

**BANK OF THE PHILIPPINE ISLANDS, EXECUTOR AND APPELLANT,
VS. JOSE J. GONZALES, OPPOSITOR AND APPELLEE.***G.R. No. 13489. January 29, 1960*

Ponente: BAUTISTA ANGELO, J.

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In a statement of accounts submitted by the Bank of the Philippine Islands in its capacity as executor of the testate estate of the late Graciana de Jesus pending before the Court of First Instance of Manila (Special Proceeding No. 18033), two items were disallowed on the ground that they are not expenses chargeable against the estate. One refers to the sum of P1,461.00 representing the cost of the transcript of stenographic notes taken at the hearing conducted in connection with Civil Case No. 22828 of the same court which was instituted by said Bank against Jose J. Gonzales to annul a certain deed of donation inter vivos executed by the deceased in favor of Gonzales. In said case one Angustia Jimenez, legatee of the parcels of land covered by the deed of donation intervened. The second item refers to the sum of P56.00 representing the cost of printing the brief filed by the Bank in its capacity as executor in the appeal it interposed from a resolution of the Land Registration Commission regarding a consulta requested from said Commission in connection with the annotation of a notice of lis pendens involving the same property. The appeal is still pending and was docketed as G. R. No. L-12128 of the Supreme Court. In view of the disallowance of the two items above-mentioned, the Bank took the present appeal.

It appears that in the last will and testament left by the late Graciana de Jesus dated February 1, 1945, which was admitted to probate in Special Proceeding No. 18133 of the Court of First Instance of Manila, one Angustia Jimenez was named legatee of three parcels of land situated in the City of Manila, which were subsequently made the subject of a deed of donation inter vivos executed by the deceased in favor of Jose J. Gonzales. In view of this subsequent donation, the Bank of the Philippine Islands, in its capacity as executor of the estate of the deceased, filed Civil Case No. 22828 before the same court against Gonzales praying for the annulment of the deed of donation with the purpose of recovering the parcels of land devised to Angustia Jimenez. To implement the action taken in said case, the executor filed a notice of lis pendens which was annotated on the certificate of title covering the lands in question.

Meanwhile, the lands were mortgaged by Gonzales in favor of Ramon Eugenio who, because of Gonzales' failure to pay his obligation, took action to foreclose the mortgage. In the foreclosure sale that ensued, Mrs. Consuelo O. Vda. de Eugenio, as administratrix of the estate of her late husband, became the highest bidder. After the corresponding deed of sale was executed in her favor, she requested the register of deeds of Manila to issue a new title in her name free from any lien or incumbrance, to which the Bank of the Philippine Islands, in its capacity as executor, objected. The question was taken in consulta to the Land Registration Commission who ruled against the annotation of the notice of lis pendens, so the Bank appealed the ruling to the Supreme Court, and in connection with this appeal, the Bank spent P56.00 as cost of printing of its brief. The item of P1,461.00 represents the cost of the stenographic notes taken at the hearing of Civil Case No. 22828 paid by the Bank in its capacity as executor.

The appellant now contends that the trial court erred in disallowing these two items because they represent expenses which were incurred by it in its capacity as executor and as an incident to the performance of its duties under the law in pursuance of the provisions of the will of the deceased Graciana de Jesus which was duly admitted to probate. Oppositor Gonzales, on the other hand, contends that the disallowance was proper because the purpose of the action taken by the Bank in Civil Case No. 22828 was to annul certain deed of donation covering the same parcels of land devised in the will to the intervenor Angustia Jimenez and, hence, the latter would appear to be the real party in interest who should institute the action, she being the only one to be benefited if the action would prove successful. In other words, it is oppositor's contention that the action taken by the Bank was merely to accommodate Angustia Jimenez and so it is not fair that the estate be made to pay the expenses incident to such accommodation.

There is no merit in appellee's contention. While it is true that the subject of the alleged deed of donation are the same properties which were devised to Angustia Jimenez in the will of the late Graciana de Jesus, we should not however overlook the fact that the Bank of the Philippine Islands was appointed by the probate court as executor with the will annexed charged with the particular duty of carrying out the provisions of the will. And since one of the mandates of the will, which was duly probated, is to devise the properties in question to Angustia Jimenez, it would appear to be its clear duty to take all the necessary steps, legal or otherwise, to take possession thereof and turn them over to whom they belong. Thus, "It is the primary duty of the executor or administrator, to the performance of which his authority of course extends, to collect the assets of the estate for the benefit of both the creditors and the next of kin or legatee * * *" (33 C. J. S., p. 1136), and as an incident to the performance of this duty, our rules provide that "an executor or administrator shall be allowed the necessary expenses in the care, management and settlement of the estate" (Section 7, Rule 86). Since the two items in question were spent in connection with the performance of the duty of appellant to gather all the assets of the estate in order that they may be dealt with in accordance with the provisions of the will, they may be considered as administration expenses that may be properly charged against the estate.

Wherefore, the order appealed from insofar as the two items in question are concerned, is set aside, with costs against appellee. Said items are hereby allowed as expenses of administration.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David JJ., concur.

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