

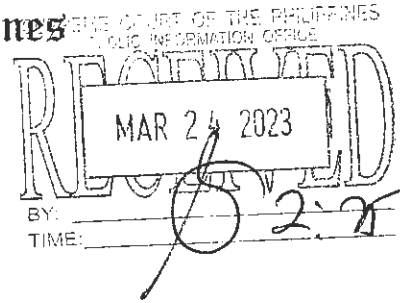


Republic of the Philippines

Supreme Court

Manila

EN BANC



ROSITA P. SINICLANG,
Petitioner,

G.R. No. 234766

- versus -

THE HONORABLE COURT OF
APPEALS, THE HONORABLE
OMBUDSMAN FOR LUZON
AND ERNESTO A. LUCIANO,
JR.,

Respondents.

X-----X
ROSITA P. SINICLANG,
Petitioner,

G.R. No. 239855

- versus -

ERNESTO A. LUCIANO, JR.,
Respondent.

X-----X
ROSITA P. SINICLANG,
Petitioner,

G.R. No. 247366

- versus -

OFFICE OF THE OMBUDSMAN,
AND ERNESTO A. LUCIANO,
JR.,

Respondents.

X-----X

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ROSITA P. SINICLANG,
Petitioner,

G.R. No. 256013

Present:

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

- versus -

COMMISSION ON AUDIT,
Respondent.

Promulgated:

October 18, 2022



DECISION

DIMAAMPAO, J.:

Before this Court are four consolidated petitions filed by petitioner Rosita P. Siniclang (Rosita) fulminating against separate issuances of the Court of Appeals and the Commission on Audit.

The Petition for *Certiorari*¹ in **G.R. No. 234766** impugns two Resolutions dated 21 March 2017² and 18 July 2017³ of the Court of Appeals granting the Motion for Leave to Intervene (With Motion to Admit Attached Comment-in-Intervention)⁴ filed by the Office of the Deputy Ombudsman for

* On Official Leave.

** On Official Business.

*** On Official Business.

¹ *Rollo* (G.R. No. 234766), pp. 3-19.

² *Id.* at 21-22; penned by Associate Justice Fernanda Lampas Peralta, with the concurrence of Associate Justices Jane Aurora C. Lantion and Victoria Isabel A. Paredes. Not attached to the *rollo*, but mentioned in the Resolution dated 18 July 2017.

³ *Id.*

⁴ *Id.* at 46-52.

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Luzon, and denying the Motion for Reconsideration⁵ thereof, respectively, in CA-G.R. SP No. 148280.

On the other hand, the Petition for Review on *Certiorari*⁶ in **G.R. No. 239855** assails the Decision⁷ dated 8 December 2017 and the Resolution⁸ dated 12 April 2018 of the Court of Appeals in CA-G.R. SP No. 148280 which affirmed the Decision⁹ of the Office of the Ombudsman in OMB-L-A-15-0499 adjudging Rosita administratively liable for simple neglect of duty and imposing upon her the penalty of suspension from service for one month and one day without pay.

G.R. No. 247366 is a Petition for Review on *Certiorari*¹⁰ challenging the Decision¹¹ dated 22 November 2018 and the Resolution¹² dated 13 March 2019 which dismissed the consolidated *certiorari* petitions in CA-G.R. SP Nos. 144738 and 149496. The petition in CA-G.R. SP No. 144738 sought to set aside the Order dated 8 January 2016 of the Office of the Ombudsman placing Rosita under preventive suspension, while the petition in CA-G.R. SP No. 149496 endeavored to annul the letters of the Office of the Ombudsman dated 9 September 2016 and 23 November 2016 refusing to recognize Rosita's alleged voluntary compliance with the preventive suspension order for her failure to follow the proper procedure in the execution of the same.

Finally, **G.R. No. 256013**, a Petition for *Certiorari*¹³ rails against the Decision¹⁴ dated 25 January 2018 of the Commission on Audit, which upheld the Decision¹⁵ dated 29 April 2015 of its Regional Office No. I denying Rosita's request for relief from money accountability¹⁶ and its subsequent Resolution dated 31 January 2020, which denied the Motion for Reconsideration thereof.

The salient facts unfurl as follows:

⁵ Id. at 23-31.

⁶ *Rollo* (G.R. No. 239855), pp. 3-19.

⁷ Id. at 30-40; penned by Associate Justice Fernanda Lampas Peralta, with the concurrence of Associate Justices Elihu A. Ybañez and Carmelita Salandanan Manahan.

⁸ Id. at 21.

⁹ Id. at 41-47.

¹⁰ *Rollo* (G.R. No. 247366), pp. 3-23.

¹¹ Id. at 35-51; penned by Associate Justice Ramon M. Bato Jr., with the concurrence of Associate Justices Ramon A. Cruz and Pablito A. Perez.

¹² Id. at 25-26.

¹³ *Rollo* (G.R. No. 256013), pp. 3-27.

¹⁴ *Rollo* (G.R. No. 234766), pp. 257-260; penned by Chairperson Michael G. Aguinaldo, with the concurrence of Commissioners Jose A. Fabia and Isabel D. Agito.

¹⁵ *Rollo* (G.R. No. 256013), pp. 57-59; penned by Regional Director Lynn S. F. Sicangco.

¹⁶ Id. at 55.

