

JOCELYN RULONA-AL AWADHI, PETITIONER, VS. HON. ABDULMAJLD J. ASTIH, DISTRICT JUDGE OF THE FOURTH SHARIA JUDICIAL DISTRICT COURT AND NABIL AL-AWADHI, RESPONDENTS.

G.R. No. 81969. September 26, 1988

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

A petition for review on certiorari was filed by Jocelyn Rulona-Al Awadhi, assailing the order dated January 12, 1988 of the Sharia Judicial District Court of Marawi City which denied her motion to dismiss Special Proceedings No. 011-87, entitled "Nabil Al-Awadhi, Petitioner, vs. Jocelyn Rulona, Respondent" for custody and guardianship of their minor children named Abdul Wahab Nabil, 5 years old, Adare Nabil, 3 years old, and Sabihab Al Abdullah Nabil, 6 months old.

The petitioner and the private respondent were married in Kuwait on August 1, 1981. The petitioner is a Filipino nurse and a Roman Catholic. Her husband, the private respondent, is a Kuwaiti student. The petitioner resides with her children in Sta. Cruz, Calape, Bohol, while the private respondent resides at 49-7 Pamaong Street, Tagbilaran City.

On or about August 25, 1987, she filed an action for support and guardianship of her three (3) minor children (who are in her custody) in the Regional Trial Court, Branch 2, in Tagbilaran City (Civil Case No. 4170, entitled "Jocelyn Rulona-Al Awadhi, Petitioner, vs. Nabil Al-Awadhi, Defendant"). Upon her motion, she was appointed the children's guardian by order of the court dated August 25, 1987 (Annex B, p. 20, Rollo). The defendant, her husband, filed in the same court a motion to be allowed to exercise joint parental authority over their children (Annex C, p. 21, Rollo). However, without waiting for the action of the Tagbilaran Court, he filed on November 4, 1987 a petition for custody and guardianship of their minor children in the Fourth Sharia District Court in Marawi City (Annex A, p. 10, Rollo). It was docketed therein as Special Proceeding No. 011-87.

After having been summoned, the petitioner filed a motion to dismiss the petition on the grounds that: (1) the court has no jurisdiction over the subject of the petition, nor over the parties, least of all, herself; (2) there is another action pending between the same parties for the same cause; and (3) improper venue (Annex B, p. 45, Rollo).

In its order dated November 20, 1987, the Sharia District Court denied her motion to dismiss (Annex C, p. 23, Rollo). Its order was based on Section 13 of the Special Rules of Procedure in the Sharia Courts which provides:

"Section 13. Pleadings and Motions Disallowed. - The court shall not allow the filing of the following pleadings, petitions or motions, to wit:

"(a) Motion to dismiss or to quash;

"(b) Motion for a bill of particulars;

- “(c) Motion for extension of time to file pleadings or any other paper;
- “(d) Motion to declare defendant in default;
- “(e) Reply, third party complaints, or intervention;
- “(f) Petition for certiorari, mandamus, or prohibition against any interlocutory order Issued by the court;
- “(g) Petition for relief from Judgment;
- “(h) Motion for new trial or reopening of trial; and
- “(i) Any dilatory motion for postponement.”

Petitioner's motion for reconsideration of that order (Annex D, p. 24, Rollo) was also denied by the court on January 12, 1988. Hence, this petition for review raising only the legal issue of jurisdiction, or lack of it, of the respondent Sharia District Court over the parties and the subject matter of the case. Only the Sharia District Judge filed a Comment on the petition; the private respondent did not.

Article 13, Title II of the Code of Muslim Personal Laws of the Philippines (PD 1083) provides:

"BOOK TWO
TITLE II
Chapter One

APPLICABILITY CLAUSE

"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.

“(2) In case of a marriage between a Muslim and non-Muslim, solemnized not in accordance with Muslim law or this Code, the Civil Code of the Philippines shall apply.

“(3) Subject to the provisions of the preceding paragraphs, the essential requisites and legal impediments to marriage, divorce, paternity and filiation, guardianship and custody of minors, support and maintenance, claims for customary dower (mahr), betrothal, breach of contract to marry, solemnization and registration of marriage and divorce, rights and obligations between husband and wife, parental authority, and the property relations between husband and wife shall be governed by this Code and other applicable Muslim laws." (Underscoring supplied.)

In view of the following admitted facts:

(1)

That the plaintiff husband in Spl. Proc. No. 011-87 is not a Philippine Muslim but a Kuwaiti national;

(2)

That he resides at 49-7 Pamaong Extension, Tagbilaran City, Bohol, not in Marawi City where the Sharia courts sits;

(3)

That the defendant wife (herein petitioner Jocelyn Rulona) is a Filipino citizen and a non-Muslim (a Roman Catholic Christian);

(4)

That their Muslim marriage was not solemnized in any part of the Philippines, for they were married in Kuwait (Annex A, par. 2, p. 40, Rollo); and

(5)

That they do not reside within the Fourth Sharia District, embracing the provinces of Lanao del Norte and Lanao del Sur, and the cities of Iligan and Marawi (Art. 138-d, P.D. No. 1083), for both of them reside in the province of Bohol;

it should have been self-evident to the Fourth Sharia District Court that it had no jurisdiction over the spouses or their marriage, nor over the custody and guardianship of their children (Art. 143, P.D. No. 1083).

The Regional Trial Court, Branch II, at Tagbilaran City which had assumed jurisdiction over petitioner's complaint for support and guardianship of her children on August 25, 1987 (p. 19, Rollo), may not be divested of its jurisdiction over the parties (the husband having voluntarily submitted to its jurisdiction by filing a motion therein for joint custody of his children) by the Fourth Sharia District Court in Marawi City by the husband's filing therein three (3) months later his own petition for custody and guardianship of his children (p. 10, Rollo). The rule is that once a court has assumed jurisdiction of a case, its jurisdiction shall continue until the case is finished. It may not be ousted from its jurisdiction by a co-equal court (*People vs. Layno*, 111 SCRA 20; *Denila vs. Bellosillo*, 64 SCRA 63; *Lat vs. PLDT*, 67 SCRA 425; and *People vs. Ocaya*, 83 SCRA 218).

Moreover, Article 3 of the Muslim Code (P.D. No. 1083) expressly provides:

"Art. 3. Conflict of provisions. - x x x.

"(3) The provisions of this Code shall be applicable only to Muslims and nothing herein shall be construed to operate to the prejudice of a Non-Muslim."

The application of the Muslim Code to the Christian wife will be prejudicial to her.

The Code of Muslim Personal Laws was promulgated to fulfill "the aspiration of the Filipino Muslims to have their system of laws enforced in their communities" (Exec. Order No. 442, Dec. 23, 1974). Those communities are found in the ten (10) Mindanao provinces and six (6) cities comprised within the five (5) Sharia judicial districts which were created under Article 138 of the Muslim Code. As neither the petitioner nor the private respondent and their children live in or are members of those communities, they do not come within the ambit of the Sharia courts' jurisdiction.

Instead of invoking a procedural technicality, the respondent court should have recognized its lack of jurisdiction over the parties and promptly dismissed the action, for, without jurisdiction, all its proceedings would be, as they were, a futile and invalid exercise. A summary rule prohibiting the filing of a motion to dismiss should not be a bar to the dismissal of the action for lack of jurisdiction when the jurisdictional infirmity is patent on the face of the complaint itself, in view of the fundamental procedural doctrine that the jurisdiction of a court may be challenged at anytime and at any stage of the action (*Tijam vs. Sibonghanoy*, 23 SCRA 29, 35-36; *Crisostomo vs. Court of Appeals*, 32 SCRA 54; *Zulueta vs. Pan American World Airways, Inc.*, 49 SCRA 1, 6; *Nueva Viscaya*

Chamber of Commerce vs. Court of Appeals, 97 SCRA 856).

WHEREFORE, the petition for certiorari is granted. All the proceedings in Special Proceeding No. 011-87 of the Fourth Sharia District Court at Marawi City are annulled and the petition therein is dismissed. Costs against the private respondent.

SO ORDERED.

Narvasa, Cruz, Gancayco, and Medialdea, JJ., concur.

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