

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. CHULE Y. LIM, RESPONDENT.

G.R. No. 153883. January 13, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court stemmed from a petition for correction of entries under Rule 108 of the Rules of Court filed by respondent Chule Y. Lim with the Regional Trial Court of Lanao del Norte, Branch 4, docketed as Sp. Proc. No. 4933.

In her petition, respondent claimed that she was born on October 29, 1954 in Buru-an, Iligan City. Her birth was registered in Kauswagan, Lanao del Norte but the Municipal Civil Registrar of Kauswagan transferred her record of birth to Iligan City. She alleged that both her Kauswagan and Iligan City records of birth have four erroneous entries, and prays that they be corrected.

The trial court then issued an Order,[1] which reads:

WHEREFORE, finding the petition to be sufficient in form and substance, let the hearing of this case be set on December 27, 1999 before this Court, Hall of Justice, Rosario Heights, Tubod, Iligan City at 8:30 o'clock in the afternoon at which date, place and time any interested person may appear and show cause why the petition should not be granted.

Let this order be published in a newspaper of general circulation in the City of Iligan and the Province of Lanao del Norte once a week for three (3) consecutive weeks at the expense of the petitioner.

Furnish copies of this order the Office of the Solicitor General at 134 Amorsolo St., Legaspi Vill., Makati City and the Office of the Local Civil Registrar of Iligan City at Quezon Ave., Pala-o, Iligan City.

SO ORDERED.

During the hearing, respondent testified thus:

First, she claims that her surname “Yu” was misspelled as “Yo”. She has been using “Yu” in all her school records and in her marriage certificate.[2] She presented a clearance from the National Bureau of Investigation (NBI)[3] to further show the consistency in her use of the surname “Yu”.

Second, she claims that her father’s name in her birth record was written as “Yo Diu To (Co Tian)” when it should have been “Yu Dio To (Co Tian).”

Third, her nationality was entered as Chinese when it should have been Filipino considering that her father and mother never got married. Only her deceased father was Chinese, while her mother is Filipina. She claims that her being a registered voter attests to the fact that she is a Filipino citizen.

Finally, it was erroneously indicated in her birth certificate that she was a legitimate child when she should have

been described as illegitimate considering that her parents were never married.

Placida Anto, respondent's mother, testified that she is a Filipino citizen as her parents were both Filipinos from Camiguin. She added that she and her daughter's father were never married because the latter had a prior subsisting marriage contracted in China.

In this connection, respondent presented a certification attested by officials of the local civil registries of Iligan City and Kauswagan, Lanao del Norte that there is no record of marriage between Placida Anto and Yu Dio To from 1948 to the present.

The Republic, through the City Prosecutor of Iligan City, did not present any evidence although it actively participated in the proceedings by attending hearings and cross-examining respondent and her witnesses.

On February 22, 2000, the trial court granted respondent's petition and rendered judgment as follows:

WHEREFORE, the foregoing premises considered, to set the records of the petitioner straight and in their proper perspective, the petition is granted and the Civil Registrar of Iligan City is directed to make the following corrections in the birth records of the petitioner, to wit:

- Her family name from "YO" to "YU";
- Her father's name from "YO DIU TO (CO TIAN)" to "YU DIOTO (CO TIAN)";
- Her status from "legitimate" to "illegitimate" by changing "YES" to "NO" in answer to the question "LEGITIMATE?"; and,
- Her citizenship from "Chinese" to "Filipino".

SO ORDERED.[4]

The Republic of the Philippines appealed the decision to the Court of Appeals which affirmed the trial court's decision.[5]

Hence, this petition on the following assigned errors:

I

THE COURT OF APPEALS ERRED IN ORDERING THE CORRECTION OF THE CITIZENSHIP OF RESPONDENT CHULE Y. LIM FROM "CHINESE" TO "FILIPINO" DESPITE THE FACT THAT RESPONDENT NEVER DEMONSTRATED ANY COMPLIANCE WITH THE LEGAL REQUIREMENTS FOR ELECTION OF CITIZENSHIP.

II

THE COURT OF APPEALS ERRED IN ALLOWING RESPONDENT TO CONTINUE USING HER FATHER'S SURNAME DESPITE ITS FINDING THAT RESPONDENT IS AN ILLEGITIMATE CHILD.[6]

To digress, it is just as well that the Republic did not cite as error respondent's recourse to Rule 108 of the Rules of Court to effect what indisputably are substantial corrections and changes in entries in the civil register. To clarify, Rule 108 of the Revised Rules of Court provides the procedure for cancellation or correction of entries in the civil registry. The proceedings under said rule may either be summary or adversary in nature. If the correction sought to be made in the civil register is clerical, then the procedure to be adopted is summary. If the rectification affects the civil status, citizenship or nationality of a party, it is deemed substantial, and the procedure to be adopted is adversary. This is our ruling in *Republic v. Valencia*[7] where we held that even substantial errors in a

civil registry may be corrected and the true facts established under Rule 108 provided the parties aggrieved by the error avail themselves of the appropriate adversary proceeding. 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.[8]

As likewise observed by the Court of Appeals, we take it that the Republic's failure to cite this error amounts to a recognition that this case properly falls under Rule 108 of the Revised Rules of Court considering that the proceeding can be appropriately classified as adversarial.

Instead, in its first assignment of error, the Republic avers that respondent did not comply with the constitutional requirement of electing Filipino citizenship when she reached the age of majority. It cites Article IV, Section 1(3) of the 1935 Constitution, which provides that the citizenship of a legitimate child born of a Filipino mother and an alien father followed the citizenship of the father, unless, upon reaching the age of majority, the child elected Philippine citizenship.[9] Likewise, the Republic invokes the provision in Section 1 of Commonwealth Act No. 625, that legitimate children born of Filipino mothers may elect Philippine citizenship by expressing such intention "in a statement to be signed and sworn to by the party concerned before any officer authorized to administer oaths, and shall be filed with the nearest civil registry. The said party shall accompany the aforesaid statement with the oath of allegiance to the Constitution and the Government of the Philippines." [10]

Plainly, the above constitutional and statutory requirements of electing Filipino citizenship apply only to legitimate children. These do not apply in the case of respondent who was concededly an illegitimate child, considering that her Chinese father and Filipino mother were never married. As such, she was not required to comply with said constitutional and statutory requirements to become a Filipino citizen. By being an illegitimate child of a Filipino mother, respondent automatically became a Filipino upon birth. Stated differently, she is a Filipino since birth without having to elect Filipino citizenship when she reached the age of majority.

In *Ching, Re: Application for Admission to the Bar*, [11] citing *In re Florencio Mallare*, [12] we held:

Esteban Mallare, natural child of Ana Mallare, a Filipina, is therefore himself a Filipino, and no other act would be necessary to confer on him all the rights and privileges attached to Philippine citizenship (*U.S. vs. Ong Tianse*, 29 Phil. 332; *Santos Co vs. Government of the Philippine Islands*, 42 Phil. 543; *Serra vs. Republic*, L-4223, May 12, 1952; *Sy Quimsuan vs. Republic*, L-4693, Feb. 16, 1953; *Pitallano vs. Republic*, L-5111, June 28, 1954). Neither could any act be taken on the erroneous belief that he is a non-Filipino divest him of the citizenship privileges to which he is rightfully entitled. [13]

This notwithstanding, the records show that respondent elected Filipino citizenship when she reached the age of majority. She registered as a voter in Misamis Oriental when she was 18 years old. [14] The exercise of the right of suffrage and the participation in election exercises constitute a positive act of election of Philippine citizenship. [15]

In its second assignment of error, the Republic assails the Court of Appeals' decision in allowing respondent to use her father's surname despite its finding that she is illegitimate.

The Republic's submission is misleading. The Court of Appeals did not allow respondent to use her father's surname. What it did allow was the correction of her father's misspelled surname which she has been using ever since she can remember. In this regard, respondent does not need a court pronouncement for her to use her father's surname.

We agree with the Court of Appeals when it held:

Firstly, Petitioner-appellee is now 47 years old. To bar her at this time from using her father's surname which she has used for four decades without any known objection from anybody, would only sow confusion. Concededly, one of the reasons allowed for changing one's name or surname is to avoid confusion.

Secondly, under Sec. 1 of Commonwealth Act No. 142, the law regulating the use of aliases, a person is allowed to use a name "by which he has been known since childhood."

Thirdly, the Supreme Court has already addressed the same issue. In *Pabellar v. Rep. of the Phils.*,^[16] we held:

Section 1 of Commonwealth Act No. 142, which regulates the use of aliases, allows a person to use a name "by which he has been known since childhood" (*Lim Hok Albano v. Republic*, 104 Phil. 795; *People v. Uy Jui Pio*, 102 Phil. 679; *Republic v. Tañada*, *infra*). Even legitimate children cannot enjoin the illegitimate children of their father from using his surname (*De Valencia v. Rodriguez*, 84 Phil. 222).^[17]

While judicial authority is required for a change of name or surname,^[18] there is no such requirement for the continued use of a surname which a person has already been using since childhood.^[19]

The doctrine that disallows such change of name as would give the false impression of family relationship remains valid but only to the extent that the proposed change of name would in great probability cause prejudice or future mischief to the family whose surname it is that is involved or to the community in general.^[20] In this case, the Republic has not shown that the Yu family in China would probably be prejudiced or be the object of future mischief. In respondent's case, the change in the surname that she has been using for 40 years would even avoid confusion to her community in general.

WHEREFORE, in view of the foregoing, the instant petition for review is DENIED. The decision of the Court of Appeals in CA-G.R. CV No. 68893 dated May 29, 2002, is AFFIRMED. Accordingly, the Civil Registrar of Iligan City is DIRECTED to make the following corrections in the birth record of respondent Chule Y. Lim, to wit:

- Her family name from "YO" to "YU";
- Her father's name from "YO DIU TO (CO TIAN)" to "YU DIOTO (CO TIAN)";
- Her status from "legitimate" to "illegitimate" by changing "YES" to "NO" in answer to the question "LEGITIMATE?"; and,
- Her citizenship from "Chinese" to "Filipino".

SO ORDERED.

Davide, Jr., C.J., Panganiban, Carpio, and Azcuna, JJ., concur.

[1] Exhibit "B", Records, p. 14.

[2] Exhibit "J", Records, p. 35.

[3] Exhibit "L", Records, p. 37.

[4] Penned by Judge Gerardo D. Paguio.

[5] CA-G.R. CV No. 68893, penned by Associate Justice Ruben T. Reyes; concurred in by Associate Justices Renato C. Dacudao and Amelita G. Tolentino; Rollo, pp. 29-40.

[6] Rollo, p. 16.

- [7] 141 SCRA 462, 474, G.R. No. L-32181, March 5, 1986.
- [8] Eleosida v. Local Civil Registrar of Quezon City, 382 SCRA 22, 27, G.R. No. 130277, May 9, 2002.
- [9] Re: Application for Admission to the Bar, Ching, Bar Matter No. 914, 1 October 1999, 374 Phil. 342, 349.
- [10] Id., at 350.
- [11] Supra.
- [12] In re: Florencio Mallare, Adm. Case No. 533, 12 September 1974, 59 Phil. 45, 52.
- [13] Re: Application for Admission to the Bar, Ching, supra.
- [14] TSN, February 13, 2000, p. 7.
- [15] In re: Florencio Mallare, supra, cited in Co v. Electoral Tribunal of the House of Representatives, G.R. Nos. 92191-92, 30 July 1991, 199 SCRA 692, 707.
- [16] No. L-27298, 4 March 1976, 162 Phil. 22, 29.
- [17] Rollo, pp. 38-39.
- [18] Civil Code, Art. 376.
- [19] Pabellar v. Rep. of the Phils., No. L-27298, 4 March 1976, 162 Phil. 22, 29.
- [20] Llaneta v. Hon. Agrava, G.R. No. L-32054, 15 May 1974, 156 Phil. 21, 24.

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