

TESTATE ESTATE OF THE LATE ALIPIO ABADA, BELINDA CAPONONG-NOBLE, PETITIONER, VS. ALIPIO ABAJA AND NOEL ABELLAR, RESPONDENTS.

G.R. NO. 147145. January 31, 2005

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review[1] assailing the Decision[2] of the Court of Appeals of 12 January 2001 in CA-G.R. CV No. 47644. The Court of Appeals sustained the Resolution[3] of the Regional Trial Court of Kabankalan, Negros Occidental, Branch 61 (“RTC-Kabankalan”), admitting to probate the last will and testament of Alipio Abada (“Abada”).

The Antecedent Facts

Abada died sometime in May 1940.[4] His widow Paula Toray (“Toray”) died sometime in September 1943. Both died without legitimate children.

On 13 September 1968, Alipio C. Abaja (“Alipio”) filed with the then Court of First Instance of Negros Occidental (now RTC-Kabankalan) a petition,[5] docketed as SP No. 070 (313-8668), for the probate of the last will and testament (“will”) of Abada. Abada allegedly named as his testamentary heirs his natural children Eulogio Abaja (“Eulogio”) and Rosario Cordova. Alipio is the son of Eulogio.

Nicanor Caponong (“Caponong”) opposed the petition on the ground that Abada left no will when he died in 1940. Caponong further alleged that the will, if Abada really executed it, should be disallowed for the following reasons: (1) it was not executed and attested as required by law; (2) it was not intended as the last will of the testator; and (3) it was procured by undue and improper pressure and influence on the part of the beneficiaries. Citing the same grounds invoked by Caponong, the alleged intestate heirs of Abada, namely, Joel, Julian, Paz, Evangeline, Geronimo, Humberto, Teodora and Elena Abada (“Joel Abada, et al.”), and Levi, Leandro, Antonio, Florian, Hernani and Carmela Tronco (“Levi Tronco, et al.”), also opposed the petition. The oppositors are the nephews, nieces and grandchildren of Abada and Toray.

On 13 September 1968, Alipio filed another petition[6] before the RTC-Kabankalan, docketed as SP No. 071 (312-8669), for the probate of the last will and testament of Toray. Caponong, Joel Abada, et al., and Levi Tronco, et al. opposed the petition on the same grounds they cited in SP No. 070 (313-8668).

On 20 September 1968, Caponong filed a petition[7] before the RTC-Kabankalan, docketed as SP No. 069 (309), praying for the issuance in his name of letters of administration of the intestate estate of Abada and Toray.

In an Order dated 14 August 1981, the RTC-Kabankalan admitted to probate the will of Toray. Since the oppositors did not file any motion for reconsideration, the order allowing the probate of Toray’s will became final

and executory.[8]

In an order dated 23 November 1990, the RTC-Kabankalan designated Belinda Caponong-Noble (“Caponong-Noble”) Special Administratrix of the estate of Abada and Toray.[9] Caponong-Noble moved for the dismissal of the petition for probate of the will of Abada. The RTC-Kabankalan denied the motion in an Order dated 20 August 1991.[10]

Sometime in 1993, during the proceedings, Presiding Judge Rodolfo S. Layumas discovered that in an Order dated 16 March 1992, former Presiding Judge Edgardo Catilo had already submitted the case for decision. Thus, the RTC-Kabankalan rendered a Resolution dated 22 June 1994, as follows:

There having been sufficient notice to the heirs as required by law; that there is substantial compliance with the formalities of a Will as the law directs and that the petitioner through his testimony and the deposition of Felix Gallinero was able to establish the regularity of the execution of the said Will and further, there being no evidence of bad faith and fraud, or substitution of the said Will, the Last Will and Testament of Alipio Abada dated June 4, 1932 is admitted and allowed probate.

As prayed for by counsel, Noel Abbellar[11] is appointed administrator of the estate of Paula Toray who shall discharge his duties as such after letters of administration shall have been issued in his favor and after taking his oath and filing a bond in the amount of Ten Thousand (P10,000.00) Pesos.

Mrs. Belinda C. Noble, the present administratrix of the estate of Alipio Abada shall continue discharging her duties as such until further orders from this Court.

SO ORDERED.[12]

The RTC-Kabankalan ruled on the only issue raised by the oppositors in their motions to dismiss the petition for probate, that is, whether the will of Abada has an attestation clause as required by law. The RTC-Kabankalan further held that the failure of the oppositors to raise any other matter forecloses all other issues.

Not satisfied with the Resolution, Caponong-Noble filed a notice of appeal.

In a Decision promulgated on 12 January 2001, the Court of Appeals affirmed the Resolution of the RTC-Kabankalan. The appellate court found that the RTC-Kabankalan properly admitted to probate the will of Abada.