Rosita is the former Municipal Treasurer of the local government of San Emilio, Ilocos Sur. On 23 December 2013, she encashed checks for the payment of the Productivity Enhancement Incentive (PEI bonus) of municipal officials and employees and personally distributed the same to them. Some of the employees, however, were unable to claim theirs at the end of office hours that day. Since the vault in her office was defective and no longer being used, she placed the unclaimed money in four cloth bags, keeping three of them inside the central drawer of her office table while the fourth bag inside another drawer. She padlocked the center drawer and secured the other drawer with its built-in lock. Before going home, she locked the sliding windows and the door of her office.¹⁷

Upon returning for work on 26 December 2013 after the holidays, Rosita noticed that the sliding window of her office was derailed and the grills were pried open. She immediately checked her office table and to her dismay, she discovered that the padlock latch of the center drawer was already destroyed and two of the money bags kept inside were emptied. She wasted no time and reported the incident to the San Emilio Police Station. During the investigation, the police officers determined that the perpetrator/s gained entry to Rosita's office after forcibly opening the southern steel grill and sliding window, and carted away cash amounting to ₱693,960.00,¹⁸ which included the uncollected PEI bonuses of some municipal employees.¹⁹

Thereafter, Rosita filed with the Commission on Audit Regional Office No. I a Notice of Loss²⁰ and Request From Relief From Accountability²¹ for the loss of ₱693,960.00 and two booklets of blank checks. In its Decision No. 2015-009²² dated 29 April 2015, the Commission on Audit Regional Office No. I denied Rosita's request and held her liable for the loss of the PEI bonuses funds in the amount of ₱350,400.00 for her contributory negligence in storing the money and checkbooks in her office drawer instead of the vault.²³

Aggrieved by the said ruling, Rosita sought recourse²⁴ before the Commission on Audit Commission Proper, which denied her appeal in COA Decision No. 2018-089 dated 25 January 2018 for having been filed out of time.²⁵ The Commission on Audit Commission Proper also sustained the findings of the Commission on Audit Regional Office No. I that Rosita failed to exercise the diligence required of her position as custodian of government

¹⁷ *Rollo* (G.R. No. 239855), pp. 30-31.

¹⁸ *Rollo* (G.R. No. 256013), p. 53.

¹⁹ *Rollo* (G.R. No. 239855), p. 31.

²⁰ *Rollo* (G.R. No. 256013), p. 54.

²¹ *Id.* at 55.

²² *Id.* at 57-59.

²³ *Id.* at 58-59.

²⁴ *Rollo* (G.R. No. 256013), pp. 35-46.

²⁵ *Id.* at 116-119.

funds. Her Manifestation and Motion for Reconsideration²⁶ having been denied by the Commission on Audit Commission Proper, Rosita turned to this Court *via* a Petition for *Certiorari*²⁷ under Rule 64 of the Rules of Court, docketed as **G.R. No. 256013**. She adamantly maintains that her acts were not tainted with negligence or recklessness as to justify the denial of her request for relief from accountability for the stolen money.

Meanwhile, as an offshoot of the robbery incident, several employees of the municipal Government of San Emilio, Ilocos Sur instituted an administrative complaint against Rosita with the Civil Service Commission for her failure to distribute their respective PEI bonuses despite demand. In a Decision²⁸ promulgated on 19 January 2015, Director Nelson G. Sarmiento (Director Sarmiento) dismissed the complaint and found no evidence showing that petitioner unreasonably withheld the payment of the PEI bonuses, or that she appropriated the money for her personal use. In arriving at such conclusion, Director Sarmiento zeroed in on the police report that the unclaimed PEI bonuses were stolen from the municipal treasurer's office in which Rosita had no participation. The motion for reconsideration of the 19 January 2015 Decision was subsequently denied by the Civil Service Commission in a Resolution²⁹ dated 27 May 2015.

On 11 September 2015, respondent Ernesto A. Luciano Jr. (Luciano), in his capacity as Secretary of the *Sangguniang Bayan* and as one of those affected by the lost PEI bonuses, filed a complaint against Rosita before the Office of the Ombudsman for "Conduct Prejudicial to the Best Interest of the Service, Grave Misconduct, and Gross Neglect of Duty" with prayer for preventive suspension. The case was docketed as OMB-L-A-15-0499.³⁰

In the Order³¹ dated 8 January 2016, the Office of the Ombudsman placed her under preventive suspension for a period not exceeding three months without pay. In issuing the said order, the Office of the Ombudsman relied on the 29 April 2015 Decision³² of the Commission on Audit Regional Office No. I denying Rosita's request for relief from money accountability. After finding strong evidence of guilt that she was "remiss in her duty as Municipal Treasurer" and in protecting the public funds in her custody, the Office of the Ombudsman ruled that "a preventive suspension order is warranted to prevent [Rosita] from using her office to influence potential witnesses or tamper with records that may be vital in the prosecution of the

²⁶ Id. at 127-139.

²⁷ Id. at 3-27.

²⁸ *Rollo* (G.R. No. 239855), pp. 57-68.

²⁹ *Rollo* (G.R. No. 256013), pp. 61-65.

³⁰ Id. at 38.

³¹ Id. at 38-39; the Ombudsman Order dated January 8, 2016 is not attached to the *rollo*.

³² *Rollo* (G.R. No. 256013), pp. 57-59; penned by Regional Director Lynn S.F. Sicangco.

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present case.”³³ Thus, the Office of the Ombudsman ordained:

WHEREFORE, in accordance with Section 24 of R.A. No. 6770 and Section 8, Rule III of Administrative Order No. 07, as amended, respondent Rosita Siniclang, Municipal Treasurer of San Emilio, Ilocos Sur is hereby placed under preventive suspension for a period not exceeding three (3) months without pay, which shall be immediately executory pursuant to Section 27, paragraph 1 of R.A. No. 6770. Notwithstanding any motion, appeal or petition that may be filed by respondents seeking relief from this Order, unless otherwise ordered by this Office or by any court of competent jurisdiction, the implementation of this Order shall not be interrupted within the period prescribed.

In case of delay in the disposition of the case due to the fault, negligence or any cause attributable to respondent, the period of such delay shall not be counted in computing the period of the preventive suspension.

The Honorable Secretary of the Department of Finance, or his duly authorized representative, is hereby directed to implement this Order immediately upon receipt hereof, and to notify this Office within five (5) days from said receipt of the status of said implementation.

SO ORDERED.³⁴

Rosita subsequently filed a manifestation with the Office of the Ombudsman requesting that she be allowed to voluntarily comply with the preventive suspension order starting 15 February 2016 instead inasmuch as “the character thereof” was immediately executory. Failing to elicit any response from the Office of the Ombudsman, she re-filed a Manifestation and Motion on 23 May 2016 reiterating her “voluntary compliance” to the preventive suspension order. This was followed by another Manifestation on 21 June 2016.³⁵

On 18 July 2016, Rosita received a copy of a memorandum from the Municipal Mayor of San Emilio, Ilocos Sur directing her to file her leave of absence for the dates she was supposedly complying with the preventive suspension order. Instead of complying with the mayor’s directive, she filed another Manifestation with the Office of the Ombudsman following up her earlier manifestations.³⁶

Ensuingly, in a letter dated 9 September 2016 addressed to Rosita’s counsel, the Office of the Ombudsman replied that it could not recognize her “voluntary compliance” as she did not comply with the proper procedure for

³³ *Rollo* (G.R. No. 247366), p. 49; see Court of Appeals Decision in CA-G.R. SP Nos. 144738 & 149496.

³⁴ *Id.* at 38-39.

³⁵ *Id.* at 41.

³⁶ *Id.*

the execution of the preventive suspension order. Instead, the Office of the Ombudsman reiterated its directive that she file a leave of absence, as advised by the municipal mayor. She, however, moved for reconsideration of the said letter, reverberating her prayer for the Office of the Ombudsman to recognize her proposed “voluntary compliance” from 15 February 2016 to 15 May 2016. In the letter dated 23 November 2016, the Office of the Ombudsman explicated that Rosita’s bid for reconsideration of its letter was not sanctioned by the rules, especially so because it merely explained the procedure for the implementation of a preventive suspension order.³⁷

This impelled Rosita to seek redress before the Court of Appeals through a Petition for *Certiorari*, docketed as CA-G.R. SP No. 144738. In this petition, she ascribed grave abuse of discretion on the part of the Office of the Ombudsman when it issued against her a preventive suspension order. She avowed that as the municipal treasurer of San Emilio, Ilocos Sur, she played a vital role in dispensing basic government functions, and thus, her absence would prejudice the interests of the people of the municipality.³⁸

Likewise, Rosita filed another petition for *certiorari* with the Court of Appeals, docketed as CA-G.R. SP No. 149496, imputing grave abuse of discretion on the part of the Office of the Ombudsman for not recognizing her alleged “voluntary compliance” with the preventive suspension order from 15 February 2016 to 15 May 2016.³⁹ As it happened, the two petitions in CA-G.R. SP No. 144738 and CA-G.R. SP No. 149496 were consolidated. On 22 November 2018, the Court of Appeals rendered a Decision⁴⁰ on the consolidated cases finding no grave abuse of discretion on the part of the Office of the Ombudsman in placing Rosita under preventive suspension. Likewise, the Court of Appeals held that the refusal of the Office of the Ombudsman to recognize petitioner’s purported “voluntary compliance” with the preventive suspension order was not tainted with grave abuse of discretion as it unerringly pronounced that proper procedure must be followed in its implementation and she cannot arrogate unto herself the authority to determine the effectivity of the said order. Rosita’s subsequent Motion for Reconsideration⁴¹ of the Decision was denied in the Resolution⁴² dated 13 March 2019.

³⁷ Id.

³⁸ Id. at 39-40.

³⁹ Id. at 40-41.

⁴⁰ Id. at 35-51.

⁴¹ Id. at 27-33.

⁴² Id. at 25-26.

With the dismissal of the consolidated cases and the denial of the motion for reconsideration, Rosita sought recourse before this Court *via* a Petition for Review on *Certiorari*,⁴³ docketed as **G.R. No. 247366**.

Meanwhile, in the Decision⁴⁴ dated 5 September 2016, the Office of the Ombudsman found Rosita administratively liable for simple neglect of duty and meted upon her the penalty of suspension from office for one month and one day without pay, thusly:

WHEREFORE, finding substantial evidence, judgment is hereby rendered finding **Rosita P. Siniclang** administratively liable for Simple Neglect of Duty and is meted the penalty of ***one (1) month and one (1) day suspension from office without pay*** pursuant to Sections 46 (D) (1), 48 (c) and 49 (a), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service in relation to Section 10, Rule III of Administrative Order (A.O.) No. 07, as amended by A.O. No. 17, and Section 25 of R.A. No. 6770.

In the event that the penalty of Suspension can no longer be enforced due to respondent's separation from the service, the penalty shall be converted into a Fine in an amount equivalent to her salary for one (1) month and one (1) day, payable to the Office of the Ombudsman, and may be deductible from her retirement benefits, accrued leave credits or any receivable from her office.

The Honorable Secretary of the Department of Finance is hereby directed to implement this DECISION immediately upon receipt thereof pursuant to Section 7, Rule III of A.O. No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1, Series of 2006, dated 11 April 2006 and to promptly inform this Office of the action taken hereon.

SO ORDERED.⁴⁵ (Emphasis on the original)

The Office of the Ombudsman emphasized Rosita's duty as municipal treasurer in taking custody and in exercising proper management of the funds of the municipality. It ratiocinated that as the accountable officer, she can be held liable for all losses attributable to negligence in keeping of said funds. It further opined that the loss of government funds through robbery does not totally exculpate her from liability, considering that she failed to exercise due diligence in requesting for a new vault which could have provided more security in the safekeeping of the funds.

Displeased by the judgment against her, petitioner once again sought recourse before the Court of Appeals, avouching that the Office of the Ombudsman erred in exercising jurisdiction over the case and in finding her

⁴³ Id. at 3-23.

⁴⁴ *Rollo* (G.R. No. 234766), pp. 282-288.

⁴⁵ Id. at 286-287.

liable for simple neglect of duty.⁴⁶ The petition was docketed as CA-G.R. SP No. 148280.

Thereupon, the Office of the Solicitor General, on behalf of the Office of the Ombudsman, filed a Motion for Leave to Intervene (with Motion to Admit Attached Comment-in-Intervention),⁴⁷ which the Court of Appeals granted in the Resolution dated 21 March 2017. Petitioner's bid for a reconsideration⁴⁸ thereof was given short shrift as her motion was denied in the Court of Appeals Resolution⁴⁹ dated 18 July 2017.

