

47 Phil. 944

[ G.R. No. 19077. January 23, 1923 ]

**JACOBA LIMPIN, APPLICANT AND APPELLEE, VS. SABAS YALUNG ET AL.,  
OPPONENTS AND APPELLANTS.**

**D E C I S I O N**

**ROMUALDEZ, J.:**

The first error assigned by the appellant to the order of probate of the alleged will of Genoveva Yalung, which is the subject-matter of this proceeding, is made to consist, among other things, in that all the witnesses who attested said will were not called to testify.

That is really the fact. Of the three attesting witnesses, only two testified at the hearing of the case, Cirilo Lacsamana not having done so, notwithstanding that said will was contested.

It is a rule well settled and adopted by the courts and applied by this court in the case of *Cabang vs. Delfinado* (34 Phil., 291), that "the attesting witnesses required by statute must be called to prove a contested will or a showing must be made that they cannot be had."

The applicant has not shown that the witness Cirilo Lacsamana could not be found, nor is there any circumstance whatever in the record satisfactorily accounting for the proponent's omission to introduce his testimony as evidence.

We deem it unnecessary to examine the other points raised by the appellant, the one above indicated being sufficient for the purposes of this decision.

The order appealed from is reversed, and it is ordered that the record be remanded to the court of origin for the holding of a new trial whereat the applicant shall have opportunity to complete her evidence, and the opponent to rebut what may be offered, it being understood that the evidence already introduced by both parties shall subsist, without special pronouncement as to costs. So ordered.

*Araullo, C. J., Street, Malcolm, Avancena, Villamor, Ostrand, and Johns, JJ., concur.*

Date created: September 26, 2018