

MIDSAPAK TAMPAR, MAISALAM TAMPAR, HEIRS OF GAMPONG TAMPAR, REPRESENTED BY HADJI MUSTAPHA GAMPONG AND HEIRS OF PAGAYAWAN TAMPAR, REPRESENTED BY SUMAPI TAMPAR, PETITIONERS, VS. ES...

G.R. No. 82077. August 16, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This petition for certiorari involves a dispute over the correct application of the unique Islamic rule of procedure known as the oath ("yamin").

The record of the case shows that petitioners filed a complaint against respondents for "Annulment of Sale in an Extrajudicial Settlement of Estate with Simultaneous Sale and Delivery of Certificates of Title and Damages" before

Shari'a District Court, 5th Shari'a District, Cotabato City.[1]

Petitioners allege ownership over a parcel of land located in Kalanganan, Cotabato (now Bagua, Cotabato City), claiming that they inherited the property from their ancestor, Tuan Kali Dimalen, who left his property to his two daughters, namely Remoreng Dimalen and Dominga Dimalen Tampar. The latter in turn divided the property equally between them.[2] They also allege that their ownership of the land was covered by OCT No. T-RP-478(548) issued by the Register of Deeds of Cotabato City. But they added that due to the loss of the aforementioned title, TCT No. (T-893)217 was issued on October 26, 1950 by the Register of Deeds of Cotabato City in the names of herein petitioners Remoreng Dimalen and the heirs of Dominga Dimalen, the latter having died in the interim.[3]

The Extrajudicial Settlement of Estate with Simultaneous Sale" sought to be annulled was purportedly executed on June 11, 1947 between petitioners and respondent Esmael Usman, whereby ownership of the land was conveyed to the latter for the sum of P1,000.00. The land was subsequently sold by respondent Usman to his co-respondents Mohammad Datumanong and Hadji Salik Nur.[4]

Petitioners denied that they ever entered into such an agreement with respondent Usman, and claimed that their signatures in the document of sale were forged, and that the transaction is null and void for not having been approved by the Provincial Governor, as required by law.

Respondents, on the other hand, denied having forged the signatures of the petitioners, and controverted all the other claims made by petitioners.

The pre-trial conference failed to result in an amicable settlement between the parties. Consequently, the Court proceeded to clarify and define the issues of the case, to wit:

"1. Whether or not defendant (respondent) Usman forged the Extrajudicial Settlement of Estate with

Simultaneous Sale.

2. Whether or not defendants (respondents) Mohammad Datumanong and Hadji Salik Nur are purchasers in good faith and for value."[5]

The Court thereafter directed the parties to submit the statements ("shuhud") of at least two witnesses to prove their claims. The sole witness of petitioners withdrew, prompting them to manifest to the Court that they have no witnesses. Consequently, they challenged respondent Usman to take an oath ("yamin") declaring that there is no truth to the claim of forgery brought against him. The challenge was grounded on Section 7 of the Special Rules of Procedure in Shari'a Courts (Ijra-at-al-Mahakim al Shari'a), which provides as follows:

"The plaintiff (mudda'i) has the burden of proof, and the taking of an oath ("yamin") rests upon the defendant (mudda'alai). If the plaintiff has no evidence to prove his claim, the defendant shall take an oath and judgment shall be rendered in his favor by the Court. Should the defendant refuse to take an oath, the plaintiff shall affirm his claim under oath in which case, judgment shall be rendered in his favor. Should the plaintiff refuse to affirm his claim under oath, the case shall be dismissed."

Respondent Usman opposed the challenge of petitioners, arguing that before he may be required to take the oath, petitioners, as the mudda-i, should first take the oath, since they have no witnesses at all.[6] He contended that the plaintiffs should be required to present some basis for their claim against him, in accordance with the elementary rules of evidence.

The Court overruled the opposition of respondent Usman, stating in its resolution dated June 25, 1986 that the "yamin" is sanctioned by the Special Rules of Procedure in Shari'a Courts, and that "in classical Islamic legal theory, an individual cannot be a witness in favor of his own case, and the only legal remedy for him is to demand an oath from the defendant." Having thus ruled, the Court directed respondent Usman to take the oath, which the latter eventually complied with, after his motion for reconsideration of the above Resolution was denied.

Respondent Usman took the oath in the following form:

"I, Esmael Usman, swear in the name of Allah, Most Gracious, Most Merciful and upon the Holy Quran, that I bought the land in question from the plaintiffs; that I have not forged or falsified the signatures of the plaintiffs; and that God will curse me if I am not telling the truth."[7]

Having taken the oath as demanded by petitioners, judgment was rendered in favor of respondents, and the complaint against them was dismissed.

Petitioners now assail the decision of the Shari'a court as having been rendered with grave abuse of discretion. They contend that the cognizance by the court of the "yamin" of respondent Usman is not only "unprocedural," but likewise amounts to a deprivation of their constitutional right to be heard.

The threshold issue in this case, therefore, is whether or not the Shari'a court committed a grave abuse of discretion in dismissing the complaint of petitioners by virtue of the "yamin" taken by the defendant, namely, respondent Usman.

Under Section 1, Rule 131 of the Rules of Court of the Philippines, which may apply in a suppletory manner in this case,[8] each party must prove his own affirmative allegations. When the plaintiffs (petitioners herein) failed to adduce any evidence to support the complaint, then the complaint must be dismissed. On this basis, the dismissal of the complaint by the Shari'a court in this case should be upheld, but not because of the "yamin" taken by the respondent Usman.

The Court shares the concern of petitioners in the use of the "yamin" in this proceeding, and for that matter,

before Philippine Shari'a courts. Section 7 of the Special Rules of Procedure prescribed for Shari'a courts aforecited provides that if the plaintiff has no evidence to prove his claim, the defendant shall take an oath and judgment shall be rendered in his favor by the Court. On the other hand, should defendant refuse to take an oath, plaintiff may affirm his claim under oath, in which case judgment shall be rendered in his favor.

Said provision effectively deprives a litigant of his constitutional right to due process. It denies a party his right to confront the witnesses against him and to cross-examine them.[9] It should have no place even in the Special Rules of Procedure of the Shari'a courts of the country.

The possible deletion of this provision from the said rules should be considered. For this purpose, a committee should be constituted by the Court to review the said special rules, including the above discussed provision, so that appropriate amendments thereof may be undertaken by the Court thereafter.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Narvasa, Cruz, Feliciano, Padilla, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.
Fernan, C.J., Melencio-Herrera, Gutierrez, Jr., Paras, Bidin, and Sarmiento, JJ., in the result.

[1] Page 8, Rollo.

[2] Pages 8-9, *ibid*.

[3] Page 9, *ibid*.

[4] Page 10, *ibid*.

[5] Page 77, Original Record.

[6] Page 68, *ibid*.

[7] Page 11, Rollo.

[8] Section 16, Special Rules of Procedure in Shari'a courts promulgated by the Supreme Court on September 20, 1983.

[9] Section 6, Rule 132, Rules of Court of the Philippines.

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