

**ADRIANO F. CRUZ ET AL., PETITIONERS, VS. FERNANDO JUGO,
JUDGE OF FIRST INSTANCE OF MANILA, AND FRANCISCO YATCO,
RESPONDENTS.***G.R. No. 46050. August 12, 1938*

Ponente: VILLA-REAL, J.

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This is a petition for certiorari filed by Adriano F. Cruz, Daniel F. Cruz, Jacinta Lopez Cruz and Ignacia Lopez Cruz, wherein, for the reasons alleged in the petition, it is prayed that after proper proceedings, an order be issued addressed to the respondent judge, the Honorable Fernando Jugo, or to anyone who may be acting in his place, requiring him to forward and certify to this court the record of the special proceedings No. 49484, entitled "Guardianship of the incapacitated Maria Jacoba Cruz", particularly the order of July 20, 1937, copy of which is Exhibit A, and the papers and proceedings in connection therewith, to the end that they be reviewed and set aside by this court.

Francisco Yatco, one of the respondents, had been an attorney-in-fact of Maria Jacoba Cruz, having discharged the duties thereof from January 1, 1928, until February 28, 1936. By reason of these services, the accountant of Maria Jacoba Cruz credited in the latter's books of account the sum of P1,200 a year by way of salaries due to said attorney-in-fact, payable at any time. The accounts corresponding to the years 1928 to 1931 had been expressly approved by Maria Jacoba Cruz herself as shown by the books of account.

By an order of March 9, 1936, Maria Jacoba Cruz, an old lady eighty-seven years of age, was declared mentally and physically incapacitated to manage her properties valued at more than P200,000, by the Court of First Instance of Manila in special proceedings No. 49484, entitled "Guardianship of the incapacitated Maria Jacoba Cruz". On the same date, the herein respondent Francisco Yatco was appointed guardian of the person and properties of the aforesaid incapacitated, having qualified without loss of time upon the filing of a bond fixed by the court and the sworn statement provided by law. Complying with the duty imposed upon him by law, Francisco Yatco, in his capacity as guardian of the incapacitated Maria Jacoba Cruz, filed on May 26, 1936, the inventory of the properties and obligations of the guardianship, as shown by Exhibit 1. One of the items of said inventory, under the heading "Obligations", reads as follows:

"Francisco Yatco:

"Salaries as attorney-in-fact from January 1, 1928 to February 28, 1936, at P100 per month
.....P9,800.00"

Upon submission of the said inventory to the court, the latter approved it by an order of July 7, 1936 (Exh. 2.) On July 24, 1936, Francisco Yatco collected his credit of 79,800, for which check No. 328772 was issued.

On November 13, 1936, the incapacitated ward Maria Jacoba Cruz died thereby terminating the guardianship, whereupon, the guardian filed in the corresponding guardianship proceedings his final account wherein, among

other payments made, appears the following item:

1936

Voucher No.

Paid to—

Amount

July 24

68

Francisco C. Yatco

P9,800.00

On January 26, 1937, the petitioner Adriano F. Cruz and others objected to the approval of the aforesaid item of expenses on the ground that the respondent Francisco Yatco was not entitled to receive any salary from Maria Jacoba Cruz.

After hearing the aforesaid final account and the opposition thereto of the petitioners as to the payment of the sum of P9,800 for unpaid salaries of the aforesaid guardian, and after hearing the evidence adduced by both parties, the court rendered a decision on the questioned item, approving the same as follows:

"Considering that her properties amounted to about 7300,000, it is not unreasonable that she should pay P100 a month to the one who acted as general agent of her interests. This salary could have been collected by Yatco every month, or he could have left it to accumulate as savings in the hands of Jacoba Cruz, as he did. In any event, inasmuch as Jacoba Cruz, approved this item, it is not possible now to discuss its legality."

The petitioner Adriano F. Cruz appealed from this order of approval to the Court of Appeals, but the appeal was denied because it was not timely perfected.

The first question to decide in the instant petition is one of procedure, namely, whether, after the Court of Appeals denied the appeal interposed by the herein petitioners from the order of the Honorable respondent Judge, whereby it approved the account of the guardian as to the item of P9,800, because the record on appeal was filed one day after the period fixed therefor, as it was extended by the lower court, and because the appeal bond was filed three days after the period fixed by the said court, a petition for certiorari lies to annul the order of the court of origin dated July 20, 1937, approving the final account of the guardian Francisco Yatco, including the item of P9,800, consisting in unpaid salaries of the respondent Francisco Yatco in his capacity, first, as attorney-in-fact and, thereafter, as guardian of the incapacitated Maria Jacoba Cruz.

The denial by the Court of Appeals of the appeal taken by the herein petitioners had the effect of rendering the order of the Court of First Instance final and executory. The present petition is not addressed to the Court of Appeals to annul its order denying the appeal or to compel it to admit and give due course to said appeal. When an adequate and speedy remedy by appeal exists and the petitioner avails himself thereof but fails in his effort through abandonment or negligence, he is not entitled to make use of the extraordinary remedy of certiorari (11 Corpus Juris, sec. 59, p. 116), whether his failure is due to his own abandonment or negligence, or to that of his attorney, which, for the purposes of the case, is the same; inasmuch as the attorney is the agent of the client and

the latter answers for the acts executed by the former within the bounds of his authority (11 Corpus Juris, sec. 64, p. 119; Government of the United States vs. Judge of First Instance of Pampanga and Manila Railroad Co., 49 Phil., 495).

The petitioners alleged that the order issued by the respondent judge dated July 20, 1937 in the guardianship proceedings, approving the item of P9,800, appearing in the final account of the guardian Francisco Yatco, is void because the respondent judge was without jurisdiction to approve said item inasmuch as, being a claim made by the guardian after the death of the ward, it should have been filed with the committee on claims and appraisal appointed in special proceedings No. 50613, entitled "Testamentary Proceedings of the deceased Maria Jacoba Cruz."

In the first place, the salaries which Francisco Yatco should receive as guardian of the incapacitated Maria Jacoba Cruz referred to the accounts of the guardianship, which have to be filed with and approved by the court taking cognizance of the guardianship proceedings upon the termination thereof, before the latter could be considered terminated and the case closed. The P9,800 representing unpaid salaries of Francisco Yatco from January 1, 1923, until February 26, 1936, at the rate of P100 a month, which were approved by his principal during her lifetime, had already been collected with the court's approval. The payment made on July 24, 1936 chargeable against the properties of the guardianship was approved by the court which took cognizance thereof by its order of July 7, 1936. Said claims were, therefore, no longer pending credits to be collected upon the death of Maria Jacoba Cruz; consequently they are not those which the law requires to be filed with the committee on claims and appraisal for approval (sec. 686, Code of Civil Procedure). Even if it had been an account pending payment at the time of the ward's death, its approval or disapproval would have to be made in the guardianship proceedings, because it had reference thereto and the guardian had to file his final account therein for the liquidation of the properties of the guardianship and the closure of the corresponding proceedings.

In view of the foregoing considerations, we are of the opinion and so hold that upon the death of an incapacitated ward the final account of the guardianship should be filed by the guardian in the corresponding proceedings for the approval of the court taking cognizance thereof and the closure of the said proceedings.

Wherefore, the petition for certiorari is denied and the same is dismissed, with the costs to the petitioners. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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