



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ARNOLFO A. DACO,
Petitioner,

G.R. No. 222611

Present:

-versus-

LEONEN, J., *Chairperson*,
CARANDANG,
ZALAMEDA,
ROSARIO, and
DIMAAMPAO*, JJ.

RUBEN E. CABAJAR,
Respondent.

Promulgated:
November 15, 2021
MISTDCBatt

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DECISION

LEONEN, J.:

While ordinary courts have concurrent jurisdiction with the National Commission on Indigenous Peoples in some matters in the Indigenous Peoples' Rights Act, the Commission is in the best position to decide disputes on ancestral domain between members of the same indigenous cultural community, being the "primary government agency responsible . . . to promote and protect the rights and well-being of the [indigenous cultural communities or indigenous peoples] and the recognition of their ancestral domains as well as their rights thereto."¹

This Court resolves the Petition for Review on Certiorari² under Rule 45 of the 1997 Rules of Civil Procedure filed by Arnolfo A. Daco (Daco), a

* Designated additional Member per Special Order No. 2839 dated September 16, 2021.

¹ Indigenous Peoples' Rights Act (1997), sec. 38.

² *Rollo*, pp. 5–12.

Tagbanua and a native of Busuanga, Palawan,³ praying that the Court of Appeals' March 6, 2015⁴ and December 14, 2015⁵ Resolutions be reversed and set aside. The assailed Resolutions dismissed Daco's appeal from the Decision⁶ of the National Commission on Indigenous Peoples Regional Hearing Office.

Ruben E. Cabajar (Cabajar) is a member of the Tagbanua indigenous cultural community of Barangay Panlaitan, Busuanga, Palawan.⁷ He is also the president of the Panlaitan San Isidro Cultural Minorities Development Association (PASICMIDA), a local organization of indigenous peoples in Busuanga, Palawan.⁸

Cabajar was authorized by the Council of Elders of the Tagbanua indigenous cultural community⁹ of Barangay Panlaitan and San Isidro to file a complaint before the National Commission on Indigenous Peoples for violation of Section 10 of Republic Act No. 8371 or the Indigenous Peoples' Rights Act of 1997 against Daco, specifically for unauthorized and unlawful intrusion "with prayer for [Temporary Restraining Order] and Permanent Injunction with Damages."¹⁰

Cabajar alleged that the Tagbanuas he represents applied for a Certificate of Ancestral Domain under Section 11 of the Indigenous Peoples' Rights Act. The application covers areas in Barangay Panlaitan and San Isidro,¹¹ which includes Black Island or Isla Malajem.¹²

During the pendency of their application, Former National Commission on Indigenous Peoples Chairperson Eugenio Insigne issued an "Assumption Over Ancestral Domain" in favor of the Tagbanuas represented by Cabajar.¹³

Cabajar also cited Municipal Resolution No. 39, series of 1996, which allegedly recognizes that his fellow Tagbanuas occupy and own Isla Malajem.¹⁴

³ Id. at 6.

⁴ Id. at 16–19. The March 6, 2015 Resolution in CA-G.R. SP-UDK No. 139243 was penned by Associate Justice Danton Q. Bueser with the concurrence of Associate Justices Apolinario D. Bruselas, Jr. (Chair) and Victoria Isabel A. Paredes of the Special Sixteenth Division, Court of Appeals Manila.

⁵ Id. at 23–24. The December 14, 2015 Resolution in CA-G.R. SP-UDK No. 139243 was penned by Associate Justice Danton Q. Bueser and was concurred in by Associate Justices Apolinario D. Bruselas, Jr., (Chair) and Victoria Isabel A. Paredes of the Former Special Sixteenth Division, Court of Appeals Manila.

⁶ Id. at 25–33. The January 12, 2015 Decision of the National Commission on Indigenous Peoples Regional Hearing Office IV was penned by Regional Hearing Officer Kissack B. Gabaen.

⁷ Id. at 26.

⁸ Id. at 6.

⁹ Id. at 26.

¹⁰ Id. at 25.

¹¹ Id. at 27.

¹² Id.

¹³ Id.

¹⁴ Id.

On October 12, 2012, Cabajar alleged that Daco, accompanied by several barangay tanods of Barangay Panlaitan, forcibly took over Isla Malajem.¹⁵ Two members of the Council of Elders who were guarding Isla Malajem on that day claimed that they saw Daco and the barangay tanods bring construction materials to the area.¹⁶

One of the tanods approached Cabajar and informed him that Punong Barangay Jerry Del Valle told them to escort Daco.¹⁷ Daco then proceeded to construct a nipa hut despite the elders' protest. Daco argued that he paid the municipal government for the ownership of Isla Malajem and had documents, particularly tax declarations, to prove it.¹⁸

The elders refuted this claim, saying that they have native title over the area and "that their crops, plants, caves and three nipa huts can prove their possession of the island since time immemorial."¹⁹ Unfazed, Daco and the barangay tanods continued with the construction. Cabajar and the other members of the Council of Elders went to Isla Malajem to settle but Daco and the tanods refused to talk to them.²⁰

Subsequently, Daco barred Cabajar and the other Tagbanuas from returning to Isla Malajem. Cabajar alleged that because of this, their livelihood suffered since Isla Malajem was their primary source of Balinsasayaw nest or edible bird nest.²¹

Upon learning of the complaint, Daco argued that the National Commission on Indigenous Peoples Regional Hearing Office IV (Regional Hearing Office) had no jurisdiction over the complaint.²²

Officials from the Regional Hearing Office conducted an ocular inspection in the disputed land, but Daco did not appear. Instead, his sister was present "but did not participate."²³

On January 12, 2015, the Regional Hearing Office ruled that it had jurisdiction over the complaint²⁴ and that Isla Malajem was part of the Tagbanuas' ancestral domain. It stated that the same finding had already been established in its previous ruling in *PASICMIDA v. PCSD*.²⁵ It further held:

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at 27–28.

¹⁹ Id. at 28.

²⁰ Id.

²¹ Id.

²² Id. at 29.

²³ Id. at 32.

²⁴ Id. at 25–33.

²⁵ Id. at 28–31.

The [Certificate of Ancestral Domain Title/Certificate of Ancestral Land Title] only constitutes formal recognition of the State of the rights of the ICCs/IPS over the [Ancestral Domain/Ancestral Land]. The fact that the CADT of the plaintiffs has not yet been issued cannot overcome the fact that they have established claim over their ancestral domain since time immemorial which already constitutes native title, thus, making the disputed area as their ancestral domain.²⁶

It also found that since the area in question is a “seashore and a cave traditionally used by the [i]ndigenous peoples to gather bird’s nest or in [T]agbanua dialect, ‘balinsasayaw’ since time immemorial,” it cannot be privately owned by one individual.²⁷

The dispositive portion of the Regional Hearing Office’s Decision reads:

WHEREFORE, premises considered, the defendants [Daco] are hereby found by the Regional Hearing Office to have Unlawfully and without authority intruded into the ancestral domain of the plaintiffs.

The defendants are hereby permanently enjoined by this quasi-judicial court and hereby ordered that they immediately vacate the ancestral domain of the plaintiffs.

The prayer of the plaintiffs to be awarded damages is hereby granted.

Defendants are hereby ordered to pay plaintiffs the amount of P50,000.00 as moral damages, P150,000.00 as actual damages and P50,000.00 as exemplary damages.

SO ORDERED.²⁸ (Emphasis in the original)

Daco elevated the matter to the Court of Appeals via an appeal under Rule 43 of the 1997 Rules of Civil Procedure which was denied due to several procedural infirmities.²⁹

First, Daco did not pay the docket and legal fees and did not file a motion to litigate as pauper litigants.³⁰ Second, the title and body of the petition did not state the full names of Daco’s co-petitioners. Third, Daco did not attach a Special Power of Attorney showing his authority to sign the Verification and Certification of Non-Forum Shopping in behalf of his co-petitioners and did not attach an explanation on why service on the adverse counsel and the National Commission on Indigenous Peoples was not done

²⁶ Id. at 31.

²⁷ Id. at 32.

²⁸ Id. at 32–33.

²⁹ Id. at 16–19.

³⁰ Id. at 16.

personally.³¹ Fourth, the Affidavit of Service was notarized, but the jurat does not state that the affiant presented competent evidence of identity. Fifth, the Integrated Bar of the Philippines details of Daco's counsel are not updated. Lastly, the documents mentioned in Daco's pleading were not attached.³²

The Court of Appeals held that:

At this juncture, petitioners are reminded of what should be the contents of a Petition for Review pursuant to Section 6, Rule 43 of the Rules of Court, to wit:

Section 6. *Contents of the petition.* – The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein.

Hence, pursuant to Section 7, Rule 43 of the Rules of Court, the dismissal of the instant petition is in order for failure to comply with the above-mentioned requirements, viz:

Section 7. *Effect of failure to comply with requirements.* – The failure of the petition to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be ground for the dismissal thereof.

WHEREFORE, in view of the foregoing, the instant petition is hereby DISMISSED.

IT IS SO ORDERED.³³ (Emphasis in the original)

Daco moved for reconsideration³⁴ where he tried to remedy the procedural infirmities noted by the Court of Appeals in its Decision. Nevertheless, the motion was denied in a December 14, 2015 Resolution.³⁵

³¹ Id. at 16–17.

³² Id.

³³ Id. at 17–18.

³⁴ Id. at 20–22.

³⁵ Id. at 23–24.



Hence, this Petition³⁶ was filed.

On June 6, 2016, respondent filed his Comment³⁷ on the Petition in compliance with the April 6, 2016 Resolution³⁸ of this Court.

On July 20, 2016, this Court required petitioner to file a reply to the Comment.³⁹ On June 18, 2018, this Court issued a Resolution⁴⁰ requiring the counsels of record of petitioner, Attys. Roland E. Pay and Edgar O. Palay, to show cause why they should not be disciplinarily dealt with for their failure to file a reply.

On August 7, 2019, petitioner filed his Reply⁴¹ to respondent's Comment, explaining that his failure to file the required reply immediately was due to counsel's old age and sickness.⁴²

Petitioner argues that the Court of Appeals erred in dismissing his appeal based on procedural infirmities.⁴³ Petitioner claims that Isla Malajem was owned by his father, Ciricao Daco (Ciriaco), who is also a Tagbanua.⁴⁴ He claims that Ciriaco introduced improvements over the property during his lifetime, however, the improvements were allegedly destroyed by Cabajar and the other Tagbanuas when they "attempted to grab the property using the [Indigenous Peoples' Rights Act] as their basis."⁴⁵

He adds that Isla Malajem is declared for tax purposes under petitioner's name⁴⁶ and that the National Commission on Indigenous Peoples has yet to issue a title declaring Isla Malajem as ancestral land or ancestral domain in favor of the Tagbanuas represented by Cabajar.⁴⁷ Further, petitioner claims that the Commission had no jurisdiction over the case because the complaint is criminal in nature.⁴⁸

Respondent, on the other hand, asserts that the Court of Appeals is correct in dismissing petitioner's petition for its numerous procedural flaws. Moreover, he claims that the negligence of petitioner's counsel signifies their intent to further delay the resolution of the case.⁴⁹

³⁶ Id. at 5–13.

³⁷ Id. at 51–54.

³⁸ Id. at 49.

³⁹ Id. at 60.

⁴⁰ Id. at 96–97.

⁴¹ Id. at 104–105.

⁴² Id. at 104.

⁴³ Id. at 7–8.

⁴⁴ Id.

⁴⁵ Id. at 8.

⁴⁶ Id.

⁴⁷ Id. at 9.

⁴⁸ Id. at 11.

⁴⁹ Id. at 52.

He adds that petitioner's claim that the Regional Hearing Office has no jurisdiction has no basis since the complaint he filed against petitioner is not criminal in nature, but a civil case with a violation of Tagbanua customary law.⁵⁰ Lastly, he asserts that the tax declaration presented by petitioner appears spurious and that it was not enough to support the claim of occupation or possession of the area.⁵¹

The following are the issues for this Court's resolution:

First, whether or not the Court of Appeals erred in dismissing the Petition outright due to procedural grounds;

Second, whether or not the National Commission on Indigenous Peoples has jurisdiction over the complaint for violation of Section 10 of the Indigenous Peoples' Rights Act; and

Finally, whether or not petitioner Arnolfo A. Daco has a legitimate claim of ownership or possession over Isla Malajem.

The Petition has no merit.

I

The formal requirements of an appeal filed under Rule 43 of the Rules of Civil Procedure are in Sections 5 and 6:

Section 5. *How appeal taken.* — Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, with proof of service of a copy thereof on the adverse party and on the court or agency *a quo*. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner.

Upon the filing of the petition, the petitioner shall pay to the clerk of court of the Court of Appeals the docketing and other lawful fees and deposit the sum of P500.00 for costs. Exemption from payment of docketing and other lawful fees and the deposit for costs may be granted by the Court of Appeals upon a verified motion setting forth valid grounds therefor. If the Court of Appeals denies the motion, the petitioner shall pay the docketing and other lawful fees and deposit for costs within fifteen (15) days from notice of the denial.

Section 6. *Contents of the petition.* — The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise

⁵⁰ Id.

⁵¹ Id. at 53.

statement of the facts and issues involved and the grounds relied upon for the review; (c) be *accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers*; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein. (Emphasis supplied)

Rule 43, Section 7⁵² of the Rules of Civil Procedure states that petitioner's failure to comply with any of the enumerated formal requirements is sufficient ground for the dismissal of the petition.

In line with this, the Court of Appeals dismissed outright petitioner's appeal due to its numerous procedural infirmities. It pointed out the following procedural defects:

- a. No payment for docket and other legal fees was remitted by herein petitioners and records of the instant petition indicated that there is no motion filed to litigate as pauper litigants;
- b. The title as well as the body of the instant petition failed to contain the full names of the co-petitioners of Arnolfo Daco who allegedly are the latter's "siblings and direct descendants of the deceased Ciriaco Daco." Moreover, there is no Special Power of Attorney authorizing Arnolfo Daco to sign the Verification and Certification on behalf of his co-petitioners;
- c. There is no explanation why service of the instant petition on adverse counsel and/or the National Council for [sic] Indigenous Peoples ("NCIP" for brevity) was not done personally;
- d. The notarization of the Affidavit of service of the instant petition failed to comply with Sections 6 and 12, Rule II of the 2004 Rules on Notarial Practice, there being no properly accomplished jurat showing that the affiant exhibited before the notary public competent evidence of her identity[.]
- e. Herein petitioner's counsel's IBP details does not appear to be current; and
- f. Pertinent pleadings and documents mentioned in the assailed Decision as would support the allegations in the instant petition were not appended therein[.]⁵³

Petitioner argues that the Court of Appeals erred when it dismissed the appeal on pure technicalities without considering the merits of the case.⁵⁴

⁵² Section 7. *Effect of failure to comply with requirements.* — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

⁵³ *Rollo*, pp. 16–17.

⁵⁴ *Id.* at 9.

Petitioner is correct.

