

REPUBLIC OF THE PHILIPPINES, PETITIONER-APPELLEE, VS. BISAYA LAND TRANSPORTATION CO., INC., MIGUEL CUENCO, MANUEL CUENCO, LOURDES CUENCO, JOSE P. VELEZ, JESUS P. VELEZ AND FEDER...

G.R. No. L-31490. January 06, 1978

Ponente: CASTRO, C.J.

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CASTRO, C.J.:

This is an appeal from the "Resolution" of the Court of First Instance of Manila, dated April 3, 1968, Hon. Francisco Geronimo presiding, granting the petition of the Republic of the Philippines to dismiss (1) the petition for quo warranto it filed against the respondent Bisaya Land Transportation Company, Inc., and its Board of Directors consisting of Miguel Cuenco, Manuel Cuenco, Lourdes Cuenco, Jose P. Velez, Jesus P. Velez and Federico A. Reyes, and later including the new members thereof, Antonio V. Cuenco, Carmen Cuenco, Dioscoro Lazaro and Manuel V. Cuenco, Jr.; and (2) the cross-claim filed by respondent Miguel Cuenco against his co-respondents.

The Bisaya Land Transportation Company is a corporation organized on or about June 10, 1935 under Act No. 1459, otherwise known as the Corporation Law, for the principal purpose of engaging in the business of land and water transportation, having its domicile and principal place of business in Cebu City.

The instant case came into being on March 21, 1959, when the Republic of the Philippines, through the then Solicitor General Edilberto Barot, filed a petition for quo warranto in the Court of First Instance of Manila, docketed as Special Civil Case No. 39766, for the dissolution of the Bisaya Land Transportation Company.

The petition alleges that respondent corporation, through its co-respondents named therein, acting in their official capacity as officers and controlling stockholders of the said corporation, by conspiring and confabulating together and with the aid of their associates, agents and confederates, had violated and continues to violate, offended and continues to offend the provisions of the Corporation Law and other statutes of the Philippines by having committed and continuing to commit acts amounting to a forfeiture of the respondent corporation's franchise, rights and privileges and, through various means, misused and continues to misuse, abused and continues to abuse, the terms of its franchise, palpably in contravention of the law and public policy.

The acts allegedly committed by the corporation, through its co-respondents, are embodied in nine causes of action which, in substance, are as follows:

FIRST CAUSE OF ACTION

To conceal its illegal transactions, respondent corporation falsely reconstituted its articles of incorporation in

July 1948 by adding new purposes not originally included, namely: lumber concessions, cattle ranch, agriculture, and general merchandise;

SECOND CAUSE OF ACTION

On May 25, 1948, respondent corporation, through its Board of Directors, adopted a resolution authorizing it to acquire 1,024 hectares of public land in Zamboanga and 10,000 hectares of timber concession in Mindanao in violation of Section 6, Act No. 1459;

THIRD CAUSE OF ACTION

In May, 1949, respondent officials, constituting themselves as Board of Directors of respondent corporation, passed a resolution authorizing the corporation to lease a pasture land of 2,000 hectares of cattle ranch on a public land in Bayawan, Negros Occidental;

FOURTH CAUSE OF ACTION

From August 1946 to the end of 1952, respondent corporation operated a general merchandise store, a business which is neither necessary for, nor incidental to, the accomplishment of its principal business for which it was organized, i.e., the operation of land and water transportation;

FIFTH CAUSE OF ACTION

Respondent corporation allowed Mariano Cuenco and Manuel Cuenco to act as president in 1945 to 1948 and 1953 to 1954, respectively, when at that time, neither of them owned a single stock;

SIXTH CAUSE OF ACTION

In violation of its charter and articles of incorporation, as well as applicable statutes concerning its operation, it engaged in mining by organizing the Jose P. Velez Coal Mines, and allowing said corporation to use the facilities and assets of respondent corporation;

SEVENTH CAUSE OF ACTION

It imported and sold at black market prices to third persons truck spare parts, the proceeds of which were

appropriated by respondent directors;

EIGHTH CAUSE OF ACTION

It paid its laborers and employees wages below the minimum wage law to the great prejudice of its labor force, and in violation of the laws of the state, manipulating its books and records so as to make it appear that its laborers and employees were and have been paid their salaries and wages in accordance with the minimum wage law;

NINTH CAUSE OF ACTION

It deliberately failed to maintain accurate and faithful stock and transfer books since 1945 up to the filing of the petition, enabling it to defraud the state, mislead the general public, its creditors, investors and its stockholders by not accurately and faithfully making

- an adequate, accurate and complete record of dividend distribution, and
- an adequate, accurate and complete record of transfers of its stocks.

The petition for quo warranto prayed that during the pendency of the action, a receiver be appointed by the court for the purpose of preserving the assets of the respondent corporation pursuant to section 1(a) of Rule 61 of the Rules of Court.

Under date of April 17, 1959, respondents (except Miguel Cuenco) filed a motion to dismiss the petition for quo warranto on the grounds of lack of cause of action, prescription and the failure of the Solicitor General to secure the court's permission, as required in section 4 of Rule 66 of the Rules of Court. The motion to dismiss was denied on June 27, 1959.

On April 25, 1959, respondent Miguel Cuenco filed his answer admitting certain allegations and denying others, especially participation in the acts imputed to respondent corporation which were made the basis of the quo warranto proceedings. He alleged several other causes, namely: (1) that stock dividends were issued to respondents Manuel Cuenco and Jose P. Velez, without giving the same benefit to other stockholders; (2) that, thru respondents-directors, Bisaya had destroyed company payrolls, books of accounts and other records; (3) that Bisaya had allowed Manuel Cuenco to use corporate funds, facilities and stocks for his personal benefit; and (4) that, to cover up these irregularities, said directors had manipulated the corporate books and accounts. Moreover, he set up a cross-claim against respondents-directors to recover from them, for the benefit of Bisaya, under several causes of action, the aggregate sum of P4,336,701.19. Respondent Miguel Cuenco also prayed for the appointment of a receiver without bond for the purpose of preserving the assets of respondent corporation.

On May 6, 1959, respondents (except Miguel Cuenco) filed a motion to dismiss Miguel Cuenco's cross-claim on the ground, among others, that the claims subject of the cross-claim could not be pleaded by respondent Miguel Cuenco since they did not arise out of the transactions or occurrences that were the subject-matter of the original petition for quo warranto which did not assert any claim against respondent directors or any one of them, which would thus entitle respondent Miguel Cuenco to claim indemnity from the others.

On September 19, 1959, the lower court deferred resolution on the cross-claim after trial on the merits.

Under date of September 25, 1959, respondents (except Miguel Cuenco) filed their answer, denying as well as admitting certain facts and setting up special and affirmative defenses, and praying that judgment be rendered dismissing the petition. Also, on October 19, 1959, respondents (except Miguel Cuenco) filed their answer to the cross-claim.

On January 29, 1960, respondents (except Miguel Cuenco) filed a petition for certiorari with the Supreme Court (G.R. No. L-16593, Bisaya Land Transportation Company vs. Judge Bonifacio Isip) questioning the orders of the lower court dated June 27, 1959 (denying respondents' [except Miguel Cuenco] motion to dismiss quo warranto) and September 19, 1959, (deferring resolution on the motion to dismiss Miguel Cuenco's cross-claim). However, on February 11, 1960, the Supreme Court dismissed the petition on the ground that the orders complained of were interlocutory.

On February 23, 1960, the lower court appointed the clerk of court as commissioner to receive the evidence of the parties.

Thereafter, on February 28, 1962, respondent corporation filed a motion for judgment on consent, manifesting its consent to and moving for judgment to be rendered ordering the dissolution of respondent Bisaya Land Transportation Company, Inc. and, in furtherance of that dissolution, ordering its board of directors to proceed to the liquidation of its assets in accordance with the provisions of the corporation law. In said motion for judgment on consent, respondent corporation did not admit having committed any act requiring its forcible dissolution, but alleged, as reason for the filing of said motion, that the pendency of the petition of quo warranto had prejudiced the corporation in its business, as well as its innocent stockholders, and that its business interests required that immediate relief be given to the corporation and to its thousands of stockholders; and that the majority of the board of directors and stockholders representing more than two-thirds of its capital stock had indicated their election to voluntarily dissolve the corporation as the most feasible remedy to the corporation's problems brought about by the respondent Miguel Cuenco.

The petitioner, Republic of the Philippines, filed a manifestation stating that the motion for judgment on consent being in accordance with the petition for quo warranto, the matter of the implementation of the dissolution of respondent corporation be submitted to the discretion of the lower court. Respondent Miguel Cuenco, on the other hand, filed his answer agreeing to such judgment, but urging that a receiver be appointed, and that judgment be rendered on his cross-claim.

On May 27, 1963, respondents (except Miguel Cuenco) filed their motion to withdraw motion for judgment on consent on the ground that the conditions to which the motion was subject had not been accepted. Miguel Cuenco opposed said withdrawal and pressed for the appointment of a receiver, which was, in turn, objected to by respondent corporation. The denial of the motion to withdraw was questioned by respondent corporation in a petition for prohibition filed with the Supreme Court, docketed as G.R. No. L-22097, which was, however, dismissed by this Court.

Several incidents followed thereafter which, for purposes of the disposition of the present case, need not be set forth herein.

The motion to withdraw judgment on consent was, on December 3, 1963, denied by the lower court which, however, granted receivership. From this order, respondent corporation filed a petition for certiorari with the Court of Appeals (CA-G.R. No. 33266-R), which issued an ex-parte writ of preliminary injunction enjoining the lower court from enforcing its order of December 3, 1963. On January 29, 1968, the Supreme Court in G.R. No. L-23012 annulled all the proceedings in the Court of Appeals in CA-G.R. No. 33266-R, on the ground that the latter court had no jurisdiction over said case.

On October 20, 1966, the then Solicitor General Barredo (now Supreme Court Justice) filed a motion for dismissal of the quo warranto proceedings, to which motion respondent Miguel Cuenco filed his opposition on December 3, 1966. On April 3, 1968, the court a quo issued a resolution granting petitioner's motion for the dismissal of the action for quo warranto, and dismissing respondent Miguel Cuenco's cross-claim. Respondent and cross-claimant Miguel Cuenco has appealed to this Court to question this resolution.

Six errors are imputed by appellant Miguel Cuenco to the lower court in issuing its resolution of April 3, 1968, namely:

I

THE LOWER COURT ERRED IN NOT ORDERING ENTRY OF JUDGMENT DISSOLVING RESPONDENT-APPELLEE CORPORATION ON THE STRENGTH OF ITS OWN MOTION CONSENTING TO AND PRAYING FOR SUCH JUDGMENT, DESPITE APPELLANT MIGUEL CUENCO'S INSISTENT PLEA FOR ACTION ON THE SAID MOTION.

II

THE LOWER COURT ERRED IN FAILING TO CONSIDER THAT RESPONDENT-APPELLEE CORPORATION'S MOTION FOR JUDGMENT OF DISSOLUTION WAS A CONFESSION OF JUDGMENT OR, AT ANY RATE, THAT THE ENTRY OF SUCH JUDGMENT HAD BEEN FORMALLY AGREED TO BY THE SOLICITOR GENERAL AS WELL AS APPELLANT MIGUEL CUENCO.

III

THE LOWER COURT ERRED IN HOLDING THAT THE EVIDENCE SO FAR ADDUCED BY PETITIONER WAS INSUFFICIENT TO DISSOLVE THE CORPORATION, AND IN NOT HOLDING INSTEAD THAT THE SAID EVIDENCE HAS MORE THAN SUFFICIENTLY ESTABLISHED FACTS CONSTITUTING PRACTICALLY ALL THE GROUNDS FOR QUO WARRANTO AGAINST A CORPORATION AND SHOWING THAT RESPONDENT-APPELLEE CORPORATION WAS AND IS BEING OPERATED VIRTUALLY AS A CRIME SYNDICATE AND, HENCE, MUST BE ORDERED DISSOLVED.

IV

THE LOWER COURT ERRED IN HOLDING THAT THE SOLICITOR GENERAL WAS VESTED WITH ABSOLUTE AND UNLIMITED POWER TO DISCONTINUE THE STATE'S LITIGATION AND ACCORDINGLY TO HAVE THE QUO WARRANTO PETITION DISMISSED, IF AND WHEN IN HIS OPINION THIS SHOULD BE DONE, AND IN NOT HOLDING INSTEAD THAT THE SOLICITOR GENERAL'S MOTION FOR DISMISSAL OF THE PETITION IS DEVOID OF ANY MERIT, AND

INDEED MUST BE DENIED.

V

THE LOWER COURT ERRED IN HOLDING THAT THE CROSS-CLAIM FILED BY APPELLANT MIGUEL CUENCO AGAINST HIS CO-RESPONDENTS DOES NOT PRECLUDE THE DISMISSAL OF THE PETITION WITHOUT HIS CONSENT AND IN NOT HOLDING INSTEAD THAT BY REASON OF THE SAID CROSS-CLAIM, THE SOLICITOR GENERAL COULD NOT MOVE FOR THE DISMISSAL OF THE PETITION OVER APPELLANT MIGUEL CUENCO'S OBJECTION.

VI

THE LOWER COURT ERRED IN DISMISSING THE CROSS-CLAIM.

Appellant argues, on his first and second assignments of error, that the lower court should have rendered judgment dissolving appellee corporation on the strength of its own motion consenting to and praying for its dissolution, as such motion amounted to a confession of judgment, besides the fact that it had been formally agreed to by the Solicitor General as well as by appellant Miguel Cuenco. The claim is without merit. As pointed out in the brief for petitioner-appellee Republic of the Philippines, a motion for judgment on consent is not to be equated with a judgment by confession. The former is one the provisions and terms of which are settled and agreed upon by the parties to the action, and which is entered in the record by the consent and sanction of the court. Hence, there must be an unqualified agreement among the parties to be bound by the judgment on consent before said judgment may be entered. The court does not have the power to supply terms, provisions, or essential details not previously agreed to by the parties (49 C.J.S. 308). On the other hand, a judgment by confession is not a plea but an affirmative and voluntary act of the defendant himself. Here, the court exercises a certain amount of supervision over the entry of judgment, as well as equitable jurisdiction over their subsequent status (*Ibid.*, pp. 268-269).

The records would show that there was no meeting of the minds among the parties hereto with respect to the motion for judgment on consent filed by appellee corporation and agreed to by petitioner-appellee. Whereas, appellee corporation conditioned its motion in that its liquidation shall be effected by its Board of Directors, appellant Miguel Cuenco would agree to such liquidation only if his cross-claim was first summarily adjudged and a receiver appointed by the court to effect said liquidation. On the other hand, the petitioner-appellee would have the matter regarding the implementation of the dissolution of appellee corporation submitted to the discretion of the lower court. And, before the parties could come to an unqualified agreement as to the judgment requested to be entered by appellee corporation, the latter decided to withdraw its motion for judgment on consent. Clearly, therefore, in view of the non-agreement of the parties as to the terms, and considering the nature of a judgment by consent as explained above, it can not be said that the lower court erred in not rendering judgment dissolving respondent corporation on the basis of the motion for judgment by consent filed by appellee corporation.

On the third assignment of error, appellant Miguel Cuenco would attribute error to the court a quo in not holding that the evidence which petitioner had presented in the hearings established facts constituting practically all the grounds for quo warranto against a corporation.

It will be recalled that at the hearings before the Clerk of Court who was appointed commissioner to receive the evidence of the petitioner, the latter had presented three witnesses, namely, Juan P. Mata, Clemente Vasquez and Silverio Mata, and several exhibits which were identified by said witnesses. After a very careful and deliberate consideration of the evidence adduced by petitioner, the lower court came to the conclusion that the same did not really warrant a quo warranto by the State that could truly justify to decapitate corporate life, and that the corporate acts or omissions complained of had not resulted in substantial injury to the public, nor were they wilful and clearly obdurate. The court found that the several acts of misuse and misapplication of the funds and/or assets of the Bisaya Land Transportation Co., Inc. were committed more particularly by the respondent Dr. Manuel Cuenco with the cooperation of Jose P. Velez, for the commission of which they may be personally held liable. There appears to be no reason for us to disregard the findings of the trial court, which, applying well-settled doctrines, ought to be given due weight and credit (*De la Rama vs. Ma-ao Sugar Central*, L-17504 & L-17506, Feb. 28, 1969). Besides, the court a quo found that the controversy between the parties was more personal than anything else and did not at all affect public interest. Thus, the Court held:

"A careful perusal of the above quoted letters patently reveals that rather than public interest the personal interests of both Dr. Manuel Cuenco and Mr. Miguel Cuenco are principally involved in this controversy. The allegations, therefore, of Solicitor Barredo in his motion for dismissal of action filed on October 20, 1966

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6. That in a large sense this case involves personal controversies among the Cuencos, and their relatives, by consanguinity and affinity, involving their respective interests as stockholders in the Bisaya Land Transportation Company, Inc., more than anything else;

7. That such private controversies can be ventilated in appropriate stockholders' suits which do not have to occupy the time and attention of government officials which can be better devoted to matters of more direct public interest."

are well founded.

"After a very careful and conscientious study of the records of this case, this court is not prepared to say that sufficient competent evidence has been adduced to impeach the motive of Solicitor General Barredo in filing his motion for dismissal, since honesty rather than dishonesty, good faith rather than bad faith should always be presumed in the absence of clear contrary evidence. The Solicitor General explained that after having been briefed on the evidence by Solicitor Rosete before the negotiation of an amicable settlement between the parties involved in this case started, he had already in mind asking for the dismissal of the quo warranto proceeding for he believed in all sincerity that the evidence so far presented did not justify the dissolution of the corporation through a quo warranto proceeding. He admitted that even after he had filed the motion for dismissal he continued the negotiation for the settlement of the case, but he explained that it was because of the request of the respondent and cross-claimant Miguel Cuenco and his wife that he continue to use his good offices to effect an amicable settlement between the parties."

The Solicitor General himself asserts that the only purpose of his motion for the dismissal of this quo warranto is to take the State out of unnecessary court litigation, so that the dismissal of the case would result in the disposition solely of this quo warranto by and between petitioner Republic of the Philippines and the respondents named therein. Other interested parties who might feel aggrieved, therefore, would not be without their remedies since they can still maintain whatever claims they may have against each other. It has been held that relief by dissolution will be awarded only where no other adequate remedy is available, and is not available where the rights of the stockholders can be, or are, protected in some other way (16 Fletcher Cyc. Corporations, 1942 Ed., pp. 812-813, citing "Thwing vs. McDonald", 134 Minn. 148, 156 N.W. 780, 158 N.W. 820, 159 N.W. 564, Ann. Cas. 1918 E 420; Mitchell vs. Bank of St. Paul, 7 Minn. 252, cited in De la Rama vs. Ma-ao Sugar Central, supra.). The third assignment of error, therefore, should be disregarded.

