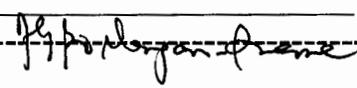


EN BANC

G.R. No. 211010 (Victoria Segovia, Ruel Lago, Clarisse Jami Chan, Representing The Carless People of The Philippines; Gabriel Anastacio, Represented By His Mother, Grace Anastacio; Dennis Orlando Sangalang, Represented By His Mother, May Alili Sangalang, Maria Paulina Castañeda, Represented By Her Mother Patricia Ann Castañeda, Representing The Children of The Philippines and Children of The Future; and Renato Pineda, Jr., Aron Kerr Menguito, May Alili Sangalang, and Glynda Bathan Baterina, representing Car-Owners Who Would Rather Not Have Cars If Good Public Transportation Were Safe, Convenient, Accessible and Reliable vs. The Climate Change Commission, represented by its Chairman, his Excellency Benigno S. Aquino III, Commissioners Mary Ann Lucille Sering, Heherson Alvarez and Nadarev Sano; Department of Transportation ["DOTC"], represented by its Secretary, Honorable Joseph Abaya; Department of Public Works and Highways ["DPWH"] and the Road Board, represented by its Secretary, Honorable Rogelio Singson; Department of Interior and Local Government ["DILG"], represented by its Secretary, Honorable Manuel Roxas; Department of Environment and Natural Resources ["DENR"], represented by its Secretary, Honorable Ramon Paje; Department of Budget and Management ["DBM"], represented by its Secretary, Honorable Florencio Abad; Metropolitan Manila Development Authority ["MMDA"], represented by its Chairman, Francis Tolentino; Department of Agriculture ["DA"], represented by its Secretary, Honorable Proceso Alcala; and John Does, representing as yet Unnamed Local Government Units and their Respective Local Chief Executive, Juridical Entities, and Natural Persons who Fail or Refuse to Implement the Law or Cooperate in the Implementation of the Law)

Promulgated:

March 7, 2017

X----------X

CONCURRING OPINION

VELASCO, JR., J.:

The present case involves the extraordinary remedy of a Writ of *Kalikasan*. Under the Rules of Procedure for Environmental Cases (RPEC), the writ is an extraordinary remedy covering **environmental damage of such magnitude that will prejudice the life, health or property of inhabitants in two or more cities or provinces.**¹ As distinguished from other available remedies in the ordinary rules of court, the Writ of *Kalikasan*

¹ *LNL Archipelago Minerals, Inc. v. Agham Party List*, G.R. No. 209165, April 12, 2016.



is designed for a narrow but special purpose: to accord a stronger protection for environmental rights, aiming, among others, to provide a speedy and effective resolution of a case involving the violation of one's constitutional right to a healthful and balanced ecology² that transcends political and territorial boundaries;³ to provide a stronger defense for environmental rights through judicial efforts where institutional arrangements of enforcement, implementation and legislation have fallen short;⁴ and to address the potentially exponential nature of large-scale ecological threats.⁵ Thus, Section 1, Rule 7, Part III of the RPEC provides:

Section 1. Nature of the writ. — The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

Given the substantially grand intentions underlying the RPEC, it would be a disappointment to rely on the technical principle of the hierarchy of courts to justify the refusal to issue the writ of *kalikasan*. Though there are grounds to deny the instant petition praying for the issuance of the writ, I agree with the *ponencia* that the alleged violation of the principle on hierarchy of courts is not one of them. And as one who was privy to the preparation of the Rules, I deem it best to write my own opinion on the issue.

Section 3, Rule 7, Part III of the RPEC provides the venue where petitions for the issuance of a Writ of Kalikasan may be filed. It plainly states, viz.:

SEC. 3 *Where to file.* — The petition shall be filed with the Supreme Court or with any of the stations of the Court of Appeals.⁶

It is clear that Section 3 uses the word “or,” which is a disjunctive article indicating an **alternative**,⁷ not successive, character of the right or duty given. The use of “or” in the RPEC indicates that the petitioner/s are given “the **choice** of either, which means that the various members of the enumeration are to be taken separately, with the term signifying disassociation and independence of one thing from each of the other things

² *Paje v. Casiño*, G.R. Nos. 207257, 207276, 207282 & 207366, February 3, 2015, Velasco, Jr., concurring.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Emphasis and underscoring supplied.

⁷ *Vargas v. Cajucom*, G.R. No. 171095, June 22, 2015, citing *Hacienda Luisita, Inc. v. Presidential Agrarian Reform Council*, G.R. No. 171101, November 22, 2011, 660 SCRA 525, 550-551, quoting *PCI Leasing and Finance, Inc. v. Giraffe-X Creative Imaging, Inc.*, 554 Phil. 288, 302 (2007).

enumerated.”⁸ Thus, under Section 3 of the RPEC, the **petitioner/s are given the right to freely choose between this Court and the different stations of the appellate court** in filing their petitions. Claiming otherwise based on the nebulous procedural principle of the hierarchy of courts is a deviation from the basic text of the adverted section. Such departure from the ordinary meaning of the text deprives ordinary citizens of the fair expectation that the procedural rules issued by this Court mean what they say and say what they mean.

Further, the absence of any mention of the first level courts—the municipal trial courts, metropolitan trial courts, and the regional trial courts—is indicative of the exceptional nature of a writ of *kalikasan* and the non-application of the principle to petitions for its issuance. This palpable absence marks the difference from the other special civil actions available under the other rules where this Court is given concurrent jurisdiction not only with the Court of Appeals (CA) but also with the trial courts.

For instance, Section 4, Rule 65 of the Rules of Court⁹ specifically identifies the RTC as one of the courts where the petitions for *certiorari*, prohibition, and *mandamus* may be filed. Section 2 of Rule 102 on *Habeas Corpus*¹⁰ likewise names the trial court as a venue where the petition therefor may be filed. In a similar manner, Section 3 of The Rule on Habeas Data¹¹ lays down at the outset that the Regional Trial Court has jurisdiction over petitions for Habeas Data and states that this Court only has jurisdiction over petitions concerning public data files of government offices. Notable too is Section 3 of the Rule on the Writ of Amparo,¹² which includes the

⁸ Id.

⁹ SECTION 4. Where Petition Filed. — The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals. Emphasis supplied.

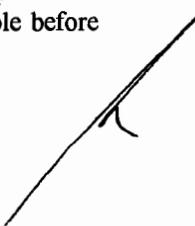
¹⁰ SECTION 2. Who may grant the writ. — The writ of habeas corpus may be granted by the Supreme Court, or any member thereof, on any day and at any time, or by the Court of Appeals or any member thereof in the instances authorized by law, and if so granted it shall be enforceable anywhere in the Philippines, and may be made returnable before the court or any member thereof, or before a Court of First Instance, or any judge thereof for hearing and decision on the merits. It may also be granted by a Court of First Instance, or a judge thereof, on any day and at any time, and returnable before himself, enforceable only within his judicial district.

¹¹ A.M. No. 08-1-16-SC, February 2, 2008; SECTION 3. Where to File. — The petition may be filed with the Regional Trial Court where the petitioner or respondent resides, or that which has jurisdiction over the place where the data or information is gathered, collected or stored, at the option of the petitioner.

The petition may also be filed with the Supreme Court or the Court of Appeals or the Sandiganbayan when the action concerns public data files of government offices.

¹² A.M. No. 07-9-12-SC, September 25, 2007; SECTION 3. Where to File. — The petition may be filed on any day and at any time with the Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred, or with the Sandiganbayan, the Court of Appeals, the Supreme Court, or any justice of such courts. The writ shall be enforceable anywhere in the Philippines.

When issued by a Regional Trial Court or any judge thereof, the writ shall be returnable before such court or judge.



Regional Trial Court, the Sandiganbayan, and the Court of Appeals in the list of fora with jurisdiction over petitions for the writ of *amparo*.

The omission of the trial courts with limited jurisdiction in Section 3, Rule 7, Part III of the RPEC was not by mere oversight. Rather, the limitation of the venues to this Court and the CA, whose jurisdiction is national in scope, is the intended solution to controversies involving environmental damage of such magnitude as to affect the “inhabitants in [at least] two or more cities or provinces.”

Surely, the scale of impact of the ecological problems sought to be addressed by a writ of *kalikasan* sets it apart from the other special civil actions under the other rules issued by this Court. Thus, to insist on the application of the technical principle on hierarchy of courts will only negate the emphasis given to this difference and the acknowledgement that environmental challenges deserve the immediate attention by the highest court of the land, even at the first instance. At the very least, the magnitude of the ecological problems contemplated under the RPEC satisfies at least one of the exceptions to the rule on hierarchy of courts, i.e., direct resort to this court is allowed where it is “dictated by the public welfare.”

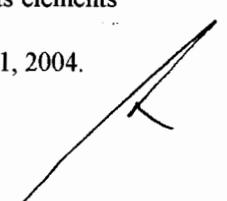
In environmental cases, this Court cannot afford to be self-important and promptly deny petitions on the clichéd ground that Ours is the “court of last resort” that cannot be “burdened with the task of dealing with cases in the first instance.” We must take stock and bear to recall that the rule on hierarchy of courts was created simply because this Court is not a trier of facts. Accordingly, in cases involving warring factual allegations, we applied this rule to require litigants to “repair to the trial courts at the first instance to determine the truth or falsity of these contending allegations on the basis of the evidence of the parties.”¹³ Under the RPEC, however, this Court burdened itself to resolve factual questions so that the rule finds no application.

Indeed, that petitions for the issuance of a writ of *kalikasan* involve factual matters cannot, without more, justify the claim that the petition must first be filed with the CA on the ground that this Court is not a trier of facts. The RPEC deviates from the other rules on this matter. After all, even if the petition has been initially lodged with the appellate court, the appellant may still raise **questions of fact** on appeal. Section 16, Rule 7, Part III of the RPEC explicitly says so:

When issued by the Sandiganbayan or the Court of Appeals or any of their justices, it may be returnable before such court or any justice thereof, or to any Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred.

When issued by the Supreme Court or any of its justices, it may be returnable before such Court or any justice thereof, or before the Sandiganbayan or the Court of Appeals or any of their justices, or to any Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred.

¹³ *Agan v. Philippine International Air Terminals Co., Inc.*, G.R. No. 155001, January 21, 2004.



SECTION 16. Appeal. — Within fifteen (15) days from the date of notice of the adverse judgment or denial of motion for reconsideration, any party may appeal to the Supreme Court under Rule 45 of the Rules of Court. **The appeal may raise questions of fact.**¹⁴

Notably, unlike in the other civil actions, ordinary or special, Section 2(d), Rule 7, Part III of the RPEC requires not only the allegations of ultimate facts but the allegations and attachment of all relevant and material **evidence** to convince the court to issue the writ. Consequently, should the factual allegations in the petition be found insufficient, as stated by the *ponencia*, the denial of the petition must not be anchored on the violation of the rule on hierarchy of courts but on non-compliance with the said requirement. Certainly, an insufficient petition cannot be granted even when first filed with the appellate court and not this Court.

With that said, let it be stated that in the instances where this Court referred the petition to the CA for hearing and reception of evidence, it did so not because of the insufficiency of the petition¹⁵ as it had, in fact, issued the writs prayed for. Such practice does not impose another level of bureaucracy given the facilitation by this Court in transferring the records with all the evidence and attachments to the CA. On the other hand, arbitrarily enforcing the rule on hierarchy of courts, denying the petition, insisting that it be filed first with the CA, compelling the reprinting of pleadings and the re-attaching of evidence—all at the expense of the petitioner/s—only to entertain the same case on a possible appeal after the filing of yet another petition (this time under Rule 45 of the Rules of Court) can only enliven the bureaucratic spirit.

On the issue for the issuance of a continuing *mandamus* thus prayed in the petition, I concur with the *ponencia* that *mandamus* does not indeed lie to compel a discretionary act. It cannot be issued to require a course of conduct. Thus, I cannot endorse the issuance of a continuing *mandamus* to compel the enforcement of the bifurcation of roads. As the *ponencia* has stated, such action amounts to requiring the respondents to act in a particular way in the implementation of the Road Sharing Principle adopted in EO 774 and AO 254.

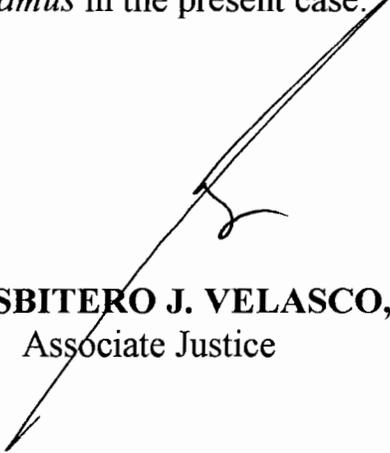
While a continuing *mandamus* cannot, however, be used to oblige the respondents to act one way or the other, it can be used to compel the respondents to act and implement the Road Sharing Principle in whatever manner they deem best. In other words, the implementation of the Road Sharing Principle itself, as opposed to the bifurcation of the roads, is an act that can be the subject of continuing *mandamus* under the RPEC. On this point, I digress from the *ponencia*.

¹⁴ Emphasis and underscoring supplied.

¹⁵ See *Paje v. Casiño*, supra note 2; *Cosalan v. Domogan*, G.R. No. 199486, January 17, 2012; *West Tower Condominium Corp. v. First Phil. Industrial Corp.*, G.R. No. 194239, June 16, 2015.



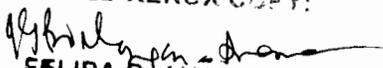
Nonetheless, the Office of the Solicitor General, on behalf of the respondents, enumerated programs that supposedly serve to implement the Road Sharing Principle,¹⁶ refuting the petitioners' allegation of unlawful neglect on the part of the respondents in the implementation of the principle. Thus, while the sufficiency or wisdom of these programs is not established, I concede that there is no unlawful *neglect* that constrains the issuance of the extraordinary remedy of continuing *mandamus* in the present case.



PRESBITERO J. VELASCO, JR.
Associate Justice

¹⁶ *Rollo*, pp. 334-335. "Respondent MMDA has been implementing various structural and non-structural projects to help alleviate the heavy traffic in Metro Manila while trying to improve the condition of the environment. Its structural projects include: footbridges, rotundas, MMDA Mobile Bike service Program (MMDA Bike-Kadahan), Southwest Integrated Provincial System, MMDA New Traffic Signal System and Command, Control and Communications Center, Revival of the Pasig River Ferry System, Bus Management Dispatch System (Enhanced Bus Route System)."

CERTIFIED XEROX COPY:



FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT