



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PROVINCE OF MAGUINDANAO
DEL NORTE, represented by its
Governor Fatima Ainee Limbona
Sinsuat,

G.R. No. 265373

Petitioner,

Present:

-versus-

LEONEN,* *Acting Chief Justice*,
LAZARO-JAVIER,**
Working Chairperson,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., JJ.

BUREAU OF LOCAL
GOVERNMENT FINANCE,
REGIONAL OFFICE NO. XII,
represented by its Acting Regional
Director June Ann C. Abella, BUREAU
OF LOCAL GOVERNMENT
FINANCE, CENTRAL OFFICE,
represented by OIC Executive Director
Ma. Pamela Quizon, MINISTRY OF
INTERIOR AND LOCAL
GOVERNMENT, represented by
Minister Naguib Sinarimbo,
Bangsamoro Autonomous Region in
Muslim Mindanao,

Promulgated:

JUN 26 2023

Respondents.

x-----x

DECISION

* Acting Chief Justice per Special Order No. 2989 dated June 24, 2023.
** Working Chairperson per Special Order No. 2993 dated June 26, 2023.

LAZARO-JAVIER, J.:**The Case**

The Petition for Mandamus with prayer for a Writ of Preliminary Mandatory Injunction seeks to compel respondents Bureau of Local Government Finance, Regional Office No. XII (BLGF Region XII), represented by its Acting Regional Director June Ann C. Abella (Acting Regional Director Abella), BLGF Central Office represented by its Officer-In-Charge Executive Director Ma. Pamela P. Quizon, Ministry of Interior and Local Government (MILG), represented by Minister Naguib Sinarimbo, Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) to process the designation of Badorie M. Alonzo (Alonzo) as Provincial Treasurer of the Province of Maguindanao del Norte in a concurrent capacity as Provincial Treasurer of the Mother Province of Maguindanao, in accordance with Section 51,¹ of Republic Act No. 11550, otherwise known as the “Charter of the Provinces of Maguindanao del Norte and Maguindanao del Sur.”²

Antecedents

Petitioner Province of Maguindanao del Norte, represented by its Governor Fatima Ainee L. Sinsuat (Governor Sinsuat) averred, in essence:

On May 27, 2021, Republic Act No. 11550 was signed into law, dividing the Province of Maguindanao into two distinct and independent provinces.³ Under Section 48 thereof, the provinces of Maguindanao del Norte and Maguindanao del Sur shall be created upon approval by majority of the votes cast by the voters of the affected areas in a plebiscite to be conducted and supervised by the Commission on Elections (COMELEC) within 90 days from the effectivity of the law.⁴ The COMELEC, however, deferred the plebiscite until after the 2022 National and Local Elections.

¹ Section 51, Republic Act No. 11550, *infra* Note 3. Organization of the Provincial Government. - All provincial appointive positions in the newly created provinces shall be filled within sixty (60) days upon commencement of its corporate existence.

² *Rollo*, p. 9.

³ Republic Act No. 11550, “Charter of the Provinces of Maguindanao del Norte and Maguindanao del Sur,” which originated in the House of Representatives was passed by the House of Representatives on June 1, 2020, amended by the Senate of the Philippines on March 9, 2021, and which amendments were concurred in by the House of Representatives on March 22, 2021. This was later on approved on May 27, 2021 by Pres. Rodrigo Roa Duterte.

⁴ *Id.* at Transitory Provision, Section 48. Plebiscite. - The provinces of Maguindanao del Norte and Maguindanao del Sur shall be created as provided for in this Chapter upon approval by the majority of the votes cast by the voters of the affected areas in a plebiscite to be conducted and supervised by the Commission on Elections (COMELEC) within ninety (90) days from the date of the effectivity of this Act. The expenses for the conduct of the plebiscite shall be borne by the present Province of Maguindanao.

Consequently, the Province of Maguindanao proceeded to elect a new set of officials during the May 22, 2022 elections.⁵

On September 17, 2022, the COMELEC eventually conducted the plebiscite which resulted in the overwhelming ratification of Republic Act No. 11550. Accordingly, the elected officials of the Province of Maguindanao carried out the transitional governance structure ordained under Section 50 of the said law, *viz.*:⁶

Section 50. Officials of the Newly Created Provinces. –

- (a) The elective officials of the newly created provinces shall be elected on the second Monday of May 2022 national and local elections: Provided, That if this Act is approved and ratified within six (6) months or more prior to the 2022 national and local elections, the vice governor and the next ranking elective member of the sangguniang panlalawigan of the present Province of Maguindanao, who are residents of the new Maguindanao del Norte shall assume as its acting governor and acting vice governor, respectively, and both shall continue to serve in office until their successors shall have been elected and qualified in the 2022 national and local elections.
- (b) The other members of the sangguniang panlalawigan shall be appointed by the President of the Republic of the Philippines from among the qualified residents of the new province of Maguindanao del Norte upon the recommendation of the acting provincial governor and the incumbent Representatives of the First Legislative District of the present Province of Maguindanao, in consultation with, and with the consensus of the local elders and political leaders: Provided, That the incumbent elected members of the sangguniang panlalawigan from the First Legislative District of the Province of Maguindanao shall have the right to retain their respective positions and finish their term of office in the new province of Maguindanao del Norte without need of appointment.
- (c) The rule of succession under Title II, Chapter 2, Section 44 of the Local Government Code of 1991, as amended by Republic Act No. 11054, otherwise known as the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, shall be applied in filling up vacant elective provincial positions in the Province of Maguindanao del Sur arising as a consequence of the approval of this Act: Provided, That additional and new members of sangguniang panlalawigan shall be appointed by the President of the Republic of the Philippines from among the qualified residents of the province upon the recommendation of the provincial governor and the incumbent Representative of the Second Legislative District of the Province of Maguindanao, in consultation with, and with the consensus of the local elders and political leaders, and they shall continue to serve in office until their successors shall have been elected and qualified in the 2022 national and local elections.

⁵ *Rollo*, p. 4.

⁶ *Id.*

The incumbent governor of the present Province of Maguindanao shall remain as governor of the Province of Maguindanao del Sur.

For Maguindanao del Norte, the elected Vice-Governor of the Province of Maguindanao Fatima Ainee L. Sinsuat and the next ranking member of the Sangguniang Panlalawigan of the Province of Maguindanao Datu Sharifudin Tucao P. Mastura assumed their respective offices as Governor and Vice-Governor, both bearing the qualifications for the posts under Section 50.⁷

By virtue of the ratification of Republic Act No. 11550 and the assumption to office of the officials of each province pursuant to Section 50 thereof, the respective corporate existence of the provinces of Maguindanao del Norte and Maguindanao del Sur was deemed to have commenced.⁸ Thus, each province got constituted as a political body corporate, endowed with the attributes of perpetual succession and powers pertaining to a provincial corporation in conformity with the provisions of Republic Act No. 11550 and Republic Act No. 7160, otherwise known as the "Local Government Code of 1991" (LGC), as amended.⁹

On December 20, 2022, Governor Sinsuat of Maguindanao del Norte sent a letter to BLGF Region XII, requesting that Alonzo be designated as Provincial Treasurer of the Province of Maguindanao del Norte in a concurrent capacity as Provincial Treasurer of the Mother Province of Maguindanao, in accordance with Section 51¹⁰ of Republic Act No. 11550.¹¹

Three days later, the Department of Budget and Management issued Local Budget Memorandum No. 85-B expressly recognizing the newly created provinces of Maguindanao del Norte and Maguindanao del Sur. The share of Maguindanao del Norte in the National Tax Allotment (NTA) for January and February 2023 was accordingly downloaded to the depository bank in the name of the province, albeit it cannot be withdrawn yet.¹²

Meantime, under letter dated January 17, 2023, BLGF Region XII, through Acting Regional Director Abella, required petitioner to submit documents pertaining to the assumption to office by local officials and the fact that the corporate existence of the newly created Province of Maguindanao del Norte has already commenced.¹³

⁷ *Id.* at 40.

⁸ Transitory Provision, Section 49, Republic Act No. 11550. Commencement of Corporate Existence. - The corporate existence of the provinces of Maguindanao del Norte and Maguindanao del Sur shall commence upon the composition, qualification and assumption of the provincial governors, provincial vice governors and majority of the members of the sangguniang panlalawigan.

⁹ *Id.* at Section 6 on Corporate Powers of the Provinces.

¹⁰ *Id.* at Section 51. Organization of the Provincial Government. - All provincial appointive positions in the newly created provinces shall be filled within sixty (60) days upon commencement of its corporate existence.

¹¹ *Rollo*, p. 9.

¹² *Id.* at 9-10.

¹³ *Id.* at 10.

In compliance, petitioner submitted the following documents to BLGF Region XII: (a) Oath of Office of Governor Sinsuat dated October 13, 2022; (b) Oath of Office of Vice Governor Datu Sharifudin Tucao P. Mastura (Vice Governor Mastura) dated October 13, 2022; (c) Resolution No. 39-2022 dated October 13, 2022 of the Sangguniang Panlalawigan of the Province of Maguindanao recognizing the Oath of Office and Assumption in the Office of Fatima Ainee L. Sinsuat as Governor in the Province of Maguindanao del Norte; and (d) Resolution No. 40-2022 dated October 13, 2022 of the Sangguniang Panlalawigan of the Province of Maguindanao recognizing the Oath of Office and Assumption in the Office of Datu Sharifudin Tucao P. Mastura as Vice Governor in the Province of Maguindanao del Norte.¹⁴

