

decreed that the Municipal Trial Court in Cities committed grave abuse of discretion when it allowed the belated submission of the Judicial Affidavits of the prosecution's witnesses.

Ronald Geralino M. Lim (Ronald) filed before the Office of the City Prosecutor a Complaint⁵ for grave threats against his brother Edwin M. Lim (Edwin). Acting favorably on the Complaint, the Office of the City Prosecutor filed an Information⁶ against Edwin before the Municipal Trial Court in Cities, Branch 5, Iloilo City.⁷ It read:

That on or about November 11, 2012, in the City of Iloilo, Philippines and within the jurisdiction of this Honorable Court, said accused, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and feloniously threaten to kill Ronald Geralino Lim, by uttering threatening words, to wit, "*Pus-on ko ulo mo!*" and "*Patyon ta ikaw*" (I will smash your head!"..., (*sic*) I will kill you) having persisted in said threats.

CONTRARY TO LAW.⁸

On arraignment, Edwin pleaded not guilty to the crime charged.⁹

The case was then referred to the Philippine Mediation Center for mediation. But due to the parties' failure to reach a settlement, the case was referred back to the court.¹⁰

On August 12, 2013, the case was set for pre-trial. However, because of Ronald's and his counsel's absence, pre-trial was reset to September 5, 2013.¹¹

After Edwin's counsel had filed a Motion for time to submit a counter-affidavit, pre-trial was again reset to October 17, 2013.¹²

On October 17, 2013, the defense counsel moved that the hearing be set at 10:00 a.m. However, because the private prosecutor was unavailable and the prosecution needed time to submit their judicial affidavits, pre-trial was reset to November 21, 2013 at 8:30 a.m.¹³

⁵ Id. at 29.

⁶ Id. at 103.

⁷ Id. at 198.

⁸ Id. at 103.

⁹ Id. at 198.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id. at 199.

At the pre-trial on November 21, 2013, the prosecution, among others, moved that they be allowed to submit the Judicial Affidavits of Ronald and their witnesses later that day. It explained that it had completed the Judicial Affidavits earlier, but “for whatever reason,”¹⁴ was not able to submit them.¹⁵ Despite the defense counsel’s insistent opposition, the Municipal Trial Court in Cities granted the Motion and gave the prosecution until 5:00 p.m. that day to submit the judicial affidavits.¹⁶

Aggrieved, Edwin moved for reconsideration.¹⁷ He argued that the prosecution was deemed to have waived its right to submit its Judicial Affidavits when it failed to submit them at least five (5) days before pre-trial.¹⁸

In its December 20, 2013 Order,¹⁹ the Municipal Trial Court in Cities denied Edwin’s Motion. It reasoned that since it had already received the Judicial Affidavits and in the interest of justice, its November 21, 2013 Order stands. Nevertheless, it ordered the prosecution to pay a fine of ₱1,000.00 for its failure to file the Judicial Affidavits within the period prescribed by the Judicial Affidavit Rule.²⁰

On January 29, 2014, Edwin filed before the Regional Trial Court a Petition for Certiorari and Prohibition with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction.²¹ He contended that the Municipal Trial Court in Cities committed grave abuse of discretion when it allowed the belated filing of the Judicial Affidavits.²²

In its Comment,²³ the prosecution argued that the Regional Trial Court did not acquire jurisdiction over them since no summons had been served upon Ronald and the Office of the Solicitor General.²⁴ In addition, they contended that a resort to a petition for certiorari was improper since the remedy of appeal was still available to them.²⁵

In its June 6, 2014 Decision,²⁶ the Regional Trial Court ruled that the Municipal Trial Court in Cities committed grave abuse of discretion when it

¹⁴ Id. at 68.

¹⁵ Id.

¹⁶ Id. at 199.

¹⁷ Id. at 118–127.

¹⁸ Id. at 121.

¹⁹ Id. at 117. The Order was penned by Judge Ofelia M. Artuz of Branch 5, Municipal Trial Court in Cities, Iloilo City.

²⁰ Id.

²¹ Id. at 87–102.

²² Id. at 94.

²³ Id. at 135–144.

²⁴ Id. at 132–133.

²⁵ Id. at 131.

²⁶ Id. at 197–204.

allowed the belated submission of the Judicial Affidavits.²⁷ The dispositive portion of the Decision read:

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

- 1) the orders of the Hon. Ofelia M. Artuz dated November 21, 2013 and December 20, 2013 allowing submission of the Judicial Affidavits belatedly filed by respondents People of the Philippines and Ronald Geralino M. Lim in Crim. Case No. S-140-13 pending before the Municipal Trial Court in Cities, Branch 5, Iloilo City are hereby ordered SET ASIDE; and
- 2) the Judicial Affidavits filed by respondents People of the Philippines and Ronald Geralino M. Lim are hereby ordered EXPUNGE[D] from the records of Crim. Case No. S-140-13.

Furnish parties copy of this order.

SO ORDERED.²⁸

The Regional Trial Court emphasized that under the Judicial Affidavit Rule, the prosecution is required to submit the Judicial Affidavits of its witnesses not later than five (5) days before pre-trial. However, despite several postponements of the pre-trial, the prosecution still failed to comply with the express provision of the Judicial Affidavit Rule.²⁹

The Regional Trial Court further decreed that while the Rule allows late submissions of judicial affidavits for valid reasons, the prosecution's justification—"for whatever reason"—was not a valid ground.³⁰

Dissatisfied with the Decision, the prosecution and Ronald moved for reconsideration,³¹ but the Motion was denied in the Regional Trial Court's August 27, 2014 Order.³²

On September 29, 2014, petitioners filed before this Court a Petition for Review on Certiorari. They argue that the Regional Trial Court did not acquire jurisdiction over them as it had failed to serve the summons and copies of the Petition on Certiorari and Prohibition personally on petitioners. They maintain that under the Rules of Court, summons shall be served upon respondent himself, not his counsel.³³

²⁷ Id. at 203.

²⁸ Id. at 203–204.

²⁹ Id. at 202.

³⁰ Id. at 203.

³¹ Id. at 206–216.

³² Id. at 229–232.

³³ Id. at 13–14.

Petitioners, likewise, argue that since the Office of the Solicitor General is regarded in criminal cases as the appellate counsel of the People of the Philippines, it should have been given an opportunity to be heard on behalf of the People.³⁴

Petitioners similarly contend that the filing of a Petition for Certiorari was improper since the remedy of appeal was available to respondent. They insist that since the prosecution has yet to present its witnesses in the criminal case, any question in the proceedings before the Municipal Trial Court in Cities should have been raised on appeal.³⁵

Petitioners also maintain that the determination of a valid reason for the belated submission of the Judicial Affidavits depends upon the trial court judge's discretion.³⁶

Finally, petitioners insist that respondent's failure to attach to his Petition for Certiorari and Prohibition a copy of the pre-trial's stenographic notes should have prompted the Regional Trial Court to dismiss his Petition outright.³⁷

In its October 15, 2014 Resolution,³⁸ this Court required respondent to file a comment.

In his Comment,³⁹ respondent argues that the Petition for Review should have been instituted by the Office of the Solicitor General as the only party authorized to represent the People of the Philippines in cases brought before the Court of Appeals or this Court.⁴⁰ He stresses that the Petition was not even verified by the People, which is the main party in this case.⁴¹

As to the alleged non-acquisition of jurisdiction over petitioner Ronald, respondent contends that nowhere in the Rules of Court does it require that the summons be served on the respondents in a petition for certiorari. He insists that Rule 65 only states that if the court finds the petition for certiorari to be sufficient in form and substance, it shall issue an order requiring the respondents to comment on it.⁴²

Respondent maintains that contrary to petitioners' assertion, a petition

³⁴ Id.

³⁵ Id. at 14–15.

³⁶ Id. at 18.

³⁷ Id. at 21–23.

³⁸ Id. at 241–242.

³⁹ Id. at 243–268.

⁴⁰ Id. at 243.

⁴¹ Id. at 244.

⁴² Id. at 254.



for certiorari is the proper remedy to assail the November 21, 2013 Order of the Municipal Trial Court in Cities. He claims that it is an interlocutory order from which no appeal may be taken.⁴³

Moreover, respondent insists that the Municipal Trial Court in Cities committed grave abuse of discretion in allowing the Judicial Affidavits' belated submission. He asserts that while the Judicial Affidavit Rule allows their belated submission, the delay must be for a valid reason. He contends that the excuse offered— "for whatever reason"—does not constitute a valid justification warranting the relaxation of the rules.⁴⁴

Finally, respondent claims that his failure to attach the stenographic notes was not a fatal error meriting the dismissal of his Petition for Certiorari and Prohibition. He maintains that his belated submission still constitutes substantial compliance with the rules.⁴⁵

In its February 9, 2015 Order,⁴⁶ this Court required petitioners to file their reply.

In his Reply,⁴⁷ petitioner Ronald reiterates that the Judicial Affidavit Rule does not prohibit the belated submission of judicial affidavits. He insists that the Municipal Trial Court in Cities had the judicial discretion to admit the Judicial Affidavits submitted by petitioners.⁴⁸

In its Reply,⁴⁹ the Office of the Solicitor General, on behalf of petitioner People of the Philippines, argues that while the Petition for Review was defective for petitioner Ronald's failure to secure its conformity, such defect was cured when it manifested its conformity and adopted the Petition as its own.⁵⁰

Additionally, the Office of the Solicitor General argues that the Regional Trial Court erred in taking cognizance of the Petition for Certiorari and Prohibition, maintaining that it is a prohibited pleading under the Rules of Summary Procedure.⁵¹

Thus, for this Court's resolution are the following issues:

⁴³ Id. at 260.

⁴⁴ Id. at 262–264.

⁴⁵ Id. at 266.

⁴⁶ Id. at 274.

⁴⁷ Id. at 292–297.

⁴⁸ Id. at 294.

⁴⁹ Id. at 319–333.

⁵⁰ Id. at 321.

⁵¹ Id. at 325–326.

First, whether or not the Regional Trial Court acquired jurisdiction over petitioners Ronald Geralino M. Lim and People of the Philippines;

Second, whether or not the Petition for Certiorari and Prohibition was the proper remedy to question the November 21, 2013 Order of the Municipal Trial Court in Cities; and

Finally, whether or not the Municipal Trial Court in Cities committed grave abuse of discretion in allowing the belated submission of the Judicial Affidavits.

Petitioners' arguments lack merit.

I

Petitioners mainly argue that since no summons had been served upon them, the Regional Trial Court failed to acquire jurisdiction over them. As a result, they insist that the Regional Trial Court's June 6, 2014 Decision is void.

Contrary to petitioners' postulation, summons need not be issued in a petition for certiorari under Rule 65 of the Rules of Court.

Under the Rules of Court, there are two (2) types of civil actions: (1) ordinary civil actions; and (2) special civil actions. Both are governed by the rules for ordinary civil actions. However, special civil actions, such as petitions for certiorari, are further subject to certain specific rules.⁵²

Rule 65, Section 6 of the Rules of Court states that the court, upon the filing of a petition for certiorari, shall determine if it is sufficient in form and substance. Once it finds the petition to be sufficient, it shall issue an order requiring the respondents to comment on the petition:

SECTION 6. Order to Comment. — If the petition is sufficient in form and substance to justify such process, the court shall issue an order requiring the respondent or respondents to comment on the petition within ten (10) days from receipt of a copy thereof. Such order shall be served on the respondents in such manner as the court may direct, together with a

⁵² RULES OF COURT, Rule 1, sec. 3 provides:

SECTION 3. *Cases Governed.* — These Rules shall govern the procedure to be observed in actions, civil or criminal, and special proceedings.

(a) A civil action is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.

A civil action may either be ordinary or special. Both are governed by the rules for ordinary civil actions, subject to the specific rules prescribed for a special civil action.

copy of the petition and any annexes thereto.

In petitions for certiorari before the Supreme Court and the Court of Appeals, the provisions of Section 2, Rule 56, shall be observed. Before giving due course thereto, the court may require the respondents to file their comment to, and not a motion to dismiss, the petition. Thereafter, the court may require the filing of a reply and such other responsive or other pleadings as it may deem necessary and proper.

Compared with an ordinary civil action, where summons must be issued upon the filing of the complaint,⁵³ the court need only issue an order requiring the respondents to comment on the petition for certiorari. “Such order shall be served on the respondents in such manner as the court may direct, together with a copy of the petition and any annexes thereto.”⁵⁴

In any case, despite petitioners’ insistence that they were not served with summons, it must be noted that on January 29, 2014, the Regional Trial Court served the summons and a copy of the Petition on petitioner Ronald, through his counsel Attorney Alfredo Arungayan III (Atty. Arungayan).⁵⁵

Similarly, the People of the Philippines, as represented by the City Prosecutor of Iloilo City, and Judge Ofelia M. Artuz, through her Branch Clerk of Court, were served with summons and copies of the Petition on January 30, 2014.⁵⁶

Furthermore, it must be stressed that in *People’s General Insurance Corporation v. Guansing*,⁵⁷ this Court reasoned that when a party participates in a proceeding despite improper service of summons, he or she is deemed to have voluntarily submitted to the court’s jurisdiction.

Here, petitioners filed before the Regional Trial Court a Comment/Opposition to the prayer for the issuance of a temporary restraining order⁵⁸ on January 30, 2014 and a Comment/Opposition to the Petition⁵⁹ on February 10, 2014. By actively participating in the proceedings, petitioners are deemed to have made a voluntary appearance and cannot argue that the Regional Trial Court did not acquire jurisdiction over them.

⁵³ RULES OF COURT, Rule 14, sec. 1 provides:

SECTION 1. Clerk to Issue Summons. — Upon the filing of the complaint and the payment of the requisite legal fees, the clerk of court shall forthwith issue the corresponding summons to the defendants.

⁵⁴ RULES OF COURT, Rule 65, sec. 6.

⁵⁵ *Rollo*, p. 269.

⁵⁶ *Id.*

⁵⁷ G.R. No. 204759, November 14, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64769>> [Per J. Leonen, Third Division].

⁵⁸ *Rollo*, pp. 128–134.

⁵⁹ *Id.* at 135–144.

Finally, petitioners argue that the Office of the Solicitor General should have been served with a copy of the Petition for Certiorari and Prohibition. However, under the Rules of Court, when a petition for certiorari is filed assailing an act of a judge, the petitioner in the main action shall be included as a private respondent, and is then mandated to appear and defend both on his or her own behalf and on behalf of the public respondent affected by the proceedings. The public respondent shall not be required to comment on the petition unless required by the court. Rule 65, Section 5 of the Rules of Court provides:

SECTION 5. Respondents and Costs in Certain Cases. — *When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings.* and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.

Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein. (Emphasis supplied)

II

This Court shall discuss the second and third issues simultaneously as they are interrelated with each other.

Settled is the rule that “the remedies of appeal and certiorari are mutually exclusive and not alternative or successive.”⁶⁰ When the remedy of appeal is available to a litigant, a petition for certiorari shall not be entertained and should be dismissed for being an improper remedy.⁶¹

Under the Rules of Court, an appeal is a remedy directed against a “judgment or final order that completely disposes of the case, or of a

⁶⁰ *Rigor v. Court of Appeals*, 526 Phil. 852, 858 (2006) [Per J. Garcia, Second Division].

⁶¹ *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, 479 Phil. 768, 782 (2004) [Per J. Panganiban, Third Division].

particular matter therein when declared by these Rules to be appealable.”⁶²
It cannot be availed of against an interlocutory order.⁶³

In *Denso (Philippines), Inc. v. The Intermediate Appellate Court*,⁶⁴ this Court distinguished a final order or judgment from an interlocutory order:

The concept of ‘final’ judgment, as distinguished from one which has ‘become final’ (or ‘executory’ as of right [final and executory]), is definite and settled. A ‘final’ judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res judicata* or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties’ next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes ‘final’ or, to use the established and more distinctive term, ‘final and executory.’

....

Conversely, an order that does not finally dispose of the case, and does not end the Court’s task of adjudicating the parties’ contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is ‘interlocutory,’ e.g., an order denying a motion to dismiss under Rule 16 of the Rules, or granting a motion for extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for

⁶² RULES OF COURT, Rule 41, sec. 1 provides:

SECTION 1. Subject of Appeal. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

⁶³ RULES OF COURT, Rule 41, sec. 1 provides:

SECTION 1. Subject of Appeal. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

- (a) An order denying a motion for new trial or reconsideration;
- (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
- (c) An interlocutory order;

....

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

⁶⁴ 232 Phil. 256 (1987) [Per J. Narvasa, First Division].

postponement, or production or inspection of documents or things, etc. Unlike a ‘final’ judgment or order, which is appealable, as above pointed out, an ‘interlocutory’ order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.⁶⁵ (Citation omitted)

In contrast, a petition for certiorari is a remedy directed not only to correct errors of jurisdiction, “but also to set right, undo[,] and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government[.]”⁶⁶ As ruled in *Cruz v. People*:⁶⁷

The writ of certiorari is not issued to correct every error that may have been committed by lower courts and tribunals. It is a remedy specifically to keep lower courts and tribunals within the bounds of their jurisdiction. In our judicial system, the writ is issued to prevent lower courts and tribunals from committing grave abuse of discretion in excess of their jurisdiction. Further, the writ requires that there is no appeal or other plain, speedy, and adequate remedy available to correct the error. Thus, certiorari may not be issued if the error can be the subject of an ordinary appeal. . . .

....

An essential requisite for filing a petition for certiorari is the allegation that the judicial tribunal acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion has been defined as a “capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law.”⁶⁸ (Citations omitted)

In *Cruz*, the petitioners filed before the Court of Appeals a Petition for Certiorari assailing the Regional Trial Court Order. The trial court denied their Motion to release cash bond after the case was dismissed due to the private complainant’s desistance. The Court of Appeals eventually dismissed the Petition on the ground that it was an improper remedy.⁶⁹

There, this Court reversed the Court of Appeals Decision and ruled that the Regional Trial Court’s noncompliance with the Rules of Court constituted grave abuse of discretion, the proper remedy against which is a petition for certiorari under Rules 65 of the Rules of Court.⁷⁰

⁶⁵ Id. at 263–264.

⁶⁶ *Araullo v. Aquino III*, 737 Phil. 457, 531 (2014) [Per J. Bersamin, En Banc].

⁶⁷ 812 Phil. 166 (2017) [Per J. Leonen, Second Division].

⁶⁸ Id. at 171–173.

⁶⁹ See *Cruz v. People*, 812 Phil. 166 (2017) [Per J. Leonen, Second Division].

⁷⁰ Id.

Similarly, here, the Municipal Trial Court in Cities committed grave abuse of discretion in blatantly disregarding the clear wording of A.M. No. 12-8-8-SC, or the Judicial Affidavit Rule. The Rule is explicit: the prosecution is mandated to submit the judicial affidavits of its witnesses not later than five (5) days before pre-trial. Should they fail to submit them within the time prescribed, they shall be deemed to have waived their submission. Section 9 of the Judicial Affidavit Rule provides:

SECTION 9. Application of Rule to Criminal Actions. — (a) This rule shall apply to all criminal actions:

....

(b) *The prosecution shall submit the judicial affidavits of its witnesses not later than five days before the pre-trial, serving copies of the same upon the accused.* The complainant or public prosecutor shall attach to the affidavits such documentary or object evidence as he may have marking them as Exhibits A, B, C, and so on. No further judicial affidavit, documentary, or object evidence shall be admitted at the trial.

....

SECTION 10. Effect of Non-Compliance with the Judicial Affidavit Rule. — (a) *A party who fails to submit the required judicial affidavits and exhibits on time shall be deemed to have waived their submission.* The court may, however, allow only once the late submission of the same provided, the delay is for a valid reason, would not unduly prejudice the opposing party, and the defaulting party pays a fine of not less than P1,000.00 nor more than P5,000.00, at the discretion of the court.

Nevertheless, if the belated submission of judicial affidavits has a valid reason, the court may allow the delay once as long as it “would not unduly prejudice the opposing party, and the defaulting party pays a fine of not less than P1,000.00 nor more than P5,000.00, at the discretion of the court.”⁷¹

Here, the Municipal Trial Court in Cities allowed the prosecution’s belated submission of their Judicial Affidavits despite the repeated postponements of the scheduled pre-trial. To recall, the pre-trial was reset thrice: from August 12, 2013 to September 5, 2013, then to October 17, 2013, and finally, to November 21, 2013. In spite of that, the prosecution failed to submit their Judicial Affidavits within the time prescribed by the Rule. Its excuse—“for whatever reason”—cannot be considered sufficient to allow the belated submission of the Judicial Affidavits.

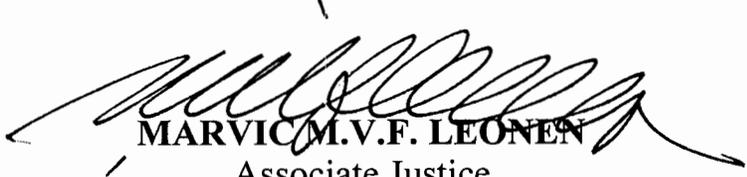
WHEREFORE, the Petition is **DENIED**. The June 6, 2014 Decision and August 27, 2014 Order of the Regional Trial Court in Special Civil

⁷¹ JUDICIAL AFFIDAVIT RULE, sec. 10(b).

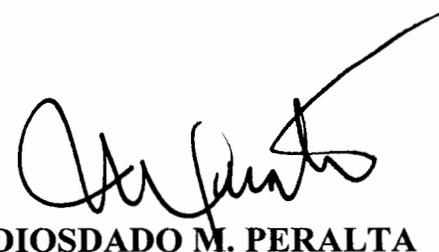


Action No. 14-32157 are **AFFIRMED**.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Associate Justice
Chairperson

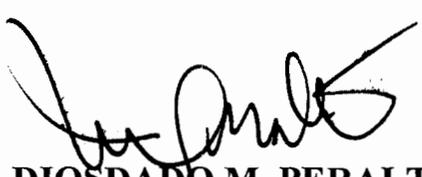

ANDRES B. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


DIOSDADO M. PERALTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



LUCAS P. BERSAMIN
Chief Justice