

SECOND DIVISION

[**A.M. No. SCC-13-18-J (Formerly A.M. OCA IPI No. 11-36-SCC), July 01, 2015**]

**BAGUAN M. MAMISCAL, COMPLAINANT, VS. CLERK OF COURT
MACALINOG S. ABDULLAH, SHARI'A CIRCUIT COURT, MARAWI
CITY, RESPONDENT.**

DECISION

MENDOZA, J.:

This resolves the complaint^[1] of Baguan M. Mamiscal (*Mamiscal*) against respondent Macalinog S. Abdullah (*Abdullah*), Clerk of Court, Shari'a Circuit Court, Marawi City, for partiality, violation of due process, dishonesty, and conduct unbecoming of a court employee. Originally, the complaint also charged Judge Aboali J. Cali (*Judge Cali*), Presiding Judge, Shari'a Circuit Court, Marawi City, for his participation in the subject controversy. On January 9, 2013, the Court resolved to dismiss the charges against Judge Cali for lack of merit.^[2]

The Facts

In his complaint, Mamiscal averred that on September 26, 2010, he and his wife, Adelaidah Lomondot (*Adelaidah*) had a heated argument. In a fit of anger, Mamiscal decided to divorce his wife by repudiating her (*talaq*).^[3] The repudiation was embodied in an agreement^[4] (*kapasadan*) signed by Mamiscal and Adelaidah.

The next day, Adelaidah left their conjugal dwelling in Iligan City and went back to her family's home in Marinaut, Marawi City. A few days later, during the obligatory period of waiting (*'iddah*),^[5] Mamiscal had a change of heart and decided to make peace with his wife. For the purpose, he sent their common relatives to see Adelaidah and make peace with her on his behalf.^[6]

Almost five (5) months later, however, on February 23, 2011, Adelaidah filed^[7] the Certificate of Divorce (*COD*),^[8] dated September 26, 2010, with the office of Abdullah for registration. Although unsigned, the certificate, purportedly executed by Mamiscal, certified that he had pronounced *talaq* in the presence of two (2) witnesses and in accordance with Islamic Law for the purpose of effecting divorce from Adelaidah. A notation on the certificate stated that it was being filed together with the *kapasadan*.

On the same day, Abdullah, in the exercise of his duty as both Clerk of Court and Circuit Civil Registrar,^[9] issued the Invitation^[10] notifying the couple and their representatives to appear before the Shari'a Circuit Court on February 28, 2011, in order to constitute the Agama Arbitration Council (AAC) that would explore the

possibility of reconciling the spouses.^[11]

On March 24, 2011, Abdullah issued the Certificate of Registration of Divorce^[12] (CRD) finalizing the divorce between Mamiscal and Adelaidah.

Mamiscal sought the revocation of the CRD, questioning the validity of the *kapasadan* on which the CRD was based. In his motion, Mamiscal contended that the *kapasadan* was invalid considering that he did not prepare the same. Moreover, there were no witnesses to its execution. He claimed that he only signed the *kapasadan* because of Adelaidah's threats.

Mamiscal also questioned the validity of the COD, denying that he had executed and filed the same before the office of Abdullah. Insisting that he never really intended to divorce his wife, Mamiscal pointed out the fact that on December 13, 2010, before the expiration of the *'iddah*, he wrote his wife^[13] to inform her that he was revoking the repudiation he made on September 26, 2010 and the *kapasadan* they entered into on the same day because he did it on the "spur of the moment."^[14]

For Mamiscal, the CRD should be declared invalid considering that: a) he was deprived of due process because the AAC, before which he and his children were supposed to express their sentiments regarding the divorce, was yet to be constituted; b) three days before the issuance of the CRD, Professor Mustafa Lomala M. Dimaro, appeared before Judge Cali to discuss the possibility of reconciliation between the parties; and c) their children, Adelah Rima and Nairn Mamiscal, prayed that the trial court advise their mother not to proceed with the divorce.^[15] In addition to the revocation of the CRD, Mamiscal also prayed that Abdullah order the reconvening of the AAC and, thereafter, grant the restoration of his marital rights with Adelaidah.

