



Republic of the Philippines

Supreme Court

Manila

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE

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SECOND DIVISION

BY:   
TIME:

KRISTINE CALUBAQUIB-DIAZ,  
Petitioner,

G.R. No. 235033

Present:

LEONEN, J., Chairperson,  
LAZARO-JAVIER,  
LOPEZ, M.,  
LOPEZ, J., and  
KHO, JR., JJ.

-versus-

DINO LOPEZ DIAZ and  
REPUBLIC OF THE  
PHILIPPINES,  
Respondents.

Promulgated:  
OCT 12 2022

X-----X

DECISION

LEONEN, J.:

Regardless of the type of action — whether it is *in personam*, *in rem*, or *quasi in rem* — the preferred mode of service of summons is personal service. If parties resort to other modes of service, the sheriff's or the process server's return must detail the actions taken and show that the other party cannot be personally served despite diligent and reasonable efforts.<sup>1</sup> Failure to meet these requisites will render other modes of service, including summons by publication, defective. As a result, the court will have no

<sup>1</sup> See *De Pedro v. Romasan Development Corporation*, 748 Phil. 706, 728 (2014) [Per J. Leonen, Second Division].

jurisdiction over the other party, and any judgment rendered against them will be null and void.<sup>2</sup>

This Court resolves a Petition for Review on Certiorari<sup>3</sup> under Rule 45 of the Rules of Court, assailing the Decision<sup>4</sup> and Resolution<sup>5</sup> of the Court of Appeals. The Court of Appeals reversed and set aside the Decision<sup>6</sup> of the Regional Trial Court, which declared the marriage of Kristine Calubaquib-Diaz (Kristine) and Dino Lopez Diaz (Dino) as null and void.

Kristine claimed that she and Dino became lovers when they met in 2009. Soon, the two began living together at Dino's Angono, Rizal residence, with Kristine shouldering most of the household expenses and even paying for the house amortizations of Dino's relatives.<sup>7</sup>

When Kristine discovered that she was pregnant with their son, she did not immediately inform Dino as he was having an affair. However, when she finally told him of the pregnancy through text, Dino did not immediately respond. He only showed up after a month.<sup>8</sup>

During Kristine's pregnancy, Dino continued having affairs with different women. Each time Kristine found out about the affairs, Dino would beg for her forgiveness and promise to change his ways.<sup>9</sup>

Kristine and Dino eventually got married on June 28, 2010. Kristine's parents paid for the wedding expenses. On their wedding night, Dino only dropped Kristine off at the condominium, left her alone, and went out with his friends. After their wedding, Kristine and Dino lived with Kristine's parents at Filinvest I, Quezon City.<sup>10</sup>

On November 21, 2010, Kristine gave birth to their son, Duke Kaiser Calubaquib-Diaz (Duke).<sup>11</sup> Dino neither brought her to the hospital, nor

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<sup>2</sup> *People's General Insurance Corporation v. Guansing*, G.R. No. 204759, November 14, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64769>> [Per J. Leonen, Third Division], citing *Interlink Movie Houses, Inc. v. Court of Appeals*, 823 Phil. 1032 (2018) [Per J. Martires, Third Division].

<sup>3</sup> *Rollo*, pp. 31–56.

<sup>4</sup> *Id.* at 14–27. The July 27, 2017 Decision in CA-G.R. CV No. 106329 was penned by Associate Justice Franchito N. Diamante with the concurrence of Associate Justices Magdangal M. De Leon and Zenaida T. Galapate-Laguilles of the Fifth Division, Court of Appeals, Manila.

<sup>5</sup> *Id.* at 12–13. The October 25, 2017 Resolution in CA-G.R. CV No. 106329 was penned by Associate Justice Franchito N. Diamante with the concurrence of Associate Justices Magdangal M. De Leon and Zenaida T. Galapate-Laguilles of the Fifth Division, Court of Appeals, Manila.

<sup>6</sup> *Id.* at 81–87. The August 12, 2015 Decision in Civil Case No. R-QZN-13-00005-SP was penned by Presiding Judge Ma. Lourdes A. Giron of the Regional Trial Court, National Capital Judicial Region, Branch 102, Quezon City.

<sup>7</sup> *Id.* at 15.

