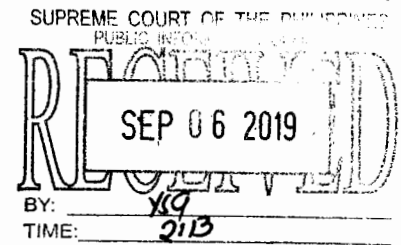




Republic of the Philippines  
Supreme Court  
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated June 10, 2019 which reads as follows:*

**“G.R. No. 200697 (*Rohaina Sumagka v. Abdulgani Sumagka*).** - The Muslim Code continues to govern the marital relations of Muslim spouses who first wed under Muslim law rites and decided to wed again under civil law rites.

Abdulgani Sumagka (Abdulgani) filed a Petition for Divorce by *Talaq*<sup>1</sup> against Rohaina Sumagka (Rohaina) in the 8<sup>th</sup> Shari’a Circuit Court (SCC) of Tacurong City. He filed his petition based on Article 46<sup>2</sup> of Presidential Decree No. 1083 or the Code of Muslim Personal Laws of the Philippines (Muslim Code). Abdulgani alleged in his petition that he and Rohaina, who are both Muslims, married in accordance with Muslim law at Tinagacan, General Santos City on July 18, 1998.<sup>3</sup> On February 4, 2004, they renewed their marriage vows under civil rites before Hon. Narciso RA. Grafilo Jr., the Municipal Mayor of Alabel, Sarangani Province.<sup>4</sup> Their blissful marriage turned sour when Abdulgani became a policeman in 2006 and was frequently assigned to different posts. The couple would often quarrel because of Rohaina’s jealousies and suspicions that Abdulgani was being unfaithful. Eventually, Rohaina, together with

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<sup>1</sup> *Rollo*, pp. 34-39.

<sup>2</sup> ARTICLE 46. *Divorce by talaq*. – (1) A divorce by *talaq* may be affected by the husband in a single repudiation of his wife during her non-menstrual period (*tuhr*) within which he has totally abstained from carnal relation with her. Any number of repudiations made during one *tuhr* shall constitute only one repudiation and shall become irrevocable after the expiration of the prescribed *’idda*.

(2) A husband who repudiates his wife, either for the first or second time, shall have the right to take her back (*ruju*) within the prescribed *’idda* by resumption of cohabitation without need of a new contract of marriage. Should he fail to do so, the repudiation shall become irrevocable (*Talaq bain sugra*).

<sup>3</sup> *Rollo*, p. 34.

<sup>4</sup> *Id.* at 40.

their three children, left the conjugal home and went to live with her parents in General Santos City. Abdulgani tried to woo her into returning home but to no avail.<sup>5</sup>

Abdulgani further alleged that he and Rohaina tried to settle their disagreement over his salary assignment to support Rohaina and their children before the Women and Children Protection Division, PNP Tumbler, General Santos City.<sup>6</sup> When they failed to reach an amicable settlement, Rohaina immediately filed a case against Abdulgani for Grave Misconduct on the ground of infidelity and abandonment. This, in turn, led him to file the Petition for Divorce by *Talaq*, praying that his marriage with Rohaina be dissolved, and that he be granted sole parental authority over their children.<sup>7</sup>

Rohaina filed an Answer with a prayer to dismiss the petition for lack of jurisdiction. She alleged that the SCC has no authority to take cognizance of the case because of their subsequent marriage under civil law. Rohaina further claimed that she was compelled to leave their conjugal home because of the recurrent abuses she and their children suffered in the hands of Abdulgani.<sup>8</sup>

In an Order<sup>9</sup> dated July 12, 2010, the SCC asserted its jurisdiction over the subject matter of the petition. It gave persuasive weight and credence to the law under which the marriage of the spouses was first celebrated.<sup>10</sup> Consequently, pursuant to Articles 160 and 161<sup>11</sup> of the Muslim Code, the SCC constituted the Agama

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<sup>5</sup> *Id.* at 40-41.

<sup>6</sup> *Id.* at 41.

<sup>7</sup> *Id.*

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

<sup>9</sup> *Rollo*, pp. 48-49.

<sup>10</sup> *Id.* at 49.

<sup>11</sup> ARTICLE 160. *Constitution.* – The *Shari'a* District Court or the *Shari'a* Circuit Court may, in appropriate cases, constitute an *Agama* Arbitration Council in the manner specified in this Title.

ARTICLE 161. *Divorce by talag and tafwid.* – (1) Any Muslim male who has pronounced a *talaq* shall, without delay, file with the Clerk of Court of the *Shari'a* Circuit Court of the place where his family resides a written notice of such fact and the circumstances attended thereto, after having served a copy thereof to the wife concerned. The *talaq* pronounced shall not become irrevocable until after the expiration of the prescribed *'idda*. The notice filed shall be conclusive evidence that *talaq* has been pronounced.

(2) Within seven days from receipt of notice, the Clerk of Court shall require each of the parties to nominate a representative. The representatives shall be appointed by the Court to constitute, together with the Clerk of Court as Chairman, an *Agama* Arbitration Council. The *Agama* Arbitration Council shall submit to the Court a report on the result of the arbitration, on the basis of which and such other evidence as may be allowed, the Court shall issue the corresponding order. (Emphasis supplied.)

Arbitration Council (Agama Council), which then submitted a report<sup>12</sup> stating:

1. Effective today, spouses Abdulgani Sumagka and Rohaina Mamalompong with the consent of their representatives agreed for their Divorce;
2. That the wife shall observe her prescribed Iddah of three months starting today, March 7, 2011, and entitled for three months support in the amount of twenty thousand pesos to be given next month, April 2011;
3. The custody of their three children are awarded to the mother which custody to their daughters shall extinguish upon her remarriage. The father is granted with visitation rights anytime with the permission of the mother;
4. That the children are entitled to monthly support from their father of four thousand five hundred pesos, every end of the month;<sup>13</sup>

On March 14, 2011, the SCC granted the petition, declaring that the divorce by *Talaq* is in accordance with the provisions of the Muslim Code. It issued a Decree of Divorce<sup>14</sup> stating:

WHEREFORE, upon all the foregoing considerations, IT IS DECREED THAT:

1. DECLARING THE DIVORCE as in accordance with Article 45 (a), 46, 160, and 161, of PD 1083, otherwise known as the Code of Muslim Personal Laws of the Philippines, and hereby granted the petition. Henceforth, the marriage bond of spouses ABDULGANI C. SUMAGKA and ROHAINA MAMALUMPONG, husband and wife, respectively, DISSOLVED AND TERMINATED[;]
2. IMPOSING the 3 MONTHS IDDAH (waiting) PERIOD for the respondent Rohaina Mamalumpong starting March 7, 2011 to end June 7, 2011. Thereafter this Divorce shall become IRREVOCABLE;
3. DIRECTING the petitioner, Abdulgani C. Sumagka, to deliver the amount of twenty five

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<sup>12</sup> Rollo, p. 56.

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

<sup>14</sup> Rollo, pp. 40-47.

thousand pesos (Php 25,000.00) of three (3) months Iddah support to the respondent, Rohaina Mamalumpang in April 2011;

4. AWARDING the custody of Regina M. Sumagka, Al-Jame M. Sumagka and Rajah Asaya M. Sumagka to the respondent, Rohaina Mamalumpang, with rights of visitation of the petitioner, Abdulgani C. Sumagka anytime of the day. The petitioner is also granted to take out any or all children from the respondent's house with her permission during his Off duty on non-school days preferably Saturday and Sunday. The custody of the respondent, Rohaina Mamalumpang for daughter, Regina M. Sumagka shall be extinguished upon her remarriage, and shall be transferred to her father, Abdulgani C. Sumagka;
5. OBLIGATING the petitioner, Abdulgani C. Sumagka to deliver the amount of Php 4,500 every end of the month, starting March 2011 and every month thereafter as support to his aforesaid 3 children, share and share alike, subject to increase or adjustment upon [sic] his resources improves;
6. GRANTING the respondent to resume to her MAIDEN NAME, thereby dropping Sumagka in all her transactions, both private and public instruments and papers;
7. ORDERING the petitioner, after 15 days from receipt of this Decree, to register the Divorce with the Shari'a Circuit Registrar, this Court for record and registration pursuant to Art. 81, of P.D. 1083, otherwise known as the Code of Muslim Personal Laws of the Philippines.
8. Upon this divorce becomes irrevocable, the Clerk of Court of this court is ordered to furnish copy of this Decree together with the Certificate of Divorce to the office of the Local Civil Registrar of Alabel, Sarangani Province where the marriage of the parties was registered in compliance with the NSO Administrative Order No. 1, series of 2005 for annotation in the marriage registries book of that Office.

