

## FIRST DIVISION

[ G.R. No. 126603, June 29, 1998 ]

**ESTRELLITA J. TAMANO, PETITIONER, VS. HON. RODOLFO A. ORTIZ, PRESIDING JUDGE, RTC-BR. 89, QUEZON CITY, HAJA PUTRI ZORAYDA A. TAMANO, ADIB A. TAMANO AND THE HON. COURT OF APPEALS, RESPONDENTS.**

### D E C I S I O N

**BELLOSILLO, J.:**

This *Petition for Review on Certiorari* seeks to reverse and set aside the decision of the Court of Appeals of 30 September 1996 in CA-G.R. SP. No. 39656 which affirmed the decision of the Regional Trial Court-Br. 89, Quezon City, denying the motion to dismiss as well as the motion for reconsideration filed by petitioner Estrellita J. Tamano.

On 31 May 1958 Senator Mamintal Abdul Jabar Tamano (Tamano) married private respondent Haja Putri Zorayda A. Tamano (Zorayda) in civil rites. Their marriage supposedly remained valid and subsisting until his death on 18 May 1994. Prior to his death, particularly on 2 June 1993, Tamano also married petitioner Estrellita J. Tamano (Estrellita) in civil rites in Malabang, Lanao del Sur.

On 23 November 1994 private respondent Zorayda joined by her son Adib A. Tamano (Adib) filed a *Complaint for Declaration of Nullity of Marriage* of Tamano and Estrellita on the ground that it was bigamous. They contended that Tamano and Estrellita misrepresented themselves as divorced and single, respectively, thus making the entries in the marriage contract false and fraudulent.

Private respondents alleged that Tamano never divorced Zorayda and that Estrellita was not *single* when she married Tamano as the decision annulling her previous marriage with Romeo C. Llave never became final and executory for non-compliance with publication requirements.

Estrellita filed a motion to dismiss alleging that the Regional Trial Court of Quezon City was without jurisdiction over the subject and nature of the action. She alleged that "only a party to the marriage" could file an action for *annulment of marriage* against the other spouse,<sup>[1]</sup> hence, it was only Tamano who could file an action for annulment of their marriage. Petitioner likewise contended that since Tamano and Zorayda were both Muslims and married in Muslim rites the jurisdiction to hear and try the instant case was vested in the *shari'a* courts pursuant to Art. 155 of the *Code of Muslim Personal Laws*.

The lower court denied the motion to dismiss and ruled that the instant case was properly cognizable by the Regional Trial Court of Quezon City since Estrellita and Tamano were married in accordance with the Civil Code and not exclusively in accordance with PD No. 1083<sup>[2]</sup> or the *Code of Muslim Personal laws*. The motion for

reconsideration was likewise denied; hence, petitioner filed the instant petition with this Court seeking to set aside the 18 July 1995 order of respondent presiding judge of the RTC-Br. 89, Quezon City, denying petitioner's motion to dismiss and the 22 August 1995 order denying reconsideration thereof.

In a Resolution dated 13 December 1995 we referred the case to the Court of Appeals for consolidation with G.R. No. 118371. Zorayda and Adib A. Tamano however filed a motion, which the Court of Appeals granted, to resolve the *Complaint for Declaration of Nullity of Marriage* ahead of the other consolidated cases.

The Court of Appeals ruled that the instant case would fall under the exclusive jurisdiction of shari'a courts only when filed in places where there are shari'a courts. But in places where there are no *shari'a* courts, like Quezon City, the instant case could properly be filed before the Regional Trial Court.

Petitioner is now before us reiterating her earlier argument that it is the *shari'a* court and not the Regional Trial Court which has jurisdiction over the subject and nature of the action.

Under *The Judiciary Reorganization Act of 1980*,<sup>[3]</sup> Regional Trial Courts have jurisdiction over all actions involving the contract of marriage and marital relations.<sup>[4]</sup> Personal actions, such as the instant complaint for declaration of nullity of marriage, may be commenced and tried where the *plaintiff* or any of the principal *plaintiffs* resides, or where the defendant or any of the principal defendants resides, at the election of the *plaintiff*.<sup>[5]</sup> There should be no question by now that what determines the nature of an action and correspondingly the court which has jurisdiction over it are the allegations made by the *plaintiff* in this case.<sup>[6]</sup> In the complaint for declaration of nullity of marriage filed by private respondents herein, it was alleged that Estrellita and Tamano were married in accordance with the provisions of the Civil Code. Never was it mentioned that Estrellita and Tamano were married under Muslim laws or PD No. 1083. Interestingly, Estrellita never stated in her *Motion to Dismiss* that she and Tamano were married under Muslim laws. That she was in fact married to Tamano under Muslim laws was first mentioned only in her *Motion for Reconsideration*.

Nevertheless, the Regional Trial Court was not divested of jurisdiction to hear and try the instant case despite the allegation in the *Motion for Reconsideration* that Estrellita and Tamano were likewise married in Muslim rites. This is because a court's jurisdiction cannot be made to depend upon defenses set up in the answer, in a motion to dismiss, or in a motion for reconsideration, but only upon the allegations of the complaint.<sup>[7]</sup> Jurisdiction over the subject matter of a case is determined from the allegations of the complaint as the latter comprises a concise statement of the ultimate facts constituting the plaintiff's causes of action.<sup>[8]</sup>

Petitioner argues that the *shari'a* courts have jurisdiction over the instant suit pursuant to Art. 13, Title II, PD No. 1083,<sup>[9]</sup> which provides -

Art. 13. *Application*. - (1) The provisions of this Title shall apply to marriage and divorce wherein both parties are Muslims, or wherein only the male party is a Muslim and the marriage is solemnized in accordance with Muslim law or this Code in any part of the Philippines.