

## SECOND DIVISION

[ G.R. No. 177861, July 13, 2010 ]

**IN RE: PETITION FOR CANCELLATION AND CORRECTION OF ENTRIES IN THE RECORD OF BIRTH, EMMA K. LEE, PETITIONER, VS. COURT OF APPEALS, RITA K. LEE, LEONCIO K. LEE, LUCIA K. LEE-ONG, JULIAN K. LEE, MARTIN K. LEE, ROSA LEE-VANDERLEK, MELODY LEE-CHIN, HENRY K. LEE, NATIVIDAD LEE-MIGUEL, VICTORIANO K. LEE, AND THOMAS K. LEE, REPRESENTED BY RITA K. LEE, AS ATTORNEY-IN-FACT, RESPONDENTS.**

### D E C I S I O N

**ABAD, J.:**

This case is about the grounds for quashing a subpoena *ad testificandum* and a parent's right not to testify in a case against his children.

#### The Facts and the Case

Spouses Lee Tek Sheng (Lee) and Keh Shiok Cheng (Keh) entered the Philippines in the 1930s as immigrants from China. They had 11 children, namely, Rita K. Lee, Leoncio K. Lee, Lucia K. Lee-Ong, Julian K. Lee, Martin K. Lee, Rosa Lee-Vanderlek, Melody Lee-Chin, Henry K. Lee, Natividad Lee-Miguel, Victoriano K. Lee, and Thomas K. Lee (collectively, the Lee-Keh children).

In 1948, Lee brought from China a young woman named Tiu Chuan (Tiu), supposedly to serve as housemaid. The respondent Lee-Keh children believe that Tiu left the Lee-Keh household, moved into another property of Lee nearby, and had a relation with him.

Shortly after Keh died in 1989, the Lee-Keh children learned that Tiu's children with Lee (collectively, the Lee's other children) claimed that they, too, were children of Lee and Keh. This prompted the Lee-Keh children to request the National Bureau of Investigation (NBI) to investigate the matter. After conducting such an investigation, the NBI concluded in its report:

**[I]t is very obvious that the mother of these 8 children is certainly not KEH SHIOK CHENG, but a much younger woman, most probably TIU CHUAN. Upon further evaluation and analysis by these Agents, LEE TEK SHENG is in a quandary in fixing the age of KEH SHIOK CHENG possibly to conform with his grand design of making his 8 children as their own legitimate children, consequently elevating the status of his second family and secure their future. The doctor lamented that this complaint would not have been necessary had not the father and his second family**

**kept on insisting that the 8 children are the legitimate children of  
KEH SHIOK CHENG.<sup>[1]</sup>**

The NBI found, for example, that in the hospital records, the eldest of the Lee's other children, Marcelo Lee (who was recorded as the 12th child of Lee and Keh), was born of a 17-year-old mother, when Keh was already 38 years old at the time. Another of the Lee's other children, Mariano Lee, was born of a 23-year-old mother, when Keh was then already 40 years old, and so forth. In other words, by the hospital records of the Lee's other children, Keh's *declared* age did not coincide with her *actual* age when she supposedly gave birth to such other children, numbering eight.

On the basis of this report, the respondent Lee-Keh children filed two separate petitions, one of them before the Regional Trial Court (RTC) of Caloocan City<sup>[2]</sup> in Special Proceeding C-1674 for the deletion from the certificate of live birth of the petitioner Emma Lee, one of Lee's other children, the name Keh and replace the same with the name Tiu to indicate her true mother's name.

In April 2005 the Lee-Keh children filed with the RTC an *ex parte* request for the issuance of a subpoena *ad testificandum* to compel Tiu, Emma Lee's presumed mother, to testify in the case. The RTC granted the motion but Tiu moved to quash the subpoena, claiming that it was oppressive and violated Section 25, Rule 130 of the Rules of Court, the rule on parental privilege, she being Emma Lee's stepmother.

<sup>[3]</sup> On August 5, 2005 the RTC quashed the subpoena it issued for being unreasonable and oppressive considering that Tiu was already very old and that the obvious object of the subpoena was to badger her into admitting that she was Emma Lee's mother.

Because the RTC denied the Lee-Keh children's motion for reconsideration, they filed a special civil action of *certiorari* before the Court of Appeals (CA) in CA-G.R. SP 92555. On December 29, 2006 the CA rendered a decision,<sup>[4]</sup> setting aside the RTC's August 5, 2005 Order. The CA ruled that only a subpoena *duces tecum*, not a subpoena *ad testificandum*, may be quashed for being oppressive or unreasonable under Section 4, Rule 21 of the Rules of Civil Procedure. The CA also held that Tiu's advanced age alone does not render her incapable of testifying. The party seeking to quash the subpoena for that reason must prove that she would be unable to withstand the rigors of trial, something that petitioner Emma Lee failed to do.

Since the CA denied Emma Lee's motion for reconsideration by resolution of May 8, 2007,<sup>[5]</sup> she filed the present petition with this Court.

### **The Question Presented**

The only question presented in this case is whether or not the CA erred in ruling that the trial court may compel Tiu to testify in the correction of entry case that respondent Lee-Keh children filed for the correction of the certificate of birth of petitioner Emma Lee to show that she is not Keh's daughter.

### **The Ruling of the Court**