IT IS SO DECREED.<sup>15</sup>

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<sup>15</sup> *Id.* at 46-47.

The SCC explained that the Muslim Code is silent as to the grounds upon which a husband may divorce his wife by *Talaq*. However, consistent with the commentaries of a Muslim author, Asaf A.A. Fyzee, the court was convinced that a Muslim husband can repudiate his wife anytime with or without cause. It held that “to withhold such power of divorce of [sic] the husband is repugnant to the basic tenet in Shariah that repudiation or *talaq* is in the hands of the husband.”<sup>16</sup> The SCC found that the quarrels of the spouses arose from Rohaina’s bare suspicion of infidelity against Abdulgani thus, under Islamic jurisprudence, divorce is the answer when a man complains of his wife’s ill conduct.<sup>17</sup>

Rohaina appealed to the 5<sup>th</sup> Shari’a District Court (SDC) of Cotabato City, asserting that civil law governs her marriage with Abdulgani. She also submitted that the report of the Agama Council is invalid because it was not signed personally by one of its members, Limbong Mamalompong (Limbong), but by another person.<sup>18</sup>

In its Order<sup>19</sup> dated November 2, 2011, the SDC dismissed Rohaina’s appeal and affirmed the Decree of Divorce. Citing Article 155 (2)(a)<sup>20</sup> of the Muslim Code, the SDC ruled that the law on marriage that will govern parties who are both Muslims is the Code of Muslim Personal Laws of the Philippines. Hence, the SCC has exclusive original jurisdiction over the case.<sup>21</sup> The SDC also observed that the issue on jurisdiction had already been raised before the SCC, which resolved it through the adoption of the commentaries of Justice Jinal D. Rasul, to wit:

In mixed marriages, civil law applies, if civil rite is followed and Islamic Law is applied, if Islamic rite is followed. If both Civil rite and Muslim rite are followed in marriages, the first rite is validating while the second rite is merely ceremonial.<sup>22</sup>

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<sup>16</sup> *Id.* at 44.

<sup>17</sup> *Id.* at 45.

<sup>18</sup> *Id.* at 22.

<sup>19</sup> *Id.* at 20-24.

<sup>20</sup> ARTICLE 155. *Jurisdiction.* – The Shari’a Circuit Courts shall have exclusive original jurisdiction over:

(1) All cases involving offenses defined and punished under this Code.

(2) All civil actions and proceedings between parties who are Muslims or have been married in accordance with Article 13 involving disputes relating to:

(a) Marriage; x x x

<sup>21</sup> *Rollo*, p. 24.

<sup>22</sup> *Id.* at 22.

As regards the issue of authentication of the Agama Council's report, the SDC held that the non-signing of Limbong over his name is satisfactorily explained by the SCC in its Order dated March 14, 2011, where it stated that Limbong actively participated in the arbitration hearings but failed to return in the afternoon session for the mechanical signing of the report. The SDC noted that Limbong did not question the contents of the report or the fact that someone else signed for him, and that, in any case, majority of the Agama Council's members signed the report.<sup>23</sup>

Rohaina moved for reconsideration but the same was denied. Hence, this petition where the issues presented are: (1) whether civil law governs the marriage of the spouses; and (2) whether the report of the Agama Council is valid.

We deny the petition.

Article 13 of the Muslim Code clearly provides that the Code applies to the marriage and divorce of spouses who are both Muslims. Thus:

**TITLE II**  
**MARRIAGE AND DIVORCE**  
**Chapter One**  
**APPLICABILITY CLAUSE**

**Article 13. Application.**

(1) **The provisions of this Title shall apply to marriage and divorce wherein both parties are Muslims**, or wherein only the male party is a Muslim and the marriage is solemnized in accordance with Muslim law or this Code in any part of the Philippines.

(2) In case of marriage between a Muslim and a non-Muslim, solemnized not in accordance with Muslim law or this Code, the Civil Code of the Philippines shall apply.

(3) Subject to the provisions of the preceding paragraphs, **the essential requisites and legal impediments to marriage, divorce**, paternity and filiation, guardianship and custody of minors, support and maintenance, claims for customary dower (*mahr*), betrothal, breach of contract to marry, solemnization and registration of marriage

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<sup>23</sup> *Id.* at 24

and divorce, rights and obligations between husband and wife parental authority, and the properly relations between husband and wife **shall be governed by this Code and other applicable Muslim laws.** (Emphasis supplied.)

Here, it is undisputed that Rohaina and Abdulgani are Muslims whose marriage was first celebrated under Muslim rites. Barely six years after, Rohaina and Abdulgani renewed their wedding vows in a civil ceremony. This subsequent civil law marriage did not supersede their previous marriage, such that civil law would now govern. The Muslim Code under which their first marriage was celebrated still applies.

We agree with the SCC and SDC that the first marriage of Rohaina and Abdulgani is the validating rite while the second marriage is merely ceremonial. In *Zamoranos v. People*,<sup>24</sup> we cited the commentaries of Justice Jainal Rasul<sup>25</sup> and Dr. Ibrahim Ghazali, two experts on the subject matter of Muslim personal laws, in relation to the so-called combined Muslim-Civil wedding rites, to wit:

**If both parties are Muslims, there is a presumption that the Muslim Code or Muslim law is complied with. If together with it or in addition to it, the marriage is likewise solemnized in accordance with the Civil Code of the Philippines, in a so-called combined Muslim-Civil marriage rites whichever comes first is the validating rite and the second rite is merely ceremonial one. But, in this case, as long as both parties are Muslims, this Muslim Code will apply.** In effect, two situations will arise, in the application of this Muslim Code or Muslim law, that is, when both parties are Muslims and when the male party is a Muslim and the marriage is solemnized in accordance with Muslim Code or Muslim law. A third situation occur[s] when the Civil Code of the Philippines will govern the marriage and divorce of the parties, if the male party is a Muslim and the marriage is solemnized in accordance with the Civil Code.<sup>26</sup> (Emphasis supplied.)

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<sup>24</sup> G.R. No. 193902, 193908 & 194075, June 1, 2011, 650 SCRA 304.

<sup>25</sup> Justice Rasul is a retired Associate Justice of the Court of Appeals. He also headed the Shari'a and Islamic Jurisprudence Department of the Philippine Judicial Academy from 2005-2012. (See PHILJA Annual Reports, 2005-2012).

<sup>26</sup> *Supra* note 24, p. 325.

Although it dealt with the issue of bigamy, the facts of *Zamoranos* are analogous with those of the present case. Zamoranos and her husband are Muslims. They married each other first under Muslim rites followed by a ceremony under civil law rites. The marriage was later dissolved through divorce by *Talaq*. Zamoranos then contracted a subsequent marriage with another Muslim, whom she also married under Muslim and civil law rites. Zamoranos' relationship with her second husband did not also work out, with the latter filing a case for bigamy against her. The second husband alleged that Zamoranos' first marriage was still subsisting when they got married. He denied that Zamoranos is a Muslim who was previously married and divorced under Islamic rites. We ruled in *Zamoranos* that:

**Zamoranos is a Muslim who married another Muslim under Islamic rites. Accordingly, the nature, consequences, and incidents of such marriage are governed by P.D. No. 1083 [or the Muslim Code].**

X X X

Nonetheless, it must be pointed out that even in criminal cases, the trial court must have jurisdiction over the subject matter of the offense. **In this case, the charge of Bigamy hinges on Pacasums claim that Zamoranos is not a Muslim, and her marriage to De Guzman was governed by civil law. This is obviously far from the truth,** and the fact of Zamoranos Muslim status should have been apparent to both lower courts, the RTC, Branch 6, Iligan City, and the CA.<sup>27</sup> (Emphasis supplied)

Referring to Justice Rasul and Dr. Ghazali's Commentaries and Jurisprudence on the Muslim Code of the Philippines, we recognized in *Zamoranos* that in combined Muslim and civil law wedding rites where both parties are Muslims, the law governing the first marriage prevails. It is of no moment that a second wedding between the parties was celebrated using the solemnities of civil law. The second wedding cannot and does not alter the character of the first wedding. After all, it is the first wedding which creates the marriage bonds between the parties.

Thus, in this case, the law of Rohaina and Abdulgani's first marriage takes precedence. The nature, incidents, and consequences

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<sup>27</sup> *Supra* note 24, pp.320-321.

of their marriage are governed by the Muslim Code. They cannot be any more married than they already were when they subsequently wedded before a municipal mayor.

In fine, considering that the Muslim Code governs the marriage of Rohaina and Abdulgani, the latter may legally avail of divorce by *Talaq* under the Code.

We also sustain the findings of the SCC and the SDC on the validity of the report of the Agama Council.

Pursuant to Articles 160 and 161 of the Muslim Code, the SCC or the SDC may constitute an Agama Council to aid the court in cases of divorce by *Talaq*, viz:

**ARTICLE 160. Constitution. – The *Shari'a* District Court or the *Shari'a* Circuit Court may, in appropriate cases, constitute an *Agama* Arbitration Council in the manner specified in this Title.**

**ARTICLE 161. Divorce by *talaq* and *tafwid*.**

(1) Any Muslim male who has pronounced a *talaq* shall, without delay, file with the Clerk of Court of the *Shari'a* Circuit Court of the place where his family resides a written notice of such fact and the circumstances attended thereto, after having served a copy thereof to the wife concerned. The *talaq* pronounced shall not become irrevocable until after the expiration of the prescribed *'idda*. The notice filed shall be conclusive evidence that *talaq* has been pronounced.

(2) Within seven days from receipt of notice, the Clerk of Court shall require each of the parties to nominate a representative. **The representatives shall be appointed by the Court to constitute, together with the Clerk of Court as Chairman, an *Agama* Arbitration Council. The *Agama* Arbitration Council shall submit to the Court a report on the result of the arbitration, on the basis of which and such other evidence as may be allowed, the Court shall issue the corresponding order. x x x (Emphasis supplied.)**

Here, the SCC constituted the Agama Council with Rohaina and Abdulgani each appointing their representatives. Limbong, whose

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signature does not appear in the report submitted by the Agama Council, is the appointed representative of Rohaina. Rohaina argues that the report is void on the basis of Limbong's missing signature. We disagree.

The Agama Council is given leeway on how it would conduct the arbitration proceedings in relation to divorces under the Muslim Code. Section 19 of the Special Rules of Procedure Governing Philippine Shari'a Courts states:

Section 19. *Agama Arbitration, how conducted.* – The Agama Arbitration Council, after its constitution pursuant to the provisions of the Code of Muslim Personal Laws, **shall conduct the arbitration proceedings in accordance with the method it deems appropriate**, taking into consideration the circumstances of the dispute, the conciliation of the parties, the interest of the children, if any, and other third parties involved, and the need for a speedy settlement of the dispute. However, no arbitration proceedings shall take place *ex parte*. (Emphasis supplied.)

We agree with the explanation of the SCC, as affirmed by the SDC, that the reason why the Agama Council allowed Limbong's signature to be affixed by another person on Limbong's behalf was his failure to return on the afternoon session of the arbitration hearings for the mechanical signing of the report.<sup>28</sup> The SCC found that Limbong actively participated in the arbitration proceedings and did not even question the contents of the report.<sup>29</sup>

Factual findings of the trial court are accorded high respect and are generally not disturbed by the appellate courts, unless found to be clearly arbitrary or baseless.<sup>30</sup> In this connection, we see no reason to deviate from the rulings of the SCC and SDC finding the report to be valid.

**WHEREFORE**, the petition is **DENIED** for lack of merit. The Orders dated November 2, 2011 and January 9, 2012 of the 5<sup>th</sup> Shari'a District Court of Cotabato City in SDC Appealed Case No. 2011-17 are hereby **AFFIRMED**.

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<sup>28</sup> *Rollo*, p. 24.

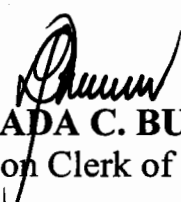
<sup>29</sup> *Id.*

<sup>30</sup> *Sazon v. Vasquez-Menancio*, G.R. No. 192085, February 22, 2012, 666 SCRA 707, 719, citing *People v. Agunias*, G.R. No. 121993, 344 Phil. 467; 279 SCRA 52, September 12, 1997.

June 10, 2019

**SO ORDERED.”** *Carandang, J., on leave.*

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court  
**367**

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