

SECOND DIVISION

[A.M. No. P-04-1780 (formerly A.M. OCA IPI No. 02-1434-P), February 18, 2004]

AMADO N. UBONGEN, COMPLAINANT, VS. VIRGINIA S. UBONGEN, COURT STENOGRAPHER III, REGIONAL TRIAL COURT, BRANCH 219, QUEZON CITY, RESPONDENT.

DECISION

CALLEJO, SR., J.:

The instant administrative case is one for disgraceful and immoral conduct filed against Virginia S. Ubongen, Stenographer III, Regional Trial Court, Branch 219. The charges were contained in a Verified Complaint^[1] dated June 28, 2002 filed by Amado N. Ubongen.

According to the complainant, the respondent was legally married to Dionisio F. Dela Cruz. She thereafter contracted a subsequent marriage with one Benjamin N. Ubongen on August 18, 1993 knowing that the latter was married to Ruth Notada Ubongen with seven children. The complainant added that the entire community where she resides was aware that she lived with Dionisio F. Dela Cruz in a single abode prior to the celebration of her second marriage. The complainant prayed that the respondent be preventively suspended and thereafter dismissed from the service "with prejudice," and attached the respective marriage contracts alluded to.

In her comment, the respondent vehemently denied the allegations against her and dismissed the same as mere opinions and conclusions based on insufficient knowledge of facts. She alleged that before she contracted her subsequent marriage with Benjamin Ubongen, she secured a judicial declaration of presumptive death of her first husband Dionisio F. Dela Cruz before the RTC of Manila, Branch 47, docketed as Sp. Proc. No. 92-63779.^[2] The respondent, likewise, stated that in order to satisfy herself about the alleged marriage of her present spouse and Ruth S. Notada on September 2, 1972, she secured certifications from the Office of the Civil Registrar of Dipaculao^[3] and the National Statistics Office^[4] which indicated that no such marriage took place. She, however, admitted that Benjamin Ubongen indeed begot children with Ruth Notada, but averred that the children were born out of wedlock.

In his Reply^[5] dated October 1, 2002, the complainant averred that Benjamin N. Ubongen was his father, and that his parents were indeed married on September 2, 1972 and that the same was solemnized by Rev. Fr. William G. Mahoney in the presence of witnesses Arturo Parilla and Lourdes Molina. He averred, however, that all of the parties are now deceased.^[6]

The complainant expounded further, thus:

6. That out of this marriage, children were born, namely, Benjamin Jr., Amado, Ronnie, Melanie, Joel, Ruben and Romeo all surnamed Ubongen; copy of my birth certificate including that of my other brothers and sisters are hereto attached and made a part hereof showing therein that our parents are Spouses Benjamin N. Ubongen and Ruth S. Notada;

7. That respondent knew and was aware of all these facts she being a resident also of Dipaculao, Quezon (now Aurora) and working at that time at the MCTC of the town of Dipaculao, Quezon (now Aurora) before she was transferred to Manila then to Quezon City, yet, she entered into a contract of marriage with my father Benjamin N. Ubongen, thus, showing her BAD FAITH and is therefore liable criminally or even administratively;

8. The claim of the respondent that she first secured information from the National Statistics Office in Manila and the Local Civil Register in Dipaculao, Aurora before she entered into a contract of marriage with my father Benjamin N. Ubongen in 1993 holds no water for reasons above-mentioned; and that public and open cohabitation as husband and wife of my parents after their marriage and a statement of such marriage in certain or subsequent documents such as our birth certificates and the Personal Data Sheet of my father hereto attached are competent evidence to prove the fact of their marriage;

9. That the mere fact of no record of their marriage in the NSO and the LCR in Dipaculao, Aurora or rather in the registry of marriage does not invalidate said marriage as long as in the celebration thereof all the requisites for its validity were present;

10. That lastly, the Honorable Supreme Court in one of its decision[s] held that the forwarding of a copy of the marriage certificate to the registry is not one of the requisites provided in the Civil Code of the Philippines in order for a marriage to be valid.^[7]

Pursuant to the Court Administrator's Report and Recommendation^[8] dated November 14, 2002, the Court referred the instant administrative complaint to Executive Judge Monina A. Zexiarosa, Regional Trial Court of Quezon City, Branch 76, for investigation, report and recommendation.^[9] However, a new executive judge assumed office, Judge Jose C. Mendoza, who later issued an Order^[10] dated April 25, 2003, inhibiting himself from the case, considering that the respondent was a member of his staff. He then designated First Deputy Executive Judge Natividad Giron-Dizon to handle the investigation.

In her Report and Recommendation dated December 29, 2003, the Executive Judge found that the respondent was, indeed guilty of disgraceful conduct, to wit:

The evidence clearly shows that Benjamin Ubongen was legally married to Ruth Notada and such marriage was still subsisting when the second marriage between respondent and Benjamin Ubongen was contracted. The non-registration of the first marriage with the Local Civil Registry's

Office in Dipaculao, Aurora, does not make such marriage null and void or inexistence (sic). The second marriage between respondent and Benjamin Ubongen, her present husband, suffered from legal infirmity under the law.

The marriage between respondent and Benjamin Ubongen was officiated under Article 34 of the Family Code, that is, by living together as husband and wife for at least five (5) years prior and without any legal impediment to the marriage. The evidence is also clear that prior to the declaration of presumptive death of her first husband Dionisio Dela Cruz, she was already cohabiting with Benjamin Ubongen. The petition to declare her husband presumptively dead was issued on April 19, 1993. ... Hence, it is easy to deduce that prior to her second marriage she and her present spouse have been cohabiting since 1988 or even earlier. Hence, the evidence is quite clear that the second marriage of respondent to Benjamin Ubongen was not made in good faith and such act constitutes disgraceful and immoral conduct.^[11]

The Executive Judge, however, recommended that a lighter penalty be imposed upon the respondent, considering that the reason why the complainant instituted the present complaint was that his father refused to execute in his favor a deed of donation to a particular property.^[12]

We agree that the respondent is guilty of immoral and disgraceful conduct.

A careful perusal of the record shows that Ruth Notada and Benjamin Ubongen were married on September 2, 1972, as evidenced by the Marriage Contract^[13] and the Certificate of Marriage^[14] issued by Father William G. Mahoney of the Church of Saint Therese in Dipaculao, Aurora, Quezon. The apparent reason why the birth certificates of their offspring showed that they were married on September 15, 1960^[15] was that the couple wanted to make it appear that their seven children were legitimate. This was confirmed by the Affidavit of Marriage Between Man and Woman Who Have Lived Together as Husband and Wife for At Least Five Years^[16] executed by Benjamin Ubongen and Ruth Notada. The Certification^[17] issued by Father Leonilo B. Glema explaining why the marriage contract was not forwarded to the Office of the Civil Registrar, in turn, clarifies why there was no record of the said marriage in the Office of the Civil Registrar of Dipaculao, Aurora, Quezon, as well as the National Statistics Office. Furthermore, according to the Executive Judge:

To buttress the conclusion that Benjamin Ubongen and Ruth Notada were indeed legally married is the fact that the former made the latter — “Ruth S. Notada-Ubongen” — as one of his dependents and he put in his relationship (sic) as his “wife” in the INP Personnel Data Sheet duly accomplished by him on May 15, 1980 (Exhibit “17”). Such piece of evidence is a mute witness, which is more credible and more telling ... than the self-serving Supplemental Affidavit of Denial executed by Benjamin Ubongen on September 24, 2003 (Exhibit “20”).^[18]

On the other hand, the complainant’s claim of good faith, that before she entered into her subsequent marriage she made sure that she and her “future husband” had no legal impediment to marry each other, is belied by her own evidence. Her