The pivotal question in this case is raised in the fourth assignment of error, i.e., whether or not the lower court erred in holding that the Solicitor General was vested with full power to manage and control the State's litigation, which includes the power to discontinue such litigation if and when in his opinion this should be done.

Appellant would maintain the negative of the above proposition, giving three main reasons therefor, namely:

- The evidence so far adduced was in fact sufficient to dissolve the respondent corporation;
- There was a pending motion of respondents for judgment on consent, by virtue of which instead of dismissal of the petition, the corporation should be considered dissolved;
- A cross-claim has been interposed by Miguel Cuenco which precluded the dismissal of the petition for quo warranto.

It will be noted that the first two reasons, given in support of the fourth assigned error, have already been discussed in connection with appellant's first three assignments of error, and shown to be unworthy of serious consideration. We shall dwell on the third reason in our discussion of the fifth assignment of error.

Meeting squarely the issue of whether or not the Solicitor General is vested with absolute and unlimited power to discontinue the State's litigation and, accordingly, to have the quo warranto petition dismissed, if and when in his opinion this should be done, the general rule seems to be that the plaintiff may do so with the approval of the court, subject to well-defined exceptions (such as, for example, where the answer sets up a counterclaim which cannot stand independently of the main action).

"The right of the plaintiff to dismiss an action with the consent of the court is universally recognized with certain well-defined exceptions. If the plaintiff discovers that the action which he commenced was brought for purposes of enforcing a right or a benefit, the advisability or necessity of which he later discovers no longer exists, or that the result of the action would be different from what he had intended, then he should be permitted to withdraw his action, subject to the approval of the court. The plaintiff should not be required to continue the action, subject to some well-defined exceptions, when it is not to his advantage so to do. Litigation should be discouraged and not encouraged. Courts should not require parties to litigate when they no longer desire so to do. Courts, in granting permission to dismiss an action, of course, should always take into consideration the effect which said dismissal would have upon the rights of the defendant.

"x x x in the case of a municipality, where the agents of the public are spending public money, we are of the opinion that such agent should not be required to continue an action when (a) it clearly appears that there is no longer a necessity therefor, or (b) when it clearly appears that to continue the action, the result would be

prejudicial to the interests of the public. We think that this conclusion is more in harmony with the rational conduct of public affairs than the opposite rule." (City of Manila vs. Ruymann, 37 Phil. 421, 424-425, 427, cited in Metropolitan Water District vs. De los Angeles, 55 Phil. 776, 780.)

American authorities likewise uphold the power and authority of the state attorney to control and manage all litigation in behalf of the State, which power involves the power to discontinue the same if and when, in his opinion, this should be done. (7 Am. Jur. 2d 18-19).

Thus, in State vs. Finch, 280 Pac. Rep. 910, 912, 915, the Attorney General moved to dismiss a liquor prosecution brought against one of the defendants by the county attorney, which motion was overruled. On appeal, the Kansas Supreme Court held:

"And, as a rule, the attorney-general has power, both under the common law and by statute, to make any disposition of the state's litigation that he deems for its best interest; for instance, he may abandon, discontinue, dismiss, or compromise it. But he cannot enter into any agreement with respect to the conduct of litigation which will bind his successor in office, nor can he empower any other person to do so. xxx The attorney-general may dismiss any suit or proceeding, prosecuted solely in the public interest, regardless of the relator's wishes. xxx Where the attorney-general is empowered, either generally or specifically, to conduct a criminal prosecution, he may do any act which the prosecuting attorney might do in the premises; that is, he can do each and every thing essential to prosecute in accordance with the law of the land, and this includes appearing in proceedings before the grand jury. So an attorney-general, even at common law, had the right to enter a nolle prosequi, although he could not do so during the trial without leave of court.

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"xxx At common law the duties of the attorney-general, as chief law officer of the realm, were very numerous and varied. He was the chief legal adviser of the crown, and was intrusted with the management of all legal affairs and the prosecution of all suits, civil and criminal, in which the crown was interested. He alone could discontinue a criminal prosecution by entering a nolle prosequi therein. xxx It is generally acknowledged that the attorney-general is the proper party to determine the necessity and advisability of undertaking or prosecuting actions on the part of the state. Thus it has been held that the discretion of the attorney-general in determining what the public interests require as to bringing an action against a domestic business corporation or its officers is absolute, and cannot be made the subject of inquiry by the courts.

"xxx xxx xxx

"xxx The power effectively to control a prosecution involves the power to discontinue if, and, when, in the opinion of the prosecutor in charge, this should be done. We are of the opinion the trial court should have sustained the Attorney-General's motion to dismiss in the instant case."

In a much later case, State vs. City of Kansas, 350 P. 2d 37, the authority of the Attorney-General to dismiss any time before submission, a quo warranto proceeding commenced by the State on the relation of the county attorney questioning certain ordinances of the city of Kansas making part of the city a portion of the Fairfax industrial district, was declared by the Kansas Supreme Court to be absolute, and a duty that could not be questioned,

notwithstanding 18 months had passed subsequent to the commencement of the action and after the commissioner had fixed the date the hearing was to begin. Said the court:

"Applying the above reasoning to our present case we conclude the attorney general by his motion to intervene and supersede the county attorney exercised his powers and duties under the constitution and appropriate statutes; this was as far as he could go as an executive officer and as an attorney and officer of this court. Since he is an officer of the judicial branch, under the separation of powers of the three branches of government, he was limited and restricted in his conduct before this court by the code of professional ethics to the same extent any other lawyer would be. If, therefore, the attorney-general considered the action unmeritorious, he not only had the authority but he also had a duty to move for dismissal. xxx.

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"Any plaintiff has an absolute right to dismiss his action any time before submission. (G.S. 1949, 60-3105; *Bavuso vs. Angwin*, 166 Kan. 469, 201 P. 2d 1057) and in *Kinsch vs. Missouri-Kansas-Texas Railroad Co.*, 183 Kan. 224, 326 P. 2d 327, when plaintiff moved to dismiss before final submission, this court held the trial court committed reversible error in overruling such motion.

