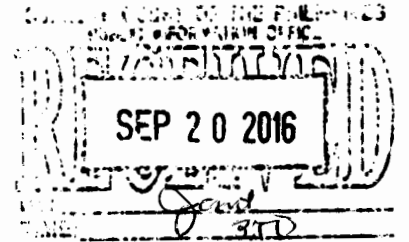




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION



IN THE MATTER OF THE
PETITION FOR CORRECTION
OF ENTRY (CHANGE OF
FAMILY NAME IN THE BIRTH
CERTIFICATE OF FELIPE C.
ALMOJUELA AS APPEARING
IN THE RECORDS OF THE
NATIONAL STATISTICS
OFFICE),

G.R. No. 211724

Present:

SERENO, C.J., Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PERLAS-BERNABE, and
CAGUIOA, JJ.

FELIPE C. ALMOJUELA,
Petitioner,

- versus -

Promulgated:

AUG 24 2016

REPUBLIC OF THE
PHILIPPINES,
Respondent.

X-----X

RESOLUTION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ is the Decision² dated February 27, 2014 rendered by the Court of Appeals (CA) in CA-G.R. CV. No. 98082, which reversed and set aside the Decision³ dated October 6, 2011 and the Order⁴ dated November 14, 2011 of the Regional Trial Court of Virac, Catanduanes, Branch 43 (RTC) in Spec. Proc. No. 1345 granting the Petition for Correction of Entry in the Certificate of Live Birth filed by petitioner Felipe C. Almojuela (petitioner).

¹ Rollo, pp. 9-19.

² Id. at 21-34. Penned by Associate Justice Stephen C. Cruz with Associate Justices Magdangal M. De Leon and Eduardo B. Peralta, Jr. concurring.

³ Id. at 46-52. Penned by Presiding Judge Lelu P. Contreras.

⁴ Id. at 53-54.

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The Facts

For almost sixty (60) years, petitioner has been using the surname “Almojuela.” However, when he requested for a copy of his birth certificate from the National Statistics Office (NSO), he was surprised to discover that he was registered as “Felipe Condono,” instead of “Felipe Almojuela.” Thus, he filed a Petition for Correction of Entry⁵ in his NSO birth certificate before the RTC,⁶ docketed as Spec. Proc. No. 1345.⁷

Petitioner alleged that he was born on February 25, 1950 in Pandan, Catanduanes and is the acknowledged natural child of Jorge V. Almojuela (Jorge), former governor of the said province, and Francisca B. Condono (Francisca), both deceased. He averred that while his parents did not marry each other, he has been known to his family and friends as “Felipe Almojuela” and has been using the said surname in all of his official and legal documents, including his school records from elementary to college, certificate of Government Service Insurance System (GSIS) membership, government service records, appointment as Provincial General Services Officer, report of rating in the First Grade Entrance Examination of the Civil Service Commission, Philippine Passport, Marriage Contract, and Certificate of Compensation Payment/Tax Withheld. In support of his petition, he also presented a copy of his birth certificate issued by the Local Civil Registrar of the Municipality of Pandan, Catanduanes showing that “Felipe Almojuela” appears as his registered full name.⁸

In an Order⁹ dated January 10, 2011, the RTC initially dismissed the petition on the ground that petitioner’s recourse to Rule 108 of the Rules of Court was improper, as the petition did not involve mere correction of clerical errors but a matter of filiation which should, thus, be filed in accordance with Rule 103 of the same Rules. Moreover, it found that a similar petition docketed as Spec. Proc. No. 1229 had already been ruled upon and dismissed by the court.¹⁰

Petitioner moved for reconsideration, maintaining that the issue of filiation is immaterial since he was only seeking a correction of entry by including the surname “Almojuela” to “Felipe Condono,” his first and middle names appearing on his birth certificate with the NSO. He likewise insisted that the name “Jorge V. Almojuela” was clearly indicated thereon as the name of his father. Finding merit in petitioner’s arguments, the RTC, in

⁵ Not attached to the *rollo*. Filed on December 17, 2010; see *id.* at 22.

⁶ See *id.* at 10-11.

⁷ See *id.* at 46.

⁸ See *id.* at 22-23 and 47-50.

⁹ Not attached to the *rollo*.

¹⁰ See *rollo*, pp. 23-24.

an Order¹¹ dated February 9, 2011, reconsidered its earlier disposition and allowed petitioner to present his evidence.¹²

During the proceedings, it was discovered that petitioner's name as registered in the Book of Births in the custody of the Municipal Civil Registrar of Pandan, Catanduanes is "Felipe Condono" and not "Felipe C. Almojuela," contrary to petitioner's allegation.¹³

The RTC Ruling

In a Decision¹⁴ dated October 6, 2011, the RTC granted the petition and accordingly, directed the Municipal Civil Registrar of Pandan, Catanduanes to cause the correction of entry of the facts of petitioner's birth by changing his surname from "Condono" to "Almojuela" and to furnish the Civil Registrar General with a copy of the corrected birth certificate.¹⁵

In so ruling, the RTC found that the change in petitioner's surname would cause no prejudice to the Almojuela family nor would they be the object of future mischief. Instead, petitioner has shown that he was accepted and acknowledged by his half-siblings. Moreover, allowing petitioner to retain the surname that he has been using for over sixty (60) years, *i.e.*, "Almojuela," would avoid confusion in his personal undertakings, as well as in the community.¹⁶

However, considering that the Book of Births of the Municipal Civil Registrar of Pandan, Catanduanes reflects the name "Felipe Condono" as petitioner's registered name, the RTC ordered that the same be first corrected before the correction of entry in the records of the NSO could be had.¹⁷

The Republic of the Philippines, through the Office of the Solicitor General (OSG), moved for reconsideration,¹⁸ citing lack of jurisdiction due to defective publication and contending that the caption or title of a petition for change of name should state: (a) the *alias* or other name of petitioner; (b) the name he seeks to adopt; and (c) the cause for the change of name, all of which were lacking in the petition filed before the RTC.¹⁹

¹¹ Not attached to the *rollo*.

¹² See *rollo*, p. 24.

¹³ *Id.* at 51.

¹⁴ *Id.* at 46-52.

¹⁵ *Id.* at 52.

¹⁶ *Id.*

¹⁷ See *id.* at 51.

¹⁸ Not attached to the *rollo*.

¹⁹ See *id.* at 53.

In an Order²⁰ dated November 14, 2011, the RTC denied the OSG's motion and reiterated its stance that based on the allegations thereon, the petition was only for the correction of entry in the records of the NSO. As petitioner had established compliance with the jurisdictional requirements therefor, the RTC had thus acquired jurisdiction.²¹ Dissatisfied, the OSG appealed²² to the CA.

The CA Ruling

In a Decision²³ dated February 27, 2014, the CA reversed and set aside the assailed RTC Decision and Order, and nullified the RTC's order for the correction of entry in petitioner's birth certificate.²⁴ It held that although petitioner correctly invoked Rule 108 of the Rules of Court in filing his petition,²⁵ he, however, failed to strictly comply with the requirements thereunder when he omitted to implead the Local Civil Registrar and his half-siblings, who stand to be affected by the corrections prayed for, as parties.²⁶ Sections 4²⁷ and 5²⁸ of Rule 108 of the Rules of Court require that notice be sent to persons named in the petition, as well as to those not named thereon but nonetheless may be considered interested or affected parties. In petitioner's case, his failure to implead and notify the Local Civil Registrar and his half-siblings as mandated by the rules precluded the RTC from acquiring jurisdiction over the case.²⁹

Moreover, the CA also found that the correction of entry sought by petitioner was not merely clerical in nature, but necessarily involved a determination of his filiation. As petitioner failed to show that his putative father, Jorge, recognized him as his child through any of the means allowed under Article 176 of the Family Code, as amended by Republic Act No. 9255,³⁰ petitioner, therefore, cannot use "Almojuela" as his surname.³¹

Aggrieved, petitioner elevated the matter before the Court through the instant petition.

²⁰ Id. at 53-54.

²¹ See id.

²² Not attached to the *rollo*.

²³ Id. at 21-34.

²⁴ Id. at 33-34.

²⁵ Id. at 31.

²⁶ Id. at 32.

²⁷ 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.

²⁸ 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.

²⁹ See id. at 32-33.

³⁰ Entitled "AN ACT ALLOWING ILLEGITIMATE CHILDREN TO USE THE SURNAME OF THEIR FATHER, AMENDING FOR THE PURPOSE ARTICLE 176 OF EXECUTIVE ORDER NO. 209, OTHERWISE KNOWN AS THE "FAMILY CODE OF THE PHILIPPINES," approved on February 24, 2004.

³¹ See *rollo*, p. 32.

The Issue Before the Court

The sole issue to be resolved by the Court is whether or not the CA erred in nullifying the correction of entry on petitioner's birth certificate on the ground of lack of jurisdiction.

The Court's Ruling

The petition is bereft of merit.

Rule 108 of the Rules of Court provides the procedure for the correction of substantial changes in the civil registry through an appropriate adversary proceeding.³² An adversary proceeding is defined as 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."³³

Sections 3, 4, and 5, Rule 108 of the Rules of Court state:

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. (Emphases supplied)

A reading of Sections 4 and 5 shows that the Rule mandates two (2) sets of notices to potential oppositors: one given to persons named in the petition, and another given to other persons who are not named in the petition but nonetheless may be considered interested or affected parties.³⁴ Consequently, the petition for a substantial correction of an entry in the civil registry should implead as respondents the civil registrar, as well as all other

³² See *Republic v. Mercadera*, 652 Phil. 195, 210-211 (2010).

³³ *Republic v. Uy*, 716 Phil. 254, 261 (2013); citation omitted.

³⁴ *Republic v. Coseteng-Magpayo*, 656 Phil. 550, 560 (2011).

persons who have or claim to have any interest that would be affected thereby.³⁵

In *Republic v. Coseteng-Magpayo*,³⁶ the Court emphasized that in a petition for a substantial correction or change of entry in the civil registry under Rule 108, it is **mandatory** that the civil registrar, as well as all other persons who have or claim to have any interest that would be affected thereby be made respondents for the reason that they are indispensable parties.³⁷ Thus, the Court nullified the order to effect the necessary changes for respondent's failure to strictly comply with the foregoing procedure laid down in Rule 108 of the Rules of Court. Citing *Labayo-Rowe v. Republic*,³⁸ the Court held therein:

Aside from the Office of the Solicitor General, **all other indispensable parties should have been made respondents.** They include not only the declared father of the child but the child as well, together with the paternal grandparents, if any, as their hereditary rights would be adversely affected thereby. **All other persons who may be affected by the change should be notified or represented.** The truth is best ascertained under an adversary system of justice.

The right of the child Victoria to inherit from her parents would be substantially impaired if her status would be changed from "legitimate" to "illegitimate." Moreover, she would be exposed to humiliation and embarrassment resulting from the stigma of an illegitimate filiation that she will bear thereafter. The fact that the notice of hearing of the petition was published in a newspaper of general circulation and notice thereof was served upon the State will *not* change the nature of the proceedings taken. Rule 108, like all the other provisions of the Rules of Court, was promulgated by the Supreme Court pursuant to its rule-making authority under Section 13, Article VIII of the 1973 Constitution, which directs that such rules shall not diminish, increase or modify substantive rights. If Rule 108 were to be extended beyond innocuous or harmless changes or corrections of errors which are visible to the eye or obvious to the understanding, so as to comprehend substantial and controversial alterations concerning citizenship, legitimacy of paternity or filiation, or legitimacy of marriage, without observing the proper proceedings as earlier mentioned, said rule would thereby become an unconstitutional exercise which would tend to increase or modify substantive rights. This situation is not contemplated under Article 412 of the Civil Code.³⁹ (Emphases, italics and underscoring supplied)

Similarly, in *Republic v. Uy*,⁴⁰ the Court nullified the trial court's order to correct respondent's entry for the latter's failure to implead and notify not only the Local Civil Registrar, but also her parents and siblings as

³⁵ Id. at 558; citation omitted.

³⁶ Id.

³⁷ See id. at 558 and 562-563; citations omitted.

³⁸ 250 Phil. 300 (1988).

³⁹ *Republic v. Coseteng-Magpayo*, supra note 34, at 559, citing *Labayo-Rowe v. Republic*, id. at 308-309.

⁴⁰ *Republic v. Uy*, supra note 33.

the persons who have interest and are affected by the changes or corrections sought.⁴¹

In this case, the CA correctly found that petitioner failed to implead both the Local Civil Registrar and his half-siblings.⁴² Although he claims that his half-siblings have acknowledged and accepted him, the procedural rules nonetheless mandate compliance with the requirements in the interest of fair play and due process and to afford the person concerned the opportunity to protect his interest if he so chooses.⁴³

Moreover, although it is true that in certain instances, the Court has allowed the subsequent publication of a notice of hearing to cure the petition's lack/failure to implead and notify the affected or interested parties, such as when: (a) earnest efforts were made by petitioners in bringing to court all possible interested parties; (b) the parties themselves initiated the corrections proceedings; (c) there is no actual or presumptive awareness of the existence of the interested parties; or, (d) when a party is inadvertently left out,⁴⁴ these exceptions are, unfortunately, unavailing in this case.

In sum, the failure to strictly comply with the above-discussed requirements of Rule 108 of the Rules of Court for correction of an entry in the civil registrar involving substantial and controversial alterations renders the entire proceedings therein null and void. In *Republic v. CA*,⁴⁵ the Court held that the proceedings of the trial court were null and void for lack of jurisdiction as the petitioners therein failed to implead the civil registrar, an indispensable party, in the petition for correction of entry, viz.:

The local civil registrar is thus required to be made a party to the proceeding. He is an indispensable party, without whom no final determination of the case can be had. As he was not impleaded in this case much less given notice of the proceeding, the decision of the trial court, insofar as it granted the prayer for the correction of entry, is void. **The absence of an indispensable party in a case renders ineffectual all proceedings subsequent to the filing of the complaint including the judgment.**

x x x x

The necessary consequence of the failure to implead the civil registrar as an indispensable party and to give notice by publication of the petition for correction of entry was to render the proceeding of the trial court, so far as the correction of entry was concerned, null and void for lack of jurisdiction both as to party and as to the subject matter.⁴⁶ (Emphases and underscoring supplied)

⁴¹ See id. at 265-266.

⁴² See *rollo*, p. 32.

⁴³ See *Republic v. Uy*, supra note 33, at 265-266.

⁴⁴ See id.

⁴⁵ 325 Phil. 361 (1996).

⁴⁶ Id. at 369-370.

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Consequently, the petition for correction of entry filed by petitioner must perforce be dismissed.

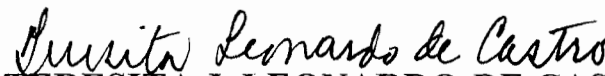
WHEREFORE, the petition is **DENIED**. The Decision dated February 27, 2014 of the Court of Appeals in CA-G.R. CV. No. 98082 is hereby **AFFIRMED**. Consequently, the Decision dated October 6, 2011 of the Regional Trial Court of Virac, Catanduanes, Branch 43 in Spec. Proc. No. 1345 granting the Petition for Correction of Entry in the Certificate of Live Birth is **NULLIFIED**.


SO ORDERED.

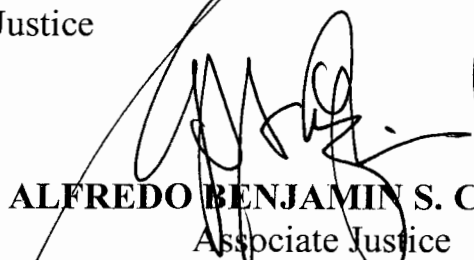

ESTELA M. PERLAS-BERNABE
 Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
 Chief Justice
 Chairperson



TERESITA J. LEONARDO-DE CASTRO
 Associate Justice


LUCAS P. BERSAMIN
 Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
 Chief Justice