

**IN THE MATTER OF THE DECLARATION OF THE CIVIL STATUS OF:
LOURDES G. LUKBAN, PETITIONER AND APPELLANT, VS. REPUBLIC
OF THE PHILIPPINES, OPPOSITOR AND APPELLEE.**

G.R. No. L-8492. February 29, 1956

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

.This is a petition filed in the Court of First Instance of Rizal for a declaration that petitioner is a widow of her husband Francisco Chuidian who is presumed to be dead and has'-no legal impediment to contract a subsequent marriage.

The Solicitor General opposed the petition on the ground that the same is not authorized by law. After petitioner had presented her evidence, the court sustained the opposition and dismissed the petition. Hence this appeal. Lourdes G. Lukban, petitioner herein, contracted marriage with Francisco Chuidian on December 10, 1933 at the Paco Catholic Church, Manila. On December 27, of the same year, Francisco left Lourdes after a violent quarrel arid since then he has not been heard from despite diligent search made by her. She also inquired about him from his parents and friends but no one was able to indicate his whereabouts. She has no knowledge if he is still alive, his last known address being Calle Merced, Paco, Manila. She believes that he is already dead because he had been absent for more than twenty years, and because she intends to marry again, she desires that her civil status be defined in order that she may be relieved of any liability under the law.

We believe that the petition at bar comes within the purview of our decision in the case of Nicolai Szartraw, 46 Off. Gaz., 1st Sup., 243, wherein it was held that a petition for judicial declaration that petitioner's husband is presumed, to be dead cannot be entertained because it is not authorized by law, and if such declaration cannot be made in a special proceeding similar to the present, much less can the court determine the status of petitioner as a widow since this matter must of necessity depend upon the fact of death of the husband. This the court can declare upon proper evidence, but not to decree that he is merely presumed to be dead. (Nicolai Szartraw, 46 Off. Gaz., 1st sup. 243).

The philosophy behind the ruling that such judicial pronouncement cannot be made in a proceeding of this nature is well expressed in the case above-cited. Thus, we there said that "A judicial pronouncement to that effect, even if final and executory, would still be a prima facie presumption only. It is still disputable. It is for that reason that it cannot be the subject of a judicial pronouncement or declaration, if it is the only question or matter involved in a case, or upon which a competent court has to pass * * *. It is, therefore, clear that a judicial declaration that a person is presumptively dead, because he had been unheard from in seven years, being a presumption juris tantum only, subject to contrary proof, cannot reach the stage of finality or become final."

Appellant claims that the remedy she is seeking for can be granted in the present proceedings because in the case of Hagans vs. Wislizenus, 42 Phil., 880, it was declared that a special proceeding is "an application or proceeding to establish the status or right of a party, or a particular fact" but, as already said, that remedy can be invoked if

the purpose is to seek the declaration of death of the husband, and not, as in the present case, to "establish a presumption of death. If it can be satisfactorily proven that the husband is dead, the court would not certainly deny a declaration to that effect as has been intimated in the case of *Nicolas Szartraw*,, *supra*.

Appellant also claims that the present petition can be entertained because article 3.49 of the Revised Penal Code, in defining bigamy, provides that a person commits that crime if he contracts a second marriage "before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings" and, it is claimed, the present petition comes within the purview of this legal provision. The argument is untenable for the words "proper proceedings" used in said article can only refer to those authorized by law such as those which refer to the administration or settlement of the estate of a deceased person (Articles S90 and 391, new Civil Code). That such is the correct interpretation of the provision in question finds support in the case of *Jones vs. Hortiguella*, 64 Phil., 179, wherein this Court made the following comment:

"For the purposes of the civil marriage law, it is not necessary to have the former spouse judicially declared an absentee. The declaration of absence made in accordance with the provisions of the Civil Code has for its sole purpose to enable the taking of the necessary precautions for the administration of the estate of the absentee. For the celebration of civil marriage, however, the law only requires that the former Spouse has been absent. for seven consecutive years at the time of the second marriage, that, the spouse present does not know his or her former spouse to be living, that such former spouse is generally reputed to be dead and the spouse present so believes at the time of the celebration, of the marriage (section III, paragraph 2, General Orders, No. 68)."

The decision appealed from is affirmed, without pronouncement aa to costs.

Parás, C. J.,. Padilla, Montemayor, Reyes, A., Jugo, Labrador, Concepcion, Reyes, J. B. L. and Endencia, JJ., concur.

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