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

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

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

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

checked up on her after her caesarian operation. He only arrived after she gave birth and left immediately.<sup>12</sup>

Despite getting married, Dino did not exert any effort to find work to support the needs of their family. Instead, he would wake up in the afternoon, go out with his friends, and come home late, intoxicated. He depended on Kristine and even abused the generosity of her parents to support his extravagant lifestyle.<sup>13</sup>

Kristine and her parents took care of Duke and spent for Kristine's hospital bills, Duke's baptism, and his other needs. Dino did not help in caring for Duke nor did he spend any quality time with him. As such, Duke had no understanding of the real concept of a father, referring to any man as his "daddy."<sup>14</sup>

In 2012, Kristine successfully persuaded Dino to finish college and even provided him financial support. However, Dino took this opportunity to "fuel his arrogance and philandering ways."<sup>15</sup> He acted as if he was a bachelor, flirting with women and having illicit relations.<sup>16</sup>

By July 2012, Kristine told Dino that she wanted to end their relationship since Dino refused to change his ways. Dino pleaded with her and promised to reform, saying, "*wag muna, wala pa akong titirhan.*"<sup>17</sup>

In the latter part of October 2012, Dino left their house, allegedly for a vacation. He had yet to return by November 2012, prompting Kristine to text him to go home. He returned in late November 2012 only to get his belongings while Kristine was not home. Dino did not even say goodbye to either Kristine or Duke.<sup>18</sup>

After they separated, Dino admitted to Kristine that he only married her for money. Such reasoning explained his lack of sympathy and drive to perform the essential marital obligations.<sup>19</sup>

Kristine discovered, through social media, that Dino would continue his extramarital affairs. He even lived with another woman in his father's house at Casa Milan Subdivision in Quezon City.<sup>20</sup>

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<sup>12</sup> *Id.* at 16.

<sup>13</sup> *Id.* at 15-16.

<sup>14</sup> *Id.* at 16.

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

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

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

<sup>18</sup> *Id.* at 16-17.

<sup>19</sup> *Id.* at 17.

<sup>20</sup> *Id.*

In December 2012, Kristine underwent psychiatric evaluation with Dr. Valentina Del Fonso Garcia (Dr. Garcia) to determine the root cause of their problems.<sup>21</sup>

On May 2, 2013, Kristine filed a Petition for Declaration of Nullity of Marriage against Dino due to his psychological incapacity.<sup>22</sup>

Summons was issued to Dino but was returned unserved.<sup>23</sup> The Process Server's Report<sup>24</sup> stated that service was attempted on May 24, 2013 and June 10, 2013 at the address indicated in the summons, to no avail. The security guard on duty stated that Dino only visited the address occasionally and that he was residing in Antipolo City.

On July 24, 2013, the Office of the Solicitor General entered its appearance and delegated its authority to the Office to the City Prosecutor of Quezon City.<sup>25</sup>

On July 26, 2013, Kristine filed a Motion for Issuance of Alias Summons (with Motion for Leave to Serve Summons by Publication).<sup>26</sup> In an August 8, 2013 Order,<sup>27</sup> the Regional Trial Court granted the motion and issued an Order of Summons by Publication<sup>28</sup> on the same day. However, due to Kristine's failure to comply, the Regional Trial Court ordered the archiving of the case on December 27, 2013.<sup>29</sup>

On February 17, 2014, Kristine filed a Motion to Reinstate the Petition,<sup>30</sup> attaching copies of the publication of the summons in Viewliner Publication,<sup>31</sup> a newspaper of general circulation, as well as the Publisher's Affidavit.<sup>32</sup>

On February 27, 2014, the Regional Trial Court issued an Order<sup>33</sup> reinstating the case. It also directed the Assistant City Prosecutor to investigate whether collusion existed between the parties as Dino failed to file an answer despite the expiration of the 30-day period stated in the summons by publication.

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 17.

<sup>23</sup> *Id.* at 18.

<sup>24</sup> *Id.* at 166.

<sup>25</sup> *Id.* at 18.

<sup>26</sup> *Id.* at 162-164.

<sup>27</sup> *Id.* at 168.

<sup>28</sup> *Id.* at 169.

<sup>29</sup> *Id.* at 171.

<sup>30</sup> *Id.* at 172-173.

<sup>31</sup> *Id.* at 175-176.

<sup>32</sup> *Id.* at 177.

<sup>33</sup> *Id.* at 213.

