Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MIGDONIO RACCA and MIAM GRACE DIANNE RACCA, Petitioners,	**G.R. No. 237133**
	Present:
- versus -	PERLAS-BERNABE, *SAJ, Chairperson,* GESMUNDO, LAZARO-JAVIER, LOPEZ, and ROSARIO,* *JJ.*
MARIA LOLITA A. ECHAGUE, Respondent.	Promulgated: JAN 20 2021

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DECISION

GESMUNDO, *J.*:

Personal notice to the heirs whose places of residence are known is mandatory. Trial courts cannot simply abdicate their duty under Section 4, Rule 76 of the 1997 Revised Rules of Court by indiscriminately applying the rule on publication. To do so would render nugatory the procedure laid down in Sec. 4 and the purpose for which it was intended.

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* On official leave.

This is an appeal by *certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure seeking to reverse and set aside the twin orders of the Regional Trial Court, Palawan and Puerto Princesa City, Branch 51 *(RTC)*, issued on August 16, 2017[1] and November 20, 2017[2] in SPL. PROC. No. 2391. The August 16, 2017 Order declared petitioners in default while the November 20, 2017 Order denied their Motion to Lift Order of General Default.

Antecedents

On March 28, 2017, Maria Lolita A. Echague *(respondent)* filed before the RTC a Petition[3] for the allowance of the will of the late Amparo Ferido Racca *(Amparo)* and issuance of letters testamentary in her favor. Respondent averred in the petition that Amparo executed a notarial will before her death on September 9, 2015 and bequeathed an undivided portion of a parcel of land consisting one-fourth (¼) of her estate, or 412.5 square meters, in favor of her grandnephew Migdon Chris Laurence Ferido. Respondent also named herein petitioners Migdonio Racca *(Migdonio)* and Miam Grace Dianne Ferido Racca *(Miam)*, Amparo's husband and daughter, respectively, as Amparo's known heirs.[4]

Finding the petition sufficient in form and substance, the RTC issued an Order on April 18, 2017 setting the case for hearing on June 21, 2017 at 8:30 a.m. On even date, the trial court issued the corresponding Notice of Hearing.[5]

The hearing proceeded on June 21, 2017 but herein petitioners failed to appear, thus prompting the trial court to declare them in default.[6]

On July 11, 2017, petitioners filed a Motion to Lift Order of General Default[7] on the ground of excusable negligence. They alleged that Migdonio received a copy of the Notice of Hearing only on June 19, 2017 or two (2) days prior to the scheduled hearing. Since Migdonio is already of advanced age, being 78 years old, and not in perfect health, he could not immediately act on the notice within such a short period of time. Miam, on the other hand, did not receive any notice. Due to their ignorance of procedural rules and financial constraints, petitioners were not immediately able to secure a

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[1] *Rollo*, pp. 56-57; penned by Presiding Judge Ambrosio B. De Luna.
[2] Id. at 66-67.
[3] Id. at 33-35.
[4] Id. at 34.
[5] Id. at 46.
[6] Id. at 15.
[7] Id. at 47-54.

counsel to represent their interest. Petitioners also manifested in the motion that Amparo was mentally incapable to make a will based on the medical certificate issued by her attending physician.[8]

In its August 16, 2017 Order, the RTC denied petitioners' motion. It held that the jurisdictional requirements of publication and posting of notices had been substantially complied with.[9]

Petitioners filed their Motion for Reconsideration[10] but the RTC denied the same in its November 20, 2017 Order.[11] Aggrieved, petitioners filed the present petition before the Court.

Issues

Petitioners attribute the following errors on the part of the RTC:

I

THE HONORABLE COURT ERRED WHEN IT RULED THAT PUBLICATION AND POSTING BAR THE PARTICIPATION OF (SIC) HEREIN PETITIONERS;

II

THE HONORABLE COURT ERRED IN DENYING THE HEREIN COMPULSORY HEIR[S] WITH THE RIGHT TO OPPOSE THE PROBATE OF THE WILL.[12]

Petitioners argue that being compulsory heirs, they have an interest in the probate of the will; that there are clear grounds to question the will, such as the subject of the devise being a conjugal property, as well as the mental condition of the deceased prior to her death;[13] that posting of the notice and its publication does not bar the lifting of the order of general default; that the order of general default may be lifted after a good and reasonable cause is shown;[14] that the order of general default should be lifted because their failure

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[8] Id. at 55.
[9] Id. at 56-57.
[10] Id. at 58-65.
[11] Id. at 66-67.
[12] Id. at 16.
[13] Id. at 17-18.
[14] Id. at 19-20.

to appear during the jurisdictional hearing is due to excusable negligence; and that substantial justice requires the relaxation of the rules in their favor.[15]

In her August 12, 2018 Comment,[16] respondent contended that the petition should be expunged and dismissed on the basis of procedural grounds; that the Verification and Certification on Non-Forum Shopping failed to refer to the issues in the instant petition or the issues in the probate proceedings before the RTC because it merely stated that "[w]e further certify that we have not commenced and/or am not aware of any other action or proceeding involving the same land, or a portion thereof, or involving the same issue in any court, tribunal, or quasi-judicial agency;"[17] that petitioners' Explanation only mentioned service of the petition to the adverse party through registered mail;[18] that the petition raises mixed questions of fact and law which should have been filed with the CA under the principle of hierarchy of courts;[19] and since an appeal by *certiorari* under Rule 45 is discretionary upon the Court, petitioners failed to cite sufficient reasons why the Court should exercise such discretion.[20]

On the substantive aspects of the petition, respondent maintained that the RTC's declaration of general default on June 21, 2017 was in accordance with law and jurisprudence. The Notice of Hearing had been published for three (3) consecutive weeks from May 6 to May 26, 2017 in Palawan Times, a newspaper of general circulation in Puerto Princesa City and the Province of Palawan. Respondent further argued that publication is a jurisdictional requirement while notice upon the heirs is a matter of procedural convenience, not a jurisdictional requisite.[21]

Respondent also asserted that Amparo's will clearly states that the property being bequeathed to the devisee shall be taken from the free portion of her estate which she can freely dispose of by will.[22] She likewise alleged that Miam's status as a compulsory heir is questionable because her birth was registered after Amparo's death or almost thirty-four (34) years from Miam's alleged date of birth.[23]

In their Reply,[24] petitioners countered that there is no controversy

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[15] Id. at 20-21.
[16] Id. at 82-95.
[17] Id. at 83.
[18] Id.
[19] Id. at 87-92.
[20] Id. at 93-94.
[21] Id. at 92-94.
[22] Id. at 89.
[23] Id. at 88.
[24] Id. at 112-120.

involving the nature of their relationship with Amparo, considering that respondent even recognized them as heirs.[25] As regards their Verification and Certification on Non-Forum Shopping, the same covers issues in the instant petition and before the probate court.[26] They asserted that the ruling in *Alaban v. Court of Appeals*[27] that personal notice upon the heirs is a matter of procedural convenience and not a jurisdictional requisite is not applicable because the lack of notice therein was cured by publication. Further, the parties in said case were not deprived of their substantial rights because they were allowed to participate in the proceedings.[28]

At bottom, the issues for resolution by the Court are: (a) may the Order of General Default issued by the RTC against the petitioners be set aside? and (b) are known heirs of the testator still entitled to personal notice despite the publication and posting of the notice of the hearing?

The Court's Ruling

The petition is meritorious. Petitioners were not properly notified in accordance with Sec. 4, Rule 76 of the Revised Rules of Court.

A petition for review under Rule 45 raising a pure question of law is the appropriate remedy

Petitioners brought the instant appeal under Rule 45 of the 1997 Revised Rules of Civil Procedure, Sec. 1 of which provides that the subject of the appeal shall be a judgment, final order or resolution of the RTC, among others.[29] A final order is defined as one which disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court.[30]

The twin orders being assailed herein pertain to the June 21, 2017 Order of general default issued by the RTC. An order of general default, as explained in *Heirs of Eugenio Lopez, Sr. v. Hon. Enriquez*,[31] has the following effects

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[25] Id. at 114.
[26] Id. at 115-116.
[27] 507 Phil. 682, 689-690 (2005).
[28] *Rollo*, pp. 116-119.
[29] RULES OF COURT, Rule 45, Sec. 1.
[30] *Republic v. Heirs of Oribello, Jr.*, 705 Phil. 614, 624 (2013).
[31] 490 Phil. 74, 93 (2005).

on the party declared in default:

> x x x A party declared in default loses his standing in court. As a result of his loss of standing, a party in default cannot appear in court, adduce evidence, be heard, or be entitled to notice. A party in default cannot even appeal from the judgment rendered by the court, unless he files a motion to set aside the order of default under the grounds provided in what is now Sec. 3, Rule 9 of the 1997 Rules of Civil Procedure.[32]

