

FIRST DIVISION

G.R. No. 203371 – REPUBLIC OF THE PHILIPPINES, *petitioner, versus,*  
CHARLIE MINTAS FELIX, *respondent.*

Promulgated:

JUN 30 2020



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SEPARATE CONCURRING OPINION

**LOPEZ, J.:**

The *ponencia* affirmed the Decision of the Regional Trial Court (RTC) to correct the entries in the respondent's birth certificate referring to his sex, first name, and father's surname under Rule 108 of the Rules of Court, and to order the Local Civil Registrar (LCR) to cancel his second birth certificate.

I concur.

Notably, it was in 2007 that the respondent sought the correction of his birth certificate before the RTC. The erroneous entries include his sex,<sup>1</sup> first name,<sup>2</sup> and father's surname.<sup>3</sup> At that time, Republic Act (RA) No. 9048<sup>4</sup> already authorized the administrative change or correction of clerical or typographical errors<sup>5</sup> in first names or nicknames. However, it was only in 2012 that RA No. 10172<sup>6</sup> introduced an amendment allowing the administrative change or correction of similar errors in the sex and the day and month in the date of birth of a person. In this circumstance, the filing of a single petition under Rule 108 to correct the erroneous entries in the respondent's birth certificate is justified. Moreover, RA No. 9048, as amended by RA No. 10172, did not divest the trial courts of jurisdiction over petitions for correction of clerical or typographical errors in a birth certificate. To be sure, the local civil registrars' administrative

<sup>1</sup> "Female" instead of "Male."

<sup>2</sup> "Shirley" instead of "Charlie."

<sup>3</sup> "Filex" instead of "Felix."

<sup>4</sup> 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 a Judicial Order, amending for this purpose Articles 376 and 412 of the Civil Code of the Philippines.

<sup>5</sup> Rule 2.8 of the implementing rules and regulations of RA No. 9048 defines a clerical or typographical error as a mistake committed in the performance of clerical work in writing, copying, transcribing, or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records. In *Republic of the Philippines v. Merlyn Mercader*, G.R. No. 186027, December 8, 2010, we held that a misspelled given name pertains to a mere clerical error. Thus, the correction of petitioner's first name from "MARILYN" to "MERLYN" was ruled as a clerical error in spelling.

<sup>6</sup> An Act Further Authorizing the City or Municipal Civil Registrar of the Consul General to Correct Clerical or Typographical Errors in the Day and Month in the Date of Birth or Sex of a Person Appearing in the Civil Register Without Need of a Judicial Order, amending for this purpose Republic Act Numbered Ninety Forty-Eight.



authority to change or correct similar errors is only primary but not exclusive.<sup>7</sup> At any rate, the doctrine of primary administrative jurisdiction is not absolute and may be dispensed with for reasons of equity. One such instance is the failure to raise the issue of non-compliance with the doctrine at an opportune time.<sup>8</sup>

Lastly, the RTC correctly ordered the LCR to cancel the respondent's second birth certificate. Under the doctrine of ancillary jurisdiction, the courts have the power to adjudicate and determine matters in aid of or incidental to the exercise of its original or primary jurisdiction.<sup>9</sup> This will avoid multiplicity of suits and further litigation between the parties, which is offensive to the orderly administration of justice.

**FOR THESE REASONS, I vote to DENY the petition.**

  
MARIO V. LOPEZ  
Associate Justice

<sup>7</sup> It is worth noting that the deliberations on RA No. 9048 did not mention that petitions for correction of clerical errors can no longer be filed with the regular courts, though the grounds upon which the administrative process before the local civil registrar may be availed of are limited under the law. (*Re: Final Report on the Judicial Audit Conducted at the Regional Trial Court, Br. 67, Paniqui, Tarlac, Adm. Matter No. 06-7-414-RTC, October 19, 2007.*)

<sup>8</sup> In *Republic of the Philippines v. Michelle Soriano Gallo*, G.R. No. 207074, January 17, 2018, We held that for reasons of equity, in cases where jurisdiction is lacking, failure to raise the issue of non-compliance with the doctrine of primary administrative jurisdiction at an opportune time may bar a subsequent filing of a motion to dismiss based on that ground by way of laches. Thus, we allowed that the corrections of clerical errors sought by the petitioner, such as his first name from "Michael" to "Michelle;" her biological sex from "male" to "female;" the entry of her middle name as "Soriano;" middle name of her mother as "Angangan;" middle name of her father as "Balingao;" and, the date of her parents' marriage as "May 23, 1981," despite the filing of a petition under Rule 108, considering the failure of the Office of the Solicitor General to raise the doctrine of primary jurisdiction at the first instance.

<sup>9</sup> While a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates. Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance. (*City of Manila v. Grecia-Cuerdo*, G.R. No. 175723, February 4, 2014, 715 SCRA 182, 206.)