On May 7, 2014, the Assistant City Prosecutor filed a Manifestation<sup>34</sup> stating that no collusion exists between the parties.<sup>35</sup>

Trial then proceeded. Aside from Kristine, Dr. Garcia and Anna Mae Peña, the couple's common friend, testified in support of her petition.<sup>36</sup>

After concluding her presentation, Kristine filed her Formal Offer of Evidence on February 24, 2015.<sup>37</sup>

In a March 26, 2015 Order, the Regional Trial Court ordered Kristine to file a memorandum within 30 days from receipt of the Order, stating that the case will be deemed submitted for decision upon the lapse of the period. Kristine filed her Memorandum on May 11, 2015.<sup>38</sup>

The Regional Trial Court rendered its August 12, 2015 Decision<sup>39</sup> without any evidence adduced by either the Office of the Solicitor General or Dino.<sup>40</sup> The dispositive portion of the trial court's Decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered declaring the marriage between petitioner KRISTINE B. CALUBAQUIB-DIAZ and respondent DINO LOPEZ DIAZ solemnized on June 28, 2010 by the Hon. June Santiago M. Arenas of Branch 217 of the Regional [Trial] Court, Quezon City NULL AND VOID on the ground of psychological incapacity of the respondent to comply with the essential marital obligations of marriage under Article 36 of the Family Code.

The Petitioner is allowed to use her maiden name KRISTINE B. CALUBAQUIB.

Considering that the parties' minor child Duke Kaiser Calubaquib Diaz is presently living with the petitioner, the custody is awarded to the petitioner-mother without prejudice to the exercise of the respondent's right as the father, subject to the condition that the best interest and welfare of the child shall be of paramount consideration.

Petitioner and respondent are obliged to support jointly their minor child, in accordance with Articles 70 and 194 of the Family Code.

The Court shall issue a Decree of Absolute Nullity when finality of this Decision shall expire after fifteen (15) days from notice to the parties.

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<sup>34</sup> *Id.* at 215.

<sup>35</sup> *Id.* at 19.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 19.

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

<sup>39</sup> *Id.* at 81-87.

<sup>40</sup> *Id.* at 19, 85.

The City Civil Registrar of Quezon City is hereby directed to cancel from their Registry of Marriages the Marriage Contract entered into by herein parties on the above mentioned date.

In as much as the *summons[,] as well as the petition, together with its annexes, was served through summons by publication*, and in accordance with the provisions of Section 22 of the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, let the dispositive portion of this Decision be published once a week for two (2) consecutive weeks in a newspaper of general circulation.

Let copies of this Decision be served to the parties and furnish the same to the Office of the Solicitor General, the Public Prosecutor's Office, the City Civil Registrar of Quezon City, where the marriage was celebrated and where this Court is located and the National Statistics Office for recording in their Registry of Marriages

SO ORDERED.<sup>41</sup> (Emphasis supplied)

The Regional Trial Court held that based on Dr. Garcia's testimony and Dino's actions toward Kristine and Duke, Dino was incapable of discharging the essential marital obligations of marriage.<sup>42</sup>

The Office of the Solicitor General moved for reconsideration,<sup>43</sup> which was denied by the Regional Trial Court in a January 5, 2016 Order.<sup>44</sup>

On appeal, the Court of Appeals reversed and set aside the Regional Trial Court's ruling. The dispositive portion of its July 27, 2017 Decision<sup>45</sup> reads:

WHEREFORE, in view of the foregoing, the instant appeal is hereby GRANTED. The assailed Decision dated August 12, 2015 and the Order dated January 5, 2016 of the Quezon City Regional Trial Court – Branch 102 in Civil Case No. R-QZN-13-00005-SP for Declaration of Nullity of Marriage are hereby REVERSED and SET ASIDE for being NULL AND VOID.

SO ORDERED.<sup>46</sup>

The Court of Appeals held that the Regional Trial Court did not acquire jurisdiction over Dino, making its judgment null and void. It observed that the Process Server's Report showed that no positive step was taken to personally serve summons upon Dino. The process server neither inquired from the persons at the provided address for Dino's present residence, nor did he ask when Dino would drop by. It observed that Kristine was aware of the

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<sup>41</sup> *Id.* at 86–87.

<sup>42</sup> *Id.* at 85–86.

<sup>43</sup> *Id.* at 346–354.

<sup>44</sup> *Id.* at 355.

<sup>45</sup> *Id.* at 14–27.

<sup>46</sup> *Id.* at 26.

happenings in Dino's life—to the extent of knowing that he lived with another woman. Dr. Garcia even testified that she sent Dino registered letters with return cards at the same address to invite him to narrate his side and undergo psychiatric evaluation, to which Dino responded with a phone call. The Court of Appeals concluded that Dino's usual place of residence is the same as the address indicated in the summons. Hence, the process server should have resorted to substituted service by leaving copies of the summons at Dino's residence with some person of suitable age and discretion residing therein.<sup>47</sup>

Kristine moved for reconsideration, which was denied by the Court of Appeals in its October 25, 2017 Resolution.<sup>48</sup>

Dissatisfied with the ruling, Kristine filed a Petition for Review<sup>49</sup> before this Court.

Petitioner argues that the Regional Trial Court had jurisdiction over both respondent and the *res* as summons was properly made through publication due to the impossibility of personal service to respondent. The Process Server's Report shows that two attempts were made at the indicated address, with the security guard stating that respondent only visits occasionally as he resides in Antipolo City. Petitioner claims that the diligent efforts made by the process server, as well as the need to promptly serve summons within a reasonable time, justified the resort to summons by publication.<sup>50</sup>

Petitioner disagrees with the pronouncement in *Manotoc v. Court of Appeals*<sup>51</sup> that at least three attempts to personally serve the summons must be made before resorting to substituted service. She cites *Macasaet v. Co., Jr.*,<sup>52</sup> where substituted service was allowed after only two attempts were made on the same day.<sup>53</sup>

Petitioner further argues that in proceedings *in rem* such as this case, the purpose of summons is only to satisfy the due process requirement, and not to vest the court with jurisdiction. The court acquires jurisdiction over an action as long as it acquires jurisdiction over the *res* that is the subject matter thereof. As applied in this case, her filing of the petition before the Regional Trial Court having jurisdiction over her residence vests such court with jurisdiction over the *res*. Correspondingly, such jurisdiction, coupled with the proper resort to substituted service of summons, entails the reversal of the

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<sup>47</sup> *Id.* at 22–26.

<sup>48</sup> *Id.* at 12–13.

<sup>49</sup> *Id.* at 31–56.

<sup>50</sup> *Id.* at 41–42.

<sup>51</sup> *Manotoc v. Court of Appeals*, 530 Phil. 454 (2006) [Per J. Velasco, Jr., Third Division].

<sup>52</sup> *Macasaet v. Co., Jr.*, 710 Phil. 167 (2013) [Per J. Bersamin, First Division].

<sup>53</sup> *Rollo*, pp. 43–46.

Court of Appeals' finding that the Regional Trial Court's ruling is null and void.<sup>54</sup>

Petitioner also asserts that the Office of the Solicitor General is estopped from questioning the jurisdiction of the court as regards the person of respondent, as it should have opposed the Regional Trial Court's grant of her motion to serve summons by publication at the earliest possible time. She highlights that the Office of the Solicitor General was furnished with her Motion for Issuance of Alias Summons (with Motion for Leave to Serve Summons by Publication), Motion to Reinstate Petition (with Compliance of the Order dated 8 August 2013), and the Regional Trial Court's August 8, 2013 Order allowing the service of summons by publication. The Office of the Solicitor General's failure to raise any opposition or question the propriety of service of summons by publication renders it in estoppel.<sup>55</sup>

In its Comment,<sup>56</sup> the Office of the Solicitor General argues that jurisdiction over the parties is required in all types of actions.<sup>57</sup> Jurisprudence has likewise settled that jurisdiction over the defendant spouse is required in a petition for declaration of nullity of a void marriage.<sup>58</sup>

The Office of the Solicitor General asserts that this Court is consistent that the "three attempts rule" must be strictly observed," and that substantial compliance with *Manotoc* is insufficient.<sup>59</sup> As such, the two attempts made by the process server cannot be considered as compliance.<sup>60</sup>

The Office of the Solicitor General further argues that personal service is the preferred mode of serving summons, while substituted service and summons by publication may only be resorted to if personal service is "impossible."<sup>61</sup> It points out that the process server did not exert any genuine effort to personally serve summons on respondent or determine his whereabouts as they only relied on a security guard's claim that respondent no longer lived at the given address. Thus, since respondent was not validly served with summons, the Regional Trial Court's decision is void as it had no authority to terminate the marriage.<sup>62</sup>

As regards petitioner's claim of estoppel, the Office of the Solicitor General argues that jurisdictional issues may be raised at any stage of the proceeding as it cannot be lost by waiver or estoppel.<sup>63</sup>

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<sup>54</sup> *Id.* at 47-53.

<sup>55</sup> *Id.* at 53-55.

<sup>56</sup> *Id.* at 473-490.

<sup>57</sup> *Id.* at 479-481.

<sup>58</sup> *Id.* at 481-486.

<sup>59</sup> *Id.* at 478.

<sup>60</sup> *Id.* at 482.

<sup>61</sup> *Id.* at 477.

<sup>62</sup> *Id.* at 482-486.

<sup>63</sup> *Id.* at 487.

In a July 23, 2018 Resolution,<sup>64</sup> this Court required petitioner to provide respondent's current address. In response, petitioner stated that she exerted efforts to determine his address by inquiring with common acquaintances, to no avail.<sup>65</sup> The Office of the Solicitor General similarly manifested to the Court that the National Bureau of Investigation had no information on respondent.<sup>66</sup>

In her Reply,<sup>67</sup> petitioner argues that both she and the process server exerted serious efforts to promptly serve summons to respondent within the time set by the court. The difficulty in promptly serving him with summons is evident in the Office of the Solicitor General's Manifestation that even the National Bureau of Investigation could not provide any detail as to respondent's whereabouts.<sup>68</sup>

Petitioner insists that even assuming the substituted service of summons was defective, the same will not automatically nullify the proceedings before the Regional Trial Court as *Manotoc* involves an *in personam* case.<sup>69</sup>

The issues for this Court's resolution are:

first, whether or not summons was validly served upon respondent Dino Lopez Diaz through publication; and,

second, whether or not the Office of the Solicitor General is estopped from questioning the jurisdiction of the court over the person of respondent Dino Lopez Diaz.

The Petition is unmeritorious.

## I

It is undisputed that courts may only exercise their powers with binding effect if they acquire jurisdiction over: (a) the cause of action or the subject matter of the case; (b) the thing or the *res*; (c) the parties; and (d) the remedy.<sup>70</sup>

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<sup>64</sup> *Id.* at 500.

<sup>65</sup> *Id.* at 505–506.

<sup>66</sup> *Id.* at 528.

<sup>67</sup> *Id.* at 552–560.

<sup>68</sup> *Id.* at 552–553.

<sup>69</sup> *Id.* at 553.

<sup>70</sup> See *De Pedro v. Romasan Development Corporation*, 748 Phil. 706, 723 (2014) [Per J. Leonen, Second Division].

Consequently, decisions or orders issued by courts outside their jurisdiction are void.<sup>71</sup>

Jurisdiction over the parties is the power of the courts to make decisions that are binding on them. A court acquires jurisdiction over petitioners as soon as they file the initiatory pleading, while jurisdiction over respondents is acquired through the valid service of summons or their voluntary submission to the court's jurisdiction.<sup>72</sup>

In *De Pedro v. Romasan Development Corporation*,<sup>73</sup> this Court clarified the need for jurisdiction over the parties to satisfy the requirements of due process:

Jurisdiction over the parties is required regardless of the type of action—whether the action is *in personam*, *in rem*, or *quasi in rem*.

In actions *in personam*, the judgment is for or against a person directly. Jurisdiction over the parties is required in actions *in personam* because they seek to impose personal responsibility or liability upon a person.

Courts need not acquire jurisdiction over parties on this basis in *in rem* and *quasi in rem* actions. Actions *in rem* or *quasi in rem* are not directed against the person based on his or her personal liability.

Actions *in rem* are actions against the thing itself. They are binding upon the whole world. *Quasi in rem* actions are actions involving the status of a property over which a party has interest. *Quasi in rem* actions are not binding upon the whole world. They affect only the interests of the particular parties.

However, to satisfy the requirements of due process, jurisdiction over the parties in *in rem* and *quasi in rem* actions is required.<sup>74</sup> (Citations omitted)

As such, the mere institution of actions *in rem*, such as the present case for annulment of marriage, will vest the court with jurisdiction over the res, but this is insufficient to allow the court to proceed with the case with authority and competence.<sup>75</sup>

“Courts are guardians of constitutional rights, and therefore, cannot deny due process rights while at the same time be considered to be acting

<sup>71</sup> *Id.* at 723–724.

<sup>72</sup> *People's General Insurance Corporation v. Guansing*, G.R. No. 204759, November 14, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64769>> [Per J. Leonen, Third Division],

<sup>73</sup> 748 Phil. 706 (2014) [Per J. Leonen, Second Division].

<sup>74</sup> *Id.* at 725.

