

**IN THE MATTER OF THE PETITION FOR THE CANCELLATION
AND/OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRAR,
ERNESTO V. ROSALES, PETITIONER-APPELLANT, VS. ASUNCION Z.
CASTILLO ROSALE...**

G.R. No. L-31712. September 28, 1984

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is an appeal by way of certiorari from the order of the then Court of First Instance of Cebu, dated July 26, 1969, in Special Proceedings Case No. 2968-R, which dismissed appellant's petition for the correction and/or cancellation of entries in the Civil Registry upon respondents-appellees' motion to dismiss on the ground that the facts alleged in the petition do not constitute a cause of action as required by Rule 108 of the Revised Rules of Court in relation to Article 412 of the Civil Code.

On March 18, 1969, appellant filed a petition for the correction and/or cancellation of entries in the Civil Registrar before the Court of First Instance of Cebu, alleging that he and respondent-appellee Asuncion Z. Castillo Rosales were married in Carmen, Cebu, on June 24, 1942 and as a result of that marriage four legitimate children were born; that on April 13, 1950, appellant and his wife respondent-appellee Asuncion Z. Castillo Rosales "separated" when he left for Iloilo to seek employment, after which he had ceased to cohabit with his respondent-appellee wife, Asuncion Z. Castillo Rosales and has never again cohabited with her; that as a result of the "separation" between appellant and his wife, the latter had illicit adulterous relationship with one Vidal Rivera starting sometime in January, 1952, which continues up to the filing of the petition; that as a result of such illicit relationship, four children were born, namely: Teresita Castillo, Cecilia Rosales, Emmanuel C. Rosales, and Milagros Socorro C. Rivera; that there are errors in the records of birth of the two (2) minors, Cecilia Rosales and Emmanuel C. Rosales, in that the name of the father listed in their records of birth is that of appellant Ernesto Rosales and not that of respondent-appellee Vidal Rivera since the two minors are not his legitimate children but are the illegitimate children of the respondents-appellees Vidal Rivera and Asuncion Castillo Rosales; that these errors were caused by Mrs. F. L. Ramiro, the proprietress of the St. Anthony Maternity and General Clinic where these two minors were born; that the aforementioned four (4) children, born as a result of the illicit relationship between respondents-appellees Vidal Rivera and Asuncion Z. Castillo Rosales, were born while the marriage of the petitioner-appellant to his respondent-appellee wife is still in force although they have been separated and have not cohabited with each other since 1949 up to the present; and that therefore, the four (4) children are conclusively pre-sumed to be his legitimate children with respondent-appellee Asuncion Z. Castillo Rosales (pp. 17-19, rec.).

In the said petition, appellant prayed that: (1) the Court declare the four [4] respondent children as not the children of the petitioner, to the end that petitioner may not be associated with the paternity of the minors Teresita Castillo, Cecilia Rosales, Emmanuel C. Rosales, and Milagros Socorro C. Rivera; and (2) the Court order the Civil Registrar of Cebu City to correct the birth records of defendants children Cecilia and Emmanuel so that the

surname Rosales shall no longer be used by them (p. 20, rec.).

On May 20, 1969, the court a quo issued an order setting the petition for hearing on June 21, 1969 and designated all persons who have an interest in the petition to show cause, if any, why the said petition should not be granted. It further ordered the publication of a copy of the order in a newspaper of general circulation in the city and province of Cebu, once a week for three (3) consecutive weeks the last publication to be made at least one week before the date set for the hearing of said petition. The Local Civil Registrar of Cebu City was notified of the said order and furnished with a copy of the petition (pp. 25-26, rec.).

On June 20, 1969, respondent-appellee Local Civil Registrar of Cebu City, through counsel, filed a motion to dismiss alleging that the facts alleged in the petition do not constitute a cause of action for correction and/or cancellation of entries in the civil register. Respondent-appellee Civil Registrar argued that the correction sought by the appellant is untenable under Rule 108 in relation to Article 412 since said correction is not clerical but substantial, involving as it does the paternity and filiation of the four children (pp. 27-28, rec.).

On July 7, 1969, petitioner-appellant filed an opposition to the motion to dismiss. Respondent-appellee Local Civil Registrar filed a reply thereto on July 25, 1969.

On July 26, 1969, the court a quo issued an order dismissing petitioner-appellant's petition and WE quote:

"This is with respect to the Motion to Dismiss filed by the Local Civil Registrar praying for the dismissal of the petition on the ground that the facts alleged in said petition do not constitute a cause of action for correction or cancellation of entries in the civil register since the error sought to be corrected is a substantial one, and not a mere clerical error.

"After hearing the arguments of counsel for both parties, the Court finds the motion to dismiss to be well-founded and therefore GRANTS the same.

"WHEREFORE, the petition at bar is hereby dismissed" (p. 30, rec.).

Petitioner-appellant now comes before US alleging that: (1) the trial court erred in holding that the facts alleged in the petition do not constitute a cause of action for correction and/or cancellation of entries in the civil registry; and (2) the trial court erred in holding that the errors sought to be corrected being substantial and not clerical should not be threshed out in the instant petition under Rule 108 of the Revised Rules of Court.

WE find that the petition is devoid of merit.

Admittedly, the correction sought by the petitioner-appellant is substantial since it involves the paternity and filiation of the four minor children.

Petitioner-appellant maintains that errors which are substantial and material in nature can be corrected under Rule 108 since it requires the petition to be verified with notice and publication of the same, making the Civil Registrar and all persons who have or claim any interest which would be affected as parties (p. 6, Brief for the petitioner-appellant, p. 83, rec.).

In the case of *Chua Wee vs. Republic*, 38 SCRA 411, analogous to the case at bar, where a petition was filed on October 5, 1966 with the Manila Court of First Instance, for the correction of the birth records in the office of the local civil registrar of the petitioner's four children by changing their civil status from legitimate to illegitimate and in the process their nationality from Chinese to Filipino, this Court held:

"Petitioners-appellants premised their appeal on the grounds:

"(1) that their petition is based, not on the summary proceeding under Art. 412 of the New Civil Code, but on

the proceeding in rem delineated in Rule 108 of the Revised Rules of Court which requires the publication of the petition once a week for three consecutive weeks in a newspaper of general circulation and therefore covers controversial issues, rendering inapplicable the doctrine in the case *Reyes, et al. vs. Republic* [L-17642, Nov. 27, 1964, 12 SCRA 376]; and

"(2) xx xx xx.

"xx xx xx.

"Article 412 of the New Civil Code is the only substantial law covering the alteration or correction of entries in the civil register which alteration or correction can only be effected through a judicial order.

"The uniform and emphatic construction of Article 412 of the New Civil Code before and after Rule 108 of the Revised Rules of Court which took effect on January 1, 1964, until the last case of *Tan Pong vs. Republic* (L-21010, Nov. 28, 1969, 30 SCRA 380), is that the changes or corrections authorized under said Article 412, which envisions a summary procedure there-for, relate only to harmless and innocuous alterations such as misspellings or errors that are visible to the eyes or obvious to the understanding and that changes in the citizenship of a person or in his status from legitimate to illegitimate or from married to not married are substantial as well as controversial, which can only be established in an appropriate adversary proceeding as a remedy for the adjudication of real and justiciable controversies involving actual conflict of rights the final determination of which depends upon the resolution of the issues of nationality, paternity, filiation or legitimacy of the marital status for which existing substantive and procedural laws as well as other rules of court amply provide (*Tan Pong vs. Republic*, supra, 388-89; see also *Chua Tan Chuan vs. Republic*, L-25439, March 28, 1969, 27 SCRA 447-449; *Republic vs. Maddela*, L-21664, March 28, 1969, 27 SCRA 702, 705; *Reyes vs. Republic*, L-17642, Nov. 27, 1964, 12 SCRA 376, 379).

"From the time the New Civil Code took effect on August 30, 1950 until the promulgation of the Revised Rules of Court on January 1, 1964, there was no law nor rule of court prescribing the procedure to secure judicial authorization to effect the desired innocuous rectifications or alterations in the civil register pursuant to Article 412 of the New Civil Code. Rule 108 of the Revised Rules of Court now provides for such a procedure which should be limited solely to the implementation of Article 412, the substantive law on the matter of correcting entries in the civil register. Rule 108, like all the other provisions of the Rules of Court, was promulgated by the Supreme Court pursuant to its rule-making authority under Sec. 13 of Art. VIII of the Constitution, which directs that such rules of court 'shall not diminish or increase or modify substantive rights.' If Rule 108 were to be extended beyond innocuous or harmless changes or corrections of errors which are visible to the eye or obvious to the understanding, so as to comprehend substantial and controversial alterations concerning citizenship, legitimacy of paternity or filiation, or legitimacy of marriage, said Rule 108 would thereby become unconstitutional for it would be increasing or modifying substantive rights, which changes are not authorized under Article 412 of the New Civil Code."

This Court further declared that:

"But whatever doubt which might have been generated by the inclusion of Rule 108 in the Revised Rules of Court which took effect on January 1, 1964 as to the applicability of said Rule 108 to corrections of entries in the civil register which are substantial and controversial especially those affecting civil status, filiation, paternity or nationality of persons, was dissipated completely by Mr. Chief Justice Roberto Concepcion in *Lim vs. Local Civil Registrar of Manila* (L-24284, Feb. 28, 1968, 22 SCRA 876). The petition in this *Lim* case, according to its records, is similar to the petition in the case at bar although originally filed on February 2, 1963. On January 17, 1964, petitioner *Lim* filed an addendum to his rejoinder to the opposition of the Solicitor General by alleging that he filed his petition pursuant to Rule 108 of the new Rules of Court. On July 8, 1964, the court ordered petitioner *Lim* to file an amended petition which amended petition was filed on July 14, 1964. In an order dated July 18, 1964, the court admitted the said amended petition and directed petitioner to publish said petition once a week for three consecutive weeks in a newspaper of general circulation and set the

case for hearing on February 23, 1964, pursuant to which order the petition was accordingly published. Mr. Chief Justice Concepcion, speaking for the High Tribunal, ruled:

"The manifest pur-pose of the petition is to make it appear that petitioner is an illegitimate child of a Filipina, Tarciana Rodriguez -not the legitimate son of Lim Sui Kian and Tarciana Rodriguez, as now set forth in the records of the local civil registrar - with a view to bolstering up his claim to Filipino nationality, following that of his Filipino mother, instead of that of his Chinese father, Lim Sui Kian. It is well settled, however, that Art. 412 of our Civil Code, upon which petitioner herein relies, contemplates a summary pro-ceeding, involving the correction of clerical errors, of a harmless and innocuous nature, not changes involving civil status, nationality or citizenship, which are sub-stantial and/or controversial, or a change of name (Ty Kong Tin vs. Republic, 94 Phil. 321; Ansaldo vs. Republic, L-10225, Feb. 1958; Alfonso Tan Su vs. Republic, L-12140, April 29, 1959; Chomi vs. Local Civil Registrar of Manila, 99 Phil. 1004; and Andrew Black vs. Republic, L-10226, Feb. 14, 1958, 56 O.G. 4752)

"xx xx" (Chua Wee vs. Republic, supra, 413-415, 418, Italics supplied).

This ruling was reiterated in the case of Go vs. Civil Registrar of the Municipality of Malabon, Rizal (39 SCRA 353), where this Court said:

"xx xx.

"It is urged, however, in some of the cases under consideration, that Rule 108 of the Revised Rules of Court, governing the 'cancellation or correction of entries in the Civil Registry,' was promulgated precisely to permit cor-rections other than those authorized in said provision of the Civil Code. The pretense is manifestly untenable. Said Rule 108 did not and cannot expand, enlarge or broaden the class of corrections permitted by the Civil Code, for the simple reason that this would entail an amendment of a sub-stantive law, which is beyond the authority of the Supreme Court. Indeed, its rule-making power is limited by the Constitution to matters of 'pleading, practice and procedure' and 'shall not diminish or increase or modify substantive rights.' x x x" (Go vs. Civil Registrar of Malabon, Rizal, supra, 361).

Again, in Celestial vs. Republic (102 SCRA 667, 668), a 1981 decision, where the lower court granted a petition for the correction of entries in the civil register involving substantial and controversial errors, this Court, through Chief Justice Enrique Fernando, reiterated OUR ruling on the matter and held that:

"xx xx.

"It is readily apparent that the lower court was oblivious of the per-tinence and applicability of the leading case of Ty Kong Tin v. Republic of the Philippines (94 Phil. 321 [1954]). Only last month, the principle therein announced in cases where the change would involve status or citizenship was reiterated in no uncertain terms in Salim Wing v. Abubakar (L-25168, January 31, 1981). As set forth in the opinion of the Court, referring to Ty Kong Tin: 'The matter therein involved was the citizenship not only of the petitioner but of his children. This Court, through Justice Bautista Angelo, in interpreting Article 412 of the Civil Code, held: "'After a mature deliberation, the opinion was reached that what was contemplated therein are mere corrections of mis-takes that are clerical in nature and not those which may affect the civil status or the nationality or citizen-ship of the persons involved. If the purpose of the petition is merely to correct a clerical error then the court may issue an order in order that the error or mistake may be corrected. If it refers to a substantial change, which affects the status or citizenship of a party, the matter should be threshed out in a proper action depending upon the nature of the issue involved.'" By the time Chug Siu v. Local Civil Registrar was decided, it had been reiterated in at least twelve cases, starting from Ansaldo v. Republic and ending with Tan v. Republic. One of the latest cases, a 1977 decision, Republic v. Castañeda, Jr., reaffirmed such a doctrine, citing eight other decisions starting from Dy Oliva v. Republic and ending with Republic v. Amores (49 SCRA 361).

"xx xx."

Moreover, the question of the legitimacy of the four minor children in the instant case is patently controversial since they were born while the marriage of petitioner-appellant and respondent-appellee Asuncion Z. Castillo Rosales is existing. The alleged errors are obviously not a clear case of erroneous entry. In fact, paragraph VIII of the petition before the lower court alleged that: "(T)he above four [4] children are conclusively presumed to be the legitimate children of the married couple, petitioner and respondent wife unless there has been no cohabitation between the two during the birth of the aforesaid children" (p. 19, rec.). As correctly pointed out by the counsel for the respondent-appellee civil registrar, "this fact made the issue in this case controversial and not appropriate for a cause of action in this proceeding" (p. 9, Brief for respondent-appellee, p. 93, rec.).

Furthermore, in *Reyes vs. Republic* (12 SCRA. 379, 380), this Court through Chief Justice Bengzon, held that "x x x While 'birth' is mentioned as one of the entries that maybe corrected or cancelled, this includes only such particulars as are attendant to birth. Other details, such as nationality or citizenship are not included."

Finally, the issue of the legitimacy of the child can only be resolved in a direct action brought for that purpose, by the proper parties, and within the period limited by law. Article 261 of the Civil Code provides that "there is no presumption of legitimacy or illegitimacy of a child born after three hundred days following the dissolution of the marriage or the separation of the spouses. Whoever alleges the legitimacy or the illegitimacy of such child must prove his allegation." While Article 263 of the same code reads:

"The action to impugn the legitimacy of the child shall be brought within one year from the recording of the birth in the Civil Register, if the husband should be in the same place, or in a proper case, any of his heirs.

"If he or his heirs are absent, the period shall be eighteen months if they should reside in the Philippines; and two years if abroad. If the birth of the child has been concealed, the term shall be counted from the discovery of the fraud."

"The legitimacy of the child cannot be contested by way of defense or as a collateral issue in an independent action directly impugning the legitimacy is more clearly expressed in the Mexican Code (Art. 335) which provides: 'The contest of the legitimacy of a child by the husband or his heirs must be made by proper complaint before the competent court; any contest made in any other way is void.' This principle applies under our Code. Articles 262 and 263 of our Code confirm this view, because they refer to 'filing of the complaint,' to the 'period for bringing the action,' and to the action to impugn the legitimacy. This action can be brought only by the husband or his heirs (Article 262), and within the periods fixed in the present article", (Vol. I, Tolentino, Civil Code of the Phil., 1974 Ed., p. 530).

WHEREFORE, THE ORDER OF THE TRIAL COURT DATED JULY 26, 1969 IS HEREBY AFFIRMED AND THE APPEAL DISMISSED, WITH COSTS AGAINST PETITIONER-APPELLANT.

SO ORDERED.

Aquino, Escolin, and Cuevas, JJ., concur.

Abad Santos, J., in the result.

Concepcion, Jr., and Guerrero, JJ., on leave.

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