By virtue of the assailed orders of the RTC, herein petitioners, who claim to be the husband and the daughter of Amparo, had been barred from participating in the allowance of her alleged last will and testament. Their non-participation in the probate proceeding would prevent them from raising matters that may cast serious doubts on the genuineness and authenticity of Amparo's will. By reason of the default order, they cannot participate in the proceedings, oppose the probate of the will which they believe to be unauthentic, or even appeal the judgment of the trial court thereon. As such, the August 16, 2017 and November 20, 2017 Orders of the trial court are final and, therefore, proper subjects of an appeal under Rule 45.

Significantly, the present petition is concerned with whether petitioners, being known heirs of the testator, are still entitled to notice under Sec. 4 of Rule 76 despite the publication of the notice of hearing. This issue indubitably involves a question of law which the Court may entertain in a petition filed under Rule 45.[33]

An Order of General Default does not apply in probate proceedings

The crux of petitioners' appeal pertains to the issuance of the order of general default by the trial court in the probate of Amparo's will. Apparently, the RTC based the issuance of such order on Sec. 3, Rule 9 of the Rules of Civil Procedure which provides:

> RULE 9
> Effect of Failure to Plead
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> Section 3. *Default; declaration of.* — If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed

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[32] Id. at 93; citing *Lim Toco v. Go Fay*, 80 Phil. 166, 169 (1948).
[33] Supra note 29.

> to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

However, Sec. 3, Rule 9 does not apply in probate proceedings. A careful reading of Sec. 3 reveals that an order of default avails only in litigious proceedings. Thus, it cannot be validly issued in a special proceeding such as the probate of a will. The Court already made this clarification in the early case of *Riera v. Palmaroli*[34] as follows:

> Now what is the meaning of "judgment rendered upon default," as used in section 513? The reference is of course to the default mentioned in section 128 of the Code of Civil Procedure. x x x **A default, such as is there intended, can only arise in contentious litigation where a party who has been impleaded as a defendant and served with process fails to appear at the time required in the summons or to answer at the time provided by the rules of the court. The proceeding to probate a will is not a contentious litigation in any sense, because nobody is impleaded or served with process. It is a special proceeding, and although notice of the application is published, nobody is bound to appear and no order for judgment by default, is ever entered.** If the application is not opposed, the court may allow the will on the testimony of one of the subscribing witnesses only (sec. 631, Code Civ. Proc.), provided none of the reasons specified in section 634 of the Code of Civil Procedure for disallowing the will are found to exist. If any interested person opposes the probate, the court hears the testimony and allows or disallows the will accordingly. From such judgment any interested person may appeal to the Supreme Court within twenty days. (Sec. 781, Code Civ. Proc.) **Though the action taken by a Court of First Instance in thus allowing or disallowing a will is properly denominated a judgment, it is not a judgment rendered upon default even though no person appears to oppose the probate.**[35] (emphases supplied)

It should be emphasized that in probate proceedings, the court's area of inquiry is limited to an examination and resolution of the extrinsic validity of the will.[36] By extrinsic validity, the testamentary capacity and the compliance with the formal requisites or solemnities prescribed by law are the only questions presented for the resolution of the court.[37] Due execution of the will or its extrinsic validity pertains to whether the testator, being of sound mind, freely executed the will in accordance with the formalities prescribed by Articles 805 and 806 of the New Civil Code.[38] These matters do not

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[34] 40 Phil. 105 (1919).
[35] Id. at 114-115.
[36] *Nepomuceno v. Court of Appeals*, 223 Phil. 418, 423 (1985).
[37] *Sumilang v. Ramagosa*, 129 Phil. 636, 639 (1967), citing *Nuguid v. Nuguid*, 123 Phil. 1305, 1308 (1966).
[38] *Baltazar v. Laxa*, 685 Phil. 484, 498 (2012).

necessitate the issuance of an order of default against parties who failed to appear in the proceedings despite the publication of the notice of hearing. After all, the probate of a will is mandatory[39] and cannot be left to the discretion of the persons interested in the estate of the deceased.

Moreover, Rule 76 does not expressly provide for the issuance of a default order in the absence of persons contesting the will. In the event that no persons appear to contest the will, Sec. 5[40] thereof only directs the court to grant allowance of the will based on the testimony of a witness that it was executed pursuant to law, or in the case of holographic will, that the handwriting and signature were those of the testator.

Without legal support, the RTC cannot validly issue an order of default in probate proceedings. Hence, the RTC palpably erred in issuing the order of general default due to the non-appearance of petitioners in the June 21, 2017 hearing.

Notice to the designated and known heirs, devisees and legatees under Section 4, Rule 76 of the Rules of Court is mandatory; Publication of notice of hearing is not sufficient when the places of residence of the heirs, legatees and devisees are known

The notice requirement in the allowance or disallowance of a will is found in Secs. 3 and 4, Rule 76 of the 1997 Rules of Court, which read:

Rule 76
Allowance or Disallowance of Will

> 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

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[39] *Alejandra Arado Heirs v. Alcoran*, 763 Phil. 205, 223 (2015); *Roberts v. Leonidas*, 214 Phil. 30, 36 (1984).

[40] **Section 5.** *Proof at hearing. What sufficient in absence of contest.* — At the hearing compliance with the provisions of the last two preceding sections must be shown before the introduction of testimony in support of the will. All such testimony shall be taken under oath and reduced to writing. If no person appears to contest the allowance of the will, the court may grant allowance thereof on the testimony of one of the subscribing witnesses only, if such witness testify that the will was executed as is required by law.

In the case of a holographic will, it shall be necessary that at least one witness who knows the handwriting and signature of the testator explicitly declare that the will and the signature are in the handwriting of the testator. In the absence of any such competent witness, and if the court deem it necessary, expert testimony may be resorted to.

> 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 coexecutor not petitioning, if their places of residence be known. Personal service of copies of the notice at [least] (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.

Notable that Secs. 3 and 4 prescribe two (2) modes of notification of the hearing: (1) by publication in a newspaper of general circulation or the Official Gazette, and (2) by personal notice to the designated or known heirs, legatees and devisees. Under Sec. 3, publication of the notice of hearing shall be done upon the delivery of the will, or filing of the petition for allowance of the will in the court having jurisdiction. On the other hand, personal notice under Sec. 4 shall be served to the designated or known heirs, legatees and devisees, and the executor or co-executor, at their residence, if such are known.

In here, the RTC declared petitioners to have defaulted. The RTC held the view that the publication of the notice of hearing in a newspaper of general circulation, pursuant to Sec. 3 of Rule 76, sufficiently notified petitioners of the scheduled hearing.

Once again, the RTC is mistaken.

We shall expound on Our ruling by reviewing the antecedents of Secs. 3 and 4 of Rule 76, as well as jurisprudence on the matter.

The earliest progenitor of the above rules can be traced to Sec. 630 of Act No. 190, otherwise known as the Code of Civil Procedure, enacted on August 7, 1901. Sec. 630 provides for the procedure in notifying the parties

interested in the allowance of the will. It reads:

> SECTION 630. Court to Appoint Hearing on Will. — When a will is delivered to a court having jurisdiction of the same, the court shall appoint a time and place when all concerned may appear to contest the allowance of the will, and **shall cause public notice thereof to be given by publication in such newspaper or newspapers as the court directs of general circulation in the province, three weeks successively,** previous to the time appointed, **and no will shall be allowed until such notice has been given**. At the hearing all testimony shall be taken under oath, reduced to writing and signed by the witnesses. (emphases supplied)

As may be observed, Sec. 630 only identified publication of the notice of hearing in a newspaper of general circulation as the mode of notifying interested parties to the allowance of the will. Sec. 630 was mandatory as it provided that a will shall not be probated without publication of the notice of hearing.

The publication requirement under Sec. 630 conformed with the nature accorded to probate proceedings. In the 1918 case of *In re: Estate of Johnson,*[41] the Court characterized probate proceedings as *in rem* whereby the state was allowed a wide latitude to determine the character of the constructive notice to be issued to the world.[42] The Court reiterated the *in rem* nature of probate proceedings in *Manalo v. Paredes and Philippine Food Co. (Manalo)*[43] in 1925. Significantly, *Manalo* pointed out that the court acquires jurisdiction over all the persons interested through the publication of the notice prescribed by Sec. 630, and any order that may be entered is binding against all of them.[44] *Mercado v. Santos,*[45] promulgated in 1938, also emphasized that despite the non-issuance of court process, all interested persons in proving the will are deemed constructively notified by the publication of the notice of hearing.

