



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

LEONARDO V. REVUELTA,
 Petitioner,

G.R. No. 237039

Present:

- versus -

PERALTA, J., *Chairperson,*
 LEONEN,
 REYES, A., JR.,
 HERNANDO, and
 INTING, JJ.

PEOPLE OF THE PHILIPPINES,
 Respondent.

Promulgated:

June 10, 2019

X-----*Regul Peralta*-----X

DECISION

PERALTA, J.:

Before *Us* is a Petition for *Certiorari* under Rule 65 of the Rules of Court, with prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, seeking the reversal of the Sandiganbayan’s Resolutions dated September 6, 2017,¹ and November 28, 2017,² which respectively denied petitioner’s Motion to Dismiss and Motion for Reconsideration.

Petitioner was charged before the Sandiganbayan for Violation of Section 3 (e) of Republic Act (R.A.) No. 3019 under an Information filed by the Office of Ombudsman on July 1, 2015. The Ombudsman’s Information stemmed from the Complaint-Affidavit dated March 9, 2009 filed by private complainants Justiano N. Calvario, Guillermo O. Maulawin, Jesus A. Astillo, Oscar A. Aguirre and Albelio C. Reyes.

¹ *Rollo*, pp. 22-46.
² *Id.* at 48-54.

On January 30, 2017, petitioner filed a Motion to Dismiss before the Sandiganbayan on the ground that the inordinate delay of more than six (6) years in resolving the complaint (from the time of the complaint to the filing of information) violated his constitutional rights to speedy disposition and resolution of cases, and to due process.

Summarized in the Sandiganbayan Sixth Division's assailed September 6, 2017 Resolution, the factual antecedents are as follows:

On March 16, 2009, the Office of the Deputy Ombudsman for Luzon received a Complaint-Affidavit dated March 9, 2009 from Justiniano N. Calvario, Guillermo O. Maulawin, Jesus A. Astillo, Oscar A. Aguirre and Albelio C. Reyes (Complainants) charging Isaias Ubana, Municipal Mayor of Lopez, Quezon with Malversation, Falsification and Violation of R.A. No. 3019. Said complaint-affidavit alleged irregularities in the procurement and deliveries of glass wares and plastic wares to recipient barangays in the municipality. On March 23, 2009, the complaint-affidavit was docketed for fact-finding investigation.

On April 9, 2009 and August 13, 2009, the Deputy Ombudsman for Luzon directed the Municipal Accountant of Lopez, Quezon and COA LGS-Cluster of Lucena, respectively, to submit documents relevant to the investigation. On August 28, 2009, the fact-finding investigation was terminated and the case was re-docketed as a criminal case.

On November 9, 2009, the said criminal case was assigned to Graft Investigation and Prosecution Officer (GIPO) J.S. Ong (Ong) for preliminary investigation. On November 23, 2009, GIPO J.S. Ong received the records of the case.

The preliminary investigation ensued against Ubana being the only respondent in the case. On November 16, 2009, the Deputy Ombudsman for Luzon issued a subpoena to accused Ubana for the submission of his counter-affidavit,

On December 17, 2009, the Deputy Ombudsman for Luzon unloaded the case to GIPO Albert Almojuela (Almojuela).

On January 5, 2010, accused Ubana filed a Motion for Extension of Time to Submit Counter-affidavit. On January 26, 2010, for the second time, accused Ubana sought an extension of time to submit his counter-affidavit. This was opposed by the complainants on February 3, 2010. On February 10, 2010, accused Ubana filed his third Motion for Extension of Time to Submit Counter-affidavit. After filing three (3) Motions for Extension of Time to Submit Counter-Affidavit, accused Ubana finally submitted his Counter-Affidavit dated February 18, 2010, or *three (3) months and two (2) days* from the date of issuance of the subpoena.

On April 18, 2011, the case was re-assigned to GIPO Expedito Allado, Jr. (Allado, Jr.), In a Memorandum dated September 12, 2011, GIPO Allado, Jr. sought the inclusion of accused Revuelta and Nieva, and

co-respondents Abelia Norada Villasenor (Villasenor), Hermes Arche Argante (Argante), and Esmeraldo L. Erandio (Erandio) in the case.

On September 21, 2011, the Deputy Ombudsman for Luzon issued an order directing accused Revuelta and Nieva, and co-respondents Villasenor, Argante, and Erandio to submit their counter-affidavits.

Accused Revuelta and Nieva failed to submit their counter-affidavits despite personal receipt of the order to file the same. From the foregoing, the investigatory process against accused Revuelta and Nieva started only when they were impleaded as co-respondents in the case on September 12, 2011 or *two (2) years, five (5) months and twenty-six (26) days* after the filing of the complaint-affidavit, or *one (1) year, five (5) months and three (3) days* after the start of the preliminary investigation against accused Ubana.

Pending resolution of the case, complainants submitted the COA audit observation memorandum on September 25, 2011 and COA fact-finding investigation report on October 26, 2011. On September 25, 2012, the complainants sought the admission of said documents as additional evidence.

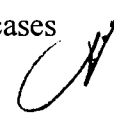
This prompted the Deputy Ombudsman for Luzon to re-evaluate the records. On March 4, 2013, the case was transferred to Ombudsman-Zero Backlog Unit (ZBU) for continuation of the preliminary investigation. The Ombudsman-ZBU then issued an Order dated July 15, 2013 directing the accused and their co-respondents to submit their comments on the said COA audit observation memorandum and fact-finding report submitted by the complainants.

Within the period July 24, 2013 to August 6, 2013, accused Ubana and Nieva and their co-respondents, filed separate motions seeking an extension of time to submit their comments. On August 27, 2013, accused Ubana and Nieva and their co-respondents, submitted their comments on the COA memorandum and report.

On August 30, 2013, the Ombudsman-ZBU directed COA to produce a certified copy of its report in the case. Dissatisfied with their 2011 reports, COA's Fraud Audit Office conducted another fact-finding investigation which resulted in a 2013 Fact-Finding Report. On September 6, 2013, complainants filed a motion for the immediate resolution of the case.

On August 18, 2014, a draft resolution finding probable cause for Violation of R.A. No. 3019 against accused Ubana, Nieva and Revuelta, and for Falsification against accused Ubana and Nieva, and dismissing the charges against respondents Villasenor, Argante and Erandio for lack of probable cause, was submitted for approval by Assistant Ombudsman Leilanie Bernadette C. Cabras (Cabras) to Ombudsman Conchita Carpio-Morales (Carpio-Morales). On August 20, 2014, Ombudsman Carpio-Morales approved the said draft resolution.

Thereafter, accused Ubana, Nieva and Revuelta sought a partial reconsideration of the same. This was denied by the Ombudsman on January 30, 2015. Thereafter, the OSP filed the informations in these cases



before this Court on July 1, 2015, or *five (5) months, nineteen (19) days* after the denial of their motion for partial reconsideration.³

Based on the foregoing facts, the Sandiganbayan denied for lack of merit petitioner's Motion to Dismiss per its assailed Resolution dated September 6, 2017. The court *a quo*'s disquisitions, in so far as relevant to petitioner's claim of inordinate delay, run as follows:

The period from February 18, 2010 to September 21, 2011, or *one (1) year, seven (7) months and three (3) days*, should be attributed to the Deputy Ombudsman for Luzon. During this period, the case was unloaded from GIPO Almojuela to GIPO Allado, Jr., for reasons unstated. At this point, GIPO Allado, Jr. requested the inclusion in the case of accused Revuelta and Nieva, and co-respondents Villasenor, Argante, and Erandio. On September 21, 2011, the Deputy Ombudsman for Luzon issued orders to accused Revuelta and Nieva, and co-respondents Villasenor, Argante, and Erandio requiring the submission of their respective counter-affidavits. The Deputy Ombudsman for Luzon's actions were put on hold pending the submission by accused Nieva and Revuelta of their respective counter-affidavits. During this period, again, accused Ubana neither questioned any delay nor sought the separate resolution of his case.

However, the above period of *two (2) years, five (5) months and seventeen (17) days* from March 16, 2009 to September 21, 2011, should not be counted in the case of accused Revuelta and Nieva.

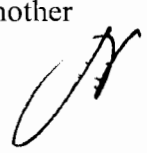
Prior to this period, accused Revuelta and Nieva **were not** subjects of any investigation related to alleged irregularities and ghost deliveries of glass wares and plastic wares to recipient Barangays in the Municipality of Lopez, Quezon. In fact, the complaint and preliminary investigation were first initiated against accused Ubana only.

Accused Revuelta and Nieva were only impleaded as co-respondents when the Deputy Ombudsman for Luzon ordered their inclusion in the case on September 12, 2011 upon the recommendation of GIPO Allado, Jr. Thereafter, on September 21, 2011, they were required by the Deputy Ombudsman for Luzon to submit their respective counter-affidavits. Thus, there is no proof that they endured any vexatious, capricious, and oppressive delay during this period because they had not undergone any investigative proceeding before September 12, 2011.

x x x x.

The period from September 21, 2011 to September 6, 2013, or *one (1) year, eleven (11) months and sixteen (16) days*, should not be visited upon the Deputy Ombudsman for Luzon and the accused. The Complainants' late submission of additional documents, *i.e.*, the COA audit observation memorandum and fact-finding report, relative to the case was beyond the Deputy Ombudsman's control. The verification and further evaluation of these documents with the COA is inevitable. During this period, the COA was also given an opportunity to conduct another

³ *Id.* at 25-28. (Citations omitted)



fact-finding investigation which resulted in their 2013 Fact-Finding Report. These incidents are beyond the control of the Deputy Ombudsman for Luzon and the accused.


The period from September 6, 2013 to August 20, 2014, or *eleven (11) months and fourteen (14) days*, is attributable to the Office of the Ombudsman. The period spent by the Deputy Ombudsman for Luzon in finishing the preliminary investigation and drafting the resolution in these cases is *eleven (11) months and twelve (12) days*. The Resolution dated August 18, 2014 recommending the filing of a case for Violation of R.A. No. 3019 against accused Ubana, Nieva and Revuelta, and for Falsification against accused Ubana and Nieva, and dismissing the charges against respondents Villasenor, Argante and Erandio for lack of probable cause, was approved by Ombudsman Carpio-Morales after *two (2) days*. There is no inordinate delay here because the Office of the Ombudsman spent less than a year in terminating the preliminary investigation from the date of the last pleading filed on September 6, 2013. This period is justified because the Office of the Ombudsman needed to ensure that the proper, correct, and strong cases are filed against the accused. In fact, the accused benefited from this lapse of time because the Deputy Ombudsman for Luzon found probable cause only for violation of R.A. 3019 and falsification and dismissed all the other criminal and administrative charges against them.

The period from August 20, 2014 to January 30, 2015, or *five (5) months and ten (10) days*, is attributed to the accused because of the exercise of their right to procedural due process. During this period, accused Ubana, Revuelta and Nieva sought to assail the finding of probable cause against them before the filing of the informations in Court. The Office of the Ombudsman cannot be faulted for granting them sufficient opportunity to exercise said right.

The period from January 30, 2015 to July 1, 2015, or *five (5) months and one (1) day*, is attributable to the Office of the Ombudsman. This period is, however, justified because the OSP reviewed the cases again and made sure that only those cases that could stand the rigors of trial would be filed. On the other hand, accused Nieva benefited from this lapse of time because the OSP filed an information for only one (1) count of falsification instead of the seven (7) counts recommended by the Office of the Deputy Ombudsman for Luzon.

Based on the foregoing, the total period of *six (6) months and twenty-three (23) days*, is attributed to accused Ubana, and the period of *five (5) months and ten (10) days*, to accused Nieva and Revuelta. This period should be excluded from the time spent by the Office of the Ombudsman to terminate the fact-finding and preliminary investigation, respectively, and for the OSP to file the corresponding informations in this Court.

The total period of two (2) years, four (4) and twenty-eight (28) days should also be excluded from the computation of the period attributed to the Office of the Ombudsman. As explained above, this period covers those incidents beyond the control of the Office of the Ombudsman and the accused.



Subtracting the periods attributable to the accused and those beyond the control of the Office of the Ombudsman, the total period it took the Office of the Ombudsman to finish its fact-finding investigation and preliminary investigation, and for the OSP to file the corresponding informations is only *three (3) years, three (3) months and twenty-six (26) days* in the case of accused Ubana, while *eleven (11) months and five (5) days* in the case of accused Nieva and Revuelta.⁴

Petitioner's Motion for Reconsideration⁵ dated September 22, 2017 was denied by the Sandiganbayan in its Resolution⁶ dated November 28, 2017. Hence, petitioner filed this petition for *certiorari* ascribing grave abuse of discretion on the Sandiganbayan.

Petitioner asserts that there was inordinate delay in the conduct of preliminary investigation which lasted for more than six (6) years counted from the time of filing of the complaint before the Office of the Ombudsman up to the filing of the information in the Sandiganbayan. He contends that the undue delay in the conduct and termination of the preliminary investigation and in the disposition of the case violated, his constitutional right to speedy trial and speedy disposition of case which covers not only the period of preliminary investigation, but includes even fact-finding investigations conducted prior thereto. Petitioner insists that it was the duty of the Ombudsman to act promptly and speedily resolve complaints even without invocation of such rights, and that failure to comply with such duty, without any justifiable reason, warrants a dismissal of the complaint against him. While he concedes that rights may be waived, he, however, argues that such waiver may not be inferred by mere failure on the part of the accused to assert and urge the expeditious disposition of his case and that such waiver may be considered only when the delay is attributable to the accused.

In its Comment,⁷ the People, thru the Office of the Special Prosecutor (*OSP*), alleges that the instant Petition failed to identify and substantiate the specific circumstances during the proceedings before the Office of Ombudsman that allegedly made the lapse of period vexatious, capricious and oppressive to the petitioner. It argues that the Sandiganbayan not only embarked on a mere mathematical computation of the time involved but it also engaged in the delicate task of balancing all the facts and circumstances peculiar to the case in determining whether the period that lapsed was oppressive, capricious or vexatious to the petitioner. The *OSP* asserts that "speedy disposition" and "delay" are flexible and relative concepts which call for the application of the "*balancing test*" approach where the issue pertains to the right to speedy disposition of cases. Such test requires the

⁴ *Id.* at 33-35.

⁵ *Id.* at 55-59.

⁶ *Supra* note 2.

⁷ *Rollo*, pp. 97-113.

consideration of such factors as: (a) length of delay; (b) reason for the delay; (c) assertion of the right or failure to assert it; and (d) prejudice caused by the delay.

The OSP insists that petitioner could not have suffered undue prejudice or vexed by the period of fact-finding investigation that started on March 16, 2009 since it was only on September 21, 2011 that he was included as respondent to the case or made to answer to the allegations in the complaint. It also contends that the Sandiganbayan did not commit grave abuse of discretion and acted well within its jurisdiction when it refused to adopt the cases cited by the petitioner in as much as the conditions or circumstances which impelled this Court to uphold the right of the accused to speedy disposition of cases are not present in this case.

Once again, the Court is confronted with the issue of whether the period spent from the filing of the complaint before the Office of the Ombudsman up to the time of filing of the information in the Sandiganbayan transgressed petitioner's constitutional right to a speedy disposition of his case.

We find the petition to be without merit.

Section 16, Article III of the Constitution guarantees every person's right to a speedy disposition of his case before all judicial, quasi-judicial or administrative bodies. This constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as in all proceedings, either judicial or quasi-judicial. In this accord, any party to a case may demand expeditious action of all officials who are tasked with the administration of justice.⁸

It must be noted, however, that the right to a speedy disposition of cases should be understood to be a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient. Jurisprudence dictates that the right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for or secured, or even without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.⁹ Equally applicable is the balancing test used to determine whether a defendant has been denied his right to speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed, and such factors as length of delay, reason for the delay, the defendant's

⁸ *Inocentes v. People, et al.*, 789 Phil. 318, 333-334 (2016).

⁹ *Coscolluela v. Sandiganbayan (First Division), et al.*, 714 Phil. 55, 61 (2013).

assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, are considered.¹⁰

In *Tatad v. Sandiganbayan*,¹¹ the Court ordered the dismissal of the case not only because the complaint against petitioner was politically motivated but also because the three (3)-year delay from the day of the investigation was submitted for resolution up to the date of the filing of the information in court was violative of petitioner's right to speedy disposition of cases. The Court, likewise, ordered the dismissal of the case on the ground of inordinate delay in the cases of *Angchangco, Jr. v. Ombudsman*,¹² *Duterte v. Sandiganbayan*,¹³ *Roque v. Office of the Ombudsman*,¹⁴ *Lopez, Jr. v. Office of the Ombudsman*,¹⁵ *Cervantes v. Sandiganbayan*,¹⁶ *People v. SPO4 Anonas*,¹⁷ and a lot more other cases. In these cases, however, the Court had not set a definite length of time as to what constitutes inordinate delay since "speedy disposition" is a relative and flexible concept that a mere mathematical reckoning of the period involved is not sufficient to determine the existence of inordinate delay.

But in *Elpidio Magante v. Sandiganbayan (Third Division), et al.*,¹⁸ a distinction was made between fact-finding investigations conducted before and after the filing of a formal complaint for the purpose of establishing the reckoning point for computing the start of delay. We ruled that in case a formal complaint was initiated by a private complainant, the fact-finding investigation conducted by the Ombudsman after the filing of the complaint is necessarily included in computing the aggregate period of the preliminary investigation. On the other hand, the fact-finding investigation conducted before the filing of a formal complaint, as in investigations relating to anonymous complaints or *motu proprio* investigations by the Ombudsman, will not be counted in determining the attendance of delay. During such fact-finding investigations and prior to the filing of a formal complaint, the party involved cannot yet invoke the right to speedy disposition of his case since he is not yet subjected to any adverse proceeding.

In *Cagang v. Sandiganbayan*,¹⁹ the Court clarified the mode of analysis in situations where the right to speedy disposition of cases or the right to speedy trial is invoked, thus:

¹⁰ *Gonzales v. Sandiganbayan*, 276 Phil. 323, 334 (1991).

¹¹ 242 Phil. 563, 576 (1988).

¹² 337 Phil. 68 (1997).

¹³ 352 Phil. 557 (1998).

¹⁴ 366 Phil. 568 (1999).

¹⁵ 417 Phil. 39 (2001).

¹⁶ 366 Phil. 602 (1999).

¹⁷ 542 Phil. 539 (2007).

¹⁸ G.R. Nos. 230950-51, July 23, 2018.

¹⁹ G.R. Nos. 206438 and 206458, July 31, 2018.

First, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.

Second, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.

Third, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars,¹⁷¹ and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.

If the defense has the burden of proof, it must prove *first*, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and *second*, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay.

Fourth, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.

Here, it was only on September 21, 2011 when petitioner was required by the Office of the Ombudsman to submit his counter-affidavit. While the complaint against petitioner's co-accused Isaias Ubana II was initiated on March 16, 2009, petitioner became a party respondent only on September 12, 2011 when GIPO Allado requested his inclusion in the preliminary investigation conducted against Ubana II. Prior to his inclusion as respondent in the preliminary investigation, his right to speedy disposition of case cannot be invoked as he was not yet subjected to any adverse proceeding. Thus, the reckoning point for purposes of computing inordinate delay should start on September 21, 2011.



In this case, the Court finds there was no inordinate delay in the conduct and termination of preliminary investigation by the Ombudsman. While petitioner did not submit any counter-affidavit nor file any comment to the COA reports despite personal receipts of the subpoena, his co-respondents filed several motions for extension of time to file comment on the COA memorandum and report. It was only on August 27, 2013, that petitioner's co-respondents filed their comments to the COA report.

Records show that Assistant Ombudsman Leilanie C. Cabras' Resolution dated August 18, 2014 was approved by Ombudsman Conchita Carpio-Morales on August 20, 2014. Petitioner and his co-respondents filed a motion for partial reconsideration of the Deputy Ombudsman for Luzon's resolution, which was denied by Ombudsman Carpio-Morales on January 12, 2015. The Information was filed with the Sandiganbayan on July 1, 2015. Thus, the length of period from September 21, 2011, when petitioner was required to submit counter-affidavit, up to the time of the filing of information before the Sandiganbayan cannot be construed as vexatious, capricious or oppressive to the petitioner. Due process considerations and other factors not attributable to the Office of the Ombudsman factored in on the length of time consumed before the filing of the information before the Sandiganbayan.

It should, likewise, be noted that petitioner did not assert his right to a speedy disposition of his case at the earliest possible time. In fact, petitioner took more than a year after the filing of the information in the Sandiganbayan before he invoked his right. Petitioner's failure to invoke his right to a speedy disposition of his case during the preliminary investigation amounted to a waiver of said right. In *Magante*,²⁰ We categorically held that "it is the duty of the respondent to bring to the attention of the investigating officer the perceived inordinate delay in the proceedings of the formal preliminary investigation. Failure to do so may be considered a waiver of his/her right to speedy disposition of cases." This could also address the rumored "parking fee" allegedly being paid by some respondents so that delay can be set up as a ground for the dismissal of their respective cases.²¹

In light of the foregoing, We see no reason to disturb the findings and conclusions of the Sandiganbayan Sixth Division's assailed Resolutions dated September 6, 2017 and November 28, 2017. There was no inordinate delay committed by the Office of the Ombudsman that transgressed petitioner's right to a speedy disposition of his case. The Office of the Ombudsman cannot be faulted for giving petitioner and his co-respondents every opportunity to exhaust legal remedies afforded to them by law. It must

²⁰ *Supra* note 18.

²¹ *Id.*

be emphasized that the state, like any other litigant, is entitled to its day in court, and to a reasonable opportunity to present its case.²²

WHEREFORE, premises considered, the Petition is **DISMISSED** for utter lack of merit. Costs against the petitioner.

SO ORDERED.




DIOSDADO M. PERALTA
Associate Justice

²² *People v. Leviste*, 325 Phil. 525, 538 (1996).

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
Associate Justice



ANDRES B. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice

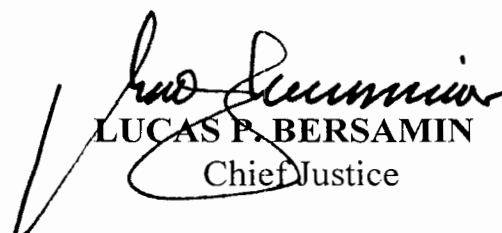
ATTESTATION

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.


DIOSDADO M. PERALTA
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.


LUCAS P. BERSAMIN
Chief Justice