa kaliwang panig ng lahat at bawa't dahon ng kasulatan ito.

EUGENIA E. IGSOLO
address: 500 San Diego St.
Sampaloc, Manila Res. Cert. No. A-7717-37
Issued at Manila on March 10, 1981.

QUIRINO AGRAVA
address: 1228-Int. 3, Kahilum
Pandacan, Manila Res. Cert. No. A-458365
Issued at Manila on Jan. 21, 1981

LAMBERTO C. LEAÑO
address: Avenue 2, Blcok 7,
Lot 61, San Gabriel, G.MA., Cavite Res.
Cert. No. A-768277 issued at Carmona, Cavite
on Feb. 7, 1981

JUANITO ESTRERA
address: City Court Compound,
City of Manila Res. Cert. No. A574829
Issued at Manila on March 2, 1981.

Nilagdaan ko at ninotario ko ngayong 10 ng Hunyo 10, 1981 dito sa Lungsod ng Maynila.

(Sgd.)
PETRONIO Y. BAUTISTA
Doc. No. 1232 ; bsp; & NOTARIO PUBLIKO
Page No. 86 ; Until Dec. 31, 1981
Book No. 43 ; PTR-152041-1/2/81-Manila
Series of 1981 TAN # 1437-977-8[1]

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The three named witnesses to the will affixed their signatures on the left-hand margin of both pages of the will, but not at the bottom of the attestation clause.

The probate petition adverted to only two (2) heirs, legatees and devisees of the decedent, namely: petitioner himself, and one Irene Lynn Igsolo, who was alleged to have resided abroad. Petitioner prayed that the will be allowed, and that letters testamentary be issued to the designated executor, Vart Prague.

The petition was opposed by Geralda Aida Castillo (Geralda Castillo), who represented herself as the attorney-in-fact of "the 12 legitimate heirs" of the decedent.[2] Geralda Castillo claimed that the will is a forgery, and that the true purpose of its emergence was so it could be utilized as a defense in several court cases filed by oppositor against petitioner, particularly for forcible entry and usurpation of real property, all centering on petitioner's right to occupy the properties of the decedent.[3] It also asserted that contrary to the representations of petitioner, the decedent was actually survived by 12 legitimate heirs, namely her grandchildren, who were then residing abroad. Per records, it was subsequently alleged that decedent was the widow of Bonifacio Igsolo, who died in 1965,[4] and the mother of a legitimate child, Asuncion E. Igsolo, who predeceased her mother by three (3) months.[5]

Oppositor Geralda Castillo also argued that the will was not executed and attested to in accordance with law. She pointed out that decedent's signature did not appear on the second page of the will, and the will was not properly acknowledged. These twin arguments are among the central matters to this petition.

After due trial, the RTC admitted the will to probate, in an Order dated 10 August 1992.[6] The RTC favorably took into account the testimony of the three (3) witnesses to the will, Quirino Agrava, Lamberto Leano, and Juanito Estrada. The RTC also called to fore "the modern tendency in respect to the formalities in the execution of a will x x x with the end in view of giving the testator more freedom in expressing his last wishes;"[7] and from this perspective, rebutted oppositor's arguments that the will was not properly executed and attested to in accordance with law.

> After a careful examination of the will and consideration of the testimonies of the subscribing and attesting witnesses, and having in mind the modern tendency in respect to the formalities in the execution of a will, i.e., the liberalization of the interpretation of the law on the formal requirements of a will with the end in view of giving the testator more freedom in expressing his last wishes, this Court is persuaded to rule that the will in question is authentic and had been executed by the testatrix in accordance with law.
>
> On the issue of lack of acknowledgement, this Court has noted that at the end of the will after the signature of the testatrix, the following statement is made under the sub-title, "Patunay Ng Mga Saksi":
> "Ang kasulatang ito, na binubuo ng _____ dahon pati ang huling dahong ito, na ipinahayag sa amin ni Eugenia N. Igsolo, tagapagmana na siya niyang Huling Habilin, ngayong ika-10 ng Hunyo 1981, ay nilagdaan ng nasabing tagapagmana sa ilalim ng kasulatang nabanggit at sa kaliwang panig ng lahat at bawa't dahon, sa harap ng lahat at bawa't sa amin, at kami namang mga saksi ay lumagda sa harap ng nasabing tagapagmana at sa harap ng lahat at bawa't isa sa amin, sa ilalim ng nasabing kasulatan at sa kaliwang panig ng lahat at bawa't dahon ng kasulatan ito."

The aforequoted declaration comprises the attestation clause and the acknowledgement and is considered by this Court as a substantial compliance with the requirements of the law.

On the oppositor's contention that the attestation clause was not signed by the subscribing witnesses at the bottom thereof, this Court is of the view that the signing by the subscribing witnesses on the left margin of the second page of the will containing the attestation clause and acknowledgment, instead of at the bottom thereof, substantially satisfies the purpose of identification and attestation of the will.

With regard to the oppositor's argument that the will was not numbered correlatively in letters placed on upper part of each page and that the attestation did not state the number of pages thereof, it is worthy to note that the will is composed of only two pages. The first page contains the entire text of the testamentary dispositions, and the second page contains the last portion of the attestation clause and acknowledgement. Such being so, the defects are not of a serious nature as to invalidate the will. For the same reason, the failure of the testatrix to affix her signature on the left margin of the second page, which contains only the last portion of the attestation clause and acknowledgment is not a fatal defect.

As regards the oppositor's assertion that the signature of the testatrix on the will is a forgery, the testimonies of the three subscribing witnesses to the will are convincing enough to establish the genuineness of the signature of the testatrix and the due execution of the will.[8]

The Order was appealed to the Court of Appeals by Ernesto Castillo, who had substituted his since deceased mother-in-law, Geralda Castillo. In a Decision dated 17 August 1995, the Court of Appeals reversed the trial court and ordered the dismissal of the petition for probate.[9] The Court of Appeals noted that the attestation clause failed to state the number of pages used in the will, thus rendering the will void and undeserving of probate.[10]

Hence, the present petition.

Petitioner argues that the requirement under Article 805 of the Civil Code that "the number of pages used in a notarial will be stated in the attestation clause" is merely directory, rather than mandatory, and thus susceptible to what he termed as "the substantial compliance rule."[11]

The solution to this case calls for the application of Articles 805 and 806 of the Civil Code, which we replicate in full.

> Art. 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.
>
> The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of each page.
>
> The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.
>
> If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them.
>
> Art. 806. Every will must be acknowledged before a notary public by the testator and the witnesses. The notary public shall not be required to retain a copy of the will, or file another with the office of the Clerk of Court.

The appellate court, in its Decision, considered only one defect, the failure of the attestation clause to state the number of pages of the will. But an examination of the will itself reveals several more deficiencies.

As admitted by petitioner himself, the attestation clause fails to state the number of pages of the will.[12] There was an incomplete attempt to comply with this requisite, a space having been allotted for the insertion of the number of pages in the attestation clause. Yet the blank was never filled in; hence, the requisite was left uncomplied with.

The Court of Appeals pounced on this defect in reversing the trial court, citing in the process Uy Coque v. Navas L. Sioca[13] and In re: Will of Andrada.[14] In Uy Coque, the Court noted that among the defects of the will in question was the failure of the attestation clause to state the number of pages contained in the will.[15] In ruling that the will could not be admitted to probate, the Court made the following consideration which remains highly relevant to this day: "The purpose of requiring the number of sheets to be stated in the attestation clause is obvious; the document might easily be so prepared that the removal of a sheet would completely change the testamentary dispositions of the will and in the absence of a statement of the total number of sheets such removal might be effected by taking out the sheet and changing the numbers at the top of the following sheets or pages. If, on the other hand, the total number of sheets is stated in the attestation clause the falsification of the document will involve the inserting of new pages and the forging of the signatures of the testator and witnesses in the margin, a matter attended with much greater difficulty."[16]

The case of In re Will of Andrada concerned a will the attestation clause of which failed to state the number of sheets or pages used. This consideration alone was sufficient for the Court to declare "unanim[ity] upon the point that the defect pointed out in the attesting clause is fatal."[17] It was further observed that "it cannot be denied that the x x x requirement affords additional security against the danger that the will may be tampered with; and as the Legislature has seen fit to prescribe this requirement, it must be considered material."[18]

