

**MACLARING M. LUCMAN, IN HIS CAPACITY AS THE MANAGER OF
THE LAND BANK OF THE PHILIPPINES, MARAWI CITY, PETITIONER,
VS. ALIMATAR MALAWI, ABDUL- KHAYER PANGCOGA, SALIMATAR
SARIP, L...**

G.R. No. 159794. December 19, 2006

Ponente: TINGA, J.

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TINGA, J.:

This is a petition for review challenging the decision of the trial court, affirmed by the Court of Appeals, granting the petition for mandamus filed by herein respondents, Barangay Chairmen (or Punong Barangay) of several barangays in the province of Lanao del Sur.

The petition for mandamus filed by respondents before the trial court is rooted in their claim that they were deprived of their Internal Revenue Allotment (IRA) for the 2nd and 3rd quarters of 1997. Respondents further alleged that these same funds were released by petitioner as Manager of Land Bank of the Philippines (LBP), the depository bank, to third persons.

There were originally six (6) petitioners when the Petition for Mandamus with Prayer for Writ of Preliminary Mandatory Injunction was filed by now respondents before the court of origin. They were Alimatar Malawi, Abdulkhayr Pangcoga, Salimatar Sarip, Lomala Cadar, Aliriba S. Macarambon and Abdul Usman who were the incumbent barangay chairmen of Bubong Ngingir (Kabasaran), Ilian, Linindingan, Mapantao-Ingod, Paigoay and Rangiran, respectively, all from the Municipality of Pagayawan, Lanao del Sur.[1] All of them were the incumbent barangay chairmen of their respective barangays prior to the 12 May 1997 barangay elections. The elections on 12 May 1997 in the aforesaid barangays resulted in a failure of elections. Thereafter, the special elections held in these barangays likewise resulted in a failure of elections.[2] Consequently, respondents remained in office in a holdover capacity pursuant to the provisions of Sec. 1 of

R.A. No. 6679[3] and Comelec Resolution No. 2888 dated February 5, 1997.[4]

Beginning with the second quarter of 1997, LBP was selected as the government depository bank for the IRAs of the abovementioned barangays.[5] Being a new government depository bank for the IRA funds, the authorized public officials had to open new accounts in behalf of their government units with the proper LBP branch from which they could withdraw the IRAs.[6]

After the failed 12 May 1997 elections, respondents attempted to open their respective barangays' IRA bank accounts but were refused by petitioner because respondents needed to show their individual certifications showing their right to continue serving as Barangay Chairmen and the requisite Municipal Accountant's Advice giving respondents the authority to withdraw IRA deposits.[7] The requirement for the Accountant's Advice stemmed from Commission on Audit Circular No. 94-004.[8]

Respondents were eventually allowed to open accounts for their barangays except for Lomala Cadar and Abdul

Usman of barangays Mapantao-Ingud and Rangiran, respectively, because the accounts for these barangays were previously opened by two persons who presented themselves as the duly proclaimed Barangay Chairmen for these same barangays.[9]

In any event, all respondents were not allowed to withdraw the IRA funds from the opened accounts, owing to the absence of the requisite Accountant's Advice.[10]

Then on 4 August 1997, five (5) other persons presented themselves before petitioner as the newly proclaimed Punong Barangays of the five barangays concerned,[11] each of them presenting a certification of his election as Punong Barangay issued by the provincial director of the DILG-ARMM and another Certification issued by the Local Government Operations Officer attesting, among others, to the revocation of the certification previously issued to respondents.[12] Without verifying the authenticity of the certifications presented by these third persons, petitioner proceeded to release the IRA funds for the 2nd and 3rd quarters of 1997 to them.[13]

Respondents thus filed on 11 August 1997 a special civil action for Mandamus with Application for Preliminary Mandatory Injunction docketed as Civil Case No. 11-106, to compel petitioner to allow them to open and maintain deposit accounts covering the IRAs of their respective barangays and to withdraw therefrom.[14] The case was raffled to the Regional Trial Court (RTC) of Lanao del Sur, Branch 11.[15]

At the trial respondents Sarip, Cadar, Pangcoga and Usman testified that they were duly elected chairpersons of their respective barangays and continued as such in a holdover capacity until their re-election on 30 August 1997. They testified further that despite presenting the corresponding documents, petitioner refused to allow the withdrawal of the funds.[16]

