

**JOSEFINA JUANA DE DIOS RAMIREZ MARCAIDA,
PETITIONER-APPELLANT, VS. LEONCIO V. AGLUBAT, IN HIS
CAPACITY AS DEPUTY LOCAL CIVIL REGISTRAR OF MANILA,
RESPONDENT-APPELLEE.**

G.R. No. 24006. November 25, 1967

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Refusal of the Local Civil Registrar of Manila to record an Escritura de Adopcion executed in Madrid, Spain, is now challenged before this Court on appeal by registrant-adoptee from a judgment of the Court of First Instance of Manila confirmatory of such refusal.

The disputed deed of adoption had its inception, thus: Prior to October 21, 1958, proceedings for adoption were started before the Court of First Instance of Madrid, Spain, by Maria Garnier Garreau, then 84 years of age, adopting Josefina Juana de Dios Ramirez Marcaida, 55 years, a citizen of the Philippines. Both were residents of Madrid, Spain. On that date, October 21, 1953, the court granted the application for adoption and gave the necessary judicial authority, once the judgment becomes final, to execute the corresponding adoption document "con arreglo al articulo 177 delCodigo Civil." The adoption document became necessary for the reason that under Article 177 of the Civil Code of Spain, "[a] probada definitivamente la adopcion por el Juez, se otorgara escritura, expresando en ella las condiciones con que se haya hecho, y se inscribira en el Registro Civil correspondiente." In compliance, on November 29, 1958, the notarial document of adoption - which embodies the court order of adoption - whereunder Maria Garnier Garreau formally adopted petitioner, was executed before Notary Public Braulio Velasco Carrasquedo of Madrid. In that document, Maria Garnier Garreau instituted petitioner, amongst other conditions, as her unica y universal heredera de todos sus bienes, derechos y acciones, presentes y futuros.

In conformity with our law, this escritura de adopcion was, on December 10, 1958, authenticated by Emilio S. Martinez, Philippine Vice Consul, Philippine Embassy, Madrid, who issued the corresponding certificate of authentication.[1]

The document of adoption was filed in the Office of the Local Civil Registrar of Manila on January 15, 1959. The Registrar, however, refused to register that document upon the ground that under Philippine law, adoption can only be had through judicial proceeding. And since the notarial document of adoption is not a judicial proceeding, it is not entitled to registration.

Failing in her move to reconsider, petitioner went to the Court of First Instance of Manila on mandamus.[2] As adverted to earlier, the mandamus petition did not prosper. The lower court in its decision of February 28, 1964 dismissed said petition.

Petitioner's lone assignment of error reads: "The lower court erred in declaring the 'escritura de adopcion' as authenticated by the Philippine Vice Consul in Madrid, Spain, as not registrable in the Philippines."

1. Act 3753 of the Philippine Legislature, entitled "An Act to establish a civil register", in Section 1 thereof, recites that a "civil register is established for recording the civil status of persons, in which shall be entered", amongst others, "(g) adoptions". It provides for local civil registrars. Complementary thereto are Article 407 of our Civil Code which commands that "[a]cts, events and judicial decrees concerning the civil status of persons shall be recorded in the civil register"; and Article 408 of the same Code which, in language similar, directs that "[t]he following shall be entered in the civil register: x x x (8) adoptions; x x x." The law is clear. The compulsory tenor of the word "shall" leaves no alternative. It is a command.

2. But the Solicitor General, hewing to the line drawn by the court below, argues that petitioner's case does not come within the purview of Article 409 of the Civil Code, which states that:

"ART. 409. In cases of legal separation, adoption, naturalization and other judicial orders mentioned in the preceding article, it shall be the duty of the clerk of the court which issued the decree to ascertain whether the same has been registered, and if this has not been done, to send a copy of said decree to the civil registry of the city or municipality where the court is functioning."

and Section 11 of Act 3753, which reads:

"SEC. 11. Duties of clerks of court to register certain decisions. - In cases of legitimation, acknowledgment, adoption, naturalization, and change of given or family name, or both, upon the decree of the court becoming final, it shall be the duty of the clerk of the court which issued the decree to ascertain whether the same has been registered, and if this has not been done, to have said decree recorded in the office of the civil registrar of the municipality where the court is functioning."