Against these cited cases, petitioner cites Singson v. Florentino[19] and Taboada v. Hon. Rosal,[20] wherein the Court allowed probate to the wills concerned therein despite the fact that the attestation clause did not state the number of pages of the will. Yet the appellate court itself considered the import of these two cases, and made the following distinction which petitioner is unable to rebut, and which we adopt with approval:

> Even a cursory examination of the Will (Exhibit "D"), will readily show that the attestation does not state the number of pages used upon which the will is written. Hence, the Will is void and undeserving of probate.
>
> We are not impervious of the Decisions of the Supreme Court in "Manuel Singson versus Emilia Florentino, et al., 92 Phil. 161 and Apolonio [Taboada] versus Hon. Avelino Rosal, et al., 118 SCRA 195," to the effect that a will may still be valid even if the attestation does not contain the number of pages used upon which the Will is written. However, the Decisions of the Supreme Court are not applicable in the aforementioned appeal at bench. This is so because, in the case of "Manuel Singson versus Emilia Florentino, et al., supra," although the attestation in the subject Will did not state the number of pages used in the will, however, the same was found in the last part of the body of the Will:
>
> "x x x
>
> The law referred to is article 618 of the Code of Civil Procedure, as amended by Act No. 2645, which requires that the attestation clause shall state the number of pages or sheets upon which the will is written, which requirement has been held to be mandatory as an effective safeguard against the possibility of interpolation or omission of some of the pages of the will to the prejudice of the heirs to whom the property is intended to be bequeathed (In re Will of Andrada, 42 Phil. 180; Uy Coque vs. Navas L. Sioca, 43 Phil., 405; Gumban vs. Gorcho, 50 Phil. 30; Quinto vs. Morata, 54 Phil. 481; Echevarria vs. Sarmiento, 66 Phil. 611). The ratio decidendi of these cases seems to be that the attestation clause must contain a statement of the number of sheets or pages composing the will and that if this is missing or is omitted, it will have the effect of invalidating the will if the deficiency cannot be supplied, not by evidence aliunde, but by a consideration or examination of the will itself. But here the situation is different. While the attestation clause does not state the number of sheets or pages upon which the will is written, however, the last part of the body of the will contains a statement that it is composed of eight pages, which circumstance in our opinion takes this case out of the rigid rule of construction and places it within the realm of similar cases where a broad and more liberal view has been adopted to prevent the will of the testator from being defeated by purely technical considerations."

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> (page 165-165, supra) (Underscoring supplied)

In "Apolonio Tabaoda versus Hon. Avelino Rosal, et al." supra, the notarial acknowledgement in the Will states the number of pages used in the:

> "x x x
>
> We have examined the will in question and noticed that the attestation clause failed to state the number of pages used in writing the will. This would have been a fatal defect were it not for the fact that, in this case, it is discernible from the entire will that it is really and actually composed of only two pages duly signed by the testatrix and her instrumental witnesses. As earlier stated, the first page which contains the entirety of the testamentary dispositions is signed by the testatrix at the end or at the bottom while the instrumental witnesses signed at the left margin. The other page which is marked as "Pagina dos" comprises the attestation clause and the acknowledgment. The acknowledgment itself states that "this Last Will and Testament consists of two pages including this page" (pages 200-201, supra) (Underscoring supplied).

However, in the appeal at bench, the number of pages used in the will is not stated in any part of the Will. The will does not even contain any notarial acknowledgment wherein the number of pages of the will should be stated.[21]

Both Uy Coque and Andrada were decided prior to the enactment of the Civil Code in 1950, at a time when the statutory provision governing the formal requirement of wills was Section 618 of the Code of Civil Procedure.[22] Reliance on these cases remains apropos, considering that the requirement that the attestation state the number of pages of the will is extant from Section 618.[23] However, the enactment of the Civil Code in 1950 did put in force a rule of interpretation of the requirements of wills, at least insofar as the attestation clause is concerned, that may vary from the philosophy that governed these two cases. Article 809 of the Civil Code states: "In the absence of bad faith, forgery, or fraud, or undue and improper pressure and influence, defects and imperfections in the form of attestation or in the language used therein shall not render the will invalid if it is proved that the will was in fact executed and attested in substantial compliance with all the requirements of article 805."

In the same vein, petitioner cites the report of the Civil Code Commission, which stated that "the underlying and fundamental objective permeating the provisions on the [law] on [wills] in this project consists in the [liberalization] of the manner of their execution with the end in view of giving the testator more [freedom] in [expressing] his last wishes. This objective is in accord with the [modern tendency] in respect to the formalities in the execution of wills."[24] However, petitioner conveniently omits the qualification offered by the Code Commission in the very same paragraph he cites from their report, that such liberalization be "but with sufficient safeguards and restrictions to prevent the commission of fraud and the exercise of undue and improper pressure and influence upon the testator."[25]

Caneda v. Court of Appeals[26] features an extensive discussion made by Justice Regalado, speaking for the Court on the conflicting views on the manner of interpretation of the legal formalities required in the execution of the attestation clause in wills.[27] Uy Coque and Andrada are cited therein, along with several other cases, as examples of the application of the rule of strict construction.[28] However, the Code Commission opted to recommend a more liberal construction through the "substantial compliance rule" under Article 809. A cautionary note was struck though by Justice J.B.L. Reyes as to how Article 809 should be applied:

> x x x The rule must be limited to disregarding those defects that can be supplied by an examination of the will itself: whether all the pages are consecutively numbered; whether the signatures appear in each and every page; whether the subscribing witnesses are three or the will was notarized. All these are facts that the will itself can

> reveal, and defects or even omissions concerning them in the attestation clause can be safely disregarded. But the total number of pages, and whether all persons required to sign did so in the presence of each other must substantially appear in the attestation clause, being the only check against perjury in the probate proceedings.[29] (Emphasis supplied.)

The Court of Appeals did cite these comments by Justice J.B.L. Reyes in its assailed decision, considering that the failure to state the number of pages of the will in the attestation clause is one of the defects which cannot be simply disregarded. In Caneda itself, the Court refused to allow the probate of a will whose attestation clause failed to state that the witnesses subscribed their respective signatures to the will in the presence of the testator and of each other,[30] the other omission cited by Justice J.B.L. Reyes which to his estimation cannot be lightly disregarded.

Caneda suggested: "[I]t may thus be stated that the rule, as it now stands, is that omission which can be supplied by an examination of the will itself, without the need of resorting to extrinsic evidence, will not be fatal and, correspondingly, would not obstruct the allowance to probate of the will being assailed. However, those omissions which cannot be supplied except by evidence aliunde would result in the invalidation of the attestation clause and ultimately, of the will itself."[31] Thus, a failure by the attestation clause to state that the testator signed every page can be liberally construed, since that fact can be checked by a visual examination; while a failure by the attestation clause to state that the witnesses signed in one another's presence should be considered a fatal flaw since the attestation is the only textual guarantee of compliance.[32]

The failure of the attestation clause to state the number of pages on which the will was written remains a fatal flaw, despite Article 809. The purpose of the law in requiring the clause to state the number of pages on which the will is written is to safeguard against possible interpolation or omission of one or some of its pages and to prevent any increase or decrease in the pages.[33] The failure to state the number of pages equates with the absence of an averment on the part of the instrumental witnesses as to how many pages consisted the will, the execution of which they had ostensibly just witnessed and subscribed to. Following Caneda, there is substantial compliance with this requirement if the will states elsewhere in it how many pages it is comprised of, as was the situation in Singson and Taboada. However, in this case, there could have been no substantial compliance with the requirements under Article 805 since there is no statement in the attestation clause or anywhere in the will itself as to the number of pages which comprise the will.

At the same time, Article 809 should not deviate from the need to comply with the formal requirements as enumerated under Article 805. Whatever the inclinations of the members of the Code Commission in incorporating Article 805, the fact remains that they saw fit to prescribe substantially the same formal requisites as enumerated in Section 618 of the Code of Civil Procedure, convinced that these remained effective safeguards against the forgery or intercalation of notarial wills.[34] Compliance with these requirements, however picayune in impression, affords the public a high degree of comfort that the testator himself or herself had decided to convey property post mortem in the manner established in the will.[35] The transcendent legislative intent, even as expressed in the cited comments of the Code Commission, is for the fruition of the testator's incontestable desires, and not for the indulgent admission of wills to probate.

The Court could thus end here and affirm the Court of Appeals. However, an examination of the will itself reveals a couple of even more critical defects that should necessarily lead to its rejection.

For one, the attestation clause was not signed by the instrumental witnesses. While the signatures of the instrumental witnesses appear on the left-hand margin of the will, they do not appear at the bottom of the attestation clause which after all consists of their averments before the notary public.

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Cagro v. Cagro[36] is material on this point. As in this case, "the signatures of the three witnesses to the will do not appear at the bottom of the attestation clause, although the page containing the same is signed by the witnesses on the left-hand margin."[37] While three (3) Justices[38] considered the signature requirement had been substantially complied with, a majority of six (6), speaking through Chief Justice Paras, ruled that the attestation clause had not been duly signed, rendering the will fatally defective.

> There is no question that the signatures of the three witnesses to the will do not appear at the bottom of the attestation clause, although the page containing the same is signed by the witnesses on the left-hand margin.
>
> We are of the opinion that the position taken by the appellant is correct. The attestation clause is "a memorandum of the facts attending the execution of the will" required by law to be made by the attesting witnesses, and it must necessarily bear their signatures. An unsigned attestation clause cannot be considered as an act of the witnesses, since the omission of their signatures at the bottom thereof negatives their participation.
>
> The petitioner and appellee contends that signatures of the three witnesses on the left-hand margin conform substantially to the law and may be deemed as their signatures to the attestation clause. This is untenable, because said signatures are in compliance with the legal mandate that the will be signed on the left-hand margin of all its pages. If an attestation clause not signed by the three witnesses at the bottom thereof, be admitted as sufficient, it would be easy to add such clause to a will on a subsequent occasion and in the absence of the testator and any or all of the witnesses.[39]

The Court today reiterates the continued efficacy of Cagro. Article 805 particularly segregates the requirement that the instrumental witnesses sign each page of the will, from the requisite that the will be "attested and subscribed by [the instrumental witnesses]." The respective intents behind these two classes of signature are distinct from each other. The signatures on the left-hand corner of every page signify, among others, that the witnesses are aware that the page they are signing forms part of the will. On the other hand, the signatures to the attestation clause establish that the witnesses are referring to the statements contained in the attestation clause itself. Indeed, the attestation clause is separate and apart from the disposition of the will. An unsigned attestation clause results in an unattested will. Even if the instrumental witnesses signed the left-hand margin of the page containing the unsigned attestation clause, such signatures cannot demonstrate these witnesses' undertakings in the clause, since the signatures that do appear on the page were directed towards a wholly different avowal.

The Court may be more charitably disposed had the witnesses in this case signed the attestation clause itself, but not the left-hand margin of the page containing such clause. Without diminishing the value of the instrumental witnesses' signatures on each and every page, the fact must be noted that it is the attestation clause which contains the utterances reduced into writing of the testamentary witnesses themselves. It is the witnesses, and not the testator, who are required under Article 805 to state the number of pages used upon which the will is written; the fact that the testator had signed the will and every page thereof; and that they witnessed and signed the will and all the pages thereof in the presence of the testator and of one another. The only proof in the will that the witnesses have stated these elemental facts would be their signatures on the attestation clause.

Thus, the subject will cannot be considered to have been validly attested to by the instrumental witnesses, as they failed to sign the attestation clause.

Yet, there is another fatal defect to the will on which the denial of this petition should also hinge. The requirement under Article 806 that "every will must be acknowledged before a notary public by the testator and the witnesses" has also not been complied with. The importance of this requirement is highlighted by the fact that it had been segregated from the other requirements under Article 805 and entrusted into a separate provision, Article 806. The non-observance of Article 806 in this case is equally as critical as the other cited flaws in compliance with Article

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805, and should be treated as of equivalent import.

