Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

P/S INSP. SAMSON B. BELMONTE, SPO1 FERMO R. GALLARDE, PO3 LLOYD F. SORIA, PO1 HOMER D. GENEROSO, PO1 SERGS DC. MACEREN, PO3 AVELINO L. GRAVADOR, PO2 FIDEL O. GUEREJERO, and PO1 JEROME T. NOCHEFRANCA, JR., Petitioner,	**G.R. No. 197665** **Present:** VELASCO, JR., *J., Chairperson*, PERALTA, VILLARAMA, JR., MENDOZA,* and REYES, *JJ.*
- versus -	
OFFICE OF THE DEPUTY OMBUDSMAN FOR THE MILITARY AND OTHER LAW ENFORCEMENT OFFICES, OFFICE OF THE OMBUDSMAN, Respondent.	**Promulgated:** January 13, 2016

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D E C I S I O N

PERALTA, *J.*:

Before the Court is a Petition for Prohibition with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction under Rule 65 of the Rules of Court seeking to prohibit the Deputy Ombudsman for the Military and Other Law Enforcement Offices from implementing its Decision[1] dated May 24, 2011 issued in OMB-P-A-07-1396-L finding petitioners guilty of Grave Misconduct and imposing the penalty of Dismissal from Service, together with its accessory penalties.

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* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 27, 2014.

[1] Penned by Graft Investigation & Prosecution Officer Yvette Marie S. Evaristo, with Director Dennis L. Garcia, concurring; *rollo*, pp. 21-26.

The instant case stemmed from a Complaint[2] filed by Sandra Uy Matiao against petitioners P/S Insp. Samson B. Belmonte, SPO1 Fermo R. Gallarde, PO3 Lloyd F. Soria, PO1 Homer D. Generoso, PO1 Sergs DC. Maceren, PO3 Avelino L. Gravador, PO2 Fidel O. Guerejero, PO1 Jerome T. Nochefranca, Jr., members of the Regional Traffic Management Office-7 (*RTMO-7*) as well as P/Supt. Eleuterio N. Gutierrez, Regional Director of the Traffic Management Group Region 7 (*TMG-R7*). In said Complaint, Sandra alleged that sometime on September 3, 2007 in Dumaguete City, petitioners flagged down her vehicle because the 2007 LTO sticker was not displayed on its windshield. Consequently, petitioners proceeded to seize and impound the subject vehicle without any warrant or existing complaint for theft. Thereafter, Sandra alleged that they asked her if she could shoulder their lodging expenses at the OK Pensionne House and treat them for dinner while an initial macro-etching examination was being conducted on her vehicle. Sandra acceded. While on their way to dinner, however, petitioner Belmonte told Sandra to just settle the problem for three hundred thousand pesos (₱300,000.00).[3]

The next day, the macro-etching examination revealed that the engine, chassis and production numbers of Sandra's vehicle were tampered. Because of this, the vehicle was placed under the list of stolen vehicles and was subsequently brought to the PNP-TMG 7 Office in Cebu City under the custody of P/Supt. Gutierrez.

In a demand letter dated September 14, 2007, Sandra requested Gutierrez to release the subject vehicle. Immediately thereafter, she received a phone call from petitioner Belmonte threatening to file criminal charges against her for violations of Republic Act (*RA*) No. 6539, otherwise known as the *Anti-Carnapping Act* and Presidential Decree (*PD*) No. 1612, otherwise known as the *Anti-Fencing Law*. Despite such threat, Sandra filed a civil case against petitioners for Recovery of Personal Property with Prayer for Issuance of a Writ of Replevin before the RTC of Cebu City. Conversely, petitioners filed the criminal cases they had previously threatened to file against Sandra before the Prosecutor's Office of Dumaguete City, docketed as I.S. No. 2007-443.[4]

On December 12, 2007, Sandra filed the subject Administrative Complaint for Grave Misconduct and Abuse of Authority against petitioners before the Visayas Office of the Ombudsman. In their Counter-Affidavits, petitioners denied the charges and pleaded, as part of their defense, the findings of Prosecutor May Flor V. Duka on the criminal charges for Anti-Carnapping and Anti-Fencing in her Resolution dated December 14, 2007 which upheld, in their favor, the presumption of regularity in their

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2 *Id*. at 47-51.
3 *Id*. at 21-22.
4 *Id*. at 22.

performance of duty. The Resolution noted that petitioners were on official duty at the time when they apprehended and seized the subject motor vehicle for not bearing the 2007 LTO sticker.

Petitioners also invoked good faith as regards the allegation that their hotel accommodation was paid for by Sandra claiming to be in honest belief that it was P/Supt. Manuel Vicente of the Negros Traffic Management Office (*NTMO*) who billeted them at the OK Pensionne House at said office's own expense, and without any inkling that it was Sandra who had paid for the same. They further averred that Sandra is guilty of forum shopping due to the fact that she had already filed a civil case for Recovery of Personal Property before the RTC of Cebu City, which contains similar issues with the administrative case except for the allegation of extortion, a mere afterthought.[5]

In her Reply-Affidavit, Sandra denied the forum shopping allegation in stressing that her present cause of action pertains to petitioners' acts of extortion while the civil case for Recovery of Personal Property seeks the recovery of the subject motor vehicle. She also averred that petitioners tried to make it appear that there were irregularities in her vehicle so that they could extort money from her. But when she refused to succumb to their demands, they filed the Anti-Carnapping and Anti-Fencing charges.

On May 24, 2011, the Office of the Ombudsman issued the assailed Decision finding petitioners guilty of Grave Misconduct. It ruled that Sandra presented substantial evidence, such as hotel receipts, to support her allegations that petitioners demanded and received favours from her as consideration for the processing of the macro-etching examination of the subject vehicle. Accordingly, the dispositive portion of the Decision reads:

> WHEREFORE, premises considered, respondents P/S INSP. SAMSON B. BELMONTE, SPO3 LLOYD F. SORIA, PO1 HOMER D. GENEROSO, PO1 JEROME T. NOCHEFRANCA, JR., PO3 AVELINO L. GRAVADOR, SPO2 FERMO R. GALLARDE, PO2 FIDEL O. QUEREJERO, PO1 SERGS DC MACEREN are hereby found GUILTY of Grave Misconduct and are meted out the extreme penalty of Dismissal from the Service, together with its accessory penalties. Respondent P/SUPT. ELEUTERIO N. GUTIERREZ, on the other hand, is hereby exonerated of the instant administrative charges.[6]

On July 18, 2011, petitioners filed a Motion for Reconsideration arguing that the Ombudsman's decision is not supported by evidence and that the penalty of dismissal imposed on them is oppressive.

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5 *Id*. at 22-23.

6 *Id*. at 25.

Before the Ombudsman could resolve the said motion, however, petitioners elevated the matter to the Court by filing the instant Petition for Prohibition on August 3, 2011, praying that the Court issue a Writ of Prohibition and Temporary Restraining Order and/or Writ of Preliminary Injunction commanding the Ombudsman to desist from implementing its Decision dated May 24, 2011 ordering their dismissal from service pending resolution of their Motion for Reconsideration with said office or until remedies under the Rules and law have been fully exhausted. Thus, petitioners raised the following grounds:

> I.
> THE DECISION IN OMB-P-A-07-1396-L WAS ISSUED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION. IT CLEARLY STEMMED FROM THE MANIFESTLY FALSE CHARGES OF COMPLAINANTS WHO WERE MOTIVATED BY THEIR LUST FOR VENGEANCE OCCASIONED BY THE IMPOUNDMENT OF THEIR MOTOR VEHICLE.
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> II.
> PETITIONERS HAVE NO APPEAL OR ANY OTHER PLAIN, SPEEDY, AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW, BUT THIS PETITION CONSIDERING THAT THE DECISION OF THE OFFICE OF THE OMBUDSMAN IS IMMEDIATELY EXECUTORY.
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> III.
> THE EXTREME PENALTY OF DISMISSAL FROM THE SERVICE IMPOSED IN THE DECISION IS TOO HARSH, OPPRESSIVE AND EXCESSIVE. IT ARBITRARILY AND UNJUSTLY STRIPPED PETITIONERS OF THEIR GAINFUL EMPLOYMENT, PROFESSION, TRADE OR CALLING, A PROPERTY RIGHT WITHIN THE CONSTITUTIONAL GUARANTEE OF DUE PROCESS.

