

VIVENCIO B. VILLAGRACIA, PETITIONER, VS. FIFTH (5TH) SHARI'A DISTRICT COURT AND ROLDAN E. MALA, REPRESENTED BY HIS FATHER HADJI KALAM T. MALA, RESPONDENTS.

G.R. No. 188832. April 23, 2014

Ponente: LEONEN, J.

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LEONEN, J.:

Shari'a District Courts have no jurisdiction over real actions where one of the parties is not a Muslim.

This is a petition for certiorari with application for issuance of temporary restraining order and/or preliminary injunction to set aside the Fifth (5th) Shari'a District Court's decision[1] dated June 11, 2008 and order[2] dated May 29, 2009 in SDC Special Proceedings Case No. 07-200.

The facts as established from the pleadings of the parties are as follows:

On February 15, 1996, Roldan E. Mala purchased a 300-square-meter parcel of land located in Poblacion, Parang, Maguindanao, now Shariff Kabunsuan, from one Ceres Cañete. On March 3, 1996, Transfer Certificate of Title No. T-15633 covering the parcel of land was issued in Roldan's name.[3] At the time of the purchase, Vivencio B. Villagracia occupied the parcel of land.[4]

By 2002, Vivencio secured a Katibayan ng Orihinal naTitulo Blg. P-60192 issued by the Land Registration Authority allegedly covering the same parcel of land.[5]

On October 30, 2006, Roldan had the parcel of land surveyed. In a report, Geodetic Engineer Dennis P. Dacup found that Vivencio occupied the parcel of land covered by Roldan's certificate of title.[6]

To settle his conflicting claim with Vivencio, Roldan initiated barangay conciliation proceedings before the Office of the Barangay Chairman of Poblacion II, Parang, Shariff Kabunsuan. Failing to settle with Vivencio at the barangay level, Roldan filed an action to recover the possession of the parcel of land with respondent Fifth Shari'a District Court.[7]

In his petition, Roldan alleged that he is a Filipino Muslim; that he is the registered owner of the lot covered by Transfer Certificate of Title No. 15633; and that Vivencio occupied his property, depriving him of the right to use, possess, and enjoy it. He prayed that respondent Fifth Shari'a District Court order Vivencio to vacate his property.[8]

Respondent court took cognizance of the case and caused service of summons on Vivencio. However, despite service of summons, Vivencio failed to file his answer. Thus, Roldan moved that he be allowed to present evidence ex parte, which motion respondent Fifth Shari'a District Court granted in its order[9] dated January 30, 2008.[10]

In its decision[11] dated June 11, 2008, respondent Fifth Shari'a District Court ruled that Roldan, as registered owner, had the better right to possess the parcel of land. It ordered Vivencio to vacate the property, turn it over to

Roldan, and pay P10,000.00 as moderate damages and P5,000.00 as attorney's fees.

On December 15, 2008, respondent Fifth Shari'a District Court issued the notice of writ of execution[12] to Vivencio, giving him 30 days from receipt of the notice to comply with the decision. He received a copy of the notice on December 16, 2008.[13]

On January 13, 2009, Vivencio filed a petition for relief from judgment with prayer for issuance of writ of preliminary injunction.[14] In his petition for relief from judgment, Vivencio cited Article 155, paragraph (2) of the Code of Muslim Personal Laws of the Philippines[15] and argued that Shari'a District Courts may only hear civil actions and proceedings if both parties are Muslims. Considering that he is a Christian, Vivencio argued that respondent Fifth Shari'a District Court had no jurisdiction to take cognizance of Roldan's action for recovery of possession of a parcel of land. He prayed that respondent Fifth Shari'a District Court set aside the decision dated June 11, 2008 on the ground of mistake.[16]

Respondent Fifth Shari'a District Court ruled that Vivencio "intentionally [waived] his right to defend himself." [17] It noted that he was duly served with summons and had notice of the following: Roldan's motion to present evidence ex parte, respondent Fifth Shari'a District Court's decision dated June 11, 2008, and the writ of execution. However, Vivencio only went to court "when he lost his right to assail the decision via certiorari." [18]

According to respondent Fifth Shari'a District Court, Vivencio cited the wrong provision of law. Article 155, paragraph (2) of the Code of Muslim Personal Laws of the Philippines refers to the jurisdiction of Shari'a Circuit Courts, not of Shari'a District Courts.[19] It ruled that it had jurisdiction over Roldan's action for recovery of possession. Regardless of Vivencio being a non-Muslim, his rights were not prejudiced since respondent Fifth Shari'a District Court decided the case applying the provisions of the Civil Code of the Philippines.[20]

Thus, in its order[21] dated May 29, 2009, respondent Fifth Shari'a District Court denied Vivencio's petition for relief from judgment for lack of merit. It reiterated its order directing the issuance of a writ of execution of the decision dated June 11, 2008.

Vivencio received a copy of the order denying his petition for relief from judgment on June 17, 2009.[22]

On August 6, 2009, Vivencio filed the petition for certiorari with prayer for issuance of temporary restraining order with this court.[23]

In his petition for certiorari, Vivencio argued that respondent Fifth Shari'a District Court acted without jurisdiction in rendering the decision dated June 11, 2008. Under Article 143, paragraph (2)(b) of the Code of Muslim Personal Laws of the Philippines,[24] Shari'a District Courts may only take cognizance of real actions where the parties involved are Muslims. Reiterating that he is not a Muslim, Vivencio argued that respondent Fifth Shari'a District Court had no jurisdiction over the subject matter of Roldan's action. Thus, all the proceedings before respondent Fifth Shari'a District Court, including the decision dated June 11, 2008, are void.[25]

In the resolution[26] dated August 19, 2009, this court ordered Roldan to comment on Vivencio's petition for certiorari. This court subsequently issued a temporary restraining order enjoining the implementation of the writ of execution against Vivencio.[27]

On September 21, 2011, Roldan filed his comment[28] on the petition for certiorari. He allegedly filed the action for recovery of possession with the Shari'a District Court where "a more speedy disposition of the case would be obtained":[29]

- That SDC Spl. Case No. 07-200 (Quieting of Title...) was duly filed with the Fifth (5th) Shariah District

Court, Cotabato City at the option of herein private respondent (petitioner below) who believed that a more speedy disposition of the case would be obtained when the action is filed with the Shariah District Court than in the Regional Trial Courts considering the voluminous pending cases at the Regional Trial Courts[.][30]

On Vivencio's claim that respondent Fifth Shari'a District Court had no jurisdiction to decide the action for recovery of possession because he is a non-Muslim, Roldan argued that no provision in the Code of Muslim Personal Laws of the Philippines prohibited non-Muslims from participating in Shari'a court proceedings, especially in actions where the Shari'a court applied the provisions of the Civil Code of the Philippines. Thus, respondent Fifth Shari'a District Court validly took cognizance of his action:

- That the Shariah District Court is not a court exclusively for muslim litigants. No provision in the Code on Muslim Personal Laws which expressly prohibits non-muslim to participate in the proceedings in the Shariah Courts, especially in actions which applies the civil code and not the Code on Muslim Personal Laws;
- The Shariah District Courts has jurisdiction over action for quieting of title filed by a muslim litigant since the nature of the action involved mere removal of cloud of doubt upon one's Certificate of Title. The laws applied in this case is the Civil Code and other related laws, and not the Code on Muslim Personal Laws[.][31]

Since respondent Fifth Shari'a District Court had jurisdiction to decide the action for recovery of possession, Roldan argued that the proceedings before it were valid. Respondent Fifth Shari'a District Court acquired jurisdiction over the person of Vivencio upon service on him of summons. When Vivencio failed to file his answer, he "effectively waived his right to participate in the proceedings [before the Fifth Shari'a District Court]"[32] and he cannot argue that his rights were prejudiced:

- That it is not disputed that herein petitioner (respondent below) was properly served with summons, notices and other court processes when the SDC Spl. Case No. 07-200 was filed and heard in the Fifth (5th) Shariah District Court, Cotabato City, but petitioner (respondent below) intentionally or without known reason, ignore the proceedings;
- That the main issue in the instant action for certiorari is whether or not herein petitioner (respondent below) has effectively waived his right to participate in the proceedings below and had lost his right to appeal via Certiorari; and the issue on whether or not the Fifth (5th) Shariah District Court has jurisdiction over an action where one of the parties is a non-muslim;
- That the Fifth (5th) Shariah District Court, Cotabato City acquired jurisdiction over the case and that the same Court had correctly ruled that herein petitioner (respondent) intentionally waived his right to defend himself including his right to appeal via certiorari;
- That it is humbly submitted that when the Shariah District Court took cognizance of an action under its concurrent jurisdiction with the Regional Trial Court, the law rules applied is not the Code on Muslim Personal Laws but the Civil Code of the Philippines and the Revised Rules of Procedure, hence the same would not prejudice the right of herein petitioner (respondent below)[.][33]

In the resolution dated November 21, 2011, this court ordered Vivencio to reply to Roldan's comment. On February 3, 2012, Vivencio filed his manifestation,[34] stating that he would no longer file a reply to the comment as he had "exhaustively discussed the issue presented for resolution in [his petition for certiorari]."[35]

The principal issue for our resolution is whether a Shari'a District Court has jurisdiction over a real action where one of the parties is not a Muslim.

We also resolve the following issues:

- Whether a Shari'a District Court may validly hear, try, and decide a real action where one of the parties is a

non-Muslim if the District Court decides the action applying the provisions of the Civil Code of the Philippines; and

- Whether a Shari'a District Court may validly hear, try, and decide a real action filed by a Muslim against a non-Muslim if the non-Muslim defendant was served with summons.

We rule for petitioner Vivencio.

I

Respondent Fifth Shari'a District Court had no jurisdiction to hear, try, and decide Roldan's action for recovery of possession

Jurisdiction over the subject matter is "the power to hear and determine cases of the general class to which the proceedings in question belong." [36] This power is conferred by law, [37] which may either be the Constitution or a statute. Since subject matter jurisdiction is a matter of law, parties cannot choose, consent to, or agree as to what court or tribunal should decide their disputes. [38] If a court hears, tries, and decides an action in which it has no jurisdiction, all its proceedings, including the judgment rendered, are void. [39]

To determine whether a court has jurisdiction over the subject matter of the action, the material allegations of the complaint and the character of the relief sought are examined. [40]

The law conferring the jurisdiction of Shari'a District Courts is the Code of the Muslim Personal Laws of the Philippines. Under Article 143 of the Muslim Code, Shari'a District Courts have concurrent original jurisdiction with "existing civil courts" over real actions not arising from customary contracts [41] wherein the parties involved are Muslims:

ART 143. Original jurisdiction. – 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) [42] 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; and

x x x x

When ownership is acquired over a particular property, the owner has the right to possess and enjoy it. [43] If the owner is dispossessed of his or her property, he or she has a right of action to recover its possession from the dispossessor. [44] When the property involved is real, [45] such as land, the action to recover it is a real action; [46] otherwise, the action is a personal action. [47] In such actions, the parties involved must be Muslims for Shari'a District Courts to validly take cognizance of them.

In this case, the allegations in Roldan's petition for recovery of possession did not state that Vivencio is a Muslim. When Vivencio stated in his petition for relief from judgment that he is not a Muslim, Roldan did not dispute this claim.

When it became apparent that Vivencio is not a Muslim, respondent Fifth Shari'a District Court should have *motu proprio* dismissed the case. Under Rule 9, Section 1 of the Rules of Court, if it appears that the court has no

jurisdiction over the subject matter of the action based on the pleadings or the evidence on record, the court shall dismiss the claim:

Section 1. Defenses and objections not pleaded. – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

Respondent Fifth Shari'a District Court had no authority under the law to decide Roldan's action because not all of the parties involved in the action are Muslims. Thus, it had no jurisdiction over Roldan's action for recovery of possession. All its proceedings in SDC Special Proceedings Case No. 07-200 are void.

Roldan chose to file his action with the Shari'a District Court, instead of filing the action with the regular courts, to obtain "a more speedy disposition of the case." [48] This would have been a valid argument had all the parties involved in this case been Muslims. Under Article 143 of the Muslim Code, the jurisdiction of Shari'a District Courts over real actions not arising from customary contracts is concurrent with that of existing civil courts. However, this concurrent jurisdiction over real actions "is applicable solely when both parties are Muslims" [49] as this court ruled in *Tomawis v. Hon. Balindong*. [50] When one of the parties is not a Muslim, the action must be filed before the regular courts.

The application of the provisions of the Civil Code of the Philippines by respondent Fifth Shari'a District Court does not validate the proceedings before the court. Under Article 175 of the Muslim Code, customary contracts are construed in accordance with Muslim law. [51] Hence, Shari'a District Courts apply Muslim law when resolving real actions arising from customary contracts.

In real actions not arising from contracts customary to Muslims, there is no reason for Shari'a District Courts to apply Muslim law. In such real actions, Shari'a District Courts will necessarily apply the laws of general application, which in this case is the Civil Code of the Philippines, regardless of the court taking cognizance of the action. This is the reason why the original jurisdiction of Shari'a District Courts over real actions not arising from customary contracts is concurrent with that of regular courts.

However, as discussed, this concurrent jurisdiction arises only if the parties involved are Muslims. Considering that Vivencio is not a Muslim, respondent Fifth Shari'a District Court had no jurisdiction over Roldan's action for recovery of possession of real property. The proceedings before it are void, regardless of the fact that it applied the provisions of the Civil Code of the Philippines in resolving the action.

True, no provision in the Code of Muslim Personal Laws of the Philippines expressly prohibits non-Muslims from participating in Shari'a court proceedings. In fact, there are instances when provisions in the Muslim Code apply to non-Muslims. Under Article 13 of the Muslim Code, [52] provisions of the Code on marriage and divorce apply to the female party in a marriage solemnized according to Muslim law, even if the female is non-Muslim. [53] Under Article 93, paragraph (c) of the Muslim Code, [54] a person of a different religion is disqualified from inheriting from a Muslim decedent. [55] However, by operation of law and regardless of Muslim law to the contrary, the decedent's parent or spouse who is a non-Muslim "shall be entitled to one-third of what he or she would have received without such disqualification." [56] In these instances, non-Muslims may participate in Shari'a court proceedings. [57]

Nonetheless, this case does not involve any of the previously cited instances. This case involves an action for recovery of possession of real property. As a matter of law, Shari'a District Courts may only take cognizance of a real action "wherein the parties involved are Muslims." [58] Considering that one of the parties involved in this

case is not a Muslim, respondent Fifth Shari'a District Court had no jurisdiction to hear, try, and decide the action for recovery of possession of real property. The judgment against Vivencio is void for respondent Fifth Shari'a District Court's lack of jurisdiction over the subject matter of the action.

That Vivencio raised the issue of lack of jurisdiction over the subject matter only after respondent Fifth Shari'a District Court had rendered judgment is immaterial. A party may assail the jurisdiction of a court or tribunal over a subject matter at any stage of the proceedings, even on appeal.[59] The reason is that "jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action." [60]

In *Figueroa v. People of the Philippines*, [61] Venancio Figueroa was charged with reckless imprudence resulting in homicide before the Regional Trial Court of Bulacan. The trial court convicted Figueroa as charged. On appeal with the Court of Appeals, Figueroa raised for the first time the issue of jurisdiction of the Regional Trial Court to decide the case. Ruling that the Regional Trial Court had no jurisdiction over the crime charged, this court dismissed the criminal case despite the fact that Figueroa objected to the trial court's jurisdiction only on appeal.

In *Metromedia Times Corporation v. Pastorin*, [62] Johnny Pastorin filed a complaint for constructive dismissal against Metromedia Times Corporation. Metromedia Times Corporation actively participated in the proceedings before the Labor Arbiter. When the Labor Arbiter ruled against Metromedia Times, it appealed to the National Labor Relations Commission, arguing for the first time that the Labor Arbiter had no jurisdiction over the complaint. According to Metromedia Times, the case involved a grievance issue "properly cognizable by the voluntary arbitrator." [63] This court set aside the decision of the Labor Arbiter on the ground of lack of jurisdiction over the subject matter despite the fact that the issue of jurisdiction was raised only on appeal.

There are exceptional circumstances when a party may be barred from assailing the jurisdiction of the court to decide a case. In the 1968 case of *Tijam v. Sibonghanoy*, [64] the Spouses Tijam sued the Spouses Sibonghanoy on July 19, 1948 before the Court of First Instance of Cebu to recover P1,908.00. At that time, the court with exclusive original jurisdiction to hear civil actions in which the amount demanded does not exceed P2,000.00 was the court of justices of the peace and municipal courts in chartered cities under Section 88 of the Judiciary Act of 1948.

As prayed for by the Spouses Tijam in their complaint, the Court of First Instance issued a writ of attachment against the Spouses Sibonghanoy. However, the latter filed a counter-bond issued by Manila Surety and Fidelity Co., Inc. Thus, the Court of First Instance dissolved the writ of attachment.

After trial, the Court of First Instance decided in favor of the Spouses Tijam. When the writ of execution returned unsatisfied, the Spouses Tijam moved for the issuance of a writ of execution against Manila Surety and Fidelity Co., Inc.'s bond. The Court of First Instance granted the motion. Manila Surety and Fidelity Co., Inc. moved to quash the writ of execution, which motion the Court of First Instance denied. Thus, the surety company appealed to the Court of Appeals.

The Court of Appeals sustained the Court of First Instance's decision. Five days after receiving the Court of Appeals' decision, Manila Surety and Fidelity Co., Inc. filed a motion to dismiss, arguing for the first time that the Court of First Instance had no jurisdiction over the subject matter of the case. The Court of Appeals forwarded the case to this court for resolution.

This court ruled that the surety company could no longer assail the jurisdiction of the Court of First Instance on the ground of estoppel by laches. Parties may be barred from assailing the jurisdiction of the court over the subject matter of the action if it took them an unreasonable and unexplained length of time to object to the court's

jurisdiction.[65] This is to discourage the deliberate practice of parties in invoking the jurisdiction of a court to seek affirmative relief, only to repudiate the court's jurisdiction after failing to obtain the relief sought.[66] In such cases, the court's lack of jurisdiction over the subject matter is overlooked in favor of the public policy of discouraging such inequitable and unfair conduct.[67]

In *Tijam*, it took Manila Surety and Fidelity Co., Inc. 15 years before assailing the jurisdiction of the Court of First Instance. As early as 1948, the surety company became a party to the case when it issued the counter-bond to the writ of attachment. During trial, it invoked the jurisdiction of the Court of First Instance by seeking several affirmative reliefs, including a motion to quash the writ of execution. The surety company only assailed the jurisdiction of the Court of First Instance in 1963 when the Court of Appeals affirmed the lower court's decision. This court said:

x x x Were we to sanction such conduct on [Manila Surety and Fidelity, Co. Inc.'s] part, We would in effect be declaring as useless all the proceedings had in the present case since it was commenced on July 19, 1948 and compel [the spouses *Tijam*] to go up their Calvary once more. The inequity and unfairness of this is not only patent but revolting.[68]

After this court had rendered the decision in *Tijam*, this court observed that the “non-waivability of objection to jurisdiction”[69] has been ignored, and the *Tijam* doctrine has become more the general rule than the exception. In *Calimlim v. Ramirez*,[70] this court said:

A rule that had been settled by unquestioned acceptance and upheld in decisions so numerous to cite is that the jurisdiction of a court over the subject-matter of the action is a matter of law and may not be conferred by consent or agreement of the parties. The lack of jurisdiction of a court may be raised at any stage of the proceedings, even on appeal. This doctrine has been qualified by recent pronouncements which stemmed principally from the ruling in the cited case of [*Tijam v. Sibonghanoy*]. It is to be regretted, however, that the holding in said case had been applied to situations which were obviously not contemplated therein. x x x.[71]

Thus, the court reiterated the “unquestionably accepted”[72] rule that objections to a court's jurisdiction over the subject matter may be raised at any stage of the proceedings, even on appeal. This is because jurisdiction over the subject matter is a “matter of law”[73] and “may not be conferred by consent or agreement of the parties.”[74]

In *Figuerola*,[75] this court ruled that the *Tijam* doctrine “must be applied with great care;”[76] otherwise, the doctrine “may be a most effective weapon for the accomplishment of injustice”:[77]

x x x estoppel, being in the nature of a forfeiture, is not favored by law. It is to be applied rarely — only from necessity, and only in extraordinary circumstances. The doctrine must be applied with great care and the equity must be strong in its favor. When misapplied, the doctrine of estoppel may be a most effective weapon for the accomplishment of injustice. x x x a judgment rendered without jurisdiction over the subject matter is void. x x x. No laches will even attach when the judgment is null and void for want of jurisdiction x x x.[78]

In this case, the exceptional circumstances similar to *Tijam* do not exist. *Vivencio* never invoked respondent Fifth Shari'a District Court's jurisdiction to seek affirmative relief. He filed the petition for relief from judgment precisely to assail the jurisdiction of respondent Fifth Shari'a District Court over *Roldan's* petition for recovery of possession.

Thus, the general rule holds. *Vivencio* validly assailed the jurisdiction of respondent Fifth Shari'a District Court over the action for recovery of possession for lack of jurisdiction over the subject matter of *Roldan's* action.

II

That respondent Fifth Shari'a
District Court served summons on

petitioner Vivencio did not vest it with jurisdiction over the person of petitioner Vivencio

Roldan argued that the proceedings before respondent Shari'a District Court were valid since the latter acquired jurisdiction over the person of Vivencio. When Vivencio was served with summons, he failed to file his answer and waived his right to participate in the proceedings before respondent Fifth Shari'a District Court. Since Vivencio waived his right to participate in the proceedings, he cannot argue that his rights were prejudiced.

Jurisdiction over the person is "the power of [a] court to render a personal judgment or to subject the parties in a particular action to the judgment and other rulings rendered in the action." [79] A court acquires jurisdiction over the person of the plaintiff once he or she files the initiatory pleading. [80] As for the defendant, the court acquires jurisdiction over his or her person either by his or her voluntary appearance in court [81] or a valid service on him or her of summons. [82]

Jurisdiction over the person is required in actions in personam [83] or actions based on a party's personal liability. [84] Since actions in personam "are directed against specific persons and seek personal judgments," [85] it is necessary that the parties to the action "are properly impleaded and duly heard or given an opportunity to be heard." [86] With respect to the defendant, he or she must have been duly served with summons to be considered properly impleaded; otherwise, the proceedings in personam, including the judgment rendered, are void. [87]

On the other hand, jurisdiction over the person is not necessary for a court to validly try and decide actions in rem. [88] Actions in rem are "directed against the thing or property or status of a person and seek judgments with respect thereto as against the whole world." [89] In actions in rem, the court trying the case must have jurisdiction over the res, or the thing under litigation, to validly try and decide the case. Jurisdiction over the res is acquired either "by the seizure of the property under legal process, whereby it is brought into actual custody of the law; or as a result of the institution of legal proceedings, in which the power of the court is recognized and made effective." [90] In actions in rem, summons must still be served on the defendant but only to satisfy due process requirements. [91]

Unlike objections to jurisdiction over the subject matter which may be raised at any stage of the proceedings, objections to jurisdiction over the person of the defendant must be raised at the earliest possible opportunity; otherwise, the objection to the court's jurisdiction over the person of the defendant is deemed waived. Under Rule 9, Section 1 of the Rules of Court, "defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived."

In this case, Roldan sought to enforce a personal obligation on Vivencio to vacate his property, restore to him the possession of his property, and pay damages for the unauthorized use of his property. [92] Thus, Roldan's action for recovery of possession is an action in personam. As this court explained in *Ang Lam v. Rosillosa and Santiago*, [93] an action to recover the title to or possession of a parcel of land "is an action in personam, for it binds a particular individual only although it concerns the right to a tangible thing." [94] Also, in *Muñoz v. Yabut, Jr.*, [95] this court said that "a judgment directing a party to deliver possession of a property to another is in personam. It is binding only against the parties and their successors-in-interest by title subsequent to the commencement of the action." [96]

This action being in personam, service of summons on Vivencio was necessary for respondent Fifth Shari'a District Court to acquire jurisdiction over Vivencio's person.

However, as discussed, respondent Fifth Shari'a District Court has no jurisdiction over the subject matter of the

action, with Vivencio not being a Muslim. Therefore, all the proceedings before respondent Shari'a District Court, including the service of summons on Vivencio, are void.

III

The Shari'a Appellate Court and the Office of the Jurisconsult in Islamic law must now be organized to effectively enforce the Muslim legal system in the Philippines

We note that Vivencio filed directly with this court his petition for certiorari of respondent Fifth Shari'a District Court's decision. Under the judicial system in Republic Act No. 9054,[97] the Shari'a Appellate Court has exclusive original jurisdiction over petitions for certiorari of decisions of the Shari'a District Courts. He should have filed his petition for certiorari before the Shari'a Appellate Court.

However, the Shari'a Appellate Court is yet to be organized. Thus, we call for the organization of the court system created under Republic Act No. 9054 to effectively enforce the Muslim legal system in our country. After all, the Muslim legal system – a legal system complete with its own civil, criminal, commercial, political, international, and religious laws[98] – is part of the law of the land,[99] and Shari'a courts are part of the Philippine judicial system.[100]

Shari'a Circuit Courts and Shari'a District Courts created under the Code of Muslim Personal Laws of the Philippines shall continue to discharge their duties.[101] All cases tried in Shari'a Circuit Courts shall be appealable to Shari'a District Courts.[102]

The Shari'a Appellate Court created under Republic Act No. 9054 shall exercise appellate jurisdiction over all cases tried in the Shari'a District Courts.[103] It shall also exercise original jurisdiction over petitions for certiorari, prohibition, mandamus, habeas corpus, and other auxiliary writs and processes in aid of its appellate jurisdiction.[104] The decisions of the Shari'a Appellate Court shall be final and executory, without prejudice to the original and appellate jurisdiction of this court.[105]

This court held in *Tomawis v. Hon. Balindong*[106] that “until such time that the Shari'a Appellate Court shall have been organized,”[107] decisions of the Shari'a District Court shall be appealable to the Court of Appeals and “shall be referred to a Special Division to be organized in any of the [Court of Appeals] stations preferably composed of Muslim [Court of Appeals] Justices.”[108] However, considering that *Tomawis* was not yet promulgated when Vivencio filed his petition for certiorari on August 6, 2009, we take cognizance of Vivencio's petition for certiorari in the exercise of our original jurisdiction over petitions for certiorari.[109]

Moreover, priority should be given in organizing the Office of the Jurisconsult in Islamic law. A Jurisconsult in Islamic law or “Mufti” is an officer with authority to render legal opinions or “fatawa”[110] on any questions relating to Muslim law.[111] These legal opinions should be based on recognized authorities[112] and “must be rendered in precise accordance with precedent.”[113] In the Philippines where only Muslim personal laws are codified, a legal officer learned in the Qur'an and Hadiths is necessary to assist this court as well as Shari'a court judges in resolving disputes not involving Muslim personal laws.

All told, Shari'a District Courts have jurisdiction over a real action only when the parties involved are Muslims. Respondent Fifth Shari'a District Court acted without jurisdiction in taking cognizance of Roldan E. Mala's action for recovery of possession considering that Vivencio B. Villagrancia is not a Muslim. Accordingly, the proceedings in SDC Special Proceedings Case No. 07-200, including the judgment rendered, are void.

WHEREFORE, the petition for certiorari is GRANTED. Respondent Fifth Shari'a District Court's decision dated June 11, 2008 and order dated May 29, 2009 in SDC Special Proceedings Case No. 07-200 are SET ASIDE without prejudice to the filing of respondent Roldan E. Mala of an action with the proper court.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

April 30, 2014

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ____April 23, 2014____ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on April 30, 2014 at 11:05 a.m.

Very truly yours,

LUCITA ABJELINA SORIANO
Division Clerk of Court

By:
(SGD)
WILFREDO V. LAPITAN
Deputy Division Clerk of Court

[1] Rollo, pp. 18-19.

[2] Id. at 22-23.

[3] Id. at 42.

[4] Id. at 6.

[5] Id. at 43.

[6] Id. at 19.

[7] Id.

[8] Id. at 38-41.

[9] Id. at 44.

[10] Id. at 18.

[11] Id. at 18-19.

[12] Id. at 28.

[13] Id. at 33.

[14] Id. at 33-36.

[15] MUSLIM CODE, Art. 155, par. (2) provides:

ART. 155. Jurisdiction. — The Shari'a Circuit Courts shall have exclusive original jurisdiction over:

x x x x

(2) All civil actions and proceedings between parties who are Muslims or have been married in accordance with Article 13 involving disputes relating to:

- (a) Marriage;
- (b) Divorce recognized under this Code;
- (c) Betrothal or breach of contract to marry;
- (d) Customary dower (mahr);
- (e) Disposition and distribution of property upon divorce;
- (f) Maintenance and support, and consolatory gifts, (mut'a); and
- (g) Restitution of marital rights.

[16] Rollo, p. 33.

[17] Id. at 23.

[18] Id. at 22.

[19] Id. at 23.

[20] Id.

[21] Id. at 22-23.

[22] Id. at 4.

[23] Id. at 2-44.

[24] MUSLIM CODE, Art. 143, par. (2)(b) provides:

ART. 143. Original jurisdiction – 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.

[25] Rollo, pp. 8-10.

[26] Id. at 45-46.

[27] Id. at 70-72.

[28] Id. at 27-30.

[29] Id. at 27.

[30] Id.

[31] Id. at 27-28.

[32] Id. at 28.

[33] Id. at 28-29.

[34] Id. at 33-36.

[35] Id. at 33.

[36] Reyes v. Diaz, 73 Phil. 484, 486 (1941) [Per J. Moran, En Banc].

[37] Francel Realty Corporation v. Sycip, 506 Phil. 407, 415 (2005) [Per Acting C.J. Panganiban, Third Division].

[38] Calimlim v. Ramirez, 204 Phil. 25, 34-35 (1982) [Per J. Vasquez, First Division].

[39] Figueroa v. People, 580 Phil. 58, 78 (2008) [Per J. Nachura, Third Division], citing Heirs of Julian Dela Cruz and Leonora Talaro v. Heirs of Alberto Cruz, G.R. No. 162890, November 22, 2005, 475 SCRA 743 [Per J. Callejo, Second Division].

[40] Id.

[41] MUSLIM CODE, Art. 175 provides:

ART. 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.

[42] Muslim Code, Art. 143, par. 1(d) provides:

ART. 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[.]

x x x x

[43] CIVIL CODE, Art. 428.

[44] CIVIL CODE, Art. 428.

[45] CIVIL CODE, Art. 415 provides:

Art. 415. The following are immovable property:

- (1) Land, buildings, roads and constructions of all kinds adhered to the soil;
- (2) Trees, plants, and growing fruits, while they are attached to the land or form an integral part of an immovable;
- (3) Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object;
- (4) Statues, reliefs, paintings or other objects for use or ornamentation, placed in buildings or on lands by the owner of the immovable in such a manner that it reveals the intention to attach them permanently to the tenements;

(5) Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works;

(6) Animal houses, pigeon-houses, beehives, fish ponds or breeding places of similar nature, in case their owner has placed them or preserves them with the intention to have them permanently attached to the land, and forming a permanent part of it; the animals in these places are included;

(7) Fertilizer actually used on a piece of land;

(8) Mines, quarries, and slag dumps, while the matter thereof forms part of the bed, and waters either running or stagnant;

(9) Docks and structures which, though floating, are intended by their nature and object to remain at a fixed place on a river, lake, or coast;

(10) Contracts for public works, and servitudes and other real rights over immovable property.

[46] RULES OF COURT, Rule 4, Sec. 1 provides:

SEC. 1. Venue of real actions. – Actions affecting title to or possession of real property, or interest therein, shall 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.

Forcible entry and detainer actions shall be commenced and tried in the municipal trial court of the municipality or city wherein the real property involved, or a portion thereof, is situated.

[47] RULES OF COURT, Rule 4, Sec. 2 provides:

SEC. 2. Venue of personal actions. – All other actions 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.

[48] Rollo, p. 27.

[49] *Tomawis v. Hon. Balindong*, G.R. No. 182434, March 5, 2010, 614 SCRA 354, 369 [Per J. Velasco, Jr., En Banc].

[50] G.R. No. 182434, March 5, 2010, 614 SCRA 354 [Per J. Velasco, Jr., En Banc].

[51] MUSLIM CODE, Art. 175.

[52] MUSLIM CODE, Art. 13, par. (1) provides:

ART. 13. Application. – (1) The provisions of this Title shall apply to marriage and divorce wherein both parties are Muslims, or wherein only the male party is a Muslim and the marriage is solemnized in accordance with Muslim law or this Code in any part of the Philippines.

[53] B. I. Arabani, Sr., *Commentaries on the Code of Muslim Personal Laws of the Philippines* 258 (2011).

[54] MUSLIM CODE, Art. 93 provides:

ART. 93. Disqualifications to succession. – The following shall be disqualified to succeed:

x x x x

(c) Those who are so situated that they cannot inherit under Islamic law.

[55] Under Islamic law, a Muslim may not inherit from a non-Muslim, and a non-Muslim may not inherit from a Muslim. This is based on the Hadith of Muhammad that “the people belonging to two (different) faiths do not inherit from each other.” See B. I. Arabani, Sr., Commentaries on the Code of Muslim Personal Laws of the Philippines 608 (2011).

[56] MUSLIM CODE, Art. 107 provides:

ART. 107. Bequest by operation of law. – Should the testator die without having made a bequest in favor of any child of his son who predeceased him, or who simultaneously dies with him, such child shall be entitled to one-third of the share that would have pertained to the father if he were alive. The parent or spouse, who is otherwise disqualified to inherit in view of Article 93(c), shall be entitled to one-third of what he or she would have received without such disqualification.

[57] MUSLIM CODE, Arts. 155 (2) and 143 (1)(b).

[58] MUSLIM CODE, Art. 143 (2)(b).

[59] Ibrahim v. Commission on Elections, G.R. No. 192289, January 8, 2013, 688 SCRA 129, 145 [Per J. Reyes, En Banc], citing Republic v. Bantigue Point Development Corporation, G.R. No. 162322, March 14, 2012, 668 SCRA 158 [Per J. Sereno, Second Division]; Figueroa v. People of the Philippines, 580 Phil. 58, 76 (2008) [Per J. Nachura, Third Division]; Mangaliag v. Catubig-Pastoral, 510 Phil. 637, 648 (2005) [Per J. Austria-Martinez, Second Division]; Calimlim v. Ramirez, 204 Phil. 25, 35 (1982) [Per J. Vasquez, First Division].

[60] Francel Realty Corporation v. Sycip, 506 Phil. 407, 415 (2005) [Per Acting C.J. Panganiban, Third Division].

[61] 580 Phil. 58, 76 (2008) [Per J. Nachura, Third Division].

[62] 503 Phil. 288 (2005) [Per J. Tinga, Second Division].

[63] Id. at 294.

[64] 131 Phil. 556 (1968) [Per J. Dizon, En Banc].

[65] Id. at 563.

[66] Id. at 564.

[67] Id. at 563-564.

[68] Id. at 565.

[69] Calimlim v. Ramirez, 204 Phil. 25, 35 (1982) [Per J. Vasquez, First Division].

[70] 204 Phil. 25 (1982) [Per J. Vasquez, First Division].

[71] Id. at 34-35.

[72] Id. at 34.

[73] Id.

[74] Id. at 34-35.

[75] Figueroa v. People of the Philippines, 580 Phil. 58 (2008) [Per J. Nachura, Third Division].

[76] Id. at 77.

[77] Id.

[78] Id at 77-78.

[79] *Macasaet v. Co, Jr.*, G.R. No. 156759, June 5, 2013, 697 SCRA 187, 198 [Per J. Bersamin, First Division].

[80] Id. at 201.

[81] RULES OF COURT, Rule 14, Sec. 20.

[82] *Macasaet v. Co, Jr.*, G.R. No. 156759, June 5, 2013, 697 SCRA 187, 201 [Per J. Bersamin, First Division].

[83] Id. at 198.

[84] Id. at 199, citing *DOMAGAS V. JENSEN*, 489 Phil. 631, 641 (2005) [Per J. Callejo, Sr., Second Division].

[85] *ANG LAM V. ROSILLOSA AND SANTIAGO*, 86 Phil. 447, 451 (1950) [Per J. Ozaeta, En Banc].

[86] Id. at 450, citing *PATRIARCA V. ORATE*, 7 Phil. 390, 393-394 (1907) [Per C.J. Arellano, En Banc].

[87] *DOMAGAS V. JENSEN*, 489 Phil. 631, 645 (2005) [Per J. Callejo, Sr., Second Division].

[88] *Macasaet v. Co, Jr.*, G.R. No. 156759, June 5, 2013, 697 SCRA 187, 198 [Per J. Bersamin, First Division].

[89] *Ang Lam v. Rosillosa and Santiago*, 86 Phil. 447, 451 (1950) [Per J. Ozaeta, En Banc], citing 1 C.J.S., 1148.

[90] *Macahilig v. Heirs of Magalit*, 398 Phil. 802, 817 (2000) [Per J. Panganiban, Third Division].

[91] *Macasaet v. Co, Jr.*, G.R. No. 156759, June 5, 2013, 697 SCRA 187, 198 [Per J. Bersamin, First Division].

[92] *Rollo*, p. 40.

[93] 86 Phil. 447 (1950) [Per J. Ozaeta, En Banc].

[94] Id. at 451.

[95] G.R. No. 142676, June 6, 2011, 650 SCRA 344 [Per J. Leonardo-de Castro, First Division].

[96] Id. at 367.

[97] 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.

[98] B. I. Arabani, Sr., *Commentaries on the Code of Muslim Personal Laws of the Philippines* 245 (2011).

[99] MUSLIM CODE, Art. 2.

[100] MUSLIM CODE, Art. 137.

[101] Republic Act No. 9054, Art. VIII, Sec. 5.

[102] MUSLIM CODE, Art. 144 (1).

[103] Republic Act No. 9054, Art. VIII, Secs. 7 and 9.

[104] Republic Act No. 9054, Art. VIII, Sec. 9.

[105] Republic Act No. 9054, Art. VIII, Sec. 10.

[106] G.R. No. 182434, March 5, 2010, 614 SCRA 354 [Per J. Velasco, Jr., En Banc].

[107] Id. at 361.

[108] Id.

[109] Const., art. VIII, sec. 5 (1).

[110] The singular form is “fatwa”.

[111] MUSLIM CODE, Art. 166 (1).

[112] MUSLIM CODE, Art. 166 (1).

[113] B. I. Arabani, Sr., Commentaries on the Code of Muslim Personal Laws of the Philippines 855 (2011).

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