

## THIRD DIVISION

[ G.R. No. 198010, August 12, 2013 ]

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. DR. NORMA S. LUGSANAY UY, RESPONDENT.**

### DECISION

**PERALTA, J.:**

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court are the Court of Appeals (CA)<sup>[1]</sup> Decision<sup>[2]</sup> dated February 18, 2011 and Resolution<sup>[3]</sup> dated July 27, 2011 in CA-G.R. CV No. 00238-MIN. The assailed decision dismissed the appeal filed by petitioner Republic of the Philippines and, consequently, affirmed *in toto* the June 28, 2004 Order<sup>[4]</sup> of the Regional Trial Court (RTC), Branch 27, Gingoog City in Special Proceedings No. 230-2004 granting the Petition for Correction of Entry of Certificate of Live Birth filed by respondent Dr. Norma S. Lugsanay Uy; while the assailed resolution denied petitioner's motion for reconsideration.

The facts of the case are as follows:

On March 8, 2004, respondent filed a Petition for Correction of Entry in her Certificate of Live Birth.<sup>[5]</sup> Impleaded as respondent is the Local Civil Registrar of Gingoog City. She alleged that she was born on February 8, 1952 and is the illegitimate daughter of Sy Ton and Sotera Lugsanay<sup>[6]</sup> Her Certificate of Live Birth<sup>[7]</sup> shows that her full name is "Anita Sy" when in fact she is allegedly known to her family and friends as "Norma S. Lugsanay." She further claimed that her school records, Professional Regulation Commission (PRC) Board of Medicine Certificate,<sup>[8]</sup> and passport<sup>[9]</sup> bear the name "Norma S. Lugsanay." She also alleged that she is an illegitimate child considering that her parents were never married, so she had to follow the surname of her mother.<sup>[10]</sup> She also contended that she is a Filipino citizen and not Chinese, and all her siblings bear the surname Lugsanay and are all Filipinos.<sup>[11]</sup>

Respondent allegedly filed earlier a petition for correction of entries with the Office of the Local Civil Registrar of Gingoog City to effect the corrections on her name and citizenship which was supposedly granted.<sup>[12]</sup> However, the National Statistics Office (NSO) records did not bear such changes. Hence, the petition before the RTC.

On May 13, 2004, the RTC issued an Order<sup>[13]</sup> finding the petition to be sufficient in form and substance and setting the case for hearing, with the directive that the said Order be published in a newspaper of general circulation in the City of Gingoog and the Province of Misamis Oriental at least once a week for three (3) consecutive weeks at the expense of respondent, and that the order and petition be furnished

the Office of the Solicitor General (OSG) and the City Prosecutor's Office for their information and guidance.<sup>[14]</sup> Pursuant to the RTC Order, respondent complied with the publication requirement.

On June 28, 2004, the RTC issued an Order in favor of respondent, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant petition is hereby GRANTED. THE CITY CIVIL REGISTRAR OF GINGOOG CITY, or any person acting in his behalf is directed and ordered to effect the correction or change of the entries in the Certificate of Live Birth of petitioner's name and citizenship so that the entries would be:

a) As to petitioner's name	:	
First Name	:	NORMA
Middle Name	:	SY
Last Name	:	LUGSANAY

b) As to petitioner's nationality/citizenship	:	FILIPINO
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SO ORDERED.<sup>[15]</sup>

The RTC concluded that respondent's petition would neither prejudice the government nor any third party. It also held that the names "Norma Sy Lugsanay" and "Anita Sy" refer to one and the same person, especially since the Local Civil Registrar of Gingoog City has effected the correction. Considering that respondent has continuously used and has been known since childhood as "Norma Sy Lugsanay" and as a Filipino citizen, the RTC granted the petition to avoid confusion.<sup>[16]</sup>

On February 18, 2011, the CA affirmed *in toto* the RTC Order. The CA held that respondent's failure to implead other indispensable parties was cured upon the publication of the Order setting the case for hearing in a newspaper of general circulation for three (3) consecutive weeks and by serving a copy of the notice to the Local Civil Registrar, the OSG and the City Prosecutor's Office.<sup>[17]</sup> As to whether the petition is a collateral attack on respondent's filiation, the CA ruled in favor of respondent, considering that her parents were not legally married and that her siblings' birth certificates uniformly state that their surname is Lugsanay and their citizenship is Filipino.<sup>[18]</sup> Petitioner's motion for reconsideration was denied in a Resolution dated July 27, 2011.

Hence, the present petition on the sole ground that the petition is dismissible for failure to implead indispensable parties.

Cancellation or correction of entries in the civil registry is governed by Rule 108 of the Rules of Court, to wit:

SEC. 1. *Who may file petition.* – Any person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the Regional

Trial Court of the province where the corresponding civil registry is located.

*SEC. 2. Entries subject to cancellation or correction.* – Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriages; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) changes of name.

**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.**

*SEC. 6. Expediting proceedings.* – The court in which the proceeding is brought may make orders expediting the proceedings, and may also grant preliminary injunction for the preservation of the rights of the parties pending such proceedings.

*SEC. 7. Order.* – After hearing, the court may either dismiss the petition or issue an order granting the cancellation or correction prayed for. In either case, a certified copy of the judgment shall be served upon the civil registrar concerned who shall annotate the same in his record.<sup>[19]</sup>

In this case, respondent sought the correction of entries in her birth certificate, particularly those pertaining to her first name, surname and citizenship. She sought the correction allegedly to reflect the name which she has been known for since childhood, including her legal documents such as passport and school and professional records. She likewise relied on the birth certificates of her full blood siblings who bear the surname "Lugsanay" instead of "Sy" and citizenship of "Filipino" instead of "Chinese." The changes, however, are obviously not mere clerical as they touch on respondent's filiation and citizenship. In changing her surname from "Sy" (which is the surname of her father) to "Lugsanay" (which is the surname of her mother), she, in effect, changes her status from legitimate to illegitimate; and in changing her citizenship from Chinese to Filipino, the same

affects her rights and obligations in this country. Clearly, the changes are substantial.

It has been settled in a number of cases starting with *Republic v. Valencia*<sup>[20]</sup> that even substantial errors in a civil registry may be corrected and the true facts established provided the parties aggrieved by the error avail themselves of the appropriate adversary proceeding.<sup>[21]</sup> The pronouncement of the Court in that case is illuminating:

It is undoubtedly true that if the subject matter of a petition is not for the correction of clerical errors of a harmless and innocuous nature, but one involving nationality or citizenship, which is indisputably substantial as well as controverted, affirmative relief cannot be granted in a proceeding *summary* in nature. However, it is also true that a right in law may be enforced and a wrong may be remedied as long as the *appropriate remedy is used*. This Court adheres to the principle that even substantial errors in a civil registry may be corrected and the true facts established provided the parties aggrieved by the error avail themselves of the appropriate adversary proceeding. x x x

What is meant by "appropriate adversary proceeding?" Black's Law Dictionary defines "adversary proceeding" as follows:

One having opposing parties; contested, as distinguished from an *ex parte* application, one of which the party seeking relief has given legal warning to the other party, and afforded the latter an opportunity to contest it. Excludes an adoption proceeding.<sup>[22]</sup>

In sustaining the RTC decision, the CA relied on the Court's conclusion in *Republic v. Kho*,<sup>[23]</sup> *Alba v. Court of Appeals*,<sup>[24]</sup> and *Barco v. Court of Appeals*,<sup>[25]</sup> that the failure to implead indispensable parties was cured by the publication of the notice of hearing pursuant to the provisions of Rule 108 of the Rules of Court. In *Republic v. Kho*,<sup>[26]</sup> petitioner therein appealed the RTC decision granting the petition for correction of entries despite respondents' failure to implead the minor's mother as an indispensable party. The Court, however, did not strictly apply the provisions of Rule 108, because it opined that it was highly improbable that the mother was unaware of the proceedings to correct the entries in her children's birth certificates especially since the notices, orders and decision of the trial court were all sent to the residence she shared with them.<sup>[27]</sup>

In *Alba v. Court of Appeals*,<sup>[28]</sup> the Court found nothing wrong with the trial court's decision granting the petition for correction of entries filed by respondent although the proceedings was not actually known by petitioner. In that case, petitioner's mother and guardian was impleaded in the petition for correction of entries, and notices were sent to her address appearing in the subject birth certificate. However, the notice was returned unserved, because apparently she no longer lived there. Thus, when she allegedly learned of the granting of the petition, she sought the annulment of judgment which the Court denied. Considering that the petition for correction of entries is a proceeding *in rem*, the Court held that acquisition of jurisdiction over the person of the petitioner is, therefore, not required and the