

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. MERLE M. MALIGAYA, ALSO KNOWN AS “MERLY M. MALIGAYA-SARMIENTO,” RESPONDENT.***G.R. No. 233068. November 09, 2020*

Ponente: LOPEZ, J.

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This is a Petition for Review on Certiorari[1] assailing the Decision[2] dated December 14, 2016 of the Regional Trial Court (RTC) in Special Proceedings No. NC-2016-2599 which granted the correction of entries in the birth certificate referring to the first name and date of birth.

**ANTECEDENTS**

In 2016, Merly Maligaya (Merly) filed a petition for correction of entries in her birth certificate under Rule 108 of the Rules of Court before the RTC docketed as Special Proceedings No. NC-2016-2599. In her petition, Merly prayed to change her first name from “MERLE” to “MERLY” and her date of birth from “February 15, 1959” to “November 26, 1958.”[3] As supporting evidence, Merly presented the original and certified original copies of her SSS Member’s Data E-4 Form, Voter’s Registration Record, Voter’s Certification, Voter’s Identification Card, Police Clearance and National Bureau of Investigation (NBI) Clearance. After finding the petition sufficient in form and substance, the RTC ordered the publication of the petition in a newspaper of general circulation once a week for three consecutive weeks. Trial then ensued.

On December 14, 2016, the RTC granted the petition to reflect Merly’s accurate personal circumstances and to avoid confusion on her public and private documents, thus:

WHEREFORE, premises considered, the instant petition for correction of entries are hereby GRANTED. Ordering the Local Civil Registry of Magallanes, Cavite to correct the date of birth of petitioner from February 15, 1959 to November 26, 1958 and further ordered to correct the first name of said petitioner from Merle to Merly.

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SO ORDERED.[4]

The Office of the Solicitor General (OSG) moved for a reconsideration.[5] Yet, the RTC denied the motion.[6] Hence, this petition.[7] The OSG argues that the RTC has no jurisdiction to rectify the error in Merly’s first name because the mistake is clerical that must be corrected through administrative proceedings under Republic Act (RA) No. 9048, as amended by RA No. 10172. As to the date of birth, Merly properly filed a petition under Rule 108 of the Rules of Court but she failed to comply with the requirements of Section 3, Rule 108 to implead all persons who have a claim or any interest in the proceedings. On the other hand, Merly maintains that the correction of her first name and date of birth under Rule 108 is appropriate, and that the filing of separate petitions will result in circuitous proceedings and unjustified delay. Moreover, Merly claims that the correction of such entries is clerical and strict observance with Rule 108 is not required. Lastly, the publication of the petition cured

the failure to implead the indispensable parties.[8]

#### RULING

The petition is partly meritorious.

The issues hinge on the RTC's jurisdiction to order the correction of Merly's birth certificate under the provisions of Rule 108 of the Rules of Court as regards the erroneous entries in her first name from "MERLE" to "MERLY" and her date of birth from "February 15, 1959" to "November 26, 1958." Thus, we find it necessary to discuss first the scope of the rule.

Foremost, Rule 108 applies when the person is seeking to correct clerical and innocuous mistakes in his or her documents with the civil register. It also governs the correction of substantial errors affecting the civil status, citizenship, and nationality of a person. As such, the proceedings may either be summary, if the correction pertains to clerical mistakes, or adversary, if it involves substantial errors. Also, the petition must be filed before the RTC which sets a hearing and directs the publication of its order in a newspaper of general circulation. Afterwards, the RTC may grant or dismiss the petition and serve a copy of its judgment to the Civil Registrar.[9]

In 2001, RA No. 9048 amended Rule 108 and authorized the local civil registrars, or the Consul General, as the case may be, to correct clerical or typographical errors in the civil registry, or make changes in the first name or nickname, without need of a judicial order. The law provided an administrative recourse for the correction of clerical or typographical errors, essentially leaving substantial corrections to Rule 108.[10] In 2012, RA No. 10172[11] amended RA No. 9048[12] expanding the authority of local civil registrars and the Consul General to make changes in the day and month in the date of birth, as well as in the recorded sex of a person, when it is patently clear that there was a typographical error or mistake in the entry.[13]

Applying these precepts, we now determine whether the errors that Merly seeks to correct in her birth certificate are substantial or clerical. Ordinarily, the term "substantial" means consisting of or relating to substance, or something that is important or essential.[14] In relation to change or correction of an entry in the birth certificate, substantial refers to that which establishes, or affects the substantive right of the person on whose behalf the change or correction is being sought. Thus, changes which may affect the civil status from legitimate to illegitimate, as well as sex, civil status, or citizenship of a person are substantial in character. On the other hand, RA No. 9048, as amended by RA No. 10172, defines a clerical or typographical error as a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth, mistake in the entry of day and month in the date of birth or the sex of the person or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records. However, the correction must not involve the change of nationality, age, or status of the petitioner.[15] Otherwise, the petition must be denied.[16]

Here, the correction of Merly's first name from "MERLE" to "MERLY" refers to a clerical or typographical error. It merely rectified the erroneous spelling through the substitution of the second letter "E" in "MERLE" with the letter "Y," so it will read as "MERLY." To be sure, the documentary evidence satisfactorily show that Merly's first name is not "MERLE" as incorrectly indicated in her birth certificate. More importantly, the correction will neither affect nor prejudice any substantial rights. The innocuous errors in Merly's first name may be corrected or changed under RA No. 9048 by referring to related documents. In *Republic v. Mercadera*,[17] we ruled that the correction of petitioner's misspelled first name from "MARILYN" to "MERLYN" involves only a clerical mistake. The Court then cited several cases pertaining to similar errors, viz.:

Indeed, there are decided cases involving mistakes similar to *Mercadera's* case which recognize the same a

harmless error. In *Yu v. Republic* it was held that “to change ‘Sincio’ to ‘Sencio’ which merely involves the substitution of the first vowel ‘i’ in the first name into the vowel ‘e’ amounts merely to the righting of a clerical error. In *Labayo-Rowe v. Republic*, it was held that the change of petitioner’s name from “Beatriz Labayo/Beatriz Labayu” to “Emperatriz Labayo” was a mere innocuous alteration wherein a summary proceeding was appropriate. In *Republic v. Court of Appeals, Jaime B. Caranto and Zenaida P. Caranto*, the correction involved the substitution of the letters “ch” for the letter “d,” so that what appears as “Midael” as given name would read “Michael.” In the latter case, this Court, with the agreement of the Solicitor General, ruled that the error was plainly clerical, such that, “changing the name of the child from ‘Midael C. Mazon’ to ‘Michael C. Mazon’ cannot possibly cause any confusion, because both names can be read and pronounced with the same rhyme (tugma) and tone (tono, tunog, himig).”[18]

Meanwhile, the correction of Merly’s date of birth is substantial because changing the month, day and year from “February 15, 1959” to “November 26, 1958” will alter her age. As discussed earlier, the law expressly provides that the correction of clerical or typographical error must not involve a change in the age of the petitioner. Otherwise, the petition must be denied. The law’s unmistakable intent is to characterize the correction of age as substantial that necessitates a judicial order. Indeed, the age of a person is a matter of public concern and an essential component of one’s status in law. A change in a person’s date of birth, in which an alteration in his age is a necessary consequence, significantly affects his status with regard to matters, such as marriage and family relations, obligations and contracts, and the exercise of legal rights.[19] Corollarily, the substantial error in Merly’s date of birth may be corrected only through the appropriate adversary proceedings.[20] Thus, Merly correctly filed a petition for cancellation and/or correction of the entries before the RTC under Rule 108 of the Rules of Court. Nevertheless, we find that Merly failed to observe the required procedures under Sections 3, 4, and 5 of Rule 108, to wit:

SEC. 3. Parties. — When cancellation or correction of an entry in the civil register is sought, the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding.

SEC. 4. Notice and publication. — Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the persons named in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

SEC. 5. Opposition. — The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto. (Emphases supplied.)

Verily, the rules require two sets of notices to potential oppositors — one is given to persons named in the petition and another served to persons who are not named in the petition but nonetheless may be considered interested or affected parties. Consequently, the petition for a substantial correction must implead the civil registrar and other persons who have or claim to have any interest that would be affected.[21] In this case, Merly only impleaded the local civil registrar but not her parents who are in the best position to establish the correct date of her birth as well as her siblings, if any. In *Labayo-Rowe v. Republic*,[22] we emphasized the necessity of impleading indispensable parties, thus:

Aside from the Office of the Solicitor General, all other indispensable parties should have been made respondents. They include not only the declared father of the child but the child as well, together with the paternal grandparents, if any, as their hereditary rights would be adversely affected thereby. All other persons who may be affected by the change should be notified or represented. The truth is best ascertained under an adversary system of justice.[23] (Emphasis supplied; citations omitted.)

Also, the phrase “and all persons who have or claim any interest which would be affected thereby” in the title of the petition and the publication of the petition are not sufficient notice to all interested parties. In *Tan v. Office of the Local Civil Registrar of the City of Manila*,<sup>[24]</sup> we ruled that impleading and notifying only the local civil registrar and the publication of the petition are not sufficient compliance with the procedural requirements. However, the subsequent publication of a notice of hearing may cure the failure to implead and notify the affected or interested parties, such as when: (a) earnest efforts were made by petitioners in bringing to court all possible interested parties; (b) the parties themselves initiated the corrections proceedings; (c) there is no actual or presumptive awareness of the existence of the interested parties; or (d) when a party is inadvertently left out.<sup>[25]</sup>

None of these exceptions are present in this case. There was no earnest effort on the part of Merly to bring to court her parents and siblings, if any, and other parties who may have an interest in the petition. Also, these indispensable parties are not the ones who initiated the proceedings and Merly cannot possibly claim that she was not aware, actually or presumptively, as to the existence or whereabouts of these interested parties. Likewise, it does not appear that the indispensable parties were inadvertently and unintentionally left out when Merly filed the petition.<sup>[26]</sup> Taken together, the failure to strictly comply with the requirements under Rule 108 renders the proceedings void for the correction of substantial errors.<sup>[27]</sup>

Notwithstanding, we sustain the correction of clerical mistake in Merly’s first name through the filing of a petition under Rule 108. Ideally, Merly should have filed the petition with the local civil registrar. Only when the petition is denied can the RTC take cognizance of the case.<sup>[28]</sup> We emphasize that RA No. 9048, as amended by RA No. 10172, did not divest the trial courts of jurisdiction over petitions for correction of clerical or typographical errors in a birth certificate. The local civil registrars’ administrative authority to change or correct similar errors is only primary but not exclusive.<sup>[29]</sup> As aptly held in *Republic of the Philippines v. Charlie Mintas Felix a.k.a. Shirley Mintas Felix*,<sup>[30]</sup> with the advent of RA No. 9048, as amended by RA No. 10172, the RTCs are not divested of their jurisdiction to hear and decide petitions for correction of entries and that even the failure to observe the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the court.<sup>[31]</sup>

At any rate, the doctrine of primary administrative jurisdiction is not absolute and may be dispensed with for reasons of equity.<sup>[32]</sup> In this case, Merly had presented testimonial and documentary evidence which the RTC had evaluated and found sufficient. To require Merly to file a new petition with the local civil registrar and start the process all over again would not be in keeping with the purpose of RA No. 9048 of giving people an option to have the erroneous entries in their civil records corrected through an administrative proceeding that is less expensive and more expeditious. It will be more prudent for Merly, and other persons similarly situated, to allow multiple corrections and/or cancellations of entries in a single action under Rule 108 rather than two separate petitions before the RTC and the local civil registrar. This will avoid multiplicity of suits and further litigation between the parties, which is offensive to the orderly administration of justice.

FOR THESE REASONS, the petition is PARTLY GRANTED. The Regional Trial Court’s Decision dated December 14, 2016 in Special Proceedings No. NC-2016-2599 is AFFIRMED with respect to the correction of first name from “MERLE” to “MERLY.” On the other hand, the correction of date of birth from “February 15, 1959” to “November 26, 1958” is SET ASIDE.

### **SO ORDERED.**

Perlas-Bernabe, S.A.J. (Chairperson), Gesmundo, Lazaro-Javier, and Rosario,[\*] JJ., concur.

[\*] Designated as additional member per Special Order No. 2797 dated November 5, 2020.

[1] Rollo, pp. 3-20.

[2] Id. at 21-22; penned by Judge Lerio C. Castigador.

[3] Id. at 23-25.

[4] Id. at 31.

[5] Id. at 30-40.

[6] Id. at 27-29.

[7] Id. at 7. The Office of the Solicitor General raised the following issues:

(I) THE REGIONAL TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN, DESPITE NOT WITHIN ITS PRIMARY JURISDICTION, IT ORDERED THE CORRECTION OF [MERLY'S] FIRST NAME IN HER BIRTH CERTIFICATE; and

(II) THE REGIONAL TRIAL COURT COMMITTED REVERSIBLE ERROR IN ORDERING THE CORRECTION OF [MERLY'S] DATE OF BIRTH IN HER BIRTH CERTIFICATE, DESPITE FAILURE TO IMPLEAD ALL INDISPENSABLE PARTIES.

[8] Id. at 45-57.

[9] Republic v. Gallo, 823 Phil. 1090, 1108 (2018).

[10] Republic v. Tipay, 826 Phil. 88, 94-95 (2018).

[11] AN ACT FURTHER AUTHORIZING THE CITY OR MUNICIPAL CIVIL REGISTRAR OR THE CONSUL GENERAL TO CORRECT CLERICAL OR TYPOGRAPHICAL ERRORS IN THE DAY AND MONTH IN THE DATE OF BIRTH OR SEX OF A PERSON APPEARING IN THE CIVIL REGISTER WITHOUT NEED OF A JUDICIAL ORDER, AMENDING FOR THIS PURPOSE REPUBLIC ACT NUMBERED NINETY FORTY-EIGHT; approved on August 15, 2012.

[12] AN ACT AUTHORIZING THE CITY OR MUNICIPAL CIVIL REGISTRAR OR THE CONSUL GENERAL TO CORRECT A CLERICAL OR TYPOGRAPHICAL ERROR IN AN ENTRY AND/OR CHANGE OF FIRST NAME OR NICKNAME IN THE CIVIL REGISTER WITHOUT NEED OF A JUDICIAL ORDER, AMENDING FOR THIS PURPOSE ARTICLES 376 AND 412 OF THE CIVIL CODE OF THE PHILIPPINES; approved on March 22, 2001.

[13] Section 1 of RA No. 9048, as amended, reads:

SEC. 1. Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname. — No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and change of first name or nickname, the day and month in the date of birth or sex of a person where it is patently clear that there was a clerical or typographical error or mistake in the entry, which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations. (Emphasis supplied.)

[14] Merriam-Webster Dictionary.

[15] RA No. 10172, Sec. 2 (3).

[16] SEC. 5.8.4 of the Implementing Rules and Regulations of RA No. 9048 states the following:

5.8. Deny the petition for correction of clerical or typographical error based on any of the following grounds:

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5.8.4. The petition involves the change of the status, sex, age or nationality of the petitioner or of any person named in the document. (Emphasis supplied.)

[17] 652 Phil. 195 (2010).

[18] Id. at 212.

[19] In *Silverio v. Republic*, 562 Phil. 953 (2007), the Court defined “status” as the circumstances affecting the legal situation (that is, the sum total of capacities and incapacities) of a person in view of his age, nationality and his family membership. The status of a person in law includes all his personal qualities and relations, more or less permanent in nature, not ordinarily terminable at his own will, such as his being legitimate or illegitimate, or his being married or not. The comprehensive term status includes such matters as the beginning and end of legal personality, capacity to have rights in general, family relations, and its various aspects, such as birth, legitimation, adoption, emancipation, marriage, divorce, and sometimes even succession. Id. at 969.

[20] See *Onde v. Office of the Local Civil Registrar of Las Piñas City* (Resolution), 742 Phil. 691, 696 (2014).

[21] *Almojuela v. Republic* (Resolution), 793 Phil. 780, 787-788 (2016).

[22] 250 Phil. 300 (1988). In this case, aside from seeking to change her name from “Beatriz Labayo/Beatriz Labayu” to “Emperatriz Labayo,” the petitioner also sought the correction of her civil status in her daughter’s birth certificate from “married” to “single” and the date and place of marriage to “no marriage.” The trial court granted the petition although indispensable parties were not impleaded. In overruling the trial court, we held that the Office of the Solicitor General and all other indispensable parties should have been made respondents.

[23] Id. at 308.

[24] G.R. No. 211435, April 10, 2019.

[25] Id.

[26] See *Republic v. Coseteng-Magpayo*, 656 Phil. 550 (2011).

[27] *Almojuela v. Republic* (Resolution), *supra* at 789-790.

[28] *Republic v. Gallo*, *supra* note 9, at 1111, citing *Republic v. Sali*, 808 Phil. 343 (2017).

[29] It is worth noting that the deliberations on RA No. 9048 did not mention that petitions for correction of clerical errors can no longer be filed with the regular courts, though the grounds upon which the administrative process before the local civil registrar may be availed of are limited under the law. (Re: Final Report on the Judicial Audit Conducted at the Regional Trial Court, Br. 67, Paniqui, Tarlac, Adm. Matter No. 06-7-414- RTC, October 19, 2007.)

[30] G.R. No. 203371, June 30, 2020.

[31] *Republic v. Charlie Mintas Felix a.k.a. Shirley Mintas Felix*, G.R. No. 203371, June 30, 2020.

[32] In *Republic v. Gallo*, *supra*, we held that for reasons of equity, in cases where jurisdiction is lacking, failure to raise the issue of non-compliance with the doctrine of primary administrative jurisdiction at an opportune time may bar a subsequent filing of a motion to dismiss based on that ground by way of laches. Thus, we allowed that the corrections of clerical errors sought by the petitioner, such as his first name from “Michael” to “Michelle”;

her biological sex from “male” to “female”; the entry of her middle name as “Soriano”; middle name of her mother as “Angangan”; middle name of her father as “Balingao”; and, the date of her parents’ marriage as “May 23, 1981,” despite the filing of a petition under Rule 108, considering the failure of the Office of the Solicitor General to raise the doctrine of primary jurisdiction at the first instance.

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