In lieu of an acknowledgment, the notary public, Petronio Y. Bautista, wrote "Nilagdaan ko at ninotario ko ngayong 10 ng Hunyo 10 (sic), 1981 dito sa Lungsod ng Maynila."[40] By no manner of contemplation can those words be construed as an acknowledgment. An acknowledgment is the act of one who has executed a deed in going before some competent officer or court and declaring it to be his act or deed.[41] It involves an extra step undertaken whereby the signor actually declares to the notary that the executor of a document has attested to the notary that the same is his/her own free act and deed.

It might be possible to construe the averment as a jurat, even though it does not hew to the usual language thereof. A jurat is that part of an affidavit where the notary certifies that before him/her, the document was subscribed and sworn to by the executor.[42] Ordinarily, the language of the jurat should avow that the document was subscribed and sworn before the notary public, while in this case, the notary public averred that he himself "signed and notarized" the document. Possibly though, the word "ninotario" or "notarized" encompasses the signing of and swearing in of the executors of the document, which in this case would involve the decedent and the instrumental witnesses.

Yet even if we consider what was affixed by the notary public as a jurat, the will would nonetheless remain invalid, as the express requirement of Article 806 is that the will be "acknowledged", and not merely subscribed and sworn to. The will does not present any textual proof, much less one under oath, that the decedent and the instrumental witnesses executed or signed the will as their own free act or deed. The acknowledgment made in a will provides for another all-important legal safeguard against spurious wills or those made beyond the free consent of the testator. An acknowledgement is not an empty meaningless act.[43] The acknowledgment coerces the testator and the instrumental witnesses to declare before an officer of the law that they had executed and subscribed to the will as their own free act or deed. Such declaration is under oath and under pain of perjury, thus allowing for the criminal prosecution of persons who participate in the execution of spurious wills, or those executed without the free consent of the testator. It also provides a further degree of assurance that the testator is of certain mindset in making the testamentary dispositions to those persons he/she had designated in the will.

It may not have been said before, but we can assert the rule, self-evident as it is under Article 806. A notarial will that is not acknowledged before a notary public by the testator and the witnesses is fatally defective, even if it is subscribed and sworn to before a notary public.

There are two other requirements under Article 805 which were not fully satisfied by the will in question. We need not discuss them at length, as they are no longer material to the

disposition of this case. The provision requires that the testator and the instrumental witnesses sign each and every page of the will on the left margin, except the last; and that all the pages shall be numbered correlatively in letters placed on the upper part of each page. In this case, the decedent, unlike the witnesses, failed to sign both pages of the will on the left margin, her only signature appearing at the so-called "logical end"[44] of the will on its first page. Also, the will itself is not numbered correlatively in letters on each page, but instead numbered with Arabic numerals. There is a line of thought that has disabused the notion that these two requirements be construed as mandatory.[45] Taken in isolation, these omissions, by themselves, may not be sufficient to deny probate to a will. Yet even as these omissions are not decisive to the adjudication of this case, they need not be dwelt on, though indicative as they may be of a general lack of due regard for the requirements under Article 805 by whoever executed the will.

All told, the string of mortal defects which the will in question suffers from makes the probate denial inexorable.

WHEREFORE, the petition is DENIED. Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, and Carpio-Morales, JJ., concur.

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[1]Rollo, pp. 21-22.

[2] Id. at 35.

[3] Id. at 36.

[4] Records, p. 505.

[5] Id.

[6] Penned by Judge Perfecto Laguio, Jr.

[7] Rollo, p. 41.

[8] Id. at 41-42.

[9] Decision penned by Associate Justice (now Supreme Court Associate Justice) Romeo J. Callejo, Sr., and concurred in by Associate Justices Jorge S. Imperial and Pacita Cañizares-Nye.

[10] See rollo, pp. 46-50.

[11] Id. at 24.

[12] See rollo, p. 26.

[13] 43 Phil. 405 (1922).

[14] 42 Phil. 180 (1921).

[15] Uy Coque v. Navas L. Sioca, supra note 13, at 409.

[16] Id.

[17] In re: Will of Andrada, supra note 14 at 181.

[18] Id. at 182.

[19] 92 Phil. 161 (1952).

