# FELIX CARLOS CABUDSAN UY, PETITIONER-APPELLEE, VS. LOCAL CIVIL REGISTRAR OF CATBALOGAN CITY, SAMAR AND THE NATIONAL STATISTICS OFFICE, QUEZON CITY DEFENDANT-APPELLEE,

Ponente: LOPEZ, J.

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**LOPEZ, J.:**

For consideration in this appeal is a Decision[1] of the Regional Trial Court, Branch 28 of Catbalogan, Samar promulgated on November 24, 2011 in Special Proceeding No. 8080 for Correction of Entry in the Birth Certificate of Felix Carlos Cabudsan Uy granting the said petition, the dispositive portion of which reads;

> "WHEREFORE, premises considered, judgment is hereby rendered directing the Local Civil Registrar of Catbalogan, Samar and the National Statistics Office Quezon City Metro Manila to correct the erroneous entries in the Birth Certificate of Felix Carlos Cabudsan Uy particularly his gender from "FEMALE" to "MALE" and his first name from "JOVANNIE" to "FELIX CARLOS".
>
> SO ORDERED."[2]

ANTECEDENT FACTS

Petitioner Felix Carlos Cabudsan Uy was born on June 27, 1986 with Certificate of Live Birth[3] registered before the Local Civil Registrar's Office of Catbalogan, Samar. The said Certificate of Live Birth contained two (2) erroneous entries namely:

1. FEMALE in the SEX entry
2. JOVANNIE in the FIRST NAME entry

Petitioner claimed that the true and correct entries are:

1. MALE in the SEX entry
2. FELIX CARLOS in the FIRST NAME entry

On January 16, 2011, petitioner filed a Petition[4] for Correction of Entries in his Birth Certificate. Finding the petition to be sufficient in form and substance, the trial court ordered[5] petitioner to cause the publication of its Order once a week for three (3) consecutive weeks in an accredited newspaper of general circulation in the Province of Samar. Accordingly, petitioner acceded to the publication requirement. The Order was published in Samar Weekly Express for the week February 15-21, 2011[6]; February 22-28, 2011[7] and March 1-7, 2011[8].

On two (2) separate scheduled hearings dated July 19, 2011[9] and July 28, 2011[10], public prosecutor Atty. Laura E. Mabini failed to appear the same which caused for the resetting of the hearings.

During the trial, petitioner presented himself and Dr. Joselito R. Yulo as witnesses during trial to support his petition. He offered as evidence the following to prove that his real name is FELIX CARLOS and that he is a male - (1) Identification Card from the Commission on Elections[11] (COMELEC); (2) a PCOS Technician

Identification Card No. PCT-8-60-6012-4233[12]; (3) a National Certificate II from Technical Education and Skills Development Authority (TESDA)[13]; (4) Official Transcript of Records from Samar State University[14] under the name Uy, Felix Carlos C.; and (5) Certificate of Baptism[15] from the Parish of Our Lady of the Annunciation in the name of Felix Carlos Uy Cabudsan.

In an Order[16] dated June 22, 2011, the trial court admitted the foregoing pieces of evidence presented for purposes of compliance of the jurisdictional facts and requirement.

During the trial, petitioner testified that he discovered the discrepancy in his Birth Certificate when, before their graduation, they were required to submit a Certificate of Live Birth from the National Statistics Office.[17]

Dr. Yulo, the other witness for petitioner, declared in court that he met petitioner on August 3, 2011 when the latter went to his clinic for a physical examination to actually determine his gender. After a thorough physical examination upon petitioner, Dr. Yulo found that there is a penile shaft with pubic hairs at the base; a scrotal sac located between the shaft and the anal opening, enclosing two (2) solid round objects.[18] Based on such findings, the physician declared that petitioner is physically a male person.

Added to that, the ultrasound examination conducted upon petitioner revealed[19] that both testes are normal in size, contour and with homogenous echopattern. There were no intratesticular mass and hydrocele noted nor was there any inguinal mass observed. Both epididymis were likewise normal. In sum, the following observations reveal a normal reproductive organ present in a male.[20]

On August 15, 2011, petitioner formally offered[21] the pieces of documentary evidence he presented in court. With no opposition or comment filed by the public prosecutor, the trial court admitted the same via an Order[22] dated October 21, 2011.

