



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated January 12, 2021 which reads as follows:

“G.R. No. 252995 (Melchor C. Camello v. Kristoff Kean Aurelio a.k.a. Kristoff Kean Camello, Antonio Carreon in his capacity as The Local Civil Registrar of Santiago City). – After a judicious study of the case, the Court resolves to deny the petition.

Firstly, the petition was filed under Rule 108 of the Rules of Court. A perusal of the arguments alleged in the petition and the reliefs prayed for by petitioner Melchor Camello (Melchor) reveal that the changes sought to be reflected are substantial and cannot be resolved through the proceedings under Rule 108. In *Barretto v. Local Registrar of Manila*,¹ it is settled that:

The summary procedure for correction of entries in the civil registry under article 412 of the Civil Code and Rule 108 of the Rules of Court is confined to "innocuous or clerical errors, such as misspellings and the like, errors that are visible to the eyes or obvious to the understanding" or corrections that are not controversial and are supported by indubitable evidence.

A clerical error "is one made by a clerk in transcribing or otherwise, and, of course, must be apparent on the face of the record, and capable of being corrected by reference to the record only."²

In this case, Melchor sought the correction or cancellation of respondent Kristoff Kean Camello's (Kristoff) certificate of live birth (COLB) in order that it be reflected that Kristoff is the

¹ 165 Phil. 858 (1976).

² Id. at 862-863.

legitimate child of Myla Vista Alberto-Aurelio (Myla) and her estranged husband Danilo Aurelio, Jr. (Danilo) and not the illegitimate child of Myla and Melchor.³

What Melchor seeks to correct are not mere clerical errors, as the changes sought to be carried out are substantial. It is not a simple matter of correcting a single letter in Kristoff's surname due to a misspelling. Rather, Kristoff's filiation and status will be gravely affected. This will affect not only his identity, but his successional rights as well.

In *Miller v. Miller y Espenida*,⁴ the Court dismissed a petition seeking to change private respondent's surname in her COLB. Petitioners want private respondent to use her mother's surname, Espenida, instead of Miller, claiming that she was not an acknowledged illegitimate child of petitioners' father, John. In dismissing the petition, the Court cited its ruling in *Braza v. The City Civil Registrar of Himamaylan City, Negros Occ.*⁵ where it was emphasized that "legitimacy and filiation can be questioned only in a direct action seasonably filed by the proper party, and not through collateral attack[.]"⁶ The Court added that impugning the legitimacy of a child is governed by Article 171 of the Family Code, not Rule 108 of the Rules of Court.⁷

Secondly, even assuming that Melchor availed the proper remedy, his petition should still be dismissed. As correctly observed by the CA, the local civil registrar did not violate any law or rule when Melchor's surname was entered as the surname of Kristoff despite the fact that Melchor did not execute an Affidavit to Use the Surname of the Father (AUSF). This is because he acknowledged paternity when he signed the acknowledgment/ admission of paternity portion of the COLB, a public document.⁸ The CA properly highlighted Republic Act No. (R.A.) 9255⁹ which was signed into law on February 24, 2004 and amended Article 176 of the Family Code which now reads:

³ *Rollo*, p. 40.

⁴ G.R. No. 200344, August 28, 2019.

⁵ 622 Phil. 654 (2009).

⁶ *Id.* at 659.

⁷ *Id.*

⁸ *Rollo*, p. 42.

⁹ 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."

Article 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. However, illegitimate children may use the surname of their father if their filiation has been expressly 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. *Provided*, the father has the right to institute an action before the regular courts to prove non-filiation during his lifetime. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child.¹⁰

Under Office of the Civil Registrar General Administrative Order (AO) No. 1, series of 2004, the governing implementing rules of R.A. 9255 when Kristoff was born, an AUSF is required only if the admission of paternity is made through a private handwritten instrument. Rule 7 of AO No. 1, series of 2004 states:

Rule 7. Requirements for the Child to Use the Surname of the Father

7.1 For Births Not Yet Registered

7.1.1. The illegitimate child shall use the surname of the father if a public document is executed by the father, either at the back of the Certificate of Live Birth or in a separate document.

7.1.2 If admission of paternity is made through a private handwritten instrument the child shall use the surname of the father, provided the registration is supported by the following documents:

- a. AUSF
- b. Consent of the child, if 18 years old and over at the time of the filing of the document
- c. Any two of the following documents showing clearly the paternity between the father and the child:
 - 1) Employment records
 - 2) SSS/ GSIS records
 - 3) Insurance
 - 4) Certification of membership in any organization
 - 5) Statement of Assets and Liabilities

¹⁰ Republic Act No. 9255, Section 1.

6) Income Tax Return (ITR).¹¹ (Underscoring supplied; emphasis in the original)

Here, the local civil registrar relied on the signature of Melchor appearing on the Affidavit of Acknowledgment/ Admission of Paternity portion of Kristoff's COLB, a public document. It was only under Philippine Statistics Authority (PSA) AO No. 1, series of 2016, the revised implementing rules of R.A. 9255 which took effect approximately three years after the birth of Kristoff, that an AUSF had to be submitted before an illegitimate child could use the surname of the father as required in Rule 3:

RULE 3. *What to File.* –

The following documents shall be filed at the LCRO or PFSP for registration:

3.1 Affidavit of Admission of Paternity

3.2 Private Handwritten Instrument

3.3 Affidavit to Use the Surname of the Father¹²

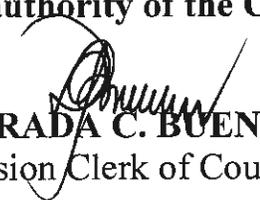
In view of the foregoing, Melchor's petition for cancellation or correction of Kristoff's COLB cannot prosper.

WHEREFORE, the instant petition is **DENIED**.

The petitioner is hereby required to **SUBMIT**, within five (5) days from notice hereof, a soft copy in compact disc, USB or e-mail containing the PDF file of the signed petition for review on certiorari with its annexes pursuant to A.M. Nos. 10-3-7-SC and 11-9-4-SC.

SO ORDERED.” **PERALTA, C.J.**, took no part; **DELOS SANTOS, J.**, designated additional Member per Raffle dated December 14, 2020

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court ms/r

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
15-B

¹¹ Revised Implementing Rules and Regulations of Republic Act No. 9255, Administrative Order No. 1, series of 2004, Rule 7.

¹² Revised Implementing Rules and Regulations of Republic Act No. 9255, PSA Administrative Order No. 01-16, Rule 3.



BALOT LAW OFFICE
Counsel for Petitioner
Room 309, 3rd Floor, Heritage Commercial
Complex, Maharlika Highway, Malvar
Santiago City, 3311 Isabela

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

Court of Appeals (x)
Manila
(CA-G.R. CV No. 111711)

Atty. Edwin O. Betguen
Counsel for Private Respondent
Gundaway, Cabarroguis
Quirino, 3321 Isabela

The Solicitor General
Amorsolo St., Legaspi Village
1229 Makati City

Local Civil Registrar
Santiago City, 3311 Isabela

The Presiding Judge
Regional Trial Court, Branch 35
Santiago City, 3311 Isabela
(Spl. Proc. No. 35-1154)



UR

15-B

JLP