

## **SIXTH DIVISION**

**[ CA-G.R. CV NO. 99599, May 30, 2014 ]**

**CHRISTOPHER S. LORIYO, PETITIONER-APPELLANT, V. MARY  
JEAN G. BONDOY, RESPONDENT-APPELLEE.**

### **D E C I S I O N**

**BARZA, J.:**

Subject of the appeal before the Court is the order<sup>[1]</sup> dated September 19, 2012 of the Regional Trial Court of Legazpi City, Branch 8 which sustained its earlier order<sup>[2]</sup> dated August 8, 2012, dismissing the petition<sup>[3]</sup> for declaration of absolute nullity of void marriage filed by appellant Christopher Loriyo against appellee Mary Jean Bondoy on the ground of collusion between the parties.

Appellant's petition for declaration of absolute nullity of void marriage alleged that he is a seaman by occupation. He met appellee in 2003 through his friends which eventually led to whirlwind relationship between them. At the outset of the relationship, appellee already informed him that she had two (2) children by a former lover. However, appellant was never informed that appellee and her former lover were married. In August 2005, appellant left for Jeddah, Saudi Arabia, to work as a seaman. He left appellee and her children in a rented house in Manila but after a month they went home to Bicol to live with appellant's family in Camalig, Albay, where the appellee put up a store with the capital appellant gave her. Appellee would once in a while take a trip to Sorsogon City to visit her family but as the months progressed the trips became frequent to the detriment of the family business. Appellant's family also noticed that appellee had been receiving phone calls on her cellphone that she would not answer. In an attempt to avoid being questioned about her behavior, appellee would avoid appellant's family until such time she told appellant through a text message that she did not want to live with the latter's family anymore. Thus, appellant allowed appellee to stay with her family in Sorsogon. Then appellee's text messages to appellant became less frequent but in spite of it they got married on December 21, 2007.

The petition further narrated that after appellant finished a seafarer's contract in February 2010, he and appellee started to quarrel a lot for no apparent reason. Their quarrels escalated when appellant found a text message on appellee's cellphone indicating that she was in a relationship with another man. Eventually, appellee admitted to the affair. Appellant forgave her, but not long after he was informed by his brother-in-law, Richard, that the affair continued even after appellee had already promised to end the same. Then acting on the suspicion that appellee is married to the father of her children, appellant, through his mother, tried to verify appellee's status with the National Statistics Office. True enough it was confirmed that appellee is married to a certain Leandro J. Vidad since February 17, 1997, in Pasay City and that Vidad was still alive when appellant wed appellee.

Since then appellant has moved on from his relationship with appellee and eventually found another woman whom he was hoping to marry. Due to the legal impediment of his subsisting marriage with appellee he filed the instant petition for the purpose of remarriage.

Summons was then served on appellee who personally received the same.<sup>[4]</sup> After the Solicitor General entered its appearance as counsel for the State and deputized the Office of the Prosecutor of Legazpi City, Albay, to appear in the case,<sup>[5]</sup> the trial court then ordered on June 11, 2012 the Office of the Provincial Prosecutor to conduct a collusion investigation and file its report within thirty (30) days from date of order.<sup>[6]</sup> Thereafter, the prosecutor subpoenaed the parties notifying them of the investigation on July 25, 2012. However, none of the parties showed up in the scheduled collusion investigation. Nonetheless, appellant's mother, Aurora Loriyo, and appellee's brother, Richard Bondoy, appeared as witnesses for appellant.

Mrs. Loriyo basically testified that her son has not communicated with appellee since 2010 and that prior to the filing of the petition for declaration of nullity of void marriage, appellant asked her to secure from the NSO his birth certificate and marriage record. It was then that she discovered that the NSO has a record of appellee's prior marriage to one Leandro Vidad. On the other hand, Bondoy testified that he knew his sister was already married to Vidad before she tied the knot with appellant. He informed appellant about it but the latter still pushed through with their wedding. In view of the testimonies of witnesses, the prosecutor, in the collusion report<sup>[7]</sup> dated August 6, 2012, concluded that appellant already knew of the existing marriage of appellee to Vidad prior to his marriage with appellee. He cannot conveniently invoke the bigamous nature of his marriage to appellee as a ground to have such marriage voided. As for appellee, the prosecutor noted that appellee seemed to have no interest in contesting the petition and its allegations. Thus, the prosecutor found the parties to be in collusion with each other.

On August 8, 2012, the trial court issued an order<sup>[8]</sup> dismissing the petition on account of the existence of collusion between the parties. Appellant sought to have the order reconsidered,<sup>[9]</sup> positing that the immediate dismissal of the petition is premature and contrary to **Section 9 of A.M. No. 02-11-10-SC**, otherwise known as the ***Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages***. The pertinent provision of Sec. 9 reads -

**Sec. 9 (2).** If the public prosecutor finds that collusion exists, he shall state the basis thereof in his report. The parties shall file their respective comments on the finding of collusion within 10 days from receipt of the copy of the report. The court SHALL set the report for hearing and if convinced that the parties are in collusion, it shall dismiss the petition.

During the hearing of appellant's motion for reconsideration on August 22, 2012, both the prosecutor and appellant's counsel agreed that appellant be allowed to submit his comment on the collusion report. Appellant was given a period of 10 days from the hearing to file his comment.<sup>[10]</sup> On August 31, 2012, appellant filed a Compliance with Motion to Set Case for Hearing on the Collusion Report<sup>[11]</sup> reiterating his argument that the dismissal of his petition is premature and the collusion report shall not be the sole basis of such dismissal without giving him the opportunity to refute the findings of the prosecutor by "allowing the petitioner to present his witnesses to refute the alleged collusion report." He further argued that