It is at once apparent that the cited legal provisions refer to adoptions effected in the Philippines. For, indeed, Article 409 of the Civil Code and Section 10 of the Registry Law speak of adoption which shall be registered in the municipality or city where the court issuing the adoption decree is functioning. But, the trial court concluded that what is registrable is only adoption obtained through a judgment rendered by the Philippine court.

We are not persuaded to adopt the Government's theory. We are at a loss to understand how it could be concluded that the structure of the law did not authorize registration of foreign adoptions. We perceive that Article 409 and Section 10 aforesaid were incorporated into the statute books merely to give effect to our law^[3] which required judicial proceedings for adoption. Limitation of registration of adoptions to those granted by Philippine courts is a misconception which a broader view allows us now to correct. For, if registration is to be narrowed down to local adoptions, it is the function of Congress, not of this Court, to spell out such limitation. We cannot carve out a prohibition where the law does not so state. Excessive rigidity serves no purpose. And, by Articles 407 and 408 of our Civil Code, the disputed document of adoption is registrable.

3. No suggestion there is in the record that prejudice to State and adoptee, or any other person for that matter, would ensue from the adoption here involved. The validity thereof is not under attack. At any rate, whatever may be the effect of adoption, the rights of the State and adoptee and other persons interested are fully safeguarded by Article 15 of our Civil Code which, in terms explicit, provides that: "Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad."

4. Private international law offers no obstacle to recognition of foreign adoption. This rests on the principle that the status of adoption, created by the law of a State having jurisdiction to create it, will be given the same effect in another state as is given by the latter state to the status of adoption when created by its own law.^[4] It is quite obvious then that the status of adoption, once created under the proper foreign law, will be recognized in this country, except where public policy or the interests of its inhabitants forbid its enforcement and demand the

substitution of the *lex fori*. Indeed, implicit in Article 15 of our Civil Code just quoted, is that the exercise of incidents to foreign adoption "remains subject to local law." [5]

It is high time for this Court to formulate a rule on the registration of foreign adoptions. We hold that an adoption created under the law of a foreign country is entitled to registration in the corresponding civil register of the Philippines. It is to be understood, however, that the effects of such adoption shall be governed by the laws of this country. [6]

Conformably to the foregoing, the lower court's decision of February 28, 1964 dismissing the mandamus petition, appealed from, is hereby reversed; and the Local Civil Registrar of Manila is hereby directed to register the deed of adoption (*Escritura de Adopción*) by Maria Garnier Garreau in favor of petitioner Josefina Juana de Dios Ramirez Marcaida.

No Costs.

SO ORDERED.

Dizon, Acting C.J., Makalintal, Bengzon, Zaldivar, Castro, Angeles, and Fernando, JJ., concur.

[1] See: Section 25, Rule 132 of the Rules of Court.

[2] Civil Case No. 39943, "Josefina Juana de Dios Ramirez Marcaida, petitioner, vs. Leoncio V. Aglubat, in his capacity as Deputy Local Civil Registrar of Manila, respondent." The petition was amended to substitute M.C. Icasiano, in his capacity as Local Civil Registrar of Manila, for Leoncio V. Aglubat.

[3] Rule 99, Rules of Court, and Chapter V, Title XI, Book I of the Civil Code.

[4] See: Salonga, *Private International Law*, 2nd ed., 1957, p. 268, citing *Restatement of the Law*, Sec. 143. See also: 15-A C.J.S., pp. 477-478.

[5] Leflar, *The Law of Conflict of Laws*, 1959 ed., p. 342.

[6] Commenting on Article 326 of the Civil Code of Spain which reads: "El Registro del estado civil comprendera las inscripciones o anotaciones de nacimientos, matrimonios, emancipaciones, reconocimientos y legitimaciones, defunciones, naturalizaciones y vecindad, y estara a cargo de los Jueces municipales u otros funcionarios del orden civil en España y de los Agentes consulares o diplomaticos en el extranjero", F. Bonet Ramon in his *Codigo Civil Comentado*, 1962 ed., p. 309, says: "En cunato a las anotaciones, dispone la vigente Ley que a peticion del Ministerio Fiscal o de cualquier interesado se anotara, con valor simplemente informativo y con expresion de sus circunstancias: x x x 3.º El hecho relativo a españoles acaecido en España que afecte al estado civil segun la Ley extranjera; 4.º La sentencia o resolucion extranjera que afecte tambien al estado civil, en tanto no se obtenga el exequatur; x x x."

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