Under Rule 65 of the Rules of Court, Rosita lodged before this Court a Petition for *Certiorari*⁵⁰ docketed as **G.R. No. 234766**, impugning the Resolutions dated 21 March 2017 and 18 July 2017 of the Court of Appeals for having been issued with grave abuse of discretion.

At the interstice, the Court of Appeals promulgated on 8 December 2017 its Decision⁵¹ in CA-G.R. SP No. 148280, affirming *in toto* the findings of the Office of the Ombudsman. Rosita was adjudged liable for simple neglect of duty. The Court of Appeals ruled that being an officer of the government having custody of public funds, she was fully accountable for the safekeeping of the funds under her custody. This being so, she should have placed the unclaimed PEI bonuses of the municipal employees in a more secure location, rather than inside her wooden office cabinet, which locks could easily be destroyed. The Court of Appeals likewise agreed with the Office of the Ombudsman that she failed to present evidence to prove that she had requested the mayor of San Emilio, Ilocos Sur for a new vault, which could have provided more security in safekeeping the public funds in her custody.⁵²

Rosita's Motion for Reconsideration⁵³ having been denied by the Court of Appeals, is now before the Court *via* a Petition for Review on *Certiorari*⁵⁴ docketed as **G.R. No. 239855**, seeking to set aside the *Decision* and *Resolution* in CA-G.R. SP No. 148280.

⁴⁶ Id. at 101-116.

⁴⁷ Id. at 46-52.

⁴⁸ Id. at 231-256.

⁴⁹ Id. at 21-22.

⁵⁰ Id. at 3-19.

⁵¹ *Rollo* (G.R. No. 239855), pp. 30-40.

⁵² Id. at 36-39.

⁵³ Id. at 22-28.

⁵⁴ Id. at 3-19.

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Inevitably, in the Resolution⁵⁵ dated 14 September 2021, this Court ordered the consolidation of G.R. Nos. 234766, 239855, 247366, and 256013 given that all cases arose from the same set of facts and were founded on essentially related issues.

In **G.R. No. 234766**, Rosita intransigently asseverates that the Court of Appeals gravely abused its discretion in granting the Motion for Intervention (with Motion to Admit Attached Comment-in-Intervention) filed by the Office of the Ombudsman considering that it cannot intervene on the appeal of its own decision promulgated in the exercise of its quasi-judicial function. She insists that quasi-judicial agencies like the Office of the Ombudsman must be detached and impartial not only when hearing and resolving the case before it but even when its judgment is brought on appeal before a higher court.⁵⁶

Meanwhile, in **G.R. No. 239855**, Rosita avouches that the Office of the Ombudsman is barred from taking cognizance of the case because the Civil Service Commission had earlier exercised its jurisdiction over the administrative complaint filed against her for failure to remit the stolen PEI bonuses of the employees. She contends that under the principle of concurrent jurisdiction, the Civil Service Commission's assumption of jurisdiction precludes the Office of the Ombudsman from acting on the complaint before it. Concomitantly, she claims that respondent Luciano is barred by *res judicata* from instituting a complaint before the Office of the Ombudsman in light of the Civil Service Commission ruling, which exonerated her from administrative liability. Rosita avows that respondent Luciano is guilty of forum shopping for raising before the Office of the Ombudsman the same legal question which was already passed upon by the Civil Service Commission with finality.⁵⁷

In **G.R. No. 247366**, Rosita avers that the preventive suspension order against her was issued arbitrarily and capriciously given the lack of strong evidence establishing her guilt. She insists that her "voluntary compliance" with the preventive suspension order from 15 February 2016 to 15 May 2016 should be recognized by the Court, taking into account the immediately executory character of a preventive suspension order.⁵⁸

Finally, in **G.R. No. 256013**, she postulates that respondent Commission on Audit Commission Proper erred in denying her request for relief from money accountability. She bemoans the finding of negligence

⁵⁵ *Rollo* (G.R. No. 234766), p. 224.

⁵⁶ *Id.* at 8-13.

⁵⁷ *Rollo* (G. R. No. 239855), pp. 9-13.

⁵⁸ *Rollo* (G.R. No. 247366), pp. 15-18.

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against her and stresses that she had no contributory fault in the loss of the public funds arising from the robbery incident.⁵⁹

Perceivably, the determination of the outcome of these consolidated Petitions rests on the resolution of the following manifest procedural issues:

First. May the Office of the Ombudsman intervene in this case where its decision is subject of review?

Second. Did the Decision of the Civil Service Commission dismissing the administrative complaint against Rosita for her alleged failure to distribute the PEI bonuses of the employees bar the filing of an administrative complaint for Conduct Prejudicial to the Best Interest of the Service, Grave Misconduct and Gross Neglect of Duty before the Office of the Ombudsman?

Third. Is respondent guilty of forum shopping when he instituted administrative complaints against Rosita before the Civil Service Commission and the Office of the Ombudsman?

With regard to the substantive aspect of the cases, the Court is tasked to write *finis* to the following controversies: **one**, whether the issuance of the preventive suspension order against Rosita was proper; **two**, whether the Court of Appeals correctly affirm the findings of the Office of the Ombudsman holding Rosita administratively liable for simple neglect of duty; and **three**, whether the Commission on Audit gravely abuse its discretion in denying Rosita's request for relief from money accountability?

OUR RULING

The consolidated Petitions rest on nebulous grounds.

Before delving into the merits of the cases, this Court shall first briefly pass upon the procedural issues raised by petitioner Rosita.

The Office of the Ombudsman may intervene in the proceedings where its decision is subject of review.

Prefatorily, it bears to accentuate that this issue is no longer novel. The question of whether the Office of the Ombudsman has the requisite standing to intervene and become a party in cases wherein its administrative ruling is under review was decisively settled in the affirmative by the Court *En Banc*

⁵⁹ *Rollo* (G.R. No. 256013), pp. 11-18.

in the case of *Office of the Ombudsman v. Samaniego (Samaniego)*,⁶⁰ wherein it was held that the Office of the Ombudsman, as a competent disciplining authority, possesses ample legal interest to take part in the said cases, viz.:

The Office of the Ombudsman sufficiently alleged its legal interest in the subject matter of litigation. Paragraph 2 of its motion for intervention and to admit the attached motion to recall writ of preliminary injunction averred:

2. As a competent disciplining body, the Ombudsman has the right to seek redress on the apparently erroneous issuance by this Honorable Court of the Writ of Preliminary Injunction enjoining the implementation of the Ombudsman's Joint Decision imposing upon petitioner the penalty of suspension for one (1) year, consistent with the doctrine laid down by the Supreme Court in *PNB [vs]. Garcia* x x x and *CSC [vs]. Dacoycoy*[.]

In asserting that it was a “competent disciplining body,” the Office of the Ombudsman correctly summed up its legal interest in the matter in controversy. In support of its claim, it invoked its role as a constitutionally mandated “protector of the people,” a disciplinary authority vested with quasi-judicial function to resolve administrative disciplinary cases against public officials. To hold otherwise would have been tantamount to abdicating its salutary functions as the guardian of public trust and accountability.

Moreover, the Office of the Ombudsman had a clear legal interest in the inquiry into whether respondent committed acts constituting grave misconduct, an offense punishable under the Uniform Rules in Administrative Cases in the Civil Service. It was in keeping with its duty to act as a champion of the people and preserve the integrity of public service that petitioner had to be given the opportunity to act fully within the parameters of its authority.⁶¹ (Emphasis supplied; citations omitted.)

Samaniego further demystified that it is plain error to equate the Ombudsman to a judge or a court when the former is discharging its duty to decide administrative cases. Unlike a judge or a court, the Ombudsman - by virtue of its special power, duty and function under the Constitution and the law — is on “*a league of its own*” and thus cannot be “*detached, disinterested or neutral*” with respect to the administrative decisions it renders,⁶² hence:

Both the CA and respondent likened the Office of the Ombudsman to a judge whose decision was in question. This was a tad too simplistic (or perhaps even rather disdainful) of the power, duties and functions of the Office of the Ombudsman. The Office of

⁶⁰ 586 Phil. 497 (2008).

⁶¹ Id. at 510-511.

⁶² Id. at 512.

the Ombudsman cannot be detached, disinterested and neutral specially when defending its decisions. Moreover, in administrative cases against government personnel, the offense is committed against the government and public interest. What further proof of a direct constitutional and legal interest in the accountability of public officers is necessary?⁶³ (Emphasis supplied; citations omitted.)

In fealty to *Samaniego*, the Court's pronouncements in the cases of *Office of the Ombudsman v. Liggayu*,⁶⁴ *Office of the Ombudsman v. Magno*,⁶⁵ and *Office of the Ombudsman v. Sison*⁶⁶ were abandoned in the later case of *Office of the Ombudsman v. Chipoco*,⁶⁷ which provided the following illuminating discourse:

We are not, however, unaware of *Liggayu* and of the like cases of *Office of the Ombudsman v. Magno, et al.* and *Office of the Ombudsman v. Sison* that seemingly depart from the doctrine established in *Samaniego*. Be that as it may, we still hold *Samaniego* controlling for the foregoing reasons:

First. Liggayu, Magno and Sison were all cases decided by a Division of the Court. Hence, none of these cases, under Section 4(3), Article VIII of the Constitution, has sufficient doctrinal force to modify, much less overturn, the pronouncement in *Samaniego*.

Second. Cases more recent than Liggayu, Magno and Sison have all reaffirmed *Samaniego*. In the 2013 case of *Office of the Ombudsman v. De Chavez, et al.*, the 2015 case of *Office of the Ombudsman v. Quimbo et al.*, and the 2017 case of *Office of the Ombudsman v. Gutierrez*, we demonstrated our firm commitment to uphold the *Samaniego* pronouncement and its place in our jurisprudence. Thus, in *Office of the Ombudsman v. De Chavez, et al.*, we declared:

The CA should have allowed the Office of the Ombudsman to intervene in the appeal pending with the lower court. The wisdom of this course of action has been exhaustively explained in *Office of the Ombudsman v. Samaniego*. In said case, the CA also issued a Resolution denying the Office of the Ombudsman's motion to intervene. In resolving the issue of whether the Office of the Ombudsman has legal interest to intervene in the appeal of its Decision, the Court expounded, thus:

X X X X

⁶³ Id.

⁶⁴ 688 Phil. 443 (2012).

⁶⁵ 592 Phil. 636 (2008).

⁶⁶ 626 Phil. 598 (2010).

⁶⁷ G.R. Nos. 231345 & 232406, August 19, 2019, 914 SCRA 533.

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Here, since its power to ensure enforcement of its Joint Decision and Supplemental Resolution is in danger of being impaired, the Office of the Ombudsman had a clear legal interest in defending its right to have its judgment carried out. The CA patently erred in denying the Office of the Ombudsman's motion for intervention.

Then, in the case of *Office of the Ombudsman v. Quimbo et al.*, we held:

The issue of whether or not the Ombudsman possesses the requisite legal interest to intervene in the proceedings where its decision is at risk of being inappropriately impaired has been laid to rest in *Ombudsman v. De Chavez*. In the said case, the Court conclusively ruled that even if the Ombudsman was not impleaded as party in the proceedings, part of its broad powers include defending its decisions before the CA. And pursuant to Section 1 of Rule 19 of the Rules of Court, the Ombudsman may validly intervene in the said proceedings as its legal interest on the matter is beyond cavil.

And, finally, in the case of *Ombudsman v. Gutierrez*:

Thus, as things currently stand, *Samaniego* remains to be the prevailing doctrine. The Ombudsman has legal interest in appeals from its rulings in administrative cases. Petitioner could not then be faulted for filing its Omnibus Motion before the appellate court in CA-G.R. S.P. No. 107551.⁶⁸

Ineluctably, the legal standing of the Office of the Ombudsman to intervene in appeals from its rulings in administrative cases has been settled. *Ergo*, the Court of Appeals did not gravely abuse its discretion in allowing the Office of the Ombudsman to intervene in the Petition for Review before it docketed as CA-G.R. SP No. 148280.

The Civil Service Commission Decision dismissing the administrative complaint against petitioner Rosita for alleged failure to distribute the Productivity Enhancement Incentive bonuses of the employees did not bar the filing of an administrative complaint before the Office of the Ombudsman; respondent Luciano is not guilty of forum shopping.

⁶⁸ Id. at 548-550.

Petitioner Rosita postulates that the Office of the Ombudsman has no jurisdiction to act on the complaint filed against her by respondent Luciano since the Civil Service Commission had already dismissed the previous administrative complaint instituted against her in its Decision No. 15-0008⁶⁹ dated 19 January 2015 and Resolution No. 15-000105⁷⁰ dated 27 May 2015. She claims that under the principle of concurrent jurisdiction, the Civil Service Commission's assumption of jurisdiction over the previous administrative complaint precludes the Office of the Ombudsman from acting on the complaint filed before it.

Appositely, petitioner Rosita contends that respondent Luciano is guilty of willful and deliberate forum shopping when he filed before the Office of the Ombudsman a complaint for Conduct Prejudicial to the Best Interest of the Service, Grave Misconduct and Gross Neglect of Duty despite the final and executory decision of the Civil Service Commission exonerating petitioner from liability.

Petitioner Rosita's contention is out on a limb.

The essence of forum-shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. A party violates the rule against forum shopping if the elements of *litis pendentia* are present; or if a final judgment in one case would amount to *res judicata* in the other.⁷¹

This Court has recognized the following instances as modes of committing forum shopping: (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).⁷²

Here, respondent Luciano did not commit forum shopping. While the complaint filed before the Civil Service Commission and the Office of the Ombudsman complaint-subject of G.R. No. 239855 are related to each other having the same robbery incident as their precursor, *the parties involved, the*

⁶⁹ *Rollo* (G.R. No. 239855), pp. 57-68.

⁷⁰ *Id.* at 70-74.

⁷¹ See *Ignacio v. Office of the City Treasurer of Quezon City*, 817 Phil. 1133, 1149 (2017).

⁷² *Buenaflores v. Federated Distributors, Inc.*, G.R. Nos. 240187-88, March 28, 2022.

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causes of action, and reliefs sought in the two cases are indubitably not identical.

The complaint filed with the Civil Service Commission was instituted by several municipal employees of San Emilio, Ilocos Sur for petitioner Rosita's failure to remit their PEI bonuses despite demand and which, according to them, constituted a *prima facie* case for malversation. On the other hand, the complaint filed before the Office of the Ombudsman was instituted by respondent Luciano to hold petitioner Rosita accountable for Conduct Prejudicial to the Best Interest of the Service, Grave Misconduct, and Gross Neglect of Duty for her failure to exercise her duty and responsibility in the safekeeping of government funds in her custody.

There being no prior acquisition of jurisdiction over a similar complaint by the Civil Service Commission, the Office of the Ombudsman unerringly exercised jurisdiction to hear and decide the instant administrative complaint.

Having hurdled the procedural matters raised in these Petitions, the Court now proceeds to dispose of the substantive issues.

The Office of the Ombudsman did not gravely abuse its discretion in placing petitioner Rosita under preventive suspension.

At this juncture, it is worthy to note that despite the lapse of the period of petitioner Rosita's preventive suspension, the issue of its validity is not mooted and there remains a practical value in resolving the same. In *Ombudsman v. Capulong*,⁷³ the Court had the occasion to rule that a case questioning the validity of a preventive suspension order is not mooted by the supervening lifting thereof, thus:

In the instant case, the subsequent lifting of the preventive suspension order against Capulong does not render the petition moot and academic. **It does not preclude the courts from passing upon the validity of a preventive suspension order, it being a manifestation of its constitutionally mandated power and authority to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.**⁷⁴ (Emphasis supplied)

Since the propriety or impropriety of petitioner Rosita's preventive suspension would essentially determine her entitlement to back salaries

⁷³ 729 Phil. 553 (2014).

⁷⁴ Id. at 562-563.

during the three-month period, this Court rules and so holds that despite the lapse of the period of her preventive suspension, there is nothing that precludes the resolution of her Petition assailing the Order of the Office of the Ombudsman, which placed her under preventive suspension.

Section 12, Article XI of the 1987 Constitution vests upon the Ombudsman and his or her deputies the power to promptly act on complaints filed against public officials and employees of the government. Such power emanates from the noble distinction of the Office of the Ombudsman as the protector of the people, *viz.*:

Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

This constitutional mandate is fleshed out in Republic Act No. 6770.⁷⁵ Section 24 grants the Office of the Ombudsman the power to preventively suspend public officials and employees, thusly:

Section 24. *Preventive Suspension.* — The Ombudsman and his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six (6) months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.⁷⁶

The Office of the Ombudsman is explicitly authorized to issue a preventive suspension order under Section 24 of Republic Act No. 6770 when two conditions are met. These are: (a) the evidence of guilt is strong based on the Ombudsman's judgment; and (b) any of the three circumstances are present— (1) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (2) the

⁷⁵ THE OMBUDSMAN ACT OF 1989, Approved on November 17, 1989.

⁷⁶ *Id.*

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charges would warrant removal from service; or (3) the respondent's continued stay in office may prejudice the case filed against him.⁷⁷

Apropos the first condition, *Yasay Jr. v. Desierto*⁷⁸ enunciates that the strength of the evidence is to be determined by the Office of the Ombudsman by taking into account the evidence before him, *viz.*:

The rule is that whether the evidence of guilt is strong, as required in Section 24 of R.A. No. 6770, is left to the determination of the Ombudsman by taking into account the evidence before him. **In the very words of Section 24, the Ombudsman may preventively suspend a public official pending investigation if "in his judgment" the evidence presented before him tends to show that the official's guilt is strong and if the further requisites enumerated in Section 24 are present. The Court cannot substitute its own judgment for that of the Ombudsman on this matter, absent clear showing of grave abuse of discretion.**⁷⁹ (Emphasis supplied)

Withal, *Buenaseda v. Flavier*⁸⁰ instructs that:

Under the Constitution, the Ombudsman is expressly authorized to recommend to the appropriate official the discipline or prosecution of erring public officials or employees. **In order to make an intelligent determination whether to recommend such actions, the Ombudsman has to conduct an investigation. In turn, in order for him to conduct such investigation in an expeditious and efficient manner, he may need to suspend the respondent.**

The need for the preventive suspension may arise from several causes, among them, the danger of tampering or destruction of evidence in the possession of respondent; the intimidation of witnesses, *etc.* The Ombudsman should be given the discretion to decide when the persons facing administrative charges should be preventively suspended.⁸¹ (Emphasis and underscoring supplied)

In OMB-L-A-15-0499, petitioner Rosita was administratively charged with Conduct Prejudicial to the Best Interest of the Service, Grave Misconduct and Gross Neglect of Duty. In issuing a preventive suspension order against petitioner Rosita, the Office of the Ombudsman relied on the 29 April 2015 Commission on Audit Regional Office No. I Decision⁸² denying petitioner's request for relief from money accountability. Accordingly, the Office of the Ombudsman initially found her to be "remiss in her duty as Municipal

⁷⁷ See *Purissima v. Carpio-Morales*, 814 Phil. 872, 886 (2017).

⁷⁸ 360 Phil. 680 (1998).

⁷⁹ *Id.* at 697.

⁸⁰ 297 Phil. 719 (1993).

⁸¹ *Id.* at 727-728.

⁸² *Rollo* (G.R. No. 256013), pp. 57-59; penned by Regional Director Lynn S.F. Sicangco.

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Treasurer” and in protecting the public funds in her custody. This impelled the Office of the Ombudsman to rule that “a preventive suspension order is warranted to prevent Rosita from using her office to influence potential witnesses or tamper with records that may be vital in the prosecution of the present case.”⁸³

Meanwhile, the nature of the charges against petitioner Rosita satisfies the second condition in the issuance of an order of preventive suspension. Indubitably, grave misconduct and gross neglect of duty, if proven, would warrant her removal from office.

Plain as a pikestaff, no grave abuse of discretion can be imputed on the part of the Office of the Ombudsman in placing petitioner Rosita under preventive suspension.

The Court of Appeals correctly affirmed the findings of the Office of the Ombudsman holding petitioner Rosita administratively liable for simple neglect of duty.

Section 105⁸⁴ of Presidential Decree No. 1445⁸⁵ provides that officers accountable for government property or funds shall be liable in case of its loss, damage or deterioration occasioned by negligence in the keeping or use thereof. Indeed, accountable officers are still liable for the funds under their custody even if the loss was caused by *force majeure* should their own negligence contribute to it.⁸⁶

In *Bintudan v. Commission on Audit*,⁸⁷ the Court expounded the relative concept of negligence, to wit:

Negligence is the omission to do something that a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent man

⁸³ See *rollo* (G.R. No. 247366), p. 49.

⁸⁴ SECTION 105. *Measure of Liability of Accountable Officers.* — (1) Every officer accountable for government property shall be liable for its money-value in case of improper or unauthorized use or misapplication thereof, by himself or any person for whose acts he may be responsible. He shall likewise be liable for all losses, damages, or deterioration occasioned by negligence in the keeping or use of the property, whether or not it be at the time in his actual custody.

(2) Every officer accountable for government funds shall be liable for all losses resulting from the unlawful deposit, use, or application thereof and for all losses attributable to negligence in the keeping of the funds.

⁸⁵ ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES, approved on June 11, 1978.

⁸⁶ See *Callang v. Commission on Audit*, 845 Phil. 476, 484-485 (2019).

⁸⁷ 807 Phil. 795 (2017).

and [a] reasonable man could not do. Stated otherwise, negligence is want of care required by the circumstances. **Negligence is, therefore, a relative or comparative concept. Its application depends upon the situation the parties are in, and the degree of care and vigilance which the prevailing circumstances reasonably require.** Conformably with this understanding of negligence, the diligence the law requires of an individual to observe and exercise varies according to the nature of the situation in which she happens to be, and the importance of the act that she has to perform.⁸⁸ (Emphasis supplied)

Parenthetically, in the case of *Leano v. Domingo*,⁸⁹ which involved a government cashier whose money accountability was lost also through robbery, this Court unequivocally ruled that the safety of money cannot be ensured when it is deposited in enclosures other than the safety vault. As in this case, the cashier therein did not keep her money accountabilities in the vault. The Court ultimately upheld the Decision of the Commission on Audit to deny Leano's request for relief from accountabilities and found her negligent in handling government funds, thus—

Applying the stated test to the facts of this case, **it is evident that petitioner fell short of the demands inherent in her position.** As aptly argued by the Solicitor General, an exercise of proper diligence expected of her position would have compelled petitioner to request an immediate change of the combination of the safe. However, the record is bare of any showing that petitioner had, at least, exerted any effort to have the combination changed, content with the fact that, according to her, the former cashier also used the steel cabinet as depository of the funds.

In addition, it was found that **the use of the steel cabinet was not a wise and prudent decision. The steel cabinet, even when locked, at times could be pulled open, thus it can be surmised that even without the use of a key, the robbery could be committed once the culprits succeed in entering the room** (Progress Report of the Police dated February 28, 1985). Moreover, the original key of the steel cabinet was left inside a small wooden box placed near the steel cabinet; it is therefore highly possible that the said steel cabinet was opened with the use of its original key (Police Alarm Report).⁹⁰ (Emphasis supplied)

Being the municipal treasurer of the local government unit, petitioner Rosita had the duty to take custody and exercise proper management of its funds. As an accountable officer, the exercise of proper diligence would have compelled her to place government funds in her custody in a more secured location such as a safety vault, rather than inside her wooden cabinet, which locks could easily be destroyed. Clearly, the loss of the PEI bonuses of the municipal employees through robbery will not totally exculpate her from

⁸⁸ Id. at 803.

⁸⁹ 275 Phil. 887-893 (1991).

⁹⁰ Id. at 892-893.

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liability. Other than her bare allegations, the records bare no evidence showing that she caused the repair of the defective vault or requested for a serviceable one, which would have provided more security for her money accountabilities. Lamentably, such failure to use 'that reasonable care and caution which an ordinarily prudent person would have used in the same situation' demonstrates petitioner's contributory negligence.⁹¹ Petitioner Rosita's inability or failure, though committed evidently through inadvertence, lack of attention, or carelessness, amounts to simple neglect of duty.

Simple neglect of duty is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference. On the other hand, gross neglect of duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty.⁹²

Under Section 46(D)(1), Rule 10 of CSC Resolution No. 1101502 dated 8 November 2011, otherwise known as the "Revised Rules on Cases in the Civil Service", simple neglect of duty is a less grave offense, punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense. Section 48(1) of the same rule clarifies that "first offense" may be considered as a mitigating circumstance. Moreover, Section 49(a) provides that "[t]he minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present."

In light of the foregoing legal and jurisprudential precepts, the Court echoes with approbation the imposition by the Court of Appeals of the penalty of suspension from service for one month and one day without pay upon petitioner Rosita, this being her first offense.

*The Commission on Audit Commission
Proper did not gravely abuse its
discretion in affirming the denial of
petitioner Rosita's request for relief
from money accountability.*

At this point, it bears to highlight that the Court's power to review decisions of the Commission on Audit *via* Rule 64 petitions is limited to jurisdictional errors or grave abuse of discretion; the Court generally upholds the Commission on Audit's ruling, especially in the absence of grave abuse on

⁹¹ See *Gutierrez v. Commission on Audit*, 750 Phil. 413, 434 (2015).

⁹² See *Civil Service Commission v. Catacutan*, G.R. Nos. 224651 and 224656, July 3, 2019, 907 SCRA 373, 386.

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its part.⁹³

A cursory perusal of the *certiorari* petition in **G.R. No. 256013** divulges that petitioner Rosita failed to allege any grave abuse of discretion on the part of the Commission on Audit in rendering the assailed Decision and Resolution. Instead, she asserts her innocence and posits that she was not negligent in safekeeping the public funds in her custody. She avouches that the Commission on Audit gravely erred in denying her request for relief from accountability.

Quite discernibly, arguments raised by petitioner Rosita are not averments of grave abuse of discretion. At best, the errors imputed upon the Commission on Audit are mere errors of judgment that cannot be remedied via *certiorari*.⁹⁴ She bears the burden of proving ‘not merely reversible error’ committed by the Commission on Audit, but ‘such a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.’⁹⁵ Even if so alleged, her recourse is still deficient in intrinsic merit. The Commission on Audit committed no grave abuse of discretion in issuing the assailed Decision and Resolution since its findings of negligence on the part of petitioner Rosita are to be respected for being supported by substantial evidence.

In arriving at its conclusion, the Commission on Audit relied on the Reinvestigative Report⁹⁶ of the Audit Team, which established that petitioner Rosita placed the money inside her center drawer because the old vault in her room could no longer be opened. Given petitioner Rosita’s insouciance in not employing measures to secure a new vault or much less, to cause the repair of the defective vault in her office, the Commission on Audit concluded that she failed to exercise the diligence required of her position as custodian of government funds. As this Court previously enunciated, “a person who is negligent in keeping the funds cannot be relieved from liability.”⁹⁷ Verily, petitioner has to answer for the loss of the funds in her custody, consistent with the provisions of **Section 105 of P.D. No. 1445**.⁹⁸

THE FOREGOING DISQUISITIONS CONSIDERED, the consolidated *Petitions* are hereby **DENIED** and the following are **AFFIRMED**:

⁹³ See *Zamboanga City Water District v. Commission on Audit*, G.R. No. 218374, December 1, 2020.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Rollo* (G.R. No. 256013), pp. 123-126.

⁹⁷ See *Gutierrez v. Commission on Audit*, supra note 92 at 435.

⁹⁸ Supra note 85.

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- (1) Resolutions dated 21 March 2017 and 18 July 2017 of the Court of Appeals in **CA-G.R. SP No. 148280**;
- (2) Decision dated 8 December 2017 and Resolution dated 12 April 2018 of the Court of Appeals in **CA-G.R. SP No. 148280**;
- (3) Decision dated 22 November 2018 and Resolution dated 13 March 2019 of the Court of Appeals in **CA-G.R. SP Nos. 144738 and 149496**; and
- (4) Decision No. 2018-089 dated 25 January 2018 and Resolution No. 2020-385 dated 31 January 2020 of the Commission on Audit.

SO ORDERED.



JAPAR B. DIMAAMPAO
Associate Justice

WE CONCUR:



ALEXANDER G. GESMUNDO
Chief Justice



MARVIC M.V.F. LEONEN
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



HENRIJEAN PAUL B. INTING
Associate Justice

On Official Leave
RODIL V. ZALAMEDA
Associate Justice




MARIO Y. LOPEZ
Associate Justice


On Official Business
SAMUEL H. GAERLAN
Associate Justice



RICARDO R. ROSARIO
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice



JOSE MIDAS P. MARQUEZ
Associate Justice




ANTONIO T. KHO, JR.
Associate Justice

On Official Business
MARIA FILOMENA D. SINGH
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 cases were assigned to the writer of the opinion of this Court.



ALEXANDER G. GESMUNDO
Chief Justice