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SECOND DIVISION

[Adm. Mat. No. 2026. December 19, 1981]

NENITA DE VERA SUROZA, complainant, *vs.* JUDGE REYNALDO P. HONRADO of the Court of First Instance of Rizal, Pasig Branch 25 and EVANGELISTA S. YUIPCO, Deputy Clerk of Court, respondents.

SYNOPSIS

Complainant wife of the preterited heir filed a verified complaint in the Supreme Court against respondent Judge for having probated an alleged fraudulent will of the decedent Marcelina Salvador Suroza naming a supposed granddaughter as the sole heir and giving nothing at all to her supposed father who was still alive, and for having allowed the administratrix and her cohorts to withdraw from various banks, the deposits of the testatrix. Said will was written in English, a language not known to the illiterate testatrix and probably forged because the testatrix and the attesting witnesses did not appear before the notary as admitted by the notary himself. Complainant also denounced deputy clerk of court Yuipco for not giving her access to the record of the probate case and for insinuating that for ten thousand pesos the case might be decided in complainant's favor. In their comment, respondent Judge merely pointed out that the complainant did not appeal from the decree of probate and that upon being ejected the latter asked for a thirty-day period to vacate the house of the testatrix, while respondent Yuipco vehemently denied the charges against her. The case was referred for investigation, report and recommendation to Justice Juan A. Sison of the Court of Appeals who submitted a report dated October 7, 1981. Relying on the decision of the Court of Appeals dismissing complainant's petition for certiorari and prohibition, respondent Judge filed a motion to dismiss the administrative case for having allegedly become moot and academic.

The Supreme Court ruled that respondent Judge was guilty of inexcusable negligence and dereliction of duty for his improper disposition of the testate case which might have resulted in a miscarriage of justice and imposed upon him a fine equivalent to his salary for one month. The case against respondent Yuipco was held as having become moot and academic in view of her being beyond the Court's disciplinary jurisdiction because she is no longer employed in the judiciary.

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SYLLABUS

1. CONSTITUTIONAL LAW; SUPREME COURT SUPERVISION OVER LOWER COURTS; ADMINISTRATIVE CASE AGAINST JUDGES; REQUIREMENTS TO BE FOUND GUILTY OF SERIOUS MISCONDUCT OR INEFFICIENCY.— Administrative action may be taken against a judge of the court of first instance for serious misconduct or inefficiency (Sec. 67, Judiciary Law). Misconduct implies malice or a wrongful intent, not a mere error of judgment. "For serious misconduct to exist, there must be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law, or were in persistent disregard of well-known legal rules (*In re* Impeachment of Horrilleno, 43 Phil. 212, 214-215).

2. ID.; ID.; ID.; ID.; INEFFICIENCY DEFINED.— Inefficiency implies negligence, incompetence, ignorance and carelessness. A judge would be inexcusably negligent if he failed to observe in the performance of his duties that diligence, prudence and circumspection which the law requires in the rendition of any public service (*In re* Climaco, Adm. Case No. 134-J, Jan. 21, 1974, 55 SCRA 107, 119).

3. ID.; ID.; ID.; ID.; CIRCUMSTANCES IN THE CASE AT BAR SHOWING NEGLIGENCE AND DERELICTION OF DUTY.— In this case, respondent judge, on perusing the will and noting that it was written in English and was thumbmarked by an obviously illiterate testatrix, could have readily perceived that the will is shown in the attestation clause and notarial acknowledgment where the testatrix is repeatedly referred to as the "testator" instead of "testatrix", that he could have noted not only the anomaly as to the language of the will but also that there was something wrong in instituting the supposed granddaughter as sole heiress and giving nothing at all to her supposed father who was still alive, that after the hearing conducted by respondent deputy clerk of court, respondent judge could have noticed that the notary was not presented as a witness, and that in spite of the absence of an opposition, respondent judge should have personally conducted the hearing on the probate of the will so that he could have ascertained whether the will was validly executed.

4. ID.; ID.; ID.; ID.; INEFFICIENCY IN HANDLING THE TESTATE CASE; PENALTY; CASE AT BAR.— For inefficiency in handling the testate case of Marcelina S. Suroza, a fine equivalent to his salary for one month is imposed on respondent judge.

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5. ID.; ID.; ID.; ADMINISTRATIVE COMPLAINT AGAINST DEPUTY CLERK OF COURT; BECOMES MOOT AND ACADEMIC WHEN RESPONDENT IS NO LONGER EMPLOYED IN THE JUDICIARY; CASE AT BAR.— The case against respondent Deputy Clerk of Court has become moot and academic because she is no longer employed in the judiciary. Since September 1, 1980, she has been assistant city fiscal of Surigao City. She is beyond this Court's disciplinary jurisdiction (Peralta *vs.* Firme, Adm. Matter No. 2044-CFI, November 21, 1980, 101 SCRA 225).

DECISION

AQUINO, *J.*:

Should disciplinary action be taken against respondent judge for having admitted to probate a will, which on its face is *void* because it is written in English, a language not known to the illiterate testatrix, and which is probably a *forged will* because she and the attesting witnesses did not appear before the notary as admitted by the notary himself?

That question arises under the pleadings filed in the testate case and in the certiorari case in the Court of Appeals which reveal the following tangled strands of human relationship.

Mauro Suroza, a corporal in the 45th Infantry of the U.S. Army (Philippine Scouts), Fort McKinley, married Marcelina Salvador in 1923 (p. 150, Spec. Proc. No. 7816). They were childless. They reared a boy named Agapito who used the surname Suroza and who considered them as his parents as shown in his 1945 marriage contract with Nenita de Vera (p. 15, Rollo of CA-G.R. No. 08654, p. 148, Rollo of Testate Case showing that Agapito was 5 years old when Mauro married Marcelina in 1923).

Mauro died in 1942. Marcelina, as a veteran's widow, became a pensioner of the Federal Government. That explains why on her death she had accumulated some cash in two banks.

Agapito and Nenita begot a child named Lilia who became a medical technologist and went abroad. Agapito also became a soldier. He was disabled and his wife Nenita was appointed as

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his guardian in 1953 when he was declared an incompetent in Special Proceedings No. 1807 of the Court of First Instance of Rizal, Pasig Branch I (p. 16, Rollo of CA-G.R. No. 08654-R).

In that connection, it should be noted that a woman named Arsenia de la Cruz wanted also to be his guardian in another proceeding. Arsenia tried to prove that Nenita was living separately from Agapito and that she (Nenita) admitted to Marcelina that she was unfaithful to Agapito (pp. 61-63, Record of testate case).

Judge Bienvenido A. Tan dismissed the second guardianship proceeding and confirmed Nenita's appointment as guardian of Agapito (p. 16, Rollo of CA case). Agapito has been staying in a veteran's hospital in San Francisco or Palo Alto, California (p. 87, Record).

On a date not indicated in the record, the spouses Antonio Sy and Hermogena Talan begot a child named Marilyn Sy, who, when a few days old, was entrusted to Arsenia de la Cruz (apparently a girl friend of Agapito) and who was later delivered to Marcelina Salvador Suroza who brought her up as a supposed daughter of Agapito and as her granddaughter (pp. 23-26, Rollo of CA-G.R. No. SP-08654-R). Marilyn used the surname Suroza. She stayed with Marcelina but was not legally adopted by Agapito. She married Oscar Medrano and is residing at *7666* J.B. Roxas Street, Makati, apparently a neighbor of Marina Paje, a resident of *7668* J.B. Roxas Street.

Marcelina supposedly executed a notarial will in Manila on July 23, 1973, when she was 73 years old. *That will, which is in English, was thumbmarked by her. She was illiterate.* Her letters in English to the Veterans Administration were also thumbmarked by her (pp. 38-39, CA Rollo). In that will, Marcelina bequeathed all her estate to her supposed granddaughter Marilyn.

Marcelina died on November 15, 1974 at the Veterans Hospital in Quezon City. At the time of her death, she was a resident of 7374 San Maximo Street, Olimpia, Makati, Rizal. She owned a

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150-square meter lot and house in that place. She acquired the lot in 1966 (p. 134, Record of testate case).

On January 13, 1975, Marina Paje, alleged to be a laundrywoman of Marcelina (p. 97, CA Rollo) and the executrix in her will (the alternate executrix was Juanita Macaraeg, mother of Oscar, Marilyn's husband), filed with the Court of First Instance of Rizal, Pasig Branch 25, a petition for the probate of Marcelina's alleged will. The case was assigned to Judge Reynaldo P. Honrado.

As there was no opposition, Judge Honrado commissioned his deputy clerk of court, Evangeline S. Yuipco, to hear the evidence. The transcripts of the stenographic notes taken at the hearing before the deputy clerk of court are not in the record.

In an order dated March 31, 1975, Judge Honrado appointed Marina as administratrix. On the following day, April 1, Judge Honrado issued two orders directing the Merchants Banking Corporation and the Bank of America *to allow Marina to withdraw the sum of ₱10,000* from the savings accounts of Marcelina S. Suroza and Marilyn Suroza and requiring Corazon Castro, the custodian of the passbooks, to deliver them to Marina.

Upon motion of Marina, Judge Honrado issued another order dated April 11, 1975, instructing a deputy sheriff to eject the occupants of the testratrix's house, among whom was Nenita V. Suroza, and to place Marina in possesion thereof.

That order alerted Nenita to the existence of the testamentary proceeding for the settlement of Marcelina's estate. She and the other occupants of the decedent's house filed on April 18 in the said proceedings a motion to set aside the order of April 11 ejecting them. They alleged that the decedent's son Agapito was the sole heir of the deceased, that he has a daughter named Lilia, that Nenita was Agapito's guardian and that Marilyn was not Agapito's daughter nor the decedent's granddaughter (pp. 52-68, Record of testate case). Later, they questioned the probate court's jurisdiction to issue the ejectment order.

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In spite of the fact that Judge Honrado was already apprised that persons, other than Marilyn, were claiming Marcelina's estate, he issued on April 23 an order probating her supposed will wherein Marilyn was the instituted heiress (pp. 74-77, Record).

On April 24, Nenita filed in the testate case an omnibus petition "to set aside proceedings, admit opposition with counter-petition of administration and preliminary injunction." Nenita in that motion reiterated her allegation that Marilyn was a stranger to Marcelina, that the will was not duly executed and attested, that it was procured by means of undue influence employed by Marina and Marilyn and that the thumbmarks of the testatrix were procured by fraud or trick.

Nenita further alleged that the institution of Marilyn as heir was void because of the preterition of Agapito and that Marina was not qualified to act as executrix (pp. 83-91, Record).

To that motion was attached an affidavit of Zenaida A. Peñaojas, the housemaid of Marcelina, who swore that *the alleged will was falsified* (p. 109, Record).

Not content with her motion to set aside the ejectment order (filed on April 18) and her omnibus motion to set aside the proceedings (filed on April 24), Nenita filed the next day, April 25, an opposition to the probate of the will and a counter-petition for letters of administration. In that opposition, Nenita assailed the due execution of the will and stated the names and addresses of Marcelina's intestate heirs, her nieces and nephews (pp. 113-121, Record). Nenita was not aware of the decree of probate dated April 23, 1975.

To that opposition was attached an affidavit of Dominga Salvador Teodocio, Marcelina's niece, who swore that Marcelina never executed a will (pp. 124-125, Record).

Marina in her answer to Nenita's motion to set aside the proceedings *admitted that Marilyn was not Marcelina's granddaugher but was the daughter of Agapito and Arsenia de*

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la Cruz and that Agapito was not Marcelina's son but merely an *anak-anakan* who was not legally adopted (p. 143, Record).