The Court notes, however, that on September 6, 2011, a month after the filing of the instant petition, the Office of the Ombudsman issued an Order[7] modifying its Decision by finding petitioners guilty not of Grave Misconduct, but of Conduct Prejudicial to the Best Interest of the Service and further modifying the penalty from dismissal to suspension from office for a period of six (6) months and (1) day without pay. The dispositive portion of said Order provides:

> WHEREFORE, premises considered, it is respectfully recommended that the Decision dated 24 May 2011, be RECONSIDERED and MODIFIED. Accordingly, this Office finds respondents P/S INSP. SAMSON B. BELMONTE, SPO2 FERMO R. GALLARDE, SPO3 LLOYD F. SORIA, PO1 HOMER D. GENEROSO, PO1 SERGS DC MACEREN, PO3 AVELINO L. GRAVADOR, PO2 FIDEL O. QUEREJERO and PO1 JEROME T. NOCHEFRANCA, JR., guilty of Conduct Prejudicial to the Best Interest of the Service and are hereby

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7 *Id*. at 152-157.

> meted the penalty of suspension from office for a period of Six (6) months and (1) day without pay. If the penalty of suspension can no longer be served by reason of retirement or resignation, the alternative penalty of FINE equivalent to the SIX (6) MONTHS and ONE (1) DAY salary of the respondents shall be imposed, and shall be deducted from their retirement or separation benefits.
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> As to the dismissal of the administrative complaint against respondent P/SUPT. ELEUTERIO N. GUTIERREZ, the same is hereby AFFIRMED.[8]

Nevertheless, in filing the instant action, petitioners claim that the assailed May 24, 2011 Decision was issued with grave abuse of discretion amounting to lack or excess of jurisdiction for it was issued without proof that they are indeed guilty of demanding and accepting favours from Sandra. Considering that the Decision of the Ombudsman is immediately effective and executory, petitioners alleged that they were left with no appeal, or any other plain, speedy and adequate remedy but the instant petition. According to them, their Motion for Reconsideration would not operate to stay the implementation of the Decision rendered by the Ombudsman. Thus, they stood to lose their jobs unless the Decision is stayed by the Court.

In its Comment, public respondent Office of the Ombudsman countered that the instant petition is dismissible outright. For a party to be entitled to a writ of prohibition, he must establish that the office or tribunal has acted without or in excess of its jurisdiction or with grave abuse of discretion and that there is no appeal or any other plain, speedy and accurate remedy in the ordinary course of law. Public respondent asserted that, first, petitioners have not shown that it gravely abused its discretion in issuing the assailed Decision. As can be seen in said Decision, substantial evidence existed to warrant a finding of administrative culpability on the part of petitioners. Public respondent further noted that, in any event, it issued an Order dated September 6, 2011 modifying the assailed May 24, 2011 Decision and eventually found petitioners guilty, not of grave misconduct, but of conduct prejudicial to the best interest of the service. Second, the remedy of a motion for reconsideration was available and, in fact, availed of by the petitioners. Thus, the instant petition should be dismissed.

Moreover, public respondent posited that petitioners violated the doctrine of hierarchy of courts, for appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be brought not directly to the Court but to the Court of Appeals via petition for review under Rule 43 of the Rules of Court. Finally, public respondent submitted that there exists no valid ground to grant petitioners' prayer for the issuance of a temporary restraining order and/or writ of preliminary mandatory

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8 *Id*. at 155-156.

injunction for there is no such thing as a vested interest in a public office, let alone an absolute right to hold it.

We rule in favor of public respondent.

The petition for prohibition filed by petitioners is inappropriate. Section 2, Rule 65 of the Rules of Court provides:

> Sec. 2. *Petition for Prohibition*. - When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its jurisdiction, or **with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law,** a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.[9]

For a party to be entitled to a writ of prohibition, he must establish the following requisites: (a) it must be directed against a tribunal, corporation, board or person exercising functions, judicial or ministerial; (b) the tribunal, corporation, board or person has acted without or in excess of its jurisdiction, or with grave abuse of discretion; and (c) there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[10] A cursory reading of the records of the case readily reveals the absence of the second and third requisites.

First, the Court does not find that public respondent gravely abused its discretion in issuing the subject Decision. Grave abuse of discretion is a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility. Petitioners, in this case, must prove that public respondent committed not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction. Mere abuse of discretion is not enough; it must be grave.[11]

But the Court observes that in arriving at the assailed Decision, public respondent carefully weighed the rights and interests of the parties *vis-à-vis* the evidence they presented to substantiate the same. It ruled that Sandra

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[9] Emphasis supplied.

[10] *Montes v. Court of Appeals*, 523 Phil. 98, 107 (2006), citing *Longino v. General*, 491 Phil. 600, 616 (2005).

[11] *Office of the Ombudsman v. Magno*, 592 Phil. 636, 652 (2008), citing *Suliguin v. COMELEC*, 520 Phil. 92, 107 (2006), and *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1, 20-21 (2002).

submitted substantial evidence, such as hotel receipts, to support her allegations that petitioners demanded and received favours from her as consideration for the processing of the macro-etching examination of the subject vehicle. Thus, that public respondent's ruling was unfavourable to petitioners' interests does not necessarily mean that it was issued with grave abuse of discretion, especially so when such ruling was aptly corroborated by evidence submitted by the parties.

Second, petitioners filed the instant action when they clearly had some other plain, speedy, and adequate remedy in the ordinary course of law. A remedy is considered plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of the judgment or rule, order or resolution of the lower court or agency.[12] As public respondent pointed out, the remedy of a motion for reconsideration was still available to petitioners, as expressly granted by the following Section 8 of Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order (*AO*) No. 17:

> Section 8. Motion for reconsideration or reinvestigation: Grounds – Whenever allowable, a motion for reconsideration or reinvestigation may only be entertained if filed within ten (10) days from receipt of the decision or order by the party on the basis of any of the following grounds:
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> a) New evidence had been discovered which materially affects the order, directive or decision;
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> b) Grave errors of facts or laws or serious irregularities have been committed prejudicial to the interest of the movant.
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> Only one motion for reconsideration or reinvestigation shall be allowed, and the Hearing Officer shall resolve the same within five (5) days from the date of submission for resolution.

In fact, as borne by the records, petitioners actually availed of the same when they filed their Motion for Reconsideration with public respondent on July 18, 2011.

Moreover, the mere fact that the Ombudsman's decision imposing the penalty of dismissal from service is immediately executory, alone, does not justify the issuance of an injunctive writ to stay the implementation thereof. As the Court explained in *Villaseñor v. Ombudsman*:[13]

> **The nature of appealable decisions of the Ombudsman was, in fact, settled in Ombudsman v. Samaniego, where it was held that such**

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[12] *Badiola v. Court of Appeals*, 575 Phil. 514, 531 (2008), citing *San Miguel Corporation v. Court of Appeals*, 425 Phil. 951, 956 (2002).

[13] G.R. No. 202303, June 4, 2014, citing *Ombudsman v. Samaniego*, 646 Phil. 445, 449 (2010).

> **are immediately executory pending appeal and may not be stayed by the filing of an appeal or the issuance of an injunctive writ.**
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> x x x x
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> **Thus, petitioner Villaseñor's filing of a motion for reconsideration does not stay the immediate implementation of the Ombudsman's order of dismissal, considering that "a decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course" under Section 7.**
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> x x x x
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> The Ombudsman did not, therefore, err in implementing the orders of suspension of one year and dismissal from the service against the petitioners.

This may be so because, as the Court further explained, the immediate implementation of an order of dismissal does not violate any vested right for petitioners are considered preventively suspended during their appeal, *viz.*:

> The Rules of Procedure of the Office of the Ombudsman are procedural in nature and, therefore, may be applied retroactively to petitioners' cases which were pending and unresolved at the time of the passing of A.O. No. 17. **No vested right is violated by the application of Section 7 because the respondent in the administrative case is considered preventively suspended while his case is on appeal and, in the event he wins on appeal, he shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. It is important to note that there is no such thing as a vested interest in an office, or even an absolute right to hold office. Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office**.[14]

In view of the foregoing, therefore, the Court cannot give credence to petitioners' assertion that given the immediate effectivity of the assailed Decision, a Writ of Prohibition and Temporary Restraining Order and/or Writ of Preliminary Injunction must be issued to stay the implementation thereof. As clearly held by the Court, they have no vested right which stands to be violated by the execution of the subject decision.

At this point, it must be observed that the instant petition is likewise dismissible for its violation of the doctrine of hierarchy of courts. As previously mentioned, petitioners, without awaiting public respondent's action on their Motion for Reconsideration, immediately filed the instant petition before this Court, instead of the appellate court, as required by said

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[14] *Villaseñor v. Ombudsman*, *supra*, citing *Facura v. CA*, 658 Phil. 554, 579-580 (2011), citing *Ombudsman v. Samaniego, supra* note 13, citing *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of the DPWH*, 529 Phil. 619, 630-631 (2006). (Emphasis ours)

doctrine. In *Vivas v. The Monetary Board of the Bangko Sentral ng Pilipinas*,[15] the Court had occasion to explain:

> Even in the absence of such provision, the petition is also dismissible because it simply ignored the doctrine of hierarchy of courts. **True, the Court, the CA and the RTC have original concurrent jurisdiction to issue writs of certiorari, prohibition and mandamus. The concurrence of jurisdiction, however, does not grant the party seeking any of the extraordinary writs the absolute freedom to file a petition in any court of his choice. The petitioner has not advanced any special or important reason which would allow a direct resort to this Court.** Under the Rules of Court, a party may directly appeal to this Court only on pure questions of law. In the case at bench, there are certainly factual issues as Vivas is questioning the findings of the investigating team.
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> **Strict observance of the policy of judicial hierarchy demands that where the issuance of the extraordinary writs is also within the competence of the CA or the RTC, the special action for the obtainment of such writ must be presented to either court.** As a rule, the Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate lower courts; or where exceptional and compelling circumstances, such as cases of national interest and with serious implications, justify the availment of the extraordinary remedy of writ of certiorari, prohibition, or mandamus calling for the exercise of its primary jurisdiction. The judicial policy must be observed to prevent an imposition on the precious time and attention of the Court.[16]

However, as in the foregoing pronouncement, petitioners herein directly elevated the instant case before the Court failing to advance any compelling reason for the Court to allow the same. In fact, they even raised issues concerning public respondent's factual findings, contrary to the rule that parties who appeal directly to this Court must only raise questions of law. It is clear, therefore, that the Court has ample reason to dismiss petitioners' recourse.

Besides, even granting the propriety of the instant petition, the same can no longer be given effect under the circumstances availing. Note that the instant petition particularly sought the Court to issue a Writ of Prohibition and Temporary Restraining Order and/or Writ of Preliminary Injunction commanding public respondent to desist from implementing its Decision dated May 24, 2011. But as aptly pointed out by public respondent, the assailed Decision had already been modified by its September 6, 2011 Order finding petitioners guilty, not of Grave Misconduct, but of Conduct Prejudicial to the Best Interest of the Service and imposing the penalty of

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15 G.R. No. 191424, August 7, 2013.

16 *Vivas v. The Monetary Board of the Bangko Sentral ng Pilipinas*, G.R. No. 191424, August 7, 2013, 703 SCRA 290, 304, *Philippine Veterans Bank v. Benjamin Monillas*, 573 Phil. 298, 315 (2008), and *Springfield Development Corp., Inc. v. Hon. Presiding Judge of RTC, Branch 40, Cagayan de Oro City, Misamis Oriental*, 543 Phil. 298, 315 (2007). (Emphasis ours)

suspension from office for a period of six (6) months and (1) day without pay, instead of dismissal from service. Accordingly, considering that the act sought to be enjoined has already been modified, there is nothing more to restrain.[17]

Indeed, prohibition is a preventive remedy seeking that a judgment be rendered directing the defendant to desist from continuing with the commission of an act perceived to be illegal. Its proper function is to prevent the doing of an act which is about to be done. When, however, under the circumstances, the act sought to be restrained can no longer be committed, resort to such recourse is rendered futile for prohibition is not intended to provide a remedy for acts already accomplished.[18]

WHEREFORE, premises considered, the instant petition for Prohibition is **DENIED.**

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

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17 *Montes v. Court of Appeals, supra* note 10, citing *Gonzales v. Narvasa*, 392 Phil. 518, 523 (2000).

18 *Vivas v. The Monetary Board of the Bangko Sentral ng Pilipinas, supra* note 16, citing *Guerrero v. Domingo,* 646 Phil. 175, 179 (2011), *Cabanero v. Torres*, 61 Phil. 522 (1935), *Agustin v. De la Fuente*, 84 Phil. 525 (1949), *Navarro v. Lardizabal*, 134 Phil. 331 (1968), *Heirs of Eugenia V. Roxas, Inc. v. Intermediate Appellate Court*, 255 Phil. 558 (1989).

BIENVENIDO L. REYES
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

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[illegible] V. LAPITAN
Clerk of Court
Third Division
FEB 15 2016