

REPUBLIC OF THE PHILIPPINES, Petitioner, vs. JOSE A. DAYOT, Respondent.*G.R. No. 175581. March 28, 2008*

Ponente: CHICO-NAZARIO, J.

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Before us are two consolidated petitions. G.R. No. 175581 and G.R. No. 179474 are Petitions for Review under Rule 45 of the Rules of Court filed by the Republic of the Philippines and Felisa Tecson-Dayot (Felisa), respectively, both challenging the Amended Decision[1] of the Court of Appeals, dated 7 November 2006, in CA-G.R. CV No. 68759, which declared the marriage between Jose Dayot (Jose) and Felisa void ab initio.

The records disclose that on 24 November 1986, Jose and Felisa were married at the Pasay City Hall. The marriage was solemnized by Rev. Tomas V. Atienza.[2] In lieu of a marriage license, Jose and Felisa executed a sworn affidavit,[3] also dated 24 November 1986, attesting that both of them had attained the age of maturity, and that being unmarried, they had lived together as husband and wife for at least five years.

On 7 July 1993, Jose filed a Complaint[4] for Annulment and/or Declaration of Nullity of Marriage with the Regional Trial Court (RTC), Biñan, Laguna, Branch 25. He contended that his marriage with Felisa was a sham, as no marriage ceremony was celebrated between the parties; that he did not execute the sworn affidavit stating that he and Felisa had lived as husband and wife for at least five years; and that his consent to the marriage was secured through fraud.

In his Complaint, Jose gave his version of the events which led to his filing of the same. According to Jose, he was introduced to Felisa in 1986. Immediately thereafter, he came to live as a boarder in Felisa's house, the latter being his landlady. Some three weeks later, Felisa requested him to accompany her to the Pasay City Hall, ostensibly so she could claim a package sent to her by her brother from Saudi Arabia. At the Pasay City Hall, upon a pre-arranged signal from Felisa, a man bearing three folded pieces of paper approached them. They were told that Jose needed to sign the papers so that the package could be released to Felisa. He initially refused to do so. However, Felisa cajoled him, and told him that his refusal could get both of them killed by her brother who had learned about their relationship. Reluctantly, he signed the pieces of paper, and gave them to the man who immediately left. It was in February 1987 when he discovered that he had contracted marriage with Felisa. He alleged that he saw a piece of paper lying on top of the table at the sala of Felisa's house. When he perused the same, he discovered that it was a copy of his marriage contract with Felisa. When he confronted Felisa, the latter feigned ignorance.

In opposing the Complaint, Felisa denied Jose's allegations and defended the validity of their marriage. She declared that they had maintained their relationship as man and wife absent the legality of marriage in the early part of 1980, but that she had deferred contracting marriage with him on account of their age difference.[5] In her pre-trial brief, Felisa expounded that while her marriage to Jose was subsisting, the latter contracted marriage with a certain Rufina Pascual (Rufina) on 31 August 1990. On 3 June 1993, Felisa filed an action for bigamy against

Jose. Subsequently, she filed an administrative complaint against Jose with the Office of the Ombudsman, since Jose and Rufina were both employees of the National Statistics and Coordinating Board.[6] The Ombudsman found Jose administratively liable for disgraceful and immoral conduct, and meted out to him the penalty of suspension from service for one year without emolument.[7]

On 26 July 2000, the RTC rendered a Decision[8] dismissing the Complaint. It disposed:

WHEREFORE, after a careful evaluation and analysis of the evidence presented by both parties, this Court finds and so holds that the [C]omplaint does not deserve a favorable consideration. Accordingly, the above-entitled case is hereby ordered DISMISSED with costs against [Jose].[9]

The RTC ruled that from the testimonies and evidence presented, the marriage celebrated between Jose and Felisa on 24 November 1986 was valid. It dismissed Jose's version of the story as implausible, and rationalized that:

Any person in his right frame of mind would easily suspect any attempt to make him or her sign a blank sheet of paper. [Jose] could have already detected that something was amiss, unusual, as they were at Pasay City Hall to get a package for [Felisa] but it [was] he who was made to sign the pieces of paper for the release of the said package. Another indirect suggestion that could have put him on guard was the fact that, by his own admission, [Felisa] told him that her brother would kill them if he will not sign the papers. And yet it took him, more or less, three months to "discover" that the pieces of paper that he signed was [sic] purportedly the marriage contract. [Jose] does not seem to be that ignorant, as perceived by this Court, to be "taken in for a ride" by [Felisa.]

