

## THIRD DIVISION

[ G.R. No. 207074, January 17, 2018 ]

**REPUBLIC OF THE PHILIPPINES, PETITIONER, V. MICHELLE  
SORIANO GALLO, RESPONDENT.**

### D E C I S I O N

**LEONEN, J.:**

Names are labels for one's identity. They facilitate social interaction, including the allocation of rights and determination of liabilities. It is for this reason that the State has an interest in one's name.

The name through which one is known is generally, however, not chosen by the individual who bears it. Rather, it is chosen by one's parents. In this sense, the choice of one's name is not a product of the exercise of autonomy of the individual to whom it refers.

In view of the State's interest in names as markers of one's identity, the law requires that these labels be registered. Understandably, in some cases, the names so registered or other aspects of one's identity that pertain to one's name are not reflected with accuracy in the Certificate of Live Birth filed with the civil registrar.

Changes to one's name, therefore, can be the result of either one of two (2) motives. The first, as an exercise of one's autonomy, is to change the appellation that one was given for various reasons. The other is not an exercise to change the label that was given to a person; it is simply to correct the data as it was recorded in the Civil Registry.

This is a Petition for Review<sup>[1]</sup> under Rule 45 assailing the April 29, 2013 Decision<sup>[2]</sup> of the Court of Appeals in CA-G.R. CV No. 96358, which denied the Republic of the Philippines' appeal<sup>[3]</sup> from the Regional Trial Court December 7, 2010 Order<sup>[4]</sup> granting herein respondent Michelle Soriano Gallo's (Gallo) Petition for Correction of Entry of her Certificate of Live Birth.

Gallo has never been known as "Michael Soriano Gallo." She has always been female. Her parents, married on May 23, 1981, have never changed their names. For her, in her petition before the Regional Trial Court, her Certificate of Live Birth contained errors, which should be corrected. For her, she was not changing the name that was given to her; she was merely correcting its entry.

To accurately reflect these facts in her documents, Gallo prayed before the Regional Trial Court of Ilagan City, Isabela in Special Proc. No. 2155<sup>[5]</sup> for the correction of her name from "Michael" to "Michelle" and of her biological sex from "Male" to "Female" under Rule 108<sup>[6]</sup> of the Rules of Court.<sup>[7]</sup>

In addition, Gallo asked for the inclusion of her middle name, "Soriano"; her mother's middle name, "Angangan"; her father's middle name, "Balingao"; and her parent's marriage date, May 23, 1981, in her Certificate of Live Birth, as these were not recorded.<sup>[8]</sup>

As proof, she attached to her petition copies of her diploma, voter's certification, official transcript of records, medical certificate, mother's birth certificate, and parents' marriage certificate.<sup>[9]</sup>

The Regional Trial Court, having found Gallo's petition sufficient in form and substance, set a hearing on August 2, 2010. It also ordered the publication of the Notice of Hearing once a week for three (3) consecutive weeks in a newspaper of general circulation in the Province of Isabela.<sup>[10]</sup>

The Office of the Solicitor General authorized the Office of the Provincial Prosecutor to appear on its behalf.<sup>[11]</sup> Trial then ensued.

During trial, Gallo testified on her allegations. She showed that her college diploma, voter's certification, and transcript indicated that her name was "Michelle Soriano Gallo." The doctor who examined her also certified that she was female.<sup>[12]</sup> On cross-examination, Gallo explained that she never undertook any gender-reassignment surgery and that she filed the petition not to evade any civil or criminal liability, but to obtain a passport.<sup>[13]</sup>

The Regional Trial Court, in its December 7, 2010 Order, granted the petition.<sup>[14]</sup> It lent credence to the documents Gallo presented and found that the corrections she sought were "harmless and innocuous."<sup>[15]</sup> It concluded that there was a necessity to correct Gallo's Certificate of Live Birth and applied Rule 108 of the Rules of Court,<sup>[16]</sup> citing *Republic v. Cagandahan*.<sup>[17]</sup> Thus:

WHEREFORE, above premises considered, an order is hereby issued directing the Civil Registrar General, NSO through the Municipal Civil Registrar of Ilagan, Isabela to correct the entries in the Birth Certificate of the petitioner as well as in the National Statistics Office Authenticated copy particularly her first name "MICHAEL" to "MICHELLE", gender from "MALE" to "FEMALE", middle name of petitioner to be entered as "SORIANO", middle names of petitioner's parents to be properly supplied as "ANGANGAN" for the mother and "BALINGAO" for the father, as well as date of marriage of petitioner's parents to be recorded as "MAY 23, 1981", after payment of legal fees if there be any.