In 1939, the Court, in *Testate Estate of Murray, McMaster v. Henry Reissmann & Co.,*[46] squarely addressed the effect of lack of notice to an interested person in the allowance of a will. Said the Court:

> As already stated in the foregoing statement of facts, the decree allowing the will of the deceased Samuel Murray, and declaring Henry Reissmann & Company, London merchants, as the sole "legatees" of the

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[41] 39 Phil. 156 (1918).
[42] Id. at 162.
[43] 47 Phil. 938 (1925).
[44] Id. at 942-943.
[45] 66 Phil. 215 (1938).
[46] 68 Phil. 142 (1939), citing *Everett v. Wing* (103 Vt., 488, 492).

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> said deceased in accordance with the terms of his will, was issued on January 20, 1926. It does not appear that the applicant and appellee, Margaret Stewart Mitchell McMaster, was personally notified of said decree, or on what date the notice was served, if she was notified thereof. Whether she was notified or not of said decree is of no consequence, however, for the purpose of determining whether or not she knew of the issuance of said decree. **The testate or intestate proceedings of a deceased person partake of the nature of proceedings *in rem* and, as such, the publication in the newspapers of the filing of the corresponding 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. x x x Therefore, by reason of the publication of the testamentary proceedings of the deceased James Mitchell, as well as those of the deceased Samuel Murray, the applicant-appellee is presumed to have knowledge of the respective proceedings in said cases, as well as of all the orders and decrees issued therein, including that on January 20, 1926, allowing the will of Samuel Murray to probate and declaring Henry Reissmann & Company as his sole "legatee"**, and, according to section 781 of the Code of Civil Procedure, as amended by section 2 of Act No. 3403, if she did not concur in said decree, she should have appealed therefrom within the period of twenty-five days, that is, on February 14, 1926. Inasmuch as she failed to do so, said decree automatically became final and conclusive and the probate court that heard the case lost all jurisdiction to continue hearing the same.[47] (emphasis supplied).

Clearly, the notion that publication of the notice of hearing is sufficient notification to interested parties to the will was not solely based on Sec. 630 of the Code of Civil Procedure. By large, it can be attributed to the *in rem* nature of probate proceedings. In Our jurisdiction, a proceeding *in rem*, dealing with a tangible *res*, may be instituted and carried to judgment without personal service upon the claimants within the State or notice by name to those outside of it. Jurisdiction is secured by the power of the court over the *res*.[48]

The fact that court process need not be personally served against interested parties in a probate proceeding changed with the effectivity of the 1940 Rules of Court on July 1, 1940. While Sec. 3, Rule 77 of the 1940 Rules maintained the requirement of publication under Sec. 630, the 1940 Rules added Sec. 4 which required personal notification to the known heirs, legatees and devisees. Hence, Secs. 3 and 4 read as follows:

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[47] Id. at 144.

[48] *Sepagan v. Dacillo*, 63 Phil. 412, 417 (1936).

Rule 77
Allowance or Disallowance of Will

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 weeks successively, previous to the time appointed, in a newspaper of general circulation in the province, or in the Official Gazette, as the court shall deem best.

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 known heirs, legatees, and devisees of the testator resident in the Philippines at their places of residence, and deposited in the postoffice with the postage thereon prepaid at least twenty 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 coexecutor not petitioning, if their places of residence be known. **Personal service of copies of the notice at least ten days before the day of hearing shall be equivalent to mailing.** (emphases supplied)

The notification requirement under Secs. 3 and 4 of Rule 77 remained in the 1964 Rules of Court, which became effective on January 1, 1964, although Sec. 77 was renumbered as Sec. 76 and amendments were introduced to the two sections. Significantly, the 1964 Rules of Court added in Sec. 4 the "designated" heirs, legatees or devisees as those entitled to receive the notice of hearing. Secs. 3 and 4 of Rule 76 were later reproduced *verbatim* in the 1997 Rules of Court.

The requirement of personal notice under Sec. 4 was first recognized in the case of *Joson v. Nable (Joson)*[49] in 1950. Deciding against therein petitioners, who were acknowledged heirs of the decedent and claimed to have not been personally notified of the hearing, the Court ruled:

> But petitioners maintain that the respondent court acted without absolutely any jurisdiction in admitting the will to probate. They rely on Rule 77, Section 4 which reads as follows:
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> > SEC. 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 known heirs, legatees,

[49] 87 Phil. 337 (1950).

> 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 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 days before the day of hearing shall be equivalent to mailing.
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> Petitioners maintain that no notice was received by them partly because their residence was not Dagupan Street No. 83 as alleged in the petition for probate. If the allegation of the petition was wrong and the true residence of petitioners was not known, then notice upon them individually was not necessary. **Under the provision above-quoted, individual notice upon heirs, legatees and devisees is necessary only when they are known or when their places of residence are known. In other instances, such notice is not necessary and the court may acquire and exercise jurisdiction simply upon the publication of the notice in a newspaper of general circulation.** What is, therefore, indispensable to the jurisdiction of the court is the publication of the notice in a newspaper of general circulation, and the notice on individual heirs, legatees and devisees is merely a matter of procedural convenience to better satisfy in some instances the requirements of due process.[50] (emphasis supplied)

Notable that *Joson* was the first to characterize the notice on individual heirs, legatees and devisees as being "a matter of procedural convenience," and that publication was sufficient to notify all the interested parties to the will.

However, the Court, in *Suntay v. Suntay (Suntay)*[51] in 1954, recognized the *in rem* nature of probate proceedings and held that it may only become valid if personal notice of such proceedings, or by publication, or both, shall be made, *viz.*:

> x x x In the absence of proof that the municipal district court of Amoy is a probate court and on the Chinese law of procedure in probate matters, it may be presumed that the proceedings in the matter of probating or allowing a will in the Chinese courts are the same as those provided for in our laws on the subject. **It is a proceedings *in rem* and for the validity of such proceedings personal notice or by publication or both to all interested parties must be made. The interested parties in the case were known to reside in the Philippines. The evidence shows that no such notice was received by the interested parties residing in the Philippines x x x. The proceedings had in the municipal district court of Amoy,**

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[50] Id. at 339-340.
[51] 95 Phil. 500 (1954).

> **China, may be likened to a deposition or to a perpetuation of testimony, and even if it were so it does not measure or come up to the standard of such proceedings in the Philippines for lack of notice to all interested parties and the proceedings were held at the back of such interested parties.**[52] (emphasis supplied)

Noteworthy that *Suntay* placed importance on the requirement under Sec. 4 to personally notify all the interested parties whose residence were known.

Despite the pronouncement in *Suntay*, the Court in *Perez v. Perez (Perez)*[53] in 1959 appeared to have gone back to the ruling in *Joson*. The Court reiterated in *Perez* that failure to personally notify the heirs or legatees did not affect the jurisdiction of the court, but only constituted as a mere procedural error.[54] This doctrine was similarly cited in *In the Matter of the Petition to Approve the Will of Abut v. Abut (Abut)*[55] in 1972, *Alaban v. Court of Appeals (Alaban)*[56] in 2005, *Pilapil v. Heirs of Maximino R. Briones (Pilapil)*[57] in 2006 and *Leriou v. Longa (Leriou)*[58] in 2018.

The only case that adopted the ruling in *Suntay* was the 1988 case of *De Aranz v. Judge Galing (De Aranz)*,[59] whereby the Court ruled that notice on individual heirs, legatees, and devisees is a mandatory requirement.

In view of this legal backdrop, respondent would have Us believe that the ruling in *Alaban* that notice to the heirs, legatees, and devisees is a matter of procedural convenience is absolute.

Respondent's interpretation is incorrect.

It appears that respondent failed to recognize that the oppositors to the will in *Alaban* were neither designated nor known heirs, legatees or devisees. They were complete strangers to the will and therefore not entitled to personal notice under Sec. 4 of Rule 76. This particular circumstance had prompted the Court to apply the rule in proceedings *in rem* that publication constitutes sufficient notification to all interested parties, thus:

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[52] Id. at 510-511.
[53] 105 Phil. 1132 (1959).
[54] Id. at 1134.
[55] 150-A Phil. 679 (1972).
[56] 507 Phil. 682 (2005).
[57] 519 Phil. 292 (2006).
[58] G.R. No. 203923, October 8, 2018.
[59] 244 Phil. 645 (1988).

