

IN RE TESTATE ESTATE OF DOÑA GABINA RAQUEL. VICENTE J. FRANCISCO, PETITIONER AND APPELLEE, VS. AUREA MATIAS, OPPOSITOR AND APPELLANT.

G. R. No. 16349. January 31, 1964

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

Statement.—Aurea Matias has appealed from the resoration of the Cavite Court of First Instance fixing the professional fees of Atty. Vicente J. Francisco at 25% of the current market value of the estate left by the deceased Gabina Kaquel. The relevant facts are these:

Material Facts.—In May, 1952, she filed in this expediente, thru Atty. E. N. Agbunag, a petition for the probate of the will of said Gabina Raquel. The petition was in due time, opposed by Basilia Salud,—first cousin of Gabina—on the grounds that: (1) the will was not signed by the deceased; (2) it was not executed in accordance with law; (S) Gabina had been the victim of undue influence and fraud; and (4) the deceased had no mental capacity to make a testament.

On July 16, 1952, said Aurea Matias—named as executrix in the will—engaged the services of Atty. Vicente Francisco, who, with the assistance of Atty. Agbunag and of Attorneys Alberto J. Francisco and J. Gonzales Orense, personally handled the case before three different judges—successively.

The written contract for services signed on the date above-mentioned by both Atty. Francisco and Aurea Matias reads as follows:

RECEIPT

"RECIBI de la Srta. Aurea Matias la cantidad de cinco mil (P5,000.00) pesos acuenta cle los lionorarios convenidos de veinte mil (P20,000.00) pesos, bajo las siguientes ctmdiciones: si se gana el asunto la senonta Aurea Matias me pagara el saldo de quince mil (P15,000.00) pesos y que cada dia de vista en que yo eomparezca me pagara doscientos pesos. Mis servicios se limitan. a la legalizacion del testamento de la diyunta Dña. Gabina Raquel."

After more than thirty hearings and thirty-two scheduled hearings—which started in August 1952[1], and continued on until November 1955—Judge Primitivo L. Gonzales rendered—in February, 1956,—a decision denying the probate of the will. However, on appeal to this Court, Aurea Matias obtained a reversal of the judgment, the authenticity and due execution of the will having been upheld (June 1958). Her brief as appellant here—284 printed pages—was prepared and signed by Atty. Vicente Francisco, although in the name of the four lawyers.

Petition for fees.—After the decision of this Court had become final, said attorney filed on October 7, 1958, in the Cavite court, in this testate proceeding, motion to fix his attorney's fees on the basis of quantum meruit. He alleged, among other things, that the Supreme Court had approved the probate of the will of Gabina Raquel, that he had agreed to receive a contingent fee of P15,000.00 under his erroneous belief, due to misrepresentations of

Aurea Matias, that Gabina Raquel had left properties worth only P167,000.00; that he learned, after the decision of the Supreme Court that the said properties actually amounted to much more than that sum; and that, consequently, he was not bound by his agreement to receive a contingent fee of P15,000.00 only. Atty. Francisco prayed that his compensation be fixed at 30% of the market value of the estate.

Objections.—Resisting this motion, Aurea Matias averred that appellee was only one of the four attorneys engaged by her to secure the probate of the will; that she had a written contract for attorney's fees—as above described; that Francisco "had already received the amount of P5,000.00 on July 16, 1952, plus a total sum of P6,000.00 for all his appearances in court at P200.00 per day; that inasmuch as there was a written contract for attorney's fees, such contract should prevail; that the estate was worth around P246,329.25 only; that appellee had all the time to investigate—but did not—the value of the property under litigation, and to question the inadequacy of his fees under the contract; that the value of the estate did not warrant the payment of fees greater than that stipulated in the contract.

Consequently, she requested the court to approve the attorney's fees as determined in the said contract and to note the unpaid balance of P15,000.00 as a lien upon the estate.

Motion pendente—lite.—On February 10, 1959, Francisco filed another motion praying that, without prejudice to his aforesaid petition to fix his fees, Aurea Matias be ordered to make immediate payment of the sum of P15,000.00. Appellant interposed seasonable objection thereto.

Hearing.—During the hearing of these motions, the trial judge made the following observations:

"The Court has read very carefully the answer of Atty. Orense (for Aurea Matias) and it gets the impression that his theory is that the amount of P15,000 which still remains unpaid is even excessive and exorbitant. If that be the case, it appears that the question now before the Court is: Should it order the payment of the sum of P15,000 without further proof? Atty. Orense is disputing the reasonableness of that amount; naturally enough, the other party has the right to prove that the amount is not only inadequate but that he is entitled to more for the value of his services. In other words, the issue now is: What is the reasonable amount of attorney's fees of the petitioner for the services he has rendered?"

Thereafter, he denied appellee's motion for immediate payment of the unpaid portion (P15,000) until proof shall have been adduced of the reasonable value of his professional services on the basis of quantum meruit.

So, in deciding the main petition in view of the testimonial and documentary evidence, it brushed aside, as immaterial, the alleged misrepresentation in the making of the written contract,—since "reasonable amount" had become the real issue.

Resolution fixing fee.—In determining the amount of compensation, the Cavite court paid particular attention and made a detailed account of "the extent of the services rendered" by petitioning counsel; "the importance of the subject matter of the controversy;" his "professional standing."

And in line with its various considerations, the said court declared in its resolution of September 24, 1959, that "in the light of its own professional knowledge, considering the skill, labor and time devoted by the movant to the case, he (Francisco) is entitled to 25% of the current market value of the estate of the deceased"—which value it fixed at P1,236,993.46.

Disagreeing with such resolution, Aurea Matias appealed directly to this Court.

Appellants' thesis.—In her brief, Aurea Matias strongly urges the following propositions: (a) the attorney's fees should have been fixed according to the contract—not on the basis of quantum, meruit; (b) assuming that the fees could be fixed on quantum meruit, the basis should be the assessed value—not the current market value; (c)

assuming further that the current market value should be the basis, the appraisal made by the Bureau of Internal Revenue should have been adopted; (d) the attorney's fees are chargeable only against appellant,—not against the estate; (e) to award 25% of the gross estate to this attorney would be unreasonable, even unconscionable; (f) there were no special reasons to direct execution pending appeal.

All the above propositions—except the last[2]—will herein be duly considered.

Discussion.—On the strength of rules 26 and 27 of the Rules of Court, appellant disputes the validity of the hearing in the lower court of appellee's motion to fix, and to pay a portion of his counsel fees.

It appears that the will of Gabina Raquel, who died without forced heirs, bequeathed the greatest part of the estate to appellant, and the rest to Santos Matias, Rafael Matias (her brothers) and to Victorina Salud, Santiago Salud and Policarpio Salud.

Appellant argues here that as notice of the motion had been given neither to her brothers nor to the Saluds, the hearings and the resolution produced no valid and binding effect.

According to the record, at the hearing of October 25, 1958, appellant's counsel called the attention of the lower court to this lack of notice; and during the hearing on June 27, 1959, said counsel again objected on the same ground. Acting upon such objection, the court ruled that the other legatees should also be notified, and accordingly directed that notice be given. In the subsequent hearings which took place on July 13, 1959, and other days of that month, legatee Rafael Matias was present; and appellant's counsel no longer voiced any manifestations or objections.

In the resolution now on appeal before this Court, this defect urged by appellant is not discussed. Probably, the other legatees were notified, as ordered.

Anyway, as this particular issue affects appellant's proposition (d) [services not chargeable to estate] both may, for convenience, be jointly taken up.

It is appellee's contention—on these related points—that the attorney's fees for probating the will, constituted a proper charge against the estate[3], and that a motion to fix such fees should be served, on the executor or administrator of the estate; it being unnecessary to notify the legatees, for the reason that until the project of partition is approved and their portions adjudicated to the legatees, the estate, as well as the heirs and legatees, are legally represented by the executor or administrator.

Appellee then concludes that service on appellant as the executrix of the said will, sufficiently complied with the procedural rules on the matter—Aurea Matias having engaged the services of the appellee in her capacity as executrix of the will.

Matias denies having engaged Francisco as executrix. This denial can not prevail as against the following circumstances :

- Atty. Francisco said he contracted with her as the executrix. The will (shown to him) designated her as such; 2. She later asked to be noted in the estate proceedings, the amount of P15,000.00 (Francisco's fees) as a lien upon the estate (p. 103, R.A.) ; 3. In her motion ex-parte of July 20, 1959, she petitioned for authority to pay from the estate, the sum of P2,000.00 as part of the retainer fees of Atty. Francisco; 4. She included in her statement of account[4] as executrix, Francisco's attorney's fees in the amount of P11,000.00; and 5. The statement of assets and liabilities of the estate filed by her with the lower court on January 10, 1959, listed appellee's fees in the amount of P15,000.00 as an item of estate liability.

Appellant's inconsistent course of action thus meets the judge's eye. Whereas in invoking procedural rules, she

denies representative capacity as executrix, she has, as executrix, caused this claim to be recorded as a lien upon the estate. Whereas she denied liability of the estate for Francisco's fees, she has charged the estate for the attorney's fees paid by her to him.

On the other hand, if service of the motion upon her does not bind the other legatees—as she claims—because she does not represent them, the question arises, why does she speak for them by insisting on the point?

Finally, it appears that when the lack of notice was called to the attention of the court, service was ordered. Thereafter, hearings were resumed, without any further objection. So, it may be assumed at this level that service was accordingly made; specially because no motion to reconsider was filed in the court below—which was best fitted to verify compliance with its notification orders

Quantum meruit.—Proposition (b) addresses itself to the main question: what should be the basis of appellee's fees: the contract or quantum meruit?

Generally speaking, where the employment of an attorney is under an express valid contract^[5] fixing the compensation for the attorney, such contract is conclusive as to the amount of compensation.^[6]

Atty. Francisco assails the written contract, because appellant misrepresented the real value of Gabina's inheritance. Appellant, on the other hand, maintains that the contract should govern, and that if courts could interfere with the stipulated fee, the objective should be to reduce the amount.

Adverse to appellant's contention is the fact that during the hearing on June 27, 1959, after having mulled over the pleadings and listened to oral argument of both parties, the presiding judge defined in open court (a definition to which appellant's counsel acceded), the issue between the parties as, "the reasonable amount of Attorney Francisco's fees for the services he has rendered."

Her counsel's assent to the above definition has placed Aurea in a situation where she could not equitably insist upon the amount fixed in the written contract. Appellant's disavowal of the fee stipulated therein resulted in a repudiation of the contractual compensation.

At this juncture, it may be added: it is very probable, that Atty. Francisco had been actually led to believe that the estate was worth P167,000.00 only; because given his experience and prestige, he would not have undertaken the task of probating a will involving over one million pesos^[7] for P15,000.00 only—and contingent at that.^[8] Aurea was advised by Simeon del Rosario before going to engage the services of Francisco that the latter charge high fees.—p. 401, Record on Appeal.

In the circumstances, we are constrained to hold that the trial judge did not err in determining the attorney's fees on the basis of quantum meruit in disregard of the written contract.

Assessed value or market value.—With an array of decided cases, appellant argues that in special proceedings, testate or intestate, the value in the inventories submitted by the administrator or executor is considered as the correct value of the estate—binding upon all parties, and even the court, in the proper management and administration of such estate.

Then she points out that in *Reyes vs. de la Cruz*^[9], a contract providing for compensation of attorney's fees in the amount of 5% of whatever may be adjudicated to the client, was held to refer only to the assessed value of properties' adjudicated—and not to their market value.

Refuting this argument, appellee aptly denies analogy between the *Reyes* decision (*supra*) and the instant case, because the former merely called for interpretation of the written contract of services^[10]; whereas, the question here at issue is the value of appellee's professional services on the basis of quantum meruit.

This Court must, therefore, determine how much the services of appellee are really worth. And we cannot refuse to take a realistic approach in the performance of the work. Inquiry into the real, value of the estate (its true value) becomes imperative.

We note that in *Sison vs. Suntay*, *supra*, we fixed the counsel's fees for services rendered in opposing a will on the basis of the market value of the estate.

Market value.—Both parties have submitted for examination, two valuations of the estate. To show that its market value does not exceed P246,329.25, appellant presented the appraisal for tax purposes of the estate of the deceased by Internal Revenue Examiner Florencio M. Alfonso (Exhibit 3-A) ; in addition to certificates of the assessed value of such properties in several municipalities of Cavite.

Appellee per contra, substantiated his valuation of the estate at P1,236,993 with official statements of the provincial assessors, and deeds of sale of neighboring" realty or of lands similarly situated. And to rebut the certificate Exhibit 3-A, appellee introduced Exhibit "M", and affidavit of Jose Arafias, former Commissioner of Internal Revenue, showing the defect in the methods employed by the Internal Revenue examiners in appraising the inheritance left by deceased taxpayers.

