

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ROMMEL V. DEL ROSARIO,

G.R. No. 206249

Petitioner,

Present:

PERALTA, C.J., Chairperson,
CAGUIOA, Working Chairperson,
REYES, J. JR.,
LAZARO-JAVIER, and
LOPEZ, JJ.

- versus -

EVA T. SHAIKH,

Promulgated:

Respondent.

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DECISION

REYES, J. JR., J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks to reverse and set aside the Decision¹ dated September 7, 2012 and the Resolution² dated March 6, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 114405, which reversed and set aside the Decision³ dated November 4, 2009, of the Regional Trial Court (RTC) of Balanga City, Bataan, Branch 1 in Civil Case No. 9172, a case for *mandamus*.

¹ Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Priscilla J. Baltazar Padilla and Agnes Reyes-Carpio, concurring; *rollo*, pp. 30-39.

² Id. at 50-52.

³ Penned by Judge Angelito I. Balderama; CA *rollo*, pp. 4-10.

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The Facts

On December 11, 2007, the synchronized elections for the officers and members of the Liga ng mga Barangay ng Pilipinas (Liga) Chapters in Municipalities and Component Cities were held. On the same day, and prior to the actual elections, the Punong Barangays of Bagac conducted an election meeting for the election of officers and members of the Board of Directors of the Liga Municipal Chapter of Bagac, Bataan (Liga-Bagac Chapter). The meeting was attended by the Punong Barangays from the 14 Barangays of Bagac, including Ernesto N. Labog (Labog) and herein respondent Eva T. Shaikh (Shaikh). However, during the election meeting, Labog, together with 5 other Punong Barangays and Oscar M. Ragindin (Ragindin), Municipal Local Government Operations Officer (MLGOO) of Bagac and Chairperson of the Board of Election Supervisors (BES), walked out. Despite this, the remaining eight Punong Barangays proceeded with the election and elected Shaikh as the President of the Liga-Bagac Chapter.⁴ Consequently, James Marty L. Lim (Lim), National President of the Liga, issued a Certificate of Confirmation⁵ dated December 27, 2007 in favor of Shaikh.

Meanwhile, in a letter-memorandum⁶ dated December 11, 2007, Ragindin informed the Provincial Director of the Department of Interior and Local Government (DILG)-Bataan that the election for the Liga-Bagac Chapter did not materialize as scheduled and that there had been a failure of elections. Further, on December 18, 2007, Ragindin issued a Certification⁷ stating that Labog is the Acting President of the Liga-Bagac Chapter, as per appointment issued by Lim on December 6, 2007.

On January 9, 2008, the Office of the Sangguniang Bayan of Bagac, through a letter-inquiry, requested the Liga to issue an official endorsement as to who shall seat, presumably between Labog and Shaikh, as the *ex-officio* member of the Sanggunian.⁸ On the same day, the Liga, through its Director of Legal Affairs, replied that Shaikh, as the newly elected President of the Liga-Bagac Chapter, shall seat as the *ex-officio* member.⁹

On January 28, 2008, Vice-Mayor Romeo T. Teopengco (Vice-Mayor Teopengco) issued OSB Memo No. 08-02 addressed to Shaikh, advising her to submit her Certificate of Canvass and Proclamation as certified and attested to by the BES for her full recognition as *ex-officio* member of the

⁴ Records, p. 116.

⁵ Id. at 6.

⁶ Id. at 37.

⁷ Id. at 39.

⁸ Id. at 8.

⁹ Id. at 7.

Sangguniang Bayan of Bagac, pursuant to DILG Memorandum Circular No. 2008-07.¹⁰ Vice-Mayor Teopengco reiterated his instruction on February 26, 2008,¹¹ but it would appear that Shaikh failed to submit the required certificate.

On February 26, 2008, Hon. Rommel V. Del Rosario (Mayor Del Rosario), Mayor of Bagac, wrote the DILG–Bataan, through Ragindin, requesting confirmation as to who is the legitimate and duly elected representative of the Liga–Bagac Chapter to the Sangguniang Bayan.¹² Ragindin replied that, as of February 28, 2008, no newly-elected representative of the Liga can be *ex-officio* member of the Sangguniang Bayan of Bagac.¹³

Thereafter, considering that she attended the sessions of the Sangguniang Bayan of Bagac, Shaikh requested for the payment of the salaries and allowances due her as President of the Liga–Bagac Chapter and *ex-officio* representative in the Sanggunian for the period from January 15, 2008 to March 31, 2008. On April 8, 2008, Vice-Mayor Teopengco sent a letter to Mrs. Angelina M. Bontuyan (Bontuyan), Municipal Budget Officer of Bagac, forwarding the documents relative to Shaikh’s request for payment of salaries and allowances.¹⁴

In a letter¹⁵ dated April 14, 2008, Mayor Del Rosario declined the request relative to Shaikh’s claimed salaries and allowances. In denying the release of Shaikh’s salaries and allowances, Mayor Del Rosario noted Labog’s adverse claim to the office being occupied by Shaikh. Mayor Del Rosario was of the opinion that Shaikh’s request could not be favorably acted upon until the determination of the issue as to who between Shaikh and Labog is the rightful President of the Liga–Bagac and consequently the *ex-officio* member of the Sangguniang Bayan of Bagac.

In a letter¹⁶ dated April 17, 2008, Vice-Mayor Teopengco informed Shaikh about the denial of her request furnishing her a copy of Mayor Del Rosario’s April 14, 2008 letter. Vice-Mayor Teopengco further stated that he could not act on Shaikh’s request in view of the said denial since matters pertaining to the administration of the Local Government of Bagac are within the discretion of its Mayor.

¹⁰ Id. at 52.

¹¹ Id. at 51.

¹² Id. at 43.

¹³ Id. at 44.

¹⁴ Id. at 18.

¹⁵ Id. at 19.

¹⁶ Id. at 20.

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Even after the denial of her request for the release of her salaries and other emoluments, Shaikh continued attending the sessions of the Sangguniang Bayan of Bagac.

On March 4, 2009, Shaikh filed a Petition for *Mandamus*¹⁷ seeking, among others, to compel Mayor Del Rosario and Vice-Mayor Teopengco to sign the documents necessary for the release of her salaries and other emoluments in connection with her *ex-officio* membership in the Sangguniang Bayan of Bagac for the period she had actually rendered her services. She further prayed that Bontuyan be ordered to receive, in her capacity as the Municipal Budget Officer of Bagac, all the documents she tendered pertaining to her official functions.

Ruling of the RTC

In its Decision dated November 4, 2009, the RTC dismissed Shaikh's Petition for *Mandamus*. The trial court ratiocinated that since there had been a failure of elections during the December 11, 2007 Liga ng mga Barangay Bagac Municipal Chapter, Shaikh had not been elected at all. Consequently, she did not acquire a right or title to the position that will make her a *de jure* or a *de facto* officer. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, the instant petition for mandamus is hereby DENIED for lack of merit.¹⁸

Aggrieved, Shaikh elevated an appeal before the CA.

Ruling of the CA

In its Decision dated September 7, 2012, the CA reversed and set aside the RTC's November 4, 2009 Decision and ruled that Shaikh is entitled to the salaries and emoluments of the office she held as a *de facto* officer. The appellate court held that there was no *de jure* officer occupying the *de jure* office during Shaikh's term as a *de facto* officer. Further, considering that Shaikh actually attended the sessions of the Sangguniang Bayan of Bagac, it becomes ministerial for the concerned municipal officers of Bagac to give her the salaries, emoluments, and other benefits due her. Thus, the CA opined that Mayor Del Rosario, Vice-Mayor Teopengco, and Bontuyan unlawfully neglected the performance of their respective duties by refusing to pay Shaikh the salaries, emoluments, and other benefits which she is entitled to. The dispositive portion of the CA Decision provides:

¹⁷ Id. at 2-5.

¹⁸ CA Rollo, p. 10

WHEREFORE, in view of the foregoing, Mandamus on Appeal is hereby **GRANTED**. The November 4, 2009 Decision of the RTC of Balanga City, Bataan, Branch 1, is REVERSED and SET ASIDE. Accordingly, respondents are hereby ordered to release the salaries, emoluments and benefits due to Eva T. Shaikh for the period she actually rendered her services as ex-officio member of the Sangguniang Bayan of Bagac, Bataan.

SO ORDERED.¹⁹

Mayor Del Rosario, Vice-Mayor Teopengco, and Bontuyan moved for reconsideration, but the same was denied by the CA in its Resolution dated March 6, 2013.

Unconvinced, Mayor Del Rosario filed the present petition.

The Issue

WHETHER THE COURT OF APPEALS ERRED WHEN IT RULED THAT MAYOR DEL ROSARIO, VICE-MAYOR TEOPENGCO, AND BONTUYAN MAY BE COMPELLED BY *MANDAMUS* TO ORDER THE RELEASE OF THE SALARIES AND EMOLUMENTS CLAIMED BY SHAIKH.

The Court's Ruling

The petition is meritorious.

Mandamus has been defined as a writ commanding a tribunal, corporation, board or person to do the act required to be done when it or he unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office or which such other is entitled, there being no other plain, speedy, and adequate remedy in the ordinary course of law.²⁰ Under Section 3, Rule 65 of the Rules of Court, a person aggrieved by the unlawful neglect or refusal of tribunal, corporation, board, officer or person to perform their legal duty may ask the court to compel the required performance.

From this Rule, there are two situations when a writ of *mandamus* may issue: (1) when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically

¹⁹ Rollo, p. 39.

²⁰ **City of Davao v. Oianolan*, 808 Phil. 561, 569 (2017); *Baguilat, Jr. v. Alvarez*, 814 Phil. 183, 244 (2017).

enjoins as a duty resulting from an office, trust, or station; or (2) when any tribunal, corporation, board, officer or person unlawfully excludes another from the use and enjoyment of a right or office to which the other is entitled.²¹

It must be stressed, however, that the extraordinary remedy of *mandamus* lies to compel the performance of duties that are purely ministerial in nature only. The preemptory writ of *mandamus* would not be available if, in the first place, there is no clear legal imposition of a duty upon the office or officer sought to be compelled to act,²² or if it is sought to control the performance of a discretionary duty.²³

For *mandamus* to lie, the following requisites must be present: (a) the plaintiff has a clear legal right to the act demanded; (b) it must be the duty of the defendant to perform the act, because it is mandated by law; (c) the defendant unlawfully neglects the performance of the duty enjoined by law; (d) the act to be performed is ministerial, not discretionary; and (e) there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law.²⁴

In this case, Mayor Del Rosario contends that *mandamus* will not lie to compel him to order the release of Shaikh's salaries and emoluments. He argues that he is not mandated by law nor is it his duty to give the salaries and emoluments claimed by Shaikh. He points out that the subject act being attributed to him by Shaikh is not among the duties of a municipal mayor as enumerated under Section 344 of the Local Government Code.

The Court agrees that ordering the release of the salaries and emoluments of a member of the Sangguniang Bayan is not among the duties imposed upon the Municipal Mayor.

Section 344 of the Local Government Code provides:

SEC. 344. *Certification, and Approval of, Vouchers.* - 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**

²¹ *Spouses Abaga v. Spouses Panes*, 557 Phil. 606, 612 (2007).

²² *Fernandez-Subido v. Lacson*, 112 Phil. 950, 956 (1961); *Segovia v. The Climate Change Commission*, 806 Phil. 1019, 1037 (2017); *Knights of Rizal v. DMCI Homes, Inc.*, 809 Phil. 453, 533 (2017).

²³ *Roque v. Office of the Ombudsman*, 366 Phil. 568, 578 (1999); *Knights of Rizal v. DMCI Homes, Inc.*, id.

²⁴ *De Castro v. Judicial and Bar Council*, 629 Phil. 629, 705 (2010).

department or office who has administrative control of the fund concerned, as to validity, propriety, and legality of the claim involved. Except in cases of disbursements involving regularly recurring administrative expenses such as payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to government creditor agencies such as the GSIS, SSS, LBP, DBP, National Printing Office, Procurement Service of the DBM and others, approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed. x x x (Emphasis supplied).

The intent of the Local Government Code to give to the Vice-Mayor, as the presiding officer of the Sangguniang Bayan – and not to the Municipal Mayor – the administrative control over the funds of the said local legislative body, is clear in the provisions of Section 445(a)(1) which states:

SEC. 445. Powers, Duties, and Compensation. – (a) The vice-mayor shall:

- (1) Be the presiding officer of the sangguniang bayan and sign all warrants drawn on the municipal treasury for all expenditures appropriated for the operation of the sangguniang bayan;
x x x x

In *Atienza v. Villarosa*²⁵ (*Atienza*), the Court ruled that the specific clause in Section 344 which provides that “[v]ouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned,” prevails over the clause in the same section which states that “approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed.”

In the said case, the Court also noted under Section 39 of the Manual on the New Government Accounting System for Local Government Units, the authority and duty to approve vouchers for expenditures for the operation of the Sanggunian pertain to the Vice-Governor or the Vice-Mayor, as the case may be.

Following these, the Court held that the Vice-Governor, as the presiding officer of the Sangguniang Panlalawigan, has the administrative control over the funds of the said local legislative body. As such, it is also the Vice-Governor which has the authority to sign all warrants drawn on the provincial treasury for the expenditures appropriated for the operation of the Sangguniang Panlalawigan. Thus:

Reliance by the CA on the clause “approval of the disbursement voucher by the local chief executive himself shall be required whenever

²⁵ 497 Phil. 689, 701 (2005).

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local funds are disbursed” of the above section (Section 344) to rule that it is the Governor who has the authority to approve purchase orders for the supplies, materials or equipment for the operation of the *Sangguniang Panlalawigan* is misplaced. This clause cannot prevail over the more specific clause of the same provision which provides that “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.” The Vice-Governor, as the presiding officer of the *Sangguniang Panlalawigan*, has administrative control of the funds of the said body. Accordingly, it is the Vice-Governor who has the authority to approve disbursement vouchers for expenditures appropriated for the operation of the *Sangguniang Panlalawigan*.

On this point, Section 39 of the Manual on the New Government Accounting System for Local Government Units, prepared by the Commission on Audit (COA), is instructive:

Sec. 39. Approval of Disbursements. – Approval of disbursements by the Local Chief Executive (LCE) himself shall be required whenever local funds are disbursed, except for regularly recurring administrative expenses such as: payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to government creditor agencies such as GSIS, BIR, PHILHEALTH, LBP, DBP, NPO, PS of the DBM and others, where the authority to approve may be delegated. *Disbursement vouchers for expenditures appropriated for the operation of the Sanggunian shall be approved by the provincial Vice Governor, the city Vice-Mayor or the municipal Vice-Mayor, as the case may be.*

x x x x

Since it is the Vice-Governor who approves disbursement vouchers and approves the payment for the procurement of the supplies, materials and equipment needed for the operation of the *Sangguniang Panlalawigan*, then he also has the authority to approve the purchase orders to cause the delivery of the said supplies, materials or equipment.

Indeed, the authority granted to the Vice-Governor to sign all warrants drawn on the provincial treasury for all expenditures appropriated for the operation of the *Sangguniang Panlalawigan* as well as to approve disbursement vouchers relating thereto is greater and includes the authority to approve purchase orders for the procurement of the supplies, materials and equipment necessary for the operation of the *Sangguniang Panlalawigan*.²⁶ (Italics in the original)

The pronouncements in *Atienza* also find application to this case. As already stated, as the presiding officer of the Sangguniang Bayan of Bagac, it is the Vice-Mayor of Bagac who has administrative control over its funds. This means that it is also the Vice-Mayor of Bagac who has the duty and authority to approve the vouchers and payrolls of the officers and employees

²⁶ Id. at 701-702, 704.

of the Sangguniang Bayan of Bagac. Naturally, the payrolls which approval belongs to the Vice-Mayor include the payrolls of the members of the Sangguniang Bayan of Bagac, whether sitting as a regular member or in an *ex-officio* capacity. This is only proper considering that the continued performance by the members of the Sangguniang Bayan of their duties is necessary for the continued operation of the Sangguniang Bayan.

Thus, it is clear that Mayor Del Rosario, or any sitting mayor of Bagac for that matter, could not be compelled by *mandamus* to order the release of the salaries and emoluments claimed by Shaikh. There is no law specifically enjoining the Municipal Mayor for the performance of such act. In fact, the Municipal Mayor has no authority to intervene in the administration of the funds of the Sangguniang Bayan, as the control over it pertains to the Municipal Vice-Mayor. Since there is no such specific legal duty upon the Municipal Mayor, it could not be said that Mayor Del Rosario unlawfully neglected the performance of his duty.

From the foregoing, since it is clear that it is the Municipal Vice-Mayor who has the duty and authority to approve the payrolls of the members of the Sangguniang Bayan, then it only follows that the Vice-Mayor may be compelled by *mandamus* to order the release of the salaries and emoluments pertaining to a member of the Sangguniang Bayan. Be that as it may, the Court opines that the present *mandamus* will not prosper against Vice-Mayor Teopengco or whoever is presently sitting as the Vice-Mayor of Bagac.

It must be recalled that in its September 7, 2012 Decision, the CA directed Mayor Del Rosario, Vice-Mayor Teopengco, and Bontuyan to release the salaries and other emoluments due to Shaikh for the period she rendered her services as *ex-officio* member of the Sangguniang Bayan of Bagac. However, only Mayor Del Rosario appealed the said CA decision. Neither Vice-Mayor Teopengco nor Bontuyan joined Mayor Del Rosario in the present petition.

In the present petition, Mayor Del Rosario explains that he was the only one who elevated the case to this Court because Vice-Mayor Teopengco was not re-elected as the Vice-Mayor of Bagac in the May 2010 elections, while Bontuyan retired as Municipal Budget Officer of Bagac on April 2, 2011. Shaikh did not refute this in her Comment.²⁷

At this juncture, Section 17, Rule 3 of the 1997 Revised Rules of Court is instructive, thus:

²⁷ Rollo, pp. 61-68.

RULE 3
Parties to Civil Actions

SEC. 17. *Death or separation of a party who is a public officer.* — When a public officer is a party in an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against his successor if, within thirty (30) days after the successor takes office or such time as may be granted by the court, it is satisfactorily shown to the court by any party that there is a substantial need for continuing or maintaining it and that the successor adopts or continues or threatens to adopt or continue to adopt or continue the action of his predecessor. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to be heard.

It must be noted that the aforesaid rule has been substantially lifted from Section 18, Rule 3 of the 1964 Rules of Court, which states:

SEC. 18. *Death or separation of a party who is a government officer.* — When an officer of the Philippines is a party in an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against his successor, if within thirty (30) days after the successor takes office it is satisfactorily shown to the court that there is a substantial need for so continuing and maintaining it. Substitution pursuant to this rule may be made when it is shown by supplemental pleading that the successor of an officer adopts or continues or threatens to adopt or continue the action of his predecessor in enforcing a law averred to be in violation of the Constitution of the Philippines. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to object.

In *Heirs of Mayor Nemencio Galvez v. Court of Appeals*²⁸ (*Heirs of Galvez*), a case that was decided during the effectivity of the 1964 Rules of Court, the Court ruled that non-compliance with the substitution procedure pursuant to Section 18, Rule 3 of the 1964 Rules of Court is a ground for the dismissal of a *mandamus* petition.

In the said case, Amparo San Gabriel-Mendoza (Amparo) was the registered owner and operator of a cockpit in Balagtas, Bulacan, known as the "Balagtas Sports Arena." She filed a petition for *mandamus* and prohibition to compel Mayor Nemencio Galvez (Mayor Galvez) of Balagtas, Bulacan, to issue the municipal license and permit to resume operations of the Balagtas Sports Arena and to enjoin the Sangguniang Bayan of Balagtas from implementing a resolution which ordered the closure of the said cockpit. However, during the pendency of the case, Mayor Galvez and the

²⁸ 325 Phil. 1028, 1048 (1996).

members of the Sangguniang Bayan of Balagtas were replaced by officers-in-charge as an aftermath of the 1986 EDSA Revolution. However, Amparo did not file a motion to have Mayor Galvez and the members of the Sanggunian substituted by the officers-in-charge. The Court opined that the trial and appellate courts should have dismissed the petition in view of the non-compliance with the provisions of Section 18, Rule 3 of the 1964 Rules of Court.

The Court continued that the trial court acted in excess of its jurisdiction when it ordered Mayor Galvez or his successor-in-office to issue the mayor's permit to Amparo's cockpit despite the absence of proper substitution of parties. Thus:

Considering the attendant circumstances in the case at bench, the failure to make the substitution pursuant to the aforequoted provision is a procedural defect. We bear in mind that the case out of which this petition arose is in the nature of a petition for [*mandamus*] and prohibition which sought to compel the then mayor, Dr. Nemencio Galvez, to issue the municipal license and permit to resume operations of the Balagtas Sports Arena at Balagtas, Bulacan, and to enjoin the said mayor and the Sangguniang Bayan of Balagtas, Bulacan, from implementing its Resolution No. 08-85 which ordered the closure of the cockpit arena. When the said public officials were replaced by OICs as an aftermath of the 1986 Edsa Revolution, it was incumbent upon private respondent Mendoza, through her counsel, to file for a substitution of parties within thirty (30) days after the named successors-in-office of Mayor Galvez and the members of the Sangguniang Bayan of Balagtas, Bulacan, assumed office. Inasmuch as no such substitution was effected, the [*mandamus*] petition cannot prosper in the absence of a supplemental pleading showing that the successors of Mayor Galvez and the members of the Sangguniang Bayan of Balagtas, Bulacan had adopted or had continued or threatened to adopt or continue the action of their predecessors in enforcing the assailed resolution which ordered the closure of the subject cockpit arena. In fact[,] there is reason to believe petitioners' claim that the appointed OIC no longer pursued the "closure policy" of Mayor Galvez so that the corresponding license and permit to operate the Balagtas Sports Arena were subsequently granted. Thus, the *mandamus* petition should have been dismissed for non-compliance with the substitution procedure pursuant to Rule 3, Section 18 of the Rules of Court.

The assailed decision dated May 6, 1988 was rendered a couple of years after the Mayor and members of the Municipal Council of Balagtas, Bulacan, originally sued by private respondent Mendoza had ceased to hold public office. As initiator of the *mandamus* petition, counsel for private respondent Mendoza had ample time to make a proper substitution of parties had there still been compelling reasons to obtain the writs of *mandamus* and prohibition prayed for at the earliest possible time. As it was, there were none. The records fail to show that both private respondents had refuted the petitioners' claim that, with the replacement of the late Mayor Galvez, the *mandamus* petition had become moot and

academic after private respondent Mendoza obtained the municipal license and permit from the said mayor's successor-in-office. Thus, when no proper substitution of parties was seasonably effected under Rule 3, Section 18 of the Rules of Court, the court *a quo* acted in excess of jurisdiction for having rendered the assailed decision against the petitioners in utter violation of their constitutional right to due process of law.²⁹ x x x (Underscoring supplied; citations omitted)

