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11 August 1999

To : All City/Municipal Civil Registrars

Subject : LEGITIMATION OF ILLEGITIMATE CHILDREN OF UNDERAGE
MOTHER OR FATHER OR BOTH

The issue as to whether or not an illegitimate child of underage parents can be legitimated by subsequent marriage of the latter is finally settled by the Court of Appeals in the case of *Spouses Alberto Bioco, Jr. and Junice Bongay-Bioco vs. MCR of Montevista and the Civil Registrar General, CA-G.R. Sp. No. 51583, 07 July 1999.*

Here are the facts of the case:

On December 23, 1991, Junice Bongay gave birth to a child with Alberto Bioco as the natural father. Since the couple were not married, the child was registered with the Municipal Civil Registrar of Montevista as Jessa Bongay, following her mother's maiden name. On February 14, 1994, Junice and Alberto were married at the Sta. Teresita Parish Church in Nabunturan. Junice and Alberto attempted to register the legitimation of their daughter and to change her registered surname, from Bongay to Bioco. However, the Municipal Civil Registrar of Montevista refused to register it on the ground that the mother Junice was below 18 years old at the time of the child's conception.

Consequently, Junice and Alberto filed a mandamus case against the Municipal Civil Registrar of Montevista and the Civil Registrar General to compel the latter to cause the registration of the legitimation of their minor child Jessa Bongay (Special Civil Case No. 38, RTC, Nabunturan, Comval).

Respondents (MCR of Buenavista and the Civil Registrar General) filed a verified answer wherein it argued that petitioners' daughter cannot be legitimated citing Article 177 in relation to Articles 2 and 5 of the Family Code, since at the time of the conception of the said child, her mother was under a legal impediment to marry in view of the fact that the latter was underage. Furthermore, they argued that although the registration of civil registry documents is ministerial, such duty obtains, once the civil registrar is satisfied that the application along with the supporting documents are complete and consistent.

On September 30, 1998, the trial court issued an order in favor of the petitioners, the dispositive portion of which reads:

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PREMISED ON ALL THE FOREGOING CONSIDERATIONS, order is hereby issued directing the Municipal Civil Registrar of Montevista, Comval Province to register the child Jessa Bongay-Bioco as legitimate child of Alberto Bioco Jr. and Junice Bongay-Bioco.

The MCR of Montevista and the Civil Registrar General brought the case to the Court of Appeals, assigning the following issues:

1. Whether or not mandamus would lie to compel the respondents to register the legitimation of petitioners' daughter, and
2. Whether or not petitioners' daughter is a legitimated child under the provisions of the Family Code.

The 4th Division of the Court of Appeals composed of Associate Justices Teodoro P. Regino, Salome A. Montoya and Conrado M. Vasquez, Jr. rendered the following decision:

The appeal must be sustained.

In rendering the order appealed from, the trial court sustained the ground relied upon by petitioners. His Honor reasoned thus:

"Art. 177 of the Family Code of the Philippines states: Only children conceived and born outside of wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other may be legitimated.

In law, there are two (2) restrictions: Incapacity and disqualification. Incapacity like age, disqualification like when one of the spouses is already married to another person, the phrase in Article 177 which states: 'were not disqualified by any impediment to marry each other' may refer to the restriction which is incapacity as to age and not to the restriction which is disqualification like being married to another person. Hence, upon reaching the age of majority and upon their subsequent marriage the child born outside wedlock when one of the parents was still of non-age may be legitimated.

To interpret otherwise would result to an absurdity because the child born out of wedlock would be illegitimate while his brothers and sisters born after their marriage are considered legitimate."

In our view, the trial court's confident stride falters.

Incapacity is defined in Luciano vs. Provincial Governor, 28 SCRA 537, as the lack of physical or intellectual power, or of natural or legal qualification. In this sense, the trial court is correct when it says that non-age is incapacity, at least legally. Disqualification however is a state of being disqualified, i.e., that which disqualifies or incapacitates, as non-age is a disqualification to enter into marriage. The distinction is thus a mere academic or theoretical discussion for

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lack of the required necessary age is a cause or fact, an impediment which prevents the formation of a valid marriage. Under-age prevents the person subject to it from marrying at all. The essential requisite of legal capacity is lacking, and, as a consequence, rendered the marriage void ab initio (Arts. 2, 4 and 35, Family Code). Thus understood, the legal capacity of the party, as an essential requisite to enter into the marriage contract, simply meant that he/she must have the necessary age and there must be no impediment. A person below the required age of 18 cannot marry at all. This is an absolute legal impediment. Applying Article 177 of the Family Code, petitioners-appellees' daughter Jessa cannot be legitimated because petitioner Junice, at the time of the conception of daughter Jessa, was only fourteen (14) years old and therefore there is an impediment as the parents could not have contracted marriage.

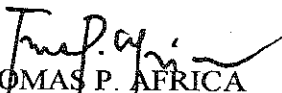
It is stated forcefully that to interpret Article 177 otherwise would result to an absurdity. This is not acceptable. Absurdity in the law, if any, cannot be corrected by judicial decisions but by legislation. The judiciary cannot change a congressional law by an extensive interpretation of it.

Under the given state of facts, petitioners have no clear legal right to the performance of the act to be required of the respondents-appellants and that the latter have no imperative duty to perform.

The writ of mandamus therefore does not lie.

WHEREFORE, the order appealed from is REVERSED and the petition for mandamus DISMISSED. No costs.

Henceforth, in view of this latest decision of the Court of Appeals, any affidavit of legitimation executed by the parents of an illegitimate child who was conceived and born when one or both of the former were below 18 years old shall not be recorded in the Register of Legal Instruments and shall not be used as a legal basis in making marginal annotation in the record of birth of the latter. The same rule shall apply even if ordered by a Regional Trial Court.


TOMAS P. AFRICA
Civil Registrar General

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