

**ANA LIM KALAW, PETITIONER, VS. THE HONORABLE
INTERMEDIATE APPELLATE COURT, THE HONORABLE RICARDO B.
DIAZ AND ROSA LIM KALAW, RESPONDENTS.**

G.R. No. 74618. September 02, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is a petition for certiorari, prohibition and mandamus with preliminary injunction to annul and set aside the decision dated December 27, 1985 of the then Intermediate Appellate Court[1] affirming the decision of the Regional Trial Court of Manila, Branch 27 in Special Proceeding No. 84520 removing petitioner Ana Lim Kalaw as administratrix and appointing private respondent Rosa Lim Kalaw in her stead as the administratrix of the estate of their late father Carlos Lim Kalaw.

It appears on record that Carlos Lim Kalaw died intestate on July 8, 1970.

On June 8, 1972, Victoria Lim Kalaw filed an amended petition for the issuance of Letters of Administration with the then Court of First Instance of Manila in Special Proceeding No. 84520 naming Ana Lim Kalaw (63 years old), Victoria Lim Kalaw (57 years old), Pura Lim Kalaw (53 years old) and Rosa Lim Kalaw (43 years old) as the surviving heirs of the late Carlos Lim Kalaw.

On April 25, 1974, the trial court issued an order appointing petitioner Ana Lim Kalaw as special administratrix. Consequently, petitioner filed a preliminary inventory of all the properties which came into her possession as special administratrix of the estate of her late father on June 3, 1974.

On October 6, 1977, the trial court issued another order appointing petitioner as the judicial administratrix of said estate and a Letter of Administration was issued to the petitioner after the latter took her oath of office on November 11, 1977.

Thereafter, Jose Lim filed a motion to require petitioner to render an accounting of her administration of said estate which was granted by respondent Judge Ricardo Diaz in an order dated December 8, 1982.

On July 1, 1983, respondent judge issued another order requiring petitioner to render an accounting of her administration with the express instruction that said order be personally served upon the petitioner since the order dated December 8, 1982 was returned to the Court unserved. However, said order was also not received by the petitioner.

On January 31, 1984, private respondent Rosa Lim Kalaw together with her sisters Victoria and Pura Lim Kalaw filed a motion to remove petitioner as administratrix of their father's estate and to appoint instead private respondent on the ground of negligence on the part of petitioner in her duties for failing to render an accounting of her administration since her appointment as administratrix more than six years ago in violation of Section 8 of Rule 85 of the Revised Rules of Court. The motion was set for hearing on February 10, 1984.

On February 21, 1984, respondent judge issued another order requiring petitioner to render an accounting within 30 days from receipt thereof which she did on March 22, 1984. She likewise filed on the same date, her Opposition to the motion praying for her removal as administratrix alleging that the delay in rendering said accounting was due to the fact that Judge Carlos Sundiam, who was the judge where the intestate proceeding was assigned, had then been promoted to the Court of Appeals causing said sala to be vacated for a considerable length of time, while newly-appointed Judge Joel Tiongco died of cardiac arrest soon after his appointment to said vacancy, so much so that she did not know to whom to render an accounting report.

In their Rejoinder and Manifestation, private respondent and her co-movant alleged that the ground relied upon for petitioner's removal was not the delay but her failure or neglect to render an accounting of all the properties which came into her possession as required under Section 1 of Rule 83 of the Revised Rules of Court.

On January 4, 1985, the trial court rendered a decision, the dispositive portion of which reads:

"From the foregoing, the Court finds that Administratrix Ana Lim Kalaw violated the provisions of Section 8, Rule 85 of the Rules of Court for not rendering an account of her administration within one (1) year from date of receipt of the letters of administration and this constitutes negligence on her part to perform her duty as Administratrix and under Section 2, Rule 82 of the Rules of Court, neglect on the part of the administratrix to render her account is a ground for her removal as an administratrix. Finding the instant motion to remove Administratrix to be meritorious and well-taken, the same is, as it is hereby, GRANTED.

WHEREFORE, Administratrix Ana Lim Kalaw is hereby REMOVED as such Administratrix of the Estate of the late Carlos Lim Kalaw."[2]

On September 2, 1985, petitioner, without waiting for the resolution of the motion for reconsideration with the trial court, filed a Petition for Certiorari with Preliminary Injunction or Restraining Order with the then Intermediate Appellate Court to annul and set aside the following Orders issued by respondent Judge Diaz, as follows:

"a. Order dated January 4, 1985 removing the Petitioner as Administratrix of the estate of the late Carlos Lim Kalaw;

b. Order dated April 30, 1985 denying Petitioner's Motion for Reconsideration of the Order of January 4, 1985;

c. Order dated May 13, 1985 appointing private Respondent Rosa Lim Kalaw, as Administratrix of said Estate;

d. Order dated June 19, 1985 directing the tenants and/or lessees of the Carlos Lim Kalaw building to deposit the rentals in court and authorizing private respondent to break open the premises in said building."[3]

On December 27, 1985, the appellate court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, the petition for certiorari is DENIED. However, respondent Judge is directed to require private respondent Rosa Lim Kalaw to post the appropriate administrator's bond within ten (10) days from notice hereof. With costs against petitioner."[4]

On January 21, 1986, petitioner filed a motion for reconsideration of said decision which was however denied for lack of merit on May 12, 1986.

Hence, this petition alleging grave abuse of discretion on the part of the appellate court in sustaining respondent Judge Diaz' order removing her as judicial administratrix considering that she had already submitted an accounting report covering the period from December, 1977 to December, 1983 in compliance with respondent's Judge order.

Section 8 of Rule 85 of the Revised Rules of Court provides that:

“SEC. 8. When executor or administrator to render account.- Every executor or administrator shall render an account of his administration within one (1) year from the time of receiving letters testamentary or of administration, unless the court otherwise directs because of extensions of time for presenting claims against, or paying the debts of, the estate, or for disposing of the estate; and he shall render such further accounts as the court may require until the estate is wholly settled.”

The rendering of an accounting by an administrator of his administration within one year from his appointment is mandatory, as shown by the use of the word “shall” in said rule. The only exception is when the Court otherwise directs because of extensions of time for presenting claims against the estate or for paying the debts or disposing the assets of the estate, which do not exist in the case at bar.

Furthermore, petitioner’s excuse that the sala where the intestate proceeding was pending was vacant most of the time deserves scant consideration since petitioner never attempted to file with said court an accounting report of her administration despite the fact that at one time or another, Judge Sundiam and Judge Tiongco were presiding over said sala during their incumbency.

Likewise, her subsequent compliance in rendering an accounting report did not purge her of her, negligence in not rendering an accounting for more than six years, which justifies petitioner’s removal as administratrix and the appointment of private respondent in her place as mandated by Section 2 of Rule 82 of the Rules of Court.[5]

As correctly stated by the appellate court:

“The settled rule is that the removal of an administrator under Section 2 of Rule 82 lies within the discretion of the Court appointing him. As aptly expressed by the Supreme Court in the case of *Degala vs. Ceniza and Umipig*, 78 Phil. 791, ‘the sufficiency of any ground for removal should thus be determined by said court, whose sensibilities are, in the first place, affected by any act or omission on the part of the administrator not conformable to or in disregard of the rules or the orders of the court.’ Consequently, appellate tribunals are disinclined to interfere with the action taken by a probate court in the matter of the removal of an executor or administrator unless positive error or gross abuse of discretion is shown. (*Borromeo vs. Borromeo*, 97 Phil. 549; *Matute vs. Court of Appeals*, 26 SCRA 768.)

In the case at bar, the removal of petitioner as administratrix was on the ground of her failure for 6 years and 3 months from the time she was appointed as administratrix to render an accounting of her administration as required by Section 8 of Rule 85 of the Rules of Court.”[6]

As to petitioner’s contention that she was denied due process when she was removed as administratrix since no hearing was held on the motion for her removal, this does not deserve serious consideration. The appellate court’s disposal of this issue is in accordance with the law and evidence. Said the Court:

“Petitioner’s contention that her removal was without due process is certainly not borne out by the records. There has been a hearing and, in fact, several pleadings had been filed by the parties on the issue before the order of removal was issued. Thus, the motion to remove petitioner as administratrix was filed on January 3, 1984, which motion was set for hearing on February 10, 1984. Petitioner filed an opposition to the motion on March 22, 1984. This was followed by a Rejoinder and Manifestation filed on April 6, 1984 by private respondent. The order for petitioner’s removal was issued on January 4, 1985, or after almost a year from the time the motion to remove her was filed. Not satisfied with this order, petitioner filed a motion for reconsideration on January 14, 1985, to which motion private respondent filed an opposition on January 25, 1985. Petitioner filed a rejoinder to the opposition on February 18, 1985. Respondent Judge issued his order denying the motion for reconsideration on April 30, 1985. This recital of events indubitably disproves petitioner’s allegation that she was not afforded due process.”[7]

WHEREFORE, finding no merit in the petition for certiorari, prohibition and mandamus with preliminary injunction, the same is hereby DENIED. Costs against petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

Melo, J., no part.

[1] Penned by Justice Santiago M. Kapunan with Justices Fidel P. Purisima and Alfredo M. Lazaro, concurring.

[2] RTC's Decision, pp. 3-4; Record, pp. 53-54.

[3] Petitioner's Petition, p. 5; Rollo, p. 11.

[4] CA's Decision, p. 11; Rollo, p. 71.

[5] "SEC. 2. Court may remove or accept resignation of executor or administrator. Proceedings upon death, resignation, or removal. - If an executor or administrator neglects to render his account and settle the estate according to law, or to perform an order or judgment of the court, or a duty expressly provided by these rules, or absconds, or becomes insane, or otherwise incapable or unsuitable to discharge the trust, the court may remove him, or, in its discretion, may permit him to resign. When an executor or administrator dies, resigns, or is removed the remaining executor or administrator may administer the trust alone, unless the court grants letters to someone to act with him. If there is no remaining executor or administrator, administration may be granted to any suitable person."

[6] CA's Decision, p. 7; Rollo, p. 67.

[7] CA's Decision, pp. 8-9; Rollo, pp. 68-69.

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