> 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.**
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> 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.
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> **The non-inclusion of petitioners' names in the petition and the alleged failure to personally notify them of the proceedings do not constitute extrinsic fraud. Petitioners were not denied their day in court, as they were not prevented from participating in the proceedings and presenting their case before the probate court.**[60] (citations omitted, emphases supplied)

To be sure, the precedent cases of *Joson, Perez* and *Abut* did not blindly apply the rule on publication. The Court in *Joson* denied personal notice to the known heirs because their residence appeared to be unknown. *Perez* also did not apply the requirement of personal notice because it concerned oppositors-appellants who were not forced heirs and an heir to whom a notice of the hearing was sent to at her last known residence. In *Abut*, the Court denied the requirement of personal notification in an amended petition for probate. Clearly, none of these cases called for the proper application of Sec. 4 of Rule 76.

Even the cases subsequent to *Alaban* did not involve the application and interpretation of Sec. 4 of Rule 76. The subsequent cases of *Pilapil* and *Leriou* involved settlement of an intestate estate and clearly had nothing to do with the allowance of a will under Rule 76.

Ineluctably, *Alaban* cannot be applied in the instant case. Instead, We revert to the ruling in *De Aranz* which squarely applied Sec. 4 of Rule 76. In holding that personal notice under Sec. 4 is mandatory, the Court explained:

> It is clear from [Section 4 of rule 76] that notice of the time and place of the hearing for the allowance of a will shall be forwarded to the designated or other known heirs, legatees, and devisees residing in the Philippines at their places of residence, if such places of residence be known. There is no question that the residences of herein petitioners

[60] *Alaban v. Court of Appeals*, supra note 56 at 695.

legatees and devisees were known to the probate court. The petition for the allowance of the will itself indicated the names and addresses of the legatees and devisees of the testator. But despite such knowledge, the probate court did not cause copies of the notice to be sent to petitioners. The requirement of the law for the allowance of the will was not satisfied by mere publication of the notice of hearing for three (3) weeks in a newspaper of general circulation in the province.

The case of *Joson vs. Nable* cited by the Court of Appeals in its assailed decision to support its theory is not applicable in the present case. In that case, petitioners Purificacion Joson and Erotita Joson failed to contest the will of Tomas Joson because they had not been notified of the hearing of the petition for probate. While the petition included the residence of petitioners as Dagupan Street No. 83, Manila, petitioners claimed that their residence was not Dagupan Street No. 83, Manila. There the Court said:

> Petitioners maintain that no notice was received by them partly because their residence was not Dagupan Street No. 83 as alleged in the petition for probate. If the allegation of the petition was wrong and the true residence of petitioners was not known, then notice upon them individually was not necessary. Under the provision abovequoted, individual notice upon heirs, legatees and devisees is necessary only when they are known or when their places of residence are known. In other instances, such notice is not necessary and the court may acquire and exercise jurisdiction simply upon the publication of the notice in a newspaper of general circulation . . .

In Re: Testate Estate of Suntay, the Court, speaking thru Mr. Justice Sabino Padilla, said:

> x x x It is a proceedings *in rem* and for the validity of such proceedings personal notice or by publication or both to all interested parties must be made. The interested parties in the case were known to reside in the Philippines. The evidence shows that no such notice was received by the interested parties residing in the Philippines (pp. 474, 476, 481, 503-4, t.s.n., hearing of 24 February 1948). The proceedings had in the municipal district court of Amoy, China, may be likened to a deposition or to a perpetuation of testimony, and even if it were so it does not measure or come up to the standard of such proceedings in the Philippines for lack of notice to all interested parties and the proceedings were held at the back of such interested parties.[61] (citations omitted)

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[61] *De Aranz v. Judge Galing*, supra note 59 at 648-650.

It should be emphasized that *De Aranz* does not disregard the rule in proceedings *in rem* that publication serves as constructive notice to the whole world.[62] *De Aranz* merely upholds the additional requirement under Sec. 4 that personal notice be served to the interested parties to the will on the condition that their places of residence are known. Otherwise, personal notification is not required even though the oppositors to the will are the compulsory heirs or named legatees and devisees.

Furthermore, *De Aranz* affirms the obligatory language of Sec. 4 as it used the word "shall." It bears emphasis that the use of the word "shall" in a statute or rule expresses what is mandatory and compulsory.[63] Thus, Sec. 4 provides that the court "shall" also cause copies of the notice of the time and place of the hearing to the designated or other known heirs, legatees, and devisees of the testator resident in the Philippines at their places of residence, if such places of residence be known. The mandatory language of Sec. 4 indicates that the trial court has the duty to strictly comply with the procedures laid therein.

It cannot be gainsaid that the Rules of Court made personal notice under Sec. 4 as an additional form of notification which the probate court cannot disregard despite publication under Sec. 3. It should be stressed that the rule on personal notice was instituted in Sec. 4 to safeguard the right to due process of unsuspecting heirs, legatees or devisees who, without their knowledge, were being excluded from participating in a proceeding which may affect their right to succeed in the estate. Indeed, in rules of procedure, an act which is jurisdictional, or of the essence of the proceedings, or is prescribed for the protection or benefit of the party affected is mandatory.[64]

In here, Miam was indicated as a known heir of Amparo in the petition filed by respondent. While her status as a compulsory heir may still be subject to confirmation, the petition, on its face, had already informed the probate court of the existence of Miam as one of Amparo's heirs. The petition also provided Miam's residence. By respondent's own averments, Miam is entitled to the notice of hearing under Sec. 4.

Respondent's contention that notice to Migdonio redounded to Miam since they live in the same residence does not avail. Sec. 4 requires that each known heir whose residence is known be individually served a copy of the notice of hearing. Although petitioners live in the same residence, it should not deprive Miam of her right to receive her own copy of the notice. Sec. 4 does

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[62] *Alaban v. Court of Appeals*, supra note 56 at 693; *Mercado v. Santos*, 66 Phil. 215, 221 (1938).
[63] *Enriquez v. Court of Appeals*, 444 Phil. 419, 428 (2003).
[64] Id. at 428-429.

not distinguish between heirs with the same address and those who reside in different locations.

To reiterate, the court has the obligation to serve personal notices to petitioners under Sec. 4 of Rule 76 because they are known heirs of Amparo and their places of residence were made known in the petition for probate. Verily, it was erroneous of the RTC to rule that petitioners had been sufficiently notified by the publication of the notice under Sec. 3. The trial court cannot simply abdicate the mandatory duty under Sec. 4 by indiscriminately applying the rule on publication. To do so would render nugatory the procedure laid down in Sec. 4 and the purpose for which the Court had intended it.

The notice sent to Migdonio failed to comply with the procedural requirements under Section 4 of Rule 76

As regards the notice sent to Migdonio, the Court also finds that the same fell short of the procedural requirements laid down by Sec. 4.

Under Sec. 4 of Rule 76, personal notice must either be (1) deposited in the post office with the postage thereon prepaid at least twenty (20) days before the hearing, or (2) personally served at least ten (10) days before the day of hearing.

In Migdonio's case, there was no evidence that the notice of hearing addressed to him was deposited in the post office at least 20 days before June 21, 2017. Even if it were assumed that the notice of hearing was personally served to Migdonio, the same cannot be said to be substantial compliance. Based on records, Migdonio received a copy of the notice on June 19, 2017 or two (2) days prior to the hearing on June 21, 2017. This is short of the 10-day period fixed by Sec. 4. Hence, the notice served to Migdonio did not satisfy the requirement provided by Sec. 4.

Moreover, We cannot expect Migdonio, an ailing 78-year old who is not knowledgeable of legal procedures, to intelligently and promptly act upon receipt of the notice of hearing. The two-day period was undoubtedly insufficient to look for a counsel, ask for advice, and collate all the needed documents to support the formal opposition to the petition. His failure to attend the June 21, 2017 hearing should be excused due to negligence. It is settled that "[n]egligence, to be 'excusable,' must be one which ordinary

diligence and prudence could not have guarded against."[65]

The other procedural challenges raised by respondent do not deserve consideration by the Court for being trivial and patently without merit.

In fine, the RTC committed reversible error in entering an order of default against petitioners. Moreover, Sec. 4, Rule 76 of the 1997 Rules of Court, which requires a copy of the notice of hearing to be sent to the known heirs whose residences are known, is mandatory and cannot be satisfied by mere publication under Sec. 3 of the same Rules.

WHEREFORE, the petition is **GRANTED**. The August 16, 2017 and November 20, 2017 Orders of the Regional Trial Court of Palawan and Puerto Princesa City, Branch 51 in SPL. PROC. No. 2391 are **ANNULLED** and **SET ASIDE**. The case is hereby **REMANDED** to the Regional Trial Court of Palawan and Puerto Princesa City for further proceedings with dispatch.

SO ORDERED.

ALEXANDER G. GESMUNDO
Associate Justice

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

(On official leave)
RICARDO R. ROSARIO
Associate Justice

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[65] *Spouses Magtoto v. Court of Appeals*, 699 Phil. 84, 98 (2012).

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.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
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