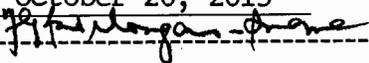


EN BANC

G.R. No. 181284 – (*Loloy Unduran, Barangay Captain Romeo Pacana, et. al. v. Ramos Aberasturi, Cristina C. Lopez, et. al.*)

Promulgated:

October 20, 2015

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CONCURRING OPINION

VELASCO, JR., J.:

I concur with the *ponencia* that the Regional Trial Court (RTC) has jurisdiction over the case. Both original and amended complaints, *accion reivindicatoria* and injunction, respectively, are incapable of pecuniary estimation; thus falling within the jurisdiction of the RTC. As correctly pointed out by the *ponencia*, “jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff’s cause of action.”¹ It cannot be acquired through a waiver or enlarged by the omission of the parties or conferred by the acquiescence of the court.²

However, I would like to submit some points for consideration which run counter to the opinion of my esteemed colleague. It is my position that the National Commission on Indigenous Peoples (NCIP) has jurisdiction over all claims and disputes involving rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) regardless of whether or not they belong to the same IP/IC Community. This is pursuant to Section 66 of Republic Act (R.A.) No. 8371,³ otherwise known as “The Indigenous Peoples’ Rights Act of 1997” (IPRA) as follows:

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. (Emphasis supplied.)

A careful scrutiny of Section 66 of the IPRA would reveal that it is composed of three parts: (1) the NCIP has jurisdiction over all claims and disputes involving rights of ICCs/IPs; (2) the requirement of exhaustion of all remedies provided under the customary laws of the ICCs/IPs; and (3) a certification from the

¹ *Ponencia*, p. 8.

² *Gomez-Castillo v. COMELEC*, G.R. No. 187231, 22 June 2010, 621 SCRA 499, 507.

³ AN ACT TO RECOGNIZE, PROTECT AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLES, CREATING A NATIONAL COMMISSION ON INDIGENOUS PEOPLES, ESTABLISHING IMPLEMENTING MECHANISMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES (1997).



Council of Elders/Leaders as a condition precedent to the filing of a petition with NCIP.

The first part lays down the basis of jurisdiction of the NCIP. It can be gleaned from this part that the law is silent if the parties should belong to the same IP/IC Community. What the law only provides is that the NCIP has jurisdiction over all claims and disputes involving rights of ICCs/IPs.

The second part contains the *proviso* that should be followed before the NCIP acquires jurisdiction over the case. Said *proviso* states: “Provided, however, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws.”

The third part, on the other hand, refers to the certification from the Council of Elders/Leaders as a condition precedent to the filing of a petition with NCIP. This is in relation to the second part requiring the exhaustion of all remedies.

The second and third parts of the provision should not be interpreted as limiting the jurisdiction of the NCIP to claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP. The *proviso* only provides for a condition precedent. It is merely procedural and does not divest the NCIP of jurisdiction over parties not belonging to the same IP/IC Community. As provided in Section 14, Rule IV of the Rules on Pleadings, Practice and Procedure⁴ of the NCIP (NCIP Rules), a party which does not belong to the same IP/IC Community is exempted from the requirement of certification, to wit:

Section 14.Exceptions. The certification shall not be required in the following cases:

- a. Where one of the parties is a public or private corporation, partnership, association or juridical person or a public officer or employee and the dispute is in connection with the performance of his official functions;
- b. Where one of the parties is non-IP/ICC or does not belong to the same IP/IC Community, except when he voluntarily submits to the jurisdiction of the Council of Elders/Leaders;**
- c. Where the relief sought for in the complaint or petition seeks to prevent any grave, imminent and irreparable damage or injury that may result if not acted upon immediately; and
- d. Where the Council of Elders/Leaders refuses to issue the necessary certification without justifiable reasons. (Emphasis supplied.)

Thus, it is my position that the NCIP has jurisdiction over the following:

- a. claims and disputes involving rights of ICCs/IPs arising between or among parties belonging to the same ICC/IP; and

⁴ Administrative Circular No. 1-03 dated April 9, 2003.

- b. claims and disputes involving rights of ICCs/IPs arising between or among ICCs/IPs even if one of the parties does not belong to the same IP/IC Community.

All cases and disputes where both parties are ICCs/IPs fall under the exclusive jurisdiction of the NCIP. Consequently, all cases and disputes where one of the parties is a non-ICC/IP are covered by the jurisdiction of the regular courts regardless of the subject matter even if it involves ancestral domains or lands of ICCs/IPs. Moreover, the regular courts have jurisdiction over cases and disputes as long as there are parties who are non-ICCs/IPs.

To limit the jurisdiction of the NCIP to claims and disputes involving rights of ICCs/IPs arising between or among parties belonging to the same ICC/IP would be contrary to the purpose for which the NCIP was created. It must be pointed out that the NCIP is an administrative body entrusted with the regulation of activities coming under its special knowledge and training. It is charged with the implementation of the law, considering its competence, expertise, experience and informed judgment. As such, the NCIP is vested with quasi-judicial and quasi-legislative powers. It is the primary government agency “responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains as well as their rights thereto.”⁵ It is quasi-judicial because it has jurisdiction over all claims and disputes involving the rights of the ICCs/IPs.⁶ It is quasi-legislative because of its rule-making power.⁷ Because of its expertise in the field of ICCs/IPs, it is better equipped than the trial courts in resolving the claims and disputes involving rights where the parties are both ICCs/IPs.

Anent the issue as to what customary laws apply in cases where the parties involved in the claims and disputes do not belong to the same IP/IC Community, the NCIP may apply the customary law common to both ICCs/IPs or that which can be applied by analogy.

Furthermore, it must be pointed out that there is no need to declare the following provisions as null and void:

- i. The first and third paragraphs of Rule IX, Section 1 of the Implementing Rules and Regulations (IRR) of R.A. No. 8371 which provide:

Section 1. Primacy of Customary Law. All conflicts related to ancestral domains and lands, involving ICCs/IPs, such as but not limited to conflicting claims and boundary disputes, shall be resolved by the concerned parties through the application of customary laws in the area where the disputed ancestral domain or land is located.

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⁵ Supra note 3, Section 38.

⁶ Id. Section 66.

⁷ Id. Section 44(c).

All decisions of the NCIP may be brought on Appeal by Petition for Review to the Court of Appeals within fifteen (15) days from receipt of the Order or Decision.

ii. Rule III, Section 5 of the NCIP Rules which provides:

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 Regional Hearing Office (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 Officer:

- 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.⁸

iii. Rule IV, Sections 13 and 14 of the NCIP Rules which provide:

Section 13. Certification to File Action. Upon the request of the proper party, members of the indigenous dispute settlement group or council of elders shall likewise issue a certification to file action before the NCIP. In giving due regard to customary laws, the certification may be in any form so long as it states in substance the failure of settlement notwithstanding the efforts made under customary law or traditional practices.⁹

Section 14. Exceptions. The certification shall not be required in the following cases:

⁸ Supra note 4.

⁹ Id.

- a. Where one of the parties is a public or private corporation, partnership, association or juridical person or a public officer or employee and the dispute is in connection with the performance of his official functions;
- b. Where one of the parties is non-IP/ICC or does not belong to the same IP/IC Community, except when he voluntarily submits to the jurisdiction of the Council of Elders/Leaders;
- c. Where the relief sought for in the complaint or petition seeks to prevent any grave, imminent and irreparable damage or injury that may result if not acted upon immediately; and
- d. Where the Council of Elders/Leaders refuse to issue the necessary certification without justifiable reasons.¹⁰

The abovementioned rules can be interpreted in harmony with the provisions of the IPRA law. Said rules do not expand the jurisdiction of the NCIP but merely enumerate the claims and disputes falling within its jurisdiction. Section 14(b) does not automatically dispense with the certification required by law as the parties may opt to voluntarily submit to the jurisdiction of the Council of Elders/Leaders. This is akin to a *barangay* conciliation proceeding under the Local Government Code wherein the conciliation process is a condition precedent that affects the sufficiency of the cause of action, not the jurisdiction of the court.¹¹

However, the second paragraph of Rule IX, Section 1 of the IRR of R.A. No. 8371 is not anchored on legal mooring. Said paragraph reads:

Section 1. Primacy of Customary Law. **All conflicts related to the ancestral domains or lands where one of the parties is a non-ICC/IP** or where the dispute could not be resolved through customary law shall be heard and adjudicated in accordance with the Rules on Pleadings, Practice and Procedures Before the NCIP to be adopted hereafter. (Emphasis supplied.)

As earlier discussed, Section 66 of R.A. No. 8371 is explicit that the NCIP's jurisdiction is confined only to claims and disputes where the parties are both ICCs/IPs. Such being the case, the second paragraph of Rule IX, Section 1 of the IRR of R.A. No. 8371 should be declared null and void because it is contrary to the provision of Section 66 of the IPRA. It is well-settled that an administrative rule or regulation must conform, not contradict, the provisions of the enabling law.¹² A rule or regulation cannot modify, expand, or subtract from the law it is intended to implement.¹³ Any rule that is not consistent with the statute itself is null and void.¹⁴ Since the rule in question is at war with Section 66 of R.A. No. 8371, then it must be excised.

Anent the resolution of the substantive issue in the case at bar, I agree with the *ponencia* that the RTC has jurisdiction over the instant dispute.

¹⁰ Id.

¹¹ *Heirs of Fernando Vinzons v. Court of Appeals*, 315 SCRA 541, 548 (1999).

¹² *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 175707, November 19, 2014.

¹³ Id.

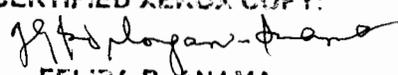
¹⁴ Id.

ACCORDINGLY, I concur to **DENY** the Petition for Review.



PRESBITERO J. VELASCO, JR.
Associate Justice

CERTIFIED XEROX COPY:



FELIZA P. YANAMA
CLERK OF COURT, EN BANC
SUPREME COURT