EN BANC

G.R. No. 259520 – MARIA LINA P. QUIRIT-FIGARIDO, Petitioner, v. **EDWIN L. FIGARIDO**, Respondent.

Promulgated:
November 5, 2024

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DISSENTING OPINION

ZALAMEDA, *J.*:

I dissent. With due respect, the *banc* should have judicially declared the nullity of the bigamous marriage between Maria Lina P. Quirit-Figarido (Maria Lina) and Edwin L. Figarido (Edwin). The State has no interest in preserving a bigamous marriage, and the Court should not refuse to declare this marriage void by primarily relying on technicalities.

The majority denies the Petition for Review on *Certiorari* filed by Maria Lina, and affirms the Decision[1] and the Resolution of the Court of Appeals.[2] Ultimately, it upheld the Decision of Regional Trial Court (RTC)[3] denying Maria Lina's petition for declaration of nullity of her marriage with respondent Edwin.[4]

Maria Lina married Ho Kar Wai, a Chinese National on December 13, 1989 in Tsim Sha Tsui in Hong Kong, and also on August 23, 1994 before the Metropolitan Trial Court of Parañaque City. In June 2000, Maria Lina met Edwin while she was working as a bank teller at Equitable Bank in Central Hong Kong. Edwin, who was a regular client of the bank, was an expatriate working as Engineer Manager in The Cable Assembly in Dongguan, China. Sometime in 2002, Edwin started courting Maria Lina. On February 22, 2003, Maria Lina and Edwin married before Reverend Christopher Navarro Lumibao at the House of the Groem in Narcissus Street, Roxas District, Quezon City. They had two children, Edward Lemuel Q. Figarido, and

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[1] *Ponencia*, p. 5. The June 21, 2021 Decision in CA-G.R. CV No. 114777 was penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Maria Elisa Sempio Diy and Carlito B. Calpatura.

[2] *Id.* The November 16, 2021 Resolution in CA-G.R. CV No. 114777 was penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Maria Elisa Sempio Diy and Carlito B. Calpatura.

[3] *Id.* at 4.

[4] *Id.*

Edward Lindon Q. Figarido.[5]

On November 28, 2007, Ho Kar Wai obtained a Certificate of Making Decree Nisi Absolute (Divorce Decree) from the District Court of Hong Kong Special Administrative Region, dissolving his marriage with Maria Lina. Maria Lina then filed a Petition for Recognition/Enforcement of Foreign Judgment before the RTC of Parañaque City, Branch 260 and was subsequently granted on February 5, 2009.[6]

Sometime in 2014, Maria Lina and Edwin separated. Their children remained in the custody of Maria Lina in the Philippines while Edwin, who was working overseas, provided them with support. On March 6, 2017, Maria Lina filed before the RTC of Parañaque City a petition for declaration of nullity of marriage on the basis that the same was "bigamous," pursuant to Article 35(4) of the Family Code.[7]

We have here Maria Lina who admitted that she entered into a second marriage while her prior marriage was still subsisting. She seeks to correct her error and set the record straight. That she contracted that second marriage should not prevent the Court from granting the petition for declaration of nullity. Doing so does not mean We are encouraging parties to enter into bigamous marriages, rather We are only confirming the fact that this marriages are void from the beginning pursuant to the Family Code.[8] Denying this petition and leaving the parties as they are results in an absurd situation where the Court tolerates a bigamous marriage just because of some technicality which is in a rule of procedure and not supported by substantive law.

As the Court said in *Kalaw v. Fernandez* (Kalaw):[9]

> We have to stress that the fulfilment of the constitutional mandate for the State to protect marriage as an inviolable social institution only relates to a valid marriage. No protection can be accorded to a marriage that is null and void ab initio, because such a marriage has no legal existence.
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> In declaring a marriage null and void ab initio, therefore, the Courts really assiduously defend and promote the sanctity of marriage as an inviolable social institution. The foundation of our society is thereby made all the more strong and solid.[10]

Thus, I dissent for the following reasons.

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5 *Id.* at 2.
6 *Id.* at 2–3.
7 *Id.*
8 FAMILY CODE, Art. 41. A marriage contracted by any person during subsistence of a previous marriage shall be null and void [.]
9 750 Phil. 482 (2015) [Per J. Bersamin, Special First Division].
10 *Id.*

There is no provision in the Family Code that says only the innocent spouse can file a petition for declaration of nullity of marriage. A.M. No. 02-11-10-SC is merely a procedural rule and cannot trump substantive law.

The Family Code lists the marriages that are considered void *ab initio*, namely Articles 35, 36, 37, 38, 41, 44, and 53. These marriages are void from the beginning due to the absence of any of the essential or formal requisites, for being incestuous, or by reason of public policy.[11] Specifically, Article 41 of the Family Code explicitly provides that "[a] marriage contracted by any person during subsistence of a previous marriage shall be null and void [.]"

Void marriages, like void contracts, are inexistent from the very beginning. To all legal intents and purposes, a void *ab initio* marriage does not exist and the parties, under the eyes of the law, were never married.[12] A void marriage produces no legal effects except those declared by law concerning the properties of the alleged spouses, special co-ownership or limited ownership through actual joint contribution, and its effect on the children born to void marriages as provided in Article 50 in relation to Articles 43 and 44 as well as Articles 51, 53, and 54 of the Family Code.[13]

Being inexistent under the law, the nullity of a void marriage can be maintained in any proceeding in which the fact of marriage may be material, either direct or collateral, in any civil court between any parties at any time, whether before or after the death of either or both the spouses. A void marriage is void by itself without need of any judicial declaration of nullity. Testimonial or documentary evidence may prove the absolute nullity of the previous marriage.[14]

In other instances, such as in action for liquidation, partition, distribution, and separation of property, custody, and support of common children and delivery of presumptive legitimes, testimonial or documentary evidence may prove the absolute nullity of the previous marriage, and judicial declaration of nullity is not required.[15] Likewise, this Court has recently settled that in a criminal case for bigamy, the accused may raise the defense

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[11] *Pulido v. People*, G.R. No. 220149, July 27, 2021 [Per J. Hernando, *En Banc*], *citing* J. Carpio, Concurring Opinion in *Abunado v. People*, 470 Phil 420, 434 (2004) [Per J. Ynares-Santiago, First Division] where he cited Associate Justice Jose C. Vitug's Civil Law, *Persons and Family Relations*, Vol. I, (2003 ed.).

[12] *Id.*, *citing Niñal v. Bayadog*, 384 Phil 661 (2000) [Per J. Ynares-Santiago, First Division].

[13] *Id.*

[14] *See Pulido v. People*, G.R. No. 220149, July 27, 2021 [Per J. Hernando, *En Banc*]; *Domingo v. Court of Appeals*, 297 Phil. 642 (1993) [Per J. Romero, Third Division].

[15] *Id.*

of a void *ab initio* marriage even without obtaining a judicial declaration of absolute nullity.[16]

As applied in this case, even without the judicial declaration of nullity of marriage, the law considers Maria Lina's marriage to Edwin void because at the time they got married on February 22, 2003, Maria Lina still had a subsisting marriage with Ho Kar Wai.[17] Notably, Maria Lina's marriage with Ho Kar Wai was only dissolved through a Divorce Decree on November 28, 2007 and thus it was considered subsisting until its dissolution.[18]

As I will further discuss below, neither the Family Code nor A.M. No. 02-11-10-SC[19] makes any qualification on the spouse who may file a petition to declare a marriage void. Only the Rationale of the Rules on Annulment of Voidable Marriages and Declaration of Absolute Nullity of Void Marriages, Legal Separation and Provisional Orders (Rationale) did. However, not only is the Rationale not part of A.M. 02-11-10-SC but it is not even the intent of the framers of said rule to make such qualification. The addition of the word "aggrieved" or "injured" before the word "spouse" is to highlight the fact that petitions for judicial declaration of the nullity of marriage cannot be filed by the compulsory or intestate heirs of the spouses or by the State because they are not the injured or aggrieved party in a void marriage. As oft-repeated in jurisprudence, A.M. No. 02-11-10-SC was introduced to end the right of the heirs of the deceased spouse to bring a nullity of marriage case against the surviving spouse because they have only inchoate rights prior to the death of their predecessor.[20]

If We follow the majority's interpretation instead, it will definitely lead to an absurd situation. If for instance, parties entered into a marriage knowing that they lack a marriage license, will the Court bar them from filing a petition for declaration of nullity of marriage just because they not considered "aggrieved" or "injured?" What about in the case of child marriage, who can file? Will the parties, who were both minors at the time the marriage was celebrated, be barred from filing a petition later? When both of them are considered "guilty parties," who can file a petition for declaration of nuliity of marriage in these instances?

We have to be mindful that recently, the Court ruled in *Clavecilla v. Clavecilla*[21] penned by the Chief Justice that "[e]ither spouse, whether

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[16] *Id.*

[17] *Ponencia*, pp. 3–4.

[18] *Id.*; *See Tan-Andal v. Andal*, G.R. No. 196359, May 11, 2021 [Per J. Leonen, *En Banc*].

[19] RULES ON ANNULMENT OF VOIDABLE MARRIAGES AND DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES, LEGAL SEPARATION AND PROVISIONAL ORDERS.

[20] *David v. Calilung*, G.R. No. 241036, January 26, 2021 [Per J. Delos Santos, *En Banc*]; *Ablaza v. Republic*, 642 Phil. 183 (2010) [Per J. Bersamin, Third Division]; *Carlos v. Sandoval*, 594 Phil. 534 (2008) [Per J. R.T. Reyes, Third Division].

[21] G.R. No. 228127, March 6, 2023 [Per CJ. Gesmundo, First Division].

psychologically incapacitated or not, may initiate a petition to declare the nullity of their marriage."[22] In other words, even if both parties gave grounds to nullify the marriage, the Court will still declare it void as there is nothing in the Family Code that says only the innocent spouse can file. This proceeds from the nature of a void marriage, as opposed to voidable marriages where Article 47 of the Family Code[23] provides that in certain cases, only the injured spouse can file, or in cases for legal separation where only the injured spouse can file pursuant to Article 56.[24]

Given this, it appears incongruent to deny the Maria Lina's petition on the ground that she has no legal capacity to sue pursuant to Section 2(a) of A.M. No. 02-11-10-SC notwithstanding that Article 41 of Family Code expressly provides that a marriage contracted by any person during subsistence of a previous marriage shall be null and void. Denying the petition on the alleged lack of capacity to file, which is a procedural rule, in effect clouds the status of this subsequent marriage that is obviously void for being contrary to law.

This case is an opportune time to revisit and and scrutinize the Court's pronouncement in Fujiki v. Marinay, as well as clarify Section 2 of A.M. No. 02-11-10-SC.

When Maria Lina filed the petition, A.M. No. 02-11-10-SC, a procedural rule, was already in effect. A reading of A.M. No. 02-11-10-SC tells us that **solely the husband or wife** can file a petition for declaration of absolute nullity of void marriage. On the other hand, the Rationale explains that "[o]nly an aggrieved or injured spouse may file petitions for annulment

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[22] *Id.*

[23] Art. 47. The action for annulment of marriage must be filed by the following persons and within the periods indicated herein:
(1) For causes mentioned in number 1 of Article 45 by the party whose parent or guardian did not give his or her consent, within five years after attaining the age of twenty-one, or by the parent or guardian or person having legal charge of the minor, at any time before such party has reached the age of twenty-one;
(2) For causes mentioned in number 2 of Article 45, by the same spouse, who had no knowledge of the other's insanity; or by any relative or guardian or person having legal charge of the insane, at any time before the death of either party, or by the insane spouse during a lucid interval or after regaining sanity;
(3) For causes mentioned in number 3 of Article 45, by the injured party, within five years after the discovery of the fraud;
(4) For causes mentioned in number 4 of Article 45, by the injured party, within five years from the time the force, intimidation or undue influence disappeared or ceased;
(5) For causes mentioned in number 5 and 6 of Article 45, by the injured party, within five years after the marriage.