In this case, a perusal of the records would reveal that Shaikh did not file any motion for the substitution of Vice-Mayor Teopengco and Bontuyan by the respective successors in office. In fact, in her Memorandum³⁰ which she filed before the CA on August 12, 2010, Vice-Mayor Teopengco was still included as a respondent. No mention was made to the effect that another person already succeeded Vice-Mayor Teopengco as the Vice-Mayor of Bagac. Needless to state, Shaikh did not file any supplemental pleading which would show that Vice-Mayor Teopengco and Bontuyan's successors had continued their refusal to release her salaries and emoluments. Evidently, Shaikh failed to comply with the procedure for substitution under Section 17, Rule 3 of the 1997 Revised Rules of Civil Procedure.

Considering that, as already stated, Section 17, Rule 3 of the 1997 Revised Rules of Civil Procedure substantially lifted the provisions of Section 18, Rule 3 of the 1964 Rules of Court, such that there had been no change in its underlying principle, the Court holds that the pronouncements in the *Heirs of Galvez* find application to the present case. Thus, the CA acted in excess of its jurisdiction when it rendered the September 7, 2012 Decision and the March 6, 2013 Resolution against Vice-Mayor Teopengco and Bontuyan, despite the fact that they ceased to be the proper parties to the *mandamus* case even prior to said dates – Vice-Mayor Teopengco was no longer the Vice-Mayor of Bagac as of noon of June 30, 2010, following his loss in the 2010 May elections, while Bontuyan ceased to be the Municipal Budget Officer of Bagac after her retirement on April 2, 2011. Likewise, the September 7, 2012 Decision could not be enforced against Vice-Mayor Teopengco and Bontuyan's successors in office as doing so would be in violation of their constitutional rights to due process.

The invalidity of the CA's September 7, 2012 Decision and March 6, 2013 Resolution subsists even if it appears that it rendered the said decision and resolution without knowledge or information of Vice-Mayor Teopengco's loss and Bontuyan's retirement. Lack of notice would not cure the defect in the said decision and resolution. After all, the duty and burden to notify the CA of these developments and to show that the unlawful refusal

²⁹ Id. at 1047-1049.

³⁰ CA *rollo*, pp. 31-40.

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is continuing, fall to Shaikh as the petitioner in the *mandamus* petition. Unfortunately, she failed in this regard.


WHEREFORE, the present Petition for Review on *Certiorari* is **GRANTED**. The Decision dated September 7, 2012, and the Resolution dated March 6, 2013 of the Court of Appeals in CA-G.R. SP No. 114405 are **SET ASIDE**.

SO ORDERED.

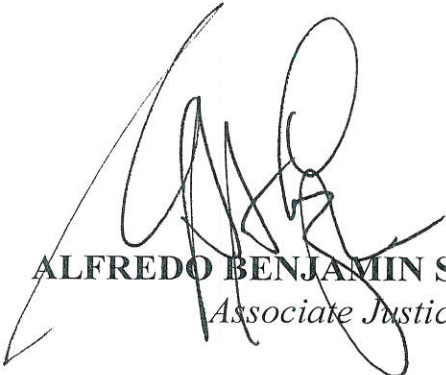


JOSE C. REYES, JR.
Associate Justice

WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice
Chairperson



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



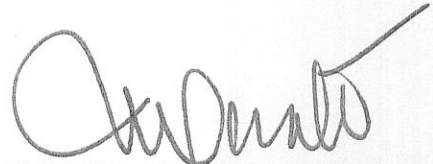
AMY C. LAZARO-JAVIER
Associate Justice



MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



DIOSDADO M. PERALTA
Chief Justice

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