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G.R. No. 215370 ***(Richelle Busque Ordoña, petitioner v. The Local Civil Registrar of Pasig City and Allan D. Fulgueras, respondents).***

Promulgated: November 9, 2021

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SEPARATE CONCURRING OPINION

GESMUNDO, *C.J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul the Decision[1] dated April 10, 2014 and the Resolution[2] dated October 14, 2014 of the Court of Appeals *(CA)* docketed as CA-G.R. CV No. 99381. The CA affirmed the Decision[3] dated April 25, 2012 and Order[4] dated July 26, 2012 of the Regional Trial Court of Pasig City, Branch 66, in SP Proc. No. 12335, which dismissed the petition filed under Rule 108 of the Rules of Court.

The *ponencia* essentially states that legitimacy and filiation cannot be collaterally attacked under Rule 108; that there is a presumption of legitimacy; that the petition did not comply with Sections 3 and 4 of Rule 108 because of the failure to implead a proper party; that there is an absence of remedy in favor of a mother in establishing the true filiation of her child; that the Philippines is bound by the obligations under the Convention on the Elimination of all forms of Discrimination Against Women *(CEDAW)*; and that there is a State commitment to ensure gender equality.

I concur with the *ponencia* insofar as declaring that petitioner did not comply with Rule 108 of the Rules of Court, hence, the need to deny the petition.

Rule 108 of the Rules of Court sets forth the rules on cancellation or correction of entries in the civil registry, to wit:

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[1] *Rollo*, pp. 6-14; penned by Associate Justice Samuel H. Gaerlan (now a Member of the Court), with Associate Justices Remedios A. Salazar-Fernando and Apolinario D. Bruselas, Jr., concurring.
[2] Id. at 15.
[3] Id. at 34-38; penned by Presiding Judge Rowena De Juan-Quinagoran.
[4] Id. at 39-42.

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.

SEC. 6. *Expediting proceedings.* — The court in which the proceedings is brought may make orders expediting the proceedings, and may also grant preliminary injunction for the preservation of the rights of the parties pending such proceedings.

SEC. 7. *Order.* — After hearing, the court may either dismiss the petition or issue an order granting the cancellation or correction prayed for. In either case, a certified copy of the judgment shall be served upon the civil registrar concerned who shall annotate the same in his record.

In the early cases of *Ty Kong Tin v. Republic*[5] and, as hereunder cited, in *Republic v. Medina*,[6] only corrections of clerical errors were allowed under Rule 108 in a summary procedure, to wit:

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[5] 94 Phil. 321 (1954).
[6] 204 Phil. 615 (1982).

> From the time the New Civil Code took effect on August 30, 1950 until the promulgation of the Revised Rules of Court on January 1, 1964, there was no law nor rule of court prescribing the procedure to secure judicial authorization to effect the desired innocuous rectifications or alterations in the civil register pursuant to Article 412 of the New Civil Code. Rule 108 of the Revised Rules of Court now provides for such a procedure which should be limited solely to the implementation of Article 412, the substantive law on the matter of correcting entries in the civil register. 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 Sec. 13 of Art. VIII of the Constitution, which directs that such rules of court "shall not diminish or increase or modify substantive rights." If Rule 108 were to be extended beyond innocuous or harmless changes or corrections of errors which are visible to the eye or obvious to the understanding, so as to comprehend substantial and controversial alterations concerning citizenship, legitimacy of paternity or filiation, or legitimacy of marriage, said Rule 108 would thereby become unconstitutional for it would be increasing or modifying substantive rights, which changes are not authorized under Article 412 of the New Civil Code.[7]

However, in *Republic v. Valencia*[8] *(Valencia)*, the Court eventually ruled that when a correction involves substantial matters, such as civil status, nationality, or citizenship, a petition for correction or cancellation of entries in the civil registry under Rule 108 may still be availed of provided that there is an adversarial proceeding:

> 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 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.[9]

It was further discussed in *Valencia* that in the adversarial proceeding regarding a substantial correction of error, the trial court must conduct proceedings where all relevant facts have been fully and properly developed, where opposing counsel have been given opportunity to demolish the

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[7] Id. at 625.
[8] 225 Phil. 408 (1986).
[9] Id. at 413.

opposite party's case, and where the evidence has been thoroughly weighed and considered.[10]

Thus, the persons who must be made parties to a proceeding concerning the cancellation or correction of an entry in the civil register are — (1) the civil registrar, and (2) all persons who have or claim any interest which would be affected thereby. Upon the filing of the petition, it becomes the duty of the court to — (1) issue an order fixing the time and place for the hearing of the petition, and (2) cause the order for hearing to be published once a week for three consecutive weeks in a newspaper of general circulation in the province. The following are likewise entitled to oppose the petition: (1) the civil registrar, and (2) any person having or claiming any interest under the entry whose cancellation or correction is sought.[11]

If all these procedural requirements have been followed, a petition for correction and/or cancellation of entries in the record of birth, even if filed and conducted under Rule 108 of the Rules of Court, can no longer be described as "summary." There can be no doubt that when an opposition to the petition is filed either by the Civil Registrar or any person having or claiming any interest in the entries sought to be cancelled and/or corrected and the opposition is actively prosecuted, the proceedings thereon become adversary proceedings.[12]

Evidently, the rationale under Sec. 3 of Rule 108, which requires that the Civil Registrar and all persons who have or claim any interest, which would be affected thereby and who shall be made parties to the proceeding, is to ensure that there will be an appropriate adversarial proceeding for a substantial correction of error in the entries in the civil registry. It is in such adversarial proceeding that the interested parties shall be given an opportunity to oppose the petition and protect their interests.

Likewise, Sec. 4 thereof requires reasonable notice to be given to the persons named in the petition so that they will be given an opportunity to participate or oppose the petition for correction of errors. At the same time, there must be publication of the notice once a week for three consecutive weeks in a newspaper of general circulation in the province. As a petition for correction or change of entry is an *in rem* action, strict compliance with

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[10] Id. at 417-418.
[11] Id. at 418.
[12] Id. at 418-419.

the requirements of publication is essential, for it is by such means that the court acquires jurisdiction.[13]

In this case, when petitioner filed the petition for correction of entries in the Certificate of Live Birth of her son, Alrich Paul, under Rule 108, she only named the following parties therein: Allan, the alleged father of Alrich Paul, the Local Civil Registrar of Pasig City, and the Office of the Solicitor General.[14] Glaringly, petitioner did not include Ariel Libut *(Ariel)*, with whom petitioner still has a subsisting and valid marriage.

To my mind, it is imperative for Ariel to have been included in the petition as the husband of petitioner. Absence of his name in the petition should have resulted to the outright dismissal of the case due to the failure to include an indispensable party therein under Sec. 3 of Rule 108. Indeed, Ariel is considered as an indispensable party. An indispensable party is one whose interest in the controversy is such that a final decree will necessarily affect his rights. The court cannot proceed without his presence. If an indispensable party is not impleaded, any judgment is ineffective.[15]

In *Arcelona v. Court of Appeals*,[16] the Court stated that:

> Rule 3, Section 7 of the Rules of Court defines indispensable parties as parties-in-interest without whom there can be no final determination of an action. As such, they must be joined either as plaintiffs or as defendants. The general rule with reference to the making of parties in a civil action requires, of course, the joinder of all necessary parties where possible, and the joinder of all indispensable parties under any and all conditions, their presence being a *sine qua non* for the exercise of judicial power. **It is precisely "when an indispensable party is not before the court (that) the action should be dismissed."** The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.[17] (emphasis supplied)

Indeed, Ariel is an indispensable party because as the husband of petitioner, under a valid and subsisting marriage, the child of petitioner is presumed to also be the child of Ariel. Accordingly, since the petition for correction of entries in the Certificate of Live Birth of Alrich Paul will affect the filiation between Alrich Paul and Ariel, then he should have been included therein as a party.

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[13] *In the Matter of the Change of Name of Hermogenes Diangkinay*, 150-A Phil. 962, 967 (1972).
[14] *Ponencia*, p. 3.
[15] *Villanueva v. Nite*, 528 Phil. 867, 874 (2006).
[16] 345 Phil. 250 (1997).
[17] Id. at 267-268.

Further, under Sec. 4 of Rule 108, Ariel should have been given reasonable notice thereof being an indispensable party to the petition. However, the records are bereft of any indication that he was indeed notified. In an *in rem* action, such as a petition under Rule 108, there must be notice sent to the parties so that they may be given an opportunity to defend themselves. While publication is undertaken to acquire jurisdiction over the *res*, service of notice to the parties is undertaken to comply with the requirement of due process.

In *Civil Service Commission v. Rasuman*,[18] the Court discussed the requirement of service of notice with respect to *in rem* actions:

> The phrase, "against the thing," to describe *in rem* actions is a metaphor. It is not the "thing" that is the party to an *in rem* action; only legal or natural persons may be parties even in *in rem* actions. "Against the thing" means that resolution of the case affects interests of others whether direct or indirect. It also assumes that the interests – in the form of rights or duties – attach to the thing, which is the subject matter of litigation. In actions *in rem*, our procedure assumes an active vinculum over those with interests to the thing subject of litigation.
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> Due process requires that those with interest to the thing in litigation be notified and given an opportunity to defend those interests. Courts, as guardians of constitutional rights, cannot be expected to deny persons their due process rights while at the same time be considered as acting within their jurisdiction.[19]

In *Lee v. Court of Appeals*,[20] the Court clarified that when a petition for correction of entry under Rule 108 does not include the indispensable parties, then the case must be dismissed, to wit:

> At the outset, it should be pointed out that in the cited case of *Labayo-Rowe vs. Republic*, the reason we declared null and void the portion of the lower court's order directing the change of Labayo-Rowe's civil status and the filiation of one of her children as appearing in the latter's record of birth, is not because Rule 108 was inappropriate to effect such changes, but because Labayo-Rowe's petition before the lower court failed to implead all indispensable parties to the case.
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> Far from petitioners' theory, this Court's ruling in *Labayo-Rowe vs. Republic* does not exclude recourse to Rule 108 of the Revised Rules of Court to effect substantial changes or corrections in entries of the civil

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[18] G.R. No. 239011, June 17, 2019, 904 SCRA 352.
[19] Id. at 360-361.
[20] 419 Phil. 392 (2001).

> register. The only requisite is that the proceedings under Rule 108 be an *appropriate adversary proceeding* as contra-distinguished from a *summary proceeding*.[21]

Accordingly, as Ariel was not included as a party in the petition under Sec. 3 of Rule 108 and was not served notice as required under Sec. 4 of Rule 108, then the case should have been dismissed by the trial court.

As to the other matter raised, such as the lack of remedy on the part of the mother to assail the filiation of her child, or whether the existing laws are sufficient to safeguard and promote the rights of women under the CEDAW, I believe these issues are not ripe to be tackled by the present petition. Since the petition did not comply with the mandatory requisites under Rule 108, then it is unnecessary to discuss them on the substantive merits.

> x x x [B]y "ripening seeds," it is meant, not that sufficient accrued facts may be dispensed with, but that a dispute may be tried at its inception before it has accumulated the asperity, distemper, animosity, passion, and violence of a full blown battle that looms ahead. The concept describes a state of facts indicating imminent and inevitable litigation provided that the issue is not settled and stabilized by tranquilizing declaration.[22] Indeed, if the seeds of adjudication are not yet ripe, as there is no actual case or controversy yet, then the Court must not act on the judicial review of an assailed law.

While procedural rules may be relaxed in the interest of justice, it is well-settled that these are tools designed to facilitate the adjudication of cases. The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity. Liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances. While litigation is not a game of technicalities, every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.[23]

The bare invocation of "the interest of substantial justice" line is not some magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled, let alone dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. It cannot be gainsaid that obedience to the requirements of procedural rules is needed if we are to expect fair results

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[21] Id. at 408-409.
[22] *Republic v. Roque*, 718 Phil. 294, 305 (2013).
[23] *Fortune Tobacco Corp. v. Commissioner of Internal Revenue*, 762 Phil. 450, 464 (2015).

therefrom and utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction.[24]

Only when there is a valid petition filed, with the court having jurisdiction over such petition, which complies with the Rules of Court, includes the necessary parties, and proper notices and publications are conducted, should the Court dwell into the substantive merits of the case, especially when it involves the issues on the constitutionality of laws.

WHEREFORE, I vote to **DENY** the petition.

ALEXANDER G. GESMUNDO
Chief Justice

[24] *Miranda v. Social Security Commission*, G.R. No. 238104, February 27, 2019, 894 SCRA 427, 440-441