

## SECOND DIVISION

[ G.R. No. 186027, December 08, 2010 ]

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. MERLYN  
MERCADERA THROUGH HER ATTORNEY-IN-FACT, EVELYN M.  
OGA, RESPONDENT.**

### D E C I S I O N

**MENDOZA, J.:**

This petition for review on certiorari assails the December 9, 2008 Decision<sup>[1]</sup> of the Court of Appeals (CA), in CA G.R. CV No. 00568-MIN, which affirmed the September 28, 2005 Order of the Regional Trial Court of Dipolog City, Branch 8 (RTC), in a petition for correction of entries, docketed as Special Proceedings No. R-3427 (SP No. R-3427), filed by respondent Merlyn Mercadera (*Mercadera*) under Rule 108 of the Rules of Court.

#### **The Factual and Procedural Antecedents**

On June 6, 2005, Merlyn Mercadera (*Mercadera*), represented by her sister and duly constituted Attorney-in-Fact, Evelyn M. Oga (*Oga*), sought the correction of her given name as it appeared in her Certificate of Live Birth - from *Marilyn L. Mercadera* to *Merlyn L. Mercadera* before the Office of the Local Civil Registrar of Dipolog City pursuant to Republic Act No. 9048 (*R.A. No. 9048*).<sup>[2]</sup>

Under R.A. No. 9048, the city or municipal civil registrar or consul general, as the case may be, is now authorized to effect the change of first name or nickname and the correction of clerical or typographical errors in civil registry entries. "Under said law, jurisdiction over applications for change of first name is now primarily lodged with administrative officers. The law now excludes the change of first name from the coverage of Rules 103 until and unless an administrative petition for change of name is first filed and subsequently denied"<sup>[3]</sup> and removes "correction or changing of clerical errors in entries of the civil register from the ambit of Rule 108." Hence, what is left for the scope of operation of the rules are substantial changes and corrections in entries of the civil register.<sup>[4]</sup>

The Office of the Local Civil Registrar of Dipolog City, however, refused to effect the correction unless a court order was obtained "because the Civil Registrar therein is not yet equipped with a permanent appointment before he can validly act on petitions for corrections filed before their office as mandated by Republic Act 9048."<sup>[5]</sup>

Mercadera was then constrained to file a *Petition For Correction of Some Entries as Appearing in the Certificate of Live Birth* under Rule 108 before the Regional Trial Court of Dipolog City (RTC). The petition was docketed as Special Proceedings No.

**SEC. 2. Entries subject to cancellation or correction.** - Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriages; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and **(o) changes of name**. [Underscoring supplied]

Upon receipt of the petition for correction of entry, the RTC issued an order, dated June 10, 2005, which reads:

Finding the petition sufficient in form and substance, notice is hereby given that the hearing of said petition is set on JULY 26, 2005 at 8:30 o'clock in the morning, at the Session Hall of Branch 8, this Court, Bulwagan ng Katarungan, Dipolog City, on which date, time and place, anyone appearing to contest the petition shall state in writing his grounds there[for], serving a copy thereof to the petitioner and likewise file copies with this Court on or before the said date of hearing.

Let this order be published at the expense of petitioner once a week for three (3) consecutive weeks in a newspaper edited and published in Dipolog City and of general circulation therein, the City of Dapitan and the province of Zamboanga del Norte, and copies hereof be furnished to the Office of the Solicitor General of (sic) 134 Amorsolo St., Legaspi Village, Makati, Metro Manila, the City Civil Registrar of Dipolog, and posted on the bulletin boards of the City Hall of Dipolog, the Provincial Capitol Building, and of this Court.

IT IS SO ORDERED.

The Office of the Solicitor General (OSG) entered its appearance for the Republic of the Philippines and deputized the Office of the City Prosecutor to assist in the case only on the very day of the hearing. This prompted the court to reset the hearing on September 5, 2005. On said day, there being no opposition, counsel for Mercadera moved for leave of court to present evidence *ex parte*. Without any objection from the City Prosecutor, the trial court designated the branch clerk of court to receive evidence for Mercadera.

On September 15, 2005, the testimony of Oga and several photocopies of documents were formally offered and marked as evidence to prove that Mercadera never used the name "Marilyn" in any of her public or private transactions. On September 26, 2005, the RTC issued an order<sup>[6]</sup> admitting Exhibits "A" to "I"<sup>[7]</sup> and their submarkings, as relevant to the resolution of the case.

The following facts were gathered from documentary evidence and the oral

testimony of Oga, as reported by the lower court:

Petitioner Merlyn M. Mercadera was born on August 19, 1970 at Dipolog City. She is the daughter of spouses Tirso U. Mercadera and Norma C. Lacquiao. The fact of her birth was reported to the Office of the City Civil Registrar of Dipolog City on September 8, 1970. It was recorded on page 68, book no. 9, in the Registry of Births of said civil registry. In the certification of birth dated May 9, 2005 issued by the same registry, her given name appears as Marilyn and not Merlyn (Exhibit "C").

On September 29, 1979, petitioner was baptized according to the rites and ceremonies of the United Church of Christ in the Philippines. As reflected in her certificate of baptism issued by said church, she was baptized by the name Merlyn L. Mercadera (Exhibit "D").

In her elementary diploma issued by the Paaralang Sentral ng Estaka, Dipolog City; her high school diploma issued by the Zamboanga del Norte School of Arts and Trades, Dipolog City; and college diploma issued by the Silliman University, Dumaguete City, where she earned the degree of Bachelor of Secondary Education, uniformly show her name as Merlyn L. Mercadera (Exhibits "E", "F", and "G").

Presently, she is working in U.P. Mindanao, Buhangin, Davao City. Her certificate of membership issued by the Government Service Insurance System also bears his [sic] complete name as Merlyn Lacquiao Mercadera (Exhibit "H").

When she secured an authenticated copy of her certificate of live birth from the National Statistics Office, she discovered that her given name as registered is Marilyn and not Merlyn; hence, this petition.

In its September 28, 2005 Decision,<sup>[8]</sup> the RTC granted Mercadera's petition and directed the Office of the City Civil Registrar of Dipolog City to correct her name appearing in her certificate of live birth, Marilyn Lacquiao Mercadera, to MERLYN Lacquiao Mercadera. Specifically, the dispositive portion of the RTC Decision reads:

WHEREFORE, the petition is GRANTED. Accordingly, the Office of the City Civil Registrar of Dipolog City is hereby directed to correct the given name of petitioner appearing in her certificate of live birth, from Marilyn Lacquiao Mercadera to MERLYN Lacquiao Mercadera.

In a four-page decision, the RTC ruled that the documentary evidence presented by Mercadera sufficiently supported the circumstances alleged in her petition. Considering that she had used "Merlyn" as her given name since childhood until she discovered the discrepancy in her Certificate of Live Birth, the RTC was convinced that the correction was justified.

The OSG timely interposed an appeal praying for the reversal and setting aside of the RTC decision. It mainly anchored its appeal on the avilment of Mercadera of

the remedy and procedure under Rule 108. In its Brief<sup>[9]</sup> filed with the CA, the OSG argued that the lower court erred (1) in granting the prayer for change of name in a petition for correction of entries; and (2) in admitting the photocopies of documentary evidence and hearsay testimony of Oga.

For the OSG, the correction in the spelling of Mercadera's given name might seem innocuous enough to grant but "it is in truth a material correction as it would modify or increase substantive rights."<sup>[10]</sup> What the lower court actually allowed was a change of Mercadera's given name, which would have been proper had she filed a petition under Rule 103 and proved any of the grounds therefor. The lower court, "may not substitute one for the other for purposes of expediency."<sup>[11]</sup> Further, because Mercadera failed to invoke a specific ground recognized by the Rules, the lower court's order in effect allowed the change of one's name in the civil registry without basis.

The CA was not persuaded. In its December 9, 2008 Decision, <sup>[12]</sup> the appellate court affirmed the questioned RTC Order in CA-G.R. CV No. 00568-MIN. The CA assessed the controversy in this wise:

Appellant's insistence that the petition should have been filed under Rule 103 and not Rule 108 of the Rules of Court is off the mark. This Court does not entertain any doubt that the petition before the trial court was one for the *correction* on an entry in petitioner's Certificate of Live Birth and not one in which she sought to *change* her name. In *Co v. Civil Register of Manila, G.R. No. 138496, February 23, 2004*, the High Court reiterated the distinction between the phrases "to correct" and "to change." Said the High Court:

To correct simply means "to make or set aright; to remove the faults or error from." To change means "to replace something with something else of the same kind or with something that serves as a substitute. Article 412 of the New Civil Code does not qualify as to the kind of entry to be changed or corrected or distinguished on the basis of the effect that the correction or change may be. Such entries include not only those clerical in nature but also substantial errors. After all, the role of the Court under Rule 108 of the Rules of Court is to ascertain the truths about the facts recorded therein.

That appellee sought to correct an entry and not to change her name is patent to the Court from the allegations in her petition, specifically, paragraphs 7 and 8 thereof--

x x x x

Anent the RTC's error in admitting the photocopies of Mercadera's documentary evidence and in vesting probative value to Oga's testimony, the CA cited the well-established rule that "evidence not objected to may be admitted and may be validly considered by the court in arriving at its judgment."<sup>[13]</sup>

On March 6, 2009, the OSG filed the present petition. On behalf of Mercadera, the Public Attorney's Office (PAO) filed its Comment<sup>[14]</sup> on July 3, 2009. The OSG declined to file a reply claiming that its petition already contained an exhaustive discussion on the following assigned errors:<sup>[15]</sup>

## I

### **THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN GRANTING THE CHANGE IN RESPONDENT'S NAME UNDER RULE 103.**

## II

### **THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN CONSIDERING SECONDARY EVIDENCE.**

Rule 103 procedurally governs judicial petitions for change of given name or surname, or both, pursuant to Article 376 of the Civil Code.<sup>[16]</sup> This rule provides the procedure for an independent special proceeding in court to establish the status of a person involving his relations with others, that is, his legal position in, or with regard to, the rest of the community.<sup>[17]</sup> In petitions for change of name, a person avails of a remedy to alter the "designation by which he is known and called in the community in which he lives and is best known."<sup>[18]</sup> When granted, a person's identity and interactions are affected as he bears a new "label or appellation for the convenience of the world at large in addressing him, or in speaking of, or dealing with him."<sup>[19]</sup> Judicial permission for a change of name aims to prevent fraud and to ensure a record of the change by virtue of a court decree.

The proceeding under Rule 103 is also an action *in rem* which requires publication of the order issued by the court to afford the State and all other interested parties to oppose the petition. When complied with, the decision binds not only the parties impleaded but the whole world. As notice to all, publication serves to indefinitely bar all who might make an objection. "It is the publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it."<sup>[20]</sup>

Essentially, a change of name does not define or effect a change of one's existing family relations or in the rights and duties flowing therefrom. It does not alter one's legal capacity or civil status.<sup>[21]</sup> However, "there could be instances where the change applied for may be open to objection by parties who already bear the surname desired by the applicant, not because he would thereby acquire certain family ties with them but because the existence of such ties might be erroneously impressed on the public mind."<sup>[22]</sup> Hence, in requests for a change of name, "what is involved is not a mere matter of allowance or disallowance of the request, but a judicious evaluation of the sufficiency and propriety of the justifications advanced x x x mindful of the consequent results in the event of its grant x x x."<sup>[23]</sup>

Rule 108, on the other hand, implements judicial proceedings for the correction or