

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. IGMEDIO YAP AND HON. JUDGE CARLOS ABIERA, OF THE COURT OF FIRST INSTANCE OF NEGROS, OCCIDENTAL, RESPONDENTS.

G.R. No. L-25519. January 30, 1970

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is a petition for certiorari and mandamus.

On March 19, 1965 the Court of First Instance of Negros Occidental rendered its decision in Civil Case No. H-4834, granting the petition of herein respondent Igmedio Yap for naturalization as a Filipino citizen. The Provincial Fiscal of Negros Occidental received a copy of the decision on March 31, 1965; the Solicitor General received a copy on the following April 7. Upon instruction of the Solicitor General the Provincial Fiscal, thru his assistant, filed with the trial court a notice of appeal and the corresponding record on appeal on May 5, 1965. In an order dated September 1, 1965, the trial judge disapproved the same on the ground that the decision had become final, copy thereof having been received by the Provincial Fiscal on March 31, 1965. The Provincial Fiscal moved to reconsider but was turned down in another order of October 27, 1965. Thereupon, the Government filed the instant petition, praying among other things:

“(a) That after hearing, judgment be rendered to declare both Orders of respondent judge dated September 1 and October 27, 1965 as illegal, null and void, as it was issued in excess of its or his jurisdiction, or with grave abuse of discretion;

“(b) To order respondent judge Honorable Carlos Abiera who is presiding Branch VI of the Court of First Instance of Himamaylan, Negros Occidental, to approve the "Record on Appeal" (Annex "B" hereof);”

The only question here is whether the thirty-day period to appeal should be counted from notice of the decision to the Provincial Fiscal or to the Solicitor General. This question, and the arguments of herein respondents in support of their position, have already been resolved by this Court. Thus in the case of *Republic vs. Chiu*, G. R. No. L-20846, Oct. 31, 1964, 12 SCRA 352, involving the same factual background as that of this case, it was held:

"There is no question that the appearance of the City Attorney for the government, in the hearing, was authorized. This authorization, however, in the light of the foregoing provision of law,[1] cannot be construed to have divested the Solicitor General of his control of the stand or defense of the State, nor did it make of the City Attorney of Davao the counsel of record for the oppositor Republic of the Philippines. Note that the law prescribes that the Solicitor General shall appear on behalf of the government "either himself or through his delegate or the provincial fiscal concerned." It did not say, "the Solicitor General or the provincial fiscal" can appear on behalf of the Republic of the Philippines, in order to make of the latter an alter-nate of the state counsel. As thus worded, what the law allows is merely the physical substitution of the Solicitor General in such proceedings. Consequently, notwithstanding the delegation to the City Attorney of the duty to appear at and attend the hearing in this case, the Solicitor General remained the counsel of record for the oppositor. This is not a case where a party litigant is represented by two lawyers, notice to one of whom is notice to the client.

Here, the City Attorney did not appear as counsel for the Republic, but merely as representative of the Solicitor General who, as stated, remained the counsel of record for the Republic.

"As the Solicitor General received copy of the decision of the lower court on August 17, 1962, the period to appeal would have expired on September 16, 1962. The filing of the notice of appeal and record on appeal on September 4 and 6, 1962, respectively, were therefore made on time."

The remedy of mandamus pursued by the Solicitor General is proper, the relief prayed for being to order respondent Judge to give due course to the appeal.

WHEREFORE, the writ is granted; the orders of respondent Court dated September 1 and October 27, 1965 are hereby set aside; and the said Court is directed to approve the record on appeal and certify the same to this Court. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Sanchez, Ruiz Castro, Fernando, Teehankee, and Barredo, JJ., concur.

[1] SEC. 10. Hearing of the Petition.- No petition shall be heard within the thirty days preceding any election. The hearing shall be public, and the Solicitor General, either himself or through his delegate or the provincial fiscal concerned, shall appear on behalf of the Commonwealth (now Republic) of the Philippines at all the proceedings and at the hearing. If after the hearing, the court believes, in view of the evidence taken, that the petitioner has all the qualifications required by, and none of the disqualifications specified in this Act, and has complied with all requisites herein established, it shall order the proper naturalization certificate to be issued and the registration of the said naturalization certificate in the proper civil registry as, required in section ten of Act Numbered Three thousand seven hundred and fifty-three." (Rev. Naturalization Law)

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