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"xxx As previously stated, the attorney-general, plaintiff herein, had an absolute right to dismiss this action and the allegations in Quindaro's pleadings must fall because they clearly show that Quindaro, one municipality, is questioning the organization, or reorganization, of the city, another municipality, and this can be done only by the state through its proper officers."

Well might the *State vs. City of Kansas* case, *supra*, be applied to the present case, since in our jurisdiction it is the Solicitor General who must commence the action involved herein (Rule 66, Sec. 3) and he, therefore, also has, before submission, the right to terminate the same where he deems it best for the interest of the State. (See also: *Lyle vs. Luna*, 338 P.2d 1060, 1065)

In his fifth assignment of error, appellant Miguel Cuenco claims that the lower court erred in holding that the cross-claim filed by him did not preclude the dismissal of the petition without his consent, and in not holding that by reason of the said cross-claim, the Solicitor General could not move for the dismissal of the petition over appellant Miguel Cuenco's objection. Citing the provisions of Sections 2 and 4 of Rule 17 of the Rules of Court, appellant opines that since his cross-claim cannot remain pending for independent adjudication, it being allegedly interwoven with the petition for quo warranto, the lower court should not have dismissed said petition.

The position taken by appellant Miguel Cuenco is legally untenable. The provision of Section 2 of Rule 17, invoked by him in support of his stand, is inapplicable. It governs dismissal of an action by order of the court, prohibiting such dismissal against defendant's objection where a counterclaim which cannot remain pending for independent adjudication by the court has been pleaded by a defendant prior to the service upon him of plaintiff's motion to dismiss. It advisedly omits reference to a cross-claim as a factor to be considered by the court in determining whether, considering the circumstances set forth therein, an action should be dismissed. The reason

could be that the framers of the rules realized that the policy against dismissal of an action behind the provision involved, while applicable to a counterclaim, is not so with respect to a cross-claim, which is, to prevent a defendant from being damaged and put to expense in preparing for his defense, only to see the case dismissed without prejudice at the instance of plaintiff, thereby putting the defendant "to expense literally for nothing." (Francisco, Revised Rules of Court, Vol. I, p. 980, citing McCann vs. Bentley Stores Corp., 34 F. Supp. 234, 3 Fed. Rules Service 41a., Case 3 [W.D. Mo. 1940]). On the other hand, the dismissal of the main action would only benefit the cross claimant and not result in any prejudice or disadvantage to him.

Neither do the provisions of Section 4 of Rule 17 help the position taken by appellant Miguel Cuenco. For although this section makes the provisions of Rule 17 also applicable to the dismissal of a cross-claim, what it actually contemplates is the allowance or disallowance of a motion to dismiss a cross-claim as an "independent" action against which a counterclaim has been interposed. It does not intend to prohibit the dismissal of an action just because a cross-claim which cannot be the subject of independent adjudication, has been pleaded. Section 4, Rule 17 should be taken in correlation with section 2 of the same Rule which would have included also "cross-claim," instead of merely mentioning "counterclaim," as a bar to the dismissal of an action where the same cannot remain pending for independent adjudication, if it had really been its intention to do so.

A cross-claim is allowed to be interposed by a party against a co-party to enable the former to recover from the latter whatever he might be made liable to pay to the plaintiff. Considering then the nature of a cross-claim, we fail to grasp the logic in appellant Miguel Cuenco's objection to the dismissal of the main action -- the quo warranto proceedings. The withdrawal or dismissal of said action would effectively prevent him from suffering any prejudice or exonerate him from any liability, to evade or mitigate which, the rules grant him the right to file a cross-claim. Moreover, the dismissal of the main action would not wipe out his rights under his cross-claim, since, if minded to do so, he may subsequently bring the corresponding action based thereon (Watts vs. Watts, 15 S.W. 2d 998; Severance vs. Heyl and Patterson, 174 A. 789).

In view of our conclusion that the court a quo committed no error in dismissing the quo warranto proceedings it also stands to reason that it acted correctly in dismissing appellant Miguel Cuenco's cross-claim. A cross-claim is proper only where the cross-claimant stands to be prejudiced by the filing of an action against him. Hence, where such action has been dismissed, his cross-claim would have no leg to stand on (Sec. 7, Rule 6, 4 Moore's Federal Practice Under the New Rules, p. 693). This disposes of the sixth assignment of error.

ACCORDINGLY, without prejudice to the rights of the private parties herein to take proper steps to enforce whatever causes of action they may have against each other, the order of the lower court embodied in its "Resolution" dated April 3, 1968, granting the Solicitor General's motion to dismiss the quo warranto proceedings and dismissing appellant Miguel Cuenco's cross-claim, is hereby upheld; the receivership on the respondent corporation's property and assets is hereby ordered terminated, effective upon the lapse of thirty (30) days from the date of promulgation of this decision; and the receiver is directed to render, within three (3) months from the finality of this decision, a full and complete accounting to the Board of Directors of the respondent corporation. No costs.

Muñoz Palma, Martin, Fernandez, and Guerrero, JJ., concur.

Teehankee, J., dissents in a separate opinion.

Makasiar, J., no part.

SEPARATE OPINION

TEEHANKEE, J., dissenting:

Since the decisions in these two cases are intertwined with L-29618 being declared moot as a result of the judgment in L-31490, this consolidated separate opinion for the two cases is herewith filed.

The judgment in the main case L-31490 provides that

"ACCORDINGLY, without prejudice to the rights of the private parties herein to take proper steps to enforce whatever causes of action they may have against each other, the order of the lower court embodied in its 'Resolution' dated April 3, 1968, granting the Solicitor General's motion to dismiss the quo warranto proceedings and dismissing appellant Miguel Cuenco's cross-claim, is hereby upheld; the receivership on the respondent corporation's property and assets is hereby ordered terminated, effective upon the lapse of thirty (30) days from the date of promulgation of this decision; and the receiver is directed to render, within three (3) months from the finality of this decision, a full and complete accounting to the Board of Directors of the respondent corporation. No costs."

And the judgment in the secondary case L-29618 accordingly dismisses the petition therein on the ground that its object of seeking an annulment of respondent judge's order denying therein petitioners' petition to discharge the receiver has been rendered moot and attained by the judgment in L-31490 which decrees precisely the termination of the receivership upon the lapse of 30 days from date of promulgation of the decision.

