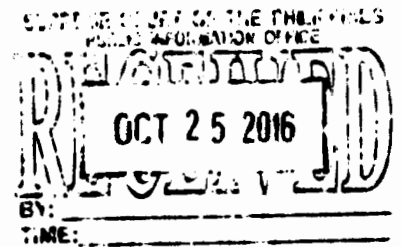




Republic of the Philippines
Supreme Court
 Manila



FIRST DIVISION

AURORA A. SALES,
 Petitioner,

G.R. No. 171420

Present:

***SERENO, C.J.,**
LEONARDO-DE CASTRO,
 Acting Chairperson,
BERSAMIN,
PERLAS-BERNABE, and
CAGUIOA, JJ.

- versus -

BENJAMIN D. ADAPON,
OFELIA C. ADAPON and
TEOFILO D. ADAPON,
 Respondents.

Promulgated:

OCT 05 2016

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D E C I S I O N

BERSAMIN, J.:

It is error to dismiss a criminal complaint for falsification if the records already contained sufficient evidence to establish probable cause to charge the respondents therewith on the basis alone that the complainant, already residing abroad, did not herself submit to the clarificatory hearing, and the investigating prosecutor did not state the matters that still required clarification.

The Case

In this appeal, the complainant for falsification appeals the adverse decision promulgated on October 19, 2005,¹ whereby the Court of Appeals (CA) annulled and set aside the resolution issued on December 14, 2004² by the Department of Justice (DOJ) in I.S. No. 02-84 that had directed the filing

* On official business.

¹ *Rollo*, pp. 41-51; penned by Associate Justice Eugenio S. Labitoria (retired) and concurred in by Associate Justice Eliezer R. de los Santos (retired/deceased) and Associate Justice Jose C. Reyes, Jr.

² *Id.* at 69-74; signed by Justice Undersecretary Ernesto L. Pineda.

against the respondents of the information for violation of Article 172, paragraph 3, of the *Revised Penal Code*.

Antecedents

The factual and procedural antecedents, as summed up by the CA in its assailed decision, are as follows:

Private respondent Aurora A. Sales, a US immigrant who has resided in said country since 1980 and petitioners Benjamin D. Adapon and Teofilo D. Adapon are among the eleven (11) siblings of the late Spouses Pedro H. Adapon and Severina Dimaano-Adapon. Petitioner Ofelia C. Adapon is the spouse of petitioner Benjamin D. Adapon. Upon their demise, Spouses Pedro and Severina Adapon left a parcel of land located in Rosario, Batangas covered by Transfer Certificate of Title No. T-6905 with a total area of 1,352,961 square meters.

On May 25, 2001, private respondent, represented by her son Adelfo A. Sales, filed a complaint against her siblings, including herein petitioners and other heirs of the late Spouses Pedro and Severina Adapon for nullification of various certificates of title emanating from TCT No. T-6905 and recovery of properties covered by the void certificates. Said case was docketed as Civil Case No. RY2K1-095 and currently pending before the Regional Trial Court of Rosario, Batangas, Branch 87. In her complaint, private respondent alleged that during her absence and without her knowledge and consent, the subject property was subdivided several times and most of it were parceled out among the defendants in varying areas and registered in their names. Private respondent also averred that she never agreed to an arrangement for the subdivision of the subject property in the manner made by the defendants, neither did she recall any extra-judicial settlement of the estate of her parents, much less a judicial partition thereof.

On June 20, 2001, defendants filed a motion to dismiss the above complaint, attaching thereto a Deed of Extra-judicial Settlement Among Heirs, purportedly executed in Makati City on November 5, 1990, by and among the eleven (11) children of the late Spouses Pedro and Severina Adapon, including herein private respondent.

Thereafter, on September 4, 2002, private respondent executed an affidavit subscribed and sworn to before Vice-Consul Maria Lourdes C. Legaspi in New York City, USA, claiming that the deed of extra-judicial settlement attached to the motion to dismiss which herein petitioners submitted in Civil Case No. RY2K1-095, RTC, Batangas, Branch 87, is a falsified document. She claims that she did not sign the subject deed, thus, she disowns the purported signature appearing on top of her name in said document, the same having been placed there without her knowledge or consent. She was in the United States on November 5, 1990 when the document was supposedly executed and could not have appeared before the notary public in Makati City. Hence, the instant complaint charging herein petitioners with the crime of use of falsified documents under Article 172, par. 3 of the Revised Penal Code.

Private respondent authorized Jerico B. Sales, her son-in-law, for the purpose of instituting the criminal proceedings against petitioners.

On June 21, 2002, petitioners filed their Joint Counter-Affidavit with Motion to Dismiss or to Suspend Preliminary Investigation. Petitioners alleged that in the execution of the deed of extra-judicial partition, private respondent was represented by her daughter Victoria Adapon Sales-Santiago. During the meetings to discuss the partition of their deceased parents' properties and in a number of deeds, it was Victoria who represented private respondent. They were assured by Victoria that she had authority to represent her mother, and they relied on the representation of Victoria. Petitioners further contend that they could not be charged for use of falsified document since they have no knowledge of the alleged falsity of the deed. It was Victoria who represented private respondent in the execution of the deed. They do not know who actually executed the same. They merely presumed in good faith that the deed was validly executed by or on behalf of private respondent. Thus, they have absolutely no knowledge whether or not said deed was forged or falsified. Moreover, they never intended to cause damage or prejudice to another person when they presented the deed in support of their motion to dismiss the civil case filed by private respondent. They did so only to present clearly and distinctly their defenses in said case.

On September 9, 2002, Prosecutor Cuevas recommended the dismissal albeit without prejudice of the instant complaint on the ground that the affidavit was not sworn to by the private respondent before a fiscal, state prosecutor or government official authorized to administer oath as required by Rule 112, Sec. 3, par. a of the Rules of Criminal Procedure.

However, upon manifestation of private respondent that she is submitting her affidavit sworn to before a Vice Consul of the Philippine Consulate General of New York City, the case was reopened.

On March 27, 2003, Prosecutor Cuevas issued a Resolution dismissing the instant complaint on the ground that it is impossible for him to proceed with the preliminary investigation without the appearance of private respondent who will be subjected to some clarificatory questions on certain matters.

Private respondent filed a motion for reconsideration of the above resolution but the same was denied in an Order dated May 14, 2003.

On June 4, 2003, private respondent filed an Appeal or Petition for Review before the Department of Justice.

On December 14, 2004, public respondent issued the assailed Resolution which reversed and set aside the March 27, 2003 Resolution of the Provincial Prosecutor and ordered the filing of the corresponding information against herein petitioners.

Petitioners moved for reconsideration of the above resolution but the same was denied by the public respondent in a resolution dated February 8, 2005.³

³ Id. at 42-46.

mentioned, the documents submitted by both parties in the proceedings were already sufficient for the determination of whether or not probable cause existed against the respondents. If the clarificatory hearing was geared towards the determination of the existence of probable cause,¹² the non-specification of the matters to be inquired into during the clarificatory hearing indicated that no more matters needed to be clarified from the petitioner herself.

Although it was concededly discretionary on the part of the investigating prosecutor to call for the clarificatory hearing considering that Section 4(e)¹³ of Rule 112 of the *Rules of Court* has used the word *may* in assigning such prerogative to him, the discretion was not unbounded because the rule precisely stated that the clarificatory hearing was to be set only “*if there are such facts and issues to be clarified from a party or a witness.*”

On the other hand, it is a sound judicial policy for the courts to refrain from interfering in the conduct of the preliminary investigation, and to just leave to the DOJ the ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of offenders. Consistent with this policy, the courts do not review and reverse the Secretary of Justice’s findings and conclusions on probable cause except in clear cases of grave abuse of discretion,¹⁴ that is, when the Secretary of Justice has exercised his discretion in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, patent and gross enough as to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law.¹⁵ As such, the Court upholds the DOJ’s executive determination of probable cause in the absence of a showing of grave abuse of discretion.

The CA justified its nullification of the DOJ’s reversal of the finding of lack of probable cause by the investigating prosecutor by opining that the dismissal of the criminal complaint was warranted because the investigating prosecutor had not personally examined the petitioner as the complainant due to her failure to attend the clarificatory hearing. It held that the personal examination of the complainant by the investigating prosecutor was a prerequisite to the finding of probable cause, citing in support Section 4, Rule 112 of the *Rules of Court*, which pertinently provides as follows:

¹² *De Ocampo v. Secretary of Justice*, supra, at 89.

¹³ Section 4, Rule 112 of the *Rules of Court* states:

Section 4. x x x

x x x x

(e) The investigating officer may set a hearing if there are such facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

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¹⁴ *Callo-Claridad v. Esteban*, G.R. No. 191567, March 20, 2013, 694 SCRA 185, 192.

¹⁵ *Metropolitan Bank and Trust Company v. Reynado*, G.R. No. 164538, August 9, 2010, 627 SCRA 88, 101.

months if not years of agonizing trial and possibly jail term, on the one hand, and peace of mind and liberty, on the other. Thus, we have characterized the right to a preliminary investigation as not a mere formal or technical right but a substantive one, forming part of due process in criminal justice. [Bold emphasis supplied]

As can be seen, the most important purpose of the preliminary investigation is to determine whether or not a crime has been committed, and whether or not the respondent is probably guilty of the crime.⁹ Probable cause has been defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. It is a reasonable ground of presumption that a matter is, or may be, well founded on such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. The term does not mean actual or positive cause; nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether or not there is sufficient evidence to procure a conviction. That it is believed that the act or omission complained of constitutes the offense charged is enough. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.¹⁰

In view of the foregoing, the investigating prosecutor gravely erred in dismissing the petitioner's criminal complaint for falsification simply because of her non-appearance at the clarificatory hearing. To start with, her personal presence was excusable because of her advanced age and the distance of her place of residence at the time (New York, United States of America) from the Province of Batangas, the venue of the proceedings. Secondly, the records already contained sufficient evidence upon which the investigating prosecutor could make a finding of probable cause. Thirdly, she was represented in the proceedings by her son-in-law Jerico B. Sales, whom she had constituted as her agent for purposes of pursuing the criminal case against the respondents. Being her agent expressly authorized for that special purpose, Jerico could competently respond to the investigating prosecutor's clarificatory questions in a manner legally binding on her. Thirdly, had the investigating prosecutor sincerely considered her personal presence as absolutely necessary in the determination of probable cause, he should have granted her request to have her deposition taken instead. Such power was within his discretion as the investigating prosecutor.¹¹ And, lastly, the investigating prosecutor's requiring her personal presence at the clarificatory hearing was probably unnecessary and superfluous in view of his failure to specify the matters still needing to be clarified. As earlier

⁹ *Metropolitan Bank & Trust Company v. Gonzales*, G.R. No. 180165, April 7, 2009, 584 SCRA 631, 640; *De Ocampo v. Secretary of Justice*, G.R. No. 147932, January 25, 2006, 480 SCRA 71, 87.

¹⁰ *Metropolitan Bank & Trust Company v. Gonzales*, supra, at 641.

¹¹ *Villanueva v. Ople*, G.R. No. 165125, November 28, 2005, 475 SCRA 539, 547.

In ordering the filing of the information against the respondents, thereby reversing the dismissal of the criminal complaint for falsification, the DOJ pointed out that the dismissal on the sole basis of the non-attendance of the petitioner at the clarificatory hearing was erroneous because: *firstly*, the investigating prosecutor did not state the matters that still needed to be clarified to justify the necessity for her to personally appear that her failure to do the same would cause the dismissal of the complaint; and, *secondly*, the totality of the evidence presented already established probable cause to indict the respondents for the violation of Article 172, paragraph 3, of the *Revised Penal Code*. The DOJ disposed thusly:

WHEREFORE, the petition is **GRANTED** and the assailed resolution is hereby **REVERSED AND SET ASIDE**. Accordingly, the Provincial Prosecutor of Batangas is directed to file the corresponding information for use of falsified document under Article 172, par. 3, of the Revised Penal Code against respondents Benjamin, Teofilo and Ofelia, all surnamed Adapon, and to report the action taken within ten (10) days from receipt hereof.

SO ORDERED.⁴

Decision of the CA

By petition for *certiorari*, the respondents assailed the resolution of the DOJ, insisting that the DOJ had thereby gravely abused its discretion amounting to lack or excess of jurisdiction.

On October 19, 2005, the CA promulgated the assailed decision granting the petition for *certiorari*. Citing Section 4, Rule 112 of the *Rule of Court*, it declared that the DOJ was guilty of grave abuse of discretion because the investigating prosecutor was bound to *personally examine* the petitioner as the complainant and her witnesses; and that the continuous absence of the complainant from the clarificatory hearing had effectively prevented the investigating prosecutor from determining the existence of probable cause against the respondents. It ruled:

WHEREFORE, premises considered, the instant petition is **GRANTED**. The assailed resolutions of the public respondent dated December 14, 2004 and February 8, 2005, respectively, are hereby **REVERSED AND SET ASIDE**.

SO ORDERED.⁵

⁴ Id. at 74.

⁵ Id. at 50.

Through its resolution promulgated on February 9, 2006,⁶ the CA denied the petitioner's motion for reconsideration.

Hence, this appeal by petition for review on *certiorari*.

Issue

The sole issue is whether or not the CA erred in ordering the dismissal of the complaint because of the petitioner's failure to appear at the clarificatory hearing set by the investigating prosecutor.

Ruling of the Court

The appeal is meritorious.

Preliminary investigation is an inquiry or proceeding to determine whether or not there is sufficient ground to engender a well-founded belief that a crime has been committed; and that the respondent, who is probably guilty thereof, should be held for trial.⁷ The nature and purposes of the preliminary investigation have been expounded in *Ang-Abaya v. Ang*,⁸ viz.:

A preliminary investigation is in effect a realistic judicial appraisal of the merits of the case; sufficient proof of the guilt of the criminal respondent must be adduced so that when the case is tried, the trial court may not be bound, as a matter of law, to order an acquittal. Although a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair; **the officer conducting the same investigates or inquires into the facts concerning the commission of the crime with the end in view of determining whether or not an information may be prepared against the accused.** After all, the purpose of preliminary investigation is not only to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent therein is probably guilty thereof and should be held for trial; it is just as well for the purpose of securing the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial. More importantly, in the appraisal of the case presented to him for resolution, **the duty of a prosecutor is more to do justice and less to prosecute.**

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A preliminary investigation is the crucial sieve in the criminal justice system which spells for an individual the difference between

⁶ Id. at 58.

⁷ *Yusop v. Sandiganbayan*, G.R. No. 138859-60, February 22, 2001, 353 SCRA 587, 593.

⁸ G.R. No. 178511, December 4, 2008, 573 SCRA 129, 145-147.