Remedial or procedural laws are statutes “designed to facilitate the adjudication of cases.”⁵⁵ They are made to aid a tribunal or court in its reception and evaluation of evidence and are aimed for an efficient and effective resolution of a case.⁵⁶ Nevertheless, this Court has time and again discouraged courts from dismissing a case solely on reasons of technicality.⁵⁷

While the number of procedural defects of petitioner’s appeal to the Court of Appeals admittedly indicates negligence on their part, rules of procedure should not be so absolute so as to subvert the true objective of all rules and laws that justice be attained. Thus, in *Barnes v. Padilla*,⁵⁸ citing *Sanchez v. Court of Appeals*,⁵⁹ this Court enumerated instances that would merit the relaxation of procedural rules:

In the *Sanchez* case, the Court restated the range of reasons which may provide justification for a court to resist a strict adherence to procedure, enumerating the elements for an appeal to be given due course by a suspension of procedural rules, such as: (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.⁶⁰ (Citation omitted)

Here, a strict application of Rule 43, Sections 5 and 6 of the Rules of Civil Procedure was not called for as the case involves matters of property that affect both parties’ livelihood. Furthermore, the liberal interpretation of the remedial requirements would not prejudice the other party. On the contrary, in resolving the case on the merits rather than on pure technicalities, the Court of Appeals would have promoted judicial economy. Judicial economy requires “the prosecution of cases with the least cost to the parties” and to the courts’ time, effort, and resources.⁶¹

Moreover, this Court has reversed decisions of the Court of Appeals dismissing cases on the sole ground of procedural defects. In *Kabalikat para sa Maunlad na Buhay, Inc. v. Commissioner of Internal Revenue*,⁶² Kabalikat’s petition was dismissed outright due to its failure to state a “concise and direct statement of complete facts” and attach “clearly legible duplicate

⁵⁵ *Land Bank of the Phils. v. Natividad*, 497 Phil. 738, 744 (2005) [Per J. Tinga, Second Division].

⁵⁶ *Malixi v. Baltazar*, 821 Phil. 423, 436 (2017) [Per J. Leonen, Third Division].

⁵⁷ *Swire Realty v. Yu*, 755 Phil. 250, 261 (2015) [Per J. Peralta, Third Division].

⁵⁸ 500 Phil. 303 (2005) [Per J. Austria-Martinez, Second Division].

⁵⁹ 452 Phil. 665, 674 (2003) [Per J. Bellosillo, En Banc].

⁶⁰ *Barnes v. Padilla*, 500 Phil. 303, 311 (2005) [Per J. Austria-Martinez, Second Division].

⁶¹ *Malixi v. Baltazar*, 821 Phil. 423, 452 (2017) [Per J. Leonen, Third Division].

⁶² G.R. No. 217530, February 10, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66105>> [Per J. Inting, Second Division].

originals or certified true copies of the issuances assailed.”⁶³ They rectified these deficiencies through their subsequent motion for reconsideration but was still refused by the Court of Tax Appeals. This Court remanded the case to the Court of Tax Appeals, holding—

To abruptly put an end to litigation solely based on technicalities amounts to serious injustice to the parties.

Moreover, their appeals do not appear to be merely frivolous and dilatory. Both parties show willingness to continue litigation. Certainly, a liberal application of the rules will not unjustly prejudice either of them.

To be sure, the formal and procedural lapses in the present case should not have rendered the parties’ respective appeals fatally defective. The court *a quo*’s insistence on a strict implementation of these technicalities is unjust, especially when “the more prudent course of action would have been to afford petitioners time” to remedy their oversight — which they already have — instead of using these mistakes to justify “dispossessing petitioners of relief.”⁶⁴ (Citation omitted)

This Court made a similar pronouncement in *Alcantara v. The Philippine Commercial and International Bank*,⁶⁵ when it held that —

In appropriate cases, the courts may liberally construe procedural rules in order to meet and advance the cause of substantial justice. Lapses in the literal observation of a procedural rule will be overlooked when they do not involve public policy, when they arose from an honest mistake or unforeseen accident, and when they have not prejudiced the adverse party or deprived the court of its authority. The aforementioned conditions are present in the case at bar.

Furthermore, 14 days after petitioner’s receipt of the September 27, 2001 Court of Appeals Resolution dismissing his petition, he filed a Motion for Reconsideration along with the documents deemed by the Court of Appeals as lacking in his originally filed petition. Contrary to the pronouncement made in the December 20, 2001 Court of Appeals Resolution which denied the aforesaid Motion, petitioner’s subsequent submission should be deemed substantial compliance with paragraph 3, Section 3, Rule 46 of the Revised Rules of Civil Procedure.

There is ample jurisprudence holding that the subsequent and substantial compliance of an appellant may call for the relaxation of the rules of procedure. In these cases, we ruled that the subsequent submission of the missing documents with the motion for reconsideration amounts to substantial compliance. The reasons behind the failure of the petitioners in these two cases to comply with the required attachments were no longer scrutinized. What we found noteworthy in each case was the fact that the petitioners therein substantially complied with the formal requirements. We ordered the remand of the petitions in these cases to the Court of Appeals, stressing the ruling that by precipitately dismissing the petitions “the

⁶³ Id.

⁶⁴ Id.

⁶⁵ 648 Phil. 267 (2010) [Per J. Leonardo-De Castro, First Division].

appellate court clearly put a premium on technicalities at the expense of a just resolution of the case.”⁶⁶ (Citations omitted)

In this case, petitioner filed a Motion for Reconsideration curing all the defects found in his Appeal. Moreover, none of the procedural lapses committed were prejudicial to respondent. Accordingly, the Court of Appeals should have decided the appeal not solely on the technicalities, but on the merits of the case.

This notwithstanding, the Petition still fails.

II

Petitioner mainly argues that the National Commission on Indigenous Peoples lacks jurisdiction over the complaint filed by respondent before the Commission’s Regional Hearing Office.

Jurisdiction is the power and authority of a tribunal to hear, try, and decide a case. It is conferred by law and cannot be dictated by any other authority, body, or party.

Pertinent to the case is Section 66 of the Indigenous Peoples’ Rights Act which defines the jurisdiction of the National Commission on Indigenous Peoples, thus:

SECTION 66. Jurisdiction of the NCIP. The NCIP, through its regional offices, shall have jurisdiction over *all claims and disputes involving rights of ICCs/IPs*: Provided, however, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP. (Emphasis supplied)

Rule IX, Section 1 of the Rules and Regulations Implementing the Indigenous Peoples’ Rights Act of 1997 reiterates the jurisdiction of the National Commission on Indigenous Peoples over claims or conflicts involving rights of indigenous cultural communities over ancestral domains and lands:

RULE IX. JURISDICTION AND PROCEDURES FOR ENFORCEMENT OF RIGHTS

⁶⁶ Id. at 278–279.

SECTION 1. Primacy of Customary Law. *All conflicts related to ancestral domains and lands, involving ICCs/IPs, such as but not limited to conflicting claims and boundary disputes, shall be resolved by the concerned parties through the application of customary laws in the area where the disputed ancestral domain or land is located.*

All conflicts related to the ancestral domains or lands where one of the parties is a non-ICC/IP or *where the dispute could not be resolved through customary law shall be heard and adjudicated in accordance with the Rules on Pleadings, Practice and Procedures Before the NCIP to be adopted hereafter.*

All decisions of the NCIP may be brought on Appeal by Petition for Review to the Court of Appeals within fifteen (15) days from receipt of the Order or Decision. (Emphasis supplied)

In *Unduran v. Aberasturi*,⁶⁷ this Court explained the conditions necessary for the National Commission on Indigenous Peoples to acquire jurisdiction as provided in Section 66:

A careful review of Section 66 shows that the NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP. This can be gathered from the qualifying provision that “no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.”

The qualifying provision requires two conditions before such disputes may be brought before the NCIP, namely: (1) exhaustion of remedies under customary laws of the parties, and (2) compliance with condition precedent through the said certification by the Council of Elders/Leaders. This is in recognition of the rights of ICCs/IPs to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities, as may be compatible with the national legal system and with internationally recognized human rights.

....

Therefore, pursuant to Section 66 of the IPRA, the NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP. When such claims and disputes arise between or among parties who do not belong to the same ICC/IP, i.e., parties belonging to different ICC/IPs or where one of the parties is a non-ICC/ IP, the case shall fall under the jurisdiction of the proper Courts of Justice, instead of the NCIP. In this case, while most of the petitioners belong to Talaandig Tribe, respondents do not belong to the same ICC/IP. Thus, even if the real issue involves a dispute over land which appear to be located within the ancestral domain of the Talaandig

⁶⁷ 771 Phil. 536 (2015) [Per J. Peralta, En Banc].

Tribe, it is not the NCIP but the RTC which shall have the power to hear, try and decide this case.⁶⁸ (Emphasis supplied, citation omitted)

In *Unduran*, the subject property involved was within the ancestral domain of the Talaandig tribe. However, petitioners failed to prove that they were members of the indigenous cultural community involved and a dispute on ownership of the ancestral land was not raised. Instead, the nature of the case was one of *accion reivindicatoria* or injunction. Consequently, this Court found that jurisdiction over the case fell with the Regional Trial Court and not the National Commission on Indigenous Peoples.⁶⁹

This is unlike the case before us. In this case, both petitioner and respondent belong to the Tagbanua indigenous cultural community. The case revolves around the ownership and possession of Isla Malajem which is being claimed to be located within the Tagbanua's ancestral domain. Accordingly, the first condition for the National Commission on Indigenous Peoples to acquire jurisdiction is present.

However, there is no showing that respondent presented a certification issued by the Council of Elders that there was an exhaustion of remedies under customary law, the second condition necessary for the case to fall under the National Commission on Indigenous Peoples' jurisdiction.

Nevertheless, upon the filing of the complaint before the Regional Hearing Office, Administrative Circular No. 1, Series of 2003 known as "The Rules on Pleadings, Practice and Procedure before the [National Commission on Indigenous Peoples]" was still effective. Rule IV, Sections 13 and 14 of the said Rules provide the certification requirements and its corollary exceptions:

Section 13. Certification to File Action. Upon the request of the proper party, members of the indigenous dispute settlement group or council of elders shall likewise issue a certification to file action before the NCIP. In giving due regard to customary laws, the certification may be in any form so long as it states in substance the failure of settlement notwithstanding the efforts made under customary law or traditional practices.

Section 14. *Exceptions*. The certification shall not be required in the following cases:

- a. Where one of the parties is a public or private corporation, partnership, association or juridical person or a public officer or employee and the dispute is in connection with the performance of his official functions;

⁶⁸ Id. at 568–569.

⁶⁹ Id.

- b. Where one of the parties is non-IP/ICC or does not belong to the same IP/IC Community, except when he voluntarily submits to the jurisdiction of the Council of Elders/Leaders;
- c. *Where the relief sought for in the complaint or petition seeks to prevent any grave, imminent and irreparable damage or injury that may result if not acted upon immediately; and*
- d. Where the Council of Elders/Leaders refuse to issue the necessary certification without justifiable reasons. (Emphasis supplied)

The allegations in the complaint state that petitioner, accompanied by barangay tanods, entered the subject parcel of land and started constructing a bahay kubo over the protests of respondent and the council of elders. It was further stated that the elders pleaded with petitioner to cease their construction, to no avail.⁷⁰ Moreover, it was shown that respondent was authorized by the Council of Elders of the Tagbanua indigenous cultural community⁷¹ to file the complaint before the National Commission on Indigenous Peoples.⁷²

Furthermore, it was alleged that since petitioner entered Isla Malajem, respondent and the Tagbanuas have been deprived of possession and source of livelihood.⁷³ From this narration, respondent's complaint falls under one of the exceptions from the certification requirement. The complaint sought to prevent grave, imminent, and irreparable damage or injury to the Tagbanua indigenous cultural community.

Petitioner insists that respondent's complaint is one of a criminal nature and should thus fall within the jurisdiction of the Regional Trial Courts. This argument must fail.

The original complaint filed by respondent against petitioner was one for violation of Section 10 of the Indigenous Peoples' Rights Act, which states:

SECTION 10. Unauthorized and Unlawful Intrusion. — Unauthorized and unlawful intrusion upon, or use of any portion of the ancestral domain, or any violation of the rights hereinbefore enumerated, shall be punishable under this law. Furthermore, the Government shall take measures to prevent non-ICCs/IPs from taking advantage of the ICCs/IPs customs or lack of understanding of laws to secure ownership, possession of land belonging to said ICCs/IPs.

In connection, Section 72 states:

⁷⁰ *Rollo* pp. 27–28.

⁷¹ *Id.* at 26.

⁷² *Id.* at 25.

⁷³ *Id.* at 28.



SECTION 72. Punishable Acts and Applicable Penalties. — *Any person who commits violation of any of the provisions of this Act, such as, but not limited to, unauthorized and/or unlawful intrusion upon any ancestral lands or domains as stated in Sec. 10, Chapter III, or shall commit any of the prohibited acts mentioned in Sections 21 and 24, Chapter V, Section 33, Chapter VI hereof, shall be punished in accordance with the customary laws of the ICCs/IPs concerned: Provided, That no such penalty shall be cruel, degrading or inhuman punishment: Provided, further, That neither shall the death penalty or excessive fines be imposed. This provision shall be without prejudice to the right of any ICCs/IPs to avail of the protection of existing laws.* In which case, any person who violates any provision of this Act shall, upon conviction, be punished by imprisonment of not less than nine (9) months but not more than twelve (12) years or a fine of not less than One hundred thousand pesos (P100,000) nor more than Five hundred thousand pesos (P500,000) or both such fine and imprisonment upon the discretion of the court. In addition, he shall be obliged to pay to the ICCs/IPs concerned whatever damage may have been suffered by the latter as a consequence of the unlawful act. (Emphasis supplied)

Contrary to petitioner's claim, Section 10's penal nature is not one necessarily meted out by the trial courts. Section 72 clearly states that violations of the provisions of the Indigenous Peoples' Rights Acts will primarily be tackled by the applicable customary laws of the indigenous cultural community involved *without prejudice to the right to avail of protection of other existing laws*, including but not limited to laws under the jurisdiction of both the National Commission on Indigenous Peoples and the Regional Trial Courts.

The Indigenous Peoples' Rights Act does not limit the course of action one may take. Under Section 72, one may file an action before the regular courts or find redress under the customary laws which falls within the jurisdiction of the Commission, its only caveat being that the penalty imposed must not be "cruel, degrading, or inhuman."

Accordingly, while respondent had the option to file his complaint with the Regional Trial Court, he was well within his rights when he chose to file the case before the Commission's Regional Hearing Office.

It must be emphasized that the National Commission on Indigenous Peoples was created primarily with the protection and promotion of the rights of indigenous peoples in mind. In *Cruz v. Secretary of Environment and Natural Resources*,⁷⁴ this Court acknowledged that the Indigenous Peoples' Rights Act was promulgated in recognition of the indigenous peoples' individual and distinct consciousness separate from that of the other citizens of the country. There, it was held that the statute created an avenue where indigenous peoples are given the opportunity to resolve issues within their

⁷⁴ 400 Phil. 904 (2000) [Per Curiam, En Banc].



customary laws or within a mechanism that recognizes their rights *vis-à-vis* their community's cultural and traditional reality. It held –

The IPRA recognizes the existence of the indigenous cultural communities or indigenous peoples (ICCs/IPs) as a distinct sector in Philippine society. It grants these people the ownership and possession of their ancestral domains and ancestral lands, and defines the extent of these lands and domains. The ownership given is the indigenous concept of ownership under customary law which traces its origin to native title.

Other rights are also granted the ICCs/IPs, and these are:

- the right to develop lands and natural resources;
- the right to stay in the territories;
- the right in case of displacement;
- the right to safe and clean air and water;
- the right to claim parts of reservations;
- the right to resolve conflict;
- the right to ancestral lands which include
 - a. the right to transfer land/property to/among members of the same ICCs/IPs, subject to customary laws and traditions of the community concerned;
 - b. the right to redemption for a period not exceeding 15 years from date of transfer, if the transfer is to a non-member of the ICC/IP and is tainted by vitiated consent of the ICC/IP, or if the transfer is for an unconscionable consideration.

