

ATTY. ABDALLAH M. CASAR, PETITIONER, VS. HADJI EBRAHIM MURAD, IN HIS CAPACITY AS CHAIRMAN OF MILF; EID KABALU, AS RANKING OFFICER AND MILF SPOKESMAN; HADJI ABDULRAHMAN MACAPAAR ...

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BORJA, J.,:

In compliance with this Court's Resolutions dated January 18, 2013,[1] and November 29, 2013,[2] the Armed Forces of the Philippines, "through the Division Staff Judge Advocate, Fourth Infantry Division, PA", submitted to the Court on January 16, 2014 a Certificate of Death issued by the National Statistics Office. The said Certificate shows that petitioner Atty. Abdallah M. Casar died on May 01, 2011 under the following causes: Cardio-Respiratory Arrest as immediate cause, Liver Cirrhosis as antecedent cause, Hepatoma as underlying cause, and Diabetes Mellitus, Type – II as contributing condition. The Certificate of Death also indicates petitioner's residence as "Tatayawan, Tamparan, Lanao del Sur." [3]

On the other hand, the Commission on Human Rights filed a "Manifestation (In Compliance with the Show Cause Order)" stating that it had been trying to ascertain the whereabouts of the petitioner since late March 2013. It found that: the petitioner's law office suddenly closed; his family left Iligan City and reportedly moved to "Taraka, Lanao del Sur"; and petitioner reportedly became involved as "agent of the Rasuman Investment Scam." The CHR could not confirm whether petitioner was already dead or was merely in hiding because of the peace and order situation in Lanao del Sur allegedly caused by the Rasuman Investment Scam.[4]

The Certificate of Death proves the petitioner's death on May 01, 2011. This case was archived on March 24, 2012[5] and dismissed with prejudice on June 18, 2012.[6] These mean that the petitioner died while the case was pending. On this score, Sec. 16, Rule 3 of the Rules of Court provides:

Section 16. Death of party; duty of counsel. - Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with his duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. (Emphases ours.)

Thus, "a deceased party may be substituted by his heirs x x x only x x x in actions that survive the death of a party

thereto.”[7] *Gonzales v. PAGCOR*[8] “declared that the determination of whether an action survives the death of a party depends on the nature of the action and the damage sued for.” The Supreme Court explained:

In the causes of action which survive, the wrong complained of affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive the injury complained of is to the person, the property and rights of property affected being incidental x x x. [9]

In this petition for Writ of Amparo, Casar asked for protection against threats on his person and those of his family members. Since this petition refers to threats of injury against the person, it is an action which does not survive.

With the petitioner’s death having been confirmed by the Certificate of Death on hand, this Court stands by its dismissal of this petition on June 18, 2012. Since no appeal to the Supreme Court was filed from this dismissal, this Court declares the dismissal final and executory.

ACCORDINGLY, the dismissal of this petition is declared final and executory. Let Judgment be duly entered.

SO ORDERED.

Garcia, R. R., and Bueser, D. Q., JJ., concur.

[*] Acting Third Member vice Justice Singh, who is on leave, per raffle dated January 27, 2015.

[1] Rollo, pp. 555-557.

[2] *Id.*, pp. 561-563.

[3] Rollo, p. 567.

[4] *Id.*, pp. 576-579.

[5] *Id.*, pp. 525-530.

[6] *Id.*, pp. 540-543.

[7] *Torres v. Balligi*, G.R. No. 177836, Sept. 4, 2009.

[8] 473 Phil. 582, 591 (2004) citing *Bonilla v. Barcena*, 163 Phil. 521 (1976).

[9] As cited in *Torres v. Balligi*, G.R. No. 177836, Sept. 4, 2009.

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