

## THIRD DIVISION

[ A.C. No. 9871, June 29, 2016 ]

**IN RE: A.M. NO. 04-7-373-RTC [REPORT ON THE JUDICIAL AUDIT CONDUCTED IN THE REGIONAL TRIAL COURT, BRANCH 60, BARILI, CEBU] AND A.M. NO. 04-7-374-RTC [VIOLATION OF JUDGE ILDEFONSO SUERTE, REGIONAL TRIAL COURT, BRANCH 60, BARILI, CEBU OF ADMINISTRATIVE ORDER NO. 36-2004 DATED MARCH 3, 2004], PROSECUTOR MARY ANN T. CASTRO-ROA, RESPONDENT.**

### D E C I S I O N

**JARDELEZA, J.:**

This is an administrative case from the findings in the Judicial Audit conducted by the Supreme Court in Regional Trial Court (RTC), Branch 60, Barili, Cebu in the sala of Judge Ildefonso Suerte. In the course of the audit, it was found that respondent Prosecutor Mary Ann T. Castro-Roa (Castro-Roa) filed two separate petitions for annulment of marriage in two different courts, one in the sala of Judge Ildefonso Suerte and the other in the sala of Judge Jesus dela Peña.<sup>[1]</sup> Thus, in an *En Banc* Resolution<sup>[2]</sup> dated October 12, 2004, this Court ordered the Integrated Bar of the Philippines (IBP) to look into the fitness of Castro-Roa as a member of the bar in connection with her filing of two separate petitions for annulment of marriage in two different trial courts.

#### The Facts

Castro-Roa married Mr. Rocky Rommel D. Roa (Mr. Roa) on March 30, 1993 and had two children together.<sup>[3]</sup> However, on June 5, 2000, Castro-Roa filed a Petition for Declaration of Nullity of Marriage<sup>[4]</sup> (First Petition) on the ground of psychological incapacity under Article 36 of the Family Code with RTC Branch 56 in Mandaue City, Cebu (RTC Branch 56).

In a Decision<sup>[5]</sup> dated April 24, 2001 (RTC Decision), RTC Branch 56 granted the First Petition, and declared the marriage between Castro-Roa and her husband null and void by reason of psychological incapacity.

The RTC Decision was, however, appealed by the Office of the Solicitor General (OSG) to the Court of Appeals (CA). The OSG argued, among others, that the trial court erred in declaring the marriage null and void. In a Decision<sup>[6]</sup> dated October 22, 2003, the CA found certain irregularities in the trial proceedings, and declared the RTC Decision void. Thus, the case was remanded to RTC Branch 56 in order to give Mr. Roa the opportunity to present his evidence.<sup>[7]</sup> After the remand of the First Petition to the RTC, Castro-Roa filed a Motion to Dismiss (First) Petition,<sup>[8]</sup> on December 11, 2003. She stated that she no longer wished to continue the trial

because "the continuance of the trial would mean extra effort, time and money x x x"[9] that would dwindle her income.

However, despite the pendency of Castro-Roa's Motion to Dismiss (First) Petition, she filed a Petition for Annulment of Marriage<sup>[10]</sup> (Second Petition) on November 20, 2003 with RTC Branch 60, Barili, Cebu (RTC Branch 60). The Second Petition was grounded on fraud through the concealment of drug addiction and habitual alcoholism under Article 45 (3) in relation to Article 46 of the Family Code.<sup>[11]</sup> In this Second Petition, Castro-Roa failed to mention the pendency of the First Petition in the Verification and Certification of Non-Forum Shopping.<sup>[12]</sup>

RTC Branch 60 rendered a Decision<sup>[13]</sup> dated January 26, 2004 granting the Second Petition, and declaring the marriage between Castro-Roa and her husband null and void. Castro-Roa's Motion to Dismiss the (First) Petition was granted by RTC Branch 56 only on March 10, 2004.<sup>[14]</sup>

### **Cases Filed**

On August 10, 2004, a letter-complaint with joint affidavit was filed by Jake Yu and Nanak Yu before the Office of the Ombudsman in Visayas (Ombudsman) charging Castro-Roa with Perjury and Falsification of Public Document and Grave Misconduct.<sup>[15]</sup> The charge of Grave Misconduct was based solely on the alleged perjury and falsification of public document by Castro-Roa in connection with her failure to mention the pendency of the First Petition for nullity of marriage in the Verification and Certification of Non-Forum Shopping portion of her Second Petition filed before RTC Branch 60. For this charge, the Ombudsman found Castro-Roa guilty and meted her the penalty of suspension for three months.<sup>[16]</sup>

For the charge of Perjury and Falsification of Public Document, the Ombudsman filed an Information<sup>[17]</sup> in the Municipal Trial Court (MTC) of Barili, Cebu, which eventually dismissed the case, upon demurrer to evidence. Thus, the MTC found Castro-Roa not guilty in an Order<sup>[18]</sup> dated March 8, 2011.

