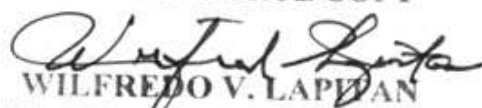




Republic of the Philippines
SUPREME COURT
 Baguio City

CERTIFIED TRUE COPY

WILFREDO V. LAPIDAN
 Division Clerk of Court
 Third Division

MAY 22 2018

THIRD DIVISION

ESTRELLITA TADEO-MATIAS,
 Petitioner,

G.R. No. 230751

Present:

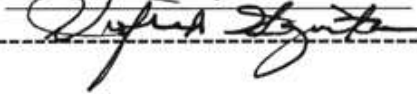
- versus -

VELASCO, JR., *J.*, Chairperson,
 BERSAMIN,
 LEONEN,
 MARTIRES, and
 GISMUNDO, *JJ*

REPUBLIC OF THE PHILIPPINES,
 Respondent.

Promulgated:

April 25, 2018



x-----x

DECISION

VELASCO, JR., *J.*:

This is an appeal¹ assailing the Decision² dated November 28, 2016 and Resolution³ dated March 20, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 129467.

The facts are as follows:

On April 10, 2012, petitioner Estrellita Tadco-Matias filed before the Regional Trial Court (RTC) of Tarlac City a petition for the declaration of presumptive death of her husband, Wilfredo N. Matias (Wilfredo).⁴ The allegations of the petition read:

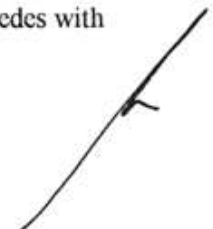
1. [Petitioner] is of legal age, married to [Wilfredo], Filipino and curr[e]ntly a resident of 106 Molave street, Zone B, San Miguel, Tarlac City;

¹ Under Rule 45 of the Rules of Court.

² *Rollo*, pp. 29-36. The decision was penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Magdangal M. De Leon and Elihu A. Ybañez concurring.

³ *Id.* at 38-39.

⁴ *Id.* at 46-48.




2. [Wilfredo] is of legal age, a member of the Philippine Constabulary and was assigned in Arayat, Pampanga since August 24, 1967[;]
3. The [p]etitioner and [Wilfredo] entered into a lawful marriage on January 7, 1968 in Imbo, Anda, Pangasinan x x x;
4. After the solemnization of their marriage vows, the couple put up their conjugal home at 106 Molave street, Zone B, San Miguel, Tarlac City;
5. [Wilfredo] continued to serve the Philippines and on September 15, 1979, he set out from their conjugal home to again serve as a member of the Philippine Constabulary;
6. [Wilfredo] never came back from his tour of duty in Arayat, Pampanga since 1979 and he never made contact or communicated with the [p]etitioner nor to his relatives;
7. That according to the service record of [Wilfredo] issued by the National Police Commission, [Wilfredo] was already declared missing since 1979 x x x;
8. Petitioner constantly pestered the then Philippine Constabulary for any news regarding [her] beloved husband [Wilfredo], but the Philippine Constabulary had no answer to his whereabouts, [neither] did they have any news of him going AWOL, all they know was he was assigned to a place frequented by the New People's Army;
9. [W]eeks became years and years became decades, but the [p]etitioner never gave up hope, and after more than three (3) decades of waiting, the [p]etitioner is still hopeful, but the times had been tough on her, specially with a meager source of income coupled with her age, it is now necessary for her to request for the benefits that rightfully belong to her in order to survive;
10. [T]hat one of the requirements to attain the claim of benefits is for a proof of death or at least a declaration of presumptive death by the Honorable Court;
11. That this petition is being filed not for any other purpose but solely to claim for the benefit under P.D. No. 1638 as amended.

The petition was docketed as Spec. Proc. No. 4850 and was raffled to Branch 65 of the Tarlac City RTC. A copy of the petition was then furnished to the Office of the Solicitor General (OSG).

Subsequently, the OSG filed its notice of appearance on behalf of herein respondent Republic of the Philippines (Republic).⁵

⁵ Id. at 78.



On January 15, 2012, the RTC issued a Decision⁶ in Spec. Proc. No. 4850 granting the petition. The dispositive portion of the Decision reads:⁷

WHEREFORE, in view of the foregoing, the Court hereby declared (*sic*) WILFREDO N. MATIAS absent or presumptively dead **under Article 41 of the Family Code of the Philippines** for purposes of claiming financial benefits due to him as former military officer.

x x x x

SO ORDERED. (Emphasis supplied)

The Republic questioned the decision of the RTC *via* a petition for *certiorari*.⁸

On November 28, 2012, the CA rendered a decision granting the *certiorari* petition of the Republic and setting aside the decision of the RTC. It accordingly disposed:

WHEREFORE, premises considered, the petition for certiorari is GRANTED. The Decision dated January 15, 2012 of the Regional Trial Court, branch 65, Tarlac City, in Special Proceeding no. 4850 is ANNULLED and SET ASIDE, and the petition is DISMISSED.

The CA premised its decision on the following ratiocinations:

1. The RTC erred when it declared Wilfredo presumptively dead on the basis of Article 41 of the Family Code (FC). Article 41 of the FC does not apply to the instant petition as it was clear that petitioner does not seek to remarry. If anything, the petition was invoking the presumption of death established under Articles 390 and 391 of the Civil Code, and not that provided for under Article 41 of the FC.
2. Be that as it may, the petition to declare Wilfredo presumptively dead should have been dismissed by the RTC. The RTC is without authority to take cognizance of a petition whose sole purpose is to have a person declared presumptively dead under either Article 390 or Article 391 of the Civil Code. As been held by jurisprudence, Articles 390 and 391 of the Civil Code merely express rules of evidence that allow a court or a tribunal

⁶ Id. at 78-80. The decision was penned by Judge Ma. Magdalena A. Balderama.

⁷ This is actually the *corrected* version of the dispositive portion of the RTC decision. Originally, the dispositive portion of the said decision read:

WHEREFORE, in view of the foregoing, the Court hereby declared (*sic*) WILFREDO N. MATIAS absent or presumptively dead under Article 41 of the Family Code of the Philippines for **purposes of remarriage**.

x x x x

SO ORDERED. (Emphasis supplied)

The RTC issued the corrected version of the dispositive portion on the same day it issued the decision.

⁸ Under Rule 65 of the Rules of Court.

to presume that a person is dead—which presumption may be invoked in any action or proceeding, but itself cannot be the subject of an independent action or proceeding.

Petitioner moved for reconsideration, but the CA remained steadfast. Hence, this appeal.

Our Ruling

We deny the appeal.

I

The CA was correct. The petition for the declaration of presumptive death filed by the petitioner is not an authorized suit and should have been dismissed by the RTC. The RTC's decision must, therefore, be set aside.

RTC Erred in Declaring the Presumptive Death of Wilfredo under Article 41 of the FC; Petitioner's Petition for the Declaration of Presumptive Death Is Not Based on Article 41 of the FC, but on the Civil Code

A conspicuous error in the decision of the RTC must first be addressed.

It can be recalled that the RTC, in the *fallo* of its January 15, 2012 Decision, granted the petitioner's petition by declaring Wilfredo presumptively dead "*under Article 41 of the FC.*" By doing so, the RTC gave the impression that the petition for the declaration of presumptive death filed by petitioner was likewise filed pursuant to Article 41 of the FC.⁹ This is wrong.

The petition for the declaration of presumptive death filed by petitioner is not an action that would have warranted the application of Article 41 of the FC because petitioner was not seeking to remarry. A reading of Article 41 of the FC shows that the presumption of death established therein is only applicable for the purpose of *contracting a valid subsequent marriage* under the said law. Thus:

Art. 41. A marriage contracted by any person during 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

⁹ Executive Order No. 209, s. 1987.



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.

Here, petitioner was forthright that she was not seeking the declaration of the presumptive death of Wilfredo as a prerequisite for remarriage. In her petition for the declaration of presumptive death, petitioner categorically stated that the same was filed "*not for any other purpose but solely to claim for the benefit under P.D. No. 1638 as amended.*"¹⁰

Given that her petition for the declaration of presumptive death was *not* filed for the purpose of remarriage, **petitioner was clearly relying on the presumption of death under either Article 390 or Article 391 of the Civil Code¹¹ as the basis of her petition.** Articles 390 and 391 of the Civil Code express the general rule regarding presumptions of death for *any* civil purpose, to wit:

Art. 390. After an absence of seven years, it being unknown whether or not the absentee still lives, he shall be presumed dead for all purposes, except for those of succession.


The absentee shall not be presumed dead for the purpose of opening his succession till after an absence of ten years. If he disappeared after the age of seventy-five years, an absence of five years shall be sufficient in order that his succession may be opened.

Art. 391. The following shall be presumed dead for all purposes, including the division of the estate among the heirs:

- (1) A person on board a vessel lost during a sea voyage, or an aeroplane which is missing, who has not been heard of for four years since the loss of the vessel or aeroplane;
- (2) A person in the armed forces who has taken part in war, and has been missing for four years;
- (3) A person who has been in danger of death under other circumstances and his existence has not been known for four years.

¹⁰ *Rollo*, p. 47.

¹¹ Republic Act No. 386.



Verily, the RTC's use of Article 41 of the FC as its basis in declaring the presumptive death of Wilfredo was misleading and grossly improper. **The petition for the declaration of presumptive death filed by petitioner was based on the Civil Code, and not on Article 41 of the FC.**

Petitioner's Petition for Declaration of Presumptive Death Ought to Have Been Dismissed; A Petition Whose Sole Objective is to Declare a Person Presumptively Dead Under the Civil Code, Like that Filed by the Petitioner Before the RTC, Is Not a Viable Suit in Our Jurisdiction

The true fault in the RTC's decision, however, goes beyond its misleading *fallo*. The decision *itself* is objectionable.

Since the petition filed by the petitioner merely seeks the declaration of presumptive death of Wilfredo under the Civil Code, the RTC should have dismissed such petition outright. This is because, in our jurisdiction, a petition whose *sole objective* is to have a person declared presumptively dead under the Civil Code is *not* regarded as a valid suit and no court has any authority to take cognizance of the same.

The above norm had its conceptual roots in the 1948 case of *In re: Petition for the Presumption of Death of Nicolai Szatraw*.¹² In the said case, we held that a rule creating a presumption of death¹³ is merely one of evidence that—while may be invoked in any action or proceeding—cannot be the lone subject of an independent action or proceeding. *Szatraw* explained:

The rule invoked by the latter is merely one of evidence which permits the court to presume that a person is dead after the fact that such person had been unheard from in seven years had been established. This presumption may arise and be invoked and made in a case, either in an action or in a special proceeding, which is tried or heard by, and submitted for decision to, a competent court. **Independently of such an action or special proceeding, the presumption of death cannot be invoked, nor can it be made the subject of an action or special proceeding.** In this case, **there is no right to be enforced nor is there a remedy prayed for by the petitioner against her absent husband.** Neither is there a prayer for the final determination of his right or status or for the ascertainment of a particular fact, for the petition does not pray for a declaration that the petitioner's husband is dead, but merely asks for a declaration that he be presumed dead because he had been unheard from in seven years. If there

¹² No. L-1780, August 31, 1948.

¹³ The rule expressing the presumption of death referred to in the case of *Szatraw* is found under Section 334 (24) of Act No. 190 or the Code of the Civil Procedure of the Philippines. The section reads:

Section 334. Disputable Presumptions. – The following presumptions are satisfactory, if uncontradicted, but they are disputable, and may be contradicted by other evidence:

x x x x

24. That a person not heard from in seven years is dead.

is any pretense at securing a declaration that the petitioner's husband is dead, such a pretension cannot be granted because it is unauthorized. **The petition is for a declaration that the petitioner's husband is presumptively dead. But this declaration, even if judicially made, would not improve the petitioner's situation, because such a presumption is already established by law. A judicial pronouncement to that effect, even if final and executory, would still be a *prima facie* presumption only. It is still disputable. It is for that reason that it cannot be the subject of a judicial pronouncement or declaration, if it is the only question or matter involved in a case, or upon which a competent court has to pass.** The latter must decide finally the controversy between the parties, or determine finally the right or status of a party or establish finally a particular fact, out of which certain rights and obligations arise or may arise; and once such controversy is decided by a final judgement, or such right or status determined, or such particular fact established, by a final decree, then the judgement on the subject of the controversy, or the decree upon the right or status of a party or upon the existence of a particular fact, becomes *res judicata*, subject to no collateral attack, except in a few rare instances especially provided by law. It is, therefore, clear that a judicial declaration that a person is presumptively dead, because he had been unheard from in seven years, being a presumption *juris tantum* only, subject to contrary proof, cannot reach the stage of finality or become final. (Citations omitted and emphasis supplied)

The above ruling in *Szatraw* has since been used by the subsequent cases of *Lukban v. Republic*¹⁴ and *Gue v. Republic*¹⁵ in disallowing petitions for the declaration of presumptive death based on Article 390 of the Civil Code (and, implicitly, also those based on Article 391 of the Civil Code).

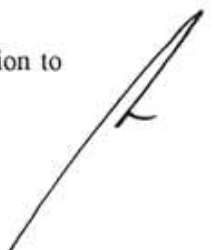
Dissecting the rulings of *Szatraw*, *Gue* and *Lukban* collectively, we are able to ascertain the considerations why a petition for declaration of presumptive death based on the Civil Code was disallowed in our jurisdiction, viz:¹⁶

1. Articles 390 and 391 of the Civil Code merely express rules of evidence that only allow a court or a tribunal to *presume* that a person is dead upon the establishment of certain facts.
2. Since Articles 390 and 391 of the Civil Code merely express rules of evidence, **an action brought exclusively to declare a person presumptively dead under either of the said articles actually presents no actual controversy that a court could decide.** In such action, there would be no actual rights to be enforced, no wrong to be remedied nor any status to be established.

¹⁴ 98 Phil. 574 (1956).

¹⁵ 107 Phil. 381 (1960).

¹⁶ *In re: Petition for the Presumption of Death of Nicolai Szatraw*, supra note 12, in relation to *Lukban v. Republic*, supra note 14 and *Gue v. Republic*, supra note 15.



3. A judicial pronouncement declaring a person presumptively dead under Article 390 or Article 391 of the Civil Code, in an action exclusively based thereon, would never really become “*final*” as the same only confirms the existence of a *prima facie* or disputable presumption. The function of a court to render decisions that is supposed to be *final* and *binding* between litigants is thereby compromised.
4. Moreover, a court action to declare a person presumptively dead under Articles 390 and 391 of the Civil Code would be unnecessary. **The presumption in the said articles is already established by law.**

Verily, under prevailing case law, courts are without any authority to take cognizance of a petition that—like the one filed by the petitioner in the case at bench—only seeks to have a person declared presumptively dead under the Civil Code. Such a petition is not authorized by law.¹⁷ Hence, by acting upon and eventually granting the petitioner’s petition for the declaration of presumptive death, the RTC violated prevailing jurisprudence and thereby committed grave abuse of discretion. The CA, therefore, was only correct in setting aside the RTC’s decision.

II


Before bringing this case to its logical conclusion, however, there are a few points the Court is minded to make.

It is not lost on this Court that much of the present controversy stemmed from the misconception that a court declaration is *required* in order to establish a person as presumptively dead for purposes of claiming his death benefits as a military serviceman under pertinent laws.¹⁸ This misconception is what moved petitioner to file her misguided petition for the declaration of presumptive death of Wilfredo and what ultimately exposed her to unnecessary difficulties in prosecuting an otherwise simple claim for death benefits either before the Philippine Veterans’ Affairs Office (PVAO) or the Armed Forces of the Philippines (AFP).

What the Court finds deeply disconcerting, however, is the possibility that such misconception may have been peddled by no less than the PVAO and the AFP themselves; that such agencies, as a matter of practice, had been requiring claimants, such as the petitioner, to first secure a court declaration of presumptive death before processing the death benefits of a missing serviceman.

¹⁷ *Valdez v. Republic of the Philippines*, G.R. No. 180863, September 8, 2009, citing *Gue v. Republic*, *supra* note 15.

¹⁸ *Rollo*, p. 47.



In view of the foregoing circumstance, the Court deems it necessary to issue the following guidelines—culled from relevant law and jurisprudential pronouncements—to aid the public, PVAO and the AFP in making or dealing with claims of death benefits which are similar to that of the petitioner:

1. **The PVAO and the AFP can decide claims of death benefits of a missing soldier without requiring the claimant to first produce a court declaration of the presumptive death of such soldier.** In such claims, the PVAO and the AFP can make their own determination, on the basis of evidence presented by the claimant, whether the presumption of death under Articles 390 and 391 of the Civil Code may be applied or not.

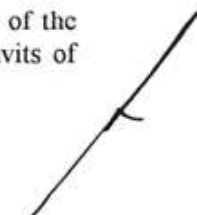
It must be stressed that the presumption of death under Articles 390 and 391 of the Civil Code arises by operation of law, *without need of a court declaration*, once the factual conditions mentioned in the said articles are established.¹⁹ Hence, requiring the claimant to further secure a court declaration in order to establish the presumptive death of a missing soldier is not proper and contravenes established jurisprudence on the matter.²⁰

2. In order to avail of the presumption, therefore, the claimant need only present before the PVAO or the appropriate office of the AFP, as the case may be, any “*evidence*”²¹ which shows that the concerned soldier had been missing for such number of years and/or under the circumstances prescribed under Articles 390 and 391 of the Civil Code. Obviously, the “*evidence*” referred to here *excludes* a court declaration of presumptive death.
3. The PVAO or the AFP, as the case may be, may then weigh the evidence submitted by the claimant and determine their sufficiency to establish the requisite factual conditions specified under Article 390 or 391 of the Civil Code in order for the presumption of death to arise. **If the PVAO or the AFP determines that the evidence submitted by the claimant is sufficient, they should not hesitate to apply the presumption of death and pay the latter’s claim.**

¹⁹ *Manuel v People of the Philippines*, G.R. No. 165842, November 29, 2005 citing TOLENTINO, THE NEW CIVIL CODE, VOL. 1, 690. See also *Valdez v. Republic*, supra note 17.

²⁰ *In re: Petition for the Presumption of Death of Nicolai Szatraw*, supra note 12, in relation to *Lukban v. Republic*, supra note 14 and *Gue v. Republic*, supra note 15.

²¹ The “*evidence*” referred to include, but are not limited to, the official service records of the missing soldier showing for how long he had been missing and his last assignments and affidavits of persons who knew the circumstances of the missing soldiers’ disappearance.



4. If the PVAO or the AFP determines that the evidence submitted by the claimant is not sufficient to invoke the presumption of death under the Civil Code and denies the latter's claim by reason thereof, the claimant may file an appeal with the Office of the President (OP) pursuant to the principle of exhaustion of administrative remedies.

If the OP denies the appeal, the claimant may next seek recourse *via* a petition for review with the CA under Rule 43 of the Rules of the Court. And finally, should such recourse still fail, the claimant may file an appeal by *certiorari* with the Supreme Court.

While we are constrained by case law to deny the instant petition, the Court is hopeful that, by the foregoing guidelines, the unfortunate experience of the petitioner would no longer be replicated in the future.

WHEREFORE, the instant appeal is **DENIED**. The Decision dated November 28, 2016 and Resolution dated March 20, 2017 of the Court of Appeals in CA-G.R. SP No. 129467 are **AFFIRMED**. The Court declares that a judicial decision of a court of law that a person is presumptively dead is not a requirement before the Philippine Veterans' Affairs Office or the Armed Forces of the Philippines can grant and pay the benefits under Presidential Decree No. 1638.

Let a copy of this decision be served to the Philippine Veterans' Affairs Office and the Armed Forces of the Philippines for their consideration.

SO ORDERED.



PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

I dissent. See separate opinion

Marvic M.V.F. Leonen
MARVIC M.V.F. LEONEN
Associate Justice

Samuel R. Martires
SAMUEL R. MARTIRES
Associate Justice

Alexander G. Gesmundo
ALEXANDER G. GESMUNDO
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.

Presbitero J. Velasco, Jr.
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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.

CERTIFIED TRUE COPY
Wilfredo V. Lapid
WILFREDO V. LAPID
Division Clerk of Court
Third Division
MAY 22 2018

Antonio T. Carpio
ANTONIO T. CARPIO
Acting Chief Justice