

**LINDA MOHAMED BARRUECO, REPRESENTED BY HER GUARDIAN AD LITEM, CIRIACA SULAYAO, PLAINTIFF-APPELLANT, VS. THE CONSUL GENERAL OF SPAIN IN THE PHILIPPINES, IN HIS CAPACITY AS ADMINI...***G.R. No. 48796. March 17, 1943*

Ponente: OZAETA, J.

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This action was instituted on behalf of a baby girl named Linda Mohamed Barrueco to compel the defendant, as administrator of the intestate estate of the deceased Julio Veloso Barrueco, to recognize her as a natural daughter of said deceased. Previous to the commencement of the present action this same plaintiff, thru her grandmother and guardian ad litem Ciriaca Sulayao, had filed a petition in the intestacy of Julio Veloso Barrueco (case No. 55129 of the Court of First Instance of Manila) for the purpose of obtaining a judicial declaration that she is the sole and universal heir of the decedent. That petition was opposed by the herein defendant and, after due hearing, was denied by Judge Gervasio Diaz, who in his decision rendered on November 20, 1939 (exhibit Z), stated the facts as follows:

"Los hechos son claros, simples y no controvertidos. Desde el dia 22 de mayo de 1937 hasta el dia 12 de junio de 1939, el finado Julio Veloso Barrueco, mayor de edad, y Glicería Mohamed, entonces menor de 18 y hasta la fecha menor de edad, vivieron juntos como marido y mujer, al principio en Pasay, Rizal, y mas tarde en la Ciudad de Manila, especialmente en los altos de la casa No. 160 de la calle Legarda, cuyo primer piso estaba ocupado por el negocio establecido de dicho finado. Ambos eran solteros, de buena reputation y no tenian impedimento para contraer matrimonio, pero no lo contrajeron, por motivos que no aparecen en los autos; y como fruto de sus relaciones nacio la aqui solicitante, Linda Mohamed Barrueco, en el 'Mary Johnston Hospital' en la noche del dia 9 de junio de 1939. El finado Julio Veloso Barrueco fue el que, a horas tempranas de aquella noche, condujo al hospital en su automovil a la parturienta Glicería Mohamed; pero a altas horas de aquella noche misma, cuando esta acababa de dar a luz a Linda Mohamed Barrueco, algunos deudores de dicho finado que estuvieron disgustados de el, le atacaron, infiriendole heridas mortales; de las cuales fallecio en el 'Saint Joseph's Hospital' a horas tempranas del dia 12 de junio de 1939, o sea, a los tres dias de nacida dicha Linda Mohamed. El finado pago los gastos de la hospitalizacdn de Glicería Mohamed en el 'Mary Johnston's Hospital', expreso constantemente en vida su deseo de que se bautice con su propio nombre y apellido el nuevo ser que en su seno llevaba Glicería Mohamed si resultaba un nino, y cuando la Srta. Sofia Reyes, amiga de el y de Glicería Mohamed, le visito en el 'Saint Joseph Hospital' el dia 10 de junio de 1939, pregunto aun a esta si habia visto a su hija Linda. Glicería Mohamed y Julio Veloso Barrueco han estado siempre viviendo juntos como marido y mujer, y solamente la muerte de este les separo."

The trial court (Judge Fernando Jugo presiding) dismissed the complaint on the grounds (1) that the decision of Judge Diaz above referred to had rendered res adjudicata the compulsory recognition of the plaintiff as a natural daughter of the deceased, and (2) that the facts proven did not entitle the plaintiff to such recognition under paragraph 2 of article 135 of the Civil Code. Judge Diaz and Judge Jugo both held that the marital cohabitation of

the parents of the plaintiff child, as a result of which the latter was born, and the manifest intention of the deceased to recognize said child as his, were not sufficient to vest in the plaintiff the uninterrupted possession of the status of a natural child of the deceased, the latter having died only three days after the birth of the former.

We find that both the parties and the trial court have overlooked one vital aspect of the case, and that is, that in an action or proceeding to compel the recognition of a natural child of a deceased person the legitimate heirs or kin of the latter are necessary and indispensable parties. (*Briz vs. Briz and Remigio*, 43 Phil., 763; *Severino vs. Severino*, 44 Phil., 343.) Neither in this nor in the previous case have the potential heirs of the deceased Julio Veloso Barrueco been made parties. Consequently, no valid judgment upon the status which the plaintiff seeks to establish could have been rendered in the previous case; nor can it be rendered in the present case. That status still remains in open question and will continue so until the parties necessary and indispensable to its determination are given an opportunity to be heard.

Altho the facts found by Judge Diaz in the previous case and reiterated by Judge Jugo in the present case are, of course, not binding upon the potential heirs, who have not yet been heard, we deem it expedient and proper to express our opinion upon those facts for the future guidance of the trial court, to which we shall have to remand this case for further proceedings. If we were in accord with the lower court that, upon the proven facts, the plaintiff is not entitled to compulsory recognition as the natural daughter of the deceased, it would serve no purpose to implead the potential heirs.

The lower court seems to have labored under the misapprehension that because the plaintiff lived only three days before her father died, she could not have enjoyed the uninterrupted possession of the status of a natural child of the decedent. But, under articles 29 and 30 of the Civil Code, altho legal existence commences at birth the conceived child is considered as born for all purposes favorable to it, provided that when born it shall have a human form and shall live twenty-four hours after complete separation from the mother's womb. Since the plaintiff fulfils that requisite, the acts performed by the putative father from the time the child was conceived tending to show that he recognized it as his natural child, should not be left out of consideration. Commenting on article 29, Manresa says:

"Queda, por ultimo, el reconocimiento de derechos civiles a los concebidos, o sean las personas por nacer, usando la expresion de la ley argentina. El texto primitivo del Codigo, despues de afirmar que el nacimiento determina la personalidad, anadia 'sin perjuicio de los casos en que la ley retrotrae a una fecha anterior los derechos del nacido.' Este precepto podia dar lugar a omisiones, porque si bien el Codigo sefiala en diversos lugares los derechos de los postumos, en otros era defícil interpretar que los habia reconocido. Asi, por ejemplo, no existiendo un principio general, no hubieramos podido afirmar que deben reconocerse los derechos de los postumos relativos a la nacionalidad, pues la ley para nada se ocupa de ellos en el titulo anterior a este. Era, pues, oportuno, y asi lo ha demostrado la reforma del Codigo, que se siguiese la tradicion romana consignada en la celebre ley 3.a, tit. 23 de la Partida 4.a: 'Desmientre que estoviese la criatura en el vientre de su madre, toda cosa que se faga o se diga a pro de ella, aprovechase ende, bien asi como si fuese nacida; mas lo que fuese dicho o fecho a dano de su persona o de sus cosas, non le empesce.' Y esto se ha hecho en la reforma del Codigo, prefiriendo reconocer aquella existencia imperfecta 'y pendiente de la condicion del nacimiento, de acuerdo con el derecho de Inglaterra, de Portugal, de Mejico, del Peru, de Costa Rica, de la Republica Argentina, que es el mas explicito en este punto, de Suiza y de otras varias naciones, a retrotraer la fecha del nacimiento, que era el sistema admitido anteriormente por el Codigo, y que tiene precedentes en el de Sajonia." (Codigo Civil, Manresa, 4th ed., vol. 1, pp. 192-193.)

Judge Diaz, with whom Judge Jugo concurs, said in his decision:

"\* \* \* Lo que se ha probado simplemente fue que el finado dio a la madre de la solicitante la consideracion de una verdadera esposa desde que esta concibio a aquella con el evidente proposito de reconocer como hija suya

a dicha solicitante cuando haya nacido, y nada mas. A esta no se le dio la constante consideracion de una hija natural porque aun no habia nacido, ni pudo haberle dado dicha consideracion su finado padre natural, porque este fallecio a los tres dias de nacida ella. \* \* \*" (Exhibit Z.)

We think such opinion is untenable because it completely disregards the clear and express provisions of articles 29 and 30 of the Civil Code. Plaintiff's possession of the status of a natural child of the deceased, under the facts stated, was uninterrupted from the moment she was conceived to the very last moment of her father's life. The open marital cohabitation of the parents; the father's act of bringing the mother to the hospital to deliver the child; his payment of the hospital expenses; his oft-repeated wish that if the child in the mother's womb turned out to be a boy it be baptized with his own name; his having inquired, two days before his death, of a friend, Miss Sofia Reyes, whether she had seen his daughter Linda—these acts and conduct are, in our opinion, sufficient to justify the uninterrupted possession by the plaintiff of the status of a natural child of the deceased.

The judgment appealed from is reversed and set aside, and the case is ordered remanded to the trial court with instructions that the legitimate heirs or kin of the deceased Julio Veloso Barrueco be included as parties defendant and summoned according to law, after which the case shall be retried and decided anew. There is no pronouncement as to costs in this instance. So ordered.

Yulo, C. J., Moran, Paras, and Bocobo, JJ., concur.

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