[24] Art. 56. The petition for legal separation shall be denied on any of the following grounds:
(1) Where the aggrieved party has condoned the offense or act complained of;
(2) Where the aggrieved party has consented to the commission of the offense or act complained of;
(3) Where there is connivance between the parties in the commission of the offense or act constituting the ground for legal separation;
(4) Where both parties have given ground for legal separation;
(5) Where there is collusion between the parties to obtain decree of legal separation; or
(6) Where the action is barred by prescription.

of voidable marriages and declaration of absolute nullity of void marriages."[25]

In accordance with the Rationale's qualification, the majority is of the view that Maria Lina has no legal capacity to file the petition for declaration of nullity of marriage. In holding that Ho Kar Wai is the one who has the legal capacity to file a petition for declaration of nullity of marriage in this case, the majority finds support in *Fujiki v. Marinay* (*Fujiki*),[26] emphatically stating that "based on the rules and jurisprudence, the injured or aggrieved spouse in the prior subsisting marriage has the sole right to file the petition for declaration of nullity of the bigamous marriage."[27]

In light of the factual circumstances brought by this case and the provisions of the Family Code, in relation to Article 349 of the Revised Penal Code, I believe it is a proper time for this Court to revisit A.M. No. 02-11-10-SC, the Rationale, and the Court's interpretation of this provision in *Fujiki*.

Contrary to Fujiki, the general rule should remain that the wife or the husband may file the petition for declaration of nullity of marriage. The exception is in the case of a bigamous marriage, where the spouse of the existing first marriage is likewise authorized to file the petition for declaration of nullity of marriage.

It is worthy to emphasize that *Fujiki* traces its roots from *Juliano-Llave v. Republic* (*Juliano-Llave*),[28] although *Fujiki* became a modified version of its precedent.

In *Fujiki,* the Court emphasized that when Section 2(a) states that a petition for declaration of absolute nullity of void bigamous marriage may be filed solely by the husband or the wife, it refers to the husband or the wife of the *subsisting* marriage, *i.e.*, the first marriage. This is so because under Article 35(4) of the Family Code, bigamous marriages are void from the beginning. The parties in a bigamous marriage are neither the husband nor the wife contemplated by the Rule,[29] thus:

> Section 2(a) of A.M. No. 02-11-10-SC does not preclude a spouse of a subsisting marriage to question the validity of a subsequent marriage on the ground of bigamy. On the contrary, when Section 2(a) states that "[a]

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[25] *Juliano-Llave v. Republic*, 662 Phil. 203 (2011) [Per J. Del Castillo, First Division].
[26] 712 Phil. 524 (2013) [Per J. Carpio, Second Division].
[27] *Ponencia*, p. 6.
[28] 662 Phil. 203 (2011) [Per J. Del Castillo, First Division].
[29] *Fujiki v. Marinay*, 712 Phil. 524 (2013) [Per J. Carpio, Second Division]; *Ponencia*, pp. 7–8.

> petition for declaration of absolute nullity of void marriage may be filed **solely by the husband or the wife**"[75]—it refers to the husband or the wife of the subsisting marriage. Under Article 35(4) of the Family Code, bigamous marriages are void from the beginning. Thus, the parties in a bigamous marriage are neither the husband nor the wife under the law. The husband or the wife of the prior subsisting marriage is the one who has the personality to file a petition for declaration of absolute nullity of void marriage under Section 2(a) of A.M. No. 02-11-10-SC.[30]

There is no such categorical pronouncement in *Juliano Llave*, though.

In *Juliano Llave*, the wife in the first marriage filed a declaration of nullity of a bigamous marriage between her husband and the latter's second wife. The second wife challenged the legal personality of the first wife by arguing that under A.M. No. 02-11-10-SC, only the husband or the wife in a void marriage can file a petition for declaration of nullity of marriage. In debunking such contention, the Court, in stark contrast to *Fujiki*, implicitly acknowledged the plain and obvious rule that it should be the husband and wife of the void marriage that must file the pertinent petition. Ultimately, however, the Court held in *Juliano Llave* that "this interpretation does not apply if the reason behind the petition is bigamy," as in this case, adding that "[if such] interpretation is employed, the prior spouse is unjustly precluded from filing an action, which "is not what the Rule contemplated."[31] *Juliano Llave* further explains:

> The subsequent spouse may only be expected to take action if he or she had only discovered during the connubial period that the marriage was bigamous, and especially if the conjugal bliss had already vanished. Should parties in a subsequent marriage benefit from the bigamous marriage, it would not be expected that they would file an action to declare the marriage void and thus, in such circumstance, the "injured spouse" who should be given a legal remedy is the one in a subsisting previous marriage. The latter is clearly the aggrieved party as the bigamous marriage not only threatens the financial and the property ownership aspect of the prior marriage but most of all, it causes an emotional burden to the prior spouse. The subsequent marriage will always be a reminder of the infidelity of the spouse and the disregard of the prior marriage which sanctity is protected by the Constitution.[32]

The foregoing clearly reveals that *Fujiki*'s application of *Juliano Llave* must be clarified. The *Juliano Llave* ruling instantly tells us that *Fujiki* erred in unequivocally holding that "when Section 2(a) states that "[a] petition for declaration of absolute nullity of void marriage may be filed **solely by the husband or the wife**"[33]—it refers to the husband or the wife of the subsisting marriage" and that since "[u]nder Article 35(4) of the Family Code, bigamous

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30 *Fujiki v. Marinay*, 712 Phil. 524, 550–551 (2013) [Per J. Carpio, Second Division].
31 *Juliano-Llave v. Republic*, 662 Phil. 203, 222–223 (2011) [Per J. Del Castillo, First Division].
32 *Id.* at 223–234.
33 Emphasis in the original.

marriages are void from the beginning[,]" "the parties in a bigamous marriage are neither the husband nor the wife under the law."[34] Technically, there is no subsisting marriage in all kinds of void marriages. Hence, there is no reason to distinguish the wife and husband in a void bigamous marriage from the spouses of other kinds of void marriages. In bigamous marriage, however, *Juliano Llave* took due consideration of the financial and emotional position of the spouses in the first marriage, finding it an equitable and exceptional reason to authorize them to file the pertinent petition. Hence, as it now stands, the general rule is that only the husband or wife of the void marriage has the capacity to file the petition for judicial declaration of the nullity of marriage. By way of exception, the spouse in the subsisting first marriage is authorized to file a petition for the nullity of a bigamous marriage, pursuant to *Juliano Llave*.

In addition, the interpretation in *Fujiki* that only the husband and wife in the subsisting marriage can file a petition unduly deprives **innocent second spouses** the right to seek the nullification of their bigamous marriages. In fact, *Fujiki* is inconsistent with the *Juliano Llave* ruling in this respect because the latter impliedly recognized such right of the innocent second spouse to file the pertinent petition, thus:

> The subsequent spouse may only be expected to take action if he or she had only discovered during the connubial period that the marriage was bigamous, and especially if the conjugal bliss had already vanished. Should parties in a subsequent marriage benefit from the bigamous marriage, it would not be expected that they would file an action to declare the marriage void.[35]

I respectfully object to the limitation that only the aggrieved or injured spouse may file the petition. To reiterate, while the present rule allows either the husband or wife of the void marriage to file the petition for declaration of nullity of marriage, and as such, Edwin could have been authorized to file the same. However, the Rationale allegedly bars him from filing the same because he is not the injured spouse, given that he also knowingly entered into an illicit romance and later, a bigamous marriage with Maria Lina.

Evidently, there is a need to revisit *Fujiki* as it unduly prevents the innocent second spouse from filing a declaration of nullity of marriage when such limitation is not found in the Family Code, the A.M. No. 02-11-10-SC, and even its Rationale. Neither is it the import of the Court's ruling in *Juliano Llave*. To continue relying on *Fujiki* will only unfairly disregard innocent second spouses' own emotional burden of finding out that their marriage does not exist. Moreover, it will unjustly force them to miserably remain in their illegal marriage as they have no way to get out of it unless the so-called aggrieved party decides to file the petition that could free them all from their

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[34] *Juliano-Llave v. Republic*, 662 Phil. 203 (2011) [Per J. Del Castillo, First Division].
[35] *Id.* at 223.

unsavory entanglements. I repeat, A.M. No. 02-11-10-SC was introduced only to foreclose the right of the heirs of the deceased spouse to petition for the nullity of marriage against the surviving spouse because they have only inchoate rights prior to the death of their predecessor.[36]

Ultimately, to avoid similar iniquitous situations, the Court should do away with the unnecessary qualification created by the Rationale on who between the spouses in the void marriage is entitled to file a petition because the Family Code does not provide for such distinction.

As I earlier raised, what if there is no aggrieved spouse as when all three of them knew exactly what they are into and consented or acquiesced to such a situation or when, as in this case, the spouses in the bigamous marriage are both aware of their illicit affair and the spouse in the first marriage has already obtained a judicial recognition of the divorce? What if, when the spouse of the subsisting first marriage has the legal capacity to file, he or she is not interested to seek the nullification of the subsequent marriage? There are several what ifs that can be conjured given the realities of life, the present social dynamics, and the frailty of humankind. The more important question here is, what is the Court's judicious approach to settling cases involving a peculiar set of circumstances as in this case?

As stated earlier, based on the definition of an "aggrieved" or "injured" spouse under the Rationale, the majority declared Maria Lina lacking in legal capacity to file the petition given that she was the one who contracted the subsequent marriage. Furthermore, the majority did not refute Maria Lina's argument that Ho Kar Wai lost his status as the injured or aggrieved spouse in the prior subsisting marriage when he secured the Divorce Decree abroad. There being no aggrieved or injured spouse to seek the end of the bigamous marriage that would have capacitated Maria Lina and Edwin to remarry, the majority refused to consider Maria Lina's plea as "there is no compelling reason for the State to dissolve the illegitimate union of the bigamous spouses."[37]

Mindful of the Court's duty to make a calibrated assessment of facts and the law for a just resolution of cases and the broader interest of justice, it begs me to question: Would it really be a judicious resolution of this case for the Court to let Maria Lina and Edwin live as a married couple, when in the

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[36] *David v. Calilung*, G.R. No. 241036, January 26, 2021 [Per J. Delos Santos, *En Banc*]; *Ablaza v. Republic*, 642 Phil. 183 (2010) [Per J. Bersamin, Third Division]; *Carlos v. Sandoval*, 594 Phil. 534 (2008) [Per J. R.T. Reyes, Third Division].

[37] *Ponencia*, p. 11.

eyes of the law, their marriage is void, by blindly adhering to a technicality resulting from the Court's possibly unwarranted adoption of the Rationale?

While courts are, first and foremost, a court of law, magistrates are not automatons. In the eloquently written and thought-provoking prefatory statement in the case of *Alonzo v. Intermediate Appellate Court*,[38] the late former Associate Justice Isagani A. Cruz said:

> The question is sometimes asked, in serious inquiry or in curious conjecture, whether we are a court of law or a court of justice. Do we apply the law even if it is unjust or do we administer justice even against the law? Thus queried, we do not equivocate. The answer is that we do neither because we are a court *both* of law and of justice. We apply the law *with* justice for that is our mission and purpose in the scheme of our Republic.[39]

Indeed, as *De Guzman v. Sandiganbayan*[40] (*De Guzman*) emphatically declares, "[t]he power of this Court to suspend its own rules or to except a particular case from its operations whenever the purposes of justice require it, cannot be questioned." *De Guzman* further teaches that "[t]he rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. Even the Rules of Court envision this liberality. This power to suspend or even disregard the rules can be so pervasive and encompassing so as to alter even that which this Court itself has already declared to be final [.]"[41]

Following this premise, I dissent and encourage the *banc* to scrutinize the relevant statement in the Rationale and the dire results of its literal and stringent application, as shown by the majority's disposition where a palpably void subsequent marriage is being refused to be declared as such only because it is the erring spouse who filed the petition.

The phrase "aggrieved or injured spouse" is not found in the language of A.M. No. 02-11-10-SC but in its Rationale, which the majority heavily relies on. Without the Rationale, a reading of Section 2(a) will authorize Maria Lina or Edwin to file the petition. In line with this, I submit that while the Rationale is persuasive, it does not bind the Court. To reiterate, the Rationale does not form part of A.M. No. 02-11-10-SC. More importantly, I find nothing in the Family Code that supports the adoption of the qualification provided in the Rationale that only an aggrieved or injured spouse may file a petition for declaration of nullity of marriage. Instead, what the Family Code