On November 24, 2011, the Regional Trial Court found that petitioner has proven by preponderance of evidence the averments in his petition, thus granting to him the prayers pleaded.

Oppositor-appellant Republic of the Philippines files the instant appeal submitting this sole assignment of error, to wit:

> THE COURT A QUO ERRED IN GRANTING PETITIONER-APPELLEE'S PLEA FOR CHANGE OF NAME FROM "JOVANNIE" TO "FELIX CARLOS" DESPITE HIS FAILURE TO COMPLY WITH THE REQUIREMENTS OF RULE 103 OF THE RULES OF COURT.[23]

OUR RULING
The appeal is devoid of merit.

Oppositor-Appellant contends that the instant petition sought two (2) reliefs: (1) for the correction of sex/gender on petitioner's birth certificate from FEMALE to MALE; and (2) for the change of first name from "JOVANNIE" to "FELIX CARLOS". The requirements and procedure for the change of first name is embodied in Rule 103 of the 1997 Rules of Court while the correction of entries is incorporated in Rule 108 of the said rules. Both rules are distinct and separate from each other. If both correction of entry and change of name are to be sought in one proceeding, all the requirements of both rules must be duly complied with. In this case, a perusal of the petition would reveal the following flaws: (1) petitioner-appellee failed to allege that he is a bona fide resident of the province where the petition is filed at least three (3) years prior to the date of filing; and (2) petitioner-appellee failed to include the name "JOVANNIE" which he wishes to change to "FELIX CARLOS".

The appeal has no merit.

The instant petition pleads for a correction of an entry in petitioner's Birth Certificate and the consequent


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correction of the entry in his first name. The pertinent rules raised by oppositor-appellant which are allegedly applicable in this case are Rules 103 of the Rules of Court affecting change of name and Rule 108 involving correction of entries in the civil registry.

Rule 103 procedurally governs judicial petitions for change of given name or surname, or both, pursuant to Article 376[24] of the Civil Code. This rule provides the procedure for an independent special proceeding in court to establish the status of a person involving his relations with others, that is, his legal position in, or with regard to, the rest of the community.[25] The proceeding under Rule 103 is also an action in rem which requires publication of the order issued by the court to afford the State and all other interested parties to oppose the petition. When complied with, the decision binds not only the parties impleaded but the whole world. As notice to all, publication serves to indefinitely bar all who might make an objection. "It is the publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it."[26]

Rule 108, on the other hand, implements judicial proceedings for the correction or cancellation of entries in the civil registry pursuant to Article 412[27] of the Civil Code. Entries in the civil register refer to "acts, events and judicial decrees concerning the civil status of persons,"[28] also as enumerated in Article 408[29] of the same law.

Before, only mistakes or errors of a harmless and innocuous nature in the entries in the civil registry may be corrected under Rule 108 and substantial errors affecting the civil status, citizenship or nationality of a party are beyond the ambit of the rule.[30] However, in Republic vs. Valencia[31], the Supreme Court ruled that changes which may affect the civil status from legitimate to illegitimate, as well as sex, are substantial and controversial alterations which can only be allowed after appropriate adversary proceedings depending upon the nature of the issues involved.[32] Rule 108 remains applicable provided adversarial proceedings were observed.

An appropriate adversary suit or proceeding is one where the trial court has conducted proceedings where all relevant facts have been fully and properly developed, where opposing counsel have been given opportunity to demolish the opposite party’s case, and where the evidence has been thoroughly weighed and considered.33 In such a proceeding, the parties to be impleaded as respective defendants are (a) the local civil registrar; and, (b) all persons who have claims any interest which would be affected thereby.[34] On the other hand, the proceedings are summary only if the entries in the civil register sought to be corrected are clerical or innocuous in nature.[35]

In this case, what petitioner seeks to correct is the entry in his Birth Certificate which stated that his gender is FEMALE when in fact, he is a MALE, as proven by the results of the physical examination conducted upon him. Accordingly, he prays for a consequent correction of the entry of his FIRST NAME - - from JOVANNIE to FELIX CARLOS so as to correspond to the change of his gender and to his previous public records.