I am constrained to dissent from the majority decisions which would sustain the lower court's Resolution dated April 3, 1968 abruptly terminating and setting at naught the protracted and far advanced proceedings below (which had been commenced nine (9) years earlier on March 21, 1959) instead of finally settling and determining the intra-corporate dispute between the respondents stockholders and which would now in 1978 after nineteen (19) years leave them as they were and have them start all over again "to take proper steps to enforce whatever causes of action they may have against each other," for the following reasons and considerations:

1. This is the fourth time in its 19-year pendency that the main case for dissolution of respondent corporation, Bisaya Land Transportation Co., Inc., by forcible forfeiture of its corporate franchise under the quo warranto proceedings instituted in 1959 by the Solicitor General on behalf of the Republic of the Philippines or by judgment on consent by motion of respondent corporation itself (filed in February, 1962 with the required 2/3 stockholders' vote) has reached this Court and been disposed of without a definitive conclusion of the case or a final adjudication of its merits.[1]

The first time in 1960, respondents corporation and majority stockholders filed a petition for certiorari (L-16593) challenging the lower court's orders denying their motion to dismiss the State's quo warranto action and deferring resolution on their motion to dismiss Miguel Cuenco's cross-claim against them. On February 11, 1960, this Court dismissed the petition since the questioned orders were interlocutory and it was proper and in order that the lower court hear and resolve the case on the merits.

Soon thereafter on February 23, 1960, the hearings in the case below began before a commissioner. Two years later on February 28, 1962, respondent corporation (and its majority directors) filed a motion for judgment on consent ordering its own dissolution and directing that its board of directors proceed with the liquidation of its assets in accordance with law. The Solicitor General agreed to the rendition of such judgment on consent (since it was in accordance with the quo warranto petition seeking precisely the dissolution of the corporation), stating however that its implementation be submitted to the discretion of the lower court. Respondent Miguel Cuenco

likewise agreed to the rendition of said judgment but urged that a receiver be appointed to wind up the affairs of the corporation and that judgment be rendered on his cross-claim against respondents majority directors to recover from them for the benefit of the corporation the aggregate sum of P4,336,701.19.

A year and three months thereafter, on May 27, 1963, respondents majority directors now back-tracked and filed their motion to withdraw the motion for judgment on consent on the ground that the conditions to which the motion was subject had not been accepted. Respondents corporation and majority directors for the second time elevated the case to this Court through a petition for prohibition (L-22097) this time questioning the alleged lack of jurisdiction of the lower court in Manila because of the corporation's domicile in Cebu. This Court again peremptorily dismissed the petition on November 15, 1963.

The lower court on December 3, 1963 denied the motion to withdraw the standing motion for judgment on consent and granted receivership as prayed for by Miguel Cuenco. Respondents corporation and majority stockholders this time filed a petition for certiorari with the Court of Appeals which issued on January 15, 1964 an ex parte writ of preliminary injunction and rendered on June 6, 1964 its decision annulling the lower court's receivership order. The main case reached this Court for the third time. Upon petition for certiorari (L-23013) filed in turn on June 3, 1964 by Miguel Cuenco assailing the Court of Appeals' lack of jurisdiction over the case by virtue of his cross-claim for over P4-million (since at the time the Court of Appeals' jurisdiction was limited to cases where the value in controversy did not exceed P200,000.00) this Court issued a writ of preliminary injunction commanding the Court of Appeals to desist from enforcing its preliminary injunction against the receivership order of the lower court. This Court rendered judgment on January 29, 1968 annulling all the proceedings in the Court of Appeals for lack of jurisdiction and declaring as "clearly untenable" respondents' contention "that the jurisdiction of the appellate court should be determined by the allegations of the [Republic's] petition for quo warranto, which is incapable of pecuniary estimation, and that a cross-claim [Miguel Cuenco's] is improper in quo warranto proceedings." [2]

This Court rendered its said decision of January 29, 1968 declaring the proceedings in the Court of Appeals as "null and void ab initio" for lack of jurisdiction precisely by virtue of Miguel Cuenco's cross-claim on behalf of the corporation against respondents majority directors for over P4-million on behalf of the corporation after then Solicitor General (who was appointed and assumed office in early 1966, now Associate Justice of this Court) Barredo filed on October 20, 1966 the motion for dismissal of the quo warranto proceedings subject matter of the present main case (L-31490) and after the Solicitor General on behalf of the Republic and the respondent corporation had filed with the lower court a motion for judgment based on a "compromise" between them, whereby

"a. respondent corporation be ordered to amend within six (6) months its articles of incorporation so as to exclude from its purpose clause the operation of lumber concessions, cattle ranch, agricultural lands, and a general merchandise store;

"b. respondent corporation be ordered to sell or otherwise dispose of within six (6) months its cattle ranch;

"c. respondent corporation be authorized to continue serving the public in the field of public transportation only and to post such bond as the appropriate court may require to secure and protect whatever rights or claims any complaining stockholder, including Miguel Cuenco, may have against the corporation, "[2-a]

which this Court disregarded as not being relevant to the issues and which compromise at any rate now appears to have been discarded and aborted with the Republic's motion for outright dismissal of the quo warranto proceedings, as precipitately granted by the lower court in its Resolution of April 3, 1968 notwithstanding this Court's decision just two months earlier upholding its action sustaining the dissolution proceedings and granting receivership.

2. Given the foregoing antecedents with this very Court in three cases between 1960 and 1968 having cleared the way for the main case below to be heard and adjudicated on the merits, (during which time then Solicitor General Barredo's predecessors in office had successfully instituted and maintained on behalf of the Republic the quo warranto proceedings against respondent corporation), the advanced state of the hearings and the volume of the evidence proffered and the long pendency of the case, and the demands of public policy and public interest that there be a definitive end to litigations and that the courts of justice discharge their main role which is to assist in the enforcement of the rule of law and the maintenance of peace and order by settling judicial controversies with finality[3] the case at bar presents a manifest exception to the general power of the Solicitor General to control and discontinue a litigation on behalf of the State. From the controlling jurisprudence cited in the main opinion[4] it is evident that such discontinuance and dismissal of an action may be sanctioned only "when (a) it clearly appears that there is no longer a necessity therefor, or (b) when it clearly appears that to continue the action, the result would be prejudicial to the interests of the public." Here the contrary quite clearly is the case since the imperatives of public policy and public interest call for the continuation and termination of the case on its merits.

