

MARIA VIRGINIA V. REMO, PETITIONER, VS. THE HONORABLE SECRETARY OF FOREIGN AFFAIRS, RESPONDENT.

G.R. No. 169202. March 05, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review[1] of the 27 May 2005 Decision[2] and 2 August 2005 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 87710. The Court of Appeals affirmed the decision of the Office of the President, which in turn affirmed the decision of the Secretary of Foreign Affairs denying petitioner's request to revert to the use of her maiden name in her replacement passport.

The Facts

Petitioner Maria Virginia V. Remo is a married Filipino citizen whose Philippine passport was then expiring on 27 October 2000. Petitioner being married to Francisco R. Rallonza, the following entries appear in her passport: "Rallonza" as her surname, "Maria Virginia" as her given name, and "Remo" as her middle name. Prior to the expiry of the validity of her passport, petitioner, whose marriage still subsists, applied for the renewal of her passport with the Department of Foreign Affairs (DFA) office in Chicago, Illinois, U.S.A., with a request to revert to her maiden name and surname in the replacement passport.

Petitioner's request having been denied, Atty. Manuel Joseph R. Bretana III, representing petitioner, wrote then Secretary of Foreign Affairs Domingo Siason expressing a similar request.

On 28 August 2000, the DFA, through Assistant Secretary Belen F. Anota, denied the request, stating thus:

This has reference to your letter dated 17 August 2000 regarding one Ms. Maria Virginia V. Remo who is applying for renewal of her passport using her maiden name.

This Office is cognizant of the provision in the law that it is not obligatory for a married woman to use her husband's name. Use of maiden name is allowed in passport application only if the married name has not been used in previous application. The Implementing Rules and Regulations for Philippine Passport Act of 1996 clearly defines the conditions when a woman applicant may revert to her maiden name, that is, only in cases of annulment of marriage, divorce and death of the husband. Ms. Remo's case does not meet any of these conditions.[4] (Emphasis supplied)

Petitioner's motion for reconsideration of the above-letter resolution was denied in a letter dated 13 October 2000.[5]

On 15 November 2000, petitioner filed an appeal with the Office of the President.

On 27 July 2004, the Office of the President dismissed the appeal[6] and ruled that Section 5(d) of Republic Act

No. 8239 (RA 8239) or the Philippine Passport Act of 1996 "offers no leeway for any other interpretation than that only in case of divorce, annulment, or declaration [of nullity] of marriage may a married woman revert to her maiden name for passport purposes." The Office of the President further held that in case of conflict between a general and special law, the latter will control the former regardless of the respective dates of passage. Since the Civil Code is a general law, it should yield to RA 8239.

On 28 October 2004, the Office of the President denied the motion for reconsideration.[7]

Petitioner filed with the Court of Appeals a petition for review under Rule 43 of the Rules of Civil Procedure.

In its Decision of 27 May 2005, the Court of Appeals denied the petition and affirmed the ruling of the Office of the President. The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, premises considered, the petition is DENIED, and the resolution dated July 27, 2004, and the order dated October 28, 2004 of the Office of the President in O.P. Case No. 001-A-9344 are hereby AFFIRMED.

SO ORDERED.[8]

Petitioner moved for reconsideration which the Court of Appeals denied in its Resolution dated 2 August 2005.

Hence, this petition.

The Court of Appeals' Ruling

The Court of Appeals found no conflict between Article 370 of the Civil Code[9] and Section 5(d) of RA 8239.[10] The Court of Appeals held that for passport application and issuance purposes, RA 8239 limits the instances when a married woman applicant may exercise the option to revert to the use of her maiden name such as in a case of a divorce decree, annulment or declaration of nullity of marriage. Since there was no showing that petitioner's marriage to Francisco Rallonza has been annulled, declared void or a divorce decree has been granted to them, petitioner cannot simply revert to her maiden name in the replacement passport after she had adopted her husband's surname in her old passport. Hence, according to the Court of Appeals, respondent was justified in refusing the request of petitioner to revert to her maiden name in the replacement passport.

The Issue

The sole issue in this case is whether petitioner, who originally used her husband's surname in her expired passport, can revert to the use of her maiden name in the replacement passport, despite the subsistence of her marriage.

The Ruling of the Court

The petition lacks merit.

Title XIII of the Civil Code governs the use of surnames. In the case of a married woman, Article 370 of the Civil Code provides:

ART. 370. A married woman may use:

- (1) HER MAIDEN FIRST NAME AND SURNAME AND ADD HER HUSBAND'S SURNAME, OR
- (2) HER MAIDEN FIRST NAME AND HER HUSBAND'S SURNAME, OR
- (3) Her husband's full name, but prefixing a word indicating that she is his wife, such as "Mrs."

We agree with petitioner that the use of the word "may" in the above provision indicates that the use of the husband's surname by the wife is permissive rather than obligatory. This has been settled in the case of *Yasin v. Honorable Judge Shari'a District Court*.^[11]

In *Yasin*,^[12] petitioner therein filed with the Shari'a District Court a "Petition to resume the use of maiden name" in view of the dissolution of her marriage by divorce under the Code of Muslim Personal Laws of the Philippines, and after marriage of her former husband to another woman. In ruling in favor of petitioner therein, the Court explained that:

When a woman marries a man, she need not apply and/or seek judicial authority to use her husband's name by prefixing the word "Mrs." before her husband's full name or by adding her husband's surname to her maiden first name. The law grants her such right (Art. 370, Civil Code). Similarly, when the marriage ties or vinculum no longer exists as in the case of death of the husband or divorce as authorized by the Muslim Code, the widow or divorcee need not seek judicial confirmation of the change in her civil status in order to revert to her maiden name as use of her former husband's is optional and not obligatory for her (Tolentino, Civil Code, p. 725, 1983 ed.; Art. 373, Civil Code). When petitioner married her husband, she did not change her but only her civil status. Neither was she required to secure judicial authority to use the surname of her husband after the marriage as no law requires it. (Emphasis supplied)

Clearly, a married woman has an option, but not a duty, to use the surname of the husband in any of the ways provided by Article 370 of the Civil Code.^[13] She is therefore allowed to use not only any of the three names provided in Article 370, but also her maiden name upon marriage. She is not prohibited from continuously using her maiden name once she is married because when a woman marries, she does not change her name but only her civil status. Further, this interpretation is in consonance with the principle that surnames indicate descent.^[14]

In the present case, petitioner, whose marriage is still subsisting and who opted to use her husband's surname in her old passport, requested to resume her maiden name in the replacement passport arguing that no law prohibits her from using her maiden name. Petitioner cites *Yasin* as the applicable precedent. However, *Yasin* is not squarely in point with this case. Unlike in *Yasin*, which involved a Muslim divorcee whose former husband is already married to another woman, petitioner's marriage remains subsisting. Another point, *Yasin* did not involve a request to resume one's maiden name in a replacement passport, but a petition to resume one's maiden name in view of the dissolution of one's marriage.

The law governing passport issuance is RA 8239 and the applicable provision in this case is Section 5(d), which states:

Sec. 5. Requirements for the Issuance of Passport. -- No passport shall be issued to an applicant unless the Secretary or his duly authorized representative is satisfied that the applicant is a Filipino citizen who has complied with the following requirements: x x x

(d) In case of a woman who is married, separated, divorced or widowed or whose marriage has been annulled or declared by court as void, a copy of the certificate of marriage, court decree of separation, divorce or annulment or certificate of death of the deceased spouse duly issued and authenticated by the Office of the Civil Registrar General: Provided, That in case of a divorce decree, annulment or declaration of marriage as void, the woman applicant may revert to the use of her maiden name: Provided, further, That such divorce is recognized under existing laws of the Philippines; x x x (Emphasis supplied)

The Office of the Solicitor General (OSG), on behalf of the Secretary of Foreign Affairs, argues that the highlighted proviso in Section 5(d) of RA 8239 "limits the instances when a married woman may be allowed to revert to the use of her maiden name in her passport." These instances are death of husband, divorce decree, annulment or nullity of marriage. Significantly, Section 1, Article 12 of the Implementing Rules and Regulations

of RA 8239 provides:

The passport can be amended only in the following cases:

- a) Amendment of woman's name due to marriage;
- b) Amendment of woman's name due to death of spouse, annulment of marriage or divorce initiated by a foreign spouse; or
- c) Change of surname of a child who is legitimated by virtue of a subsequent marriage of his parents.

Since petitioner's marriage to her husband subsists, placing her case outside of the purview of Section 5(d) of RA 8239 (as to the instances when a married woman may revert to the use of her maiden name), she may not resume her maiden name in the replacement passport.[15] This prohibition, according to petitioner, conflicts with and, thus, operates as an implied repeal of Article 370 of the Civil Code.

Petitioner is mistaken. The conflict between Article 370 of the Civil Code and Section 5(d) of RA 8239 is more imagined than real. RA 8239, including its implementing rules and regulations, does not prohibit a married woman from using her maiden name in her passport. In fact, in recognition of this right, the DFA allows a married woman who applies for a passport for the first time to use her maiden name. Such an applicant is not required to adopt her husband's surname.[16]

In the case of renewal of passport, a married woman may either adopt her husband's surname or continuously use her maiden name. If she chooses to adopt her husband's surname in her new passport, the DFA additionally requires the submission of an authenticated copy of the marriage certificate. Otherwise, if she prefers to continue using her maiden name, she may still do so. The DFA will not prohibit her from continuously using her maiden name.[17]

However, once a married woman opted to adopt her husband's surname in her passport, she may not revert to the use of her maiden name, except in the cases enumerated in Section 5(d) of RA 8239. These instances are: (1) death of husband, (2) divorce, (3) annulment, or (4) nullity of marriage. Since petitioner's marriage to her husband subsists, she may not resume her maiden name in the replacement passport. Otherwise stated, a married woman's reversion to the use of her maiden name must be based only on the severance of the marriage.

Even assuming RA 8239 conflicts with the Civil Code, the provisions of RA 8239 which is a special law specifically dealing with passport issuance must prevail over the provisions of Title XIII of the Civil Code which is the general law on the use of surnames. A basic tenet in statutory construction is that a special law prevails over a general law,[18] thus:

[I]t is a familiar rule of statutory construction that to the extent of any necessary repugnancy between a general and a special law or provision, the latter will control the former without regard to the respective dates of passage.[19]

Moreover, petitioner's theory of implied repeal must fail. Well-entrenched is the rule that an implied repeal is disfavored. The apparently conflicting provisions of a law or two laws should be harmonized as much as possible, so that each shall be effective.[20] For a law to operate to repeal another law, the two laws must actually be inconsistent. The former must be so repugnant as to be irreconcilable with the latter act.[21] This petitioner failed to establish.

The Court notes that petitioner would not have encountered any problems in the replacement passport had she opted to continuously and consistently use her maiden name from the moment she was married and from the time she first applied for a Philippine passport. However, petitioner consciously chose to use her husband's surname before, in her previous passport application, and now desires to resume her maiden name. If we allow petitioner's

present request, definitely nothing prevents her in the future from requesting to revert to the use of her husband's surname. Such unjustified changes in one's name and identity in a passport, which is considered superior to all other official documents,[22] cannot be countenanced. Otherwise, undue confusion and inconsistency in the records of passport holders will arise. Thus, for passport issuance purposes, a married woman, such as petitioner, whose marriage subsists, may not change her family name at will.

The acquisition of a Philippine passport is a privilege. The law recognizes the passport applicant's constitutional right to travel. However, the State is also mandated to protect and maintain the integrity and credibility of the passport and travel documents proceeding from it[23] as a Philippine passport remains at all times the property of the Government. The holder is merely a possessor of the passport as long as it is valid and the same may not be surrendered to any person or entity other than the government or its representative.[24]

As the OSG correctly pointed out:

[T]he issuance of passports is impressed with public interest. A passport is an official document of identity and nationality issued to a person intending to travel or sojourn in foreign countries. It is issued by the Philippine government to its citizens requesting other governments to allow its holder to pass safely and freely, and in case of need, to give him/her aid and protection. x x x

Viewed in the light of the foregoing, it is within respondent's competence to regulate any amendments intended to be made therein, including the denial of unreasonable and whimsical requests for amendments such as in the instant case.[25]

WHEREFORE, we DENY the petition. We AFFIRM the 27 May 2005 Decision and 2 August 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 87710.

SO ORDERED.

Brion, Del Castillo, Abad, and Perez, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Rollo, pp. 37-44. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Rosmari D. Carandang and Monina Arevalo Zenarosa concurring.

[3] Id. at 35.

[4] Id. at 49.

[5] Id. at 50.

[6] Id. at 45-47.

[7] Id. at 48.

[8] Id. at 44.

[9] Art. 370. A married woman may use:

(1) Her maiden first name and surname and add her husband's surname, or

(2) Her maiden first name and her husband's surname or

(3) Her husband's full name, but prefixing a word indicating that she is his wife, such as "Mrs."

[10] Section 5(d) for RA 8239 provides: In case of a woman who is married, separated, divorced or widowed or whose marriage has been annulled or declared by court as void, a copy of the certificate of marriage, court decree of separation, divorce or annulment or certificate of death of the deceased spouse duly issued and authenticated by the Office of the Civil Registrar General: Provided, That in case of a divorce decree, annulment or declaration of marriage as void, the woman applicant may revert to the use of her maiden name: Provided, further, That such divorce is recognized under existing laws of the Philippines;

[11] 311 Phil. 696, 707 (1995). See also Bar Matter No. 1625, In re: Petition to Use Maiden Name in Petition to Take the 2006 Bar Examinations, Josephine P. Uy-Timosa (En Banc Resolution dated 18 July 2006).

[12] Supra.

[13] TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, Vol. 1 (1990 edition), p. 675.

[14] Id.

[15] Rollo, pp. 264-265.

[16] See <http://dfa.gov.ph/main/index.php/consular-services/passport>.

[17] See <http://dfa.gov.ph/main/index.php/renewal-of-passport>.

[18] *Sitchon v. Aquino*, 98 Phil. 458, 465 (1956); *Laxamana v. Baltazar*, 92 Phil. 32, 35 (1952); *De Joya v. Lantin*, 126 Phil. 286, 290 (1967); *Nepomuceno v. RFC*, 110 Phil. 42, 47 (1960).

[19] *Lagman v. City of Manila*, 123 Phil. 1439, 1447 (1966) citing *Cassion v. Banco Nacional Filipino*, 89 Phil. 560, 561 (1951).

[20] *Valera v. Tuason, Jr.*, 80 Phil. 823, 827 (1948); *Republic v. Asuncion*, G.R. No. 108208, 11 March 1994, 231 SCRA 211, 231, citing *Gordon v. Veridiano II*, No. L-55230, 8 November 1988, 167 SCRA 51, 58-59; *People v. Antillon*, 200 Phil. 144, 149 (1982).

[21] *U.S. v. Palacio*, 33 Phil. 208 (1916).

[22] Section 19, RA 8239.

[23] See <http://philippine-embassy.org.sg/index.cfm?GPID=9>.

[24] Section 11, RA 8239.

[25] Rollo, p. 272.

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