

IN THE MATTER OF THE PETITION OF ESTEBAN LUI (KIONG) TO BE ADMITTED CITIZEN OF THE PHILIPPINES. ESTEBAN LUI (KIONG), PETITIONER AND APPELLEE, VS REPUBLIC OF THE PHILIPPINES, OPP...*G.R. No. L-9107. October 31, 1956*

Ponente: FELIX, J.

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We have before us the appeal of the Government from the decision of the Court of First Instance of Cebu admitting petitioner Esteban Lui (Kiong) to Philippine citizenship and providing that after said decision becomes final, he may take the corresponding oath of allegiance to the Republic of the Philippines preparatory to the issuance of the certificate of naturalization. The Solicitor General contends that "the lower court erred in allowing the petitioner-appellee to substitute one of his subscribing witnesses with another and in not declaring such substitution invalid as not being in accordance with law" and, consequently, "in granting Philippine citizenship to the herein petitioner-appellee".

The decision of the lower court makes an accurate exposition of the facts and of the law applicable to the matter, and as the grounds on which the appeal of the Solicitor General are based are the same as those raised for the opposition of the Government in the lower court, We hereunder copy the decision in toto and let the trial Judge refute by himself the grounds of the appeal. Said decision reads as follows:

"Petitioner's application for naturalization filed on May 23, 1951 was originally supported by the joint affidavit of his vouching witnesses Facundo Buot and Enemesdo Dabon (page 4, record). After notice of hearing was published in the Official Gazette and in the newspaper 'La Prensa' for the required statutory period (Exhibits 'J' 'K', 'K-1', 'K-2' and 'K-3') and after various postponements the application came up for hearing on February 2, 1955.

"From the evidence adduced, it appears that petitioner was born in Cebu City on August 3, 1930 (Exhibit 'A'); that he was baptized in the Roman Catholic Cathedral of Cebu City, on February 9, 1935 (Exhibit 'B'); that petitioner holds an Alien Residence Certificate (Exhibit 'C'), and an Alien Registration Certificate issued by the Bureau of Immigration (Exhibit 'D'); that petitioner is single and without any children; that he has resided in the Philippines since birth and has never left the country; that he studied in the Tejero Elementary School up to the fourth grade (Exhibit 'E'); that he studied in the fifth and sixth grades in the Zapatera Elementary School (Exhibit 'E-1'); that he finished the first year of high school in the University of San Carlos, after which, he transferred to the Colegio de San Jose where he finally obtained the Degree of Bachelor of Science in Commerce (Exhibits 'E-2', 'E-3', 'E-4' and 'E-5'); that although not required to undergo compulsory military training, petitioner actually submitted himself to such military training (Exhibit 'E-6'); that he is presently the assistant manager of the Rizal Lumber Company, situated at No. 39&-400 Colon Street, Cebu City, wherein he as, an investment of P6,000, and is earning a monthly salary of P150; that he can speak and write English and the Cebu Visayan dialect (Exhibit 'F'); that he has never been convicted of any crime (Exhibits 'G' to 'G-5', inclusive); that he is not suffering from any contagious or loathsome disease (Exhibits 'H', 'H-1' and 'H~2'); that

he has never filed any petition for naturalization before the instant petition; that he desires to become a Filipino citizen because he was born and educated in the Philippines, has mingled socially with Filipinos, and likes Filipino customs and traditions; that he believes in the principles underlying the Philippine Constitution, portions of which he recited on the witness stand; that in proof of his earnest desire to become a Filipino citizen, he is not a member of the Cebu Chinese Chamber of Commerce, notwithstanding the fact that he still is a Chinese citizen.

"Petitioner's vouching witness, Facundo Buot, a checker in the Hijos de F. Escafio Company, testified that he knew petitioner when petitioner's parents were living on Martires Street, Cebu City, from 1920 to 1935; that even after 1935, he had been seeing the petitioner; that being friends, they used to go out together to attend social gatherings, such as fiestas and baptismal parties; that petitioner is of good moral character and, in his opinion, would make a good Filipino citizen.

"Enemesio Dabon, one of petitioner's original vouching witnesses, having died on October 25, 1951, counsel presented in his stead the widow of the said witness, by the name of Asuncion Perez Vda. de Dabon. Mrs. Dabon testified that she knows petitioner's parents since 1920 and petitioner since after his birth, when they were neighbors on Martires Street, Cebu City; that petitioner is a good person; that he has no conviction whatsoever; that he mingles with Filipinos; and that she has been transacting business with petitioner in the purchase of lumber for her undertaking business in Mandawe, Cebu. In the opinion also of Mrs. Dabon, petitioner would make a good Filipino citizen.

"Notwithstanding the various continuances granted the Fiscal in order to await the report of the National Bureau of Investigation regarding the herein petitioner, the Fiscal did not present to the Court any such report of the National Bureau of Investigation. The Fiscal, therefore, submitted the case for the Government without any evidence. He, however, filed a formal opposition under date of February 14, 1955, on the ground that Mrs. Asuncion Perez Vda. de Dabon was not qualified to testify as a vouching witness for the petitioner, she not being one of the original witnesses who subscribed the affidavit in support of petitioner's application for naturalization. In other words, it is the Fiscal's contention that petitioner may act, in the hearing of the application, present witnesses other than the original witnesses who subscribed to the statutory affidavit in support of an application for naturalization.

"A review of the record discloses that petitioner's application for naturalization as a Filipino citizen, and his qualifications as such, are amply supported not only by his testimonial evidence, but also by overwhelming documentary evidence. From the said evidence, it appears that petitioner possesses all the qualifications enumerated in Section 2 of Commonwealth Act No. 473, as amended by Commonwealth Act No. 535, and none of the disqualifications enumerated in Section 4 of the statute. The court, therefore, believes that petitioner is entitled to Philippine citizenship.

"Having determined that the petitioner is fully qualified to become a Filipino citizen, the only question left for determination is whether he is entitled to Philippine citizenship under the present application, in view of the Fiscal's opposition to the competency of Asuncion Perez Vda. de Dabon to testify as a witness for him. The challenge appears to be based on Section 7 of Commonwealth Act No. 473, which provides that a petition for citizenship, besides the petitioner's qualification as enumerated in the act "must be signed by the applicant in his own handwriting and be supported by the affidavit of at least two credible persons, stating that they are citizens of the Philippines and personally know the petitioner to be a resident of the Philippines for the period of time required by this Act and a person of good repute and morally irreproachable, and that the said petitioner has in their opinion all the qualifications necessary to become a citizen of the Philippines, and is not in any way disqualified under the provisions of this Act.* * *

"Although the Fiscal did not cite any specific case, the Court presumes that the Fiscal had in mind the case of *Roberto Cu vs. Republic of the Philippines*, G. R. No. L—3018, July 18, 1951. An examination of the case cited will, however, readily show that it is not applicable to the instant case because of radical factual differences. In

the aforesaid case of Cu vs. Republic of the Philippines, supra Dr. Pastor Gomez, one of the vouching witnesses for the petitioner, testified that "he had known Mr. Cu since liberation, about August, 1945." After the said answer was given, counsel for the Government objected to the witness' testifying any further for the petitioner, he not having known the petitioner for the required period of time, and the objection having been sustained, Dr. Gomez was withdrawn.

"In the light of the evidence adduced, the Supreme Courts through Mr. Justice Tuason, held that the evidence adduced by the petitioner, Roberto Cu, was insufficient to sustain his application for naturalization. The Court went on to say that the statutory provisions requiring the petition for naturalization to be verified by the affidavit of at least two credible witnesses who are citizens of the Philippines, stating therein certain facts related to the applicant, is mandatory, so that a petition not so verified by at least two persons who are citizens of the Philippines; is not only merely voidable but void, and that the petition cannot be amended. After, citing American precedents, Justice Tuason further held that a competent witness cannot be substituted for an incompetent one. The Court, however, did not pass upon the question as to whether an application for naturalization could be granted if witnesses other than vouching witness who were Filipino citizens and knew the applicant for the time required by the statute, could be substituted by other witnesses, likewise competent. The Court thus said:

'It is unnecessary to consider whether the application could be granted, if witnesses, other than vouching witnesses, who were Filipino citizens and knew the applicant for the time required by the statute, and testified and established the petitioner's qualification for admission to citizenship; as already indicated, no such witnesses were introduced in support of the petition/ "In the instant case, a reading of the affidavit of the supporting witnesses, Facundo Buot and Enemesio Dabon (page 4, record) will readily show that the said witnesses were competent. The said affidavit was attached to the application for naturalization when this was filed in May 23, 1951. The vouching witness Dabon, having died on October 25, 1951 was therefore no longer available at the hearing of the application on February 2, 1955. Petitioner, therefore, could not have chosen a better substitute than Dabon's widow, Mrs, Asuncion Perez Vda. de Dabon. The Court believes that Mrs. Dabon was competent witness to support the application, for the rule is well-settled that the witnesses at the final hearing are not required to be the same As those who witnessed the petition; nor is the applicant limited to those witnesses whose names are given in a posted notice, but in case they cannot be produced, he may summon others, subject to the right of the court to make whatever orders may be deemed necessary to enable the government to investigate their qualifications, character, and credibility. (8 C. J. S., Aliens, section 139, p. 850, citing U. S. vs. Doyle, 179 F. 687; In re Schats, 161 F. 227; In re Correcto 215 F. 177).

"It will thus be seen that the instant case does not come within the ambit of the ruling in the case of Cu vs. Republic of the Philippines, supra, because of tenable distinctions between the said case and the present one. In Cu vs. Republic of the Philippines, an incompetent witness (Dr. Pastor Gomez) was not substituted by any competent witness. In the instant case, a qualified vouching witness who could no longer testify for the petitioner on account of his death, was substituted by a qualified witness who is no other than the widow of said, witness.

"Wherefore, Judgment is hereby rendered admitting the petitioner, Esteban Lui (Kiong), to Filipino citizenship, and after this decision has become final, the petitioner may take the corresponding oath of allegiance to the Republic of the Philippines preparatory to the issuance of a certificate of naturalization.

"SO ORDERED.

"City of Cebu, Philippines, March 3, 1955.

M. M. Mejia

Judge".

To the reason adduced by the trial Judge, We might add that section 7 of the Revised Naturalization Law specifically provides that

" . . . the petition must be filed by the applicant in' his own handwriting and be supported by the affidavit of at least two credible persons . . . The petition shall also set forth the names and post office addresses of such witnesses as the petitioner may desire to introduce at the hearing of the case".

From this provision it can be easily inferred that according to the law, the witnesses whom the petitioner may present at the hearing of the case are not circumscribed to those two credible persons that support the petition, for he is allowed to call others whom he may deem best to present. It is true that these other witnesses shall be mentioned in the petition, but the applicant herein had no reason to suspect that one of his witnesses Enemesio Dabon, who was to testify as to his qualifications to become a Filipino citizen and attest to his honesty, morality and good behavior would not be able, because of death, to testify at the hearing of the petition, which was delayed for a long time, not by any fault. of the petitioner, but by the numerous motions for postponement from February 26, 1952, when the lower court postponed the hearing for the first time until February 2, 1955, when the trial of this case actually commenced. And it is to be noted that soon after the death of Enemesio Dabon, petitioner caused Dabon's wife, Asuncion Perez-Dabon, to execute on March 10, 1952, together with Mrs. Aquilina Sanchez-Zanoria, the corresponding affidavit which was filed on April 4, of the same year. A legal maxim says that *ad impossibilia lex non cogit*. In default of her husband who could not be presented as witness, Asuncion Perez-Dabon who was in the same position as her late husband could properly serve the purpose and this substitution by no means amount to an irregular and not permissible amendment of the petition.

Wherefore, we hereby affirm the decision appealed from without pronouncement as to costs. So it is ordered.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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