Hence, the present recourse by Caponong-Noble.

The Issues

The petition raises the following issues:

- What laws apply to the probate of the last will of Abada;
- Whether the will of Abada requires acknowledgment before a notary public;[13]
- Whether the will must expressly state that it is written in a language or dialect known to the testator;
- Whether the will of Abada has an attestation clause, and if so, whether the attestation clause complies with the requirements of the applicable laws;
- Whether Caponong-Noble is precluded from raising the issue of whether the will of Abada is written in a language known to Abada;
- Whether evidence aliunde may be resorted to in the probate of the will of Abada.

The Ruling of the Court

The Court of Appeals did not err in sustaining the RTC-Kabankalan in admitting to probate the will of Abada.

The Applicable Law

Abada executed his will on 4 June 1932. The laws in force at that time are the Civil Code of 1889 or the Old Civil Code, and Act No. 190 or the Code of Civil Procedure^[14] which governed the execution of wills before the enactment of the New Civil Code.

The matter in dispute in the present case is the attestation clause in the will of Abada. Section 618 of the Code of Civil Procedure, as amended by Act No. 2645,^[15] governs the form of the attestation clause of Abada's will.^[16] Section 618 of the Code of Civil Procedure, as amended, provides:

SEC. 618. Requisites of will. – No will, except as provided in the preceding section,^[17] shall be valid to pass any estate, real or personal, nor charge or affect 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 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 of each other.

Requisites of a Will under the Code of Civil Procedure

Under Section 618 of the Code of Civil Procedure, the requisites of a will are the following:

- (1) The will must be written in the language or dialect known by the testator;
- (2) The will must be signed by the testator, or by the testator's name written by some other person in his presence, and by his express direction;
- (3) The will must be attested and subscribed by three or more credible witnesses in the presence of the testator and of each other;
- (4) The testator or the person requested by him to write his name and the instrumental witnesses of the will must sign each and every page of the will on the left margin;
- (5) The pages of the will must be numbered correlatively in letters placed on the upper part of each sheet;
- (6) 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 of the will, or caused some other person to write his name, under his express direction, in the presence of three witnesses, and the witnesses witnessed and signed the will and all pages of the will in the presence of the testator and of each other.

Caponong-Noble asserts that the will of Abada does not indicate that it is written in a language or dialect known to the testator. Further, she maintains that the will is not acknowledged before a notary public. She cites in particular Articles 804 and 805 of the Old Civil Code, thus:

Art. 804. Every will must be in writing and executed in [a] language or dialect known to the testator.

Art. 806. Every will must be acknowledged before a notary public by the testator and the witnesses. xxx^[18]

Caponong-Noble actually cited Articles 804 and 806 of the New Civil Code.[19] Article 804 of the Old Civil Code is about the rights and obligations of administrators of the property of an absentee, while Article 806 of the Old Civil Code defines a legitime.

Articles 804 and 806 of the New Civil Code are new provisions. Article 804 of the New Civil Code is taken from Section 618 of the Code of Civil Procedure.[20] Article 806 of the New Civil Code is taken from Article 685 of the Old Civil Code[21] which provides:

Art. 685. The notary and two of the witnesses who authenticate the will must be acquainted with the testator, or, should they not know him, he shall be identified by two witnesses who are acquainted with him and are known to the notary and to the attesting witnesses. The notary and the witnesses shall also endeavor to assure themselves that the testator has, in their judgment, the legal capacity required to make a will.

Witnesses authenticating a will without the attendance of a notary, in cases falling under Articles 700 and 701, are also required to know the testator.

However, the Code of Civil Procedure[22] repealed Article 685 of the Old Civil Code. Under the Code of Civil Procedure, the intervention of a notary is not necessary in the execution of any will.[23] Therefore, Abada's will does not require acknowledgment before a notary public.

Caponong-Noble points out that nowhere in the will can one discern that Abada knew the Spanish language. She alleges that such defect is fatal and must result in the disallowance of the will. On this issue, the Court of Appeals held that the matter was not raised in the motion to dismiss, and that it is now too late to raise the issue on appeal. We agree with Caponong-Noble that the doctrine of estoppel does not apply in probate proceedings.[24] In addition, the language used in the will is part of the requisites under Section 618 of the Code of Civil Procedure and the Court deems it proper to pass upon this issue.

Nevertheless, Caponong-Noble's contention must still fail. There is no statutory requirement to state in the will itself that the testator knew the language or dialect used in the will.[25] This is a matter that a party may establish by proof aliunde.[26] Caponong-Noble further argues that Alipio, in his testimony, has failed, among others, to show that Abada knew or understood the contents of the will and the Spanish language used in the will. However, Alipio testified that Abada used to gather Spanish-speaking people in their place. In these gatherings, Abada and his companions would talk in the Spanish language.[27] This sufficiently proves that Abada speaks the Spanish language.

The Attestation Clause of Abada's Will

A scrutiny of Abada's will shows that it has an attestation clause. The attestation clause of Abada's will reads:

Suscrito y declarado por el testador Alipio Abada como su ultima voluntad y testamento en presencia de nosotros, habiendo tambien el testador firmado en nuestra presencia en el margen izquierdo de todas y cada una de las hojas del mismo. Y en testimonio de ello, cada uno de nosotros lo firmamos en presencia de nosotros y del testador al pie de este documento y en el margen izquierdo de todas y cada una de las dos hojas de que esta compuesto el mismo, las cuales estan paginadas correlativamente con las letras "UNO" y "DOS" en la parte superior de la carrilla.[28]

Caponong-Noble proceeds to point out several defects in the attestation clause. Caponong-Noble alleges that the attestation clause fails to state the number of pages on which the will is written.

The allegation has no merit. The phrase "en el margen izquierdo de todas y cada una de las dos hojas de que esta compuesto el mismo" which means "in the left margin of each and every one of the two pages consisting of the same" shows that the will consists of two pages. The pages are numbered correlatively with the letters "ONE"

and “TWO” as can be gleaned from the phrase “las cuales estan paginadas correlativamente con las letras “UNO” y “DOS.”

Caponong-Noble further alleges that the attestation clause fails to state expressly that the testator signed the will and its every page in the presence of three witnesses. She then faults the Court of Appeals for applying to the present case the rule on substantial compliance found in Article 809 of the New Civil Code.[29]

The first sentence of the attestation clause reads: “Suscrito y declarado por el testador Alipio Abada como su ultima voluntad y testamento en presencia de nosotros, habiendo tambien el testador firmado en nuestra presencia en el margen izquierdo de todas y cada una de las hojas del mismo.” The English translation is: “Subscribed and professed by the testator Alipio Abada as his last will and testament in our presence, the testator having also signed it in our presence on the left margin of each and every one of the pages of the same.” The attestation clause clearly states that Abada signed the will and its every page in the presence of the witnesses.

However, Caponong-Noble is correct in saying that the attestation clause does not indicate the number of witnesses. On this point, the Court agrees with the appellate court in applying the rule on substantial compliance in determining the number of witnesses. While the attestation clause does not state the number of witnesses, a close inspection of the will shows that three witnesses signed it.

This Court has applied the rule on substantial compliance even before the effectivity of the New Civil Code. In *Dichoso de Ticson v. De Gorostiza*,^[30] the Court recognized that there are two divergent tendencies in the law on wills, one being based on strict construction and the other on liberal construction. In *Dichoso*, the Court noted that *Abangan v. Abangan*,^[31] the basic case on the liberal construction, is cited with approval in later decisions of the Court.

In *Adeva vda. De Leynez v. Leynez*,^[32] the petitioner, arguing for liberal construction of applicable laws, enumerated a long line of cases to support her argument while the respondent, contending that the rule on strict construction should apply, also cited a long series of cases to support his view. The Court, after examining the cases invoked by the parties, held:

x x x It is, of course, not possible to lay down a general rule, rigid and inflexible, which would be applicable to all cases. More than anything else, the facts and circumstances of record are to be considered in the application of any given rule. If the surrounding circumstances point to a regular execution of the will, and the instrument appears to have been executed substantially in accordance with the requirements of the law, the inclination should, in the absence of any suggestion of bad faith, forgery or fraud, lean towards its admission to probate, although the document may suffer from some imperfection of language, or other non-essential defect. x x x.

An attestation clause is made for the purpose of preserving, in permanent form, a record of the facts attending the execution of the will, so that in case of failure of the memory of the subscribing witnesses, or other casualty, they may still be proved. (Thompson on Wills, 2d ed., sec. 132.) A will, therefore, should not be rejected where its attestation clause serves the purpose of the law. x x x [33]

We rule to apply the liberal construction in the probate of Abada’s will. Abada’s will clearly shows four signatures: that of Abada and of three other persons. It is reasonable to conclude that there are three witnesses to the will. The question on the number of the witnesses is answered by an examination of the will itself and without the need for presentation of evidence aliunde. The Court explained the extent and limits of the rule on liberal construction, thus:

[T]he so-called liberal rule does not offer any puzzle or difficulty, nor does it open the door to serious consequences. The later decisions do tell us when and where to stop; they draw the dividing line with precision. They do not allow evidence aliunde to fill a void in any part of the document or supply missing

details that should appear in the will itself. They only permit a probe into the will, an exploration within its confines, to ascertain its meaning or to determine the existence or absence of the requisite formalities of law. This clear, sharp limitation eliminates uncertainty and ought to banish any fear of dire results.[34] (Emphasis supplied)

The phrase “en presencia de nosotros” or “in our presence” coupled with the signatures appearing on the will itself and after the attestation clause could only mean that: (1) Abada subscribed to and professed before the three witnesses that the document was his last will, and (2) Abada signed the will and the left margin of each page of the will in the presence of these three witnesses.

Finally, Caponong-Noble alleges that the attestation clause does not expressly state the circumstances that the witnesses witnessed and signed the will and all its pages in the presence of the testator and of each other. This Court has ruled:

Precision of language in the drafting of an attestation clause is desirable. However, it is not imperative that a parrot-like copy of the words of the statute be made. It is sufficient if from the language employed it can reasonably be deduced that the attestation clause fulfills what the law expects of it.[35]

The last part of the attestation clause states “en testimonio de ello, cada uno de nosotros lo firmamos en presencia de nosotros y del testador.” In English, this means “in its witness, every one of us also signed in our presence and of the testator.” This clearly shows that the attesting witnesses witnessed the signing of the will of the testator, and that each witness signed the will in the presence of one another and of the testator.

WHEREFORE, we AFFIRM the Decision of the Court of Appeals of 12 January 2001 in CA-G.R. CV No. 47644.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Presbitero J. Velasco, Jr. (now Court Administrator) with Associate Justices Ruben T. Reyes and Juan Q. Enriquez, Jr., concurring.

[3] Penned by Presiding Judge Rodolfo S. Layumas.

[4] Alipio C. Abaja tried to secure a copy of Abada’s death certificate but the Local Civil Registrar of Cawayan, Negros Occidental informed him that all the records of pre-war deaths were destroyed during the war.

[5] In the matter of the Probate of the Last Will and Testament of the late Alipio Abada.

[6] In the matter of the Probate of the Last Will and Testament of the late Paula Toray.

[7] In the matter of the Intestate Estate of Spouses Alipio Abada and Paula Toray. Petition for Letters of Administration.

[8] Records, p. 38.

[9] Ibid., p. 41.

[10] Ibid., pp. 42-45.

[11] It should be Abellar.

[12] Rollo, p. 47.

[13] Petitioner phrases this issue as to whether the will has to be “notarized.” A notarized document includes one that is subscribed and sworn under oath or one that contains a jurat. Acknowledgment is different. Acknowledgment refers to an act in which an individual on a single occasion: (a) appears in person before the notary public and presents an integrally complete instrument or document; (b) is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and (c) represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity, that he has the authority to sign in that capacity. (See Section 1, Rule II of 2004 Rules of Notarial Practice)

[14] The Code of Civil Procedure took effect on 1 September 1901.

[15] An Act amending section six hundred and eighteen of Act Numbered One hundred and ninety, entitled “An Act providing A Code of Procedure in Civil Actions and Special Proceedings in the Philippine Islands,” prescribing additional requirement in the execution of wills. It took effect on 1 July 1916.

[16] The validity of the execution of a will is governed by the statutes in the force at the time of its execution (In re will of Riosa, 39 Phil. 23 [1918]). Article 795 of the New Civil Code provides: “The validity of a will as to its form depends upon the observance of the law in force at the time it is made.”

[17] Section 617 governs wills executed by a Spaniard or a resident of the Philippine Islands before Act No. 190 came into force on 1 September 1901.

[18] Rollo, p. 151.

[19] The New Civil Code took effect on 30 August 1950.

[20] TOLENTINO, CIVIL CODE OF THE PHILIPPINES, 67 Vol. III (1998).

[21] Ibid., p. 101.

[22] FISHER, THE CIVIL CODE OF SPAIN, 198 (1921).

[23] Valera v. Purugganan, 4 Phil. 719 (1905).

[24] See Fernandez, et al. v. Dimagiba, 128 Phil. 450 (1967).

[25] Lopez v. Liboro, 81 Phil 429 (1948).

[26] Ibid.

[27] TSN, 26 October 1989, p. 74.

[28] Exhibit “A,” Folder.

[29] Article 809 of the New Civil Code provides:

Art. 809. 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.

[30] 57 Phil. 437 (1932).

[31] 40 Phil. 476 (1919).

[32] 68 Phil. 745 (1939).

[33] Ibid.

[34] *Gil v. Murciano*, Resolution on the Motion for Reconsideration, dated 20 March 1953, 88 Phil. 260 (1951). See also *Caneda v. Court of Appeals*, G.R. No. 103554, 28 May 1993, 222 SCRA 781, where the Court explained the extent and limits of Article 809 of the New Civil Code.

[35] *Dichoso de Ticson v. De Gorostiza*, *supra*, see note 31.

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