

**ANTONIO CHIAO BEN LIM, PETITIONER, VS. HON. MARIANO A. ZOSA,
JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, BRANCH V
AND THE LOCAL CIVIL REGISTRAR OF THE CITY OF CEBU,
RESPONDENTS.**

G.R. No. L-40252. December 29, 1986

Ponente: CRUZ, J.

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CRUZ, J.:

This is an appeal by certiorari from two Orders^[1] of the respondent judge dismissing a petition for the correction of an allegedly wrong entry in the birth records of Kim Joseph describing him as a Chinese national instead of a Filipino citizen.

The petitioner had offered to prove the error through several pieces of evidence, among them an earlier birth certificate of Kim Joseph describing him as a Filipino citizen, the birth certificates of his seven brothers and sisters all describing them as Filipinos, and a decision of the Court of Appeals recognizing their grandfather as a Filipino citizen.^[2]

On opposition by the local civil registrar of Cebu,^[3] however, the respondent judge dismissed the petition and sustained the contention that only clerical errors were allowed to be corrected in the summary proceedings authorized under Article 412 of the Civil Code and Rule 108 of the Rules of Court. Substantial issues like citizenship were not covered. In effect, it was held, the petition was for a judicial declaration of citizenship, which was not allowed under existing rules.^[4]

Article 412 of the Civil Code simply provides: "No entry in the civil registry shall be changed or corrected without a judicial order."

In fairness to the respondent judge, there was abundant jurisprudence to lend support to his Orders at the time they were issued. Since then, however, the strict doctrine announced in those cases has been relaxed, most recently in the case of *Republic v. Valencia*,^[5] supported by twelve members of this Court with only one other member not taking part.

In that case (arising, incidentally, also in Cebu City), there was a petition for the correction in the birth entries of two persons in the local civil registry, specifically to change their citizenship from "Chinese" to "Filipino," their status as children from "legitimate" to "illegitimate," and their mother's status from "married" to "single." The motion to dismiss filed by the local civil registrar having been denied, a full-blown trial was held and the changes sought were thereafter ordered by the trial court. The Republic of the Philippines then came to this Court to question the decision, invoking substantially the same grounds on which the Orders now being challenged were based.

In a well-reasoned and exhaustive decision, Justice Hugo E. Gutierrez declared *inter alia*:

"It is undoubtedly true that if the subject matter of a petition is not for the correction of clerical errors of a harmless and innocuous nature, but one involving nationality or citizenship, which is indisputably substantial as well as controverted, affirmative relief cannot be granted in a proceeding summary in nature. However, it is also true that a right in law may be enforced and a wrong may be remedied as long as the appropriate remedy is used. This Court adheres to the principle that even substantial errors in a civil registry may be corrected and the true facts established provided the parties aggrieved by the error avail themselves of the appropriate adversary proceeding. As a matter of fact, the opposition of the Solicitor General dated February 20, 1970 while questioning the use of Article 412 of the Civil Code in relation to Rule 108 of the Revised Rules of Court admits that 'the entries sought to be corrected should be threshed out in an appropriate proceeding.'

"What is meant by 'appropriate adversary proceeding?' Black's Law Dictionary defines 'adversary proceeding' as follows:

'One having opposing parties; contested, as distinguished from an ex parte application, one of which the party seeking relief has given legal warning to the other party, and afforded the latter an opportunity to contest it. Excludes an adoption proceeding.' (Platt v. Magagnini, 187, p. 716, 718, 110 Was. 39).[6]

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"The court's role in hearing the petition to correct certain entries in the civil registry is to ascertain the truth about the facts recorded therein. Under our system of administering justice, truth is best ascertained or approximated by trial conducted under the adversary system.[7]

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"Provided 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, the suit or proceeding is 'appropriate.'

"The pertinent sections of Rule 108 provide:

'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 in 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.'

"Thus, the persons who must be made parties to a proceeding concerning the cancellation or correction of an entry in the civil registrar are - (1) the civil registrar, and (2) all persons who have or claim any interest which would be affected thereby. Upon the filing of the petition, it becomes the duty of the court to (1) issue an order fixing the time and place for the hearing of the petition, and (2) cause the order for hearing to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province. The following are likewise entitled to oppose the petition: (1) the civil registrar, and (2) any persons having or claiming any interest under the entry whose cancellation or correction is sought.

"If all these procedural requirements have been followed, a petition for correction and/or cancellation of entries in the record of birth even if filed and conducted under Rule 108 of the Revised Rules of Court can no longer be

described as 'summary.' There can be no doubt that when an opposition to the petition is filed either by the Civil Registrar or any person having or claiming any interest in the entries sought to be cancelled and/or corrected and the opposition is actively prosecuted, the proceedings thereon become adversary proceedings.

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"We are of the opinion that the petition filed by the respondent in the lower court by way of a special proceeding for cancellation and/or correction of entries in the civil register with the requisite notice and publication and the recorded proceedings that actually took place there-after could very well be regarded as that proper suit or appropriate action." [8]

In a number of earlier cases, the Court has ruled that the birth entry regarding a person's citizenship could not be changed under Rule 108 as this would involve substantive rights that the rules of court could not "diminish, increase or modify" under the Constitution. [9]

Thus, in *Chua Wee v. Republic*, [10] a unanimous Court declared that, "if Rule 108 were to be extended beyond innocuous or harmless changes or corrections of errors which are visible to the eye or obvious to the understanding, so as to comprehend substantial and controversial alterations concerning citizenship, legitimacy of paternity or filiation, or legitimacy of marriage, said Rule 108 would thereby become unconstitutional for it would be increasing or modifying substantive rights, which changes are not authorized under Article 412 of the new Civil Code."

In *Wong v. Republic*, [11] however, Justice Vicente Abad Santos, in a separate concurrence, expressed the view that Article 412, which Rule 108 was supposed to implement, "does not say that it applies only to non-controversial issues and that the procedure to be used is summary in nature," adding that "Article 412 contemplates all kinds of issues and all kinds of procedures." Justice Pacifico de Castro, in a dissenting opinion, agreed with him and said (speaking also of Article 412) that "no prohibition may be seen from its express provision, nor by mere implication, against correction of a substantial error as one affecting the status of a person." Amplifying on this view, he declared in another dissenting opinion in *Republic v. de la Cruz*: [12]

"It is not accurate to say that Rule 108 would be rendered unconstitutional if it would allow the correction of more than mere harmless clerical error, as it would thereby increase or modify substantive rights which the Constitution expressly forbids because Article 412 of the Civil Code, the substantive law sought to be implemented by Rule 108, allows only the correction of innocuous clerical errors not those affecting the status of persons. As was stressed in the dissent on the aforesaid *Wong Case*, Article 412 does not limit in its express terms nor by mere implication, the correction authorized by it to that of mere clerical errors. Upon a consideration of this fact, it would be reasonable and justified to rule that Article 412 contemplates of correction of erroneous entry of whatever nature, procedural safeguards having only to be provided for, as was the manifest purpose of Rule 108.

"It is worth emphasizing that proceedings for the correction of erroneous entry should not be considered as establishing one's status in a legal manner conclusively beyond dispute or controversion, for as provided by Article 410 of the Civil Code, 'the books making up the civil register and all documents relating thereto x x x shall be prima facie evidence of the facts therein contained. Hence, the status as corrected would not have a superior quality for evidentiary purpose. Moreover, the correction should not imply a change of status but a mere rectification of error to make the matter corrected speak for the truth. There is, therefore, no increase or diminution of substantive right, as is the basis for holding that Rule 108 would be unconstitutional if held to allow correction of more than mere harmless and innocuous clerical errors."

The *Valencia* ruling has in effect adopted the above-stated views insofar as it now allows changes in the birth entry regarding a person's citizenship as long as adversary proceedings are held. Where such a change is ordered,

the Court will not be establishing a substantive right but only correcting or rectifying an erroneous entry in the civil registry as authorized by law. In short, Rule 108 of the Rules of Court provides only the procedure or mechanism for the proper enforcement of the substantive law embodied in Article 412 of the Civil Code and so does not violate the Constitution.

We note that in the case at bar the petition was dismissed outright without a trial being held, on the justification that it was not permitted. In the light of the Valencia ruling, the Orders of the respondent judge must now be reversed, to give way to the appropriate proceedings necessary to the resolution of the substantial issue raised by the petitioner. The records show that the publication requirement has already been complied with.^[13] The next step, therefore, is for the petitioner and all adverse and interested parties to be given their day in court in a regular trial on the merits.

WHEREFORE, the challenged Orders are hereby set aside, and Special Proceeding No. 3596-R of the Regional Trial Court of Cebu, Branch V, is reinstated for trial on the merits without delay. No pronouncement as to costs.

SO ORDERED.

Teehankee, C.J., Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., Paras, and Feliciano, JJ., concur.

[1] Dated January 10, 1975 and January 28, 1975. The second Order was a denial of the Motion for Reconsideration.

[2] Rollo, pp. 9, 17; Annexes "L" to "R", Petition.

[3] Annex "D", Petition.

[4] Order of January 10, 1975.

[5] 141 SCRA 462.

[6] 141 SCRA 468.

[7] Ibid., p. 471

[8] Id., pp. 473-474.

[9] Ty Kong Tin v. Republic, 94 Phil. 321; Ansaldo v. Republic, 102 Phil. 1046; Black v. Republic, 104 Phil. 848; Tan Su v. Republic, 105 Phil. 578; Bantoto Co. v. Republic, 2 SCRA 42; Balet v. Republic, 3 SCRA 582; Lui Lin v. Nuño, 9 SCRA 707; Beduya v. Republic, 11 SCRA 109; Reyes v. Republic, 12 SCRA 376; Baybayan v. Republic, 16 SCRA 403; Dy En Siu Co. v. Local Civil Registrar of Manila, 24 SCRA 309; Chua Tan Chuan v. Republic, 27 SCRA 447; Chua Chin v. Local Civil Registrar of Manila, 29 SCRA 448; Tan Pong v. Republic, 30 SCRA 380; Celestial v. Republic, 102 SCRA 666 citing Salim Wing v. Abubakar, L-25168, January 31, 1981; Republic v. Caparosso, 107 SCRA 67; Wong v. Republic, 115 SCRA 496.

[10] 38 SCRA 409.

[11] 135 SCRA 496.

[12] 118 SCRA 33-34.

[13] Annex "B", Petition.

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