



September 12, 2022

MEMORANDUM

FOR : THE REGIONAL EXECUTIVE DIRECTOR
DENR IV-B MIMAROPA Region
1515 L&S Bldg., Roxas Blvd.
Ermita, Manila 1000

FROM : The Provincial Environment and
Natural Resources Officer

SUBJECT : MEMORANDUM DATED AUGUST 8, 2022 FROM CENRO
QUEZON, PALAWAN RE: SUPREME COURT NOTICE OF
JUDGMENT AND DECISION PROMULGATED ON 22
MARCH 2022 IN GR NO. 195638, “ANITA SANTOS,
PETITIONER VERSUS ATTY. KISSACK GABAEN,
RICARDO D. SANGA, AND THE NATIONAL COMMISSION
ON INDIGENOUS PEOPLES, DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES,
RESPONDENTS.”

Respectfully forwarding the Memorandum dated August 8, 2022 of CENRO Quezon, Palawan, through CENRO Leonard Caluya, in compliance to the Memorandum dated June 23, 2022 issued by the Director of Legal Affairs Service, Atty. Norlito Eneran and Memorandum dated July 19, 2022 issued by the Regional Executive Director of MIMAROPA Region, Lormelyn E. Claudio.

The undersigned concurs with the comments and recommendations of CENRO Leonard Caluya. In addition, the undersigned submits the following:

1. Status update of Resource Use Permit (RUP) 001-09 issued to Pinagtibukan It Palaw'an Inc. (PINPAL) involved in the subject case, and other RUPs granted all over the ancestral domains within Palawan.

As per PENRO records, the following are the status update of all RUPs granted all over

LIST OF RESOURCE USE PERMIT (RUP-OM) PROVINCIAL ENVIRONMENT AND NATURAL RESOURCES OFFICE Province of Palawan As of September 2022									
Seq. No.	Organization/Cooperative/ Association	ACRONYM	RUP No.	Name of Product	Location	Total Area (Hectares)	Annual Allowable Harvest (Kilograms/Lineal meters)	Date Granted	Expiry Date
1	Pinagtibukan It Mga Palaw'an	PINPAL	PPAL-21-0001	Almasiga Resin (Renewal)	Bgy. Puntabaja, Rizal, Palawan	5,575.38	189,944.66	9-Sep-21	10-Sep-22
2	Campung It Mapangarapan It Palawano	CAMPAL	PPAL-21-0002	Almasiga Resin	Bgy. Campung Ulay, Rizal, Palawan	5,832.150	270,101.45	10-Sep-21	11-Sep-22
3	Tinig ng mga Katutubo sa Cabayugan	TIKCA	PPAL-2022-0003	Rattan (Renewal)	Bgy. Cabayugan, Puerto Princesa City	5,091.7511	1,338.75	15-Jun-22	16-Jun-23
4	Nagkaka-isang Tribu ng Daan	NTD	PPAL-2022-0001	Almasiga Resin (Renewal)	Bgy. Apurawan, Aborlan, Palawan	1,700.00	185,250.00	14-Jun-22	15-Jun-23
5	Nagkaka-isang Tribu ng Daan	NTD	PPAL-2022-0002	Rattan (Renewal)	Bgy. Apurawan, Aborlan, Palawan	1,700.00	902,411.00	14-Jun-22	15-Jun-23

the ancestral domains within Palawan:



As of this date, the RUPs granted to PINPAL and CAMPAL have already expired. Upon inquiry, both PINPAL and CAMPAL have pending request for renewal of RUPs to CENRO Quezon.

2. Implication of Supreme Court's Decision to RUP 001-09 and other RUPs involved.

The undersigned opines that the Supreme Court ruling in the case of Anita Santos vs. Atty. Kissak B. Gabaen et. al., (G.R. No. 195638, March 22, 2022) did not have an implication to RUP 001-09 and other RUPs involved considering that the decision did not touch upon the issue on the validity and legality of the Resource Use Permits (RUPs) issued by the Department of Environment and Natural Resources all over the ancestral domains within Palawan.

Mainly, the petition was dismissed due to the following:

- a. Although petitioner Anita Santos filed the proper remedy of Petition for Certiorari under Rule 65 of the Rules of Court, the petition was still dismissed for violating the doctrine of hierarchy of courts;
- b. Even if the doctrine of hierarchy of courts is relaxed, the petition of Santos failed to comply with the requisites of judicial review because she has no legal standing to bring a suit defending the validity of the RUP of PINPAL; and
- c. The question on the constitutionality of Section 3(a) of R.A 8371 was not resolved because the case can be ruled on other grounds.

Simply put, the Supreme Court did not decide on the substantial aspect of the case, but merely on procedural grounds. Hence, there was no implication at all regarding the existing RUPs within the ancestral domains.

The undersigned likewise opines that the DENR can issue Resource Use Permit (RUP) to members of the IP/ICC within the ancestral domain even without compliance with the Free and Prior Informed Consent (FPIC) requirement of the National Commission on Indigenous People (NCIP). Under Section 39 of NCIP Administrative Order No. 3, Series of 2012 on Revised Guidelines on Free and Prior Informed Consent (FPIC) and related processes of 2012, the requirement of FPIC is not required when programs, projects and activities are solicited or initiated by the concerned ICCs/IPs themselves within the ancestral domain, to wit:

Section 39. Community-Solicited or Initiated Activities. *Programs, projects and activities solicited or initiated by the concerned ICCs/IPs themselves where the activity is strictly for the delivery of basic services to be undertaken within or affecting the ancestral domain, do not require compliance with the FBI/FPIC requirement as provided in this Guidelines, however, they shall be subjected to a validation process* where the following shall be determined:

- a. *The ICC, in fact, voluntarily solicited or initiated the plan, program, project or activity to be undertaken;*
- b. *The plan, program, project or activity conforms with the community's ADSDPP or in the absence of the ADSDPP, the concerned community considers the same to form part already of the ADSDPP that they will formulate in the future;*
- c. *The ICC knows the extent of the plan, program, project or activity and its socio-cultural/ environmental impact to the community;*
- d. *The parties acknowledge their obligations; or*
- e. *The plan, program, project or activity is for the delivery of basic services or livelihood projects involving community. (Italics and underline supplied)*



Further, Section 10 of DENR-NCIP Joint Administrative Order No. 2008-01 provides that the resource extraction within the ancestral domain management blocks shall be regulated and governed in accordance with existing DENR laws, rules and regulations, to wit:

Sec. 10. Resources Management and Sustainability. - Resource management within registered traditionally-managed forests shall be strictly in adherence to the established traditional leadership structure and practices. A resource management plan shall be prepared and institutionalized relative to the identified ancestral management units/blocks by the community underscoring collective agreements and commitments on natural resource protection, conservation and utilization. However, for purposes of ensuring sustainability and control, any resource utilization set by the communities shall be documented. All concerned entities (DENR, NCIP, and LGU) shall be informed accordingly for purposes of monitoring and transparency. The following principles shall be observed in resources utilization:

xxx

10.4. The resource extraction shall be in accordance with existing traditional resource rights defined by the community in its indigenous system and practice. All DENR laws, rules and guidelines on resource utilization shall be applicable in a supplementary manner;

10.5. The resources extracted for utilization or to be traded outside the domain/locality by the concerned ICC/IP shall be regulated. The disposition of timber and non-timber products shall be governed by the applicable DENR laws, rules and regulations relative to the requisite shipping/ transport documents;


10.6. Resources utilization from naturally grown forests for livelihood projects as carving, handicrafts, manufacturing, etc., shall be regulated and only the allowable volume/number of species needed as raw materials for livelihood projects could be disposed of outside the domain/locality in accordance with existing traditional resource rights and DENR laws, rules and regulations; and

10.7. Resources harvested from the established indigenous forest/forest plantation to be further processed into finished products (i.e. carving, ornamental, handicrafts, novelty items, etc.), shall be allowed to be transported outside the point of origin to any market outlets subject to DENR laws, rules and regulations. (Italics and underline supplied)

Considering the foregoing, in addition to the recommendations of CENRO Quezon, the undersigned recommends for the policy makers of our agency to revisit the guidelines on the granting of resource use permits involving ancestral lands and supplement a provision relating to Section 39 of NCIP Administrative Order No. 3, Series of 2012 on the validation process so that any misunderstanding between DENR and NCIP may be prevented on the issuance of RUPs applied for by the IP/ICCs within their ancestral lands.

For information and appropriate action.

