



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

**IN THE MATTER OF THE
 TESTATE ESTATE OF
 AIDA A. BAMBAO,**

G.R. No. 237449

Present:

LINDA A. KUCSKAR,
 Petitioner,

PERLAS-BERNABE,* *S.A.J.*,
Chairperson,
 GESMUNDO,**
 LAZARO-JAVIER,
 LOPEZ, and
 ROSARIO,*** *JJ.*

- versus -

COSME B. SEKITO, JR.,
 Respondent.

Promulgated:
DEC 02 2020

X-----X

D E C I S I O N

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) Decision² dated August 31, 2017 in CA-G.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

* On official leave.

** Acting Chairperson.

*** Designated additional Member *per* Special Order No. 2797 dated November 5, 2020.

¹ *Rollo*, pp. 9-39.

² *Id.* at 75-92; penned by Associate Justice Romeo F. Barza, with the concurrence of Associate Justices Myra V. Garcia-Fernandez and Renato C. Francisco.

³ *Id.* at 49-54.

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 2⁴

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

⁴ *Id.*
⁵ *Id.* at 76.
⁶ *Id.* at 75-76.
⁷ *Id.* at 77-78.

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.

⁸ *Id.* at 78.

⁹ *Id.* at 45.

¹⁰ *Id.* at 78.

¹¹ *Id.* at 48.

¹² *Id.* at 83.

¹³ *Id.* at 73-74.

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.

¹⁴ *Id.* at 86-91.

¹⁵ *Id.* at 9-39, *Supra* note 1.

¹⁶ Civil Code, Art. 838 and Rules of Court, Rule 76, Sec. 1.

¹⁷ See *Palaganas v. Palaganas*, 655 Phil. 535, 539 (2011).



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.

¹⁸ *Wildvalley Shipping Co., Ltd. v. CA*, 396 Phil. 383, 392 (2000).

¹⁹ *Nullada v. The Hon. Civil Registrar of Manila*, G.R. No. 224548, January 23, 2019.

²⁰ Rules of Court, Rule 132, Sec. 24. See also *ATCI Overseas Corp. v. Echin*, 647 Phil. 43, 50 (2010).

²¹ Rules of Court, Rule 132, Sec. 25.

²² *Noveras v. Noveras*, 741 Phil. 670, 680 (2014).

Unfortunately for petitioner, it did not prove the pertinent Saudi laws on the matter; thus, the International Law doctrine of presumed-identity approach or processual presumption comes into play. Where a foreign law is not pleaded or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours. Thus, we apply Philippine labor laws in determining the issues presented before us. (Emphasis in the original.)

The Philippines does not take judicial notice of foreign laws, hence, they must not only be alleged; they must be proven. To prove a foreign law, the party invoking it must present a copy thereof and comply with Sections 24 and 25 of Rule 132 of the Revised Rules of Court[.]²³ x x x; (Emphases supplied.)

Hence, this Court applies Philippine laws in determining whether the will should have been considered for probate. Our laws define a will as an act whereby a person is permitted, with the formalities prescribed by law, to control to a certain degree the disposition of his estate, to take effect after his death.²⁴ The object of solemnities surrounding the execution of wills is to close the door on bad faith and fraud, to avoid substitution of wills and testaments and to guarantee their truth and authenticity.²⁵

A will may either be holographic or notarial. A person may execute a holographic will which must be entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in, or out of the Philippines, and need not be witnessed.²⁶ In contrast, a notarial will must comply with solemnities including attestation, subscription and acknowledgment. The attestation refers to the act of three or more witnesses themselves who certify to the execution of the will before them, and to the manner of its execution.²⁷ The acknowledgment is the act of the one who executed the will in going to a competent officer and declaring that the will is [his/her] act or deed.²⁸ The subscribing or attesting witnesses are likewise required to acknowledge the will before the notary public. These requirements are indispensable for the validity of the will.²⁹ Apropos are Art. 805 and Art. 806 of the Civil Code, to wit:

ART. 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.

The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and

²³ *ATCI Overseas Corporation v. Echin*, 647 Phil. 43, 49-50 (2010).

²⁴ Civil Code, Art. 783.

²⁵ *Lee v. Atty. Tambago*, 568 Phil. 363, 371 (2008).

²⁶ Civil Code, Art. 810.

²⁷ *Echavez v. Dozen Construction and Dev't Corp.*, 647 Phil. 108, 112 (2010).

²⁸ See *Azuela vs. CA*, 521 Phil. 263, 283 (2006).

²⁹ *Garcia v. Gatchalian*, 129 Phil. 246, 247 (1967).

every page thereof, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of each page.

The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.

If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them.

ART. 806. Every will must be acknowledged before a notary public by the testator and the witnesses. The notary public shall not be required to retain a copy of the will, or file another with the office of the Clerk of Court.

Obviously, Aida's will cannot pass as holographic because it is not entirely in her handwriting. At most, the will may be classified as a notarial will. However, an examination of the will reveals that only two witnesses attested its execution. The witnesses did not sign on each and every page of the will. The attestation clause failed to state the total number of pages. Worse, Aida and the witnesses did not acknowledge the will before a notary public. It bears emphasis that the CA adopted the substantial compliance rule in allowing the will despite the defects in its attestation clause. In *Taboada v. Hon. Rosal*³⁰ and *Azuela v. Court of Appeals*,³¹ the Court permitted the probate although the number of pages was not stated in the attestation clause but elsewhere in the will. In *Lopez v. Lopez*, however, We held that the attestation must state the number of pages used upon which the will is written. The purpose is to safeguard against possible interpolation, or omission of one, or some of its pages and prevent any increase or decrease in the pages. Further, the substantial compliance rule applies only to imperfections which can be explained through examination of the will itself, thus:

x x x The rule must be limited to disregarding those defects that can be supplied by an examination of the will itself: whether all the pages are consecutively numbered; whether the signatures appear in each and every page; whether the subscribing witnesses are three or the will was notarized. All these are facts that the will itself can reveal, and defects or even omissions concerning them in the attestation clause can be safely disregarded. **But the total number of pages, and whether all persons required to sign did so in the presence of each other must substantially appear in the attestation clause, being the only check against perjury in the probate proceedings.**³² (Emphases supplied.)

Assuming the CA correctly appreciated substantial compliance with the formalities of the attestation clause under Art. 805, the same cannot be applied to the requirement of acknowledgment under Art. 806. To reiterate, Aida and

³⁰ 203 Phil. 572 (1982).

³¹ 521 Phil. 263 (2006), *supra* note 28.

³² 698 Phil. 423 (2013).



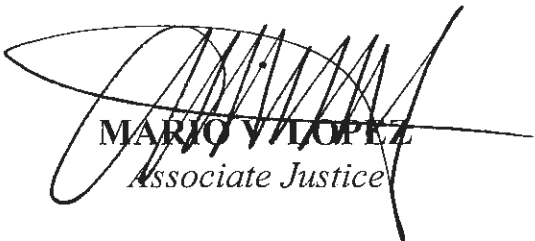
the witnesses did not acknowledge the will before a notary public. The CA did not even bother to discuss this requirement. Viewed from this light, we cannot, by any stretch of imagination, accept the supposed validity of the will absent total compliance with the requisite acknowledgement. The CA likewise, cannot conveniently rely on Aida's Revocable Living Trust in allowing the will. The living trust simply provides the proportion of the United States and Philippine shares to be given to the beneficiaries.³³ Also, the living trust was presented to the District Court, Clark County, Nevada,³⁴ which is a distinct proceeding from the probate of the will here in the Philippines. Hence, the living trust is evidence *aliunde* that is not allowed to fill a void or to supply missing details that should appear in the will itself.³⁵

Lastly, Linda's failure to object at the onset of the probate proceedings does not relieve the proponent of the will from establishing that it complied with the legal formalities. Estoppel is not applicable in probate proceedings because they involve public interest. Otherwise, the truth as to the circumstances surrounding the execution of a testament may not be ascertained which is inimical to public policy.³⁶

In sum, Aida's will should have been disallowed because it failed to comply with the legal formalities.³⁷ It is regrettable that this case has dragged on and up to this Court unnecessarily only for Us to come to the conclusion that the foreign law was not alleged and proven, and that the Will does not comply with Philippine laws. On this score, We stress that the requirements for proving foreign laws and judgments are not mere technicalities,³⁸ and Our courts are not at liberty to exercise judicial notice without contravening Our own rules on evidence.³⁹

FOR THESE REASONS, the petition is **PARTLY GRANTED**. The case is **REMANDED** to the Regional Trial Court of Pasig City, Branch 167, for purposes of compliance with Sections 24 and 25 of Rule 132 of the Revised Rules of Court.

SO ORDERED.


MARIO V. LOPEZ
Associate Justice

³³ *Rollo*, pp. 87-89.

³⁴ *Id.* at 89.

³⁵ See *Caponong-Noble v. Abaja*, 490 Phil. 671, 685 (2005).

³⁶ *Alsua-Betts v. CA*, 180 Phil. 737, 750 (1979), citing *Testate Estate of the Late Procopio Apostol, Benedicta Obispo, et al. v. Remedios Obispo*, CA 50 O.G. 614.

³⁷ Civil Code. Art. 839.

³⁸ See *Wildvalley Shipping Co., Ltd. v. CA*, *supra* note 18, at 396.

³⁹ *Gov't of Hongkong Special Administrative Region v. Muñoz*, 820 Phil. 479, 482 (2017).

WE CONCUR:

(ON OFFICIAL LEAVE)
ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson



ALEXANDER G. GESMUNDO
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


RICARDO R. ROSARIO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


DIOSDADO M. PERALTA
Chief Justice