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SUPREME COURT
Manila

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AMADEA ANGELA K. AQUINO
Petitioner,

- versus -

G.R. No. 208912

RODOLFO C. AQUINO and
ABDULLAH C. AQUINO
Respondents.

X-----X

RODOLFO C. AQUINO
Petitioner,

- versus -

G.R. No. 208918

AMADEA ANGELA K. AQUINO
Respondent.

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COMMENT

The **Office of the Solicitor General**, in compliance with this Honorable Court's Resolution dated July 3, 2018, respectfully submits this Comment and states:

NATURE OF THE PETITION

1. The two (2) petitions subject of this Comment are both for Review on *Certiorari* under Rule 45 of the Revised Rules of Court.

2. In G.R. No. 208912, petitioner Amadea Angela Aquino¹ assails the Decision dated January 21, 2013 and Resolution dated July 24, 2013 rendered by the Court of

¹ Hereinafter referred to as "Amadea".

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Appeals² in CA-G.R. CV No. 016333-Min, titled "*Abdullah C. Aquino, Appellant vs. Amadea Angela K. Aquino, Appellee.*"

3. In G.R. No. 208918, petitioner Rodolfo C. Aquino³ questions the Decision dated August 23, 2012 and Resolution dated August 1, 2013 rendered by the Court of Appeals⁴ in CA-G.R. SP No. 002269-MIN, titled "*Rodolfo C. Aquino, Petitioner, vs. Amadea Angela C. Aquino, Respondent.*"

THE RELEVANT FACTUAL AND JUDICIAL ANTECEDENTS

4. The instant petitions sprung from the Petition for Settlement of Estate of the Late Miguel T. Aquino filed by petitioner Rodolfo C. Aquino. The case, docketed as Special Proceeding No. 6872-2003, was originally lodged before the Regional Trial Court of Davao City, Branch 33. Later on, however, the case was re-raffled to Branch 14 of the same Regional Trial Court.

5. The Court of Appeals in CA-G.R. SP No. 002269-MIN summarized the facts of the case, as follows:

Petitioner Rodolfo is the legitimate son of the spouses Miguel T. Aquino and Amadea C. Aquino. The couple have four legitimate children, namely, Abdullah, Wilfredo and petitioner Rodolfo. Miguel's wife, Amadea died on September 27, 1977. Wilfredo died on April 22, 1986 while Arturo died on January 10, 1978.

On July 5, 1999, Miguel Aquino died.

On May 7, 2003, petitioner Rodolfo filed the Petition (for intestate estate of the late Miguel T. Aquino) xxx [praying] that letters of administration be issued in favor of Rodolfo, being the son of the deceased Miguel.

In his petition, Rodolfo enumerated the names of the surviving heirs of Miguel, namely: Enerie Bernolo Aquino, Miguel's the second wife; sons Abdullah C. Aquino, Rodolfo

² Copies of said CA rulings are attached as Annexes "A" and "E" of the Petition in G.R. No. 208912.

³ Hereinafter referred to as "Rodolfo".

⁴ Copies of said CA rulings are attached as Annexes "A" and "B" of the Petition in G.R. No. 209018.

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C. Aquino; the surviving wife and children of Wilfredo Aquino. Rodolfo also mentioned Arturo Aquino, who died and predeceased his father Miguel T. Aquino, but made no mention of any surviving heir who shall represent him in the estate of Miguel.

On July 17, 2003 Amadea Angela K. Aquino ("Angela" for brevity) filed the Motion to be Included in the Distribution and Partition of Estate.