Respondent Macarambon testified that he was the incumbent chairperson of Barangay Paigoay prior to the 12 May 1997 elections and that due to the failure of elections, he continued to occupy his position in a holdover capacity until he was succeeded by his wife upon the latter's election to the same post. He testified on petitioner's refusal to release the money to him despite his submission of the Accountant's Advice.[17]

For failure to appear at the scheduled hearing on 20 April 1999, petitioner was held as in default and respondents were allowed to present evidence ex parte. Petitioner's Motion for Reconsideration of the Order declaring him as in default was granted.[18]

After failing again to appear on the given time for him to adduce evidence, another Order was issued wherein petitioner was deemed to have waived his right to present evidence. The Order was lifted on petitioner's Motion for Reconsideration. Instead of presenting evidence, petitioner filed on 10 November 1999 a Motion to Dispense or Waive Presentation of Evidence wherein he represented that the prayers in the complaint had already been complied with.[19] The RTC granted petitioner's motion through an Order dated 24 September 1999.[20]

Thereafter, the RTC rendered a Decision[21] dated 8 October 1999 commanding petitioner to pay respondents, except respondent Alimatar Malawi who failed to testify, the IRAs of their respective barangays "even without the Accountant's Advice." [22] The dispositive portion of the Decision reads, to wit:

WHEREFORE, premises all considered, the instant petition is hereby granted. Accordingly, Mr. Maclaring M. Lucman, Manager of the Land Bank of the Philippines, Marawi City branch, is hereby ordered to pay the following:[23]

- Aliriba Macarambon, the 2nd Quarter IRA of Paigoay, Pagayawan in the sum of P48,200.00;

- Salimatar Sarip of Linindingan the

2nd Quarter IRA - - - P54,220.00

3rd Quarter IRA - - - P54,220.00

- Lomala S. Cadar of Mapantao the

2nd Quarter IRA - - - P54,320.00

3rd Quarter IRA - - - P54,320.00

- Abdulkhay Pangcoga of Ilian the

2nd Quarter IRA - - - P53, 361.00

3rd Quarter IRA - - - P53,361.00

- Abdul Usman of Rangiran the

2nd Quarter IRA - - - P51,185.00

3rd Quarter IRA - - - P51,185.00

even without the Accountant's Advice and the subsequent IRAs until their term of office shall have expired.

SO ORDERED.[24]

The RTC gave no credence to petitioner's assertion of payment to the rightful barangay officers, there having been no testimonial or documentary evidence proffered in substantiation thereof.[25] It considered petitioner's refusal to present evidence as a "silence" that equates to an admission of respondents' allegations.[26] Furthermore, the RTC relied on the testimonies and certifications adduced by respondents in holding that they were occupying their positions in a holdover capacity[27] and that by virtue thereof, they had "the perfect right to continue performing the duties and functions of their positions including the withdrawal of funds of their respective barangays." [28]

The Court of Appeals[29] affirmed the RTC's Decision in toto. Hence, this petition.

Petitioner argues that respondents have no cause of action against him since they failed to present valid certifications showing their respective right to continue serving as Punong Barangay as well as the requisite Municipal Accountant's Advice. Petitioner also asserts that the LBP Marawi Branch had already released the contested IRAs to the Barangay Treasurers who were acting in conjunction with the duly recognized Punong Barangays, thereby making the petition for mandamus moot and academic.[30] These are factual issues that are generally beyond the review of this Court.

Petitioner adds that respondents have no legal personality to institute the petition for mandamus in their own names since the IRAs rightfully belong to the respective barangays and not to them and that their respective barangays already received the claimed IRAs in this instant case.[31]

For the proper adjudication of the present petition, two related core issues have to be resolved. First, what is the cause of action alleged in the initiatory pleading filed by respondents before the trial court? Second, are there indispensable parties which were not impleaded?

Although the pleading filed before the lower court was denominated as a Petition for Mandamus With Prayer For Writ of Preliminary Injunction, the allegations thereof indicate that it is an action for specific performance, particularly to compel petitioner to allow withdrawal of funds from the accounts of the barangays headed by respondents with the LBP, Marawi Branch. Thus, the Petition alleged:

"12. Despite the opening of deposit accounts for the barangays mentioned in the preceding paragraph, respondent, without any valid or lawful cause, failed and refused, and still fails and refuses, to allow the withdrawal of the funds or IRA of the said barangays as evidenced by the WITHDRAWAL CHECKS (attached as Annexes "D" to "D-3" hereof) of said barangays which were refused payment when presented to

the Land Bank on August 4, 1997." [32]

From the records of the case, it appears that the shares of the barangays in the IRA had already been remitted by the Department of Budget and Management (DBM) to the LBP Marawi Branch where they were kept in the accounts opened in the names of the barangays.

By virtue of the deposits, there exists between the barangays as depositors and LBP a creditor-debtor relationship. Fixed, savings, and current deposits of money in banks and similar institutions are governed by the provisions concerning simple loan. [33] In other words, the barangays are the lenders while the bank is the borrower.

This Court elucidated on the matter in *Guingona, Jr., et al. v. The City Fiscal of Manila, et al.*, [34] citing *Serrano v. Central Bank of the Philippines*, [35] thus:

Bank deposits are in the nature of irregular deposits. They are really loans because they earn interest. All kinds of bank deposits, whether fixed, savings, or current are to be treated as loans and are to be covered by the law on loans (Art. 1980, Civil Code; *Gullas v. Phil. National Bank*, 62 Phil. 519). Current and savings deposits are loans to a bank because it can use the same. The petitioner here in making time deposits that earn interest with respondent Overseas Bank of Manila was in reality a creditor of the respondent Bank and not a depositor. The respondent Bank was in turn a debtor of petitioner. Failure of the respondent Bank to honor the time deposit is failure to pay its obligation as a debtor and not a breach of trust arising from a depository's failure to return the subject matter of the deposit. (Emphasis supplied.) [36]

The relationship being contractual in nature, mandamus is therefore not an available remedy since mandamus does not lie to enforce the performance of contractual obligations. [37]

This brings us to the second core issue.

The IRA funds for which the bank accounts were created belong to the barangays headed by respondents. The barangays are the only lawful recipients of these funds. Consequently, any transaction or claim involving these funds can be done only through the proper authorization from the barangays as juridical entities.

The determination, therefore, of whether or not the IRA funds were unlawfully withheld or improperly released to third persons can only be determined if the barangays participated as parties to this action. These questions cannot be resolved with finality without the involvement of the barangays. After all, these controversies involve funds rightfully belonging to the barangays. Hence, the barangays are indispensable parties in this case.

An indispensable party is defined as parties-in-interest without whom there can be no final determination of an action. [38] The nature of an indispensable party was thoroughly discussed in *Arcelona v. Court of Appeals*, [39] to quote:

An indispensable party is a party who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest, a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete, or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward.

A person is not an indispensable party, however, if his interest in the controversy or subject matter is separable from the interest of the other parties, so that it will not necessarily be directly or injuriously affected by a decree which does complete justice between them. Also, a person is not an indispensable party if his presence would merely permit complete relief between him and those already parties to the action, or if he has no

interest in the subject matter of the action. It is not a sufficient reason to declare a person to be an indispensable party that his presence will avoid multiple litigation.[40]

In *Arcelona*, the Court also dwelt on the consequences of failure to include indispensable parties in a case, categorically stating that the presence of indispensable parties is a condition for the exercise of juridical power[41] and when an indispensable party is not before the court, the action should be dismissed.[42] The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.[43]

The joinder of indispensable parties is mandatory. Without the presence of indispensable parties to the suit, the judgment of the court cannot attain real finality. Strangers to a case are not bound by the judgment rendered by the court.[44]

Clearly, this case was not initiated by the barangays themselves. Neither did the barangay chairmen file the suit in representation of their respective barangays. Nothing from the records shows otherwise. On this score alone, the case in the lower court should have been dismissed.

Even if the barangays themselves had filed the case, still it would not prosper. The case involves government funds and as such, any release therefrom can only be done in accordance with the prevailing rules and procedures.

The Government Accounting and Auditing Manual (GAAM) provides that the local treasurers shall maintain the depositary accounts in the name of their respective local government units with banks.[45] Under the Local Government Code, the treasurer is given the power, among others, to: (1) keep custody of barangay funds and properties; and (2) disburse funds in accordance with the financial procedures provided by the Local Government Code.[46] The same manual defines disbursements as constituting all cash paid out during a given period either in currency or by check.[47]

Sec. 344 of the Local Government Code further provides for the following requirements in cases of disbursements, to wit:

Sec. 344. No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose. Vouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned, as to the validity, propriety, and legality of the claim involved. Except in cases of disbursements involving regularly recurring administrative expenses xxx approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed.

Thus, as a safeguard against unwarranted disbursements, certifications are required from: (a) the local budget officer as to the existence and validity of the appropriation; (b) the local accountant as to the legal obligation incurred by the appropriation; (c) the local treasurer as to the availability of funds; and (d) the local department head as to the validity, propriety and legality of the claim against the appropriation.[48]

Further, the GAAM provides for the basic requirements applicable to all classes of disbursements that shall be complied with, to wit:

a) Certificate of Availability of Fund.—Existence of lawful appropriation, the unexpended balance of which, free from other obligations, is sufficient to cover the expenditure, certified as available by an accounting officer or any other official required to accomplish the certificate.

Use of moneys appropriated solely for the specific purpose for which appropriated, and for no other, except when authorized by law or by a corresponding appropriating body.

- b) Approval of claim or expenditure by head of office or his duly authorized representative.
- c) Documents to establish validity of claim. – Submission of documents and other evidences to establish the validity and correctness of the claim for payment.
- d) Conformity of the expenditure to existing laws and regulations.e) Proper accounting treatment.[49]

This prescribed legal framework governing the release and disbursement of IRA funds to the respective barangays disabuses from the notion that a barangay chairman, relying solely on his authority as a local executive, has the right to demand physical possession of the IRA funds allocated by the national government to the barangay. The right to demand for the funds belongs to the local government itself through the authorization of their Sanggunian.[50]

One final note. There is no conclusive proof from the records showing that the IRA funds for the 2nd and 3rd quarters of the barangays concerned remitted by the DBM had already been

withdrawn from the LBP Marawi Branch. Considering the implications of this action of possibly depriving several local government units of their IRAs, the Court took the initiative to request the COMELEC to issue certifications on who were the duly elected chairmen of the barangays concerned. The COMELEC issued to this Court a list of the elected barangay chairmen which confirmed the re-election of respondents as barangay chairmen of their respective barangays.[51] If withdrawals were indeed made, whether by the respondents or by impostors, the matter deserves to be investigated since public funds are involved. Accordingly, we refer the matter to the Department of Interior and Local Government (DILG) for investigation and appropriate action.

WHEREFORE, premises considered, the petition is GRANTED. The assailed Decisions of the Court of Appeals and the Regional Trial Court are REVERSED and SET ASIDE. The Petition for Mandamus filed before the Regional Trial Court is ordered DISMISSED.

The alleged withdrawals of deposits representing the Internal Revenue Allotments for the 2nd and 3rd Quarters of 1997 of the barangays concerned from the Land Bank of the Philippines, Marawi Branch, are referred to the DILG for investigation and appropriate action. The DILG is hereby DIRECTED to INFORM the Court of the result of its investigation within thirty (30) days from the completion thereof.

No pronouncement as to costs.

SO ORDERED.

Quisumbing, Carpio, Carpio-Morales, and Velasco, Jr. JJ., concur

[1]RTC Decision, rollo, pp. 126-130.

[2]CA Decision, id. at 24.

[3]Id. at 126.

Section 1. The elections of barangay officials set on the second Monday of November 1998 by Republic Act 6653 are hereby postponed and reset to March 28, 1989. They shall serve a term which shall begin on the first day of May 1989 and ending on the thirty-first day of May 1994.

There shall be held a regular election of barangay official on the second Monday of May 1994 and on the same day every five (5) years thereafter. Their term shall be for five (5) years which shall begin on the first day of June following the election and until their successors shall have been elected and qualified: Provided, That no

barangay official shall serve for more than three (3) successive terms.

xxxx

[4]Id.

Sec. 42. Candidates Holding Elective or Appointive Office. x x x x

Incumbent elective barangay officials running for the same office shall not be considered resigned upon the filing of their certificate of candidacy. They shall continue to hold office until their successors shall have been elected and qualified.

[5]Id. at 108.

[6]Id.

[7]Id. at 63.

[8]COA Circular No. 94-004 states:

It has come to the attention of the Commission that not all barangay checks paid by barangay depository banks are covered by duly approved disbursement vouchers/payrolls. Said practice has resulted in the doubtful validity and the non-recording of transactions in the barangay books of accounts.

