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**SUPREME COURT
EN BANC**

**IN THE MATTER OF THE CHANGE OF
NAME OF ANTONINA B. OSHITA.
ANTONINA B. OSHITA,
*Petitioner-Appellee,***

-versus-

**G.R. No. L-21180
March 31, 1967**

**REPUBLIC OF THE PHILIPPINES,
*Oppositor-Appellant.***

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D E C I S I O N

ZALDIVAR, J.:

This is an appeal by the Solicitor General from the decision of the Court of First Instance of Davao granting the petition of appellee, Antonina B. Oshita, for a change of name.

On February 15, 1962, Antonina B. Oshita filed with the Court of First Instance of Davao a petition to have her name changed from "Antonina B. Oshita" to "Antonina Bartolome." The petition was signed by the petitioner herself and was "subscribed and sworn to" by her before the Deputy Clerk of Court. The requirements for the publication of the hearing of the petition were duly complied with. Asst. City Attorney Roque M. Barnes, acting in behalf of the Solicitor

General filed a motion to dismiss the petition upon the grounds (1) of lack of jurisdiction, in that although the petition was subscribed and sworn to by petitioner, it was not verified in accordance with the provisions of Section 6, Rule 15 of the Rules of Court; and (2) that the petition does not state a cause of action. The petitioner-appellee filed an opposition to the motion to dismiss. The lower court denied the motion to dismiss and set the case for hearing.

As found by the lower court, the evidence has established that appellee Antonina B. Oshita is the legitimate daughter of Kishimatsu Oshita, a Japanese citizen, now deceased, and Buena Bartolome, a Filipina; that she was born in the City of Davao on May 9, 1940, and has since then, up to the time of the hearing, resided in said city; that upon reaching the age of majority, appellee elected Philippine citizenship and took her oath of allegiance; that being already a Filipino citizen she desired to have her family name changed from "Oshita" to "Bartolome", the latter being the family name of her mother, and because she felt embarrassed when introduced as one bearing a Japanese surname; that her older brother and sister, who had earlier elected Philippine citizenship, have been using the surname "Bartolome;" and that she has no criminal record nor a pending tax liability.

The Assistant City Attorney of Davao City did not present any evidence in support of his opposition to the petition, but simply reiterated his motion to dismiss. On November 12, 1962, the trial court rendered a decision granting the petition. Hence this appeal by the Solicitor General.

In his appeal, the Solicitor General insists (1) that the lower court had no jurisdiction to take cognizance of the case because the petition was not verified as required by Section 2 of Rule 103 of the Rules of Court, and (2) that no sufficient reason had been shown to justify the change of the surname of the appellee.

This appeal has no merit. It is admitted that the petition is not verified in the manner as prescribed in Section 6 of Rule 15 of the old Rules of Court (now Section 6 of Rule 67 of the new Rules of Court), because what appears is a simple jurat by the Deputy Clerk of Court that the petitioner had subscribed and sworn to, the petition, before

him. While it is true that under Section 2, Rule 103, it is required that the petition for change of name be verified, nevertheless, no provision exists in the rules which declares that such a requirement regarding verification is jurisdictional. The requirement regarding verification of a pleading is simply intended to secure an assurance that what are alleged in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The requirement regarding verification of a pleading is simply a condition affecting the form of pleading,^[1] the non-compliance of which does not necessarily render the pleading fatally defective. The court may order the correction of the pleading if the verification is lacking, or act on the pleading although it is not verified if the attending circumstances are such that the strict compliance with the rule may be dispensed with in order that the ends of justice or the law may thereby be served. This view finds support in the ruling laid down by this Court in several decisions.

In the case of the Philippine Bank of Commerce vs. Macadaeg, et al., 109 Phil. 981, the petition for certiorari was attacked as fatally defective because it was not verified as required by the provision of Section 1 of Rule 67 of the Rules of Court (now Section 1, Rule 65 of the new Rules of Court). In resolving this question, this Court held:

“First, respondents claim that the petition, not being verified, is fatally defective. We do not think so. It is true that Rule 67, sec. 1, of the Rules of Court, require that the petition for certiorari be verified, the apparent object thereof being to insure good faith in the averments of the petition. Where, however, the material facts alleged are a matter of record in the court below, consisting in pleadings filed or proceedings taken therein, and the questions raised are mainly of law, a verification as to the truth of said facts is not an absolute necessity and may be waived (42 Am. Jur., sec. 42, p. 177), as this Court has done in this case when we gave due course to the present petition. In fact, many authorities consider the absence of verification a mere formal, not jurisdictional, defect, the absence of which does not of itself justify a court in refusing to allow and act in the case (71 C.J.S., 744 745).” (Italics supplied).

Likewise, in the case of Tavera vs. El Hogar Filipino, Inc. et al., 98 Phil. 481, this Court held that “lack of verification of a petition filed in a probate court for the sale of real property belonging to the estate of a minor is not a jurisdictional defect.”^[2] In a land registration case, notwithstanding the provision of Section 34, Act 496, which requires that opposition to an application for registration of land should be sworn to by oppositor, this Court held that an “unverified opposition is sufficient to confer standing in court to oppositors.”^[3]

In the light of the rulings laid down by this Court in the decisions aforesaid, it is clear that verification is not a jurisdictional, but a formal, requisite. While the petition now before Us was not verified, it was, however, subscribed and sworn to by the petitioner, and We believe that the lower court did not commit a reversible error when it denied the motion to dismiss the petition upon the ground of lack of jurisdiction. The jurisdiction of the court was not affected by the absence of the proper verification of the petition. It may be stated here, though, that the lower court should have required appellee to have her petition verified before setting the case for hearing, in order to have the petition conform with the rule.

The appellant also contends that no sufficient reasons had been shown to justify the grant by the lower court of the petition for a change of name. The appellant urges that under Article 364 of the Civil Code legitimate children shall principally use the surname of the father. This provision, however, is not absolute because under Article 264 of the same Code, it is provided that legitimate children have the right to bear the surname of the father and of the mother. Hence, if there is sufficient reason, the change of a child’s surname from that of the father, to that of the mother, may be authorized by the court.

In the instant case, it has been shown that the petitioner- appellee is the legitimate daughter of Buena Bartolome and Kishimatsu Oshita; that upon reaching the age of majority she elected Philippine citizenship and took her oath of allegiance; that being already a Filipino citizen she desires to adopt a Filipino surname; that her older brother and sister who had also elected Philippine citizenship have been using the surname “Bartolome”; and that she desires to have the surname “Bartolome” instead of “Oshita”, because she felt embarrassed when introduced as one bearing Japanese surname. The

lower court further observed that “It cannot be denied that there had been ill feeling among the Filipinos against the Japanese due to the last Pacific war. Although normal relations between the Philippines and Japan have been established the ill feelings still persists among some Filipinos especially among the less educated who had unpleasant experience during the war.” There is no showing that the appellee was motivated by any fraudulent purpose, or that the change of her surname will prejudice public interest We believe that the lower court acted correctly when it considered these circumstances as reasons sufficient to justify the change of name as prayed for by the petitioner-appellee.

Moreover, the matter of whether to grant or deny a petition for a change of name is left to the sound discretion of the court. The following ruling of this Court is relevant:

“In granting or denying petitions for change of name, the question of ‘proper and reasonable cause’ is left to the sound discretion of the court. The evidence presented need only be satisfactory to the Court and not all the best evidence available.

“In the present case the trial court found to its satisfaction that petitioner was earnest in his desire to do away with all traces of his former Chinese nationality and henceforth to be recognized as a Filipino. Such desire is in line with the policy of our naturalization laws that applicants for naturalization should fully embrace Filipino customs and traditions and socially mingle with Filipinos.

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“It has not been shown that petitioner has any fraudulent intent in seeking a change of name. No criminal, civil, tax or any other, liability on his part, which he may avoid by the change of name, has been suggested. Nothing has been presented to show any prejudice to the Government or to any individual should the petition be granted. In the absence of prejudice to the State or any individual, a sincere desire to adopt a Filipino name to erase signs of a former alien nationality which unduly hamper social and business life, is a proper and reasonable cause for a

change of name. It is not trivial whimsical or capricious.” (Uy vs. Republic, L-22712, November 29, 1965).

WHEREFORE, the decision appealed from is **AFFIRMED**, without pronouncement as to costs. It is so **ORDERED**.

Concepcion, C.J., Reyes, Dizon, Regala, Bengzon, Sanchez and Castro, JJ., concur.
Makalintal, J., took no part.

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- [1] Rule 7 of the Rules of Court is entitled “Formal Requirements of Pleadings”, and it is under this Rule (Sec. 6) that the requirement regarding verification is provided.
- [2] Although Section 569, Act No. 190, which is similar to Section 1, Rule 96, Old Rules of Court, and now section 1, Rule 95, new Rules of Court, require that such petition should be verified.
- [3] Miller, et al. vs. The Director of Lands, et al., L-16761, October 31, 1964, citing Malagum vs. Pablo, 46 Phil. 19 and Nicolas vs. Director of Lands, et al., L-19147-8, December 28, 1963.