

ENTRY No. 09AA.019

DECISION WRITTEN BY JUDGE EVA CAL

Motion to Declare Null and Void the Installation of the Executor, filed by HILDA ANTONIA PIZA BLONDET in the testamentary estate proceedings of the late WILSON CHARLES LUCOM.

ORDER CURING PROCEDURAL DEFECTS

FIRST SUPERIOR COURT FOR THE FIRST JUDICIAL CIRCUIT.

Panama, this twelfth (15th) day of July, two thousand and nine (2009)

HAVING SEEN:

This Superior Court has received, at the level of an appeal, the Motion to Declare Null and Void the Installation of the Executor, filed by HILDA ANTONIA PIZA BLONDET in the testamentary estate proceedings of the late WILSON CHARLES LUCOM, by virtue of the appeals filed by LUCOM WORLD PEACE LIMITED and RICHARD SAM LEHMAN against Order No. 952 of August 29, 2008, issued by the Fifth Civil Circuit Court for the First Judicial Circuit of Panama, whereby said Judge “DECREEES the NULLITY of the installation of Executor RICHARD SAM LEHMAN in the testate estate proceedings of the late WILSON CHARLES LUCOM, and, therefore, ORDERS TO RENDER WITHOUT EFFECT all which he might have done by virtue of said office.”

After being subjected to the rules governing assignment, said Motion was referred to the trier of fact to proceed to cure procedural defects, as provided in Article 1151 of the Judicial Code.

Pursuant to the last paragraph of Article 1136 of the Judicial Code, the Superior Court, when considering an appeal, must review whether the appeal has been admitted according to law and, therefore, it is proper to verify whether the Order appealed from admits an appeal.

As we have noted, Order No. 952 from the judge under appeal rules on a motion to declare null and void the installation of Mr. RICHARD SAM LEHMAN in the office of executor and, as consequence, it renders without effect all which he might have done by virtue of said office. Although it is true that said Motion has no legal foundations whatever and it nullifies legal matters without specifying what matters are those and without hearing the opposing party in those matters, it is no less true that it is an order issued in connection with a motion filed in estate proceedings and that, consequently, said Order No. 952 was issued in non-adversarial proceedings, as estate proceedings are not adversarial.

And as it happens, in non-adversarial proceedings the filing and decision of all appeals shall be subject to the procedures established for summary proceedings, according to the provisions of paragraph 11 of Article 1423 of the Judicial Code; and, pursuant to paragraph 9 of Article 1436, *ibidem*, in summary proceedings only a resolution dismissing the complaint or the answer or a resolution involving their dismissal, a resolution denying the commencement of discovery, or a resolution putting an end to the proceedings or making it impossible to pursue them is appealable. Moreover, in estate proceedings specifically, only the order declaring heirs, the order of adjudication, the order to partition the estate, and the order to sell estate property are subject to appeal, according to Articles 1510, 1520, 1565, and 1580 of the Judicial Code, respectively.

It is clear from the foregoing, therefore, that Order No. 952 does fit any of those resolutions. This means, then, that Order No. 952 is not appealable.