Angela alleged that she is the natural child of Arturo Aquino with Susan Kuan. Angela was born in Davao City on October 9, 1978. At the time she was conceived, both her parents were not suffering from any impediment to marry each other, and in fact the two have wedding plans set but her father was killed even before the wedding could be held before she was born. Angela also claims that from the time of her birth, she has been recognized by the Aquino clan as the natural child of Arturo Aquino. Miguel Aquino provided for the medical expenses of Angela's mother while the latter was still pregnant with Angela. When Angela was born, she and her mother lived with the Aquino family at their ancestral home. When she was baptized, her deceased father's brother, Abdulah signed in as one of her godparents. She was named after her grandmother, Amadea. Angela further narrates in her motion, that presently, she is residing at the Aquino clan's ancestral home, this is, in accordance with the instruction of Rodolfo. Miguel Aquino supported her since her birth and spent for her education from kinder to college and even bought a policy with the College Assurance Plan in her favor. As operator of a cockpit in Davao City, Miguel caused the chairs in the coliseum to be marked at the back with her name "Maggie". The Aquinos fondly call her Maggie. The proceeds collected from the use of the marked chairs went to her for support.

Angela further avers that before his death, Miguel dictated to his son, Rodolfo and grandson, Miguel Luis or Miko, the distribution of the more valuable properties in his estate. Among the instruction was to give the lot in

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front of LTA to her. The lot was delivered to her by Miko. To employees of the Aquino clan as well as in the community they belong, she was known to be a mother of the family.

Rodolfo and his brother Abdulah filed separate oppositions to the motion of Angela. Angela filed her Manifestation and Reply.

On February 22, 2005, Amadea filed the Motion for Distribution of Residue of Estate or for Allowance to the Heirs. Petitioner Rodolfo filed his Opposition thereto.⁵

6. On April 22, 2005, the trial court rendered its Order⁶ granting petitioner Amadea's Motion to be Included in the Distribution and Partition of Estate of the decedent. The dispositive portion of said Order reads, thus:

ACCORDINGLY, Amadea Angela K. Aquino is hereby considered and declared an acknowledged natural child of legitimated child of Arturo C. Aquino for purposes of determining here share in the estate of her grandfather, Miguel T. Aquino, in representation of her father Arturo, and pending distribution of the residual estate, the Administrator is hereby directed to immediately give her a monthly allowance of P64,000.00 upon the latter's posting a bond of P100,000.00.

SO ORDERED.

7. Feeling aggrieved, petitioner Rodolfo and respondent Abdullah C. Aquino⁷ filed their separate motions for reconsideration. However, the trial court denied both motions in its Order dated March 6, 2008.⁸

8. From there, petitioner Rodolfo and respondent Abdullah separately assailed the trial court's Orders dated April 22, 2005 and March 6, 2008.

⁵ Decision dated August 23, 2012 in CA-G.R. SP No. 002269-MIN, pp. 2-4.

⁶ See Annex "A" of Annex "C" of the petition in G.R. No. 209018.

⁷ Hereinafter referred to as "Abdullah".

⁸ See Annex "B" of Annex "C" of the petition in G.R. No. 209018.

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8.1. For his part, respondent Abdullah lodged an ordinary appeal before the *Court of Appeals of Cagayan de Oro City, Twenty-First Division*. The appeal was docketed as **CA G.R. CV No. 01633**.

8.2. On the other hand, petitioner Rodolfo filed a petition for *certiorari* under Rule 65 of the Revised Rules of Court, before the *Court of Appeals, Cagayan de Oro City, Twenty-Second Division*. The petition was docketed as **CA-G.R. SP No. 002269-MIN**.

9. On August 23, 2012, the Court of Appeals in CA-G.R. SP No. 002269-MIN rendered a Decision denying petitioner Rodolfo's petition, viz:

WHEREFORE, premises considered, the instant petition is DENIED. Costs against petitioner.

SO ORDERED.⁹

10. On September 25, 2012, petitioner Rodolfo moved for the reconsideration of the said August 23, 2012 Decision. The Court of Appeals, however, denied said motion through its Resolution dated August 1, 2013.

11. Meanwhile, on January 21, 2013, the Court of Appeals in CA G.R. CV No. 01633 rendered a Decision granting the appeal filed by herein respondent Abdullah. The dispositive portion of said Decision reads, thus:

WHEREFORE, premises considered, the Order dated April 22, 2005 of the Regional Trial Court, Branch 14, Davao City, as well as the Order dated March 6, 2008 are hereby **REVERSED AND SET ASIDE**. Movant-appellee Amadea Angela K. Aquino's, (1) July 2, 2003 Motion to be included in The Distribution and Partition of the Estate, and (2) February 22, 2005 Motion for Distribution of Residue of Estate or for Allowance to the Heirs are **DENIED** for her failure to prove her filiation with Arturo Aquino. Accordingly, movant-appellee Amadea Angela K. Aquino is

⁹ See p. 11 of Annex "A" of the petition in CA-G.R. SP No. 002269-MIN.

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hereby declared disqualified to inherit from the
intestate estate of decedent Miguel T. Aquino.

SO ORDERED.¹⁰

12. On March 8, 2013, petitioner Amadea moved for
the reconsideration of the said January 21, 2013 Decision.
However, the Court of Appeals rendered a Resolution dated
July 24, 2013 denying said motion.

13. Hence, the instant petitions.

ISSUES

I

WHETHER THE COURT OF APPEALS IN
CA-G.R. SP No. 002269-MIN ERRED
WHEN IT DENIED THE PETITION FILED
BY PETITIONER RODOLFO AQUINO.

II

WHETHER THE COURT OF APPEALS IN
CA G.R. CV No. 01633 ERRED WHEN IT
GRANTED THE APPEAL FILED BY
RESPONDENT ABDULLAH C. AQUINO

ARGUMENTS

I

THE COURT OF APPEALS CORRECTLY
DENIED THE PETITION IN CA-G.R. SP
No. 002269-MIN.

II

THE COURT OF APPEALS CORRECTLY
GRANTED THE APPEAL IN CA G.R. CV
No. 01633.

¹⁰ See p. 18 of Annex "A" of the petition in CA G.R. CV No. 01633.

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DISCUSSION

The Court of Appeals correctly denied the petition in CA-G.R. SP NO. 002269-MIN.

14. At the outset, it bears emphasis that the special civil action for *certiorari* is a limited form of review and is a remedy of last recourse. This Honorable Court has often reminded members of the bench and bar that this extraordinary action lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. It cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, *certiorari* not being a substitute for a lapsed or lost appeal. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion. ¹¹

15. Corollary to this, the proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to *certiorari* because one of the requirements for the latter remedy is the unavailability of appeal.¹²

16. In this connection, the OSG concurs with the Court of Appeals' ruling that petitioner Rodolfo availed himself of the wrong remedy when he resorted to a petition for *certiorari* under Rule 65. As correctly held by the Court of Appeals,

Under Section 1, Rule 109 of the Rules of Court, appeal, not *certiorari*, is the proper relief for the following orders/decisions in special proceedings, thus:

"Section 1. *Orders or judgments from which appeals may be taken.* — An interested person may appeal in

¹¹ *Malayang Manggawa ng Stayfast Phils., Inc. vs. NLRC, G.R. No. 155306, August 28, 2013.*

¹² *Dycoco, vs. CA, G.R. No. 147257, July 31, 2013.*

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special proceedings from an order or judgment rendered by a Court of First Instance or a Juvenile and Domestic Relations Court, where such order or judgment:

(a) Allows or disallows a will;

(b) **Determines who are the lawful heirs of a deceased person,** or the distributive share of the estate to which such person is entitled;

(c) Allows or disallows, in whole or in part, any claim against the estate of a deceased person, or any claim presented on behalf of the estate in offset to a claim against it;

(d) Settles the account of an executor, administrator, trustee or guardian;

(e) Constitutes, in proceedings relating to the settlement of the estate of a deceased person, or the administration of a trustee or guardian, a final determination in the lower court of the rights of the party appealing, except that no appeal shall be allowed from the appointment of a special administrator; and

(f) Is the final order or judgment rendered in the case, and affects the substantial rights of the person appealing unless it be an order granting or denying a motion for a new trial or for reconsideration.

xxx

An appeal is allowed in the aforesaid cases as these orders, decrees or judgments issued by a court in a special proceeding constitute a final determination of the rights of the parties so appealing. In contrast, interlocutory orders are not appealable as these are merely incidental to judicial proceedings. In these cases, the court issuing such orders retains control over the same and

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may thus modify, rescind, or revoke the same on sufficient grounds at any time before the final judgment [*Testate Estate of Maria Manuel vda de Biascan v. Rosalina C. Biascan*, G.R. No. 13871, 11 December 2000].

The assailed Order dated 22 April 2005, declaring Angela as "acknowledged natural child and or legitimated" child is in fact a determination by the trial court of a legal heir of deceased Miguel Aquino. By so ruling, the trial court has effectively determined that Angela should be included as heir of Miguel Aquino, among the surviving sons and wife of the deceased. As such, the same may be the proper subject of an appeal. This falls squarely under paragraph (b), Section 1, Rule 190 of the Rules of Court.

Obviously, petitioner, in filing the instant petition for *certiorari* under Rule 65 of the Rules of Court, availed of the wrong remedy, and the instant petition should have merited outright dismissal.¹³

17. It must be further noted in this regard that petitioner Rodolfo received a copy of the trial court's Order dated March 6, 2005, which denied his Motion for Reconsideration of the Order dated April 22, 2005, on March 11, 2008. Hence, he had fifteen (15) days from said date of receipt, or until **March 26, 2005**, to appeal the Order. However, instead of filing an appeal within said reglementary period, petitioner Rodolfo filed his petition for *certiorari* on April 3, 2008. Unfortunately, by that time, the 15-day reglementary period to interpose an appeal had already lapsed; therefore, the trial court's Orders dated April 22, 2005 and March 6, 2005 were supposed to have reached finality. Thus, if not for the timely appeal separately filed by respondent Abdullah, petitioner would have suffered the consequences of his costly mistake. As pointed out by this Honorable Court in *Nueva Ecija II Cooperative vs. Mapagu*,¹⁴

While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the

¹³ See pp. 6-7 of Annex "A" of the petition in CA-G.R. SP No. 002269-MIN.

¹⁴ G.R. No. 196084, February 15, 2017; citing *Gonzales v. Pe*, G.R. No. 167398, August 8, 2011, 655 SCRA 176.

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constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises a jurisdictional problem, as it deprives the appellate court of its jurisdiction over the appeal. After a decision is declared final and executory, vested rights are acquired by the winning party. Just as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the decision on the case.

18. The OSG further concurs with the Court of Appeals' findings that the petition in CA-G.R. SP No. 002269-MIN violated the rules against forum shopping and on *litis pendentia*.

19. There is forum shopping when as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or certiorari.¹⁵ Forum shopping exists when two or more actions involve the same transactions, essential facts, and circumstances, and raise identical causes of action, subject matter, and issues. The case of *Chua v. Metropolitan Bank & Trust Company*¹⁶ defined how forum shopping is committed:

Forum shopping can be committed in three ways: (1) **filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*);** (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action, but with different prayers (splitting causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).¹⁷

20. The rationale against forum shopping is that a party should not be allowed to pursue simultaneous

¹⁵ National Electrification Administration (NEA) v. Buenaventura, G.R. No. 132453, February 14, 2008.

¹⁶ G.R. No. 182311, August 19, 2009.

¹⁷ Emphasis supplied.

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remedies in two different *fora*. Filing multiple petitions or complaints constitutes abuse of court processes, which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts.¹⁸ Willful and deliberate violation of the rule against forum shopping is a ground for summary dismissal of the case; it may also constitute direct contempt.¹⁹ Considered a pernicious evil, it adversely affects the efficient administration of justice since it clogs the court dockets, unduly burdens the financial and human resources of the judiciary, and trifles with and mocks judicial processes.²⁰

21. *Litis pendentia* is a form of forum shopping. It refers to a situation where another action is pending between the same parties for the same cause of action so that one of these actions is unnecessary and vexatious. Its underlying principle is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action.²¹ To constitute *litis pendentia*, the following requisites must be present: (1) identity of the parties in the two actions; (2) substantial identity in the causes of action and in the reliefs sought by the parties; (3) and the identity between the two actions should be such that any judgment that may be rendered in one case, regardless of which party is successful, would amount to *res judicata* in the other.²²

22. Here, the elements of *litis pendentia* are all present. As correctly held by the Court of Appeals,

The instant petition and the appeal in CA-G.R. CV No. 01633 involves the same parties. Herein petitioner is the same Rodolfo Aquino who was impleaded as a nominal party to the appeal in the other case. While the appellee in CA G.G. CV No 01633 is the same Amadea Angela Aquino who is the respondent in the present case. While appellant in The CA-

¹⁸Wee v. Galvez, 436 SCRA 96, 108 (2004), as cited in Huilbonhoa v. Concepcion, 497 SCRA 562 (2006).
19 Section 5, Rule 7 of the Rules of Court.

²⁰ Progressive Development Corporation, Inc. v. Court of Appeals, 301 SCRA 637 (1999).

²¹ Quito v. Stop & Save Corporation, G.R. No. 186657, June 11, 2014.

²² Benavidez v. Salvador, G.R. No. 173331, December 11, 2013.

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G.R. CV No. 01633, Abdulah Aquino is not a party to this petition for *certiorari*, he stands to be benefited or affected of the results of the instant petition being one of the heirs of Miguel Aquino. In fact, Abdulah is also the administrator of the estate appointed by the court.

A substantial identity of parties is enough to qualify under the first requisite. What is important here is that the principal parties are the same in both cases.

There is likewise the same rights asserted in the appeal and in the instant petition. The reliefs prayed for are founded on the same facts. Among the several tests resorted to in ascertaining whether two suits relate to a single or common cause are (1) whether the same evidence would support and sustain both the first and second caused of action; and (2) whether the defenses in one case may be used to substantiate the complaint in the other.

A reading of the appellants' brief in comparison with the instant petition, indubitably shows that both assail identical subject, the order of the court that declared Angela as an acknowledged natural child or legitimated child of Arturo C. Aquino, who is entitled to a monthly allowance of P64,000.00. The appeal (CA-G.R. CV No. 01633) prays for identical reliefs as with the instant petition, that is, to set aside both assailed Orders and to disqualify Angela in inheriting from the estate of the late Miguel Aquino.

We must concede that in special proceedings governed by Rule 72 to 109 of the Revised Rules of Court, as in the instant case, multiple appeals are allowed. However, the rationale behind allowing more than one appeal in the same case is to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the court and held to be final. In this multi-appeal mode, the probate court loses jurisdiction only over the subject matter of the appeal but retains jurisdiction over the special proceeding from which the appeal was taken for purposes

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of further remedies that parties may avail of. There is identical issue that must be resolved in the present petition and before the appeal in CA-G.R. CV No. 01633. A final judgment in one case will amount to *res judicata* in the other. The rule on multiple appeals only finds practical application in cases where there are separate and distinct issues involved.

In fine, there is forum shopping and *litis pendentia* considering these standards are *res judicata* would result in one case from a ruling in the other. The petition and the appeal involve the same issues so that a ruling in either one will affect the other.²³

23. In view of the foregoing disquisition, the OSG submits that the Court of Appeals correctly denied the petition in CA-G.R. SP NO. 002269-MIN for being an erroneous remedy and for violating the rules on forum shopping.

The Court of Appeals correctly granted the appeal CA G.R. CV No. 01633.

24. The OSG further submits that petitioner Amadea failed to establish her illegitimate filiation to Arturo Aquino and that she is, therefore, not entitled to a share in the estate of the decedent, Miguel T. Aquino.

25. Here, it must be noted that petitioner Amadea claims that she was the illegitimate daughter of Arturo T. Aquino who predeceased the decedent Miguel T. Aquino. However, she admits that she had never been formally acknowledged through any of the modes allowed by law and that she had brought no action for recognition prior to the death of his supposed father. Nonetheless, in order to establish her filiation with his supposed father, petitioner Amadea claims that she has been in continuous possession of the status of a legitimate child and that this Honorable Court's ruling in *Tongoy vs. Court of Appeals*²⁴ applies to her case.

²³ See pp. 9-11 of Annex "A" of the petition in CA-G.R. SP No. 002269-MIN.

²⁴ G.R. No. L-45645, June 28, 1983.

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26. Petitioner's claims are untenable.

27. The rules for establishing filiation are found in Articles 172 and 175 of the Family Code, which provide as follows:

Article 172. The filiation of legitimate children is established by any of the following:

(1) The record of birth appearing in the civil register or a final judgment; or

(2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

(1) The open and continuous possession of the status of a legitimate child; or

(2) Any other means allowed by the Rules of Court and special laws.

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Article 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent.

28. As stated above, petitioner Amadea invokes her alleged "*open and continuous possession of the status of a legitimate child*" as a ground to establish her filiation. Corollary to this, Article 175 of the Family Code categorically provides that an action based on such ground must be brought during the lifetime of the alleged parent. Unfortunately, petitioner Amadea herself admitted that no action of such sort was filed prior to the death of her alleged father Arturo Aquino. Consequentially, she is now barred

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from establishing her filiation to Arturo. As correctly held by the Court of Appeals,

xxx [I]n this case, Amadea failed to present any competent proof of her filiation with Arturo Aquino through any of the means provided by law. She never presented any record of her birth to prove Arturo's paternity or any public document or a private handwritten instrument signed by Arturo admitting Amadea's filiation.

The Certification issued by the Davao Doctor's Hospital certifying the fact of her birth in the said facility is not the record of birth contemplated by law as it is not one appearing in the civil registry. Amadea cannot likewise rely on her baptismal certificate wherein Abdulah Aquino stood as her godfather to establish her filiation with Arturo for while a baptismal certificate may be considered as public document, it can only serve as evidence of the administration of the sacrament on the date specified but not as to the veracity of the entries with respect to the child's paternity.

Further, Amadea cannot find solace in the second paragraph of Art. 172 for the success of an action to establish illegitimate filiation under the said paragraph. The law itself provides that the same should be brought during the lifetime of the alleged parent.

In *Uyguangco v. Court of Appeals*, Graciano Uyguangco, claiming to be an illegitimate child of the decedent, filed a complaint for partition against the latter's wife and legitimate children. However, an admission was elicited from him in the course of his presentation of evidence at the trial that he had none of the documents mentioned in Article 278 of the 1950 Civil Code to show that he was the illegitimate son of the decedent. The wife and the legitimate children of the decedent thereupon moved for the dismissal of the case on the ground that he could no longer prove his alleged filiation under the applicable provision of the Civil Code. Hence, the Court

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then, applying the provisions of the Family Code which had then already taken effect, ruled that since Graciano was claiming illegitimate filiation under the second paragraph of Article 172 of the Family Code, i.e., open and continuous possession of the status of an illegitimate child, the action was already barred by the death of alleged father.

In the same vein, Amadea cannot likewise now establish her filiation under the second paragraph of Article 172 by reason of Arturo's death even before she was born.

Furthermore, while Amadea claims that the Aquino clan had since her birth, recognized her as the natural child of Arturo and have even enumerated events and circumstances of such recognition, it is however ineffectual, for under the law, the recognition must be mad personally by the putative parent and not by any brother, sister, or relative. Hence, no amount of overt acts of the decedent Miguel T. Aquino and the Aquino clan which may seem a recognition of her as the daughter of Arturo could translate to a legal recognition of her as the illegitimate child of Arturo.²⁵

29. Even assuming that petitioner's minority prevented her from filing an action for recognition prior to the death of Arturo Aquino, she still had four (4) years after attaining the majority age within which to seek recognition.²⁶ Unfortunately, she did not do so.

30. Further, petitioner Amadea's reliance on the *Tongoy* case is misplaced. Again, the OSG quotes with approval the findings of the Court of Appeals, viz:

As appellant asserts, the case of *Tongoy* is inapplicable in this case. In *Tongoy*, the issue then was whether respondents could be considered as legitimated children by virtue of the eventual marriage of their parents,

²⁵ See p. 14-16 of Annex "A" of the petition in CA G.R. CV No. 01633.

²⁶ ART. 285, Civil Code, provides that an action for recognition of natural children may be brought only during the lifetime of the presumed parents except *inter alia* if the father died during the minority of the child, in which case the latter may file the action before the expiration of four years from the attainment of his majority.

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Francisco Tongoy and Antonina Pabello despite the absence of an acknowledgment made by their father through any of the modes recognized by the Old Civil Code. The said issue came about since without the required acknowledgment, legitimation of the respondents could not take place in view of the provisions of Art. 121 of the same Code which states that "children shall be considered legitimated by a subsequent marriage only when they have been acknowledged before or after the celebration thereof."

In said case, estoppel was applied in favor of respondents and thus precluded defendants-appellants from attacking their status as acknowledged natural or legitimated children of Francisco Tongoy despite the absence of an acknowledgement since respondents have always been treated as acknowledged and legitimated children of the second marriage of Francisco Tongoy, not only by their presumed parents Francisco Tongoy and Antonina Pabello, but also by the entire Tongoy-Sonora clan.

However in this case, in marked contrast with *Tongoy*, no marriage ever took place between Arturo Aquino and Amadea's mother. It is thus an error on the part of the RTC to rely on the case of *Tongoy* and declare Amadea as an acknowledged natural or legitimated child of Arturo Aquino for the legitimation of children conceived and born outside of wedlock to parents who at the time of conception were not disqualified with impediment to marry each other takes place only by a subsequent valid marriage between the parents. Estoppel as applied in *Tongoy* is therefore inappropriate in the present case.²⁷

31. Here, it is undisputed that petitioner Amadea's mother was never married to Arturo Aquino. As such, the *ratio decidendi* in the *Tongoy* case cannot be extended to the case at bar.

²⁷ See p. 11-12 of Annex "A" of the petition in CA G.R. CV No. 01633.

COMMENT

Aquino vs Aquino; Aquino vs Aquino
G.R. No. 208912; G.R. No. 208918

x-----x

32. At this juncture, it is well to stress that as the movant below, petitioner Amadea had the burden of proving her allegation that she is the illegitimate daughter of Antonio Aquino. She must rely on the strength of her evidence and not on the weakness of the defense. Unfortunately, petitioner Amadea glaringly failed in this respect.

33. Indeed, petitioner Amadea failed to establish her illegitimate filiation to Arturo Aquino; therefore, she is not entitled to a share in the estate of the decedent Miguel T. Aquino.

PRAYER

WHEREFORE, the Office of the Solicitor General respectfully prays that the instant COMMENT be **NOTED** in the resolution of the instant petitions.

The OSG likewise prays for other equitable forms of relief just and proper under the premises.

Makati City, July 16, 2018.

JOSE C. CALIDA

Solicitor General

Roll No. 24852

IBP Lifetime No. 015360 - 08/18/16

MCLE Exemption No. VI-000016 - 9/28/16



BERNARD G. HERNANDEZ

Assistant Solicitor General

Roll No. 34618

IBP Lifetime No. 08866 - 2/1/10

MCLE Exemption No. VI-000384 - 4/2/18


Other Signatory . . . /

COMMENT

Aquino vs Aquino; Aquino vs Aquino

G.R. No. 208912; G.R. No. 208918

X-----X


KRISTAN CARLOS M. CRISTOBAL

State Solicitor

Roll No. 56841

IBP Lifetime No. 019157 – 3/27/18

MCLE Compliance No. V-0008858 – 7/1/15

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COURT OF APPEALS

CA G.R. SP No. 02269-MIN

CA G.R. CV No. 01633-MIN

9000 Cagayan de Oro City

COMMENT

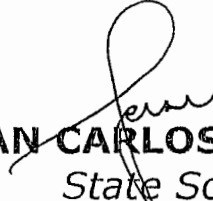
Aquino vs Aquino; Aquino vs Aquino
G.R. No. 208912; G.R. No. 208918

X-----X

MRS. ENERIE B. AQUINO
J.P. Cabaguio Avenue
8000 Davao City

EXPLANATION

This **COMMENT** is being served by registered mail due to lack manpower to effect personal service.


KRISTAN CARLOS M. CRISTOBAL
State Solicitor

BGH/KCMC/arch - 09-014921

Republic of the Philippines)
Makati City

) S.S.

Verified Declaration

I, KRISTAN CARLOS M. CRISTOBAL, hereby declare that the soft copy of the COMMENT submitted in a compact disc in accordance with the Efficient Use of Paper Rule is complete and true copy of the same document filed with this Honorable Court.

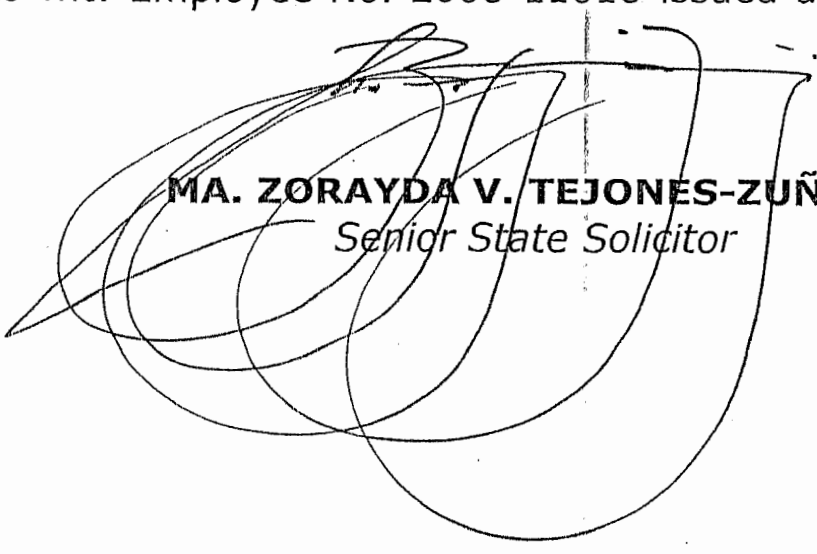


KRISTAN CARLOS M. CRISTOBAL

State Solicitor I

July 16, 2018

SUBSCRIBED AND SWORN TO before me this 16th day of July 2018, affiant exhibiting his competent evidence of identity, to wit: Employee No. 2008-11018 issued at Makati City.



MA. ZORAYDA V. TEJONES-ZUÑIGA

Senior State Solicitor

REPUBLIC OF THE PHILIPPINES

AFFIDAVIT OF SERVICE

(Revised as of April 1992)

OFFICE OF THE SOLICITOR GENERAL ,

Office address: 124 Valdez, Legaspi Village Makali City, after being sworn to depose and say:
MARIA LUCILLE M. VALDEZ, CGSIS UMD #006-0116-4758-2

that on 07/16/2018, I caused to be served a copy of the following pleading/paper:
JUL 16 2018

NATURE OF THE PLEADING

Comment

Case No. CA G.R.SP NO.02269, entitled RODOLFO C. AQUINO

AMADEA ANGELA K. AQUINO, HON. JUDGE WILLIAM M.LAYAGUE AND HON. JUDGE GEORGE E.

sent to Section 3,4,5 and 10, Rule 13 of the Rules of Court, as follows:

Personal Service To:

() By depositing a copy to the party or his/her attorney on _____ as shown on p _____.

() By leaving a copy in his/her clerk or with a person having charge thereof on _____ as shown on p _____.

() By delivering a copy to the Court/Tribunal Office on _____ as shown on p _____.

Registered Mail To:

() By depositing copy on JUL 16 2018 in the Post Office at _____ as evidenced by Registry Receipt(s) No.(s) _____ herelo attached and indicated after the name (s) of the addressee(s), and with instruction to the postmaster to return the mail to the sender after (10) days if undelivered.

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COURT OF APPEALS

G.R. SP No. 02269-MIN

OF APPEALS
CV No. 01633-MIN
n de Oro City
Philippines

Makati, Metro Manila, Philippines

(Affiant)

MARIA LUCILLE M. VALDEZ, AO
GSIS UMD #006-0116-4758-2

SUBSCRIBED AND SWORN to before me this _____ of _____ at Makati
Philippines. Affiant exhibiting to me his JUL 16 2018 issued at Pasay City.



09-014921-0003

MA. ZORAYDA V. TEJONES-ZUNIGA

Solicitor, Officer Administering the Oath
Office of the Solicitor General