



PAMAHALAANG BAYAN NG TAYTAY TANGGAPAN NG SANGGUNIANG BAYAN

EXCERPT FROM THE MINUTES OF THE 109th REGULAR SESSION OF THE 11th
SANGGUNIANG BAYAN, TAYTAY, RIZAL, HELD ON OCTOBER 5, 2021, 1:37 PM
AT THE SESSION HALL OF THE MUNICIPAL BUILDING, TAYTAY, RIZAL

PRESENT:

| | | |
|-----------------------------------|---|------------------------------|
| Hon. Michell B. Bermundo | - | Vice Mayor/Presiding Officer |
| Hon. Sophia Priscilla L. Cabral | - | Councilor |
| Hon. Ma. Jeca B. Villanueva | - | " |
| Hon. Patrick John P. Alcantara | - | " |
| Hon. Joanne Marie P. Calderon | - | " |
| Hon. Ceferino R. Resurreccion Jr. | - | " |
| Hon. Kyle Georic Y. Gacula | - | " |
| Hon. Ma. Elaine T. Leonardo | - | " |
| Hon. Philip Jeison J. Cruz | - | " |
| Hon. Frank Luster L. Santos | - | LnB President |
| Hon. Roda May A. Diño | - | SK Federation President |

Introduced by: Vice Mayor Michell B. Bermundo
Coun. Sophia Priscilla L. Cabral
Coun. Ma. Jeca B. Villanueva
Coun. Patrick John P. Alcantara
Coun. Joanne Marie P. Calderon
Coun. Ceferino R. Resurreccion Jr.
Coun. Kyle Georic Y. Gacula
Coun. Ma. Elaine T. Leonardo
Coun. Philip Jeison J. Cruz
LnB Pres. Frank Luster L. Santos
SK Fed. Pres. Roda May A. Diño

RESOLUTION NO. 378 series of 2021

A RESOLUTION RENDERING A DECISION IN ADMINISTRATIVE CASE NO. 11-2021-AC-001, ENTITLED: POLITICO ARNANTE, AS APOLA REPRESENTATIVE, COMPLAINANT, VERSUS DIOSDADO MANGOBA AND JERRY T. CALDERON, RESPONDENTS

STATEMENT OF THE CASE

Before the Sangguniang Bayan Committee En Banc, acting as a quasi judicial body, is an administrative complaint filed by Complainant Politico Arnante, as APOLA Representative, (hereinafter referred to as Complainant) against Diosdado Mangoba and Jerry T. Calderon (hereinafter referred to as Respondents) for (1) *culpable violation of the Constitution*; (2) *dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty*; and (3) *abuse of authority, as provided for in Section 60 of RA 7160, otherwise known as The Local Government Code*

FACTS OF THE CASE

On January 12, 2021, the Sangguniang Bayan of the Municipality of Taytay received a complaint filed by Complainant Politico Arnante, as APOLA Representative. This complaint was calendared under Communication during the regular session of the Sangguniang Bayan on January 19, 2021 and it was referred to the Committee of Rules. On July 2, 2021 the Sangguniang issued a subpoena/summons to Respondents Diosdado Mangoba and Jerry T. Calderon, furnished with the copy of the complaint, and required them to submit their verified answer within fifteen (15) days upon receipt thereof.

Respondents did not file a verified answer, but rather filed a motion to dismiss on July 15, 2021. However, in an Order dated August 6, 2021, a schedule for Order for Determination of Prima Facie Evidence, the motion to dismiss was denied for being vague, and the Sangguniang Bayan Committee En Banc, acting as a quasi judicial body, determined that there was prima facie case to warrant the institution of formal administrative investigation.

On August 25, 2021 when the instant case was called for preliminary conference, Complainant, represented by his counsel, Atty. Jose Aaron Pedrosa, Jr., and Respondents, representing themselves, both appeared. Then, this Tribunal ruled that this case be submitted for resolution only after the parties submitted their position papers within fifteen (15) days from termination thereof.¹

On September 9, 2021, both Complainant and Respondents filed their respective position papers. Thus, this decision.

EVIDENCE FOR THE COMPLAINANT

Complainant Politico Arnante (*Complainant Arnante for brevity*) is an officer of Alliance Peoples Organization in Lupang Arenda (APOLA). Through a resolution² passed by APOLA he was given the right to represent it in the instant case. Sometime in September 2019, the officers of APOLA received information from one of its members that Barangay Officials of Barangay Sta. Ana, under the leadership of *Kagawads* Diosdado Mangoba and Jerry. T. Calderon, respondents herein, were cutting trees located at Purok 1, 2, 3, 4, and 5 Lupang Arenda, Brgy. Sta. Ana, Taytay, Rizal. Some APOLA representatives and the Homeowners Association went on site to oppose the on-going operation. Emotions ran high during confrontation with the Respondents. Despite this, APOLA and the Homeowners Association failed to stop the operation and the barangay officials proceeded with it. Parenthetically, on a later date, APOLA together with Bantay Kalikasan personnel conducted an inventory of trees cut in the aforesaid places and it listed a total of 216 different trees cut using chainsaw, *palakol* and *itak* during respondents' operation.³

APOLA then decided to file a formal complaint before PENRO-RIZAL to put a stop on the on-going tree cutting operation of Barangay Sta. Ana. PENRO-RIZAL witnessed the Respondents' tree cutting operation during its on-site inspection.⁴ It called for three technical conferences to give Respondents chance to explain their side, which led to a decision finding them liable for violations of environmental laws and regulations. Thereafter, on January 2020, Complainant, together with PENRO-RIZAL, formally filed a case before the Provincial Prosecutor against the Respondents for Violation of: (1) Section 77 of PD 705 or the Revised Forestry Reform Code of the Philippines, as amended by RA 7161; (2) Presidential Decree 953 or Requiring the Planting of Trees in Certain Places and Penalizing Unauthorized Cutting, Destruction, Damaging and Injuring of Certain Trees, Plants or Vegetation; and (3) Violation of Republic Act 3571 or An Act to Prohibit the Cutting Destroying or Injuring of Planted or Growing Trees, Flowering Plants and Shrubs or Plants of Scenic Value along Public Roads, In Plazas, Parks, School Premises or Any other Public Ground.

¹ Order dated August 25, 2021

² Annex "A" attached in the Complaint - Authority to File Case

³ Annex "I" attached in the Complaint - Inventory Report of Cut Trees at Purok 1,2,3,4,5 Lupang Arenda, Brgy. Sta. Ana, Taytay, Rizal

⁴ Annex "G-I" attached in the Complaint - Spot Report on Alleged Illegal Cutting of Various Trees at Lupang Arenda, Barangay Sta. Ana, Taytay, Rizal

In Complainant's position paper, through his counsel, Atty. Jose Aaron Pedrosa, Jr., he emphasized that Respondents violated Section 60 of RA 7160, particularly paragraphs (b) Culpable violation of the Constitution; (c) Dishonesty, oppression misconduct in office, gross negligence, or dereliction of duty; (e) Abuse of authority; and (h) Such other grounds as may be provided in this Code and other laws.

Complainant then prayed that judgment be rendered as follows, to wit: (1) to recommend to the Honorable Mayor George Ricardo Gacula that respondents be placed under preventive suspension; (2) imposition of the penalty of suspension against the respondent pursuant to Section 66 of the Local Government Code for having violated paragraphs (b), (c), (d) and (e) of Section 60 of the Local Government Code; and (3) other reliefs that may be just and equitable.

EVIDENCE FOR THE RESPONDENTS

Respondents Diosdado Mangoba and Jerry. T. Calderon are incumbent Barangay Kagawads of Barangay Sta. Ana, Taytay, Rizal. On August 1, 2019, Mayor George Ricardo R. Gacula II, issued a Memorandum⁵, addressed to all barangay officials in the municipality of Taytay, Rizal, for clearing of all public roads and streets of any obstruction. In compliance with the above-mentioned memorandum, the Barangay Council of Barangay Sta. Ana, issued a Resolution⁶ creating a Task Force Tanggal Sagabal of Brgy. Sta Ana. Then Barangay Captain Joselito Calderon issued an Executive Order⁷ creating the Barangay Sta. Ana Task Force Tanggal Sagabal with the Respondents as the leads for Sitio Lupang Arenda.

After Respondents complied with their duties pursuant to the aforesaid memorandum, resolution and executive order, they received a complaint filed by APOLA, represented by then Vicente Barlos, lodged before the DENR.⁸ This, notwithstanding the pendency of the first complaint, Complainant Arnante filed this instant case against the Respondents.

In their position paper, Respondents raised the arguments that: *first*, the complaint states no cause of action and that Complainant herein are not proper party-in-interest; *second*, Respondents, as public officials, enjoys the presumption of regularity in the discharge of their duties and functions; and *third*, the complainant violated Rule 7, Section 5 of the Amended Revised Rules of Court or the rules on non-forum shopping.

Therefore, Respondents prayed that the instant case be dismissed as against them.

ISSUES TO BE RESOLVED

1. Whether or not the administrative complaint states a cause of action and/or Complainant is a proper party-in-interest to file the instant case;
2. Whether or not the instant complaint be dismissed for violation of the rules on non-forum shopping; and
3. Whether or not Respondents should be held administratively liable for violating the Local Government Code when they sanctioned and conducted tree-cutting operation in Barangay Sta. Ana.

⁵ Annex "1" attached in Respondents' Position Paper - Memorandum dated August 1, 2019

⁶ Annex "2" attached in Respondents' Position Paper - Resolution No. 136 S. 2019

⁷ Annex "3" attached in Respondents' Position Paper - Executive Order No. 2019-002

⁸ Annex "4" attached in Respondents' Position Paper - Complaint Affidavit dated November 18, 2019

DISCUSSION

First Issue.

Respondents make of issue the complaint's failure to state a cause of action, arguing that the complaint did not cite the provision of law they supposedly transgressed when they cut hundreds of trees in Lupang Arenda.

On this score, it has been ruled in a case⁹ that failure to state cause of action as a ground for dismissal:

“Refers to an insufficiency of the allegations in the petition/complaint. It is a ground for dismissal under Rule 16 of the Rules of Court before the defendant or respondent files a responsive pleading. Notably, the dismissal is without prejudice to the re-filing of an amended complaint.”

It has also been held in another case¹⁰ that:

The familiar test for determining whether a complaint did or did not state a cause of action against the defendants is whether or not, admitting hypothetically the truth of the allegations of fact made in the complaint, a judge may validly grant the relief demanded in the complaint.

Here, it has been alleged by the Complainant that, despite the community's adamant protestations, Respondents, being public officers, ignored the same and insisted on wantonly carried on hacking and slashing over 200 trees in the Barangay; that as it turns out, as evidenced by the fact that PENRO initiated a criminal complaint against the same Respondents, the latter were not armed with the proper permits therefor and; for which abusive actions, Respondents must be held administratively liable by this Tribunal.

In this Tribunal's opinion, the foregoing allegations make out a sufficient case for an administrative complaint, inasmuch as the complaint successfully identified Respondents as public officers who are under this Tribunal's disciplinary jurisdiction, and their supposedly illegal act, which, if hypothetically admitted, warrants the sanction prayed thereunder.

Respondents likewise question the standing of Complainant to sue. On this matter, suffice it to state that the right to a balanced and healthful ecology is a constitutionally sanctioned one, properly recognized by jurisprudence as one so transcendental as to justify the brushing aside of the procedural matter of legal standing. In fact, in *Oposa v. Factoran*,¹¹ the locus standi of petitioners-minors to sue on behalf their generation, as well as generation yet unborn, were upheld by the Supreme Court, in view of the principle of intergenerational responsibility.

On the other hand, one other right to be factored here is the right of the Government to penalize erring and abusive public officers. This Tribunal is not prepared to concede such statutory right and let an affront against the right of its constituents be left unpunished by the mere expedient of muddling one's motivation or standing to sue upon an officer's erroneous act, where such an act is patent and undenied.

Further, complementing the foregoing, it is also basic that administrative cases are not bound by the technical rigors of court procedure.

Parenthetically, this ground was not raised by the Respondents in their Motion to Dismiss. Should technicalities be given much weight in these proceedings, Respondents should be considered to have waived this ground for dismissal, per Omnibus Motion Rule of the Rules of Court.

⁹ Apostolic Vicar of Tabuk, Inc., v. Spouses Sison and Wadas, G.R. No. 191132, (January 27, 2016)

¹⁰ Aquino, et al., v. Quiazon, et al., G.R. No. 201248, (March 11, 2015)

¹¹ G.R. No. 101083, (July 30, 1993)

Second Issue.

Respondents replead their tired argument of forum shopping on the part of the Complainant – a matter already addressed by this Tribunal in an Order dated August 6, 2021. They hammer in on the fact that Complainant herein filed a complaint before the DENR prior to filing this instant case, thus, violating the rule on non forum shopping.

On that note, the Supreme Court penned the test to determine the existence of forum shopping¹², to wit:

The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to *res judicata* in the action under consideration.

Here, while there is identity of parties in both actions filed before the DENR and this Tribunal, there is variance in the rights asserted and relief prayed for, to which any judgment rendered in either action consequently does not amount to *res judicata* on the other one.

This instant case is not entirely hinged on the very act complained of, but rather on the fact that they are public officers, redress for which is properly sought within this Tribunal. Here, the issue is whether or not Respondents, in their capacity as public officers, are in violation of the Local Government Code. Meanwhile, the complaint filed before the DENR is a complaint on the act itself, i.e., the cutting of trees. For this one, the sole issue is whether or not Respondents violated any environment laws.

Respondents' attempt at imputing falsehood upon Complainant's Certification Against Forum Shopping is not well taken. That one certifies in the latter case that he has not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency despite the pendency of a prior one, does not render the certification false because, as earlier mentioned, these two cases have different issues, rights asserted, and reliefs prayed.

Third Issue.

Now, the merit of the case.

The Local Government Code provides the following grounds for imposition of disciplinary actions, thus:

Section 60. Grounds for Disciplinary Actions. - An elective local official may be disciplined, suspended, or removed from office on any of the following grounds:

- (a) Disloyalty to the Republic of the Philippines;
- (b) Culpable violation of the Constitution;
- (c) Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty;
- (d) Commission of any offense involving moral turpitude or an offense punishable by at least prison mayor;
- (e) Abuse of authority;
- (f) Unauthorized absence for fifteen (15) consecutive working days, except in the case of members of the *sangguniang panlalawigan*, *sangguniang panlungsod*, *sangguniang bayan*, and *sangguniang barangay*;

¹² Heirs of Marcelo Sotto v. Palicte, G.R. No. 159691, (February 17, 2014).

- (g) Application for, or acquisition of, foreign citizenship or residence or the status of an immigrant of another country; and
- (h) Such other grounds as may be provided in this Code and other laws.

That Respondents fell hundreds of trees without a proper permit is beyond question. This assertion in the Complaint was never countered by the Respondents.

Complainant argues that, inasmuch as the right to a balanced and healthful ecology is constitutionally mandated, violation of the same by the Respondents amounted to Culpable Violation of the Constitution. This does not impress.

The Justice Carpio's dissent in the case of *Republic v. Sereno*¹³, is persuasive authority on the concept of the term culpable violation of the constitution, viz:

Culpable violation of the Constitution must be understood to mean "willful and intentional violation of the Constitution and not violations committed unintentionally or involuntarily or in good faith or through an honest mistake of judgment." The framers of the Constitution, particularly the Committee on Accountability of Public Officers, "accepted the view that [culpable violation of the Constitution] implied 'deliberate intent, perhaps even a certain degree of perversity for it is not easy to imagine that individuals in the category of these officials would go so far as to defy knowingly what the Constitution commands.'"

Here, it appears that no such deliberate intent to violate such constitutional right was present on the part of Respondents. They were merely carrying into effect the provisions of Memorandum dated August 1, 2019, which called for clearing of all public roads and streets of any obstruction; but to be sure, not the haphazard hacking away of foliage. While their enthusiasm was ill-advised, it was not one characteristic of intentional violation of the Constitution as to be within the ambit of Culpable Violation of the Constitution.

Nonetheless, there is cogent reason to hold Respondents administratively liable, not just for felling trees without a permit, which is, parenthetically, indicative of negligence on their part, but also for doing the same in an abusive and oppressive manner. The record bears several affidavits of witnesses of Complainant, attesting as to how Respondents brushed aside their barangay constituents, who were then crying and woefully pleading to spare the trees.

The Supreme Court in a case¹⁴ refers gross negligence as "negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property." In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.

However, a perusal of the records revealed that although Respondents are indeed negligent by not securing a permit with the DENR, such negligence cannot be qualified as gross negligence because Respondents' action was pursuant to a superior order. Therefore, their breach of duty was not flagrant and palpable, it was one resulting from carelessness or indifference.

The Supreme Court in a case¹⁵ provided that "simple neglect of duty" means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference. Simple neglect of duty is classified as a less grave offense punishable by suspension without pay for one month and one day to six months. In this instant case, Respondents acted in neglect of their duty as public officials.

¹³ G.R. No. 237428, (May 11, 2018): See J. Carpio, dissenting, citing J. Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary* 1112 (2003 Edition), J. Bernas, *The Intent of the 1986 Constitution Writers* 765 (1995 Edition)

¹⁴ Office of the Ombudsman v. De Leon, G.R. No. 154083, (February 27, 2013)

¹⁵ Office of the Deputy Ombudsman for Military and Other Law Enforcement v. Saligumba, G.R. No. 223768, (February 22, 2017)

Nonetheless, there is a need to emphasized Respondents' negligence when they proceeded with the tree cutting operation without securing a proper permit from the DENR – an indicative of neglect of duty. As public officers, they are under obligation to perform the duties of their offices honestly, faithfully, and to the best of their ability. They ought to be first and foremost in insuring compliance with the laws, rules and regulations. Thus, they cannot shield themselves by the mere expedient of invoking superior orders where the sheer number of trees they had to fell, as well as the irreparable nature of the consequences of the proposed action, require that they be circumspect in carrying out the same. In other words, Respondents cannot hide behind the defense of following orders by ignoring other established laws.

Penalty.

While Respondents may have been guilty of simple neglect of duty in the performance of his duty, this Tribunal recognizes that the same could have been made in deference to the Memorandum dated August 1, 2019, as Respondents raised in their Position Paper. As misplaced and unwarranted their overzealousness in carrying out said Memorandum as may be, this Tribunal finds it just, however, to temper their penalty, considering that there is no actual malice involved in having caused the felling of about 216 trees in Lupang Arenda, Brgy. Sta. Ana, Taytay, Rizal. For this, a suspension for 60 Days, without pay, is reasonable.

Incidentally, as to the imposition of preventive suspension, this Tribunal finds no reason to impose the same considering that the Respondents had no capacity to interfere during the period of deciding this instant case.

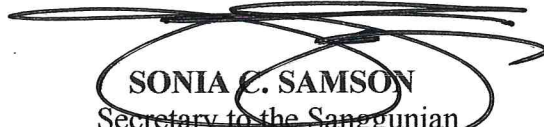
RULING

NOW, WHEREFORE, premises considered, be it resolved, as it is hereby resolved by the Sangguniang Bayan of the Municipality of Taytay, Rizal, in a session assembled:

1. Respondents Diosdado Mangoba and Jerry T. Calderon are liable for simple neglect of duty in the performance of their duties under Par. (h), Section 60 of RA 7160, otherwise known as The Local Government Code;
2. Respondents are hereby given a penalty of **SIXTY (60) DAYS SUSPENSION** which they shall serve after 30 days upon receipt of this Resolution;
3. Let it be put in record that the said suspension of Respondents are with respect to their capacity as members of the Sangguniang Barangay of Barangay Sta. Ana, Taytay, Rizal, as they are duly elected *kagawads* of the said Barangay.
4. The Sangguniang Barangay of Barangay Sta. Ana is hereby directed to see to it that this Resolution is implemented; and
5. The Office of the Sangguniang Bayan-Secretariat is hereby directed to furnish the Respondents, the Complainant, and his Counsel, the Sangguniang Barangay of Sta. Ana, Taytay, Rizal, the Department of the Interior and Local Government (DILG), and all other agencies concerned a copy of this Resolution, for their information and appropriate action.

APPROVED, this 5th day of October, 2021, 3:25 PM at the Sangguniang Bayan Session Hall, Municipality of Taytay, Province of Rizal.

I HEREBY CERTIFY, to the correctness of the foregoing Resolution which was duly adopted by the Sangguniang Bayan of Taytay on second reading on October 5, 2021 and was passed on third and final reading on October 5, 2021 during the 109th Regular Session held on the 5th day of October, 2021.


SONIA C. SAMSON
Secretary to the Sanggunian
Officer-in-Charge

ATTESTED AND CERTIFIED TO BE DULY
ADOPTED BY HER HONOR


HON. MICHEL B. BERMUNDO
Municipal Vice Mayor/Presiding Officer

HON. SOPHIA PRISCILLA L. CABRAL
Councilor


HON. MA. JECA B. VILLANUEVA
Councilor


HON. PATRICK JOHN P. ALCANTARA
Councilor


HON. JOANNE MARIE P. CALDERON
Councilor


HON. CEFERINO R. RESURRECCION JR.
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HON. KYLE GEORIC Y. GACULA
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HON. MA. ELAINE T. LEONARDO
Councilor


HON. PHILIP JEISON J. CRUZ
Councilor


HON. FRANK LUSTER L. SANTOS
LnB President


HON. RODA MAY A. DIÑO
SK Federation President

Note:

As Per Ordinance No. 697, series of 2021 Section 5(e.2) Votes and Voting of the Sangguniang Bayan, the August Body conducted a close door secret voting during the deliberation where the results of the voting are the following: seven (7) Yes Votes, one (1) No Vote, one (1) Abstained, and one (1) Did Not Vote.