<sup>75</sup> *Id.* at 727.

within their jurisdiction.”<sup>76</sup> To satisfy the requirements of due process, jurisdiction over the parties is required as a violation thereof is a jurisdictional defect.<sup>77</sup> In the absence of service or when the service of summons upon a party is defective, the court acquires no jurisdiction over their person, and a judgment rendered against them is null and void.<sup>78</sup> Ultimately, compliance with the rules on service of summons “is as much an issue of due process as of jurisdiction.”<sup>79</sup> Hence, regardless of the nature of the action, proper service of summons is imperative.<sup>80</sup>

In serving summons, personal service is the preferred mode.<sup>81</sup> Jurisprudence requires the sheriff or the process server to act with utmost diligence and reasonable promptness so as not to prejudice the expeditious dispensation of justice. They must exert their best efforts to accomplish personal service on the respondent.<sup>82</sup>

It is only when several attempts to serve summons through personal service fails that one may resort to the other modes of service of summons.<sup>83</sup> These “several attempts” are defined by the Court as “at least three (3) tries, preferably on at least two different dates.”<sup>84</sup> The sheriff or process server must also narrate why these efforts proved unsuccessful.<sup>85</sup>

The Rules of Court allows summons to be served by substituted service only for justifiable causes and if the respondent cannot be served within a reasonable time.<sup>86</sup> This was elaborated upon in *San Pedro v. Ong*:<sup>87</sup>

Personal service of summons is preferred to substitute service. Only if the former cannot be made promptly can the process server resort to the latter. Moreover, the proof of service of summons must (a) indicate the impossibility of service of summons within a reasonable time; (b) specify the efforts exerted to locate the defendant; and (c) state that the summons was served upon a person of sufficient age and discretion who is residing in the address, or who is in charge of the office or regular place of business, of the defendant. It is likewise required that the pertinent facts proving these circumstances be stated in the proof of service or in the officer’s return. The

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<sup>76</sup> *People’s General Insurance Corporation v. Guansing*, G.R. No. 204759, November 14, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64769>> [Per J. Leonen, Third Division]. (Citation omitted)

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*, citing *Interlink Movie Houses, Inc. v. Court of Appeals*, 823 Phil. 1032 (2018) [Per J. Martires, Third Division].

<sup>79</sup> *Samartino v. Raor*, 433 Phil. 173, 186 (2002) [Per J. Ynares-Santiago, First Division].

<sup>80</sup> See *De Pedro v. Romasan Development Corporation*, 748 Phil. 706, 725 (2014) [Per J. Leonen, Second Division].

<sup>81</sup> *Titan Dragon Properties Corporation v. Velasco-Galenzoga*, G.R. No. 246088, April 28, 2021, <<https://sc.judiciary.gov.ph/20345/>> [Per J. Zalameda, First Division].

<sup>82</sup> *Manotoc v. Court of Appeals*, 530 Phil. 454, 469 (2006) [Per J. Velasco, Jr., Third Division].

<sup>83</sup> *De Pedro v. Romasan Development Corporation*, 748 Phil. 706, 727–728 (2014) [Per J. Leonen, Second Division].

<sup>84</sup> *Manotoc v. Court of Appeals*, 530 Phil. 454, 470 (2006) [Per J. Velasco, Jr., Third Division].

<sup>85</sup> *Id.* at 470.

<sup>86</sup> *De Pedro v. Romasan Development Corporation*, 748 Phil. 706, 728 (2014) [Per J. Leonen, Second Division].

<sup>87</sup> 590 Phil. 781 (2008) [Per J. Chico-Nazario, Third Division].

failure to comply faithfully, strictly and fully with all the foregoing requirements of substituted service renders the service of summons ineffective.<sup>88</sup> (Citation omitted)

Another mode of service allowed by the Rules of Court is service of summons by publication. This mode may only be effected by leave of court when the respondent's identity or whereabouts is unknown and cannot be ascertained by diligent inquiry.<sup>89</sup> It must be shown that multiple unsuccessful attempts were made to serve the summons personally and that diligent inquiries regarding the respondent's whereabouts proved futile.<sup>90</sup> Further, to satisfy the diligence requirement, prior resort to both personal service and substituted service must be made and shown to be ineffective.<sup>91</sup>

The legality of a party's resort to modes of service other than personal service requires a scrutiny of the contents of the sheriff or the process server's return to determine if justifiable cause exists and if the requisites are met. In all cases, earnest efforts must be made to personally serve summons prior to resorting to other modes of service. As explained in *Chu v. Mach Asia Trading Corporation*:<sup>92</sup>

This is necessary because substituted service is in derogation of the usual method of service. It is a method extraordinary in character, hence, may be used only as prescribed and in the circumstances authorized by statute. The statutory requirements of substituted service must be followed strictly, faithfully and fully, and any substituted service other than that authorized by statute is considered ineffective.<sup>93</sup> (Citation omitted)

In cases where summons by publication is availed of, the Court requires utmost compliance with the requirements:

Where service is obtained by publication, the entire proceeding should be closely scrutinized by the courts and a strict compliance with every condition of law should be exacted. Otherwise great abuses may occur, and the rights of persons and property may be made to depend upon the elastic conscience of interested parties rather than the enlightened judgment of the court or judge.<sup>94</sup>

This Court finds that the foregoing requirements were not complied with when petitioner resorted to summons by publication.

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<sup>88</sup> *Id.* at 796.

<sup>89</sup> RULES OF COURT, rule 14, sec. 16.

<sup>90</sup> *De Pedro v. Romasan Development Corporation*, 748 Phil. 706, 728 (2014) [Per J. Leonen, Second Division].

<sup>91</sup> *Express Padala (Italia) S.P.A. v. Ocampo*, 817 Phil. 911, 918 (2017) [Per J. Jardeleza, First Division].

<sup>92</sup> 707 Phil. 284 (2013) [Per J. Peralta, Third Division].

<sup>93</sup> *Id.* at 291.

<sup>94</sup> *Yu v. Lim Yu*, 787 Phil. 569, 585 (2016) [Per J. Peralta, Third Division], citing *Dulap v. Court of Appeals*, 149 Phil. 636, 649 (1971) [Per J. Villamor, En Banc].

The Process Server's Report indicates that only two attempts were made to personally serve respondent with summons at the address provided. The process server's first attempt failed as respondent was not there, and the process server was advised by the security guard on duty to return another day as respondent would visit occasionally. When the process server returned more than two weeks later, respondent was, again, not at the address. However, the security guard disclosed that respondent was currently living in Antipolo City.<sup>95</sup> The Report states:

THIS IS TO CERTIFY that the undersigned tried to serve the Summons on May 24, 2013, upon respondent DINO LOPEZ DIAZ at No. 8 Gesu Street, Casa Milan, Fairview, Quezon City, but failed and unavailing on the ground that respondent only visits once in a while at the given address as per information given by S/G Rodolfo Sira, a guard on duty at the mentioned address, he also advised the undersigned to come back some other day.

That on the 10<sup>th</sup> day of June, 2013, the undersigned tried again to serve the said Summons upon the respondent at the given address but also failed and unavailing on the ground that respondent is not residing and only visits once in a while at the said address and he is *presently residing somewhere in Antipolo City, as per information given by S/G Rodolfo Sira*, a guard on duty at the gate entrance in the above-mentioned address.

The Summons is hereby respectfully returned UNSERVED.<sup>96</sup>  
(Emphasis supplied)

Contrary to petitioner's assertions that earnest efforts were made, the foregoing report of the actions undertaken by the process server shows the inadequacy of the attempts to personally serve summons upon respondent. The security guard with whom the process server spoke revealed that respondent would frequent the house and even divulged the city where respondent resides. These pieces of information were vital details that would have likely led to respondent and to the success of personal service of summons upon him.

If the process server had only exercised the duty zealously, then summons would have been personally served upon respondent and his due process rights would be protected in the proceedings. In this light, it cannot be concluded that personal service was impossible or could not be made within a reasonable time.

Petitioner's reliance on *Macasaet*<sup>97</sup> to justify the process server's attempts is likewise misplaced. The sheriff in that case had deemed it futile to attempt a third time to personally serve summons after he was informed, during his second attempt, that there was no likelihood of respondent's return.

<sup>95</sup> *Rollo*, p. 166.

<sup>96</sup> *Id.*

<sup>97</sup> 710 Phil. 167 (2013) [Per J. Bersamin, First Division].

As such, substituted service of summons was resorted to, which the Court upheld.<sup>98</sup>

The facts in *Macasaet* deviate from this case in that respondent here would still frequent the address indicated in the summons and the process server was informed of the city where he resides. A third attempt at either the given address or further investigation into the lead of respondent's residence would have likely proven a success. Further, the petitioner in *Macasaet* resorted to substituted service,<sup>99</sup> which petitioner in this case failed to undertake.

Even assuming that the attempts made to personally serve summons upon respondent met the necessary threshold, petitioner's immediate resort to service of summons through publication instead of substituted summons violates the diligence requirement.<sup>100</sup>

Petitioner did not explain why substituted service was not attempted. The Process Server's Report is bereft of any statement regarding whether substituted service was availed of or any explanation as to why such mode would be infeasible.<sup>101</sup> Petitioner's statement that "despite diligent inquiries and efforts exerted by the petitioner to determine the address and whereabouts of the respondent in Antipolo City for the purpose of serving the summons, such efforts were unavailing[,]"<sup>102</sup> for the reasons earlier discussed, does not persuade.

As such, the process server cannot be said to have exerted diligent efforts to locate respondent and that personal service of summons, including substituted service, was impossible. Petitioner's immediate resort to service by publication, therefore, cannot be upheld.

Petitioner's act of immediately asking for leave of court to effect service through publication, instead of chasing down the lead regarding respondent's current address or availing of substituted service of summons, reveals her deliberate intent to bypass respondent's due process rights and keep him in the dark regarding the petition to annul their marriage. The Regional Trial Court should have been more circumspect in its duty to determine whether alternate modes of service of summons could have been availed of.

As the service of summons by publication upon respondent deviated from the rigid requirements imposed by the Court, the Regional Trial Court

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<sup>98</sup> *Id.* at 182.

<sup>99</sup> *Id.* at 171, 182.

<sup>100</sup> See *Express Padala (Italia) S.P.A. v. Ocampo*, 817 Phil 911, 918-920 (2017) [Per J. Jardeleza, First Division].

<sup>101</sup> *Rollo*, p. 166.

<sup>102</sup> *Id.* at 163.

failed to acquire jurisdiction over his person and failed to protect his due process rights. Therefore, the resultant proceedings and the decision rendered therein are null and void and cannot be binding upon him.

## II

Having established that the Regional Trial Court failed to acquire jurisdiction over the person of respondent, it must be determined if such issue is subject to estoppel, as claimed by petitioner.

Jurisprudence is consistent that objections to a court's jurisdiction over the person of the respondent must be raised at the earliest possible opportunity; otherwise, objections to the court's jurisdiction over the person are deemed waived.<sup>103</sup>

Even at this stage in the proceedings and despite the lapse of nine years since the filing of the petition, respondent has neither been notified nor heard. Viewed in light of the failure to properly serve summons upon him, it can be concluded that he is still unaware of the proceedings undertaken to annul his marriage with petitioner. Evidently, such "earliest possible opportunity" has yet to occur.

As estoppel can only set in due to respondent's inaction despite the opportunity, which is absent in this case, the failure of the Office of the Solicitor General to raise the court's lack of jurisdiction is irrelevant.

**ACCORDINGLY**, the Petition is **DENIED**, there being no reversible error in the assailed Decision. The July 27, 2017 Decision and the October 25, 2017 Resolution of the Court of Appeals in CA-G.R. CV No. 106329 are **AFFIRMED**. The August 12, 2015 Decision and January 5, 2016 Order of the Regional Trial Court in Civil Case No. R-QZN-13-00005-SP declaring the marriage of petitioner Kristine Calubaquib-Diaz and respondent Dino Lopez Diaz null and void are hereby **REVERSED** and **SET ASIDE** due to trial court's lack of jurisdiction over respondent Dino Lopez Diaz.

**SO ORDERED.**

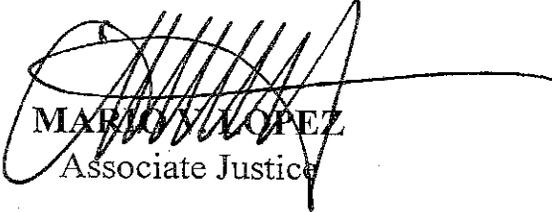


MARVIC M.V.F. LEONEN  
Senior Associate Justice

<sup>103</sup> *Villagracia v. Fifth Shari'a District Court*, 734 Phil. 239, 263-264 (2014) [Per J. Leonen, Third Division].

WE CONCUR:

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

  
**MARIO Y. LOPEZ**  
Associate Justice

  
**JHOSEP Y. LOPEZ**  
Associate Justice

  
**ANTONIO T. KHO, JR.**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARVIC M.V.F. LEONEN**  
Senior Associate Justice  
Chairperson

**CERTIFICATION**

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

  
**ALEXANDER G. GESMUNDO**  
Chief Justice