Within their ancestral domains and ancestral lands, the ICCs/IPs are given the right to self-governance and empowerment, social justice and human rights, the right to preserve and protect their culture, traditions, institutions and community intellectual rights, and the right to develop their own sciences and technologies.

To carry out the policies of the Act, the law created the National Commission on Indigenous Peoples (NCIP). The NCIP is an independent agency under the Office of the President and is composed of seven (7) Commissioners belonging to ICCs/IPs from each of the ethnographic areas — Region I and the Cordilleras; Region II; the rest of Luzon; Island groups including Mindoro, Palawan, Romblon, Panay and the rest of the Visayas; Northern and Western Mindanao; Southern and Eastern Mindanao; and Central Mindanao. The NCIP took over the functions of the Office for Northern Cultural Communities and the Office for Southern Cultural Communities created by former President Corazon Aquino which were merged under a revitalized structure.

Disputes involving ICCs/IPs are to be resolved under customary laws and practices. When still unresolved, the matter may be brought to the NCIP, which is granted quasi-judicial powers. The NCIP's decisions may be appealed to the Court of Appeals by a petition for review.

Any person who violates any of the provisions of the Act such as, but not limited to, unauthorized and/or unlawful intrusion upon ancestral lands and domains shall be punished in accordance with customary laws or imprisoned from 9 months to 12 years and/or fined from P100,000.00 to

*P500,000.00 and obliged to pay damages.*⁷⁵ (Emphasis supplied, citations omitted)

This notwithstanding, *Lim v. Gamosa*,⁷⁶ citing *Unduran*, states that while the National Commission on Indigenous Peoples has primary jurisdiction over claims and disputes involving rights of indigenous cultural communities, the same remains concurrent with ordinary courts when involving parties who do not belong to indigenous cultural communities:

Plainly, the NCIP is the “primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains as well as their rights thereto.” Nonetheless, the creation of such government agency does not *per se* grant it primary and/or exclusive and original jurisdiction, excluding the regular courts from taking cognizance and exercising jurisdiction over cases which may involve rights of ICCs/IPs.

Recently, in *Unduran, et al. v. Aberasturi, et al.* we ruled that Section 66 of the IPRA does not endow the NCIP with primary and/or exclusive and original jurisdiction over all claims and disputes involving rights of ICCs/IPs. Based on the qualifying proviso, we held that the NCIP's jurisdiction over such claims and disputes occur only when they arise between or among parties belonging to the same ICC/IP. Since two of the defendants therein were not IPs/ICCs, the regular courts had jurisdiction over the complaint in that case.⁷⁷ (Citations omitted)

Here, both parties are members of the Tagbanua indigenous cultural community and the subject matter is a parcel of land claimed to be located within the Tagbanua's ancestral domain. Accordingly, the National Commission on Indigenous Peoples, being the “primary government agency responsible ... to promote and protect the rights and well-being of the [indigenous cultural communities or indigenous peoples] and the recognition of their ancestral domains as well as the rights thereto,”⁷⁸ is in the best position to decide the matter. Thus, the Regional Hearing Office correctly exercised its jurisdiction over the complaint filed by respondent.

III

Section 3(a) and (b) and Section 56 of the Indigenous Peoples' Rights Act define ancestral domains and ancestral lands:

SECTION 3. *Definition of Terms.* — For purposes of this Act, the following terms shall mean:

⁷⁵ J. Puno, Separate Opinion in *Cruz v. Secretary of Environment*, 400 Phil. 904, 944–946 (2000) [Per Curiam].

⁷⁶ 774 Phil. 31 (2015) [Per J. Perez, First Division].

⁷⁷ Id. at 46–47.

⁷⁸ Indigenous Peoples' Rights Act (1997), sec. 38.

- a) *Ancestral Domains* — Subject to Section 56 hereof, refers to *all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;*
- b) *Ancestral Lands* — Subject to Section 56 hereof, refers to *lands occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations, including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots.*

SECTION 56. *Existing Property Rights Regimes.* — Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected. (Emphasis supplied)

In *Republic v. Cosalan*⁷⁹ citing *Cruz*, this Court enunciated that ancestral lands are covered by the concept of native title and considered owned by the indigenous peoples since time immemorial. Consequently, ancestral lands are incapable of private ownership. It held:

Ancestral lands are covered by the concept of native title that “refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest.” To reiterate, they are considered to have never been public lands and are thus indisputably presumed to have been held that way.

The CA has correctly relied on the case of *Cruz v. Secretary of DENR*, which institutionalized the concept of native title. Thus:

⁷⁹ 835 Phil. 649 (2018) [Per J. Gesmundo, Third Division].

Every presumption is and ought to be taken against the Government in a case like the present. It might, perhaps, be proper and sufficient to say that *when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way before the Spanish conquest, and never to have been public land.*

From the foregoing, it appears that lands covered by the concept of native title are considered an exception to the *Regalian Doctrine* embodied in Article XII, Section 2 of the Constitution which provides that all lands of the public domain belong to the State which is the source of any asserted right to any ownership of land.⁸⁰ (Emphasis in the original, citations omitted)

Here, the Regional Hearing Office further found that respondent applied for the issuance of Certificate of Ancestral Domain⁸¹ before the National Commission on Indigenous Peoples over the subject land by virtue of Section 11 of the Indigenous Peoples' Rights Act, which states:

SECTION 11. *Recognition of Ancestral Domain Rights.* — The rights of ICCs/IPs to their ancestral domains by virtue of Native Title shall be recognized and respected. Formal recognition, when solicited by ICCs/IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated.

While the Certificate of Ancestral Domain Title was yet to be released at the time of the dispute, the Regional Hearing Office found that an "Assumption Over Ancestral Domains" had been issued in favor of respondent. Moreover, that a certificate has yet to be released does not contradict the indigenous concept of ownership. This Court has held that the concept of ownership and title for indigenous people are not dependent on a piece of paper, instead, a paper title is merely seen as a formal recognition of native title.

In *Lamsis, et al. v. Dong-e*,⁸² we held —

The application for issuance of a Certificate of Ancestral Land Title pending before the NCIP is akin to a registration proceeding. It also seeks an official recognition of one's claim to a particular land and is also *in rem*. *The titling of ancestral lands is for the purpose of "officially establishing" one's land as an ancestral land. Just like a registration proceeding, the titling of ancestral lands does not vest ownership upon the applicant but only recognizes ownership that has already vested in the applicant by virtue*

⁸⁰ Id. at 660.

⁸¹ *Rollo*, p. 27.

⁸² 648 Phil. 372 (2010) [Per J. Del Castillo, First Division].



of his and his predecessor-in-interest's possession of the property since time immemorial. As aptly explained in another case:

It bears stressing at this point that *ownership should not be confused with a certificate of title. Registering land under the Torrens system does not create or vest title* because registration is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein.⁸³ (Emphasis supplied, citations omitted)

Moreover, Isla Malajem is a “seashore and a cave traditionally used by indigenous peoples to gather bird’s nest” called “balinsasayaw” in Tagbanua’s dialect. The same land was recognized by the Municipality of Busuanga, Palawan through Resolution No. 39, series 1996 of the Office of the Sangguniang Bayan as part of the ancestral lands “discovered by the forefathers of the cultural minorities since time immemorial” and “exclusively for cultural minorities, of Barangay Panlaitan, San Isidro”⁸⁴ which respondent is a member of.

On the contrary, petitioner’s lone proof to support his claims that he, along with his siblings, are the legitimate owners of the subject parcel of land were tax declarations in the name of their father. Unfortunately, these tax declarations, coupled with unsubstantiated claims of possession over the land, are not sufficient. This Court has time and again held that tax declarations are not conclusive evidence of ownership or the right to possess land when not supported by other evidence to substantiate the claim.⁸⁵ While it may be considered as good indicia of ownership,⁸⁶ it cannot defeat native title which has been described as ownership since time immemorial.

In the present case, it has been established that the subject land, Isla Malajem, has been recognized as ancestral domain of the Tagabanua indigenous cultural community and has never been considered as part as the public domain. Accordingly, it could not be privately owned by an individual albeit his alleged extended possession.

WHEREFORE, premises considered, the petition is **DENIED**. The March 6, 2015 and December 14, 2015 Resolutions of the Court of Appeals, Manila in CA G.R. SP-UDK No. 139243 affirming the January 12, 2015 Decision of the National Commission on Indigenous Peoples Regional Hearing Office IV is **AFFIRMED**.

⁸³ Id. at 393–394.

⁸⁴ *Rollo*, pp. 55–56. Resolution No. 39, series of 1996 of the Office of the Sangguniang Bayan of Busuanga, Palawan.

⁸⁵ *Republic v. Manimtim*, 661 Phil. 158, 174 (2011) [Per J. Mendoza, Second Division].

⁸⁶ *Kawayan Hills Corp. v. Court of Appeals*, G.R. No. 203090, September 5, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64512>> [Per J. Leonen, Third Division].

Petitioner Arnolfo A. Daco is found to have unlawfully and without authority, intruded into the ancestral domain of the respondent Ruben E. Cabajar and the Tagbanuas he represents. Petitioner is hereby permanently enjoined and ordered to immediately vacate the ancestral domain of respondent. Petitioner is ordered to pay respondent the amount of ₱50,000.00 as moral damages, ₱150,000.00 as actual damages, and ₱50,000.00 as exemplary damages.

SO ORDERED.

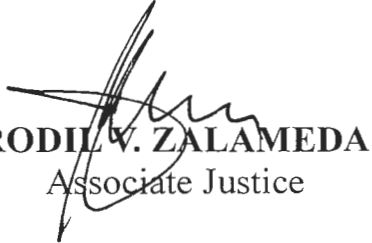


MARVIC M.V.F. LEONEN
Associate Justice


WE CONCUR:



ROSMARI D. CARANDANG
Associate Justice



RODIL V. ZALAMEDA
Associate Justice



RICARDO R. ROSARIO
Associate Justice



JAFAR B. DIMAAMPAO
Associate Justice

ATTESTATION

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.


MARVIC M.V.F. LEONEN

Associate Justice
Chairperson

CERTIFICATION

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


ALEXANDER G. GESMUNDO

Chief Justice