

## SECOND DIVISION

[ A.M. No. MTJ-96-1088, July 19, 1996 ]

**RODOLFO G. NAVARRO, COMPLAINANT, VS. JUDGE HERNANDO C. DOMAGTOY, RESPONDENT.**

### DECISION

**ROMERO, J.:**

The complainant in this administrative case is the Municipal Mayor of Dapa, Surigao del Norte, Rodolfo G. Navarro. He has submitted evidence in relation to two specific acts committed by respondent Municipal Circuit Trial Court Judge Hernando Domagtoy, which, he contends, exhibits gross misconduct as well as inefficiency in office and ignorance of the law.

First, on September 27, 1994, respondent judge solemnized the wedding between Gaspar A. Tagadan and Arlyn F. Borga, despite the knowledge that the groom is merely separated from his first wife.

Second, it is alleged that he performed a marriage ceremony between Floriano Dador Sumaylo and Gemma G. del Rosario outside his court's jurisdiction on October 27, 1994. Respondent judge holds office and has jurisdiction in the Municipal Circuit Trial Court of Sta. Monica-Burgos, Surigao del Norte. The wedding was solemnized at the respondent judge's residence in the municipality of Dapa, which does not fall within his jurisdictional area of the municipalities of Sta. Monica and Burgos, located some 40 to 45 kilometers away from the municipality of Dapa, Surigao del Norte.

In his letter-comment to the Office of the Court Administrator, respondent judge avers that the office and name of the Municipal Mayor of Dapa have been used by someone else, who, as the mayor's "lackey," is overly concerned with his actuations both as judge and as a private person. The same person had earlier filed Administrative Matter No. 94-980-MTC, which was dismissed for lack of merit on September 15, 1994, and Administrative Matter No. OCA-IPI-95-16, "Antonio Adapon v. Judge Hernando C. Domagtoy," which is still pending.

In relation to the charges against him, respondent judge seeks exculpation from his act of having solemnized the marriage between Gaspar Tagadan, a married man separated from his wife, and Arlyn F. Borga by stating that he merely relied on the Affidavit issued by the Municipal Trial Judge of Basey, Samar, confirming the fact that Mr. Tagadan and his first wife have not seen each other for almost seven years.

[1] With respect to the second charge, he maintains that in solemnizing the marriage between Sumaylo and del Rosario, he did not violate Article 7, paragraph 1 of the Family Code which states that: "Marriage may be solemnized by: (1) Any incumbent member of the judiciary within the court's jurisdiction"; and that Article 8 thereof applies to the case in question.

The complaint was not referred, as is usual, for investigation, since the pleadings submitted were considered sufficient for a resolution of the case.<sup>[2]</sup>

Since the countercharges of sinister motives and fraud on the part of complainant have not been sufficiently proven, they will not be dwelt upon. The acts complained of and respondent judge's answer thereto will suffice and can be objectively assessed by themselves to prove the latter's malfeasance.

The certified true copy of the marriage contract between Gaspar Tagadan and Arlyn Borga states that Tagadan's civil status is "separated." Despite this declaration, the wedding ceremony was solemnized by respondent judge. He presented in evidence a joint affidavit by Maurecio A. Labado, Sr. and Eugenio Bullecer, subscribed and sworn to before Judge Demosthenes C. Duquilla, Municipal Trial Judge of Basey, Samar.<sup>[3]</sup> The affidavit was not issued by the latter judge, as claimed by respondent judge, but merely acknowledged before him. In their affidavit, the affiants stated that they knew Gaspar Tagadan to have been civilly married to Ida D. Peñaranda in September 1983; that after thirteen years of cohabitation and having borne five children, Ida Peñaranda left the conjugal dwelling in Valencia, Bukidnon and that she has not returned nor been heard of for almost seven years, thereby giving rise to the presumption that she is already dead.

In effect, Judge Domagtoy maintains that the aforementioned joint affidavit is sufficient proof of Ida Peñaranda's presumptive death, and ample reason for him to proceed with the marriage ceremony. We do not agree.

Article 41 of the Family Code expressly provides:

"A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Articles 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph, the spouse present **must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee**, without prejudice to the effect of reappearance of the absent spouse." (Emphasis added.)

There is nothing ambiguous or difficult to comprehend in this provision. In fact, the law is clear and simple. Even if the spouse present has a well-founded belief that the absent spouse was already dead, a summary proceeding for the declaration of presumptive death is necessary in order to contract a subsequent marriage, a mandatory requirement which has been precisely incorporated into the Family Code to discourage subsequent marriages where it is not proven that the previous marriage has been dissolved or a missing spouse is factually or presumptively dead, in accordance with pertinent provisions of law.