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[38] 234 Phil. 267 (1987) [Per J. Cruz, *En Banc*].
[39] *Id.*
[40] 326 Phil. 182 (1996) [Per J. Francisco, *En Banc*].
[41] *Id.*

expressly contains are provisions stating the effects of a declaration of nullity of marriages in favor of an innocent spouse and against a spouse in bad faith, and also the consequence if both spouses of the subsequent marriage acted in bad faith.[42]

Ideally, the State, as part of its constitutional duty to protect the sanctity of marriage as a social institution, should have more interest in ensuring that void bigamous marriages do not exist in our society, let alone proliferate. It is also to the State's interest that the ill effects of such marriages be significantly minimized. In keeping with such mandate, the Court has compelling reason to declare a subsequent marriage void whenever the facts and evidence before it preponderantly proves that the second marriage is, in fact, what it purports to be.

Contrary to the majority's conclusion, this Court is not empowering an erring spouse to dissolve the void bigamous marriage "at will." As *Kalaw* states, "[n]o protection can be accorded to a marriage that is null and void *ab initio* [.]"[43] In nullifying a marriage, the court simply declares a status or condition.[44] In other words, Maria Lina is not dissolving her marriage "at will" because, in the first place, her subsequent marriage to Erwin is inexistent and without effect in the eyes of the law from its inception. She only seeks the judicial declaration of the nullity of the same.

At any rate, I also see no good reason to qualify the spouse who may file the pertinent petition. Granting that a petitioner may have gravely erred in contracting a void marriage and blatantly disregarded the institution of marriage, it is not enough reason to deprive him or her of the right granted by law to seek the dissolution of his or her void marriage.

I emphasize that neither the Family Code nor A.M. No. 02-11-10-SC makes any qualification on the spouse who may file a petition to declare a marriage void. Only the Rationale made the distinction. Even assuming that the drafters of A.M. No. 02-11-10-SC failed to have contemplated a situation, such as in this case, We see now the possibility that a party may admit that he or she is the erring party in a void marriage. The Court should do well to adapt to the present-day reality. The circumstances of this case warrant the liberality of the Court and a relaxation of the rule such that the lack of an aggrieved party in this case should not prevent the Court from ultimately declaring the nullity of the void marriage between Maria Lina and Edwin.

Indubitably, a void bigamous marriage is contrary to law. In fact,

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[42] *See* Article 50 of the FAMILY CODE, in relation to Articles 43 and 44.

[43] *Id.*

[44] *Pulido v. People*, G.R. No. 220149, July 27, 2021 [Per J. Hernando, *En Banc*], *citing Suntay v. Cojuangco-Suntay*, 360 Phil 932, 944 (1998) [Per J. Martinez, Second Division].

contracting a bigamous marriage results in the crime of Bigamy, punishable under the Revised Penal Code. It is also against public policy; it does not promote the protection of the sanctity of marriage. However, declaring the nullity of the subsequent marriage between Maria Lina and Edwin, pursuant to Articles 35(4) and 41 of the Family Code, does not mean that this Court condones Maria Lina's transgression or downplays, the ill-effects of a void marriage. Because even if we declare this marriage void, the State can still hold parties liable for bigamy under Article 349 of the Revised Penal Code. As We ruled in *Abunado v. People*:[45]

> The subsequent judicial declaration of the nullity of the first marriage was immaterial because prior to the declaration of nullity, the crime had already been consummated. Moreover, petitioner's assertion would only delay the prosecution of bigamy cases considering that an accused could simply file a petition to declare his previous marriage void and invoke the pendency of that action as a prejudicial question in the criminal case. We cannot allow that.
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> The outcome of the civil case for annulment of petitioner's marriage to Narcisa had no bearing upon the determination of petitioner's innocence or guilt in the criminal case for bigamy, because all that is required for the charge of bigamy to prosper is that the first marriage be subsisting at the time the second marriage is contracted.[46]

Given the foregoing, I dissent and the Court should have granted this petition as it is the only way for Maria Lina to rectify her grave mistake and formally put an end to an obviously void marriage. In doing so, the Court actually reinforces the State's interest in prohibiting parties from entering into bigamous marriage and preventing said void marriage from further unleashing its undesirable consequences.

RODIL V. ZALAMEDA
Associate Justice

[45] 470 Phil. 420 (2004) [Per J. Ynares-Santiago, First Division].
[46] *Id.* at 429–430.