

**SULTAN YAHYA “JERRY” M. TOMAWIS, PETITIONER,
VS. HON. RASAD G. BALINDONG, AMNA A. PUMBAYA, JALILAH A.
MANGOMPIA, AND RAMLA A. MUSOR, RESPONDENTS.**

G.R. No. 182434. March 05, 2010

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

This petition for certiorari, prohibition, and mandamus under Rule 65 seeks to nullify the Orders dated July 13, 2005, September 6, 2005, and February 6, 2008 issued by respondent Judge Rasad G. Balindong of the Shari'a District Court (SDC), Fourth Judicial District in Marawi City, in Civil Case No. 102-97 entitled Amna A. Pumbaya, et al. v. Jerry Tomawis, et al.

The Facts

Private respondents Amna A. Pumbaya, Jalilah A. Mangompia, and Ramla A. Musor are the daughters of the late Acraman Radia. On February 21, 1997, private respondents filed with the SDC an action for quieting of title of a parcel of land located in Banggolo, Marawi City, against petitioner Sultan Jerry Tomawis and one Mangoda Radia. In their complaint, styled as Petition[1] and docketed as Civil Case No. 102-97, private respondents, as plaintiffs a quo, alleged the following:

(1) They were the absolute owners of the lot subject of the complaint, being the legal heirs of Acraman Radia, who had always been in peaceful, continuous, and adverse possession of the property; (2) Tomawis assumed ownership of the said property on the claim that he bought the same from Mangoda Radia, who, in turn, claimed that he inherited it from his late father; (3) in 1996, they "were informed that their land [was] leveled and the small houses [built] thereon with their permission were removed" upon the orders of Tomawis; and (4) they had been unlawfully deprived of their possession of the land, and Tomawis' actions had cast a cloud of doubt on their title.

In his answer, Tomawis debunked the sisters' claim of ownership and raised, as one of his affirmative defenses treated by the court as a motion to dismiss, SDC's lack of jurisdiction over the subject matter of the case.[2] As argued, the regular civil court, not SDC, had such jurisdiction pursuant to Batas Pambansa Blg. (BP) 129 or the Judiciary Reorganization Act of 1980.[3]

Following the hearing on the affirmative defenses, respondent Judge Rasad Balindong, by Order of April 1, 2003, denied the motion. Apropos the jurisdiction aspect of the motion, respondent judge asserted the SDC's original jurisdiction over the case, concurrently with the Regional Trial Court (RTC), by force of Article 143, paragraph 2(b) of Presidential Decree No. (PD) 1083 or the Code of Muslim Personal Laws of the Philippines.

On June 16, 2005, Tomawis filed an Urgent Motion to Dismiss with Prayer to Correct the Name of Defendants to Read Sultan Yahya "Jerry" M. Tomawis & Mangoda M. Radia.[4] In it, he alleged that title to or possession of real property or interest in it was clearly the subject matter of the complaint which, thus, brought it within the

original exclusive jurisdiction of the regular courts in consonance with existing law. [5] On July 13, 2005, the SDC denied this motion to dismiss.

Unsatisfied, Tomawis later interposed an Urgent Motion for Reconsideration with Prayer to Cancel and Reset the Continuation of Trial Until After the Resolution of the Pending Incident.[6] Per Order[7] dated September 6, 2005, the SDC denied Tomawis' urgent motion for reconsideration and ordered the continuation of trial.

Forthwith, Tomawis repaired to the Court of Appeals (CA), Mindanao Station, on a petition for certiorari, mandamus, and prohibition under Rule 65 to nullify, on jurisdictional grounds, the aforesaid SDC July 13, 2005 and September 6, 2005 Orders.

By Resolution[8] of February 8, 2006, the appellate court dismissed the petition on the ground that the CA was "not empowered to resolve decisions, orders or final judgments of the [SDCs]." Justifying its disposition, the CA held that, pursuant to Art. 145[9] of PD 1083, in relation to Art. VIII, Section 9[10] of Republic Act No. (RA) 9054,[11] the new organic law of the Autonomous Region in Muslim Mindanao, final decisions of the SDC are reviewable by the yet to be established Shari'a Appellate Court. Pending the reorganization of the Shari'a Appellate Court, the CA ruled that such intermediate appellate jurisdiction rests with the Supreme Court.

Undeterred by the foregoing setback before the CA, Tomawis interposed, on January 29, 2008, before the SDC another motion to dismiss on the same grounds as his previous motions to dismiss. The motion was rejected by respondent Judge Balindong per his order of February 6, 2008, denying the motion with finality.

Hence, this recourse on the sole issue of:

WHETHER OR NOT THE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION IN DENYING PETITIONER'S MOTIONS TO DISMISS ON THE GROUND OF LACK OF JURISDICTION AND IN DENYING PETITIONER'S MOTION SEEKING RECONSIDERATION OF THE ORDER DENYING HIS MOTION TO DISMISS.

Simply put, the issue is whether or not the SDC can validly take cognizance of Civil Case No. 102-97.

The Court's Ruling

Prefatorily, the Court acknowledges the fact that decades after the enactment in 1989 of the law[12] creating the Shari'a Appellate Court and after the Court, per Resolution of June 8, 1999,[13] authorized its creation, the Shari'a Appellate Court has yet to be organized with the appointment of a Presiding Justice and two Associate Justices. Until such time that the Shari'a Appellate Court shall have been organized, however, appeals or petitions from final orders or decisions of the SDC filed with the CA shall be referred to a Special Division to be organized in any of the CA stations preferably composed of Muslim CA Justices.

For cases where only errors or questions of law are raised or involved, the appeal shall be to this Court by a petition for review on certiorari under Rule 45 of the Rules of Court pursuant to Art. VIII, Sec. 5 of the Constitution and Sec. 2 of Rule 41 of the Rules.

To be sure, the Court has, on several occasions, passed upon and resolved petitions and cases emanating from Shari'a courts. Among these was one involving the issue of whether or not grave abuse of discretion attended the denial of a motion to implement a writ of execution.[14] Still another involved the Shari'a courts' jurisdiction in custody and guardianship proceedings,[15] nullity of marriage and divorce when the parties were both married in civil and Muslim rites,[16] and settlement of estate proceedings where the deceased was alleged to be not a Muslim,[17] or where the estate covered properties situated in different provinces.[18]

The instant petition, involving only a question of law on the jurisdiction of the SDC over a complaint for quieting

of title, was properly instituted before the Court.

Petitioner asserts that Sec. 19(2), in relation to Sec. 33(3) of BP 129, as amended--by vesting original exclusive jurisdiction to the RTCs or Municipal Trial Courts (MTCs), as the case may be, over civil actions that involve the title to, or possession of, real property--effectively removed the concurrent jurisdiction once pertaining to the SDC under Art. 143(2)(b) of PD 1083. In fine, petitioner contends that Art. 143 of PD 1083, insofar as it granted the SDC concurrent jurisdiction over certain real actions, was repealed by the BP 129 provisions adverted to.

Disagreeing as to be expected, private respondents balk at the notion of the implied repeal petitioner espouses, arguing that PD 1083, being a special, albeit a prior, law, has not been repealed by BP 129. Putting private respondents' contention in a narrower perspective, Art. 143(2)(b) of PD 1083 is of specific applicability and, hence, cannot, under the rules of legal hermeneutics, be superseded by laws of general application, absent an express repeal.

Petitioner's claim has no basis.

The allegations, as well as the relief sought by private respondents, the elimination of the "cloud of doubts on the title of ownership"[19] on the subject land, are within the SDC's jurisdiction to grant.

