

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. THE HONORABLE JUDGE OF BRANCH III OF THE COURT OF FIRST INSTANCE OF CEBU AND ANDREW BARRETTO, RESPONDENTS.

G.R. No. L-35605. October 11, 1984

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

The present petition for certiorari filed by the Republic seeks to set aside the decision rendered by the Court of First Instance of Cebu under date of March 4, 1968, in Special Proceeding No. 2742-R entitled "In Re Petition for Change of Name, Andrew Barretto, Petitioner."

The following facts are undisputed:

"1. On February 21, 1967, herein respondent Andrew Barretto filed Special Proceeding No. 2742-R with the Court of First Instance of Cebu for the change of his name from Andrew Barretto to Andrew Velez, alleging as reason for his petition that Velez is the surname of his step-father with whom he was living.

xx xx xx xx

"2. On March 16, 1967, the trial court issued an order setting the petition for hearing and directing the publication of said order. xx xx

"3. On August 1, 1967, herein petitioner Republic of the Philippines filed an opposition to the petition, alleging that the proposed change of name is unwarranted in the absence of any showing that the present surname of respondent Andrew Barretto is ridiculous and/or tainted which dishonor. It was also contended that the ground given for the proposed change of name does not constitute proper and reasonable justification for the grant of the petition. xx

"4. That on September 8, 1967, petitioner Republic of the Philippines also filed a motion to dismiss, alleging mainly that the title and caption of the petition for change of name and the order of publication failed to state and include the proposed new name of the petitioner Andrew Barretto. It was also alleged in said motion that the petitioner had no legal capacity to file the petition as he was then a minor. xx xx

"5. On September 14, 1967, respondent Andrew Barretto filed an opposition to the Republic's motion to dismiss, insisting on the propriety of his petition.

xx xx xx

"6. On October 5, 1967, the trial court issued an order denying the Republic's motion to dismiss. xx xx xx

"7. On December 28, 1967, respondent Barretto filed a motion to declare the Republic or the Solicitor General in default.

xx xx xx

"8. On January 16, 1968, the petitioner Republic filed a motion to strike out from the record the aforementioned motion to declare the Republic in default, alleging that the Republic had already filed its opposition to the petition for change of name. xx xx

"9. On January 26, 1968, the trial court issued an order denying the motion to declare the Republic in default. xx xx xx

"10. On March 4, 1968, the trial court rendered a decision granting the petition of respondent Andrew Barretto to change his surname to Velez. xx xx

"We need only add that after the trial court rendered its aforesaid decision of March 4, 1968, oppositor Republic filed the present petition for review on certiorari with this Honorable Court on November 4, 1972, respondent Andrew Barretto, through counsel, filed his Answer to the petition admitting the facts and the law as set forth in said petition and manifesting that:

"1. Respondent in all candor, and motivated by a desire not to trifle with the precious time of this Court and considering the very recent decision of this Court in the case of Republic of the Philippines versus Reyes, G.R. No. L-29850 promulgated on June 30, 1972 and long after the questioned decision was promulgated by the respondent Judge on February 13, 1967, most respectfully manifests that respondent cannot resist the arguments marshaled by the Honorable Solicitor General as contained in the petition for review and certiorari" (pp. 2-5, Appellant's Brief; p. 1, Appellee's Brief).

Republic assigns the following errors:

"1. The respondent Court erred in not holding that it did not acquire jurisdiction over this petition because the caption and title thereof did not include the name sought to be adopted by petitioner.

"2. The respondent Court also erred in not holding that it failed to acquire jurisdiction over the petition for change of name in view of the defective publication thereof, which defect is jurisdictional.

"3. The respondent Court finally erred in not dismissing the present petition for failure of petitioner to show proper and reasonable cause or justification for the change of name sought" (pp. 5, 6 & 9, Appellant's Brief).

WE tackle the first two assigned errors jointly because they are closely related.

A perusal of the applicable provisions of the Rules of Court and pertinent jurisprudence easily yields the following formal requirements for a change of name:

(1) Under Rule 103, Rules of Court -

"Section 2. Contents of petition. A petition for change of name shall be signed and verified by the person desiring his name changed, or some other person on his behalf, and shall set forth:

"(a) That the petitioner has been a bona fide resident of the province where the petition is filed for at least three [3] years prior to the date of such filing;

"(b) The cause for which the change of the petitioner's name is sought;

"(c) The name asked for.

"Section 3. Order of hearing. -- If the petition filed is sufficient in form and substance, the court, by an order reciting the purpose of the petition, shall fix a date and place for the hearing thereof, and shall direct that a copy of the order be published before the hearing at least once a week for three [3] successive weeks in some newspaper of general circulation published in the province, as the court shall deem best. The date set for the hearing shall not be within thirty [30] days prior to an election nor within four [4] months after the last publication of the notice.

(2) The petition for change of name and the order of publication and hearing thereon must contain in its title or caption [a] the applicant's real name, [b] his aliases and other names, if any, [c] and the name he seeks to adopt (Republic vs. Tañada, L-31563, Nov. 29, 1971, 42 SCRA 419; Republic vs. Lee Wai Lam, L-22607, 28 SCRA 1043 [July 30, 1969]); and this notwithstanding that the body of the petition or of the order includes also the cited information (Republic vs. Tañada, supra).

(3) Finally, there must be effective publication, i.e., such publication reciting, among others: [a] the name or names of the applicant, [b] the cause for which the change of name is sought, and [c] the new name asked for. (Ng Yao Siong vs. Republic, L-20306, 16 SCRA 483 [March 31, 1966]).

Failure to comply with the aforementioned requirements results in the lower court acquiring no jurisdiction to hear and determine the petition (Republic vs. Reyes, L-29850, 45 SCRA 570 [June 30, 1970]; Republic vs. Tañada, supra; Ng Yao Siong vs. Republic, supra).

The name Andrew Barretto, under which the petition for change of name was brought, is the applicant's baptized name (p. 28, rec.). There is no showing whether the same is also his real and official name, i.e., his name as appearing in the Civil Registry. In Ng Yao Siong vs. Republic, supra, this Court declared that the only name that may be changed is the true or official name recorded in the Civil Registry. Thus, the present petition is not sufficient in form and substance.

The name sought to be adopted does not appear in the title of the petition (p. 26, rec.). Also, the same does not appear in the title of the order of publication (p. 28, rec.). These are jurisdictional defects.

The order of publication is defective for another reason: it does not cite the cause for which the change of name is sought.

Consequently, the publication itself is defective on three counts: (1) the name Andrew Barretto appearing therein may not be the petitioner's real name; (2) the cause for which the change of name is sought does not appear therein; and (3) the name sought to be adopted does not appear in the title or caption of the published order.

"Change of name is a judicial proceeding in rem. Jurisdiction to hear and determine a petition therefor, by law is acquired after publication of the order reciting the purpose of the petition and the date and place for the hearing thereof -- for three (3) successive weeks in a newspaper of general circulation. Publication is notice to the whole world that the proceeding has for its object 'to bar indifferently all who might be minded to make an objection of any sort against the right sought to be established.

xx xx xx

"For that publication to be effective, it must give a correct information. To inform, the publication should recite, amongst others, the following facts: (1) the name or names of the applicant, (2) the cause for which the change of name is sought, and (3) the new name asked for" (Ng Yao Siong vs. Republic, supra).

WE need only reiterate Our oft-quoted justification in requiring strict compliance with the publication requirement in petitions for change of name --

"Change of name is a matter of public interest. Petitioner might be in the gallery of wanted criminals; he could be in hiding to avoid service of sentence or compliance with a judgment in a criminal case; he could have escaped from a penal institution into which he had been confined. If an alien, he might have given cause for deportation or might be one against whom an order of deportation had actually be issued. And again, the new name petitioner desires to adopt may be similar to that of a respectable person. The latter may have evidence that petitioner is with unsavory reputation. Naturally, it is to the interest of the person actually enjoying the good name to protect it against possible mistaken reference to him as the petitioner.

"xx xx Notices in the newspapers, like the one under consideration, usually appear in the back pages. The reader, as is to be expected, merely glances at the title of the petition. It is only after he has satisfied himself that the title interests him, that he proceeds to read down further. The probability is that the portions in the publication heretofore quoted will escape the reader's notice. The purpose of which the publication is made, that is, to inform, may thus be unserved (*Ng Yao Siong vs. Republic*, supra).

"Notices published in the newspapers often appear in the back pages thereof or in the pages least read or paid attention to. The reader, as usually happens, merely scans these pages and 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 non-inclusion 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*, supra).

WE may add here that the publication of the proposed name in the title of the order also preempts the possibility of any mercenary interest on the part of the alleged stepfather who may become the heir of the minor-applicant. Said step-father may become the guardian of the applicant's person and property during the latter's minority, and thereby enjoy the administration of applicant's property and its fruits.

WE need only consider the Republic's last assigned error.

The lower court granted Andrew Barretto's prayer for a change of name on the basis of *Del Prado vs. Republic* (L-18127, 19 SCRA 721 [April 5, 1967]). WE agree with the Solicitor General that the doctrine does not apply (pp. 15-17, rec.):

"The case of *Del Prado, et al. v. Rep.*, L-18127, April 5, 1967, 19 SCRA 721, cited in the decision of the Court a quo, is, we submit, not applicable to the instant case. Firstly, the child in said case whose name her mother sought to change, was a girl only three years old, and said child appeared to be the issue of a bigamous marriage between the mother Corazon Adolfo, and the father Manuel del Prado who was convicted of bigamy after the birth of said child. Upon the other hand, all that appears in this case is that respondent Andrew Barretto is 'the illegitimate son of Lucy Barreto' (p. 2, Annex 'A' hereof), with-out any showing why said respondent is an illegitimate child. Secondly, it does not appear in the *Del Prado* case that the mother of the girl whose surname was sought to be changed and her step-father had children of their own who might be prejudiced by the change of name. In the instant case, however, the lower lower court found that petitioner's mother has three sons with her husband Magin Velez (petitioner's step-father), and not only that, the husband Magin Velez likewise has two other sons not begotten with petitioner's mother, all boys bearing the surname 'Velez,' (p. 2, Annex 'A' hereof), whose consent does not appear to have been obtained or given in this case. For this reason, to authorize petitioner to use the surname 'Velez' might, in the future, result in the confusion of his real paternity, to the prejudice of the legitimate sons of his step-father Magin Velez, not to say that it may later prejudice the successional rights of Magin Velez's real sons. Thus, this Honorable Court held in the case of *Moore v. Republic*, L-18407, June 26, 1963:

"'x x Indeed, if a child born out of a lawful wedlock be allowed to bear the surname of the second husband of the mother, should the first husband die or be separated by a decree of divorce, there may result a confusion as to his real paternity. x x x'

Thirdly, while the girl whose name was sought to be changed in the *Del Prado* case was only three years old, petitioner here-in is already married, employed, and living separately from his mother, step-father, and half-brothers. x x x x Finally, the surname previously borne by the girl Gertrudes Josefina in the *Del Prado vs. Rep.* case is that of her illegitimate father Manuel del Prado. The name presently borne by respondent Andrew Barretto is not, however, the name of his illegitimate father but that of his mother Lucy Barretto (p. 2, Annex 'A'

hereof). xx xx"

The touchstone for the grant of a change of name is that there be "proper and reasonable cause" for which the change is sought (Ng Yao Siong vs. Republic, *supra*). It is a ruling of long standing in this jurisdiction that a change of name is not a matter of right; that, being a privilege, before it can be authorized, the person petitioning for such change must first show proper and compelling reason therefor. And what may constitute as proper and compelling reason shall depend on the particular circumstances of each case, and upon the discretion of the court (Ang Chay vs. Republic, L-28507, 34 SCRA 224 [July 31, 1970]).

The following, *inter alia*, may be considered as proper grounds for a change of name: (1) when the name is ridiculous, tainted with dishonor, or is extremely difficult to write or pronounce; (2) when the request for change is a consequence of a change of status, such as when a natural child is acknowledged or legitimated; and (3) when the change is necessary to avoid confusion (Chiu Hap Chiu vs. Republic, L-20018, 16 SCRA 864 [April 30, 1966]; Haw Liong vs. Republic, L-21194, 16 SCRA 677 [April 29, 1966]; Yu Chi Han vs. Republic, L-22040, 15 SCRA 454 [Nov. 29, 1965]).

If no proper or reasonable cause or compelling reason is shown for the change of name, the petition should be denied (Yu Chi Han vs. Republic, *supra*).

In his petition, Andrew Barretto states that "he desires to change his name to ANDREW VELEZ because it is the surname of his step-father Magin V. Velez with whom he is living at present" (p. 26, *rec.*).

The reason alleged by Andrew Barretto is not compelling enough to warrant the change of name prayed for.

The surname "Barretto" is his mother's sur-name. He is the illegitimate child of Lucy Barretto (p. 15, *rec.*). But he is not a natural child of Magin V. Velez. The circumstances of his illegitimate filiation are not known.

Magin V. Velez had children of his own before he married the applicant's mother. Magin V. Velez and Lucy Barretto also have their own children. To warrant the change of name herein sought will necessarily invite confusion as to paternity, to the prejudice of Magin V. Velez, the applicant's mother, as well as their common and separate off-springs.

The lower court found that --

"His reasons for asking for the change of his surname from Barretto to Velez are because: (1) the use of the surname, Barretto, by him has caused him embarrassment because, being a half-brother of many children of his mother who bear the sur-name, Velez, people look down upon him as an illegitimate son; (2) his chances for advancement may thus be impeded since one's family history, relations and status are usually considered by his employer when he applies for employment or promotion; and (3) his wife, mother, Magin Velez and he have agreed that it is to their best interest to change his surname to Velez" (pp. 22-23, *rec.*).

Granting that the same could have been subsumed in the applicant's stated ground in the petition, still they are not compelling enough to warrant the change of name sought. Indeed if said reasons were so compelling, why seek the change of name only after so many years. Moreover, the lower court itself found that the applicant --

"xx xx is now in the third year of commerce (college) in the University of San Carlos, Cebu City. The family first lived in a house on V. Rama Street; then in the Espina Compound on V. Rodriguez Street, Cebu City; then back to V. Rama Street, in a house built by Magin V. Velez and his mother. He separated from them only after his marriage in the middle of 1967. He married his wife, Nympha Canares. After their marriage they went to live in Lipata, Minglanilla, Cebu. He is employed as accounting clerk in the Gold's Pump International Company, Cebu City, with a salary of P190 monthly" (p. 22, *rec.*).

All seems well for Andrew Barretto without a new name.

WE note one last item here. Andrew Barretto filed his application in his own name. He was born on November 10, 1948 (p. 22, rec.). At the time of the filing of his application on February 21, 1967, he was only 18 years old. Being a minor, he would not have been qualified to do so. He was then represented by Magin V. Velez as guardian ad litem (p. 22, rec.). But since his mother had married and it was never disputed that he himself was already married at the time said petition was filed (p. 26, rec.), then, on this point, We find nothing wrong in the application. Article 288 in connection with Article 329 of the Civil Code, and Article 399 of the same Code permit this. The aforecited articles read thus:

"Art. 288. Minor children mentioned in the preceding article are under the parental authority of the mother.

xx xx

"Art. 329. When the mother of an illegitimate child marries a man other than its father, the court may appoint a guardian for the child.

xx xx

"Art. 399. Emancipation by marriage or by voluntary concession shall terminate parental authority over the child's person. It shall enable the minor to administer his property as though he were of age, but he cannot borrow money or alienate or en-cumber real property without the consent of his father or mother, or guardian. He can sue and be sued in court only with the assistance of his father, mother or guardian."

WHEREFORE, THE DECISION RENDERED BY THE COURT OF FIRST INSTANCE OF CEBU IN SPECIAL PROCEEDING NO. 2742-R IS HEREBY SET ASIDE FOR BEING NULL AND VOID. COSTS AGAINST THE APPELLEE.

SO ORDERED.

Aquino, Guerrero, Abad Santos, Escolin, and Cuevas, JJ., concur.

Concepcion, Jr., J., on leave.

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