[Jose's] claim that he did not consent to the marriage was belied by the fact that he acknowledged Felisa Tecson as his wife when he wrote [Felisa's] name in the duly notarized statement of assets and liabilities he filled up on May 12, 1988, one year after he discovered the marriage contract he is now claiming to be sham and false. [Jose], again, in his company I.D., wrote the name of [Felisa] as the person to be contacted in case of emergency. This Court does not believe that the only reason why her name was written in his company I.D. was because he was residing there then. This is just but a lame excuse because if he really considers her not his lawfully wedded wife, he would have written instead the name of his sister.

When [Jose's] sister was put into the witness stand, under oath, she testified that she signed her name voluntarily as a witness to the marriage in the marriage certificate (T.S.N., page 25, November 29, 1996) and she further testified that the signature appearing over the name of Jose Dayot was the signature of his [sic] brother that he voluntarily affixed in the marriage contract (page 26 of T.S.N. taken on November 29, 1996), and when she was asked by the Honorable Court if indeed she believed that Felisa Tecson was really chosen by her brother she answered yes. The testimony of his sister all the more belied his claim that his consent was procured through fraud.[10]

Moreover, on the matter of fraud, the RTC ruled that Jose's action had prescribed. It cited Article 87[11] of the New Civil Code which requires that the action for annulment of marriage must be commenced by the injured party within four years after the discovery of the fraud. Thus:

That granting even for the sake of argument that his consent was obtained by [Felisa] through fraud, trickery and machinations, he could have filed an annulment or declaration of nullity of marriage at the earliest possible opportunity, the time when he discovered the alleged sham and false marriage contract. [Jose] did not take any action to void the marriage at the earliest instance. x x x.[12]

Undeterred, Jose filed an appeal from the foregoing RTC Decision to the Court of Appeals. In a Decision dated 11 August 2005, the Court of Appeals found the appeal to be without merit. The dispositive portion of the appellate court's Decision reads:

WHEREFORE, the Decision appealed from is AFFIRMED.[13]

The Court of Appeals applied the Civil Code to the marriage between Jose and Felisa as it was solemnized prior to the effectivity of the Family Code. The appellate court observed that the circumstances constituting fraud as a ground for annulment of marriage under Article 86[14] of the Civil Code did not exist in the marriage between the parties. Further, it ruled that the action for annulment of marriage on the ground of fraud was filed beyond the prescriptive period provided by law. The Court of Appeals struck down Jose's appeal in the following manner:

Nonetheless, even if we consider that fraud or intimidation was employed on Jose in giving his consent to the marriage, the action for the annulment thereof had already prescribed. Article 87 (4) and (5) of the Civil Code provides that the action for annulment of marriage on the ground that the consent of a party was obtained by fraud, force or intimidation must be commenced by said party within four (4) years after the discovery of the fraud and within four (4) years from the time the force or intimidation ceased. Inasmuch as the fraud was allegedly discovered by Jose in February, 1987 then he had only until February, 1991 within which to file an action for annulment of marriage. However, it was only on July 7, 1993 that Jose filed the complaint for annulment of his marriage to Felisa.[15]

Likewise, the Court of Appeals did not accept Jose's assertion that his marriage to Felisa was void ab initio for lack of a marriage license. It ruled that the marriage was solemnized under Article 76[16] of the Civil Code as one of exceptional character, with the parties executing an affidavit of marriage between man and woman who have lived together as husband and wife for at least five years. The Court of Appeals concluded that the falsity in the affidavit to the effect that Jose and Felisa had lived together as husband and wife for the period required by Article 76 did not affect the validity of the marriage, seeing that the solemnizing officer was misled by the statements contained therein. In this manner, the Court of Appeals gave credence to the good-faith reliance of the solemnizing officer over the falsity of the affidavit. The appellate court further noted that on the dorsal side of said affidavit of marriage, Rev. Tomas V. Atienza, the solemnizing officer, stated that he took steps to ascertain the ages and other qualifications of the contracting parties and found no legal impediment to their marriage. Finally, the Court of Appeals dismissed Jose's argument that neither he nor Felisa was a member of the sect to which Rev. Tomas V. Atienza belonged. According to the Court of Appeals, Article 56[17] of the Civil Code did not require that either one of the contracting parties to the marriage must belong to the solemnizing officer's church or religious sect. The prescription was established only in Article 7[18] of the Family Code which does not govern the parties' marriage.

Differing with the ruling of the Court of Appeals, Jose filed a Motion for Reconsideration thereof. His central opposition was that the requisites for the proper application of the exemption from a marriage license under Article 76 of the Civil Code were not fully attendant in the case at bar. In particular, Jose cited the legal condition that the man and the woman must have been living together as husband and wife for at least five years before the marriage. Essentially, he maintained that the affidavit of marital cohabitation executed by him and Felisa was false.

The Court of Appeals granted Jose's Motion for Reconsideration and reversed itself. Accordingly, it rendered an Amended Decision, dated 7 November 2006, the fallo of which reads:

WHEREFORE, the Decision dated August 11, 2005 is RECALLED and SET ASIDE and another one entered declaring the marriage between Jose A. Dayot and Felisa C. Tecson void ab initio.

Furnish a copy of this Amended Decision to the Local Civil Registrar of Pasay City.[19]

In its Amended Decision, the Court of Appeals relied on the ruling of this Court in *Niñal v. Bayadog*,[20] and reasoned that:

In *Niñal v. Bayadog*, where the contracting parties to a marriage solemnized without a marriage license on the

basis of their affidavit that they had attained the age of majority, that being unmarried, they had lived together for at least five (5) years and that they desired to marry each other, the Supreme Court ruled as follows:

"x x x In other words, the five-year common-law cohabitation period, which is counted back from the date of celebration of marriage, should be a period of legal union had it not been for the absence of the marriage. This 5-year period should be the years immediately before the day of the marriage and it should be a period of cohabitation characterized by exclusivity - meaning no third party was involved at any time within the 5 years and continuity - that is unbroken. Otherwise, if that continuous 5-year cohabitation is computed without any distinction as to whether the parties were capacitated to marry each other during the entire five years, then the law would be sanctioning immorality and encouraging parties to have common law relationships and placing them on the same footing with those who lived faithfully with their spouse. Marriage being a special relationship must be respected as such and its requirements must be strictly observed. The presumption that a man and a woman deporting themselves as husband and wife is based on the approximation of the requirements of the law. The parties should not be afforded any excuse to not comply with every single requirement and later use the same missing element as a pre-conceived escape ground to nullify their marriage. There should be no exemption from securing a marriage license unless the circumstances clearly fall within the ambit of the exception. It should be noted that a license is required in order to notify the public that two persons are about to be united in matrimony and that anyone who is aware or has knowledge of any impediment to the union of the two shall make it known to the local civil registrar.

Article 80(3) of the Civil Code provides that a marriage solemnized without a marriage license, save marriages of exceptional character, shall be void from the beginning. Inasmuch as the marriage between Jose and Felisa is not covered by the exception to the requirement of a marriage license, it is, therefore, void ab initio because of the absence of a marriage license.[21]

Felisa sought reconsideration of the Amended Decision, but to no avail. The appellate court rendered a Resolution[22] dated 10 May 2007, denying Felisa's motion.

Meanwhile, the Republic of the Philippines, through the Office of the Solicitor General (OSG), filed a Petition for Review before this Court in G.R. No. 175581, praying that the Court of Appeals' Amended Decision dated 7 November 2006 be reversed and set aside for lack of merit, and that the marriage between Jose and Felisa be declared valid and subsisting. Felisa filed a separate Petition for Review, docketed as G.R. No. 179474, similarly assailing the appellate court's Amended Decision. On 1 August 2007, this Court resolved to consolidate the two Petitions in the interest of uniformity of the Court rulings in similar cases brought before it for resolution.[23]

The Republic of the Philippines propounds the following arguments for the allowance of its Petition, to wit:

I

RESPONDENT FAILED TO OVERTHROW THE PRESUMPTION OF THE VALIDITY OF HIS MARRIAGE TO FELISA.

II

RESPONDENT DID NOT COME TO THE COURT WITH CLEAN HANDS AND SHOULD NOT BE ALLOWED TO PROFIT FROM HIS OWN FRAUDULENT CONDUCT.

III

RESPONDENT IS ESTOPPED FROM ASSAILING THE LEGALITY OF HIS MARRIAGE FOR LACK OF MARRIAGE LICEN[S]E.[24]

Correlative to the above, Felisa submits that the Court of Appeals misapplied Niñal.[25] She differentiates the case at bar from Niñal by reasoning that one of the parties therein had an existing prior marriage, a circumstance

which does not obtain in her cohabitation with Jose. Finally, Felisa adduces that Jose only sought the annulment of their marriage after a criminal case for bigamy and an administrative case had been filed against him in order to avoid liability. Felisa surmises that the declaration of nullity of their marriage would exonerate Jose from any liability.

For our resolution is the validity of the marriage between Jose and Felisa. To reach a considered ruling on the issue, we shall jointly tackle the related arguments vented by petitioners Republic of the Philippines and Felisa.