On the matter of the correction of the entry on gender, under Republic Act No. 9048, a correction in the civil registry involving the change of sex is not a mere clerical or typographical error. It is a substantial change for which the applicable procedure is Rule 108 of the Rules of Court.[36]

Rule 108 of the Rules of Court provides:

> Rule 108
> CANCELLATION OR CORRECTION OF ENTRIES
> IN THE CIVIL REGISTRY
> Section 1. Who may file petition. – Any person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the Regional Trial Court of the province where the corresponding civil registry is located.
>
> 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) marriages; (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) changes of name.
>
> Sec. 3. Parties. – When cancellation or correction of an entry in the civil register is sought, the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding.
>
> Sec. 4. Notice and publication. – Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the persons named in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.
>
> Sec. 5. Opposition. – The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto.
>
> Sec. 6. Expediting proceedings. – The court in which the proceedings is brought may make orders expediting the proceedings, and may also grant preliminary injunction for the preservation of the rights of the parties pending such proceedings.
>
> Sec. 7. Order. – After hearing, the court may either dismiss the petition or issue an order granting the cancellation or correction prayed for. In either case, a certified copy of the judgment shall be served upon the civil registrar concerned who shall annotate the same in his record.

In fine, the essential requisite for allowing substantial corrections of entries in the civil registry is that the true facts be established in an appropriate adversarial proceeding.[37]

In the present case, records would reveal that the Republic was duly notified of the hearings conducted by trial court through the publication and posting of the Order of the trial court once a week for three (3) consecutive weeks in a newspaper of general circulation. This is one indicia of an adverse proceeding. Other than that, the Republic was given ample opportunity to present countervailing evidence and to oppose the offer of documentary evidence exhibited by the petitioner. It, however, failed to present its own witnesses; to provide contradicting evidence; and to oppose or comment on petitioner's Formal Offer of Exhibits. The fact that no one opposed the petition, including the OSG, did not deprive the trial court of its jurisdiction to hear the same and did not make the proceeding less adversarial in nature. Considering that the OSG did not oppose the petition when it had the opportunity to do so, it cannot now complain that the proceedings in the lower court were procedurally defective. In fine, the requirement under the Rules that the proceedings in a correction of entry be adversarial has already been complied with by the chances Oppositor Republic has been given to oppose and contradict the allegations presented by the petitioner in his petition.

Besides, the records would prove that the actual sex of petitioner is genuinely MALE. He was able to amply and sufficiently establish such fact by the testimony of the doctor who conducted the physical examination upon his person; and so with the results of the examination. Added to that, petitioner presented the following proofs of his identity - his Certificate of Baptism[38]; an Identification Card issued by COMELEC[39]; a PCOS Technician Identification Card[40]; a National Certificate from TESDA[41] and his Official Transcript of Records from Samar State University[42] indicating therein the name that he was using since he was a child "FELIX CARLOS C. UY" which happens to be a name generally used by MALES. Nowhere in the records did it show, even impliedly, that petitioner underwent any procedure of any kind to change his sex from female to male. Being

undoubtedly MALE, petitioner has the right to be entitled to the grant of his petition for the correction of the entry in his Birth Certificate from FEMALE to MALE.

On the matter of petitioner's change of name, Article 376 of the Civil Code stating that "no person can change his name or surname without judicial authority" was amended by Section 1 of Republic Act 9048 which reads:

> SECTION 1. Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname. – No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and change of first name or nickname which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations.

In view of such amendment, it may be gleaned that RA 9048 now governs the change of first name. It vests the power and authority to entertain petitions for change of first name to the city or municipal civil registrar or consul general concerned. Under the law, therefore, jurisdiction over applications for change of first name is now primarily lodged with the aforementioned administrative officers. The intent and effect of the law is to exclude the change of first name from the coverage of Rules 103 (Change of Name) and 108 (Cancellation or Correction of Entries in the Civil Registry) of the Rules of Court, until and unless an administrative petition for change of name is first filed and subsequently denied. It likewise lays down the corresponding venue, form and procedure.[43]

Nevertheless, in Administrative Matter No. 06-7-414-RTC[44], the Supreme Court discussed that "local civil registrar is given the authority to act on such petitions filed before his office, yet there was nary a mention or even insinuation that such petitions can no longer be filed with the regular courts. In fact, it was clarified that the grounds upon which the administrative process before the local civil registrar may be availed of are limited under the law; hence, outside of such limited grounds, the judicial process should be availed of. Indeed, there was no intent on the part of the lawmakers to remove the authority of the trial courts to make judicial corrections of entries in the civil registry. It can thus be concluded that the local civil registrar has primary, not exclusive, jurisdiction over such petitions for correction of clerical errors and change of first name or nickname, with R.A. No. 9048 prescribing the procedure that the petitioner and local civil registrar should follow."

Accordingly, the trial court was correct in taking cognizance of the petition. It granted petitioner's plea for a correction of the entry of FEMALE to MALE and the consequent change of first name from JOVANNIE to FELIX CARLOS.

The OSG contended that petitioner, on the matter of the petitioner's plea for a change of name, failed to allege that "he was a bona fide resident of the province where the petition was filed at least three (3) years prior to the filing of the petition" which, under Rule 103 is a necessary requirement for the trial court to acquire jurisdiction over the petition warranting the dismissal of the petition.

We do not agree.

In the Supreme Court case of Republic vs. Jennifer Cagandahan[45], despite OSG's invocation of petitioner's failure to include in his petition the three-year residency requirement under Rule 103, the Highest Court still upheld the trial court's Decision granting the change of his name from JENNIFER Cagandahan to JEFF Cagandahan; and his gender from FEMALE to MALE. The circumstances obtaining in the foregoing case fell squarely to the facts of this case. Both petitioners pleaded for a change in the Sex and the First Name on their Certificates of Live Birth. Applying the cited Supreme Court Decision, We thus affirm the trial court's ruling in granting petitioner's plea for a change in the entry of the First Name in his Certificate of Live Birth.

Besides, the records of the case would prove that herein petitioner-appellee completed his college education in


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Samar State University and that he had worked at COMELEC, Catbalogan, Samar. It is apparent therefore that, despite the failure to indicate in his petition that he has been residing in Samar for the past three (3) years prior to the filing of his petition, he had actually been living in Samar for such a period of time and more.

In addition, even granting that Rule 103 was not properly applied to this case and what was complied with was Rule 108, the Decision of the court a quo remains valid. The case of Republic vs. Mercadera[46] pronounced that Article 412[47] of the New Civil Code (which is duly implemented under Rule 108 of the Rules of Court) does not qualify as to the kind of entry to be changed or corrected or distinguished on the basis of the effect that the correction or change may be. Such entries include not only those clerical in nature but also substantial errors. After all, the role of the Court under Rule 108 of the Rules of Court is to ascertain the truths about the facts recorded therein.

In the present case, the change in petitioner-appellee's name, though substantial it may seem for it involved not merely a patently misspelled name, is still covered under Rule 108, as this involved an erroneous entry in the civil register which needs to be corrected in the light of the pieces of evidence presented before the Court. As long as the proper adversarial proceedings are properly observed, which is obtaining in this case, the grant of the plea for a change of name is hereby warranted.

Moreover, the Supreme Court has held that a change of name is not a matter of right but of judicial discretion, to be exercised in the light of the reasons adduced and the consequences that will follow.[48] In the instant case, the trial court's grant of petitioner's change of name from JOVANNIE to FELIX CARLOS implies a revision of what can be considered both a feminine and a masculine name to a purely masculine name which reflects petitioner's actual and real gender. In addition, the trial court merely recognized and considered petitioner's previous public records bearing his FIRST NAME as FELIX CARLOS. With the consequent change of his GENDER from FEMALE to MALE, We find merit in petitioner's change of NAME for this will conform to the change of the entry in his birth certificate from female to male.

WHEREFORE, premises considered, the appeal is DENIED. The assailed Decision of the Regional Trial Court, Branch 28 of Catbalogan, Samar dated November 24, 2011 in Special Proceeding No. 8080 for Correction of Entry in the Birth Certificate of Felix Carlos Cabudsan Uy is hereby AFFIRMED in toto.

**SO ORDERED.**

Delos Santos, E.L., Chairperson, and Lagura-Yap, M.B., JJ., concur.

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[1] Penned by Judge Sibanah E. Usman, Rollo, pp. 30-33; Record, pp. 65-68

[2] Id, p. 33

[3] Exhibit "B", Record, p. 11

[4] Exhibit "A", Id, pp. 7-10

[5] Order dated February 15, 2011, Exhibit "E", Id, p. 19

[6] Exhibit "G", Id, pp. 22-25

[7] Exhibit "H", Id, pp. 26-29

[8] Exhibit "I", Id, pp. 30-33

[9] Order, Id, p. 42

[10] Order, Id, p. 44

[11] Exhibit “L”, Id, p. 48

[12] Exhibit “L”, Id

[13] Exhibit “N”, Id, p. 52

[14] Exhibit “M”, Id, pp. 49-51

[15] Exhibit “C”, Id, p. 12

[16] Id, p. 39-40

[17] TSN (Uy) August 2, 2011, Record, p. 12

[18] TSN (Yulo) August 15, 2011, Record, p. 6

[19] Exhibit “D”, Record, p. 13

[20] TSN (Yulo) August 15, 2011, Record, p. 7

[21] Formal Offer of Exhibits, Record, pp. 59-62

[22] Id, p. 64

[23] Rollo, p. 22

[24] “No person can change his name or surname without judicial authority.”

[25] Republic of the Philippines vs. Mercadera, G.R. No. 186027, December 8, 2010 citing Republic v. Court of Appeals, G.R. No. 97906, May 21, 1992

[26] Id citing Milagros M. Barco, as the Natural Guardian and Guardian Ad Litem of Mary Joy Ann Gustillo v. Court of Appeals, G.R. No. 120587, January 20, 2004

[27] “No entry in a civil register shall be changed or corrected, without a judicial order.”

[28] Article 407, Civil Code

[29] Article 408. The following shall be entered in the civil register:(1) Births; (2) marriages; (3) deaths; (4) legal separations; (5) annulments of marriage; (6) judgments declaring marriages void from the beginning; (7) legitimations; (8) adoptions; (9) acknowledgments of natural children; (10) naturalization; (11) loss, or (12) recovery of citizenship; (13) civil interdiction; (14) judicial determination of filiation; (15) voluntary emancipation of a minor; and (16) changes of name. (Emphasis supplied)

[30] Republic of the Philippines vs. Mercadera, G.R. No. 186027, December 8, 2010

[31] G.R. No. L-32181, March 5, 1986

[32] At note 30

[33] Republic vs. Olaybar, G.R. No. 189538, February 10, 2014

[34] Tan, et. Al., vs. The Civil Register of Manila, G.R. No. 138496, February 23, 2004

[35] Id

[36] Republic vs. Cagandahan, G.R. No. 166676, September 12, 2008 citing Silverio v. Republic of the

Philippines, G.R. No. 174689, October 19, 2007

[37] Milagros M. Barco, as the Natural Guardian and Guardian Ad Litem of Mary Joy Ann Gustillo vs. Court of Appeals, G.R. No. 120587, January 20, 2004

[38] At note 15

[39] At note 11

[40] At note 12

[41] At note 13

[42] At note 14

[43] Silverio vs. Republic, G.R. No. 174689, October 22, 2007

[44] Re: Final Report on the Judicial Audit conducted at the Regional Trial Court, Br. 67, Paniqui, Tarlac

[45] G.R. No. 166676, September 12, 2008

[46] G.R. No. 186027, December 8, 2010

[47] “No entry in a civil register shall be changed or corrected, without a judicial order.”

[48] At note 38 citing Yu v. Republic of the Philippines, G.R. No. L-20874, May 25, 1966


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