

**DANGWA TRANSPORTATION CO., INC. (DANGWA BUS COMPANY),
AND JAMES G. GAYOT, PETITIONERS, VS. HON. MALCOLM G.
SARMIENTO, JUDGE, COURT OF FIRST INSTANCE OF PAMPANGA,
AND LAWRENCE HE...**

G.R. No. L-22795. January 31, 1977

Ponente: ANTONIO, J.

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ANTONIO, J.:

The sole issue in this petition for prohibition is whether or not the Court of First Instance of Pampanga, Branch I, San Fernando, in Civil Case No. 2515, gravely abused its discretion in denying petitioner's motion to dismiss on the ground of improper venue.

On March 16, 1964, private respondent Lawrence Heller, as a consequence of the injuries sustained by him when his motorcycle was bumped by a bus of the Dangwa Transportation Co., Inc., filed an action with the Court of First Instance of Pampanga,[1] against petitioners James G. Gayot, the bus driver, and Dangwa Transportation Co., Inc., owner of the bus, and docketed therein as Civil Case No. 2515,[2] for damages (actual and compensatory – P30,000.00, moral and exemplary – P14,000.00). In his complaint, private respondent alleges, among others, (1) that he is of legal age, single, American citizen, an Airman First Class of the United States Air Force, and presently assigned and stationed at Clark Air Base, Pampanga, Philippines; while the defendant James G. Gayot, is also of legal age, Filipino, married, and a resident of Engineer's Hill, Baguio City and the other defendant Dangwa Bus Company[3] is a juridical person or corporation organized and existing in accordance with the laws of the Republic of the Philippines, with business address at Trinidad Valley, Benguet, Mountain Province, where summons and other lawful processes of the court may be served; (2) that James G. Gayot is a driver and employee of said bus company, a common carrier and registered owner of Dangwa bus bearing Plate No. PUB-1986; (3) that on December 30, 1963, at Twin Peaks, Kennon Road, Tuba, Benguet, Mountain Province, this Dangwa bus was driven by James G. Gayot with such reckless imprudence and at a greater speed than was reasonable and proper, that the bus collided with Lawrence Heller who was then riding on his motorcycle; (4) that, as a result of the collision, the latter sustained serious physical injuries, namely, a closed fracture of the left femur and a compound fracture of the left tibia, and his motorcycle was totally wrecked; (5) that, thereafter, he was confined at the USAF Hospital, Clark Air Base, Angeles, Pampanga; and (6) that as Airman First Class in the USAF assigned to the 1st Mobile Communication Group, Clark AFB, he received a monthly pay of \$234.00.

On March 25, 1964, the petitioners filed a motion to dismiss[4] on the ground that venue was improperly laid with the Court of First Instance of Pampanga under Section 1(c) of Rule 16 of the Revised Rules of Court, for private respondent, an American citizen, is not a resident of Clark Air Base, Pampanga, as the first paragraph of his complaint alleges that he is "presently assigned and stationed at Clark Air Base, Pampanga, Philippines", and, as such, his assignment in the Philippines is temporary since members of the United States Air Force may be assigned any time to any station under the exclusive control and decision of the Commanding Officer; and that, pursuant to Section 2(b), Rule 4, of the Revised Rules of Court, the venue of private respondent's action should

not be Pampanga but the City of Baguio or Benguet, Mountain Province.

On April 8, 1964, the private respondent filed an Opposition^[5] to the aforesaid motion to dismiss alleging, among others, (1) that the residence required by the rule (Section 2[b], Rule 4, Revised Rules of Court) need not necessarily be permanent, it being sufficient that the plaintiff had his actual residence at the place where the action was brought;^[6] (2) that he has the privilege to elect which court to file his action and he had chosen the Court of First Instance of Pampanga, because he is a resident of Clark Air Base, Pampanga, not only at the time of the commencement of the present action, but also even before the accident happened; and (3) that when he alleged in his complaint that he is stationed in Clark Air Base, Pampanga, Philippines, he meant to convey that, as long as he stays in the Philippines, his residence is in Clark Air Base, Pampanga.

On the same day, April 8, 1964, respondent Judge Malcolm G. Sarmiento issued an Order denying petitioners' motion to dismiss,^[7] and stating that private respondent's actual residence is in Clark Air Base, Pampanga, and his action, therefore, was properly instituted in said province, for "residence under this action need not be continuous, it being sufficient that a party, though a foreign subject, has his actual residence in the place when the action was brought."^[8]

We find the petition without merit.

There is no question that respondent Lawrence Heller has his fixed place of abode at Clark Air Base, Pampanga. There is no showing in the record that Heller has not resided consistently and with continuity in his place of abode at Clark Air Base at the time he filed this action.

In *Koh v. Court of Appeals*,^[9] We explained that the term "resides" as employed in the rule on venue on personal actions filed with courts of first instance^[10] means the place of abode, whether permanent or temporary, of the plaintiff or the defendant, as distinguished from "domicile" which denotes a fixed permanent residence to which, when absent, one has the intention of returning.

"It is fundamental in the law governing venue of actions (Rule 4 of the Rules of Court) that the situs for bringing real and personal civil actions are fixed by the rules to attain the greatest convenience possible to the parties litigants by taking into consideration the maximum accessibility to them of the courts of justice. It is likewise undeniable that the term domicile is not exactly synonymous in legal contemplation with the term residence, for it is an established principle in Conflict of Laws that domicile refers to the relatively more permanent abode of a person while residence applies to a temporary stay of a person in a given place. In fact this distinction is very well emphasized in those cases where the Domiciliary Theory must necessarily supplant the Nationality Theory in cases involving stateless persons.

"This Court held in the case of *Uytengsu vs. Republic*, 50 O.G. 4781, October, 1954, reversing its previous stand in *Larena v. Ferrer*, 61 Phil. 36 and *Nuval v. Guray*, 52 Phil. 645, that—

"There is a difference between domicile and residence. Residence is used to indicate a place of abode, whether permanent or temporary; domicile denotes a fixed permanent residence to which when absent, one has the intention of returning. A man may have a residence in one place and a domicile in another. Residence is not domicile, but domicile is residence coupled with the intention to remain for an unlimited time. A man can have but one domicile for one and the same purpose at any time, but he may have numerous places of residence. His place of residence generally is his place of domicile, but is not by any means, necessarily so since no length of residence without intention of remaining will constitute domicile." (Italicised for emphasis)

"We note that the law on venue in Courts of First Instance (Section 2, of Rule 4, Rules of Court) in referring to the parties utilizes the words 'resides or may be found,' and not 'is domiciled,' thus:

'Sec. 2(b) Personal actions – All other actions may be commenced and tried where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff.' (Italicised for emphasis)

"Applying the foregoing observation to the present case, We are fully convinced that private respondent Coloma's protestations of domicile in San Nicolas, Ilocos Norte, based on his manifested intention to return there after the retirement of his wife from government service to justify his bringing of an action for damages against petitioner in the C.F.I. of Ilocos Norte, is entirely of no moment since what is of paramount importance is where he actually resided or where he may be found at the time he brought the action, to comply substantially with the requirements of Sec. 2(b) of Rule 4, Rules of Court, on venue of personal actions." (Koh v. Court of Appeals, supra, pp. 304-305.)

The same construction of the word "resides" as used in Section 1, Rule 73, of the Revised Rules of Court, was enunciated in *Fule v. Court of Appeals, et al.* (G.R. No. L-40502) and *Fule v. Hon. Ernani C. Paño, et al.* (G.R. No. L-42670), decided on November 29, 1976. Thus, this Court, in the aforecited cases, stated:

"2. But, the far-ranging question is this: What does the term 'resides' mean? Does it refer to the actual residence or domicile of the decedent at the time of his death? We lay down the doctrinal rule that the term 'resides' connotes *ex vi termini* 'actual residence' as distinguished from 'legal residence or domicile.' This term 'resides,' like the terms 'residing' and 'residence' is elastic and should be interpreted in the light of the object or purpose of the statute or rule in which it is employed. In the application of venue statutes and rules—Section 1, Rule 73 of the Revised Rules of Court is of such nature—residence rather than domicile is the significant factor. Even where the statute uses the word 'domicile' still it is construed as meaning residence and not domicile in the technical sense. Some cases make a distinction between the terms 'residence' and 'domicile' but as generally used in statutes fixing venue, the terms are synonymous, and convey the same meaning as the term 'inhabitant.' In other words, 'resides' should be viewed or understood in its popular sense, meaning, the personal, actual or physical habitation of a person, actual residence or place of abode. It signifies physical presence in a place and actual stay thereat. In this popular sense, the term means merely residence, that is, personal residence, not legal residence or domicile. Residence simply requires bodily presence as an inhabitant in a given place, while domicile re-quires bodily presence in that place and also an intention to make it one's domicile. No particular length of time of residence is required though; however, the residence must be more than temporary."

Respondent court having found that private respondent Lawrence Heller had his actual residence at Clark Air Base, Angeles (now a City), Pampanga, at the time he filed his personal action against the petitioners, it did not, therefore, gravely abuse its discretion in refusing to dismiss the case.

WHEREFORE, the petition for prohibition is hereby DISMISSED, with costs against the petitioners.

Fernando, (Chairman), Barredo, Aquino, and Concepcion, Jr., JJ., concur.

[1] Annex "A", Petition, pp. 6-9, Rollo.

[2] Entitled "Lawrence Heller, Plaintiff, versus James G. Gayot and Dangwa Bus Company, Defendants."

[3] Petitioner Dangwa Transportation Co., Inc. was wrongly designated in the complaint as "Dangwa Bus Company".

[4] Annex B, Petition, pp. 10-12, Rollo.

[5] Annex C, Ibid., pp. 13-15.

[6] Citing *De La Rosa and Go Kee v. De Borja*, 53 Phil. 990, 998; *Molina v. De la Riva*, 6 Phil. 12.

[7] Annex "D", Petition, pp. 16-19, Rollo.

[8] Citing Moran, Comments on the New Rules of Court, Vol. I, Sec. 2, Rule 4, p. 189, which cited as authority the case of De la Rosa and Go Kee v. De Borja, *supra*.

[9] 70 SCRA 298.

[10] Sec. 2(b), Rule 4, of the Revised Rules of Court.

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