The Republic of the Philippines asserts that several circumstances give rise to the presumption that a valid marriage exists between Jose and Felisa. For her part, Felisa echoes the claim that any doubt should be resolved in favor of the validity of the marriage by citing this Court's ruling in *Hernandez v. Court of Appeals*.^[26] To buttress its assertion, the Republic points to the affidavit executed by Jose and Felisa, dated 24 November 1986, attesting that they have lived together as husband and wife for at least five years, which they used in lieu of a marriage license. It is the Republic's position that the falsity of the statements in the affidavit does not affect the validity of the marriage, as the essential and formal requisites were complied with; and the solemnizing officer was not required to investigate as to whether the said affidavit was legally obtained. The Republic opines that as a marriage under a license is not invalidated by the fact that the license was wrongfully obtained, so must a marriage not be invalidated by the fact that the parties incorporated a fabricated statement in their affidavit that they cohabited as husband and wife for at least five years. In addition, the Republic posits that the parties' marriage contract states that their marriage was solemnized under Article 76 of the Civil Code. It also bears the signature of the parties and their witnesses, and must be considered a primary evidence of marriage. To further fortify its Petition, the Republic adduces the following documents: (1) Jose's notarized Statement of Assets and Liabilities, dated 12 May 1988 wherein he wrote Felisa's name as his wife; (2) Certification dated 25 July 1993 issued by the Barangay Chairman 192, Zone ZZ, District 24 of Pasay City, attesting that Jose and Felisa had lived together as husband and wife in said barangay; and (3) Jose's company ID card, dated 2 May 1988, indicating Felisa's name as his wife.

The first assignment of error compels this Court to rule on the issue of the effect of a false affidavit under Article 76 of the Civil Code. A survey of the prevailing rules is in order.

It is beyond dispute that the marriage of Jose and Felisa was celebrated on 24 November 1986, prior to the effectivity of the Family Code. Accordingly, the Civil Code governs their union. Article 53 of the Civil Code spells out the essential requisites of marriage as a contract:

ART. 53. No marriage shall be solemnized unless all these requisites are complied with:

- (1) Legal capacity of the contracting parties;
- (2) Their consent, freely given;
- (3) Authority of the person performing the marriage; and
- (4) A marriage license, except in a marriage of exceptional character. (Emphasis ours.)

Article 58^[27] makes explicit that no marriage shall be solemnized without a license first being issued by the local civil registrar of the municipality where either contracting party habitually resides, save marriages of an exceptional character authorized by the Civil Code, but not those under Article 75.^[28] Article 80(3)^[29] of the Civil Code makes it clear that a marriage performed without the corresponding marriage license is void, this being nothing more than the legitimate consequence flowing from the fact that the license is the essence of the marriage contract.^[30] This is in stark contrast to the old Marriage Law,^[31] whereby the absence of a marriage license did not make the marriage void. The rationale for the compulsory character of a marriage license under the Civil Code

is that it is the authority granted by the State to the contracting parties, after the proper government official has inquired into their capacity to contract marriage.[32]

Under the Civil Code, marriages of exceptional character are covered by Chapter 2, Title III, comprising Articles 72 to 79. To wit, these marriages are: (1) marriages in articulo mortis or at the point of death during peace or war, (2) marriages in remote places, (2) consular marriages,[33] (3) ratification of marital cohabitation, (4) religious ratification of a civil marriage, (5) Mohammedan or pagan marriages, and (6) mixed marriages.[34]

The instant case pertains to a ratification of marital cohabitation under Article 76 of the Civil Code, which provides:

ART. 76. No marriage license shall be necessary when a man and a woman who have attained the age of majority and who, being unmarried, have lived together as husband and wife for at least five years, desire to marry each other. The contracting parties shall state the foregoing facts in an affidavit before any person authorized by law to administer oaths. The official, priest or minister who solemnized the marriage shall also state in an affidavit that he took steps to ascertain the ages and other qualifications of the contracting parties and that he found no legal impediment to the marriage.

The reason for the law,[35] as espoused by the Code Commission, is that the publicity attending a marriage license may discourage such persons who have lived in a state of cohabitation from legalizing their status.[36]

It is not contested herein that the marriage of Jose and Felisa was performed without a marriage license. In lieu thereof, they executed an affidavit declaring that "they have attained the age of maturity; that being unmarried, they have lived together as husband and wife for at least five years; and that because of this union, they desire to marry each other." [37] One of the central issues in the Petition at bar is thus: whether the falsity of an affidavit of marital cohabitation, where the parties have in truth fallen short of the minimum five-year requirement, effectively renders the marriage void ab initio for lack of a marriage license.

We answer in the affirmative.