After examining the evidence presented by both sides, we find no important reason to overrule the opinion of the trial judge that the current market value is that reflected in the estimate of the provincial assessors, whose judgment, by reason of their official work and wide experience in such particular line deserves great weight and reliability. Besides, holding court sessions in Cavite City and possessing background information, the trial judge occupied a better position to estimate landed property prices. Furthermore, we cannot discount the fact that the assessment of real properties for tax purposes (the principal element taken into account when the Revenue Examiner made his appraisal) is of little use in a judicial inquiry as to the market value of the land. Lastly, the appraisal made by the Revenue Examiners turned out to be unreliable according to Commissioner of the Internal Revenue Arañas (Exhibit M).

At any rate, we may take judicial notice of the general information that the market value of real property in the provinces is usually three or more times the assessed valuation thereof.[11]

Percentage of Fees.—Citing Section 22, Rule 127 of the Rules of Court which says that "an attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services", appellant denounces as unreasonable and unconscionable the 25% given to Atty. Francisco as counsel fees.

This Supreme Court has held the following as the guidelines to be observed in determining the compensation of an attorney: (a) the amount and character of the services rendered; (b) the labor, time and trouble involved; (c) the nature and importance of the litigation or business in which the services were rendered; (d) the responsibility imposed; (e) the amount of money or the value of the property affected by the controversy, or involved in the employment; (f) the skill and experience called for in the performance of the services; (g) the professional character and standing of the attorney; (h) the results secured; (i) and whether or not the fee is absolute or contingent [12], it being a recognized rule that an attorney may properly charge a much larger fee when it is to be contingent than when it is not." (Moran, Comments on the Rules of Court, Vol. III [1957 Ed.] pp. 644, 645, citing *Haussermann vs. Rahmeyer*, 12 Phil. 350; and others.)

The Court has likewise held that:

"The allowance of counsel fees in probate proceedings rests largely in the sound discretion of the court (probate) which should not be interfered with except for manifest abuse; but it may be modified by the reviewing court, when the fee allowed is inadequate or excessive." (*Quintillan vs. Degala*, 96 Phil., 77; 60 Off.

Gaz. 5305.)

By the way, in this Quintillan case, a thirty-percent (30%) or thirty-three percent (33%) contingent fee in opposing a will was held not to be excessive or unreasonable.

Importance of the subject matter.—Appellee's services were engaged to secure the probate of the will of Gabina Raquel. Upon the allowance of the will, rested the appellant's right to the bulk of an estate, worth more than one million pesos. Had the will been disallowed, appellant and the other legatees named in the will would have received nothing. The whole estate would have passed to the oppositor Basilia Salud, who is the first cousin of the deceased Gabina Raquel—to the exclusion of appellant and the other legatees named in the will. Aurea Matias, whose father is a first cousin of the deceased, stands five degrees removed from Gabina Raquel, whereas Basilia Salud is only four degrees removed from her; and under our rules on succession[13] in case of intestate or legal succession, the relative nearer in degree excludes the more remote ones and considering also, that in the collateral line, the right of representation holds only where nephews and nieces survive with brothers and sisters of the deceased.[14] Note incidentally, that the will favored Aurea because the latter lived with, and rendered services to, her aunt Gabina for more than 32 years.

Nature and extent of the services rendered.—The probate of the will, confronted Aurea's counsel with questions of fact and questions of law. Counsel had to prove that the said will was valid, duly executed in accordance with law. In view of the various grounds of the opposition to the probate of the will, Atty. Francisco had to make wide and extensive research in the field of handwriting, medicine and chemistry—not to mention the interviewing of prospective witnesses.

Indeed, the legal services rendered in the lower court were expectably quite exacting. The trial alone covered almost a period of four years. The preparation and presentation of evidence called for strenuous work. Thirty-one documents were presented as evidence for the proponent of the will. The transcript of the stenographic notes consisted of more than a thousand pages. Numberless motions were filed. After the closing of the evidence, a memorandum had to be filed to answer the oppositor's motion to reject the will. And then, despite the extensive study, research, and preparation of the evidence, and notwithstanding the skill and experience of Atty. Francisco, the Cavite court denied the probate of the will.

The adverse judgment was appealed to this Court. There was additional labor to be performed, because there was a greater responsibility to discharge. To secure a reversal of judgment was doubly hard. Counsel had to demonstrate the errors of fact and law committed by the lower court in its decision and to persuade the appellate court to reverse—overcoming the presumption in favor of a judicial pronouncement. This Court was actually convinced—the will was admitted to probate. Appellant's brief consisted of 285 printed pages. The reversal of the appealed decision proved the effectiveness of Francisco's appellate advocacy.

Attempting to minimize the importance to the estate of legal services in securing approval of the will, appellant points out that will or no will, the estate remains. The argument, however, plausible, overlooks the significance of the will. It is the desire, the command of the owner of the estate as to how his inheritance shall be distributed. In upholding the will and working for its approval, the attorney was simply serving such departed owner of the estate—and so in effect serving the estate.

As already explained; had the will been disapproved, this appellant and the other legatees would have gotten nothing out of the estate. It is fair to make them pay. "Yes, they are liable, but not the estate" appellant may reply. Such distinction does not seem equitable. Anyway, as stated, service was rendered to the estate.

Professional Standing of counsel.—The professional standing of appellee has been amply attested to by the late

Senator Claro M. Recto and the former Secretary of Justice, Jose P. Bengzon. Appellee has been shown to have practiced law since his admission to the bar in 1914, either alone or in association with other equally prominent lawyers; to have figured in several precedent-laying controversies decided by this Court; to have annotated or written commentaries on practically every branch of the law; to have published and edited for 23 years, the Lawyers Journal; to have founded a law school; to have actively participated in various political and civic organizations; to have been elected to the Philippine Senate, obtaining the highest number of votes among all the senatorial candidates in the election held in the year 1945, etc.

There is no doubt, he belongs in the front line of the legal profession. In trial work, there are few who can match his mental acumen and resourcefulness.

Conclusion.—Taking into account all the variables of the process, in the light of our several pronouncements on the matter of contingent lawyer's fees, we feel that modifying the appealed resolution and awarding 12.5% of the market value to the herein appellee would accomplish substantial justice. This figure represents a compromise, some members having "voted for a bigger amount[15], while others voted for less. The Suntay and the Harden cases were specially mentioned, since they belonged to the million-peso class. This award sets a higher ratio than the first, because the latter involved over three million pesos and because Atty. Francisco rendered much greater services to this estate. For one thing, he handled tedious trial work which lasted for about four years—and for another, the fee was contingent. The Harden ratio (20%) was not applied, because attorney and client had entered therein into a valid written contract.[16]

Several circumstances account for this drastic reduction, among them: (a) 25% of P1,236,993.46 equals P309,248.36; but Atty. Francisco expressed willingness to receive P100,000.00 only, in his letter of September 15, 1958 (Record on Appeal, p. 132) ; (b) although admittedly the leading legal counsel, he got the assistance of three other attorneys; (c) believing the estate amounted to P167,000.00, he agreed to receive P15,000.00 as contingent fee, i.e. 9% only; and (d) he has already received a total of P11,000.00,

WHEREFORE, modified as herein indicated, the appealed decision is affirmed. No costs in this instance.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

[1] Dates listed on pp. 157-159 Record on. Appeal.

[2] This will not be discussed because it seems academic now, a bond to prevent the execution having been approved. (See p. 173, brief of the appellant.)

[3] In the case of Teofilo Sison vs. Federico Suntay (102 Phil., 769) one of the heirs in his capacity as judicial administrator of the intestate estate employed Atty. Sison to oppose an alleged will. Result: his services were charged against the estate, in the first instance. And in the U. S. a majority of the courts allow executors attorney's fees in probating a will (See note 40 A.L.R. 2d pp. 1411-1414), on the theory that it is the duty of the executor to submit the will and have it probated.

[4] of November 20, 1959.

[5] Underline "valid".

[6] See 5 Am. Jur. 378.

[7] Expectably involving formidable opposition and extensive trial work and research.

[8] Only 1.5 per cent. The reports do not disclose any instance of a contingent fee as meaner as that.

[9] 105 Phil. 372.

[10] Besides, there were elements of judgment not found here; for instance, resulting obscurity of the document prepared by the lawyer, etc.

[11] And with the present lower purchasing power of the peso, a bigger difference logically arises.

[12] That there was some money paid does not detract from the contingent nature of the fees (cf McGraw vs. Lake Tp. 266 Mich. 38; 253 N.W. 207).

[13] Articles 962 and 975, New Civil Code of the Philippines.

[14] "Art. 972, New. Civil Code.

[15] Citing the Quitoriano case, wherein contingent attorney's fees of 1/3 of the estate in opposing a will was held reasonable; and Perez vs. Scottish Union, 76 Phil. 320, wherein a P6,000 contingent fee of 1/2 of the amount recovered (P12,000) was upheld.

[16] It must be stressed that this is appellate judging, and we are "revising" the action of a lower court that fixed the compensation; and in approaching the problem, we worked under the restraint of the doctrinal injunction to yield to its solution in so far as possible.

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