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Republic of the Philippines  
Supreme Court  
Manila

EN BANC

**RICHELLE BUSQUE ORDOÑA,** G.R. No. 215370  
*Petitioner,*

Present:

GESMUNDO, C.J.,  
PERLAS-BERNABE,  
LEONEN,  
CAGUIOA,  
HERNANDO,  
CARANDANG,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
LOPEZ, M.,  
GAERLAN,\*  
ROSARIO,  
LOPEZ, J., and  
DIMAAMPAO, JJ.

- versus -

**THE LOCAL CIVIL  
REGISTRAR OF PASIG CITY  
and ALLAN D. FULGUERAS,**  
*Respondents.*

Promulgated:

November 9, 2021

X-----*Inting*-----X

**DECISION**

**INTING, J.:**

This is a Petition<sup>1</sup> for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to annul the Decision<sup>2</sup> dated April 10, 2014 and

\* Took no part.

<sup>1</sup> *Rollo*, pp. 21-32.

<sup>2</sup> *Id.* at 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.

the Resolution<sup>3</sup> dated October 14, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 99381. The CA affirmed the Decision<sup>4</sup> dated April 25, 2012 and the Order<sup>5</sup> dated July 26, 2012 of Branch 166, Regional Trial Court (RTC), Pasig City in SP Proc. No. 12335 which denied the verified Petition<sup>6</sup> for Correction of Entries (Rule 108 petition) in the Certificate of Live Birth of Alrich Paul Ordoña Fulgueras (Alrich Paul).

### *The Antecedents*

Richelle Busque Ordoña (petitioner) was married to a certain Ariel O. Libut (Ariel) on October 10, 2000 in Las Piñas City. In December 2005, petitioner went to Qatar for work until 2008 when she discovered that Ariel had an illicit relationship. This prompted her to return to the Philippines and separate from him. Despite their eventual separation, petitioner has not yet filed a petition for annulment of her marriage to Ariel.<sup>7</sup>

Thereafter, in April 2008, petitioner applied for another work in Abu Dhabi, United Arab Emirates (UAE) where she met Allan D. Fulgueras (Allan), her former colleague in Qatar. She and Allan engaged in an intimate relationship which resulted in petitioner's pregnancy with Allan as the purported father. Thus, petitioner went back to the Philippines sometime in September 2009. On January 26, 2010, petitioner gave birth to a son in a hospital in Pasig City. In the Certificate of Live Birth,<sup>8</sup> the child was given the name "Alrich Paul Ordoña Fulgueras" with "Allan Demen Fulgueras" as the purported father.<sup>9</sup>

Thus, on September 7, 2011, petitioner filed before the RTC the Rule 108 petition seeking the following corrections: (1) change of last name of Alrich Paul in Item No. 1 from "Fulgueras" to "Ordoña," petitioner's maiden name; and (2) deletion of entries in the paternal information as provided in Item Nos. 13 to 17. She alleged that it was not Allan who signed the Affidavit of Acknowledgment/Admission of

<sup>3</sup> *Id.* at 15.

<sup>4</sup> *Id.* at 34-38; penned by Presiding Judge Rowena De Juan-Quinagoran.

<sup>5</sup> *Id.* at 39-42.

<sup>6</sup> Records, pp. 3-7.

<sup>7</sup> *Rollo*, p. 7.

<sup>8</sup> Records, pp. 8-9.

<sup>9</sup> *Rollo*, p. 7.

Paternity<sup>10</sup> attached to the Certificate of Live Birth (Affidavit of Acknowledgment) considering that Allan was not in the Philippines when she gave birth to Alrich Paul.<sup>11</sup>

In its Order<sup>12</sup> dated September 14, 2011, finding the petition to be sufficient in form and in substance, the RTC (1) set the hearings on December 12, 2011 and February 6, 2012, and enjoined all persons interested to be present and show adverse cause, if any, to the granting of the petition; (2) directed the publication of the Order once a week for three consecutive weeks in a newspaper of general circulation; and (3) directed the Court Sheriff to furnish a copy of the Order to the Solicitor General (OSG), the National Statistics Office, the City Prosecutor's Office, the Civil Registrar of Pasig City, petitioner, and Allan.<sup>13</sup>

Thus, the Order dated September 14, 2011 was published in the Manila Times newspapers on November 5, 12, and 19, 2011.<sup>14</sup>

Further, the Sheriff served a copy of the Order dated September 14, 2011 and a copy of the petition to the Office of the City Civil Registrar, the City Prosecutor, the Office of the Solicitor General, the National Statistics Office, and Allan.<sup>15</sup>

On February 6, 2012, Allan, the Local Civil Registrar of Pasig City, and the OSG were the oppositors to the petition. They were called in open court, but none of them appeared. Further, no opposition to the petition was filed in the RTC.<sup>16</sup>

Consequently, petitioner was allowed to present her evidence.

Petitioner's testimony included the above-stated matters, *i.e.*, from her separation with her husband, Ariel, in 2008, to her subsequent relationship with Allan in Abu Dhabi, UAE, to giving birth to Alrich Paul on January 26, 2010, and the recording of Alrich Paul's birth before the civil registry. Petitioner emphasized that Allan could not have signed

<sup>10</sup> *Id.* at 9.

<sup>11</sup> *Id.* at 4-5.

<sup>12</sup> *Id.* at 14-15; penned by Presiding Judge Rowena De Juan-Quinagoran.

<sup>13</sup> *Id.*

<sup>14</sup> See Affidavit of Publication dated November 21, 2011 of Evelyn S. Arevalo, *id.* at 25.

<sup>15</sup> *Id.* at 13.

<sup>16</sup> *Rollo*, pp. 34-35.

the Affidavit of Acknowledgment/Admission of Paternity because Allan was not in the Philippines at that time. Petitioner further testified that it was she who supplied the information pertaining to the child's father in the Certificate of Live Birth.<sup>17</sup>

To bolster her allegations that Allan did not sign the Affidavit of Acknowledgment, petitioner presented Engineer Michael Mantes (Michael), her and Allan's co-employee. Michael testified as follows: (1) he personally knew Allan because during the term of his (Michael's) employment contract from January 2006 to March 2008, he worked with Allan who was a land surveyor in the same department in a company in Qatar; (2) he personally saw Allan affix his signature on the "as built data" documents that Allan submitted to him and also during their meetings for attendance; (3) he met Allan on January 26, 2010 in UAE; and (4) the signature which contained "A" and "Fulgueras" that appears in the Affidavit of Acknowledgment is different from the real signature of Allan which is illegible and does not contain any initial.<sup>18</sup>

#### *The RTC Ruling*

On April 25, 2012, the RTC rendered its Decision<sup>19</sup> denying the petition for lack of merit.

The RTC ruled that there is no dispute that Alrich Paul is an illegitimate child considering that he was conceived and born outside a valid marriage. Per his Certificate of Live Birth, his mother is petitioner married to Ariel, but his alleged father is Allan.<sup>20</sup>

The RTC declared that under Article 176 of the Family Code of the Philippines (Family Code), as amended by Republic Act No. (RA) 9255,<sup>21</sup> illegitimate children shall use the surname and be under the parental authority of their mother, and shall be entitled to support in conformity with the Family Code; however, illegitimate children may use the surname of their father if their filiation has been expressly

<sup>17</sup> TSN, February 6, 2012, records, pp. 37-45.

<sup>18</sup> *Id.* at 47-51.

<sup>19</sup> *Rollo*, pp. 34-38.

<sup>20</sup> *Id.* at 36.

<sup>21</sup> Entitled, "An Act Allowing Illegitimate Children to Use the Surname of Their Father, Amending for the Purpose Article 176 of Executive Order No. 209, Otherwise Known as the 'Family Code of the Philippines,'" approved on February 24, 2004.

recognized by the father through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten instrument is made by the father.<sup>22</sup>

The RTC noted that the Certificate of Live Birth of Alrich Paul shows that his alleged father, Allan, expressly recognized him as his illegitimate child when he affixed his signature in the Affidavit of Acknowledgment/Admission of Paternity.<sup>23</sup>

The RTC further noted that petitioner presented Michael to prove that it was physically impossible for Allan to sign the Certificate of Live Birth because he was abroad. Thus, petitioner wanted to delete the entries in Item Nos. 13 to 17 in Alrich Paul's Certificate of Live Birth to do away with an embarrassing situation when he comes of age and attends school where he can be the object of ridicule and discriminatory remarks from his peers.<sup>24</sup>

Still, the RTC explained that it must protect the child by giving the best interest in his favor. It declared that if the entries in Item Nos. 13 to 17 were deleted, Alrich Paul would be considered to have no father at all; that it would be more embarrassing for Alrich Paul if he, in effect, will have no father; that the intended correction was only for the convenience of petitioner, who is legally married to Ariel, but gave birth to Alrich Paul whose alleged father is Allan; and that the legitime of Alrich Paul might be affected if Item Nos. 13 to 17 were to be deleted.<sup>25</sup>

The RTC also denied petitioner's prayer for the deletion of the surname of Alrich Paul in his Certificate of Live Birth. It explained that the Affidavit of Acknowledgment/Admission of Paternity at the dorsal portion of the Certificate of Live Birth was subscribed and sworn to before a notary public; that as such, it had become a public instrument which enjoys the presumption of validity; and that following Article 176 of the Family Code, as amended by RA 9255, Alrich Paul may use the surname of his alleged father.<sup>26</sup>

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<sup>22</sup> *Rollo*, pp. 36-37.

<sup>23</sup> *Id.* at 37.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 37-38.

Petitioner filed a Motion for Reconsideration<sup>27</sup> of the Decision dated April 25, 2012. The OSG then filed its Comment (Re: Motion for Reconsideration dated May 10, 2012)<sup>28</sup> dated July 6, 2012 on the motion. Thereafter, the RTC denied the motion in its Order<sup>29</sup> dated July 26, 2012.

### *The CA Ruling*

The CA denied the petition in its Decision<sup>30</sup> dated April 10, 2014.

The CA explained that under Article 164 of the Family Code, “children conceived or born during the marriage of the parents are legitimate.” It then noted that when Alrich Paul was born, petitioner was still married to Ariel.<sup>31</sup>

While the CA was aware of petitioner’s admission that Allan, and not her husband, Ariel, was the father of the child Alrich Paul, it pointed out that Article 167 of the Family Code mandates that “the child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.” Thus, contrary to what the RTC declared, it ruled that Alrich Paul cannot be deemed the illegitimate child of petitioner and Allan based solely on petitioner’s admission; that the law requires that every reasonable presumption be made in favor of legitimacy; and that the status and filiation of the child cannot be compromised.<sup>32</sup>

The CA further explained that the law sets who may dispute the legitimate status of the child, and that specifically, impugning the legitimacy of a child is a strictly personal right of the husband, or in exceptional cases, his heirs.<sup>33</sup>

The CA noted that the RTC held that the presumption of legitimacy in favor of Alrich Paul had been sufficiently defeated because of the physical impossibility of sexual intercourse between petitioner and

<sup>27</sup> Records, pp. 60-67.

<sup>28</sup> *Id.* at 75-82.

<sup>29</sup> *Rollo*, pp. 39-42.

<sup>30</sup> *Id.* at 7-14.

<sup>31</sup> *Id.* at 10.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

Ariel.<sup>34</sup> However, it ruled that the RTC relied on the testimony of petitioner regarding the physical impossibility of sexual intercourse between the latter and Ariel, misapplying the ruling in *Concepcion v. Court of Appeals*<sup>35</sup> and disregarding the law altogether. It added that the RTC's act of giving credence to petitioner's testimony was tantamount to allowing petitioner to make a declaration against the legitimacy of her son, Alrich Paul, which is prohibited under Article 167 of the Family Code.<sup>36</sup>

The CA added that it was not for the RTC to rule on the matter: should Ariel or his heirs file an action impugning the status of Alrich Paul as a legitimate child of Ariel, it should be threshed out in a different proceeding. It explained that the well settled rule is that the issue of legitimacy cannot be attacked collaterally.<sup>37</sup>

Thus, the CA declared that the presumption that Alrich Paul is the legitimate child of the legal and subsisting marriage between petitioner and Ariel stands.<sup>38</sup>

The CA further noted the RTC's reliance on the presumption of validity of the Affidavit of Acknowledgment/Admission of Paternity at the dorsal portion of Alrich Paul's Certificate of Live Birth which was subscribed and sworn to before a notary public. However, the CA ruled that a record of birth is merely *prima facie* evidence of the facts stated therein. As *prima facie* evidence, the statements in the record of birth may be rebutted by mere preponderant evidence. It explained that it is not conclusive evidence with respect to the truthfulness of the statements made therein by the interested parties. Thus, between the Certificate of Live Birth which is *prima facie* evidence of Alrich Paul's illegitimacy and the quasi-conclusive presumption of law (rebuttable only by proof beyond reasonable doubt) of his legitimacy, the CA held that the latter shall prevail. Further, it explained that not only does it bear more weight, it is also more conducive to the best interests of the child and in consonance with the purpose of the law.<sup>39</sup>

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<sup>34</sup> *Id.* at 11.

<sup>35</sup> 505 Phil. 529 (2005).

<sup>36</sup> *Rollo*, p. 12.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 13.

Thus, in upholding the presumption of legitimacy in favor of Alrich Paul, the CA ruled that he shall have the right to bear the surnames of Ariel and petitioner, subject to the action which may be filed by Ariel or his heirs to impugn his legitimate status within the period allowed by law.<sup>40</sup>

The dispositive portion of the CA Decision provides:

WHEREFORE, premises considered, the instant appeal is DENIED. However, the assailed Decision and Order are hereby REVERSED and SET ASIDE. In view of the discussion above, the Civil Registrar of Pasig City is DIRECTED to enter the surname "Libut" as the surname of Alrich Paul in his Certificate of Live Birth. Accordingly, the name of the father should be changed from "Allan D. Fulgueras" to "Ariel O. Libut". From the foregoing, the Affidavit of Acknowledgment appearing at the back of Alrich Paul's Certificate of Live Birth shall now be disregarded.

SO ORDERED.<sup>41</sup>

Petitioner filed a Motion for Reconsideration,<sup>42</sup> but the CA denied it in its Resolution<sup>43</sup> dated October 14, 2014.

Hence, the instant petition.<sup>44</sup>

The OSG filed its Comment<sup>45</sup> to the petition. Thereafter, petitioner filed her Reply to the OSG's Comment.<sup>46</sup> On the other hand, no comment was filed by Allan.

#### *The Court's Ruling*

The Court denies the petition.

In resolving the petition, the Court is guided by the Court's pronouncements on the parameters in seeking relief under Rule 108 of

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *CA rollo*, pp. 64-69.

<sup>43</sup> *Rollo*, p. 15.

<sup>44</sup> *Id.* at 21-31.

<sup>45</sup> *Id.* at 65-74.

<sup>46</sup> *Id.* at 84-93.

the Rules of Court. Rule 108 governs the proceedings for the cancellation or correction of entries in the civil registry.

Associate Justice Alfredo Benjamin S. Caguioa aptly pointed out the Court's pronouncement in *Miller v. Miller*<sup>47</sup> (*Miller*). In that case, the Court, speaking through Associate Justice Marvic M.V.F. Leonen and relying on *Braza v. The City Civil Registrar of Himamaylan City, Negros Occ.*,<sup>48</sup> categorically ruled that the legitimacy and filiation of children cannot be collaterally attacked in a petition for correction of entries in the certificate of live birth, the action filed in that case.<sup>49</sup> The Court ruled:

Here, petitioners sought the correction of private respondent's surname in her birth certificate registered as Local Civil Registrar No. 825. They want her to use her mother's surname, Espenida, instead of Miller, claiming that she was not an acknowledged illegitimate child of John.

What petitioners seek is not a mere clerical change. It is not a simple matter of correcting a single letter in private respondent's surname due to a misspelling. Rather, private respondent's filiation will be gravely affected, as changing her surname from Miller to Espenida will also change her status. This will affect not only her identity, but her successional rights as well. Certainly, this change is substantial.

In *Braza v. The City Civil Registrar of Himamaylan City, Negros Occidental*, this Court emphasized that "*legitimacy and filiation can be questioned only in a direct action seasonably filed by the proper party, and not through collateral attack[.]*" Moreover, impugning the legitimacy of a child is governed by Article 171 of the Family Code, not Rule 108 of the Rules of Court.<sup>50</sup>

Article 164<sup>51</sup> of the Family Code provides that "children conceived or born during the marriage of the parties are legitimate."

<sup>47</sup> G.R. No. 200344, August 28, 2019.

<sup>48</sup> 622 Phil. 654 (2009).

<sup>49</sup> *Id.* at 659. See also *Tison v. CA*, 342 Phil 550 (1997), the Court herein discussed the well settled rule that the issue of legitimacy cannot be attacked collaterally.

<sup>50</sup> *Miller v. Miller*, *supra* note 47. Citations omitted.

<sup>51</sup> Article 164 of the Family Code of the Philippines (Family Code) provides:

Art. 164. Children conceived or born during the marriage of the parents are legitimate.

Children conceived as a result of artificial insemination of the wife with the sperm of the husband or that of a donor or both are likewise legitimate children of the husband and his wife, provided, that both of them authorized or ratified such insemination in a written instrument executed and signed by them before the birth of the child. The instrument shall be recorded in the civil registry together with the birth certificate of the child.



Here, petitioner admitted to being in a valid and subsisting marriage with Ariel when she conceived and gave birth to Alrich Paul. Thus, Alrich Paul is presumed to be a legitimate child of petitioner and Ariel. However, looking at the Rule 108 petition in this case, petitioner, mother of Alrich Paul, in effect declared against her child's legitimacy when she alleged that Alrich Paul was the child of Allan.

Following the pronouncement in *Miller*, petitioner's collateral attack of Alrich Paul's filiation cannot be allowed in a Rule 108 proceeding. Thus, on this ground alone, the RTC should have dismissed the Rule 108 petition.

Further, assuming *arguendo* that the Rule 108 petition filed in the case is considered as the direct action to impugn Alrich Paul's presumed legitimacy, the Rule 108 petition must still fail.

It must be emphasized that the direct action to impugn the legitimacy of a child must be brought by the proper parties and within the period limited by law.<sup>52</sup>

Here, as correctly opined by Associate Justice Estela M. Perlas-Bernabe, petitioner is barred from impugning Alrich Paul's presumed legitimacy considering the prohibition under Article 167 of the Family Code.<sup>53</sup> Article 167 provides that "[t]he child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress."

To elucidate, the presumption of legitimacy under Article 164 of the Family Code is not conclusive. It may be disputed based on the grounds and manner provided under Articles 166, 170, and 171 of the same law.

In *Concepcion v. Court of Appeals*,<sup>54</sup> the Court ruled that the presumption of legitimacy is "quasi-conclusive" and may be rebutted or overthrown. The Court ruled:

<sup>52</sup> *Tison v. CA*, 342 Phil. 550, 558-559 (1997), citing Tolentino, A., *Civil Code of the Philippines, Commentaries and Jurisprudence*, Vol. 1, 1990 ed., pp. 535-537.

<sup>53</sup> Concurring Opinion of Senior Associate Justice Estela M. Perlas-Bernabe, p. 1.

<sup>54</sup> *Concepcion v. Court of Appeals*, *supra* note 35.

The presumption of legitimacy proceeds from the sexual union in marriage, particularly during the period of conception. To overthrow this presumption on the basis of Article 166 (1)(b) of the Family Code, it must be shown beyond reasonable doubt that there was no access that could have enabled the husband to father the child. Sexual intercourse is to be presumed where personal access is not disproved, unless such presumption is rebutted by evidence to the contrary.

The presumption is quasi-conclusive and may be refuted only by the evidence of physical impossibility of coitus between husband and wife within the first 120 days of the 300 days which immediately preceded the birth of the child.

To rebut the presumption, the separation between the spouses must be such as to make marital intimacy impossible. This may take place, for instance, when they reside in different countries or provinces and they were never together during the period of conception. Or, the husband was in prison during the period of conception, unless it appears that sexual union took place through the violation of prison regulations.<sup>55</sup>

Still, the rule is that the mother is barred from impugning or declaring against the legitimacy of her child, and *only the father*,<sup>56</sup> or in *exceptional instances, his heirs*,<sup>57</sup> can contest in an appropriate action the legitimacy of a child born to his wife based on any of the grounds enumerated under Article 166 of the Family Code.

The pertinent rules provide:

Art. 166. Legitimacy of a child may be impugned only on the following grounds:

(1) That it was physically impossible for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child because of:

(a) the physical incapacity of the husband to have sexual intercourse with his wife;

(b) the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible;  
or

<sup>55</sup> *Id.* at 539. Citations omitted.

<sup>56</sup> *Id.* at 538-539.

<sup>57</sup> *Id.*, citing Article 171 of the Family Code.

(c) serious illness of the husband, which absolutely prevented sexual intercourse;

(2) That it is proved that for biological or other scientific reasons, the child could not have been that of the husband, except in the instance provided in the second paragraph of Article 164; or

(3) That in case of children conceived through artificial insemination, the written authorization or ratification of either parent was obtained through mistake, fraud, violence, intimidation, or undue influence.

x x x x

Art. 170. The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded.

If the husband or, in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier.

Art. 171. The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding article only in the following cases:

(1) If the husband should die before the expiration of the period fixed for bringing his action;

(2) If he should die after the filing of the complaint without having desisted therefrom; or

(3) If the child was born after the death of the husband.

Significantly, in *Liyao, Jr. v. Tanhoti-Liyao*<sup>58</sup> (*Liyao, Jr.*), William Liyao, Jr. (William), represented by his mother Corazon G. Garcia (Corazon), filed an action for compulsory recognition as “the illegitimate (spurious) child of the late William Liyao.”<sup>59</sup> William alleged that he was in continuous possession and enjoyment of the status of the child of

<sup>58</sup> 428 Phil. 628 (2002).

<sup>59</sup> *Id.* at 630.

William Liyao. Such was the case considering that he was recognized and acknowledged as such child by William Liyao during his lifetime.<sup>60</sup>

However, the pertinent facts in *Liyao, Jr.* are as follows: (1) Corazon gave birth to William on June 9, 1975; (2) Corazon was legally married to but living separately from Ramon M. Yulo for more than 10 years at the time of the institution of the action or in 1976; and (3) Corazon cohabited with the late William Liyao from 1965 up to the time of William's demise on December 2, 1975.<sup>61</sup>

The trial court rendered a decision declaring William as the illegitimate child of the deceased William Liyao. However, the CA reversed the RTC.<sup>62</sup>

On appeal, the Court denied the petition and affirmed the ruling of the CA. The Court ruled that the petition initiated by Corazon as guardian *ad litem* of the then minor William as the illegitimate son of the late William Liyao could not prosper. The Court, applying Article 256<sup>63</sup> of the Civil Code, the counterpart provision of Article 167 of the Family Code, ruled that a child born within a valid marriage is presumed legitimate even though the mother may have declared against its legitimacy or may have been sentenced as an adulteress. The Court explained that only the husband, or in exceptional circumstances, his heirs, could impugn the legitimacy of a child born in a valid and subsisting marriage and the child cannot choose his own filiation.<sup>64</sup>

In effect, the presumption of legitimacy of William subsisted absent any impugnation by the proper party.

Here, petitioner's declaration in the birth certificate and in the Rule 108 petition that Alrich Paul is illegitimate cannot be countenanced as it runs counter to Article 167 of the Family Code. The presumption that Alrich Paul is legitimate stands in the absence of a direct action timely filed by the proper party.

<sup>60</sup> *Id.* at 631.

<sup>61</sup> *Id.* at 631-632.

<sup>62</sup> *Id.* at 369.

<sup>63</sup> Article 256 of the Civil Code of the Philippines (Civil Code) provides:

Article 256. The child shall be presumed legitimate, although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.

<sup>64</sup> *Id.*

Further, even assuming *arguendo* that petitioner 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.<sup>65</sup>

In *Barco v. Court of Appeals*,<sup>66</sup> the Court ruled that “[s]ince the promulgation of the [*Republic v. Valencia*] ruling in 1986 the Court has repeatedly 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.”<sup>67</sup>

Further, in *Rep. of the Phils. v. Olaybar*,<sup>68</sup> the Court ruled that “the procedure laid down in Rule 108 is not a summary proceeding *per se*”<sup>69</sup> 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 entries of the civil register.”<sup>70</sup>

Section 3, Rule 108 requires that “all persons who stand to be affected by a substantial correction of an entry in the civil registrar must be impleaded as indispensable parties” and “failure to implead the indispensable parties renders all proceedings subsequent to the filing of the complaint including the judgment ineffectual.”<sup>71</sup>

Section 4, Rule 108 also provides for the requirement of publication and notice.

Sections 3 and 4, Rule 108 state:

<sup>65</sup> *Republic v. Timario*, G.R. No. 234251, June 30, 2020.

<sup>66</sup> 465 Phil. 39 (2004).

<sup>67</sup> *Id.* at 58.

<sup>68</sup> 726 Phil. 378 (2014).

<sup>69</sup> *Id.* at 386.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

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 cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

In the case, Ariel, the presumed father of Alrich Paul was not impleaded as a party. Being the presumed father of Alrich Paul, Ariel has an interest that would be affected if the trial court were to grant the reliefs sought by petitioner. His hereditary rights would be adversely affected if the Court were to declare that Alrich Paul is not his legitimate child but Allan's illegitimate child.

Admittedly, there are instances where failure to implead and to notify the affected or interested parties are cured by the publication of the notice of hearing.<sup>72</sup> These special circumstances are “when earnest efforts were made by petitioners in bringing to court all possible interested parties; the interested parties themselves initiated the corrections proceedings; there was no actual or presumptive awareness of the existence of the interested parties; or when the party was inadvertently left out.”<sup>73</sup>

However, petitioner failed to establish the presence of any of the above exceptions. There is likewise no indication in the records that Ariel, although not impleaded, was made aware of the petition and the status of the proceedings.

Given the foregoing, the Court must ultimately dismiss the Rule 108 petition filed by petitioner and need not discuss the sufficiency of her evidence to justify the corrections sought in Alrich Paul's birth certificate.

As a result, there is now an absurd and unremedied situation that

<sup>72</sup> *Republic v. Manda*, G.R. No. 200102, September 18, 2019.

<sup>73</sup> *Republic v. Timario*, *supra* note 65. Citations omitted.

Alrich Paul remains to be illegitimate in the birth certificate and will use the surname of Allan while possessing, at the same time, a legitimate status, one that is conferred on him by law.

Giving clarity to Alrich Paul's situation is attended by a scarcity of remedies.

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.<sup>74</sup>

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.<sup>75</sup>

Noted civilist Arturo M. Tolentino discussed:

The prescriptive period begins to run either from the knowledge of the plaintiffs of the birth of the child, or from the date of the registration of such birth, whichever is earlier.

The period of prescription is one year if the husband or anyone of the heirs resides in the city or municipality where the birth took place or was recorded.

The period is two years if the husband or all of the heirs do not reside in the city or municipality of birth or registration but somewhere else in the Philippines; and three years if they reside abroad.

These periods apply whether the plaintiff is the husband or any of the heirs. If they acquire knowledge of the birth at different dates

<sup>74</sup> *Liyao, Jr. v. Tanhota-Liyao*, *supra* note 58 at 642.

<sup>75</sup> *Tison v. CA*, *supra* note 52.

before it is recorded, the period of prescription shall be counted from the date on which the plaintiff had knowledge of such birth.

If the husband should die before the expiration of the period within which he could bring the action, without having filed the same, an heir could bring the action. Within what time? We believe the period applicable to him personally would apply, not the period applicable to the husband. The plaintiff heir would not be merely representing the predeceased husband, but would be acting in his own right.

If the husband dies after filing the action and it is pending, the action being personal, the case may be dismissed. The heirs can file another action in their own right, subject to the prescriptive periods applicable to them.<sup>76</sup>

The hands of the Court are tied as it may only entertain the impugnation of a child's presumed legitimacy in a direct action filed by the proper party and within the prescribed period under the law.

In light of these, the Court finds the present case as an opportune moment to highlight the absence of a remedy in favor of a mother in establishing the true filiation of her child. Ultimately, the Court's observations are directed to the Legislature inasmuch as the Court is careful not to tread on the realm of judicial legislation.

One of the grounds for impugning the legitimacy of a child is that found in Article 166(1)(b) of the Family Code, *i.e.*, "that it was physically impossible for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child because of x x x" "x x x the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible."

Here, petitioner maintained that Ariel, her husband, could not have been Alrich Paul's father considering that upon learning of the latter's illicit relationship, she separated from him and went to Abu Dhabi, UAE to work sometime in April 2008, stayed there, and engaged in an intimate relationship with Allan. Thereafter, she became pregnant, went back to the Philippines sometime in September 2009, and gave birth to Alrich Paul on January 26, 2010.

<sup>76</sup> Tolentino, A., *Civil Code of the Philippines, Commentaries and Jurisprudence*, Vol. 1, 2004 ed., 538.

However, there is no remedy under the law available to petitioner to dispute the presumption of legitimacy accorded to Alrich Paul—not in a Rule 108 petition which must be dismissed primarily for being a collateral attack and not in any other action by reason of her being the mother of Alrich Paul.

It must be emphasized that the scenario under Article 166(1)(b) is a factual matter personally known not only to the husband, but also the wife. And yet, Article 167 of the Family Code prohibits the mother from impugning or declaring against the legitimacy of her child. Further, the right to impugn belongs only to the husband, or in exceptional circumstances, his heirs. Certainly, there is, in the words of Associate Justice Estela M. Perlas-Bernabe, “[an] apparent disparity between the mother’s and the father’s legal standing in assailing the legitimacy and/or filiation of a child.”<sup>77</sup> This runs counter to the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to which the Philippines is a state party. The Philippines ratified the CEDAW on August 5, 1981.<sup>78</sup> Thus, it is now a part of the Philippine legal system.

As a state party to the CEDAW, the Philippines is bound by the obligations imposed therein:

Article 2.

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, and to this end, undertake:

x x x

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

Article 16

1. States Parties shall take all appropriate measures to eliminate

<sup>77</sup> Concurring Opinion of Senior Associate Justice Estela M. Perlas-Bernabe, p. 1.

<sup>78</sup> See United Nations Human Rights Treaty Bodies Database, <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN)> (last accessed February 16, 2020).

discrimination against women in all matters relating to marriage and family relations and in particular, shall ensure, on a basis of equality of men and women:

x x x

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

x x x

The CEDAW mandates States Parties to eliminate discrimination against women particularly in all matters relating to marriage and family relations. Thus, consistent with the CEDAW, the States Parties must take all the appropriate measures to ensure that all rights available to husbands and/or fathers must, in matters involving their children, be available to wives and/or mothers. Further, in eliminating discrimination as to the rights and obligations of parents, the States Parties must consider the paramount interest of the child.

Thus, consistent with the Philippines' obligations under the CEDAW, Section 14, Article II of the 1987 Constitution embodied the State's commitment to ensure gender equality, thus:

SECTION 14. The State recognizes the role of women in nation-building and shall ensure the fundamental equality before the law of women and men.<sup>79</sup>

Here, petitioner's declaration against the legitimacy of Alrich Paul is in conformity with the provisions of the CEDAW but is regrettably prohibited under our national law.

To be sure, matters of legitimacy and filiation involve not only rights in the child's favor, but also obligations or burdens to which he or his estate may be subjected to. The obligations, or burdens which translate to rights in favor of what the law considers as his or her family members include support of family members<sup>80</sup> and those arising from

<sup>79</sup> *Alonis III v. Court of Appeals*, G.R. No. 216425, November 11, 2020.

<sup>80</sup> Article 199 of the Family Code provides:

Art. 199. Whenever two or more persons are obliged to give support, the liability shall

succession.<sup>81</sup> No doubt, the child or his estate need not be unduly and erroneously burdened by obligations in favor of persons who turn out to be not related to him by blood. Thus, it would be to the best interest of the child if even the mother who has *personal knowledge* of the circumstances surrounding her pregnancy will be allowed to prove that her husband could not have fathered her child.

However, with the current state of the laws, an illegitimate child's true filiation may never be recognized by law because the husband, who is already living separately from the wife, may have no interest in filing the appropriate action even if he knows that his wife gave birth to a child with another man.

Nevertheless, while there is a *lacuna* in the law, this is an opportune moment to signal to the Legislature the incongruity between our domestic law and our international obligation to eliminate the discrimination against women particularly in all matters relating to marriage and family relations. Ultimately, the Legislature should be given the opportunity to perform its primordial role of lawmaking.<sup>82</sup>

**WHEREFORE**, the petition is **DENIED**. The Decision dated April 10, 2014 and the Resolution dated October 14, 2014 of the Court of Appeals in CA-G.R. CV No. 99381 are **REVERSED AND SET ASIDE**. A new judgment is hereby entered **DISMISSING** the verified petition for correction of entries in the Certificate of Live Birth of Alrich Paul Ordoña Fulgueras.

devolve upon the following persons in the order herein provided:

- (1) The spouse;
- (2) The descendants in the nearest degree;
- (3) The ascendants in the nearest degree; and
- (4) The brothers and sisters. (294a)

<sup>81</sup> Article 887 of the Civil Code provides:

Art. 887. The following are compulsory heirs:

- (1) Legitimate children and descendants, with respect to their legitimate parents and ascendants;
- (2) In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;
- (3) The widow or widower;
- (4) Acknowledged natural children, and natural children by legal fiction;
- (5) Other illegitimate children referred to in Article 287.

Compulsory heirs mentioned in Nos. 3, 4, and 5 are not excluded by those in Nos. 1 and 2; neither do they exclude one another.

In all cases of illegitimate children, their filiation must be duly proved.

The father or mother of illegitimate children of the three classes mentioned, shall inherit from them in the manner and to the extent established by this Code. (807a)

<sup>82</sup> *Corpus v. People*, 734 Phil. 353, 425 (2014).

Let a copy of this Decision be furnished to the President of the Senate and to the Speaker of the House of Representatives.

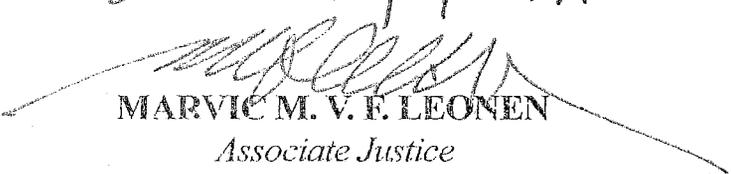
**SO ORDERED.**

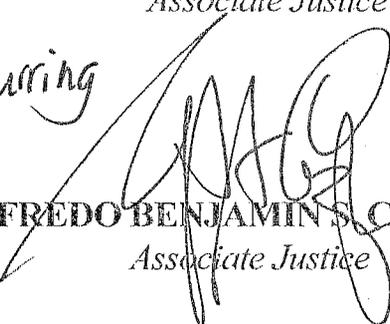
  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

WE CONCUR:

*Please see separate concurring opinion*  
  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*

*Please see Concurring Opinion*  
  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

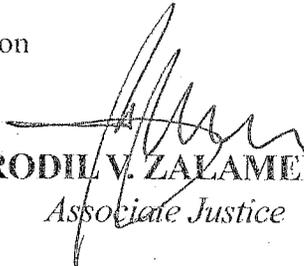
*see dissenting opinion*  
  
**MARVIC M. V. F. LEONEN**  
*Associate Justice*

*See Concurring Opinion*  
  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

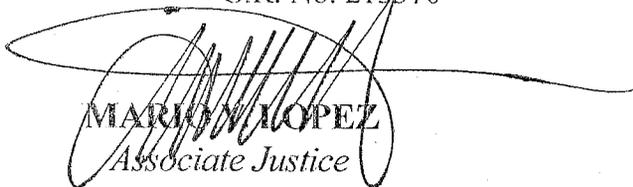
  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

  
**ROSMARID. CARANDANG**  
*Associate Justice*

*See Dissent*  
  
**AMY C. LAZARO-JAVIER**  
*Associate Justice*

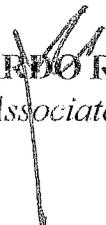


**RODIL V. ZALAMEDA**  
*Associate Justice*



**MARIO N. LOPEZ**  
*Associate Justice*

(No part)  
**SAMUEL H. GAERLAN**  
*Associate Justice*



**RICARDO R. ROSARIO**  
*Associate Justice*



**JHOSEP V. LOPEZ**  
*Associate Justice*



**JAPAR B. DIMAAMPAO**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



**ALEXANDER G. GESMUNDO**  
*Chief Justice*

