

MELYSINDA D. REYES, PETITIONER, VS. MARIA SALOME R. ELQUIERO, REPRESENTED BY ATTORNEY-IN-FACT, DAISY ELQUIERO-BENAVIDEZ, RESPONDENT.

G.R. No. 210487. September 02, 2020

Ponente: GAERLAN, J.

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GAERLAN, J.:

Assailed in this Petition for Review on Certiorari under Rule 45 of the Rules of Court are the April 26, 2012 Decision[1] and the December 12, 2013 Resolution[2] of the Court of Appeals (CA) in CA-G.R. No. 115366, which nullified two orders issued by the Regional Trial Court (RTC) of San Pablo City in a habeas corpus proceeding relating to the custody of a minor child.

The Facts

Petitioner Melysinda D. Reyes (Melysinda) is the biological aunt of the minor child Irish Elquero (Irish). Irish is the biological daughter of Melysinda's brother and the legally adopted daughter of Rex R. Elquero (Rex) who, in turn, is the son of respondent Maria Salome R. Elquero (Salome). Upon the death of Rex in 2009, Melysinda and Salome both claimed custody of Irish.

The Habeas Corpus Case

On March 26, 2010, Salome petitioned the CA for a writ of habeas corpus which was docketed as CA-G.R. SP. No. 113286. Salome essentially alleged therein that: Melysinda, Rex, and Irish lived together in San Pedro, Laguna, until Rex left in August 2007 for the United States, where he died in February 2009; thereafter, Irish has remained in the custody of Melysinda; Salome last heard from Irish when the former's daughter, Daisy E. Benavidez (Daisy), visited the child in San Pablo City on March 29, 2009. Since then, Melysinda prevented Salome and her daughters Daisy and Gilda E. Kelley (Gilda) from having any contact or communication with Irish. Salome thus prayed for the issuance of a writ of habeas corpus to compel Melysinda "and any person acting on her behalf" to produce the body of Irish before the Court.[3]

The CA granted the petition in a Resolution dated March 31, 2010. It directed the issuance of a writ of habeas corpus returnable to the RTC of San Pablo City, Laguna. The appellate court observed that:

A perusal of the records reveals that the petitioner claims custody as adoptive grandmother and substitute parent over the minor subject of the instant petition. On the other hand, the respondent who allegedly withholds lawful custody is referred to as both a girlfriend of the deceased adoptive father and the sister of the minor's biological father.[4]

On April 8, 2010, NBI Special Investigator Mark Anthony G. Diaz filed a return of the writ and the San Pablo City RTC Branch 30, conducted hearings on the matter. Afterwards, the RTC issued an Order confirming the parties' agreement to vest temporary custody of Irish with Melysinda while the case was pending.[5]

Melysinda then filed an Opposition to Petition for Writ of Habeas Corpus dated April 12, 2010, where she argued that: Salome had no personality to question Irish's custody; the petition was baseless as Irish was not being deprived of liberty or otherwise restrained, but instead is in the rightful care and custody of her biological aunt, whom she purportedly recognizes "as her very own mother"; Salome was guilty of forum shopping; and Salome was not genuinely interested in the child's welfare, but merely hoped to benefit materially from Rex's estate.[6]

Another hearing was conducted on April 16, 2010, but Salome did not appear either in person or through a representative. Instead of requiring Salome's appearance, the RTC issued an Order requiring submission of either a compromise agreement or the parties' pre-trial briefs. Salome moved for reconsideration, arguing that petitions for habeas corpus are summary in nature and are thus not covered by the provision on mandatory pre-trial under A.M. No. 03-04-04-SC.[7] Melysinda filed an Opposition to Salome's motion for reconsideration, asserting that "the custody of minor (sic) has a similar purpose akin or similar to the Writ of Habeas Corpus(.)"[8] Salome's motion for reconsideration was denied in an order which she received on July 9, 2010.[9]

Aggrieved, Salome challenged the April 16, 2010 and July 9, 2010 orders before the CA, which was docketed as CA-G.R. SP No. 115366. While this petition was pending, Salome sought injunctive relief. In her pleadings, she admitted that she had filed another petition for custody of Irish before Branch 207 of the Muntinlupa RTC, which was docketed as Sp. Case No. 10-027 (hereinafter referred to as the Muntinlupa Custody Case). The records reveal that Salome had filed the case through a representative. The representative even disclosed the pendency of the habeas corpus proceeding in the verification of the Muntinlupa petition.[10]

Melysinda, in her opposition to Salome's prayer for injunctive relief, alleged that in addition to the Muntinlupa custody case, Salome filed on July 17, 2009 yet another Petition for Guardianship of Irish before Branch 30 of the San Pablo City RTC, which was docketed as Sp. Proc. Case No. SP-1768(09) (hereinafter referred to as the Guardianship Case). Melysinda further alleged that Salome's daughters were actively pursuing the Guardianship Case.[11]

The Muntinlupa Custody Case

The Muntinlupa Custody Case was initiated on June 15, 2010.[12] In her petition before the Muntinlupa court, Salome alleged the following: (1) her son Rex was the legal adoptive father of Irish, who was nine (9) years old at that time; (2) Melysinda was the sister of Irish's biological father; (3) Melysinda and Rex had a romantic relationship and lived together in one house along with Irish; (4) on February 17, 2009, Rex died of cardiac ailment in the United States of America; (5) Salome's daughter Daisy last saw Irish in Melysinda's custody on March 29, 2009; (5) Salome and her daughters had been deprived of Irish's custody, in spite of the fact that they were relatives of Irish's adoptive father; (6) Melysinda had no legal right to retain Irish's custody; and (7) Melysinda had no gainful employment and was exerting undue influence detrimental to Irish.[13]

In her Answer dated August 13, 2010, Melysinda countered that: (1) Salome was not related to Irish because the legal relationship created by adoption was only between the adopting parent and the adopted, and it did not extend to the adopter's relatives; (2) Irish has been in Melysinda's care and custody since the former was seven days old up to the present, and Irish considers Melysinda as her own mother; (3) Salome, in filing the petition for custody, was guilty of forum shopping since there were already pending petitions for guardianship and for writ of habeas corpus in relation to Irish's custody; (4) Salome and her daughters were not really interested in Irish's well-being, but in the property left behind by Rex; and (5) Salome was not well known to Irish since the former had only seen the latter thrice: when she was just four months, four years, and six years old.

Melysinda filed a Motion to Dismiss dated August 24, 2010, on the following grounds: (1) the pendency of the Habeas Corpus Case involving before Branch 30 of the San Pablo City RTC; (2) forum shopping; (3) Salome's

lack of qualifications for custody of Irish; and (4) the lack of emotional and psychological bonds between Irish and Salome.

Salome argued that the motion to dismiss should be denied because it was filed after Melysinda had already filed an answer; and there was no forum shopping since the only relief sought by the Habeas Corpus Case was the production of the person of Irish.

On January 11, 2011, the Muntinlupa court issued an order granting Melysinda's motion to dismiss, ruling that Salome had failed to establish any right to exercise custody over Irish considering that there was no legal relationship whatsoever between Salome and Irish. Salome moved for reconsideration, which the Muntinlupa court denied in an order dated April 12, 2011. Salome thus appealed to the CA. The case was docketed as CA-G.R. CV No. 97013.

Ruling in CA-G.R. CV No. 97013
(Muntinlupa Custody Case)

The CA 16[th] Division, in a Decision[14] dated September 25, 2012, denied Salome's petition, the fallo of which reads:

ACCORDINGLY, the appeal is DENIED for lack of merit The Orders dated January 11, 2011 and April 12, 2011 are affirmed. Further, appellant Maria Salome R. Elquero, represented by Daisy Elquero-Bernadez and her lawyer Atty. Nelson H. Manalili are directed to show cause, within ten days from notice, why they should not be sanctioned for committing multiple acts of forum shopping.

SO ORDERED.[15]

The CA affirmed the Muntinlupa RTC Decision and found Salome guilty of forum shopping, viz.:

x x x The habeas corpus case, in relation to custody, is currently pending before RTC-Branch 30, San Pablo City. The fact that this Court had earlier issued the corresponding writ requiring appellee to produce the person of Irish in court did not terminate said case, for this Court had, thereafter, referred the case to RTC-Branch 30, San Pablo City for hearing and disposition, specifically on the issue of who should rightfully exercise custody over the person and property of Irish. Notably, the habeas corpus case involves exactly the same parties, subject matter, and issue, as in the present case.

Not only that. There is even another case for guardianship still pending before RTC-San Pablo City. There, RTC-San Pablo City appointed appellee as guardian over the person and property of Irish. Appellant opposed appellee's appointment as guardian, but she did not appeal it To be sure, the custody case here is a replication of the guardianship case where the sole subject is custody of the person and property of Irish. It is settled, however, that a party cannot go to another forum for the purpose of setting aside the disposition of a coequal body. Applying this to the present case, RTC-Muntinlupa City cannot review, let alone, reverse the disposition of RTC-San Pablo City in the guardianship proceedings similarly involving minor Irish and her property.

In light of the following considerations, it is clear as day that appellant committed multiple acts of forum shopping, i.e. the habeas corpus case, the guardianship case, and the custody case, all involving the same subject matter, parties, and relief, albeit, packaged in different forms. x x x[16]

Furthermore, the appellate court held that Salome had no cause of action to sue for custody of Irish, because adoption does not create a legal relationship between the adoptee (in this case, Irish) and the adopter's relatives (in this case, Salome and her daughters).

Ruling in CA-G.R. SP No. 115366
(Habeas Corpus Case)

Concurring with Salome's assertion that habeas corpus proceedings are summary in nature, the CA 9[th] Division partially granted her petition and reversed the assailed orders which required the parties to submit pleadings preparatory for a pre-trial.

The CA 9[th] Division admitted that the Habeas Corpus Case should be considered a regular habeas corpus case, bearing in mind that a writ of habeas corpus issued by an RTC is enforceable only within the court's judicial region, and that a writ of habeas corpus is merely an ancillary remedy in custody cases. The CA 9[th] Division concluded that Salome filed the habeas corpus petition with the CA because she knew that any writ of habeas corpus issued by the Muntinlupa RTC (where her custody case was pending) could not be enforced in San Pablo, Laguna (where Irish and Melysinda lived). Stated differently, there was a territorial conflict between the main case for custody and the ancillary remedy for writ of habeas corpus. Despite this admission, the CA 9[th] Division treated the Habeas Corpus Case "as one strictly under the Rule of Custody of Minors, not under Rule 102 of the Rules of Court," and held that the San Pablo City RTC erred in requiring the parties to submit pre-trial briefs, as habeas corpus proceedings are summary in nature. Furthermore, the 9[th] Division held that Salome was not guilty of forum shopping when she filed the Habeas Corpus Case before the CA. According to the CA 9[th] Division, the determination of Irish's custody still lay with the Muntinlupa RTC; and the Habeas Corpus Case was limited to the issue of whether Irish was being deprived of liberty legally. Ultimately, the CA 9[th] Division ordered the San Pablo City RTC to proceed with the Habeas Corpus Case and treat it as a regular habeas corpus proceeding under Rule 102.

Melysinda moved for reconsideration, which the CA 9[th] Division denied in the assailed resolution. Hence, this petition, which raises the following issues:

- I. THE HONORABLE COURT OF APPEALS GROSSLY ERRED AND COMMITTED REVERSIBLE ERROR IN FINDING THAT THE HONORABLE REGIONAL TRIAL COURT, BRANCH 30, SAN PABLO CITY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN ISSUING THE ORDERS DATED APRIL 16, 2010 AND JULY 5, 2010.
- II. THE HONORABLE COURT OF APPEALS GROSSLY ERRED AND COMMITTED REVERSIBLE ERROR IN FINDING THAT [SALOME] IS NOT GUILTY OF FORUM SHOPPING.
- III. THE HONORABLE COURT OF APPEALS GROSSLY ERRED AND COMMITTED REVERSIBLE ERROR IN NOT FINDING THAT [SALOME] HAS NO VALID CAUSE OF ACTION FOR CUSTODY OF MINOR IRISH REYES ELQUIERO.

The Court's Ruling

The issues raised by the petition boil down to three questions: first, whether the Habeas Corpus Case should be treated as a regular habeas corpus petition governed primarily by Rule 102 or as a special habeas corpus petition which is an ancillary remedy governed by the special rules on custody; second, whether Salome is guilty of forum shopping; and third, whether Salome is entitled to seek custody of Irish.

Nature of the Habeas Corpus Case

At this point, it must be noted that the two CA rulings concur as to the purpose of the Habeas Corpus Case. The CA 16[th] Division, in ruling upon Melysinda's motion to dismiss the Muntinlupa custody case, held:

x x x The habeas corpus case, in relation to custody, is currently pending before RTC-Branch 30, San Pablo City. The fact that this Court had earlier issued the corresponding writ requiring appellee to produce the person of Irish in court did not terminate said case, for this Court had, thereafter, referred the case to RTC-Branch 30, San Pablo City for hearing and disposition, specifically on the issue of who should rightfully exercise custody over the person and property of Irish. Notably, the habeas corpus case involves exactly the same parties,

subject matter, and issue, as in the present case.

x x x x

x x x [t]he habeas corpus case, the guardianship case, and the custody case, all involv[e] the same subject matter, parties, and relief, albeit, packaged in different forms.[17] (*Italicize ours*)

Meanwhile, the CA 9[th] Division, which was essentially asked to determine the nature of the Habeas Corpus Case, held that:

The general rule above formulated is that the remedy of habeas corpus involving custody over a child is merely ancillary to an already pending petition for such custody. Madriñan also illustrates habeas corpus proceedings wherein custodial rights over the same children subject of the writ were thereafter properly determined by the Court.

However, in the situation now before Us, resort to the ancillary remedy as such would not have been tenable in the Petition for Custody pending before the RTC of Muntinlupa City. In fulsome, the original Petition for the issuance of a writ of habeas corpus was an availment of the remedy in its original sense, under Rule 102 of the Rules of Court.

Indeed, while petitioner alleged substitute parental authority by virtue of her son Rex, Irish's adoptive father and the restraint of the child's liberty by respondent, Rex's girlfriend, petitioner specified in her prayer only the issuance of the writ of habeas corpus, directing respondent and any person acting on her behalf to appear before the Court, produce the body of the minor Irish Reyes Elquero, and explain why the latter should not be set at liberty. Strictly speaking, petitioner's allegations of substitute parental authority were not even material, since any person may apply for a writ of habeas corpus on behalf of the aggrieved party.

The basic rule is that reliefs granted to a litigant are limited to those specifically prayed for in the initiatory pleading, and other reliefs may be granted only when related to the specific prayers and supported by the evidence on record. Since petitioner alluded to Rex's legal adoption of Irish yet submitted no evidence of such adoption, together with the fact that a separate action for custody was already pending before the Muntinlupa City RTC, the relief granted was rightly limited to a writ of habeas corpus in its original sense. Parenthetically, what We did was to merely direct the production of the minor in court and the explanation of the latter's alleged restraint. We did not grant custody over Irish to any of the parties.

Treating the original petition as one strictly under the Rule on Custody of Minors, not under Rule 102 of the Rules of Court, the RTC gravely abused its discretion in setting it for pre-trial. Habeas corpus proceedings are summary in nature and its special rules of procedure do not mandate a full-blown trial, much less pre-trial proceedings. The determination as to who is entitled to the custody of Irish and the rights concomitant thereto is the function of the RTC of Muntinlupa City, where the petition for her custody is pending and docketed as Sp. Case No. 10-027. To be sure, it is the RTC of Muntinlupa City which is procedurally required to conduct a pre-trial conformably with the dictates of A.M. No. 03-04-04-SC. Incidentally, it is for similar reasons that We cannot find petitioner to have committed forum-shopping or violated the prohibition against multiplicity of suits.[18]

Clearly, there was no doubt in the mind of the appellate court that the Habeas Corpus Case was filed by Salome with a view of obtaining custody of Irish. *Sombong v. Court of Appeals* elucidates this function of habeas corpus in custody cases, viz.:

Fundamentally, in order to justify the grant of the writ of habeas corpus, the restraint of liberty must be in the nature of an illegal and involuntary deprivation of freedom of action. This is the basic requisite under the first part of Section 1, Rule 102, of the Revised Rules of Court, which provides that "except as otherwise expressly provided by law, the writ of habeas corpus shall extend to all cases of illegal confinement or detention by

which any person is deprived of his liberty."

In the second part of the same provision, however, Habeas Corpus may be resorted to in cases where "the rightful custody of any person is withheld from the person entitled thereto." Thus, although the Writ of Habeas Corpus ought not to be issued if the restraint is voluntary, we have held time and again that the said writ is the proper legal remedy to enable parents to regain the custody of a minor child even if the latter be in the custody of a third person of her own free will.

It may even be said that in custody cases involving minors, the question of illegal and involuntary restraint of liberty is not the underlying rationale for the availability of the writ as a remedy; rather, the writ of habeas corpus is prosecuted for the purpose of determining the right of custody over a child.

The controversy does not involve the question of personal freedom, because an infant is presumed to be in the custody of someone until he attains majority age. In passing on the writ in a child custody case, the court deals with a matter of an equitable nature. Not bound by any mere legal right of parent or guardian, the court gives his or her claim to the custody of the child due weight as a claim founded on human nature and considered generally equitable and just. Therefore, these cases are decided, not on the legal right of the petitioner to be relieved from unlawful imprisonment or detention, as in the case of adults, but on the court's view of the best interests of those whose welfare requires that they be in custody of one person or another. Hence, the court is not bound to deliver a child into the custody of any claimant or of any person, but should, in the consideration of the facts, leave it in such custody as its welfare at the time appears to require. In short, the child's welfare is the supreme consideration.