[20] No. L-36033, 5 November 1982, 118 SCRA 195.

[21] Rollo, pp. 47-49. Underscoring not ours.

[22] Section 618 of the Code of Civil Procedure as amended by Act No. 2645 reads:

> "No will, except as provided in the preceding section, shall be valid to pass any estate, real or personal, nor charge or effect the same, unless it be written in the language or dialect known by the testator and signed by him, or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of each other. The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, on the left margin, and said pages shall be numbered

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> correlatively in letters placed on the upper part of each sheet. The attestation shall state the number of sheets or pages used, upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of three witnesses, and the latter witnessed and signed the will and all pages thereof in the presence of the testator and each other."

[23]Id.

[24]Rollo, pp. 23-25.

[25]See Report of the Code Commission, p. 103. The full citation reads:

> "The underlying and fundamental objectives permeating the provisions of the law on wills in this Project consists in the liberalization of the manner of their execution with the end in view of giving the testator more freedom in expressing his last wishes, but with sufficient safeguards and restrictions to prevent the commission of fraud and the exercise of undue and improper pressure and influence upon the testator.
>
> This objective is in accord with the modern tendency with respect to the formalities in the execution of wills. The proposed Code provides for two forms of will, namely, (1) the holographic, and (2) the ordinary will."

[26]G.R. No. 103554, 28 May 1993, 222 SCRA 781.

[27]Id. at 795-800.

[28]Id. at 796-797.

[29]Id. at 794; citing Lawyer's Journal, November 30, 1950, 566. In the same article, Justice J.B.L. Reyes suggested that Article 809 be reworded in such a manner that the will would not be rendered invalid if the defects and imperfections in the attestation "can be supplied by an examination of the will itself and it is proved that the will was in fact executed and attested in substantial compliance with all the requirements of Article 805." See R. Balane, Jottings and Jurisprudence in Civil Law (1998 ed.) at 87, citing Lawyers Journal, November 30, 1950.

[30]Id. at 792-793.

[31]Id. at 800.

[32]See Balane, supra note 29, at 87.

[33]Caneda v. Court of Appeals, supra note 26 at 790; citing Andrada, supra note 14.

[34]The Code Commission did qualify in its Report that the thrust towards liberalization be qualified "with sufficient safeguards and restrictions to prevent the commission of fraud and the exercise of undue and improper pressure and influence upon the testator" Supra note 25.

[35]"The object of the solemnities surrounding the execution of wills is to close the door against bad faith and fraud, to avoid substitution of wills and testaments and to guaranty their truth and authenticity. Therefore the laws on this subject should be interpreted in such a way as to attain these primordial ends. But, on the other hand, one must not lose sight of the fact that it is not the object of the law to restrain and curtail the exercise of the right to make a will." A. Tolentino, III Civil Code of the Philippines (1992 ed.), at 67.

[36]92 Phil. 1032 (1953)

[37]Id. at 1033.

[38]Justices Felix Bautista Angelo, Pedro Tuason and Felicisimo R. Feria.

[39]Cagro v. Cagro, supra note 36, at 1033-1034.

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[40]Rollo, p. 22.

[41]Tigno v. Aquino, G.R. No. 129416, 25 November 2004, 444 SCRA 61, 72.

[42]See Gamido v. New Bilibid Prisons Officials, 312 Phil. 100, 104; citing Theobald v. Chicago Ry. Co., 75 Ill. App. 208.

[43]Protacio v. Mendoza, Adm. Case No. 5764, 13 January 2003, 395 SCRA 10, 15; citing Coronado v. Felongco, 344 SCRA 565 (2000); Nunga v. Viray, 306 SCRA 487 (1999); Arrieta v. Llosa, 282 SCRA 248 (1997); Dinoy v. Rosal, 235 SCRA 419 (1994).

[44]To use the term adopted by eminent civilists Prof. Balane and Dr. Tolentino, who distinguish "the physical end " where the writing stops' from "the logical end " where the last testamentary disposition ends." See Balane, supra note 29 at 60; Tolentino, supra note 35, at 70.

[45]See e.g., Balane, supra note 28 at 63, 67; Tolentino, supra note 34, at 104.

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