

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF DAVAO ORIENTAL AND SAMUEL YU, RESPONDENTS.

G.R. No. L-31748. August 20, 1979

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a petition filed by the Solicitor General on behalf of the Republic of the Philippines for the review of the decision of the Court of First Instance of Davao Oriental, 16th Judicial District, at Mati, in the case entitled: "In the Matter of the Petition to Correct the Registration of the Record of Birth of Samuel Yu in the Local Civil Registry of the Municipality of Baganga, Davao Oriental; Samuel Yu, a minor, represented by Cresencia B. Bual, his mother and natural guardian, petitioner versus the Local Civil Registrar of the Municipality of Baganga, Davao Oriental and Yu Se Guan, respondents," the dispositive portion of which is as follows:

"WHEREFORE, the Court hereby directs the Local Civil Registrar of Baganga, Davao Oriental to correct the entries in the Record of Birth of Petitioner, Samuel Yu, by crossing out the word "Chinese" and inserting therein the word "Filipino" as his nationality, and also by crossing out the word "legitimate" and inserting therein the word "illegitimate" as his status, and to furnish a copy of Certificate of Live Birth of Samuel Yu as corrected, the Office of the Civil Registrar General, Bureau of Census and Statistics in Manila."[1]

It appears from the records of this case that on April 30, 1968, Samuel Yu, represented by his mother and natural guardian, filed in the Court of First Instance of Davao Oriental, a petition for correction of registration alleging inter alia that:

"4) That without the benefit of lawful wedlock, Petitioner's mother and natural guardian has been cohabiting with, and as the common-law wife of, respondent Yu Se Guan, alias "Johnny Yu", a Chinese national, and out of their said common-law cohabitation, the following children were born on the dates and at the places respectively set, to wit:

- a) Jeffrey Yu -May 5, 1955-Candijay, Bohol
- b) Bailey Yu -May 8, 1957-Cebu City
- c) Emily Yu -May 10, 1959-Cebu City
- d) Samuel Yu -Aug. 26, 1960-Baganga, Davao
- e) Carolina Yu -June 11, 1963-Cebu City

"5) That in the registration of the birth of your Petitioner in the Local Civil Registry of the Municipality of Baganga, Province of Davao (now Davao Oriental), your Petitioner's nationality or citizenship was erroneously recorded as "Chinese" and his status as "legitimate" child of Petitioner's natural guardian and respondent Yu Se Guan, as may be shown by the attached true copy of a certified true and correct extract of the Register of Birth issued by the respondent Local Civil Registrar of Baganga, Davao Oriental, which true copy is incorporated

herein as Annex "A" hereof;

"6) That the truth of the matter is that your Petitioner is an illegitimate child of his natural guardian-herein representative with respondent Yu Se Guan, he having been born outside of the lawful wedlock and during the common-law cohabitation of his aforesaid parents;

"7) That the error in the registration of the citizenship and status of your Petitioner resulted from the misconception or misapprehension by respondent Yu Se Guan, who furnished the data of the registration, that his common-law cohabitation with Petitioner's mother and natural guardian conferred upon the children born during their said cohabitation legitimate status and Chinese citizenship, following the citizenship of their Chinese father, said respondent Yu Se Guan;"[2]

Finding the petition to be sufficient in form and substance, the Court a quo issued an order on April 30, 1968 setting the hearing of the case on June 6, 1968 at 8:30 a.m.; directing that a copy of the said order be published at the expense of the petitioner in the Mindanao Mirror, a newspaper of general circulation in the city and province of Davao Oriental, once a week for three (3) consecutive weeks; and informing all persons against the petition to file their opposition on or before the date of the hearing. In compliance with this order, petitioner Yu caused the same to be published on May 2, 9 and 16, 1968.

On the date of the hearing, petitioner Yu, through counsel, presented Valerio P. Diaz, the Local Civil Registrar of Baganga, Davao Oriental, who testified by virtue of a subpoena duces tecum on the record of birth of petitioner as appearing in the registry book of births for the year 1960 as well as on the absence of the record of marriage of Cresencia B. Bual and Yu Se Guan in the registry book of marriages under his custody. Likewise, he presented both of his parents who testified to the fact that they are not legally married and that February 20, 1954, the supposed date of their marriage as appearing in the record of birth of petitioner is merely the date when they began living together as husband and wife.

On the basis of these evidence which the lower court found to have been uncontroverted, the petition was granted. Hence, this instant petition for review on certiorari of the Solicitor General assigning these errors:

I

The lower court erred in granting the petition despite the fact that the change of citizenship and status applied for is not within the purview of Rule 108 of the Rules of Court.

II

The lower court erred in ordering the correction of the entry in the Record of Birth of Samuel Yu with regards to his nationality or citizenship from Chinese to Filipino and the indication therein of his status as illegitimate on the basis of the lack of record in the Civil Registry of the marriage of his parents, Cresencia B. Bual and Yu Se Guan and the latter's self-serving testimony of cohabitation as common-law husband and wife without the benefit of lawful wedlock.[3]

We must reverse the judgment under review.

Deeply entrenched and unswervingly followed in this jurisdiction is the rule that changes in the citizenship of a person or in his status from legitimate to illegitimate are substantial as well as controversial and may not therefore be changed pursuant to Article 412 of the New Civil Code. Neither may these changes be effected under Rule 108 of the Revised Rules of Court which only prescribes the judicial procedure on the matter and which, moreover, limits the entries subject to cancellation or correction to those enumerated in Section 2 thereof.

Article 412 of the New Civil Code provides: "No entry in the civil register shall be changed or corrected, without

a judicial order." Since the case of *Ty Kong Tin vs. Republic*,^[4] a 1954 case, this legal provision has been invariably interpreted as an authority for the Court to direct the correction of mistakes that are clerical in nature, i.e. those harmless and innocuous changes, such as, correction of a name that is clearly misspelled, occupation of the parents, etc.^[5] or those that are visible to the eyes or obvious to the understanding or "an error made by a clerk or a transcriber; a mistake in copying or writing."^[6] It does not extend to important controversial matters, such as those which affect the civil status or the nationality or citizenship of the persons involved. Such matters should be threshed out in appropriate actions wherein not only the State but also all persons who may be affected by such change should be notified or represented. Looking into the reason for this rule, this Court held in *Ty Kong Tin vs. Republic*^[7] and reiterated in *Go vs. Civil Registrar of the Municipality of Malabon*,^[8] that:

"xxx xxx xxx The philosophy behind this requirement lies in the fact that: 'the books making up the civil register and all documents relating thereto shall be considered public documents and shall be prima facie evidence of the facts therein contained.' (Article 410, New Civil Code), and if the entries in the civil register could be corrected or changed through a mere summary proceeding, and not through an appropriate action wherein all the parties who may be affected by the entries are notified or represented, we would set wide open the door to fraud or other mischief the consequence of which might be detrimental and far reaching. It is for these reasons that the law has placed the necessary safeguards to forestall such eventuality that even on matters which call for a correction of clerical mistakes the intervention of the courts was found necessary. This is an innovation not originally found in the law which placed this matter exclusively upon the sound judgment and discretion of the civil registrars. This was found by Congress unwise and risky in view of the far reaching importance of the subjects covered by the civil register. And under the present innovation the law even exacts civil liability from the civil registrar for any unauthorized alteration, which shows the concern of Congress in maintaining the integrity and genuineness of the entries contained in our civil registers. (Article 411, new Civil Code)"

Rule 108 is the procedural law on the matter of cancellation or correction of entries in the civil register. As such, it cannot be distinct and separable from Article 412 of the New Civil Code. Much less can it enlarge the judicial power under said substantive law. As vividly set forth in the exhaustive opinion of this Court in *Chua Wee vs. Republic*,^[9] and quoted with approval in *Uy vs. Local Civil Registrar of the City of Cebu*,^[10] Rule 108 of the Rules of Court is limited solely to the implementation of Article 412:

"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 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 other provisions of the Rules of Court, was promulgated by the Supreme Court pursuant to its rule-making authority under Section 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 Civil Code."

The statement of private respondent in his answer to this instant petition for review that his petition before the court a quo was filed NOT under Article 412 of the New Civil Code BUT in accordance with the new provisions of Rule 108 of the Revised Rules of Court^[11] is thus, patently erroneous. Such view has apparently been influenced by the cases of *Baybayan vs. Republic*,^[12] *Uy Sioco Nacague Tan, et al. vs. Republic*,^[13] and *Domingo Dy Oliva vs. Republic*^[14] is implying the applicability of Rule 108 of the Revised Rules of Court to

substantial and controversial entries in the civil register. But this view is oblivious of the numerous cases decided prior to the aforementioned three cases, as well as sub-sequently, reaffirming the continuing validity of the doctrines interpreting Article 412 of the New Civil Code even after the promulgation of the Revised Rules of Court. These are the cases of *Beduya vs. Republic*,^[15] *Lim vs. Local Civil Registrar of Manila*,^[16] *Lee vs. Hian Tiu and the Local Civil Registrar of Pasay City*,^[17] *Chua Tan Chuan vs. Republic*,^[18] *Chan Cin vs. Local Civil Registrar of Manila*,^[19] and *Tan Pong vs. Republic*^[20] where, notwithstanding the compliance with the requirement of notice and publication under Section 4, Rule 108 of the Revised Rules of Court, the proceedings therein were not dissociated from Article 412 of the New Civil Code. In the language of this Court in *Dy En Sui Co vs. Local Civil Registrar of Manila*:^[21]

"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 Article 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."

To dispel whatever doubt that the cases of *Baybayan vs. Republic*, *Uy Sioco Nacague Tan, et al. vs. Republic* and *Domingo Dy Oliva vs. Republic* might have created, this Court was prompted to issue this statement in *Chua Wee vs. Republic*:^[22]

"Statements in the cases of *Baybayan vs. Republic*, *Uy Sioco Nacague Tan vs. Republic* and *Dy Oliva vs. Republic* 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 En Sui Co*, *Chua Tan Chuan*, *Chan Chin* and *Tan Pong*, *supra*."

From then on, the consolidated cases under the main titles of *Go vs. Civil Registrar of the Municipality of Malabon, Rizal*^[23] and *Uy vs. Local Civil Registrar of the City of Cebu*^[24] as well as the later case of *Republic vs. Amores*,^[25] all similarly enunciated a rule that leave no room for doubt that only "clerical errors of a harmless or innocuous nature," not those "involving civil status, nationality or citizenship, which are substantial and/or controversial," may be corrected under the provisions of said Article 412 of the New Civil Code, in relation to Rule 108 of the Revised Rules of Court.

As pointed out by the Solicitor General in this petition, the erroneous reliance of private respondent on Rule 108 to effect the desired changes in his citizenship is further shown by Section 2 of the said rule itself. Section 2 provides:

"SEC. 2. Entries subject to cancellation or correction. - Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriage; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) change of name."

Clearly evident from the foregoing provision is that the change of citizenship urged by private respondent upon the lower court does not fall within its purview. Changes in citizenship are limited only to election, loss or recovery thereof. The scope of this section has been explained in *Reyes vs. Republic*^[26] and reaffirmed in *Chua*

Wee vs. Republic:[27]

"It may be stated at this juncture that Rule 108 of the Revised Rules of Court provides for the cancellation or correction of 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. But this certainly has no relevance to the instant petition, which, as hitherto stated, seeks a judicial declaration of Philippine citizenship."

In resume, the fatal infirmity of the petition does not lie on the question of sufficiency or insufficiency of the evidence presented by private respondent to prove his citizenship and status nor on the question of whether or not there is sufficient compliance with the provisions of Rule 108 of the Revised Rules of Court but on the impropriety of the said rule itself as the remedy to effect the change of citizenship and status. Thus, We deem it unnecessary to discuss the Solicitor General's second assignment of error which questions the sufficiency of the evidence regarding the absence of marriage of the parents of private respondent.

WHEREFORE, the decision of the Court of First Instance of Davao Oriental, 16th Judicial District, at Mati, allowing the correction of the entries in the Record of Birth of Samuel Yu, is hereby REVERSED and SET ASIDE. No costs.

SO ORDERED.

Makasiar, Fernandez, and Melencio-Herrera, JJ., concur.
Teehankee, (Chairman), J., in the result.
De Castro, J., no part.

[1] Rollo, p. 77.

[2] Record on Appeal, pp. 2-3.

[3] Brief for Petitioner, pp. 1-2.

[4] 94 Phil. 321.

[5] Ansaldo vs. Republic, 102 Phil. 1046.

[6] Black vs. Republic, 104 Phil. 848.

[7] *supra*.

[8] 39 SCRA 350.

[9] 38 SCRA 409.

[10] 46 SCRA 1.

[11] Rollo, p. 33.

[12] 16 SCRA 403.

[13] 16 SCRA 697.

[14] 20 SCRA 1070.

[15] 11 SCRA 109.

[16] 22 SCRA 876.

[17] 23 SCRA 211.

[18] 27 SCRA 447.

[19] 29 SCRA 448.

[20] 30 SCRA 380.

[21] 24 SCRA 309.

[22] *supra*.

[23] *supra*.

[24] 46 SCRA 1; where the case of Bual vs. The Local Civil Registrar of Candijay, Bohol involving herein private respondent's brother, Jeffrey Yu, was jointly decided.

[25] 49 SCRA 361.

[26] 12 SCRA 376.

[27] *supra*.

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