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MAR 07 2018

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

REPUBLIC OF THE PHILIPPINES, G.R. No. 207074
Petitioner,

Present:

VELASCO, JR., J., *Chairperson*,
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, JJ.

-versus-

MICHELLE SORIANO GALLO,
Respondent.

Promulgated:

January 17, 2018

W. V. Lapitan

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DECISION

LEONEN, J.:

Names are labels for one’s identity. They facilitate social interaction, including the allocation of rights and determination of liabilities. It is for this reason that the State has an interest in one’s name.

The name through which one is known is generally, however, not chosen by the individual who bears it. Rather, it is chosen by one’s parents. In this sense, the choice of one’s name is not a product of the exercise of autonomy of the individual to whom it refers.

In view of the State’s interest in names as markers of one’s identity, the law requires that these labels be registered. Understandably, in some cases, the names so registered or other aspects of one’s identity that pertain to one’s name are not reflected with accuracy in the Certificate of Live Birth filed with the civil registrar.

R

Changes to one's name, therefore, can be the result of either one of two (2) motives. The first, as an exercise of one's autonomy, is to change the appellation that one was given for various reasons. The other is not an exercise to change the label that was given to a person; it is simply to correct the data as it was recorded in the Civil Registry.

This is a Petition for Review¹ under Rule 45 assailing the April 29, 2013 Decision² of the Court of Appeals in CA-G.R. CV No. 96358, which denied the Republic of the Philippines' appeal³ from the Regional Trial Court December 7, 2010 Order⁴ granting herein respondent Michelle Soriano Gallo's (Gallo) Petition for Correction of Entry of her Certificate of Live Birth.

Gallo has never been known as "Michael Soriano Gallo." She has always been female. Her parents, married on May 23, 1981, have never changed their names. For her, in her petition before the Regional Trial Court, her Certificate of Live Birth contained errors, which should be corrected. For her, she was not changing the name that was given to her; she was merely correcting its entry.

To accurately reflect these facts in her documents, Gallo prayed before the Regional Trial Court of Ilagan City, Isabela in Special Proc. No. 2155⁵ for the correction of her name from "Michael" to "Michelle" and of her biological sex from "Male" to "Female" under Rule 108⁶ of the Rules of Court.⁷

In addition, Gallo asked for the inclusion of her middle name, "Soriano"; her mother's middle name, "Angangan"; her father's middle name, "Balingao"; and her parent's marriage date, May 23, 1981, in her Certificate of Live Birth, as these were not recorded.⁸

As proof, she attached to her petition copies of her diploma, voter's certification, official transcript of records, medical certificate, mother's birth certificate, and parents' marriage certificate.⁹

¹ *Rollo*, pp. 8–25.

² *Id.* at 26–33. The Decision was penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Jose C. Reyes, Jr. and Socorro B. Inting of the Ninth Division, Court of Appeals, Manila.

³ Represented by the Office of the Solicitor General.

⁴ *Rollo*, pp. 34–35. The Order, docketed as Special Proc. No. 2155, was penned by Acting Judge Isaac R. De Alban of Branch 18, Regional Trial Court, Ilagan, Isabela.

⁵ *Id.* at 34, Regional Trial Court Order.

⁶ RULES OF COURT, Rule 108.

⁷ *Rollo*, p. 34, Regional Trial Court Order.

⁸ *Id.* at 26–27, Court of Appeals Decision.

⁹ *Id.* at 27.

The Regional Trial Court, having found Gallo's petition sufficient in form and substance, set a hearing on August 2, 2010. It also ordered the publication of the Notice of Hearing once a week for three (3) consecutive weeks in a newspaper of general circulation in the Province of Isabela.¹⁰

The Office of the Solicitor General authorized the Office of the Provincial Prosecutor to appear on its behalf.¹¹ Trial then ensued.

During trial, Gallo testified on her allegations. She showed that her college diploma, voter's certification, and transcript indicated that her name was "Michelle Soriano Gallo." The doctor who examined her also certified that she was female.¹² On cross-examination, Gallo explained that she never undertook any gender-reassignment surgery and that she filed the petition not to evade any civil or criminal liability, but to obtain a passport.¹³

The Regional Trial Court, in its December 7, 2010 Order, granted the petition.¹⁴ It lent credence to the documents Gallo presented and found that the corrections she sought were "harmless and innocuous."¹⁵ It concluded that there was a necessity to correct Gallo's Certificate of Live Birth and applied Rule 108 of the Rules of Court,¹⁶ citing *Republic v. Cagandahan*.¹⁷ Thus:

WHEREFORE, above premises considered, an order is hereby issued directing the Civil Registrar General, NSO through the Municipal Civil Registrar of Ilagan, Isabela to correct the entries in the Birth Certificate of the petitioner as well as in the National Statistics Office Authenticated copy particularly her first name "MICHAEL" to "MICHELLE", gender from "MALE" to "FEMALE", middle name of petitioner to be entered as "SORIANO", middle names of petitioner's parents to be properly supplied as "ANGANGAN" for the mother and "BALINGAO" for the father, as well as date of marriage of petitioner's parents to be recorded as "MAY 23, 1981", after payment of legal fees if there be any.

SO ORDERED.¹⁸

The Office of the Solicitor General appealed, alleging that the applicable rule should be Rule 103 of the Rules of Court for Petitions for

¹⁰ Id.

¹¹ Id.

¹² Id. The CA Decision did not mention the name of the doctor.

¹³ Id. at 27-28.

¹⁴ Id. at 35, Regional Trial Court Order.

¹⁵ Id. at 34.

¹⁶ RULES OF COURT, Rule 108.

¹⁷ *Republic v. Cagandahan*, 586 Phil. 637-653 (2008) [Per J. Quisumbing, Second Division].

¹⁸ *Rollo*, p. 35, Regional Trial Court Order.

Change of Name.¹⁹ It argued that Gallo did not comply with the jurisdictional requirements under Rule 103 because the title of her Petition and the published Order did not state her official name, “Michael Gallo.”²⁰ Furthermore, the published Order was also defective for not stating the cause of the change of name.²¹

The Court of Appeals, in its assailed April 29, 2013 Decision, denied the Office of the Solicitor General’s appeal.²² It found that Gallo availed of the proper remedy under Rule 108 as the corrections sought were clerical, harmless, and innocuous.²³ It further clarified that Rule 108 is limited to the implementation of Article 412 of the Civil Code²⁴ and that the proceedings which stem from it can “either be summary, if the correction sought is clerical, or adversary . . . if [it] affects . . . civil status, citizenship or nationality . . . which are deemed substantial corrections.”²⁵

The Court of Appeals discussed that Rule 103, on the other hand, “governs the proceeding for changing the given or proper name of a person as recorded in the civil register.”²⁶

Jurisprudence has recognized the following grounds as sufficient to warrant a change of name, to wit: (a) when the name is ridiculous, dishonorable or extremely difficult to write or pronounce; (b) when the change results as a legal consequence of legitimation or adoption; (c) when the change will avoid confusion; (d) when one has continuously used and been known since childhood by a Filipino name and was unaware of alien parentage; (e) when the change is based on a sincere desire to adopt a Filipino name to erase signs of former alienage, all in good faith and without prejudice to anybody; and (f) when the surname causes embarrassment and there is no showing that the desired change of name was for a fraudulent purpose or that the change of name would prejudice public interest.²⁷

The Court of Appeals also stated that Republic Act No. 10172, “the present law on the matter, classifies a change in the first name or nickname, or sex of a person as clerical error that may be corrected without a judicial

¹⁹ Id. at 28, Court of Appeals Decision.

²⁰ RULES OF COURT, Rule 103, sec. 2.

SECTION 2. *Contents of petition.* — A petition for change of name shall be signed and verified by the person desiring his name changed, or some other person on his behalf, and shall set forth:

(a) That the petitioner has been a *bona fide* resident of the province where the petition is filed for at least three (3) years prior to the date of such filing;

(b) The cause for which the change of the petitioner’s name is sought;

(c) The name asked for.

²¹ *Rollo*, p. 28, Court of Appeals Decision.

²² Id.

²³ Id. at 29.

²⁴ CIVIL CODE, art. 412. No entry in a civil register shall be changed or corrected, without a judicial order.

²⁵ *Rollo*, p. 29, Court of Appeals Decision, citing *Republic v. Bautista*, 239 Phil. 10–17 (1987) [Per J. Fernan, Third Division].

²⁶ Id.

²⁷ Id. at 29, citing *Republic v. Hernandez*, 323 Phil. 606–642 (1996) [Per J. Regalado, Second Division]

order.”²⁸ It applied this ruling on the inclusion of Gallo’s middle name, her parents’ middle names, and the latter’s date of marriage, as they do not involve substantial corrections.²⁹

As the petition merely involved the correction of clerical errors, the Court of Appeals held that a summary proceeding would have sufficed. With this determination, the Regional Trial Court’s more rigid and stringent adversarial proceeding was more than enough to satisfy the procedural requirements under Rule 108.³⁰

However, the Republic, through the Office of the Solicitor General, believes otherwise. For it, Gallo wants to change the name that she was given. Thus, it filed the present Petition via Rule 45 under the 1997 Rules of Civil Procedure. The Petition raises procedural errors made by the Regional Trial Court and the Court of Appeals in finding for Gallo.³¹

Citing *Republic v. Mercadera*,³² petitioner argues that “only clerical, spelling, typographical and other innocuous errors in the civil registry may be raised” in petitions for correction under Rule 108.³³ Thus, the correction must only be for a patently misspelled name.³⁴ As “Michael” could not have been the result of misspelling “Michelle,” petitioner contends that the case should fall under Rule 103 for it contemplates a substantial change.³⁵

Petitioner holds that since the applicable rule is Rule 103, Gallo was not able to comply with the jurisdictional requirements for a change of name under Section 2 of this Rule.³⁶ It also argues that the use of a different name is not a reasonable ground to change name under Rule 103.³⁷

Finally, petitioner insists that Gallo failed to exhaust administrative remedies and observe the doctrine of primary jurisdiction³⁸ as Republic Act No. 9048 allegedly now governs the change of first name, superseding the civil registrar’s jurisdiction over the matter.³⁹

To support its claim, it cited *Silverio v. Republic*,⁴⁰ which held that “[t]he intent and effect of the law is to exclude the change of first name from

²⁸ Id. at 30, Court of Appeals Decision.

²⁹ Id.

³⁰ Id. at 31, Court of Appeals Decision.

³¹ Id. at 8–25, Petition.

³² 652 Phil. 195, 205 (2010) [Per J. Mendoza, Second Division].

³³ *Rollo*, pp. 13–14, Petition.

³⁴ Id.

³⁵ Id. at 14.

³⁶ Id. at 14–15.

³⁷ Id. at 16.

³⁸ Id. at 12–13.

³⁹ Id. at 18–19.

⁴⁰ 562 Phil. 953 (2007) [Per J. Corona, First Division].



the coverage of Rules 103 . . . and 108 . . . of the Rules of Court, until and unless an administrative petition for change of name is first filed and subsequently denied.”⁴¹

Respondent Gallo, in her Comment,⁴² counters that the issue of whether or not the petitioned corrections are innocuous or clerical is a factual issue, which is improper in a Petition for Review on Certiorari under Rule 45.⁴³ In any case, she argues that the corrections are clerical; hence, the applicable rule is Rule 108 and not Rule 103, with the requirements of an adversarial proceeding properly satisfied.⁴⁴ Lastly, she contends that petitioner has waived its right to invoke the doctrines of non-exhaustion of administrative remedies and primary jurisdiction when it failed to file a motion to dismiss before the Regional Trial Court and only raised these issues before this Court.⁴⁵

Petitioner filed its Reply.⁴⁶ The case was then submitted for resolution after the parties filed their respective Memoranda.⁴⁷

The issues for this Court’s resolution are:

First, whether or not the Republic of the Philippines raised a question of fact in alleging that the change sought by Michelle Soriano Gallo is substantive and not a mere correction of error;

Second, whether or not Michelle Soriano Gallo’s petition involves a substantive change under Rule 103 of the Rules of Court instead of mere correction of clerical errors; and

Finally, whether or not Michelle Soriano Gallo failed to exhaust administrative remedies and observe the doctrine of primary jurisdiction.

This Court finds for the respondent. Hers was a Petition to correct the entry in the Civil Registry.

I

In assailing the Court of Appeals’ ruling that the change sought by

⁴¹ *Rollo*, p. 19, Petition.

⁴² *Id.* at 47–57, Respondent’s Comment.

⁴³ *Id.* at 51.

⁴⁴ *Id.* at 52–53.

⁴⁵ *Id.* at 54.

⁴⁶ *Id.* at 60–67, Reply.

⁴⁷ *Id.* at 73–92, Republic’s Memorandum; *rollo*, pp. 104–116, Gallo’s Memorandum.

Gallo was a mere correction of error, petitioner raises a question of fact not proper under a Rule 45 Petition, which should only raise questions of law.

Time and again, it has been held that this Court is not a trier of facts. Thus, its functions do not include weighing and analyzing evidence adduced from the lower courts all over again.

In *Spouses Miano v. Manila Electric Co.*⁴⁸:

The Rules of Court states that a review of appeals filed before this Court is “not a matter of right, but of sound judicial discretion.” The Rules of Court further requires that only questions of law should be raised in petitions filed under Rule 45 since factual questions are not the proper subject of an appeal by *certiorari*. It is not this Court’s function to once again analyze or weigh evidence that has already been considered in the lower courts.

Bases Conversion Development Authority v. Reyes distinguished a question of law from a question of fact:

Jurisprudence dictates that there is a “question of law” when the doubt or difference arises as to what the law is on a certain set of facts or circumstances; on the other hand, there is a “question of fact” when the issue raised on appeal pertains to the truth or falsity of the alleged facts. The test for determining whether the supposed error was one of “law” or “fact” is not the appellation given by the parties raising the same; rather, it is whether the reviewing court can resolve the issues raised *without evaluating the evidence*, in which case, it is a question of law; otherwise, it is one of fact. In other words, where there is no dispute as to the facts, the question of whether or not the conclusions drawn from these facts are correct is a question of law. However, if the question posed requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relationship to each other, the issue is factual.⁴⁹ (Emphasis supplied)

In the case at bar, petitioner raises an issue which requires an evaluation of evidence as determining whether or not the change sought is a typographical error or a substantive change requires looking into the party’s records, supporting documents, testimonies, and other evidence.

On changes of first name, Republic Act No. 10172, which amended

⁴⁸ G.R. No. 205035, November 16, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/205035.pdf>> [Per J. Leonen, Second Division].

⁴⁹ *Id.*, citing RULES OF COURT, Rule 45, sec. 1 and 6; *Bases Conversion Development Authority v. Reyes*, 711 Phil. 631–643 (2012) [Per J. Perlas-Bernabe, Second Division]; *Quintos v. Nicolas*, 736 Phil. 438, 451 (2014) [Per J. Velasco, Third Division].

Republic Act No. 9048, is helpful in identifying the nature of the determination sought.

Republic Act No. 10172⁵⁰ defines a clerical or typographical error as a recorded mistake, “which is *visible to the eyes or obvious to the understanding.*” Thus:

Section 2. *Definition of Terms.* — As used in this Act, the following terms shall mean:

....

(3) “Clerical or typographical error” refers to a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth, mistake in the entry of day and month in the date of birth or the sex of the person or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records: *Provided, however,* That no correction must involve the change of nationality, age, or status of the petitioner.⁵¹

Likewise, Republic Act No. 9048⁵² states:

Section 2. *Definition of Terms.* — As used in this Act, the following terms shall mean:

....

(3) “Clerical or typographical error” refers to a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records: *Provided, however,* That no correction must involve the change of nationality, age, status or sex of the petitioner.⁵³

By qualifying the definition of a clerical, typographical error as a mistake “visible to the eyes or obvious to the understanding,” the law recognizes that there is a factual determination made after reference to and evaluation of existing documents presented.

Thus, corrections may be made even though the error is not typographical if it is “obvious to the understanding,” even if there is no

⁵⁰ Rep. Act No. 10172 (2012), *Authority to Correct Certain Clerical or Typographical Errors Appearing in the Civil Register Without Need of a Judicial Order.*

⁵¹ Rep. Act No. 10172 (2012), sec. 2.

⁵² Rep. Act No. 9048 (2001), *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname in Civil Register.*

⁵³ Rep. Act No. 9048 (2001), sec. 2.

proof that the name or circumstance in the birth certificate was ever used.

This Court agrees with the Regional Trial Court's determination, concurred in by the Court of Appeals, that this case involves the correction of a mere error. As these are findings of fact, this Court is bound by the lower courts' findings.

II.A

In any case, Rule 103 of the Rules of Court does not apply to the case at bar. The change in the entry of Gallo's biological sex is governed by Rule 108 of the Rules of Court while Republic Act No. 9048 applies to all other corrections sought.

Under Article 407 of the Civil Code, the books in the Civil Register include "acts, events and judicial decrees concerning the civil status of persons,"⁵⁴ which are *prima facie* evidence of the facts stated there.⁵⁵

Entries in the register include births, marriages, deaths, legal separations, annulments of marriage, judgments declaring marriages void from the beginning, legitimations, adoptions, acknowledgments of natural children, naturalization, loss or recovery of citizenship, civil interdiction, judicial determination of filiation, voluntary emancipation of a minor, and *changes of name*.⁵⁶

As stated, the governing law on changes of first name is currently Republic Act No. 10172, which amended Republic Act No. 9048. Prior to these laws, the controlling provisions on changes or corrections of name were Articles 376 and 412 of the Civil Code.

Article 376 states the need for judicial authority before any person can change his or her name.⁵⁷ On the other hand, Article 412 provides that judicial authority is also necessary before any entry in the civil register may be changed or corrected.⁵⁸

Under the old rules, a person would have to file an action in court under Rule 103 for substantial changes in the given name or surname provided they fall under any of the valid reasons recognized by law, or Rule 108 for corrections of clerical errors.

⁵⁴ CIVIL CODE, art. 407.

⁵⁵ CIVIL CODE, art. 410.

⁵⁶ CIVIL CODE, art. 408.

⁵⁷ CIVIL CODE, art. 376. No person can change his name or surname without judicial authority.

⁵⁸ CIVIL CODE, art. 412.



This requirement for judicial authorization was justified to prevent fraud and allow other parties, who may be affected by the change of name, to oppose the matter, as decisions in these proceedings bind the whole world.⁵⁹

Rule 103 procedurally governs judicial petitions for change of given name or surname, or both, pursuant to Article 376 of the Civil Code. This rule provides the procedure for an independent special proceeding in court to establish the status of a person involving his relations with others, that is, his legal position in, or with regard to, the rest of the community. In petitions for change of name, a person avails of a remedy to alter the “designation by which he is known and called in the community in which he lives and is best known.” When granted, a person’s identity and interactions are affected as he bears a new “label or appellation for the convenience of the world at large in addressing him, or in speaking of, or dealing with him.” Judicial permission for a change of name aims to prevent fraud and to ensure a record of the change by virtue of a court decree.

The proceeding under Rule 103 is also an action *in rem* which requires publication of the order issued by the court to afford the State and all other interested parties to oppose the petition. When complied with, the decision binds not only the parties impleaded but the whole world. As notice to all, publication serves to indefinitely bar all who might make an objection. “It is the publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it.”

Essentially, a change of name does not define or effect a change of one’s existing family relations or in the rights and duties flowing therefrom. It does not alter one’s legal capacity or civil status. However, “there could be instances where the change applied for may be open to objection by parties who already bear the surname desired by the applicant, not because he would thereby acquire certain family ties with them but because the existence of such ties might be erroneously impressed on the public mind.” Hence, in requests for a change of name, “what is involved is not a mere matter of allowance or disallowance of the request, but a judicious evaluation of the sufficiency and propriety of the justifications advanced . . . mindful of the consequent results in the event of its grant . . .”⁶⁰ (Citations omitted)

Applying Article 412 of the Civil Code, a person desiring to change his or her name altogether must file a petition under Rule 103 with the Regional Trial Court, which will then issue an order setting a hearing date and directing the order’s publication in a newspaper of general circulation.⁶¹

⁵⁹ *Republic v. Mercadera*, 652 Phil. 195, 205 (2010) [Per J. Mendoza, Second Division].

⁶⁰ *Id.* at 205–206.

⁶¹ RULES OF COURT, Rule 103, sec.1 and 3 provide:

Section 1. *Venue*. — A person desiring to change his name shall present the petition to the Court of First Instance of the province in which he resides, or, in the City of Manila, to the Juvenile and Domestic Relations Court.

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After finding that there is proper and reasonable cause to change his or her name, the Regional Trial Court may grant the petition and order its entry in the civil register.⁶²

On the other hand, Rule 108 applies when the person is seeking to correct clerical and innocuous mistakes in his or her documents with the civil register.⁶³ It also governs the correction of substantial errors in the entry of the information enumerated in Section 2 of this Rule⁶⁴ and those affecting the civil status, citizenship, and nationality of a person.⁶⁵ The proceedings under this rule may either be summary, if the correction pertains to clerical mistakes, or adversary, if it pertains to substantial errors.⁶⁶

As explained in *Republic v. Mercadera*:⁶⁷

Finally in *Republic v. Valencia*, the above[-]stated views were adopted by this Court insofar as even substantial errors or matters in a civil registry may be corrected and the true facts established, provided the parties aggrieved avail themselves of the appropriate adversary proceeding. “If the purpose of the petition is merely to correct the clerical errors which are visible to the eye or obvious to the understanding, the court may, under a summary procedure, issue an order for the correction of a mistake. However, as repeatedly construed, *changes which may affect the civil status from legitimate to illegitimate, as well as sex, are substantial and controversial* alterations which can only be allowed after appropriate adversary proceedings depending upon the nature of the issues involved. *Changes which affect the civil status or citizenship of a party are substantial in character* and should be threshed out in a proper action depending upon the nature of the issues in controversy, and wherein all the parties who may be affected by the entries are notified or represented and

....

Section 3. *Order for hearing.* — If the petition filed is sufficient in form and substance, the court, by an order reciting the purpose of the petition, shall fix a date and place for the hearing thereof, and shall direct that a copy of the order be published before the hearing at least once a week for three (3) successive weeks in some newspaper of general circulation published in the province, as the court shall deem best. The date set for the hearing shall not be within thirty (30) days prior to an election nor within four (4) months after the last publication of the notice.

⁶² RULES OF COURT, Rule 103, sec. 5 and 6 provide:

Section 5. *Judgment.* — Upon satisfactory proof in open court on the date fixed in the order that such order has been published as directed and that the allegations of the petition are true, the court shall, if proper and reasonable cause appears for changing the name of the petitioner, adjudge that such name be changed in accordance with the prayer of the petition.

Section 6. *Service of judgment.* — Judgments or orders rendered in connection with this rule shall be furnished the civil registrar of the municipality or city where the court issuing the same is situated, who shall forthwith enter the same in the civil register.

⁶³ *Republic v. Mercadera*, 652 Phil. 195, 207–209 (2010) [Per J. Mendoza, Second Division].

⁶⁴ RULES OF COURT, Rule 108, sec. 2.

Section 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.** (Emphasis supplied)

⁶⁵ *Republic v. Mercadera*, 652 Phil. 195, 207 (2010) [Per J. Mendoza, Second Division].

⁶⁶ *Id.*

⁶⁷ 652 Phil. 195 (2010) [Per J. Mendoza, Second Division].

evidence is submitted to prove the allegations of the complaint, and proof to the contrary admitted” “Where such a change is ordered, the Court will not be establishing a substantive right but only correcting or rectifying an erroneous entry in the civil registry as authorized by law. In short, Rule 108 of the Rules of Court provides only the procedure or mechanism for the proper enforcement of the substantive law embodied in Article 412 of the Civil Code and so does not violate the Constitution.”⁶⁸ (Emphasis in the original)

Following the procedure in Rule 103, Rule 108 also requires a petition to be filed before the Regional Trial Court. The trial court then sets a hearing and directs the publication of its order in a newspaper of general circulation in the province.⁶⁹ After the hearing, the trial court may grant or dismiss the petition and serve a copy of its judgment to the Civil Registrar.⁷⁰

Mercadera clarified the applications of Article 376 and Rule 103, and of Article 412 and Rule 108, thus:

The “change of name” contemplated under Article 376 and Rule 103 must not be confused with Article 412 and Rule 108. A change of one’s name under Rule 103 can be granted, only on grounds provided by law. In order to justify a request for change of name, there must be a proper and compelling reason for the change and proof that the person requesting will be prejudiced by the use of his official name. To assess the sufficiency of the grounds invoked therefor, there must be adversarial proceedings.

In petitions for correction, only clerical, spelling, typographical and other innocuous errors in the civil registry may be raised. Considering that the enumeration in Section 2, Rule 108 also includes “changes of name,” the correction of a patently misspelled name is covered by Rule 108. Suffice it to say, not all alterations allowed in one’s name are confined under Rule 103. Corrections for clerical errors may be set right under Rule 108.

This rule in “names,” however, does not operate to entirely limit Rule 108 to the correction of clerical errors in civil registry entries by way of a summary proceeding. As explained above, *Republic v. Valencia* is the authority for allowing substantial errors in other entries like citizenship, civil status, and paternity, to be corrected using Rule 108 provided there is an adversary proceeding. “After all, the role of the Court

⁶⁸ Id. at 208, citing *Republic v. Valencia*, 225 Phil. 408–422 (1986) [Per J. Gutierrez, Jr., En Banc]; *Lee v. Court of Appeals*, 419 Phil. 392 (2001) [Per J. De Leon Jr., Second Division]; *Chiao Ben Lim v. Zosa*, 230 Phil. 444 (1986) [Per J. Cruz, En Banc].

⁶⁹ RULES OF COURT, Rule 108, sec. 4 provides:
Section 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.

⁷⁰ RULES OF COURT, Rule 108, sec. 7 provides:
Section 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.

under Rule 108 is to ascertain the truths about the facts recorded therein.”⁷¹ (Citations omitted)

However, Republic Act No. 9048⁷² amended Articles 376 and 412 of the Civil Code, effectively removing clerical errors and changes of the name outside the ambit of Rule 108 and putting them under the jurisdiction of the civil registrar.⁷³

*In Silverio v. Republic:*⁷⁴

The State has an interest in the names borne by individuals and entities for purposes of identification. A change of name is a privilege, not a right. Petitions for change of name are controlled by statutes. In this connection, Article 376 of the Civil Code provides:

ART. 376. No person can change his name or surname without judicial authority.

This Civil Code provision was amended by RA 9048 (Clerical Error Law) . . .

. . . .

RA 9048 now governs the change of first name. It vests the power and authority to entertain petitions for change of first name to the city or municipal civil registrar or consul general concerned. Under the law, therefore, jurisdiction over applications for change of first name is now primarily lodged with the aforementioned administrative officers. The intent and effect of the law is to exclude the change of first name from the coverage of Rules 103 (Change of Name) and 108 (Cancellation or Correction of Entries in the Civil Registry) of the Rules of Court, until and unless an administrative petition for change of name is first filed and subsequently denied. It likewise lays down the corresponding venue, form and procedure. In sum, the remedy and the proceedings regulating change of first name are primarily administrative in nature, not judicial.⁷⁵ (Citations omitted)

*In Republic v. Cagandahan:*⁷⁶

The determination of a person’s sex appearing in his birth certificate is a legal issue and the court must look to the statutes. In this connection, Article 412 of the Civil Code provides:

ART. 412. No entry in a civil register shall be changed or corrected without a judicial order.

⁷¹ *Republic v. Mercadera*, 652 Phil. 195, 210–211 (2010) [Per J. Mendoza, Second Division].

⁷² The law was enacted on March 22, 2001 and became effective on April 22, 2001.

⁷³ *Republic v. Mercadera*, 652 Phil. 195 (2010) [Per J. Mendoza, Second Division].

⁷⁴ 562 Phil. 953 (2007) [Per J. Corona, First Division].

⁷⁵ *Id.* at 963–965.

⁷⁶ 586 Phil. 637 (2008) [Per J. Quisumbing, Second Division].

Together with Article 376 of the Civil Code, this provision was amended by Republic Act No. 9048 in so far as *clerical or typographical* errors are involved. The correction or change of such matters can now be made through administrative proceedings and without the need for a judicial order. In effect, Rep. Act No. 9048 removed from the ambit of Rule 108 of the Rules of Court the correction of such errors. Rule 108 now applies only to substantial changes and corrections in entries in the civil register.⁷⁷ (Emphasis in the original, citations omitted)

In *Republic v. Sali*:⁷⁸

The petition for change of first name may be allowed, among other grounds, *if the new first name has been habitually and continuously used by the petitioner and he or she has been publicly known by that first name in the community. The local city or municipal civil registrar or consul general has the primary jurisdiction to entertain the petition. It is only when such petition is denied that a petitioner may either appeal to the civil registrar general or file the appropriate petition with the proper court.*⁷⁹ (Emphasis supplied, citations omitted)

Republic Act No. 9048 also dispensed with the need for judicial proceedings in case of any clerical or typographical mistakes in the civil register or changes in first names or nicknames.⁸⁰

Section 1. *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname.* — No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and change of first name or nickname which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations.⁸¹

Thus, a person may now change his or her first name or correct clerical errors in his or her name through administrative proceedings. Rules 103 and 108 only apply if the administrative petition has been filed and later denied.

In 2012, Republic Act No. 9048 was amended by Republic Act No. 10172.⁸²

In addition to the change of the first name, the day and month of birth,

⁷⁷ Id. at 647–648.

⁷⁸ G.R. No. 206023, April 3, 2017
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/april2017/206023.pdf>> [Per J. Peralta, Second Division].

⁷⁹ Id. at 5.

⁸⁰ Rep. Act No. 9048 (2001), sec. 1.

⁸¹ Rep. Act No. 9048 (2001), sec. 1.

⁸² Rep. Act No. 10172 (2012).

and the sex of a person may now be changed without judicial proceedings. Republic Act No. 10172 clarifies that these changes may now be administratively corrected where it is patently clear that there is a clerical or typographical mistake in the entry. It may be changed by filing a subscribed and sworn affidavit with the local civil registry office of the city or municipality where the record being sought to be corrected or changed is kept.⁸³

Section 1. *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname.*— No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and *change of first name or nickname*, the day and month in the date of birth or sex of a person *where it is patently clear that there was a clerical or typographical error or mistake in the entry*, which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations.⁸⁴ (Emphasis supplied)

However, Republic Act No. 10172 does not apply in the case at bar as it was only enacted on August 15, 2012—more than two (2) years after Gallo filed her Petition for Correction of Entry on May 13, 2010.⁸⁵ Hence, Republic Act No. 9048 governs.

II.B

As to the issue of which between Rules 103 and 108 applies, it is necessary to determine the nature of the correction sought by Gallo.

Petitioner maintains that Rule 103 applies as the changes were substantive while respondent contends that it is Rule 108 which governs as the changes pertain only to corrections of clerical errors.

Upon scrutiny of the records in this case, this Court rules that Gallo's Petition involves a mere correction of clerical errors.

A clerical or typographical error pertains to a

[M]istake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous . . . which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records[.]⁸⁶

⁸³ Rep. Act No. 9048 (2001), sec. 5 as amended by Rep. Act No. 10172 (2012), sec. 3.

⁸⁴ Rep. Act No. 10172, sec. 1.

⁸⁵ *Rollo*, p. 26.

⁸⁶ Rep. Act No. 10172 (2012), sec. 2(3); Rep. Act No. 9048(2001), sec. 2(3).

However, corrections which involve a change in nationality, age, or status are not considered clerical or typographical.⁸⁷

Jurisprudence is replete with cases determining what constitutes a clerical or typographical error in names with the civil register.

In *Republic v. Mercadera*,⁸⁸ Merlyn Mercadera (Mercadera) sought to correct her name from “Marilyn” to “Merlyn.”⁸⁹ She alleged that “she had been known as MERLYN ever since” and she prayed that the trial court correct her recorded given name “Marilyn” “to conform to the one she grew up to.”⁹⁰ The Office of the Solicitor General argued that this change was substantial which must comply with the procedure under Rule 103 of the Rules of Court.⁹¹ However, this Court ruled that Rule 103 did not apply because the petition merely sought to correct a misspelled given name:

In this case, the use of the letter “a” for the letter “e,” and the deletion of the letter “i,” so that what appears as “Marilyn” would read as “Merlyn” is patently a rectification of a name that is clearly misspelled. The similarity between “Marilyn” and “Merlyn” may well be the object of a mix-up that blemished Mercadera’s Certificate of Live Birth until her adulthood, thus, her interest to correct the same.

The [Court of Appeals] did not allow Mercadera the change of her name. What it did allow was the correction of her misspelled given name which she had been using ever since she could remember.⁹²

Mercadera also cited similar cases in which this Court determined what constitutes harmless errors that need not go through the proceedings under Rule 103:

Indeed, there are decided cases involving mistakes similar to Mercadera’s case which recognize the same a harmless error. In *Yu v. Republic* it was held that “to change ‘Sincio’ to ‘Sencio’ which merely involves the substitution of the first vowel ‘i’ in the first name into the vowel ‘e’ amounts merely to the righting of a clerical error.” In *Labayo-Rowe v. Republic*, it was held that the change of petitioner’s name from “Beatriz Labayo/Beatriz Labayu” to “Emperatriz Labayo” was a mere innocuous alteration wherein a summary proceeding was appropriate. In *Republic v. Court of Appeals, Jaime B. Caranto and Zenaida P. Caranto*, the correction involved the substitution of the letters “ch” for the letter “d,” so that what appears as “Midael” as given name would read “Michael.” In the latter case, this Court, with the agreement of the

⁸⁷ Rep. Act No. 10172 (2012), sec. 2(3); Rep. Act No. 9048 (2001), sec. 2(3).

⁸⁸ 652 Phil. 195 (2010) [Per J. Mendoza, Second Division].

⁸⁹ Id. at 199.

⁹⁰ Id. at 211.

⁹¹ Id. at 209.

⁹² Id. at 212–213.

Solicitor General, ruled that the error was plainly clerical, such that, “changing the name of the child from ‘Midael C. Mazon’ to ‘Michael C. Mazon’ cannot possibly cause any confusion, because both names can be read and pronounced with the same rhyme (*tugma*) and tone (*tono, tunog, himig*).”⁹³ (Citations omitted)

Likewise, in *Republic v. Sali*,⁹⁴ Lorena Omapas Sali (Sali) sought to correct her Certificate of Live Birth, alleging that her first name was erroneously entered as “Dorothy” instead of “Lorena,” and her date of birth as “June 24, 1968” instead of “April 24, 1968.” She alleged that she had been using the name “Lorena” and the birth date “April 24, 1968” ever since. She also averred that she had always been known as “Lorena” in her community. She claimed that the petition was just to correct the error and not to evade any criminal or civil liability, or to affect any succession of another person.⁹⁵

In response, the Office of the Solicitor General, representing the Republic, argued against Sali’s claim, alleging that the petition was for a change of name under Rule 103 and not for the correction of a simple clerical error. It averred that there must be a valid ground for the name change, and the applicant’s names and aliases must be stated in the title of the petition and the order setting it for hearing. It also contended that assuming Rule 108 was the proper remedy, Sali failed to exhaust her remedies when she did not file an affidavit under Republic Act No. 9048.⁹⁶

In *Sali*, this Court held that Rule 103 did not apply because the petition was not for a change of name, but a petition for correction of errors in the recording of Sali’s name and birth date. Sali had been using the name “Lorena” since birth, and she merely sought to have her records conform to the name she had been using as her true name. She had no intention of changing her name altogether. Thus, her prayer for the correction of her misspelled name is not contemplated by Rule 103.⁹⁷

In the case at bar, petitioner, raising the same arguments as that in *Sali*, claims that the change sought by Gallo is substantial, covered by Rule 103 because the two (2) names are allegedly entirely different from each other. It argues that “Michael” could not have been the result of a misspelling of “Michelle.”⁹⁸

⁹³ Id. at 212.

⁹⁴ G.R. No. 206023, April 3, 2017
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/april2017/206023.pdf>> [Per J. Peralta, Second Division].

⁹⁵ Id. at 2.

⁹⁶ Id. at 4.

⁹⁷ Id.

⁹⁸ *Rollo*, p. 14, Petition.

On the other hand, Gallo argues that the corrections are clerical which fall under Rule 108, with the requirements of an adversarial proceeding properly complied.⁹⁹

Considering that Gallo had shown that the reason for her petition was not to change the name by which she is commonly known, this Court rules that her petition is not covered by Rule 103. Gallo is not filing the petition to change her current appellation. She is merely correcting the misspelling of her name.

Correcting and changing have been differentiated, thus:

To correct simply means “to make or set aright; to remove the faults or error from.” To change means “to replace something with something else of the same kind or with something that serves as a substitute.”¹⁰⁰

Gallo is not attempting to replace her current appellation. She is merely correcting the misspelling of her given name. “Michelle” could easily be misspelled as “Michael,” especially since the first four (4) letters of these two (2) names are exactly the same. The differences only pertain to an additional letter “a” in “Michael,” and “le” at the end of “Michelle.” “Michelle” and “Michael” may also be vocalized similarly, considering the possibility of different accents or intonations of different people. In any case, Gallo does not seek to be known by a different appellation. The lower courts have determined that she has been known as “Michelle” all throughout her life. She is merely seeking to correct her records to conform to her true given name.

However, Rule 108 does not apply in this case either.

As stated, Gallo filed her Petition for Correction of Entry on May 13, 2010.¹⁰¹ The current law, Republic Act No. 10172, does not apply because it was enacted only on August 19, 2012.¹⁰²

The applicable law then for the correction of Gallo’s name is Republic Act No. 9048.¹⁰³

To reiterate, Republic Act No. 9048 was enacted on March 22, 2001

⁹⁹ Id. at 52–53.

¹⁰⁰ *Republic v. Mercadera*, 652 Phil. 195, 204 (2010) [Per J. Mendoza, Second Division].

¹⁰¹ *Rollo*, p. 26, Court of Appeals Decision.

¹⁰² Rep. Act No. 10172 (2012).

¹⁰³ Gallo’s Petition for Correction of Entries of Certificate of Live Birth was filed on May 13, 2010. Republic Act No. 9048 took effect on April 21, 2001. Thus, Republic Act No. 9048 applies.

and removed the correction of clerical or typographical errors from the scope of Rule 108. It also dispensed with the need for judicial proceedings in case of any clerical or typographical mistakes in the civil register, or changes of first name or nickname. Thus:

Section 1. *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname.* — No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and change of first name or nickname which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations.¹⁰⁴

Therefore, it is the civil registrar who has primary jurisdiction over Gallo's petition, not the Regional Trial Court. Only if her petition was denied by the local city or municipal civil registrar can the Regional Trial Court take cognizance of her case. In *Republic v. Sali*,¹⁰⁵

Sali's petition is not for a change of name as contemplated under Rule 103 of the Rules but for correction of entries under Rule 108. What she seeks is the correction of clerical errors which were committed in the recording of her name and birth date. This Court has held that not all alterations allowed in one's name are confined under Rule 103 and that corrections for clerical errors may be set right under Rule 108. The evidence presented by Sali show that, since birth, she has been using the name "Lorena." Thus, it is apparent that she never had any intention to change her name. What she seeks is simply the removal of the clerical fault or error in her first name, and to set aright the same to conform to the name she grew up with.

Nevertheless, at the time Sali's petition was filed, R.A. No. 9048 was already in effect . . .

. . . .

The petition for change of first name may be allowed, among other grounds, if the new first name has been habitually and continuously used by the petitioner and he or she has been publicly known by that first name in the community. The local city or municipal civil registrar or consul general has the primary jurisdiction to entertain the petition. It is only when such petition is denied that a petitioner may either appeal to the civil registrar general or file the appropriate petition with the proper court . . .

. . . .

In this case, the petition, insofar as it prayed for the change of Sali's first name, was not within the RTC's primary jurisdiction. It was improper because the remedy should have been administrative, *i.e.*, filing of the petition with the local civil registrar concerned. For failure to

¹⁰⁴ Rep. Act No. 9048 (2001), sec. 1.

¹⁰⁵ G.R. No. 206023, April 3, 2017
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/april2017/206023.pdf>> [Per J. Peralta, Second Division].

exhaust administrative remedies, the RTC should have dismissed the petition to correct Sali's first name.¹⁰⁶

Likewise, the prayers to enter Gallo's middle name as Soriano, the middle names of her parents as Angangan for her mother and Balingao for her father, and the date of her parents' marriage as May 23, 1981 fall under clerical or typographical errors as mentioned in Republic Act No. 9048.

Under Section 2(3) of Republic Act No. 9048:

(3) "Clerical or typographical error" refers to a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records: *Provided, however*, That no correction must involve the change of nationality, age, status or sex of the petitioner.¹⁰⁷

These corrections may be done by referring to existing records in the civil register. None of it involves any change in Gallo's nationality, age, status, or sex.

Moreover, errors "visible to the eyes or obvious to the understanding"¹⁰⁸ fall within the coverage of clerical mistakes not deemed substantial. If it is "obvious to the understanding," even if there is no proof that the name or circumstance in the birth certificate was ever used, the correction may be made.

Thus, as to these corrections, Gallo should have sought to correct them administratively before filing a petition under Rule 108.

However, the petition to correct Gallo's biological sex was rightfully filed under Rule 108 as this was a substantial change excluded in the definition of clerical or typographical errors in Republic Act No. 9048.¹⁰⁹

This was affirmed in *Republic v. Cagandahan*:¹¹⁰

Under Rep. Act No. 9048, a correction in the civil registry involving the change of sex is not a mere clerical or typographical error.

¹⁰⁶ Id. at 4-6.

¹⁰⁷ Rep. Act No. 9048 (2001), sec. 2(3).

¹⁰⁸ Rep. Act No. 9048 (2001), sec. 2(3).

¹⁰⁹ Rep. Act No. 9048 (2001), sec. 2(3).

¹¹⁰ 586 Phil. 637 [Per J. Quisumbing, Second Division].

It is a substantial change for which the applicable procedure is Rule 108 of the Rules of Court.¹¹¹ (Citation omitted)

It was only when Republic Act No. 10172 was enacted on August 15, 2012 that errors in entries as to biological sex may be administratively corrected, provided that they involve a typographical or clerical error.¹¹²

However, this is not true for all cases as corrections in entries of biological sex may still be considered a substantive matter.

In *Cagandahan*,¹¹³ this Court ruled that a party who seeks a change of name and biological sex in his or her Certificate of Live Birth after a gender reassignment surgery has to file a petition under Rule 108.¹¹⁴ In that case, it was held that the change did not involve a mere correction of an error in recording but a petition for a change of records because the sex change was initiated by the petitioner.¹¹⁵

IV

Considering that Gallo did not first file an administrative case in the civil register before proceeding to the courts, petitioner contends that respondent failed to exhaust administrative remedies and observe the doctrine of primary jurisdiction under Republic Act No. 9048.¹¹⁶

On the other hand, respondent argues that petitioner has waived its right to invoke these doctrines because it failed to file a motion to dismiss before the Regional Trial Court and only raised these issues before this Court.¹¹⁷

¹¹¹ Id. at 648.

¹¹² Rep. Act No. 10172, sec. 1 and 2(3) provide:

Section 1. *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname.*— No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and **change of first name or nickname**, the day and month in the date of birth or sex of a person **where it is patently clear that there was a clerical or typographical error or mistake in the entry**, which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations.

Section 2. *Definition of Terms.* — As used in this Act, the following terms shall mean:

....

(3) “Clerical or typographical error” refers to a mistake **committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous**, such as **misspelled name** or misspelled place of birth, mistake in the entry of day and month in the date of birth or the sex of the person or the like, which is **visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records: Provided, however, That no correction must involve the change of nationality, age, or status of the petitioner.** (Emphasis supplied)

¹¹³ *Republic v. Cagandahan*, 586 Phil. 637 (2008) [Per J. Quisumbing, Second Division].

¹¹⁴ Id. at 647–678.

¹¹⁵ Id.

¹¹⁶ *Rollo*, pp. 12–13 and 19, Petition.

¹¹⁷ Id. at 54, Comment.

This Court rules in favor of Gallo.

Under the doctrine of exhaustion of administrative remedies, a party must first avail of all administrative processes available before seeking the courts' intervention. The administrative officer concerned must be given every opportunity to decide on the matter within his or her jurisdiction. Failing to exhaust administrative remedies affects the party's cause of action as these remedies refer to a precedent condition which must be complied with prior to filing a case in court.¹¹⁸

However, failure to observe the doctrine of exhaustion of administrative remedies does not affect the court's jurisdiction.¹¹⁹ Thus, the doctrine may be waived as in *Soto v. Jareno*:¹²⁰

Failure to observe the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the court. We have repeatedly stressed this in a long line of decisions. The only effect of non-compliance with this rule is that it will deprive the complainant of a cause of action, which is a ground for a motion to dismiss. If not invoked at the proper time, this ground is deemed waived and the court can then take cognizance of the case and try it.¹²¹ (Citation omitted)

Meanwhile, under the doctrine of primary administrative jurisdiction, if an administrative tribunal has jurisdiction over a controversy, courts should not resolve the issue even if it may be within its proper jurisdiction. This is especially true when the question involves its sound discretion requiring special knowledge, experience, and services to determine technical and intricate matters of fact.¹²²

In *Republic v. Lacap*:¹²³

Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.¹²⁴ (Citation omitted)

¹¹⁸ *Ongsuco v. Malones*, 619 Phil. 492–513 (2009) [Per J. Chico-Nazario, Third Division].

¹¹⁹ *Soto v. Jareno*, 228 Phil. 117, 119 (1986) [Per J. Cruz, First Division].

¹²⁰ 228 Phil. 117 (1986) [Per J. Cruz, First Division].

¹²¹ *Id.* at 119.

¹²² *Nestle Philippines, Inc. v. Uniwide Sales, Inc.*, 648 Phil. 451–460 (2010) [Per J. Carpio, Second Division].

¹²³ 546 Phil. 87 (2007) [Per J. Austria-Martinez, Third Division].

¹²⁴ *Id.* at 96–98.

Thus, the doctrine of primary administrative jurisdiction refers to the competence of a court to take cognizance of a case at first instance. Unlike the doctrine of exhaustion of administrative remedies, it cannot be waived.

However, for reasons of equity, in cases where jurisdiction is lacking, this Court has ruled that failure to raise the issue of non-compliance with the doctrine of primary administrative jurisdiction at an opportune time may bar a subsequent filing of a motion to dismiss based on that ground by way of laches.¹²⁵

In *Tijam v. Sibonghanoy*:¹²⁶

True also is the rule that jurisdiction over the subject-matter is conferred upon the courts exclusively by law, and as the lack of it affects the very authority of the court to take cognizance of the case, the objection may be raised at any stage of the proceedings. However, considering the facts and circumstances of the present case — which shall forthwith be set forth — We are of the opinion that the Surety is now barred by *laches* from invoking this plea at this late hour for the purpose of annulling everything done heretofore in the case with its active participation . . .

....

A party may be estopped or barred from raising a question in different ways and for different reasons. Thus we speak of estoppels *in pais*, of estoppel by deed or by record, and of estoppel by *laches*.

Laches, in a general sense, is failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.

The doctrine of laches or of “stale demands” is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims and, unlike the statute of limitations, is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.

It has been held that a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction . . . In the case just cited, by way of explaining the rule, it was further said that the question whether the court had jurisdiction either of the subject-matter of the action or of the parties was not important in such cases because the party is barred from such conduct *not because the judgment or order of the court is valid and conclusive as an adjudication, but for the*

¹²⁵ *Tijam v. Sibonghanoy*, 131 Phil. 563 (1968) [Per J. Dizon, En Banc].

¹²⁶ 131 Phil. 556 (1968) [Per J. Dizon, En Banc].

reason that such a practice cannot be tolerated — obviously for reasons of public policy.

Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court . . . And in *Littleton vs. Burgess*, . . . the Court said that it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.¹²⁷ (Emphasis supplied, citations omitted)

Thus, where a party participated in the proceedings and the issue of non-compliance was raised only as an afterthought at the final stage of appeal, the party invoking it may be estopped from doing so.

Nonetheless, the doctrine of exhaustion of administrative remedies and the corollary doctrine of primary jurisdiction, which are based on sound public policy and practical considerations, are not inflexible rules. There are many accepted exceptions, such as: (a) *where there is estoppel on the part of the party invoking the doctrine*; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) *where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant*; (d) where the amount involved is relatively small so as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) when its application may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot; (j) when there is no other plain, speedy and adequate remedy; (k) when strong public interest is involved; and, (l) in *quo warranto* proceedings . . .¹²⁸ (Emphasis supplied, citations omitted)

Petitioner does not deny that the issue of non-compliance with these two (2) doctrines was only raised in this Court. Thus, in failing to invoke these contentions before the Regional Trial Court, it is estopped from invoking these doctrines as grounds for dismissal.

WHEREFORE, premises considered, the petition is **DENIED**. The April 29, 2013 Decision of the Court of Appeals in CA-G.R. CV No. 96358 is **AFFIRMED**. The Petition for Correction of Entry in the Certificate of Live Birth of Michelle Soriano Gallo is **GRANTED**. This Court directs that the Certificate of Live Birth of Michelle Soriano Gallo be corrected as follows:


- 1) Correct her first name from “Michael” to “Michelle”;

¹²⁷ Id. at 562–564.

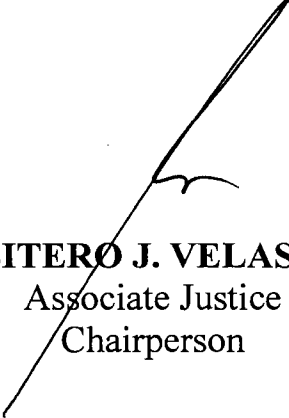
¹²⁸ *Republic v. Lacap*, 546 Phil. 87, 96–98 [Per J. Austria-Martinez, Third Division].

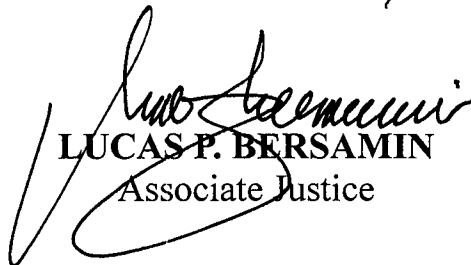
- 2) Correct her biological sex from “Male” to “Female”;
- 3) Enter her middle name as “Soriano”;
- 4) Enter the middle name of her mother as “Angangan”;
- 5) Enter the middle name of her father as “Balingao”; and
- 6) Enter the date of her parents’ marriage as “May 23, 1981.”

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

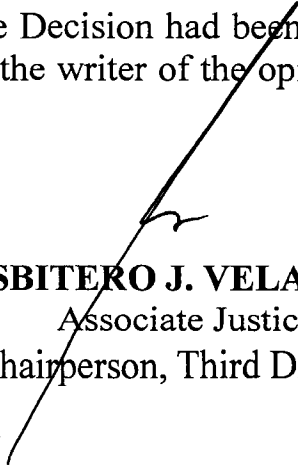

LUCAS P. BERSAMIN
Associate Justice


SAMUEL R. MARTIRES
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice


ATTESTATION

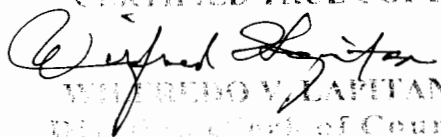
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court’s Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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's Division.


MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Division

MAR 07 2018