Marriages of exceptional character are, doubtless, the exceptions to the rule on the indispensability of the formal requisite of a marriage license. Under the rules of statutory construction, exceptions, as a general rule, should be strictly [38] but reasonably construed. [39] They extend only so far as their language fairly warrants, and all doubts should be resolved in favor of the general provisions rather than the exception. [40] Where a general rule is established by statute with exceptions, the court will not curtail the former or add to the latter by implication. [41] For the exception in Article 76 to apply, it is a sine qua non thereto that the man and the woman must have attained the age of majority, and that, being unmarried, they have lived together as husband and wife for at least five years.

A strict but reasonable construction of Article 76 leaves us with no other expediency but to read the law as it is plainly written. The exception of a marriage license under Article 76 applies only to those who have lived together as husband and wife for at least five years and desire to marry each other. The Civil Code, in no ambiguous terms, places a minimum period requirement of five years of cohabitation. No other reading of the law can be had, since the language of Article 76 is precise. The minimum requisite of five years of cohabitation is an indispensability carved in the language of the law. For a marriage celebrated under Article 76 to be valid, this material fact cannot be dispensed with. It is embodied in the law not as a directory requirement, but as one that partakes of a mandatory character. It is worthy to mention that Article 76 also prescribes that the contracting parties shall state the requisite facts [42] in an affidavit before any person authorized by law to administer oaths; and that the official, priest or minister who solemnized the marriage shall also state in an affidavit that he took steps to ascertain the ages and other qualifications of the contracting parties and that he found no legal

impediment to the marriage.

It is indubitably established that Jose and Felisa have not lived together for five years at the time they executed their sworn affidavit and contracted marriage. The Republic admitted that Jose and Felisa started living together only in June 1986, or barely five months before the celebration of their marriage.[43] The Court of Appeals also noted Felisa's testimony that Jose was introduced to her by her neighbor, Teresita Perwel, sometime in February or March 1986 after the EDSA Revolution.[44] The appellate court also cited Felisa's own testimony that it was only in June 1986 when Jose commenced to live in her house.[45]

Moreover, it is noteworthy that the question as to whether they satisfied the minimum five-year requisite is factual in nature. A question of fact arises when there is a need to decide on the truth or falsehood of the alleged facts.[46] Under Rule 45, factual findings are ordinarily not subject to this Court's review.[47] It is already well-settled that:

The general rule is that the findings of facts of the Court of Appeals are binding on this Court. A recognized exception to this rule is when the Court of Appeals and the trial court, or in this case the administrative body, make contradictory findings. However, the exception does not apply in every instance that the Court of Appeals and the trial court or administrative body disagree. The factual findings of the Court of Appeals remain conclusive on this Court if such findings are supported by the record or based on substantial evidence.[48]

Therefore, the falsity of the affidavit dated 24 November 1986, executed by Jose and Felisa to exempt them from the requirement of a marriage license, is beyond question.

We cannot accept the insistence of the Republic that the falsity of the statements in the parties' affidavit will not affect the validity of marriage, since all the essential and formal requisites were complied with. The argument deserves scant merit. Patently, it cannot be denied that the marriage between Jose and Felisa was celebrated without the formal requisite of a marriage license. Neither did Jose and Felisa meet the explicit legal requirement in Article 76, that they should have lived together as husband and wife for at least five years, so as to be excepted from the requirement of a marriage license.

Anent petitioners' reliance on the presumption of marriage, this Court holds that the same finds no applicability to the case at bar. Essentially, when we speak of a presumption of marriage, it is with reference to the prima facie presumption that a man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage.[49] Restated more explicitly, persons dwelling together in apparent matrimony are presumed, in the absence of any counter-presumption or evidence special to the case, to be in fact married.[50] The present case does not involve an apparent marriage to which the presumption still needs to be applied. There is no question that Jose and Felisa actually entered into a contract of marriage on 24 November 1986, hence, compelling Jose to institute a Complaint for Annulment and/or Declaration of Nullity of Marriage, which spawned the instant consolidated Petitions.

In the same vein, the declaration of the Civil Code[51] that every intendment of law or fact leans towards the validity of marriage will not salvage the parties' marriage, and extricate them from the effect of a violation of the law. The marriage of Jose and Felisa was entered into without the requisite marriage license or compliance with the stringent requirements of a marriage under exceptional circumstance. The solemnization of a marriage without prior license is a clear violation of the law and would lead or could be used, at least, for the perpetration of fraud against innocent and unwary parties, which was one of the evils that the law sought to prevent by making a prior license a prerequisite for a valid marriage.[52] The protection of marriage as a sacred institution requires not just the defense of a true and genuine union but the exposure of an invalid one as well.[53] To permit a false affidavit

to take the place of a marriage license is to allow an abject circumvention of the law. If this Court is to protect the fabric of the institution of marriage, we must be wary of deceptive schemes that violate the legal measures set forth in our laws.