SO ORDERED.<sup>[18]</sup>

The Office of the Solicitor General appealed, alleging that the applicable rule should be Rule 103 of the Rules of Court for Petitions for Change of Name.<sup>[19]</sup> It argued that Gallo did not comply with the jurisdictional requirements under Rule 103 because the title of her Petition and the published Order did not state her official name, "Michael Gallo."<sup>[20]</sup> Furthermore, the published Order was also defective for not stating the cause of the change of name.<sup>[21]</sup>

The Court of Appeals, in its assailed April 29, 2013 Decision, denied the Office of the Solicitor General's appeal.<sup>[22]</sup> It found that Gallo availed of the proper remedy under

Rule 108 as the corrections sought were clerical, harmless, and innocuous.<sup>[23]</sup> It further clarified that Rule 108 is limited to the implementation of Article 412 of the Civil Code<sup>[24]</sup> and that the proceedings which stem from it can "either be summary, if the correction sought is clerical, or adversary . . . if [it] affects . . . civil status, citizenship or nationality . . . which are deemed substantial corrections."<sup>[25]</sup>

The Court of Appeals discussed that Rule 103, on the other hand, "governs the proceeding for changing the given or proper name of a person as recorded in the civil register."<sup>[26]</sup>

Jurisprudence has recognized the following grounds as sufficient to warrant a change of name, to wit: (a) when the name is ridiculous, dishonorable or extremely difficult to write or pronounce; (b) when the change results as a legal consequence of legitimation or adoption; (c) when the change will avoid confusion; (d) when one has continuously used and been known since childhood by a Filipino name and was unaware of alien parentage; (e) when the change is based on a sincere desire to adopt a Filipino name to erase signs of former alienage, all in good faith and without prejudice to anybody; and (f) when the surname causes embarrassment and there is no showing that the desired change of name was for a fraudulent purpose or that the change of name would prejudice public interest.<sup>[27]</sup>

The Court of Appeals also stated that Republic Act No. 10172, "the present law on the matter, classifies a change in the first name or nickname, or sex of a person as clerical error that may be corrected without a judicial order."<sup>[28]</sup> It applied this ruling on the inclusion of Gallo's middle name, her parents' middle names, and the latter's date of marriage, as they do not involve substantial corrections.<sup>[29]</sup>

As the petition merely involved the correction of clerical errors, the Court of Appeals held that a summary proceeding would have sufficed. With this determination, the Regional Trial Court's more rigid and stringent adversarial proceeding was more than enough to satisfy the procedural requirements under Rule 108.<sup>[30]</sup>

However, the Republic, through the Office of the Solicitor General, believes otherwise. For it, Gallo wants to change the name that she was given. Thus, it filed the present Petition via Rule 45 under the 1997 Rules of Civil Procedure. The Petition raises procedural errors made by the Regional Trial Court and the Court of Appeals in finding for Gallo.<sup>[31]</sup>

Citing *Republic v. Mercadera*,<sup>[32]</sup> petitioner argues that "only clerical, spelling, typographical and other innocuous errors in the civil registry may be raised" in petitions for correction under Rule 108.<sup>[33]</sup> Thus, the correction must only be for a patently misspelled name.<sup>[34]</sup> As "Michael" could not have been the result of misspelling "Michelle," petitioner contends that the case should fall under Rule 103 for it contemplates a substantial change.<sup>[35]</sup>

Petitioner holds that since the applicable rule is Rule 103, Gallo was not able to comply with the jurisdictional requirements for a change of name under Section 2 of this Rule.<sup>[36]</sup> It also argues that the use of a different name is not a reasonable ground to change name under Rule 103.<sup>[37]</sup>

Finally, petitioner insists that Gallo failed to exhaust administrative remedies and observe the doctrine of primary jurisdiction<sup>[38]</sup> as Republic Act No. 9048 allegedly now governs the change of first name, superseding the civil registrar's jurisdiction over the matter.<sup>[39]</sup>

