



**Republic of the Philippines  
Supreme Court  
Manila**

**SECOND DIVISION**

**IN THE MATTER OF THE  
PETITION FOR THE PROBATE  
OF THE LAST WILL AND  
TESTAMENT OF ENRIQUE S.  
LOPEZ**

**G.R. No. 189984**

Present:

**RICHARD B. LOPEZ,**  
Petitioner,

CARPIO, J., Chairperson,  
BRION,  
DEL CASTILLO,  
PEREZ,  
PERLAS-BERNABE, JJ.

- versus -

**DIANA JEANNE LOPEZ,  
MARYBETH DE LEON and  
VICTORIA L. TUAZON,**  
Respondents.

Promulgated:

**NOV 12 2012**

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**RESOLUTION**

**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.

<sup>1</sup> *Rollo*, pp. 38-53. Penned by Associate Justice Noel G. Tijam, with Presiding Justice Conrado M. Vasquez, Jr., and Associate Justice Sesinando E. Villon, concurring.

<sup>2</sup> *Id.* at 55-58.

<sup>3</sup> Records, Vol. III, pp. 378-383.

### **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.

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<sup>4</sup> Exhibit "H," *id.* at 17-24.

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

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<sup>5</sup> Supra note 3.

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.

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<sup>6</sup> Id. at 388.

<sup>7</sup> Supra note 1.

<sup>8</sup> Supra note 2.

### **Ruling of the Court**

The petition lacks merit.

The provisions of the Civil Code on Forms of Wills, particularly, Articles 805 and 809 of the Civil Code provide:

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 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. (underscoring supplied)

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.

The law is clear that the attestation must state the number of pages used upon which the will is written. The purpose of the law is to safeguard against possible interpolation or omission of one or some of its pages and prevent any increase or decrease in the pages.<sup>9</sup>

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<sup>9</sup> *Caneda v. CA*, G.R. No. 103554, May 28, 1993, 222 SCRA 781, 790.


While Article 809 allows substantial compliance for defects in the form of the attestation clause, Richard likewise failed in this respect. The statement in the Acknowledgment portion of the subject last will and testament that it “consists of 7 pages including the page on which the ratification and acknowledgment are written”<sup>10</sup> cannot be deemed substantial compliance. The will actually consists of 8 pages including its acknowledgment which discrepancy cannot be explained by mere examination of the will itself but through the presentation of evidence *aliunde*.<sup>11</sup> On this score is the comment of Justice J.B.L. Reyes regarding the application of Article 809, to wit:

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.*<sup>12</sup> (Emphasis supplied)

Hence, the CA properly sustained the disallowance of the will. Moreover, it correctly ruled that Richard pursued the wrong mode of appeal as Section 2(a), Rule 41 of the Rules of Court explicitly provides that in special proceedings, as in this case, the appeal shall be made by record on appeal.

**WHEREFORE**, premises considered, the petition is **DENIED**.

**SO ORDERED.**

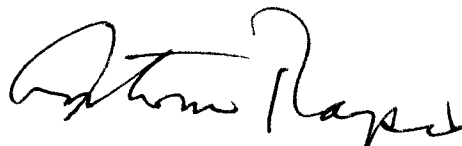
  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

<sup>10</sup> CA Decision, *rollo*, p. 51.

<sup>11</sup> *Testate Estate of the late Alipio Abada v. Abaja*, G.R. No. 147145, January 31, 2005, 450 SCRA 264, 276.

<sup>12</sup> *Azuela v. CA*, 521 Phil. 263, 278 (2006), citing *Caneda v. CA*, *supra* note 8, at 794.

**WE CONCUR:**



**ANTONIO T. CARPIO**

Associate Justice  
Chairperson



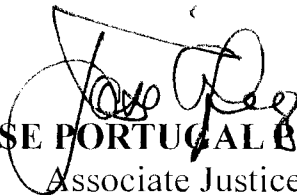
**ARTURO D. BRION**

Associate Justice



**MARIANO C. DEL CASTILLO**

Associate Justice

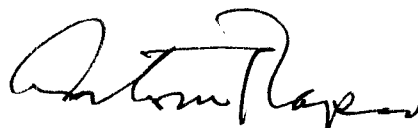


**JOSE PORTUGAL BEREZ**

Associate Justice

**ATTESTATION**

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

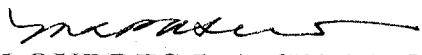


**ANTONIO T. CARPIO**

Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

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

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice