

REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT
NATIONAL CAPITAL JUDICIAL REGION
BRANCH 83 – QUEZON CITY

ATTY. JULITO D. VITRIOLO,
Petitioner,

- versus -

Civil Case No. R-QZN-19-
06374-CV

ATTY. CINDERELLA
FILIPINA BENITEZ-JARO,
Respondent.

X-----X

MOTION FOR RECONSIDERATION

(of the Resolution dated October 15, 2019)

The respondent, by counsel, respectfully moves for reconsideration of the resolution dated October 15, 2019 holding that she usurped the office of Executive Director IV of the CHED, and ousting and excluding her effective immediately.

GROUND

THIS HONORABLE COURT ERRED IN RELYING ON THE RESOLUTION DATED JUNE 3, 2019 IN "OFFICE OF THE OMBUDSMAN V. JULITO D. VITRIOLO" IN GRANTING THE PETITION FOR QUO WARRANTO.

DISCUSSION

1. The Supreme Court Resolution dated June 3, 2019 in G.R. No. 237582 entitled "Office of the Ombudsman v. Julito D. Vitriolo" cannot be used to justify the grant of the writ of quo warranto because it involves only the denial of the Ombudsman's Omnibus Motion (motion to intervene and to admit attached motion for reconsideration) in the Court of Appeals case of "Oliver Felix v. Atty Julito D. Vitriolo" docketed

as CA-G.R. SP No. 149063.¹ Plainly, the substantive arguments raised by the Ombudsman relative to the Vitriolo's administrative liability was not ruled upon by the Supreme Court.²

2. The Supreme Court resolution covered only the issue of whether the Ombudsman could intervene after the rendition of a judgment in an appealed case:

The Court has already clarified in *Ombudsman v. Bongais (Bongais)* that the Ombudsman has legal standing to intervene on appeal in administrative cases resolved by it. Even if not impleaded as a party in the proceedings, it has legal interest to intervene and defend its ruling in administrative cases before the CA, which interest proceeds from its duty to act as a champion of the people and to preserve the integrity of public service.

As it stands, therefore, the Ombudsman's legal standing to intervene in appeals from its rulings in administrative cases has been settled and is the prevailing rule, in accordance with the Court's pronouncement in *Bongais*, provided, that the Ombudsman moves for intervention before rendition of judgment, pursuant to Rule 19 of the Rules of Court, lest its motion be denied.

The rule requiring intervention before rendition of judgment, however, is not inflexible. Jurisprudence is replete with instances where intervention was allowed even beyond the period prescribed in the Rules of Court when demanded by the higher interest of justice; to afford indispensable parties, who have not been impleaded, the right to be heard; to avoid grave injustice and injury and to settle once and for all the substantive issues raised by the parties; or, because of the grave legal issues raised. Stated otherwise, the rule may be relaxed and intervention may be allowed subject to the court's discretion after consideration of the appropriate circumstances, for after all, Rule 19 of the Rules of Court is a rule of procedure whose object is to make the powers of the court fully and completely available for justice; its purpose is not to hinder or delay, but to facilitate and promote the administration of justice.

After a meticulous review of the available records, however, the Court finds that none of the excepting

¹ Resolution dated June 3, 2019, p. 1.

² *Id.* at 7.

circumstances as above-enumerated obtain in this case; hence, the general rule provided under Section 2, Rule 19 of the Rules of Court applies. Therefore, while the Ombudsman had legal interest to intervene in the proceedings in CA-G.R. SP No. 149063, the CA correctly denied the intervention prayed for as records show that the Omnibus Motion was filed only on September 28, 2017, or a month after the promulgation of the CA's Decision on August 17, 2017.

In fine, while it is now settled doctrine that the Ombudsman has legal standing to intervene in appeals from its ruling in administrative cases, it should, however, move for intervention before rendition of judgment lest the same be denied, unless warranted by certain excepting circumstances, which unfortunately do not obtain herein. Consequently, the present petition must be denied, and since intervention has been disallowed, there is no more need to delve into the merits of the substantive arguments raised by the Ombudsman on respondent's administrative liability.³

3. The resolution is clear. No interpretation is required. It erroneous on the part of this Honorable Court to grant the petition on the basis of the Supreme Court resolution.

4. The issue of Vitriolo's administrative liability has not yet been resolved, as the Supreme Court through its Public Information Office conveyed in a statement dated September 18, 2019:

The Supreme Court (SC) has denied for lack of merit the petition of the Office of the Ombudsman (Ombudsman) questioning the rulings of the Court of Appeals (CA) that disallowed the Ombudsman to intervene for the delayed filing of the motion in a case implicating a Commission on Higher Education (CHED) official on alleged irregularities at the Pamantasan ng Lungsod ng Maynila (PLM).

In an eight-page resolution promulgated on June 3, 2019, the Court's Second Division, through the ponencia of Associate Justice Estela M. Perlas-Bernabe, reiterated the settled doctrine that while the Ombudsman has legal standing to intervene in appeals from its rulings in

³ *Id.* at 6-7.

administrative cases, it should, however, move for intervention before rendition of judgment. Unless warranted by certain excepting circumstances, the petition for intervention will be denied. Thus, the SC affirmed the August 17, 2017 decision and January 28, 2019 resolution of the CA.

The case stemmed from the 2011 complaint filed by Oliver B. Felix, a former faculty member of the PLM before the Ombudsman against Julito D. Vitriolo, then Executive Director of CHED, for grave misconduct, gross neglect of duty, incompetence, and inefficiency in the performance of official duties in connection with the alleged irregularities at PLM. Vitriolo allegedly prevented the issuance of a certification that PLM was not authorized by CHED to implement the Expanded Tertiary Education Equivalent Accreditation program (ETEEAP). Felix accused Vitriolo of conspiring with the officials of PLM which he said was a "diploma mill."

The only issue for the SC's resolution in this case was whether or not the CA erred in denying the Ombudsman's Omnibus Motion. It thus highlighted that "since intervention has been disallowed, there is no more need to delve into the merits of the substantive arguments raised by the Ombudsman on Julito D. Vitriolo's administrative liability."

Intervention is the procedural method for the Ombudsman to participate in the case, and with the motion for intervention's denial, the Ombudsman is technically barred from even passing upon its substantive arguments. Hence, the Court never passed upon the same and consequently, there was no ruling on Vitriolo's administrative liability on the merits.

In affirming the CA ruling, the SC pointed out that "while the Ombudsman had legal interest to intervene in the proceedings in CA-G.R. SP No. 149063, the CA correctly denied the intervention prayed for as records show that the Omnibus Motion was filed only on September 28, 2017, or a month after the promulgation of the CA's decision on August 17, 2017.

The SC further discussed that the rule requiring intervention before rendition of judgment is not inflexible. Jurisprudence is replete with instances where intervention was allowed beyond the period prescribed in the Rules of Court subject to the court's discretion after consideration of the appropriate circumstances, "for after all, Rule 19 of the Rules of Court is a rule of procedure whose object is to make the powers of the court fully and completely available for

justice; its purpose is not to hinder or delay, but to facilitate and promote the administration of justice." After a meticulous review of the available records, however, the SC found that none of the excepting circumstances are present in this case, "hence, the general rule provided under Section 2, Rule 19 of the Rules of Court applies."

Thus, with only the issue of intervention having been traversed, the administrative liability of Vitriolo anent the charges hurled against him by Felix has yet to be resolved by the SC. In fact, it is a live issue which is still pending determination in the separate pending case docketed as G.R. No. 237129 entitled "Oliver B. Felix v. Julito D. Vitriolo."

5. This Honorable Court cannot preempt the resolution of the Supreme Court by granting the instant petition for *quo warranto*. The case of "Topacio v. Ong" is instructive on the issue:

A quo warranto proceeding is the proper legal remedy to determine the right or title to the contested public office and to oust the holder from its enjoyment. It is brought against the person who is alleged to have usurped, intruded into, or unlawfully held or exercised the public office, and may be commenced by the Solicitor General or a public prosecutor, as the case may be, or by any person claiming to be entitled to the public office or position usurped or unlawfully held or exercised by another.

Nothing is more settled than the principle, which goes back to the 1905 case of *Acosta v. Flor*, reiterated in the recent 2008 case of *Feliciano v. Villasin*, that for a *quo warranto* petition to be successful, the private person suing must show a clear right to the contested office. In fact, not even a mere preferential right to be appointed thereto can lend a *modicum* of legal ground to proceed with the action.

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6. Considering that the instant motion is being filed within the period prescribed by the rules, the resolution dated October 15, 2109 has not attained finality. There is no reason for the Court to grant execution pending appeal considering that this case is not one of those covered by Section 4, Rule 39 of the Rules of Court, but also because the petitioner has

⁴ 595 Phil. 491, 505 [2008].

not shown any reason for the grant, and he filed a litigious motion which cannot be heard *ex parte*.

7. In other words, the respondent was denied due process. This means that the resolution is void. A void judgment is "a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head."⁵ In concrete terms, this means that a void judgment creates no rights and imposes no duties. Any act performed pursuant to it and any claim emanating from it have no legal effect.⁶

PRAYER

The respondent respectfully prays that this Honorable Court reconsider the resolution dated October 15, 2019 and dismiss the instant petition for lack of merit.

Makati City, October 21, 2019.

JOSE C. CALIDA

Solicitor General

Roll No. 24852

IBP Lifetime Membership No. 015360, 08/18/16

MCLE Exemption No. VI-000016, 09/28/16



BERNARD G. HERNANDEZ

Assistant Solicitor General

Roll No. 34618

IBP Lifetime Membership No. 08866, 02/01/10

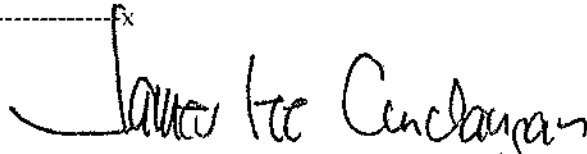
MCLE Exemption No. VI-000384, 04/02/18

⁵ Banco Español-Filipino v. Palanca, 37 Phil.921(1918).

⁶ Land Bank of the Philippines v. Orilla, G.R. No. 194168, February 13, 2013, 690 SCRA 610, 619.

Motion for Reconsideration
Atty. Julito D. Vitriolo v. Atty. Cinderella Filipina Benitez-Jaro
Civil Case No. R-QZN 19-06374 CV

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JAMES LEE CUNDANGAN

Senior State Solicitor

Roll No. 47481

Lifetime Membership No. 09142

MCLE Compliance No. VI- 0023137, 04/11/19

OFFICE OF THE SOLICITOR GENERAL

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NOTICE OF HEARING

ATTY. ARNOLD V. GUERRERO

ArGue Law Firm

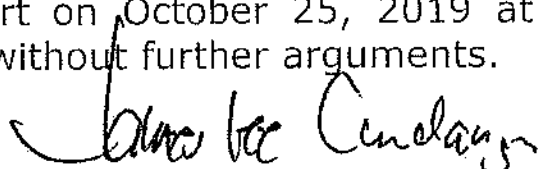
Counsel for Petitioner

33A Marilag St., U.P. Village

Quezon City

G r e e t i n g s :

Please be notified that this Motion for Reconsideration will be submitted for the approval and consideration of this Honorable Court on October 25, 2019 at 9:00 a.m. upon receipt hereof without further arguments.



JAMES LEE CUNDANGAN

Senior State Solicitor

Copy furnished:

ATTY. ARNOLD V. GUERRERO

ArGue Law Firm

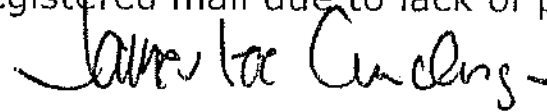
Counsel for Petitioner

33A Marilag St., U.P. Village

Quezon City

E X P L A N A T I O N
(Pursuant to Section 11, Rule 13 of the
1997 Rules of Civil Procedure)

Filing in court and service on the adverse counsel are being done by registered mail due to lack of personnel.



JAMES LEE CUNDANGAN
Senior State Solicitor

SC Disallows Ombudsman to Intervene for Delayed Filing of Motion

September 18, 2019

The Supreme Court (SC) has denied for lack of merit the petition of the Office of the Ombudsman (Ombudsman) questioning the rulings of the Court of Appeals (CA) that disallowed the Ombudsman to intervene for the delayed filing of the motion in a case implicating a Commission on Higher Education (CHED) official on alleged irregularities at the Pamantasan ng Lungsod ng Maynila (PLM).

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(G.R. No. 237582, *Office of the Ombudsman v. Julito D. Vitriolo*, June 3, 2019)

READ the full-text at: <http://sc.judiciary.gov.ph/4952/>