

RE: PETITION FOR CHANGE OF NAME FROM LLENITA SALDO CATAYOC TO MA. LLONITA CATAYOC LAO

Ponente: LOPEZ, J.

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LOPEZ, J.:

Challenged in this Appeal is the Decision[1] dated 15 April 2010 of the Cebu City Regional Trial Court, Branch 58, in SP Proc. No. 17082-CEB, and its Order[2] on the Motion for Reconsideration[3] filed by appellant. The dispositive portion of the trial court's Decision reads:

WHEREFORE, judgment is hereby rendered granting the petition. Accordingly, the following entries in the Certificate of Live Birth of Ma. Llonita Lao is hereby corrected:

From: LLENITA SALDO CATAYOC

To: MA. LLONITA CATAYOC LAO

The Local Civil Registrar of Cebu City is hereby ordered to make the foregoing change of name in the birth record of Ma. Llonita Catayoc Lao, and to issue a new copy of the Certificate of Live Birth reflecting said change of name.

Furnish a copy of this Decision to the Petitioner, the Local Civil Registrar of Cebu City, and the Solicitor General representing the Republic of the Philippines.

SO ORDERED.

FACTS

On 17 August 2009, petitioner Ma. Llenita Catayoc, 45 years old, a laboratory aide, filed a verified Petition for Change of Name in her birth record, praying that her name be changed from LLENITA SALDO CATAYOC to MA. LLONITA CATAYOC LAO.

The Petition substantially alleges that petitioner is married to Efren Raypan. As reflected in her Certificate of Live Birth[4], petitioner's name is Llenita Saldo Catayoc. However, her mother used to name her as Ma. Llonita C. Lao, which she was usually known before marriage as reflected in her Certificate of Baptism.[5] Her records in the Social Security System[6], Philippine Health Insurance Corporation[7], and in the Office of the Municipal Civil Registrar[8] reflect the name Ma. Llonita C. Lao. The petition was filed in order to avoid confusion and to straighten out her records.

In an Order[9] dated 11 September 2009, the trial court set the initial hearing of the petition on 4 March 2010 at 8:30 o'clock in the morning, and directed the required publication of the said Order. A Notice of Order dated 11 September 2009 was furnished to the Local Civil Registrar of Cebu City[10] and the Office of the Solicitor General.[11]

To establish the jurisdictional facts, the following exhibits were formally offered:

Exhibit

A[12] Verified Petition, filed on 17 August 2009;

A-1[13] Verification, Name, and signature of Ma. Llonita C. Lao;

B[14] Order for initial hearing and publication dated 11 September 2009;

C[15] Notice of Order dated 11 September 2009;

C-1[16] Addressed to the Local Civil Registrar of Cebu City;

C-2[17] Addressed to the Office of the Solicitor General, Makati City

D[18] Notice of Appearance of the Solicitor General, as counsel for the Republic of the Philippines dated 28 October 2009 with Letter of Authority addressed to the Office of the City Prosecutor, Cebu City to assist the Solicitor General.

E[19] Affidavit of Publication dated 19 October 2009 issued by the Opinion Editor of Sun Star Daily Cebu City, Candido O. Wenceslao;

E-1[20] Newspaper clipping on the 1st publication, 2 October 2009 issue;

E-2[21] Newspaper clipping on the 2nd publication, 9 October 2009, issue;

E-3[22] Newspaper clipping on the 3rd publication, 16 October 2009 issue.

F[23] Certificate of Live Birth

G[24] Certificate of Baptism

H[25] International Pharmaceutical Inc. Identification Card (ID)

I[26] Social Security System ID

No cross-examination was conducted.

On 15 April 2010, the trial court rendered the challenged Decision.[27] The Office of the Solicitor General (OSG) filed a Motion for Reconsideration[28]. Petitioner, through counsel, filed her Opposition to the Motion for Reconsideration.[29] In an Order[30] dated 1 September 2010, the trial court denied the Motion for Reconsideration. Hence, this appeal.

ISSUES

The OSG assigns this sole issue for our consideration:

I. THE TRIAL COURT GRAVELY ERRED IN GRANTING THE PETITION BECAUSE APPELLANT FAILED TO FAITHFULLY COMPLY WITH THE JURISDICTIONAL REQUIREMENTS OF THE LAW

OUR RULING

The appeal is meritorious.

A change of name is a special proceeding to establish the status of a person involving his relation with others, that is, his legal position in, or with regard to, the rest of the community. It is a proceeding in rem and, as such, strict compliance with jurisdictional requirements, particularly, on publication, is essential in order to vest the court with jurisdiction therefor.[31]

Arguing in behalf of the state, the OSG avers that the trial court granted the petition to change appellee's full name from Llenita Saldo Catayoc to Ma. Llonita Catayoc Lao to legally enable her to claim support from her alleged biological father, Liberato Lao. However, the latter, an indispensable party under Rule 108, was not

impleaded as a party respondent in the petition. For the OSG, appellee's failure to implead Liberato Lao as a party to this case is fatal to the petition.

In its Order resolving the Motion for Reconsideration, the trial court ruled that petitioner was not changing her name in order to claim support from her late father. Rather she was doing so in order to claim her SSS, Pag-ibig, and other insurance benefits. The trial court further ruled that petitioner has complied with all the requirements of Rule 103 of the Rules of Court.

A person can effect a change of name under Rule 103 (CHANGE OF NAME) using valid and meritorious grounds including (a) when the name is ridiculous, dishonorable or extremely difficult to write or pronounce; (b) when the change results as a legal consequence such as legitimation; (c) when the change will avoid confusion; (d) when one has continuously used and been known since childhood by a Filipino name, and was unaware of alien parentage; (e) a sincere desire to adopt a Filipino name to erase signs of former alienage, all in good faith and without prejudicing anybody; and (f) when the surname causes embarrassment and there is no showing that the desired change of name was for a fraudulent purpose or that the change of name would prejudice public interest.[32]

In petitions for change of name, a person avails of a remedy to alter the "designation by which he is known and called in the community in which he lives and is best known." [33] When granted, a person's identity and interactions are affected as he bears a new "label or appellation for the convenience of the world at large in addressing him, or in speaking of, or dealing with him." [34] Judicial permission for a change of name aims to prevent fraud and to ensure a record of the change by virtue of a court decree.[35]

Essentially, a change of name does not define or effect a change of one's existing family relations or in the rights and duties flowing therefrom. It does not alter one's legal capacity or civil status.[36] However, "there could be instances where the change applied for may be open to objections by parties who already bear the surname desired by the applicant, not because he would thereby acquire certain family ties with them but because the existence of such ties might be erroneously impressed on the public mind." [37] Hence, in requests for a change of name, "what is involved is not a mere matter of allowance or disallowance of the request, but a judicious evaluation of the sufficiency and propriety of the justifications advanced xxx mindful of the consequent results in the event of its grant xxx." [38]

A change of one's name under Rule 103 can be granted, only on grounds provided by law. In order to justify a request for change of name, there must be a proper and compelling reason for the change and proof that the person requesting will be prejudiced by the use of his official name. To assess the sufficiency of the grounds invoked therefor, there must be adversarial proceedings.[39]

Unlike petitions for the cancellation or correction of clerical errors in entries in the civil registry under Rule 108 of the Rules of Court, a petition for change of name under Rule 103 cannot be decided through a summary proceeding. There is no doubt that this petition does not fall under Rule 108 for it is not alleged that the entry in the civil registry suffers from clerical or typographical errors. The relief sought clearly goes beyond correcting erroneous entries in the civil registry, although by granting the petition the result is the same in that a corresponding change in the entry is also required to reflect the change in name.[40] In this regard, appellee complied with the requirement for an adversarial proceeding by posting in a newspaper of general circulation notice of the filing of the petition.[41] Moreover, Rule 103 does not require that specific persons be impleaded, all it requires is the publication of the Order of the Court.[42] The OSG was also furnished a copy thereof. Despite the notice, no one came forward to oppose the petition including the OSG.

In the present case, petitioner-appellee wishes to change her name, including her surname. However, we could not

find sufficient basis to support such a change.

In her direct examination, petitioner-appellee testified that:

xxx

Q: Madam Witness, can you explain before this court why you are carrying at present the name Ma. LLonita Catayoc Lao instead of Llenita Saldo Catayoc?

A: When my mom was about to enroll me, we went to the Local Civil Registrar and they said that I have no record. The next day when I enrolled myself I used the family name since there was no record. So I used that surname Lao so that my father will support us.

xxx

Such bare allegations in her direct testimony deserve scant consideration. Petitioner did not present any witness or school record that would corroborate her story. Appellee's identification cards⁴³ do not show that she has used the name MA. LLONITA CATAYOC LAO all her life. The fact that her Certificate of Baptism^[44] bears the name of Liberato Lao as his father is of little significance. It is well settled that Church registries of births, marriages, and deaths made subsequent to the promulgation of General Orders No. 68, promulgated on December 18, 1889, and the passage of Act No. 190, enacted on August 7, 1901, are no longer public writings, nor are they kept by duly authorized public officials.^[45] They are private writings and their authenticity must therefore be proved, as are all other private writings in accordance with the Rules of Evidence.^[46] Sadly, here appellee failed to do so.

When petitioner was born in 1964 (prior to the enactment and effectivity of the Family Code of the Philippines),^[47] the pertinent provision of the Civil Code then as regards her use of a surname, read:

Art. 366. A natural child acknowledged by both parents shall principally use the surname of the father. If recognized by only one of the parents, a natural child shall employ the surname of the recognizing parent.^[48]

Meanwhile, according to the Family Code which repealed, among others Article 366 of the Civil Code:

Art. 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. xxx^[49]

The Supreme Court's ruling in the case of *In Re: Petition for Change of Name and/or Correction/Cancellation of Entry in Civil Registry of Julian Lin Carulasan Wang*^[50] is enlightening:

Our laws on the use of surnames state that legitimate and legitimated children shall principally use the surname of the father. The Family Code gives legitimate children the right to bear the surnames of the father and the mother, while illegitimate children shall use the surname of their mother, unless their father recognizes their filiation, in which case they may bear the father's surname.

Applying these laws, an illegitimate child whose filiation is not recognized by the father bears only a given name and his mother's surname, and does not have a middle name. The name of the unrecognized illegitimate child therefore identifies him as such. It is only when the illegitimate child is legitimated by the subsequent marriage of his parents or acknowledged by the father in a public document or private handwritten instrument that he bears both his mother's surname as his middle name and his father's surname as his surname, reflecting his status as a legitimated child or an acknowledged child.^[51]

Worthy to note is the fact that in petitioner-appellee's NSO Certificate of Live Birth^[52], no father's name is recorded. The records also do not reveal any act or intention on the part of petitioner-appellee's putative father to actually recognize her. Thus, we could not find any convincing evidence on why petitioner should be allowed to carry the surname "LAO". Consequently, the trial court erred in granting the petition for change of name. The reasons adduced are not substantial enough to justify the petition. To allow the change of name may cause

confusion as to petitioner's parentage and might create the impression that she is legitimate since she carries the paternal surname.

The matter of granting or denying petitions for change of name and the corollary issue of what is a proper and reasonable cause therefor rests on the sound discretion of the court. The evidence presented need only be satisfactory to the court; it need not be the best evidence available.[53] What is involved in special proceedings for change of name is, to borrow from Republic v. Court of Appeals[54], "not a mere matter of allowance or disallowance of the petition, but a judicious evaluation of the sufficiency and propriety of the justifications advanced in support thereof, mindful of the consequent results in the event of its grant and with the sole prerogative for making such determination lodged before the courts."

The lower court is still expected to exercise its judgment to determine whether the petition is meritorious or not and not merely accept as true the arguments propounded.[55] Much as we would like to sympathize with petitioner-appellee's cause that she may encounter in the future some difficulties in claiming her social security, Pag-ibig, and other insurance benefits when she reaches the age of 60[56], we rule that no sufficient basis exists to grant petitioner-appellee's prayer for change of name.

WHEREFORE, the appeal is GRANTED. The Decision of the trial court dated 15 April 2010, and its Order on the Motion for Reconsideration dated 1 September 2010, are REVERSED and SET ASIDE. The Petition for Change of Name is DISMISSED.

SO ORDERED.

Lagura-Yap, M.B., and [*]Azcarraga-Jacob, M.C., JJ., concur.

[*] Per raffle dated 26 February 2015 vice Justice Ingles' inhibition.

[1] Rollo, pp.27-28

[2] Rollo, p.49

[3] Rollo, pp.30-35

[4] Records, p.4

[5] Records, p.5

[6] Records, p.6

[7] *ibid*

[8] Records, p.7

[9] Records, p.8

[10] Records, p.9

[11] *ibid*

[12] Records, pp.1-2

[13] Records, p.3

[14] Records, p.8

[15] Records, p.9

[16] id

[17] id

[18] Records, p.10-11

[19] Records, p.15

[20] Records, p.16

[21] Records, p.17

[22] Records, p.18

[23] Records, p.22

[24] Records, p.23

[25] Records, p.23

[26] Records, p.24

[27] Records, pp.27-28

[28] Records, pp. 30-36

[29] Records, pp. 41- 42

[30] Records, p.49

[31] Milagros M. Barco, as the Natural Guardian and Guardian Ad Litem of Mary Joy Ann Gustillo v. Court of Appeals, *supra* note 4 at 57, citing Republic v. Honorable Judge of Branch III, CFI of Cebu City, 217 Phil 442 (1984)

[32] Vide See Republic v. Hernandez, 323 Phil. 606, 637-638 (1996);

[33] In the Matter of the Adoption of Stephanie Nathy Astorga Garcia, 494 Phil. 515 (2005).

[34] Del Prado v. Republic, 126 Phil. 1 (1967).

[35] Republic vs. Mercadera, G.R. No. 186027, December 8, 2010.

[36] Republic v. Court of Appeals, G.R. No. 97906, May 21, 1992

[37] In the matter of the petition to change name of Ong Huan Tin to Teresita Tan Ong Huan Tin v. Republic of the Philippines, 126 Phil. 201

[38] In re: Petition for Change of Name and/or Correction/Cancellation of Entry in Civil Registry of Julian Lin Carulasan Wang v. Cebu City Civil Registry, 494 Phil. 149

[39] "One having opposing parties, contested, as distinguished from an ex parte application, one [in] which the party seeking relief has given legal warning to the other party, and afforded the latter an opportunity to contest it. xxx," cited in Republic of the Philippines v. Labrador, 364 Phil. 934 (1999).

[40] Republic v. Capote, G.R. No. 157043, February 2, 2007.

[41] *ibid*

[42] Rule 103, Section 3. Order for 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) month after the last publication of the notice.

Section 4. Hearing. — Any interested person may appear at the hearing and oppose the petition. The Solicitor General or the proper provincial or city fiscal shall appear on behalf of the Government of the Republic.

[43] Records, pp.6-7.

[44] Records, p.5

[45] Lemos vs. Lemos, G.R. No. 150162, January 26, 2007.

[46] Ibid

[47] Executive Order No. 209, known as the Family Code of the Philippines, took effect on August 3, 1988.

[48] Emphasis ours.

[49] Emphasis ours.

[50] G.R. No. 159966, 30 March 2005.

[51] Id., at 163 citing Civil Code, Arts. 174, 176 and 364; and Republic Act No. 9255, "An Act Allowing Illegitimate Children to Use the Surname of Their Father, Amending for the Purpose Art. 176 of the Family Code." See Leonardo v. Court of Appeals, et al., G.R. No. 125329, 10 September 2003, 410 SCRA 446 and Mossesgeld v. Court of Appeals, 360 Phil. 646 (1998).

Article 176 of the Family Code, as amended by RA 9255, reads:

Art. 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. However, illegitimate children may use the surname of their father if their filiation has been expressly recognized by the father through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten instrument is made by the father. Provided, the father has the right to institute an action before the regular courts to prove non-filiation during lifetime. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. (Emphasis ours).

[52] Records, p.4

[53] Ching v. Republic, 98 Phil. 1012 (1956); Oshita v. Republic, G.R. No. L-21180, March 31, 1967; Republic vs. Bolante, G.R. No. 160597, July 20, 2006.

[54] Republic v. Court of Appeals, G.R. No. 97906, May 21, 1992

[55] ibid

[56] TSN, March 25, 2010; Emphasis ours.

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