To prevent such occurrence and to ensure that checks encashed by barangay depository banks are for legitimate barangay expenditures, the use of Accountant's Advice of Barangay Check Disbursements is hereby prescribed. x x x x Barangay Depository banks are enjoined to pay checks issued by barangays only if accompanied by the Advice. x x x x. CA rollo, p. 69.

[9]Rollo p. 25.

[10]Id. at 29.

[11]The persons who represented themselves as the barangay chairmen of the five barangays concerned are the following: Alimama Manalao for Barangay Ngingir Bubong; Piti-Ilan Adiong for Barangay Ilian; Solaiman Manalao for Barangay Linindingan; Abayaraga Maruhom for Barangay Mapantao and Sittie Sandab for Barangay Rangiran. Id. at 26.

[12]Id. at 26 and 29.

[13]Id. at 29-30.

[14]RTC Records, pp. 7-13.

[15]Presided by Judge Moslemen T. Macarambon, who has no relationship with respondent Aliriba S. Macarambon. See TSN, 20 April 1999, p. 3.

[16]Rollo, pp. 30-32.

[17]Id. at 31.

[18]Id. at 127.

[19]Id. See also RTC Records, pp. 237-238.

[20]Rollo, p. 127.

[21]Supra note 1.

[22]Id. at 130.

[23]The trial court concentrated on the five respondents, and excluded the evidence presented by Alimatar Malawi because the true name of this party is Alinader Malawi. The court advised the counsel to amend the petition with respect to Alinader Malawi. Records do not show any action of amendment by counsel of Alinader Malawi. See TSN, 20 April 1999, p. 59.

[24]Rollo, p. 130.

[25]Id. at 123.

[26]Id.

[27]Id. at 24.

[28]Id.

[29]In a decision penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Roberto A. Barrios and Edgardo F. Sundiam of the Seventeenth Division.

[30]Rollo, pp. 62-63.

[31]Id. at 67.

[32]RTC Records, p. 10.

[33]Civil Code, Art. 1980.

[34]213 Phil. 516, 523-524 (1984).

[35]No. L-30511, 14 February 1980, 96 SCRA 96.

[36]Emphasis supplied.

[37]Manalo v. PAIC Savings Bank, G.R. No. 146531, 18 March 2005, 453 SCRA 747.

[38]Rules of Court, Rule 3, Sec.7.

[39]345 Phil. 250, 269-270 (1997).

[40]Citing 67 A.C.J.S. 646-649.

[41]Marcelino Arcelona, et al. v. Court of Appeals, et al., supra note 39, at 267 citing Borlasa v. Polistico, 47 Phil. 345, 347, 28 January 1925.

[42]Id.

[43]Id. at 268.

[44]Moldes. v. Villanueva, G.R. No. 161955, 31 August 2005, 468 SCRA 697, 708 citing Commissioner Andrea D. Domingo v. Herbert Markus Emil Scheer, G. R. No. 154745, 29 January 2004, 421 SCRA 468.

[45]Book II, Chapter 4, Art. 4, Sec. 129.

[46]Sec. 395 par. (e) sub pars. (1) and (3).

[47]Government Accounting and Auditing Manual (GAAM), Sec. 167.

[48]Aquilino Q. Pimentel, Jr., The Local Government Code of 1991, The Key to National Development, 1993, p.

393.

[49]Government Accounting and Auditing Manual, Sec. 168.

[50]It is generally within the legislative province to direct in what way, through what board of municipal officers or agents, or by what municipal officers the powers given shall be exercised. Citing Angeles, Restatement of the Law on Local Governments citing 2A McQuillin, The Law of Municipal Corporations, Sec. 10.27 (3[rd] ed.); Ravettino v. San Diego, 70 Cal App 2d 37, 160 P2d 1035.

[51]Rollo, p. 153. Except for Aliriba S. Macarambon who was replaced by his wife, Fatima Macarambon for the office of Barangay Chairmen, all respondents were re-elected, thus:

Name of Barangay Elected Punong Barangay

Paigoay Fatima Macarambon

Linindangan Salimatar Sarip

Mapantao Cadar Lomala Sarip

Ilian Pangcoga Abulkhayer Sharief

Rangiran Abdul Usman

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