

## SECOND DIVISION

**[ G.R. No. 189984, November 12, 2012 ]**

**IN THE MATTER OF THE PETITION FOR THE PROBATE OF THE  
LAST WILL AND TESTAMENT OF ENRIQUE S. LOPEZ RICHARD B.  
LOPEZ, PETITIONER, VS. DIANA JEANNE LOPEZ, MARYBETH DE  
LEON AND VICTORIA L. TUAZON, RESPONDENTS.**

### DECISION

**PERLAS-BERNABE, J.:**

This Petition for Review on *Certiorari* assails the March 30, 2009 Decision<sup>[1]</sup> and October 22, 2009 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 87064 which affirmed the August 26, 2005 Decision<sup>[3]</sup> of the Regional Trial Court of Manila, Branch 42 (RTC), in SP. Proc. No. 99-95225 disallowing the probate of the Last Will and Testament of Enrique S. Lopez.

#### The Factual Antecedents

On June 21, 1999, Enrique S. Lopez (Enrique) died leaving his wife, Wendy B. Lopez, and their four legitimate children, namely, petitioner Richard B. Lopez (Richard) and the respondents Diana Jeanne Lopez (Diana), Marybeth de Leon (Marybeth) and Victoria L. Tuazon (Victoria) as compulsory heirs. Before Enrique's death, he executed a Last Will and Testament<sup>[4]</sup> on August 10, 1996 and constituted Richard as his executor and administrator.

On September 27, 1999, Richard filed a petition for the probate of his father's Last Will and Testament before the RTC of Manila with prayer for the issuance of letters testamentary in his favor. Marybeth opposed the petition contending that the purported last will and testament was not executed and attested as required by law, and that it was procured by undue and improper pressure and influence on the part of Richard. The said opposition was also adopted by Victoria.

After submitting proofs of compliance with jurisdictional requirements, Richard presented the attesting witnesses, namely: Reynaldo Maneja; Romulo Monteiro; Ana Maria Lourdes Manalo (Manalo); and the notary public who notarized the will, Atty. Perfecto Nolasco (Atty. Nolasco). The instrumental witnesses testified that after the late Enrique read and signed the will on each and every page, they also read and signed the same in the latter's presence and of one another. Photographs of the incident were taken and presented during trial. Manalo further testified that she was the one who prepared the drafts and revisions from Enrique before the final copy of the will was made.

Likewise, Atty. Nolasco claimed that Enrique had been his client for more than 20 years. Prior to August 10, 1996, the latter consulted him in the preparation of the subject will and furnished him the list of his properties for distribution among his

children. He prepared the will in accordance with Enrique's instruction and that before the latter and the attesting witnesses signed it in the presence of one another, he translated the will which was written in English to Filipino and added that Enrique was in good health and of sound mind at that time.

On the other hand, the oppositors presented its lone witness, Gregorio B. Paraon (Paraon), Officer-in-Charge of the Notarial Section, Office of the Clerk of Court, RTC, Manila. His testimony centered mainly on their findings that Atty. Nolasco was not a notary public for the City of Manila in 1996, which on cross examination was clarified after Paraon discovered that Atty. Nolasco was commissioned as such for the years 1994 to 1997.

### **Ruling of the RTC**

In the Decision dated August 26, 2005,<sup>[5]</sup> the RTC disallowed the probate of the will for failure to comply with Article 805 of the Civil Code which requires a statement in the attestation clause of the number of pages used upon which the will is written. It held that while Article 809 of the same Code requires mere substantial compliance of the form laid down in Article 805 thereof, the rule only applies if the number of pages is reflected somewhere else in the will with no evidence *aliunde* or extrinsic evidence required. While the acknowledgment portion stated that the will consists of 7 pages including the page on which the ratification and acknowledgment are written, the RTC observed that it has 8 pages including the acknowledgment portion. As such, it disallowed the will for not having been executed and attested in accordance with law.

Aggrieved, Richard filed a Notice of Appeal which the RTC granted in the Order dated October 26, 2005.<sup>[6]</sup>

### **Ruling of the Court of Appeals**

On March 30, 2009,<sup>[7]</sup> the CA issued the assailed decision dismissing the appeal. It held that the RTC erroneously granted Richard's appeal as the Rules of Court is explicit that appeals in special proceedings, as in this case, must be made through a record on appeal. Nevertheless, even on the merits, the CA found no valid reason to deviate from the findings of the RTC that the failure to state the number of pages of the will in the attestation clause was fatal. It noted that while Article 809 of the Civil Code sanctions mere substantial compliance with the formal requirements set forth in Article 805 thereof, there was a total omission of such fact in the attestation clause. Moreover, while the acknowledgment of the will made mention of "7 pages including the page on which the ratification and acknowledgment are written," the will had actually 8 pages including the acknowledgment portion thus, necessitating the presentation of evidence *aliunde* to explain the discrepancy. Richard's motion for reconsideration from the decision was likewise denied in the second assailed Resolution<sup>[8]</sup> dated October 22, 2009.

Hence, the instant petition assailing the propriety of the CA's decision.

### **Ruling of the Court**

The petition lacks merit.