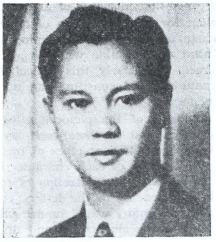
A NOVEL CASE



Judge Alberto J. Francisco

In the Matter of the Change of Name of Moises Tumale Bueno; Moises Tumale Bueno, petitioner, Sp. Proc. No. SC-121; In the Matter of Change of Name of Francisco Perez Javier. Sp. Proc. No. SC-122; Court of First Instance of Laguna, Branch II, Francisco, J.

D E C I S I O N

Petitioners Moises Tumale Bueno and Francisco Perez Javier seek the authorization of the Court for a change of their names from Moises Tumale Bueno to TStststststststststs-THthththththththth TH-th-TS-th, and from Francisco Perez Javier to Zzz-zzzzzzzzzzzzzz Z-z Z-z, respectively. Both are allegedly the founders of a religious sect known as "Iglesia Ygy-Nygy Philippinanas" with a membership of around one hundred followers at present, of both sexes.

These two petitions were heard jointly.

It is the pretension of herein petitioners that while delving into the mysteries and revelations of their religion — in the studies of which they had supposedly adverted to the sciences of Horology and Numerology in conjunction with the Bible as translated in the vernacular — they have been imbued with the sincere belief that in order to enjoy an auspicious existence on this earth and to attain succes in life their newly established religion requires of its votaries to adopt or assume a name consisting of a series of a letter or letters of the alphabet, either vowels or consonants, of a number unlimited, i.e., from two and so forth ad infinitum as long as to their belief and intent, there appears a conformation of the number of letters with the position of the heavenly bodies — the planets and the stars with the time, date, day, hour, month and year of their birth.

Counsel for petitioners contends in his memorandum that these petitions for the change of names are based "on petitioners' religious sect or affiliation", "a matter purely of belief which is strictly personal to them", and "that this fundamental right of freedom of worship and religion is a constitutional right guaranteed to everyone."

It should be made clear outright that this Court does not presume to indulge into an abstract and metaphysical theological disputation or dissertation of the viridity or the irrationality of the tenets and precepts of this religion — which are matters not justiciable and hence beyond judicial cognizance; neither does it intend to pass upon the sincerity of the convictions of the founders and followers of this religion; nor does it attempt to lay down a criterion by which the validity, the propriety or impropriety for the establishment of such religion may be gauged or determined. The task of dabbling into the abstruse study of the mystics and mysteries of this religion and of imparting them to its converts properly falls within the competence of its founders.

In short, the Court does not concern itself with the question of the free exercise of religion guaranteed by the constitution which connotes freedom of belief and worship. Insofar as these matters are concerned they are of no moment in these proceedings since they are not in issue; hence irrelevant. However, when attention is focused to the details in motivation of the devotees of such religion as when such religious beliefs or theories are sought to be actualized or translated into overt acts — in the present cases by an attempt to change baptismal names and surnames to those consisting of a long series of a particular letter of the alphabet — they may collide with certain interests which the State for reasons of public policy and welfare has a right to intervene and protect. Consequently, while the freedom to entertain a particular religious belief is absolute and falls within the meaning and protection of the constitutional precept, yet freedom to act in accordance therewith cannot always be unbridled and should accordingly be deemed subject of appropriate legislation; hence, the existence of statutory regulations governing the matter, viz., Articles 376; 380; 408(16); 412 of the Civil Code; Rule 103, Rules of Court. The juridical basis or rationale of these legal provisions cannot be circumvented by the pretense that their wise and proper application would result in a denial of the freedom of religion vouchsafed by the constitution. Indeed, while the latter guarantees liberty as concerns religious beliefs, worship or expression it does not necessarily negate, nor does it exclude by implication the right of the State to establish such safeguards against the abuse of such right albeit sincerity of motives, so long as they may affect adversely the public weal or traduce public policy. It has been held that public policy is the "community common sense and common conscience extended and applied through the state to matters of public morals, public health, public safety, public welfare and the like; it is that general and well-settled public opinion relating to man's plain, palpable duty to his fellow men having due regard to all the circumstances of each particular relation and situation." (Pittsburg, C.C. & St. L. Ry. Co. vs. Kinney, 115 N. E. 505, 506, 95 Ohio St. 64 L.R.A.). An act as to the consideration or thing to be done is contrary to or against public policy when it "has a tendency to injure the public, is against the public good, or contravenes some established interests of society, or is inconsistent with sound policy and good morals, or tends clearly to undermine the security of individual rights, whether of personal liberty or of private property." (Gabriel vs. Monte de Piedad, 40 Off. Gaz., 14th. Suppl., p. 67).

Let us consider the case of herein petitioners, the co-founders of the aforementioned religious sect — and parenthetically, its followers who may file similar petitions for change of name — from the viewpoint of their personality as natural persons. As such physical entities they have the aptitude to be subjects of rights and obligations and are endowed with the power and capacity to enter into juridical relations, and to perform acts with legal effects, e.g., to enter into contracts; to make wills; to borrow money; to dispose or acquire property; to marry; etc.

It is an acknowledged fact that man is beset by limitations and is insufficient to obtain by himself alone the means for the satisfaction of his necessities, either personal or social.

Hence, for the realization of his individual and social ends, and to attain the means required for common life and social cooperation he has often to enter into or engage in manifold dealings with others, sometimes with those residing within his own community; at times with others dispersed throughout the length and breadth of the archipelago; and, under certain circumstances with those residing outside the Islands even to the extent of his being impelled to leave his own country and settle in a foreign land. Consequently, it is likewise an undeniable fact that man's activities are not limited or circumscribed within the premises of his own home; nor within the walls which enclose the bethel where he worships or conducts the ceremonial rites of his religion; nor within the confines of the community wherein he lives; nor even within the territorial boundaries of his own country. In resume, when pursued down to its essentials, man — with a view to satisfying or complementing his individual ends — has to enter into civil agreements, transact business, execute contracts, issue negotiable papers, may bring suits or may even be sued, civilly or criminally.

According to herein petitioners those who are affiliated with this religion, including their children, are not prohibited from assuming identical style of names and surnames, that is, consisting of a similar series of any of the letters of the alphabet as already adopted by another or others, the differentiating factor that would serve to distinguish one individual from the other being the numbers or frequency of that particular letter of the alphabet in the series constituting the name or surname. Hence, one follower may procure as his name twenty-eight in number of the letter Z and as his surname thirty-one in number of the letters Th; another may assume twenty-nine of the letter Z as his name and thirty-two of the letters Th as his surname. By the same token, one of them may adopt ninety-nine letters S as his name and ninety-eight letters H as his surname. In effect therefore several persons may adopt as their praenomen or Christian name a series of the same letter of the alphabet, e. g., T; as their nomen or middle name a series of the same letter of alphabet, e.g. X and as their cognomen or surname a series of the same letter of the alphabet, e. g.; Z — the only mode of distinguishing or identifying one from the other being the frequency or the number of times that particular letter appears or is written as applied to one individual in contradistinction to the other individual. Thusly: A follower of this sect may bear as his Christian name the letter T multiplied sixteen times; and as his surname the letter T multiplied eighteen times. Another may carry the same letter T multiplied seventeen times as his Christian name; the same letter X multiplied eighteen times as his middle name; and the same letter Z multiplied nineteen times as his surname. A third individual may adopt the name and surname, respectively, multiplied into a different number of times, with one letter more or one letter less to constitute a shade of variation; and so forth ad nauseam.

To compound the confusion it may be stated here without peradventure of doubt that the use of the agnomen or nickname may not even be availed of.

Let us now analyze the impact of such disquieting atmosphere upon the various facets of normal human activities. Certainly, it would be rational and justifiable to conclude that such situation would breed in most likelihood chaos and confusion that could serve to seriously undermine or impair stability in juridical relations. Thus:

a.) Incertitude on the binding effects of contracts or agreements.—If one or two letters of the alphabet written repeatedly in series were to constitute the name and surname then the determining factor for identification of the individual would be the numerous frequencies in which the same letter appears in such name and surname. Consequently, all of said letters would have to be counted in order to determine the number of repetitions of that particular letter so as to identify or differentiate the individuals transacting business from other or others bearing as their names and surnames identical letters of the alphabet but with a shade of variation in their frequencies, consisting in a letter less or in a letter more. Under such queasy circumstances it would not be a far-fetched conclusion to state that a mistake in the exact number of the same letter of the alphabet either in the name or in the surname, whether inadvertently made or with malice aforethought, would be conducive to or would afford ample opportunity for one of the contracting parties to renege on an agreement or to disavow liability thereon as not the person signatory thereto; let alone the delay in the expeditious dispatch of mercantile transactions.

b.) Inducement for the commission of forgery. — In affixing a person's name and surname by signing in such style it would be very hard to determine whether a particular signature has been forged. Conversely, this difficulty in verifying simulation of signature would constitute an open invitation to the commission of forgery.

From the standpoint of the pictorial effect of the whole signature of the name and surname such styling in signing would easily fail to yield sufficient clues of forgery. A fortiori, even a scrutiny and analysis of each character in the signature would make just as difficult the detection of forgery inasmuch as the connection and spacing of the letters; their alignment; their irregularity or conformity would render extremely arduous the task of determining the similarities and dissimilarities; the significant differences or divergencies between a genuine signature and a simulated one. In short, the adoption of such style of names and surnames, and apropos, the affixing of such signatures would greatly detract from arriving at a fair and reasonable conclusion whether a particular signature is an authentic or a spurious one, considering the lack of continuity or consistency of the various parts of the signature with itself — which would be otherwise if there were a variation in the employment of several different letters of the alphabet and from which a fairly accurate deduction may be derived on the qualities, elements, features and characteristics of the handwriting constituting the signature.

c.) Indecisiveness of judicial orders, decrees and judgments;—In judicial proceedings such styling of appellations would necessitate the outmost precision in writing down the name and surname of the person who may be involved in the litigation, whether criminal or civil. This would be especially true in cases where there might be several persons who bear in common identical names and surnames consisting of a series of the same letter of the alphabet with only a slight modification or difference in the number of their repetition or consistency. In the issuance of warrants of arrests, subpoenas or summonses a detraction from or an addition of a letter in the correct name or surname of the subject of the writ would constitute a substantial difference that would render difficult service thereof. In like manner, an oversight or a slight mistake due to inadvertence in writing down the correct number of the same letters of the alphabet constituting the name and surname of a party-litigant would render effete the orders, decrees and decisions of the Court which otherwise, under normal circumstances, should have binding effect on the party sought to be affected thereby.

d.) Overriding the doctrine of idem sonans. — Under the doctrine of idem sonans — which is addressed to the auricular sense-if two or more names, though spelled differently, sound alike; they are to be regarded as the same and hence pertaining to a particular individual. This doctrine would become completely useless and nugatory when sought to be applied to the circumstances obtaining in the case at bar. Moreover, such set-up might tend to encourage the commission of crimes due to the facility in the concealment of the offender's identity and the consequent difficulty in his apprehension.

e.) Undermining the legal presumption of identity of persons from identity of names. — From the viewpoint of the law on evidence the presumption of "identity of person from identity

of name" (Rule 123, section 69 /w/, Rules of Court) — which has reference to the visual sense — would be extremely difficult of application. Inasmuch as the name and surname would be composed of a series of an identical letter of the alphabet written in succession, the existence of the slightest variation in the number of frequencies or in the continuity in which that particular letter might appear in the written name and surname would necessarily result in a vast difference in the identity of the persons who may have adopted the same alphabetical character, differing only in the number in which it is repeated. In effect, under such circumstances this would be tantamount to an indirect abrogation of the aforecited rule.

f.) Turmoil in the political field. — There is no gainsaying the fact that herein petitioners and the followers of this religious sect are and would not be barred from actively engaging in partisan political activities, even to the extent of launching their candidacy for elective public offices.

Once such style of name and surname sought to be adopted by the petitioners — and for that matter by others who may follow suit — carry the badge of judicial sanction there is no telling the extent of the deleterious effect that same would have in this aspect of political affairs. It would not do to dismiss as purely speculative the great probability that two or more candidates for an elective office may bear the same names and surnames consisting of an identical letter of the alphabet written in series but differing only in the number of frequencies. A single mistake in writing down the precise and correct number of letters in both names would nullify as stray votes, the ballots purportedly cast for these candidates since it would not avail to advert to the doctrine of idem sonans. Moreover, such disconcerting situation would demand an undue strain on the part of the voters in filling out the ballots and on the election inspectors in ascertaining for whom the votes had been cast. To say the least, the logical outcome of such situation would be chaos and confusion.

g.) Embarrassments in normal social intercourse. — Even in the ordinary pursuit of the amenities of social life, should perchance there would be a gathering of a group of persons affiliated with this religious sect bearing as their appellations the identical letter of the alphabet, e.g., "Z", though varying in the frequency in which such letter is repeated, it would be a frustrating experience to address, call or summon any one of them in particular for what would emit in pronouncing the individual's name would be a hizzing sound.

h.) Indetermination of gender. — Human individuals, are by virtue of their natural state, either males or females. Hence, it has been determined by implied agreement and general assent among civilized nations to give to either sex such Christian or proper name as would serve to distinguish one from the other. Under the unorthodox style in the use of names advocated by herein petitioners such conventional distinction which has ripened into custom and tradition would be totally eradicated. This new system would seem to connote the idea or to create the impression of the existence of a sexless aggroupation of individuals in the human species.

i.) Difficulty in tracing the lineage or parentage. — As testified to by one of herein petitioners their religion does not forbid, hence it sanctions, the adoption of similar style of names and surnames by the offsprings, whether males or females of its members; even by utilizing another sundry letter of the alphabet other than that already appropriated by their parents. This would be a drastic departure from the orthodox practice observed throughout the civilized world of conferring on a descendant at least the surname of his immediate ascendant or to be baptized with the patronymic or patrilineal name of his forbears. Furthermore, this would constitute a crass disregard of the legal requirement that children should bear the surname of either their father or mother, as the case may be. (Arts. 364, 366, 367, 368, 369, Civil Code).

Hence, to accede to the petitions would be to put a premium to the creation of perplexing situations in endeavors to trace or to identify either the lineage or ancestry of the persons concerned whether through the ascending, descending or collateral lines. These difficulties would be more patent and pronounced in cases involving wills, descent and succession; paternity and filiation; and, compulsory acknowledgment of children.

Before concluding it would not be amiss to dwell upon the nature and purpose of the name and surname. To all legal practical purposes a man's name is the designation by which he lives and is best known. A person's name consists, in law, of a Christian name and a family surname. A Christian name or first name or proper name is one that is used to distinguish a particular individual from his fellowmen; while a surname is that portion of the name of the individual which is employed by him in common with other members of the family.

It has been the practice which has ripened into custom and usage in all civilized countries, founded on a well-entrenched social order, that a person's name consists of a combination of letters or characters of the alphabet that spell out or denote a syllable or syllables such that a particular individual could be addressed, designated or identified by the distinct phonetic and limpid enunciation emitted by the syllabification of his name.

The names sought to be adopted by herein petitioners are unquestionably of a different version, constituting a violent departure from established practice, and borrowed independently from a source contrived to be impregnated with a tinge of religious motive. In addressing or identifying them — and by the same measure many others who may later seek to adopt similar style of appellations — one would have to sibilate; and this sibilation must perforce have to be produced by a stock of a similar letter of the alphabet repeated in successive frequencies resulting in a hissing sound, with ubiquitous and equivocal effects.

That the adoption of such style in name could easily lead to the commission of mistakes, and the creation of confusion and chaos, must have to be admitted. For, one of the petitioners himself, Tumale, had committed outright an error in writing down the very name he desires to assume, in lieu of his original baptismal name. Thus:

Cross—examination by Asst. Fiscal Tengco:

Q. Will you please write in this Exhibit "5" which is Exhibit "1" for Bueno and Exhibit "3" for Javier, now you will write your official signature based upon the supposed to be adopted name? How will you write your signature?

Atty. Plantilla:

Your official signature. If you are granted that name, what will be your official signature?

Court:

Make it of record that after writing down the letters, the witness has been counting the number of the letters supposed to be his signature.

Asst. Fiscal Tengco:

There is a statement which was made by this witness which we will request that the interpreter to please interpret the same.

Interpreter:

The witness wants to call the attention of the Court that he made a mistake in Exhibit "1-A" and he is making the proper correction and he writes the same in line with . . .

Asst. Fiscal Tengco:

I will request that the same be marked as Exhibit "8"

for the oppositor.

Interpreter:

Witness wants to call the attention of the Court that in Exhibit "A-1" in writing his surname, he committed an error and wants to point to the Court that the correct figure will be . . .

Asst. Fiscal:

We will request that the same be marked as Exhibit "8-A" — Moises and as Exhibit "8-B" — Tumale. (T.s.n., June 18, 1963; pp. 2-3).

Moreover, there is one important factor which the Court can not discount nor be oblivious of. It should be emphasized that to grant the herein petitions would be to establish a precedent that would pave the way for similar petitions on the part of others, who may be fascinated and intrigued by this new fangled idea, whether under claim of religious convictions ingeniously feigned or otherwise. To limit the grant of such petitions to those who may be affiliated with this religious sect would not only lay the Court open to the charge of discrimination and inconsistency but would, moreover, controvert the very contention of counsel for herein petitioners that freedom in the choice of religious beliefs is beyond the pale of legislative regulation or judicial determination. Furthermore, such circumscription to affiliates of this sect would be violative of the injunction that a person should not be unduly deprived of the exercise of his prerogatives on account of his religious belief or political opinion (Art. 39, Civil Code).

Pursued down to its ultimate conclusions, one need not necessarily be endowed with a fervid imagination to be able to envisage the perplexing situations; the unpleasant predicaments; the chaos, confusion and disorders that would be generated by the frequent repetition of such unimaginative device in the style of names, in substitution of conventional appellations. Such, indeed, would be the resultant and far-reaching chaotic effects were the Court to acquiesce to these arbitrary permutations of the letters of the alphabet. What may be a novelty for the present, could in the future, be a parody of the past.

To grant the petitions at bar would be to subserve sound public policy in place of emphasis to details of personal motivations under the simple expedient that the same are blended with certain religious connotations.

In concluding, the Court wishes to reiterate that, as heretofore stated, the issue in the present cases does not concern the establishment of a particular religion nor with the question of one's views of his relations to his Creator, and to the obligations they impose of reverence for His Being and character, and of obedience to His will. Neither is the Court concerned with the free exercise thereof and the form of worship that is imposed to the followers of this particular religious sect as approved by their judgment and conscience; nor to the mode by which they may exhibit their sentiments in relation thereto insofar as they do not undermine public policy or subvert the welfare of the rest of the community.

Parenthetically, neither are the votaries of his religion denied the right to appropriate to themselves a shibboleth to identify or designate the particular religious denomination to which they may belong, as for example, that of being Lutheran, a Calvinist, a Baptist, a Methodist or an Aglipayan.

Premises alluded to, it is the considered opinion of the Court that two or more detached and separated letters of the alphabet do not constitute a name; and, that the intent by which any specific combination of letters is used is immaterial provided their use tends, as a matter of fact, to deceive or to confuse.

As the declared purpose of proceedings for change of name is the prevention of fraud, rules enacted in connection therewith are valid exercise of the police power of the State; and, since the change of name of person may affect his business and social relations, the rule allows any interested person, besides the Solicitor General or the proper provincial fiscal, to appear at the hearing and oppose the petition. (Rule 103, sec. 4, Rules of Court).

Furthermore, it is settled doctrine that an order changing the name of the applicant is a matter of judicial discretion and not of right and that the Court is not subject to the whims of every petitioner, hence, it may make an order dismissing the application, as the Court may deem right and proper. (38 Am. Jur., p. 610; 45 C.J., p. 382).

In view of all the foregoing considerations, the Court is constrained to deny, as it hereby denies, the two herein petitions for change of names. Without pronouncement as to costs.

SO ORDERED.

Sta. Cruz, Laguna, November 1, 1963.

ALBERTO J. FRANCISCO
Judge

REPUBLIC . . . (Continued from page 379)

SEC. 4. The eleventh and thirteenth paragraphs of Section fifty-four of the same Act, as amended, is hereby further amended to read as follows:

"Eleventh Judicial District: At Culasi, Province of Antique, on the first Tuesday of December of each year, a special term of court shall be held at least once a year on dates to be fixed by the district judge. Special terms of court shall also be held at San Agustin, Province of Romblon, on the third Tuesday of August, December and April of each year; and at Odiongan and Cajidiocan, same province, at least once a year on dates to be fixed by the judge.

"Thirteenth Judicial District: The Calbayog branch to hold court at Basey, Samar, on the first Tuesday of January of each year; the Laoang branch, at Gamay, same province, on the first Tuesday of July of each year."

SEC. 5. Section seventy-one of the same Act, as amended, is hereby further amended by adding another paragraph thereto which shall read as follows:

"No person shall be appointed judge of the municipal court of any chartered city or justice of the peace of any provincial capital unless he is (1) at least thirty years of age; (2) a citizen of the Philippines; (3) of good moral character and has not been convicted of any felony; (4) has been admitted by the Supreme Court to the practice of law; and (5) has practised law in the Philippines for a period of not less than five years."

SEC. 6. Wherever an additional branch or branches of the Court of First Instance is or are established in this Act in the same place where there is an existing court or courts of first instance, all cases already filed in the latter court or courts shall be heard, tried and decided by such latter court or courts.

SEC. 7. The stenographer of a Court of First Instance shall receive a compensation of not less than four thousand eight hundred pesos per annum except the stenographers of the Courts of First Instance of the City of Manila, Pasay City, Quezon City, Caloocan City and the Provinces of Rizal, Cebu, Negros Occidental, Iloilo, Leyte and Davao who shall receive a compensation of not less than six thousand pesos per annum: Provided, That no salary shall be paid to a court stenographer unless he submits a sworn statement to the effect that he has given requesting parties copies of transcript of stenographic notes upon payment of proper fees, and transcripts have been completed and attached to the records of every appealed case within sixty days after receipt of notice from the appellate courts.

SEC. 8. Such sums as may be necessary to carry out the purposes of this Act is hereby appropriated out of any funds in the National Treasury not otherwise appropriated.

SEC. 9. This Act shall take effect upon its approval.

Approved, June 22, 1963.