

IN RE: PETITION FOR CORRECTION OF ENTRY IN CERTIFICATE OF BIRTH, DANILO IBARRA SISON AND JOSEPHINE IBARRA SISON, PETITIONERS, VS. REPUBLIC OF THE PHILIPPINES, HON. BUENAVENTURA...

G.R. No. 58087. December 27, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This Petition for Review on Certiorari seeks the reversal of the Decision of the Court of First Instance of Rizal, Branch XXIV, dismissing an Amended Petition (Sp. Procs. Case No. 8934) for correction of surname in records of birth.

On February 6, 1979, petitioners, assisted by their grandmother, Gertrudes Reyes, as they were minors, submitted an Amended Petition to respondent Court for correction of their surnames from "de la Cruz", as entered in their respective Birth Certificates, to "Sison". A copy of this Amended Petition was served on the Solicitor General on February 20, 1979.

On February 14, 1979, the Trial Court issued an Order setting the case for hearing on April 6, 1979 and citing all interested persons to show cause, if any, why the petition should not be granted. Copy of this Order was served on the Civil Registrar and on the Solicitor General on February 20, 1979. The Order was duly published in the Evening Express, a newspaper of general circulation, once a week for three consecutive weeks as required by the same Order.

On April 18, 1979, the State, through the Solicitor General, filed an Opposition alleging that the corrections requested were substantial or controversial in nature and that the summary procedure for correction of entry in the Civil Registry under Art. 412 of the Civil Code in relation to Rule 108 of the Rules of Court is confined to mere clerical errors or harmless or innocuous changes, citing *Ty Kong Tin vs. Republic*, 94 Phil. 321; *Ansaldo vs. Republic*, 102 Phil. 1046; and *Babayan vs. Republic*, 16 SCRA 403.

Petitioners adduced their evidence before a duly appointed commissioner in the presence of Solicitor Felixberto C. de la Cruz. No evidence was presented by the State in support of its opposition.

On March 31, 1980, the Trial Court promulgated a Decision denying the Petition on the grounds raised in the Government's opposition. Petitioners' Motion for Reconsideration was similarly denied. Hence, the instant recourse.

From the testimonial and documentary evidence submitted, the following facts have been established:

Petitioners are the children of the late Antonio Sison and Gloria Ibarra. Antonio was one of the two children of Gertrudes Reyes with her first husband Aurelio Sison, whom she married in 1931. Antonio was born on May 10, 1935. Gertrudes was married thrice. She married her second husband Laurencio de la Cruz in 1942. Her third

husband is now Jose Delgado.

On July 2, 1962, Antonio eloped and married Gloria Ibarra before the Municipal Mayor of San Juan, Rizal. Antonio was then 27 years old. He used the surname "de la Cruz" in the Marriage Contract (Exh. "E"). The couple begot two children, Danilo, born on October 4, 1962, and Josephine, born on March 21, 1964. Their births were recorded in the Office of the Local Civil Registrar of San Juan, Rizal, on October 25, 1962 and March 30, 1964, respectively, under the family name "de la Cruz" (Exhs. "M", "M-1"). However, when they were baptized in the Parish of Sta. Cruz, San Juan, Metro Manila, Danilo, on December 16, 1962 and Josephine, on August 17, 1964, their surnames were stated to be "Sison", and they were given the Christian names of Danilo and Maria Jocelyn (Exhs. "H", "I"). In subsequent schooling they were also registered as Danilo Sison and Jocelyn I. Sison (Exhs. "J", "K", "L"). They became known to relatives and friends by such names.

Petitioners' father, Antonio, died of tetanus on March 14, 1978 (Exh. "B", "C"). Their mother Gloria, now works as a nurse in Detroit, Michigan, U.S.A. It appears that when the minors were to go to the States to join their mother it was discovered during the processing of their travel papers, that their surname in their birth registry was "de la Cruz".

Petitioners have proved that their correct surname is "Sison". It was error for their father, Antonio, to have entered "de la Cruz" as his surname in his marriage contract and in the Birth Certificates of his children, for, at the time of Antonio's birth on May 10, 1935, his mother was then the wife of Aurelio Sison, whom she had married in 1931. Antonio's father was Aurelio Sison. Although at the time of his marriage in 1962, Antonio's mother was then the wife of Laurencio de la Cruz, whom she married in 1942, our laws do not authorize legitimate children to adopt the surname of a person who is not their father.[1] It could be that Antonio used "de la Cruz" in order to hide his real identity because of his elopement. That has given rise to the confusion which is now being sought to be clarified.

Procedurally, the only way by which a name can be changed legally is by appropriate proceeding under Rule 103; that is, through a petition for Change of Name, since a person's legal name is what appears in the civil register, not the name by which he was baptized or by which he has been known in the community.[2] However, as in *San Roque vs. Republic*, 23 SCRA 444 (1968) the petition in this case may well be, in essence, one for judicial authority to change names, for the petition prays for "correction of names"[3] and more specifically for an order "to make the necessary corrections in the respective certificates of birth of petitioners by registering their names therein as Danilo Sison y Ibarra and Josephine Sison y Ibarra." [4]

"x x x Essentially, therefore, the petition admitted that appellee's real name was Lucia San Roque which, according to the *Chomi* case, was her true name because it was the one appearing in the Civil Register, but that this notwithstanding, she had been using continuously since birth and had been known under the name of Leoncia San Roque. These allegations were not only not denied by the oppositor but were duly proven during the hearing. Ultimately, therefore, notwithstanding the imperfection of language employed, the petition was, in essence, one to secure judicial authority for appellee to change her name from Lucia to Leoncia - a petition which falls reasonably within the provisions of Rule 103. That the petition was entitled one 'to correct name in the birth certificate of Leoncia San Roque' and prayed that petitioner's name appearing in her birth certificate be corrected accordingly did not necessarily make the petition fall under the provisions of Rule 108, because even under the provisions of Rule 103 the judgment or order rendered in connection with said Rule shall be furnished the Civil Registrar of the municipality or city where the Court who issued the same is situated, who shall forthwith enter the same in the civil register (Section 6).

The record discloses, upon the other hand, that the provisions of Rule 103 - similar to those of Rule 108 - had been strictly and fully complied with and that the State had been given ample opportunity to state and prove its case.

We, therefore, conclude that no reversible error was committed by the trial court in considering the petition as one filed under the provisions of Rule 103 of the Rules of Court." [5]

Moreover, as held in *Matias vs. Republic* [6], per Acting Chief Justice J. B. L. Reyes, "Granting that the supplying of a name that was left blank in the original recording of the birth does not constitute, as contended by the Solicitor General, a rectification of a mere clerical error, it is well to observe that the doctrine of the case of *Ty Kong Tin v. Republic*, 94 Phil. 321, and subsequent adjudications predicated thereon, forbade only the entering of material corrections or amendments in the record of birth by virtue of a judgment in a summary action against the Civil Registrar."

In this case, the proceedings below were not summary pursuant to the rulings in the *Matias* case and in the more recent one of *Kumala Salim Wing vs. Ahmad Abubakar*, Civil Registrar of the Municipality of Jolo, et al [7], penned by Mr. Chief Justice Enrique M. Fernando, which case has also been invoked by petitioners. Therein, we ruled:

"x x x the proceedings were not summary, considering the publication of the petition made by order of the court in order to give notice to any person that might be interested, including direct service on the Solicitor General himself."

Similarly herein, copies of the Petition and Amended Petition were served on the Solicitor General. The Order of the Trial Court setting the petition for hearing was duly published in a newspaper of general circulation once a week for three consecutive weeks. Copy of that Order was likewise furnished the Solicitor General. Notwithstanding that all interested persons were cited to appear to show cause why the petition should not be granted, no one appeared to oppose except the State through the Solicitor General. But neither did the State present evidence in support of its Opposition. There was a hearing on the merits where the State was duly represented and cross-examined petitioners and their witness. No doubt is cast on the credibility of petitioners' allegations nor upon the evidence adduced by them. Absent, too, is any showing that prejudice would result to any party interested. [8]

In his "Manifestation/Motion in Lieu of Respondents' Brief", the Solicitor General has departed from his posture below in the light of the *Kumala Salim Wing* case, *supra*, and has recommended that the Decision appealed from be reversed. The recommendation is well taken.

WHEREFORE, the Decision of respondent Judge, dated March 31, 1980, is hereby set aside, and another one rendered granting the prayer for the change of petitioners' surname entered as "de la Cruz" in their respective records of birth with the Civil Registrar of San Juan, to "Sison", which is their true surname.

Let a certified copy of this Decision be served on the Civil Registrar of San Juan, Metro Manila, who is hereby directed to make the corresponding entry in his records.

No costs.

SO ORDERED.

Fernando, C.J., Teehankee, Concepcion, Jr., Guerrero, Plana, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

Makasiar, J., see dissent.

Aquino, J., dissents. The *Chomi* case lays down the correct rule. The petitioners should file a petition for change of surname.

Abad Santos, J., concurs with J. De Castro in his separate opinion.

De Castro, J., see separate opinion.

[1] Art. 364, Civil Code; Padilla vs. Republic, 113 SCRA 789 (1982).

[2] Chomi vs. Local Civil Registrar of Manila, 99 Phil. 1004 (1956).

[3] p. 1, Petition.

[4] p. 3, *ibid.*

[5] San Roque vs. Republic, *supra*.

[6] 28 SCRA 31 (1969).

[7] 102 SCRA 523 (1981).

[8] See Matias vs. Republic, *supra*.

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SEPARATE OPINION

DE CASTRO, J.:

I concur. I have always taken the view that the action contemplated under Rule 108 is not a summary action, and renders obsolete rulings denying authority to the courts to order correction of more than mere harmless clerical errors in the Civil Registry. The instant decision would seem to sustain my dissenting opinions in *Wong v. Republic*, L-29376, July 30, 1982 and *Republic v. de la Cruz*, L-34079, November 2, 1982, which, it is hoped, will henceforth be regarded as the prevailing doctrine.

In Re: Petition for Correction of Entry in the Certification of Birth, Sison vs Philippines : L-58087 : December 27, 1982 : J. Makasiar : En Banc : Dissenting Opinion 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

Dissenting Opinion

MAKASIAR, J.:

I join Justice Aquino in his dissent.

There is something here that more than meets the eye. When Antonio Sison married Gloria Ibarra on July 2, 1962, both he and his wife committed falsification of a public document by making it appear in the marriage contract that his surname is "Dela Cruz", the surname of his stepfather, Laurencio dela Cruz, the second husband of his mother, Gertrudes Reyes. Like-wise, they presumably falsified the same entry in the birth certificates of his two children; because the parents, as required by law, usually furnish such data to the attending physician, midwife or

nurse who shall accordingly fill up the corresponding form, which shall thereafter be submitted to the office of the Local Civil Registrar. Their two children, Danilo and Josephine, were born respectively on October 4, 1962 and March 21, 1964 and their births were recorded with "Dela Cruz" as their surname in the Local Civil Registry, respectively, on October 25, 1962 and March 30, 1964. But when they were baptized respectively on December 16, 1962 and August 17, 1964, their surnames were entered as "Sison". Their school records also show that their surname is "Sison".

The father, Antonio Sison, during his lifetime, had all the time to cause the correction of the record of birth in the Local Civil Registrar's Office from 1962 until his death on March 14, 1978. Neither he nor his wife, the mother of the children, filed any such petition for correction so that he, with his wife, could have explained personally the discrepancy in the surname of the two children appearing in the Civil Registry on the one hand and in the church as well as the school record on the other.

What was the reason for such failure or omission? Was it fear of criminal prosecution or exposure of some ugly incident in their lives? The father is now dead and the mother is abroad -- both beyond the reach of our laws. And the petition for correction was filed with the assistance of their paternal grandmother.

Moreover, all persons interested in the estate of the deceased Antonio Sison and the heirs of Antonio's stepfather, Laurencio dela Cruz, who died in 1942 were not personally notified of, nor heard on the petition for correction. Notice by publication will not suffice since these interested persons are known to the grand-mother, Gertrudes Reyes, Antonio's mother, who assisted herein petitioners in this case.

Rights of third persons may also be prejudiced by the petition for correction, which rights should likewise be determined in an appropriate proceeding.

Finally, the majority opinion does not intimate any possible effect on the criminal liability of the spouses for falsifying the entries in the marriage contract and birth certificates. The crime was concealed from the authorities until February 20, 1979 when the Solicitor General was served with a copy of the amended petition.

Hence, the instant petition should be dismissed.

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