

EMELITA BASILIO GAN, PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, RESPONDENT.

G.R. No. 207147. September 14, 2016

Ponente: REYES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-207147/>

REYES, J.:

This is a petition for review on certiorari[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated April 26, 2013 issued by the Court of Appeals (CA) in CA-G.R. CV No. 98112.

Facts

Emelita Basilio Gan (petitioner) was born on December 21, 1956 out of wedlock to Pia Gan, her father who is a Chinese national, and Consolacion Basilio, her mother who is a Filipino citizen.[3] The petitioner's birth certificate,[4] which was registered in the Office of the Local Civil Registrar (LCR) of Libmanan, Camarines Sur, indicates that her full name is Emelita Basilio.

On June 29, 2010, the petitioner filed a Petition[5] for correction of name with the Regional Trial Court (RTC) of Libmanan, Camarines Sur. The petitioner sought to change the full name indicated in her birth certificate from "Emelita Basilio" to "Emelita Basilio Gan." She claimed that she had been using the name "Emelita Basilio Gan" in her school records from elementary until college, employment records, marriage contract, and other government records.[6]

Ruling of the RTC

On July 15, 2010, the RTC issued an Order, which noted that the petition filed sought not merely a correction of entry in the birth certificate, but a change of name. Accordingly, the RTC ordered the petitioner to make the necessary amendment to her petition to conform to the requirements of Rule 103 of the Rules of Court.[7]

The petitioner filed with the RTC an Amended Petition[8] dated August 3, 2010 for change of name. The amended petition contained substantially the same allegations as in the petition for correction of entry in the birth certificate. On August 10, 2010, the RTC set the initial hearing of the petition in a newspaper of general circulation. The Office of the Solicitor General (OSG), as counsel of the Republic of the Philippines (respondent), filed its notice of appearance. The OSG authorized the Office of the Provincial Prosecutor of Libmanan, Camarines Sur to appear and assist the OSG in the proceedings before the RTC.[9]

On July 19, 2011, after due proceedings; the RTC of Libmanan, Camarines Sur, Branch 29, issued an Order[10] granting the petition for change of name. The RTC, thus, directed the LCR of Libmanan, Camarines Sur to change the petitioner's name in her birth certificate from "Emelita Basilio" to "Emelita Basilio Gan." The RTC opined that, from the evidence presented, the said petition was filed solely to put into order the records of the petitioner and that changing her name in her birth certificate into Emelita Basilio Gan would avoid confusion in her personal records.[11]

The respondent sought a reconsideration[12] of the RTC Order dated July 19, 2011, alleging that the petitioner, who is an illegitimate child, failed to adduce evidence that she was duly recognized by her father, which would have allowed her to use the surname of her father.[13] On October 17, 2011, the RTC issued an Order[14] denying the respondent's motion for reconsideration.

Ruling of the CA

On appeal, the CA, in its Decision[15] dated April 26, 2013, reversed and set aside the RTC Orders dated July 19, 2011 and October 17, 2011. The CA opined that pursuant to Article 176 of the Family Code, as amended by Republic Act No. 9255,[16] the petitioner, as an illegitimate child, may only use the surname of her mother; she may only use the surname of her father if their filiation has been expressly recognized by her father.[17] The CA pointed out that the petitioner has not adduced any evidence showing that her father had recognized her as his illegitimate child and, thus, she may not use the surname of her father.[18]

In this petition for review, the petitioner maintains that the RTC correctly granted her petition since she only sought to have her name indicated in her birth certificate changed to avoid confusion as regards to her personal records.[19] She insists that her failure to present evidence that her father recognized her as his illegitimate child is immaterial; a change of name is reasonable and warranted, if it is necessary to avoid confusion.[20]

Ruling of the Court

The petition is denied.

A change of name is a privilege and not a matter of right; a proper and reasonable cause must exist before a person may be authorized to change his name.[21] "In granting or denying petitions for change of name, the question of proper and reasonable cause is left to the sound discretion of the court. x x x What is involved is not a mere matter of allowance or disallowance of the request, but a judicious evaluation of the sufficiency and propriety of the justifications advanced in support thereof, mindful of the consequent results in the event of its grant and with the sole prerogative for making such determination being lodged in the courts." [22]

After a judicious review of the records of this case, the Court agrees with the CA that the reason cited by the petitioner in support of her petition for change of name, i.e. that she has been using the name "Emelita Basilio Gan" in all of her records, is not a sufficient or proper justification to allow her petition. When the petitioner was born in 1956, prior to the enactment and effectivity of the Family Code, the pertinent provisions of the Civil Code then regarding the petitioner's use of surname provide:

Article 366. A natural child acknowledged by both parents shall principally use the surname of the father. If recognized by only one of the parents, a natural child shall employ the surname of the recognizing parent.

Article 368. Illegitimate children referred to in Article 287 shall bear the surname of the mother.

In her amended petition for change of name, the petitioner merely stated that she was born out of wedlock; [23] she did not state whether her parents, at the time of her birth, were not disqualified by any impediment to marry each other, which would make her a natural child pursuant to Article 269 of the Civil Code. If, at the time of the petitioner's birth, either of her parents had an impediment to marry the other, she may only bear the surname of her mother pursuant to Article 368 of the Civil Code. Otherwise, she may use the surname of her father provided that she was acknowledged by her father.

However, the petitioner failed to adduce any evidence that would show that she indeed was duly acknowledged by his father. The petitioner's evidence consisted only of her birth certificate signed by her mother, school records, employment records, marriage contract, certificate of baptism, and other government records. Thus, assuming that

she is a natural child pursuant to Article 269 of the Civil Code, she could still not insist on using her father's surname. It was, thus, a blatant error on the part of the RTC to have allowed the petitioner to change her name from "Emelita Basilio" to "Emelita Basilio Gan."

The petitioner's reliance on the cases of *Alfon v. Republic of the Philippines*,^[24] *Republic of the Philippines v. Coseteng-Magpayo*,^[25] and *Republic of the Philippines v. Lim*^[26] to support her position is misplaced.

In *Alfon*, the name of the petitioner therein which appeared in her birth certificate was Maria Estrella Veronica Primitiva Duterte; she was a legitimate child of her father and mother. She filed a petition for change of name, seeking that she be allowed to use the surname "Alfon," her mother's surname, instead of "Duterte." The trial court denied the petition, ratiocinating that under Article 364 of the Civil Code, legitimate children shall principally use the surname of the father. The Court allowed the petitioner therein to use the surname of her mother since Article 364 of the Civil Code used the word "principally" and not "exclusively" and, hence, there is no legal obstacle if a legitimate child should choose to use the mother's surname to which he or she is legally entitled.^[27]

In contrast, Articles 366 and 368 of the Civil Code do not give to an illegitimate child or a natural child not acknowledged by the father the option to use the surname of the father. Thus, the petitioner cannot insist that she is allowed to use the surname of her father.

In *Coseteng-Magpayo*, the issue was the proper procedure to be followed when the change sought to be effected in the birth certificate affects the civil status of the respondent therein from legitimate to illegitimate. The respondent therein claimed that his parents were never legally married; he filed a petition to change his name from "Julian Edward Emerson Coseteng Magpayo," the name appearing in his birth certificate, to "Julian Edward Emerson Marquez-Lim Coseteng." The notice setting the petition for hearing was published and, since there was no opposition thereto, the trial court; issued an order of general default and eventually granted the petition of the respondent therein by, inter alia, deleting the entry on the date and place of marriage of his parents and correcting his surname from "Magpayo" to "Coseteng."^[28] The Court reversed the trial court's decision since the proper remedy would have been to file a petition under Rule 108 of the Rules of Court. The Court ruled that the change sought by the respondent therein involves his civil status as a legitimate child; it may only be given due course through an adversarial proceedings under Rule 108 of the Rules of Court. The Court's pronouncement in *Coseteng-Magpayo* finds no application in this case.

Finally, *Lim* likewise finds no application in this case. In *Lim*, the petition that was filed was for correction of entries under Rule 108 of the Rules of Court; the petition sought, among others, is the correction of the surname of the respondent therein from "Yo" to "Yu." Further, the respondent therein, although an illegitimate child, had long been using the surname of her father. It bears stressing that the birth certificate of the respondent therein indicated that her surname was the same as her father albeit misspelled. Thus, a correction of entry in her birth certificate is appropriate.^[29]

Here, the petitioner filed a petition for change of name under Rule 103 and not a petition for correction of entries under Rule 108. Unlike in *Lim*, herein petitioner's birth certificate indicated that she bears the surname of her mother and not of her father.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is DENIED.

SO ORDERED.

Carpio,[*] Velasco, Jr., (Chairperson), Bersamin,**] and Perez, JJ., concur.

November 9, 2016

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on September 14, 2016 a Resolution, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on November 9, 2016 at 11:15 a.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] Designated additional Member per Raffle dated October 13, 2014 vice Associate Justice Francis H. Jardeleza.

**] Designated additional Member per Raffle dated February 17, 2016 vice Associate Justice Diosdado M. Peralta.

[1] Rollo, pp. 4-18.

[2] Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Francisco P. Acosta and Angelita A. Gacutan concurring; id. at 21-29.

[3] Id. at 21-22.

[4] Id. at 30-31.

[5] Id. at 33-35.

[6] Id. at 33-34.

[7] Id. at 22.

[8] Id. at 36-38.

[9] Id. at 23-24.

[10] Issued by Presiding Judge Cecilia R. Borja-Soler; id. at 39-41.

[11] Id. at 41.

[12] Id. at 42-49.

[13] Id. at 43.

[14] Id. at 50-52.

[15] Id. at 21-29.

[16] AN ACT ALLOWING ILLEGITIMATE CHILDREN TO USE THE SURNAME OF THEIR FATHER, AMENDING FOR THE PURPOSE ARTICLE 176 OF EXECUTIVE ORDER NO. 209, OTHERWISE KNOWN AS THE "FAMILY CODE OF THE PHILIPPINES." Approved on February 24, 2004.

[17] Rollo, p. 26.

[18] Id. at 27.

[19] Id. at 13.

[20] Id. at 11.

[21] See *Oan v. Republic of the Philippines*, 102 Phil. 468, 469-470 (1957).

[22] *Julian Lin Wang v. Cebu City Civil Registrar*, 494 Phil. 149, 158 (2005).

[23] Rollo, p. 36.

[24] 186 Phil. 600 (1980).

[25] 656 Phil. 550 (2011).

[26] 464 Phil. 151 (2004).

[27] *Alfon v. Republic of the Philippines*, *supra* note 24, at 603.

[28] *Republic of the Philippines v. Coseteng-Magpayo*, *supra* note 25, at 552-554.

[29] *Republic of the Philippines v. Lim*, *supra* note 26, at 155.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.