On April 20, 2011, Abdullah denied Mamiscal's motion.^[16] In sustaining the divorce between Mamiscal and Abdullah, Abdullah opined that it was simply his ministerial duty to receive the COD and the attached *kapasadan* filed by Adelaidah. Abdullah also noted that when the AAC was convened during the February 28, 2010 hearing, only Mamiscal and his representatives appeared. Considering the fact that Adelaidah manifested her opposition in writing to any reconciliation with her husband and the fact that the 90-day period of *'iddah* had already lapsed, Abdullah ruled that any move to reconstitute the AAC would have been futile because the divorce between Mamiscal and his wife had already become final and irrevocable.

Contending that the issuance of the CRD was tainted with irregularity, Mamiscal comes to this Court, through the subject complaint, charging Abdullah with partiality, violation of due process, dishonesty, and conduct unbecoming of a court employee.

The Charge

In his complaint, Mamiscal averred that Abdullah should not have entertained or acted upon the COD and the *kapasadan* filed by Adelaidah. He contended that under the Code of Muslim Personal Laws, a divorce under *talaq* could only be filed and registered by the male spouse, considering that female Muslims could do so only if

the divorce was through *tafwid*.^[17]

Moreover, Mamiscal alleged that Abdullah "fabricated and twisted the facts"^[18] when he declared that only Mamiscal and his representative appeared when the AAC was convened. Mamiscal insisted that Adelaidah and her relatives were also present during the hearing of February 28, 2010, and that the AAC was never convened because the parties agreed to reset the proceedings so that they could explore the possibility of reconciling the differences between them. Notwithstanding the ongoing mediation proceedings, Abdullah proceeded to act on the COD and finalized the divorce by issuing the CRD.

Finally, it was averred that Abdullah violated the Shari'a rules of procedure when he initially refused to receive Mamiscal's motion for reconsideration when it was first filed. Mamiscal also argued that Abdullah should not have considered the opposition of Adelaidah when he denied his attempt to seek reconsideration because he was never furnished a copy of Adelaidah's opposition.

Abdullah's Comment

In his comment,^[19] Abdullah countered that although he had the authority to process the registration of the divorce as court registrar, he could not be held responsible for the contents of the COD and the *kapasadan* because his functions were only ministerial. Nevertheless, Abdullah asserted that the divorce between Mamiscal and Adelaidah had already attained finality, not only because of the lapse of the required *'iddah*, but also because the *kapasadan* and Adelaidah's opposition both proved that there could be no reconciliation between the spouses.

Abdullah also discounted any impropriety for processing the unsigned COD, arguing that since it was accompanied by the *kapasadan* which bore the signature of Mamiscal and his declaration that he was divorcing his wife by *talaq* - there was nothing wrong with Adelaidah filing it with his office. Moreover, with the lapse of the *'iddah*, Abdullah argued that the COD had remained to be nothing more than a formality for the purpose of registering the divorce with the National Statistics Office (NSO) and its issuance using the NSO security paper.

As to the allegations pertaining to the February 28, 2010 hearing, Abdullah stated that he only conducted the same because it was required under the Muslim Personal Code. Abdullah explained that he did not convene the ACC anymore not only because Adelaidah or her representatives were not present, but also because the divorcing couple's own children wrote to him opposing the convening of the council.

As to Mamiscal's contention that he already revoked his repudiation of his wife, Abdullah pointed out that his office was not informed of any revocation of the divorce. According to Abdullah, if Mamiscal had indeed revoked his repudiation, he should have complied with the provisions of Rule II (1)(2) of NSO Administrative Order No. 1, series of 2001, which required the husband to file five (5) copies of his sworn statement attesting to the fact of revocation, together with the written consent of his wife.

In its report,^[20] the Office of the Court Administrator (OCA) found Abdullah guilty of gross ignorance of the law and recommended that he be fined in the amount of

P10,000.00 with a stern warning that a repetition of the same offense shall be dealt with severely.

On January 30, 2014, Abdullah filed a motion,^[21] praying for the early resolution of the complaint filed against him. Reiterating his plea for the dismissal of the said complaint, Abdullah claimed that he was due for compulsory retirement on June 5, 2014.

The Court's Ruling

At the outset, it must first be pointed out that while it may seem to be a related issue, the validity of the divorce between Mamiscal and Adelaidah is not in issue here. Whether or not Mamiscal had validly effected a divorce from his wife is a matter that must first be addressed by the Shari'a Circuit Court which, under the Code of Muslim Personal Laws of the Philippines (*Muslim Code*),^[22] enjoys exclusive original jurisdiction to resolve disputes relating to divorce.

Thus, Article 155 of the Muslim Code provides:

Article 155. *Jurisdiction*. The Shari'a Circuit Courts shall have **exclusive original jurisdiction** over;

(1) All cases involving offenses defined and punished under this Code.

(2) All civil actions and proceedings between parties who are Muslims or have been married in accordance with Article 13 involving disputes relating to:

(a) Marriage;

(b) Divorce recognized under this Code;

(c) Betrothal or breach of contract to marry;

(d) Customary dower (mahr);

(e) Disposition and distribution of property upon divorce;

(f) Maintenance and support, and consolatory gifts, (mut'a); and

(g) Restitution of marital rights.

(3) All cases involving disputes relative to communal properties.

[Emphases Supplied]

Consequently, in resolving the subject complaint, the Court shall confine itself to the sole issue of whether or not Abdullah should be held administratively liable for his actions in connection with the registration of the divorce between Mamiscal and Adelaidah. *A priori* to the resolution of the foregoing issue is the question of whether this Court has jurisdiction to impose administrative sanction against Abdullah for his acts.

The Court rules in the negative.

The civil registrar is the person charged by law for the recording of vital events and other documents affecting the civil status of persons. The Civil Registry Law embraces all acts of civil life affecting the status of persons and is applicable to all persons residing in the Philippines.^[23]

To ensure the proper registration of all facets of the civil life of Muslim Filipinos throughout the country, Article 81 of the Muslim Code provides:

Article 81. *District Registrar.* The Clerk of Court of the Shari' a District Court shall, in addition to his regular functions, act as District Registrar of Muslim Marriages, Divorces, Revocations of Divorces, and Conversions within the territorial jurisdiction of said court. **The Clerk of Court of the Shari'a Circuit Court shall act as Circuit Registrar of Muslim Marriages, Divorces, Revocations of Divorces, and Conversions within his jurisdiction.**

[Emphasis Supplied]

In view of the above-quoted provision, it becomes apparent that the Clerk of Court of the Shari'a Circuit Court enjoys the privilege of wearing two hats: *first*, as Clerk of Court of the Shari'a Circuit Court, and *second*, as Circuit Registrar within his territorial jurisdiction. Although the Constitution vests the Court with the power of administrative supervision over all courts and its personnel,^[24] this power must be taken with due regard to other prevailing laws.

Thus, Article 185 of the Muslim Code provides:

Article 185. Neglect of duty by registrars. Any district registrar or circuit registrar who fails to perform properly his duties in accordance with this Code **shall be penalized in accordance with Section 18 of Act 3753.**

Commonwealth Act (C.A.) No. 3753^[25] is the primary law that governs the registry of civil status of persons. To ensure that civil registrars perform their duties under the law, Section 18 of C.A. No. 3753 provides:

Section 18. Neglect of duty with reference to the provisions of this Act. — Any local registrar who **fails to properly** perform his duties in accordance with the provisions of this Act and of the regulations issued hereunder, shall be punished for the first offense, by an administrative fine in a sum equal to his salary for not less than fifteen days nor more than three months, and for a second or repeated offense, by removal from the service.

[Emphasis Supplied]

The same Act provides:

Section 2. Civil Registrar-General his duties and powers. - The director of the National Library shall be Civil Registrar-General and shall enforce the