Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

IONA LERIOU, ELEPTHERIOS L. LONGA, and STEPHEN L. LONGA,
Petitioners,

- *versus* -

YOHANNA FRENESI S. LONGA (Minor) and VICTORIA PONCIANA S. LONGA (Minor), represented by their mother MARY JANE B. STA. CRUZ,
Respondents.

G.R. No. 203923

Present:

LEONARDO-DE CASTRO, *CJ.*, Chairperson,
BERSAMIN,*
DEL CASTILLO,
JARDELEZA, and
TIJAM, *JJ.*

Promulgated:

OCT 08 2018

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DECISION

LEONARDO-DE CASTRO, *CJ.*:

Before Us is a Petition for Review on *Certiorari* filed by petitioners Iona Leriou (Iona), Elepytherios L. Longa (Elepytherios), and Stephen L. Longa (Stephen) assailing the Decision[1] dated June 28, 2012 and Resolution[2] dated October 8, 2012 of the Court of Appeals in CA-G.R. CV No. 92497, affirming the Orders[3] dated July 18, 2008 and November 3, 2008 of the Regional Trial Court (RTC) of Muntinlupa City Branch 276, which denied petitioners' Omnibus Motion to remove respondent Mary Jane B. Sta. Cruz as administratrix; and to appoint petitioner Elepytherios or his nominee as administrator of the estate of deceased Enrique Longa (Enrique).

The factual antecedents are as follows:

Respondent-minors Yohanna Frenesi S. Longa[4] (Yohanna) and Victoria Ponciana S. Longa[5] (Victoria), represented by their mother, Mary

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* On official business.

1 *Rollo*, pp. 8-18; penned by Associate Justice Japar B. Dimaampao with Associate Justices Michael P. Elbinias and Nina G. Antonio-Valenzuela concurring.

2 Id. at 19-20.

3 Records pp. 279-282 & 341-343.

4 Born on September 29, 2002 per Certificate of Live Birth, Records p. 63.

Jane B. Sta. Cruz, instituted a special proceeding entitled "*In the Matter of the Intestate Estate of Enrique T. Longa Petition for Letters of Administration*,"[6] docketed as SP Proc. No. 07-035, with the RTC in Muntinlupa City on June 19, 2007. Respondents alleged that Enrique died intestate, survived by petitioners Eleptherios and Stephen and respondents Yohanna and Victoria, his legitimate and illegitimate children, respectively; and that Enrique left several properties[7] with no creditors. In the meantime, respondents were deemed as pauper litigants and exempt from paying the filing fee, subject to the payment thereof once a final judgment is rendered in their favor.[8]

On November 5, 2007, Acting Presiding Judge Romulo SG. Villanueva of the RTC issued an Order,[9] appointing Mary Jane B. Sta. Cruz (respondent-administratrix) as the administratrix of Enrique's estate, thus:

> WHEREFORE, premises considered, Mary Jane B. Sta. Cruz, being the mother, representative, and legal guardian of minor children Yohanna Frenesi S. Longa and Victoria Ponciana S. Longa, is hereby appointed Administratrix of the properties or estate of deceased Enrique T. Longa. Let a Letter of Administration be issued in her favor upon posting of a bond in the amount of FOUR HUNDRED EIGHTY THOUSAND (Php480,000.00) pesos, and after taking the required Oath of Office, she may discharge the rights, duties and responsibilities of her trust.
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> As such Administratrix, she is hereby directed to do the following:
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> 1. To make and return to the Court within three (3) months from assumption of her office, subject to such reasonable extension as may be approved by the Court, a true and complete inventory of all the property, real and personal, of the deceased which shall come to her possession or knowledge or to the knowledge of any other person for her.
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> 2. To faithfully execute the duties of her trust, to manage and dispose of the estate according to the rules for the best interest of the deceased.
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> 3. To render a true and just account of all the estate of the deceased in her hands and of all proceeds and interest derived therefrom, and of the management and disposition of the same, at the time designated by the rules and such other times as the Court directs, and at the expiration of her trust, to settle her account with the Court and to deliver and pay over all the estate,

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5 Victoria is approximately four years younger than Yohanna, TSN (October 16, 2007) p. 4, Records, p. 68.

6 Id. at 33-36.

7 a) Parcel of land in Ayala Alabang Village, Muntinlupa City covered by Transfer Certificate of Title (TCT) No. 159705; b) Parcel of land in Rizal Village, Cupang, Muntinlupa City, covered by TCT No. 166270; c) Parcel of land in Moonwalk Village, Parañaque City, covered by TCT No. 36663; d) Condominium Unit in Baguio Green Valley Village, covered by Condominium Certificate of Title (CCT) No. C-3424; e) Shares of Stocks in various companies; f) Palms Country Club shares; g) Alabang Country Club shares; h) Gold Rolex watch; and i) Box of precious coins. (Records, p. 34.)

8 Records, p. 52.

9 Id. at 71-73.

effects, and moneys remaining in her hands, or due from her on such settlement, to the person lawfully entitled thereto.

4. To perform all orders of the Court by her to be performed.

The RTC issued the Letters of Administrator[10] on December 19, 2007. On March 18, 2008, respondent-administratrix submitted a Report of the Inventory and Appraisal[11] of the real and personal properties of the decedent, which was duly noted by the RTC in its Order[12] dated March 27, 2008.

On May 20, 2008, petitioners filed an *Omnibus Motion 1. To Remove Jane Sta. Cruz as Administratrix; and 2. Appoint Eleptherios L. Longa or His Nominee as Administrator* (Omnibus Motion).[13] Petitioners alleged that they were denied due process of law because they did not receive any notice about respondents' Petition for Letters Administration. Petitioners accuse respondent-administratrix of: 1) neglect for failing to abide by the order of the RTC for her to coordinate with the Department of Foreign Affairs (DFA) for the proper service of the Petition and Order dated July 4, 2007 to petitioners; and 2) two acts of misrepresentation for not disclosing all the assets of the decedent and for pretending to be a pauper litigant. Petitioners also averred that respondent-administratrix did not post a bond as required by Administrative Matter No. 03-02-05-SC, or the "Rule on Guardianship of Minors." Petitioners assert that each of them, being the surviving spouse and legitimate children of Enrique, has a preferential right over respondents to act as administrator of the estate, or to designate somebody else to administer the estate in their behalf, pursuant to the order of preference under Rule 78, Section 6.

On June 6, 2008, respondent-administratrix filed her Opposition to the Omnibus Motion,[14] alleging that she mailed the Petition for Letters of Administration and the RTC Order dated July 4, 2007 to petitioners in the addresses that the latter gave her, and that she coordinated with the Department of Foreign Affairs (DFA) for the service of the Petition for Letters of Administration to petitioners as evidenced by the RTC Order bearing the stamp[15] "RECEIVED" by the DFA Records Division on July 27, 2007. Respondent-administratrix also exchanged correspondences with petitioners and their counsels about her decision to let the court settle Enrique's estate, as shown by her letter dated June 22, 2007 addressed to petitioners' counsels, and her electronic mails (e-mails) with petitioner Eleptherios.[16]

Respondent-administratrix denied committing any act of misrepresentation. With regard to the non-disclosure of some assets of the

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10 Id. at 107.
11 Id. at 109-111.
12 Id. at 116.
13 Id. at 118-139.
14 Id. at 172-180.
15 Id. at 181.
16 Id. at 182-186.

decedent, respondent-administratrix explained that she did not include those properties which were not declared or registered in Enrique's name, and that it was only after the Petition was filed with the RTC that respondent-administratrix learned about a certain real property in Carmona, Cavite. Likewise, respondent-administratrix maintained that she is a pauper litigant since she has no capacity to pay the ₱480,000.00 bond and she had to borrow money from a friend to pay the ₱25,000.00 premium[17] to Travellers Insurance Surety Corporation so that she may post a surety bond.

Respondent-administratrix also said that Administrative Matter No. 03-02-05-SC or the "Rule on Guardianship of Minors" does not apply to her as she is merely representing her children in the administration and preservation of the estate of respondents' father.

In opposing petitioners' preferential right to administer the estate, respondent-administratrix averred that petitioners are disqualified to act as administrators because petitioner Iona, a Greek national, is already divorced from Enrique and has already remarried as shown by her name – Iona Leriou Regala in the Omnibus Motion, and petitioners Eleptherios and Stephen are non-residents of the Philippines.

Respondent-administratrix recognizes that respondents Yohanna and Victoria's shares in the decedent's estate are significantly less than the shares of petitioners Eleptherios and Stephen who are Enrique's legitimate children. However, respondent-administratrix sensed that petitioner Eleptherios is slowly depleting the estate by charging his plane fares to and from the United States of America (USA) and huge phone bills against the estate. In addition, petitioner Eleptherios ordered respondent-administratrix to transfer all of the estate to him so that he could personally partition the properties to Enrique's heirs. Thus, respondent-administratrix was forced to seek the help of the courts for the proper settlement of Enrique's estate.

After the filing of petitioners' Reply and respondent-administratrix's Rejoinder, the Omnibus Motion was submitted for decision.

On June 18, 2008, the RTC issued the assailed Order denying petitioners' Omnibus Motion. The RTC ratiocinated:

> Section 2 of Rule 82 of the Rules of Court provides the grounds by which an administrator may be removed by the court:
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> > Section 2. *Court may remove or accept resignation of executor or administrator. Proceedings upon death, resignation, or removal.* — If an executor or administrator neglects to render his account and settle the estate according to law, to perform an order or judgment of the court, or a duty expressly provided by these rules, or absconds, or becomes insane, or otherwise incapable or unsuitable to discharge the

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17 Id. at 187.

> trust, the court may remove him, or, in its discretion, may permit him to resign. x x x.

The Court, after going over all the evidence submitted by the parties in support of their respective positions, finds and so holds that the [petitioners] in their instant Omnibus Motion has not shown any circumstance as sufficient grounds for the removal of Ms. Jane Sta. Cruz as the court-appointed Administratrix of the estate of the late Enrique Longa.

Records show that Ms. Sta. Cruz has substantially complied with the Court's Order and coordinated with the Department of Foreign Affairs for the service of the Petition and the Order to the [petitioners] in the address/es furnished by her, as shown by the stamp receipt on the Order. x x x. There was any showing that she deliberately or maliciously neglected her duty. Nonetheless, the record would show that Ms. Sta. Cruz never intended to hide the filing of the Petition from the [petitioners] as she was in constant communication with them, particularly with Eleptherios, through e-mails and this fact was never denied by the latter in his pleadings.

Neither will the non-disclosure of Ms. Sta. Cruz of all the assets of the decedent in her initiatory pleading affects her appointment as administrator. Section 2 of Rule 76 of the Rules of Court requires only an allegation of the probable value and character of the property of the estate. If the true value and properties would be known later on, the same should be reported and made known to the Court, just as what the Administratrix did in the instant case when she submitted to the Court the true inventory and appraisal of all the real and personal properties of the estate after her appointment as Administratrix.

The mere imputation of misrepresentation on the alleged financial capacity of the Administratrix as a pauper litigant without any concrete and categorical proof is not also a sufficient ground for the removal of the Administratrix. The record shows that Ms. Sta. Cruz' petition to litigate as pauper underwent the required hearing and compliance of all the requirements as provided by law before she was allowed to do so. The mere fact that Ms. Sta. Cruz resides in the posh Ayala Alabang Village does not necessarily disqualify her as a pauper litigant. There must be a showing that she is the owner of the said property.

Anent the ground that Ms. Sta. Cruz is disqualified to represent the minors in this instant proceedings for her failure to post the required guardian's bond, it should be stressed that this is a proceeding for the settlement of estate of the late Enrique T. Longa, not the estate of the minor children-[respondents], where the rights of ownership of the children over the properties of their deceased father is merely inchoate as long as the estate has not been fully settled. [Salvador vs. Sta. Maria, 20 SCRA 603 (1967)]. Unless there is partition of the estate of the deceased, the minors cannot yet be considered owners of properties, hence, the requirement of guardian bond is immaterial in this case. Needless to state, in instituting this proceedings (sic) in behalf of her minor children, Ms. Sta. Cruz is just exercising her legal, moral and natural right and duty as the mother in order to protect her children's right and claim over the estate of their deceased father.

