



Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
 PUBLIC INFORMATION OFFICE

**RECEIVED**  
 AUG 12 2022  
 BY: R. SANTANA  
 TIME: 10:10

**FIRST DIVISION**

**FELICITAS AGUILAR  
 BOLLOZOS,**

Petitioner,

- versus -

**HEIRS OF LUISA ABRIO VDA.  
 DE AGUILAR represented by  
 FLORENTINO DIPUTADO,**  
 Respondents.

**G.R. No. 194310**

Present:

GESMUNDO, *C.J.*,  
 Chairperson,  
 CAGUIOA,  
 INTING,  
 GAERLAN, and  
 DIMAAMPAO, *JJ.*

Promulgated:  
**MAR 29 2022**

X-----X

**DECISION**

**GAERLAN, J.:**

Before this Court is a petition for review on *certiorari*<sup>1</sup> filed by petitioner Felicitas Aguilar Bollozos (petitioner) under Rule 45 of the Rules of Court, seeking to annul and set aside the Resolution<sup>2</sup> dated June 30, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 02919-MIN denying the due course to the petition for *certiorari* therein filed; and its Resolution<sup>3</sup> dated September 23, 2010 denying the motion for reconsideration thereof.

**The Antecedent Facts**

On December 28, 2007, respondent Florentino Diputado (respondent Diputado), in his capacity as the named executor in the will, filed a Verified

<sup>1</sup> *Rollo*, pp. 4-42.

<sup>2</sup> *Id.* at 143-145. Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Edgardo T. Lloren and Ruben C. Ayson concurring.

<sup>3</sup> *Id.* at 157. Penned by Associate Justice Edgardo T. Lloren with Associate Justices Edgardo A. Camello and Angelita A. Gacutan concurring.

Petition<sup>4</sup> for the probate of the will<sup>5</sup> of Luisa Abrío Vda. de Aguilar (Vda. de Aguilar) before the Regional Trial Court (RTC) of Misamis Oriental, Branch 17.

In an Order<sup>6</sup> dated January 7, 2008, the RTC set the petition for hearing on February 13, 2008, required all interested parties to appear and show cause on even date why the petition should not be granted, and ordered the publication of the same Order once a week for three (3) consecutive weeks in a newspaper of general circulation in the City of Cagayan de Oro and the Province of Misamis Oriental.<sup>7</sup>

On January 28, 2008, the petitioner, claiming to be the daughter and the sole surviving heir of Vda. de Aguilar filed an *Opposition with Motion to Dismiss for Lack of Jurisdiction*<sup>8</sup> grounded on non-payment of the proper docket fees.<sup>9</sup> On October 23, 2008, the RTC issued a Resolution<sup>10</sup> denying the petitioner's Opposition.

Thereafter, the petitioner filed two motions' first, seeking reconsideration of the October 23, 2008 Resolution, and second, a *Motion to Make Definite Appraisal of Estate Value* which was filed on February 27, 2009.<sup>11</sup> Both motions were denied by the RTC in its Orders dated March 10, 2009<sup>12</sup> and April 21, 2009,<sup>13</sup> respectively.

The petitioner then filed a petition for *certiorari*<sup>14</sup> before the CA assailing the Orders dated March 10, 2009 and April 21, 2009. Petitioner alleged that the RTC committed grave abuse of discretion when it assumed jurisdiction despite the respondent's deficient payment of docket fees and defective publication, and when it denied the motion to make a definite appraisal value of the estate.<sup>15</sup>

The petitioner argued that while the *Verified Petition* alleged the total approximate assessed value of the estate as ₱1,000,000.00, the same is belied by tax declarations of the declared properties of the decedent which indicated a total market value of ₱6,595,616.00. In this regard, the payment

---

<sup>4</sup> Id. at 46-48.

<sup>5</sup> Id. at 49-52.

<sup>6</sup> Id. at 54. Penned by Presiding Judge Florencia D. Sealana-Abbu.

<sup>7</sup> Id. at 5.

<sup>8</sup> Id. at 55-69.

<sup>9</sup> Id. at 6, 55.

<sup>10</sup> Id. at 93-96.

<sup>11</sup> Id. at 7.

<sup>12</sup> Id. at 115-116.

<sup>13</sup> Id. at 117.

<sup>14</sup> Id. at 118-139.

<sup>15</sup> Id. at 111-139.

of docket fees based on the lower amount is insufficient and does not vest jurisdiction upon the RTC.<sup>16</sup>

The petitioner also assailed the denial by the RTC of her motion for definite appraisal, claiming that the issue of whether the docket fees paid were deficient is best resolved at the earliest stages of the case because docket fees are the lifeblood of the judicial system.<sup>17</sup>

Lastly, the petitioner argued that there should be a republication of the notice for hearing after the initial date set was postponed and scheduled anew.<sup>18</sup>

The CA, through its Resolution<sup>19</sup> dated June 30, 2009 denied due course to the petition on account of petitioner's failure to file a motion for reconsideration before resorting to a special civil action for *certiorari*.<sup>20</sup> The *fallo* of the Resolution reads:

**WHEREFORE**, premises considered, the instant petition is hereby **DISMISSED**.

**SO ORDERED.**<sup>21</sup>

On September 23, 2010, the CA in its Resolution<sup>22</sup> denied the petitioner's Motion for Reconsideration. Thus, this petition for review on *certiorari* whereby the petitioner assigns the following errors committed by the CA:

- I. THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR AFFECTING THE VALIDITY OF ITS JUDGMENT AND SUBSTANTIAL JUSTICE IN FINDING THAT THERE WAS NO MOTION FOR RECONSIDERATION FILED OR THAT ONE WAS NEEDED.
- II. THE HONORABLE COURT OF APPEALS HAS DECIDED AS WELL QUESTIONS OF SUBSTANCE NOT HERETOFORE DETERMINED BY THE HONORABLE SUPREME COURT; NAMELY:

[A]. IN ALLOWING A DEPARTURE FROM THE RULES ON JUDICIAL PROCEEDINGS REQUIRING FULL PAYMENT OF

---

<sup>16</sup> Id. at 128-131.

<sup>17</sup> Id. at 133.

<sup>18</sup> Id. at 134-138.

<sup>19</sup> Supra note 2.

<sup>20</sup> *Rollo*, p. 114.

<sup>21</sup> Id. at 145.

<sup>22</sup> Supra note 3.

DOCKET FEES WHEN RECORDS SHOW THE OBVIOUS DEFICIENT DOCKET FEES.

[B]. THE REFUSAL OF THE COURT OF APPEALS IN ANNULING THE ORDER OF THE TRIAL COURT, WHICH ALLOWED THE PROCEEDINGS IN PROBATE TO PROCEED WITHOUT OBTAINING JURISDICTION IN REM OR OVER THE WHOLE WORLD BY REFUSING A RE-PUBLICATION OF THE NOTICE OF INITIAL HEARING THAT WAS POSTPONED AT THE RESPONDENT'S INSTANCE, IS AN ERROR INVOLVING QUESTION OF SUBSTANCE THAT INVOLVES JURISDICTION AND VALIDITY OF THE PROCEEDINGS.<sup>23</sup>

The instant petition sought to reconsider the CA Decision on two (2) points. First, that the assailed Decision erroneously dismissed the petition for *certiorari* on the ground that no motion for reconsideration has been filed. Second, that the CA erred in not determining the proper docket fees and ordering its payment, and in refusing to direct the republication of notice of hearing.<sup>24</sup>

The petitioner claims that the assailed RTC Order dated March 10, 2009 is a resolution of its motion for reconsideration of the RTC Resolution dated October 23, 2008; therefore, the filing of another motion for reconsideration would be useless. At any rate, the petitioner argues that there are established exceptions to the rule which requires the filing of a motion for reconsideration; which obtain in the case at bar— when there is an issue of jurisdiction, when the filing of such motion would be useless, when only legal issues are involved, and when so demanded by the interest of substantial justice.<sup>25</sup>

On the remaining ground, the petitioner submits that the RTC failed to acquire jurisdiction when it failed to order the payment of the proper amount of docket fees based on the tax declarations; and direct the republication of the May 28, 2008 hearing for the benefit of other interested parties.<sup>26</sup>

The respondents filed their Comment<sup>27</sup> on March 29, 2011. Therein, the respondents argued, among others, that there are no reversible errors and that the petitioner's submissions are mere rehash of the points she raised in before the CA. Aside from affirming the CA resolution, the respondents submitted that they paid the correct amount of docket fees based on the probable value of the properties included in the estate. On the matter of

---

<sup>23</sup> *Rollo*, p. 17.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 18-23.

<sup>26</sup> *Id.* at 24-40.

<sup>27</sup> *Id.* at 161-170.

notice, respondents contended that there is no longer any need for publication anew of the RTC order inasmuch as all interested parties have already been previously notified.<sup>28</sup>

On February 13, 2019, the Court issued a Resolution<sup>29</sup> requiring the parties to move in the premises. On December 27, 2019, the petitioner filed its Manifestation<sup>30</sup> stating that the case has not been rendered moot and academic as the RTC refused to proceed with the case and order the respondents to account and consign rental income on the subject properties.<sup>31</sup>

### The Court's Ruling

The petition is *not* meritorious.

It bears to note that “[a] dismissal by the Court of Appeals of a Petition *via* Rule 65 for failure to file a Motion for Reconsideration may be assailed *via* Rule 45.”<sup>32</sup> With that, the Court proceeds with the determination of the issues at hand.

The settled rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*. This is to grant the court an opportunity to correct any actual or perceived error attributed to it.<sup>33</sup> However, the rule is not absolute and admits of exceptions established by jurisprudence:

(a) where the order is a patent nullity, as where the court a quo has no jurisdiction; **(b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;** (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding were *ex parte* or in which the petitioner had no opportunity

<sup>28</sup> Id. at 162-169.

<sup>29</sup> Id. at 198.

<sup>30</sup> Id. at 203-204.

<sup>31</sup> Id. at 203.

<sup>32</sup> *Rep. of the Phils. v. Bayao, et al.*, 710 Phil. 279, 286 (2013).

<sup>33</sup> Id.

to object; **and (i) where the issue raised is one purely of law** or where public interest is involved.<sup>34</sup> (Emphasis supplied)

The second and fourth exceptions are present, which renders the non-filing of a motion for reconsideration not fatal in this case.

The petitioner's petition for *certiorari* before the CA rested upon the same points in this petition for review on *certiorari*, that is, that the RTC, acting as a probate court failed to acquire jurisdiction as the "correct" amount of docket fees have not been paid, and its Order resetting the case for hearing was not published.<sup>35</sup>

On the matter of payment of the proper amount of docket fees, the Court agrees with the respondents that the issue had already been passed upon by the RTC.

The determination of the amount of docket fees is intricately related with the matter of valuation of the properties which comprise the estate. This is precisely why the Petitioner filed an *Opposition with Motion to Dismiss for Lack of Jurisdiction*<sup>36</sup> in which, the petitioner also raised the need for republication of notice and a *Motion to Make Definite Appraisal of Estate Value* as it claimed that the value declared by the respondents is deficient, and cannot therefore serve as basis for the computation of docket fees. The *Opposition* was denied by the RTC in its Resolution dated October 23, 2008;<sup>37</sup> prompting the petitioner to file a motion for reconsideration albeit similarly denied by the RTC in its Order dated March 10, 2009,<sup>38</sup> the first assailed Order before the CA. Consequently, in the second assailed Order dated April 21, 2009,<sup>39</sup> the RTC ratiocinated that the matter raised in the motion for appraisal has already been passed upon by it in its Resolution dated March 10, 2009.<sup>40</sup> Clearly, the filing of a motion for reconsideration in this case is not necessary since the questions raised in the *certiorari* proceedings before the CA have already been duly raised and passed upon by the RTC.<sup>41</sup>

In any case, the issue of whether in case of postponement of the initial date of hearing of a verified petition for the allowance of a will there

---

<sup>34</sup> Id. citing *Siok Ping Tang v. Subic Bay Distribution, Inc.*, 653 Phil. 124, 136-137 (2010).

<sup>35</sup> *Rollo*, pp. 127-138.

<sup>36</sup> Id. at 55-69.

<sup>37</sup> Id. at 93-96.

<sup>38</sup> Id. at 115-116.

<sup>39</sup> Id. at 117.

<sup>40</sup> Id.

<sup>41</sup> *Supra* note 34.

is a need to again publish the Order which stated the new date of hearing, is a question of law, similarly justifying the lack of motion for reconsideration.

The procedural obstacle notwithstanding, the Court sees no reason to reverse the Orders of the RTC.

It is elementary that in both original and appellate cases, the court acquires jurisdiction over the case only upon the payment of the prescribed docket fees.<sup>42</sup> In the matter of allowance of wills, the amount of docket fees to be paid is governed by Section 7, Rule 141 of the Rules of Court as amended by A.M. No. 04-2-04-SC<sup>43</sup> and Supreme Court Amended Administrative Circular No. 35-2004,<sup>44</sup> to wit:

Section 7. Clerks of Regional Trial Courts. —

- a) For filing an action or a permissive or compulsory counter-claim, cross-claim, or **money claim against an estate** not based on judgment, or for filing a third-party, fourth-party, etc. complaint, or a complaint-in-intervention, if the total sum claimed, inclusive of interests, penalties, surcharges, damages of whatever kind, and attorney's fees, litigation expenses and costs and/or **in cases involving property, the fair market value of the real property in litigation stated in the current tax declaration or current zonal valuation** of the Bureau of Internal Revenue, whichever is higher, or **if there is none, the stated value** of the property in litigation or the value of the personal property in litigation **as alleged by the claimant** is:

[Table of fees omitted]

- (d) For initiating proceedings for the allowance of wills, granting letters of administration, appointment of guardians, trustees, and other special proceedings, the fees payable shall be collected in accordance with the **value of the property involved in the proceedings**, which must be **stated in the application or petition** as follows:

[Table of fees omitted]

If the value of the estate as definitely appraised by the court is more than the value declared in the application, the difference of fee shall be paid: provided that a certificate from the clerk of court that the proper fees have been paid shall be required prior to the closure of the proceedings. (Emphasis and underscoring supplied)

<sup>42</sup> *Gonzales, et al. v. Pe*, 670 Phil. 597, 610-611 (2011), citing *Far Corporation v. Magdaluyo*, 485 Phil. 599, 610 (2004).

<sup>43</sup> Entitled, "RE-PROPOSED REVISION OF RULE 141, REVISED RULES OF COURT, LEGAL FEES" (August 16, 2004).

<sup>44</sup> Entitled, "GUIDELINES IN THE ALLOCATION OF THE LEGAL FEES COLLECTED UNDER RULE 141 OF THE RULES OF COURT, AS AMENDED, BETWEEN THE SPECIAL ALLOWANCE FOR THE JUDICIARY FUND AND THE JUDICIARY DEVELOPMENT FUND." Approved on August 12, 2004.

From the foregoing, it is clear that in money claims against the estate not based on judgment and in the allowance of wills, it is the clerk of court which has the authority to assess the amount of docket fees on the basis of either; a) the fair market value of the real property in litigation as stated in the current tax declaration or the Bureau of Internal Revenue's (BIR) zonal valuation, whichever is higher, or b) the stated value of the property as alleged by the claimant.

In *Ramones v. Sps. Guimoc*,<sup>45</sup> the Court held that "where the plaintiff has paid the amount of filing fees assessed by the clerk of court, and the amount paid turns out to be deficient, the trial court still acquires jurisdiction over the case, subject to the payment by the plaintiff of the deficiency assessment"<sup>46</sup> provided that the party has acted in good faith or that there was no intention to defraud the government.<sup>47</sup> In fine, for purposes of determining whether the court has acquired jurisdiction over the case, it is sufficient that the plaintiff has paid in full the amount of docket fees assessed by the clerk of court although such assessment may later be found insufficient. In the latter instance, the deficiency as assessed by the clerk of court or his duly authorized deputy shall be paid by the party filing the action which shall constitute a lien on the judgment<sup>48</sup> pursuant to Section 2,<sup>49</sup> Rule 141 of the Rules of Court.

Applied in this case, it is undisputed that the respondents paid in full, the amount of docket fees assessed by the clerk of court on the basis of the value stated in the verified petition. In the same vein, fraudulent intent cannot simply be presumed from the fact that the respondents' allegation of value of the estate in their verified petition is insufficient, inasmuch as under Section 2,<sup>50</sup> Rule 76 of the Rules of Court, a petition for allowance of a will requires only a declaration of the probable value and character of the

---

<sup>45</sup> 838 Phil. 542 (2018).

<sup>46</sup> Id. at 551.

<sup>47</sup> Id. at 551-552.

<sup>48</sup> Id., citing *Rivera v. del Rosario*, 464 Phil. 783 (2004); *Fil-Estate Golf and Development, Inc. v. Navarro*, 553 Phil. 48 (2007); *United Overseas Bank v. Ros (United Overseas Bank)*, 556 Phil. 178 (2007); *The Heirs of Reinoso, Sr. v. CA*, 669 Phil. 272 (2011).

<sup>49</sup> Section 2. *Fees in lien*. - Where the court in its final judgment awards a claim not alleged, or a relief different from, or more than that claimed in the pleading, the party concerned shall pay the additional fees which shall constitute a lien on the judgment in satisfaction of said lien. The clerk of court shall assess and collect the corresponding fees.

<sup>50</sup> **Section 2. Contents of petition.** — A petition for the allowance of a will must show, so far as known to the petitioner:

(a) The jurisdictional facts;

(b) The names, ages, and residences of the heirs, legatees, and devisees of the testator or decedent;

(c) The probable value and character of the property of the estate;

(d) The name of the person for whom letters are prayed;

(e) If the will has not been delivered to the court, the name of the person having custody of it.

But no defect in the petition shall render void the allowance of the will, or the issuance of letters testamentary or of administration with the will annexed.



property of the estate. Consequently, the RTC acquired jurisdiction over this case.

However, should the RTC eventually appraise the value of the estate to be greater than the declared amount, the difference in docket fees must be paid prior to closure of proceedings.<sup>51</sup> Therefore, contrary to the allegation of the petitioner, the definitive assessment of value for the purpose of computing the correct amount of docket fees need not be done during the commencement of the proceedings for as long as payment of the full and appropriate amount is done prior to its cessation.

With respect to the issue of publication, the petitioner's arguments similarly fail to persuade the Court.

The Sections 3 and 4, Rule 76 of the 1997 Rules of Court, which read:

#### **Rule 76**

##### **Allowance or Disallowance of Will**

**Section 3.** *Court to appoint time for proving will. Notice thereof to be published.* - When a will is delivered to, or a petition for the allowance or a will is filed in, the court having jurisdiction, such court shall fix a time and place for proving the will when all concerned may appear to contest the allowance thereof, and shall cause notice of such time and place to be published three (3) weeks successively, previous to the time appointed, in a newspaper of general circulation in the province.

But no newspaper publication shall be made where the petition for probate has been filed by the testator himself.

**Section 4.** *Heirs, devisees, legatees, and executors to be notified by mail or personally.* - The court shall also cause copies of the notice of the time and place fixed for proving the will to be addressed to the designated or other known heirs, legatees, and devisees of the testator resident in the Philippines at their places or residence, and deposited in the post office with the postage thereon prepaid at least twenty (20) days before the hearing, if such places of residence be known. A copy of the notice must in like manner be mailed to the person named as executor, if he be not the petitioner; also, to any person named as co-executor not petitioning, if their places of residence be known. Personal service of copies of the notice at [least] (10) days before the day of hearing shall be equivalent to mailing.

If the testator asks for the allowance of his own will notice shall be sent only to his compulsory heirs.

---

<sup>51</sup> RULE 141, Section 7a.

In an allowance or disallowance of a will, there are two (2) notification requirements both of which are mandatory and jurisdictional: (a) publication in a newspaper of general circulation or the Official Gazette, and (b) personal notice to the designated or known heirs, legatees and devisees.<sup>52</sup> In this controversy, compliance with these requirements is admitted. Question arose as the date of the hearing set in the notice which has been published was postponed. The petitioner then argues that there is again a need to publish the notice setting a new date for hearing.

The requirement for the publication of the notice of hearing can be attributed to the *in rem* nature of probate proceedings.<sup>53</sup> Actions *in rem* are actions against the thing itself and are binding upon the whole world. Simply, in the resolution of actions *in rem*, an active *vinculum* is created over all those with interests to the thing that is the subject matter of litigation. Thus, due process dictates that all persons with interest to the thing be notified and given an opportunity to defend their interests through publication.<sup>54</sup>

Due process does not however demand the unreasonable. Under this premise, the Court regards that it is sufficient that publication of the notice of hearing has been done prior to the commencement of the proceedings notifying all persons of the verified petition for the allowance of will and giving them an opportunity to defend their interests on a scheduled date of hearing. After which, it then becomes incumbent upon all persons concerned to appear and actively protect their interests. That the hearing date indicated in the notice did not push through is beside the point as for all intents and purposes, all interested parties have already been notified of the existence of the probate proceedings by virtue of publication and any subsequent development is easily verifiable.

The purpose of procedure is to facilitate and not to thwart justice. It was created not to hinder and delay, but to promote the administration of justice. Hence, every interpretation in its application must towards the attainment of these objectives.<sup>55</sup>

**WHEREFORE**, premises considered, the instant petition for review on *certiorari* is **DENIED**. The Resolution dated October 23, 2008 and Orders dated March 10, 2009 and April 21, 2009 of the Regional Trial Court of Misamis Oriental, Branch 17, are hereby **AFFIRMED**.

---


<sup>52</sup> *Racca v. Echague*, G.R. No. 237133, January 20, 2021.

<sup>53</sup> *Id.*

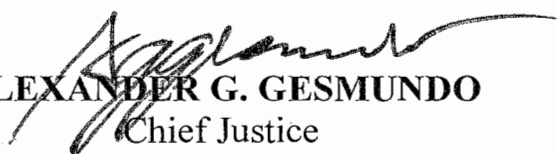
<sup>54</sup> *De Pedro v. Romasan Development Corp.*, 748 Phil. 706, 725-726 (2014).

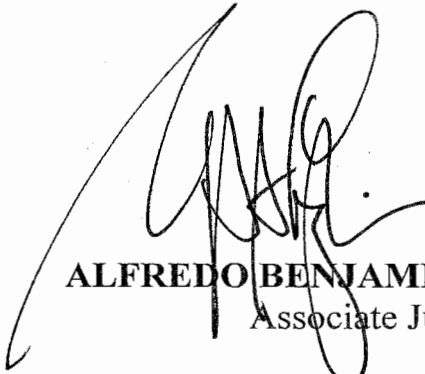
<sup>55</sup> *People v. Flores*, 336 Phil. 58, 61 (1997), citing *Manila Railroad Co. v. Attorney General*, 20 Phil. 523 (1911).

**SO ORDERED.**

  
**SAMUEL H. GAERLAN**  
Associate Justice

WE CONCUR:

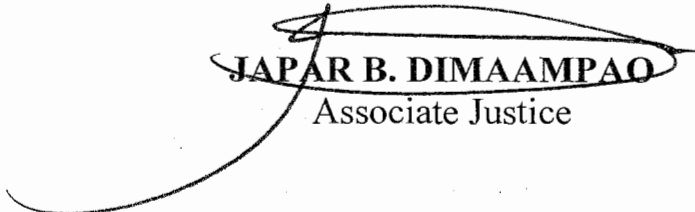
  
**ALEXANDER G. GESMUNDO**  
Chief Justice



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



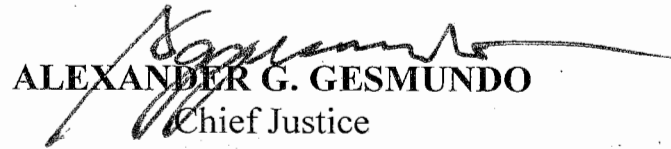
**HENRI JEAN PAUL B. INTING**  
Associate Justice



**JAPAR B. DIMAAMPAO**  
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's Division.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice