



Republic of the Philippines  
**Supreme Court**  
Manila

FIRST DIVISION

REPUBLIC OF THE PHILIPPINES.  
Petitioner,

G.R. No. 212726

Present:

- versus -

PERALTA, C.J., *Chairperson*,  
CAGUIOA, *Working Chairperson*,  
REYES, J. JR.,  
LAZARO-JAVIER, *and*  
LOPEZ, JJ.

LEILANIE DELA CRUZ FENOL,  
Respondent.

Promulgated:

JUN 10 2020

X

X

DECISION

REYES, J. JR., J.:

Assailed in this Petition for Review on *Certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated November 28, 2013 and the Resolution<sup>3</sup> dated May 26, 2014 of the Court of Appeals–Cagayan De Oro City (CA) in CA-G.R. SP No. 05084[-MIN] affirming *in toto* the Decision<sup>4</sup> dated April 15, 2011 of the Regional Trial Court of Kabacan, Cotabato, Branch 41 (RTC) in Spl. Proc. No. 09-22 declaring Reneto Alilongan Suminguit (Reneto) presumptively dead under Article 41 of the Family Code.

<sup>1</sup> Rollo, pp. 9-27.

<sup>2</sup> Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Oscar V. Badelles and Edward B. Contreras, concurring; id. at 28-33.

<sup>3</sup> Id. at 34-35.

<sup>4</sup> Penned by Acting Presiding Judge Lily Lydia A. Laquindanum; id. at 36-40.

Y

### The Antecedents

On July 8, 2000, Leilanie Dela Cruz Fenol (respondent) married Reneto in Kidapawan City. Out of this union, they begot a child named Loren Jade Fenol Suminguit.<sup>5</sup>

Sometime in January 2001, Reneto left the conjugal dwelling in Malayan, M'lang, Cotabato and went to Manila to apply for work abroad. Since then, he has not come back to his family and his whereabouts have been unknown for a continuous period of more than eight years. Thus, respondent filed a Petition for Declaration of Presumptive Death of Reneto Alilongan Suminguit dated November 16, 2009 before the RTC of Kabacan, Cotabato.<sup>6</sup>

In the petition, respondent alleged that she exerted earnest efforts to locate the whereabouts of her husband. She went to Manila sometime in 2002 and stayed there for seven months to find Reneto, but the same proved futile. She also proceeded to Reneto's relatives in Cayawan, Davao del Norte only to find out that they have no knowledge of his whereabouts either. Sometime in 2004, she applied for employment abroad and worked overseas, but she still failed to find Reneto until she returned to the Philippines in 2008.<sup>7</sup>

### The RTC Ruling

On April 15, 2011, the RTC declared Reneto presumptively dead subject to the restrictions and conditions imposed in Article 41 of the Family Code. The RTC reasoned:

Taking into consideration the circumstances of the absence of the [respondent]'s husband, the Court is convinced that he may be declared as presumptively dead. From the time [respondent]'s husband left the conjugal dwelling for Manila in January of 2001, purposely to apply for work abroad, his whereabouts became unknown. From the time the whereabouts of [respondent]'s husband became unknown since he left the conjugal dwelling in 2001, up to the time that the [respondent] testified in 2010, the [respondent]'s husband has been absent for more than nine (9) years and his whereabouts unknown. And for purposes of re-marriage, a period of only four (4) years is required by law. The loss of a loved one is saddening but what is more saddening is a loved one whose whereabouts has been unknown for a long time. His absence or his presence cannot be determined, to the extent that the family left could not move on with their lives, as in this case.

In sum, the well-founded belief being required of under the Family Code has been preponderantly established by the [respondent] because although there were no concrete documentary evidences presented by her

---

<sup>5</sup> Id. at 11.

<sup>6</sup> Id.

<sup>7</sup> Id. at 11-12.

in Court to justify the declaration of [Reneto] as presumptively dead, the circumstances of the case would point to the fact that the [respondent]'s husband has already been absent for more than nine (9) years. And to allow the [respondent] to wait a little longer, to await her husband's return, without certainty, would be unfair to the [respondent] and to her daughter, who already have suffered so much when the [respondent]'s husband left them way back in 2001.<sup>8</sup>

The Republic of the Philippines, through the Office of the Solicitor General (OSG), moved for reconsideration of the RTC Decision, but the same was denied in an Order dated May 31, 2012.

### **The CA Ruling**

In its Decision dated November 28, 2013, the CA denied the OSG's appeal. It held that respondent exerted efforts to locate Reneto, but she still failed to find him. It agreed with the RTC that respondent was able to prove a well-founded belief that Reneto was already dead. It enunciated that the Decision of the RTC is already final and executory and can no longer be modified or reversed since a petition for declaration of presumptive death is a summary judicial proceeding under the Family Code.<sup>9</sup>

The OSG filed a motion for reconsideration of the CA Decision which was denied in a Resolution dated May 26, 2014.

Hence, this petition.

### **Issues**

The OSG claims that the conclusions of the RTC and the CA are not in accordance with law and jurisprudence. It maintains that while the Decision of the RTC is immediately final and executory and not appealable, it may still be reviewed *via* petition for *certiorari* under Rule 65 of the Rules of Court. It argues that, contrary to the findings of the courts below, the efforts of respondent in locating her husband were not sufficient to form a well-founded belief that he is already dead.

### **The Court's Ruling**

The petition is granted.

The OSG raises procedural and substantive issues in its petition. Procedurally, it imputes error on the part of the CA for dismissing its petition for *certiorari* for being the wrong remedy. Substantively, it questions the factual bases of the RTC in granting respondent's petition. It asserts that

---

<sup>8</sup> Id. at 39-40.

<sup>9</sup> Id. at 31-33.

f

respondent's efforts did not generate a well-founded belief that her husband Reneto was already dead.

The procedural aspect of the case is governed by Article 41 in relation to Articles 238, 247 and 253 of the Family Code. The provisions read:

ART. 41. 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 Article 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. (Underscoring supplied)

x x x x

TITLE XI  
SUMMARY JUDICIAL PROCEEDING  
IN THE FAMILY LAW

Chapter 1. Scope of the Application

ART. 238. Until modified by the Supreme Court, the procedural rules in this Title shall apply in all cases provided for in this Code requiring summary court proceedings. Such cases shall be decided in an expeditious manner, without regard to technical rules.

Chapter 2. Separation in Fact Between  
Husband and Wife

x x x x

ART. 247. The judgment of the court shall be immediately final and executory. (Underscoring supplied)

x x x x

Chapter 4. Other Matters Subject  
to Summary Proceedings

ART. 253. The foregoing rules in Chapters 2 and 3 hereof shall likewise govern summary proceedings filed under Articles 41, 51, 69, 73, 96, 124 and 217, insofar as they are applicable. (Underscoring supplied)

f

Nothing could be clearer from the above legal provisions than that a petition for declaration of presumptive death of an absent spouse for the purpose of contracting a subsequent marriage under Article 41 of the Family Code involves a proceeding that is summary in nature, the judgment of the court therein shall be immediately final and executory.<sup>10</sup> Consequently, a judicial declaration of presumptive death cannot be a proper subject of an appeal and the filing of a motion for reconsideration or a notice of appeal is a procedural misstep which warrants an outright denial or dismissal. The final and executory nature of the judgment in a petition for declaration of presumptive death renders the court's dispositions and conclusions therein immutable and unalterable not only as against the parties, but even as against the courts.<sup>11</sup> Hence, except for correction of clerical errors, the courts are barred from modifying or altering a definitive final judgment, such as the one assailed in the case, even if the modification is intended to correct erroneous conclusion of fact or law.<sup>12</sup>

But the losing party in a summary court proceeding is not left without a legal recourse. When the present spouse successfully obtains a judicial declaration of his/her spouse's presumptive death, the OSG may properly bring an original action for *certiorari* under Rule 65 of the Rules of Court, as it actually did in this case, before the appellate court on the ground that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it rendered its judgment. In declaring that the OSG resorted to a wrong remedy by filing a petition for *certiorari*, the CA had been unmindful of our consistent pronouncement that "*certiorari* lies to challenge the decisions, judgments or final orders of trial courts in a summary proceeding for the declaration of presumptive death under the Family Code."<sup>13</sup> We held in *Republic v. Narceda*:<sup>14</sup>

As explained in *Republic v. Tango*, the remedy of a losing party in a summary proceeding is not an ordinary appeal, but a petition for *certiorari*, to wit:

By express provision of law, the judgment of the court in a summary proceeding shall be immediately final and executory. As a matter of course, it follows that no appeal can be had of the trial court's judgment in a summary proceeding for the declaration of presumptive death of an absent spouse under Article 41 of the Family Code. It goes without saying, however, that an aggrieved party may file a petition for certiorari to question abuse of discretion amounting to lack of jurisdiction. Such petition should be filed in the Court of Appeals in accordance with the Doctrine of Hierarchy of Courts. To be sure, even if the Court's original jurisdiction to issue a writ of certiorari is concurrent with the RTCs and the Court of Appeals in certain cases, such concurrence does not sanction an unrestricted freedom of choice of court forum. From the decision of the

<sup>10</sup> *Republic v. Granada*, 687 Phil. 403, 408 (2012).

<sup>11</sup> *Republic v. Cantor*, 723 Phil. 114, 124 (2013).

<sup>12</sup> *C-E Construction Corp. v. National Labor Relations Commission*, 456 Phil. 597, 605 (2003).

<sup>13</sup> *Republic v. Cantor*, supra, at 125.

<sup>14</sup> 708 Phil. 458, 464-465 (2013).

Y



Court of Appeals, the losing party may then file a petition for review on *certiorari* under Rule 45 of the Rules of Court with the Supreme Court. This is because the errors which the court may commit in the exercise of jurisdiction are merely errors of judgment which are the proper subject of an appeal. (Underscoring supplied)

There is, thus, no doubt that the OSG availed of the correct remedy when it filed a petition for *certiorari* before the CA.

Going into the merits of the case, we find that the respondent failed to satisfy the “well-founded belief” requirement in Article 41 of the Family Code.

In *Republic v. Tampus*,<sup>15</sup> the Court clarified the scope and extent of the present spouse’s duty before he/she can obtain a judicial declaration of spouse’s presumptive death, *viz.*:

The “well-founded belief” in the absentee’s death requires the present spouse to prove that his/her belief was the result of diligent and reasonable efforts to locate the absent spouse and that based on these efforts and inquiries, he/she believes that under the circumstances, the absent spouse is already dead. It necessitates exertion of active effort, not a passive one. As such, the mere absence of the spouse for such periods prescribed under the law, lack of any news that such absentee spouse is still alive, failure to communicate, or general presumption of absence under the Civil Code would not suffice. The premise is that Article 41 of the Family Code places upon the present spouse the burden of complying with the stringent requirement of “well-founded belief” which can only be discharged upon a showing of proper and honest-to-goodness inquiries and efforts to ascertain not only the absent spouse’s whereabouts, but more importantly, whether the latter is still alive or is already dead. (Underscoring supplied)

Clearly, it is not enough that the present spouse holds a firm conviction that his/her spouse is already dead and alleges the same in his/her petition. Belief is a state of the mind which may only be established by direct evidence or circumstantial evidence that tends, even in a slight degree, to elucidate the inquiry or assist to a determination probably founded in truth.<sup>16</sup> At the same time, the law does not demand positive certainty of the absent spouse’s death, for to do so would run counter to the very essence of a petition for declaration of presumptive death. Thus, to meet the requirement of the law, the present spouse must allege and prove that his/her belief is the result of proper and honest-to-goodness inquiries and efforts to locate the absent spouse and determine whether he/she is still alive or not. The term “proper and honest-to-goodness inquiries and efforts” is tantamount to diligent and reasonable inquiries and search to ascertain the absent spouse’s whereabouts.

---

<sup>15</sup> 783 Phil. 485, 492 (2016).

<sup>16</sup> *Republic v. Court of Appeals*, 513 Phil. 391, 397 (2005).

Y

In this case, the RTC and the CA were in unison in holding that the efforts exerted by the respondent are adequate to substantiate her belief that Reneto was already dead. But a careful examination of the records proved otherwise.

Respondent's so-called "earnest efforts" only consisted of two instances: (1) from Cotabato, respondent went to Manila and stayed there for seven months to look for Reneto; and (2) respondent went to Davao del Norte, Reneto's birthplace, to inquire about her husband's whereabouts from his family and relatives. When Reneto's family members denied knowing his whereabouts, respondent took it as gospel truth without even bothering to inquire from the neighbors or other disinterested persons as to the veracity of their narrative. She heavily relied on the uncorroborated and naturally biased statement of her husband's relatives. Interestingly, respondent did not present Reneto's family and relatives who could have attested that she personally inquired from them about Reneto's whereabouts and that she exerted active efforts to ascertain his location and status. Time and again, we have held that the present spouse's bare assertion that he inquired from his friends or from the relatives of his absent spouse about the latter's whereabouts is insufficient especially when the names of the persons from whom he made inquiries were not identified in the testimony nor presented as witnesses,<sup>17</sup> as in this case.

It bears stressing that other than the above "earnest efforts," respondent made no further attempt to find her husband. The fact that respondent worked abroad does not even bolster her claim that she extended her search for Reneto since it cannot be determined from her allegations that she purposely went to the country where her husband was deployed to look for him. All that she stipulated in her petition was that she went abroad in 2004 and returned in the Philippines in 2008 without any information as to Reneto's whereabouts.

Furthermore, it perplexes the court that notwithstanding Reneto's absence for years, respondent never reported the matter to the local police or local government unit and sought its help in looking for her husband. When she was still working abroad, respondent did not coordinate with the Philippine consul office to express her serious concern for the safety and welfare of her missing husband and ask for its assistance. Respondent did not even offer plausible explanation as to why she failed to secure the assistance of the authorities which a person of ordinary prudence would have done under a similar circumstance.

---

<sup>17</sup> *Republic v. Nolasco*, 292-A Phil. 102, 112 (1993); *Republic v. Cantor*, supra note 11, at 133; *Republic v. Tampus*, supra note 15, at 493.


Y

A claim of a diligent search cannot be given credence *sans* evidentiary support. Basic is the rule that one who alleges a fact has the burden of proving it and mere allegation is not evidence;<sup>18</sup> thus, respondent should prove her allegation that she exercised the degree of diligence required for the search of her missing husband. Lamentably, respondent failed to discharge this burden.

There being no basis of respondent's "well-founded belief" that Reneto is already dead, the petition for declaration of presumptive death must perforce be denied.

**WHEREFORE**, the petition is **GRANTED**. The Decision dated November 28, 2013 and the Resolution dated May 26, 2014 of the Court of Appeals-Cagayan de Oro City in CA-G.R. SP No. 05084[-MIN] are **REVERSED** and **SET ASIDE**. The petition of respondent Leilanie Dela Cruz Fenol to have her husband, Reneto Alilongan Suminguit, declared presumptively dead is **DENIED**.

**SO ORDERED.**

  
**JOSE C. REYES, JR.**  
*Associate Justice*

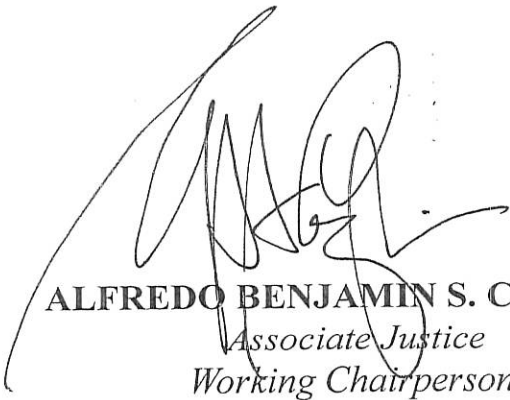
**WE CONCUR:**

  
**DIOSDADO M. PERALTA**  
*Chief Justice*  
*Chairperson*

---

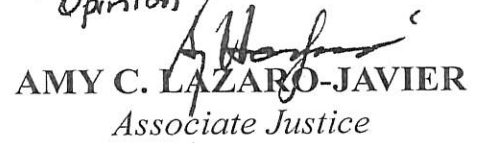
<sup>18</sup> Supra note 11 at 128.



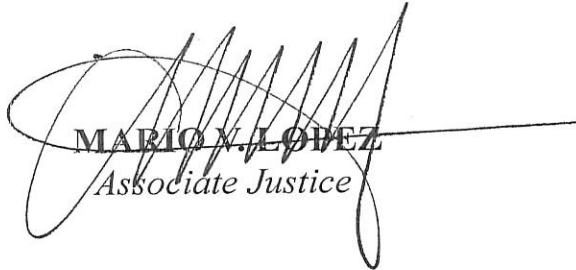


**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*  
*Working Chairperson*

*Pls. see Dissenting  
Opinion*



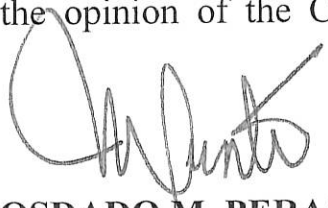
**AMY C. LAZARO-JAVIER**  
*Associate Justice*



**MARIO N. LOPEZ**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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.



**DIOSDADO M. PERALTA**  
*Chief Justice*

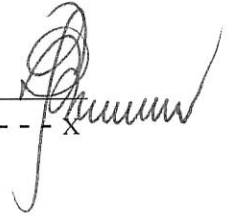


**FIRST DIVISION**  
**Agenda of June 10, 2020**  
**Item No. 101**

**G.R. No. 212726 (*Republic of the Philippines v. Leilanie Dela Cruz Fenol*).**

**Promulgated:**

**JUN 10 2020**



x - - - - -

**SEPARATE CONCURRING OPINION**

**PERALTA, C.J.:**

I concur with the *ponencia* and vote to deny the petition of respondent Leilanie Dela Cruz Fenol to have her husband, Reneto Alilongan Suminguit, declared presumptively dead.

To recall, Leilanie and Reneto were married on July 8, 2000. In January 2001, Reneto left their conjugal home in Cotabato and went to Manila to apply for work abroad. Since then, he has neither come back nor given word to Leilanie as to his whereabouts. Consequently, Leilanie filed a Petition for Declaration of Presumptive Death of Reneto on November 16, 2009. In the petition, she alleged that she went to Manila in 2002 and stayed there for seven (7) months to look for Reneto. Then, she went to Davao del Norte to inquire about his whereabouts from his relatives. In 2004, she worked overseas and returned to the Philippines in 2008. But despite her efforts in going to said places, she still failed to locate Reneto who had been missing for a period of more than eight (8) years already.

The Court had consistently resolved this matter, time and again, in several of its pronouncements, imposing the same stringent requirements each time.

As early as 1993, the Court, in *Republic v. Nolasco*,<sup>1</sup> denied Nolasco's petition to declare his wife as presumptively dead finding that he did not possess a "well-founded belief" that she was already dead. There, Nolasco married his wife, a British woman, in Antique, Philippines in 1982. But in 1983, she left their home while he was on board a vessel working as a seafarer. Consequently, he filed the petition. The Court, however, rejected the same and ruled as insufficient Nolasco's efforts consisting of: (1) searching for his wife abroad; (2) writing letters to her; and (3) inquiring

---

<sup>1</sup> 292-A Phil. 102 (1993).



from friends regarding her whereabouts. Specifically, We found that Nolasco could have easily sought the help of local authorities or of the British Embassy. But instead, he secured another seaman's contract, went to London, a "vast city of many millions of inhabitants," to look for her there. Also, while Nolasco claims to have inquired from their friends as to her whereabouts, he neither presented those friends to testify let alone identified them in his own testimony. In the end, We ruled that his evidence merely tended to show that his spouse had chosen not to communicate with him but not that she was dead.

In 2012, the Court had occasion to reiterate, in *Republic v. Granada*,<sup>2</sup> the stringent requirements laid down in *Nolasco*. In said case, respondent Granada married her husband in 1991 who left in 1994 to seek employment in Taiwan. After nine (9) years of waiting, Granada sought to declare her husband presumptively dead claiming that from the time he left in 1991, she had not received any communication from him. In support of her petition, she presented her brother who testified that he asked the relatives of her husband regarding the latter's whereabouts, but to no avail. The Court, however, found said testimony insufficient to show that Granada duly conducted a diligent search of her husband. Fatal to her case were her failure to: (1) present these relatives to corroborate her brother's testimony; (2) seek information from the Taiwanese Consular Office or assistance from other government agencies in Taiwan or the Philippines; and (3) utilize such other means to search for her husband such as mass media.

Not long after, the Court denied another petition for declaration of presumptive death in *Republic v. Cantor*.<sup>3</sup> This time, it was a petition filed by respondent Cantor concerning her husband who left their home in January 1998 due to a quarrel they had about her "inability to reach sexual climax," just less than a year from their marriage in September 1997. But the Court found that the following efforts of Cantor fell short of the stringent standard required by jurisprudence: (1) making inquiries about her husband's whereabouts from her in-laws, neighbors and friends; and (2) whenever she went to a hospital, she saw to it that she looked through the patients' directory, hoping to find Jerry. As with *Granada* and *Nolasco*, We found that Cantor failed to present as witnesses her husband's relatives and friends, to report the absence to the police, as well as to seek the aid of authorities.

Recently, in *Republic v. Tampus*,<sup>4</sup> and *Republic v. Sareñogon, Jr.*,<sup>5</sup> the Court remained consistent with this prevailing standard of well-founded belief. In the former, respondent Tampus filed her petition claiming that she firmly believes that her husband, who left her for Jolo, Sulu as a member of

---

<sup>2</sup> G.R. No. 187512, June 13, 2012, 687 Phil. 403, 412 (2012).

<sup>3</sup> 723 Phil. 114, 132 (2013).

<sup>4</sup> 783 Phil. 485 (2016).

<sup>5</sup> 780 Phil. 738, 763 (2016).



the Armed Forces of the Philippines (SFP), is already dead in view of the fact that she has not heard from him for a period of thirty-three (33) years since he left. In the latter, respondent Sareñogon sought to declare his wife presumptively dead as he had not heard from her for over ten (10) years since the time he left to work as a seaman and the time she left for Hong Kong as a domestic helper. In both cases, We resolved to deny the petitions of the present spouses to declare their absent spouse as presumptively dead for the following reasons: (1) failure to call to the witness stand the specific relatives and friends of the missing spouse; and (2) failure to seek assistance from the pertinent government agencies and the media.

Thus, on the basis of current and unwavering case law on the matter, I concur with the *ponencia* in finding that Leilanie’s bare assertion that she exerted efforts to search for her absent husband in going to Manila and Davao Del Norte to ask the relatives of said spouse regarding his whereabouts cannot support her claim of well-founded belief that her husband is already dead. As in the cases cited above, she similarly failed to present corroborative proof consisting of testimonies of her in-laws as well as reports to and inquiries with the police and other pertinent government authorities.

It must be remembered that the Petition for Declaration of Presumptive Death filed by Leilanie herein is one for purposes of contracting a subsequent marriage under Article 41 of the Family Code which states:

Art. 41. 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 provision of Article 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.

In *Nolasco*, the Court pointed out that Article 41 expressly imposed a standard stricter than that of the old Article 83<sup>6</sup> of the Civil Code. In the

---

<sup>6</sup> Pertinent portions of Article 83 of the Civil Code read:

Art. 83. Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any other person other than such first spouse shall be illegal and void from its performance, unless:

x x x x

(2) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive,



latter, it is merely required that there be *no news that such absentee is still alive; or the absentee is generally considered to be dead and believed to be so by the spouse present, or is presumed dead* under Articles 390 and 391 of the Civil Code. But in the former, the present spouse must have a "*well-founded belief*" that the absent spouse is already dead before a petition for declaration of presumptive death can be granted. In particular, he or she must sufficiently establish the following: (1) that the absent spouse has been missing for four consecutive years, or two consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391, Civil Code; (2) that the present spouse wishes to remarry; (3) that the present spouse has a *well-founded belief that the absentee is dead*; and (4) that the present spouse files a summary proceeding for the declaration of presumptive death of the absentee."

The records of the instant case, however, merely tend to show an absence of news that Reneto is alive under the old Civil Code but not so much the required well-founded belief that he is already dead under the present Article 41 of the Family Code. To repeat, after Reneto left their home in 2001, Leilanie's efforts merely consisted of going to Manila for work, Davao del Norte to talk to Reneto's relatives, and abroad, again, for work.

If one would really think about it, however, these jurisprudential requirements on "well-founded belief" may be designated as "stringent," but the same is not that difficult to achieve. On the contrary, I see nothing impractical nor costly about going to the police authorities to inquire about your spouse or asking said spouse's relatives to testify. After all, it is a search of a missing person none other than your husband or wife who may already be dead. It bears emphasis that Leilanie, here, had travelled far and wide from Cotabato to Manila to Davao del Norte and even overseas allegedly in search of her absent husband Reneto. It is, therefore, rather odd that she could not make a quick walk to the police station especially in view of the great distance that she already conquered.

In the end, it must be remembered that the purpose of the "stricter standard approach" is to ensure that a petition for declaration of presumptive death under Article 41 of the Family Code is not used as a tool to conveniently circumvent the laws on marriage.<sup>7</sup> It is a basic policy of the State to protect the institution of marriage as a family's foundation. Indeed, the Court is fully aware of the possible collusion between spouses to utilize the summary nature of said Article 41 in cases when they find it impossible

---

or if the absentee, though he has been absent for less than seven years, is generally considered as dead and believed to be so by the spouse present at the time of the contracting such subsequent marriage, or if the absentee is presumed dead according to articles 390 and 391. The marriage so contracted shall be valid in any of the three cases until declared null and void by a competent court."

7

*Republic v. Cantor*, *supra* note 3, at 133-134.

to dissolve the marital bonds through existing legal means. For the purposes of remarriage, therefore, We must see to it that spouses should not be allowed, by the simple expedient of agreeing that one of them leave the conjugal abode and never to return again, to effectively evade the laws on marriage.<sup>8</sup>



**DIOSDADO M. PERALTA**  
Chief Justice

---


<sup>8</sup>

*Republic v. Nolasco, supra* note 1.



JUN 10 2020

X-----



DISSENTING OPINION

LAZARO-JAVIER, J.:

The majority opinion grants the petition of the Republic of the Philippines to reverse and set aside the affirmance of the declaration of presumptive death of respondent's husband Reneto Alilongan Suminguit.

I respectfully dissent.

Article 41 of the Family Code enumerates the following requisites for declaration of presumptive death: 1) the absent spouse has been missing for four (4) consecutive years, or two (2) consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391 of the Civil Code;<sup>1</sup> 2) the present spouse wishes to remarry; 3) the present spouse has a well-founded belief that the absentee is dead; and 4) the present spouse files for a summary proceeding for the declaration of presumptive death of the absentee.<sup>2</sup>

Here, the Republic, through the Office of the Solicitor General (OSG) argues that Leilanie's trips to Manila and Davao del Norte in search of her husband were not sufficient<sup>3</sup> to prove the facts surrounding his disappearance. Too, it faults Leilanie for not reporting Reneto's disappearance to the authorities and for not presenting other witnesses in support of her allegations.<sup>4</sup> Due to these shortcomings, the OSG concludes that Leilanie fell short of the diligence required by law and jurisprudence to establish a well-founded belief that her husband is presumably dead.

The majority opinion agrees with the Republic that Leilanie's trips to Manila and Davao del Norte and her heavy reliance on the statements made by her husband's family and relatives without presenting them as witnesses, and without seeking assistance to proper authorities cannot be concluded as earnest and diligent efforts to comply with the stringent requirement of "well-founded belief." In *Republic v. Cantor*,<sup>5</sup> however, the Court ruled that

<sup>1</sup> Art. 391. The following shall be presumed dead for all purposes, including the division of the estate among the heirs: (1) A person on board a vessel lost during a sea voyage, or an aeroplane which is missing, who has not been heard of for four years since the loss of the vessel or aeroplane; (2) A person in the armed forces who has taken part in war, and has been missing for four years; (3) A person who has been in danger of death under other circumstances and his existence has not been known for four years.

<sup>2</sup> See *Republic v. Tampus*, 783 Phil. 485, 491 (2016, citing *Republic v. Cantor*, 723 Phil. 114, 127-129 (2013); *Republic v. Granada*, 687 Phil. 403, 413 (2012); *Republic v. Nolasco*, 292-A Phil. 102, 109 (1993).

<sup>3</sup> *Rollo*, p. 20.

<sup>4</sup> *Id.*

<sup>5</sup> 723 Phil 114, 129 (2013).





whether one has a “well-founded belief” that his or her spouse is dead depends on the unique circumstances of each case and there is no exact definition nor set standard or procedure in its determination, thus:

The law did not define what is meant by “well-founded belief.” It **depends upon the circumstances of each particular case.** Its determination, so to speak, remains on a case-to-case basis. To be able to comply with this requirement, the present spouse must prove that his/her belief was the result of **diligent and reasonable efforts and inquiries** to locate the absent spouse and that based on these efforts and inquiries, he/she **believes** that under the circumstances, the absent spouse is already dead. xxx <sup>6</sup> (emphasis added)

Here, sometime in January 2001, Leilanie’s husband Reneto left their conjugal home in Malayan, M’lang Cotabato<sup>7</sup> and went to Manila to apply for work overseas. Reneto, however, never returned and his whereabouts since then had remained unknown.<sup>8</sup> Leilanie went to Manila and stayed there for seven (7) months to locate her husband but was not able to find him.<sup>9</sup> In 2004, Leilanie went abroad to work, and at the same time, continued her search for Reneto.<sup>10</sup> Her search abroad, however, was as futile as before.<sup>11</sup> Reneto’s whereabouts had remained unknown and no one among his friends, acquaintances and relatives abroad knew of it. Thus, after three (3) years,<sup>12</sup> Leilanie returned to the Philippines, resumed her search for her husband but she never succeeded.<sup>13</sup> She went to Cayawan, Davao del Norte, her husband’s birthplace, where she was able to talk with Reneto’s family and relatives, but they said they had no knowledge of Reneto’s whereabouts<sup>14</sup> nor heard a single news whether Reneto was still alive or already dead.

Leilanie’s lack of resources appears on record. When Reneto left the conjugal dwelling in January 2001, Leilanie single-handedly raised their two-month old baby,<sup>15</sup> without a stable source of income. Though she had no means to support their daily needs and depended on the meager allowance from her mother,<sup>16</sup> Leilanie was determined to find her missing husband. She travelled to Manila, Davao del Norte, and even abroad to search for Reneto. The financial difficulties and emotional struggles she and her daughter had to endure did not deter her from traversing different places to search and find him. She must have just started a new life, begun a career, and moved on from the despair of spousal abandonment yet, she had a resolute heart in her search for Reneto. In fine, Leilanie exerted her best efforts to locate her missing husband. She has shown “honest to goodness” efforts required in our

---

<sup>6</sup> *Id.*

<sup>7</sup> *Rollo*, p. 36.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 37.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 12.

<sup>12</sup> *Id.* at 37.

<sup>13</sup> *Id.* at 38.

<sup>14</sup> *Id.* at 37.

<sup>15</sup> *Id.* at 32.

<sup>16</sup> *Id.*



jurisprudence to ascertain whether Reneto is still alive. To require Leilanie more than what she already did, and to demand that she should have tried much more or “hard enough,” without saying how it should be done, is utterly unfair.

Whether Leilanie has exerted her best efforts to look for her husband is a question of fact that has been resolved by the trial court and affirmed by the Court of Appeals. Since the evidence on record support such factual finding, the same is deemed conclusive and will ought not be disturbed at this late stage.

To emphasize, a “well-founded belief” should be based on the circumstances of each case; and here, Leilanie has established a well-founded belief that her husband Reneto is presumably dead. Her search for Reneto, though unsuccessful, was not a mere passive search. It was sincere, honest, diligent, religious, and laborious. It took her nine (9) years to finally concede and accept that Reneto could no longer be found. Reneto left Leilanie and their newborn child in 2001, or for almost nineteen (19) years now. No one has heard of him. Nothing has been heard from him. No one has seen him.

Article 41 allows a spouse to seek judicial relief on the basis of “reasonable belief.” Corollary to this, in declaring a person presumptively dead, it behooves the court to sustain a mere **presumption**. Absolute certainty is not a requisite. The *ponencia* even acknowledges this when it stated that: “the law does not demand positive certainty of the absent spouse’s death for to do so would run counter to the very essence of a petition for declaration of presumptive death.” Thus, to impose exacting standards and establish the same as solid proof of one’s death defies what the law requires, which is a mere presumption.<sup>17</sup>

In *Republic v. CA*,<sup>18</sup> the Court held that Article 41 of the Family Code had been resorted to by parties wishing to remarry knowing fully that their alleged missing spouses are alive and well. Thus, the law ordains that declarations of presumptive death are “without prejudice to the reappearance of the absent spouse.” More, Article 42 of the Family Code<sup>19</sup> decrees the automatic termination of the subsequent marriage entered into by the present spouse upon recording of the affidavit of reappearance by the absent spouse. Thus, in the distant possibility that Reneto reappears, the law provides remedies for him.

---

<sup>17</sup> J. Leonen, Dissenting Opinion in *Republic v. Sareñogon, Jr.*, 780 Phil. 738 (2016).

<sup>18</sup> See 513 Phil. 391 (2005), as cited in *Republic v. Cantor*.

<sup>19</sup> Article 42. The subsequent marriage referred to in the preceding Article shall be automatically terminated by the recording of the affidavit of reappearance of the absent spouse, unless there is a judgment annulling the previous marriage or declaring it void ab initio.

A sworn statement of the fact and circumstances of reappearance shall be recorded in the civil registry of the residence of the parties to the subsequent marriage at the instance of any interested person, with due notice to the spouses of the subsequent marriage and without prejudice to the fact of reappearance being judicially determined in case such fact is disputed.

All told, the Court of Appeals did not commit reversible error in affirming the trial court's declaration that Reneto Alilongan Suminguit is presumptively dead pursuant to Article 41 of the Family Code.

I, therefore, vote to **DENY** the petition and **AFFIRM** the dispositions of both the trial court and the Court of Appeals.

  
AMY C. LAZARO-JAVIER