On February 1, 2023, Acting Regional Director Abella of BLGF Region XII informed petitioner that BLGF Region XII intended to seek legal guidance from the BLGF Central Office as well as the MILG of BARMM on the correct interpretation of the Transitory Provisions of Republic Act No. 11550. According to the said office, since the plebiscite was held only after and not before the May 2022 National Elections, Section 50 would no longer apply *vis-à-vis* the assumption to office of the supposed governing officials of the newly created Province of Maguindanao del Norte.¹⁵

In stark contrast, however, the same BLGF Region XII promptly recognized the existence of the Province of Maguindanao del Sur, including the authority of the Provincial Treasurer (appointed prior to the effectivity of Republic Act No. 11550) to continue performing the functions of the office for the newly created province. As a consequence, since January 2023, the Province of Maguindanao del Sur has already been regularly drawing its NTA share, and its officials and employees, their salaries.¹⁶

The Present Petition

Petitioner was thus constrained to file the present Petition for Mandamus with prayer for issuance of a writ of preliminary mandatory injunction to compel BLGF Region XII to designate Alonzo or any qualified person designated by petitioner to discharge the duties and functions of Provincial Treasurer of Maguindanao del Norte.¹⁷

Preliminarily, petitioner justifies its direct resort to the Court by way of exception to the doctrine of hierarchy of courts since the present case involves a pure question of law and is imbued with public interest.¹⁸

¹⁴ *Id.* at 11.

¹⁵ *Id.*

¹⁶ *Id.* at 11–12.

¹⁷ *Id.* at 24–25.

¹⁸ *Id.* at 21.

On the merits, **petitioner argues** that under Department Personnel Order No. 562-2016 dated November 10, 2016, which sets the guidelines for the designation of provincial, city or municipal treasurer or assistant treasurer, it is the ministerial duty of BLGF Region XII to designate the provincial treasurer of Maguindanao del Norte upon the written request of its governor. BLGF Region XII thus committed grave abuse of discretion when it rendered an interpretation of the transitory provisions of Republic Act No. 11550 in its letter dated February 1, 2023 and refused to act on petitioner's request. As a result, BLGF Region XII further violated Section 6,¹⁹ Article X of the 1987 Constitution and Section 286(a)²⁰ of the LGC as it hampered petitioner's withdrawal of its share from the NTA.²¹

More, Section 50 of Republic Act No. 11550 reveals the legislative intent to immediately fill elective provincial offices in the Provinces of Maguindanao del Norte and Maguindanao del Sur in the next regular elections. Consequently, then Vice Governor Fatima Ainee L. Sinsuat and next highest ranking Sangguniang Panlalawigan member Datu Sharifudin Tucao Mastura of the Mother Province of Maguindanao duly assumed the offices of governor and vice governor of the Province of Maguindanao del Norte, respectively.²²

In its Comment²³ dated March 24, 2023, **BLGF**, through the Office of the Solicitor General (OSG) **ripostes** that petitioner has not established a clear legal right to compel BLGF to appoint a provincial treasurer of the newly created Province of Maguindanao del Norte. Section 50 allows the assumption to office of the elected vice-governor and next ranking elective member of the Sangguniang Panlalawigan of the Mother Province of Maguindanao as governor and vice-governor of the Province of Maguindanao del Norte only if the law was ratified at least six months prior to the May 2022 National and Local Elections.²⁴ Meantime, Section 54 of Republic Act No. 11550 states that the expenses for the activities to ensure the full and complete management, operations, and service delivery of the newly created provinces shall be borne by the Mother province of Maguindanao.²⁵

More important, per Section 26 of Republic Act No. 11550, BLGF is not the entity mandated by law to appoint the provincial treasurer of

¹⁹ Section 6, Art. X, 1987 Constitution. Local government units shall have a just share, as determined by law, in the national taxes which shall automatically be released to them.

²⁰ Section 286(a). Automatic Release of Shares. – (a) The share of each local government unit shall be released, without need of any further action, directly to the provincial, city, municipal or barangay treasurer, as the case may be, on a quarterly basis within five (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose.

²¹ *Rollo*, pp. 13–14.

²² *Id.* at 15–21.

²³ *Id.* at 75–87.

²⁴ *Id.* at 79.

²⁵ *Id.* at 81–82.

