

## FIRST DIVISION

[ G.R. No. 211724, August 24, 2016 ]

**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),**

**FELIPE C. ALMOJUELA, PETITIONER, VS. REPUBLIC OF THE  
PHILIPPINES, RESPONDENT.**

### R E S O L U T I O N

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> is the Decision<sup>[2]</sup> dated February 27, 2014 rendered by the Court of Appeals (CA) in CA-G.R. CV. No. 98082, which reversed and set aside the Decision<sup>[3]</sup> dated October 6, 2011 and the Order<sup>[4]</sup> 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).

#### **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 Condено," instead of "Felipe Almojuela." Thus, he filed a Petition for Correction of Entry<sup>[5]</sup> in his NSO birth certificate before the RTC,<sup>[6]</sup> docketed as Spec. Proc. No. 1345.<sup>[7]</sup>

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. Condено (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.<sup>[8]</sup>

In an Order<sup>[9]</sup> 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.<sup>[10]</sup>

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 Condeno," 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 an Order<sup>[11]</sup> dated February 9, 2011, reconsidered its earlier disposition and allowed petitioner to present his evidence.<sup>[12]</sup>

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 Condeno" and not "Felipe C. Almojuela," contrary to petitioner's allegation.<sup>[13]</sup>

### **The RTC Ruling**

In a Decision<sup>[14]</sup> 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 "Condeno" to "Almojuela" and to furnish the Civil Registrar General with a copy of the corrected birth certificate.<sup>[15]</sup>

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.<sup>[16]</sup>

However, considering that the Book of Births of the Municipal Civil Registrar of Pandan, Catanduanes reflects the name "Felipe Condeno" 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.<sup>[17]</sup>

The Republic of the Philippines, through the Office of the Solicitor General (OSG), moved for reconsideration,<sup>[18]</sup> 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.<sup>[19]</sup>

In an Order<sup>[20]</sup> 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.<sup>[21]</sup> Dissatisfied, the OSG appealed<sup>[22]</sup> to the CA.

### **The CA Ruling**

In a Decision<sup>[23]</sup> 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.<sup>[24]</sup> It held that although petitioner correctly invoked Rule 108 of the Rules of Court in filing his petition,<sup>[25]</sup> 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.<sup>[26]</sup> Sections 4<sup>[27]</sup> and 5<sup>[28]</sup> 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.<sup>[29]</sup>

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,<sup>[30]</sup> petitioner, therefore, cannot use "Almojuela" as his surname.<sup>[31]</sup>

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

### **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.<sup>[32]</sup> 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."<sup>[33]</sup>

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.<sup>[34]</sup> 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 persons who have or claim to have any interest that would be affected thereby.<sup>[35]</sup>

In *Republic v. Coseteng-Magpayo*,<sup>[36]</sup> 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.<sup>[37]</sup> 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*,<sup>[38]</sup> 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