DENR-PALAWAN
PENRO-RECORDS
RELEASED
By Rhea
Date: 15 SEP 2022 2022-2370


FELIZARDO B. CAYATOC



Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region
COMMUNITY ENVIRONMENT AND NATURAL RESOURCES OFFICE
National Highway, Bgy. Alfonso XIII, Quezon, Palawan
Contact No.: 0917-160-4920
Email: cenroquezon@denr.gov.ph

August 8, 2022

MEMORANDUM


FOR : The Regional Executive Director
DENR-MIMAROPA Region
Roxas Blvd. Ermita, Manila

THRU : The Provincial Environment and
Natural Resources Officer
Sta. Monica, Puerto Princesa City

FROM : The Community Environment and
Natural Resources Officer

SUBJECT : **SUPREME COURT NOTICE OF JUDGEMENT AND DECISION
PROMULGATED ON 22 MARCH 2022 IN G.R. NO. 195638, "ANITA
SANTOS, PETITIONER, VERSUS ATTY. KISSACK B. GABAEN,
RICARDO D. SANGA, AND THE NATIONAL COMMISSION ON
INDIGENOUS PEOPLES, DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES, RESPONDENTS."**

DENR PENRO
PALAWAN RECORDS
RECEIVED

BY: 
DATE: 08-18-2022 22:7478

This pertains with your memorandum dated July 19, 2022 which was received by this Office on July 26, 2022 relative to the above subject. As per attached memorandum dated June 23, 2022 of Director Legal Affairs Service, it is hereby instructed to submit comments on the following statements, to wit:

1. Status update of Resource Use Permit (RUP) 001-09 issued to *Pinagtibukan It Palaw'an, Inc.* (PINPAL) involved in the subject case, and other RUPs granted all over the ancestral domains within Palawan.
 - This Office issued Resource Use Permit (RUP) No. PPAL-21-0002 to Campung It Mapangarapan It Palawano (CAMPAL) of Bgy. Campung Ulay, Rizal, Palawan on September 10, 2021 and will expire on September 11, 2022 and RUP No. 001-09 issued to Pinagtibukan It Mga Pala'wan (PINPAL) was renewed on September 09, 2021 that will expire on September 10, 2022 under RUP No. PPAL-21-0001.
 - That, minor forest products under RUP No. PPAL-21-0001 was already manifested based on the records of this Office.
2. Implication of the Supreme Court's Decision to RUP 001-09 and other RUPs involved.
 - Pursuant to Section 10.a.iv which states that Community-Based Forest Management Project (CBFMP) may be implemented in uplands and coastal lands of the public domain except in *NCIP certified ancestral lands and domains, except when the ICCs/IPs opt to participate in CBFM*. Since the PINPAL opted to participate in the said CBFMP, the jurisdiction over the utilization and transport of the forest products

7-



Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region
COMMUNITY ENVIRONMENT AND NATURAL RESOURCES OFFICE
National Highway, Bgy. Alfonso XIII, Quezon, Palawan
Contact No.: 0917-160-4920
Email: cenroquezon@denr.gov.ph

derived within their ancestral land falls within the mandate of the DENR. Therefore, the NCIP has no authority/jurisdiction over the utilization of the said forest products considering the PINPAL opted to participate in CBFM Projects;

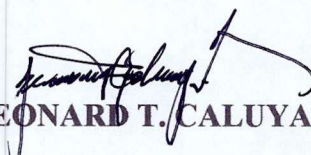
- The DENR shall prepare a management and utilization plan for each resources e.g. timber, almaciga resins and rattan and conduct resource inventory as a basis for the said plan pursuant to Section 10 of DENR Administrative Order (DAO) No. 99-35 or the Revised Guidelines in the Implementation of the Resource Use Permit in Community-Based Forest Management Program;
- Hence, the PINPAL issued with RUP, they can sell the logs, timber and other forest products derived within their CADC in accordance with Section 7 of DENR Administrative Order (DAO) No. 2000-29 or the Guidelines Regulating the Harvesting and Utilization of Forest Products within Community-Based Forest Management Areas (CBFMA); and
- In line with this, the DENR is responsible/authorized to issue appropriate transport documents to any forest products pursuant to DENR Administrative Order (DAO) No. 94-07 or the Revised Guidelines Governing the Issuance of Certificate of Origin for Logs, Timber, Lumber, and Non-Timber Forest Products.

3. Proposed action/recommendation considering the foregoing.

- Strictly abide and follow the doctrine of primary jurisdiction;
- It is the primary mandate of the DENR to manage the utilization, development, conservation and management of country's natural resources specifically in forest lands and grazing lands, mineral resources, including those in reservation and watershed areas, and lands of the public domain, as well as the licensing and regulation of all natural resources as may be provided by law pursuant to Executive Order (E.O.) 192;
- That, the memorandum dated February 6, 2011 of the NCIP-Regional Hearing Officer (RHO) Gabaen enjoining the transport of almaciga resin and apprehended the same was outside of his authority, since the said resin was derived from CADC but opted to choose the CBFMP, which the DENR has the jurisdiction over the said matter.
- That, the Legal Division shall delineate and specify the authority of DENR and NCIP on the issuance of documents governing gathering and transport of Almaciga resin and rattan from forest lands and ancestral domain, and;
- That, concerned personnel of NCIP must be informed on limit of their authority on gathering and transporting of forest products within CADC/CADT areas. A Release Order dated October 5, 2017 of the NCIP Regional Hearing Officer Atty. Josephine S. Rodriguez-Agusti for lack of authority on the Almaciga Resin apprehended by NCIP Officer Mr. Ricardo Sanga last 2011 covered by appropriate transport documents issued by the DENR-CENRO. It took six (6) years to resolve this simple case from its apprehension last C.Y. 2011.

For your information and record.




LEONARD T. CALUYA



Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region
COMMUNITY ENVIRONMENT AND NATURAL RESOURCES OFFICE
National Highway, Bgy. Alfonso XIII, Quezon, Palawan
Contact No.: 0917-160-4920
Email: cenroquezon@denr.gov.ph

August 8, 2022

MEMORANDUM

FOR : The Regional Executive Director
DENR-MIMAROPA Region
Roxas Blvd. Ermita, Manila

THRU : The Provincial Environment and
Natural Resources Officer
Sta. Monica, Puerto Princesa City

FROM : The Community Environment and
Natural Resources Officer

SUBJECT : **SUPREME COURT NOTICE OF JUDGEMENT AND DECISION
PROMULGATED ON 22 MARCH 2022 IN G.R. NO. 195638, "ANITA
SANTOS, PETITIONER, VERSUS ATTY. KISSACK B. GABAEN,
RICARDO D. SANGA, AND THE NATIONAL COMMISSION ON
INDIGENOUS PEOPLES, DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES, RESPONDENTS."**

DENR PENRO
PALAWAN RECORDS
RECEIVED

BY: *[Signature]*
DATE: 08-18-2022 22-7478

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Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region
COMMUNITY ENVIRONMENT AND NATURAL RESOURCES OFFICE
National Highway, Bgy. Alfonso XIII, Quezon, Palawan
Contact No.: 0917-160-4920
Email: cenroquezon@denr.gov.ph

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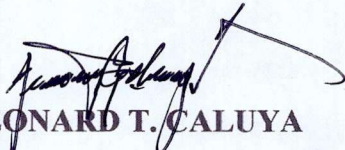
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3. Proposed action/recommendation considering the foregoing.

- Strictly abide and follow the doctrine of primary jurisdiction;
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- That, the memorandum dated February 6, 2011 of the NCIP-Regional Hearing Officer (RHO) Gabaen enjoining the transport of almaciga resin and apprehended the same was outside of his authority, since the said resin was derived from CADC but opted to choose the CBFMP, which the DENR has the jurisdiction over the said matter.
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- That, concerned personnel of NCIP must be informed on limit of their authority on gathering and transporting of forest products within CADC/CADT areas. A Release Order dated October 5, 2017 of the NCIP Regional Hearing Officer Atty. Josephine S. Rodriguez-Agusti for lack of authority on the Almaciga Resin apprehended by NCIP Officer Mr. Ricardo Sanga last 2011 covered by appropriate transport documents issued by the DENR-CENRO. It took six (6) years to resolve this simple case from its apprehension last C.Y. 2011.

For your information and record.




LEONARD T. CALUYA



Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region

96-79 (1005)
(3014)

MEMORANDUM

TO : The PENR Officer
Palawan

ATTENTION : The CENR Officer
Quezon, Palawan

FROM : THE REGIONAL EXECUTIVE DIRECTOR

SUBJECT : SUPREME COURT NOTICE OF JUDGMENT AND DECISION
PROMULGATED ON 22 MARCH 2022 IN G.R. NO. 195638,
"ANITA SANTOS, PETITIONER, VERSUS ATTY. KISSACK B.
GABAEN, RICARDO D. SANGA, AND THE NATIONAL
COMMISSION ON INDIGENOUS PEOPLES, DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES,
RESPONDENTS."

DATE : JUL 19 2022

DENR PENRO
PALAWAN RECORDS
RECEIVED

BY: [Signature]
DATE: 07-26-2022 12:67:67

This refers to the attached Memorandum dated June 23, 2022 issued by the Director, Legal Affairs Service, endorsing a copy of the above-cited Decision for consideration, and for submission of comments on the following:

1. Status update of Resource Use Permit (RUP) 001-09 issued to *Pinagtibukan It Pala'wan, Inc. (PINPAL)* involved in the subject case, and other RUPs granted all over the ancestral domains within Palawan;
2. Implication of the Supreme Court's Decision to RUP 001-09 and other RUPs involved; and
3. Proposed action/recommendation considering the foregoing.

Submit your comments on the three items within fifteen (15) days upon receipt of this memorandum.

For strict compliance.


LORMELYN E. CLAUDIO, CESO IV

CC:

The Office of the Secretary

The Undersecretary, Legal, Administration, Human Resources and Legislative Affairs

The Assistant Secretary, Legal Affairs

The Director, Legal Affairs Service

All PENROs

All CENROs

Licenses, Patents and Deeds Division

ARD-MS/LD



Department of Environment
and Natural Resources
MIMAROPA Region



Doc ID: 89697



Republic of the Philippines
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Visayas Avenue, Diliman, Quezon City

Tel. No. 929-6626 to 29; 929-6633 to 35

926-7041 to 43; 929-6252; 929-1669

Website: <https://www.denr.gov.ph> / Email: web@denr.gov.ph

DENR MIMAROPA RECORDS SECTION	
RECEIVED	
23 JUN 2022	
<input type="checkbox"/> INCOMPLETE	<input type="checkbox"/> OUTCOME
<input type="checkbox"/> BY	<input type="checkbox"/> DATE

JUN 23 2022

URGENT MEMORANDUM

FOR : **The Regional Executive Director**
DENR Region IV-B MIMAROPA
DENR by the Bay Bldg.
1515 Roxas Boulevard, Ermita, Manila
mimaroparegion@denr.gov.ph

ATTENTION : **The Chief, Legal Division**
DENR Region IV-B MIMAROPA

FROM : **The Director**
Legal Affairs Service

SUBJECT : **SUPREME COURT NOTICE OF JUDGMENT AND DECISION
PROMULGATED ON 22 MARCH 2022 IN G.R. NO. 195638,
"ANITA SANTOS, PETITIONER, VERSUS ATTY. KISSACK B.
GABAEN, RICARDO D. SANGA, AND THE NATIONAL
COMMISSION ON INDIGENOUS PEOPLES, DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES,
RESPONDENTS."**

This refers to the Notice of Judgment¹ issued by Marife M. Lomibao-Cuevas, Clerk of Court, Supreme Court in G.R. No. 195638, "*Anita Santos, Petitioner, versus Atty. Kissack B. Gabaen, Ricardo D. Sanga, and the National Commission on Indigenous Peoples, Department of Environment and Natural Resources, Respondents.*" furnishing a copy of the Decision² of the Supreme Court in the said case promulgated on 22 March 2022.

The subject case pertains to the Petition for *Certiorari* and Prohibition with prayer for the issuance of a temporary restraining order under Rule 65 (Petition) filed by petitioner Anita Santos (Santos) against respondents including the DENR, assailing the Order dated 07 February 2011 and the Cease and Desist Order (CDO) dated 10 February 2011 of the NCIP-Regional Hearing Office (NCIP-RHO).

The said CDO dated 10 February 2011 of the NCIP-RHO was issued against the DENR, among others, ordering the DENR through the PENRO and all its CENROs in Palawan to further cease and desist in implementing all illegally issued Resource Use Permits (RUPs) granted all over the ancestral domains within Palawan, viz.:

Subsequently, on February 10, 2011, the NCIP-RHO issued a Cease and Desist Order, the dispositive portion of which states:

WHEREFORE, the defendants x x x are hereby
ordered to stay, refrain or CEASE and DESIST
from further COERCING, INTIMIDATING AND
THREATENING the NCIP employee of AboAbo

¹ Copy attached as ANNEX "A".

² Copy attached as ANNEX "B".

who effected the seizure of the illegal forest products unlawfully taken from the ancestral domain and *INTERVENING* into the release of the seized almaciga.

And for the employees of the DENR Palawan, specifically, to cease and desist in intervening and disregarding the law and the jurisdiction of the NCIP over all ancestral domains and all the natural resources and forest products illegally transported without a CP or without going into the legal mandatory process of FPIC.

Further, the defendant DENR thru the PENRO and all its CENROs in Palawan to FURTHER CEASE AND DESIST IN IMPLEMENTING ALL ILLEGALLY ISSUED RESOURCE USE PERMITS GRANTED ALL OVER THE ANCESTRAL DOMAINS WITHIN PALAWAN, AND FOR ANITA SANTOS, JEFFRY CINCO, NILO YBANEZ AND ROSEVIANNE YBANES, WHOSE RIGHTS AS CONCESSIONERS, BUYERS AND SHIPPERS OF ALMACIGA EMANATED (sic) FROM AN ILLEGAL ISSUANCE OF RUPs, TO ABSOLUTELY STAY AND REFRAIN FROM CONTINUING TO USE AN ILLEGALLY OBTAINED RIGHT.

x x x

Based on the Cease and Desist Order, the NCIP-RHO enjoined the parties from coercing, threatening, and intimidating the NCIP personnel and from intervening in the release of the almaciga resin. The DENR and the CENRO were called out for issuing the RUP for the almaciga resins and consenting to their removal from the ancestral domains of the IPs without the requisite certification under Section 59 of R.A. No. 8371. (Underscoring supplied)

Please be informed that the Supreme Court resolved to dismiss the Petition on the grounds of non-observance of the doctrine of hierarchy of courts, and the absence of legal standing of Santos, viz.:

WHEREFORE, the Petition for *Certiorari* and Prohibition with prayer for the issuance of a temporary restraining order under Rule 65 of the Rules of Court filed by petitioner Anita Santos against respondents Atty. Kissack B. Gabaen, Ricardo D. Sanga, and the National Commission on Indigenous Peoples, Department of Environment and Natural Resources is **DISMISSED**.

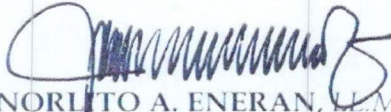
SO ORDERED.

In view thereof, this Office is endorsing a copy of the Decision to your Office for your consideration. Kindly submit comments on the following:

1. Status update of Resource Use Permit (RUP) 001-09 issued to *Pinagtibukan It Pala'wan, Inc. (PINPAL)* involved in the subject case, and other RUPs granted all over the ancestral domains within Palawan;

2. Implication of the Supreme Court's Decision to RUP 001-09 and other RUPs involved; and
3. Proposed action/recommendation considering the foregoing.

For your consideration and compliance, please.


NORLITO A. ENERAN, LLM., CESO III

Copy furnished:

The Office of the Secretary

The Undersecretary

Legal, Administration, Human Resources and
Legislative Affairs

The Assistant Secretary

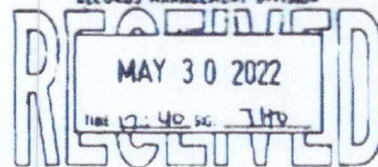
Legal Affairs



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

EN BANC

DEPT. OF ENVIRONMENT AND NATURAL RESOURCES
RECORDS MANAGEMENT DIVISION



ANITA SANTOS,

Petitioner,

- versus -

G.R. No. 195638

ATTY. KISSACK B. GABAEN,
RICARDO D. SANGA, AND THE
NATIONAL COMMISSION ON
INDIGENOUS PEOPLES, DEPARTMENT
OF ENVIRONMENT AND NATURAL
RESOURCES,

Respondents.


x ----- x

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on March 22, 2022 a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on May 19, 2022 at 3:00 p.m.

Very truly yours,


MARIFE M. BOMIBAO-CUEVAS
Clerk of Court

ATTY. MARIA ELISA DR. MENDOZA (x)
Counsel for Petitioner
Unit 602 West Insula
135 West Avenue, Quezon City

PUBLIC INFORMATION OFFICE (x)
OFFICE OF THE COURT
ADMINISTRATOR (x)
OFFICE OF THE CHIEF ATTORNEY (x)
PHILIPPINE JUDICIAL ACADEMY (x)
LIBRARY (x)
JUDICIAL RECORDS OFFICE (x)
Supreme Court, Manila

THE SOLICITOR GENERAL (x)
134 Amorsolo St., Legaspi Village
Makati City

✓ THE SECRETARY (x)
Department of Environment and
Natural Resources
Visayas Avenue, Diliman, Quezon City

ATTY. KISSACK B. GABAEN (x)
NCIP Regional Hearing Officer, Region IV
3rd Floor, Argo Building
574 Edsa corner P. Tuazon
Cubao, Quezon City

RICARDO D. SANGA (reg)
NCIP Community Dev't. Officer
NCIP Field Office, Abo-Abo
Sofronio, Espanola, 5300 Palawan

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Republic of the Philippines
Supreme Court
Manila

EN BANC

ANITA SANTOS,

Petitioner,

G.R. No. 195638

Present:

GESMUNDO, C.J.,
PERLAS-BERNABE,*
LEONEN,
CAGUIOA,
HERNANDO
LAZARO-JAVIER,
INTING
ZALAMEDA,
LOPEZ, M. V.,
GAERLAN,
ROSARIO,
LOPEZ, J. Y.,
DIMAAMPAO,**
MARQUEZ, and
KHO, JR., JJ.:

- versus -

ATTY. KISSACK B. GABAEN,
RICARDO D. SANGA, AND
THE NATIONAL COMMISSION
ON INDIGENOUS PEOPLES,
DEPARTMENT OF
ENVIRONMENT AND NATURAL
RESOURCES,

Respondents.

Promulgated

March 22, 2022

X-----*Stimulas-Lyons*-----X

DECISION

LOPEZ, J., J.:

Before this Court is a Petition for *Certiorari* and Prohibition¹ with prayer for the issuance of a temporary restraining order (TRO) under Rule 65 of the Rules of Court filed by petitioner Anita Santos (Santos) against respondents Atty. Kissack B. Gabaen, (Gabaen) Ricardo D. Sanga, and the National Commission on Indigenous Peoples (NCIP), Department of Environment and Natural Resources (DENR) assailing the Order² dated

* On official leave

** On official business

¹ Rollo, pp. 3-58

² Penned by NCIP Regional Hearing Officer Kissack B. Gabaen, id. at 68-69

February 7, 2011, and the Cease and Desist Order³ dated February 10, 2011 of the NCIP-Regional Hearing Office (NCIP-RHO).

The Antecedents

Pinagtibukan It Pala'wan, Inc. (PINPAL) is a people's organization of Pala'wan Indigenous Cultural Community in *Barangay Punta Baja*, Rizal, Palawan. It is the holder of Resource Use Permit (RUP) No. 001-09,⁴ which authorizes it to occupy, cut, collect, and remove 155,503 125 kilos of almaciga resin from the Certificates of Ancestral Domain Claims (CADC) area with CADC No. R4-CADC-100 located in the said *barangay*. Since time immemorial, Danny Erong (Erong), a *Pala'wan* Tribal Chieftain of Purok Culapisan, *Barangay Punta Baja*, Rizal, Palawan, and his ancestors have been engaged in the gathering and selling of almaciga resin within the forest area.⁵

Erong alleged that the DENR, through the City Environment and Natural Resources Office (CENRO) of Quezon, Palawan, granted PINPAL's RUP No. 001-09⁶ without the required Certification Precondition (CP) under Section 59⁷ of Republic Act (RA) No. 8371.⁸ Under this provision, all departments and government agencies are required to secure prior certification from the NCIP stating that the area affected does not overlap with an ancestral domain or that the Free and Prior Informed Consent (FPIC) of the affected Indigenous Cultural Community (ICC) or Indigenous Peoples (IP) has been obtained before any concession, license, or permit is granted.⁹

Erong further claimed that PINPAL, as the holder of RUP No. 001-09, required him to sell his almaciga resin only to Santos, thereby allowing her to have monopoly over the market.¹⁰ When Erong found another buyer offering a better price than that given by Santos, he pleaded to PINPAL that he be allowed to gather and sell resin to his buyer of choice. However, PINPAL allegedly refused and even threatened to confiscate his almaciga

³ Id. at 72-79

⁴ Id. at 65

⁵ Id. at 60

⁶ Id. at 65

⁷ SECTION 59. *Certification Precondition* — All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned. *Provided*, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned. *Provided, further*, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT. *Provided, finally*, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process. (Emphasis supplied)

⁸ Otherwise known as the "Indigenous Peoples Rights Act of 1997"

⁹ *Rollo*, p. 60

¹⁰ Id.

resin and prohibited him from gathering and selling the same.¹¹ Hence, on October 15, 2010, Erong filed a complaint¹² before the NCIP-RHO against PINPAL, represented by Naron T. Asura (Asura), and the DENR. Erong accused PINPAL and DENR of violating Section 59 of R.A. No. 8371 in issuing RUP No. 001-09.¹³

On October 20, 2010, the NCIP-RHO Regional Hearing Officer Gabaen issued a 20-day TRO.¹⁴

On November 17, 2010, Santos filed a Verified Motion to Intervene¹⁵ and her Answer-in-Intervention.¹⁶ She denied monopolizing the market. She explained that though she buys the products of PINPAL, she does not exclusively fix the price because it is controlled by market demand.¹⁷ She also stressed that she does not buy directly from the members of the ICC but from PINPAL's authorized representative.¹⁸ She also maintained that Erong failed to demonstrate irreparable injury to justify the issuance of an injunction.¹⁹

On December 2, 2010, the NCIP-RHO conducted a hearing wherein the parties expressed their willingness to enter into an amicable settlement.²⁰ Therefore, in an Order²¹ issued on even date, the case was remanded to the Tribal Council of the Pala'wan ICC for the expeditious settlement of the dispute based on the customs and traditions of the Pala'wan Tribe.²²

While a general assembly for the amicable settlement was scheduled on February 4, 2011, PINPAL advised the NCIP-RHO that it was no longer willing to proceed with the proposed amicable settlement, and that they will not participate in the general assembly,²³ thus, leaving the issues to be resolved by the NCIP-RHO.²⁴

Subsequently, the general assembly proceeded as scheduled. Despite the boycott made by PINPAL, community members supporting Erong and other PINPAL officers and members attended. However, no resolution was reached, giving way to another assembly set on February 14, 2011.²⁵

¹¹ *Id.*

¹² *Id.* at 59-63.

¹³ *Id.* at 60.

¹⁴ *Id.* at 81-83.

¹⁵ *Id.* at 128-130.

¹⁶ *Id.* at 131-136.

¹⁷ *Id.* at 132.

¹⁸ *Id.* at 133.

¹⁹ *Id.* at 134.

²⁰ *Id.* at 147.

²¹ *Id.* at 70-71.

²² *Id.*

²³ *Id.* at 155.

²⁴ *Id.* at 260.

²⁵ *Id.*

on way to court

On February 7, 2011, the NCIP-RHO received a call from its Field Office based in Abo-Abo, Sofronio, Palawan, reporting that a van coming from Punta Baja, Rizal will be used by PINPAL, particularly Asura, and will surreptitiously transport a full-load of almaciga resin out of the ancestral domain. Hence, [NCIP-RHO directed the NCIP Community Service Center of Abo-Abo to mobilize the DENR and police checkpoints.] However, no police officers nor DENR personnel were available. Thus, the NCIP-RHO sought the assistance of the Philippine Marines to enforce the jurisdiction of the NCIP.²⁶

[The NCIP claimed that since the almaciga resin were going to be brought to Santos in Puerto Prinsesa and will immediately be transported to Manila, waiting for a written restraining order from the NCIP-RHO in Quezon City, Metro Manila was deemed impractical.]²⁷ On the basis of Gabaen's instruction, the NCIP Field Office in Abo-abo, Palawan issued a memorandum²⁸ dated February 6, 2011 enjoining the transport of the almaciga resin. At 1:30 p.m. on February 7, 2011, the elf truck that Santos sent to pick up the almaciga resin from the warehouse of PINPAL was apprehended by the Philippine Marines on the basis of the memorandum dated February 6, 2011 was shown to Nilo Ybanez, the person driving the truck.²⁹ The vehicle and almaciga resin were then impounded.³⁰

Thereafter, in an Order³¹ dated February 7, 2011, the NCIP-RHO required the almaciga resin to remain in the custody of the NCIP until the resolution of the complaint and further instructed that they be deposited with the Abo-Abo Service Center.³² The pertinent portion of the Order states:

x x x x

The almaciga resins will remain confiscated by this Quasi-Judicial Court until the resolution of the case pending before it and to be deposited with the Abo-Abo Service Center after the issuance of receipt of the confiscated almaciga.

WHEREFORE, with the foregoing, the NCIP Provincial Officer and the Community Development Officer of the Abo-Abo Service Center are hereby ordered to effect the Jurisdiction of the NCIP. The PNP and the Philippine Marines are ordered by this quasi-judicial court to assist the effective jurisdiction of this Office without hesitation.

So ordered ³³ (Emphases in the original)

²⁶ Id. at 460
²⁷ Id. at 261, 460
²⁸ Id. at 67
²⁹ Id. at 25
³⁰ Id. at 387
³¹ Id. at 68-69
³² Id. at 68
³³ Id.

Subsequently, on February 10, 2011, the NCIP-RHO issued a Cease and Desist Order,³⁴ the dispositive portion of which states:

WHEREFORE, the defendants, **PINAGTIBUKAN IT PALA'WAN (PINPAL)**, Represented by: **Naron T. Asura** and the **DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES** thru **PENRO Juan De La Cruz** and his agents namely **Ma Theresa V. Ayson**, Chief FMS; **Bernardo S. Francisco**, Chief FMS; **Florencio C. Diaz**, CENRO; **Jesus Nunez, Jr.**, FR/ Team Leader Sector III; **Rosvianne Ybanez**, owner of conveyance; **Nilo Ybanez**, representative; **Jeffry Cinco**, owner/shipper; **Merlo Cantuba**, FR/Team Leader Sector II; **Gerry O. Pader**, Forest Ranger **Marlo B. Morano**, Forest ranger; **Froilan Felix**, DENR manning the abo-abo checkpoint, Police Officer **Willy Molines**; **Brgy. Capt. Myrna Marques**; **Anita Santos** and all those who claim rights under said defendants and all persons under their instructions and acting for and in their behalves are hereby **ordered to stay, refrain or CEASE and DESIST** from further **COERCING, INTIMIDATING AND THREATENING** the NCIP employee of AboAbo who effected the seizure of the illegal forest products unlawfully taken from the ancestral domain and **INTERVENING** into the release of the seized almaciga.

And for all the employees of the DENR Palawan, specifically, to cease and desist in intervening and disregarding the law and the jurisdiction of the NCIP over all ancestral domains and all the natural resources and forest products illegally transported without a CP or without going into the legal mandatory process of FPIC. *

Further, the defendant DENR thru the PENRO and all its CENROs in Palawan to FURTHER CEASE AND DESIST IN IMPLEMENTING ALL ILLEGALLY ISSUED RESOURCE USE PERMITS GRANTED ALL OVER THE ANCESTRAL DOMAINS WITHIN PALAWAN. AND FOR ANITA SANTOS, JEFFRY CINCO, NILO YBANEZ AND ROSEVIANNE YBANES, WHOSE RIGHTS AS CONCESSIONERS, BUYERS AND SHIPPERS OF ALMACIGA EMANATED FROM AN ILLEGAL ISSUANCE OF TRUPs, TO ABSOLUTELY STAY AND REFRAIN FROM CONTINUING TO USE AN ILLEGALLY OBTAINED RIGHT.

Finally, the Government thru the NCIP as the GUARDIAN OF THE PEOPLE are hereby ordered to gather the General Assembly of the ancestral Domain subject matter of this complaint and facilitate the election of a legitimate tribal leaders/ constitute legal Indigenous Peoples Organization and register it with the NCIP in order for it to have a legal standing in dealing with all matters pertaining to the ancestral domain.

The private defendants are hereby ordered to submit all the financial statements of their 20 years of operation as an alleged IP organization with the Regional Hearing Office to check if indeed the proceeds of the almaciga went to the benefit of the whole ancestral domain subject matter of the complaint.

The driver of the truck van, Nilo Ybanez, with plate no. ROK 643, used to transport the illegally acquired almaciga is hereby directly

ordered by this Regional Hearing Office to open his truck in order for the NCIP to fully effect its jurisdiction over the almaciga resins within three (3) days from the receipt or refusal to receive of this order. Refusal to comply with this order is contempt under the rules and the NCIP with the help of the marines may be allowed to open the truck on their own initiative to consummate the seizure.

This CEASE AND DESIST ORDER shall be *effective immediately.*

Violation of this order will subject the violator to not more than six (6) months in prison or a fine not exceeding Thirty Thousand Pesos (P30,000.00) and will be ordered to make full restitution of the property involved or such amount as maybe alleged and proved.

Ordering further the National Commission on Indigenous Peoples (NCIP) in Abo-Abo Service Center in Palawan to immediately serve this order to the defendants and agents of the defendants on the field

Commending the Philippine Marines under the command of Col Jesus Raul Valdes for its continued assistance to the NCIP in effecting its jurisdiction

The Municipal Government and the Municipal Chief of Police of Rizal, Palawan are advised to give due assistance to the NCIP in the service of this order so as to avoid the risk of life and security as per the joint memorandum of agreement between the DILG and the NCIP respecting the rights of the Indigenous Peoples

*So ordered.*³⁵ (Emphases and italics in the original)

Based on the Cease and Desist Order,³⁶ the NCIP-RHO enjoined the parties from coercing, threatening, and intimidating the NCIP personnel and from intervening in the release of the almaciga resin. The DENR and the CENRO were called out for issuing the RUP for the almaciga resins and consenting to their removal from the ancestral domains of the IPs without the requisite certification under Section 59 of R.A. No. 8371.³⁷

On February 15, 2011, Santos filed with the NCIP-RHO a notice of withdrawal of the Motion to Intervene, which she filed on November 17, 2010, stating that the proceedings in the case lack due process and that the almaciga resin were being held without jurisdiction.³⁸ Thereafter, Santos filed a Petition for *Certiorari* and prohibition³⁹ with prayer for the issuance of TRO with this Court.

Similarly, Asura, representing PINPAL, filed an omnibus motion with the NCIP-RHO asking for the same reliefs Santos prayed for in her

³⁵ Id. at 76-78

³⁶ Id. at 72-79

³⁷ Id. at 75

³⁸ Id. at 262

³⁹ Id. at 3-54

petition.⁴⁰

Just a few weeks after, the leaders of the tribes affected by the Cease and Desist Order asked that it be lifted and that they be allowed to transport their minor forest products out of their ancestral domain.⁴¹

In another Order⁴² dated April 5, 2011, the NCIP-RHO directed the lifting of the Cease and Desist Order against the DENR. Nonetheless, the NCIP-RHO stressed that in issuing certificate of origins, the Provincial Environment and Natural Resources Officer (PENRO)/CENRO must abide by the mandatory rule on FPIC. The NCIP-RHO reminded that a certificate issued by the NCIP Provincial Officer should first be obtained stating that the requirement of FPIC has been complied with by the grantees before certificate of origins may be issued.⁴³

Meanwhile, on April 25, 2011, Rosvianne S. Ybanez, claiming to be the daughter of Santos, filed a third party claim⁴⁴ with the NCIP-RHO. She asked for the release of her seized van that was used to transport the almaciga resins. Her claim was granted and the van was released to her father, Nilo Ybanez, the common-law husband of Santos.⁴⁵

In the present Petition for *Certiorari* and prohibition,⁴⁶ Santos asks this Court *inter alia* to: (1) issue a TRO and a writ of prohibition to enjoin Gabaen, the NCIP, the DENR, and all persons acting under its authority from implementing the Cease and Desist Order dated February 10, 2011; (2) issue a TRO and a writ of prohibition to enjoin Gabaen and the NCIP from ruling on the validity of the RUP in NCIP Case No. 28-RIV-10 during the pendency of the petition; (3) annul the Order dated February 7, 2011 and the Cease and Desist Order dated February 10, 2011 for lack of jurisdiction and for being contrary to law; and (4) declare unconstitutional Section 3(a)⁴⁷ of R.A. No.

⁴⁰ Id. at 262

⁴¹ Id. at 159

⁴² Id. at 161

⁴³ Id.

⁴⁴ Id. at 162-165

⁴⁵ Id. at 169-170

⁴⁶ Id. at 5-54

⁴⁷ SECTION 3. *Definition of Terms*. — For purposes of this Act, the following terms shall mean:

a) Ancestral Domains — Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators.

8371, and Section 1, Part II, Rule III⁴⁸ of the Implementing Rules and Regulations (IRR) of R.A. No. 8371 for violating Section 2, Article XII of the Constitution.⁴⁹

For the government, the Office of the Solicitor General (OSG) deemed it appropriate to file a Comment⁵⁰ stating that: (1) Santos has no standing to institute the petition as she is not the owner of the RUP whose validity is in question;⁵¹ (2) the present petition is not the proper remedy to question the validity of the orders Gabaen issued;⁵² (3) the NCIP has jurisdiction to issue the assailed orders pursuant to its quasi-judicial power under Section 69 (d) of R.A. No. 8371;⁵³ (4) even if the case may be resolved without passing upon the constitutionality of R.A. No. 8371, the resolution of such issue presents a justiciable controversy and is imperative in order to finally settle the issue and avoid a situation wherein all RUPs are resolved on the basis of the application of the doctrine of operative fact;⁵⁴ (5) the provisions of R.A. No. 8371 conferring ownership over ancestral domains and lands to IPs contravene the Regalian Doctrine;⁵⁵ and (6) the RUP of PINPAL is invalid due to non-compliance with Section 59 of R.A. No. 8371 regardless of the constitutionality of the relevant provisions, since the doctrine of operative fact recognizes that any legislative or executive act, prior to its invalidity, is considered to be in force and must be complied with.⁵⁶

For its part, the NCIP argues that (1) it has acted within the scope of its jurisdiction and with due process in the issuance of the Order dated February 7, 2011 and the Cease and Desist Order dated February 10, 2011;⁵⁷ (2) the NCIP can validly question the RUP issued by the DENR with respect to natural resources found within the ancestral domain;⁵⁸ (3) ICCs/IPs are not exempt from the requirement of obtaining FPIC from the community and the corresponding CP from the NCIP before a RUP can be issued to them by the DENR for utilizing natural resources within the ancestral domain;⁵⁹ (4)

⁴⁸ SECTION 1. *Rights of Ownership* – ICCs/IPs have rights of ownership over lands, waters, and natural resources and all improvements made by them at any time within the ancestral domains/lands. These rights shall include, but not limited to, the right over the fruits, the right to possess, the right to use, right to consume, right to exclude and right to recover ownership, and Page 6 the rights or interests over land and natural resources. The right to recover shall be particularly applied to lands lost through fraud or any form of vitiated consent or transferred for an unconscionable price.

⁴⁹ *Rollo*, pp. 52-54.

⁵⁰ *Id.* at 200-246.

⁵¹ *Id.* at 209-212.

⁵² *Id.* at 212-214.

⁵³ *Id.* at 214-217, SECTION 69. *Quasi-Judicial Powers of the NCIP* – The NCIP shall have the power and authority

x x x x

d) To enjoin any or all acts involving or arising from any case pending before it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social or economic activity.

⁵⁴ *Id.* at 217-219.

⁵⁵ *Id.* at 219-239.

⁵⁶ *Id.* at 239-244.

⁵⁷ *Id.* at 264-267.

⁵⁸ *Id.* at 267-270.

⁵⁹ *Id.* at 270-271.

Santos cannot collaterally attack the constitutionality of R.A. No. 8371 in the present case as it is immaterial to the causes of action she raised,⁶⁰ and (5) the petition should be dismissed on technical grounds for raising to this Court issues other than those on pure questions of law, and for failing to exhaust all prior remedies.⁶¹

By way of Reply,⁶² Santos insists that: (1) she has *locus standi* to file the present petition because her business was affected by the assailed orders and she is the owner of the confiscated almaciga resins;⁶³ (2) a petition for *certiorari* and prohibition was the appropriate remedy and that the principle on exhaustion of administrative remedies is not applicable, since she was not even made a party to any pending case before the NCIP;⁶⁴ (3) her challenge on the constitutionality of Section 3(a) of R.A. No. 8371, and Section 1, Part II, Rule III of the IRR of R.A. No. 8371 was proper because ownership of the natural resources determines which agency has jurisdiction to take cognizance of the issues on the validity of the RUP;⁶⁵ (4) the validity of the RUP is not an issue in this petition as the underlying issue is the ownership of ancestral domain;⁶⁶ and (5) the status *quo* that must be maintained is the continued trading of almaciga resins by PINPAL and Santos.⁶⁷

After several extensions afforded by this Court to the DENR, it filed its Comment⁶⁸ on August 25, 2020. It maintains that: (1) the RUP it issued is valid and is in line with its duties and responsibilities;⁶⁹ (2) the NCIP does not have jurisdiction to invalidate the RUP DENR issued;⁷⁰ and (3) the provisions in R.A. No. 8371 conferring right of ownership over ancestral domains are unconstitutional as it contravenes the Regalian Doctrine.⁷¹

Issues

The issues to be resolved are:

I

Whether the present petition is the proper remedy to question the orders of Gabaen;

II

Whether Santos has legal standing to defend the validity of the RUP issued by the DENR to PINPAL; and

⁶⁰ Id. at 271-272.
⁶¹ Id. at 272-274.
⁶² Id. at 324-339.
⁶³ Id. at 325-326.
⁶⁴ Id. at 326-328.
⁶⁵ Id. at 328.
⁶⁶ Id. at 328-331.
⁶⁷ Id. at 332-334.
⁶⁸ Id. at 603-619.
⁶⁹ Id. at 605-610.
⁷⁰ Id. at 610-613.
⁷¹ Id. at 613-616.

III

Whether this Court may take cognizance and rule on the constitutionality of the provisions of R.A. No. 8371 conferring ownership over ancestral domain and land to ICCs/ IPs.

Our Ruling

The petition must be dismissed

I

At the outset, there is a need to discuss the propriety of the petition for *certiorari* and prohibition filed with the objective of annulling the challenged orders of Gabaen that were issued in the exercise of the NCIP's quasi-judicial power.

Under Section 1, Rule 65 of the Rules of Court, the following requisites must be present in order for a petition for *certiorari* to prosper: (1) the writ is directed against a tribunal, a board, or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.⁷²

Meanwhile, in Section 2, Rule 65 of the Rules of Court, the following requisites must be established in the case of a petition for prohibition: (1) the writ is directed against a tribunal, corporation, board or person exercising functions, judicial, quasi-judicial, or ministerial; (2) such tribunal, corporation, board, officer or person has acted without or in excess of its jurisdiction, or with grave abuse of discretion, and (3) there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.⁷³

In the present case, the first two requisites for a petition for *certiorari* and prohibition under Rule 65 are present because it is directed against orders of the NCIP issued in the exercise of its quasi-judicial function and are purportedly without or in excess of its jurisdiction, or with grave abuse of discretion. The third requisite – that there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law – is likewise present. To demonstrate this requisite within the context of the present case, it is imperative to discuss the mandate and jurisdiction of the NCIP.

⁷² Section 1, Rule 65 of the Rules of Court

⁷³ Section 2, Rule 65 of the Rules of Court

The NCIP is mandated to "protect and promote the interest and well-being of the ICCs/IPs with due regard to their beliefs, customs, traditions and institutions."⁷⁴ This is consistent with the framework observed by the State in favor of the protection of the rights of the ICCs/IPs, as found in Section 22, Article II,⁷⁵ Section 5, Article XII,⁷⁶ and Section 6, Article XIII⁷⁷ of the Constitution. In *The City Government of Baguio City v Atty Masweng*,⁷⁸ this Court declared that:

The NCIP is the primary government agency responsible for the formulation and implementation of policies, plans and programs to protect and promote the rights and well-being of indigenous cultural communities/indigenous peoples (ICCs/IPs) and the recognition of their ancestral domains as well as their rights thereto. In order to fully effectuate its mandate, the NCIP is vested with jurisdiction over all claims and disputes involving the rights of ICCs/IPs. The only condition precedent to the NCIP's assumption of jurisdiction over such disputes is that the parties thereto shall have exhausted all remedies provided under their customary laws and have obtained a certification from the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved.⁷⁹

To achieve the mandate of the State, the jurisdiction of the NCIP is laid down in Section 66 of R.A. No. 8371, which states:

SECTION 66 *Jurisdiction of the NCIP*. — The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs. *Provided, however*, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.⁸⁰

⁷⁴ Section 39, R.A. No. 8371.

⁷⁵ Section 22, Article II of the 1987 Constitution states:

SECTION 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

⁷⁶ Section 5, Article XII of the 1987 Constitution states:

SECTION 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

⁷⁷ Section 6, Article XIII of the 1987 Constitution states:

SECTION 6. The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands.

The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.

⁷⁸ 597 Phil. 668 (2009).

⁷⁹ *Id.* at 674.

⁸⁰ Section 66, R.A. No. 8371.

Likewise, Section 5, Rule III of the NCIP Administrative Circular No. 1, Series of 2003, or the Rules on Pleadings, Practice and Procedure Before the National Commission on Indigenous Peoples (2003 NCIP Rules of Procedure) provides an enumeration of cases under the jurisdiction of the NCIP:

SECTION 5 *Jurisdiction of the NCIP* The NCIP through its Regional Hearing Offices shall exercise jurisdiction over all claims and disputes involving rights of ICCs/IPs and all cases pertaining to the implementation, enforcement, and interpretation of R.A. 8371, including but not limited to the following:

- (1) Original and Exclusive Jurisdiction of the RHO
 - a. Cases involving disputes and controversies over ancestral lands/domains of ICCs/IPs,
 - b. Cases involving violations of the requirement of free and prior and informed consent of ICCs/IPs,
 - c. Actions for enforcement of decisions of ICCs/IPs involving violations of customary laws or desecration of ceremonial sites, sacred places, or rituals,
 - d. Actions for redemption/reconveyance under Section 8(b) of R.A. 8371; and
 - e. Such other cases analogous to the foregoing
- (2) Original Jurisdiction of the Regional Hearing Office
 - a. Cases affecting property rights, claims of ownership, hereditary succession, and settlement of land disputes, between and among ICCs/IPs that have not been settled under customary laws, and
 - b. Actions for damages arising out of any violation of Republic Act No. 8371.
- (3) Exclusive and Original Jurisdiction of the Commission:
 - a. Petition for cancellation of Certificate of Ancestral Domain Titles/Certificate of Ancestral Land Titles (CADTs/CALTs) alleged to have been fraudulently acquired by, and issued to, any person or community as provided for under Section 54 of R.A. 8371. Provided that such action is filed within one (1) year from the date of registration.⁸¹

Among the powers bestowed on the NCIP is the jurisdiction "to decide all appeals from the decisions and acts of all various offices with the Commission."⁸² This necessarily includes decisions and acts of the regional and field offices of the NCIP.

However, it must be clarified that the NCIP does not automatically have jurisdiction over all disputes involving ICCs/IPs. In *Unduran v. Aberasturi*,⁸³ it was declared that Section 66 of R.A. No. 8371 does not confer on the NCIP exclusive and original jurisdiction over all claims and disputes involving rights of ICCs/IPs. This Court emphasized that the

⁸¹ Section 5, Rule III of the NCIP Administrative Circular No. 1, Series of 2003

⁸² Paragraph (n), Section 44, R.A. No. 8371

⁸³ 771 Phil. 536 (2015)

proper construction of the provision, particularly its qualifying *proviso*, is that the NCIP's jurisdiction over such claims and disputes occur "only when they arise between or among parties belonging to the same ICC/IP."⁸⁴

Here, it is undisputed that Santos does not belong to the ICC of Erong and PINPAL. The remedies the NCIP suggested are not available to Santos because she could not file a motion for reconsideration before the NCIP nor an appeal to the Court of Appeals (CA). She has no available remedy within the NCIP as it does not have jurisdiction over her claim. Therefore, a petition under Rule 65 of the Rules of Court is the proper remedy to challenge the confiscation of the almaciga resins.

Nevertheless, the petition should still be dismissed for violating the doctrine of hierarchy of courts. Under Section 5(1), Article VIII of the Constitution, this Court has original jurisdiction over petitions for *certiorari*, prohibition, and mandamus. However, in *GIOS-SAMAR, Inc. v. Department of Transportation and Communications*,⁸⁵ it was held that:

The 1987 Constitution and the Rules of Court promulgated, pursuant to its provisions, granted us original jurisdiction over certain cases. In some instances, this jurisdiction is shared with Regional Trial Courts (RTCs) and the Court of Appeals (CA). However, **litigants do not have unfettered discretion to invoke the Court's original jurisdiction. The doctrine of hierarchy of courts dictates that, direct recourse to this Court is allowed only to resolve questions of law, notwithstanding the invocation of paramount or transcendental importance of the action. This doctrine is not mere policy, rather, it is a constitutional filtering mechanism designed to enable the Court to focus on the more fundamental and essential tasks assigned to it by the highest law of the land** ⁸⁶ (Emphasis supplied)

The doctrine of hierarchy of courts is in place to "ensure that this Court remains a court of last resort."⁸⁷ This Court could not simply give due course to all petitions where original jurisdiction over the matter is shared with the lower courts as it will unnecessarily clog this Court's docket and exhaust resources that may be better utilized to resolve more pressing concerns.

In *The Diocese of Bacolod v. Commission on Elections*,⁸⁸ this Court identified the instances wherein the strict application of the doctrine of hierarchy of courts may be relaxed. These include: (1) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (2) when the issues involved are of transcendental

⁸⁴ Id. at 568, 569.

⁸⁵ G.R. No. 217158, March 12, 2019, 896 SCRA 217.

⁸⁶ Id. at 227.

⁸⁷ *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 238-239 (2018).

⁸⁸ 751 Phil. 301 (2015).

importance; (3) in cases of first impression; (4) when the constitutional issues raised are better decided by this Court; (5) when the exigency or time element presented in the case cannot be ignored; (6) when the petition filed reviews the act of a constitutional organ; (7) when petitioners have no other plain, speedy, and adequate remedy in the ordinary course of law; and (8) when the petition includes questions that are dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.⁸⁹ Under any of these circumstances, a petitioner may be permitted to seek direct resort to this Court through *certiorari*, *mandamus*, and/or prohibition under Rule 65 of the Rules of Court.

To validly take cognizance of the present petition for *certiorari* and prohibition, Santos must specify the exceptional circumstance present in her case to warrant direct resort to this Court. Noticeably, in justifying her direct resort to this Court, Santos merely alleged that

x x x x

20. Since there is no other plain, speedy and adequate remedy in the ordinary course of law for the petitioner, a recourse to this Petition was made by her before this Honorable Court. Also, considering the chaotic consequence, magnitude and the extreme urgency of the matter involved in this Petition, only this Honorable Court can provide the immediate and adequate remedy to the situation affecting not only the petitioner but the other traders as well and the indigenous peoples in Palawan.⁹⁰

A careful examination of the quoted statement above reveals that Santos failed to invoke any extraordinary circumstance to convince this Court to allow a deviation from the doctrine of hierarchy of courts. Merely stating the purported "chaotic consequence, magnitude and the extreme urgency of the matter,"⁹¹ without anything more to substantiate her claim, does not automatically excuse her from observing the hierarchy of courts.

In *Puerto Del Sol Palawan, Inc. v. Gabaen (Puerto Del Sol Palawan, Inc.)*,⁹² the CA opined that since Puerto Del Sol Palawan, Inc. (PDSPI) had the available remedy of filing a motion for reconsideration against the Order of the NCIP-RHO dismissing outright its Memorandum on Appeal for being filed beyond the reglementary period, the petition for *certiorari* of PDSPI should be dismissed. The CA ruled that there was still a plain, adequate, and speedy remedy at the disposal of PDSPI. When the case reached this Court, the ruling was reversed and it was held that the CA erred in dismissing the petition for *certiorari* of PDSPI assailing the denial of its Memorandum on

⁸⁹ *Id.* at 331-335.

⁹⁰ *Rollo*, p. 11.

⁹¹ *Id.*

⁹² G.R. No. 212607, March 27, 2019, 898 SCRA 581.

Appeal.⁹³ It must be stressed that in *Puerto Del Sol Palawan, Inc.*, the petition for *certiorari* assailing the NCIP-RHO Hearing Officer's order disallowing PDSPI's appeal, was filed in the CA. The NCIP-RHO Hearing Officer involved was coincidentally also, Gabaen. It was held that in challenging an interlocutory order or an order of the NCIP disallowing an appeal, a petition under Rule 65 was the proper remedy and that the CA was the proper court to resolve it.⁹⁴ To this Court's mind, there is no reason to depart from the doctrine of hierarchy of courts and the ruling in *Puerto Del Sol Palawan, Inc.*

II

Even if the doctrine of hierarchy of courts is relaxed, the petition of Santos failed to comply with the requisites of judicial review because she has no legal standing to bring a suit defending the validity of the RUP of PINPAL.

The requisites of judicial review include: (1) there must be an actual case or controversy; (2) it must be ripe for adjudication; (3) the person challenging the validity of the act must have standing to sue; (4) the question of constitutionality must have been raised at the earliest opportunity; and (5) the issue of constitutionality must be the very *lis mota* of the case.⁹⁵

The requisite of actual case or controversy is present "when there is a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute."⁹⁶ It must involve issues that are definite and concrete and affect legal relations of parties with adverse interests.⁹⁷ It must also be demonstrated that there is grave abuse of discretion in the assailed governmental act in the context of actual, not merely theoretical, facts.⁹⁸ The right sought to be enforced through the exercise of judicial review is inextricably linked to the other requisites, particularly a party's legal standing.

Anent the requisite of legal standing, the complaining party must demonstrate a direct injury already sustained or immediately in danger of sustaining as a result of the act complained of. Here, this Court finds that

⁹³ Id. at 589

⁹⁴ Id.

⁹⁵ *Calleja v. Executive Secretary*, G.R. Nos. 252578, 252579, 252580, 252585, 252613, 252623, 252624, 252646, 252702, 252726, 252733, 252736, 252741, 252747, 252755, 252759, 252765, 252767, 252768, UDK 16663, G.R. Nos. 252802, 252809, 252903, 252904, 252905, 252916, 252921, 252984, 253018, 253100, 253118, 253124, 253242, 253252, 253254, 254191 & 253420, December 7, 2021, citing *Philippine Constitution Association v. Enriquez*, 395 Phil. 546, 562 (1994).

⁹⁶ Id., citing *Ocampo v. Rear Admiral Enriquez*, 798 Phil. 227, 288 (2016).

⁹⁷ Id., citing *Falcoy III v. Civil Registrar General*, G.R. No. 217910, September 3, 2019, 917 SCRA 197.

⁹⁸ Id., citing *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116 (2016).

Santos has no legal standing to institute a suit defending the validity of the RUP of PINPAL.

In *Falcis III v. Civil Registrar General*,⁹⁹ this Court defined legal standing as

x x x a party's "personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement." Interest in the case "means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest."¹⁰⁰ (Citations omitted)

The requirement of legal standing is imposed to ensure "that a party is seeking a concrete outcome or relief that may be granted by courts."¹⁰¹ It is based on the principle of separation of powers as it spares the "unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government."¹⁰² It is also intended to prevent the courts from indiscriminately being exposed to all types of suits that may unduly overburden the dockets.¹⁰³

This Court highlighted in *Falcis III*¹⁰⁴ that:

[w]hether a suit is public or private, the parties must have "a present substantial interest," not a "mere expectancy or a future, contingent, subordinate, or consequential interest." Those who bring the suit must possess their own right to the relief sought.¹⁰⁵

The foregoing rule applies even to non-traditional suitors such as taxpayers, legislators, or concerned citizens, who must still claim some kind of injury-in-fact or concrete interest in the outcome of the dispute.¹⁰⁶

Moreover, Section 2, Rule 3 of the Rules of Court provides that a real party in interest is one "who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit."

In *Alliance of Non-Life Insurance Workers of the Philippines v. Hon. Mendoza*,¹⁰⁷ the petition for review on *certiorari* filed by purported non-life insurance agents and underwriters was denied due, among other reasons, to

⁹⁹ *Falcis III v. Civil Registrar General*, G.R. No. 217910, September 3, 2019, 917 SCRA 197.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *White Light Corporation v. City of Manila*, 596 Phil. 444, 455 (2009).

¹⁰³ *Falcis III v. Civil Registrar General*, *supra* note 99, citing *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 856 Phil. 205, 239-240 (2018).

¹⁰⁴ *Falcis III v. Civil Registrar General*, *supra* note 99.

¹⁰⁵ *Id.*, citing *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, *supra* note 87 at 250.

¹⁰⁶ *Id.* at 250-251.

¹⁰⁷ G.R. No. 206159, August 26, 2020.

their lack of legal standing to challenge the constitutionality of an issuance by the Department of Transportation and Communication. This Court ruled that the petitioners failed to establish legal standing as associations suing on behalf of their members. While their respective certificates of incorporation were presented, it was not shown that they were authorized to represent their members in the protection of their insurance business. The same can be said about Santos. She could not simply institute a case defending the validity of the RUP of PINPAL without being authorized by the organization to sue on its behalf. Santos failed to demonstrate to this Court that she possesses the requisite authority to represent PINPAL.

Meanwhile, in the case of *Real v. House of Representatives*,¹⁰⁸ this Court dismissed a petition filed under Rule 65 of the Rules of Court seeking to compel the House of Representatives to facilitate the proceedings in relation to the renewal of a corporation's legislative franchise. In dismissing the petition, this Court reiterated that only those who sustained a direct injury or is in danger of suffering damage from the assailed acts may bring a suit to Us. This Court also noted that the corporation seeking a renewal of its legislative franchise had already instituted a separate proceeding.¹⁰⁹ This ruling can be applied by analogy to the petition of Santos. Since PINPAL has the more direct and specific interest in the validity of its RUP than Santos, her petition must be dismissed.

While Santos may have an indirect interest, as a buyer of the almaciga resins, this interest is only incidental as compared to the interest of PINPAL – the holder of the RUP. As pointed out by the OSG, her interest does not qualify as that contemplated to warrant the exercise of judicial review because it arises only from her alleged exclusive dealership with PINPAL, and not from the RUP itself. Santos has no direct or personal right prejudiced by the nullity of the RUP granted to PINPAL.¹¹⁰ Thus, she is not in the position to ask for injunctive relief against the proceedings for the validity of the RUP before the NCIP-RHO.

III

Finally, on the question of constitutionality of Section 3(a) of R.A. No. 8371, in *Parcon-Song v. Parcon*,¹¹¹ it was held that courts should avoid resolving the constitutionality of a law if the case can be ruled on other grounds. Speaking through the *ponencia* of Associate Justice Marvic M.V.F. Leonen, this Court explained that:

As a rule, the courts will not resolve the constitutionality of a law, if the controversy can be settled on other grounds. The policy of

¹⁰⁸ G.R. No. 252187 (Resolution), June 30, 2020.

¹⁰⁹ *Id.*

¹¹⁰ *Rollo*, pp. 210-212.

¹¹¹ G.R. No. 199582, July 7, 2020.

the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid, absent a clear and unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the doctrine of separation of powers. This means that the measure had first been carefully studied by the legislative and executive departments and found to be in accord with the Constitution before it was finally enacted and approved.

x x x x

The judicial review requirement that a constitutional issue seasonably raised should be the *lis mota* of the case is rooted in two constitutional principles: first, **the principle of deference**; and second, **the principle of reasonable caution in striking down an act by a co-equal political branch of government.**¹¹² (Emphases supplied, italics in the original)

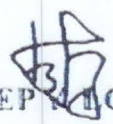
Similarly, in *Alliance of Non-Life Insurance Workers of the Philippines v. Hon. Mendoza*,¹¹³ this Court emphasized that constitutional issues raised in a case will not be passed upon "when it is not the *lis mota*. More so, when it can be resolved on some other ground."¹¹⁴

Here, this Court deems it proper to refrain from deciding on the constitutionality of Section 3(a) of R.A. No. 8371 and its counterpart provision in Section 1, Part II, Rule III of its IRR, as the grounds of non-observance of the doctrine of hierarchy of courts, and the absence of legal standing are enough reasons to dismiss the petition.

In view of the foregoing limitations, there is no reason for this Court to take cognizance of the present petition.

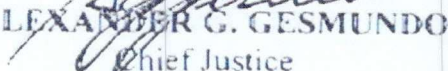
WHEREFORE, the Petition for *Certiorari* and Prohibition with prayer for the issuance of a temporary restraining order under Rule 65 of the Rules of Court filed by petitioner Anita Santos against respondents Atty. Kissack B. Gabaen, Ricardo D. Sanga, and the National Commission on Indigenous Peoples, Department of Environment and Natural Resources is **DISMISSED**.

SO ORDERED.

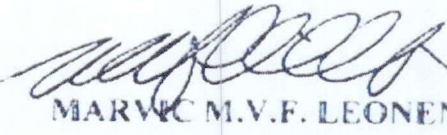

JOSE P. LOPEZ
Associate Justice

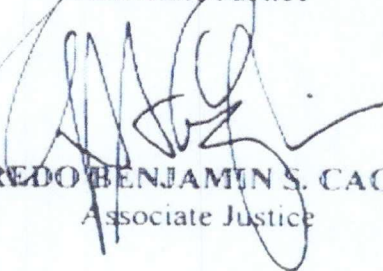
¹¹² *Id.*
¹¹³ *Supra* note 107.
¹¹⁴ *Id.*

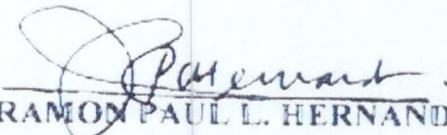
WE CONCUR:



ALEXANDER G. GESMUNDO
Chief Justice

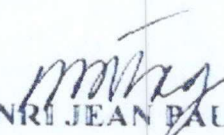
on official leave
ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice

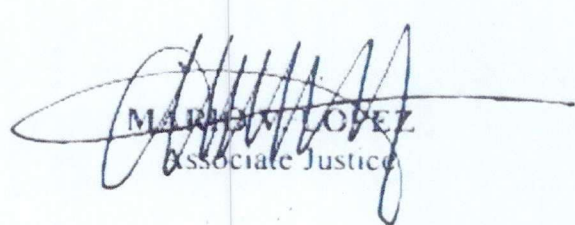

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

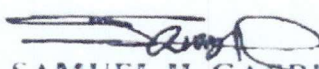

RAMON PAUL L. HERNANDO
Associate Justice

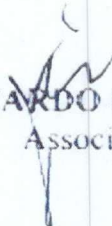

AMY C. LAZARO-JAVIER
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice

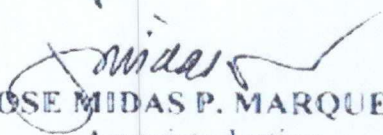

RODIL V. ZALAMEDA
Associate Justice

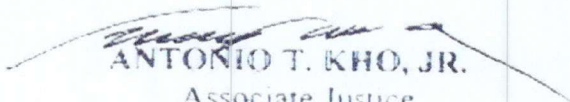

MARIA V. LOPEZ
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


RICARDO R. ROSARIO
Associate Justice

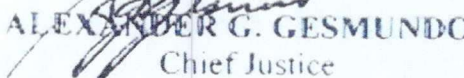
on official business
JABAR B. DIMAAMPAO
Associate Justice

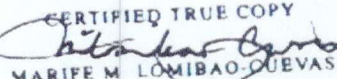

JOSE MIDAS P. MARQUEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.


ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY

MARIFE M. LOMIBAO-CUEVAS
Clerk of Court
Supreme Court