

FIRST DIVISION

[G.R. No. 134622, October 22, 1999]

**AMININ L. ABUBAKAR, PETITIONER VS. AURORA A. ABUBAKAR,
RESPONDENT.**

D E C I S I O N

DAVIDE, JR., C.J.:

Petitioner Aminin L. Abubakar (hereafter AMININ) and respondent Aurora A. Abubakar (hereafter AURORA) were married in Jolo, Sulu, on 1 May 1978 in accordance with Islamic law.

Sometime in February 1996, AURORA filed before the 1st Shari'ah Circuit Court of Isabela, Basilan Province (hereafter referred to as the CIRCUIT COURT), a complaint against AMININ for "Divorce with Prayer for Support and Damages." Docketed as Case No. 537, the complaint was mainly premised on the alleged failure of AMININ to secure AURORA's consent before contracting a subsequent marriage, in violation of Articles 27 and 162 of Presidential Decree No. 1083, otherwise known as the "Code of Muslim Personal Laws of the Philippines."

In its pre-trial order^[1] dated 21 March 1997, the CIRCUIT COURT limited the issue to be resolved at the trial to a determination of "the rights or the respective shares of the (parties) with respect to the property subject of partition after divorce." Identified as the realty to be divided were: (a) a half unit of a duplex standing on a lot at Tumaga Por Centro, Zamboanga City^[2] covered by Transfer Certificate of Title No. T-86, 898. [The other half is owned and occupied by a certain JACKARIA M. MOHAMMAD and his wife].²; (b) a 550-square meter lot adjacent to the one previously mentioned^[3] ; and (c) a house and lot at Block 2, (Lot 44), Kasanyangan Village, Jolo, Sulu,^[4] (hereafter collectively known as the PROPERTIES).

On 29 August 1997, Judge Kaudri L. Jainul issued an order^[5] dissolving the marriage of AURORA and AMININ, distributing the PROPERTIES equally between them as co-owners, and ordering AMININ to pay her the amount of P10,000 as support during the three-month *'idda* (waiting period).

AURORA duly filed a notice of appeal from this decision but only "as far as it involves the issue of partition of property, and not to the grant of divorce and damages it being in her favor."^[6] Actually, both parties were concerned only with the conclusion of the CIRCUIT COURT that the PROPERTIES were conjugal.

In his 20 May 1998 decision,^[7] Judge Bensaudi I. Arabani, Sr., presiding over the 3rd Shari'ah Judicial District Court of Zamboanga City (hereafter referred to as the DISTRICT COURT), affirmed the CIRCUIT COURT's 29 August 1997 order with some modifications, thus:

WHEREFORE, appreciating the evidence submitted to the Court by both parties in their respective pleadings and memoranda, and the pertinent laws applicable to the case, judgment is hereby rendered modifying the order of the court of origin as follows:

(a) Affirming the grant of DIVORCE by faskh (decree of court) between the parties;

(b) Affirming the order of the trial Court, as follows:

The following properties is (sic) hereby awarded and distributed equally between herein plaintiff and defendant being considered as co-owners and as such, they will have equal share in the partition of their properties, to wit:

1. House and lot situated at Tumaga Por Centro, Zamboanga City, consisting of a half duplex unit on Lot No. 1845-B-2 under Transfer Certificate of Title No. T-86, 898. (The other half duplex is owned and occupied by JACKARIA M. MOHAMMAD and his wife);
2. A 550 square meters (sic) lot adjacent to the house and lot described under item No. 1, identified as Lot No. 1845-B-3 under Transfer Certificate of Title No. 86, 899;
3. House and lot at Block 2, Lot 44, Kasanyangan Village, Jolo, Sulu under Transfer Certificate of Title No. T-1820 containing an area of 240 square meters;

And, in addition, to be included as part of their common property and (to) be partitioned and divided equally:

1. The real estate at Alicia, Zamboanga del Sur.

(c) Ordering the defendant-appellee to pay the plaintiff-appellant the sum of one hundred ten thousand (P110,000.00) pesos, Philippine Currency as support in arrears from . . . February 14, 1996, when plaintiff-appellant demanded for it in her complaint, and up to the expiration of her idda (waiting period) on December 16, 1997, or (a) duration of twenty two (22) months, and in the amount of five (5) thousand (P5,000.00) pesos, monthly, or a total amount of One Hundred Ten Thousand (P110,000.00) pesos, Philippine Currency, plus legal interest thereon from the time this judgment becomes final and executory until the said amount is satisfied in full;

(d) Ordering defendant-appellee to pay plaintiff-appellant the sum of FIFTY THOUSAND (P50,000.00) pesos, Philippine Currency as moral damages, plus legal interest thereon from the time this judgment becomes final and executory until the said amount is satisfied in full.

SO ORDERED. [Modifications in italics]

Aggrieved by these changes, AMININ filed a motion for reconsideration^[8] thereof on the following grounds: