

## EN BANC

[ G.R. No. 201614, January 12, 2016 ]

**SHERYL M. MENDEZ, PETITIONER, VS. SHARI'A DISTRICT COURT, 5<sup>th</sup> SHARI'A DISTRICT, COTABATO CITY, RASAD G. BALINDONG (ACTING PRESIDING JUDGE); 1<sup>st</sup> SHARI'A CIRCUIT COURT, 5<sup>th</sup> SHARI'A DISTRICT, COTABATO CITY, MONTANO K. KALIMPO (PRESIDING JUDGE); AND DR. JOHN O. MALIGA, RESPONDENTS.**

### DECISION

**MENDOZA, J.:**

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the March 30, 2012 Decision<sup>[1]</sup> of the Shari'a District Court, 5<sup>th</sup> Shari'a District, Cotabato City (ShDQ, in ShDC Appealed Case No. 2011-19. The assailed decision affirmed the August 19, 2011 Order<sup>[2]</sup> of the 1<sup>st</sup> Shari'a Circuit Court, Cotabato City (ShCC), in ShCC Civil Case No. 2010-559, confirming the talaq<sup>[3]</sup> (*divorce*) between petitioner Sheryl M. Mendez (Mendez) and private respondent Dr. John O. Maliga (*Maliga*); awarding the custody of their minor child to Maliga; and ordering him to give a *mut'a* (*consolatory gift*) to Mendez.

### The Facts

From the records, it appears that on April 9, 2008, Mendez and Maliga were married under Muslim rites. Prior to their marriage, the couple was already blessed with a daughter, Princess Fatima M. Maliga (*Princess Fatima*). Their marriage, however, soured shortly after their wedding.

On November 2, 2010, Maliga filed with the ShCC a petition<sup>[4]</sup> for the judicial confirmation of *talaq* from Mendez, with a prayer for the grant of probational custody of their minor child pending the resolution of the case. According to Maliga, Mendez was a Roman Catholic and she only embraced the Islamic faith on the date of their marriage. Shortly after being married, he claimed that he started to doubt the sincerity of his wife's submission to Islam, having noticed no changes in her moral attitude and social lifestyle despite his guidance. Maliga added that despite his pleas for her to remain faithful to the ways of Islam, she remained defiant. He alleged that sometime in December 2008, Mendez reverted to Christianity. Maliga went on to add that she went to Manila a few days after their wedding and brought Princess Fatima with her without his knowledge and consent. In Manila, she taught their daughter how to practice Christianity by enrolling her in a Catholic school. Maliga, thus, prayed for probational custody considering the unsafe religious growth and values repugnant to Islam.

Before Mendez could file her answer, Maliga filed his urgent motion<sup>[5]</sup> reiterating his plea to be awarded temporary custody of Princess Fatima. He claimed that considering such factors as moral values, social upliftment, behavioral growth, and religious consideration, he should have custody of their child.

On November 12, 2010, the ShCC issued the order<sup>[6]</sup> granting Maliga's urgent motion. The ShCC deemed it proper for Princess Fatima to stay with her father because of his social, financial and religious standing, and considering that she was then under his custody; that he raised her as a good Muslim daughter as evidenced by her appearance; and that her parents were married under Islamic rites.

On November 18, 2010, Mendez filed her Answer.<sup>[7]</sup> She alleged that she followed the religion of her Muslim grandfather, and denied Maliga's allegations that she was not sincere in her practice of Islam. She averred that she became pregnant before she married Maliga and had been raising their daughter on her own since her birth and that he had been totally remiss in his material and moral obligations to support her and their child. She opposed his prayer for custody, arguing that she had been raising Princess Fatima since she was born; that Maliga had several wives and three other children and was very busy with his profession as a physician; and that the custody of children below seven years old should belong to the mother.

Mendez added that on October 21, 2010, she left their daughter in Maliga's custody for a visit, with the understanding that he would bring her back the following day. On October 22, 2010, she went with her cousin to fetch her daughter but Maliga threatened to kill them and displayed his bodyguards clad in police uniforms and firearms. This prompted her to file a complaint-affidavit for kidnapping and failure to return a minor with the National Bureau of Investigation.<sup>[8]</sup>

On November 22, 2010, Mendez filed her opposition<sup>[9]</sup> to Maliga's urgent motion for issuance of temporary custody. She argued that the motion did not contain the requisite notice of hearing and was, therefore, a mere scrap of paper. She pointed out that the motion was filed on October 9, 2010, *prior* to the filing of the main case on November 2, 2010. She contended that she never received the summons in connection with the urgent motion and, furthermore, she never received a copy of the November 12, 2010 Order granting temporary custody to Maliga, which she had only picked up from the court herself on November 18, 2010, the day she filed her answer.

In its Order,<sup>[10]</sup> dated December 3, 2010, the ShCC *partially reconsidered* its initial order awarding temporary custody to Maliga by granting the right of *visitation* to Mendez, as follows:

WHEREFORE, in the light of the foregoing, PRINCESS FATIMA, daughter of the herein parties is hereby ordered be placed under the CARE and CUSTODY of the Petitioner, DR. JOHN O. MALIGA, pending the resolution of the above-entitled case, effective immediately, WITH THE RIGHT OF VISITATION BY THE RESPONDENT, SHERYL M. MENDEZ TO HER DAUGHTER PRINCESS FATIMA M. MALIGA, ANY REASONABLE TIME OF THE DAY AND NIGHT, AND/OR BORROW HER (PRINCESS FATIMA M.

MALIGA) PROVIDED THAT IT MUST BE ONLY WITHIN THE VICINITY OF COTABATO CITY AND THEREAFTER, RETURN HER TO THE PETITIONER, DR. JOHN O. MALIGA, UPON PROPER COORDINATION AND ARRANGEMENT FROM THE ABOVE-NAMED PETITIONER OR HIS DULY AUTHORIZED REPRESENTATIVE.

SO ORDERED.<sup>[11]</sup>

Mendez filed a motion for reconsideration of the December 3, 2010 order, arguing that the question of custody was within the exclusive original jurisdiction of the ShDC, and not the ShCC, and praying that the said order be declared null and void.<sup>[12]</sup>

On January 19, 2011, the ShCC constituted an Agama Arbitration Council<sup>[13]</sup> which, after its own hearing and meeting, submitted the case for hearing on the merits because the parties failed to arrive at an amicable settlement and because "the [d]ivorce was moot and academic."<sup>[14]</sup>

*The Ruling of the Shari 'a Circuit Court*

On August 19, 2011, the ShCC issued the order<sup>[15]</sup> confirming the *talaq* pronounced by Maliga against Mendez and awarded to him the care and custody of Princess Fatima. In the same order, the ShCC granted visitation rights to Mendez and ordered Maliga to give her a *mut 'a* (consolatory gift) in the amount of P24,000.00. Thus:

WHEREFORE, in the light of the foregoing, it is hereby ORDERED, that:

1. The pronounced *Talaq* (Divorce) by herein Petitioner DR. JOHN O. MALIGA against respondent SHERYL M. MENDEZ is hereby CONFIRMED and considering that the Iddah (cooling-off/waiting period) had long been lapsed, she may now be allowed to use her former maiden name in all personal and official transactions;
2. The care and custody of the PARTIES' minor daughter PRINCESS FATIMA shall remain with Petitioner DR. JOHN O. MALIGA with a right of visitation by respondent SHERYL M. MENDEZ any reasonable time of the day and night and/or borrow her and thereafter, return her (PRINCESS FATIMA) to petitioner DR. JOHN O. MALIGA, provided it is only within the vicinity of Cotabato City and provided further that there should be a proper coordination with the above-named Petitioner, and the petitioner is hereby ordered to observe such rights of visitation and/or borrow of by the respondent SHERYL M. MENDEZ; and
3. Petitioner DR. JOHN O. MALIGA is hereby ordered upon receipt hereof, to give consolatory gift (*mut'a*) to respondent SHERYL M. MENDEZ in the amount of TWENTY FOUR THOUSAND PESOS (Php. 24,000.00) as provided by law as contained in the petitioner's prayer

which amounts of money must be coursed/consigned to this Court.

Let the copy of this Order be furnished to the Office of the Shari'a Circuit Registrar of this Court for record and registration purposes, and/or ANNOTATION of the PARTIES' marriage contract as DIVORCED.

SO ORDERED.<sup>[16]</sup>

In its ruling, the ShCC noted that Mendez never questioned the validity of the *talaq* and found that it was caused by the irreconcilable religious differences between the spouses as to the upbringing of their daughter. For said reason, it ruled that, in the best interest of the child in all aspects of life - economic, social and religious, the care and custody of Princess Fatima should remain with Maliga.<sup>[17]</sup>

#### The Ruling of the Shari 'a District Court

Mendez appealed the ShCC order to the ShDC only with respect to the ruling on custody. In her memorandum<sup>[18]</sup> before the ShDC, Mendez argued that the order of the ShCC was null and void for its failure to state the facts and law on which its findings were based in accordance with Section 1, Rule 36 of the Rules of Court. She reiterated that the urgent motion filed by Maliga did not contain the requisite notice of hearing, and that the mother had the right of custody if the child was under seven years of age. She asserted that the question of custody was within the exclusive original jurisdiction of the ShDC only, and that an order of a court not vested with jurisdiction was null and void.<sup>[19]</sup>

On March 30, 2012, the ShDC issued the assailed decision,<sup>[20]</sup> affirming the August 19, 2011 Order of the ShCC. Giving credence to Maliga's allegation that Mendez had reverted to Christianity, the ShDC ruled that in Shari'a Law, a mother might be legally disentitled to the custody of her child if she turned apostate, and disqualified until she returned to the Islamic faith; and that the father, as a Muslim, was in a better position to take care of the child's well-being and raise her as a Muslim. Affirming the ShCC ruling, the ShDC found that Princess Fatima should remain with her father for her best interest in all aspects of life, economically, socially and religiously.

Hence, this petition where Mendez argues the following:

#### **ASSIGNMENT OF ERRORS**

**A. THE HONORABLE PRESIDING JUDGE OF 1st SHARI'A CIRCUIT, COTABATO CITY, 5th SHARIA [DISTRICT], MONTANO K. KALIMPO, GRAVELY AND SERIOUSLY ERRED IN DECIDING IN FAVOR OF THE PETITIONER-APPELLEE IN SHCC CIVIL CASE NO. 2010-559, DR. JOHN O. MALIGA FOR CARE AND CUSTODY [OF] MINOR CHILD AGAINST HEREIN RESPONDENT-APPELLANT AS THE HONORABLE JUDGE,**

**GRAVELY ABUSES HIS AUTHORITY AMOUNTED TO LACK OF JURISDICTION OVER THE CASE.**

**B. WERE THE ORDER OF THE HONORABLE PRESIDING JUDGE MONTANO K. KALIMPO OF 1st SHARI'A CIRCUIT COURT, COTABATO CITY DATED NOVEMBER 12, 2010 AND DECEMBER 03, 2010 AWARDED THE CARE AND CUSTODY IN FAVOR OF PETITIONER-APPELLEE SHCC CIVIL CASE NO. 2010-559 FOR BEING UNREASONABLE, IN VIOLATION OF RULE 15, SECTIONS 4, 5, 6 REVISED RULES OF CIVIL PROCEDURE 1997, ARTICLE 143, PAR. 1, SECTION a OF THE P.D. 1083, ARTICLE 78, P.D. 1083 AS WELL AS JURISDICTION.**

**C. WERE THE DECISION OF THE HONORABLE SHARI'A DISTRICT COURT, 5th SHARI'A DISTRICT COTABATO CITY, PROMULGATED ON MARCH 30, 2011, AFFIRMED ASSAILED ORDER DATED AUGUST 19, 2011 OF THE SHARI'A CIRCUIT COTABATO CITY, FOR BEING UNREASONABLE.<sup>[21]</sup>**

Mendez argues that the ShCC acted in excess of jurisdiction when it ruled on Maliga's urgent motion for issuance of temporary custody, considering that the motion was a mere scrap of paper for lack of notice of hearing. She reiterates that she never received any summons in connection with the urgent motion. She never received a copy of the ShCC order granting the said motion either.<sup>[22]</sup>

Mendez goes on to contend that the ShCC had no jurisdiction to hear, try and decide the issue of Princess Fatima's custody, considering that under Article 143(1)(a) of Presidential Decree (*P.D.*) No. 1083,<sup>[23]</sup> it is the ShDC which has the exclusive original jurisdiction over all cases involving custody. She argues the rule that any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal.<sup>[24]</sup>

Finally, she asserts that she should have been awarded custody under Article 78 of P.D. No. 1083, as Princess Fatima was *not above seven years old* at the time the ShCC order was promulgated. As to Maliga's claim that she was disqualified to have custody over Princess Fatima for becoming apostate to the Islamic faith, Mendez argues that while the same may be a ground for disinheritance under the Muslim Law, the same law does not provide that being apostate is a ground to be denied of the care and custody of her minor child.<sup>[25]</sup> Besides, she professes that she is still a Muslim.

In the July 9, 2012 Resolution,<sup>[26]</sup> the Court initially denied the subject petition for various procedural defects.

On November 12, 2012, acting on the motion for reconsideration filed by Mendez, the Court reinstated the petition.<sup>[27]</sup> Thereafter, Maliga and Mendez filed their respective pleadings.

In his Comment,<sup>[28]</sup> dated January 17, 2013, Maliga countered that a mother may be deprived of the custody of her child below seven years of age for compelling