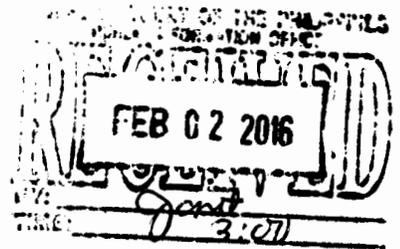




Republic of the Philippines
Supreme Court
Manila

EN BANC



SHERYL M. MENDEZ,
Petitioner,

G.R. No. 201614

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN, and
JARDELEZA, * *JJ.*

- versus -

**Shari'a District Court,
5th Shari'a District, Cotabato City,
Rasad G. Balindong (Acting
Presiding Judge); 1st Shari'a
Circuit Court, 5th Shari'a District,
Cotabato City, Montano K.
Kalimpo (Presiding Judge);
and DR. JOHN O. MALIGA,**

Promulgated:

Respondents.

January 12, 2016

Rasad G. Balindong

X ----- X

DECISION

MENDOZA, J.:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the March 30, 2012 Decision¹ of the Shari'a District Court, 5th Shari'a District, Cotabato City (*ShDC*), in *ShDC* Appealed Case No. 2011-19. The assailed decision affirmed the August 19,

* Corrected.

¹ *Rollo*, pp. 108-109; penned by Acting Presiding Judge Rasad G. Balindong.

CERTIFIED XEROX COPY:

Rasad G. Balindong
FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT

2011 Order² of the 1st Shari'a Circuit Court, Cotabato City (*ShCC*), in *ShCC* Civil Case No. 2010-559, confirming the *talaq*³ (divorce) between petitioner Sheryl M. Mendez (*Mendez*) and private respondent Dr. John O. Maliga (*Maliga*); awarding the custody of their minor child to Maliga; and ordering him to give a *mut'a* (consolatory gift) to Mendez.

The Facts

From the records, it appears that on April 9, 2008, Mendez and Maliga were married under Muslim rites. Prior to their marriage, the couple was already blessed with a daughter, Princess Fatima M. Maliga (*Princess Fatima*). Their marriage, however, soured shortly after their wedding.

On November 2, 2010, Maliga filed with the *ShCC* a petition⁴ for the judicial confirmation of *talaq* from Mendez, with a prayer for the grant of probational custody of their minor child pending the resolution of the case. According to Maliga, Mendez was a Roman Catholic and she only embraced the Islamic faith on the date of their marriage. Shortly after being married, he claimed that he started to doubt the sincerity of his wife's submission to Islam, having noticed no changes in her moral attitude and social lifestyle despite his guidance. Maliga added that despite his pleas for her to remain faithful to the ways of Islam, she remained defiant. He alleged that sometime in December 2008, Mendez reverted to Christianity. Maliga went on to add that she went to Manila a few days after their wedding and brought Princess Fatima with her without his knowledge and consent. In Manila, she taught their daughter how to practice Christianity by enrolling her in a Catholic school. Maliga, thus, prayed for probational custody considering the unsafe religious growth and values repugnant to Islam.

Before Mendez could file her answer, Maliga filed his urgent motion⁵ reiterating his plea to be awarded temporary custody of Princess Fatima. He claimed that considering such factors as moral values, social upliftment, behavioral growth, and religious consideration, he should have custody of their child.

² Id. at 61-66; penned by Presiding Judge Montano K. Kalimpo.

³ Art. 45. Definition and forms. – Divorce is the formal dissolution of the marriage bond in accordance with this Code to be granted only after the exhaustion of all possible means of reconciliation between the spouses. It may be effected by:

- (a) Repudiation of the wife by the husband (*talaq*);
- (b) Vow of continence by the husband (*ila*);
- (c) Injurious assanilation of the wife by the husband (*zihar*);
- (d) Acts of imprecation (*li'an*);
- (e) Redemption by the wife (*khul'*);
- (f) Exercise by the wife of the delegated right to repudiate (*tafwld*); or
- (g) Judicial decree (*faskh*). [Presidential Decree No. 1083 (1977), Book Two, Title II, Chapter III, Sec. 1]

⁴ *Rollo*, pp. 45-46.

⁵ Urgent Motion for Issuance of Temporary Custody of Minor Princess Fatima, Pending Answer or Resolution to the above-entitled case, id. at 35.

On November 12, 2010, the ShCC issued the order⁶ granting Maliga's urgent motion. The ShCC deemed it proper for Princess Fatima to stay with her father because of his social, financial and religious standing, and considering that she was then under his custody; that he raised her as a good Muslim daughter as evidenced by her appearance; and that her parents were married under Islamic rites.

On November 18, 2010, Mendez filed her Answer.⁷ She alleged that she followed the religion of her Muslim grandfather, and denied Maliga's allegations that she was not sincere in her practice of Islam. She averred that she became pregnant before she married Maliga and had been raising their daughter on her own since her birth and that he had been totally remiss in his material and moral obligations to support her and their child. She opposed his prayer for custody, arguing that she had been raising Princess Fatima since she was born; that Maliga had several wives and three other children and was very busy with his profession as a physician; and that the custody of children below seven years old should belong to the mother.

Mendez added that on October 21, 2010, she left their daughter in Maliga's custody for a visit, with the understanding that he would bring her back the following day. On October 22, 2010, she went with her cousin to fetch her daughter but Maliga threatened to kill them and displayed his bodyguards clad in police uniforms and firearms. This prompted her to file a complaint-affidavit for kidnapping and failure to return a minor with the National Bureau of Investigation.⁸

On November 22, 2010, Mendez filed her opposition⁹ to Maliga's urgent motion for issuance of temporary custody. She argued that the motion did not contain the requisite notice of hearing and was, therefore, a mere scrap of paper. She pointed out that the motion was filed on October 9, 2010, *prior* to the filing of the main case on November 2, 2010. She contended that she never received the summons in connection with the urgent motion and, furthermore, she never received a copy of the November 12, 2010 Order granting temporary custody to Maliga, which she had only picked up from the court herself on November 18, 2010, the day she filed her answer.

In its Order,¹⁰ dated December 3, 2010, the ShCC *partially reconsidered* its initial order awarding temporary custody to Maliga by granting the right of *visitation* to Mendez, as follows:

⁶ Id. at 36-37.

⁷ Id. at 48-50.

⁸ Id. at 31-32.

⁹ Id. at 38-39.

¹⁰ Id. at 43-44.

WHEREFORE, in the light of the foregoing, PRINCESS FATIMA, daughter of the herein parties is hereby ordered be placed under the CARE and CUSTODY of the Petitioner, DR. JOHN O. MALIGA, pending the resolution of the above-entitled case, effective immediately, WITH THE RIGHT OF VISITATION BY THE RESPONDENT, SHERYL M. MENDEZ TO HER DAUGHTER PRINCESS FATIMA M. MALIGA, ANY REASONABLE TIME OF THE DAY AND NIGHT, AND/OR BORROW HER (PRINCESS FATIMA M. MALIGA) PROVIDED THAT IT MUST BE ONLY WITHIN THE VICINITY OF COTABATO CITY AND THEREAFTER, RETURN HER TO THE PETITIONER, DR. JOHN O. MALIGA, UPON PROPER COORDINATION AND ARRANGEMENT FROM THE ABOVE-NAMED PETITIONER OR HIS DULY AUTHORIZED REPRESENTATIVE.

SO ORDERED.¹¹

Mendez filed a motion for reconsideration of the December 3, 2010 order, arguing that the question of custody was within the exclusive original jurisdiction of the ShDC, and not the ShCC, and praying that the said order be declared null and void.¹²

On January 19, 2011, the ShCC constituted an Agama Arbitration Council¹³ which, after its own hearing and meeting, submitted the case for hearing on the merits because the parties failed to arrive at an amicable settlement and because “the [d]ivorce was moot and academic.”¹⁴

The Ruling of the Shari’a Circuit Court

On August 19, 2011, the ShCC issued the order¹⁵ confirming the *talaq* pronounced by Maliga against Mendez and awarded to him the care and custody of Princess Fatima. In the same order, the ShCC granted visitation rights to Mendez and ordered Maliga to give her a *mut’a* (consolatory gift) in the amount of ₱24,000.00. Thus:

WHEREFORE, in the light of the foregoing, it is hereby ORDERED, that:

1. The pronounced *Talaq* (Divorce) by herein Petitioner DR. JOHN O. MALIGA against respondent SHERYL M. MENDEZ is hereby CONFIRMED and considering that the Iddah (cooling-off/waiting period) had long been

¹¹ Id. at 44.

¹² Records, pp. 22-23.

¹³ Id. at 9.

¹⁴ Id. at 29.

¹⁵ *Rollo*, pp. 61-66.

lapsed, she may now be allowed to use her former maiden name in all personal and official transactions;

2. The care and custody of the PARTIES' minor daughter PRINCESS FATIMA shall remain with Petitioner DR. JOHN O. MALIGA with a right of visitation by respondent SHERYL M. MENDEZ any reasonable time of the day and night and/or borrow her and thereafter, return her (PRINCESS FATIMA) to petitioner DR. JOHN O. MALIGA, provided it is only within the vicinity of Cotabato City and provided further that there should be a proper coordination with the above-named Petitioner, and the petitioner is hereby ordered to observe such rights of visitation and/or borrow of by the respondent SHERYL M. MENDEZ; and
3. Petitioner DR. JOHN O. MALIGA is hereby ordered upon receipt hereof, to give consolatory gift (mut'a) to respondent SHERYL M. MENDEZ in the amount of TWENTY FOUR THOUSAND PESOS (Php. 24,000.00) as provided by law as contained in the petitioner's prayer which amounts of money must be coursed/consigned to this Court.

Let the copy of this Order be furnished to the Office of the Shari'a Circuit Registrar of this Court for record and registration purposes, and/or ANNOTATION of the PARTIES' marriage contract as DIVORCED.

SO ORDERED.¹⁶

In its ruling, the ShCC noted that Mendez never questioned the validity of the *talaq* and found that it was caused by the irreconcilable religious differences between the spouses as to the upbringing of their daughter. For said reason, it ruled that, in the best interest of the child in all aspects of life – economic, social and religious, the care and custody of Princess Fatima should remain with Maliga.¹⁷

The Ruling of the Shari'a District Court

Mendez appealed the ShCC order to the ShDC only with respect to the ruling on custody. In her memorandum¹⁸ before the ShDC, Mendez argued that the order of the ShCC was null and void for its failure to state the facts and law on which its findings were based in accordance with Section 1, Rule 36 of the Rules of Court. She reiterated that the urgent motion filed by Maliga did not contain the requisite notice of hearing, and

¹⁶ Id. at 65-66.

¹⁷ Id. at 63-65.

¹⁸ Memorandum Brief for [Defendant-Appellant], id. at 71-82.

that the mother had the right of custody if the child was under seven years of age. She asserted that the question of custody was within the exclusive original jurisdiction of the ShDC only, and that an order of a court not vested with jurisdiction was null and void.¹⁹

On March 30, 2012, the ShDC issued the assailed decision,²⁰ *affirming* the August 19, 2011 Order of the ShCC. Giving credence to Maliga's allegation that Mendez had reverted to Christianity, the ShDC ruled that in Shari'a Law, a mother might be legally disentitled to the custody of her child if she turned apostate, and disqualified until she returned to the Islamic faith; and that the father, as a Muslim, was in a better position to take care of the child's well-being and raise her as a Muslim. Affirming the ShCC ruling, the ShDC found that Princess Fatima should remain with her father for her best interest in all aspects of life, economically, socially and religiously.

Hence, this petition where Mendez argues the following:

ASSIGNMENT OF ERRORS

- A. THE HONORABLE PRESIDING JUDGE OF 1ST SHARI'A CIRCUIT, COTABATO CITY, 5TH SHARIA [DISTRICT], MONTANO K. KALIMPO, GRAVELY AND SERIOUSLY ERRED IN DECIDING IN FAVOR OF THE PETITIONER-APPELLEE IN SHCC CIVIL CASE NO. 2010-559, DR. JOHN O. MALIGA FOR CARE AND CUSTODY [OF] MINOR CHILD AGAINST HEREIN RESPONDENT-APPELLANT AS THE HONORABLE JUDGE, GRAVELY ABUSES HIS AUTHORITY AMOUNTED TO LACK OF JURISDICTION OVER THE CASE.**
- B. WERE THE ORDER OF THE HONORABLE PRESIDING JUDGE MONTANO K. KALIMPO OF 1ST SHARI'A CIRCUIT COURT, COTABATO CITY DATED NOVEMBER 12, 2010 AND DECEMBER 03, 2010 AWARDED THE CARE AND CUSTODY IN FAVOR OF PETITIONER-APPELLEE SHCC CIVIL CASE NO. 2010-559 FOR BEING UNREASONABLE, IN VIOLATION OF RULE 15, SECTIONS 4, 5, 6 REVISED RULES OF CIVIL PROCEDURE 1997, ARTICLE 143, PAR. 1, SECTION a OF THE P.D. 1083, ARTICLE 78, P.D. 1083 AS WELL AS JURISDICTION.**

¹⁹ Id. at 74-86.

²⁰ Id. at 108-109.

C. WERE THE DECISION OF THE HONORABLE SHARI'A DISTRICT COURT, 5TH SHARI'A DISTRICT COTABATO CITY, PROMULGATED ON MARCH 30, 2011, AFFIRMED ASSAILED ORDER DATED AUGUST 19, 2011 OF THE SHARI'A CIRCUIT COTABATO CITY, FOR BEING UNREASONABLE.²¹

Mendez argues that the ShCC acted in excess of jurisdiction when it ruled on Maliga's urgent motion for issuance of temporary custody, considering that the motion was a mere scrap of paper for lack of notice of hearing. She reiterates that she never received any summons in connection with the urgent motion. She never received a copy of the ShCC order granting the said motion either.²²

Mendez goes on to contend that the ShCC had no jurisdiction to hear, try and decide the issue of Princess Fatima's custody, considering that under Article 143(1)(a) of Presidential Decree (*P.D.*) No. 1083,²³ it is the ShDC which has the exclusive original jurisdiction over all cases involving custody. She argues the rule that any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal.²⁴

Finally, she asserts that she should have been awarded custody under Article 78 of P.D. No. 1083, as Princess Fatima was *not above seven years old* at the time the ShCC order was promulgated. As to Maliga's claim that she was disqualified to have custody over Princess Fatima for becoming apostate to the Islamic faith, Mendez argues that while the same may be a ground for disinheritance under the Muslim Law, the same law does not provide that being apostate is a ground to be denied of the care and custody of her minor child.²⁵ Besides, she professes that she is still a Muslim.

In the July 9, 2012 Resolution,²⁶ the Court initially denied the subject petition for various procedural defects.

On November 12, 2012, acting on the motion for reconsideration filed by Mendez, the Court reinstated the petition.²⁷ Thereafter, Maliga and Mendez filed their respective pleadings.

²¹ *Id.* at 16-17.

²² *Id.* at 17-18.

²³ Otherwise known as the Code of Muslim Personal Laws of the Philippines.

²⁴ *Id.* at 20-22.

²⁵ *Id.* at 22-23.

²⁶ *Id.* at 93-94.

²⁷ *Id.* at 117.

1

In his Comment,²⁸ dated January 17, 2013, Maliga countered that a mother may be deprived of the custody of her child below seven years of age for compelling reasons. He alleged that Mendez was unemployed and was financially dependent on him for all the needs of Princess Fatima since her conception. He reiterated that a Muslim mother may be legally disentitled to the custody of her minor child if she turned apostate and should remain disqualified until she return to the Islamic faith. Maliga noted that although the Family Code would now apply to Mendez, who was no longer a Muslim, the application of the Family Code would defeat the purpose of the Muslim law on disqualification to inheritance by virtue of apostasy. Finally, he claimed that he was fit and qualified to have custody of his child as he was a prominent medical practitioner with resources to meet all her needs. He pointed out that, under his care, Princess Fatima's academic performance dramatically improved from the lowest ranking to the top six in her 3rd grade class.

In her Reply,²⁹ dated April 26, 2013, Mendez countered that Maliga only filed his petition for *talaq* when he discovered that she had filed a complaint-affidavit against him for kidnapping and failure to return a minor;³⁰ that he had been totally remiss in his material and moral obligations to his daughter;³¹ that he was unfit to take care of Princess Fatima as his numerous wives had been confusing the child;³² and that she was not unemployed as she was a registered nurse who could provide for all the needs of her child and who, in fact, had cared for her from birth until she was six (6) years old and sent her to an exclusive school, all without the assistance of Maliga.³³

ISSUES

As can be gleaned from the pleadings, the issues at hand are the following:

- 1. Whether or not the ShCC erred in acting on Maliga's urgent motion for issuance of temporary custody;**
- 2. Whether or not the ShCC and the ShDC had jurisdiction to rule on the issue of custody; and**
- 3. Whether or not custody was properly granted to Maliga.**

²⁸ Id. at 118-122.

²⁹ Id. at 136-138.

³⁰ Id. at 136-137.

³¹ Id. at 137.

³² Id.

³³ Id.

11

Opinion of Amicus Curiae

On March 11, 2014, the Court appointed Secretary-CEO Mehol K. Sadain (*Secretary Sadain*) of the National Commission on Muslim Filipinos (*NCMF*) and Dr. Hamid A. Barra of the King Faisal Center for Islamic, Arabic and Asian Studies, as *amici curiae*, and directed them to submit their respective opinions on the matter of jurisdiction with respect to the issue of custody,³⁴ in view of the fact that the exclusive original jurisdiction over divorce and custody pertains to two separate courts, namely, the ShCC and the ShDC, respectively.

In compliance, Secretary Sadain submitted his opinion,³⁵ calling on the Court to apply the *darurah*-oriented principle of liberal construction in order to promote the objective of securing a just, speedy and inexpensive disposition of every action and proceeding, in accordance with the Rules of Court, which applies to P.D. No. 1083 in a suppletory manner. He explained that Islamic law subscribes to the same objective of dispensing speedy and equitable justice, as well as its own *darurah*-oriented liberal construction for the sake of promoting equitable or weighty public interests. He elucidated that under the doctrine of *darurah* (necessity), prohibited actions may be allowed or restrictive rules may be relaxed if such would serve a greater and more primordial interest, such as the preservation of life and property, or the higher pursuit of justice. He cited as an example the prohibition on the eating of pork by a Muslim which could be temporarily set aside if he was faced with the choice of starving to death or eating pork to survive. Another example given was the allowance of the internal use of alcohol-based products if ingested in the form of life-preserving medicine.

In consonance with the above principles, Secretary Sadain was of the view that strict procedural requirements could be relaxed if such would result in a speedy, fair and beneficial disposition of a pending legal question. He noted that determining the custody of a child was an ancillary matter, which unavoidably would arise in divorce proceedings, and would usually involve delving into matters of child welfare and interest, as well as the fitness of the person/s seeking custody. He noted that the speedy resolution of divorce and custody proceedings had an effect on the general welfare of the child and was in the child's best interest. He cited that the Islamic legal jurisdiction in Pakistan had ruled that, in guardianship proceedings, the Court exercised parental jurisdiction, and technicalities of pleadings or strict formalities need not be enforced because the State took charge of the rights of the child to safeguard their welfare by deciding the question of custody as expeditiously as possible.

³⁴ Id. at 160.

³⁵ Id. at 166-169.

h

Secretary Sadain, thus, opined that the rule on jurisdiction under P.D. No. 1083 may be relaxed considering that the issue of custody arose as an ancillary matter in the divorce proceedings, which must be addressed in the same court in order to protect the welfare, rights and interest of the child as expeditiously as possible. He also pointed out that allowing the ShCC to decide on the matter of custody would avoid multiplicity of suits and delay in the judicial proceedings. Lastly, he noted that because the ShDC had passed judgment on the case appealed from the ShCC, the need for a separate case had been moot and the jurisdictional and procedural defects had been cured.

Dr. Hamid Barra, despite repeated requests, did not submit an opinion.³⁶

The Ruling of the Court

Appellate Jurisdiction of the Court in Shari'a Cases

At the outset, the Court notes that this petition has been correctly instituted with this Court. It has been recognized that decades after the 1989 enactment of the law³⁷ creating the Shari'a Appellate Court and after the Court authorized its creation in 1999,³⁸ it has yet to be organized. Pending the organization of the Shari'a Appellate Court, appeals or petitions from final orders or decisions of the ShDC shall be filed with the Court of Appeals (CA) and referred to a Special Division to be organized in any of the CA stations preferably to be composed of Muslim CA Justices. For cases where only errors or questions of law are raised or involved, the appeal shall be to this Court via a petition for review on *certiorari* under Rule 45 of the Rules of Court pursuant to Article VIII, Section 5 of the Constitution and Section 2 of Rule 41 of the Rules.³⁹ As the present petition involves only questions of law, it has been properly filed before this Court.

Jurisdiction of Shari'a Courts

Jurisdiction is the power and authority of a court to hear, try and decide a case.⁴⁰ In order for the court to have authority to dispose of a case on the merits, it must acquire jurisdiction over the subject matter and the parties.⁴¹ The Congress has the power to define, prescribe and apportion the

³⁶ Atty. Eric Ismael P. Sakkam, Court Attorney VI in the office of the member-in-charge, reported that he was able to get in touch with Dr. Hamid Barra, who claimed that he was already based in Malaysia and would no longer submit any opinion.

³⁷ Autonomous Region in Muslim Mindanao Organic Law (R.A. No. 6734), as amended.

³⁸ A.M. No. 99-4-66.

³⁹ *Tomawis v. Balindong*, 628 Phil. 252, 258-259 (2010).

⁴⁰ *Century Insurance Co. v. Fuentes*, 112 Phil. 1065, 1072 (1961).

⁴¹ *Paramount Insurance Corporation v. Japzon*, G.R. No. 68037, July 29, 1992, 211 SCRA 879, 885.

jurisdiction of various courts,⁴² and courts are without authority to act where jurisdiction has not been conferred by law.⁴³ Jurisdiction is conferred only by the Constitution or the law. It cannot be acquired through a waiver or enlarged by the omission of the parties or conferred by the acquiescence of the court, and may be raised at any stage of the proceedings, even for the first time on appeal.⁴⁴

The law which confers jurisdiction on the Shari'a courts is P.D. No. 1083. The pertinent articles of the law as to the original jurisdiction of the Shari'a courts are as follows:

Art. 143. Original jurisdiction. —

- (1) **The Shari'a District Court shall have exclusive original jurisdiction over:**

 - (a) All cases involving custody, guardianship, legitimacy, paternity and filiation arising under this Code;
 - (b) All cases involving disposition, distribution and settlement of the estate of deceased Muslims, probate of wills, issuance of letters of administration or appointment of administrators or executors regardless of the nature or the aggregate value of the property;
 - (c) Petitions for the declaration of absence and death and for the cancellation or correction of entries in the Muslim Registries mentioned in Title VI of Book Two of this Code;
 - (d) All actions arising from customary contracts in which the parties are Muslims, if they have not specified which law shall govern their relations; and
 - (e) All petitions for mandamus, prohibition, injunction, certiorari, habeas corpus, and all other auxiliary writs and processes in aid of its appellate jurisdiction.

- (2) Concurrently with existing civil courts, the Shari'a District Court shall have original jurisdiction over:
 - (a) Petitions by Muslims for the constitution of a family home, change of name and commitment of an insane person to an asylum;
 - (b) All other personal and real actions not mentioned in paragraph 1 (d) wherein the parties involved are Muslims except those for forcible entry and unlawful detainer, which shall fall under the exclusive original jurisdiction of the Municipal Circuit Court; and
 - (c) All special civil actions for interpleader or declaratory relief wherein the parties are Muslims or the property involved belongs exclusively to Muslims.

⁴² Sec. 2, Article VIII, 1987 Constitution.

⁴³ *Municipality of Sogod v. Rosal*, 278 Phil. 642, 648 (1991).

⁴⁴ *Republic v. Bantigue Point Development Corporation*, 684 Phil. 192, 199 (2012).

XXXX

Art. 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;
 - (b) **Divorce recognized under this Code;**
 - (c) Betrothal or breach of contract to marry;
 - (d) Customary dower (mahr);
 - (e) Disposition and distribution of property upon divorce;
 - (f) Maintenance and support, and consolatory gifts, (mut'a);
and
 - (g) Restitution of marital rights.
- (3) All cases involving disputes relative to communal properties.

[Emphases and Underscoring Supplied]

It is clear that the ShCC has exclusive original jurisdiction over civil actions between parties who have been married in accordance with the Muslim law, involving disputes *relating to* divorce under P.D. No. 1083. There is, therefore, no doubt that the ShCC had jurisdiction to confirm the *talaq* between Mendez and Maliga.

Jurisdiction in Custody Case

Article 143 above, however, clearly provides that **the ShDC has exclusive original jurisdiction over all cases involving custody under P.D. No. 1083**. Exclusive jurisdiction is the power of the court to take cognizance of and decide certain cases to the exclusion of any other courts.⁴⁵ Original jurisdiction is the power of the court to take judicial cognizance of a case instituted for judicial action for the first time under conditions provided by law.

On the other hand, appellate jurisdiction is the authority of a court higher in rank to re-examine the final order of judgment of a lower court which tried the case now elevated for judicial review.⁴⁶ Since the two jurisdictions are exclusive of each other, each must be expressly conferred by law. One does not flow from, nor is inferred from the other.⁴⁷

⁴⁵ Bensaudi I. Arabani, Sr., Philippine Shari'a Courts Procedure, (Quezon City, Philippines: Rex Book Store, Inc., 2000), First Edition, p. 18.

⁴⁶ Oscar M. Herrera, Remedial Law, (Quezon City, Philippines: Rex Book Store, Inc., 2000), Volume 1, p. 59.

⁴⁷ *Garcia v. De Jesus*, G.R. No. 88158, March 4, 1992, 206 SCRA 779, 786.

Implication of Article 54

As opined by Secretary Sadain,⁴⁸ the ShCC does seem to have ancillary jurisdiction over custody issues as they relate to a divorce decree. Under Article 155, it is provided that the SHCC shall have exclusive original jurisdiction over all civil actions and proceedings involving disputes *relating to* divorce. To quote once more:

Article 155. Jurisdiction. The Shari'a Circuit Court 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) x x x.
 - (b) Divorce recognized under this Code.

x x x x

Clearly, the provision above clothes the ShCC with power to hear and decide civil actions *relating to* a *talaq* or divorce. It cannot be denied that the issue of custody is a necessary consequence of a divorce proceeding. As Article 54 of P.D. No. 1083 provides:

Article 54. Effects of irrevocable talaq or faskh. A *talaq* or *faskh*, as soon as it becomes irrevocable, shall have the following effects:

- (a) The marriage bond shall be severed and the spouses may contract another marriage in accordance with this Code;
- (b) The spouses shall lose their mutual rights of inheritance;
- (c) **The custody of children shall be determined in accordance with Article 78 of this Code;**
- (d) The wife shall be entitled to recover from the husband her whole dower in case the *talaq* has been effected after the consummation of the marriage, or one-half thereof if effected before its consummation;
- (e) The husband shall not be discharged from his obligation to give support in accordance with Article 67; and
- (f) The conjugal partnership, if stipulated in the marriage settlements, shall be dissolved and liquidated.

Though Article 54 does not directly confer jurisdiction to the ShCC to rule on the issue of custody, the Court, nevertheless grants the ShCC

⁴⁸ And also pointed out by Associate Justice Presbitero J. Velasco.

ancillary jurisdiction to resolve issues *related to* divorce. The above-quoted provision states categorically that as a consequent effect of divorce, the custody of children shall be determined in accordance with **Article 78** of the Code. In turn, **Article 78** states that the care and custody of children below seven whose parents are divorced shall **belong to the mother**, and the minor above seven but below the age of puberty may **choose the parent** with whom he/she wants to stay.⁴⁹

To rule that the ShCC is without jurisdiction to resolve issues on custody after it had decided on the issue of divorce, simply because it appears to contravene Article 143 of P.D. No. 1083, would be antithetical to the doctrine of ancillary jurisdiction. “While a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates. Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.”⁵⁰

Following the doctrine, the ShCC, in cases involving divorce, possesses the power to resolve the issue of custody, it being a *related issue* to the main cause of action.

At this juncture, the question must be asked: By recognizing the power of the **ShCC** to rule on the issue of custody, would this effectively render Article 143 of P.D. No. 1083 meaningless, considering that the same is unequivocal in providing that the **ShDC** has the exclusive original jurisdiction to decide on all cases involving custody?

The Court rules in the negative.

⁴⁹ Art. 78. *Care and custody*. — (1) The care and custody of children below seven years of age whose parents are divorced shall belong to the mother or, in her absence, to the maternal grandmother, the paternal grandmother, the sister and aunts. In their default, it shall devolve upon the father and the nearest paternal relatives. The minor above seven years of age but below the age of puberty may choose the parent with whom he wants to stay.

(2) The unmarried daughter who has reached the age of puberty shall stay with the father; the son, under the same circumstances, shall stay with the mother.

⁵⁰ *City of Manila v. Grecia-Cuerdo*, G.R. No. 175723, February 4, 2014, 715 SCRA 182, 206.

A distinction must be made between a case for divorce wherein the issue of custody is an *ancillary issue* and a case where custody is the *main issue*. Jurisdiction in the former, as discussed above, lies with the ShCC, as the main cause of action is divorce. The latter on the other hand, where the main cause of action is one of custody, the same must be filed with the ShDC, pursuant to Article 143 of P.D. No. 1083.

*Violation of Due Process;
No Notice of Hearing; and
Absence of Hearing*

Notwithstanding the foregoing, the award of custody to Maliga by the ShCC was void as it was rendered in violation of the constitutional right of Mendez to due process.

Mendez pointed out that Maliga's urgent motion for issuance of temporary custody was filed on October 9, 2010, even before the main petition for *talaq* was filed on November 2, 2010, and that she never received a summons pertaining to the urgent motion. Indeed, a review of the records reveals that the date of filing was handwritten on the said motion as "October 9, 2010." The motion itself and the registry receipt attached thereto, however, were dated "November 9, 2010." The Court is, thus, of the view that the month "October" was mistakenly written by the receiving clerk instead of "November," and that the motion was filed *subsequent* to the main petition for *talaq* as an ancillary matter.

The Court, nonetheless, agrees with Mendez that the urgent motion lacked the requisite notice of hearing. It is immediately evident from the face of the motion that it did not contain the notice of hearing required by the Rules of Court which has supplementary application to the present case. Section 4 of Rule 15 provides that every written motion shall be set for hearing by the applicant. Every written motion is required to be heard and the notice of hearing shall be served in such manner as to insure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.⁵¹ The notice of hearing is intended to prevent surprise and to afford the adverse party a chance to be heard before the motion is resolved by the court. A seasonable service of a copy of the motion on the adverse party with a notice of hearing indicating the time and place of hearing is a mandatory requirement that cannot be dispensed with as this is the minimum requirement of procedural due process.⁵²

⁵¹ *Bank of the Philippine Islands v. Far East Molasses*, G.R. No. 89125, July 2, 1991, 198 SCRA 689, 698.

⁵² *Leobrero v. Court of Appeals*, 252 Phil. 737, 743 (1989).

K

A motion that does not contain a notice of hearing is a mere scrap of paper and presents no question which merits the attention and consideration of the court. It is not even a motion for it does not comply with the rules, and, hence, even the clerk has no right to receive it.⁵³

Award of Custody; No Basis

Not only was the award of custody violative of the constitutional right of Mendez to due process, but also both the orders of the ShCC and the ShDC awarding custody of Princess Fatima to Maliga were without evidentiary basis because no hearing was actually conducted prior to the issuance of the order granting the urgent motion. Moreover, there was no explanation given as to why the motion was resolved without notice to, or the participation of, Mendez.

In awarding custody to Maliga, the ShCC merely wrote:

On the issue of CARE AND CUSTODY of the PARTIES' minor daughter PRINCESS FATIMA, this Court after closely scrutinizing the evidence on hand, deemed it just and proper and/or is convinced that it should be under status quo, remains (sic) with Petitioner DR. JOHN O. MALIGA, for her (PRINCESS FATIMA) best interest in all aspects of life, economically, socially and religiously etc WITHOUT prejudice of the rights of visitation of respondent SHERYL M. MENDEZ any reasonable time of the day and right (sic), and borrow her (PRINCESS FATIMA) provided that it is only within the vicinity of Cotabato City and thereafter, return her, with proper coordination with Petitioner DR. JOHN O. MALIGA, and the latter (DR. JOHN O. MALIGA) is hereby ordered to observe such rights afforded to respondent SHERYL M. MENDEZ.⁵⁴

Although the ShCC stated that, in deciding on the custody case, it scrutinized the evidence on hand, it was remiss in its duty to state the precise factual and legal basis on which its ruling awarding custody to Maliga was based. Section 14, Article VIII of the 1987 Constitution mandates that decisions must clearly and distinctly state the facts and the law on which they are based. The decisions of courts must be able to address the issues raised by the parties through the presentation of a comprehensive analysis or account of factual and legal findings of the court.⁵⁵ It is evident that the ShCC failed to comply with these requirements. It merely stated that it was in Princess Fatima's "best interest in all aspects of life, economically, socially and religiously" that custody be awarded to her father. There was no express finding that Mendez was unfit in any way, or a hint of an

⁵³ *Bank of the Philippine Islands v. Far East Molasses*, supra note 51.

⁵⁴ Records, pp. 59-60.

⁵⁵ *Office of the President v. Cataquiz*, 673 Phil. 318, 334 (2011).

K

explanation as to why Maliga was in a better position to take custody of Princess Fatima.

The ShDC, on the other hand, in affirming the findings of the ShCC, stated that Mendez was disentitled to custody because she had turned apostate, and held that she would remain disqualified until she return to the Islamic faith in accordance with the Muslim Law. It appears, however, that *disqualification* due to *apostasy* under the Muslim Code pertains to *disinheritance* under Article 93 of the Muslim Code,⁵⁶ and *not to the custody of children*.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The following are declared **NULL** and **VOID**:

1. the November 12, 2010 and December 3, 2010 Orders of the Shari'a Circuit Court in ShCC Civil Case No. 2010-559, insofar as the ruling on custody and visitation is concerned;
2. the August 19, 2011 Order of the Shari'a Circuit Court in ShCC Civil Case No. 2010-559, insofar as the ruling on custody is concerned; and
3. the March 30, 2012 Decision of the Shari'a District Court in SDC Appealed Case No. 2011-19, insofar as the ruling on custody is concerned.

In the August 19, 2011 Order of the Shari'a Circuit Court in ShCC Civil Case No. 2010-559, confirming the pronouncement of *Talaq* (Divorce) by petitioner Dr. John O. Maliga against respondent Sheryl M. Mendez and the giving of consolatory gift (*mut'a*) to her in the amount of ₱24,000.00 is maintained.

The records of the case are hereby ordered **REMANDED** to the Shari'a Circuit Court for appropriate proceedings on the motion of Dr. John O. Maliga for the determination of custody of Princess Fatima M. Maliga.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

⁵⁶ Jainal D. Rasul and Ibrahim Ghazali, Commentaries and Jurisprudence on the Muslim Code of the Philippines, (Quezon City, Philippines: Central Lawbook Publishing Co., Inc., 1984), p. 260.

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice



ANTONIO T. CARPIO
Associate Justice



PRESBITERO J. VELASCO, JR.
Associate Justice



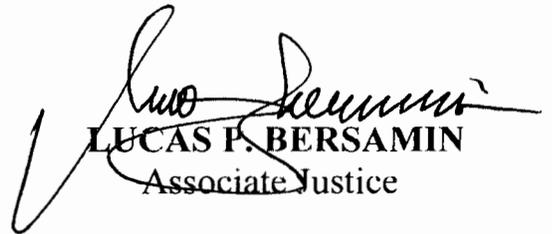
TERESITA J. LEONARDO-DE CASTRO
Associate Justice



ARTURO D. BRION
Associate Justice



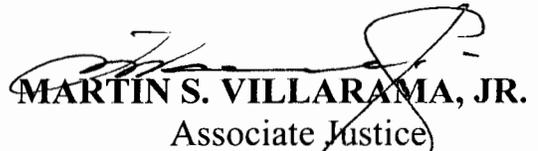
DIOSDADO M. PERALTA
Associate Justice



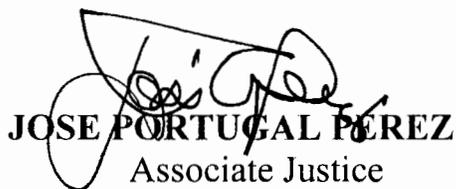
LUCAS F. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice



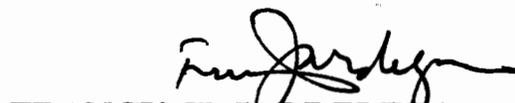
BIENVENIDO L. REYES
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC M. VF. LEONEN
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

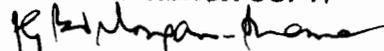
Pursuant to Section 13, Article VIII of the Constitution, I hereby certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



MARIA LOURDES P. A. SERENO

Chief Justice

CERTIFIED XEROX COPY:



**FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT**

k