Similarly, we are not impressed by the ratiocination of the Republic that as a marriage under a license is not invalidated by the fact that the license was wrongfully obtained, so must a marriage not be invalidated by a fabricated statement that the parties have cohabited for at least five years as required by law. The contrast is flagrant. The former is with reference to an irregularity of the marriage license, and not to the absence of one. Here, there is no marriage license at all. Furthermore, the falsity of the allegation in the sworn affidavit relating to the period of Jose and Felisa's cohabitation, which would have qualified their marriage as an exception to the requirement for a marriage license, cannot be a mere irregularity, for it refers to a quintessential fact that the law precisely required to be deposed and attested to by the parties under oath. If the essential matter in the sworn affidavit is a lie, then it is but a mere scrap of paper, without force and effect. Hence, it is as if there was no affidavit at all.

In its second assignment of error, the Republic puts forth the argument that based on equity, Jose should be denied relief because he perpetrated the fabrication, and cannot thereby profit from his wrongdoing. This is a misplaced invocation. It must be stated that equity finds no room for application where there is a law.[54] There is a law on the ratification of marital cohabitation, which is set in precise terms under Article 76 of the Civil Code. Nonetheless, the authorities are consistent that the declaration of nullity of the parties' marriage is without prejudice to their criminal liability.[55]

The Republic further avers in its third assignment of error that Jose is deemed estopped from assailing the legality of his marriage for lack of a marriage license. It is claimed that Jose and Felisa had lived together from 1986 to 1990, notwithstanding Jose's subsequent marriage to Rufina Pascual on 31 August 1990, and that it took Jose seven years before he sought the declaration of nullity; hence, estoppel had set in.

This is erroneous. An action for nullity of marriage is imprescriptible.[56] Jose and Felisa's marriage was celebrated sans a marriage license. No other conclusion can be reached except that it is void ab initio. In this case, the right to impugn a void marriage does not prescribe, and may be raised any time.

Lastly, to settle all doubts, jurisprudence has laid down the rule that the five-year common-law cohabitation period under Article 76 means a five-year period computed back from the date of celebration of marriage, and refers to a period of legal union had it not been for the absence of a marriage.[57] It covers the years immediately preceding the day of the marriage, characterized by exclusivity - meaning no third party was involved at any time within the five years - and continuity that is unbroken.[58]

WHEREFORE, the Petitions are DENIED. The Amended Decision of the Court of Appeals, dated 7 November 2006 in CA-G.R. CV No. 68759, declaring the marriage of Jose Dayot to Felisa Tecson-Dayot void ab initio, is AFFIRMED, without prejudice to their criminal liability, if any. No costs.

SO ORDERED.

Austria-Martinez, (Acting Chairperson), Tinga[*], Velasco, Jr.,[**] and Reyes, JJ., concur.

[*]Per Special Order No. 497, dated 14 March 2008, signed by Chief Justice Reynato S. Puno designating Associate Justice Dante O. Tinga to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave under the Court's Wellness Program and assigning Associate Justice Alicia Austria-Martinez as Acting

Chairperson.

[**] Justice Presbitero J. Velasco, Jr. was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 12 September 2007.

[1] Penned by Associate Justice Marina L. Buzon with Associate Justices Mario L. Guariña III and Santiago Javier Ranada, concurring; rollo (G.R. No. 175581), pp. 65-70; rollo, (G.R. No. 179474), pp. 156-161.

[2] Records, p. 170.

[3] Id.

[4] Id. at 1-8.

[5] The marriage contract shows that at the time of the celebration of the parties' marriage, Jose was 27 years old, while Felisa was 37.

[6] The Administrative complaint before the Administrative Adjudication Bureau of the Office of the Ombudsman was docketed as OMB-ADM-0-93-0466; Records, pp. 252-258.

[7] Id. at 257.

[8] Id. at 313-323.

[9] Id. at 323.

[10] Id. at 321-322.

[11] ART. 87. - The action for annulment of marriage must be commenced by the parties and within the periods as follows:

(1) For causes mentioned in Number 1 of Article 85, by the party whose parent or guardian did not give his or her consent, within four years after attaining the age of twenty or eighteen years, as the case may be; or by the parent or guardian or person having legal charge, at any time before such party has arrived at the age of twenty or eighteen years;

(2) For causes mentioned in Number 2 of Article 85, by the spouse who has been absent, during his or her lifetime; or by either spouse of the subsequent marriage during the lifetime of the other;

(3) For causes mentioned in Number 3 of Article 85, by the sane spouse, who had no knowledge of the other's insanity; or by any relative or guardian of the party of unsound mind, at any time before the death of either party;

(4) For causes mentioned in Number 4, by the injured party, within four years after the discovery of the fraud;

(5) For causes mentioned in Number 5, by the injured party, within four years from the time the force or intimidation ceased;

(6) For causes mentioned in Number 6, by the injured party, within eight years after the marriage.

[12] Records, p. 322.

[13] Rollo (G.R. No. 179474), p. 125.

[14] ART. 86. Any of the following circumstances shall constitute fraud referred to in number 4 of the preceding article:

(1) Misrepresentation as to the identity of one of the contracting parties;

(2) Nondisclosure of the previous conviction of the other party of a crime involving moral turpitude, and the penalty imposed was imprisonment for two years or more;

(3) Concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband;

No other misrepresentation or deceit as to character, rank, fortune or chastity shall constitute such fraud as will give grounds for action for the annulment of marriage.

[15] Rollo (G.R. No. 179474), p. 122.

[16] ART. 76. No marriage license shall be necessary when a man and a woman who have attained the age of majority and who, being unmarried, have lived together as husband and wife for at least five years, desire to marry each other. The contracting parties shall state the foregoing facts in an affidavit before any person authorized by law to administer oaths. The official, priest or minister who solemnized the marriage shall also state in an affidavit that he took steps to ascertain the ages and other qualifications of the contracting parties and that he found no legal impediment to the marriage.

[17] ART. 56. Marriage may be solemnized by:

(1) The Chief Justice and Associate Justices of the Supreme Court;

(2) The Presiding Justice and the Justices of the Court of Appeals;

(3) Judges of the Courts of First Instance;

(4) Mayors of cities and municipalities;

(5) Municipal judges and justices of the peace;

(6) Priests, rabbis, ministers of the gospel of any denomination, church, religion or sect, duly registered, as provided in Article 92; and

(7) Ship captains, airplane chiefs, military commanders, and consuls and vice-consuls in special cases provided in Articles 74 and 75.

[18] ART. 7. Marriage may be solemnized by:

(1) Any incumbent member of the judiciary within the court's jurisdiction;

(2) Any priest, rabbi, imam, or minister of any church or religious sect duly authorized by his church or religious sect and registered with the civil registrar general, acting within the limits of the written authority granted him by his church or religious sect and provided that at least one of the contracting parties belongs to the solemnizing officer's church or religious sect;

(3) Any ship captain or airplane chief only in the cases mentioned in Article 31;

(4) Any military commander of a unit to which a chaplain is assigned, in the absence of the latter, during a military operation, likewise only in the cases mentioned in Article 32; or

(5) Any consul-general, consul or vice-consul in the case provided in Article 10.

[19] CA rollo, p. 279.

[20] 384 Phil. 661 (2000).

[21] CA rollo, pp. 278-279.

[22] Rollo (G.R. No. 179474), pp. 173-174.

[23] Rollo (G.R. No. 179474), p. 180.

[24] Rollo (G.R. No. 175581), pp. 44-45.

[25] Erroneously cited as *Niño v. Bayadog*; rollo (G.R. No. 179474), p. 18.

[26] 377 Phil. 919 (1999).

[27] ART. 58. Save marriages of an exceptional character authorized in Chapter 2 of this Title, but not those under Article 75, no marriage shall be solemnized without a license first being issued by the local civil registrar of the municipality where either contracting party habitually resides.

[28] ART. 75. Marriages between Filipino citizens abroad may be solemnized by consuls and vice-consuls of the Republic of the Philippines. The duties of the local civil registrar and of a judge or justice of the peace or mayor with regard to the celebration of marriage shall be performed by such consuls and vice-consuls.

[29] ART. 80. The following marriages shall be void from the beginning:

x x x x

(3) Those solemnized without a marriage license, save marriages of exceptional character.

[30] *People v. De Lara*, No. 12583-R, 14 February 1955, 51 O.G. 4079, 4082.

[31] The Marriage Law, otherwise known as Act No. 3613, requires the following essential requisites: (1) legal capacity of the contracting parties; and (2) their mutual consent.

[32] Report of the Code Commission, pp. 79-80; see also *Ambrosio Padilla*, *Civil Code Annotated*, 1956 Edition, Vol. I, p. 195.

