

**TESTATE ESTATE OF THE LATE DOMINADOR TUMANG,
MAGDALENA A. TUMANG, ADMINISTRATRIX-APPELLEE, VS. GUIA T.
LAGUIO AND HER MINOR CHILDREN, MOVANTS-APPELLANTS.**

G.R. No. 50277, February 14, 1980

Ponente: ANTONIO, J.

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ANTONIO, J.:

This case was forwarded to this Court by the Court of Appeals on the ground that it involves purely legal issues. The factual background, as found by the Court of Appeals, is as follows:

In Special Proceeding No. 1953 involving the estate of the late Dominador Tumang and pending before the Court of First Instance of Pampanga, the widow of the deceased, namely Magdalena A. Tumang, administratrix and executrix of the will, filed a petition to declare the testate proceedings definitely terminated and closed with respect to her-self and two of her children - Melba Tumang Ticzon and Nestor A. Tumang. The petition was premised on the fact that the aforesaid heirs had already acknowledged receipt of the properties adjudicated to them, and in order for such properties to be transferred in their names, there was need for an order of the court declaring the proceedings closed with respect to the aforesaid heirs. The petition was opposed by appellee's daughter, Guia T. Laguio and her children on the ground that appellee, as administratrix and executrix, had not yet delivered all properties adjudicated to them. Moreover, the oppositors contended that there could be no partial termination of the proceedings. Thereafter, the administratrix withdrew the aforementioned petition.

During the hearing of the motion to withdraw petition, Magdalena Tumang, as required by the court, filed a pleading captioned "Compliance", alleging that as shown by the attached receipts issued by the BIR, the estate and inheritance taxes had been fully paid; that as certified by the Deputy Clerk of Court, no claim has been presented that has not been satisfied; that all the heirs since the conditional approval of the original and amendatory projects of partition have actually received all their respective hereditary shares and have been in material possession thereof, receiving all rents, fruits, benefits and proceeds thereof; that the administratrix sent to heiress Guia T. Laguio and her children the corresponding Receipt of Inheritance but the said heirs refused to sign the same on the ground that the real and personal properties adjudicated to them had not yet been transferred in their names; that heiress Guia T. Laguio failed to specify what other properties adjudicated to her and her children she had not yet received. It was prayed that all the Registers of Deeds of the provinces and cities where the properties involved are located be ordered to give due course to the original and amendatory projects of partition filed and approved, and that the closure and termination of the proceedings be decreed after the transfer of the titles of ownership in the names of the respective adjudicatees, as desired by the oppositors.

Acting on the foregoing the court a quo issued the Order of December 14, 1970 which reads as follows:

"This being the case, the Court hereby directs and orders the administratrix to furnish a copy of the aforesaid original and amendatory projects of partition to all the Registers of Deeds of the provinces and cities where the real estates of the late Dominador Tumang are located, as well as to all the Presidents and Managers of the

dif-ferent corporations where the said Dominador Tumang appears to be a shareholder as shown in the several certificates of shares of stock disposed of in said original and amendatory projects of partition, for the transfer in favor of the heirs adjudicatees of the titles of ownership of the real properties and shares of stock respectively adjudicated to them.

"Once the said titles of ownership are issued in favor of the heirs, the administratrix shall report it to the Court, for the issuance of the corresponding order of closure." [1]

On January 25, 1971, Guia T. Laguio and her minor children filed an Urgent Motion to Require the Administratrix to Render an Accounting of the cash and stock dividends declared on the shares of stock, which motion was opposed by the administratrix on the grounds that the case is already definitely closed; that the administratrix has already filed her final accounts, opposed by Guia T. Laguio and her children and resulting in a compromise agreement which was approved by the court and which is already res adjudicata; that Guia T. Laguio, thru counsel, had admitted in open court that the executrix has already delivered all the properties and dividends of the shares of stock adjudicated to her and her minor children since the approval of the original and amendatory projects of partition; and that with such admission, the court no longer has jurisdiction to entertain the motion under consideration.

Resolving the foregoing, the court a quo issued the first questioned Order on February 5, 1971, sta-ting in part, the following:

"Considering the opposition well founded, the court hereby considers the motion to require administratrix to render an accounting untenable, as the final accounting of the administratrix was already approved and therefore denies the motion of oppositor and counter-petitioner dated Jan. 25, 1971." [2]

A motion for reconsideration of the foregoing Order was filed by Guia T. Laguio and her minor children. On August 16, 1971, the court a quo issued the second questioned Order denying the mo-tion for reconsideration in the following manner:

"After a careful consideration of the grounds relied upon by the movant counter-petitioner, this Court resolves to deny the motion for reconsideration for the reason that in view of said counter-petitioner's receipt of the cash dividends in question without first requiring the administra-trix the accounting now being sought to be ren-dered for purposes of determining the correctness of the cash dividends constitutes already a waiver on her part to question such correctness of the aforesaid cash dividends. The counter-petitioner is being assisted by counsel in the person of her own husband, and who being well-versed in such legal process, could have rejected receipt of the said cash dividends on the shares of stock if the correctness of the same was at that time being doubted. To say the least, therefore, the grounds for the motion for reconsideration are, in the honest opinion of this Court, unmeritorious, and all the motion, in effect, is hereby denied." [3]

The sole issue is whether or not the court should have required the executrix to render an ac-counting of the cash and stock dividends received after the approval of her final accounts. A corol-lary issue is whether or not petitioners have waived their right to demand such accounting.

Section 8 of Rule 85 provides that the "execu-tor or administrator shall render an account of his administration within one (1) year from the time of receiving letters testamentary or of administration * * *, and he shall render such further accounts as the court may require until the estate is wholly settled."

In the instant case, further accounts by the executrix appear to be in order, in view of the fact that the dividends sought to be accounted for are not included in the final accounts rendered by the executrix. It appears that the interests of all the parties will be better served and the conflict between petitioners and respondent will be resolved if such additional accounting is made. Further, "it has been held that an executor or administrator who

receives assets of the estate after he has filed an account should file a supplementary account there-of, and may be compelled to do so, but that it is only with respect to matters occurring after the settlement of final account that representatives will be compelled to file supplementary account." [4] It is only in a case where the petition to compel an executor to account after he has accounted and has been discharged fails to allege that any further sums came into the hands of the executor, and the executor specifically denies the receipt of any further sums that the accounting should be denied. [5]

There is no question that in the instant case, the fact that the executrix received funds of the estate after the approval of her final accounts and before the issuance of an order finally closing the proceedings is admitted. She must, therefore, account for the same, in consonance with her duty to account for all the assets of the decedent's estate which have come into her possession by virtue of her office. [6] An executor should account for all his receipts and disbursements since his last accounting. [7]

We disagree with the lower court's finding that petitioners, by receiving the dividends without requiring an accounting, had waived their right to do so. The duty of an executor or administrator to render an account is not a mere incident of an administration proceeding which can be waived or disregarded. It is a duty that has to be performed and duly acted upon by the court before the administration is finally ordered closed and terminated, [8] to the end that no part of the decedent's estate be left unaccounted for. The fact that the final accounts had been approved does not divest the court of jurisdiction to require supplemental accounting for, aside from the initial accounting, the Rules provide that "he shall render such further accounts as the court may require until the estate is wholly settled." [9]

WHEREFORE, in view of all the foregoing, the Orders of the lower court dated February 5, 1971 and August 16, 1971 are set aside, and respondent executrix is hereby ordered to render a supplemental accounting of all cash and stock dividends as well as other properties of the estate which came into her possession after the approval of her final accounts.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., and De Castro, JJ., concur.

Abad Santos, J., took no part.

De Castro, J., was designated to sit in the Second Division.

[1] Annex "K", Record on Appeal, pp. 44-45.

[2] Annex "P", Ibid., pp. 59-60.

[3] Annex "U", Ibid., pp. 76-77.

[4] In Re Valionis' Estate, 26 NYS 2d 540; In Re Irvine, 58 A. 618; 209 Pa. 325.

[5] Matter of Jenkins, 117 NYS 74; 34 CJS 942.

[6] Ellis v. Geer, 137 SE 290.

[7] In Re McCabe's Estate, 194 A 556.

[8] Joson v. Joson, G.R. No. L-9686, May 30, 1961, 112 Phil. 1.

[9] Section 8, Rule 85, Revised Rules of Court.

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