Castro-Roa appealed the Ombudsman's finding of guilt in the administrative charge of Grave Misconduct with the CA. The CA granted the appeal, and therefore dismissed the administrative case of Grave Misconduct against Castro-Roa in a Decision<sup>[19]</sup> dated November 29, 2013. The CA ruled that a final judgment of conviction in the criminal case of perjury was needed before Castro-Roa can be proceeded against administratively. It also explained that the administrative charge of grave misconduct was based solely on the alleged perjury committed, which was not work-related and not an administrative offense *per se*. According to the CA, while a public officer may be suspended or dismissed for malfeasance for a crime which is not related to the functions of the office, the officer may not be proceeded against administratively based thereon until a final judgment of conviction is rendered by a court of justice.<sup>[20]</sup> Finally, the CA ruled that there was no forum shopping because the two petitions filed by Castro-Roa involved different facts and different causes of actions.<sup>[21]</sup>

### **IBP Proceedings**

Meanwhile, on October 26, 2006, the IBP, through Director for Bar Discipline, Rogelio A. Vinluan, ordered Castro-Roa to comment on the *En Banc* Resolution directing the IBP to look into her fitness as a member of the Bar.<sup>[22]</sup> Castro-Roa filed her Comment<sup>[23]</sup> on February 22, 2007, explaining that she believed that there was "no substantial irregularity when she filed the second annulment of marriage with another court."<sup>[24]</sup> She argued that the two petitions were rooted from two distinct issues, one being psychological incapacity and the other, fraud.<sup>[25]</sup> She also claimed that when the Second Petition for annulment was filed, she had already abandoned her First Petition for declaration of nullity when she filed the Motion to Dismiss (First) Petition in RTC Branch 56.<sup>[26]</sup>

Alter due proceedings, the Board of Governors of the IBP (IBP Board) in a Resolution<sup>[27]</sup> dated November 19, 2011, adopted and approved the Report and Recommendation<sup>[28]</sup> dated February 1, 2011, finding Castro-Roa guilty of violating Canon 1,<sup>[29]</sup> Canon 10,<sup>[30]</sup> Rule 1.02,<sup>[31]</sup> Rule 7.03,<sup>[32]</sup> Rule 10.01,<sup>[33]</sup> Rule 10.03<sup>[34]</sup> and Rule 12.02<sup>[35]</sup> of the Code of Professional Responsibility. The IBP Board recommended her suspension from the practice of law for a period of one year.<sup>[36]</sup> The IBP Board also ruled that there was forum shopping because the elements of *litis pendentia* are present. Pertinent portions of the Report and Recommendation states:

Clearly, the act committed by the respondent lawyer was a deliberate violation of the rule against forum shopping which is punishable administratively.

Furthermore, there is no showing on the records that she reported the filing of the second petition to RTC of Cebu Branch 56. In connection with the second petition, she failed to state the pendency of the first case in the certificate of [non-forum] shopping.

Also, upon closer examination of the two actions, it shows that the respondent misled the courts in stating two different residence addresses in order to suit the jurisdictional requirements of filing the petitions in two different courts., x x x By evidently deceiving the second court, the respondent prosecutor violated Canon 10, Rule 10.01, and Rule 10.03 of the Code of Professional Responsibility x x x.<sup>[37]</sup>

Thus, the issues for this Court's resolution are the following:

- (1) Whether Castro-Roa committed forum shopping; and
- (2) Whether such act deserves the penalty of suspension from the practice of law.

### **Court's Ruling**

We agree with the ruling of the IBP Board.

Forum shopping is the act of a party who repetitively availed 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, to increase his chances of obtaining a favorable decision if not in one court, then in another.<sup>[38]</sup>

In determining whether forum shopping exists, the important factor to consider is the vexation caused to the courts and to the party-litigant by a party who asks different courts to rule on the same or related causes and/or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issue.<sup>[39]</sup>

Castro-Roa argues that she could not have committed forum shopping because the two cases "involved two different set of facts, two distinct issues, two separate grounds and were based on two different causes of action." She therefore claims that there can be no conflicting decisions between the two cases filed.<sup>[40]</sup>

We disagree.

Forum shopping can be committed in three ways, namely: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (*litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (*res judicata*); or (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).<sup>[41]</sup>

We find that Castro-Roa committed forum shopping of the third kind. Forum shopping can occur although the actions seem to be different, when it can be seen that there is a splitting of a cause of action.<sup>[42]</sup> In fact, and as will be shown below, while the relief prayed for in the First Petition was to declare the marriage "null and void *ab initio*" and the relief in the Second was for the marriage to be "annulled and voided," an examination of the records would reveal that Castro-Roa alleged the same facts and circumstances in both petitions. This leads to the conclusion that the reliefs sought are based on the same cause of action and are founded on the same

In her First Petition, Castro-Roa alleged that three days from the time their marriage was celebrated, Mr. Roa "manifested sadism wherein if he pleasures to have sex, [Castro-Roa] should abide even if against her will or else she would suffer physical pain x x x as what x x x happened last April 2, 1993 x x x."<sup>[43]</sup> She also alleged that aside from physical abuse, she likewise suffered verbal abuse from her husband by "shouting words only barbaric and uncivilized person could make."<sup>[44]</sup> She also claimed that her husband failed "to provide love, respect and fidelity to [her] by having relations with other women."<sup>[45]</sup> She said that her husband showed "irresponsibility by spending his time in liquor drinking, gambling and drug vices."<sup>[46]</sup> Finally, she stated that when he "abandoned the conjugal dwelling on October 4, 1997, he never spared the children any amount for support."<sup>[47]</sup> Castro-Roa argued that all of these acts are tantamount to psychological incapacity to comply with the essential marital obligations.

In her testimony in the Second Petition, Castro-Roa alleged that she observed that

her husband "is a kind of sadist."<sup>[48]</sup> She stated that on April 2, 1993, she received physical beatings when she refused sex with her husband as she was not feeling well. She added that she constantly suffered physical and verbal abuse from him, calling her "names only barbaric and uncivilized persons could make."<sup>[49]</sup> She further alleged that her husband "failed to provide love, respect and fidelity"<sup>[50]</sup> and had "relations with different women."<sup>[51]</sup> She said that he showed irresponsibility through habitual alcoholism, gambling, drug vices and womanizing, and that this behavior was attested by friends and neighbors to have existed before the marriage.<sup>[52]</sup> Castro-Roa said that she would not have married him if she knew of these beforehand.<sup>[53]</sup>

Considering the foregoing, we find that Castro-Roa was merely splitting her causes of action. A cause of action is defined as the delict or wrongful act or omission committed by a party in violation of the primary rights of another.<sup>[54]</sup> In both petitions, Castro-Roa alleged the same facts and circumstances but still chose to invoke two different grounds to attain essentially one judicial relief, which is the dissolution of her marriage. In *Mallion v. Alcantara*,<sup>[55]</sup> we ruled that litigants are provided with the options on the course of action to take in order to obtain judicial relief, and once an option has been taken and a case is filed in court, the parties must ventilate all matters and relevant issues therein.<sup>[56]</sup>

More, there is a possibility that a final judgment in one case would amount to *res judicata* in the other because the elements of *litis pendentia* are present. In *Quinsay v. Court of Appeals*,<sup>[57]</sup> we held that the elements of *litis pendentia* are: (a) identity of parties, or at least such parties who represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity, with respect to the two preceding particulars in the two cases, is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other.<sup>[58]</sup>

In this case, the first requisite is clearly present. The preceding discussion, where we established identity of facts, rights asserted, and reliefs sought, satisfies the second requisite. Finally, judgment on any of the two petitions would amount to *res judicata* in the other. The cause of action raised and adjudged in the First Petition would have been conclusive between the two petitions, and therefore cannot be raised again in the Second Petition.

Section 47 (b) of Rule 39 of the Rules of Court embodies the concept of *res judicata* as "bar by prior judgment" or "estoppel by verdict," which is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action.<sup>[59]</sup> The pendency of both petitions would also create an absurd situation where the proceedings in the Second Petition would be a useless endeavor should the First Petition be granted: the Second Petition cannot anymore dissolve a marriage, which has already been dissolved in the First Petition.

Castro-Roa cannot argue that the two petitions would not result in conflicting decisions, if both were left to proceed until their conclusion. The dissolution of a voidable marriage under Article 45 of the Family Code, and a void marriage under Article 36 have different consequences in law.