

**ESTATE OF MIGUEL MAMUYAC, DECEASED. FRANCISCO GAGO,
PETITIONER AND APPELLANT, VS. CORNELIO MAMUYAC,
AMBROSIO LARIOS, FELICIANA BAUZON, AND CATALINA
MAMUYAC, OPPONENTS AND APPEL...**

G.R. No. 26317. January 29, 1927

Ponente: JOHNSON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-26317/>

JOHNSON, J.:

The purpose of this action was to obtain the probation of a last will and testament of Miguel Mamuyac, who died on the 2d day of January, 1922, in the municipality of Agoo of the Province of La Union. It appears from the record that on or about the 27th day of July, 1918, the said Miguel Mamuyac executed a last will and testament (Exhibit A). In the month of January, 1922, the said Francisco Gago presented a petition in the Court of First Instance of the Province of La Union for the probation of that will. The probation of the same was opposed by Cornelio Mamuyac, Ambrosio Larios, Feliciano Bauzon, and Catalina Mamuyac (civil cause No. 1144, Province of La Union). After hearing all of the parties the petition for the probation of said will was denied by the Honorable C. M. Villareal on the 2d day of November, 1923, upon the ground that the deceased had on the 16th day of April, 1919, executed a new will and testament.

On the 21st day of February, 1925, the present action was commenced. Its purpose was to secure the probation of the said will of the 16th day of April, 1919 (Exhibit 1). To said petition Cornelio Mamuyac, Ambrosio Larios, Feliciano Bauzon, and Catalina Mamuyac presented their oppositions, alleging (a) that the said will is a copy of the second will and testament executed by the said Miguel Mamuyac; (b) that the same had been cancelled and revoked during the lifetime of Miguel Mamuyac and (c) that the said will was not the last will and testament of the deceased Miguel Mamuyac.

Upon the issue thus presented, the Honorable Anastasio R. Teodoro, judge, after hearing the respective parties, denied the probation of said will of April 16, 1919, upon the ground that the same had been cancelled and revoked in the year 1920. Judge Teodoro, after examining the evidence adduced, found that the following facts had been satisfactorily proved:

"That Exhibit A is a mere carbon copy of its original which remained in the possession of the deceased testator Miguel Mamuyac, who revoked it before his death as per testimony of witnesses Jose Fenoy, who typed the will of the testator on April 16, 1919, and Carlos Bejar, who saw on December 30, 1920, the original of Exhibit A (will of 1919) actually cancelled by the testator Miguel Mamuyac, who assured Carlos Bejar that inasmuch as he had sold him a house and the land where the house was built, he had to cancel it (the will of 1919), executing thereby a new testament. Narcisa Gago in a way corroborates the testimony of Jose Fenoy, admitting that the will executed by the deceased (Miguel Mamuyac) in 1919 was found in the possession of father Miguel Mamuyac. The opponents have successfully established the fact that father Miguel Mamuyac had executed in 1920 another will. The same Narcisa Gago, the sister of the deceased, who was living in the house with him, when

cross-examined by attorney for the opponents, testified that the original of Exhibit A could not be found. For the foregoing consideration and for the reason that the original of Exhibit A has been cancelled by the deceased father Miguel Mamuyac, the court disallows the probate of Exhibit A for the applicant." From that order the petitioner appealed.

The appellant contends that the lower court committed an error in not finding from the evidence that the will in question had been executed with all the formalities required by the law; that the same had been revoked and cancelled in 1920 before his death; that the said will was a mere carbon copy and that the oppositors were not estopped from alleging that fact.

With reference to the said cancellation, it may be stated that there is positive proof, not denied, which was accepted by the lower court, that the will in question had been cancelled in 1920. The law does not require any evidence of the revocation or cancellation of a will to be preserved. It therefore becomes difficult at times to prove the revocation or cancellation of wills. The fact that, such cancellation or revocation has taken place must either remain unproved or be inferred from evidence showing that after due search the original will cannot be found. Where a will which cannot be found is shown to have been in the possession of the testator, when last seen, the presumption is, in the absence of other competent evidence, that the same was cancelled or destroyed. The same presumption arises where it is shown that the testator had ready access to the will and it cannot be found after his death. It will not be presumed that such will has been destroyed by any other person without the knowledge or authority of the testator. The force of the presumption of cancellation or revocation by the testator, while varying greatly, being weak or strong according to the circumstances, is never conclusive, but may be overcome by proof that the will was not destroyed by the testator with intent to revoke it.

In view of the fact that the original will of 1919 could not be found after the death of the testator Miguel Mamuyac and in view of the positive proof that the same had been cancelled, we are forced to the conclusion that the conclusions of the lower court are in accordance with the weight of the evidence. In a proceeding to probate a will the burden of proof is upon the proponent clearly to establish not only its execution but its existence. Having proved its execution by the proponents, the burden is on the contestant to show that it has been revoked. In a great majority of instances in which wills are destroyed for the purpose of revoking them there is no witness to the act of cancellation or destruction and all evidence of its cancellation perishes with the testator. Copies of wills should be admitted by the courts with great caution. When it is proven, however, by proper testimony that a will was executed in duplicate and each copy was executed with all the formalities and requirements of the law, then the duplicate may be admitted in evidence when it is made to appear that the original has been lost and was not cancelled or destroyed by the testator. (*Borromeo vs. Casquijo*, G. R. No. 26063.)^[1]

After a careful examination of the entire record, we are fully persuaded that the will presented for probate had been cancelled by the testator in 1920. Therefore the judgment appealed from is hereby affirmed. And without any finding as to costs, it is so ordered.

Street, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

[1] Promulgated December 14, 1926, not reported.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.