

IN THE MATTER OF THE CHANGE OF NAME OF MA CHIK KIN, A MINOR. MA ING CHAO, PETITIONER-APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR-APPELLANT.

G.R. No. L-28051. July 28, 1970

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

This is an appeal, taken by the Solicitor General, from an order of the Court of First Instance of Zamboanga City, authorizing that the name of one Ma Chik Tong be changed to Ma Chik Kin.

The record shows that on June 29, 1966, Ma Ing Chao filed, with said Court, a petition for the aforementioned change of name, upon the ground that, prior thereto, said petitioner had adopted Chik Tong, a minor, then 4 years of age; that the order, dated September 11, 1953, granting the petition for adoption, in Special Civil Case No. 327 of said Court, directed that, thereafter, his surname shall be Ma, which is that of the adopting father; that the full name of the adopted minor should, therefore, be Ma Chik Tong; that his Alien Certificate of Registration No. A-202752, issued on September 25, 1953, is, however, in the name of Ma Chik Kin; that since the minor began schooling in 1955, he had been using the name Ma Chik Kin and is known by that name by his friends and schoolmates; that petitioner had "lately x x x discovered," before the institution of the present case, that such name is not in accordance with the aforesaid order of adoption dated September 11, 1953; and that petitioner wants his adopted son to "continue using t he name, Ma Chik Kin, not only because it is the name by which he is commonly known to his friends, acquaintances and schoolmates, but, also, because it is the name appearing in his alien registration certificate, otherwise known as ACR No. V-54813, issued on May 8, 1953." After publication of the corresponding notice and due hearing, the lower court issued the order already adverted to, despite the opposition thereto of the Solicitor General, who, upon the subsequent denial of his motion for reconsideration, interposed the present appeal, which We find to be well taken.

Indeed, the title of the case at bar is: "In the matter of the change of name of Ma Chik Kin, a minor." The order of the trial court, directing the publication of the corresponding notice, bore the same title, which is, also, that of the notice published accordingly. We have, however, held that the true name of the party whose name is sought to be changed should be set forth in the title of the case and of the notice published in connection therewith, and that failure to do so is fatal to the application for a change of name and precludes the Court from having jurisdiction to entertain the same. Thus, in *Ng Yao Siong v. Republic*,^[1] We said:

“ x x x. The order of publication herein - based on the petition - was published in 'The Negros Times', a weekly newspaper in Dumaguete City. The title of this case was there printed as follows: 'In the matter of the change of name of Jesus Ng Yao Siong, Jesus Ng Yao Siong, petitioner.' But Jesus Ng Yao Siong, the name appearing in the petition, the order of publication, and the publication itself, is not the true name of petitioner. As heretofore stated, his name appearing in the civil register is merely 'Jesus Ng' without the Yao Siong. The name to be changed, if any, is Jesus Ng-not Jesus Ng Yao Siong. It thus results that there is no name to be changed in the petition.

"It is our view that this failure in the heading of the application to give the true name sought to be changed is fundamental; such failure is non-compliance with the strict requirements of publication; it is fatal; and the court did not acquire jurisdiction to hear the case."

Illustrative of the vital importance attached to the inclusion of the name in the title of the case and in the notice published in connection therewith is *Tan v. Republic*.^[2] The name of the applicant therein was Jayme S. Tan, whereas that given in said notice was Jaime S. Tan. The use therein of the letter "i", instead of "y" in Jayme was deemed sufficient to warrant denial of the petition, because ?

"A discrepancy exists in the petition and the published order. Whereas in the published Order the name of petitioner was spelled Jaime S. Tan; the verified petition spells his name as Jayme S. Tan (Exhs. A-1 to A-3). Even the affidavit of the publisher of 'La Prensa' (Exh. A), the name appearing is Jaime S. Tan. Petitions for change of name being proceedings in rem, strict compliance with the requirements of publication is essential, for it is by such means that the Court acquires jurisdiction (*Aida Jacobo v. Republic*, 5Z O. G. No. 9, p. 2928). Considering the fact that the proceedings is one for change of name, the defect in the petition and the order, as to the spelling of the name of the petitioner, is substantial, because it did not correctly identify the party to said proceedings. As the Solicitor General has aptly observed -

' x x x. Not only was it misleading to the courts of justice, but also prejudiced the interests of the general public. By said act, he made, it difficult or virtually impossible for anyone who might have an adverse interest, to oppose his petition. In the eyes of the law, therefore, petitioner has not complied strictly with the legal requirement regarding publication, thereby rendering the entire proceeding had in the court below null and void.'"

As above indicated, the name given in the title of the case at bar and of the notice published in connection therewith is Ma Chik Kin, not the true name of the adopted son of herein petitioner, which, according to the latter, is either Chik Tong, or Ma Tong, or Ma Chik Tong, Consequently, the appealed decision is null and void for lack of jurisdiction.

Independently of the foregoing, the allegations of the petition have not been duly established. Petitioner introduced the testimony of Vicente Osorio, who stated that he is the officer-in-charge and acting alien control officer of the immigration office at Zamboanga City; that an alien by the name of Ma Chik Tong is registered in his office; that the registration was made on the basis of the adoption papers, Exhibits A and A-1 (which is the order of adoption); that, on September 25, 1953, Ma Chik Tong was issued an alien certificate of registration in the name of Ma Chik Kin; and that this was due to the fact that Ma Ing Chao, the petitioner herein, had asked the then alien registration officer, one Atty. Dizon, that the name registered be that of Ma Chik Kin because he (petitioner) did not want the child to know that he was not really petitioner's son. Apart from this testimony, petitioner introduced no other evidence except Exhibits A and A-1, the order of adoption, Exhibit B, a photostatic copy of Ma Chik Kin's alien certificate of registration, and Exhibit C, the affidavit of publication of the notice already adverted to.

It has not been proven that Ma Chik Kin is the same Chik Tong, to whom the order of adoption, Exhibit A, refers. Neither the petitioner nor Ma Chik Kin, or any other person, had taken the witness stand to testify thereon. Upon the other hand, the only witness for petitioner herein, namely, Vicente Osorio, was not competent to furnish said evidence. In fact, he admitted that he was not the one who typed and prepared the application for registration of Ma Chik Tong; that he does not remember having seen the person of Ma Chik Tong whose photograph appears on the alien certificate of registration Exhibit B; and that he is not sure that Exhibit B was based upon Exhibits A and A-1, because the former is not in accordance with the latter. In fact, Exhibit B was issued by someone else, not by Osorio, who does not appear to know either Ma Chik Tong or Ma Chik Kin. Consequently, the allegations of the petition in this case have not been duly established.

WHEREFORE, the order appealed from is hereby reversed and judgment shall be entered denying the petition of appellee Ma Ing Chao, as well as dismissing the same, with costs against said appellee.

SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, and Villamor, JJ., concur.
Barredo, J., did not take part.

[1] L-20306, March 31, 1966.

[2] L-16384, April 26, 1962.

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