



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

ANDRE CHARLES NAGEL,  
Petitioner,

G.R. No. 244737

Present:

- versus -

LEONEN, J., Chairperson,  
LAZARO-JAVIER,\*  
LOPEZ, M.  
LOPEZ, J., and  
KHO, JR., JJ.

THE BOARD OF  
COMMISSIONERS, BUREAU  
OF IMMIGRATION,  
Respondent.

Promulgated:

OCT 23 2023

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DECISION

KHO, JR., J.:

Assailed in this Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 are the Resolutions dated December 14, 2017<sup>2</sup> and June 13, 2018,<sup>3</sup> rendered by the Court of Appeals (CA) in CA-G.R. SP No. 153174, which dismissed the Petition for Review filed by petitioner Andre Charles Nagel<sup>4</sup> (Nagel), a Dutch national, for non-exhaustion of administrative remedies and/or for being an improper remedy. Nagel appealed directly to the CA to question the Resolutions dated December 8, 2016<sup>5</sup> and September 7, 2017<sup>6</sup> rendered by the

\* On official business.

<sup>1</sup> *Rollo*, pp. 12-32.

<sup>2</sup> *Id.* at 38. Rendered by the Former Special Second Division composed of Associate Justices Rosmari D. Carandang (a retired member of this Court), Stephen C. Cruz, and Nina G. Antonio-Valenzuela

<sup>3</sup> *Id.* at 36-37. Penned by Associate Justice Stephen C. Cruz with Associate Justices Rosmari D. Carandang and Nina G. Antonio-Valenzuela, concurring.

<sup>4</sup> Also referred to as "Nagel Andre Charles" in some parts of the *rollo*.

<sup>5</sup> *Rollo*, pp. 59-64.

<sup>6</sup> *Id.* at 78-78A.

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Bureau of Immigration (BI)'s Board of Commissioners (BOC-BI), finding him an undesirable alien and ordering his deportation.

### The Facts

The case stemmed from a Complaint filed<sup>7</sup> before the BI by Michelle G. Duenas (Duenas), a Filipina and former wife of Nagel, seeking the latter's deportation. She alleged that Nagel has contracted three marriages in Asia: *first*, with Mychel Rebutillo (Rebutillo), a Filipina, on March 14, 2000 in Caloocan City; *second*, in 2005 in Taiwan; and *third*, with Duenas on August 20, 2008 in Makati City, which was annulled on November 26, 2010. With Nagel's propensity to marry without getting the previous marriages annulled first, Duenas claimed that such is an overt manifestation of his undesirability as he made a mockery of Philippine laws.<sup>8</sup>

Special Prosecutor Laarni Rycelle B. Mendoza-Gabriana (SP Mendoza-Gabriana), BI's legal division, ordered Nagel to submit his counter-affidavit to Duenas' Complaint, which he did. Thereafter, SP Mendoza-Gabriana filed the charge sheet dated November 12, 2015 against Nagel before the Board of Special Inquiry (BSI) for: (1) violation of the conditions/limitations of his stay in the country as a non-immigrant under Section 37(a)(7) of the Commonwealth Act No. 613, otherwise known as "The Philippine Immigration Act of 1940," as amended (Immigration Act); and (2) undesirability under Section 69<sup>9</sup> of Act No. 2711 or the Revised Administrative Code of 1917, committed as follows:

On 18 February 2010, the Board of Commissioners (BOC) granted NAGEL ANDRE CHARLES (NAGEL)'s permanent residence visa under CA 613, Section 13(a) being married to Michelle Duenas (Duenas), a Filipina.

On 15 September 2015, due to an entry of Judgment declaring the marriage between NAGEL and Duenas as null and void for being bigamous, the Commissioner approved NAGEL's CA 613, Section 13(a) visa downgrading application to Temporary Visitor's Visa with an Order to secure appropriate visa within 30 days from receipt. But, records show that NAGEL failed to comply.

On 04 September 2015, Duenas filed a complaint against him for posing harm to her life and for contracting a bigamous marriage.

<sup>7</sup> Filed on September 4, 2015.

<sup>8</sup> *Rollo*, p. 59.

<sup>9</sup> SECTION 69. *Deportation of subject of foreign power.* — A subject of a foreign power residing in the (Philippine Islands) Philippines shall not be deported, expelled, or excluded from said Islands or repatriated to his own country by the (Governor-General) President of the Philippines except upon prior investigation, conducted by said Executive or his authorized agent, of the ground upon which such action is contemplated. In such case the person concerned shall be informed of the charge or charges against him and he shall be allowed not less than three days for the preparation of his defense. He shall also have the right to be heard by himself or counsel, to produce witnesses in his own behalf, and to cross-examine the opposing witnesses.

NAGEL poses a risk to public interest.<sup>10</sup>

On December 11, 2015, SP Mendoza-Gabriana transmitted her Memorandum together with Nagel's deportation case file to the BSI, which then issued an order to Nagel to submit his memorandum to the charge sheet, to which he complied.<sup>11</sup>

### The BOC-BI Ruling

In a Resolution<sup>12</sup> dated December 8, 2016, the BOC-BI, acting upon the BSI's recommendation, declared Nagel an undesirable alien and accordingly, ordered that he be deported.<sup>13</sup>

The BOC ruled that substantial evidence exists that Nagel committed bigamy. It is not disputed that Nagel's marriage to Rebutillo was only declared null on September 18, 2012, while Nagel married Duenas on August 20, 2008.<sup>14</sup> It further stated that the subsequent nullification of marriage with Rebutillo did not erase the fact that Nagel was married at the time of his marriage to Duenas.<sup>15</sup>

The BOC-BI added that under BI's Operations Order No. SBM-2014-048 entitled "Acts or Omissions that Constitute Undesirability of Foreign Nationals," "the commission of any act or omission constituting criminal offense punishable by imprisonment of one (1) year or more shall deem a foreign national as undesirable" which only requires substantial evidence to prove undesirability.<sup>16</sup>

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<sup>10</sup> *Rollo*, p. 59.

<sup>11</sup> *Id.* at 61.

<sup>12</sup> *Id.* at 59-64.

<sup>13</sup> *Id.* at 63. The dispositive portion reads:

**WHEREFORE**, We DISMISS the deportation case against **NAGEL ANDRE CHARLES**, a Dutch (NDL) national, for violation of the condition/limitation of his stay as a non immigrant under CA 613, Section 37(a)(7) for lack of merit. However, We find him an UNDESIRABLE alien under Act 2711, Section 69 in relation to Operations Order No. SBM-2014-048 and ORDER the following:

1. His deportation to the Netherlands subject to the submission of appropriate clearances;
2. His inclusion in the BI's Blacklist thereby barring his re-entry to country. He may apply for the deletion of his name therefrom FIVE years from date of actual implementation of his deportation order; and
3. The ARD to cancel his ACR I Card, if any.

For the purpose of implementing this Resolution, Watchlist Order No. SBM-15-058 against NAGEL is ORDERED LIFTED.

<sup>14</sup> *Id.* at 62. *See also*, petition, *id.* at 14-15.

<sup>15</sup> *Id.* at 62.

<sup>16</sup> *Id.* at 62.

*File*

The BOC-BI noted that the Constitution recognized the sanctity of family life, and the protection and strengthening of family as a basic autonomous social institution, and that marriage is the foundation of the family and an inviolable one. Therefore, the propensity of Nagel in contracting illegal marriages is a risk to public interest as it is against public policy.<sup>17</sup>

Aggrieved, Nagel sought partial reconsideration<sup>18</sup> and argued that: (i) he has not been found guilty of bigamy by a competent court or was he even indicted for bigamy; and (ii) the case should have been dismissed outright based on Part II, Rule 2, Sec 7(c)<sup>19</sup> of Immigration Memorandum Circular No. SBM 2015-010, which states that a complaint alleging a crime or felony other than the specific acts mentioned in Section 37(a) of the Immigration Act shall be recommended for immediate dismissal, considering that bigamy is not one of those listed under Section 37(a) thereof. He added that he has no criminal intent to commit the crime of bigamy and excused himself in that Rebutillo informed him that by not cohabiting and communicating for the next seven years, their marriage would be automatically voided. He also claimed that he demonstrated his obedience to law and legal process by filing for the nullity of his marriage to Rebutillo after learning that it was not automatically voided and applied for a visa downgrade after the annulment. Further, as the biological father of a Filipino minor, he cannot be deprived of the custody and care of his child and that the minor has the right to be supported, cared for and visited by his biological father. He further argued that has never been a public charge nor liability to the state and while his married life was difficult, this does not make him any less of a good person nor undesirable.<sup>20</sup>

The BSI recommended the granting of the motion but the BOC-BI rejected the recommendation in a Resolution<sup>21</sup> dated September 7, 2017. The BOC-BI maintained that Nagel's undesirability was established by substantial evidence, particularly, the existence of two marriages that was proven in court as there were two decisions on the annulment of Nagel's marriages contracted here in the Philippines. According to the BOC-BI, Nagel has been shown to have trifled with the sanctity of marriage under Philippine laws.<sup>22</sup>

Aggrieved, Nagel filed a Rule 43 Petition for Review before the CA.

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<sup>17</sup> *Id.* at 62–63.

<sup>18</sup> *Id.* at 65–77.

<sup>19</sup> Section 7. Action on the Complaint. –

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c. A Complaint alleging a crime or felony other than the specific offenses mentioned in Section 37 (a) of Commonwealth Act No. 613, as amended, shall be recommended for immediate dismissal. Such complaint may be referred by the BI to appropriate government agency.

<sup>20</sup> *Rollo*, p. 78.

<sup>21</sup> *Id.* at 78–78A.

<sup>22</sup> *Id.* at 78A.

### The CA Ruling

In a Resolution<sup>23</sup> dated December 14, 2017, the CA dismissed the Petition for non-exhaustion of administrative remedies and/or for being an improper remedy. Moreover, Nagel did not allege in his Petition the presence of any exceptions to the non-exhaustion of administrative remedies.

Nagel then sought reconsideration<sup>24</sup> wherein he explained his failure as “honest inadvertence”<sup>25</sup> and pointed out that his case is an exception warranting direct judicial recourse because: (a) the BOC-BI has no jurisdiction over the Complaint for bigamy; (b) the BOC-BI violated basic precepts of fair play and due process; (c) he stands to suffer the great and irreparable damage of being deprived of his natural right over his minor daughter; (d) there was extreme urgency; (e) he has no other plain, speedy, and adequate remedy.<sup>26</sup>

The CA denied the reconsideration in a Resolution<sup>27</sup> dated June 13, 2018 because Nagel did not raise any new or substantial ground or reason that would call for the reversal of the earlier ruling. Hence, this Petition.

### The Issue Before the Court

The core issue for the Court’s resolution is whether the CA correctly dismissed the Rule 43 Petition filed by Nagel for failure to exhaust administrative remedies.

Nagel argues that he has presented facts and circumstances which would warrant his direct recourse to the CA, reiterating the grounds<sup>28</sup> he raised before the same. He adds that it was an error on the part of the CA to sustain the findings of the BOC-BI that he is an undesirable alien and maintains that the BOC-BI has no authority to adjudge Nagel of bigamy.

For its part, the BOC-BI, represented by the Office of the Solicitor General, points out in its Comment<sup>29</sup> that: (1) Nagel’s Petition includes questions of facts — that Nagel did not intend to commit the crime of bigamy and he was obedient and respectful of Philippine laws — and he has not set forth special reasons for this Court to re-examine findings of fact which the CA did not even pass upon; (2) Nagel failed to exhaust administrative remedies; and (3) Nagel was correctly found as an undesirable alien.

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<sup>23</sup> *Id.* at 38.

<sup>24</sup> *Id.* at 101-111.

<sup>25</sup> *Id.* at 102.

<sup>26</sup> *Id.* at 102.

<sup>27</sup> *Id.* at 36-37.

<sup>28</sup> *Id.* at 36-37.

<sup>29</sup> *Id.* at 264-283.

In his Reply,<sup>30</sup> Nagel argues that his case falls under the exception where this Court can re-evaluate factual matters because he questioned the unlawful acts of BOC-BI and raised the violation of his due process rights. He then reiterates his position in the Petition.

### The Court's Ruling

The Petition is without merit.

Prefatorily, it must be emphasized that this Court is not a trier of facts and a petition for review on *certiorari* is limited to reviewing questions of law, subject to this Court's discretion and other exceptions recognized in case law.<sup>31</sup> Any claim to these exceptions must be alleged, substantiated, and proved by the parties before this Court may evaluate and review the facts of the case.<sup>32</sup>

Here, while Nagel claimed that he is raising pure questions of law,<sup>33</sup> nowhere in his Petition can it be concluded that he indeed raises questions of law. In fact, he raised only questions of fact. *First*, he assailed the CA twin resolutions dismissing his Petition for Review for failure to exhaust administrative remedies alleging that he presented his claim for exception. *Second*, Nagel assigned as an error the CA's affirmation of the BOC-BI ruling declaring him as undesirable alien. *Third*, the CA erred in upholding the BOC-BI's finding that Nagel is "guilty" of bigamy. *Lastly*, the CA erred in affirming the BOC-BI's ruling which essentially deprives Nagel parental rights over his minor child and cannot enter the Philippines and exercise visitorial rights over his minor child as a consequence of him being declared an undesirable alien.<sup>34</sup> For raising only questions of fact, the Petition should be dismissed.

Even if the Court disregards the aforesaid procedural mishap committed by Nagel, a perusal of the records would readily show that the CA did not commit reversible error in dismissing Nagel's Rule 43 Petition on the ground of non-exhaustion of administrative remedies.

In *Magalang v. PAGCOR*,<sup>35</sup> the Court, through Justice Martin S. Villarama, Jr., had the opportunity to reiterate the doctrine of exhaustion of administrative remedies, as follows:

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<sup>30</sup> *Id.* at 287-293.

<sup>31</sup> *See Pascual v. Burgos*, 776 Phil. 167, 169 (2016) [Per J. Leonen, Second Division].

<sup>32</sup> *Id.*

<sup>33</sup> *Rollo*, p. 12.

<sup>34</sup> *Id.* at 20.

<sup>35</sup> 723 Phil. 546 (2013) [Per J. Villarama, First Division].

*File*

Under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her. Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case.<sup>36</sup>

Verily, noncompliance with this doctrine leads to the dismissal of a case filed before the judicial courts.

In this case, it is undisputed that Nagel filed a Rule 43 Petition for Review to challenge the ruling of the BOC-BI. In this regard, case law instructs that the following remedies are available to assail an adverse ruling of the BOC-BI, namely: (a) an appeal directly to the CA via Rule 43 provided that he shows that any of the exceptions to the exhaustion doctrine are attendant; (b) absent any of the exceptions, he may exhaust the available administrative remedies within the executive machinery, namely, an appeal to the Secretary of Justice and then to the Office of the President (OP), and thereafter, appeal the OP's decisions via Rule 43; or (c) he may directly resort to *certiorari* before the CA strictly on jurisdictional grounds, provided that he explains why any of the aforementioned remedies cannot be taken as adequate and speedy.<sup>37</sup>

Thus, it was incumbent upon Nagel to prove that any of the acceptable exceptions to the doctrine of the exhaustion of administrative remedies are present. To be sure, these exceptions are: (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy, and (11) when there are circumstances indicating the

<sup>36</sup> *Id.* at 556-557, citing *Laguna Lake Development Authority v. SM Prime Holdings, Inc.*, 645 Phil. 324, 331 (2010) [Per J. Peralta, Second Division].

<sup>37</sup> *See Tze Sun Wong v. Wong*, 749 Phil. 206, 219 (2014) [J. Perlas-Bernabe, First Division].

urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant; (12) when no administrative review is provided by law; (13) when the rule of qualified political agency applies; and (14) when the issue of non-exhaustion of administrative remedies has been rendered moot.<sup>38</sup>

According to Nagel, his direct resort to judicial courts (and in effect, bypassing the administrative machinery) is warranted by the following circumstances: (a) the BOC has no jurisdiction over the Complaint for bigamy; (b) the BOC violated basic precepts of fair play and due process; (c) he stands to suffer the great and irreparable damage of being deprived of his natural right over his minor daughter; (d) extreme urgency; and (e) he has no other plain, speedy, and adequate remedy.

Nagel's assertions are untenable.

As regards the *first* circumstance, the BOC-BI did not find him guilty of bigamy but merely ruled that he is an undesirable alien because there is substantial evidence to support his undesirability due to having bigamous marriage as shown by two court rulings on record annulling his two marriages.

At this juncture, it must be pointed out that Nagel need not be convicted in a criminal prosecution for bigamy before the BOC-BI may rule that he is an undesirable alien on the ground that he committed bigamy. It bears stressing that criminal and civil cases are altogether different from administrative matters, such that the disposition in the first two types of cases will not inevitably govern the third.<sup>39</sup>

It is well to reiterate that this case stemmed from a deportation proceeding filed against Nagel. Thus, the BI, through the BOC-BI, is the agency that can best determine whether an alien violated immigration laws. In this jurisdiction, courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under their special technical knowledge and training. By reason of the special knowledge and expertise of administrative departments over matters falling within their jurisdiction, they are in a better position to pass judgment thereon and their findings of fact in that regard are generally accorded respect, if not finality, by the courts.<sup>40</sup> Hence, absent any grave error, the BOC-BI's determination that Nagel should be deported for being an undesirable alien should not be disturbed.

<sup>38</sup> *Magalang v. PAGCOR*, 723 Phil. 546, 557 (2013) [Per J. Villarama, First Division], *citing Hongkong & Shanghai Banking Corp., Ltd. v. G.G. Sportswear Mfg. Corp.*, 523 Phil. 245, 253-254 (2006) [Per J. Corona, Second Division].

<sup>39</sup> A.C. No. 12298, September 1, 2020 [*Per Curiam, En Banc*].

<sup>40</sup> *Go v. Bureau of Immigration*, 761 Phil. 223, 241 (2015) [Per J. Peralta, Third Division], *citing Tze Sun Wong v. Kenny Wong, supra* note 37.

Anent the *second* circumstance, it is well to reiterate that deportation proceedings are administrative in character, summary in nature, and need not be conducted strictly in accordance with the rules of ordinary court proceedings. The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.<sup>41</sup> Here, Nagel has participated in every aspect of the proceedings: he submitted a Counter-Affidavit to the Affidavit-Complaint filed by Duenas; he submitted his memorandum to the charge sheet; he was able to file a motion for reconsideration from the BOC-BI's resolution. Hence, he was not deprived of due process.

*Third*, Nagel's argument, which he first raised in his Motion for Partial Reconsideration before the BOC-BI, that his case should have been dismissed outright pursuant to Immigration Memorandum Circular No. SBM-2015-010 and the erroneous application by the BOC-BI of BI Operations Order No. SBM-2014-048 is exactly a question best addressed to the agency having supervisory power over it, that is, the Department of Justice.<sup>42</sup> This is why Nagel should have exhausted available administrative remedies.

In *Kilusang Mayo Uno v. Aquino III*,<sup>43</sup> citing *Social Security Commission v. Court of Appeals*,<sup>44</sup> the Court, through now Senior Associate Justice Marvic M.V.F. Leonen, explained that the reason for the doctrine of exhaustion of administrative remedies "rests upon the presumption that the administrative body, if given the chance to correct its mistake or error, may amend its decision on a given matter and decide it properly. The principle insures orderly procedure and withholds judicial interference until the administrative process would have been allowed to duly run its course. This is but practical since availing of administrative remedies entails lesser expenses and provides for a speedier disposition of controversies. Even comity dictates that unless the available administrative remedies have been resorted to and appropriate authorities given an opportunity to act and correct the errors committed in the administrative forum, judicial recourse must be held to be inappropriate, impermissible, premature, and even unnecessary."<sup>45</sup> Verily, Nagel's failure to exhaust administrative remedies is fatal to his cause.

*Finally*, contrary to his claim of extreme urgency, there is nothing on record that there is already imminence in his deportation. There is no warrant

<sup>41</sup> *Go, Sr. v. Ramos*, 614 Phil. 451, 479-480 (2009) [J. Quisumbing, Second Division].

<sup>42</sup> See Title III, Chapter I, Section 4 of Executive Order No. 292 or The Administrative Code of 1987.

<sup>43</sup> 850 Phil. 1168 (2019) [Per J. Leonen, *En Banc*].

<sup>44</sup> 482 Phil. 449 (2004) [Per C.J. Davide, First Division].

<sup>45</sup> *Kilusang Mayo Uno v. Aquino III*, *supra* note 43, at 1196-1197.

for deportation yet which may be considered as urgent. Moreover, recourse to the Secretary of Justice is a speedy and adequate remedy. Hence, the Court finds that Nagel has no valid reason to seek immediate judicial relief and bypass the administrative machinery.

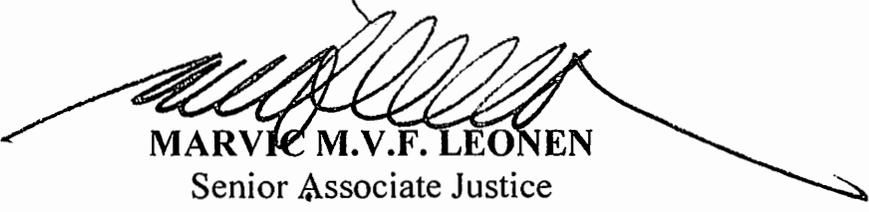
**ACCORDINGLY**, the Petition is **DENIED**. The Resolutions dated December 14, 2017 and June 13, 2018 rendered by the Court of Appeals in CA-G.R. SP No. 153174 are hereby **AFFIRMED**.

**SO ORDERED.**



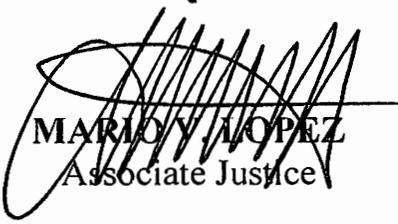
**ANTONIO T. KHO, JR.**  
Associate Justice

**WE CONCUR:**



**MARVIC M.V.F. LEONEN**  
Senior Associate Justice  
Division Chairperson

On official business  
**AMY C. LAZARO-JAVIER**  
Associate Justice



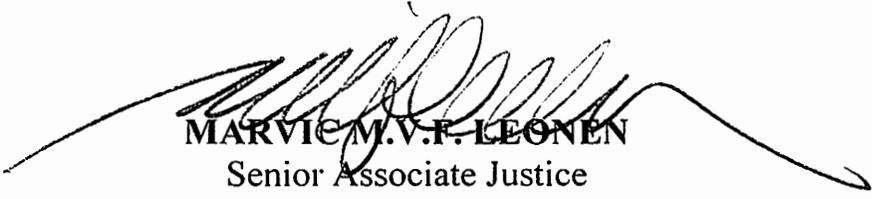
**MARIO Y. LOPEZ**  
Associate Justice



**JHOSEP Y. LOPEZ**  
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.



**MARVIC M.V.F. LEONEN**  
Senior Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Article VIII, Section 13 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.



**ALEXANDER G. GESMUNDO**  
Chief Justice