

**BOARD OF COMMISSIONERS, BUREAU OF IMMIGRATION,
COMMISSIONER OF IMMIGRATION AND SECURITY OFFICER
DETENTION STATION, ENGINEER ISLAND, MANILA, PETITIONERS,
VS. HON. FELIX R. DOMING...**

G.R. No. 21274. July 31, 1963

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

The Board of Immigration Commissioners and their Security Officers petition this Court for a writ of certiorari to annul and set aside a writ of preliminary mandatory injunction issued on 1 March 1963 and 6 March 1963 by the Court of First Instance of Pangasinan, Branch III (Judge Felix R. Domingo presiding), directing the Sheriff of the City of Manila to release respondent Monico Muya alias Tiu Kim Kee from the custody of petitioners, upon an injunction bond of P1,000.00, and a cash bond of P2,000.00, and to revoke said Court's order of 27 April 1963 denying dismissal of the petition and the dissolution of the writ of preliminary injunction.

Upon petitioners request, we restrained the enforcement of the orders complained of, pending determination of the merits of the present proceedings.

The facts are not disputed. On 5 April 1959, respondent Muya came to the Philippines aboard the s/s "Kimberley" as a stowaway Chinese citizen under the name of Tiu Kim Kee. Detected and returned to the port of departure, the same respondent entered this country again on 3 January 1962, arriving from Hongkong on board a Philippine Air Lines airplane, and sought admission as a Filipino citizen, on the strength of a Certificate of Registration and Entry No. 1138, issued by the Philippine Consulate at Hongkong by authority of the Secretary of Foreign Affairs.

His identity with the 1959 stowaway on board the s/s Kimberley, Tiu Kim Kee, having been duly established through his fingerprints, Monico Muya was detained by the immigration authorities, and investigated by a Board of Special Inquiry. After hearing, the Board recommended his exclusion and deportation as an alien that entered through false and misleading statements. The recommendation was on appeal, unanimously affirmed by the Board of Immigration Commissioners on 22 June 1962.

On 27 June 1962, Muya instituted Case No. 50813 in the Court of First Instance of Manila, claiming to be a Filipino citizen, seeking certiorari to review and annul the decision of the Commissioners of Immigration, and praying for his release without further molestation. On 31 July 1962, however, he obtained a dismissal of the case on the ground that "all administrative remedies afforded to herein petitioner has (sic) not been availed of and exhausted".

Thereafter, on 20 February 1963, respondent Muya once more went to court, this time in the Court of First Instance of Pangasinan, Branch III, and filed therein a petition (Civil Case No. D-1442) for Declaratory Judgment with Mandamus and Injunction, again asserting Filipino citizenship, and asking that he be declared a citizen of the Republic of the Philippines, that a writ of mandamus be issued to the Immigration Commissioners to release him

and for a writ of preliminary mandatory and prohibitory injunction to restrain his deportation and order his release, and for other just and equitable relief. On the first day of March, 1963, the court issued the order of preliminary mandatory injunction to set Muya free.

The immigration authorities sought reconsideration of the order and injunction writ, questioning the lower court's authority to issue a writ of preliminary injunction against officers stationed outside of its territorial jurisdiction; averring that Muya had not exhausted all administrative remedies; that the citizenship claimed can not be the object of a declaratory suit; that complainant did not come to court with clean hands, inasmuch as he concealed the fact that he had already sought certiorari from the Manila Court of First Instance, but the latter refused to issue a preliminary injunction for his release. These grounds were reiterated by answer filed on behalf of the Immigration officers by the Solicitor General under date of 6 April 1963.

Reconsideration was denied by the court below on 27 April 1963; whereupon, the petitioners' Immigration officers resorted to this Court, claiming lack of jurisdiction and abuse of discretion amounting to excess of jurisdiction by the court a quo.

We find the petition meritorious. In the first place, it is now well settled by the decision of this Court that there is no proceeding established by law, or the rules, for the judicial declaration of the citizenship of an individual (Palaran vs. Republic, L-15047, January 30, 1962; Channie Tan vs. Republic, 107 Phil., 532; Tan Yu Chin vs. Republic 111 Phil, 959. 84 Phil., 287; Delumen vs. Republic 94 Phil. 287; In re Hospicio Obiles, 92 Phil., 864; 49 Off. Gaz., p. 923); and that citizenship is not a proper subject for declaratory judgment (Feliseta Tan vs. Republic, L-16108. October 31, 1962; Tiu Navarro vs. Commissioner of Immigration, 110 Phil., 468). Therefore, since respondent Muya was not entitled to the declaratory judgment he filed in the court below, the issuance of a preliminary mandatory injunction therein was in abuse of discretion and excess of jurisdiction, because the principal remedy sought was clearly not available.

This conclusion is reinforced by the consideration that, as the Commissioners of Immigration are under the Department of Justice, the petitioner was duty-bound to exhaust all the administrative remedies by appealing first to the Secretary before seeking the intervention of the courts, as ruled in Soriano vs. Galang, 107 Phil., 1026.

Finally, respondent Muya (petitioner below) being in custody of the immigration authorities in Manila, the proper remedy to test the legality of his detention is habeas corpus and not an action for declaratory judgment with incidental mandamus to release him (Lao Tan Bun vs. Fabre, 31 Phil. 682). It goes without saying that this action should be brought in the Court of First Instance of the City of Manila where Muya is detained. Of course, from the point of view of the private respondent, such a proceeding possessed the objectionable feature that Muya previously filed and withdrawn a similar proceeding in the same court (Case No. 50813); and, in fact, it is very likely that he instituted the proceedings in Pangasinan just to avoid being confronted with the record of the former case. It is well to note also that in order to claim venue in the Pangasinan court respondent Muya averred in his petition that he was a resident of Dagupan city, while in his preceding petition in the Manila court he had alleged that he resided in Mauban Street, Quezon City. How he could assert either of such residences remains unexplained, because the admitted fact is that he was born in Amoy, China, in 1935, and entered the Philippines for the first time in 1962, only to be immediately detained by the Immigration officers.

It is highly desirable that courts should at all times be keenly aware that certain aliens are apt to resort to desperate means in order to obtain the benefits of Filipino citizenship, and that they should ever endeavor to bar the possibility that judicial proceedings should be utilized to circumvent the policy of our Constitution and statutes, even temporarily.

The writ of certiorari is granted as prayed for, and the orders of the respondent court of 6 March, and 27 April

1963, as well as the writ of injunction issued by it on March 1963 directing the release of respondent Monico, Muya alias Tiu Kim Kee, are hereby annulled and set aside. The preliminary injunction heretofore issued is made permanent. iCosts against the private respondent, Monico Muya.

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

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