

THIRD DIVISION

[G.R. No. 187462, June 01, 2016]

**RAQUEL G. KHO, PETITIONER, VS. REPUBLIC OF THE
PHILIPPINES AND VERONICA B. KHO, RESPONDENTS.**

DECISION

PERALTA, J.:

Challenged in the present petition for review on *certiorari* are the Decision^[1] and Resolution^[2] of the Court of Appeals (CA), Cebu City dated March 30, 2006 and January 14, 2009, respectively, in CA-GR. CV No. 69218. The assailed CA Decision reversed and set aside the Decision^[3] 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.

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 Colongan, 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 x^[4]

Among the pieces of evidence presented by petitioner is a Certification^[5] 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 Answer^[6] 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*.

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

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;
- (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 111, 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 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