

**IN RE TESTATE ESTATE OF THE DECEASED HILARION MARTIR.
HERMOGENES N. MARTIR APPLICANT AND APPELLEE VS. ANGELA
MARTIR, OPPOSITOR AND APPELLANT.***G.R. No. 46995. June 21, 1940*

Ponente: LAUREL, J.

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This is an appeal from the decision of the Court of First Instance of Occidental Negros in special proceeding No. 7205, rendered on July 9, 1938, allowing the probate of the last will and testament (Exhibit AA) of Hilarion Martir and confirming the appointment of Hermogenes Martir as the executor.

The following pertinent facts are disclosed by the record: On December 22, 1936, Hermogenes Martir filed a petition with the Court of First Instance of Occidental Negros for the probate of the will of his deceased father, Hilarion Martir, the document being then identified as Exhibit AA. The said document appears to have been-prepared by attorney and notary public, Esteban H. Korral, in the Visayan dialect, with one original and two carbon copies. On August 14, 1935, the will was signed by said testator and the three attesting witnesses: Valeriano Gatuslao, Dionisio Gonzaga, and Olimpio de la Rama. It was decided that one of the witnesses read the will to the testator, and for this purpose Dionisio Gonzaga was selected. This was done. After the reading of the document the testator wrote on the space immediately beneath the last paragraph of the instrument on page 3, the following: "Murcia, Occidental Negros—Agosto 14, 1935." This addition in the handwriting of the testator appears both in the original Exhibit A A and in the carbon copy Exhibit AA-1. The testator then proceeded to sign the original on the left margin of the four pages and at the foot of its body over his typewritten name and surname on page 3 thereof in the presence of the above-named attesting witnesses. Then the witnesses, one after another and in the presence of the testator and of each other, signed each and every one of the four pages on the left margin, Olimpio de la Rama also signing at the foot of the attestation clause on page 3, and Valeriano Gatuslao and Dionisio Gonzaga likewise affixed their signatures at the foot of the same clause, but, for lack of conveniently sufficient space on page 3, on the upper part of page 4. Below the signatures of the witnesses Gatuslao and Gonzaga on the upper part of page 4 there appears a "Nota" over the signature of the testator containing certain instructions to his children. Under this note appears the declaration signed by the oppositor Salvacion Angela Martir expressing conformity to the conditions set forth above.

On January 26, 1937, an opposition was entered to the probate of this will by Salvacion Angela, daughter of the testator. The opposition was amended on February 12, 1937, alleging as principal grounds that the will was not executed and signed by the witnesses in accordance with law; that the signatures of the testator were obtained through deceit and fraud and that undue influence was used by the proponent Hermogenes Martir over the testator. After hearing, the trial court allowed the will to probate and, as stated, confirmed the appointment of Hermogenes Martir as executor.

On appeal the oppositor-appellant makes an assignment of seven errors which may be condensed into the

following: (a) that the will was void because the first sheet is not numbered as required by law; (6) that Arabic numerals, instead of letters, were used in the pagination of the other sheets of the will, (c) that fraud and undue influence were used on the testator, and (d) that the attestation clause was insufficient in law.

The first sheet of the will bears no number and the oppositor claims that this circumstance is fatal to its validity. The authenticity of this unnumbered page, however, is not questioned, nor the genuineness of the signatures of the testator and of the witnesses on this sheet. There is no suggestion either that the deceased had executed another will either before or after the execution of the controverted will. The principal object of the requirement with reference to the numeration of the pages of the will is to forestall any attempt to suppress or substitute any of the pages thereof. In the absence of collusion or fraud and there being no question regarding the authenticity of the first page and the genuineness of the signatures appearing thereon, we hold that the mere fact that the first sheet is unnumbered is not sufficient to justify the invalidation of the will. (*Abangan vs. Abangan*, 40 Phil., 476 *Unson vs. Abella*, 43 Phil., 504).

With reference to the use of Arabic numerals instead of letters on the pages of the will, this point is no longer controversial. Arabic numerals are sufficient to indicate the correlation of the pages and to apprise abstraction of any of them. (*Unson vs. Abella*, 43 Phil., 504; *Aldaba vs. Roque*, 43 Phil., 378).

On the point of fraud, deceit and undue influence, the lower court found to the contrary. Upon the other hand, it appears that the oppositor waived her right to present evidence on this point. It should also be observed that the testator lived for over a year after the execution of the will and the fact that he did not change or revoke the will is very significant. Letters Exhibits "EE" and "LL" written by the oppositor and her husband to the deceased furnish an explanation for the apparent discriminatory attitude of the testator.

The opposition to the attestation clause is based on two grounds: (1) the statement of the attestation clause that the will consists of four pages when it is written on sheet 3; and (2) the said clause does not recite that the testator signed each and every page of the will in the presence of the witnesses. An examination, however, of Exhibit AA shows that the will really consists of four pages, the first page bearing no number and the other three pages correlatively numbered in Arabic numerals. The attestation clause reads as follows:

"This will is composed of four pages and had been made and published by Hilarion Martir who was the testator therein named, and that said will was signed at the foot and on the left margin of each and every page thereof in the presence of the said witnesses."

We are of the opinion that when the witnesses certified in the attestation clause that the same was signed in their presence, they could not possibly refer to another person than the testator himself.

In conclusion, we find that the circumstances point to the regular execution of the contested will, and as there is no evidence of bad faith or fraud, the will should be admitted to probate although it may suffer from minor imperfections of language or from other non-essential details (*Teofila Adeva Vda. de Leynez vs. Ignacio Leynez*, G. K. No. 46097, promulgated October 18, 1939).

The judgment appealed from is affirmed, with costs against the oppositor-appellant.

So ordered.

Avanceña, C.J., Imperial, Diaz, Concepcion, and Moran, JJ., concur.

Judgment affirmed.

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