

IN THE MATTER OF THE CHANGE OF NAME OF MILAGROS LLERENA TELMO, MILAGROS LLERENA TELMO, PETITIONER-APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR-APPELLANT.

G.R. No. L-28549. September 23, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

Milagros Llerena was admitted to the bar in 1923. In her attorney's oath dated September 30, 1946 (on file in the Bar Con-fidant's office) she used the name Milagros Llerena-Telmo. In 1930 or 1931 she married Pedro M. Telmo. They begot four sons, now all of age, who were baptized with the surname "Telmo" but who since kindergarten days have been using the surname "Thelmo".

When the Telmo spouses sojourned in the United States, Pedro M. Telmo, following the American style, changed the spelling of his name to "Thelmo". In his diploma as mechanical and marine engineer issued by the University of Michigan, his surname is allegedly spelled as "Thelmo".

Mrs. Telmo was appointed justice of the peace of Kaba-salan, Manicahan and Taluksangay, Zamboanga. (She was later appointed "midnight" Judge of the Court of First Instance but she was not able to exercise the functions of that office). She admitted that in the administrative cases filed against her when she was a justice of the peace some complainants used the name "Telmo" and others used "Thelmo". She declared that in the administrative case, which resulted in the termination of her tenure as justice of the peace, she used the name "Thelmo" (13-14 tsn March 20, 1965).

On February 15, 1964 she filed a petition in the Court of First Instance of Zamboanga City praying that her husband's surname "Telmo" be changed to "Thelmo" (Special Case No. 668). Her husband did not join her as a co-petitioner. But he executed an affidavit dated October 10, 1966 wherein he manifested that he interposed no objection to his wife's petition (Exh. A).

Two of her four sons, Agapito Ll. Thelmo, a lawyer, and Bennett Ll. Thelmo, a businessman, executed a joint affidavit expressing conformity to their mother's petition (Exh. B).

The order setting the petition for hearing was published for three consecutive weeks in the Zamboanga Times (Exh. I). At the hearing Mrs. Telmo presented the following documentary evidence:

- (1) The certificates of the Board of Medical Examiners dated April 26 and November 22, 1961 attesting that her sons Doctors Franklin L. Thelmo and William L. Thelmo, were admitted to practice as physicians (Exh. E and C);
- (2) The high school diploma issued on April 5, 1952 by the San Sebastian College to her son, Benito Thelmo (Exh. D);

- (3) The diploma of merit dated August 31, 1957 issued to her son, Franklin Ll. Thelmo (Exh. F);
- (4) The diploma issued by the University of Santo Tomas to her son, William Ll. Thelmo (Exh. G);
- (5) A telegram sent by Mesdames Balboa, Legarda and Corpus to Atty. Milagros Thelmo on February 5, 1955 (Exh. H);
- (6) The articles of incorporation of Pyramid Insurance Co., Inc. executed in June, 1964 and the articles of incorporation of Milathel Corpora-tion dated August 25, 1964 wherein the petitioner, as an incorporator, used the name Milagros Ll. Thelmo (Exh. J and K).

Although Mrs. Telmo in her petition and testimony alleged that in some titles and deeds and in her visas and passports, she used the surname "Thelmo", she did not present them in evidence. She testified that she wanted to legalize her use of the surname "Thelmo".

In her petition she alleged that she initiated the addition of the letter "h" to her husband's surname "Telmo" in order "to distinguish her sons from other Telmos who are the illegitimate children of the relatives of her husband".

The City Fiscal of Zamboanga City in his opposition con-tended that the real party in interest is the husband and that the couple's four sons, who are of age, should have been impleaded as co-petitioners.

The lower court granted the petition. It declared that petitioner's surname should be "changed from Telmo to Thelmo."

The City Fiscal in his notice of appeal to this Court stated that the lower court's order granting the petition "is contrary to law and the evidence".

The Solicitor General in his brief argues that the lower court erred in holding that the reasons adduced by the petitioner justify the change of her husband's surname.

It should be clarified that the City Fiscal did not present any evidence. This appeal should be decided solely on the basis of Mrs. Telmo's evidence. As that evidence was not rebutted, the conclusion to be drawn therefrom is in a way a question of law (*Cunanan vs. Lazatin*, 74 Phil. 719, 724).

The Solicitor General contends that the fact that Mrs. Telmo has been using "Thelmo" for a long time is not a suffi-cient justification for authorizing a change of name (*Ong Peng Oan vs. Republic*, 102 Phil. 468; *Ong Te vs. Republic*, 115 Phil. 483). He points out that Mrs. Telmo's desire to dis-tinguish her sons from her husband's illegitimate relatives surnamed "Telmo" concerns her sons, who are of age, and not herself, and that to allow her to change her husband's surname without granting a similar judicial authorization to her husband and sons would generate confusion since the latter "may still legally use the family name Telmo." The State's counsel further observes that the petitioner "left the judiciary as a result" of some administrative cases which were brought against her under the name "Telmo" and that that surname has become objectionable to her for reasons other than those alleged in her petition.

In reply, the petitioner counters that the contentions of the Solicitor General involve a change of theory because in the lower court the City Fiscal opposed the petition merely on the ground that there was no joinder of the real parties in interest, namely, the husband and sons of Mrs. Telmo.

The appeal may be upheld on a jurisdictional ground. Mrs. Telmo in the title of her petition did not indicate that she wanted her surname to be changed to "Thelmo". The published order setting her petition for hearing reproduced the defective title thereof. That publication was invalid and ineffective (*Pabellar vs. Republic*, L-27298, March 4, 1976; *Secan Kok vs. Republic*, L-27621, August 30, 1973, 52 SCRA 322; *Go Chiu Beng vs.*

Republic, L-29574, August 18, 1972, 46 SCRA 617).

A change of name is a proceeding in rem. Jurisdiction to hear and determine the petition for change of name is acquired after due publication of the order containing certain data, among which is the name sought to be adopted which should be indicated in the title of the petition (Pabellar case).

The reason for the rule is that the ordinary reader "glances fleetingly at the captions of the published orders or the titles of the petitions. Only if the caption or the title strikes him does the reader proceed to read on. And the probability is great that the reader does not at all notice the other names and/or aliases of the applicant if these are mentioned only in the body of the order or petition. The noninclusion of all the names and/or aliases of the applicant in the caption of the order or the title of the petition defeats the very purpose of the required publication." (Republic vs. Tañada, L-31563, November 29, 1971, 42 SCRA 419).

As the title of the petition in this case and the order setting it for hearing were deficient, the lower court did not acquire jurisdiction over the proceeding (Jesus Ng Yao Siong vs. Republic, 63 O.G. 4408, 16 SCRA 483).

On the merits, the issue is whether there is ample justification to allow Mrs. Telmo to change the spelling of her husband's surname.

A married woman may use her husband's surname (Art. 370, Civil Code). It is axiomatic that if she desires judicial authorization to change the spelling of his surname, her husband should initiate the proceeding. In the instant case, the anomaly is that the husband did not ask for judicial authority to change the spelling of his surname. It was his wife who filed the petition. The irregularity in the petition is obvious. The lower court sanctioned the wife's change of the spelling of her husband's surname but no similar authority was granted to the husband because he did not file a petition for that purpose.

It is true that the wife submitted to the court her husband's affidavit of conformity to the change in the spelling of his surname. But, as pointed out by the Solicitor General, that would not prevent him and their children from using the old spelling. And in that event, confusion and error might arise.

Moreover, after a careful evaluation of the reasons advanced by Mrs. Telmo for changing the spelling of her husband's surname, the Court has arrived at the conclusion that those reasons are not substantial and cogent enough to sustain her petition.

WHEREFORE , the lower court's order is reversed and the petition is dismissed. No costs.

SO ORDERED.

Fernando, (Chairman), Antonio, Concepcion, Jr., and Martin, JJ., concur.

Barredo, J., did not take part.

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