

SECOND DIVISION

[G.R. No. 237449, December 02, 2020]

**IN THE MATTER OF THE TESTATE ESTATE OF AIDA A. BAMBAO,
LINDA A. KUCSKAR, PETITIONER, VS. COSME B. SEKITO, JR.,
RESPONDENT.**

DECISION

LOPEZ, J.:

The allowance of a foreigner's will executed abroad is the main issue in this Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court assailing the Court of Appeals' (CA) Decision^[2] dated August 31, 2017 in CAG.R. CV No. 104100.

Antecedents

On October 28, 1999, Aida A. Bambao (Aida), a naturalized American citizen, executed a Last Will and Testament (will)^[3] in California where she nominated her cousin, Cosme B. Sekito, Jr. (Cosme), as a special independent executor over her assets located in the Philippines, thus:

I, AIDA A. BAMBAO, a resident of California, declare this to be my Will and hereby revoke all former Wills and Codicils.

x x x x

Fifth

x x x I nominate COSME B. SEKITO, JR. to serve as special independent Executor over all assets which are located in the Philippines, x x x. The special independent Executor over the Philippines shall have the individual signature authority capable of transacting all Trust business with regard to any assets located in the Philippines.

x x x x

By: [Sgd.] AIDA A. BAMBAO

ATTESTATION

The testator, AIDA A. BAMBAO, on the date last above written, declared to us that the above instrument is her Will and requested us to act as witnesses to it. At this point in time the testator appeared to be of sound and disposing mind. Her publication and subscription of the Will appeared

to be a free and voluntary act. Wherefore, each of us at her request now signs as a witness in the presence of the testatrix and in the presence of each other. Each of us knows that each signature appearing hereon is a true signature of the person who signed. We[,] the undersigned, are of the age of majority.

We declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 28, 1999 at Newport Beach, California.

[Signed:]Witness 1
Witness 2^[4]

On February 5, 2000, Aida died a widow in her residence at Long Beach, California.^[5] On March 27, 2000, Cosme filed a Petition for the Allowance of Will/Appointment of Guardian *Ad Litem* (allowance of the will), before the Regional Trial Court (RTC) of Pasig City, Branch 264, docketed as Sp. Proc. No. 11042.^[6] Cosme prayed that he be appointed as the Special Administrator of Aida's estate pending the issuance of letters testamentary, and as guardian *ad litem* of Aida's adopted minor child, Elsa Bambao (Elsa).^[7] Meanwhile, Linda A. Kucskar (Linda), the decedent's sister, and one of the heirs named in the will, opposed the petition and claimed that she is the one defraying all of Elsa's expenses. Linda added that Aida left a real estate property in Calbayog City which was excluded in the petition.^[8]

At the trial, Cosme presented authenticated copies of Aida's will as well as her Revocable Living Trust (living trust).^[9] The parties stipulated that these documents are faithful reproductions of the original. In due course, the RTC appointed Cosme as special administrator of Aida's estate, but designated Cosme and Linda as Elsa's co-guardians.^[10] Thereafter, the petition for allowance of the will was submitted for resolution. On August 4, 2011, the RTC granted the petition and ordered the issuance of a certificate of allowance of the will, *viz*:

WHEREFORE, finding conclusive proof of the due execution of the will of the [sic] Aida Bambao, and there being none of the grounds for its disallowance as enumerated in Section 9 of Rule 76 of the Rules of Court, the same is hereby allowed. Let the corresponding Certificate of Allowance be issued, pursuant to Section 13 of Rule 76, and be furnished to the Register of Deeds of Pasig City along with the attested copy of the Will. Said Register of Deeds is ordered to duly record the Will and the Certificate in their respective registers. Let letters of testamentary issue in favor of the petitioner Cosme Sekito, Jr. He is hereby required to take possession and management of all the properties of the deceased and shall return to this Court a true inventory and appraisal of the said properties of the deceased which shall come into his possession and knowledge within three (3) months after his appointment.

SO ORDERED.^[11] (Emphasis supplied.)

Dissatisfied, Linda sought for a reconsideration. On the other hand, Cosme moved to disinherit Linda.^[12] On November 10, 2014, the RTC denied both motions. The RTC

held that Linda is estopped from contesting the due execution and allowance of the will because she repeatedly mentioned in her pleadings that she had no opposition with its approval. The RTC likewise explained that there is no reason to disinherit Linda, but warned that her share may be revoked should she insist on contesting the will.^[13]

Aggrieved, Linda elevated the case to the CA docketed as CA-G.R. CV No. 104100. On August 31, 2017, the CA affirmed the RTC's findings pursuant to the rule on substantial compliance, to wit:

Appellant proceeds to point out the defects in the attestation clause in that it did not mention the number of pages used and it fails to state that the testator signed the will and every page thereof and in the presence of three witnesses. Also, there were only two attesting witnesses which is less than the required number.

While there are defects in the attestation clause of the will, this Court applies the rule on substantial compliance, noting the provision of Art 809 of the Civil Code, which states:

ART. 809. In the absence of bad faith, forgery, or fraud, or undue and improper pressure and influence, defects and imperfections in the form of attestation or in the language used therein shall not render the will invalid if it is proved that the will was in fact executed and attested in substantial compliance with all the requirements of Article 805.

x x x x

Considering that there was sufficient compliance on the formalities required by law on the execution of will, and there was no circumstance that would lead to the disallowance of the will under Sec. 9, Rule 76 of the Rules of Court and considering further the evidence proffered by appellee, the allowance of the will of Aida is warranted.

WHEREFORE, the appeal is DENIED. The decision appealed from is hereby AFFIRMED.

SO ORDERED.^[14] (Emphasis supplied.)

Hence, this recourse. Linda argues that Aida's will should not have been considered for probate. The foreign law governing the formalities of the will was not alleged and proven. The will also failed to conform with Philippine laws. Specifically, the will was not acknowledged before a notary public, the witnesses did not sign on each and every page, there were only two witnesses, and the attestation clause omitted the total number of pages.^[15]

The Court's Ruling

The petition is meritorious.

Philippine laws require that no will shall pass either real or personal property unless it has been proved and allowed.^[16] Our laws do not prohibit the probate of wills executed by foreigners abroad. A foreign will can be given legal effects in our jurisdiction.^[17] Article (Art.) 816 of the Civil Code is instructive, viz:

ART. 816. The will of an alien who is abroad produces effect in the Philippines if made with the formalities prescribed by the law of the place in which he resides, or according to the formalities observed in his country, or in conformity with those which this Code prescribes.

Here, it is undisputed that Aida is a naturalized American citizen and that she executed the will in California, United States of America where she was residing at the time of her death. As such, the Philippine courts must examine the formalities of Aida's will in accordance with California law. Yet, it is settled that foreign laws do not prove themselves in this jurisdiction,^[18] and our courts are not authorized to take judicial notice of them.^[19] Like any other fact, they must be properly pleaded and proved. Under the Rules of Court, the record of public documents of a sovereign authority or tribunal may be proved by (1) an official publication thereof, or (2) a copy attested by the officer having the legal custody thereof. Such official publication or copy must be accompanied, if the record is not kept in the Philippines, with a certificate that the attesting officer has the legal custody thereof. The certificate may be issued by any of the authorized Philippine embassy or consular officials stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.^[20] The attestation must state in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be, and must be under the official seal of the attesting officer.^[21]

We have scoured the records and found no copy of the pertinent California law presented as evidence pursuant to the requirements of the rules. In this circumstance, the doctrine of "*processual presumption*" comes into play,^[22] thus:

It is hornbook principle, however, that **the party invoking the application of a foreign law has the burden of proving the law, under the doctrine of *processual presumption*** which, in this case, petitioners failed to discharge. The Court's ruling in *EDI-Staffbuilders Int'l. v. NLRC* illuminates:

In the present case, the employment contract signed by Gran specifically states that Saudi Labor Laws will govern matters not provided for in the contract (e.g., specific causes for termination, termination procedures, etc.). Being the law intended by the parties (*lex loci intentiones*) to apply to the contract, Saudi Labor Laws should govern all matters relating to the termination of the employment of Gran.

In international law, the party who wants to have a foreign law applied to a dispute or case has the burden of proving the foreign law. The foreign law is treated as a question of fact to be properly pleaded and proved as the judge or labor arbiter cannot take judicial notice of a foreign law. He is presumed to know only domestic or forum law.