Judge Honrado in his order of July 17, 1975 dismissed Nenita's counter-petition for the issuance of letters of administration because of the nonappearance of her counsel at the hearing. She moved for the reconsideration of that order.

In a motion dated December 5, 1975, for the consolidation of all pending incidents, Nenita V. Suroza reiterated her contention that the alleged will is void because Marcelina did not appear before the notary and because it is written in English which is not known to her (pp. 208-209, Record).

Judge Honrado in his order of June 8, 1976 "denied" the various incidents "raised" by Nenita (p. 284, Record).

Instead of appealing from that order and the order probating the will, Nenita "filed a case to annul" the probate proceedings (p. 332, Record). That case, Civil Case No. 24276, Suroza *vs.* Paje and Honrado (p. 398, Record), was also assigned to Judge Honrado. He dismissed it in his order of February 16, 1977 (pp. 398-402, Record).

Judge Honrado in his order dated December 22, 1977, after noting that the executrix had delivered the estate to Marilyn, and that the estate tax had been paid, closed the testamentary proceeding.

About ten months later, in a verified complaint dated October 12, 1978, filed in this Court, Nenita charged Judge Honrado with having probated the fraudulent will of Marcelina. The complainant reiterated her contention that the testatrix was illiterate as shown by the fact that she affixed her thumbmark to the will and that she did not know English, the language in which the will was written. (In the decree of probate Judge Honrado did not make any finding that the will was written in a language known to the testatrix).

Nenita futher alleged that Judge Honrado, in spite of his knowledge that the testatrix had a son named Agapito (the

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testatrix's supposed sole compulsory and legal heir), who was preterited in the will, did not take into account the consequences of such a preterition.

Nenita disclosed that she talked several times with Judge Honrado and informed him that the testatrix did not know the executrix Marina Paje, that the beneficiary's real name is Marilyn Sy and that she was not the next of kin of the testatrix.

Nenita denounced Judge Honrado *for having acted corruptly in allowing Marina and her cohorts to withdraw from various banks the deposits of Marcelina.*

She also denounced Evangeline S. Yuipco, the deputy clerk of court, for not giving her access to the record of the probate case by alleging that it was useless for Nenita to oppose the probate since Judge Honrado would not change his decision. Nenita also said that Evangeline insinuated that if she (Nenita) had ten thousand pesos, the case might be decided in her favor. Evangeline allegedly advised Nenita to desist from claiming the properties of the testatrix because she (Nenita) had no rights thereto and, should she persist, she might lose her pension from the Federal Government.

Judge Honrado in his brief comment did not deal specifically with the allegations of the complaint. He merely pointed to the fact that Nenita did not appeal from the decree of probate and that in a motion dated July 6, 1976 she asked for a thirty-day period within which to vacate the house of the testatrix.

Evangeline S. Yuipco in her affidavit said that she never talked with Nenita and that the latter did not mention Evangeline in her letter dated September 11, 1978 to President Marcos.

Evangeline branded as a lie Nenita's imputation that she (Evangeline) prevented Nenita from having access to the record of the testamentary proceeding. Evangeline was not the custodian of the record. Evangeline "strongly, vehemently and flatly denied" Nenita's charge that she (Evangeline) said that the sum of ten thousand pesos was needed in order that Nenita could get

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a favorable decision. Evangeline also denied that she has any knowledge of Nenita's pension from the Federal Government.

The 1978 complaint against Judge Honrado was brought to the attention of this Court in the Court Administrator's memorandum of September 25, 1980. The case was referred to Justice Juan A. Sison of the Court of Appeals for investigation, report and recommendation. He submitted a report dated October 7, 1981.

On December 14, 1978, Nenita filed in the Court of Appeals against Judge Honrado a petition for certiorari and prohibition wherein she prayed that the will, the decree of probate and all the proceedings in the probate case be declared void.

Attached to the petition was the affidavit of Domingo P. Aquino, who notarized the will. *He swore that the testatrix and the three attesting witnesses did not appear before him and that he notarized the will "just to accomodate a brother-lawyer on the condition" that said lawyer would bring to the notary the testatrix and the witnesses but the lawyer never complied with his commitment.*

The Court of Appeals dismissed the petition because Nenita's remedy was an appeal and her failure to do so did not entitle her to resort to the special civil action of certiorari (Suroza *vs.* Honrado, CA-G.R. No. SP-08654, May 29. 1981).

Relying on that decision, Judge Honrado filed on November 17, 1981 a motion to dismiss the administrative case for having allegedly become moot and academic.

We hold that disciplinary action should be taken against respondent judge for his improper disposition of the testate case which might have resulted in a miscarriage of justice because the decedent's legal heirs and not the instituted heiress in the void will should have inherited the decedent's estate.

A judge may be criminally liable for knowingly rendering an unjust judgment or interlocutory order or rendering a manifestly

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unjust judgment or interlocutory order by reason of inexcusable negligence or ignorance (Arts. 204 to 206, Revised Penal Code).

Administrative action may be taken against a judge of the court of first instance for serious misconduct or inefficiency (Sec. 67, Judiciary Law). Misconduct implies malice or a wrongful intent, not a mere error of judgment. "For serious misconduct to exist, there must be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law, or were in persistent disregard of well-known legal rules" (*In re* Impeachment of Horrilleno, 43 Phil. 212, 214-215).

Inefficiency implies negligence, incompetence, ignorance and carelessness. A judge would be inexcusably negligent if he failed to observe in the performance of his duties that diligence, prudence and circumspection which the law requires in the rendition of any public service (*In re* Climaco, Adm. Case No. 134-J, Jan. 21, 1974, 55 SCRA 107, 119).

In this case, respondent judge, on perusing the will and noting that it was written in English and was thumbmarked by an obviously illiterate testatrix, could have readily perceived that the will is void.

In the opening paragraph of the will, it was stated that English was a language "understood and known" to the testatrix. But in its concluding paragraph, it was stated that the will was read to the testatrix "and translated into Filipino language." (p. 16, Record of testate case) That could only mean that the will was written in a language not known to the illiterate testatrix and, therefore, it is void because of the mandatory provision of Article 804 of the Civil Code that every will must be executed in a language or dialect known to the testator. Thus, a will written in English, which was not known to the Igorot testator, is void and was disallowed (Acop *vs.* Piraso, 52 Phil. 660).

The hasty preparation of the will is shown in the attestation clause and notarial acknowledgment where Marcelina Salvador

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Suroza is repeatedly referred to as the "testator" instead of "testatrix."

Had respondent judge been careful and observant, he could have noted not only the anomaly as to the language of the will but also that there was something wrong in instituting the supposed granddaughter as sole heiress and giving nothing at all to her supposed father who was still alive.

Furthermore, after the hearing conducted by respondent deputy clerk of court, respondent judge could have noticed that the notary was not presented as a witness.

In spite of the absence of an opposition, respondent judge should have personally conducted the hearing on the probate of the will so that he could have ascertained whether the will was validly executed.

Under the circumstances, we find his negligence and dereliction of duty to be inexcusable.

WHEREFORE, for inefficiency in handling the testate case of Marcelina S. Suroza, a fine equivalent to his salary for one month is imposed on respondent judge (his compulsory retirement falls on December 25, 1981).

The case against respondent Yuipco has become moot and academic because she is no longer employed in the judiciary. Since September 1, 1980 she has been assistant city fiscal of Surigao City. She is beyond this Court's disciplinary jurisdiction (Peralta *vs.* Firme, Adm. Matter No. 2044-CFI, November 21, 1980, 101 SCRA 225).

SO ORDERED.

Barredo (Chairman), De Castro, Ericta and *Escolin, JJ.*, concur.

Concepcion Jr., J., on leave.

Abad Santos, J., took no part.