A brief background. The Judiciary Act of 1948 (RA 296) was enacted on June 17, 1948. It vested the Courts of First Instance with original jurisdiction:

(b) In all civil actions which involve the title to or possession of real property, or any interest therein, or the legality of any tax, impost or assessment, except actions of forcible entry into and detainer on lands or buildings, original jurisdiction of which is conferred by this Act upon city and municipal courts.[20] x x x

Subsequently, PD 1083, dated February 4, 1977, created the Shari'a courts, i.e., the SDC and the Shari'a Circuit Court, both of limited jurisdiction. In *Republic v. Asuncion*,[21] the Court, citing the Administrative Code of 1987,[22] classified Shari'a courts as "regular courts," meaning they are part of the judicial department.

Art. 143 of PD 1083 vests SDCs, in certain cases, with exclusive original jurisdiction and with concurrent original jurisdiction over certain causes of action. As far as relevant, Art. 143 reads as follows:

ARTICLE 143. Original jurisdiction.-- (1) The Shari'a District Court shall have exclusive original jurisdiction over:

x x x x

d) All actions arising from customary contracts in which the parties are Muslims, if they have not specified which law shall govern their relations; and

x x x x

(2) Concurrently with existing civil courts, the Shari'a District Court shall have original jurisdiction over:

x x x x

(b) All other personal and real actions not mentioned in paragraph 1 (d) wherein the parties involved are Muslims except those for forcible entry and unlawful detainer, which shall fall under the exclusive original jurisdiction of the Municipal Circuit Court. (Emphasis added.)

On August 14, 1981, BP 129 took effect. Sec. 19 of BP 129, as later amended by RA 7691,[23] defining the jurisdiction of the RTCs, provides:

Section 1. Section 19 of Batas Pambansa Blg. 129, otherwise known as the "Judiciary Reorganization Act of

1980", is hereby amended to read as follows:

"Sec. 19. Jurisdiction in civil cases.--Regional Trial Courts shall exercise exclusive original jurisdiction:

x x x x

"(2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (P20,000.00) or, for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (P50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts." (Emphasis supplied.)

As things stood prior to the effectivity date of BP 129, the SDC had, by virtue of PD 1083, original jurisdiction, concurrently with the RTCs and MTCs, over all personal and real actions outside the purview of Art. 143(1)(d) of PD 1083, in which the parties involved were Muslims, except those for ejectment. Personal action is one that is founded on privity of contracts between the parties;^[24] and in which the plaintiff usually seeks the recovery of personal property, the enforcement of a contract, or recovery of damages.^[25] Real action, on the other hand, is one anchored on the privity of real estate,^[26] where the plaintiff seeks the recovery of ownership or possession of real property or interest in it.^[27]

On the other hand, BP 129, as amended, vests the RTC or the municipal trial court with exclusive original jurisdiction in all civil actions that involve the title to or possession of real property, or any interest in it, and the value of the property subject of the case or the jurisdictional amount, determining whether the case comes within the jurisdictional competence of the RTC or the MTC. *Orbeta v. Orbeta*^[28] differentiated personal action from real action in the following wise:

A real action, under Sec. 1, Rule 4 of the Rules of Court, is one that affects title to or possession of real property, or an interest therein. Such actions should be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated. All other actions are personal and may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.

Civil Case No. 102-97, judging from the averments in the underlying complaint, is basically a suit for recovery of possession and eventual reconveyance of real property which, under BP 129, as amended, falls within the original jurisdiction of either the RTC or MTC. In an action for reconveyance, all that must be alleged in the complaint are two facts that, admitting them to be true, would entitle the plaintiff to recover title to the disputed land, namely: (1) that the plaintiff is the owner of the land or has possessed the land in the concept of owner; and (2) that the defendant has illegally dispossessed the plaintiff of the land.^[29] A cursory perusal of private respondents' complaint readily shows that that these requisites have been met: they alleged absolute ownership of the subject parcel of land, and they were illegally dispossessed of their land by petitioner. The allegations in the complaint, thus, make a case for an action for reconveyance.

Given the above perspective, the question that comes to the fore is whether the jurisdiction of the RTC or MTC is to the exclusion of the SDC.

Petitioner's version of the law would effectively remove the concurrent original jurisdiction granted by Art. 143, par. 2(b) of PD 1083 to civil courts and Shari'a courts over, among others:

All other personal and real actions not mentioned in paragraph 1 (d) wherein the parties involved are Muslims except those for forcible entry and unlawful detainer, which shall fall under the exclusive original jurisdiction of the Municipal Circuit Court. x x x

Petitioner's interpretation of the law cannot be given serious thought. One must bear in mind that even if Shari'a courts are considered regular courts, these are courts of limited jurisdiction. As we have observed in *Rulona-Al Awadhi v. Astih*,^[30] the Code of Muslim Personal Laws creating said courts was promulgated to fulfill "the aspiration of the Filipino Muslims to have their system of laws enforced in their communities." It is a special law intended for Filipino Muslims, as clearly stated in the purpose of PD 1083:

ARTICLE 2. Purpose of Code. -- Pursuant to Section 11 of Article XV of the Constitution of the Philippines, which provides that "The State shall consider the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of state policies," this Code:

- (a) Recognizes the legal system of the Muslims in the Philippines as part of the law of the land and seeks to make Islamic institutions more effective;
- (b) Codifies Muslim personal laws; and
- (c) Provides for an effective administration and enforcement of Muslim personal laws among Muslims.

A reading of the pertinent provisions of BP 129 and PD 1083 shows that the former, a law of general application to civil courts, has no application to, and does not repeal, the provisions found in PD 1083, a special law, which only refers to Shari'a courts.

A look at the scope of BP 129 clearly shows that Shari'a courts were not included in the reorganization of courts that were formerly organized under RA 296. The pertinent provision in BP 129 states:

SECTION 2. Scope. -- The reorganization herein provided shall include the Court of Appeals, the Court of First Instance, the Circuit Criminal Courts, the Juvenile and Domestic Relations Courts, the Courts of Agrarian Relations, the City Courts, the Municipal Courts, and the Municipal Circuit Courts.

As correctly pointed out by private respondents in their Comment,^[31] BP 129 was enacted to reorganize only existing civil courts and is a law of general application to the judiciary. In contrast, PD 1083 is a special law that only applies to Shari'a courts.

We have held that a general law and a special law on the same subject are statutes in *pari materia* and should be read together and harmonized, if possible, with a view to giving effect to both.^[32] In the instant case, we apply the principle *generalia specialibus non derogant*. A general law does not nullify a special law. The general law will yield to the special law in the specific and particular subject embraced in the latter.^[33] We must read and construe BP 129 and PD 1083 together, then by taking PD 1083 as an exception to the general law to reconcile the two laws. This is so since the legislature has not made any express repeal or modification of PD 1083, and it is well-settled that repeals of statutes by implication are not favored.^[34] Implied repeals will not be declared unless the intent of the legislators is manifest. Laws are assumed to be passed only after careful deliberation and with knowledge of all existing ones on the subject, and it follows that the legislature did not intend to interfere with or abrogate a former law relating to the same subject matter.^[35]

In order to give effect to both laws at hand, we must continue to recognize the concurrent jurisdiction enjoyed by SDCs with that of RTCs under PD 1083.

Moreover, the jurisdiction of the court below cannot be made to depend upon defenses set up in the answer, in a motion to dismiss, or in a motion for reconsideration, but only upon the allegations of the complaint.^[36] Jurisdiction over the subject matter of a case is determined from the allegations of the complaint and the character of the relief sought.^[37] In the instant case, private respondents' petition^[38] in Civil Case No. 102-97 sufficiently alleged the concurrent original jurisdiction of the SDC.

While we recognize the concurrent jurisdiction of the SDCs and the RTCs with respect to cases involving only Muslims, the SDC has exclusive original jurisdiction over all actions arising from contracts customary to Muslims[39] to the exclusion of the RTCs, as the exception under PD 1083, while both courts have concurrent original jurisdiction over all other personal actions. Said jurisdictional conferment, found in Art. 143 of PD 1083, is applicable solely when both parties are Muslims and shall not be construed to operate to the prejudice of a non-Muslim,[40] who may be the opposing party against a Muslim.

Given petitioner's flawed arguments, we hold that the respondent court did not commit any grave abuse of discretion. Grave abuse of discretion is present when there is an arbitrary exercise of power owing from passion, prejudice, or personal hostility; or a whimsical, arbitrary, or capricious exercise of power that amounts to a shirking from or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. The abuse of discretion must be patent and gross for the act to be held as one made with grave abuse of discretion.[41] We find respondent court's issuance of the assailed orders justified and with no abuse of discretion. Its reliance on the provisions of PD 1083 in asserting its jurisdiction was sound and unassailable.

We close with the observation that what is involved here are not only errors of law, but also the errors of a litigant and his lawyer. As may have been noted, petitioner Tomawis' counsel veritably filed two (2) motions to dismiss, each predicated on the sole issue of jurisdiction. The first may have been understandable. But the second motion was something else, interposed as it was after the CA, by resolution, denied Tomawis' petition for certiorari for want of jurisdiction on the part of the appellate court to review judgments or orders of the SDC. The CA stated the observation, however, that Tomawis and his counsel may repair to this Court while the Shari'a Appellate Court has yet to be organized. Petitioner waited two years after the CA issued its denial before filing what virtually turned out to be his second motion to dismiss, coming finally to this Court after the same motion was denied. The Court must express disapproval of the cunning effort of Tomawis and his counsel to use procedural rules to the hilt to prolong the final disposition of this case. From *Alonso v. Villamor*,[42] almost a century-old decision, the Court has left no doubt that it frowns on such unsporting practice. The rule is settled that a question of jurisdiction, as here, may be raised at any time, even on appeal, provided its application does not result in a mockery of the basic tenets of fair play.[43] Petitioner's action at the later stages of the proceedings below, doubtless taken upon counsel's advice, is less than fair and constitutes censurable conduct. Lawyers and litigants must be brought to account for their improper conduct, which trenches on the efficient dispensation of justice.

WHEREFORE, the petition is DISMISSED for lack of merit. Petitioner Yahya "Jerry" Tomawis and Atty. Edgar A. Masorong are ADMONISHED to refrain from engaging in activities tending to frustrate the orderly and speedy administration of justice, with a warning that repetition of the same or similar acts may result in the imposition of a more severe sanction.

No costs.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Nachura, Leonardo-De Castro, Brion, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and Mendoza, JJ., concur.
Peralta, J., on official leave.

[1] Rollo, pp. 29-32.

[2] Id. at 35.

[3] Petitioner relies on Sec. 19 of BP 129 providing that the RTC shall exercise exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein, where the assessed value of the property exceeds twenty thousand pesos (Php 20,000) or for civil actions in Metro Manila, except actions for forcibly entry, the original jurisdiction over which is conferred upon the Metropolitan Trial Court, Municipal Trial Courts, and Municipal Circuit Trial Courts.

[4] Rollo, p. 44.

[5] BP 29, as amended by RA 7691, entitled "An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, Amending for the Purpose [BP 129]."

[6] Rollo, p. 59.

[7] Id. at 65.

[8] Id. at 86-87. Penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Teresita Dy-Liacco Flores (now retired) and Ramon R. Garcia.

[9] PD 1083, Art. 145 provides, "The decision of the Shari'a District Courts whether on appeal from the Shari'a Circuit Court or not shall be final. Nothing herein contained shall affect the original and appellate jurisdiction of the Supreme Court as provided in the Constitution."

[10] Sec. 9. Jurisdiction of the Shari'ah Appellate Court.-- The Shari'ah Appellate Court shall:

(a) Exercise original jurisdiction over petitions for certiorari, prohibition, mandamus, habeas corpus and other auxiliary writs and processes only in aid of its appellate jurisdiction; and,

(b) Exercise exclusive appellate jurisdiction over all cases tried in the Shari'ah district courts as established by law.

[11] An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, Amending for the Purpose Republic Act No. 6734, Entitled "An Act Providing for the Autonomous Region in Muslim Mindanao," as Amended.

[12] Autonomous Region in Muslim Mindanao Organic Law (RA 6734), as amended.

[13] A.M. No. 99-4-66.

[14] Batugan v. Balindong, G.R. No. 181384, March 13, 2009, 581 SCRA 473.

[15] Rulona-Al Awadhi v. Astih, No. L-81969, September 26, 1988, 165 SCRA 771.

[16] Bondagjy v. Artadi, G.R. No. 170406, August 11, 2008, 561 SCRA 633.

[17] Montañer v. Shari'a District Court, Fourth Shari'a Judicial District, Marawi City, G.R. No. 174975, January 20, 2009, 576 SCRA 746.

[18] Musa v. Moson, G.R. No. 95574, August 16, 1991, 200 SCRA 715.

[19] Rollo, p. 31.

[20] Sec. 44.

[21] G.R. No. 108208, March 11, 1994, 231 SCRA 211.

[22] Sec. 16, Chap. 4, Book 11 of the Code.

- [23] Approved on March 25, 1994.
- [24] PICOP v. Samson, No. L-30175, November 28, 1975, 68 SCRA 224.
- [25] Hernandez v. Rural Bank of Lucena, Inc., No. L-29791, January 10, 1978, 81 SCRA 75.
- [26] 1 Paras, Rules of Court Annotated 37 (2nd ed.); citing Osborne v. Fall River, 140 Mass. 508.
- [27] Hernandez v. Rural Bank of Lucena, Inc., supra.
- [28] G.R. No. 166837, November 27, 2006, 508 SCRA 265, 268; citing Rules of Court, Rule 4, Sec. 2.
- [29] Mendizabel v. Apao, G.R. No. 143185, February 20, 2006, 482 SCRA 587, 604.
- [30] Supra note 15; citing Executive Order No. 442 dated December 23, 1974.
- [31] Rollo, p. 123.
- [32] Vinzons-Chato v. Fortune Tobacco Corporation, G.R. No. 141309, June 19, 2007, 525 SCRA 11, 20-21.
- [33] Agpalo, Statutory Construction 415 (2003).
- [34] Id. at 411.
- [35] Social Justice Society v. Atienza, Jr., G.R. No. 156052, February 13, 2008, 545 SCRA 92.
- [36] Tamano v. Ortiz, G.R. No. 126603, June 29, 1998, 291 SCRA 584.
- [37] Villena v. Payoyo, G.R. No. 163021, April 27, 2007, 522 SCRA 592.
- [38] Rollo, p. 30.
- [39] While PD 1083 does not define a customary contract, its Art. 175 of Title III: Customary Contracts states:
- Article 175. How construed. Any transaction whereby one person delivers to another any real estate, plantation, orchard or any fruit-bearing property by virtue of sanda, sanla, arindao, or similar customary contract, shall be construed as a mortgage (rihan) in accordance with Muslim law.
- [40] PD 1083, Title II, Article 3. Conflict of provisions.
- (1) In case of conflict between any provision of this Code and laws of general application, the former shall prevail.
- (2) Should the conflict be between any provision of this Code and special laws or laws of local application, the latter shall be liberally construed in order to carry out the former.
- (3) The provisions of this Code shall be applicable only to Muslims and nothing herein shall be construed to operate to the prejudice of a non-Muslim.
- [41] Badiola v. Court of Appeals, G.R. No. 170691, April 23, 2008, 552 SCRA 562, 581.
- [42] 16 Phil. 315 (1910).
- [43] Jimenez v. Patricia, Inc., G.R. No. 134651, September 18, 2000, 340 SCRA 525.

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