

**IN THE MATTER OF A PETITION TO BECOME A NATURALIZED
FILIPINO CITIZEN. LI SIU LIAT ALIAS PERFECTO ALIAS NG SE LIAT,
PETITIONER-APPELLEE, VS. REPUBLIC OF THE PHILIPPINES,
OPPOSIT...**

G.R. No. L-25356. November 25, 1967

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

In the present appeal, we are asked by the State's counsel to strike down the order of Judge Emigdio V. Nietes dated October 15, 1965 in a naturalization case,[1] reconsidering the order of denaturalization and confirming an order of naturalization previous thereto.

The dossier of this case yields the following facts:

On July 14, 1956, petitioner was declared a naturalized citizen of the Philippines in an order issued by Judge Rafael Amparo, then of the Court of First Instance of Manila. On July 19, 1958, following the lapse of the two-year statutory period, three things happened: first, hearing on petitioner's oath-taking was had; second, after hearing, petitioner subscribed to an oath of allegiance before Judge Amparo; and third, Certificate of Naturalization No. 2414 was issued to petitioner by the Clerk of Court.

On July 2, 1962, the Republic of the Philippines filed a petition to declare null and void Judge Amparo's decision for lack of jurisdiction because the petition was published only once in the Official Gazette; and, likewise, to strip petitioner of Philippine citizenship because, amongst others, his naturalization was obtained through fraud and falsification in that he suppressed the fact that he had a common-law wife Mary Go alias Go Ting Ty, with whom he had several children. On July 26, 1965, upon this petition, the opposition and supplemental opposition thereto, the reply to both, and after a hearing at which evidence was adduced, the court, this time presided by Judge Jesus Y. Perez [2] (now Associate Justice of the Court of Appeals) issued an order cancelling the naturalization certificate issued to petitioner.

On petitioner's motion for reconsideration, the opposition thereto, reply to opposition, and memoranda filed by petitioner, another judge on temporary assignment, Judge Emigdio V. Nietes, issued the order of October 15, 1965 - now the subject of review - reversing the order of Judge Perez of July 26, 1965, and confirming Judge Amparo's order of naturalization. Hence, this appeal by the State.

The authority of Judge Emigdio V. Nietes to resolve the motion for reconsideration, challenged herein, stems from facts following: Judge Nietes was the district judge of Iloilo and Iloilo City, Branch I. Pursuant to Administrative Order No. 243 of the Secretary of justice dated July 28, 1965, Judge Nietes was detailed to the Court of First Instance of Manila "to take cognizance of all cases pertaining to the Third Branch thereof, effective immediately and until further orders" from the Department of Justice. This administrative order was approved by the Supreme Court in a resolution dated August 10, 1965.

On October 11, 1965, the President of the Philippines appointed, ad interim, Honorable Placido C. Ramos, District Judge of the Sixth Judicial District, "to preside over the Court of First Instance of Manila, Branch III." On October 12, 1965, Judge Placido C. Ramos took his oath of office before Acting Secretary of Justice Ruperto G. Martin. He assumed his office on that same day.

The questioned order (dated October 15, 1965) of Judge Emigdio V. Nietes, temporarily assigned to Branch III, was therefore issued three (3) days after Judge Placido C. Ramos had entered into the performance of his duties as Judge of the same Branch III.

The question then is this: Did the appointment of and assumption of office by Judge Ramos ipso facto terminate the authority of Judge Nietes to act in the present case?

The controlling legal provision is Section 51 of the Judiciary Act of 1948, as amended, which reads:

"SEC. 51. Detail of judge to another district or province. - Whenever a judge stationed in any province or branch of a court in a province shall certify to the Secretary of Justice that the condition of the docket in his court is such as to require the assistance of an additional judge, or when there is any vacancy in any court, or branch of a court in a province, the Secretary of Justice may, in the interest of justice, with the approval of the Supreme Court and for a period of not more than three months for each time, assign any judge of any court or province whose docket permits his temporary absence from said court, to hold sessions in the court needing such assistance or where such vacancy exists. No judge so detailed shall take cognizance of any case when any of the parties thereto objects and the objection is sustained by the Supreme Court.

Whenever a judge appointed or assigned in any province or branch of a court in a province shall leave the province by transfer or assignment to another court of equal jurisdiction without having decided a case totally heard by him and which was duly argued or opportunity given for argument to the parties or their counsel, it shall be lawful for him to prepare and sign his decision in said case anywhere within the Philippines and send the same by registered mail to the clerk of Court, to be filed in the court as of the date when the same was received by the clerk, in the same manner as if the judge had been present in the court to direct the filing of the judgment: Provided, however, That if a case has been heard only in part, the Supreme Court, upon petition of any of the parties to the case and the recommendation of the respective district judge, may also authorize the judge who has partly heard the case to continue hearing and to decide said case notwithstanding his transfer or appointment to another court of equal jurisdiction." [3]

Complementary thereto is Section 9, Rule 135 of the Rules of Court, thus:

"SEC. 9. Signing judgments out of province. - Whenever a judge appointed or assigned in any province or branch of a Court of First Instance in a province shall leave the province by transfer or assignment to another court of equal jurisdiction, or by expiration of his temporary assignment, without having decided a case totally heard by him and which was argued or an opportunity given for argument to the parties or their counsel, it shall be lawful for him to prepare and sign his decision in said case anywhere within the Philippines. He shall send the same by registered mail to the clerk of the court where the case was heard or argued to be filed therein as of the date when the same was received by the clerk, in the same manner as if he had been present in court to direct the filing of the judgment. If a case has been heard only in part, the Supreme Court, upon petition of any of the parties to the case and the recommendation of the respective district judge, may also authorize the judge who has partly heard the case, if no other judge had heard the case in part, to continue hearing and to decide said case notwithstanding his transfer or appointment to another court of equal jurisdiction." [4]

It is pertinent to state here that on July 27, 1965, i.e., one day prior to July 28, 1965 (date of Administrative Order 243), Judge Jesus Y. Perez was elevated to the Court of Appeals.[5] Judge Perez could not thus act on petitioner's motion for the reconsideration of his order of July 26, 1965, which was filed on September 1, 1965. And, the position of Judge of Branch III became vacant.

1. First to be assessed is the reach of Administrative Order No. 243 aforesaid. By the terms thereof, authority therefor emanated from Section 51 of the Judiciary Act of 1948, as amended. Accordingly, the power of Judge Nietes to take cognizance of all cases pertaining to Branch III of the Manila court must be circumscribed within the boundaries set forth in that statutory provision. There is no question in our mind that for as long as Branch III remained vacant, so long did Judge Nietes have authority to act on any and all cases assigned thereto within the three-month limit fixed in Section 51.

2. Could Judge Nietes still act in a case like the present at a time when there is already a regular judge? The assignment of Judge Nietes is specific, namely, to take cognizance of all cases pertaining to the Third Branch of the Court of First Instance of Manila, which was then vacant. Since a judge for that branch had been appointed and qualified, the reason for the assignment no longer existed. Therefore, the authority of Judge Nietes to continue acting as judge of Branch III terminated as of October 12, 1965 when Judge Ramos took his oath of office and started his duties as Judge thereof; and, the authority of Judge Ramos to act on this case began.

3. The view we take of this case is not without reason. Firstly, except under special circumstances by law specified, two judges cannot sit in the same branch of the court. Secondly, one temporarily assigned to a branch of a court of first instance because of an existing vacancy thereof should not intrude into the functions of the regularly appointed judge who has qualified to fill that vacancy. Because, confusion may arise as to the assignment of cases amongst the two judges of equal rank; delineation of work between them may result in lack of harmony; disputes between the two may crop up; the machinery of justice may not run smoothly.

As early as 1906, this Court, in a decision penned by Chief Justice Arellano, declared that "[t]he certification and signing of a bill of exceptions [now record on appeal] are jurisdictional acts which can not be executed by one who has no jurisdiction over the matter on account of his having ceased to be the judge of the court in which the case was tried by him as such judge." Chief Justice Arellano added: "He has no right to exercise any jurisdiction in a court of which he has ceased to be the judge." [6] As valid then is the precept that the act of reversing a decision penned by one judge of a given court, is jurisdictional, and cannot be done by another temporarily assigned thereto who has ceased to be a judge thereof. Appropriately had it been said that: "A judge in one district may preside in another district in place of the judge of the latter district. But this does not authorize two judges to hold separate courts in the same district at the same time. Therefore an order made by a judge presiding out of his district, at a time when the judge of the district where the order is made is also holding court therein, is void; and no one can be punished for contempt of court in disobeying such order." [7]

4. The case of the disputed order does not come within the exception written in Section 9 of Rule 135 of the Rules of Court and the second paragraph of Section 51 of the Judiciary Act of 1948, as amended. This is because the case was not heard totally, or for that matter, partially, by Judge Nietes. In fact, no evidence was taken before him. Evidence on the State's petition to cancel naturalization was taken before the then Judge Perez. It was not, therefore, lawful for Judge Nietes to issue the controverted order of October 15, 1965 reversing Judge Perez' order of cancellation of July 26, 1965.

5. But on top of all these is the fact that at the time Judge Emigdio V. Nietes handed down the order of October 15, 1965, he was neither a judge de jure nor a judge de facto. Not a de jure judge, because there was an incumbent de jure judge actually discharging the duties of office; not a de facto, because there was a de jure judge. [8] Indeed, to rise to the level of a de facto judge, one must be acting under some color of right. No color of right here existed as the vacancy in the office which Judge Nietes was temporarily occupying had been filled up. [9] The result is the same. The order of Judge Nietes is null and void.

6. The nullity of Judge Nietes' order of October 15, 1965 poses the problem of whether we are to remand the case

to the lower court to resolve petitioner's motion to reconsider Judge Perez' order of July 26, 1965, or, to pass upon the merits of the said motion. We opt for the second. There is no necessity for the lower court to take evidence. For, both the order of Judge Perez and that of Judge Nietes were based on the evidence already presented. The soundness of Judge Nietes' resolution on the issues of fact and of law is thoroughly discussed in the briefs of the parties. Nothing more is to be done except to grant or to deny the motion for reconsideration on the basis of the evidence of record and the law applicable. Were the case to be remanded just for the lower court to resolve said motion for reconsideration, nothing substantial will be accomplished. If the motion be granted, surely enough, the State will appeal, as it did in the present case. If denied, the probability is that petitioner will also appeal. So, we have here a case which may be bouncing back and forth from the lower court to the upper court. Multiple appeals are not favored. Sound practice seeks to accommodate the theory which avoids waste of time, effort and expense, both to the parties and the government, not to speak of delay in the disposal of the case.[10] A marked characteristic of our judicial set-up is that where the dictates of justice so demand - as in the present case - the final court, the Supreme Court, should act, and act with finality. And this we read from the following culled from *Samal vs. Court of Appeals*, 99 Phil. 230, 233 [underscoring supplied], which is illuminating:

"Now, as regards the question of procedure, as already said, the trial court in a decision dismissed the complaint without prejudice to filing a new suit against the administrator of the estate of Pascual Libudan. In reversing said decision, the Court of Appeals held that there was no need of filing an action against said administrator because at the commencement of the present action in 1950, the estate of Pascual Libudan no longer had any right or interest in the property. Ordinarily, when an order of dismissal issued by the trial court is reversed on appeal, the case is remanded to said trial court for further proceedings, particularly for the reception of evidence. In the present case, however, the trial court had already received all the evidence presented by both parties, consequently, the Court of Appeals was in a position to pass upon as it did said evidence and decide the case on its merits, and there was no necessity for remanding the case." [11]

7. The procedural question out of the way, we turn first to the merits of the State's charge that petitioner obtained his citizenship thru fraud and falsification because "he suppressed and did not disclose the truth which is that at the time he filed the petition and during the hearing and his oath-taking he had a common-law wife, Mary Go, with whom he has several children and he further alleged and testified during the trial that these children were also the children of his real wife Go Koa when the truth is that they are the children of his paramour, Mary Go."

Petitioner, in his petition for naturalization, alleges that "he is of good moral character." The State offered evidence in support of denaturalization motion that petitioner had been living with and begot least four illegitimate children with his common-law wife, Mary Go, alias Go Ting Ty. The fact of illegitimate relationship between Go Ty and petitioner herein is confirmed by the execution by both petitioner and Go Ting Ty on August 6, 1959 of an affidavit labeled "Affidavit to be Accomplished in case of an Illegitimate Child" (Exhibit F-1-Denaturalization), acknowledging the illegitimate status of Ernesto Go, who was born on June 10, 1959 and whose certificate of live birth (Exhibit F-Denaturalization) is the basis of the affidavit, Exhibit F-1.[12]

The extramarital relationship between petitioner and Mary Go, alias Go Ting Ty, finds support elsewhere in the record. A recital of the evidence as to Mariano Li - without taking into account the other children allegedly begotten by petitioner with Mary Go, alias Go Ting Ty - suffices for the purpose. Petitioner testified at the original hearing of his petition for naturalization that in addition to the two children, namely, Aida. Li and Ricardo Li mentioned in his said application, another child, Mariano Li, born on February 23, 1954, was begotten by him with his wife, Go Koa. He presented Mariano Li's birth certificate, Exhibit P-2, and the latter's Alien Certificate of Registration, Exhibit O-2.[13]

However, according to Drs. Mercedes Villalobos and Servando Arellano,[14] who attended to the birth of

Mariano Li, the mother of said child is the woman whose pictures are Exhibits M-2, N-1 and O-1-Denaturalization, and who is Mary Go whose true name is Go Ting Ty, and not the person whose picture is Exhibits B-1 and B-2-Denaturalization, who is Go Koa, the legitimate wife of herein petitioner.[15] The following from the findings of Judge Jesus Y. Perez, to which we fully subscribe, constitute circumstantial evidence of the fact just mentioned:

"x x x There could not have been any mistake on the part of Drs. Servando Arellano and Mercedes Villalobos as to the identity of the woman known as Mary Go whose alien certificate of registration is exhibit 'M-denaturalization' because the said doctors had assisted to the four deliveries of said Mary Go whose pictures are marked as Exhibits 'M-2-denaturalization', 'N-1-denaturalization' and: 'O-1-denaturalization'. Besides, her unusual bulk of about 275 pounds [16] could not but leave a lasting impression as to her identity to Drs. Arellano and Villalobos whereas, Go Koa, the petitioner's wife, whose picture is Exhibit 'B-1-denaturalization' appears to be lean.

According to Dr. Servando Arellano, the birth certificate exhibit 'A-denaturalization'[17] does not reflect the truth that the child referred to in said certificate of birth, is the third child of Mary Go because according to said doctor, the physical examination of the mother who gave birth to the child mentioned in exhibit 'A-denaturalization' showed that it was the first child of that woman." [18]

If Mariano Li was the first child of Mary Go, alias Go Ting Ty said Mariano Li could not have been the third child of petitioner's legitimate wife, Go Koa. To further bolster the foregoing findings, Judge Perez added:

"Another circumstance showing that Go Koa, the petitioner's wife, is not the mother of the child Mariano Li is that in the birth certificate of said child exhibit 'A-denaturalization', the mother is recorded as only being 23 years old when the child Mariano Li was born on February 23, 1954. But, since according to the alien certificate of registration exhibit 'B-denaturalization' of Go Koa, she was born on April 5, 1914 she was therefore already 40 years old and not 23 years when Mariano Li was born. On the other hand, Mary Go or Go Ting Ty must be 23 years old when Mariano Li was born because according to her alien certificate of registration exhibit 'M-2-denaturalization', she was born on May 10, 1931. The age of 23 years of the mother of Mariano Li appearing in the latter's birth certificate corresponds to the age of Mary Go alias Go Ting Ty and not Go Koa who was already 40 years of age at the time of Mariano's birth." [19]

We find, as did judge Perez, that petitioner was guilty of fraud in presenting proof during the course of the hearing of his petition for naturalization that Mariano Li is his child with his lawful wife, Go Koa. He is not entitled to citizenship because he did not conduct himself "in a proper and irreproachable manner during the period of his residence in the Philippines" required in Section 2 of the Naturalization Law.

8. And another yet. Petitioner's application for naturalization states only 300 Sto. Cristo, Manila, and 428 Sto. Cristo, Manila, as his former places of residence. In support of his said application, however, petitioner testified:

"Q - What were you doing during the Japanese occupation?

A - I stayed in the province.

Q - Where?

A.- Province of Rizal.

Q - You were there for 3 or 4 years?

A - Yes, sir." [20]

Section 7 of the Naturalization Law exacts that a petition for naturalization state petitioner's "present and former places of residence." The residence contemplated in Section 7 encompasses all places where petitioner actually

and physically resided. Certainly, the particular place or places in the Province of Rizal where he was residing for three or four years come within the purview of the term "residence." The reason for this is that "information regarding petitioner and objection to his application are apt to be provided by people in his actual, physical surrounding." [21] Failure to allege a former place of residence is fatal. [22]

With all the foregoing, we need not reach the other questions raised on appeal.

For the reasons given, the order of Judge Emigdio V. Nietes of October 15, 1965, which reconsiders the order of denaturalization and confirms the order of naturalization, is hereby reversed and set aside and declared null and void; and the order issued by Judge Jesus Y. Perez on July 26, 1965 cancelling the naturalization certificate issued to petitioner, is hereby affirmed.

Costs against petitioner.

SO ORDERED.

Makalintal, Bengzon, Zaldivar, Castro, Angeles, and Fernando, JJ., concur.

Concepcion, C.J., and Reyes, J., on leave.

Dizon, J., concurs in the result.

[1] In the Matter of a Petition to Become a Naturalized Filipino Citizen, Li Siu Liat alias Perfecto alias Ng Se Liat, petitioner, Civil Case No. 21125, Court of First Instance of Manila, Branch III, the case below.

[2] Judge Amparo was then Associate Justice of the Court of Appeals, having been appointed and qualified as such on October 3, 1958.

[3] Emphasis supplied.

[4] Emphasis supplied.

[5] Judge Jesus Y. Perez was appointed to the Court of Appeals on July 27, 1965 and took his oath of office on the same day.

[6] Santos vs. Johnson, 6 Phil. 473, 474-475, citing Enriquez vs. Watson, 3 Phil. 279; Ricamora vs. Trent, 3 Phil. 137; and Osmeña vs. Gorordo, 5 Phil. 37. See also: People vs. Court of Appeals, 99 Phil. 786, 788-789.

[7] I Freeman on Judgments, 5th ed., pp. 653-654, citing People vs. O'Neil, 47 Cal. 109; emphasis supplied. See also: People vs. Court of Appeals, supra.

[8] Garchitorena vs. Crescini, 37 Phil. 675, 677-678, citing authorities.

[9] 30-A Am. Jur., p. 120.

[10] Cf. Fernandez vs. Garcia, 92 Phil. 592, 597.

[11] "When the case is regularly submitted to this Court on appeal, if it be one originating in the Court of First Instance, this Court proceeds to review the record and in the event that for any reason it cannot affirm the judgment entered in the court below, it may then retry the case upon the record, determining both questions of law and fact, and on the findings of fact thus made, modify or reverse the judgment accordingly, thereby entering a new judgment convicting or acquitting the appellant as the case may be, or it may reopen the trial, as provided in sec. 42 of General Orders No. 58, and grant a new hearing. The new hearing shall take place in the court of original jurisdiction. This Court also may also order a new trial in case the record or any material part of it has

been lost or destroyed through no fault on the part of the officers of the Government." *United States vs. Gimenez*, 34 Phil. 74, 77-78; underscoring supplied.

[12] Compare the date of birth of Go Ting Ty, the common-law wife, May 10, 1931, Exhibit M-Denaturalization, and the date of birth of the real wife, Go Koa, Exhibit B-2-Denaturalization, which shows that her date of birth was April 5, 1914.

[13] Transcript, p. 9, December 28, 1955.

[14] Transcript, pp. 16, 29, September 29, 1964; and pp. 11-14, July 9, 1964. See: Exhibit C-Denaturalization.

[15] Transcript, pp. 8-9, July 9, 1964.

[16] Transcript, pp. 40-42, December 16, 1964.

[17] Birth certificate of Mariano Li.

[18] Record on appeal, pp. 72-73.

[19] Record on Appeal, pp. 74-75.

[20] Transcript, p. 20, December 28, 1955.

[21] *Qua vs. Republic*, L-19834, October 27, 1964, cited in *Tan vs. Republic*, L-22207, May 30, 1966.

[22] *Tan vs. Republic*, supra, citing, *Chang vs. Republic*, L-20713, April 29, 1966, *Chan Kiat Huat vs. Republic*, L-19579, February 28, 1966, *Republic vs. Reyes, et al.*, L-20602, December 24, 1965, citing cases.

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