

LAMBERTO TAN, PETITIONER-APPELLANT, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR-APPELLEE.

G.R. No. L-27735. December 26, 1984

Ponente: CUEVAS, J.

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CUEVAS, J.:

Appeal interposed by Lamberto Tan from the Decision of the then Court of First Instance of Manila-Branch XX, in Civil Case No. 63311, denying his petition for Correction of Entry in his Certificate of Birth, as well as from the Orders denying his first and second motions for reconsideration of the said decision.

On November 16, 1965, petitioner-appellant Tan filed with the then Court of First Instance of Manila a petition for correction of entry in his certificate of birth,[1] alleging -

- "1. That petitioner is a Filipino, of legal age, married and a resident of No. 86 Aramismis Street, Project 7, Quezon City;
2. That he was born in the City of Manila on September 16, 1933, his father being Lope Sta. Maria Tan and his mother being Marcelina Serrano;
3. That at petitioner's birth, his mother was attended by Saturnina Luarca, a midwife, who registered petitioner's birth with the Local Civil Registrar of Manila;
4. That on registering petitioner's birth, said Saturnina Luarca, believing that petitioner's father was a Chinese citizen so gave out said information as a consequence of which it now appears in the records of the Local Civil Registry and on petitioner's Birth Certificate that he is a Chinese citizen as his father is also a Chinese citizen; and
5. That the said citizenship of petitioner and his father as given out by the said Saturnina Luarca and appearing in petitioner's Birth Certificate is an error the truth being that petitioner and his parents are all Philippine citizens;"

and praying that –

"After due hearing and publication, to order the Local Civil Registrar of Manila to correct the entries appearing in petitioner's Birth Certificate, Register No. 1375-133, referring to him and his father as Chinese citizens to "Filipino" or Philippine citizens.

x x x x "

On November 22, 1965, the trial court issued an Order setting the case for hearing pursuant to Section 4, Rule 108 of the New Rules of Court and directing the publication of the Order in a newspaper of general circulation once a week for three (3) consecutive weeks.

The Local Civil Registrar of Manila filed his Answer stating therein that unless a final judicial order is first presented to him he has no authority to undertake the corrections prayed for in the Birth Certificate of the

petitioner. The Solicitor General, on the other hand, registered his opposition on the ground that the correction prayed for is not a correction of a clerical mistake which may be done under Article 412 of the Civil Code in relation to the provisions of Rule 108 of the Rules of Court.

In REPLY to said opposition, counsel for petitioner contends that his client does not seek the correction of the citizenship of his father, nor that of his mother's much less his own, for they are already all Filipinos; that he does not ask the court to declare him a Filipino for he is already a Filipino; and that he merely asks for the correction of an erroneous entry in his birth certificate, an entry made upon the declaration of a private person who had no personal knowledge of the facts of petitioner's citizenship.

The court a quo denied the petition and dismissed the case[2] ruling that "it has no authority under Article 412 of the Civil Code, upon which the present petition is based, to order the correction of the same, which is not a mere clerical error".

Petitioner's two (2) motions for reconsideration of the assailed decision having been denied, he now comes before Us thru the instant appeal by way of certiorari contending that the trial court erred:

- "1. In holding that it had no authority to order the correction prayed for in the petition - correction of erroneous entry in the appellant's Certificate of Birth;
2. In holding that Rule 108 of the Rules of Court is not applicable contrary to the decision of the Honorable Court in Tan vs. Republic, G.R. No. L-19847, April 29, 1966;
3. In holding that assuming the aforesaid rule to be applicable, petitioner-appellant has not complied with Section 3 of the said rule as to the parties to be impleaded; and
4. In not holding that the erroneous entry sought to be corrected was furnished by a person not in a position to know the correct data and that pursuant to the decision of the Honorable Court in Roces vs. Local Civil Registrar, G.R. No. L-10598, February 15, 1958, it had no authority to correct and delete it."

Petitioner's appeal is without merit. Consequently, the decision sought to be reviewed must be affirmed.

There can be no question that the alleged errors sought to be corrected in the instant case are not merely clerical, harmless or innocuous in nature. Rather, they are substantial and/or controversial since they involve a change of citizenship.[3] Correction therefore cannot be effected in a summary proceeding but through an appropriate action where all the parties adversely affected thereby must be notified or represented. As held in the case of Ansaldo vs. Republic[4] which doctrine was re-echoed in Oliva vs. Republic[5] and later reiterated in Republic vs. Medina.[6]

"x x x the clerical errors which might be corrected through judicial sanction under Article 412 of the New Civil Code, would be those harmless and innocuous changes, such as, correction of a name that is clearly misspelled, occupation of the parents, etc.; but for changes involving the civil status of their parents, their nationality or citizenship, those are grave and important matters which may have a bearing and effect on the citizenship and nationality not only of said parents, but of the offsprings, and to seek said changes, it is necessary to file a proper suit wherein not only the state, but also all parties concerned and affected should be made parties defendants or respondents and evidence should be submitted, either to support the allegations of the petition or complaint, or also to disprove the same so that any order or decision in the case may be made with due process of law and on the basis of facts proven. Then and only then may the change or changes be made in the entry in a civil register that will affect or even determine conclusively the citizenship or nationality of a person therein involved." (Italics supplied)

While admitting that the correction sought and prayed for is substantial and/or controversial, appellant however contends that the procedure undertaken by him is not summary in character but a contentious one. And this is so

because his petition was filed not merely pursuant to Article 412 of the Civil Code but under Rule 108 of the Revised Rules of Court thereby observing all the formalities prescribed and procedure laid down by the said Rule.

Appellant's aforesaid submission fails to persuade Us. Rule 108 of the Revised Rules of Court is merely an implementing rule of procedure on matters dealt with and covered by Article 412 of the Civil Code and this has been made succinctly clear in the case of *Chua vs. Republic*, 38 SCRA 411 which dictum has been reiterated in the more recent case of *Rosalio vs. Castillo, et al.*, G.R. No. L31712, September 28, 1984 wherein it was held that

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"From the time the New Civil Code took effect on August 30, 1950, until the promulgation of the Revised Rules of Court on January 1, 1964, there was no law nor rule of court prescribing the procedure to secure judicial authorization to effect the desired innocuous rectifications or alterations in the civil registrar pursuant to Art. 412 of the New Civil Code. Rule 108 of the Revised Rules of Court now provides for such a procedure which should be limited solely to the implementation of Art. 412, the substantive law on the matter of correcting entries in the civil register. Rule 108, like all other provisions of the Rules of Court, was promulgated by the Supreme Court pursuant to its rule-making authority under Section 13 of Art. VIII of the Constitution, which directs that such rules of court 'shall not diminish or increase or modify substantive rights'. 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." (Italics supplied)

The trial court therefore correctly ruled that under Article 412 of the New Civil Code as implemented by Rule 108 of the Revised Rules of Court, the correction prayed for could not be entertained. Jurisprudence on the point sustains such view.

Petitioner nevertheless insists that pursuant to the case of *Roces vs. Local Civil Registrar of Manila*[7] which he now invokes as authority in support of his stand, the correction sought for may now be effected under Rule 108 of the Rules of Court.

Far from supporting his dissertation, the aforesaid case militates very heavily against the thesis so tenaciously espoused by him. For in the said case it was so ruled that -

"The *Ty Kong Tin* case is not in point. *Ty Kong Tin* sought an amendment of the entry in the record of birth of his children relative to his and their political status, so that it may state that all of them are citizens of the Philippines instead of "Chinese", as set forth in the birth certificate of said children and in the records of the local civil registrar. On appeal, we reversed the decision of the Court of First Instance of Manila granting this relief, upon the ground that the correction authorized under Article 412 of the Civil Code of the Philippines are purely "clerical in nature", not those "which may affect the civil status for the nationality or citizenship of the persons involved, and that "the procedure contemplated" in said Article 412 "is summary in nature" and "cannot cover cases involving controversial issues." Indeed, the point in controversy in the *Ty Kong Tin* case was whether or not petitioner and his children were Chinese citizens, as stated in the corresponding certificate of birth and record of birth, or Filipino citizens, as contended by *Ty Kong Tin*.

The issue in the case at bar is, however, entirely different in nature. The legal status of *Ricardo Joaquin V. Roces* is not in dispute. The pleadings and his birth certificate show that he was born outside wedlock. The only questions before Us are whether the statements in said birth certificate identifying the alleged father of said child are valid and whether the Local Civil Registrar was justified in making the corresponding entry in the records of his office.

It should be noted, in this connection, that according to said birth certificate, the mother of Ricardo Joaquin V. Roces is one Carmen O. Valdellon, whose civil status is said to be "single". The certificate is signed by the physician of a local hospital and, apart from naming Joaquin P. Roces as the father of the child, it states that said petitioner is "married". On the back of the instrument there is a sworn statement of Carmen O. Valdellon about the truth of the data therein contained. Petitioner Joaquin P. Roces did not subscribe either the birth certificate or the aforementioned verified statement or any other declaration of similar import. Upon the other hand, Section 5 of Act No. 3753, specifically ordains, in the penultimate paragraph thereof, that:

"In the case of an illegitimate child, the birth certificate shall be signed and sworn to jointly by the parents of the infant or only by the mother if the father refuses. In the latter case, it shall not be permissible to state or reveal, in the document the name of the father who refuses to acknowledge the child, or to give therein any information by which such father could be identified."

Similarly, Article 280 of the Civil Code of the Philippines provides:

"When the father or mother makes the recognition separately, he or she shall not reveal the name of the person with whom he or she had the child; neither shall he or she state any circumstance whereby the other parent may be identified."

Thus, both legal provisions explicitly prohibit, not only the naming of the father of a child born outside wedlock, when the birth certificate, or the recognition, is not filed or made by him, but also, the statement of "any information" or "circumstance" by which he "could be identified". Accordingly, in *Crisolo vs. Macadaeg* (G.R. No. L-7017, decided April 29, 1954), we held that "the Local Civil Registrar had no authority to make of record the paternity" of an illegitimate child "upon the information of a third person"; that "records of public officers which are admissible 'are limited to those matters which the public officer has authority to record'; that "it is essential to authorize admission of a copy of the record of a private instrument that such instrument 'be made in accordance with the statutory requirement' (see also, 20 Am. Jur. p. 880); and that the certificate of birth of an illegitimate child, was signed by the mother of the latter, "is undoubtedly incompetent evidence of fatherhood of said child."

A deeper and more painstaking review of petitioner's case will reveal that it is no far different from that of the *Ty Kong Tin* case herein earlier mentioned. Petitioner's claim that his purpose in having his birth record corrected is for the same to reflect his and that of his father's true and correct citizenship and not to convert them from "chinese" to "filipino" citizens, for they are already Filipinos, is but a mere pretense. The records failed to reveal any convincing, much less indubitable proof that petitioner and his father are Filipino citizens. One is not or does not become a Filipino citizen simply by declaring himself to be so. And that is what petitioner did in the instant case. No documentary proof whatsoever - such as birth certificate, marriage certificate, etc. was presented nor any credible witness introduced to corroborate petitioner's claim that he and his father are Filipino citizens.

On the other hand, there is great probability that Saturnina Luarca, the person who assisted petitioner's mother when he was delivered, must have acted on the prevailing reputation and information she has about the citizenship of petitioner's father. Hence, she did not vacillate in stating that Lope Sta. Maria (petitioner's father) is a "chinese" at the time she reported the birth of the herein petitioner.

IN VIEW OF THE FOREGOING CONSIDERATIONS, and finding the instant appeal to be without merit, the same is hereby DISMISSED. With costs against petitioner-appellant.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion, Jr., and Cuevas, JJ., concur.

Abad Santos, J., no part.

[1] Pages 1 & 2, Original Records.

[2] Pages 53-57, CFI Decision, Original Records.

[3] Lim vs. Local Civil Registrar of Manila, 22 SCRA 876; Ty Kong Tin vs. Republic, 94 Phil. 321; Ansaldo vs. Republic, 102 SCRA 1046.

[4] 102 Phil. 1046.

[5] 20 SCRA 1070.

[6] 119 SCRA 270, 275.

[7] G.R. No. 10598, February 15, 1958; O.G. 4950; 102 Phil. 1050.

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