3. Prescinding from the foregoing, no plausible justification has been given why the lower court should not have (as urged by appellant Miguel Cuenco) granted respondent corporation's motion for judgment on consent and rendered judgment for its dissolution on the strength of its own motion consenting to and praying for such judgment of dissolution which furthermore was formally agreed to by the Solicitor General on behalf of the Republic as the petitioner in quo warranto which had been instituted precisely to effect such dissolution.

The lower court had in effect and in substance actually granted respondent corporation's motion for judgment ordering its dissolution on its own consent when on December 3, 1963 the lower court denied the motion seeking to withdraw the motion for judgment on consent on the ground that the conditions to which the motion was subject had not been accepted and instead granted receivership as prayed for by Miguel Cuenco (when he formally manifested also his agreement to the rendition of such judgment for dissolution on consent) in consonance with Rule 66, section 13 that "Appointment of receiver when corporation dissolved. - The court rendering a judgment dissolving a corporation shall appoint a receiver of all its assets who shall proceed to administer the same in accordance with the provisions of Rule 59." All that was really lacking was the lower court's formal judgment for dissolution of the corporation on the strength of its own motion for such dissolution by consent.

4. This Court in the 1968 case of Cuenco vs. Court of Appeals[5] had sustained the lower court's action of denying respondents' motion to withdraw their motion for judgment on consent and of granting instead a receivership against respondent corporation when it rendered judgment upholding the receivership and making permanent the preliminary injunction against the Court of Appeals' writ and decision to the contrary and expressly denied respondent corporation's motions directly filed with this Court for an injunction against the receivership and for the dismissal of Miguel Cuenco's petition.[6]

It should be noted that respondent corporation's ground for seeking the dismissal of Miguel Cuenco's petition for certiorari against the Court of Appeals' decision was that it and the Republic had filed with the lower court a motion for judgment on compromise, supra.[7] This motion for judgment on compromise, although aborted by the Republic's abrupt motion for dismissal in October, 1966 is significant in that

- (a) It bears out certain of the Republic's causes of action for seeking respondent corporation's dissolution, such that the corporation would be ordered to amend its articles of incorporation so as to exclude from its purpose certain activities objected to by the Republic and likewise ordered to sell or dispose of its cattle ranch (which was in conflict with its charter as a public transportation company);
- (b) The corporation would be permitted to continue operating in the field of public transportation only; and
- (c) The cross-claim of Miguel Cuenco was recognized and the corporation would post a bond to protect his rights and claims and those of any other complaining stockholder(s).

With these facts, it is difficult to justify the lower court's findings in granting the abrupt and summary dismissal of the main case below at the Solicitor General's motion in October, 1966 "that the several acts of misuse and misapplication of the funds and/or assets of the Bisaya Land Transportation Co., Inc. were committed more particularly by the respondent Dr. Manuel Cuenco with the cooperation of Jose P. Velez [being majority directors] for the commission of which they may be personally held liable"[8] and "that rather than public interest the personal interests of both Dr. Manuel Cuenco and Mr. Miguel Cuenco are principally involved in this controversy" as sustained by the main opinion - when the Republic's petition for quo warranto specified nine (9) causes of action whose sufficiency had been upheld both by the lower court and this Court which dismissed summarily respondents' petition in the first case in 1960 (L-16593) questioning the lower court's denial of their motion to dismiss the State's quo warranto action for dissolution of the corporation and the cited motion for judgment on compromise brought out the truth of several of the charges.

Furthermore, it is axiomatic that a corporation can only act through its officials and majority directors and their misuse and misapplication of corporate funds with the acquiescence of the majority do not make it a mere matter of personal conflict and interest with the complaining stockholder, for the State's interest is the public one of seeing to it that the corporation's charter as granted by the State through the Corporation Law is not violated. At any rate, even if the trial court were disposed to, as it did, grant the Solicitor General's October, 1966 motion for dismissal of the quo warranto action on April 3, 1968 notwithstanding that this Court had once again upheld in its January 29, 1968 decision the proceedings below and the receivership granted by it, it should nevertheless have at least rendered judgment that the corporation be ousted from the continuance of offenses and the exercise of any power usurped by it as brought out in the motion for compromise, as required by Rule 66, section 12.[9]

5. The main opinion advances as justification for upholding the lower court's failure to render judgment dissolving the corporation on the strength of its own motion for such judgment on consent is that "there was no meeting of minds among the parties hereto with respect to the motion for judgment on consent filed by appellee corporation and agreed to by petitioner-appellee [the Republic]."[10]

This is based on a misconception, since the protagonists and principal parties insofar as the quo warranto action is concerned were and are exclusively the appellee (respondent) corporation Bisaya Land Transportation Co., Inc. whose dissolution was sought by the Republic in its petition below and who had moved and prayed for judgment on consent for its own dissolution and the appellee (petitioner) Republic which had admittedly formally expressed its agreement thereto.

Miguel Cuenco was not even an indispensable or necessary party insofar as the quo warranto action for dissolution of the corporation under Rule 66, section 2 is concerned. The Rule provides that the action shall be brought against the corporation alone. Miguel Cuenco was impleaded by the State only as co-respondent together with the other respondents majority officials and majority directors stockholders who according to the State's petition had conspired and confabulated to violate the corporation's charter such as to warrant its forcible dissolution. That Miguel Cuenco in agreeing to respondents' motion for judgment on consent urged that a receiver

be appointed and that judgment be rendered on his cross-claim^[11] was immaterial and irrelevant, since strictly speaking, he was not even a party to the quo warranto action which had been brought solely by the Republic.

The point is that since there was plain and formal agreement between petitioner Republic and respondent corporation for the rendition of judgment for the corporation's dissolution upon its own motion and prayer, there was no legal ground whatsoever for its withdrawal (as in fact this Court sustained the lower court's denial of the motion to withdraw) nor for the lower court's failure to grant respondents' motion for judgment on consent and accordingly to order dissolution of respondent corporation.

As to respondent corporation's prayer that its dissolution be effected by its board of directors, suffice it to point out that section 13 of Rule 66, *supra*,^[12] mandates that upon a judgment of dissolution, a receiver (not the board of directors whose members would be subject to conflict of interests) shall be appointed to administer the corporate assets in accordance with Rule 59 on receivers.

6. On the crucial point invoked by Miguel Cuenco that at the stage of the proceedings in 1966 (nine [9] years after the filing of the quo warranto action by the State) the Solicitor General could not abruptly move for the summary dismissal of the case over his objection as cross-claimant against his co-respondents majority directors for the recovery of over P4 million for the benefit of respondent corporation unless his cross-claim could remain pending for independent adjudication by the court under the provisions of Rule 17, sections 2 and 4, the crucial question is assuming that despite all the foregoing considerations, the Republic could nevertheless insist on the dismissal of the quo warranto action on the premise accepted in the main opinion that

"The Solicitor General himself asserts that the only purpose of his motion for dismissal of this quo warranto is to take the State out of an unnecessary court litigation so that the dismissal of the case would result in the disposition solely of quo warranto by and between petitioner Republic of the Philippines and the respondents named therein. Other interested parties who might feel aggrieved, therefore, would not be without their remedies since they can still maintain whatever claims they may have against each other" ^[13]

was it not grave error for the lower court to dismiss Miguel Cuenco's cross-claim together with its dismissal of the quo warranto?

This was manifestly a grave error. In consonance with the Solicitor General's above-quoted stand that he merely wanted to "take the State out of an unnecessary litigation" leaving the parties free to "maintain whatever claims they may have against each other," the cross-claim of Miguel Cuenco should not be dismissed but left pending for independent adjudication by the courts.

This is expressly sanctioned by Rule 17, sections 2 and 4, with section 2 further expressly providing that once the answers to the complaint or petition are filed (and more so when the hearings over a period of years are far advanced) "an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper." The Rule precisely sanctions that the Court impose terms and conditions for the dismissal of plaintiff's suit, viz in this case that Miguel Cuenco's cross-claim against the majority directors-stockholders for the benefit of respondent corporation be maintained for independent adjudication.

Manifestly, as already indicated above, it is but to serve the demands of public policy and public interest that the cross-claim subsist notwithstanding dismissal of the quo warranto and be finally and definitively adjudicated, rather than to have the parties start now all over again after nineteen (19) years and set at naught all the time and great effort and expense incurred by them in the prosecution of the case below.

As succinctly stressed previously by this Court in the 1968 case of *Cuenco vs. Court of Appeals*, supra, in sustaining the lower court's denial of respondents' motion to dismiss Miguel Cuenco's cross-claim and upholding its receivership order issued pursuant to Miguel Cuenco's cross-claim, "after due hearing on the merits of the petition and the cross-claim, the trial court would have to render, therefore, a decision on both. In doing so, it may dismiss the cross-claim in its entirety, or render judgment for the cross-claimant, either for the full amount of the cross-claim, or for part thereof. In either case, the party adversely affected by the decision may appeal therefrom. There can be no doubt that such appeal would be within the exclusive jurisdiction, not of the Court of Appeals, but of the Supreme Court. And such would be the case, regardless of whether the cross-claim was properly filed in the trial court or not." [14]

Under these circumstances, how could the "dismissal of the main action . . . only benefit the cross-claimant and not result in any prejudice or disadvantage to him" as stated in the main opinion? [15]

7. Finally, if it be conceded as shown by the record that the Republic and respondent corporation as the protagonists in the quo warranto proceeding below had expressly agreed that judgment for the corporation's dissolution be rendered on the basis of the corporation's own motion for such judgment on consent, the lower court should be ordered to enter such judgment and Miguel Cuenco's cross-claim for the benefit of respondent corporation must necessarily be maintained and likewise adjudged since any recovery thereon would have to be taken into account in the process of dissolution of the corporation.

On the other hand, even if the dismissal of the quo warranto at the Solicitor General's October, 1966 motion were upheld notwithstanding the above-cited imperatives of public policy and public interest to the contrary, Miguel Cuenco's cross-claim should nevertheless be continued and maintained for final adjudication on the merits for the benefit of all the litigants (who are entitled to know where they finally stand) rather than compel them to start all over again after 19 years at great and needless expense when the proceedings thereon in the lower court are already far advanced. This would be but to uphold the very *raison d'etre* of the courts to settle and determine litigations with fairness and finality and with the least expense and delay.

[1] The background facts are mostly culled from the main opinion and supplemented by this Court's own narration in the previous case of *Cuenco vs. Court of Appeals*, 22 SCRA 257 (1968).

For the sake of clarity, the parties are referred to in their respective capacities in the quo warranto action below. Hence, the corporation Bisaya Land Transportation Co., Inc. is referred to as respondent corporation; its principal co-respondents as respondents majority directors, and the minority director simply as Miguel Cuenco, and the petition Republic of the Philippines as represented by the Solicitor General simply as the Republic or the State.

[2] *Cuenco vs. Court of Appeals*, L-23012, 22 SCRA 257, 264, per Concepcion, C. J.

[2-a] Emphasis supplied.

[3] *Galvez vs. PLDT*, 3 SCRA 418, 423, Oct. 31, 1961, Concepcion, J. quoted in *Dy Pac Workers Union v. Dy Pac & Co., Inc.*, 38 SCRA 263, 269, Mar. 31, 1971, per Castro, J.

[4] *City of Manila vs. Ruymann*, 37 Phil. 421; *Metropolitan Water District vs. De los Angeles*, 55 Phil. 776, cited on pp. 14-15 of the main opinion.

[5] Supra, see fns. 1 and 2.

[6] The dispositive portion of this Court's decision reads:

"WHEREFORE, the motions of Bisaya for a writ of preliminary injunction, for dismissal of the present case and for the elevation to this Court of the records of the Court of Appeals in CA-G.R. No. 33266-R are hereby denied, and the writ of preliminary injunction and the aforementioned decision in said case are, accordingly, annulled. The writ of preliminary injunction issued by this Court is hereby made permanent, with costs against herein respondents, excluding the Court of Appeals. It is so ordered." (22 SCRA at page 266)

[7] At page 4 hereof.

[8] At page 11 thereof; note in brackets supplied.

[9] The pertinent portion of the Rule reads: "Sec. 12. x x x When it is found that the corporation has offended in a matter or manner which does not by law work as a surrender or forfeiture, judgment shall be rendered that it be ousted from the continuance of such offense and the exercise of any power usurped by it." (Rule 66)

[10] Main opinion, at page 10, emphasis supplied.

[11] Main opinion, page 7.

[12] At page 6 hereof.

[13] Main opinion, at page 13.

[14] 22 SCRA at pages 265-266.

[15] At page 19.

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