Considering that the child's welfare is an all-important factor in custody cases, the Child and Youth Welfare Code 16 unequivocally provides that in all questions regarding the care and custody, among others, of the child, his welfare shall be the paramount consideration. In the same vein, the Family Code authorizes the courts to, if the welfare of the child so demands, deprive the parents concerned of parental authority over the child or adopt such measures as may be proper under the circumstances.

The foregoing principles considered, the grant of the writ in the instant case will all depend on the concurrence of the following requisites: (1) that the petitioner has the right of custody over the minor; (2) that the rightful custody of the minor is being withheld from the petitioner by the respondent; and (3) that it is to the best interest of the minor concerned to be in the custody of petitioner and not that of the respondent.[19] (Emphasis ours)

To further regulate the availing of habeas corpus writs as a means of recovering custody, the Supreme Court promulgated the Rule on Custody of Minors and Writ of Habeas Corpus in Relation to Custody of Minors[20] on April 22, 2003. Section 20 of said Rule provides:

SECTION 20. Petition for writ of habeas corpus. - A verified petition for a writ of habeas corpus involving custody of minors shall be filed with the Family Court. The writ shall be enforceable within its judicial region to which the Family Court belongs.

However, the petition may be filed with the regular court in the absence of the presiding judge of the Family Court, provided, however, that the regular court shall refer the case to the Family Court as soon as its presiding judge returns to duty.

The petition may also be filed with the appropriate regular courts in places where there are no Family Courts.

The writ issued by the Family Court or the regular court shall be enforceable in the judicial region where they belong.

The petition may likewise be filed with the Supreme Court, Court of Appeals, or with any of its members and, if so granted, the writ shall be enforceable anywhere in the Philippines. The writ may be made returnable to a

Family Court or to any regular court within the region where the petitioner resides or where the minor may be found for hearing and decision on the merits.

Upon return of the writ, the court shall decide the issue on custody of minors. The appellate court, or the member thereof, issuing the writ shall be furnished a copy of the decision.

The provision reiterates the ruling in *Sombong* that a habeas corpus proceeding essentially functions as a custody proceeding in its own right. For this reason the last paragraph specifically provides that in habeas corpus custody proceedings initiated before the CA, the return may be made "to a Family Court or to any regular court within the region where the petitioner resides or where the minor may be found for hearing and decision on the merits"; and that "[u]pon return of the writ, the court shall decide the issue on custody of minors. The appellate court, or the member thereof, issuing the writ shall be furnished a copy of the decision." Crucially, as the petition is being filed under the Rule on Custody of Minors as a special form of habeas corpus, the other provisions of that rule are applicable to the proceeding. Section 9 of the rule clearly states:

SECTION 9. Notice of mandatory pre-trial. - Within fifteen days after the filing of the answer or the expiration of the period to file answer, the court shall issue an order: (1) fixing a date for the pre-trial conference; (2) directing the parties to file and serve their respective pre-trial briefs in such manner as shall ensure receipt thereof by the adverse party at least three days before the date of pre-trial; and (3) requiring the respondent to present the minor before the court.

The notice of its order shall be served separately on both the parties and their respective counsels.

The pre-trial is mandatory.

It is therefore clear that the CA 9[th] Division erred in reversing the San Pablo City RTC's orders for the parties to submit pleadings preparatory to a pre-trial; for pre-trial is mandatory in a custody-related habeas corpus proceeding. The pendency of the Muntinlupa Custody Case is of no moment, as the Habeas Corpus Case is a full-blown custody proceeding in its own right.

Forum-shopping

In its assailed decision, the CA 9[th] Division held that the difference in reliefs afforded in the Habeas Corpus Case and the Muntinlupa Custody Case obviates the existence of forum shopping. On the other hand, the CA 16[th] Division categorically held that the Muntinlupa Custody Case constitutes forum shopping, as it seeks the same essential relief: the grant of custody of Irish. Salome, in her pleadings, essentially reiterate the reasoning of the CA 9[th] Division; while Melysinda echoes the conclusions of the CA 16[th] Division.

Fontana Development Corp. v. Vukasinovic[21] expounds on the concept of forum shopping:

There is forum shopping when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court. Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets.[22]

In *Dy v. Mandy Commodities, Inc.*,[23] this Court explained why forum shopping is prohibited:

The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached.[24]

Finally, in *Villamor & Victolero Construction Co. v. Sogo Realty and Development Corp.*, the Court, speaking through the Chief Justice, laid down the following requisites of forum shopping:

x x x the test for determining the existence of forum shopping, is whether a final judgment in one case amounts to res judicata in another or whether the following elements of *litis pendentia* are present: (a) identity of parties, or at least such parties as representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration.[25]

In the case at bar, Salome filed the Habeas Corpus Case on March 26, 2010 before the CA, which then returned and remanded the case to the San Pablo City RTC. She then filed the Muntinlupa Custody Case on June 25, 2010, barely three months after filing the Habeas Corpus Case. In both cases, Salome, as petitioner, impleaded Melysinda as respondent. In both cases, Salome alleged the following: 1) that she is the mother of Irish's adoptive father; 2) that Melysinda is the biological aunt of Irish and the girlfriend of Irish's adoptive father; 3) that Salome's daughter Daisy last saw Irish in Melysinda's custody on March 29, 2009; 4) that Salome and her daughters had been deprived of Irish's custody, in spite of the fact that they were relatives of Irish's adoptive father; and 5) Melysinda had no legal right to retain Irish's custody.

Furthermore, the Habeas Corpus Case and the Muntinlupa Custody Case seek the same essential relief: the grant of custody of Irish. We cannot subscribe to the CA 9[th] Division's reasoning that the Habeas Corpus Case merely involves the issue of Irish's confinement and legality thereof. As explained earlier, a petition for writ of habeas corpus, when sought in relation to the custody of a minor, is nothing but a special form of a petition for custody, which is availed of in special circumstances where

it appears that a minor is being kept from a parent desirous of providing the necessary atmosphere conducive to the physical, moral and intellectual development of the minor by the other parent, or in similar situations involving either parents, ascendants, elder siblings or other parties, and time is of the essence x x x.[26]

Verily, the CA 16[th] Division had these legal principles in mind in ruling that "it is clear as day that [Salome] committed multiple acts of forum shopping, i.e., the habeas corpus case, the guardianship case, and the custody case, all involving the same subject matter, parties, and relief, albeit, packaged in different forms." All told, it is abundantly clear that Salome committed forum shopping when she filed the Muntinlupa Custody Case.

As to the effect of this finding on the Habeas Corpus Case, Rule 7, Section 5 of the Rules of Court provides that the case or cases subsequently filed shall be dismissed without prejudice. However, if forum shopping was willfully and deliberately employed, all cases, including the first one filed, shall be dismissed with prejudice.[27] Stated differently, if the Muntinlupa Custody Case be found a willful and deliberate attempt to obtain the same relief from different courts, the Habeas Corpus Case must likewise be dismissed.

At this point, the following facts must be considered: first, Salome's representative disclosed the pendency of the Habeas Corpus Case when she filed the Muntinlupa Custody Case; and second, the two cases were filed almost exactly three months apart. The short period between the filing of the two cases is not in itself a definitive sign of deliberate forum shopping, but must be read together with other evidence on record. In their compliance with the CA 16[th] Division's order to explain why they should not be sanctioned for committing multiple acts of forum shopping,[28] Salome and her lawyer gave the following explanation:

x x x x

2. To clarify matters, the relief prayed for by petitioner-appellant in the habeas corpus case pending before RTC, Branch 30, San Pablo City is different from that of the instant custody case subject of this appeal. As

stated in the prayer, the relief prayed for is the production of the body of Irish R. Elquero and explaining why the latter should not be set at liberty forthwith and without delay. Whereas in this custody case, the relief prayed for is that a judgment be issued awarding to Petitioner Maria Salome R. Elquero the custody of minor Irish R. Elquero.

3. With respect to the petition for guardianship over minor Irish R. Elquero's person and property, the same was filed by respondent-appellee (not by petitioner-appellant who incidentally has a different lawyer in said petition by the name of Atty. Caspe) prior to the habeas corpus petition and has a different relief asked for as may be perused on page 3 of said petition. In said petition for guardianship, respondent-appellee averred in paragraph 6 that "petitioner [respondent-appellee herein] had been in parental care, custody x x x of minor child Irish Reyes Elquero x x x". So, respondent-appellee does not seek custody in this petition for guardianship as she already maintains therein that she already has custody over Irish R. Elquero, to begin with.

4. Indeed, petitioner-appellant has not engaged in forum shopping exists where the elements of *litis pendentia* are present or when a final judgment in one case will amount to *res judicata* in the other.

5. In this case, the requirements of *litis pendentia* are not ALL present, to wit:

- a) Identity of parties or at least representing the same interest;
- b) Identify of rights and reliefs asserted and prayed for, relief being founded on same facts; and
- c) Judgment which may be rendered on the other action will be *res judicata* in the action under consideration.

6. There is no identity of reliefs asserted in that in CA-G.R. No. 113286 (petition for habeas corpus), the relief prayed for is the production of the body of Irish R. Elquero and explaining why the latter should not be set at liberty forthwith and without delay whereas in the instant case, the relief prayed for is that a judgment be issued awarding to Petitioner Maria Salome R. Elquero the custody of minor Irish R. Elquero.

7. In the same manner, a judgment (in the habeas corpus petition) directing respondent-appellee to produce the body of Irish R. Elquero and explain why the latter should not be set at liberty forthwith and without delay could not possibly be *res judicata* in the present action to award custody over said Irish R. Elquero to herein petitioner-appellant. Or in other words, the said judgment will not amount to an adjudication of the instant action under consideration.

8. Hence, in simple terms, respondent-appellee's act of showing the child to the court is not the same as opposing the custody over said child in court.

9. Indeed, sustaining petitioner-appellant's positron on the issue, this Honorable Court thru its Ninth Division rendered the earlier Decision dated 26 April 2012 in CA-G.R. SP No. 115366 in ruling upon petitioner's Petition for Certiorari (assailing the Orders dated 16 April 2010 and 5 July 2010 of RTC--Branch 30, San Pablo City in the habeas corpus petition x x x.[29]

The CA 16[th] Division, unconvinced by the foregoing, gave Salome and her lawyer a stern warning:

We find appellant and her counsel's compliance unsatisfactory. Whatever gobbledygook they have used to justify their actions cannot erase the fact that they committed multiple acts of forum shopping which this Court has the authority to curtail and punish. x x x

x x x x

We understand the lawyer's duty to serve his client and to do everything within his power to pursue his client's cause. But whatever the lawyer does for his client must be confined within the bounds of law, justice and fairness. He should never ever allow himself to be used as an instrument of injustice, let alone, one that

shamelessly trifles with the rule of law and its processes. For more than anything else, every lawyer is an officer of the court whose duty is, to uphold its processes, the law, and the rules that ensure order in the conduct of judicial proceedings. Atty. Nelson H. Manalili is an officer of the court, first and foremost, but he utterly failed to judiciously discharge this duty. The fact that he was not the lawyer in the guardianship case does not mean he could freely file other similar action or actions, knowing full well that based on record, his client had pursued an earlier case, for the same purpose. On the other hand, Maria Salome R. Elquiero, represented by attorney-in-fact Daisy Elquiero-Benavidez, is equally found to have failed to observe good faith and respect toward the judicial process when she stubbornly pursued a single cause through various actions in different courts. She cannot plead innocence simply because she is not a lawyer. She is an educated person who knows exactly what she so desperately wants to obtain by all means, that is, the custody of minor Irish Reyes Elquiero.

ACCORDINGLY, Maria Salome R. Elquiero, represented by attorney-in-fact Daisy Elquiero-Benavidez and Atty. Nelson H. Manalili are found to have committed multiple acts of forum shopping in this case and are sternly warned against committing a similar offense, which if repeated, will definitely warrant the imposition of a severe penalty.[30]

The Court, upon a thorough perusal of the record, finds Salome and her representative guilty of committing willful and deliberate forum shopping. The record clearly shows that Salome not only filed a habeas corpus petition and a custody petition but also another case for guardianship. The suspicious timing of the filing of the Habeas Corpus and Muntinlupa Custody cases, the contumacious insistence upon the hair-splitting distinction between the habeas corpus case and the custody case, taken together with the fact that they filed three different petitions in different venues, all seeking the same essential remedy, betray to the Court Salome's willful and deliberate intent to abuse court processes just to obtain custody of a child whose relation to her is doubtful to say the least. Perforce, the Habeas Corpus Case must likewise be dismissed.

Salome's right to sue for custody of Irish

The Rule on Custody of Minors simply provides that a petition for custody "may be filed by any person claiming such right." [31] However, standing to sue for custody differs from the actual right to custody. Articles 214 and 216 of the Family Code provides:

Article 214. In case of death, absence or unsuitability of the parents, substitute parental authority shall be exercised by the surviving grandparent. In case several survive, the one designated by the court, taking into account the same consideration mentioned in the preceding article, shall exercise the authority.

Article 216. In default of parents or a judicially appointed guardian, the following person shall exercise substitute parental authority over the child in the order indicated:

- (1) The surviving grandparent, as provided in Article 214;
- (2) The oldest brother or sister, over twenty-one years of age, unless unfit or disqualified; and
- (3) The child's actual custodian, over twenty-one years of age, unless unfit or disqualified.

Whenever the appointment of a judicial guardian over the property of the child becomes necessary, the same order of preference shall be observed.

The order of preference laid down by Article 216 is mandatory, unless special circumstances require otherwise. In the case at bar, in default of Irish's biological parents and her deceased adoptive father, the parties claiming custody are the mother of her adoptive father and her biological aunt who is also her actual custodian.

The legal relationship created by adoption extends only to the adopter and the adoptee. For this reason, the Court,

in *Teotico v. Del Val Chan*,^[32] ruled that the adopted daughter of the decedent's sister cannot inherit by intestate succession, viz.:

The oppositor cannot also derive comfort from the fact that she is an adopted child of Francisca Mortera because under our law the relationship established by adoption is limited solely to the adopter and the adopted does not extend to the relatives of the adopting parents or of the adopted child except only as expressly provided for by law. Hence, no relationship is created between the adopted and the collaterals of the adopting parents. As a consequence, the adopted is an heir of the adopter but not of the relatives of the adopter.

The relationship established by the adoption, however, is limited to the adopting parent, and does not extend to his other relatives, except as expressly provided by law. Thus, the adopted child cannot be considered as a relative of the ascendants and collaterals of the adopting parents, nor of the legitimate children which they may have after the adoption, except that the law imposes certain impediments to marriage by reason of adoption. Neither are the children of the adopted considered as descendants of the adopter. The relationship created is exclusively between, the adopter and the adopted, and does not extend to the relatives of either. (Tolentino, *Civil Code of the Philippines*, Vol. 1, p. 652)

Relationship by adoption is limited to adopter and adopted, and does not extend to other members of the family of either; but the adopted is prohibited to marry the children of the adopter to avoid scandal. (An Outline of Philippines Civil law by Justice Jose B. L. Reyes and Ricardo C. Puno, Vol. 1, p. 313; See also Caguioa, *Comments and Cases on Civil law*, 1955, Vol. 1, pp. 312-313; Paras, *Civil Code of the Philippines*, 1959 ed., Vol. 1, p. 515)^[33]

In the same vein, Salome cannot claim custody of Irish because the law only recognizes a familial relation insofar as Rex and Irish are concerned. The relation does not extend to any of Rex's relatives, Salome and her daughters included. On the other hand, Melysinda, as Irish's actual and current custodian, is explicitly enumerated as one of the persons eligible to exercise substitute parental authority under the Family Code.

IN VIEW OF THE FOREGOING PREMISES, the present petition is hereby GRANTED. The April 26, 2012 Decision and December 12, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 115366 are hereby REVERSED and SET ASIDE. CA-G.R. SP No. 113286 and all other proceedings connected therewith before the Regional Trial Court of San Pablo City, Laguna are hereby DISMISSED WITH PREJUDICE.

SO ORDERED.

Leonen, (Chairperson), Gesmundo, Carandang, and Zalameda, JJ., concur.

[1] Rollo, pp. 5-15; penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Antonio L. Villamor.

[2] Id. at 16-18; penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Hakim S. Abdulwahid and Celia C. Librea-Leagogo.

[3] Id. at 6.

[4] Id.

[5] Id.

[6] Id. at 6-7.

[7] The Rule on Custody of Minors and Writs of Habeas Corpus in Relation to Custody of Minors.

[8] Rollo, p. 7.

[9] Id.

[10] Id. at 7-8.

[11] Id. at 8.

[12] Id. at 9-10.

[13] Id. at 5-15.

[14] Id. at 60-71; penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court) and concurred in by Associate Justices Mariflor P. Punzalan-Castillo and Edwin D. Sorongon.

[15] Id. at 71.

[16] Id. at 65-66.

[17] Id.

[18] Id. at 12-13. Citations omitted.

[19] 322 Phil. 737, 749-751 (1996).

[20] A.M. No. 03-04-04-SC.

[21] 795 Phil. 913 (2016).

[22] Id. at 920.

[23] 611 Phil. 74 (2009).

[24] Id. at 84.

[25] G.R. Nos. 218771 & 220689, June 3, 2019.

[26] Oscar M. Herrera, Special Proceedings and Special Rules Implementing the Family Courts Act of 1997 410 (2005).

[27] Phil. Pharmawealth, Inc. v. Pfizer, Inc., 649 Phil. 423, 445 (2010).

[28] Rollo, pp. 73-75.

[29] Id.

[30] Id. at 80, 82-83.

[31] Section 1, A.M. No. 03-04-04-SC.

[32] 121 Phil. 392 (1965).

[33] Id. at 402. Emphasis and underlining supplied.

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