

The Superior Court of Justice Decides on Probate Jurisdiction over Foreign Assets

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On August 27, 2024, the 3rd Panel of the Superior Court of Justice (STJ – Superior Tribunal de Justiça) issued its decision in an appeal dealing with the probate jurisdiction of Brazilian courts over assets located outside the country.¹

The appeal was brought against a decision by the São Paulo Court of Appeal (TJSP – Tribunal de Justiça de São Paulo), which had dismissed the heirs' petition to require the estate's administrator to submit a list of the deceased's foreign assets so that the heirs could have a more accurate notion of the extent of the estate.

In the appeal to the STJ, the heirs argued that the Brazilian courts had concurrent jurisdiction over the foreign assets left by the deceased, who had been a resident of Brazil, because if the foreign assets were excluded, the estate's property could not be correctly distributed.

The STJ's 3rd Panel dismissed the appeal by unanimous decision. It agreed with the TJSP that Brazilian courts do not have jurisdiction to process or distribute assets located outside Brazil, or to decide other matters related to the estate's foreign assets.

The 3rd Panel pointed out that although the Law of Introduction to the Rules of Brazilian Law provides that successions are governed by the law of the deceased's domicile,² that rule is not absolute and must be relaxed to take into account assets located in other jurisdictions. In the court's view, article 23(II) of the Code of Civil Procedure establishes the Brazilian courts' jurisdiction to process and distribute property in Brazil, and that article makes no reference to assets located abroad.³

The 3rd Panel thus concluded that Brazilian law allows for multiple probate jurisdiction, giving priority to the law of the place where the assets are located. As a result, the Brazilian courts do not have the power to decide matters related to assets that are located in another country and are therefore subject to different laws.

In support of its conclusion, the 3rd Panel noted that the existence of assets in other countries may be the result of the deceased's estate planning, implemented to hold assets in jurisdictions chosen for their inheritance laws, and that the deceased's intentions should be respected.

Although the 3rd Panel's decision is not yet final, since a petition for clarification has been filed, it is consistent with the position that has been adopted in the precedents: Brazilian law does not govern the inheritance of assets located outside Brazil, including for the purpose of calculating each

heir's share.

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NOTES

¹ STJ, 3rd Panel, Appeal REsp 2.080.842/SP, Justice Marco Aurélio Bellizze reporting, judged August 27, 2024, published DJe 29.8.2024.

² Decree-Law 4.657/1942. Art. 10. "Succession by reason of death or abasence is governed by the law of the country in which the deceased or absent person was domiciled, regardless of the nature and location of the [person's] property."

³ CPC. Art. 23(II). "The Brazilian judicial authority has jurisdiction, to the exclusion of all others: ... in matters of hereditary succession, to proceed to the confirmation of any private will and to the division of property situated in Brazil, even if the deceased is a foreign citizen or has a domicile outside national territory."

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