> While it may be true that the [petitioners], (except for Iona) being the legitimate children of the late Enrique Longa, have a superior right over the Court appointed Administratrix, it must be stressed that Ms. Sta. Cruz was appointed as the Administratrix, being the representative and biological parent of the minors Yohanna Frenesi and Victoria Ponciana, who are equally considered surviving heirs of the late Enrique Longa, albeit, illegitimate children of the latter. As the representative and biological parent of the minor heirs, Ms. Sta. Cruz has all the right to protect the property for the benefit of her children. Indeed, if the properties will be properly managed and taken cared of, this will definitely redound to the benefit of Yohanna and Victoria Ponciana, whose future will therefor be protected.
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> Moreover, the appointment of Elepheriosis (sic) L. Longa as Administrator is not allowed under Rule 78 Section 1(b) which provided that "No person is competent to serve as executor or administrator who is not a resident of the Philippines."
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> In fine, the grounds relied upon by the [petitioners] are not sufficient to remove the duly court appointed Administratrix.
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> The settled rule is that the removal of an administrator under Section 2 of Rule 82 of the Rules of Court "lies within the discretion of the Court appointing him/her. As aptly expressed by the Supreme Court in the case of Degala vs. Ceniza and Umipig, 78 Phil. 791, 'the sufficiency of any ground for removal should thus be determined by said court, whose sensibilities are, in the first place, affected by any act or omission on the part of the administrator not comfortable to or in disregard of the rules or the orders of the court.[18]

The RTC, ultimately, decreed:

> WHEREFORE, premises considered, the "Omnibus Motion (1) to remove Jane Sta. Cruz as Administratrix; and (2) Appoint Eleptherios L. Longa or his Nominee as Administrator" is hereby DENIED.[19]

Petitioners filed a Motion for Reconsideration,[20] which the trial court denied in an Order[21] dated November 3, 2008.

Petitioners appealed to the Court of Appeals, which was docketed as CA-G.R. CV No. 92497.

In a Decision dated June 28, 2012, the appellate court affirmed the Orders dated July 18, 2003 and November 3, 2008 of the trial court. Petitioners filed a Motion for Reconsideration[22] but it was denied in a Resolution dated October 8, 2012.

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18 Id. at 280-281.
19 Id. at 282.
20 Id. at 287-295.
21 Id. at 335-337.
22 CA *rollo* pp. 217-234.

Hence, petitioners filed the instant Petition for Review on *Certiorari*,[23] raising the following issues:

> THE HONORABLE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW AND JURISPRUDENCE, *VIZ*:
>
> A. IT DISPENSED WITH THE MANDATORY AND JURISDICTIONAL REQUIREMENTS OF SECTION 3, RULE 79, IN RELATION TO SECTIONS 3 & 4, RULE 76 OF THE RULES OF COURT, AND THE COURT A QUO'S OWN ORDER DATED 04 JULY 2007, WHEN IT CONSIDERED THE MERE PROOF OF SERVICE OF THE ORDER DATED 04 JULY 2007 ON THE DEPARTMENT OF FOREIGN AFFAIRS COMPLIANT WITH THE SAID LEGAL REQURIEMENTS.
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> B. IT CONSIDERED THE EXCHANGE OF ELECTRONIC MAILS BETWEEN RESPONDENT STA. CRUZ AND PETITIONER ELEPTHERIOS AS A POSITIVE INDICATION THAT PETITIONERS HEIRS LONGA WERE ALLEGEDLY OFFICIALLY SERVED AND HAD PERSONAL KNOWLEDGE OF THE PETITION DESPITE THE FACT THAT SAID ELECTRONIC MAILS WERE ONLY BETWEEN RESPONDENT STA. CRUZ AND PETITIONER ELEPTHERIOS.
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> C. IT DISREGARDED THE PREFERENTIAL AND SUPERIOR RIGHTS OF THE LEGITIMATE CHILDREN OVER THE ILLEGITIMATE CHILDREN OF THE DECEDENT.
>
> D. IT DISREGARDED THE SUBSTANTIATED GROUNDS RAISED BY PETITIONERS HEIRS LONGA, SHOWING THE UNFITNESS OF RESPONDENT STA. CRUZ TO DISCHARGE HER DUTIES AS ADMINISTRATRIX OF THE ESTATE OF THE DECEDENT.[24]

The Court's Ruling

A perusal of the Petition for Review on *Certiorari* reveals that it contains the same issues and arguments raised by petitioners in their Omnibus Motion and Appellants' Brief.

The Petition Suffers a Technical Infirmity.

Rule 45, Section 4 of the Revised Rules of Court requires the petition to contain a sworn certification against forum shopping. Section 4 provides:

> SECTION 4. *Contents of petition.* — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the

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23 *Rollo*, pp. 46-79.

24 Id. at 54-55.

> judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of the court *a quo* and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) **contain a sworn certification against forum shopping** as provided in the last paragraph of Section 2, Rule 42. (Emphasis supplied.)

It should be emphasized that it is the party-pleader who must sign the sworn certification against forum shopping for the reason that he/she has personal knowledge of whether or not another action or proceeding was commenced involving the same parties and causes of action. If the party-pleader is unable to personally sign the certification, he/she must execute a special power of attorney (SPA) authorizing his/her counsel to sign in his/her behalf. In *Jacinto v. Gumaru, Jr.*,[25] the Court elucidated:

> It is true, as petitioner asserts, that if for reasonable or justifiable reasons he is unable to sign the verification and certification against forum shopping in his CA Petition, he may execute a special power of attorney designating his counsel of record to sign the Petition on his behalf. In *Altres v. Empleo*, this view was taken:
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> > For the guidance of the bench and bar, the Court restates in capsule form the jurisprudential pronouncements already reflected above respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:
> >
> > 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
> >
> > 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.
> >
> > 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.
> >
> > 4) **As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent**

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25 734 Phil. 685, 696-697 (2014).

> **submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."**
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> 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.
>
> 6) **Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.** (Emphases supplied, citation omitted.)

In the instant case, it was not petitioners but Atty. Joseph Lemuel B. Baquiran (Baquiran) of Sianghio Lozada and Cabantac Law Offices who signed the certification against forum shopping despite the absence of any showing that petitioners executed an SPA authorizing Atty. Baquiran to sign in their behalf. By Atty. Baquiran's own revelation, their law firm had lost communication and they could not locate any of the petitioners who are apparently residing in the United States of America (USA). Atty. Baquiran, in the verification and certification portion of the Petition, stated:

> 5. Considering that our law Firm has lost communication with petitioners and has yet to re-establish communication with petitioners who are residing in the United States of America, I executed this Verification and Certification Against Forum Shopping pursuant to my duty as a lawyer in order to protect the rights and interest of petitioners by availing of and exhausting all available legal reliefs.[26]

The Petition should be dismissed pursuant to our ruling in *Anderson v. Ho*[27] where the Court clarified that a certification signed by a counsel without an SPA is a valid cause for the dismissal of the Petition, thus:

> The requirement that it is the petitioner, not her counsel, who should sign the certificate of non-forum shopping is due to the fact that a "certification is a peculiar personal representation on the part of the principal party, an assurance given to the court or other tribunal that there are no other pending cases involving basically the same parties, issues and causes of action." "Obviously, it is the petitioner, and not always the counsel whose professional services have been retained for a particular case, who is in the best position to know whether [she] actually filed or caused the filing of a petition in that case." Per the above guidelines, however, if a petitioner is unable to sign a certification for reasonable or

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26 *Rollo*, p. 77.

27 701 Phil. 6, 14-15 (2013).

> justifiable reasons, she must execute an SPA designating her counsel of record to sign on her behalf. "[A] certification which had been signed by counsel without the proper authorization is defective and constitutes a valid cause for the dismissal of the petition."
>
> In this light, the Court finds that the CA correctly dismissed Anderson's Petition for Review on the ground that the certificate of non-forum shopping attached thereto was signed by Atty. Oliva on her behalf *sans* any authority to do so. While the Court notes that Anderson tried to correct this error by later submitting an SPA and by explaining her failure to execute one prior to the filing of the petition, this does not automatically denote substantial compliance. It must be remembered that a defective certification is generally not curable by its subsequent correction. And while it is true that in some cases the Court considered such a belated submission as substantial compliance, it "did so only on sufficient and justifiable grounds that compelled a liberal approach while avoiding the effective negation of the intent of the rule on non-forum shopping." (Citations omitted.)

