

**GLICERIO MANGOMA, PETITIONER, VS. HON. HIGINIO MACADAEG,
AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, BRANCH
X, AND CANDELARIA BAUTISTA, RESPONDENTS.***G.R. No. L-5153. December 10, 1951*

Ponente: BAUTISTA ANGELO, J.

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This is a petition for certiorari with preliminary injunction to declare null and void an order of the Court of First Instance of Manila dated September 28, 1951, ordering petitioner to give support pendente lite to his wife and daughter in the amount of P750 a month beginning January 17, 1951 up to the termination of the case of separation of property pending between them.

Respondent Candelaria Bautista filed an action against petitioner seeking the separation of the property of the spouses and the consequent dissolution and liquidation of their conjugal partnership. Months thereafter, prior to the trial on the merits, respondent prayed the court that pending the determination of the case, she and her daughter Leticia be given support pendente lite in the amount of P1,000 a month and that petitioner be ordered to act accordingly. Her motion is based on the following grounds: On August 30, 1945, while their marriage was still subsisting, petitioner contracted another marriage, with one Luceria Bernardo; in January 1946, petitioner abandoned respondent and two minor daughters and went to live with his second wife; while the bigamy case against petitioner was under investigation by the City Fiscal of Manila, petitioner refused to give any support to respondent and her children, thus compelling her to contract monetary obligations for their maintenance; petitioner and respondent, through their joint effort and industry, acquired considerable property which, added to the earnings of petitioner from his various kinds of business, yields a net income of at least P5,000 a month; petitioner owes them in arrears by way of support a total of P6,000 from January 17, 1951.

Petitioner objected to the motion pendente lite on the following grounds: Respondent abandoned the conjugal home to live with an American soldier, a fact admitted by her when she testified in the city fiscal's office of Manila in the investigation of the charge of bigamy filed by her against petitioner; respondent committed adultery with said American soldier from October to December 1945, and lived with him from January to August 1946; later in 1947, respondent also lived with one Celestino Fernandez up to October 1949; having committed adultery, respondent, therefore, is not entitled to support; their child Leticia who is under the custody of respondent should be turned over to petitioner to free her from the influence of her mother who is living under immoral circumstances; their other two children, Glicerio Jr. and Mercedes, are at present under the custody of petitioner and are properly taken care of and educated; petitioner has no other occupation except that of a real estate broker and as such cannot earn more than P200 a month, which is barely sufficient to support and maintain the two children under his care; due to repeated civil and criminal cases filed against him by respondent, petitioner had to close his tiles factory, thereby incurring a loss of P5,000, as well as his machine shop, incurring losses amounting to P30,000; at present petitioner is heavily indebted to several banks and because of the lis pendens annotated on his certificate of title upon respondent's request, he is placed in a position where he could not pay his obligations

due to his inability to negotiate with said properties. Wherefore, petitioner prayed that the motion for support pendente lite be denied.

On August 18, 1951, respondent judge authorized his deputy clerk to receive the evidence on the motion for support pendente lite, and accordingly several trials were held before said deputy clerk for that purpose, but before petitioner has had a chance to present his evidence on his special defenses, respondent Judge issued on September 28, 1951, an order granting the motion and ordering petitioner to give support pendente lite to his wife and daughter Leticia in the amount of P750 a month beginning January 15, 1951 up to the termination of the case, and to pay the-accrued payments within five days from notice. Hence this petition for , certiorari.

In the case of Sanchez vs. Zulueta, 68 Phil. 110, wherein" the Court a quo, without acceding to the petition of the husband that he be given an opportunity to adduce evidence in support of his defense, favorably acted upon the petition for support pendente lite of the wife and ordered the husband to pay his wife and child a monthly allowance of P50 pendente lite, this Court, in revoking the order, which was sustained by the Court of Appeals, said:

"We are of the opinion that the Court of Appeals erred in not allowing the defendant to present his evidence for the purpose of determining whether it is sufficient prima facie to overcome the application. Adultery on the part of the wife is a valid defense against an action for support (Quintana vs. Lerma, 2k Phil.285). Consequently, as to the child, it is also a defense that it is the fruit of such adulterous relations, for in that case, it would not be the child of the defendant and, hence, would not be entitled to support as such. But as this defense should be established, and not merely alleged, it would be unavailing if proof thereof is not permitted. It is not of course necessary to go fully into the merits of the case, it being sufficient that the court ascertain the kind and amount of evidence which it may deem sufficient to enable it to justly resolve the application, one way or the other, in view of the merely provisional character of the resolution to be entered." (Sanchez vs. Zulueta, 68 Phil. 112).

The facts of this case show that petitioner has not also been given an opportunity to adduce evidence in support of the defenses he has set up against the motion for support pendente lite. It appears that the respondent judge commissioned his deputy clerk to receive evidence the parties may desire to present on said motion, but that after respondent had presented her evidence and before the deputy clerk had been able to complete the hearing, respondent judge issued the order subject of these proceedings without giving petitioner an opportunity to present his evidence. It is true that several trials were held before the deputy clerk of court, but there is nothing to show that petitioner has resorted to dilatory tactics as to justify that action on the motion be taken without receiving his evidence. The affidavit submitted by counsel for petitioner, which stands uncontradicted, shows that said counsel asked for postponement of the hearing only once and that he failed to appear on the date set for the continuation of the hearing due to a misunderstanding. At any rate, the court is not persuaded from a consideration of the pleadings that there has been a deliberate attempt on the part of the petitioner, or his counsel, to delay the proceedings, and, therefore, before action is taken on the matter, an opportunity should be given him to be heard, considering the serious nature of his special defenses. In line with the ruling of this Court in the Sanchez case, supra, there is no other alternative than to remand this case to the lower court in order that immediate steps may be taken relative to the reception of the evidence of petitioner in support of his opposition.

Wherefore, the order appealed from dated September 28, 1951, is hereby set aside, without special pronouncement as to costs.

After this decision had become final, the preliminary injunction issued will be dissolved.

Paras, C.J., Feria, Pablo, Bengzon, Padilla, Tuason, Reyes, and Jugo, concur.

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