

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. FERDINAND R. MARCOS II AND IMELDA R. MARCOS, RESPONDENTS.

G.R. Nos. 130371 & 130855. August 04, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, seeking to set aside the March 13, 1997 Decision[2] and August 27, 1997 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 43450.

The facts of the case are as follows:

On January 11, 1996, the Regional Trial Court (RTC) of Pasig City Branch 156, acting as a probate court, in Special Proceeding No. 10279, issued an Order[4] granting letters testamentary in solidum to respondents Ferdinand R. Marcos II and Imelda Trinidad Romualdez-Marcos as executors of the last will and testament of the late Ferdinand E. Marcos.

The dispositive portion of the January 11, 1996 Order reads:

WHEREFORE, finding the Last Will and Testament of Ferdinand Edralin Marcos to have been duly executed in accordance with law, the same is hereby ALLOWED AND ADMITTED TO PROBATE.

Upon the filing of a bond in the amount of P50,000.00, let letters testamentary be issued in solidum to Imelda Trinidad Romualdez-Marcos AND Ferdinand Romualdez Marcos II, named executors therein.

Pending the filing of said bond and their oath, Commissioner Liwayway Vinzons-Chato of the Bureau of Internal Revenue is hereby authorized to continue her functions as Special Administrator of the Estate of Ferdinand Edralin Marcos.

Let NOTICE be given to all known heirs and creditors of the decedent, and to any other persons having an interest in the estate for them to lay their claim against the Estate or forever hold their peace.

SO ORDERED.[5]

On January 15, 1996, the petitioner Republic of the Philippines filed a Motion for Partial Reconsideration[6] in so far as the January 11, 1996 RTC Order granted letters testamentary to respondents. On the other hand, respondent Imelda Marcos filed her own motion for reconsideration on the ground that the will is lost and that petitioner has not proven its existence and validity.

On February 5, 1996, respondent Ferdinand Marcos II filed a Compliance stating that he already filed a bond in the amount of P50,000.00 as directed by the January 11, 1996 RTC Order and that he took his oath as named executor of the will on January 30, 1996.

On March 13, 1996, the RTC issued Letters of Administration[7] to BIR Commissioner Liwayway

Vinzons-Chato in accordance with an earlier Order dated September 9, 1994, appointing her as Special Administratrix of the Marcos Estate.

On April 1, 1996, respondent Ferdinand Marcos II filed a Motion to Revoke the Letters of Administration issued by the RTC to BIR Commissioner Vinzons-Chato.

On April 26, 1996, the RTC issued an Order[8] denying the motion for partial reconsideration filed by petitioner as well as the motion for reconsideration filed by respondent Imelda Marcos, the penultimate portion of which reads:

Under the Rules, a decedent's testamentary privilege must be accorded utmost respect. Guided by this legal precept, therefore, in resolving the two (2) motions at hand, the Court is constrained to DENY both.

Examining the arguments poised by the movants, the Court observed that these are but a mere rehash of issues already raised and passed upon by the Court.

One has to review the previous orders issued by the Court in this case, e.g., the orders dated September 9, 1994, November 25, 1994, as well as October 3, 1995, to see that even as far back then, the Court has considered the matter of competency of the oppositors and of Commissioner Liwayway Vinzons-Chato as having been settled.

It cannot be overstressed that the assailed January 11, 1996 Orders of the Court was arrived at only after extensive consideration of every legal facet available on the question of validity of the Will.

WHEREFORE, for lack of merit, the motion for reconsideration filed separately by petitioner Republic and oppositor Imelda R. Marcos are both DENIED.

SO ORDERED.[9]

On June 6, 1996, petitioner filed with this Court a Petition for Review on Certiorari, under Ruled 45 of the Rules of Court, questioning the aforementioned RTC Orders granting letters testamentary to respondents.

