

ESTRANGED WIFE VS. MISTRESS – WHO HAS BETTER RIGHTS OVER THE REMAINS?

Early in 2012, a custody battle over the corpse of a prominent congressman arose between his estranged wife and his mistress. The solon died in a foreign land and the mistress left instructions with the mortuary to cremate the body. The wife though wanted her husband's remains to be buried in their family mausoleum in the Philippines. The foreign court awarded custody to the mistress, but the wife filed her own case in Quezon City. Eventually, the matter was settled in a media-frenzy spectacle with both women being present in the funeral and burial of the late solon in his home province.

If the conflict had dragged on, who would legally be entitled to Iggy's corpse? And would Iggy be cremated, or buried?

Fortunately, we need not wonder any longer as the Supreme Court came out with what could well be the *final say* in "corpse custody battles" just a few weeks ago.

Adriano and Rosario were married but became estranged. Rosario had been living separately in the United States for 20 years, while Adriano began maintaining a live-in relationship with Fe.

When Adriano died, Fe took care of all the funeral arrangements in Manila Memorial Park. Rosario then learned of Adriano's death and immediately contacted Fe telling her to wait for her as she wanted to bury him instead in Holy Cross Memorial Park. When Fe ignored Rosario's pleas, Rosario filed a lawsuit against her.

Fe argued that Adriano had long ago told her that he wanted to be buried in Manila Memorial park. She also pointed out that Rosario had no right since she had already abandoned him.

Ruling in favor of Rosario, the Supreme Court explained that custody over a corpse follows the same hierarchical order as support, i.e., the spouse is primarily favored, followed by the nearest descendants, the nearest ascendants, and lastly the siblings. The persons enumerated are the only ones given the duty of burial and their consent is required in the disposition of human remains. A mistress is clearly not among those mentioned.

Fe also cannot take refuge in the fact that Adriano allegedly left instructions to her to bury him in Manila Memorial Park. The Supreme Court said that "the expressed wishes of the deceased" as to his funeral only pertains to the form of the funeral rites. Any instructions regarding the place of burial should be embodied in a testamentary disposition and must not be contrary to law, meaning...it should not contravene the wishes of those who have rightful custody over his body.

Lastly, Rosario's estrangement cannot be taken against her as a waiver in the absence of a clear indication that she intended to do so. As the Supreme Court put it, *"human compassion, more often than not, opens the door to mercy and forgiveness once a family member joins his Creator."*

(Based on G.R. No. 182894, April 22, 2014)