

THIRD DIVISION

G.R. No. 250199 – REPUBLIC OF THE PHILIPPINES, *Petitioner*, v. OLIVER M. BOQUIREN AND ROSELYN M. BOQUIREN, *duly represented by her mother ROSALINDA B. MACARAEG, Respondents.*

Promulgated:

February 13, 2023

Mis-POCB-H

X-----X

DISSENTING OPINION

SINGH, J.:

In this case, the Regional Trial Court, Branch 57, San Carlos City, Pangasinan (**RTC**) granted the Petition for Correction of Entries in the Certificates of Live Birth (**COLB**) of respondents Oliver M. Boquiren (**Oliver**) and Roselyn M. Boquiren (**Roselyn**). In its Decision in C.A.-G.R. CV No. 111274,¹ dated March 29, 2019, the Court of Appeals (**CA**) affirmed the RTC Decision in SP. Proc. Case No. SCC-2061,² dated November 4, 2016. The Motion for Reconsideration of the Decision filed by the Republic, through the Office of the Solicitor General (**OSG**), was likewise denied by the CA in its Resolution,³ dated October 08, 2019.

In its Petition for Review on *Certiorari*,⁴ the Republic through the OSG, argues that the RTC has no jurisdiction in a Rule 108 proceeding to nullify marriages and to rule on legitimation and filiation, especially if initiated by improper parties.⁵ It maintains that by granting the Petition, the RTC declared the marriage of Oliver and Roselyn's parents as void *ab initio* and, at the same time, allowed them to impugn their own legitimated status, in a Rule 108 proceeding.⁶

The *ponencia* grants the Petition. The undersigned respectfully dissents.

¹ *Rollo*, pp. 51-62. Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Eduardo B. Peralta, Jr. and Gabriel T. Robeniol.

² *Id.* at 77-80. Penned by Pairing Judge Hermogenes C. Fernandez.

³ *Id.* at 18-19.

⁴ *Id.* at 32-49.

⁵ *Id.* at 38.

⁶ *Id.* at 39.



Oliver and Roselyn, represented by her mother Rosalinda B. Macaraeg (**Rosalinda**), filed a verified Petition for Correction of Entries⁷ under Rule 108 praying for the cancellation of the annotation of the Affidavit of Legitimation⁸ in their COLB, and for the registration and annotation of the Affidavit of Acknowledgment⁹ executed by their father, Oscar Boquiren (**Oscar**). At the time of filing of the Petition, Roselyn was then a minor, hence, she was represented by her mother.¹⁰

Oliver and Roselyn claimed that they are the children of Rosalinda and Oscar. They were born in 1997 and 1999, respectively. Only after the birth of the children did Rosalinda and Oscar contract marriage in 2002. Subsequently, Rosalinda and Oscar executed an Affidavit of Legitimation in order for Oliver and Roselyn to be legitimated. After the execution of such Affidavit, Rosalinda and Oscar caused the registration of the COLB of Oliver and Roselyn together with the Affidavit of Legitimation.¹¹

In 2015, Rosalinda discovered that her husband, Oscar, has a previous marriage with another woman. Oscar was married to one Gloria Erese Pangilinan¹² in January 1987 prior to his marriage with Rosalinda. Hence, Oliver and Roselyn were informed by the Philippine Statistics Authority (**PSA**) that their legitimation cannot be effected and their Query Results required that the registered Affidavit of Legitimation needs to be cancelled. In turn, Oscar only needs to acknowledge his children.¹³

Thereafter, Oscar executed an Affidavit of Acknowledgment to allow Oliver and Roselyn to continue using his surname, Boquiren.¹⁴

Oliver and Roselyn presented the Certification¹⁵ from the PSA stating that Oscar contracted a prior existing marriage in January 1987. Article 177 of the Family Code expressly precludes the legitimation of children conceived and born outside of wedlock of parents who, at the time of the conception of the former, were disqualified by any impediment to marry each other.¹⁶ The relevant provision is as follows:

Art. 177. Only children conceived and born outside of wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other may be legitimated.

⁷ *Id.* at 90-92.

⁸ *Id.* at 103.

⁹ *Id.* at 107-108.

¹⁰ *Id.* at 90.

¹¹ *Id.* at 90-91.

¹² Also spelled as Pangilanan in some parts of the *rollo*.

¹³ *Id.* at 91.

¹⁴ *Id.*

¹⁵ *Id.* at 104.

¹⁶ *Tan-Te Seng v. Pangan*, A.C. No. 12829, September 16, 2020.



Following Article 177 of the Family Code and taking into consideration the Certification from the PSA, the Affidavit of Legitimation executed by Oscar and Rosalinda in favor of Oliver and Roselyn cannot be given effect. At the time of conception of Oliver and Roselyn, Oscar and Rosalinda were disqualified from marrying each other because of the prior existing marriage of Oscar with another woman.

The *ponencia* ruled that the RTC has no jurisdiction in a Rule 108 Petition to determine the legitimacy and filiation of children.

The undersigned respectfully dissents.

As held in the case of *Republic v. Ontuca (Ontuca)*,¹⁷ the correction of entries in the Civil Register pertaining to citizenship, legitimacy of paternity or filiation, or legitimacy of marriage involves substantial alterations, which may be corrected, and the true facts established, provided the parties aggrieved by the error avail themselves of the appropriate adversary proceedings.

In *Republic v. Lugsanay Uy (Lugsanay Uy)*,¹⁸ the Court held that when a petition for cancellation or correction of an entry in the Civil Register involves substantial and controversial alterations, including those on citizenship, legitimacy of paternity or filiation, or legitimacy of marriage, strict compliance with the requirements of Rule 108 of the Rules of Court is mandated.

Further, in *Republic v. Coseteng-Magpayo (Coseteng-Magpayo)*,¹⁹ the Court ruled that changes which may affect the civil status from legitimate to illegitimate are substantial and controversial alterations which can only be allowed after appropriate adversary proceedings.


Following *Ontuca*, *Lugsanay Uy*, and *Coseteng-Magpayo*, Rule 108 is the proper procedure in the Petition filed by Oliver and Roselyn as the changes sought are substantial as such pertain to their legitimacy. As long as the procedural requirements in Rule 108 are followed, it is the appropriate adversary proceeding to effect substantial corrections and changes in entries of the Civil Register.²⁰

¹⁷ G.R. No. 232053, July 15, 2020, citing *Onde v. The Office of the Local Civil Registrar of Las Piñas City*, 742 Phil. 691, 696 (2014).

¹⁸ 716 Phil. 254 (2013).

¹⁹ 656 Phil. 550 (2011).

²⁰ *Republic v. Olaybar*, 726 Phil. 378 (2014).



The relevant sections of Rule 108 provide:

Rule 108

CANCELLATION OR CORRECTION OF ENTRIES IN THE
CIVIL REGISTRY

SEC. 1. *Who may file petition.* — Any person interested in any act, event, order, or decree concerning the civil status of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the Regional Trial Court of the province where the corresponding civil registry is located.

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.

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. (Emphasis supplied)

When a petition for cancellation or correction of an entry in the Civil Register involves substantial and controversial alterations, including those on citizenship, legitimacy of paternity or filiation, or legitimacy of marriage, a strict compliance with the requirements of Rule 108 of the Rules is mandated.²¹

Here, the verified Petition²² filed by Oliver and Roselyn impleaded the Local Civil Registrar of Malasiqui, Pangasinan and their father, Oscar. Their

²¹ *Onde v. The Office of the Local Civil Registration of Las Piñas City*, supra note 17.

²² *Rollo*, pp. 32-49.



mother, Rosalinda, is already part of the proceedings as she is representing Roselyn, who was a minor when the Petition was filed. There are no other children of Oscar and Rosalinda. This is in accordance with the provision of Section 3 of Rule 108 that the Civil Registrar and all persons who have or claim any interest which would be affected by the cancellation or correction shall be made parties to the proceeding.

In addition, the Order of initial hearing was published for three consecutive weeks in the Pangasinan Sunday Report, a newspaper of general circulation in the Province of Pangasinan.²³

A perusal of reliefs prayed for in the Petition filed by Oliver and Roselyn reveals that the changes sought to be reflected are substantial and may only be resolved through appropriate adversary proceedings under Rule 108. Through publication of the notice of hearing, all affected or interested parties were given an opportunity to file an opposition. Hence, the change sought by Oliver and Roselyn may be given due course because they complied with the requirements of an adversarial proceeding under Rule 108.

The *ponencia* held that the RTC has no jurisdiction in a Rule 108 Petition to determine the validity of the marriage of Oscar and Rosalinda.

The undersigned respectfully views the Petition differently.

The RTC was not called upon to rule on the validity of the marriage of Oscar and Rosalinda, parents of Oliver and Roselyn. The RTC was only called upon to initially cancel the Affidavit of Legitimation based on the finding and record of the PSA that Oscar has a prior existing marriage.

A void marriage can be attacked collaterally.²⁴ Under ordinary circumstances, the effect of a void marriage, so far as it concerns the conferring of legal rights upon the parties, is as though no marriage had ever taken place. And therefore, being good for no legal purpose, its invalidity can be maintained in any proceeding in which the fact of marriage may be material, either direct or collateral, in any civil court between any parties at any time, whether before or after the death of either or both the husband and the wife, and upon mere proof of the facts rendering such marriage void, it will be disregarded or treated as non-existent by the courts.²⁵

²³ *Id.* at 77.

²⁴ *Niñal v. Bayadog*, 384 Phil. 661 (2009).

²⁵ *Id.*



The *ponencia* cited the cases of *Miller v. Miller (Miller)*²⁶ and *Braza v. City Civil Registrar of Himamaylan City (Braza)*.²⁷ In *Miller* and *Braza*, the Court held that the validity of a marriage cannot be collaterally attacked and the legitimacy and filiation of children cannot be successfully impugned by the mere expedient of filing a petition for correction of entries in the Civil Register under Rule 108 of the Rules of Court.²⁸

These cases differ from the present case. In *Miller*, the petitioner prayed that the Local Civil Registrar be directed to replace therein private respondent's surname from Miller to Espenida, her mother's surname, on the ground that the putative father's acknowledgment of the child must precede the child's use of the father's surname.

On the other hand, in *Braza*, the allegations of the petition filed before the trial court clearly showed that the petitioners sought to nullify the marriage between Pablo and Lucille on the ground that it is bigamous and to impugn Patrick's filiation in connection with which they asked the trial court to order Patrick to be subjected to a DNA test.

The undersigned respectfully disagrees that the *En Banc* case of *Ordoña v. Local Civil Registrar of Pasig City (Ordoña)*²⁹ has foreclosed a Rule 108 petition to effect substantial corrections, including recognizing paternity and filiation. In *Ordoña*, the Court denied the petition for correction of entries in the COLB of Alrich Paul Ordoña Fulgeras on the following grounds:

First, the mother who was in a valid and subsisting marriage at the time of conception or giving birth to her child is prohibited under Article 167 of the Family Code from impugning the legitimacy of her child. The proscription remains even if the mother is an estranged wife.

Second, the child who was conceived or born during a valid and existing marriage has no right to impugn his own legitimacy under the Family Code. He cannot choose his own filiation.

Third, it is only the father, or in exceptional circumstances, his heirs, who may impugn the child's legitimacy on grounds provided under Article 166 of the Family Code within the periods provided under Article 170 in relation to Article 171 of the Family Code. Upon the expiration of the periods, the status conferred by the presumption becomes fixed and can no longer be questioned.³⁰

²⁶ G.R. No. 200344, August 28, 2019, 915 SCRA 286.

²⁷ 622 Phil. 654 (2009).

²⁸ *Ponencia*, pp. 16-17.

²⁹ G.R. No. 215370, November 09, 2021.

³⁰ *Id.*



The Court added in *Ordoña* that “even assuming *arguendo* that petitioner (the mother) may effectively declare against or impugn Alrich Paul’s legitimacy and that she may do so in a Rule 108 petition, her petition before the trial court must still fail for failure to satisfy the requirements under Sections 3 and 4, Rule 108 of the Rules of Court. This is considering that what petitioner seeks are substantial corrections, i.e., corrections in the entries pertaining to Alrich Paul’s father as well as Alrich Paul’s surname; hence, an adversarial proceeding is required.”³¹

In other words, the substantial corrections in a child’s birth certificate may still be effectively corrected in an adversarial proceeding. In *Ordoña*, the Court cited the case of *Barco v. Court of Appeals*,³² where the Court ruled that even substantial errors in a civil registry may be corrected through a petition filed under Rule 108, with the true facts established and the parties aggrieved by the error availing themselves of the appropriate adversarial proceeding.

Further, in *Ordoña*, the Court cited the case of *Republic v. Olaybar*,³³ where the Court held that the procedure laid down in Rule 108 is not a summary proceeding *per se* and as long as the procedural requirements in Rule 108 are followed, it is the appropriate adversary proceeding to effect substantial corrections and changes in the entries of the Civil Register.

Clearly, *Ordoña* is not on all fours with the case. The Court’s ruling in *Ordoña* was justified under the facts of that case. Richelle Busque Ordoña, the mother, therein petitioner, was the one who sought the correction to remove the details pertaining to the father, with the result that the child’s status was being amended to illegitimacy. Therefore, the Court was guided by the substantive law prohibition against a mother impugning the legitimacy of her own child.

That is far from the case here. In this case, the children, now both adults, only sought to record the Affidavit of Acknowledgment executed by their biological father in lieu of the Affidavit of Legitimation, after the PSA itself advised them that they needed to do this because their father is still married to another woman.

The petitioners are not impugning their filiation. Neither are they asserting anything new. They only want to rectify the prior legitimation which is invalid considering their father is married to another woman, an effort that should be lauded, rather than discouraged and deterred. They only want to register their father’s acknowledgment that they are indeed his children, and that their father fully consented to it as he wants the children to continue using

³¹ *Id.*


³² 465 Phil. 39 (2004).

³³ 726 Phil. 378 (2014).



his surname. After all, the whole purpose of allowing corrections under Rule 108 is to ensure the correctness and accuracy of the records kept in the Civil Register.

WHEREFORE, I DISSENT but I concur in the result in so far as it orders the annotation of the Affidavit of Acknowledgment in the Certificate of Live Birth of the petitioners.



MARIA FILOMENA D. SINGH
Associate Justice