On February 5, 1997, the First Division of this Court issued a Resolution referring the petition to the CA, to wit:

x x x x

The special civil action for certiorari as well as all the other pleadings filed herein are REFERRED to the Court of Appeals for consideration and adjudication on the merits or any other action as it may deem appropriate, the latter having jurisdiction concurrent with this Court over the Case, and this Court having been cited to no special and important reason for it to take cognizance of said case in the first instance.[10] (Emphasis and Underscoring Supplied)

On March 13, 1997, the CA issued a Decision,[11] dismissing the referred petition for having taken the wrong mode of appeal, the pertinent portions of which reads:

Consequently, for having taken the wrong mode of appeal, the present petition should be dismissed in accordance with the same Supreme Court Circular 2-90 which expressly provides that:

4. Erroneous Appeals - An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed.

IN VIEW OF THE FOREGOING, the instant petition for review is hereby DISMISSED.

SO ORDERED.[12]

Petitioner filed a Motion for Reconsideration,[13] which was, however denied by the CA in a Resolution[14] dated August 27, 1997.

Hence, herein petition, with petitioner raising the following assignment of errors, to wit:

I.

THE COURT OF APPEALS GRAVELY ERRED IN DISMISSING THE PETITION ON TECHNICAL GROUNDS DESPITE THE SUPREME COURT RESOLUTION SPECIFICALLY REFERRING SAID PETITION FOR A DECISION ON THE MERITS.

II.

THE PROBATE COURT GRAVELY ERRED IN FAILING TO CONSIDER THAT RESPONDENTS IMELDA R. MARCOS AND FERDINAND R. MARCOS II SHOULD BE DISQUALIFIED TO ACT AND SERVE AS EXECUTORS.

III.

THE PROBATE COURT GRAVELY ERRED IN FAILING TO CONSIDER THAT SAID PRIVATE RESPONDENTS HAVE DENIED AND DISCLAIMED THE VERY EXISTENCE AND VALIDITY OF THE MARCOS WILL.

IV.

THE PROBATE COURT GRAVELY ERRED IN FAILING TO CONSIDER THAT ITS ORDER OF JANUARY 11, 1996, WHICH ADMITTED THE MARCOS WILL TO PROBATE AND WHICH DIRECTED THE ISSUANCE OF LETTERS TESTAMENTARY IN SOLIDUM TO PRIVATE RESPONDENTS AS EXECUTORS OF SAID MARCOS WILL, WAS BASED ON THE EVIDENCE OF THE REPUBLIC ALONE.

V.

THE PROBATE COURT GRAVELY ERRED IN FAILING TO CONSIDER THAT BOTH PRIVATE RESPONDENTS HAVE OBSTRUCTED THE TRANSFER TO THE PHILIPPINES OF THE MARCOS ASSETS DEPOSITED IN THE SWISS BANKS.[15]

In the meantime, on October 9, 2002, the RTC, acting on the pending unresolved motions before it, issued an Order[16] which reads:

WHEREFORE, the Court hereby appoints as joint special administrators of the estate of the late Ferdinand E. Marcos, the nominee of the Republic of the Philippines (the Undersecretary of the Department of Justice whom the Secretary of Justice will designate for this purpose) and Mrs. Imelda Romualdez Marcos and Mr. Ferdinand R. Marcos II, to serve as such until an executor is finally appointed.

SO ORDERED.

The petition is without merit.

When the assailed Orders granting letters testamentary in solidum to respondents were issued by the RTC, petitioner sought to question them by filing a petition for review on certiorari under Rule 45 of the Rules of Court.

Supreme Court Circular No. 2-90,[17] which was then in effect, reads:

2. Appeals from Regional Trial Courts to the Supreme Court. - Except in criminal cases where the penalty

imposed is life imprisonment to reclusion perpetua, judgments of regional trial courts may be appealed to the Supreme Court only by petition for review on certiorari in accordance with Rule 45 of the Rules of Court in relation to Section 17 of the Judiciary Act of 1948, as amended, this being the clear intendment of the provision of the Interim Rules that "(a)ppeals to the Supreme Court shall be taken by petition for certiorari which shall be governed by Rule 45 of the Rules of Court. (Emphasis and Underscoring Supplied)

The pertinent portions of Section 17[18] of the Judiciary Act of 1948 read:

The Supreme Court shall further have exclusive jurisdiction to review, revise, reverse, modify or affirm on certiorari as the law or rules of court may provide, final judgments and decrees of inferior courts as herein provided, in -

- (1) All cases in which the constitutionality or validity of any treaty, law, ordinance, or executive order or regulation is in question;
- (2) All cases involving the legality of any tax, impost, assessment or toll, or any penalty imposed in relation thereto;
- (3) All cases in which the jurisdiction of any inferior court is in issue;
- (4) All other cases in which only errors or questions of law are involved: Provided, however, That if, in addition to constitutional, tax or jurisdictional questions, the cases mentioned in the three next preceding paragraphs also involve questions of fact or mixed questions of fact and law, the aggrieved party shall appeal to the Court of Appeals; and the final judgment or decision of the latter may be reviewed, revised, reversed, modified or affirmed by the Supreme Court on writ of certiorari; and
- (5) Final awards, judgments, decision or orders of the Commission on Elections, Court of Tax Appeals, Court of Industrial Relations, the Public Service Commission, and the Workmen's Compensation Commission.

A reading of Supreme Court Circular 2-90, in relation to Section 17 of the Judiciary Act of 1948, clearly shows that the subject matter of therein petition, that is, the propriety of granting letters testamentary to respondents, do not fall within any ground which can be the subject of a direct appeal to this Court. The CA was thus correct in declaring that the "issues raised by petitioner do not fall within the purview of Section 17 of the Judiciary Act of 1948 such that the Supreme Court should take cognizance of the instant case." [19]

Moreover, the Court's pronouncement in *Suarez v. Judge Villarama* [20] is instructive:

Section 4 of Circular No. 2-90, in effect at the time of the antecedents, provides that an appeal taken to either the Supreme Court or the Court of Appeals by the wrong mode or inappropriate mode shall be dismissed. This rule is now incorporated in Section 5, Rule 56 of the 1997 Rules of Civil Procedure.

Moreover, the filing of the case directly with this Court runs afoul of the doctrine of hierarchy of courts. Pursuant to this doctrine, direct resort from the lower courts to the Supreme Court will not be entertained unless the appropriate remedy cannot be obtained in the lower tribunals. This Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the Constitution and immemorial tradition. Thus, a petition for review on certiorari assailing the decision involving both questions of fact and law must first be brought before the Court of Appeals. [21]

Also, in *Southern Negros Development Bank v. Court of Appeals*, [22] this Court ruled:

It is incumbent upon private respondent qua appellants to utilize the correct mode of appeal of the decisions of trial courts to the appellate courts. In the mistaken choice of their remedy, they can blame no one but themselves (*Jocson v. Baguio*, 179 SCRA 550 [1989]; *Yucuanseh Drug Co. v. National Labor Union*, 101 Phil. 409 [1957]).

x x x x

Pursuant to Section 4 of Circular No. 2-90, which provides that "[a]n appeal taken to either the Supreme Court or the Court of Appeals by the wrong mode or inappropriate mode shall be dismissed," the only course of action of the Court to which an erroneous appeal is made is to dismiss the same. There is no longer any justification for allowing transfers of erroneous appeals from one court to another (*Quesada v. Court of Appeals*, G.R. No. 93869, November 12, 1990, First Division, Minute Resolution).[23]

Based on the foregoing, petitioner cannot deny that the determination of whether or not respondents should be disqualified to act as executors is a question of fact. Hence, the proper remedy was to appeal to the CA, not to this Court.

Petitioner is adamant, however, that notwithstanding the improper remedy, the CA should not have dismissed therein petition. Petitioner argues in the wise:

However, as can be seen in the Resolution of February 5, 1997, (Annex "H") this Honorable Court deemed it more proper to transmit the first Petition for Review to respondent appellate court for the reason that:

This Court having been cited to no special and important reason for it to take cognizance of said case in the first instance. x x x

It would appear then that even though this Honorable Court apparently considers the Republic's petition as deserving to be given due course, it deemed it in the best interest of the parties concerned if the Court of Appeals would first take cognizance of said case, thereby preserving its stance as a court of last resort.

Additionally, this Honorable Court itself plainly stated that the case under review is:

....REFERRED to the Court of Appeals for consideration and adjudication on the merits.... The latter having jurisdiction concurrent with this Court over the case.....[24]

Petitioner's arguments are misplaced. To stress, the February 5, 1997 Resolution reads:

The special civil action for certiorari as well as all the other pleadings filed herein are REFERRED to the Court of Appeals for consideration and adjudication on the merits or any other action as it may deem appropriate, the latter having jurisdiction concurrent with this Court over the Case, and this Court having been cited to no special and important reason for it to take cognizance of said case in the first instance.[25]

Based thereon, this Court agrees with the ruling of the CA that said resolution gave the CA discretion and latitude to decide the petition as it may deem proper. The resolution is clear that the petition was referred to the CA for consideration and adjudication on the merits or any other action as it may deem appropriate. Thus, no error can be attributed to the CA when the action it deemed appropriate was to dismiss the petition for having availed of an improper remedy. More importantly, the action of the CA was sanctioned under Section 4 of Supreme Court Circular 2-90 which provides that "an appeal taken to either the Supreme Court or the Court of Appeals by the wrong mode or inappropriate mode shall be dismissed."

Moreover, petitioner mistakenly relies in *Oriental Media, Inc. v. Court of Appeals*, [26] in which this Court made the following pronouncements:

In the case at bar, there was no urgency or need for Oriental to resort to the extraordinary remedy of certiorari for when it learned of the case and the judgment against it on July 25, 1986, due to its receipt of a copy of the decision by default; no execution had as yet been ordered by the trial court. As aforementioned, Oriental had still the time and the opportunity to file a motion for reconsideration, as was actually done. Upon the denial of its motion for reconsideration in the first case, or at the latest upon the denial of its petition for relief from judgment, Oriental should have appealed. Oriental should have followed the procedure set forth in the Rules of

Court for --

Rules of procedure are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial and extrajudicial proceedings. It is a mistake to purpose that substantive law and adjective law are contradictory to each other or, as has often been suggested, that enforcement of procedural rules should never be permitted if it will result in prejudice to the substantive rights of the litigants. This is not exactly true; the concept is much misunderstood. As a matter of fact, the policy of the courts is to give effect to both kinds of law, as complementing each other, in the just and speedy resolution of the dispute between the parties. Observance of both substantive rights is equally guaranteed by due process whatever the source of such rights, be it the Constitution itself or only a statute or a rule of court.[27]

In the case at bar, as found by this Court in its February 5, 1997 Resolution, therein petition offered no important or special reason for the Court to take cognizance of it at the first instance. Petitioner offered no plausible reason why it went straight to this Court when an adequate and proper remedy was still available. The CA was thus correct that the remedy that petitioner should have availed of was to file an appeal under Rule 109 of the Rules of Court which states:

Section 1. Orders of judgments from which appeals taken. - An interested person may appeal in special proceedings from an order or judgment rendered by a Court of First Instance or a Juvenile and Domestic Relations Court, where such order or judgment:

(a) allows or disallows a will;

Because of the preceding discussion, herein petition must necessarily fail. However, even if this Court were to set aside petitioners' procedural lapses, a careful review of the records of the case reveal that herein petition is without merit.

At the crux of the controversy is a determination of whether or not respondents are incompetent to serve as executors of the will of Ferdinand Marcos.

Ozeata v. Pecson[28] is instructive:

The choice of his executor is a precious prerogative of a testator, a necessary concomitant of his right to dispose of his property in the manner he wishes. It is natural that the testator should desire to appoint one of his confidence, one who can be trusted to carry out his wishes in the disposal of the estate. The curtailment of this right may be considered as a curtailment of the right to dispose. And as the rights granted by will take effect from the time of death (Article 777, Civil Code of the Philippines), the management of his estate by the administrator of his choice should be made as soon as practicable, when no reasonable objection to his assumption of the trust can be interposed any longer. It has been held that when a will has been admitted to probate, it is the duty of the court to issue letters testamentary to the person named as executor upon his application (23 C.J. 1023).

x x x x

The case of *In re Erlanger's Estate*, 242 N.Y.S. 249, also reiterates the same principle.

The courts have always respected the right to which a testator enjoys to determine who is most suitable to settle his testamentary affairs, and his solemn selection should not lightly be disregarded. After the admission of a will to probate, the courts will not name a better executor for the testator nor disqualify, by a judicial veto, the widow or friend or other person selected in the will, except upon strict proof of the statutory grounds of incompetency. *Matter of Leland's Will*, 219 N.Y. 387, 393, 114 N.E. 854. x x x[29]

Section 1(c), Rule 78 of the Rules of Court defines who are incompetent to serve as executors, to wit:

Section 1. Who are incompetent to serve as executors or administrators. - No person is competent to serve as executor or administrator who:

x x x x

(c) Is in the opinion of the court unfit to execute the duties of trust by reason of drunkenness, improvidence, or want of understanding or integrity, or by reason of conviction of an offense involving moral turpitude. (Emphasis Supplied)

In the case at bar, petitioner anchored its opposition to the grant of letters testamentary to respondents, specifically on the following grounds: (1) want of integrity, and (2) conviction of an offense involving moral turpitude. Petitioner contends that respondents have been convicted of a number of cases[30] and, hence, should be characterized as one without integrity, or at the least, with questionable integrity.[31]

The RTC, however, in its January 11, 1996 Order, made the following findings:

However, except for petitioner Republic's allegation of want of integrity on the part of Imelda Trinidad Romualdez-Marcos and Ferdinand Romualdez Marco II, named executors in the last will and testament, so as to render them "incompetent" to serve as executors, the Court sees at this time, no evidence on record, oral or documentary, to substantiate and support the said allegation. (Emphasis Supplied)

Based on the foregoing, this Court stresses that an appellate court is disinclined to interfere with the action taken by the probate court in the matter of removal of an executor or administrator unless positive error or gross abuse of discretion is shown.[32] The Rules of Court gives the lower court the duty and discretion to determine whether in its opinion an individual is unfit to serve as an executor. The sufficiency of any ground for removal should thus be determined by the 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 of orders of the court.[33]

Hence, in order to reverse the findings of the RTC, this Court must evaluate the evidence presented or alleged by petitioner in support of its petition for disqualification. However, after a painstaking review of the records and evidence on hand, this Court finds that the RTC committed no error or gross abuse of discretion when it ruled that petitioner failed to substantiate its allegation.

Petitioner conveniently omits to state that the two cases against respondent Imelda Marcos have already been reversed by this Court. Her conviction in Criminal Case No. 17453 was reversed by this Court in *Dans, Jr. v. People*. [34] Likewise, her conviction in Criminal Case No. 17450 was reversed by this Court in *Marcos v. Sandiganbayan*. [35] Hence, the so-called "convictions" against respondent Imelda Marcos cannot serve as a ground for her disqualification to serve as an executor.

On the other hand, the eight cases filed against respondent Ferdinand Marcos II involve four charges for violation of Section 45 (failure to file income tax returns) and four charges for violation of Section 50 (non-payment of deficiency taxes) of the National Internal Revenue Code of 1977 (NIRC).

It is a matter of record, that in CA-G.R. CR No. 18569, [36] the CA acquitted respondent Ferdinand Marcos II of all the four charges for violation of Section 50 and sustained his conviction for all the four charges for violation of Section 45. It, however, bears to stress, that the CA only ordered respondent Marcos II to pay a fine for his failure to file his income tax return. Moreover, and as admitted by petitioner, [37] said decision is still pending appeal.

Therefore, since respondent Ferdinand Marcos II has appealed his conviction relating to four violations of Section 45 of the NIRC, the same should not serve as a basis to disqualify him to be appointed as an executor of the will of his father. More importantly, even assuming *arguendo* that his conviction is later on affirmed, the same is still insufficient to disqualify him as the "failure to file an income tax return" is not a crime involving moral turpitude.

In *Villaber v. Commission on Elections*,^[38] this Court held:

As to the meaning of "moral turpitude," we have consistently adopted the definition in Black's Law Dictionary as "an act of baseness, vileness, or depravity in the private duties which a man owes his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and woman, or conduct contrary to justice, honesty, modesty, or good morals."

In *In re Vinzon*, the term "moral turpitude" is considered as encompassing "everything which is done contrary to justice, honesty, or good morals."

x x x x

We, however, clarified in *Dela Torre vs. Commission on Elections* that "not every criminal act involves moral turpitude," and that "as to what crime involves moral turpitude is for the Supreme Court to determine."^[39]

Moreover, In *De Jesus-Paras v. Vailoces*:^[40]

Indeed, it is well-settled that "embezzlement, forgery, robbery, and swindling are crimes which denote moral turpitude and, as a general rule, all crimes of which fraud is an element are looked on as involving moral turpitude" (58 C.J.S., 1206).

The "failure to file an income tax return" is not a crime involving moral turpitude as the mere omission is already a violation regardless of the fraudulent intent or willfulness of the individual. This conclusion is supported by the provisions of the NIRC as well as previous Court decisions which show that with regard to the filing of an income tax return, the NIRC considers three distinct violations: (1) a false return, (2) a fraudulent return with intent to evade tax, and (3) failure to file a return.

The same is illustrated in Section 51(b) of the NIRC which reads:

(b) Assessment and payment of deficiency tax - xxx

In case a person fails to make and file a return or list at the time prescribed by law, or makes willfully or otherwise, false or fraudulent return or list x x x. (Emphasis Supplied)

Likewise, in *Aznar v. Court of Tax Appeals*,^[41] this Court observed:

To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, by resorting to a proper interpretation of Section 332 of the NIRC. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, and (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely, "falsity," "fraud" and "omission."^[42] (Emphasis Supplied)

Applying the foregoing considerations to the case at bar, the filing of a "fraudulent return with intent to evade tax" is a crime involving moral turpitude as it entails willfulness and fraudulent intent on the part of the individual. The same, however, cannot be said for "failure to file a return" where the mere omission already constitutes a violation. Thus, this Court holds that even if the conviction of respondent Marcos II is affirmed, the same not being a crime involving moral turpitude cannot serve as a ground for his disqualification.

Anent the third error raised by petitioner, the same has no merit.

Petitioner contends that respondents denied the existence of the will, and are, therefore, estopped from claiming to be the rightful executors thereof. Petitioner further claims that said actions clearly show that respondents lack the competence and integrity to serve as officers of the court.

This Court does not agree with the posture taken by petitioner, and instead, accepts the explanation given by respondents, to wit:

Respondents opposed the petition for probate not because they are disclaiming the existence of the will, but because of certain legal grounds, to wit: (a) petitioner does not have the requisite interest to institute it; (b) the original copy of the will was not attached to the petition for probate as required by the rules; and (c) the Commissioner of the Bureau of Internal Revenue is not qualified to be appointed as administrator of the estate.[43]

Based on the foregoing, considering the nature of their opposition, respondents cannot be held guilty of estoppel as they merely acted within their rights when they put in issue legal grounds in opposing the probate proceedings. More importantly, even if said grounds were later on overruled by the RTC, said court was still of opinion that respondents were fit to serve as executors notwithstanding their earlier opposition. Again, in the absence of palpable error or gross abuse of discretion, this Court will not interfere with the RTC's discretion.

As for the remaining errors assigned by petitioner, the same are bereft of merit.

Petitioner contends that respondents have strongly objected to the transfer to the Philippines of the Marcos assets deposited in the Swiss Banks[44] and thus the same should serve as a ground for their disqualification to act as executors. This Court does not agree. In the first place, the same are mere allegations which, without proof, deserve scant consideration. Time and again, this Court has stressed that this Court is a court of law and not a court of public opinion. Moreover, petitioner had already raised the same argument in its motion for partial reconsideration before the RTC. Said court, however, still did not find the same as a sufficient ground to disqualify respondents. Again, in the absence of palpable error or gross abuse of discretion, this Court will not interfere with the RTC's discretion.

Lastly, petitioner argues that the assailed RTC Orders were based solely on their own evidence and that respondents offered no evidence to show that they were qualified to serve as executors.[45] It is basic that one who alleges a fact has the burden of proving it and a mere allegation is not evidence.[46] Consequently, it was the burden of petitioner (not respondents) to substantiate the grounds upon which it claims that respondents should be disqualified to serve as executors, and having failed in doing so, its petition must necessarily fail.

WHEREFORE, premises considered, the March 13, 1997 Decision and August 27, 1997 Resolution of the Court of Appeals in CA-G.R. SP No. 43450 are hereby AFFIRMED.

The Regional Trial Court of Pasig City, Branch 156, acting as a probate court in Special Proceeding No. 10279, is hereby ORDERED to issue letters testamentary, in solidum, to Imelda Romualdez-Marcos and Ferdinand Marcos II.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Peralta, JJ., concur.

[1] Rollo (G.R. No. 130371), pp. 7-41.

[2] Penned by Associate Justice Ramon A. Barcelona, with Associate Justices Artemon D. Luna and Hilarion L.

Aquino, concurring; id. at 45-50.

[3] Id. at 52-55.

[4] Id. at 56-65.

[5] Id. at 65. (Emphasis supplied.)

[6] Id. at 70-79.

[7] Id. at 80.

[8] Id. at 66-69.

[9] Id. at 69.

[10] Id. at 89.

[11] Id. at 45-50.

[12] Id. at 50. (Emphasis supplied.)

[13] Id. at 84-92.

[14] Id. at 52-55.

[15] Id. at 15-16.

[16] Id. at 240-243. (Emphasis supplied)

[17] Guidelines to be observed in Appeals to the Court of Appeals and to the Supreme Court; March 9, 1990.

[18] SEC. 17. Jurisdiction of the Supreme Court. -- The Supreme Court shall have original jurisdiction over cases affecting ambassadors, other public ministers, and consuls; and original and exclusive jurisdiction in petitions for the issuance of writs of certiorari, prohibition and mandamus against the Court of Appeals.

In the following cases, the Supreme Court shall exercise original and concurrent jurisdiction with the Court of First Instance:

1. In petitions for the issuance of writs of certiorari, prohibition, mandamus, quo warranto, and habeas corpus; and
2. In actions brought to prevent and restrain violations of law concerning monopolies and combinations in restraint of trade.

The Supreme Court shall have exclusive jurisdiction to review, revise, reverse, modify or affirm on appeal, certiorari or writ of error, as the law or rules of court may provide, final judgment and decrees of inferior courts as herein provided, in --

- (1) All criminal cases involving offenses for which the penalty imposed is death or life imprisonment; and those involving other offenses which, although not so punished, arose out of the same occurrence or which may have been committed by the accused on the same occasion, as that giving rise to the more serious offense, regardless of whether the accused are charged as principals, accomplices, or accessories, or whether they have been tried jointly or separately;
- (2) All cases involving petitions for naturalization or denaturalization; and
- (3) All decisions of the Auditor General, if the appellant is a private person or entity.

[19] Rollo (G.R. No. 130371), p. 48.

[20] G.R. No. 124512, June 27, 2006, 493 SCRA 74.

[21] Id. at 81-82. (Emphasis supplied.)

[22] G.R. No. 112066, June 27, 1994, 233 SCRA 460.

[23] Id. at 464-465.

[24] Rollo (G.R. No. 130371), pp. 17-18.

[25] Id. at 89. (Emphasis supplied)

[26] G.R.No. 80127, December 6, 1995, 250 SCRA 647.

[27] Id. at 654.

[28] 93 Phil. 420 (1953)

[29] Id. at 420-422. (Emphasis supplied).

[30] Rollo (G.R. No. 130371) pp. 29-31; Some of the criminal convictions against Imelda R. Marcos are:

(1) Criminal Case No. 17450 for Violation of R.A. 3019 (Anti-Graft Law), Sandiganbayan - Decision promulgated on September 24, 1993 sentencing her to imprisonment for an indeterminate period of nine (9) years and one (1) day, as minimum, to twelve (12) years and ten (10) days, as maximum, and to suffer perpetual disqualification from public office.

(2) Criminal Case No. 17453 for Violation of R.A. 3019 (Anti-Graft Law), Sandiganbayan - Decision promulgated on September 24, 1993 sentencing her to imprisonment for an indeterminate period of nine (9) years and one (1) day, as minimum, to twelve (12) years and ten (10) days, as maximum, and to suffer perpetual disqualification from public office.

With regard to the criminal convictions rendered against Ferdinand R. Marcos II, some of them are:

(1) Criminal Case No. Q-91-24390 for Violation of NIRC of 1977, RTC, Branch 105, Quezon City - Decision rendered on July 27, 1995 sentencing accused to serve imprisonment of three (3) years and to pay a fine of P30,000.00.

(2) Criminal Case No. Q-91-24391 for Violation of NIRC of 1977, RTC, Branch 105, Quezon City - Decision rendered on July 27, 1996 sentencing accused to serve imprisonment of three (3) years and to pay a fine of P30,000.00.

(3) Criminal Case No. Q-92-212 for Violation of NIRC of 1977, RTC, Branch 105, Quezon City - Decision rendered on July 27, 1995 sentencing accused to serve imprisonment of six (6) months and to pay a fine of P2,000.00.

(4) Criminal Case No. Q-91-29213 for Violation of NIRC of 1977, RTC, Branch 105, Quezon City - Decision rendered on July 27, 1995 sentencing accused to imprisonment of six (6) months and to pay a fine of P2,000.00.

(5) Criminal Case No. Q-91-29214 for Violation of NIRC of 1977, RTC, Branch 105, Quezon City - Decision rendered on July 27, 1995 sentencing accused to imprisonment of six (6) months and to pay a fine of P2,000.00.

(6) Criminal Case No. Q-91-29215 for Violation of NIRC of 1977, RTC, Branch 105, Quezon City - Decision rendered on July 27, 1995 sentencing accused to imprisonment of six (6) months and to pay a fine of P2,000.00.

(7) Criminal Case No. Q-91-29216 for Violation of NIRC of 1977, RTC, Branch 105, Quezon City - Decision rendered on July 27, 1995 sentencing accused to imprisonment of six (6) months and to pay a fine of P2,000.00.

(8) Criminal Case No. Q-91-29217 for Violation of NIRC of 1977, RTC, Branch 105, Quezon City - Decision rendered on July 27, 1995, sentencing accused to imprisonment of six (6) months and to pay a fine of P2,000.00.

[31] Rollo (G.R. No. 130371), p. 31.

[32] *Borromeo v. Borromeo*, 97 Phil. 549, 554 (1955).

[33] *Matute v. Court of Appeals*, No. L- 26751, January 31, 1969, 26 SCRA 768, 784.

[34] 349 Phil. 434 (1998).

[35] 357 Phil. 762 (1998).

[36] Penned by Associate Justice Gloria C. Paras, with Associate Justices Lourdes K. Tayao-Jaguros and Oswaldo D. Agcaoili concurring; Dated October 31, 1997.

[37] Rollo (G.R. No. 130371), p. 31.

[38] 420 Phil. 930 (2001).

[39] *Id.* at 937.

[40] 111 Phil. 569, 571 (1961).

[41] 157 Phil. 510 (1974).

[42] *Id.* at 523.

[43] Rollo (G.R. No. 130371), p. 363. (Emphasis supplied.)

[44] *Id.* at 37.

[45] *Id.* at 36.

[46] *P.T. Cerna Corporation v. Court of Appeals*, G.R. No. 91622, April 6, 1993, 221 SCRA 19, 25.

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