Maguindanao del Norte but the Secretary of Finance.²⁶ Petitioner's reliance on Department Personnel No. 562-2016 is misplaced as the same pertains only to vacancies occurring in the Office of the Provincial Treasurer but not to a newly-created position. At any rate, the appointment of a provincial treasurer is discretionary on the part of the Secretary of Finance. Finally, petitioner failed to exhaust all administrative remedies since she could have directly forwarded her request to the Secretary of Finance.²⁷

MILG, in its Comment²⁸ dated March 29, 2023, **counters** that Republic Act No. 11550 contemplated the situation where the law would be ratified before the 2022 National and Local Elections which did not happen here. The corporate existence of Maguindanao del Norte, therefore, cannot be deemed to have already commenced.²⁹ The communications from other government agencies expressly addressing Governor Sinsuat, as Governor of Maguindanao del Norte cannot serve as the legal basis for the vesture of such authority.³⁰

By Resolution³¹ dated April 19, 2023, the Court issued a writ of preliminary mandatory injunction directing BLGF Region XII to process the designation of Alonzo as Provincial Treasurer of the Province of Maguindanao del Norte pending resolution of the case on the merits.

Issues

- 1) Did the filing of the Petition for Mandamus directly with the Court violate the doctrine of hierarchy of courts?
- 2) Did Fatima L. Ainee Sinsuat as duly elected Vice Governor of the Province of Maguindanao and Datu Sharifudin Tucao Mastura as duly elected next ranking Member of the Sangguniang Panlalawigan of the Province of Maguindanao validly assume the positions of Governor and Vice Governor of Maguindanao del Norte, respectively?
- 3) May a writ of mandamus issue to compel BLGF Region XII to process the appointment of the Provincial Treasurer of Maguindanao del Norte?

Ruling

²⁶ *Id.* at 82.

²⁷ *Id.* at 83.

²⁸ *Id.* at 92-102.

²⁹ *Id.* at 97.

³⁰ *Id.* at 98.

³¹ *Id.* at 188-189.

Direct recourse to the Court is allowed on pure question of law; Case is imbued with public interest

The doctrine of hierarchy of courts guides litigants as to the proper venue of appeals and/or the appropriate forum for the issuance of extraordinary writs. Thus, although the Court, the Court of Appeals, and the Regional Trial Courts have concurrent original jurisdiction over petitions for certiorari, prohibition, mandamus, *quo warranto*, and habeas corpus, parties are directed, as a rule, to file their petitions before the lower-ranked court; otherwise, the petition may be dismissed outright.³²

The doctrine of hierarchy of courts operates to: (1) prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction; (2) prevent further overcrowding of the Court's docket; and (3) prevent the inevitable and resultant delay, intended or otherwise, in the adjudication of cases which often have to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as the court better equipped to resolve factual questions.³³

The doctrine, however, is not an iron-clad rule. The Court, in *Gios-Samar, Inc. v. Department of Transportation and Communications, et al.*,³⁴ provided a comprehensive yet succinct discussion on the exceptions to the doctrine of the hierarchy of courts. We clarified once and for all that direct recourse to this Court is allowed only to resolve questions of law, notwithstanding the invocation of paramount or transcendental importance of the action, *viz.*:

Aside from the special civil actions over which it has original [j]urisdiction, the Court, through the years, has allowed litigants to seek direct relief from it upon allegation of "serious and important reasons." *The Diocese of Bacolod v. Commission on Elections* summarized these circumstances in this wise:

- (1) when there are genuine issues of constitutionality that must be addressed at the most immediate time;
- (2) when the issues involved are of transcendental importance;
- (3) cases of first impression;
- (4) the constitutional issues raised are better decided by the Court;

³² See *Gios-Samar, Inc. v. Department of Transportation and Communications*, 849 Phil. 120 (2019) [Per J. Jardeleza, *En Banc*].

³³ *Id.* at 182–183.

³⁴ *Id.* at 172–175.

- (5) exigency in certain situations;
- (6) the filed petition reviews the act of a constitutional organ;
- (7) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; [and]
- (8) the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."

A careful examination of the jurisprudential bases of the foregoing exceptions would reveal a common denominator – the issues for resolution of the Court are purely legal. Similarly, the Court in *Diocese* decided to allow direct recourse in said case because, just like *Angara*, **what was involved was the resolution of a question of law, namely,** whether the limitation on the size of the tarpaulin in question violated the right to free speech of the Bacolod Bishop.

We take this opportunity to clarify that the presence of one or more of the so-called "special and important reasons" is not the decisive factor considered by the Court in deciding whether to permit the invocation, at the first instance, of its original jurisdiction over the issuance of extraordinary writs. **Rather, it is the nature of the question raised by the parties in those "exceptions" that enabled us to allow the direct action before us.**³⁵ (Emphases supplied)

Indeed, the Court may, in its discretion, entertain a case directly filed with it if the issues raised for resolution are purely legal in nature, *as here*. More important, the present case is of first impression, raising the novel question of whether Section 50 of Republic Act No. 11550 is operative, albeit, the law was approved and ratified only after the 2022 National and Local Elections. Notably, the case is also imbued with public interest involving as it does the governance and operation of the newly created Province of Maguindanao del Norte.

Section 50 is applicable to the governing officials of the newly created Province of Maguindanao del Norte; Petitioner validly assumed the position of governor of Maguindanao del Norte but only in an acting capacity

³⁵ *Id.* at 172–175.

Both the BLGF through the OSG, and the MILG assail the corporate existence of the Province of Maguindanao del Norte, positing that Section 50 applies only to instances where the law was ratified prior to the May 2022 National and Local Elections. Consequently, Governor Sinsuat and Vice Governor Mastura allegedly have no right to assume their respective offices in the newly created Province of Maguindanao del Norte.

We do not agree.

Sinsuat, as duly elected Vice-Governor of the Province of Maguindanao, and Mastura, as next ranking member of the Sangguniang Panlalawigan of the Province of Maguindanao, validly assumed office as governor and vice-governor, respectively, of the Province of Maguindanao del Norte, *but only* in **acting capacities** until elections for the permanent officials to the said positions shall have been held.

Indeed, Section 50³⁶ only expressly provides for two scenarios *vis-à-vis* the designation or election of officials of the newly created provinces of Maguindanao del Norte and Maguindanao del Sur depending on the date *when* Republic Act No. 11550 is approved and ratified:

- (1) The said elective officials shall be elected during the 2022 National and Local Elections if the Act is approved and ratified within *less than six months* prior to the said elections; or

³⁶ Section 50. Officials of the Newly Created Provinces. --

(a) The elective officials of the newly created provinces shall be elected on the second Monday of May 2022 national and local elections: Provided, That if this Act is approved and ratified within six (6) months or more prior to the 2022 national and local elections, the vice governor and the next ranking elective member of the sangguniang panlalawigan of the present Province of Maguindanao, who are residents of the new Maguindanao del Norte shall assume as its acting governor and acting vice governor, respectively, and both shall continue to serve in office until their successors shall have been elected and qualified in the 2022 national and local elections.

(b) The other members of the sangguniang panlalawigan shall be appointed by the President of the Republic of the Philippines from among the qualified residents of the new province of Maguindanao del Norte upon the recommendation of the acting provincial governor and the incumbent Representatives of the First Legislative District of the present Province of Maguindanao, in consultation with, and with the consensus of the local elders and political leaders: Provided, That the incumbent elected members of the sangguniang panlalawigan from the First Legislative District of the Province of Maguindanao shall have the right to retain their respective positions and finish their term of office in the new province of Maguindanao del Norte without need of appointment.

(c) The rule of succession under Title II, Chapter 2, Section 44 of the Local Government Code of 1991, as amended by Republic Act No. 11054, otherwise known as the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, shall be applied in filling up vacant elective provincial positions in the Province of Maguindanao del Sur arising as a consequence of the approval of this Act: Provided, That additional and new members of sangguniang panlalawigan shall be appointed by the President of the Republic of the Philippines from among the qualified residents of the province upon the recommendation of the provincial governor and the incumbent Representative of the Second Legislative District of the Province of Maguindanao, in consultation with, and with the consensus of the local elders and political leaders, and they shall continue to serve in office until their successors shall have been elected and qualified in the 2022 national and local elections.

The incumbent governor of the present Province of Maguindanao shall remain as governor of the Province of Maguindanao del Sur.

- (2) The vice-governor and next ranking elective member of the Sangguniang Panlalawigan of the Province of Maguindanao who are residents of Maguindanao del Norte shall assume as its *acting* governor and *acting* vice-governor, respectively, if the Act is approved and ratified *within six months or more* prior to the 2022 National and Local Elections.

As it was, however, none of the two contemplated scenarios took place. Instead, Republic Act No. 11550 was approved and ratified by an overwhelming majority only during the plebiscite which took place *after* the 2022 National and Local Elections or on September 17, 2022. Notably, the law is *silent* as regards the filling in of the positions of elective officials for the newly created provinces under this scenario.

The Court, nonetheless, must render judgment despite the silence, obscurity, or insufficiency of the law.³⁷ Here, an indubitable fact remains: the Provinces of Maguindanao del Norte and Maguindanao del Sur have already *ipso facto* been created and segregated upon the approval of majority of the voters during the plebiscite.³⁸ It is this very operative act which *created* the provinces. The people had clearly pronounced their will.

In *Miranda v. Aguirre*,³⁹ the Court explained that the required plebiscite for the creation, division, merger, abolition, or substantial alteration of boundaries of local government units is one instance where the people in their sovereign capacity decide on a matter that affects them—direct democracy of the people as opposed to democracy through people’s representatives, *viz.*:

The 1987 Constitution, more than any of our previous Constitutions, gave more reality to the sovereignty of our people for it was borne out of the people power in the 1986 EDSA revolution. Its Section 10, Article X addressed the undesirable practice in the past whereby local government units were created, abolished, merged or divided on the basis of the vagaries of politics and not the welfare of the people. **Thus, the consent of the people of the local government unit directly affected was required to serve as a checking mechanism to any exercise of legislative power creating, dividing, abolishing, merging or altering the boundaries of local government units. It is one instance where the people in their sovereign capacity decide on a matter that affects them—direct democracy of the people as opposed to democracy thru people’s**

³⁷ Civil Code, Article 9. No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws.

³⁸ Republic Act No. 11550, Section 48. *Plebiscite*. The provinces of Maguindanao del Norte and Maguindanao del Sur shall be created as provided for in this Chapter upon approval by the majority of the votes cast by the voters of the affected areas in a plebiscite to be conducted and supervised by the Commission on Elections (COMELEC) within ninety (90) days from the date of the effectivity of this Act.

³⁹ 373 Phil. 386 (1999) [Per J. Puno, *En Banc*].

representatives. This plebiscite requirement is also in accord with the philosophy of the Constitution granting more autonomy to local government units.⁴⁰ (Emphasis supplied)

So must it be.

Albeit the plebiscite was conducted only *after* the May 2022 National and Local Elections, this does not invalidate Section 50. As one of the Transitory Provisions, Section 50 is intended to operate upon the effectivity of the law. Indeed, it would be in keeping with the spirit and intention of the law to give life to its transitory provisions for we cannot simply allow the already *existing* Provinces of Maguindanao del Norte and Maguindanao del Sur to be without a set of officials or without any funds for their operations.

Since the *first scenario*, i.e., election of the provincial elective officials, under Section 50 is not feasible, the *second scenario*, i.e., assumption by the vice-governor and next ranking elective member of the Sangguniang Panlalawigan of the Province of Maguindanao as *acting* governor and *acting* vice-governor of Maguindanao del Norte subject to qualifications, should apply.

In *Lecaroz v. Sandiganbayan*,⁴¹ we reiterated the strong presumption against a legislative intent to create a vacuum in public offices, which is founded on obvious considerations of public policy to avoid a hiatus in the performance of government functions. The principle of hold over in public offices thus serves to prevent public inconvenience, *viz.*:

Indeed, the law abhors a vacuum in public offices, and courts generally indulge in the strong presumption against a legislative intent to create, by statute, a condition which may result in an executive or administrative office becoming, for any period of time, wholly vacant or unoccupied by one lawfully authorized to exercise its functions. This is founded on obvious considerations of public policy, for the principle of holdover is specifically intended to prevent public convenience from suffering because of a vacancy and to avoid a hiatus in the performance of government functions.⁴² (Emphases supplied)

The rule of hold over applies where there is no express or implied legislative intent to the contrary. But it cannot be applied if there is such legislative intent.

Here, the intent of Congress is made clear in Section 50, i.e., it did not intend in the interim for a vacuum to exist in the public offices of the newly

⁴⁰ *Id.* at 400.

⁴¹ 364 Phil. 890 (1999) [Per J. Bellosillo, Second Division].

⁴² *Id.* at 903.

created Provinces of Maguindanao del Norte and Maguindanao del Sur. Indeed, it would be absurd, *nay*, contrary to the intent of Congress and the will of the sovereign constituents of these new provinces, to interpret the law in a manner which unduly and unreasonably delays its operation and corporate existence.

Issuance of a writ of mandamus is proper

Section 3, Rule 65 of the Revised Rules of Court provides when a writ of mandamus may issue, *viz.*:

Section 3. *Petition for mandamus.* – When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

There are two situations contemplated by the Rule: (1) when any tribunal, corporation, board, officer, or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station; or (2) when any tribunal, corporation, board, officer or person unlawfully excludes another from the use and enjoyment of a right or office to which the other is entitled.⁴³

For mandamus to lie, the following requisites must be present: (a) the plaintiff has a clear legal right to the act demanded; (b) it must be the duty of the defendant to perform the act, because it is mandated by law; (c) the defendant unlawfully neglects the performance of the duty enjoined by law; (d) the act to be performed is ministerial, not discretionary; and (e) there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.⁴⁴

All the requisites are present here.

⁴³ See *Spouses Abaga v. Spouses Panes*, 557 Phil. 606, 612 (2007) [Per J. Sandoval-Gutierrez, First Division].

⁴⁴ See *Del Rosario v. Shaikh*, 867 Phil. 731, 740 (2019) [Per J. J. Reyes, Jr., First Division].

J

First. Sinsuat, as Acting Governor, has a clear legal right to recommend the appointment of the Provincial Treasurer of the Province of Maguindanao del Norte. In *Palileo v. Castro*,⁴⁵ we defined a clear legal right *vis-à-vis* the writ of mandamus as a right clearly founded in, or granted by law. It is a right which is inferable as a matter of law. A writ of mandamus will not issue unless the right to relief is clear at the time of its issuance.

To reiterate, Sinsuat validly assumed office as *Acting* Governor of the Province of Maguindanao del Norte pursuant to Section 50. Verily, she possesses the authority to recommend an appointee to the position of Provincial Treasurer under Section 26(a) of Republic Act No. 11550, thus:

Section 26. The Provincial Treasurer. – (a) The provincial treasurer shall be appointed by the Secretary of Finance from a **list of at least three (3) ranking eligible recommendees of the provincial governor**, subject to civil service law, rules and regulations.

The appointment of the provincial treasurer is mandatory. x x x
(Emphasis supplied)

Second. It is the duty of BLGF, through its duly constituted Human Resource Merits Promotion and Selection Boards (HRMPSBs), to process the recommendation of Governor Sinsuat as regards the position of provincial treasurer of Maguindanao del Norte.

On this score, the OSG argues that BLGF is not the entity mandated to appoint the Provincial Treasurer of Maguindanao del Norte but the Secretary of Finance. While the OSG is correct, as it is clear from Section 26 that the appointing authority for the said position is the Secretary of Finance, we need to reckon with Department of Finance (DOF) Personnel Order No. 477-2019, which specifically provides for a layer of review by the BLGF before the Secretary of Finance makes an appointment. Specifically, the BLGF, through its duly constituted HRMPSBs in the Central Office and each Regional Office, shall determine the best candidate for the local treasury position to be appointed by the Secretary of Finance, *viz.*:

2. SCOPE AND RATIONALE. To ensure the delivery of quality service standards, **the herein procedural guidelines shall govern the evaluation and processing of appointments of Provincial, City and Municipal Treasurers**, and Assistant Provincial, City and Municipal Treasurers by the BLGF Central and Regional Offices.

The BLGF, through its duly constituted Human Resource Merit Promotion and Selection Boards (HRMPSBs) in the Central Office (CO) and in each Regional Office (RO), shall adopt the herein criteria and guidelines in determining the best candidate for local treasury positions

⁴⁵ 85 Phil. 272 (1949) [Per J. Tuason, *En Banc*].

to be appointed by the Secretary of Finance, consistent with existing law, and civil service rules and regulations.

3. GENERAL POLICIES. The following general policies shall be observed:

x x x x

3.7. There shall be constituted and established the BLGF Central HRMPSB for Local Treasurers, which shall be chaired by the BLGF Executive Director, and the BLGF Regional HRMPSB for Local Treasurers in every BLGF RO, which shall be chaired by the concerned BLGF Regional Director, to evaluate the qualifications and competence of all recommendees of the concerned LCE. In the case of LGUs in the National Capital Region (NCR), the BLGF Central HRMPSB shall perform the functions for the purpose;

x x x x

3.9. The BLGF Regional HRMPSB for Local Treasurers shall evaluate and rank the recommendees, formalized through a Regional HRMPSB Resolution, with a duly signed summary of ratings and the required documents to be submitted to the BLGF Central HRMPSB for Local Treasurers, which in turn shall evaluate the same and formalize the final deliberations through a Central HRMPSB Resolution;

x x x x

5. EVALUATION PROCESS

5.2 Any application or recommendation submitted to the DOF or the BLGF Central and Regional Offices that are not compliant with the required documents has thirty (30) days to complete the same, after which the entire set of documents shall be immediately returned without action to the concerned LGU, with appropriate notification. The same process shall apply to LGUs within the NCR to be acted upon by the Administrative Division of the BLGF Central Office.

x x x x

6. RESPONSIBILITY OF THE BLGF. The BLGF Executive Director shall be authorized to issue guidelines or circulars relative to and consistent with this Order to ensure streamlined implementation, due diligence, and continual improvement of service delivery standards, such as the prescribed documentary requirements for each level of HRMPSB evaluations, checklists and templates, step-by-step procedures, certification of completeness and orderliness of required documents, and comparative evaluation matrices, among others. Any adjustments on weights and allocations of Annex "A" hereof shall be upon the approval of the Undersecretary of Revenue Operations Group. (Emphases and underscoring supplied)

In fine, the BLGF is akin to a "human resource manager" tasked to screen and streamline the processing of appointment of local treasurers such as provincial treasurers of local government units. *It cannot decline to act on the application of recommendation* submitted to its office except only when



as provided in Paragraph 5.2. of the Evaluation Process, it must return the application or recommendation without action if the required documents are not complied with.

Third and Fourth. BLGF unlawfully neglected the performance of its ministerial duty to process the recommendation of petitioner as mandated by DOF Personnel Order No. 477-2019. In *Lihaylihay v. Treasurer of the Philippines*,⁴⁶ citing *Sy Ha v. Galang*,⁴⁷ We explained that the duty subject of a writ of mandamus must be ministerial—not discretionary—in nature, to wit:

The duty subject of mandamus must be ministerial rather than discretionary. A court cannot subvert legally vested authority for a body or officer to exercise discretion. In *Sy Ha v. Galang*:

[M]andamus will not issue to control the exercise of discretion of a public officer where the law imposes upon him the duty to exercise his judgment in reference to any matter in which he is required to act, because it is his judgment that is to be exercised and not that of the court.

The Court distinguished in *Sanson v. Barrios*,⁴⁸ between a duty that is ministerial in nature versus one that is discretionary, viz.:

Discretion, when applied to public functionaries, means a power or right conferred upon them by law of acting officially, under certain circumstances, according to the dictates of their own judgments and consciences, uncontrolled by the judgments or consciences of others. **A purely ministerial act or duty, in contradistinction to a discretionary act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his [or her] own judgment, upon the propriety or impropriety of the act done.** If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. **The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment.** Mandamus will not lie to control the exercise of discretion of an inferior tribunal, when the act complained of is either judicial or quasi-judicial. It is the proper remedy when the case presented is outside of the exercise of judicial discretion. (Citations omitted; emphases supplied)

Personnel Order No. 477-2019 does not grant the BLGF any discretion in choosing whether to process and evaluate the qualifications and competence of any recommendee made by the local chief executive of a local government unit. Section 3.9 of Personnel Order No. 477-2019 is clear: the BLGF Regional HRMPSB for Local Treasurers *shall* evaluate and rank the recommendees to the local treasury positions from which the Secretary of

⁴⁶ 836 Phil. 400, 413 (2018) [Per J. Leonen, Third Division].

⁴⁷ 117 Phil. 798 (1963) [Per J. Bautista Angelo, *En Banc*].

⁴⁸ 63 Phil. 198, 203 (1936) [Per J. Recto, *En Banc*].

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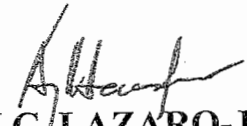
Finance shall pick his or her choice in making the appointment. In fine, the BLGF had no other choice, regardless of the question on the applicability of Section 50, but to process the recommendation made by petitioner through Acting Governor Sinsuat to designate Alonzo as Provincial Treasurer of the Province of Maguindanao del Norte. This, the BLGF, undisputedly and inexcusably failed to do.

Lastly. As discussed, the case involves a pure question of law and is imbued with public interest. To be sure, we already clarified that the fulfillment of the last requisite, i.e., there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, is determined by the inadequacy—not the mere absence—of all other legal remedies and the danger of failure of justice without the writ.

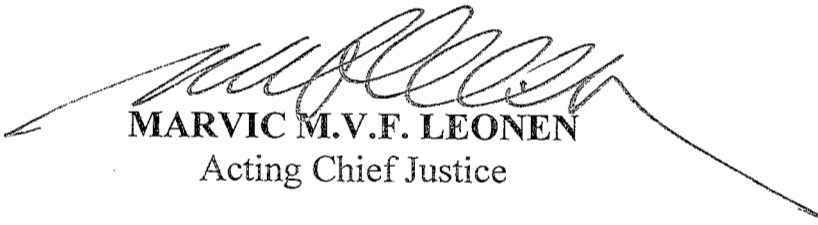
Here, we cannot allow the newly created Province of Maguindanao del Norte to be crippled without its provincial treasurer who discharges the vital task of managing the fiscal affairs of the province as the same affects the entire operation of the local government unit. To be sure, recourse to the lower courts for the present case of mandamus, while allowed, is indeed inadequate especially considering that any ruling rendered therein would still be subject to layers of appellate review. Prompt action by the Court is thus necessary and exigent in this situation.

ACCORDINGLY, the Petition for Mandamus is **GRANTED**. Respondent Bureau of Local Government Finance, Regional Office No. XII is **ORDERED** to process the appointment of Badorie M. Alonzo or any qualified person designated by petitioner Province of Maguindanao del Norte, through Acting Governor Fatima Ainee L. Sinsuat, as Provincial Treasurer of the Province of Maguindanao del Norte with utmost dispatch. The writ of preliminary mandatory injunction issued earlier is made permanent.

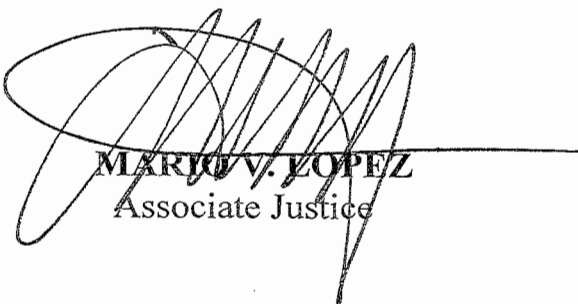
SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:




MARVIC M.V.F. LEONEN
Acting Chief Justice



MARIO V. LOPEZ
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
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 Court's Division.



MARVIC M.V.F. LEONEN
Acting Chief Justice