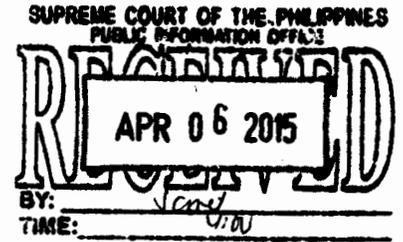




Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 18, 2015** which reads as follows:*

**“G.R. No. 214792 (REPUBLIC OF THE PHILIPPINES, petitioner, versus HON. BENJAMIN P. ESTRADA, in his capacity as Presiding Judge of RTC, Branch 9, Malaybalay City and TERESITA J. OLEMBERIO, respondent).** – The petitioner’s motion for an extension of thirty (30) days within which to file a petition for review on certiorari is **GRANTED**, counted from the expiration of the reglementary period.

On 14 October 2008, Teresita J. Olemberio filed a Petition for Declaration of Absence and Presumption of Death of her husband Diego before the Regional Trial Court (RTC) of Malaybalay. Teresita alleged she married Diego on 25 November 1973 in Impasug-ong, Bukidnon. Sometime in December 1976, Diego left their residence and never came back. He failed to communicate with her for the past 32 years and never made contact with any of their children or immediate relatives. She alleged that she exerted all efforts to reach her husband but failed. She filed the present petition to declare her husband presumptively dead so that she could contract another marriage without any impediment.

On 10 August 2009, the RTC Malaybalay granted her petition and declared Diego for all legal intents and purposes presumptively dead in accordance with Article 41 of the Family Code.

Upon appeal before the Court of Appeals, the Office of the Solicitor General filed a Petition for *Certiorari* contesting the grant of petition. On 12 December 2013, the appellate court denied the petition and affirmed the decision of the RTC.

- over - three (3) pages .....



Before this Court, OSG is alleging error on the part of the lower courts in their appreciation of the facts and circumstances of the death of Diego as well as the insufficiency of efforts of Teresita in locating Diego's whereabouts which let her to form a belief that the latter is already dead.

We dismiss the petition.

Article 41 of the Family Code provides:

A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present has a well-founded belief that the absent spouse was already dead. In case of disappearance where there is a danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

In this case, Diego's absence for more than 30 years, which far exceeded the law-required four years of absence, is more than enough to declare him presumptively dead for all legal intents and purposes. Further, it can be clearly gleaned from the totality of evidence that Diego had already died due to the prevalence of New People's Army in Malaybalay. As Cited by the appellate court:

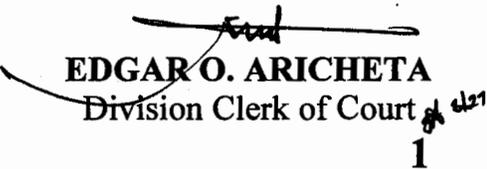
xxx It had been thirty two years since the date of Diego Olemberio's disappearance when Teresita seasonably filed her petition with the RTC. The fact that Diego Olemberio would be seventy-five years old by now was reason enough to support the presumption that he could be dead. To Teresita Olemberio, the acts of going to SSS to inquire on Diego's remittances and of going to the house of the parents of Diego to inquire as to his whereabouts, constitute diligent efforts sufficient to support her belief that Diego is dead. It is the petitioner in a petition for declaration of presumptive of death, and not the trial court, who must possess a well-grounded belief of the death of his or absent spouse. To the satisfaction of the trial court, Teresita Olemberio was able to prove such belief. This Court is well aware that in the mountainous province of Bukidnon where the private respondent resides,

NPA occupation is prevalent. Thus, we find no cogent reason to disturb the findings of fact of the trial court. The well-settled rule that factual findings of trial courts deserve respect, sometimes even finality, is based on the postulate that they had distinct opportunity, not available to the reviewing courts, to hear the testimonies of witnesses and to observe their conduct and demeanor on the stand.<sup>1</sup>

**Wherefore** the petition is **DENIED**. Accordingly, the Decision and Resolution of the Court of Appeals dated 12 December 2013 and 9 October 2014 are hereby **AFFIRMED**.

**SO ORDERED.** SERENO, C.J., on official travel; JARDELEZA, J., designated acting member per S.O. No. 1952 dated March 18, 2015.

Very truly yours,

  
EDGAR O. ARICHETA  
Division Clerk of Court <sup>of 121</sup>

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The Solicitor General (x)  
Makati City

Court of Appeals  
9000 Cagayan de Oro City  
(CA-G.R. SP No. 03649-MIN)

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The Hon. Presiding Judge  
Regional Trial Court, Br. 9  
Malaybalay City 8700 Bukidnon  
(Sp. Proc. Case No. 3218-08)

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<sup>1</sup> Rollo, pp. 5-6.

*fi*