Section 4. *Resolution of investigating prosecutor and its review.* — If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. **He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof;** that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

X X X X

The opinion of the CA was predicated on a very restrictive reading of the term *complainant* as used in Section 4, Rule 112 of the *Rules of Court*. Such term is not of the same import as the term *plaintiff* used in civil procedure to describe the party in interest initiating the civil suit.¹⁶ In criminal proceedings, the real party in interest is the State, and the complaint or information is always brought in the name of the People of the Philippines,¹⁷ it being sufficient that the complainant is named in the information or complaint as the offended party.¹⁸ Herein, the petitioner as the complainant would be a mere witness for the Prosecution at the trial,¹⁹ subject to her right to intervene by counsel in the criminal prosecution because the criminal action would entail civil liability.²⁰ Her participation in

¹⁶ Rule 3 of the *Rules of Court* provides:

Section 1. *Who may be parties; plaintiff and defendant.* — Only natural or juridical persons, or entities authorized by law may be parties in a civil action. **The term “plaintiff” may refer to the claiming party, the counter-claimant, the cross-claimant, or the third (fourth, etc.)-party plaintiff.** The term “defendant” may refer to the original defending party, the defendant in a counterclaim, the cross-defendant, or the third (fourth, etc.)-party defendant. (1a)

Section 2. *Parties in interest.* — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. (2a)

¹⁷ Rule 110 of the *Rules of Court* recites:

Section 2. *The complaint or information* — The complaint or information shall be in writing, in the name of the People of the Philippines and against all persons who appear to be responsible for the offense involved (2a)

¹⁸ Rule 110 of the *Rules of Court* says:

Section 12. *Name of the offended party.* — The complaint or information must state the name and surname of the person against whom or against whose property the offense was committed, or any appellation or nickname by which such person has been or is known. If there is no better way of identifying him, he must be described under a fictitious name.

(a) In offenses against property, if the name of the offended party is unknown, the property must be described with such particularity as to properly identify the offense charged.

(b) If the true name of the person against whom or against whose property the offense was committed is thereafter disclosed or ascertained, the court must cause such true name to be inserted in the complaint or information and the record.

(c) If the offended party is a juridical person, it is sufficient to state its name, or any name or designation by which it is known or by which it may be identified, without need of averring that it is a juridical person or that it is organized in accordance with law. (12a)

¹⁹ See *Salazar v. People*, G.R. No. 151931, September 23, 2003, 411 SCRA 598, 605.

²⁰ Rule 110 of the *Rules of Court* declares:

Section 16. *Intervention of the offended party in criminal action.* — Where the civil action for recovery of civil liability is instituted in the criminal action pursuant to Rule 111, the offended party may intervene by counsel in the prosecution of the offense. (16a)

the criminal case as the complainant was similar to that of the *relator* in other jurisdictions, the real party in interest in whose name a legal action is brought by the State, or who relates the facts on which the action is based.²¹

The offense of falsification complained of was a public offense the charges for which could be initiated by anyone, as opposed to a private crime whose institution could be made only by particular individuals.²² This distinction validated the non-indispensability of the personal presence of the petitioner as the complainant in the proceedings to determine the existence of probable cause against the respondents. We note that she had already submitted relevant sworn declarations on the falsification, as well as the affidavit of Jerico, her agent, containing allegations necessary and sufficient to establish probable cause based on his direct familiarity with her signature and his personal knowledge of the denial of the signature appearing in the *Deed of Extra Judicial Settlement Among Heirs* presented before the Regional Trial Court in Batangas.

Indeed, the DOJ discussed the justification for the finding of probable cause against the respondents, and such discussion, being correct and to the point, is quoted herein and adopted with approval, to wit:

From the evidence thus presented, we find sufficient basis to hold respondents criminally liable for introducing in evidence a falsified document. The elements if the crime penalized under Article 172, paragraph 3, of the Revised Penal Code are all present in this case, namely:

- 1) The documents is false (as embraced in Article 171 and 172, paragraphs 1 & 2);
- 2) The offender had knowledge that such document was false (*People v Facundo*, [CA], 43 O.G 5088); and
- 3) The offender introduced in evidence in any judicial proceeding such false or falsified document.

It has been held that “when a person whose signature was affixed to a document denies his signature therein, a *prima facie* case for falsification is established which the defendant must overcome” (*U.S. v. Vilorio*, 1 Phil 682; *People v. Villafranca*, [CA] 40 O.G 4622). In this case, respondents’ alleged reliance upon the authority of Victoria Adapon

²¹ Black’s Law Dictionary, Ninth Edition (2009).

²² Section 5, Rule 110 of the *Rules of Court* states:

Section 5. *Who must prosecute criminal actions.* – All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor. In case of heavy work schedule of the public prosecutor or in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecutor to prosecute the case subject to the approval of the court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to the end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn (5a).

Sales-Santiago to represent complainant in the discussion and execution of the document of partition cannot overcome the *prima facie* case of falsification created by complainant's denial of her purported signature on the subject deed of extrajudicial settlement which she could not have executed as she was then in the United States where she permanently resides. Contrary to respondents' claim, the authenticity of complainant's signature and her due execution of the subject document may not be presumed from Victoria's alleged authority, more so, since no special power of attorney was ever presented. Worse, respondents failed to present Victoria to corroborate their claim.

The factual backdrop of the execution of the subject deed also negates respondents' claim of lack of knowledge of the falsity of complainant's signature thereon. It is noteworthy that the parties to the subject deed are closely related to each other, eleven (11) brothers and sisters at that. There is also no dispute that complainant was already residing in the United States long before the execution of the subject deed. Whether or not complainant was in the Philippines on November 5, 1990 when the subject deed was executed would have been known to respondents. And while respondents claim that Victoria has acted in representation of complainant, the subject deed was purportedly signed by complainant in her own behalf.

Admittedly, the falsified deed was presented in support of a motion to dismiss filed by respondents in Civil Case No. RY2K1, Regional Trial Court of Batangas, Branch 87, which is a judicial proceeding. The fact that respondents have no intent to cause damage or prejudice to another person is immaterial. It is when the falsified document is used in another proceeding, which is not judicial, that intent to cause damage is required. (Fundamentals of Criminal Law Review by Antonio L. Gregorio, 1985 7th Ed., p. 283).

Finally, it may not be amiss to state that a finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspects (*Webb v. De Leon*, 247 SCRA 652). Needless to say, such quantum of evidence has been sufficiently met in the instant case. The taking of complainant's deposition in New York is, therefore, not necessary at the preliminary investigation stage which is summary in nature.²³

In fine, the personal presence of the petitioner at the clarificatory hearing was unnecessary to establish probable cause against the respondents, and requiring it was legally untenable.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated by the Court of Appeals on October 19, 2005; **REINSTATES** the resolution issued on December 14, 2004 issued by the Department of Justice directing the Provincial Prosecutor of Batangas to file the corresponding information for

²³ *Rollo*, pp. 72-73.

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use of falsified document under Article 172, paragraph 3, of the *Revised Penal Code* against respondents Benjamin, Teofilo and Ofelia, all surnamed Adapon; and **ORDERS** the respondents to pay the costs of suit.


SO ORDERED.

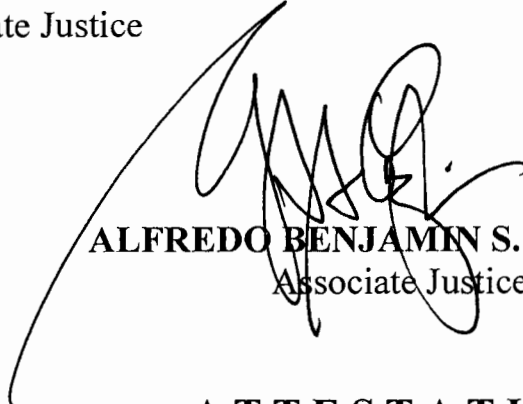

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

(On Official Business)
MARIA LOURDES P. A. SERENO
Chief Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice


ESTELAM M. PERLAS-BERNABE
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Acting Chief Justice