The Petition is Not Meritorious.

Even if we brush aside the technical defect, the instant Petition must fail just the same.

Petitioners allege that respondents failed to adduce evidence, *i.e.*, Return of Service, to show that petitioners were furnished with the Petition for Letters Administration and the RTC Order dated July 4, 2007. Petitioners assert that the e-mails between respondent-administratrix and petitioner Elephterios, and the stamp "RECEIVED" of the DFA Records Division, do not prove that they actually received the Petition for Letters of Administration and the RTC Order dated July 4, 2007. Petitioners contend that, without the mandatory and jurisdictional requirement on notice to the known heirs of the decedent, all proceedings before the RTC relative to the Petition for Letters Administration are null and void.

We are not convinced. Sections 3 and 4, Rule 76 of the Revised Rules of Court provide:

> SECTION 3. *Court to appoint time for proving will. Notice thereof to be published.* — When a will is delivered to, or a petition for the allowance of a will is filed in, the court having jurisdiction, such court shall fix a time and place for proving the will when all concerned may appear to contest the allowance thereof, and shall cause notice of such time and place to be published three (3) weeks successively, previous to the time appointed, in a newspaper of general circulation in the province.
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> But no newspaper publication shall be made where the petition for probate has been filed by the testator himself.
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> SECTION 4. *Heirs, devisees, legatees, and executors to be notified by mail or personally.* — The court shall also cause copies of the notice of the time and place fixed for proving the will to be addressed to the designated or other known heirs, legatees, and devisees of the testator

> resident in the Philippines at their places of residence, and deposited in the post office with the postage thereon prepaid at least twenty (20) days before the hearing, if such places of residence be known. A copy of the notice must in like manner be mailed to the person named as executor, if he be not the petitioner; also, to any person named as co-executor not petitioning, if their places of residence be known. Personal service of copies of the notice at least ten (10) days before the day of hearing shall be equivalent to mailing.
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> If the testator asks for the allowance of his own will, notice shall be sent only to his compulsory heirs.

Contrary to petitioners' argument that personal notice under Section 4 of Rule 76 is a jurisdictional requirement, the Court, in *Alaban v. Court of Appeals*,[28] explained that it is just a matter of personal convenience. Thus:

> According to the Rules, notice is required to be personally given to known heirs, legatees, and devisees of the testator. A perusal of the will shows that respondent was instituted as the sole heir of the decedent. Petitioners, as nephews and nieces of the decedent, are neither compulsory nor testate heirs who are entitled to be notified of the probate proceedings under the Rules. Respondent had no legal obligation to mention petitioners in the petition for probate, or to personally notify them of the same.
>
> **Besides, assuming *arguendo* that petitioners are entitled to be so notified, the purported infirmity is cured by the publication of the notice. After all, personal notice upon the heirs is a matter of procedural convenience and not a jurisdictional requisite**. (Emphasis supplied, citations omitted.)

Moreover, it should be emphasized that a testate or intestate settlement of a deceased's estate is a proceeding *in rem*,[29] such that the publication under Section 3 of the same Rule, vests the court with jurisdiction over all persons who are interested therein.

In the instant case, the Order dated July 4, 2007 was published for three consecutive weeks in *Balita*, a newspaper of general circulation, on the following dates: July 27, 2007, August 3, 2007, and August 10, 2007.[30] By such publication which constitutes notice to the whole world, petitioners are deemed notified about the intestate proceedings of their father's estate. As the Court elucidated in *Alaban v. Court of Appeals*[31]:

> However, petitioners in this case are mistaken in asserting that they are not or have not become parties to the probate proceedings.
>
> Under the Rules of Court, any executor, devisee, or legatee named in a will, or any other person interested in the estate may, at any time after the death of the testator, petition the court having jurisdiction to have the will allowed. Notice of the time and place for proving the will must be published for three (3) consecutive weeks, in a newspaper of general circulation in the

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28 507 Phil. 682, 695 (2005).

29 *Pilapil v. Heirs of Maximino R. Briones*, 543 Phil. 184, 199 (2007).

30 Records, p. 6.

31 Supra note 28 at 692-693.

> province, as well as furnished to the designated or other known heirs, legatees, and devisees of the testator. **Thus, it has been held that a proceeding for the probate of a will is one *in rem*, such that with the corresponding publication of the petition the court's jurisdiction extends to all persons interested in said will or in the settlement of the estate of the decedent.**
>
> **Publication is notice to the whole world that the proceeding has for its object to bar indefinitely all who might be minded to make an objection of any sort against the right sought to be established. It is the publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it.** Thus, even though petitioners were not mentioned in the petition for probate, they eventually became parties thereto as a consequence of the publication of the notice of hearing. (Emphasis supplied, citations omitted.)

The instant case is analogous to *Pilapil v. Heirs of Maximino R. Briones*[32] where some of the heirs did not receive any personal notice about the intestate proceedings, yet they were deemed notified through publication since the intestate proceeding is *in rem*. The Court in *Pilapil* adjudged:

> While it is true that since the CFI was not informed that Maximino still had surviving siblings and **so the court was not able to order that these siblings be given personal notices of the intestate proceedings, it should be borne in mind that the settlement of estate, whether testate or intestate, is a proceeding *in rem*, and that the publication in the newspapers of the filing of the application and of the date set for the hearing of the same, in the manner prescribed by law, is a notice to the whole world of the existence of the proceedings and of the hearing on the date and time indicated in the publication. The publication requirement of the notice in newspapers is precisely for the purpose of informing all interested parties in the estate of the deceased of the existence of the settlement proceedings, most especially those who were not named as heirs or creditors in the petition, regardless of whether such omission was voluntarily or involuntarily made.** (Emphasis supplied.)

As to whom the Letters of Administration should be issued, the Court, in *Gabriel v. Court of Appeals*,[33] gave emphasis on the extent of one's interest in the decedent's estate as the paramount consideration for appointing him/her as the administrator. The Court pronounced:

> In the appointment of the administrator of the estate of a deceased person, the principal consideration reckoned with is the interest in said estate of the one to be appointed as administrator. This is the same consideration which Section 6 of Rule 78 takes into account in establishing the order of preference in the appointment of administrators for the estate. The underlying assumption behind this rule is that those who will reap the benefit of a wise, speedy and economical administration of the estate, or, on the other hand, suffer the consequences of waste, improvidence or

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32 Supra note 29 at 199.

33 287 Phil. 459, 466-467 (1992).

> mismanagement, have the highest interest and most influential motive to administer the estate correctly.

Here, petitioners cannot assert their preferential right to administer the estate or that their choice of administrator should be preferred because they are the nearest of kin of the decedent. It is worth emphasizing that the preference given to the surviving spouse, next of kin, and creditors is not absolute, and that the appointment of an administrator greatly depends on the attendant facts and circumstances of each case. In *Uy v. Court of Appeals,*[34] the Court decreed:

> The order of preference in the appointment of an administrator depends on the attendant facts and circumstances. In *Sioca v. Garcia*, this Court set aside the order of preference, to wit:
>
> > It is well settled that a probate court cannot arbitrarily and without sufficient reason disregard the preferential rights of the surviving spouse to the administration of the estate of the deceased spouse. But, if the person enjoying such preferential rights is unsuitable the court may appoint another person. The determination of a person's suitability for the office of administrator rests, to a great extent, in the sound judgment of the court exercising the power of appointment and such judgment will not be interfered with on appeal unless it appears affirmatively that the court below was in error. (Citation omitted.)

In the instant case, petitioners are non-residents of the Philippines, which disqualify them from administering the decedent's estate pursuant to Rule 78, Section1[35] of the Rules of Court. We are mindful that respondents are also disqualified by reason of their minority. In view of the evident disqualification of petitioners and respondents and the lack of any known creditors, the parties have no choice but to have somebody else administer the estate for them. Petitioners nominated Juan Manuel Elizalde (Elizalde) but failed to give adequate justification as to why Letters of Administration should be issued in Elizalde's favor.[36] We fully agree with the ruling of the trial and appellate courts in choosing respondent-administratrix over Elizalde. Compared to Elizalde whose interest over the decedent's estate is unclear, respondent-administratrix's interest is to protect the estate for the benefit of her children with Enrique. Indeed, it is respondents who would directly benefit from an orderly and efficient management by the respondent-administratrix. In the absence of any indication that respondent-administratrix would jeopardize her children's interest, or that of petitioners in the subject estate, petitioners' attempts to remove her as administratrix of Enrique's estate must fail.

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34 519 Phil. 673, 680 (2006).

35 Section 1. *Who are incompetent to serve as executors or administrators.* — No person is competent to serve as executor or administrator who:
(a) Is a minor;
(b) Is not a resident of the Philippines[.]

36 CA *rollo*, p. 208.

Notably, the trial and appellate courts did not find any factual or legal ground to remove Mary Jane B. Sta. Cruz as administratrix of Enrique's estate. Both courts cleared respondent-administratrix of the charges of misrepresentation of being a pauper and concealment of assets of Enrique's estate. We quote with approval the ruling of the Court of Appeals:

> While it is conceded that the court is invested with ample discretion in the removal of an administrator, it must, however, have some fact legally before it in order to justify such removal. There must be evidence of an act or omission on the part of the administrator not conformable to or in disregard of the rules or the orders of the court which it deems sufficient or substantial to warrant the removal of the administrator. Suffice it to state that the removal of an administrator does not lie on the whims, caprices and dictates of the heirs or beneficiaries of the estate.[37]

Likewise, respondent-administratrix is not required to pay a guardianship bond under Section 16,[38] A.M. No. 03-02-05-SC, also known as the Rule on Guardianship of Minors, before she could discharge her functions as administratrix of Enrique's estate. This is self-explanatory and needs no further elaboration.

All told, the Court sustains the above findings especially so that petitioners did not present any new persuasive argument in their Petition. It is well-settled that the findings of fact of the trial court, when affirmed by the Court of Appeals, are generally binding and conclusive and may not be re-examined by this Court.[39] Although this rule admits of exceptions, none of the exceptional circumstances applies herein.

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37 *Rollo*, p. 16.

38 Sec. 16. Bond of parents as guardians of property of minor. – If the market value of the property or the annual Income of the child exceeds P50,000.00, the parent concerned shall furnish a bond In such amount as the court may determine, but in no case less than ten per centurn of the value of such property or annual income, to guarantee the performance of the obligations prescribed for general guardians.
A verified petition for approval of the bond shall be filed in the Family Court of the place where the child resides or, if the child resides in a foreign country, in the Family Court of the place where the property or any part thereof is situated.
The petition shall be docketed as a summary special proceeding In which all incidents and issues regarding the performance of the obligations of a general guardian shall be heard and resolved.

39 It is generally settled in jurisprudence that the findings of fact of the trial court specially when affirmed by the CA are final, binding and conclusive and may not be re-examined by this Court. There are, however, several exceptions to this rule, to wit:
1] When the findings are grounded entirely on speculation, surmises or conjectures;
2] When the inference made is manifestly mistaken, absurd or impossible;
3] When there is grave abuse of discretion;
4] When the judgment is based on misapprehension of facts;
5] When the findings of facts are conflicting;
6] When in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
7] When the findings of the CA are contrary to that of the trial court;
8] When the findings are conclusions without citation of specific evidence on which they are based;
9] When the facts set forth in the petition as well as in the main and reply briefs are not disputed;
10] When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is **DENIED**. The assailed Decision dated June 28, 2012 and Resolution dated October 8, 2012 of the Court of Appeals in CA-G.R. CV No. 92497 are **AFFIRMED**.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Chief Justice
Chairperson

WE CONCUR:

On official business
LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

11] When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (*Republic v. Hachero,* 785 Phil. 784, 792-793 [2016].)

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

TERESITA J. LEONARDO-DE CASTRO
Chief Justice