

**IN RE: PETITION TO CHANGE NAME. FELIMON TSE AND ALICE TSE,
THRU THEIR GUARDIAN AD LITEM ISMAELA DAWAT,
PETITIONERS-APPELLEES, VS. REPUBLIC OF THE PHILIPPINES,
OPPOSITOR-APPELLANT.**

G.R. No. 20708. August 31, 1967

Ponente: DIZON, J.

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DIZON, J.:

Appeal taken by the Republic of the Philippines from the decision of the Court of First Instance of Leyte in Special Proceedings No. 548-0 allowing Felimon Tse and Alice Tse to change their names to Florimon Sia and Alice Sia, respectively.

On May 26, 1962 Felimon Tse and Alice Tse, thru their guardian ad litem, Ismaela Dawat, filed a petition with the above-named court for a change of their names to Florimon Sia and Alice Sia, respectively, alleging that they are brother and sister, 17 and 16 years old, respectively; that they had been bona fide residents of Ormoc City for more than three years prior to the date of the filing of their petition; that they had been using the names of Florimon Sia and Alice Sia, respectively, since birth and had used such names in school as well as in their social relations; that unless their names are changed to those appearing in their school records, they might encounter difficulties in their pursuit for higher education.

The City Attorney of Ormoc City, on behalf of the Solicitor General, opposed the petition on the ground that the principal reason relied upon in support thereof, namely, that they might encounter difficulties in pursuing higher education if their names are not changed, was not a sufficient cause for a change of name.

After proper publication of the petition and due hear-ing, the court rendered the appealed judgment.

The facts alleged in the petition have been clearly established by petitioners' evidence. In fact, raising no factual question at all, the brief submitted by the Solicitor General urges Us to reverse the appealed decision only upon the following grounds: that the lower court erred in enter-taining the petition inspite of the fact that it was verified by petitioners themselves who were still minors at the time, and in holding that there is sufficient reason for changing their names.

In connection with the first ground, We find that Section 2 of Rule 103 of the Rules of Court provides that a petition for change of name shall be signed and verified "by the person desiring his name changed, or some other person on his behalf". No provision contained in said rule requires that a person desiring to change his name should be of age and that if he is a minor the verification made by him is of no legal effect.

Moreover, in accordance with Article 316, paragraph 1 of the New Civil Code, the father and the mother have, with respect to their unemancipated children, the duty to re-present them in all actions which redound to their benefit. In the present case, the basic petition shows that the same was filed in the name of the minor petitioners, assisted by their mother as their guardian ad litem. Whether the latter was or was not actually appointed by the

lower court in that capacity seems to be of little consequence considering that under the legal provision just cited she may be deemed to have filed the petition jointly with her children or in their behalf.

Lastly, it may not be amiss to remember that the jurisdiction of courts over the subject matter depends upon the nature of the action or proceeding and not upon the capacity or incapacity to sue on the part of one of the parties; neither is it an absolute pre-requisite to jurisdiction over an action by a minor that he sue by guardian ad litem. The action is not deemed void on such ground alone because if the lack or absence of a guardian ad litem constitutes any defect at all, the same is amendable. In the present case, it is clear that the lower court was fully cognizant of the fact that the mother of the petitioners appeared as their guardian ad litem. This being so, the lack of any positive proof that no order appointing her as such has ever been issued justifies the presumption either that she was actually so appointed or that the lower court inferentially authorized her appearance as such.

On the question of whether or not there is sufficient reason to justify the change of name, We are clearly of the view that there is such reasonable necessity. If it is true - as has been established by the evidence - that petitioners had been using the names of Florimon Sia and Alice Sia for school purposes and that their respective school records are under the names aforesaid, that, in our opinion, constitutes by itself a valid ground upon which to authorize the change of their names. In this connection it must be taken into account that, according to the evidence, the chinese surname Tse is really the same as or equivalent to Sia.

WHEREFORE, the decision appealed from being in accordance with law and the evidence, the same is hereby affirmed, without costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Bengzon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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