

INTESTATE ESTATE OF THE DECEASED PATRICIA MALONZO DE MALAPITAN. CARLOS GOZON, ADMINISTRATOR AND APPELLEE, VS. ISRAEL M. MALAPITAN, ET. AL., OPPOSITORS AND APPELLANTS.

G.R. No. 14334. April 29, 1960

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is an appeal from the order of the Court of First Instance of Rizal, Quezon City Branch, dated February 24, 1956, which reads:

"Upon due consideration of the motion of counsel for the administrator under date of February 6, 1956, and the opposition thereto of the oppositors filed on February 11, 1956, and finding the said motion of the administrator of February 6, 1956 to be well founded, the administrator is hereby allowed to withdraw from the funds of the estate the sum of P300.00, representing advance payment of the attorney's fees of Attys. Ereñeta & Munda, for their services rendered in this case for the administrator.

"As regards the urgent motion for reconsideration of the oppositors filed on February 3, 1956, it appearing that the amount of P200.00 had already been delivered to the stenographers concerned, it is therefore unnecessary to pass upon the same."

The appeal was first taken to the Court of Appeals, but after it was submitted there for decision, and after studying the case, said court certified it to us on the ground that it involved only questions of law.

The appealed order itself fails to give us the facts involved in this case, or even an idea of the same. We have carefully examined the record on appeal but the facts gathered from said record are quite meagre, so we have to supplement the statement of facts with those narrated in the brief for the appellants, Israel M. Malapitan et al. We have to confine ourselves to said brief, for the reason that appellee Carlos Gozon failed to file his brief with the Court of Appeals and by resolution, of said court of June 24, 1958, the appeal was given due course without, said appellee's brief. No attempt was made to file such brief for the appellee before us, and although the parties were on December 5, 1958 notified that the case had been included in the January calendar, which would be read on January 12, 1959, neither party had asked for the hearing and so the case was deemed submitted for decision.

From the brief of the appellants it would appear that Patricia Malonzo de Malapitan died, leaving nine children. Four of them, named Israel, Hospito, Hortencia and Estela, all surnamed Malapitan, are herein considered as oppositors-appellants, and the remaining five, Crisogono, Fabian, Vicente and Tolomeo and a deceased brother, represented by his widow Feliciano Martinez, were in favor of the appointment of one Carlos Gozon as administrator of the estate. The administration of the estate of Patricia Malonzo de Malapitan was taken before the Court of First Instance of Rizal, Quezon City Branch, in special proceedings No. 2145. Carlos Gozon was apparently appointed first as special administrator, and later as regular administrator, over the objection of the four heirs called oppositors-appellants. Said administrator filed an inventory of the properties supposed to belong to the estate. The oppositors, through their counsel, asked that certain properties included in the inventory be

excluded therefrom because they belong to said oppositors. So, the trial court commissioned a deputy clerk of court to receive evidence on the claims of ownership and the commissioner availed himself of the services of the court stenographers to take down notes of the proceedings. The administrator supposedly employed attorneys Ereñeta and Munda as counsel.

On January 27, 1956, Atty. Munda, as counsel for administrator Gozon, filed a "Petition to Set Attorney's Fee and to Withdraw Some Amount to Pay Transcript of Record". No copy of said petition was served on the oppositors or their counsel. Acting upon said petition, the Rizal Court of First Instance, Quezon City Branch, by order of January 28, 1956, authorized the administrator to withdraw from the Philippine National Bank funds in the amount of P200.00 to be paid to the stenographers for the transcript of their notes taken in connection with the hearing of the motion (presumably before the commissioner) to exclude certain properties from the inventory. The same order required counsel for administrator to submit an itemized list of services rendered to the estate.

On February 3, 1956, attorneys Munda and Ereñeta as counsel for the administrator, submitted said list of services rendered. On the same date, Israel Malapitan and his co-oppositors filed an "Urgent Motion for Reconsideration" of the order of January 28, asking that the authority granted to the administrator to withdraw P200.00 from the bank to pay to the stenographers of the court be revoked and that if the amount had already been paid, the stenographers be ordered to return the same. On February 4, 1956, the trial court issued an order directing the administrator to furnish the oppositors a copy of his petition of January 27, 1956. Instead of furnishing said oppositors a copy of his petition, the administrator, through his counsel, filed on February 8, a "Motion to Withdraw Money to Pay Transcript of Record and Attorney's Fees" and served copies thereof to the oppositors. The oppositors objected to said motion, alleging among others that the fixing of attorney's fees was premature, and to all appearances, unmeritorious and out of place, at the state of the proceedings. On February 24, 1956, the lower court issued the order now on appeal and reproduced at the beginning of this opinion. A motion for reconsideration of said order was denied an April 12, 1956 for "lack of sufficient merits".

Going back to the list of services rendered filed by the attorneys for the administrator, said list contains 26 items, some referring to appearances at the hearings for the appointment of an administrator, others referring to appearances before the court for examination of certain persons regarding property of the deceased supposed to have been concealed, still other appearances refer to those made before the Provincial Fiscal of Pasig, Rizal, and also before the City Fiscal of Manila, and some appearances referring to those made in connection with Civil Case No. 3640 of the Court of First Instance of Pasig, Rizal.

At first, we were puzzled about the appearances made by counsel in connection with criminal cases before the Fiscal of Manila and the Fiscal of Rizal, and Civil Case No. 3640, but the brief of the oppositors-appellants sheds some light on this matter. According to said brief, Civil Case No. 8640, docketed in the Court of First Instance of Rizal, refers to a suit by administrator Gozon against Israel de Malapitan, seeking to take possession of a certain store denominated "Mission Auto Supply", located at the Bonifacio Monument circle, Caloocan, Rizal, which the administrator presumably believed belong to the deceased Patricia, but which Israel claimed to be his property.

The same brief for the appellants states that administrator Gozon supposedly by the use of force took possession of a Studebaker sedan by taking it out from the garage of Israel without Israel's knowledge or consent; so Israel filed a complaint for robbery against Gozon and his companions with the office of the Provincial Fiscal of Rizal. This might explain the appearances made by the attorneys employed by Gozon as his counsel before the Provincial Fiscal of Rizal.

Then, there was another complaint filed this time with the Manila City Fiscal's Office by Vicente Malapitan, one of the group of heirs identified with the administrator, against his brother Israel, oppositor, for alleged falsification

of a public document for having registered his store "Mission Auto Supply" with the Bureau of Commerce, representing to said bureau that the store belonged to him. This may explain the appearances of the attorneys for the administrator before the City Fiscal of Manila.

The position taken by the oppositors-appellants is that much of the services rendered by the supposed attorneys for the administrator and their appearances in court and before the Fiscals of Rizal and Manila were really not for the administrator and for the benefit of the estate, but rather at the instance of and for the benefit of some of the heirs in their legal fight with the oppositors, and so payment for said services partially should be made by said heirs and in part by the administrator in his personal capacity.

In order to determine the value of said legal services of said attorneys and for whose interest they were rendered, a hearing should be held at which both parties should be present. So, at this stage of the proceedings, it would appear to us rather premature to authorize the payment for said services from the funds of the estate. So was the authority given by the trial court to the administrator to withdraw P200.00 in order to pay for the transcript to be made by the stenographers employed by the deputy clerk of court designated as commissioner to hold hearings. According to the oppositors-appellants, said transcript has not yet been made and so it is difficult to ascertain the number of pages of said transcript, assuming that each page thereof would cost P1.00, to say nothing of the fact that it remains to be seen whether said transcript would really be necessary and needed by the administrator in connection with his administration. In this we are inclined to agree with oppositors-appellants.

In view of the foregoing, the appealed order is hereby set aside in so far as it authorizes the withdrawal of P300.00 from the funds of the estate in order to pay counsel for the administrator on account of their legal services. As regards the P200.00 authorized by the trial court to be paid to the stenographers, said payment should be held in abeyance, without prejudice to its eventual payment to said stenographers should it be established that it was a necessary expense of the administration. If said amount had already been paid, the stenographers should return said amount and upon their failure to do so, the administrator should refund said sum to the estate from his personal funds. Appellee will pay the costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.

Labrador, J., took no part.

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