

CHUA WEE AND PACITA TOPENIO, PETITIONERS-APPELLANTS, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR- APPELLEE.*G.R. No. L-27731. April 21, 1971*

Ponente: MAKASIAR, J.

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On October 5, 1966, Chua Wee and Pacita Topenio filed a petition with the Manila Court of First Instance for the correction of the birth records in the office of the local civil registrar of their four children by changing their nationality from Chinese to Filipino, and their civil status from legitimate to illegitimate.

They alleged in their petition that Chua Wee is a Chinese citizen, while Pacita Topenio is a Filipino citizen, both of legal age, single and residing at 1400 F. Doroteo St., Sta. Cruz, Manila; that they have been living as husband and wife without the benefit of marriage; that out of their common-law marital relations, four children were born in Manila, namely: (1) Roberto — born on June 6, 1949; (2) Carlos — born on December 23, 1950; (3) Lucita — born on August 19, 1952; and (4) Mely — born on January 8, 1954; that the entries in the records of the Manila civil registrar to the effect that the aforesaid children are Chinese citizen and, except the fourth child Mely, are their legitimate children, are wrong; because the petitioners are not legally married and that the aforesaid four children being all illegitimate should follow the citizenship of their mother Pacita Topenio, who is a Filipino citizen.

To the petition were attached the four birth certificates of the aforesaid children.

The Republic of the Philippines and the Manila civil registrar are the only respondents named in the petition.

On December 7, 1966, the court, pursuant to Sec. 4, Rule 108 of the Revised Rules of Court, set the same for hearing on January 28, 1967 and directed the publication of the said petition in the Taliba once a week for three consecutive weeks, with notice to the local civil registrar of Manila.

On December 16, 1966, the local civil registrar of Manila filed an answer disclaiming any knowledge or information as to the truth of the material allegations of the petition, and interposing the defense that the entries sought to be corrected are matters of substance and controversial in nature and that he has no authority to institute the corrections prayed for without a final judicial order.

On January 6, 1967, the Solicitor General filed a motion to dismiss on the ground that the entries sought to be corrected are very substantial and controversial, affecting as they do the citizenship and status of the children of petitioners, and that such petition for the correction is not the appropriate remedy, which remedy can only be secured in a proper action depending upon the nature of the issue involved.

On January 18, 1967, petitioners-appellants filed an opposition to the motion to dismiss, on the ground that their petition is not for a change of name under Rule 103 of the Revised Rules of Court nor for correction of the civil registry entries under the summary proceeding contemplated by Article 412 of the New Civil Code, but pursuant to Rule 108 of the Revised Rules of Court which in effect is a proceeding in rem as publication of the petition is

required by said Rule 108. They add that the petition should not be dismissed and that they should be allowed to prove their allegations as the changes sought are not substantial in nature (p. 12, rec. on appeal), citing the glaring error in entry "NO" under the heading "Legitimate" and the entry "Chinese" under the heading "Nationality" in the birth certificate (Exh. D) of their youngest and fourth child, Mely.

In an order dated January 21, 1967, the court sustained the motion to dismiss and accordingly dismissed the petition as well as denied the motion for reconsideration filed on February 9, 1967 by petitioners-appellants in an order dated April 4, 1967, from which orders petitioners-appellants appealed to the Supreme Court.

There is no dispute that the birth certificates of the first three children show that their citizenship is Chinese, that they are the legitimate children of petitioners-appellants Chua Wee and Pacita Topenio and that the said parents are married, while the birth certificate of the fourth child states that her nationality is Chinese and contains the entry "NO" under the heading "Legitimate." Three birth certificates were all signed by Dr. E. Gochangco-Herrera, while the fourth one was signed by Dr. Virginia M. Mejica (Annexes A, B, C, & D).

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*;^[1] and

(2) that the petition cannot be dismissed on a ground not among those enumerated in Rule 16 on motions to dismiss or Rule 117 on motion to quash of the Revised Rules of Court.

It should also be noted that Sec. 3 of Rule 108 requires 'that the civil registrar and all persons who have or claim any interest which should be affected thereby shall be made parties to the proceeding'; and that Sec. 5 of the same Rule provides that the civil registrar and any person having or claiming any interest in the entry sought to be cancelled or corrected, may within 15 days from notice of the petition or from the last day of publication of such notice, file his opposition to the petition.

Article 412 of the New Civil Code is the only substantive law covering the alteration or correction of entries in the civil register "which alteration or correction can only be affected 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*,^[2] is that the changes or corrections authorized under said Article 412, which envisions a summary procedure therefor, 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.^[3]

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 wider 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.

As enunciated with pointed relevance by Mr. Chief Justice Cesar Bengzon in *Reyes v. Republic*,^[4]

"It may be stated at this juncture that Rule 108 of the Revised Rules of Court provides for the cancellation or correction of the entries in the Civil Registry relating to civil status. Any person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the Civil Registry, may file a verified petition for the cancellation or correction of any entry relating thereto. The entries which may be cancelled or corrected are specifically enumerated. While 'birth' is mentioned as one of the entries that may be corrected or cancelled, this includes only such particulars as are attendant to birth. Other details, such as nationality or citizenship are not included. Rule 108 also covers citizenship but only as regards its election, loss or recovery, (*italics supplied*) But this certainly has no relevance to the instant petition, which, as hitherto stated, seeks a judicial declaration of Philippine citizenship."

It is therefore evident from the *Reyes* case that Rule 108 merely implements Article 412 of the New Civil Code and prescribes the judicial procedure before the proper court can direct the correction of innocuous mistakes in the entries in the civil register, to better ascertain the correctness, accuracy, or truth of the harmless alterations sought.

Even as early as the 1961 case of *Bantoto Coo vs. Republic*,^[5] this Court thru Mr. Justice Natividad ruled that the fact that tile petition was published and notice thereof was served on the State did not change the summary nature of the proceeding.

"xxx The mistakes in the entries in the civil registers, whose correction is sought by the petitioners and which was ordered by the trial court, do not merely embrace clerical errors but involve controversial matters that concern the citizenship and civil status not only of the petitioners but also of their parents. It is true that the evidence shows that the petitioners were all born in the province of Negros Oriental, and that they were the illegitimate children of Coo Ak alias Coo Siong Chi, a Chinese citizen, and Bernardina Bantoto, a Filipino citizen, who were both single at the time of their conceptions and births, from which it may be presumed that mistakes concerning their nationality and civil status as well as the civil status and nationality of their parents have been made in the entries of their respective births in the local civil registers. These, however, are controversial matters which should be threshed out in appropriate actions. They cannot be threshed out in the instant proceeding which is summary in nature, a condition which was not changed by the fact that the hearing of the petition was published and notice thereof was served on the State." (*italics supplied*.)

The maternal grandparents of the four minor children of the petitioners herein as well as the minor children themselves are indispensable parties, because their rights will be adversely affected thereby. The right of the children to inherit from their parents would be substantially impaired if their status would be changed from legitimate to illegitimate, aside from the fact that they would be exposed to humiliation and embarrassment consequent upon the stigma of illegitimate filiation or paternity that they will bear thereafter. The legitime of the illegitimate child with the status of an acknowledged natural child is only one-half of the legitime of a legitimate child (Art. 887, 888, 895, N.C.C.); and the legitime of all other illegitimate children is only 4/5 of the legitime of the acknowledged natural child (Art. 895, N.C.C.). On the other hand, the maternal grandparents' right to inherit in intestacy from the children's mother will also be prejudiced (Art. 893, N.C.C.) in addition to the fact that they

will also be stigmatized as the parents of a daughter who is not legally married to a Chinaman and as grandparents of illegitimate grandchildren. Even petitioner Pacita Topenio, if not legally married, ceases to be a compulsory heir and loses the legitime pertaining to a legitimate spouse (Art. 888, 897, N.C.C).

The earlier case of *Beduya vs. Republic* decided on May 29, 1964, where the petition for correction of entries in the register of marriages of the local civil registrar and of the Roman Catholic Church anent the contract of marriage was filed on August 30, 1958 and the lower court in an order dated September 6, 1958 set the petition for hearing and directed the publication of the order once a week for three consecutive weeks in a newspaper of general circulation as well as service of notice thereof on the local civil registrar, the Solicitor General, the Director of Public Libraries and the custodian of the records of the Roman Catholic Church of the municipality, this Supreme Tribunal, through Mr. Justice Querube C. Makalintal, reiterated our unyielding stand on the matter and held that Article 412 of the New Civil Code allows corrections only of clerical errors and not substantial changes which may affect the civil status or nationality of a person.[6]

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 Concepción in *Lim vs. Local Civil Registrar of Manila*. [7] 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 Concepción, speaking for the High Tribunal, ruled:

"The manifest purpose 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 Article 412 of our Civil Code, upon which petitioner herein relies, contemplates a summary proceeding, involving the correction of clerical errors, of harmless and innocuous nature, not changes involving civil status, nationality or citizenship, which are substantial 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)." [8]

Again, in *Lee vs. Lee Hian Tiu and the Local Civil Registrar*, [9] a petition similar to the instant case was filed on February 18, 1964 and, pursuant to the order of the trial court, was published once a week for three consecutive weeks in a newspaper of general circulation. The order likewise set the case for hearing and directed the local civil registrar and the other respondents or any person claiming any interest under the entries whose corrections were sought to file their opposition to the said petition. Mr. Justice Enrique M. Fernando, speaking for the Supreme Court, held:

"It would be to overturn a long list of cases, impressive for their number and their unanimity, upholding the *Ty Kong Tin* decision, for this petition to prosper. To abandon such a doctrine which has in its favor adherence to a sound policy is unthinkable. Necessarily then, reliance on petitions of this character for the far-from-commendable purpose of changing one's nationality should continue to be frowned upon and

discouraged.

"What was set forth in *Chug Siu v. Civil Registrar of Manila* bears reiteration. Thus: 'One of the most emphatic affirmations against the utilization of this mode of procedure to obtain a judicial declaration of citizenship comes from the pen of former Chief Justice Bengzon in the above cited 1964 decision of *Reyes v. Republic*. Thus: 'The case before us is not of first impression. We have repeatedly declared that in this jurisdiction, the remedy sought in the instant petition cannot be granted in the manner desired. While ostensibly, the action seeks a mere correction of an entry in the Civil Registry, in effect, it requests the judicial declaration of Philippine citizenship. Many such cases this Court has dismissed. We have clearly stated time and again, declaratory relief is not available for the purpose of obtaining a judicial declaration of citizenship.'"[10]

In *Dy En Siu Co. vs. Local Civil Registrar of Manila*,[11] again Mr. Justice Fernando pronounced:

"The lower court correctly relied on the *Ty Kong Tin* doctrine first announced in 1954 and subsequently reiterated in all succeeding decisions, the latest of which is *Lee v. Lee Hian Tiu*. *Reyes v. Republic of the Philippines* is particularly relevant, x x x

"The firmness and consistency shown by this Court in rejecting resort to proceedings of this character is thus unmistakable. Any attempt as was done in the well-written brief of appellants to exclude this action from the operation of such a well settled principle on the ground that it could be distinguished, while not implausible, cannot be allowed to succeed. What cannot be denied is that their plea, as noted in the order, is for change of a citizenship through the correction in the data appearing in the Office of the Local Civil Registrar. Essentially then the proceeding cannot be dissociated from that contemplated under Art. 412 of the Civil Code. It is in that sense that deference to the aforesaid decisions, impressive for their number and unanimity precludes a reversal of the lower court order."[12]

In *Chua Tan Chuan vs. Republic*,[13] the petition for similar corrections was filed on April 30, 1965 and was published pursuant to the order of the trial court once a week for three consecutive weeks, which petition was opposed by the Solicitor General who appealed from the decision of the trial court granting the petition. In overruling the claim of the petitioner therein that the doctrine in the *Reyes* case[14] does not apply, Mr. Justice Enrique M. Fernando, again speaking for the Supreme Court, reiterated the 1964 decision of Mr. Chief Justice Cesar Bengzon in the *Reyes* case *vs. Republic* and in his usual distinctive style stated:

"The decision under appeal hardly commends itself as a manifestation of judicial conduct at its most exemplary. It would, by virtue of a petition for correction of entry in the certificate of birth of the minor Jacob Chua, allow an alien national to become a Filipino citizen. It cannot survive, therefore, the test of even a cursory scrutiny. For, as is to be expected, we have left no doubt about our disapproval of such a technique, unfortunately still resorted to by some members of the bar, to obtain the highly coveted distinction of gaining Filipino citizenship. What else is there for us to do then but reverse the lower court?"[15]

In *Chan Chin vs. Local Civil Registrar of Manila*,[16] the petition which was filed on June 29, 1966 under Article 412 of the New Civil Code but was published pursuant to the trial court's order and copies thereof served on the Solicitor General and Local Civil Registrar obviously in accordance with Rule 108 of the Revised Rules of Court, Mr. Chief Justice Roberto Concepción, speaking for this Tribunal, emphatically held:

"The appealed order authorizing these amendments should be reversed.

"1. The relief sought by petitioner is predicated upon Art. 412 of our Civil Code, which provides that: 'No entry in a civil register shall be changed or corrected, without a judicial order.' In *Baybayan vs. Republic*, we stressed that:

'It has been the uniform jurisprudence of this Court, since *Ty Kong Tin v. Republic* (1954), 94 Phil. 321, that substantial alteration, such as those affecting the status and citizenship of a person in the Civil Registry

records, can not be ordered by the court unless first threshed out in an "appropriate action wherein all parties who may be affected by the entries are notified or represented" (see Rule 108 of the Revised Rules of Court), and that the summary proceedings under Art. 412 of the Civil Code only justify an order to correct innocuous or clerical errors, such as misspellings and the like, errors that are visible to the eyes or obvious to the understanding (*Black v. Republic*, L-10869, Nov. 28, 1958; *Ansaldo v. Republic*, L-10226, Feb. 14, 1958; *Tan Su v. Republic*, L-12140, April 29, 1959; *Bantoto v. Republic*, L-14978, May 23, 1961; *De Castro v. Republic*, L-17431, April 30, 1963; *Lui Lin v. Republic*, L-18213, Dec. 24, 1963)."[17]

Finally, in *Tan Pong vs. Republic*,[18] the petition for correction of civil register entries of birth and for cancellation of an alien certificate of registration was filed August 28, 1961 and was published once a week for three consecutive weeks in a newspaper of general circulation. From an adverse decision of the trial court, the Solicitor General appealed. Mr. Justice Fred Ruiz Castro this time speaking for the Supreme Court, ruled:

"But assuming arguendo that the present action is legally sufficient for the purpose of establishing the plaintiff-appellee's filiation and of securing judicial approval of his recognition, still it cannot, even if successfully concluded, be used as a springboard to secure a direct declaration of the plaintiff-appellee's citizenship. Indeed, his complaint also seeks a ruling that he is a Filipino citizen, because it likewise prays the lower court 'to order the defendant Local Civil Registrar of Bacolod City to correct the entry of his birth in the civil register so as to state x x x his nationality as Filipino x x x.' In fact, because the plaintiff-appellee believes that his supposed mother was not a woman of visible means and that she is moreover already dead, having been unheard of or from for more than 13 years, it would appear that he is interested more in establishing Philippine citizenship (by proving illegitimate filiation to a Filipino mother) than in establishing a right under the civil law. Needless to stress, there is no authorized procedure for direct declaration of citizenship, and the plaintiff-appellee should not be allowed to secure by indirection what the law does not allow directly."[19]

Statements in the cases of *Baybayan vs. Republic*,[20] *Uy Sioco Nacague vs. Republic*,[21] and *Dy Oliva vs. Republic*[22] intimating the applicability of Rule 108 of the Revised Rules of Court to substantial and controversial alterations of entries in the civil register, should be considered obiter dicta because the petitions in said cases for substantial and controversial corrections were filed under Art. 412 of the Civil Code. Such dicta should be deemed revoked by the ruling in the subsequent cases of *Beduya, Lee, Dy Ensiu Co, Chua Tan Chuan, Chan Chin and Tan Pong*, supra.

The second assigned error that the petition cannot be dismissed on a ground not among those mentioned in Rule 16 or Rule 117 of the Revised Rules of Court, is likewise untenable. The dismissal is predicated on the fact that the court has no jurisdiction over the nature of the action under Sec. 1(b) of Rule 16 of the Revised Rules of Court, because the procedure in Rule 108 is not the appropriate adversary action for the determination of such substantial and controversial issues as citizenship, validity of marriage and legitimacy of filiation; and/or the petition does not state a cause of action under Sec. 1 (g) of said Rule 16, for under Rule 108 the court cannot render a valid judgment on the petition as the corrections prayed for are substantial and controversial in nature.[23]

WHEREFORE, the orders of the trial court dated January 21, 1967 and April 4, 1967 are hereby affirmed and the appeal dismissed, with costs against petitioners-appellants.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo and Villamor, JJ., concur.

[1] L-17642, Nov. 27, 1964, 12 SCRA 376.

- [2] L-21010, Nov. 28, 1969, 30 SCRA 380.
- [3] 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.
- [4] L-17642, Nov. 27, 1964, 12 SCRA 376, 379-380.
- [5] L-14978, May 23, 1961, 2 SCRA 42, 45-46.
- [6] Beduya vs. Republic, L-17639, May 29, 1964, 11 SCRA 109-111.
- [7] L-24284, Feb. 28, 1968, 22 SCRA 876.
- [8] Lim vs. Republic, *supra*, 877.
- [9] L-24540, April 25, 1968, 23 SCRA 212.
- [10] Lee vs. Lee Hian Tiu, et al., *supra*, p. 213.
- [11] L-20794, July 29, 1968, 24 SCRA 309.
- [12] Dy En Siu Co vs. Local Civil Registrar, *supra*, pp. 311-312.
- [13] L-25439, March 28, 1969, 27 SCRA 447.
- [14] L-17642, Nov. 27, 1964, 12 SCRA 376.
- [15] Chua Tan Chuan vs. Republic, *supra*, p. 449.
- [16] L-27159, Sept. 17, 1969, 29 SCRA 448.
- [17] Chan Chin vs. Republic, *supra*, pp. 450-51.
- [18] L-21010, Nov. 28, 1969, 30 SCRA 380.
- [19] Tan Pong vs. Republic, *supra* 388.
- [20] L-20717, March 18, 1966, 16 SCRA 403.
- [21] L-19847, April 29, 1966, 16 SCRA 692.
- [22] L-21806, Aug. 17, 1967, 20 SCRA 1070.

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