

**IN RE: ADOPTION OF CHILD BAPTIZED UNDER THE NAME OF ROSE.
MARVIN G. ELLIS AND GLORIA C. ELLIS, PETITIONERS, VS.
REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APPELLANT.**

G. R. No. L-16922. April 30, 1963

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal taken by the Government from a decision of the Court of First Instance of Pampanga granting the petition of Marvin G. Ellis and Gloria C. Ellis for the adoption of a Filipino baby girl named Rose.

Petitioner Marvin G. Ellis, a native of San Francisco, California, is 28 years of age. On September 8, 1949, he married Gloria C. Ellis in Bangor, Maine, United States. Both are citizens of the United States. Baby Rose was born on September 26, 1959 at the Caloocan Maternity Hospital. Four or five days later, the mother of Rose left her with the Heart of Mary Villa&mdashan institution for unwed mothers and their babies—stating that she (the mother) could not take care of Rose without bringing disgrace upon her (the mother's) family.

Being without issue, on November 22, 1959, Mr. and Mrs. Ellis filed a petition with the Court of First Instance of Pampanga for the adoption of the aforementioned baby. At the time of the hearing of the petition on January 14, 1960, petitioner Marvin G. Ellis and his wife had been in the Philippines for three (3) years, he being assigned thereto as staff sergeant in the United States Air Force Base, in Angeles, Pampanga, where both lived at that time. They had been in the Philippines before, or, to be exact, in 1953.

The only issue in this appeal is whether not being permanent residents in the Philippines, petitioners are qualified to adopt Baby Rose. Article 335 of the Civil Code of the Philippines, provides that:

"The following cannot adopt:

* * * * *

"(4) Non-resident aliens;"

* * * * *

This legal provision is too clear to require interpretation. No matter how much we may sympathize with the plight of Baby Rose and with the good intentions of petitioners herein, the law leaves us no choice but to apply its explicit terms, which unqualifiedly deny to petitioners the power to adopt anybody in the Philippines.

In this connection, it should be noted that this is a proceedings in rem, which no court may entertain, unless it has jurisdiction, not only over the subject matter of the case and over the parties, but, also, over the res, which is the personal status of Baby Rose as well as that of petitioners herein. Our Civil Code (Art. 15) adheres to the theory that jurisdiction over the status of a natural person is determined by the latter's nationality. Pursuant to this theory, we have jurisdiction over the status of Baby Rose, she being a citizen of the Philippines, but not over the status of the petitioners, who are foreigners. Under our political law, which is patterned after the Anglo-American legal

system, we have, likewise, adopted the latter's view to the effect that personal status, in general, is determined by and/or subject to the jurisdiction of the domiciliary law (Restatement of the Law of Conflict of Laws, p. 86; The Conflict of Laws by Beale, Vol. I, p. 305, Vol. II, pp. 713-714). This, perhaps, is the reason why our Civil Code does not permit adoption by non-resident aliens, and we have consistently refused to recognize the validity of foreign decrees of divorce—regardless of the grounds upon which the same are based—involving citizens of the Philippines who are not bona fide residents of the forum, even when our laws authorized absolute divorce in the Philippines (Ramirez vs. Gmur, 42 Phil. 855; Gonayeb vs. Hashim, 50 Phil. 22; Cousine Hix vs. Fleumer, 55 Phil. 851; Barretto Gonzalez vs. Gonzalez, 58 Phil. 67; Recto vs. Harden, 100 Phil. 427).

Inasmuch s petitioners herein are not domiciled in the Philippines,—and, hence, non-resident aliens—we cannot assume and exercise jurisdiction over their status, under either the nationality theory or the domiciliary theory. In any event, whether the above-quoted provision of said Art. 335 is predicated upon lack of jurisdiction over the, res, or merely affects the cause of action, we have no authority to grant the relief prayed for by petitioners it—herein, and it has been so held in Caraballo vs. Republic, L-15080 (April 25, 1962) and Katancik vs. Republic, L-15472 (June 30, 1962).

Wherefore, the decision appealed from is hereby reversed, and another one shall be entered denying the petition in this case.

Bengzon, C.J., Bautista Angelo, Labrador, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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