[33] Must be read with Article 58 of the Civil Code which provides:

ART. 58. Save marriages of an exceptional character authorized in Chapter 2 of this Title, but not those under Article 75, no marriage shall be solemnized without a license first being issued by the local civil registrar of the municipality where either contracting party habitually resides.

[34] *Edgardo L. Paras*, *Civil Code of the Philippines Annotated* (1984 Eleventh Ed.), pp. 302-310.

[35] In *Niñal v. Bayadog* (*supra* note 20 at 668-669), this Court articulated the spirit behind Article 76 of the Civil Code, thus:

"However, there are several instances recognized by the Civil Code wherein a marriage license is dispensed with, one of which is that provided in Article 76, referring to the marriage of a man and a woman who have lived together and exclusively with each other as husband and wife for a continuous and unbroken period of at least five years before the marriage. The rationale why no license is required in such case is to avoid exposing the parties to humiliation, shame and embarrassment concomitant with the scandalous cohabitation of persons outside a valid marriage due to the publication of every applicant's name for a marriage license. The publicity attending the marriage license may discourage such persons from legitimizing their status. To preserve peace in the family, avoid the peeping and suspicious eye of public exposure and contain the source of gossip arising from the publication of their names, the law deemed it wise to preserve their privacy and exempt them from that requirement."

[36] The Report of the Code Commission states that "No marriage license shall be necessary when a man and a woman who have attained the age of majority and who, being unmarried, have lived together as husband and wife for at least five years desire to marry each other. In such case, the publicity attending a marriage license may discourage such persons from legalizing their status," Report of the Code Commission, p. 80.

[37] Records, p. 49. The affidavit was denominated by the parties as an "Affidavit on (sic) Marriage Between Man and Woman Who Haved (sic) Lived Together as Husband and Wife for at Least Five Years."

[38] *Benedicto v. Court of Appeals*, 416 Phil. 722, 744 (2001).

[39] *Commissioner of Internal Revenue v. Court of Appeals*, 363 Phil. 130, 137 (1999).

[40] *Id.*

[41] *Id.* citing *Samson v. Court of Appeals*, G.R. No. L-43182, 25 November 1986, 145 SCRA 654, 659.

[42] The first part of Article 76 states, "No marriage license shall be necessary when a man and a woman who have attained the age of majority and who, being unmarried, have lived together as husband and wife for at least five years, desire to marry each other x x x."

[43] *Rollo* (G.R. No. 175581), p. 38.

[44] *Rollo* (G.R. No. 179474), p. 158, citing *TSN* (Civil Case No. B-4143), 15 April 1999.

[45] *Id.* at 159.

[46] *First Dominion Resources Corporation v. Peñaranda*, G.R. No. 166616, 27 January 2006, 480 SCRA 504, 508.

[47] *Civil Service Commission v. Ledesma*, G.R. No. 154521, 30 September 2005, 471 SCRA 589, 605.

[48] *Id.*

[49] *Vda. de Jacob v. Court of Appeals*, 371 Phil. 693, 708 (1999).

[50] *Id.*

[51] ART. 220. In case of doubt, all presumptions favor the solidarity of the family. Thus, every intendment of law or fact leans toward the validity of marriage, the indissolubility of the marriage bonds, the legitimacy of children, the community of property during marriage, the authority of parents over their children, and the validity of defense for any member of the family in case of unlawful aggression.

[52] *People v. De Lara*, *supra* note 30 at 4083.

[53] *Malcampo-Sin v. Sin*, 407 Phil. 583, 588 (2001).

[54] *Salavarria v. Letran*>College, 357 Phil. 189, 196 (1998); *Aparente, Sr. v. National Labor Relations Commission*, 387 Phil. 96, 108 (2000).

[55] *Supra* note 33 at 306. Alicia V. Sempio-Diy in *A Handbook on the Family Code of the Philippines* (1995 Ed., p. 38) wrote that "If the parties falsify their affidavit in order to have an instant marriage, although the truth is that they have not been cohabiting for five years, their marriage will be void for lack of a marriage license, and they will also be criminally liable." Article 76 of the Civil Code is now Article 34 of the Family Code, which reads:

ART. 34. No license shall be necessary for the marriage of a man and a woman who have lived together as husband and wife for at least five years and without any legal impediment to marry each other. The contracting

parties shall state the foregoing facts in an affidavit before any person authorized by law to administer oaths. The solemnizing officer shall also state under oath that he ascertained the qualifications of the contracting parties and found no legal impediment to the marriage.

[56] *Niñal v. Bayadog*, supra note 20 at 134.

[57] *Id.* at 130-131.

[58] *Id.*

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