

**COMMISSIONER OF INTERNAL REVENUE, ET AL., PETITIONERS, VS.
THE HONORABLE COURT OF APPEALS, ET AL., RESPONDENTS.
DAGUPAN COMBINED COMMODITIES, INC., ET AL.,
RESPONDENTS-INTERVENORS.**

G.R. No. 119322. February 06, 1997

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PER CURIAM:

After deliberating on petitioners' motion to disqualify Mr. Justice Santiago M. Kapunan from this case, petitioners' motion for reconsideration of the Court's (First Division) decision dated 4 June 1996 as well as all pleadings filed by the parties subsequent thereto, the Court Resolved to DENY said motion to disqualify for the following reasons:

In response to the motion for his inhibition, Justice Kapunan has formally submitted his Resolution, which was included in the Court's Agenda of 21 January 1997 for deliberation. He explained that there are no grounds whatsoever to warrant his inhibition. He bewailed that the motion to disqualify him dated 26 April 1996 was so belatedly filed, just after the First Division voted 3 to 2 on 24 April 1996 to dismiss the petition filed by petitioners, when the petition had been pending before the First Division since 29 March 1995, or for more than a year, thus, the effect of the motion for disqualification was to nullify a valid vote.[1]

Justice Kapunan's Resolution is quoted in full:

RESOLUTION

This refers to the motion of Office of the Solicitor General for my inhibition from the above-entitled case citing my alleged close association with Atty. Estelito Mendoza, counsel for private respondents who was supposedly instrumental in my appointment to the Court of Appeals. and that Atty. Mendoza and I or our wives, together with former Court of Appeals Justice Racela, established Cafe Faura located at Padre Faura Street, Manila where "Justice Kapunan and Atty. Mendoza are often seen meeting and socializing."

It is adverted in the motion for inhibition that "the magistrates who will render judgment are men of good reason, and proven adherence to the rule of law" and that "it is not enough for this Court just to do right, but it is also necessary that it gives the appearance that it will always do right," considering that this Court -

"is now in the apex of public esteem and regard because of its transcendental decisions in cases imbued with national interest, such as the cases involving the sale of PETRON-ARAMCO shares, the LRT III, the Lotto, the Jai-Alai, the EVAT, and several others. These cases show that this Honorable Court is above personalities and non-legal considerations in formulating decision."

For the foregoing reasons, the Office of the Solicitor General would want me to inhibit from the case.

Let me state the following in answer to the Solicitor General's allegations:

1. G.R. No. 119322 was assigned in March 1995 to the First division of which I am a member. From that time up to April 24, 1996, when the Division deliberated on the case and voted on whether or not to grant or dismiss

the petition, several pleadings had been filed and interlocutory orders issued in connection therewith. Yet, it was only on April 26, 1996, or two days after three members of the Division (the majority) voted to grant the petition when the Solicitor General raised the matter of my inhibition. Strangely, for a period of almost a year before our voting on the petition, the Solicitor General did not find my alleged "close association with Atty. Estelito Mendoza" sufficient to inhibit me from the case. Neither did a thought cross his mind to move for my disqualification in the EVAT cases and certain PCGG cases involving Eduardo Cojuangco wherein Atty. Mendoza was counsel for the parties opposing the stand of the Government and in which I voted in favor of the Government. Had I voted in a different way in G.R. No. 119322 would the Solicitor General have sought my inhibition?

2. The motion to inhibit me from the case coming after a vote had been taken on the petition was in effect intended to nullify a valid vote already made. The rule is that a petition to disqualify a judge must be filed before rendition of judgment by the judge. The rationale for this rule is that a litigant cannot be permitted to speculate upon the action of the court and to raise an opposition after a decision unfavorable to him had been rendered.

3. It may be pertinent to state that when the member of the First Division to whom the case was assigned for study and report submitted his draft opinion sometime in March, 1996, the other four (4) members of the Division, realizing the delicate nature of the case because of allegations of massive tax evasion and in view of the voluminous records, proposed that the case be elevated to the Court En Banc, or, at least set for oral argument. However, the ponente who was, and still is, the Chairman of the Division was not amenable to the idea, saying that the issues involved are simple, so the case need not be referred to the Court En Banc. The four (4) other members did not press their proposal in deference to the wishes of their Chairman. It was only right after the closed-door voting on April 24, 1996 - the results of which could not have been known except by the members of the First Division before the decision was promulgated on June 4, 1996 - when, surprisingly, the Solicitor General sought my inhibition and moved for the elevation of the case to the Court En Banc. And it was only last December 1996 that the OSG belatedly moved to set the case for oral argument. It is not fair to change the rules at the middle of the game. But it is worse when rules are changed when the game is over. What I am saying is that, on my part, I have always comported myself with utmost circumspection and impartiality in my actuaciones. I have no personal interests whatsoever in the case.

4. It is gratuitous for the Solicitor General to state that this Court has achieved the apex of public esteem and high public regard simply because of the decisions of this Court upholding the stand of the Office of the Solicitor General in Petron-Aramco, the LRT, the Lotto, the Jai-Alai and EVAT, among several other cases (There, I voted consistently in favor of the OSG). The implication of the Solicitor General's stance is most disturbing. He would want to convey the idea that it is only when the Supreme Court consistently sustains his position in major cases that it automatically merits high public esteem and regard, but when the Court decides against the Government, it loses its good public image. I certainly do not share the Solicitor General's concept of the nature and essence of the duties of the Supreme Court as a just, fair and impartial legal arbiter. As mandated in Sec. 1, Art. VII of the Constitution:

[J]udicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

In other words, in the discharge of its duty of adjudicating controversies or of determining whether or not there has been grave abuse of discretion, the Supreme Court considers the Constitution, the law and the evidence before it and what it perceives to be right and just. The Court does not cease to do what is right and just simply because its decision does not coincide with the stand of the Government. It is the fundamental duty of the Court to accord everyone the protective mantle of the Constitution against abuse of power.

5. The fact that Atty. Mendoza was once my superior at the Office of the Solicitor General and assuming that he recommended me to the Court of Appeals cannot by any stretch of imagination be a ground for my inhibition. I would like to believe that I was appointed to the Court of Appeals and afterwards to the Supreme Court because I deserved the appointment. If I was recommended by Atty. Mendoza who was then the Solicitor General, it was a matter of his responsibility as chief of office to attract competent lawyers to the Office of the Solicitor General and to inspire them to dedicate themselves to the public service. Atty. Mendoza did not do it as a personal favor to me, in the same way that every appointment to the public office should not be considered as a personal favor to the appointee, because a public office is a public trust and the public official should discharge his duties for the public good. Moreover, if the Solicitor General's argument is followed to its logical conclusion, then all the members of this Court who have been appointed by the President should inhibit themselves in the cases where the Government is a party.

6. On the other hand, the record will reveal that in several cases decided by this Court, I voted against the clients of Atty. Mendoza, like the EVAT cases, certain PCGG cases involving Eduardo Cojuangco and, more recently, the question of whether Governor Rodriguez of Quezon Province be allowed to sit as governor. I can say with all sincerity that during the almost thirty-nine (39) years that I have been in Government service, as tax lawyer, Solicitor, Assistant Solicitor General, Acting Commissioner of Land Registration, Associate Justice of the Court of Appeals and now as Associate Justice of this Court, I have never allowed any personal consideration to influence my official actuations.

7. I deny that Atty. Mendoza and I are "often seen meeting and socializing." I rarely see him and in fact I am not fond of socializing. Cafe Faura at the Padre Faura Street, Manila, which is no longer existing, was a small restaurant managed by my wife and Mrs. Consuelo Racela. It did not produce any profit but was being maintained for sometime primarily to provide livelihood to its few employees. Atty. Estelito Mendoza and his wife did not own a single share of stock in Cafe Faura; neither were they involved in its management or operation.

There is no ground at all for my inhibition in this case. Moreover, I do not entertain the slightest doubt on my capacity to perform my duties and functions as member of this Court with utmost impartiality, fairness and fidelity.

WHEREFORE, I resolve to deny the motion for my inhibition.

On the motion to disqualify Justice Kapunan from participating in this case, the Court took note of the old doctrine that when a Justice of the Court of Appeals or the Supreme Court is challenged, "the magistrate sits with the court and the question is decided by it as a body."^[2] It will be observed, however, that the basis of the challenge there was that the Justice had previously acted as the fiscal in an earlier proceeding in the case, a ground for compulsory inhibition, and that the matter was dealt with under Article 8 of the Code of Civil Procedure the provisions of which differ from those under the first paragraph of Rule 137 of the Rules of Court.

Again, in *Araneta vs. Dinglasan*,^[3] the motion to disqualify Mr. Justice Padilla from acting therein was also founded upon a mandatory ground for inhibition, in that as Secretary of Justice he had advised the President on the question of emergency powers. In denying the motion to disqualify Justice Padilla, the Court ruled, citing a previous case,^[4] that "a litigant x x x cannot be permitted to speculate upon the action of the court and raise an objection of this sort after decision has been rendered." It appearing inter alia that the motion to disqualify was presented after Justice Padilla had given his opinion on the merits of the cases involved, the Court voted to deny the motion for disqualification.

In the present case, the so-called grounds relied upon for the disqualification of Justice Kapunan, i.e., his having served under Atty. Estelito Mendoza when the latter was the Solicitor General, and their having had business relations in connection with the operation of a small restaurant, even if true, could not constitute compulsory

grounds for Justice Kapunan's recusation. It is for him alone, therefore, to determine his qualification.

Furthermore, the present motion for inhibition was filed after the case at bar had already been decided by the First Division of this Court and Justice Kapunan had duly participated and cast his vote therein sans any objection from any source. The motion consequently falls squarely within the prohibition in the aforecited cases of Araneta and Abella.

At all events, and although it was not necessary for the Court En Banc to resolve the motion, all the Members thereof concurred in the denial of said motion to disqualify Justice Kapunan.

The Court further Resolved to DENY the motion for reconsideration of the decision dated 4 June 1996, the basic issues raised therein having already been passed upon in said decision and there being no substantial arguments to support said motion.

However, in order to avoid undue delay in the disposition of Civil Case No. Q-94-18790 and the preliminary investigation of the complaints against private respondents, the Court Resolved to:

1. REMAND Civil case No. Q-94-18790 to the Regional Trial Court, Branch 88, Quezon City;
 2. SET ASIDE the orders of the panel of prosecutors declaring private respondents' "Motion to Dismiss, Alternatively, Motion to suspend" as private respondents' counter-affidavits, and denying their motions to require petitioner Commissioner of Internal Revenue to submit documents and to inhibit the members of the panel of prosecutors;
 3. DIRECT the Secretary of Justice to designate as early as possible, a new panel of prosecutors to investigate the complaints against private respondents;
 4. ORDER the new panel of prosecutors designated by the Secretary of Justice to grant private respondents' motion for the submission by petitioner Commissioner of Internal Revenue to private respondents, thru their counsel of record, of the documents supporting the complaints, and to give private respondents reasonable time to examine the documents and to submit their counter-affidavits;
 5. ORDER the preliminary investigation to proceed with all reasonable dispatch; and
 6. DIRECT respondent Judge Tirso Velasco to dismiss Civil Case No. Q-94-18790 on the ground that it has become moot in light of the foregoing dispositions.
- SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr., Panganiban, and Torres, Jr., JJ., concur.

[1] In the wake of the OSG's motion, anonymous poison-pen letters were widely distributed and picked up by some radio commentators and a few newspaper writers, viciously attacking the honor and integrity of the Justices who voted to deny the petition, prompting the Court en banc to issue a public statement on 4 June 1996 which is quoted in part:

The Court is constrained to issue this statement with regard to what may be described as a poison letter," which reportedly is being widely distributed to the public. x x x The letter's author, while attempting to hide his identity in cowardly fashion behind an obviously deceitful pseudonym, is unable to hide his dastardly intention: which apparently is to influence said Members of the Court to vote against Lucio Tan and his co-parties, or so

thoroughly discredit them as to rob whatever views they may subsequently express about the case of any moral cogency. This seems evident in the context of the circumstances in which the poison pen letter made its appearance.

xxx

Be that as it may, the three (3) Members of the Court's First Division thus villified have in separate written statements addressed to the entire membership of the Court, denounced the "poison pen letter" as extremely vicious, scurrilous, false and malicious, libelous, unfair, baseless, mere "matters of guessword," the product of a malevolent mind. A Member of the First Division, Mr. Justice Jose Vitug, also belied the letter's contents by orally asserting before the Court En Banc that contrary to said letter's allegation, he had never been approached by any of the three Justices, or any one else, to vote for any party. The Chairman of the First Division categorically denied as being utterly without basis in fact the report in a newspaper that he was "fuming mad" at a member of his Division for "lack of delicadeza" in connection with the case. And all the Members of the Division denied that there was ever any "see-sawing" in votes or opinions in said case.

The Court condemns the "poison pen letter" in the strongest possible terms, and excoriates its cowardly and devious author and disseminator.

The Court declares its support of and continuing confidence in these three (3) Members, and the Chief Justice, who is also libeled in the "poison pen letter." The Court is confident that the records not only of their public service but also of their private lives can stand the closest and most critical scrutiny, and will by any rational norm be acknowledged as models of superior achievement, honor and rectitude.

[2] *Jurado & Co. v. Hongkong & Shanghai Banking Corp.*, 1 Phil. 395.

[3] 84 Phil. 368, at pp.431-432.

[4] *Government of the Philippines Islands v. Heirs of Abella*, 49 Phil. 374.

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