



CERTIFIED TRUE COPY
Welford E. Lopez
 WILFREDO VELASCO, JR.
 DIVISION CLERK OF COURT
 1ST FLOOR, JUDICIAL CENTER
 MANILA

JUN 16 2016

Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

RAQUEL G. KHO,

Petitioner,

G.R. No. 187462

Present:

- versus -

VELASCO, JR., J., *Chairperson,*
 BRION,*
 PERALTA,
 PEREZ,
 REYES, JJ.

REPUBLIC OF THE PHILIPPINES
and VERONICA B. KHO,

Respondents.

Promulgated:

June 1, 2016

X-----*Welford E. Lopez*-----X

DECISION

PERALTA, J.:

Challenged in the present petition for review on *certiorari* are the Decision¹ and Resolution² of the Court of Appeals (CA), Cebu City dated March 30, 2006 and January 14, 2009, respectively, in CA-G.R. CV No. 69218. The assailed CA Decision reversed and set aside the Decision³ of the Regional Trial Court (RTC) of Borongan, Eastern Samar, Branch 2, in Civil Case No. 464, which ruled in petitioner's favor in an action he filed for declaration of nullity of his marriage with private respondent, while the CA Resolution denied petitioners' motion for reconsideration.

* Designated Additional Member in lieu of Associate Francis H. Jardeleza, per Raffle dated May 23, 2016.

¹ Penned by Associate Justice Apolinario D. Bruselas, Jr., with the concurrence of Associate Justices Arsenio J. Magapale and Vicente L. Yap, concurring; Annex "A" to Petition, *rollo*, pp. 28-40.

² Penned by Associate Justice Francisco P. Acosta, with Associate Justices Amy C. Lazaro-Javier and Rodil V. Zalameda, concurring; Annex "B" to Petition, *id.* at 41-43.

³ Annex "C" to Petition, *id.* at 44-59.

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The present petition arose from a Petition for Declaration of Nullity of Marriage filed by herein petitioner with the RTC of Oras, Eastern Samar. Pertinent portions of the Petition allege as follows:

x x x x

3. Sometime in the afternoon of May 31, 1972, petitioner's parents summoned one Eusebio Colongon, now deceased, then clerk in the office of the municipal treasurer, instructing said clerk to arrange and prepare whatever necessary papers were required for the intended marriage between petitioner and respondent supposedly to take place at around midnight of June 1, 1972 so as to exclude the public from witnessing the marriage ceremony;

4. Petitioner and Respondent thereafter exchanged marital vows in a marriage ceremony which actually took place at around 3:00 o'clock before dawn of June 1, 1972, on account that there was a public dance held in the town plaza which is just situated adjacent to the church whereas the venue of the wedding, and the dance only finished at around 2:00 o'clock of same early morning of June 1, 1972;

5. Petitioner has never gone to the office of the Local Civil Registrar to apply for marriage license and had not seen much less signed any papers or documents in connection with the procurement of a marriage license;

6. Considering the shortness of period from the time the aforementioned clerk of the treasurer's office was told to obtain the pertinent papers in the afternoon of May 31, 1972 so required for the purpose of the forthcoming marriage up to the moment the actual marriage was celebrated before dawn of June 1, 1972, no marriage license therefore could have been validly issued, thereby rendering the marriage solemnized on even date null and void for want of the most essential requisite;

7. For all intents and purposes, thus, Petitioner's and Respondent's marriage aforestated was solemnized sans the required marriage license, hence, null and void from the beginning and neither was it performed under circumstances exempting the requirement of such marriage license;

x x x x

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that after due notice and hearing, judgment be rendered:

1. Declaring the contract of marriage between petitioner and respondent held on June 1, 1972, at Arteche, Eastern Samar, null and void *ab initio* and of no legal effect;

x x x x⁴



⁴

Rollo, pp. 60-61.

Among the pieces of evidence presented by petitioner is a Certification⁵ issued by the Municipal Civil Registrar of Arteche, Eastern Samar which attested to the fact that the Office of the Local Civil Registrar has neither record nor copy of a marriage license issued to petitioner and respondent with respect to their marriage celebrated on June 1, 1972.

Respondent filed her Answer⁶ praying that the petition be outrightly dismissed for lack of cause of action because there is no evidence to prove petitioner's allegation that their marriage was celebrated without the requisite marriage license and that, on the contrary, both petitioner and respondent personally appeared before the local civil registrar and secured a marriage license which they presented before their marriage was solemnized.

Upon petitioner's request, the venue of the action was subsequently transferred to the RTC of Borongan, Eastern Samar, Branch 2, where the parties submitted their respective pleadings as well as affidavits of witnesses.

On September 25, 2000, the RTC rendered its Decision granting the petition. The dispositive portion of the said Decision reads:

WHEREFORE, in view of the foregoing, the Court hereby declares the marriage contracted between Raquel G. Kho and Veronica Borata on June 1, 1972 null and void *ab initio*, pursuant to Article 80 of the Civil Code and Articles 4 and 5 of the Family Code. The foregoing is without prejudice to the application of Articles 50 and 51 of the Family Code.

Let a copy of this decision be furnished the Municipal Civil Registrar of Arteche, Eastern Samar for proper registration of this decree of nullity of marriage.

SO ORDERED.⁷

The RTC found that petitioner's evidence sufficiently established the absence of the requisite marriage license when the marriage between petitioner and respondent was celebrated. As such, the RTC ruled that based on Articles 53(4), 58 and 80(3) of the Civil Code of the Philippines, the absence of the said marriage license rendered the marriage between petitioner and respondent null and void *ab initio*.

⁵ See RTC Decision, *id.* at 56.

⁶ *Rollo*, p. 64.

⁷ *Id.* at 59.



Respondent then filed an appeal with the CA in Cebu City. On March 30, 2006, the CA promulgated its assailed Decision, disposing thus:

WHEREFORE, in view of the foregoing, the Decision dated 25 September 2000 of Branch 2 of the Regional Trial Court of Borongan, Eastern Samar, is **REVERSED** and **SET ASIDE**. The marriage between the petitioner-appellee Raquel Kho and Veronica Kho is declared valid and subsisting for all intents and purposes.

SO ORDERED.⁸

The CA held that since a marriage was, in fact, solemnized between the contending parties, there is a presumption that a marriage license was issued for that purpose and that petitioner failed to overcome such presumption. The CA also ruled that the absence of any indication in the marriage certificate that a marriage license was issued is a mere defect in the formal requisites of the law which does not invalidate the parties' marriage.

Petitioner filed a Motion for Reconsideration,⁹ but the CA denied it in its Resolution dated January 14, 2009.

Hence, the instant petition raising the following issues, to wit:

1. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN ASCRIBING A SO-CALLED "ETHICAL DIMENSION" TO PETITIONER'S CAUSE, ALLUDING TO AN ALLEGED LIAISON WITH ANOTHER WOMAN AS A FACTOR IN REVERSING THE JUDGMENT OF THE LOWER COURT WHICH VOIDED HIS MARRIAGE IN QUESTION WITH RESPONDENT;
2. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN APPRECIATING AGAINST PETITIONER THE FACT THAT DESPITE THE LAPSE OF 25 YEARS HE DID NOTHING TO ATTACK, EVEN COLLATERALLY, HIS APPARENTLY VOID MARRIAGE WITH RESPONDENT;
3. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN ALTOGETHER DISREGARDING PETITIONER'S OBVIOUSLY OVERWHELMING DOCUMENTARY EVIDENCES OF LACK OF MARRIAGE LICENSE AND GIVING WEIGHT INSTEAD TO UNSUPPORTED PRESUMPTIONS IN FAVOR OF RESPONDENT, IN ITS ASSAILED DECISION; and



⁸ *Id.* at 39.

⁹ *Id.* at 72.

4. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN SETTING ASIDE OR REVERSING THE LOWER COURT'S JUDGMENT DECLARING THE MARRIAGE BETWEEN PETITIONER AND RESPONDENT A NULLITY FOR ABSENCE OF THE REQUISITE MARRIAGE LICENSE.¹⁰

Petitioner's basic contention in the present petition centers on the alleged failure of the CA to give due credence to petitioner's evidence which established the absence or lack of marriage license at the time that petitioner and respondent's marriage was solemnized. Petitioner argues that the CA erred in deciding the case not on the basis of law and evidence but rather on the ground of what the appellate court calls as ethical considerations as well as on the perceived motive of petitioner in seeking the declaration of nullity of his marriage with respondent.

The Court finds for the petitioner.

At the outset, the State, through the Office of the Solicitor General (OSG), raises a procedural question by arguing that the issues presented by petitioner in the present petition are factual in nature and it is not proper for this Court to delve into these issues in a petition for review on *certiorari*.

The Court does not agree.

The issues in the instant petition involve a determination and application of existing law and prevailing jurisprudence. However, intertwined with these issues is the question of the existence of the subject marriage license, which is a question of fact and one which is not appropriate for a petition for review on *certiorari* under Rule 45 of the Rules of Court. This rule, nonetheless, is not without exceptions, *viz.*:

- (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
- (2) When the inference made is manifestly mistaken, absurd or impossible;
- (3) Where there is a grave abuse of discretion;
- (4) When the judgment is based on a misapprehension of facts;
- (5) **When the findings of fact are conflicting;**
- (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
- (7) **When the findings are contrary to those of the trial court;**
- (8) When the findings of fact are conclusions without citation of specific evidence on which they are based;

¹⁰ *Id.* at 15.



- (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and
(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.¹¹

In the present case, the findings of the RTC and the CA, on whether or not there was indeed a marriage license obtained by petitioner and respondent, are conflicting. Hence, it is but proper for this Court to review these findings.

The marriage of petitioner and respondent was celebrated on June 1, 1972, prior to the effectivity of the Family Code.¹² Hence, the Civil Code governs their union. Accordingly, Article 53 of the Civil Code spells out the essential requisites of marriage as a contract, to wit:

ART. 53. *No marriage shall be solemnized unless all these requisites are complied with:*

- (1) Legal capacity of the contracting parties;
- (2) Their consent, freely given;
- (3) Authority of the person performing the marriage; and
- (4) A marriage license, except in a marriage of exceptional character.**¹³

Article 58 of the Civil Code makes explicit that no marriage shall be solemnized without a license first being issued by the local civil registrar of the municipality where either contracting party habitually resides, save marriages of an exceptional character authorized by the Civil Code, but not those under Article 75.¹⁴ Under the Civil Code, marriages of exceptional character are covered by Chapter 2, Title III, comprising Articles 72 to 79. These marriages are: (1) marriages in *articulo mortis* or at the point of death during peace or war; (2) marriages in remote places; (3) consular marriages; (4) ratification of marital cohabitation; (5) religious ratification of a civil marriage; (6) Mohammedan or pagan marriages; and (7) mixed marriages. Petitioner's and respondent's marriage does not fall under any of these exceptions.

Article 80(3) of the Civil Code also makes it clear that a marriage performed without the corresponding marriage license is void, this being

¹¹ *Geronimo v. Court of Appeals*, G.R. No. 105540, July 5, 1993, 224 SCRA 494, 498-499. (Emphasis supplied)

¹² The Family Code of the Philippines took effect on August 3, 1988.

¹³ Emphasis supplied.

¹⁴ Art. 75. Marriages between Filipino citizens abroad may be solemnized by consuls and vice-consuls of the Republic of the Philippines. The duties of the local civil registrar and of a judge or justice of the peace or mayor with regard to the celebration of marriage shall be performed by such consuls and vice-consuls.

nothing more than the legitimate consequence flowing from the fact that the license is the essence of the marriage contract.¹⁵ The rationale for the compulsory character of a marriage license under the Civil Code is that it is the authority granted by the State to the contracting parties, after the proper government official has inquired into their capacity to contract marriage.¹⁶ Stated differently, the requirement and issuance of a marriage license is the State's demonstration of its involvement and participation in every marriage, in the maintenance of which the general public is interested.¹⁷

In the instant case, respondent claims that she and petitioner were able to secure a marriage license which they presented to the solemnizing officer before the marriage was performed.

The OSG, on its part, contends that the presumption is always in favor of the validity of marriage and that any doubt should be resolved to sustain such validity. Indeed, this Court is mindful of this principle as well as of the Constitutional policy which protects and strengthens the family as the basic autonomous social institution and marriage as the foundation of the family.

On the other hand, petitioner insists that the Certification issued by the Civil Registrar of Arteche, Eastern Samar, coupled with the testimony of the former Civil Registrar, is sufficient evidence to prove the absence of the subject marriage license.

The Court agrees with petitioner and finds no doubt to be resolved as the evidence is clearly in his favor.

Apropos is the case of *Nicdao Cariño v. Yee Cariño*.¹⁸ There, it was held that the certification of the Local Civil Registrar, that their office had no record of a marriage license, was adequate to prove the non-issuance of said license.¹⁹ It was further held that the presumed validity of the marriage of the parties had been overcome, and that it became the burden of the party alleging a valid marriage to prove that the marriage was valid, and that the required marriage license had been secured.²⁰

As stated above, petitioner was able to present a Certification issued by the Municipal Civil Registrar of Arteche, Eastern Samar attesting that the Office of the Local Civil Registrar "has no record nor copy of any marriage

¹⁵ *Republic of the Phils. v. Dayot*, 573 Phil. 553, 568-569 (2008).

¹⁶ *Id.* at 569.

¹⁷ *Alcantara v. Alcantara*, 558 Phil. 192, 202 (2007).

¹⁸ 403 Phil. 861 (2001).

¹⁹ *Id.* at 869.

²⁰ *Id.* at 870.



license ever issued in favor of Raquel G. Kho [petitioner] and Veronica M. Borata [respondent] whose marriage was celebrated on June 1, 1972.”²¹ Thus, on the basis of such Certification, the presumed validity of the marriage of petitioner and respondent has been overcome and it becomes the burden of respondent to prove that their marriage is valid as it is she who alleges such validity. As found by the RTC, respondent was not able to discharge that burden.

It is telling that respondent failed to present their alleged marriage license or a copy thereof to the court. In addition, the Certificate of Marriage²² issued by the officiating priest does not contain any entry regarding the said marriage license. Respondent could have obtained a copy of their marriage contract from the National Archives and Records Section, where information regarding the marriage license, *i.e.*, date of issuance and license number, could be obtained. However, she also failed to do so. The Court also notes, with approval, the RTC's agreement with petitioner's observation that the statements of the witnesses for respondent, as well as respondent herself, all attest to the fact that a marriage ceremony was conducted but neither one of them testified that a marriage license was issued in favor of petitioner and respondent. Indeed, despite respondent's categorical claim that she and petitioner were able to obtain a marriage license, she failed to present evidence to prove such allegation. It is a settled rule that one who alleges a fact has the burden of proving it and mere allegation is not evidence.²³

Based on the Certification issued by the Municipal Civil Registrar of Arteche, Eastern Samar, coupled with respondent's failure to produce a copy of the alleged marriage license or of any evidence to show that such license was ever issued, the only conclusion that can be reached is that no valid marriage license was, in fact, issued. Contrary to the ruling of the CA, it cannot be said that there was a simple defect, not a total absence, in the requirements of the law which would not affect the validity of the marriage. The fact remains that respondent failed to prove that the subject marriage license was issued and the law is clear that a marriage which is performed without the corresponding marriage license is null and void.

As to the sufficiency of petitioner's evidence, the OSG further argues that, on the basis of this Court's ruling in *Sevilla v. Cardenas*,²⁴ the certification issued by the local civil registrar, which attests to the absence in

²¹ See RTC Decision, *rollo*, p. 56.

²² *Rollo*, p. 133.

²³ *Amor-Catalan v. Court of Appeals*, 543 Phil. 568, 575 (2007).

²⁴ 529 Phil. 419, 429 (2006).

its records of a marriage license, must categorically state that the document does not exist in the said office despite diligent search.

However, in *Republic of the Philippines v. Court of Appeals*,²⁵ this Court considered the certification issued by the Local Civil Registrar as a certification of due search and inability to find the record or entry sought by the parties despite the absence of a categorical statement that “such document does not exist in their records despite diligent search.” The Court, citing Section 28,²⁶ Rule 132 of the Rules of Court, held that the certification of due search and inability to find a record or entry as to the purported marriage license, issued by the civil registrar, enjoys probative value, he being the officer charged under the law to keep a record of all data relative to the issuance of a marriage license. Based on said certification, the Court held that there is absence of a marriage license that would render the marriage void *ab initio*.

Moreover, as discussed in the abovestated case of *Nicdao Cariño v. Yee Cariño*,²⁷ this Court considered the marriage of the petitioner and her deceased husband as void *ab initio* as the records reveal that the marriage contract of petitioner and the deceased bears no marriage license number and, as certified by the local civil registrar, their office has no record of such marriage license. The court held that the certification issued by the local civil registrar is adequate to prove the non-issuance of the marriage license. Their marriage having been solemnized without the necessary marriage license and not being one of the marriages exempt from the marriage license requirement, the marriage of the petitioner and the deceased is undoubtedly void *ab initio*. This ruling was reiterated in the more recent case of *Go-Bangayan v. Bangayan, Jr.*²⁸

Furthermore, in the fairly recent case of *Abbas v. Abbas*,²⁹ this Court echoed the ruling in *Republic v. CA*³⁰ that, in sustaining the finding of the lower court that a marriage license was lacking, this Court relied on the Certification issued by the local civil registrar, which stated that the alleged marriage license could not be located as the same did not appear in their records. Contrary to petitioner's asseveration, nowhere in the Certification was it categorically stated that the officer involved conducted a diligent search. In this respect, this Court held that Section 28, Rule 132 of the Rules

²⁵ G.R. No. 103047, September 2, 1994, 236 SCRA 257, 262.

²⁶ Sec. 28. *Proof of lack of record.* – A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search, no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry.

²⁷ *Supra* note 18.

²⁸ G.R. No. 201061, July 3, 2013.

²⁹ 702 Phil. 578, 590-592 (2013).

³⁰ *Supra* note 25.



of Court does not require a categorical statement to this effect. Moreover, in the said case, this Court ruled that:

Under Sec. 3(m), Rule 131 of the Rules of Court, it is a disputable presumption that an official duty has been regularly performed, absent contradiction or other evidence to the contrary. We held, "The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty." No such affirmative evidence was shown that the Municipal Civil Registrar was lax in performing her duty of checking the records of their office, thus the presumption must stand. x x x³¹

In all the abovementioned cases, there was clear and unequivocal finding of the absence of the subject marriage license which rendered the marriage void.

From these cases, it can be deduced that to be considered void on the ground of absence of a marriage license, the law requires that the absence of such marriage license must be apparent on the marriage contract, or at the very least, supported by a certification from the local civil registrar that no such marriage license was issued to the parties.³²

Indeed, all the evidence cited by the CA to show that a wedding ceremony was conducted and a marriage contract was signed does not operate to cure the absence of a valid marriage license.³³ As cited above, Article 80(3) of the Civil Code clearly provides that a marriage solemnized without a license is void from the beginning, except marriages of exceptional character under Articles 72 to 79 of the same Code. As earlier stated, petitioner's and respondent's marriage cannot be characterized as among the exceptions.

As to the motive of petitioner in seeking to annul his marriage to respondent, it may well be that his motives are less than pure – that he seeks a way out of his marriage to legitimize his alleged illicit affair with another woman. Be that as it may, the same does not make up for the failure of the respondent to prove that they had a valid marriage license, given the weight of evidence presented by petitioner. The law must be applied. As the marriage license, an essential requisite under the Civil Code, is clearly absent, the marriage of petitioner and respondent is void *ab initio*.

³¹ *Abbas v. Abbas*, *supra* note 29, at 592.

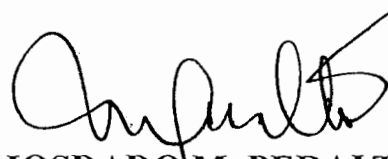
³² *Alcantara v. Alcantara*, *supra* note 17, at 203-204.

³³ *Abbas v. Abbas*, *supra* note 29, at 594.



WHEREFORE, the instant petition is **GRANTED**. The Decision and Resolution of the Court of Appeals, Cebu City, dated March 30, 2006 and January 14, 2009, respectively, in CA-G.R. CV No. 69218, are **REVERSED** and **SET ASIDE**. The Decision of the Regional Trial Court of Borongan, Eastern Samar, Branch 2, dated September 25, 2000, in Civil Case No. 464 is **REINSTATED**.

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

On Leave
ARTURO D. BRION
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice



BIENVENIDO L. REYES
Associate Justice

ATTESTATION

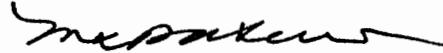
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice

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WILFREDO V. LITITAN

Division Clerk of Court

Third Division

JUN 16 2016