

**LINDA MOHAMED BARRUQCO, REPRESENTED BY HER
GRANDMOTHER AND GUARDIAN AD LITEM, CIRIACA SULAYAO,
PETITIONER, VS. QUNUCO ABETO, AS JUDGE OF FIRST INSTANCE OF
MANILA, BRANCH VI, AND...**

G.R. No. 47755. December 06, 1940

Ponente: LAUREL, J.

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LAUREL, J.:

This is an original action for prohibition whereby the petitioner, Linda Mohamed Barrueco, represented by her guardian ad litem Ciriaca Sulayao, seeks to obtain an order from this court commanding the respondent judge of the Court of First Instance of Manila, Honorable Quirico Abeto, (1) to desist from taking any further action in civil case No. 55129, entitled "In the matter of the intestate estate of the deceased Julio Veloso Barrueco/" in so far as it relates only to the petition filed therein by the respondent Juliana Veloso for her compulsory acknowledgment as a natural child of the deceased Julio Veloso Barrueco, and (2) to definitely dismiss said petition.

The respondent, Honorable Quirico Abeto, is the presiding Judge of Branch VI of the Court of First Instance of Manila before whom the aforesaid civil case No. 55129 is pending. The herein petitioner, Linda Mohamed Barrueco, claims that she is the acknowledged natural daughter and exclusive heir of the deceased Julio Veloso Barrueco and, as such, entitled to the entire estate of the latter which is the subject matter of the intestate proceedings, civil case No. 55129. The respondent Juliana Veloso, represented by her guardian ad litem Maria Blanco, filed in said intestate proceedings a petition, dated January 11, 1940, which was substituted by an amended petition, dated April 3, 1940, praying for her compulsory acknowledgement as a natural child of the deceased Julio Veloso Barrueco, which petition was in due time answered and opposed by the herein petitioner, Linda Mohamed Barrueco, and by the Consul-General of Spain in the Philippines in his capacity as administrator of the intestate estate of Julio Veloso Barrueco. The respondent Judge, by order of April 16, 1940, set the hearing of said petition for compulsory acknowledgement for April 24, 1940. On the latter date, the parties appeared before the respondent Judge who proceeded to receive the evidence for Juliana Veloso, but for lack of time the respondent Judge ordered the continuance of the hearing for May 4, 1940. As the hearing of the petition held on the latter date was not terminated, the respondent Judge again had to postpone the case until June 3, 1940 and subsequently, for similar reasons, until June 11, 1940, June 21, 1940, and July 18, 1940. On July 16, 1940 the attorney for the respondent Juliana Veloso filed a motion praying that the hearing set for July 18, 1940 be postponed on the ground that said attorney would appear on said date before the Court of First Instance of Rizal, to which motion the petitioner, Linda Mohamed Barrueco, objected. The petitioner alleges that, acting upon this last motion for postponement, the respondent Judge did not proceed with the trial previously set for July 18, 1940 and notified the parties in writing that said trial would be continued on August 19, 1940. On the other hand, the respondents allege that when the case was called for hearing on July 18, 1940, the attention of the respondent Judge was called by the clerk to the motion for postponement, dated July 16th, and, acting thereon, he verbally set

the continuation of the trial for August 1, 1940; that on this latter date the respondent Judge could not proceed with hearing because there were two long criminal cases to be tried, whereupon the respondent Judge again postponed the hearing of the case in question until August 19, 1940. It appears that Attorney Pedro R. Arteche, counsel for the petitioner, was not notified of the hearing set by the respondent Judge for August 1, 1940. On August 19, 1940, Attorney Arteche, instead of going into trial, filed a motion for dismissal of the petition of Juliana Veloso on the ground that, for having adjourned the trial of said petition for a longer period than one month for one adjournment without the written authorization of the Chief Justice of this Court, the respondent Judge had lost jurisdiction over the petition in question. Without passing upon this motion for dismissal, the respondent Judge ordered that the hearing of the petition be held on September 10, 1940, on which date Attorney Arteche called the attention of the respondent Judge to the motion for dismissal. After hearing the arguments of the parties, the respondent Judge denied said motion, at the same time granting Attorney Arteche, at the latter's request, five days within which to file in the Court the proper action against the respondent Judge, with the understanding that upon failure of said attorney to do so, the trial would be continued on September 17, 1940. On September 16, 1940, the present petition for prohibition was instituted, the petitioner having been allowed by resolution of this Court of September 17, 1940 to litigate as pauper.

It is the contention of the herein petitioner that "from April 24, 1940, when the reception of the evidence for said Juliana Veloso actually took place, until the 19th day of August, 1940, more than three (3) months have passed by; and from July 18, 1940, to August 19, 1940, more than one (1) month—thirty-two (32) days, to be exact—had elapsed, for that single adjournment, and the herein respondent Judge was not expressly authorized to make such adjournments by the Chief Justice of this Honorable Supreme Court, all in violation of Rule 31, section 4, Rules of Court, the provisions of which are mandatory, and not "merely directory," and that, consequently, "the herein respondent, Honorable Quirico Abeto, as Judge of Branch VI of the Court of First Instance of Manila, has absolutely lost his right and automatically forfeited his jurisdiction to further proceed" with the petition of said Juliana Veloso,

It is not disputed that the period which elapsed from July 18 to August 19, 1940, is more than one month, and the contention of the respondents merely rests on the propositions (1) that there was not in this case a single postponement for more than one month because between July 18 and August 19, 1940, the trial was set for August 1, 1940, and (2) that as the petition of the respondent Juliana Veloso was filed before July 1, 1940, the respondent Judge has the discretion conceded to him by Rule 133 of the Rules of Court to apply the former procedure.

With respect to the petitioner's contention that the respondent Judge had adjourned the trial of the petition of the respondent Juliana Veloso for more than three months in all, it is to be noted that said petition was first set for trial for April 24, 1940, and that the subsequent postponements for May 4, June 3, June 11 and June 21, 1940, were allowed by the respondent Judge prior to July 1, 1940 when the Rules of Court began to take effect. It results that, in accordance with Rule 133 of the Rules of Court providing that said rules "shall govern all cases brought after they take effect and also all further proceedings in cases then pending," the postponements allowed by the respondent Judge before July 1, 1940, should not be counted; otherwise the Rules of Court would be given retroactive effect in violation of said Rule 133. However, under said Rule 133, the Rules of Court shall govern further proceedings in cases pending at the time they became effective. In other words, said rules must be applied to the postponements allowed after July 1, 1940, namely, the postponements for July 18, 1940, August 19, 1940 and September 17, 1940, which, however, do not exceed three months.

With respect to the petitioner's claim that there was a single postponement of more than one month, we observed that while it is not disputed that more than one month transpired from July 18, 1940 to August 19, 1940, the

respondent Judge alleges in his answer that there was another postponement set for August 1, 1940. The record shows, however, that the petitioner was not notified of the latter postponement. We find it unnecessary to decide the controverted point, in view of the fact that it is our opinion that section 4 of Rule 31 of the Rules of Court which provides that a court "shall have no power to adjourn a trial for a longer period than one month for each adjournment, nor more than three months in all, except when authorized in writing by the Chief Justice," is merely directory! a violation of which will not nullify a judicial proceeding But even so, it is not amiss to emphasize here that a wilful disregard or reckless violation of said provision on the part of judges would constitute a breach or neglect of duty which may subject them to corresponding administrative action.

The petition for prohibition will, therefore, be denied, without costs. So ordered.

Avanceña, C.J., Imperial, Diaz, and Horritteno, JJ., concur.

Writ denied.

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