

SECOND DIVISION

[G.R. No. 125901, March 08, 2001]

**EDGARDO A. TIJING AND BIENVENIDA R. TIJING, PETITIONERS,
VS. COURT OF APPEALS (SEVENTH DIVISION) AND ANGELITA
DIAMANTE, RESPONDENTS.**

D E C I S I O N

QUISUMBING, J.:

For review is the decision of the Court of Appeals dated March 6, 1996, in CA-G.R. SP No. 39056, reversing the decision of the Regional Trial Court in a petition for *habeas corpus* of Edgardo Tijing, Jr., allegedly the child of petitioners.

Petitioners are husband and wife. They have six children. The youngest is Edgardo Tijing, Jr., who was born on April 27, 1989, at the clinic of midwife and registered nurse Lourdes Vasquez in Sta. Ana, Manila. Petitioner Bienvenida served as the laundrywoman of private respondent Angelita Diamante, then a resident of Tondo, Manila.

According to Bienvenida in August 1989, Angelita went to her house to fetch her for an urgent laundry job. Since Bienvenida was on her way to do some marketing, she asked Angelita to wait until she returned. She also left her four-month old son, Edgardo, Jr., under the care of Angelita as she usually let Angelita take care of the child while Bienvenida was doing laundry.

When Bienvenida returned from the market, Angelita and Edgardo, Jr., were gone. Bienvenida forthwith proceeded to Angelita's house in Tondo, Manila, but did not find them there. Angelita's maid told Bienvenida that her employer went out for a stroll and told Bienvenida to come back later. She returned to Angelita's house after three days, only to discover that Angelita had moved to another place. Bienvenida then complained to her barangay chairman and also to the police who seemed unmoved by her pleas for assistance.

Although estranged from her husband, Bienvenida could not imagine how her spouse would react to the disappearance of their youngest child and this made her problem even more serious. As fate would have it, Bienvenida and her husband reconciled and together, this time, they looked for their missing son in other places. Notwithstanding their serious efforts, they saw no traces of his whereabouts.

Four years later or in October 1993, Bienvenida read in a tabloid about the death of Tomas Lopez, allegedly the common-law husband of Angelita, and whose remains were lying in state in Hagonoy, Bulacan. Bienvenida lost no time in going to Hagonoy, Bulacan, where she allegedly saw her son Edgardo, Jr., for the first time after four years. She claims that the boy, who was pointed out to her by Benjamin Lopez, a brother of the late Tomas Lopez, was already named John Thomas Lopez.

[1] She avers that Angelita refused to return to her the boy despite her demand to do so.

Bienvenida and Edgardo filed their petition for *habeas corpus* with the trial court in order to recover their son. To substantiate their petition, petitioners presented two witnesses, namely, Lourdes Vasquez and Benjamin Lopez. The first witness, Vasquez, testified that she assisted in the delivery of one Edgardo Tijing, Jr. on April 27, 1989 at her clinic in Sta. Ana, Manila. She supported her testimony with her clinical records.[2] The second witness, Benjamin Lopez, declared that his brother, the late Tomas Lopez, could not have possibly fathered John Thomas Lopez as the latter was sterile. He recalled that Tomas met an accident and bumped his private part against the edge of a banca causing him excruciating pain and eventual loss of his child-bearing capacity. Benjamin further declared that Tomas admitted to him that John Thomas Lopez was only an adopted son and that he and Angelita were not blessed with children.[3]

For her part, Angelita claimed that she is the natural mother of the child. She asserts that at age 42, she gave birth to John Thomas Lopez on April 27, 1989, at the clinic of midwife Zosima Panganiban in Singalong, Manila. She added, though, that she has two other children with her real husband, Angel Sanchez.[4] She said the birth of John Thomas was registered by her common-law husband, Tomas Lopez, with the local civil registrar of Manila on August 4, 1989.

On March 10, 1995, the trial court concluded that since Angelita and her common-law husband could not have children, the alleged birth of John Thomas Lopez is an impossibility.[5] The trial court also held that the minor and Bienvenida showed strong facial similarity. Accordingly, it ruled that Edgardo Tijing, Jr., and John Thomas Lopez are one and the same person who is the natural child of petitioners. The trial court decreed:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered GRANTING the petition for Habeas Corpus, as such, respondent Angelita Diamante is ordered to immediately release from her personal custody minor John Thomas D. Lopez, and turn him over and/or surrender his person to petitioners, Spouses Edgardo A. Tijing and Bienvenida R. Tijing, immediately upon receipt hereof.

Branch Sheriff of this Court, Carlos Bajar, is hereby commanded to implement the decision of this Court by assisting herein petitioners in the recovery of the person of their minor son, Edgardo Tijing Jr., the same person as John Thomas D. Lopez.

SO ORDERED.[6]

Angelita seasonably filed her notice of appeal.[7] Nonetheless, on August 3, 1994, the sheriff implemented the order of the trial court by taking custody of the minor. In his report, the sheriff stated that Angelita peacefully surrendered the minor and he turned over the custody of said child to petitioner Edgardo Tijing.[8]

On appeal, the Court of Appeals reversed and set aside the decision rendered by the trial court. The appellate court expressed its doubts on the propriety of the *habeas*

corpus. In its view, the evidence adduced by Bienvenida was not sufficient to establish that she was the mother of the minor. It ruled that the lower court erred in declaring that Edgardo Tijing, Jr., and John Thomas Lopez are one and the same person,^[9] and disposed of the case, thus:

IN VIEW OF THE FOREGOING, the decision of the lower court dated March 10, 1995 is hereby REVERSED, and a new one entered dismissing the petition in Spec. Proc. No. 94-71606, and directing the custody of the minor John Thomas Lopez to be returned to respondent Angelita Diamante, said minor having been under the care of said respondent at the time of the filing of the petition herein.

SO ORDERED.^[10]

Petitioners sought reconsideration of the abovequoted decision which was denied. Hence, the instant petition alleging:

I

THAT THE RESPONDENT COURT OF APPEALS COMMITTED A GRAVE ERROR WHEN IT DECLARED THAT THE PETITIONERS' ACTION FOR HABEAS CORPUS IS MERELY SECONDARY TO THE QUESTION OF FILIATION THAT THE PETITIONERS HAD LIKEWISE PROVEN.

II

THAT THE RESPONDENT COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE REGIONAL TRIAL COURT DISMISSING THE PETITION FOR "HABEAS CORPUS" AND DIRECTING THAT THE CUSTODY OF THE MINOR JOHN THOMAS LOPEZ WHO WAS PROVEN TO BE THE SAME MINOR AS EDGARDO R. TIJING, JR., BE RETURNED TO THE PRIVATE RESPONDENT.^[11]

In our view, the crucial issues for resolution are the following:

- (1) Whether or not *habeas corpus* is the proper remedy?
- (2) Whether or not Edgardo Tijing, Jr., and John Thomas Lopez are one and the same person and is the son of petitioners?

We shall discuss the two issues together since they are closely related.

The writ of *habeas corpus* extends to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.^[12] Thus, it is the proper legal remedy to enable parents to regain the custody of a minor child even if the latter be in the custody of a third person of his own free will. It may even be said that in custody cases involving minors, the question of illegal and involuntary restraint of liberty is not the underlying rationale for the availability of the writ as a remedy. Rather, it is prosecuted for the purpose of determining the right of custody over a child.^[13] It must be stressed too that in *habeas corpus* proceedings, the question of identity is relevant and material, subject to the usual presumptions including those as to identity of the person.