

## SECOND DIVISION

[ G.R. NO. 170340, June 29, 2007 ]

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. CARLITO I. KHO, MICHAEL KHO, MERCY NONA KHO-FORTUN, HEDDY MOIRA KHO-SERRANO, KEVIN DOGMOC KHO (MINOR), AND KELLY DOGMOC KHO (MINOR), RESPONDENTS.**

### DECISION

**CARPIO MORALES, J.:**

Challenged via petition for review on certiorari is the October 27, 2005 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 78124 which affirmed the September 4, 2002 Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Butuan City, Branch 5 granting the prayer of respondents Carlito I. Kho (Carlito), Michael Kho, Mercy Nona Kho-Fortun, and Hedly Moira Kho-Serrano for the correction of entries in their birth certificates as well as those of Carlito's minor children Kevin and Kelly Dogmoc Kho.

The undisputed facts are as follows:

On February 12, 2001, Carlito and his siblings Michael, Mercy Nona and Hedly Moira filed before the RTC of Butuan City a verified petition for correction of entries in the civil registry of Butuan City to effect changes in their respective birth certificates. Carlito also asked the court in behalf of his minor children, Kevin and Kelly, to order the correction of some entries in their birth certificates.

In the case of Carlito, he requested the correction in his birth certificate of the citizenship of his mother to "Filipino" instead of "Chinese," as well as the deletion of the word "married" opposite the phrase "Date of marriage of parents" because his parents, Juan Kho and Epifania Inchoco (Epifania), were allegedly not legally married.

The same request to delete the "married" status of their parents from their respective birth certificates was made by Carlito's siblings Michael, Mercy Nona, and Hedly Moira.

With respect to the birth certificates of Carlito's children, he prayed that the date of his and his wife's marriage be corrected from April 27, 1989 to January 21, 2000, the date appearing in their marriage certificate.

The Local Civil Registrar of Butuan City was impleaded as respondent.

On April 23, 2001, Carlito et al. filed an Amended Petition<sup>[3]</sup> in which it was additionally prayed that Carlito's second name of "John" be deleted from his record of birth; and that the name and citizenship of Carlito's father in his (Carlito's) marriage certificate be corrected from "John Kho" to "Juan Kho" and "Filipino" to

"Chinese," respectively.

As required, the petition was published for three consecutive weeks<sup>[4]</sup> in Mindanao Daily Patrol-CARAGA, a newspaper of general circulation, after which it was set for hearing on August 9, 2001.

In a letter of June 18, 2001 addressed to the trial court, the city civil registrar<sup>[5]</sup> stated her observations and suggestions to the proposed corrections in the birth records of Carlito and his siblings but interposed no objections to the other amendments.

On the scheduled hearing of the petition on August 9, 2001, only the counsel for respondents appeared as the Office of the Solicitor General (OSG) had yet to enter its appearance for the city civil registrar. The trial court thus reset the hearing to October 9, 2001.<sup>[6]</sup> On September 14, 2001,<sup>[7]</sup> the OSG entered its appearance with an authorization to the city prosecutor of Butuan City to appear in the case and render assistance to it (the OSG).

On January 31, 2002, respondents presented documentary evidence showing compliance with the jurisdictional requirements of the petition. They also presented testimonial evidence consisting of the testimonies of Carlito and his mother, Epifania. During the same hearing, an additional correction in the birth certificates of Carlito's children was requested to the effect that the first name of their mother be rectified from "Maribel" to "Marivel."

By Decision<sup>[8]</sup> of September 4, 2002, the trial court directed the local civil registrar of Butuan City to correct the entries in the record of birth of Carlito, as follows: (1) change the citizenship of his mother from "Chinese" to "Filipino"; (2) delete "John" from his name; and (3) delete the word "married" opposite the date of marriage of his parents. The last correction was ordered to be effected likewise in the birth certificates of respondents Michael, Mercy Nona, and Heddy Moira.

Additionally, the trial court ordered the correction of the birth certificates of the minor children of Carlito to reflect the date of marriage of Carlito and Marivel Dogmoc (Marivel) as January 21, 2000, instead of April 27, 1989, and the name "Maribel" as "Marivel."

With respect to the marriage certificate of Carlito and Marivel, the corrections ordered pertained to the alteration of the name of Carlito's father from "John Kho" to "Juan Kho" and the latter's citizenship from "Filipino" to "Chinese."

Petitioner, Republic of the Philippines, appealed the RTC Decision to the CA, faulting the trial court in granting the petition for correction of entries in the subject documents despite the failure of respondents to implead the minors' mother, Marivel, as an indispensable party and to offer sufficient evidence to warrant the corrections with regard to the questioned "married" status of Carlito and his siblings' parents, and the latter's citizenship.

Petitioner also faulted the trial court for ordering the change of the name "Carlito John Kho" to "Carlito Kho" for non-compliance with jurisdictional requirements for a change of name under Rule 103 of the Rules of Court.

By the assailed Decision of October 27, 2005, the CA denied petitioner's appeal and affirmed the decision of the trial court.

The CA found that Rule 108 of the Revised Rules of Court, which outlines the proper procedure for cancellation or correction of entries in the civil registry, was observed in the case.

Regarding Carlito's minor children Kevin and Kelly, the appellate court held that the correction of their mother's first name from "Maribel" to "Marivel" was made to rectify an innocuous error.

As for the change in the date of the marriage of Carlito and Marivel, albeit the CA conceded that it is a substantial alteration, it held that the date would not affect the minors' filiation from "legitimate" to "illegitimate" considering that at the time of their respective births in 1991 and 1993, their father Carlito's first marriage was still subsisting as it had been annulled only in 1999.

In light of Carlito's legal impediment to marry Marivel at the time they were born, their children Kevin and Kelly were illegitimate. It followed, the CA went on to state, that Marivel was not an indispensable party to the case, the minors having been represented by their father as required under Section 5 of Rule 3<sup>[9]</sup> of the Revised Rules of Court.

Further, the CA ruled that although Carlito failed to observe the requirements of Rule 103 of the Rules of Court, he had complied nonetheless with the jurisdictional requirements for correction of entries in the civil registry under Rule 108 of the Rules of Court. The petition for correction of entry in Carlito's birth record, it noted, falls under letter "o" of the enumeration under Section 2 of Rule 108.

In the present petition, petitioner contends that since the changes sought by respondents were substantial in nature, they could only be granted through an adversarial proceeding in which indispensable parties, such as Marivel and respondents' parents, should have been notified or impleaded.

Petitioner further contends that the jurisdictional requirements to change Carlito's name under Section 2 of Rule 103 of the Rules of Court were not satisfied because the Amended Petition failed to allege Carlito's prior three-year bona fide residence in Butuan City, and that the title of the petition did not state Carlito's aliases and his true name as "Carlito John I. Kho." Petitioner concludes that the same jurisdictional defects attached to the change of name of Carlito's father.

The petition fails.

It can not be gainsaid that the petition, insofar as it sought to change the citizenship of Carlito's mother as it appeared in his birth certificate and delete the "married" status of Carlito's parents in his and his siblings' respective birth certificates, as well as change the date of marriage of Carlito and Marivel involves the correction of not just clerical errors of a harmless and innocuous nature.<sup>[10]</sup> Rather, the changes entail substantial and controversial amendments.

For the change involving the nationality of Carlito's mother as reflected in his birth certificate is a grave and important matter that has a bearing and effect on the citizenship and nationality not only of the parents, but also of the offspring.<sup>[11]</sup>

Further, the deletion of the entry that Carlito's and his siblings' parents were "married" alters their filiation from "legitimate" to "illegitimate," with significant implications on their successional and other rights.

Clearly, the changes sought can only be granted in an adversary proceeding. *Labayo-Rowe v. Republic*<sup>[12]</sup> explains the *raison d etre*:

x x x. The philosophy behind this requirement lies in the fact that the books making up the civil register and all documents relating thereto shall be prima facie evidence of the facts therein contained. **If the entries in the civil register could be corrected or changed through mere summary proceedings and not through appropriate action wherein all parties who may be affected by the entries are notified or represented, the door to fraud or other mischief would be set open, the consequence of which might be detrimental and far reaching.** x x x (Emphasis supplied)

In *Republic v. Valencia*,<sup>[13]</sup> however, this Court ruled, and has since repeatedly ruled, that even substantial errors in a civil registry may be corrected through a petition filed under Rule 108.<sup>[14]</sup>

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 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. x x x <sup>[15]</sup> (Emphasis, italics and underscoring supplied)

The enactment in March 2001 of Republic Act No. 9048, otherwise known as "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 JUDICIAL ORDER," has been considered to lend legislative affirmation to

the judicial precedence that substantial corrections to the civil status of persons recorded in the civil registry may be effected through the filing of a petition under Rule 108.<sup>[16]</sup>

Thus, this Court in *Republic v. Benemerito*<sup>[17]</sup> observed that the obvious effect of Republic Act No. 9048 is to make possible the administrative correction of clerical or typographical errors or change of first name or nickname in entries in the civil register, leaving to Rule 108 the correction of substantial changes in the civil registry in appropriate adversarial proceedings.

When all the procedural requirements under Rule 108 are thus followed, the appropriate adversary proceeding necessary to effect substantial corrections to the entries of the civil register is satisfied.<sup>[18]</sup> The pertinent provisions of Rule 108 of the Rules of Court read:

SEC. 3. *Parties.* – When cancellation or correction of an entry in the civil registrar 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 in 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. (Emphasis and underscoring supplied)

There is no dispute that the trial court's Order<sup>[19]</sup> setting the petition for hearing and directing any person or entity having interest in the petition to oppose it was posted<sup>[20]</sup> as well as published for the required period; that notices of hearings were duly served on the Solicitor General, the city prosecutor of Butuan and the local civil registrar; and that trial was conducted on January 31, 2002 during which the public prosecutor, acting in behalf of the OSG, actively participated by cross-examining Carlito and Epifania.

What surfaces as an issue is whether the failure to implead Marivel and Carlito's parents rendered the trial short of the required adversary proceeding and the trial court's judgment void.

A similar issue was earlier raised in *Barco v. Court of Appeals*.<sup>[21]</sup> That case stemmed from a petition for correction of entries in the birth certificate of a minor, June Salvacion Maravilla, to reflect the name of her real father (Armando Gustilo) and to correspondingly change her surname. The petition was granted by the trial court.