

G.R. No. 246209 (*Monico A. Abogado, et al. v. Department of Environment and Natural Resources, et al.*).

Promulgated:

September 3, 2019

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SEPARATE OPINION

PERALTA, J.:

I agree that the motion for withdrawal of the *Petition for the Issuance of The Writ of Kalikasan and The Writ of Continuing Mandamus* should be granted. I must point out, however, that the petition should have been dismissed outright due to procedural and substantive defects.

The petition for writ of *kalikasan* should have been dismissed outright for the following reasons: (1) no judicial affidavits were attached to the petition to support that claim that respondents omitted, failed and/or refused to enforce Philippine Laws at the Panatag Shoal, the Ayungin Shoal, and the Panganiban reef; (2) the foreign fishermen and other foreign entities who violated Philippine environmental laws in the said shoals and reef, have not been impleaded in the petition as respondents; and (3) the factual and evidentiary issues raised must be referred to the Court of Appeals, for appropriate resolution.

The petition for writ of continuing mandamus should, likewise, be dismissed outright, because there is no clear allegation how respondents have failed or have been remiss in performing their duties in enforcing environmental laws. The petition should have been filed first with the Court of Appeals because there are factual and evidentiary issues raised. Although the rules may or may not allow a hearing, the allegations in the petition clearly show facts that have to be established and proven, through judicial affidavits and memoranda.

The case of *MMDA, et al. v. Concerned Residents of Manila Bay, etc., et al.*¹ is different from this case because the Court took judicial notice of the pollution in Manila Bay, and the parties did not raise any contradictory facts. Here, the Office of the Solicitor General disputes the allegations insofar as respondents are being accused of malicious neglect in performing their official duties under the law, rules or regulations.

Section 2, Rule 7 of the Rules of Procedure for Environmental Cases requires that the verified petition for issuance of a writ of *kalikasan* should

¹ 595 Phil. 305 (2008).

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contain, among other matters, all relevant and material evidence consisting of the affidavits of witnesses, documentary evidence, scientific and other expert studies, and if possible, object evidence. Here, nothing in the Annexes attached to the petition pertains to respondents' supposed omission, failure and/or refusal to enforce Philippine Laws in Panatag Shoal, Ayungin Shoal, and Panganiban reef.

During the oral arguments on July 2, 2019, counsel for petitioners admitted the absence of judicial affidavits, and I explained the rationale for attaching such affidavits to support a petition for writ of *kalikasan*, thus:

ASSOCIATE JUSTICE PERALTA:

Some of the questions that I was thinking of asking you have already been asked by Justice Leonen. So I will just ask you some clarificatory questions. Number one is that **there is an admission from you that x x x there are no judicial affidavits or competent evidence attached to your petition?**

ATTY. PALACIOS:

Yes, Your Honor, we're invoking the rule of the Rules of Court on mandatory judicial notice where the Court will take judicial notice without the requirement of submission of evidence, Your Honor.

ASSOCIATE JUSTICE PERALTA:

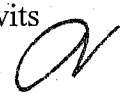
But it is clear from the special rule that the petition must be accompanied by judicial affidavits. The reason why we require that is that, in all writs of *kalikasan* when we were preparing, when we were drafting this rule, all the issues that will be raised are factual. That's why we require the submission of judicial affidavit and competent evidence. Now[,] if the facts that you alleged are disputed by the Solicitor General, can we resolve your petition? Just merely saying that we are, you are using the evidence submitted in the arbitral proceedings pertaining to the acts allegedly committed in the years 2012, 2013 and 2014?

ATTY. PALACIOS:

Well, yes, Your Honor. The Court may want to look at those submissions by the executive branch which actually are matters of mandatory judicial notice and (interrupted)

ASSOCIATE JUSTICE PERALTA:

The reason why we require judicial affidavit is that x x x the opposing party can cross-examine the person who alleged that an illegal act was committed. Without the judicial affidavit, which will now be the direct testimony of the witness, we cannot test the credibility of the affiant[,] because as I've said a while ago, we anticipated that all writs of *kalikasan* will involve factual issues because you just look at the elements, acts complained of, you have to establish what are the acts complained of, and then, the respondent, in their answer or in the return of the writ must likewise submit judicial affidavits and then indicate their defenses. So how can we resolve this petition without the judicial affidavits on the part of the petitioners[,] and also judicial affidavits on the part of the respondents?



ATTY. PALACIOS:

Yes, Your Honor. I think this case presents a unique opportunity for the Court to examine the situation where there are x x x essential facts which can support the grant.

ASSOCIATE JUSTICE PERALTA:

Yeah, to me that's my problem. Because what you are saying is that the facts are not disputed.²

During the oral arguments, petitioner also implied that they did not implead as respondents the indispensable parties, namely, the foreign fishermen and other foreign entities who violated Philippine environmental laws in the said shoals and reef, thus:

ASSOCIATE JUSTICE PERALTA:

My other concern is this. **The acts complained of not only against the public officials, but also other persons because you have to implead the other persons who are violating our environmental law, to me, these are indispensable parties. If we issue a privilege of writ of *kalikasan*, would it be sufficient just to address them to the public official. Is it not that we have also to address those who are violating, those who are violating our environmental rights?**

ATTY. PALACIOS:

We believe, Your Honor, that **we have impleaded the necessary parties for this case.** And that we do not have to implead the private individuals who violated the Philippine environmental laws, they, Your Honor, are subject of criminal or administrative prosecution by the respondents.

ASSOCIATE JUSTICE PERALTA:

Probably, that will fall on x x x continuing mandamus. **The writ of *kalikasan* is to stop the parties from violating our environment. If it's the public official that is violating our environmental right, then, it can be the subject of the writ of *kalikasan* because the respondents here are public officials.**

ATTY. PALACIOS:

Yes, Your Honor.

ASSOCIATE JUSTICE PERALTA:

Who are supposed to enforce our environmental laws, *sa* continuing mandamus *iyon*.

ATTY. PALACIOS:

Yes, Your Honor.



² TSN, Oral Arguments, July 2, 2019, pp. 52-53. (Emphasis added)

ASSOCIATE JUSTICE PERALTA:

The writ of *kalikasan* is actually addressed to those who are violating[,] not to those who do not enforce the environmental law[.] [T]hat is why, probably, you filed two petitions in one petition. You put writ of *kalikasan* and writ of mandamus because if the writ of *kalikasan* is not proper then probably writ of mandamus will substitute[,] or will be the alternative resolution to your petitions, is it not?

ATTY. PALACIOS:

Yes, Your Honor, if I may respond, we are looking at the rules of writ of *kalikasan*, Rule 7[,] and in the section on the reliefs available to the parties[,] one of the reliefs, number one, the first relief that's available to the parties is a directive from the Court for the violator to cease and desist from the unlawful neglect of their duty, Your Honor.

ASSOCIATE JUSTICE PERALTA:

Because you know, Counsel, if we issue the privilege of the writ, and therefore, we will tell those who violate the rule against whom will the writ be issued?

ATTY. PALACIOS:

Your Honor.

ASSOCIATE JUSTICE PERALTA:

There are no respondents who are supposed to be the violators.

ATTY. PALACIOS:

Yes, Your Honor..... (interrupted)

ASSOCIATE JUSTICE PERALTA:

As simple as this, you have a company violating our environmental law, alright? And probably [emitting obnoxious,] or something that is obnoxious, and therefore, violation of our environmental law. Here comes a company. The writ will be issued against the company that's violating the environmental law. Here, you want a writ of *kalikasan* to be issued against the public official. The public official is not violating our environmental law. According to you[,] they are neglecting their duties to enforce the environmental law.

ATTY. PALACIOS:

Yes, Your Honor.³

The petition for writ of continuing mandamus should also be dismissed outright, because there is no clear allegation and judicial affidavits to show how respondents have failed or have been remiss in performing their duties in enforcing environmental laws. During the oral arguments, I discussed the nature of omission on the part of a public official to warrant the issuance of such writ of mandamus, the need for judicial affidavits and the factual and evidentiary nature of issues involved in a writ of *kalikasan* proceeding, thus:

³ *Id.* at 55-57. (Emphasis added)

ASSOCIATE JUSTICE PERALTA:

Okay, now let us go to continuing mandamus. The law is very clear [...] **unlawfully neglects his duty.** We anticipated when we [were] drafting these rules[,] that if we do not place **unlawfully neglects then mere negligence, the public official will be the subject matter of the continuing mandamus.** Because there is [a] difference between mere negligence and **unlawfully neglecting his duties.** So can you [see] based [on] your evidence that the public officials are **unlawfully neglecting their duties in enforcing environmental law.** There is **no judicial affidavit to prove that in the petition.** So what shall we do? I think the law is very clear. **Unlawfully neglect is not a mere negligence.** So that the respondents could have also submitted their evidence to show that probably there is negligence but they did not **unlawfully neglect their duties.** That's why you know, we anticipated that all of these x x x, may involve factual issues that's why we required that these cases should also be brought to the Court of Appeals because the Court of Appeals is a Court where it can receive evidence[,] not the Supreme Court. The Supreme Court was only included there because we do not divest the Supreme Court of jurisdiction of any case that may be brought before any other court. That's why the Supreme Court is included there as a forum over which the petition may be filed. But the issues are factual[.] [W]e do not [...] we cannot receive evidence here and require the parties to testify here, and then, cross-examine.

ATTY. PALACIOS:

Yes, Your Honor.

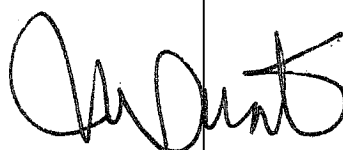
ASSOCIATE JUSTICE PERALTA:

And then, because of the urgency, we require that this petition should be resolved within sixty (60) days. I hope the Solicitor General will not dispute the facts as you have stated a while ago. Because the moment that they will dispute the facts, who will now resolve [...] [t]hat the evidence of the petitioners is more credible than the evidence of the Solicitor General[?] Who will now resolve it?


ATTY. PALACIOS:

Yes, Your Honor.⁴

All told, while I agree with the grant of the Motion to Withdraw the Petition for the Issuance of the Writ of *Kalikasan* and of the Writ of Continuing Mandamus, I also submit the foregoing observations as to the proper recourse in light of the procedural and substantive defects of the Petition.


DIOSDADO M. PERALTA
 Associate Justice

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EDGAR O. ARICHETA
 Clerk of Court En Banc
 Supreme Court

⁴ *Id.* at 57-58. (Emphasis added)