To support its claim, it cited *Silverio v. Republic*,<sup>[40]</sup> which held that "[t]he intent and effect of the law is to exclude the change of first name from the coverage of Rules 103 . . . and 108 . . . of the Rules of Court, until and unless an administrative petition for change of name is first filed and subsequently denied."<sup>[41]</sup>

Respondent Gallo, in her Comment,<sup>[42]</sup> counters that the issue of whether or not the petitioned corrections are innocuous or clerical is a factual issue, which is improper in a Petition for Review on Certiorari under Rule 45.<sup>[43]</sup> In any case, she argues that the corrections are clerical; hence, the applicable rule is Rule 108 and not Rule 103, with the requirements of an adversarial proceeding properly satisfied.<sup>[44]</sup> Lastly, she contends that petitioner has waived its right to invoke the doctrines of non-exhaustion of administrative remedies and primary jurisdiction when it failed to file a motion to dismiss before the Regional Trial Court and only raised these issues before this Court.<sup>[45]</sup>

Petitioner filed its Reply.<sup>[46]</sup> The case was then submitted for resolution after the parties filed their respective Memoranda.<sup>[47]</sup>

The issues for this Court's resolution are:

First, whether or not the Republic of the Philippines raised a question of fact in alleging that the change sought by Michelle Soriano Gallo is substantive and not a mere correction of error;

Second, whether or not Michelle Soriano Gallo's petition involves a substantive change under Rule 103 of the Rules of Court instead of mere correction of clerical errors; and

Finally, whether or not Michelle Soriano Gallo failed to exhaust administrative remedies and observe the doctrine of primary jurisdiction.

This Court finds for the respondent. Hers was a Petition to correct the entry in the Civil Registry.

## I

In assailing the Court of Appeals' ruling that the change sought by Gallo was a mere correction of error, petitioner raises a question of fact not proper under a Rule 45 Petition, which should only raise questions of law.

Time and again, it has been held that this Court is not a trier of facts. Thus, its functions do not include weighing and analyzing evidence adduced from the lower courts all over again.

In *Spouses Miano v. Manila Electric Co.*<sup>[48]</sup>:

The Rules of Court states that a review of appeals filed before this Court is "not a matter of right, but of sound judicial discretion." The Rules of

Court further requires that only questions of law should be raised in petitions filed under Rule 45 since factual questions are not the proper subject of an appeal by *certiorari*. It is not this Court's function to once again analyze or weigh evidence that has already been considered in the lower courts.

*Bases Conversion Development Authority v. Reyes* distinguished a question of law from a question of fact:

Jurisprudence dictates that there is a "question of law" when the doubt or difference arises as to what the law is on a certain set of facts or circumstances; on the other hand, there is a "question of fact" when the issue raised on appeal pertains to the truth or falsity of the alleged facts. The test for determining whether the supposed error was one of "law" or "fact" is not the appellation given by the parties raising the same; rather, it is whether the reviewing court can resolve the issues raised *without evaluating the evidence*, in which case, it is a question of law; otherwise, it is one of fact. In other words, where there is no dispute as to the facts, the question of whether or not the conclusions drawn from these facts are correct is a question of law. However, if the question posed requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relationship to each other, the issue is factual.<sup>[49]</sup> (Emphasis supplied)

In the case at bar, petitioner raises an issue which requires an evaluation of evidence as determining whether or not the change sought is a typographical error or a substantive change requires looking into the party's records, supporting documents, testimonies, and other evidence.

On changes of first name, Republic Act No. 10172, which amended Republic Act No. 9048, is helpful in identifying the nature of the determination sought.

Republic Act No. 10172<sup>[50]</sup> defines a clerical or typographical error as a recorded mistake, "which is *visible to the eyes or obvious to the understanding*." Thus:

Section 2. *Definition of Terms.* — As used in this Act, the following terms shall mean:

(3) "Clerical or typographical error" refers to 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, mistake in the entry of day and month in the date of birth or the sex of the person 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: *Provided, however,* That no correction must involve the change of nationality, age, or status of the petitioner.<sup>[51]</sup>

Likewise, Republic Act No. 9048<sup>[52]</sup> states: