

**HATIMA C. YASIN, REPRESENTED BY HER ATTORNEY-IN-FACT,
HADJI HASAN S. CENTI, PETITIONER, VS. THE HONORABLE JUDGE
SHARI'A DISTRICT COURT THIRD SHARI'A JUDICIAL DISTRICT,
ZAMBOANGA...**

G.R. No. 94986. February 23, 1995

Ponente: BIDIN, J.

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BIDIN, J.:

On May 5, 1990, Hatima C. Yasin filed in the Shari'a District Court in Zamboanga City a "Petition to resume the use of maiden name" (Sp. Proc. No. 06-3). The petition reads:

"1. That she is of legal age, a divorcee, a Muslim Filipino and a resident of Suterville, Zamboanga City, Philippines, and is duly represented in this act by her elder brother and attorney-in-fact, HADJI HASAN S. CENTI by virtue of an instrument of a Special Power of Attorney, original copy of which is hereto attached and marked as Annex 'A' hereof;

"2. That she was formerly married to a certain Hadji Idris Yasin, also a Muslim Filipino in accordance with Muslim rites and customs, and who is now residing at barangay Recodo, Zamboanga City, but sometime on March 13, 1984, they were granted a decree of divorce by the Mindanao Islamic Center Foundation, Inc., in accordance with Islamic Law, the divorce rites was officiated by Ustadz Sharif Jain Jali as evidenced by his Certification, dated March 13, 1984, copy of which is hereto attached as Annex 'B' to form an integral part hereof;

"3. That, thereafter the former husband Hadji Idris Yasin contracted another marriage to another woman;

"WHEREFORE, invoking the provisions of Article 143, par. 1(c) of Presidential Decree. No. 1083 in relation to Article 371 (2) of the New Civil Code, and after due notice and hearing, it is most respectfully prayed of this Honorable Court that petitioner be allowed to resume the use of her maiden name Hatima Centi y Saul."

On July 4, 1990, the respondent court issued an order which reads as follows:

"It patently appearing that the petition filed is not sufficient in form and substance in accordance with Section 2(a) and 3, Rule 103, Rules of Court, regarding the residence of petitioner and the name sought to be adopted is not properly indicated in the title thereof which should include all the names by which the petitioner has been known (Ng Yao Siong v. Republic of the Philippines, L-20306, March 31, 1966, 16 SCRA [483]; Go v. Republic of the Philippines, L-31760, May 25, 1977; Pabellar v. Republic, L-27298, March 4, 1976), the pleading must be rectified accordingly.

"WHEREFORE, petitioner is hereby ordered to effect the necessary amendment of the petition within one (1) week from receipt hereof so as to reflect the formal requirements adverted to." (Rollo, p. 9)

Hatima filed a motion for reconsideration of the aforesaid order alleging that the petition filed is not covered by Rule 103 of the Rules of Court but is merely a petition to resume the use of her maiden name and surname after

the dissolution of her marriage by divorce under the Code of Muslim Personal Laws of the Philippines (P.D. No. 1083), and after marriage of her former husband to another woman.

The motion was denied by the respondent court in an order dated August 10, 1990, on the ground that the petition is substantially for change of name and that compliance with the provisions of Rule 103, Rules of Court on change of name is necessary if the petition is to be granted as it would result in the resumption of the use of petitioner's maiden name and surname.

Hence, this petition alleging that respondent court erred in applying Rule 103 of the Rules of Court to the instant case.

In its Comment dated June 14, 1991, the respondent court, among others, contends:

"5. x x x [R]espondent court is of the honest opinion that the said petition is substantially one for change of name, particularly of surname-Hatima C. Yasin to Hatima Centi y Saul, the latter being her maiden name and surname. Her reasons: The (1) dissolution of her marriage, and (2) her legal right to resume the use of her maiden name and surname. In effect, if petition is granted, it will result in the resumption of the use of her surname.

"Moreover, the use of surnames is governed by law (Arts. 364--380, Title XIII, New Civil Code). This is the substantive requirements. And as to procedural requirements, no person can change his name or surname without judicial authority (Art. 376, Civil Code of the Philippines) (Underlining supplied). Change of name under judicial authorization is governed by Rule 103 of the Revised Rules of Court. Under Sec. 1 of said rule: 'a person desiring to change his name shall present the petition to the Court of First Instance of the province (now RTC) in which he resides, or in the City of Manila, to the Juvenile and Domestic Relations Court.' The State has an interest in the names borne by individual and entities for purposes of identification. A change of name is a privilege and not a matter of right. Therefore, before a person can be authorized to change his name (given him either in his birth certificate or civil registry), he must show proper or compelling reason, which may justify such change. Otherwise, the request should be denied (Ong Peng Oan v. Republic, 102 Phil. 468) (See: Paras, Civil Code of the Philippines Annotated, Vol. I, 8th Ed., 1978, pp. 739-740)." (Rollo, pp. 46-47)

The basic issue to be resolved is: whether or not in case of annulment of marriage, or divorce under the Code of Muslim Personal Laws of the Philippines, and the husband is married again to another woman and the former wife desires to resume her maiden name or surname, is she required to file a petition for change of name and comply with the formal requirements of Rule 103 of the Rules of Court.

Stated otherwise, the issue is: whether or not a petition for resumption of maiden name and surname is also a petition for change of name.

The Court rules in the negative.

The true and real name of a person is that given to him and entered in the civil register (Chomi v. Local Civil Registrar of Manila, 99 Phil. 1004 [1956]; Ng Yao Siong v. Republic, 16 SCRA 483 [1966]; Rendora v. Republic, 35 SCRA 262 [1970]; Pabellar v. Republic, 70 SCRA 16 [1976]).

While it is true that under Article 376 of the Civil Code, no person can change his name or surname without judicial authority, nonetheless, the only name that may be changed is the true and official name recorded in the Civil Register. Thus, this Court in Ng Yao Siong v. Republic (16 SCRA 483 [1966]), held:

"In a proceeding for a change of name the following question may crop up: What is the name to be changed? By Article 408 of the Civil Code a person's birth must be entered in the civil register. So it is, that the civil register records his name. That name in the civil register, for legal purposes, is his real name. And correctly so, because the civil register is an official record of the civil status of persons. A name given to a person in the

church record or elsewhere or by which he is known in the community - when at variance with that entered in the civil register - is unofficial and cannot be recognized as his real name.

"We therefore rule that for purposes of an application for change of name under Article 376 of the Civil Code, the only name that may be changed is the true or official name recorded in the civil register."

Petitioner's registered name is Hatima Centi Y. Saul. In the instant petition, petitioner does not seek to change her registered maiden name but, instead, prays that she be allowed to resume the use of her maiden name in view of the dissolution of her marriage to Hadji Idris Yasin, by virtue of a decree of divorce granted in accordance with Muslim law.

Divorce (talaq) is defined in PD 1086, the Code of Muslim Personal Laws of the Philippines, as follows:

"Art. 45. Definition and forms. - Divorce is the formal dissolution of the marriage bond in accordance with this Code to be granted only after exhaustion of all possible means of reconciliation between the spouses. It may be effected by:

"(a) Repudiation of the wife by the husband (talaq);

"x x x

"(g) Judicial decree (faskh)."

Divorce (talaq or faskh) severs the marriage bond. Thus, Article 54 of PD 1086 provides:

"Art. 54. Effects of irrevocable talaq or faskh. - A talaq or faskh, as soon as it becomes irrevocable, shall have the following effects:

"(a) The marriage bond shall be severed and the spouses may contract another marriage in accordance with this Code;"

The divorce becomes irrevocable after observance of a period of waiting called idda (Art. 56, PD 1086) the duration of which is 3 monthly courses after termination of the marriage by divorce (Art. 57[b], PD 1083). Under Article 187, PD 1083, the Civil Code of the Philippines, the Rules of Court and other existing laws, insofar as they are not inconsistent with the provisions of this Code (the Code of Muslim Personal Laws), shall be applied suppletorily.

Even under the Civil Code, the use of the husband's surname during the marriage (Art. 370, Civil Code), after annulment of the marriage (Art. 371, Civil Code) and after the death of the husband (Art. 373, Civil Code) is permissive and not obligatory except in case of legal separation (Art. 372, Civil Code). Thus, Articles 370 and 371 of the Civil Code provides:

"Art. 370. A married woman may use:

"(1) Her maiden first name and surname and add her husband's surname, or

"(2) Her maiden first name and her husband's surname, or

"(3) Her husband's full name, but prefixing a word indicating that she is his wife, such as 'Mrs.'"

"Art. 371. In case of annulment of marriage, and the wife is the guilty party, she shall resume her maiden name and surname. If she is the innocent spouse, she may resume her maiden name and surname. However, she may choose to continue employing her former husband's surname, unless:

"(1) The court decrees otherwise, or

“(2) She or the former husband is married again to another person.”

According to Tolentino:

"x x x Under the present article of our Code, however, the word 'may' is used, indicating that the use of the husband's surname by the wife is permissive rather than obligatory. We have no law which provides that the wife shall change her name to that of the husband upon marriage. This is in consonance with the principle that surnames indicate descent. It seems, therefore, that a married woman may use only her maiden name and surname. She has an option, but not a duty, to use the surname of the husband in any of the ways provided by this Article." (Tolentino, Civil Code of the Philippines, Vol. I, p. 724, 1983 ed.).

When a woman marries a man, she need not apply and/or seek judicial authority to use her husband's name by prefixing the word "Mrs." before her husband's full name or by adding her husband's surname to her maiden first name. The law grants her such right (Art. 370, Civil Code). Similarly, when the marriage ties or vinculum no longer exists as in the case of death of the husband or divorce as authorized by the Muslim Code, the widow or divorcee need not seek judicial confirmation of the change in her civil status in order to revert to her maiden name as the use of her former husband's name is optional and not obligatory for her (Tolentino, Civil Code, p. 725, 1983 ed.; Art. 373, Civil Code). When petitioner married her husband, she did not change her name but only her civil status. Neither was she required to secure judicial authority to use the surname of her husband after the marriage as no law requires it.

In view of the foregoing considerations. We find the petition to resume the use of maiden name filed by petitioner before the respondent court a superfluity and unnecessary proceeding since the law requires her to do so as her former husband is already married to another woman after obtaining a decree of divorce from her in accordance with Muslim laws.

Although there is no legal prohibition against obtaining a judicial confirmation of a legal right, nevertheless, no law or rule provides for the procedure by which such confirmation may be obtained. In view of such circumstances, the onerous requirements of Rule 103 of the Rules of Court on change of name should not be applied to judicial confirmation of the right of a divorced woman to resume her maiden name and surname. In the absence of a specific rule or provision governing such a proceeding, where sufficient facts have been alleged supported by competent proof as annexes, which appear to be satisfactory to the court, such petition for confirmation of change of civil status and/or to resume the use of maiden name must be given due course and summarily granted as in fact it is a right conferred by law.

While the petition filed in the instant case leaves much to be desired in matters of form and averment of concise statements of ultimate facts constituting the petitioner's cause of action, nevertheless, giving it a most liberal construction, the petition suffices to convey the petitioner's desire and prayer to resume her maiden surname on grounds of her divorce from her former husband and subsequent marriage of the latter to another woman.

The remand of this case to the trial court would only delay the final disposition of this case and would not serve the public interest. We have consistently ruled that the remand of the case to a lower court for further reception of evidence is not necessary if this Court can already resolve the dispute on the basis of the records before it (*Dimayuga v. PCIB*, 200 SCRA 143 [1991]; *Board of Liquidators v. Zulueta*, 115 SCRA 548 [1982]; *Quisumbing v. CA*, 120 SCRA 703 [1983]).

WHEREFORE, the petition is GRANTED and the orders of respondent court dated July 4, 1990 and August 10, 1990 are hereby SET ASIDE. Petitioner is authorized to resume her maiden name and surname.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Regalado, Davide, Jr., Bellosillo, Melo, Quason, Puno, Kapunan, Mendoza, and Francisco, JJ., concur.

Romero and Vitug, JJ., please see concurring opinion.

CONCURRING OPINION

ROMERO, J.:

From birth, a person's identity is established by his name. Although oftener used by others in addressing him, he identifies himself with this name, such that in his mind, he not only has a name but he is that name.

Thus, to set him apart from the rest of mankind, he makes certain that people know him by the name his parents have given him from birth. Recognizing the implications of confused identities, the law requires the registration of a newly-born infant's name along with the fact of birth reflective of his civil status. As a badge of identity, one's name is protected by law from usurpation [1] or unauthorized or unlawful use by others. [2] Not only this, a person is prohibited by law from using different names and surnames [3] An alias or assumed name may be used for business purposes provided this is duly registered. [4] In the event that one employs pen names or stage names, this must be done in good faith and there should be no injury to third persons. [5] During elections, only votes bearing names registered by a candidate are to be counted in his favor. Indeed, the man of law parts ways with the poet who rhetorically asks:

"What's in a name?

A rose by any other name smells as sweet."

So fraught with complications is the use by an individual of another name that, in case he decides to change it, the law requires him to seek judicial permission to do so, even if it be merely to rectify an error committed in one's birth or baptismal records, unless it be an innocuous clerical error. [6]

One instance where tradition or custom, even more than law, sanctions the use of another or an additional name is the adoption by a woman who gets married of her husband's name. In certain cultures, this signifies her formal joining of her husband's family, on the one hand, and on the other, her acceptance therein.

Conceding the importance of laying down rules as regards the use of names resulting from the contracting of marriage, or its breakup, the Civil Code has provided for each eventuality. For instance, Art. 370 gives a married woman certain options with respect to the change of name reflective of the change of her civil status, without need of recourse to judicial process:

It provides:

"ART. 370. A married woman may use:

(1) Her maiden first name and surname and add her husband's surname, or

(2) Her maiden first name and her husband's surname, or

(3) Her husband's full name, but prefixing a word indicating that she is his wife, such as 'Mrs.'"
(Underscoring supplied)

It is to be noted that the introductory sentence uses the directory "may" instead of the mandatory "shall." Its obvious intendment is that the married woman, if she chooses to, need not use her husband's surname. Clearly, no

law prohibits her from continuing to use her maiden name and surname if she wishes to; or for that matter, to resume the same even as she uses her husband's family name during matrimony, as long as there is disclosure and no fraudulent intent.

In recognition of the increasing clamor of women worldwide for equality, the 1987 Constitution laid down the basic policy with respect to the standing of women and men in the eyes of the law, thus:

"Sec. 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men."

If it means anything at all, it signifies that women, no less than men, shall enjoy the same rights accorded by law and this includes the freedom of choice in the use of names upon marriage. To give substance and meaning to the policy, laws have been enacted by Congress, and rules and regulations issued by administrative agencies, notably Republic Act No. 7192 "promoting the integration of women as full and equal partners of men in development and nation building...."

Whatever rights or opportunities used to be denied to women in categorical language or due to ambiguity or implied from long-continued practice or custom, are now clearly granted to them, such as the right to "enter into contracts which shall in every respect be equal to that of men under similar circumstances," [7] equal membership in clubs, [8] admission to military schools, [9] voluntary PAGIBIG, GSIS and SSS Coverage [10] and others.

Now that doors hitherto closed to them have been flung open with the approbation and active collaboration of men, should we refuse to recognize their right to the continued use of their (maiden) name and surname even after marriage, without doubt a comparatively minor concession? Other than the bruising of the male ego, there can hardly be any legal injury or damage resulting to personal, property or contractual rights of the husbands.

In many countries, the trend is for married women to retain their maiden names. Even in the Philippines, the use of the title "Ms." to refer to women in general, whether single, married, widowed or separated, has gained acceptance.

Where, however, a woman voluntarily assumes her husband's family name upon marriage, the dissolution of the matrimonial bonds consequent upon the granting of absolute divorce or the declaration of nullity of marriage or its annulment, provides legal ground for the automatic dropping of said family name and the resumption of the use of her maiden name. This is but in recognition of the change of her civil status from "married" to "unmarried." Such right should not be begrudged her, whether her former husband contracts another union or not.

I could not agree more with the enlightened ponencia of my respected colleague who, being a Muslim like the petitioner, is in the best position to understand the customs, mores and practices, as well as the feelings of the men and women of his faith.

[1] Art. 377, Civil Code.

[2] Art. 378, Civil Code.

[3] Art. 380, Civil Code.

[4] Act No. 3883, as amended by Act No. 4147.

[5] Art. 379, Civil Code.

[6] Rule 103, Rules of Court.

[7] Rep. Act No. 7192, Sec. 5.

[8] Ibid., Sec. 6.

[9] Ibid., Sec. 7.

[10] Ibid., Sec. 8.

CONCURRING OPINION

VITUG, J.:

I concur with my esteemed colleague, Mr. Justice Abdulwahid A. Bidin, on his well written ponencia. Allow me, nonetheless, to express my views, in general, on the use of surnames by married women.

The accepted rule is that a person may only use his own name and surname. One exception involves a married woman. When a woman marries, the law, or what I believe to be its intendment, would appear to mandate, in brief outline, thusly -

A. During the existence of the marriage, she may choose to use any of the following names:

- (1) Her maiden first name and surname and add her husband's surname, or
- (2) Her maiden first name and husband's surname, or
- (3) Her husband's full name but must prefix a word to indicate that she is his wife (Art. 370, Civil Code).

Notes:

- (1) It is mandatory that the husband's surname should, in any of the above options, be somehow used.

Interestingly, in one of the deliberations of the Civil Code Revision Committee at the U.P. Law Center (participated in by Justice Jose B.L. Reyes, Justice Ricardo C. Puno, Justice Eduardo Caguioa, Justice Alicia Semplo-Diy, Atty. Ofelia Calcetes-Santos, Dean Fortunato Gupit and Dean Jose C. Vitug), a proposal to allow a married woman to use her maiden name and surname (after noting the provision of Sec. 14, Art. II of the Constitution which expresses the "fundamental equality before the law of women and men") was turned down by the Committee.

- (2) In case of legal separation, the wife must continue using her name and surname employed before the decree of legal separation (Art. 372, Civil Code), i.e., she may not at will revert to her maiden name and surname (*Laperal vs. Republic*, 6 SCRA 357).

B. In the event of annulment of marriage -

- (1) If the wife is adjudged to be the guilty party, she must resume her maiden name and surname, but
- (2) If the wife is the innocent party -
 - (I) She may resume her maiden name and surname, or
 - (II) She may choose to continue using her husband's surname unless -
 - (a) The court decrees otherwise, or
 - (b) She or he remarries (Art. 371, Civil Code).

C. In case of death of the husband - The widow may use her husband's surname (Art. 373, Civil Code), or resume her maiden name and surname (pursuant to the general rule).

D. In case of divorce –

The rule has been held to be akin to item C (death of husband), i.e., she may use her husband's surname (Tolentino vs. Court of Appeals, 162 SCRA 66) or resume her maiden name and surname (general rule).

Note: It would seem preferable to have this situation governed instead by the rules on annulment where we would distinguish between a case where the wife gives cause for divorce (annulment) and the instance when she is the Innocent party.

E. In case of declaration of nullity of marriage - No marriage having, or being deemed to have, technically existed, the general rule, i.e., that she may only use her own name and surname, should apply, but if she has, in fact, theretofore used the husband's surname, she obviously should cease from such use upon finality of the decree of nullity.

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