

IN THE MATTER OF THE PETITION FOR CORRECTION OF THE BIRTH CERTIFICATES OF MINORS JORGE BATBATAN AND HIS SISTER DELIA BATBATAN, AND THE CORRESPONDING ENTRIES THEREOF IN THE CIVIL...

G.R. No. L-33724. November 29, 1982

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Petitioner Eligia Batbatan is the mother of two children whose names were registered in the office of the local civil registrar of Pagadian, Zamboanga del Sur as Jorge Batbatan Ang and Delia Batbatan Luy. The boy was born on September 8, 1959 while the girl was born on March 6, 1962. Both were born in Pagadian.

The surnames of the two children were taken from the name and the alias of their father, Ang Kiu Chuy alias Sioma Luy. Eligia Batbatan and Ang Kiu Chuy lived in a common-law relationship and were never married at least up to the time the former testified in court. According to the petitioner, Mr. Ang was married to another woman at the times their children were born. An elder daughter carried the name Jane Batbatan without the father's surname.

Eligia Batbatan filed this petition for the correction of entries as regards the names of the two children who were still minors. The mother wanted the "Ang" and the "Luy" surnames dropped from her children's names such that their corrected names would be Jorge Batbatan and Delia Batbatan, respectively.

The trial court denied the petition with costs against the petitioner on the basis of the following:

"The records show (Exhibit 'A') that it was the petitioner who supplied the information in the entries of the certificate of birth of her son.

"Entries in the records of birth in the Office of the local civil registrar are allowed only to correct clerical errors. Corrections are not allowed when the effect is to change status, citizenship, or any substantial alterations, which should be decided in an appropriate proceeding. (*Ty Kiong Lin vs. Republic*, L-5609, Feb. 3, 1954; *Brown v. Republic*, L-9526, August 30, 1956; *Chomi v. Registrar*, L-9203, Sept. 28, 1956; *Ansaldo v. Republic*, L-10226; Feb. 14, 1958; *Tan Su v. Republic*, L-12140, April 29, 1959)."

The petitioner raised a lone assignment of error in her appeal, namely -

"THE TRIAL COURT ERRED IN HOLDING THAT THE CORRECTIONS SOUGHT IN THE PETITION ARE NOT ALLOWABLE; HENCE, IN DISMISSING THE PETITION WITH COSTS AGAINST PETITIONER; AND CONVERSELY, IN DISALLOWING OR REFUSING TO GRANT THE CORRECTIONS SOUGHT IN THE ENTRIES THEREIN THE BIRTH CERTIFICATES, EXHS. 'A' AND 'B', IN THE RECORDS OF THE OFFICE OF THE CIVIL REGISTRAR OF PAGADIAN CITY."

We agree with the petitioner that the lower court committed a reversible error. The corrections sought in the petition would not change the status, citizenship, genealogical relationship or filiation of the children nor effect

any substantial change or alteration which should be threshed out in a proper action.

The certificate of live birth of Jorge Batbatan Ang (Exhibit "A") clearly identifies him as an illegitimate child. In fact, his parents executed the "Affidavit To Be Accomplished In Case of An Illegitimate Child" at the back of the printed certificate filed with the local civil registrar. The certificate of live birth of Delia Batbatan Luy (Exhibit "B") identifies her as illegitimate because "Item 23. Legitimate" is answered "No".

In *Guevarra Lim v. Republic* (G.R. No. L-8932, May 13, 1957) we ruled that a clerical error implies mistakes by the clerk in copying or writing, the making of wrong entries in the public records contrary to existing facts. In *u(7 SCRA 967)*, we stated that an error is not clerical and does not fall under the summary procedure contemplated in Article 412 of the Civil Code if it affects substantial matters, if its correction will bring about a substantial change.

We have tended to be strict in the application of Rule 108 on cancellation or correction of entries in the civil registry to avoid this summary procedure from being unlawfully utilized as a shortcut method to bring about a change of citizenship, paternity, status, or other substantial attribute or qualification. However, where justice and equity dictate it and where no such change is contemplated, we have also readily sustained its use. Thus, in *Guevara Lim v. Republic* (supra) where the citizenship of the petitioner was no longer in issue but was a fact already established by an administrative decision, we ordered the correction of the error in the civil registry.

The corrections sought in this petition do not go so far as to affect citizenship or status. The errors committed by the clerk have resulted in entries contrary to law. The changes sought, if granted, would bring about a compliance with Article 363 of the Civil Code which provides: "Illegitimate children referred to in Article 287 shall bear the surnames of the mother". Since the petitioner's children were born of a married man with a woman not his legitimate spouse and are thus "spurious or adulterous", they should bear the petitioner's or mother's surname pursuant to the above provision. The petitioner's prayer to strike out the surnames not sanctioned by the Civil Code should have been granted by the lower court.

WHEREFORE, the judgment appealed from is hereby reversed and set aside. The petition is granted and the local civil registrar of Pagadian, Zamboanga del Sur is directed to correct the records of birth of Jorge Batbatan Ang and Delia Batbatan Luy to make their names read as Jorge Batbatan and Delia Batbatan, respectively.

SO ORDERED.

Teehankee, (Chairman), Plana, and Relova, JJ., concur.

Melencio-Herrera, J., joins J. Vasquez in the result.

Vasquez, J., In the result. He believes that the proper proceeding should have been for a change of name under Rule 103, instead of a correction of entry under Rule 108.

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