

TEODORICO UY TIOCO, PETITIONER, VS. CARLOS IMPERIAL, JUDGE OF FIRST INSTANCE OF MANILA, AND ALEJANDRO M. PANIS, RESPONDENTS.*G.R. No. 29414. July 17, 1928*

Ponente: OSTRAND, J.

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This is a petition for a writ of prohibition to restrain the respondent judge from compelling the petitioner to pay the sum of P11,250 to the other respondent, Alejandro Panis, out of the funds of the estate of the deceased Basilisa Yangco, of which estate said petitioner is the administrator.

It appears from the record that the respondent Panis was counsel for the administration of said estate and that he on October 31, 1927, before the final settlement of accounts, presented a motion in the probate proceedings for the allowance of attorney's fees in the sum of P15,000. On December 5, 1927, the respondent judge, over the objections in writing presented by the administrator, granted the motion and allowed the fees claimed by Panis. The administrator, herein petitioner, did not appeal from the order of the court, but on February 8, 1928, Jacinto Yangco, in his capacity as guardian ad litem of the minors Pedro and Bruno Uy Tioco, the sons and then only heirs of the deceased, presented a motion for reconsideration under section 113 of the Code of Civil Procedure on the grounds that he was not notified of the motion for the allowance of fees and had no knowledge thereof or of the order granting the motion until a few days before the filing of the motion for reconsideration; that the fees allowed Panis were excessive and prejudicial to the interests of the estate; and that considering the nature of the work performed, the services rendered by him did not warrant the payment of the sum claimed. This motion was denied on February 15, 1928, the respondent judge holding that while the heirs of the deceased were not notified of the hearing of the motion for allowance of attorney's fees, such notice was duly served upon the administrator; that that was a sufficient compliance with the law; that the curador ad litem might have the right to intervene in the case but had no absolute right to be notified of the motion; that the provisions of section 113 of the Code of Civil Procedure were not applicable to the case; and that, in any event, the motion for reconsideration is entirely without merit.

On February 23, 1928, the guardian ad litem excepted to the order of February 15, 1928, and gave notice of his intention to appeal to the Supreme Court. On the 28th of the same month, Attorney Felix Wijangco, on behalf of Panis, filed a motion in the probate proceedings in which he set forth that the minor Bruno Uy Tioco is now deceased and that his share of the inheritance will go to his father, the herein petitioner; that the property involved in the case is community property of which one-half belongs to the petitioner; that consequently the minor Pedro Uy Tioco is only entitled to a one-fourth of the property pertaining to the estate, and that therefore his appeal from the order allowing the attorney's fees can only relate to one-fourth of the amount allowed, wherefore the movant asked that the administrator be ordered to make payment of three-fourths of the amount within five days from the presentation of the motion. To this motion the guardian ad litem objected, but under the date of March 6, 1928, the respondent judge ordered the administrator to make payment of three-fourths of the P15,000, within five days.

The administrator refused to make such payment, and on March 17th the court, after citing him to show cause, again ordered him to pay as provided for in the order of March 6, under penalty of removal from office. The present action was thereupon brought. Upon the filing of the petition the respondents were ordered to answer within ten days. Instead of filing an answer, as ordered, the respondents submitted a demurrer which we, considering that there can be no dispute as to the essential facts, shall regard as a sufficient answer to said petition.

In our opinion, the petition must be granted. The orders of March 6th and 17th for a partial payment of the fees claimed were issued after an appeal had been taken and perfected by the filing of an appeal bond approved by the court. The appeal was taken from the order of February 15 denying the motion for a reopening and reconsideration of the allowance for attorney's fees and involves the validity of that order and the finality of the order of December 5, 1927. Whether these orders were valid and final need not here be determined, but they are appealable, and we are not aware of any provision of law authorizing the lower court to enforce the immediate execution of such orders in probate proceedings after an appeal has been perfected. The interests of the appellee are supposed to be sufficiently protected by an adequate bond.

The arguments submitted indicate a misconception of the character of the liability for attorney's fees in probate proceedings. The services for which fees are claimed are supposed to have been rendered to the executor or administrator to assist him in the execution of his trust. The attorney can therefore not hold the estate directly liable for his fees; such fees are allowed to the executor or administrator and not to the attorney. The liability for the payment rests on the executor or administrator, but if the fees paid are beneficial to the estate and reasonable, he is entitled to reimbursement from the estate. Such payments should be included in his accounts and the reimbursement therefor settled upon the notice prescribed in section 682 of the Code of Civil Procedure. (See Church on Probate Law and Practice, pp. 1570-1588 and authorities there cited; Woeraer on the American Law of Administration, 2d ed., sections 515 and 516.)

For the reasons stated the respondent judge is hereby prohibited from enforcing the payment of the attorney's fees above-mentioned until the appeal taken by Jacinto Yangco, as guardian ad litem for the minor Pedro Uy Tioco, has been passed upon by this court or dismissed. No costs will be allowed. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Romualdez, and Villa-Real, JJ., concur.

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