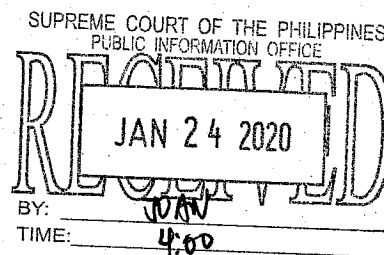




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **December 5, 2019** which reads as follows:

“G.R. No. 202641 — REPUBLIC OF THE PHILIPPINES,
petitioner, versus **KATHERINE ALEJANDRO NUESTRO,**
respondent.

This is a Petition for Review on *Certiorari*¹ (Petition) under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Decision² dated July 5, 2012 (Assailed Decision) in CA-G.R. CV No. 02476. The CA affirmed the Regional Trial Court, Branch 16, Davao City (RTC) Order³ dated March 4, 2011, which granted respondent Katherine Alejandro Nuestro’s (respondent) petition for correction of entries in the birth certificates of her children, Yumiko Kaye Nuestro Morikawa and Hideaki Kyle Nuestro Morikawa (respondent’s children).

The Facts and Antecedent Proceedings

The CA summarized the facts as follows:

[Respondent] Katherine Alejandro Nuestro is the mother of Yumiko Kaye Nuestro Morikawa and Hideaki Kyle Morikawa born on 8 November 1995 and 29 September 2000, respectively, in San Pedro Hospital in Davao City. The father of her children is a Japanese national named Sadao Morikawa. Her children’s birth information was registered in the Office of the Local Civil Registry of Davao City.

- over – nine (9) pages ...

129-B

¹ *Rollo*, pp. 22-58.

² *Id.* at 60-69. Penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Maria Elisa Sempio Diy and Jhosep Y. Lopez.

³ *Id.* at 70-71. Penned by Presiding Judge Emmanuel C. Carpio.

On 26 August 2010, [respondent] filed a petition for correction of entries in the birth certificates of her children before the Regional Trial Court of Davao City, seeking to change the following entries in the birth certificates of her children, to wit:

- a) The name of the father under Item No. 13 – from “Sadao Sazaki Morikawa” to Sadao Morikawa; and
- b) The date and place of marriage of the parents under Item No. 18 – deleting the entry “August 18, 1994 – Davao City.”]

[Respondent] claimed that she was never married to Sadao Morikawa. The reason why she and Sadao indicated in the birth certificates of their children that they were married to each other on “18 August 1994 in Davao City” was because of their desire to let the children use the family name of their father. Further, Sadao’s middle name was erroneously included in the birth certificates of her children. She seeks to change it as well because normally Japanese nationals do not indicate their middle name in their birth certificates.

Consequently, on 3 September 2010[,] the trial court set the case for hearing on 5 November 2010 and directed that a copy of the Order be published in a newspaper of general circulation at least once a week for three (3) consecutive issues. Likewise, the trial court directed the Local Civil Registrar of Davao City and the city prosecutor to appear during the scheduled hearing to show cause why the petition should not be granted.

As required, the petition was published for three consecutive weeks in Mindanao Daily Mirror, a newspaper of general circulation, on the following dates, September 19, 26 and October 3, 2010.

The hearing of the petition was postponed twice. Finally, on 1 March 2011 the hearing commenced. The Office of the City Prosecutor of Davao City appeared on behalf of the Office of the Solicitor General. [Respondent] presented documentary evidence showing compliance with the jurisdictional requirements of the petition. She also testified in court.⁴

After trial, the RTC granted the petition in its Order dated March 4, 2011 and ordered the Office of the Civil Registrar of Davao City to correct: (1) Entry No. 13 regarding the name of the father of respondent’s children from “Sadao Sazaki Morikawa” to “Sadao

- over -

129-B

⁴ Id. at 61-63.

Morikawa” for the reason that Japanese Nationals do not use middle names; and (2) Entry No. 18 regarding the date and place of marriage of their parents, by deleting the entry “August 18, 1994-Davao City” for the reason that said parents were never married.⁵

The Republic of the Philippines through the Office of the Solicitor General (OSG) filed an appeal before the CA, alleging that: (1) the RTC Order dated March 4, 2011 was void for failing to implead Sadao Sazaki Morikawa, an indispensable party; and (2) the RTC gravely erred in granting the petition despite respondent’s failure to present valid reasons and credible evidence to justify the corrections of the birth certificates of her children.⁶

In the Assailed Decision, the CA dismissed the appeal and affirmed the March 4, 2011 Order of the RTC.⁷ The CA held, citing *Barco v. Court of Appeals*,⁸ that respondent’s failure to implead Sadao Morikawa was cured when respondent complied with Section 3, Rule 108 of the Rules of Court and published the RTC’s Order dated September 3, 2010 in the Mindanao Daily Mirror, a newspaper of general circulation.⁹ The CA explained that such publication constitutes notice to all indispensable parties including the father of respondent’s children and binds the whole world to the judgment rendered in the petition.¹⁰

The OSG thus filed the instant petition alleging that: (1) the RTC did not acquire jurisdiction over the case for failure to implead an indispensable party; and (2) respondent failed to prove the allegations in her petition, in accordance with the rules on evidence, specifically, that no marriage exists between respondent and Sadao Sazaki Morikawa and that under Japanese Laws, Japanese males do not use a middle name.¹¹

Issue

Whether the CA erred in denying the appeal.

The Court’s Ruling

The Petition has merit. The proceedings before the RTC are null and void because Sadao Sazaki Morikawa, an indispensable

- over -

129-B

⁵ Id. at 71.

⁶ Id. at 63.

⁷ Id. at 69.

⁸ 465 Phil. 39 (2004).

⁹ *Rollo*, pp. 66-67.

¹⁰ Id. at 67.

¹¹ Id. at 33-34.

party, was never impleaded in the proceedings. The question of whether a petition is dismissible for failure to implead indispensable parties was resolved by the Court in *Republic v. Lugsanay Uy*¹² (*Lugsanay Uy*), viz.:

Cancellation or correction of entries in the civil registry is governed by Rule 108 of the Rules of Court, to wit:

X X X X

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.

X X X X

It has been settled in a number of cases starting with *Republic v. Valencia* that even substantial errors in a civil registry may be corrected and the true facts established provided the parties aggrieved by the error avail themselves of the appropriate adversary proceeding. The pronouncement of the Court in that case is illuminating:

It is undoubtedly true that if the subject matter of a petition is not for the correction of clerical errors of a harmless and innocuous nature, but one involving nationality or citizenship, which is indisputably substantial as well as controverted, affirmative relief cannot be granted in a proceeding *summary* in nature. However, it is also true that a right in law may be enforced and a wrong

- over -

129-B

¹² 716 Phil. 254 (2013).

may be remedied as long as the *appropriate remedy is used*. This Court adheres to the principle that even substantial errors in a civil registry may be corrected and the true facts established provided the parties aggrieved by the error avail themselves of the appropriate adversary proceeding. x x x

What is meant by “appropriate adversary proceeding?” Black’s Law Dictionary defines “adversary proceeding” as follows:

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. Excludes an adoption proceeding.

In sustaining the RTC decision, the CA relied on the Court’s conclusion in *Republic v. Kho, Alba v. Court of Appeals*, and *Barco v. Court of Appeals*, that the failure to implead indispensable parties was cured by the publication of the notice of hearing pursuant to the provisions of Rule 108 of the Rules of Court. x x x

x x x x

In this case, it was only the Local Civil Registrar of Gingoog City who was impleaded as respondent in the petition below. This, notwithstanding, the RTC granted her petition and allowed the correction sought by respondent, which decision was affirmed *in toto* by the CA.

We do not agree with the RTC and the CA.

This is not the first time that the Court is confronted with the issue involved in this case. Aside from *Kho, Alba* and *Barco*, the Court has addressed the same in *Republic v. Coseteng-Magpayo*, *Ceruila v. Delantar*, and *Labayo-Rowe v. Republic*.

In *Republic v. Coseteng-Magpayo*, claiming that his parents were never legally married, respondent therein filed a petition to change his name from “Julian Edward Emerson Coseteng-Magpayo,” the name appearing in his birth certificate to “Julian Edward Emerson Marquez Lim Coseteng.” The notice setting the petition for hearing was published and there being no opposition thereto, the trial court issued an order of general default and eventually granted respondent’s petition deleting the entry on the date and place of marriage of parties; correcting his surname from “Magpayo” to “Coseteng”; deleting the entry “Coseteng” for

- over -

129-B



middle name; and deleting the entry "Fulvio Miranda Magpayo, Jr." in the space for his father. The Republic of the Philippines, through the OSG, assailed the RTC decision on the grounds that the corrections made on respondent's birth certificate had the effect of changing the civil status from legitimate to illegitimate and must only be effected through an appropriate adversary proceeding. The Court nullified the RTC decision for respondent's failure to comply strictly with the procedure laid down in Rule 108 of the Rules of Court. Aside from the wrong remedy availed of by respondent as he filed a petition for Change of Name under Rule 103 of the Rules of Court, assuming that he filed a petition under Rule 108 which is the appropriate remedy, the petition still failed because of improper venue and failure to implead the Civil Registrar of Makati City and all affected parties as respondents in the case.

In *Ceruila v. Delantar*, the Ceruilas filed a petition for the cancellation and annulment of the birth certificate of respondent on the ground that the same was made as an instrument of the crime of simulation of birth and, therefore, invalid and spurious, and it falsified all material entries therein. The RTC issued an order setting the case for hearing with a directive that the same be published and that any person who is interested in the petition may interpose his comment or opposition on or before the scheduled hearing. Summons was likewise sent to the Civil Register of Manila. After which, the trial court granted the petition and nullified respondent's birth certificate. Few months after, respondent filed a petition for the annulment of judgment claiming that she and her guardian were not notified of the petition and the trial court's decision, hence, the latter was issued without jurisdiction and in violation of her right to due process. The Court annulled the trial court's decision for failure to comply with the requirements of Rule 108, especially the non-impleading of respondent herself whose birth certificate was nullified.

In *Labayo-Rowe v. Republic*, petitioner filed a petition for the correction of entries in the birth certificates of her children, specifically to change her name from Beatriz V. Labayo/Beatriz Labayo to Emperatriz Labayo, her civil status from "married" to "single," and the date and place of marriage from "1953-Bulan" to "No marriage." The Court modified the trial court's decision by nullifying the portion thereof which directs the change of petitioner's civil status as well as the filiation of her child, because it was (sic) the OSG only that was made respondent and the proceedings taken was summary in nature which is short of what is required in cases where substantial alterations are sought.

X X X X

The fact that the notice of hearing was published in a newspaper of general circulation and notice thereof was served upon the State will not change the nature of the proceedings

- over -

129-B



taken. A reading of Sections 4 and 5, Rule 108 of the Rules of Court shows that the Rules mandate two sets of notices to different potential oppositors: one given to the 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. Summons must, therefore, be served not for the purpose of vesting the courts with jurisdiction but to comply with the requirements of fair play and due process to afford the person concerned the opportunity to protect his interest if he so chooses.

While there may be cases where the Court held that the failure to implead and notify the affected or interested parties may be cured by the publication of the notice of hearing, earnest efforts were made by petitioners in bringing to court all possible interested parties. Such failure was likewise excused where the interested parties themselves initiated the corrections proceedings; when there is no actual or presumptive awareness of the existence of the interested parties; or when a party is inadvertently left out.

It is clear from the foregoing discussion 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, a strict compliance with the requirements of Rule 108 of the Rules of Court is mandated. If the entries in the civil register could be corrected or changed through mere summary proceedings and not through appropriate action wherein all parties who may be affected by the entries are notified or represented, the door to fraud or other mischief would be set open, the consequence of which might be detrimental and far reaching.¹³

As in *Lugsanay Uy*,¹⁴ only the Local Civil Registrar of Davao City was impleaded in the instant petition for correction of entries. This notwithstanding, the RTC granted respondent's petition and allowed the corrections sought, which decision was affirmed *in toto* by the CA.

It bears emphasis that Sadao Sazaki Morikawa is undoubtedly an indispensable party, considering that the corrections sought in the birth certificates of his children involved his purported middle name (or lack thereof) and his marital status. Despite this, he was never named in the petition nor made a party to the proceedings.¹⁵ As

- over -

129-B

¹³ Id. at 259-266. Citations omitted. Emphasis and underscoring supplied.

¹⁴ Supra note 11.

¹⁵ *Rollo*, p. 71.

discussed, summons must be served upon him, "to comply with the requirements of fair play and due process to afford the person concerned the opportunity to protect his interest if he so chooses."¹⁶

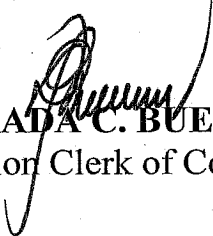
In view of the foregoing, the CA gravely erred in holding that the failure to implead Sadao Sazaki Morikawa was cured when respondent published the RTC's Order in the Mindanao Daily Mirror.¹⁷ There was absolutely no showing that: (1) "earnest efforts were made x x x in bringing to court all possible interested parties;"¹⁸ (2) that the failure was "excused where the interested parties themselves initiated the corrections proceedings;"¹⁹ (3) that there was "no actual or presumptive awareness of the existence of the interested parties;"²⁰ or (4) that Sadao Sazaki Morikawa was "inadvertently left out."²¹

Having disposed of the foregoing matter, the Court finds no reason to resolve the other issues.

WHEREFORE, the Petition is **GRANTED** and the July 5, 2012 Decision of the Court of Appeals in CA-G.R. CV No. 02476 is **REVERSED**. Consequently, the March 4, 2011 Order of the Regional Trial Court, Branch 16, Davao City, granting the Petition for Correction of Entries filed by respondent Katherine Alejandro Nuestro is hereby **NULLIFIED**, without prejudice to the filing of a petition in strict compliance with the requirements of Rule 108.

SO ORDERED. *Inting, J., designated Additional Member per Special Order 2726.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court *lib*

129-B

- over -

¹⁶ Supra note 11 at 265.

¹⁷ *Rollo*, p. 67.

¹⁸ *Republic v. Lugsanay Uy*, supra note 11 at 266.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*



RESOLUTION

9

G.R. No. 202641
December 5, 2019

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals
9000 Cagayan de Oro City
(CA-G.R. CV No. 02476)

Atty. Mariano C. Alegarbes
Counsel for Respondent
City Hall Drive (near Robel Eatery)
8000 Davao City

The Hon. Presiding Judge
Regional Trial Court, Branch 16
8000 Davao City
(Sp. Proc. No. 10,939-2010)

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Judgment Division (x)
Supreme Court

129-B

UR

NKF