



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

**REPUBLIC OF THE
 PHILIPPINES** represented by
**PHILIPPINE ECONOMIC
 ZONE AUTHORITY,**
Petitioner,

G.R. No. 191531

Present:

CARPIO, J.,
 Chairperson,
 BRION,
 DEL CASTILLO,
 PEREZ, and
 PERLAS-BERNABE, JJ.

- versus -

**HEIRS OF CECILIO AND
 MOISES CUIZON,**
Respondents.

Promulgated:

MAR 06 2013

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DECISION

PEREZ, J.:

Assailed in this petition for review filed under Rule 45 of the *Rules of Court* is the Decision¹ dated 30 October 2009 rendered by the Fourth Division of the Court of Appeals (CA) in CA-G.R. SP No. 108085, dismissing without prejudice the petition filed by the Philippine Economic Zone Authority (**PEZA**) for the review of the 14 October 2008 Decision of the Office of the President in O.P. Case No. 07-C-081.²

The Facts

¹ Penned by CA Presiding Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Vicente S.E. Veloso and Marlene Gonzales-Sison, *rollo*, pp. 221-229.

² CA's 30 October 2009 Decision, CA *rollo*, pp. 221-229.

On 19 September 2001, the counsel of Cecilio and Moises Cuizon (*the Cuizons*) wrote PEZA Director General Lilia B. De Lima, offering said agency the priority to buy Lot Nos. 4522 and 4525 of the Opon Cadastre, with an aggregate area of 12,124 square meters.³ Although presently situated within the Mactan Economic Zone (*MEZ*), the subject lots were previously registered in the names of the Cuizons' predecessors-in-interest, the *Spouses* Pedro and Eugenia *Tunacao*, under Original Certificate of Title (OCT) Nos. RO-2428 and RO-2429 of the Lapu-Lapu City registry.⁴ By means of a Deed of Extrajudicial Settlement and Sale executed by the Heirs of the *Spouses Tunacao* on 11 June 1975,⁵ it appears that the subject parcels were transferred in favor of the Cuizons, in whose names the same were subsequently registered under Transfer Certificate of Title (TCT) Nos. 42755 and 50430.⁶

In a letter dated 17 October 2001, PEZA declined the offer on the ground that, in 1958, the same lots were sold by Eugenia Tunacao in favor of the then Civil Aeronautics Administration (*CAA*), the predecessor of the Bureau of Air Transportation (*BAT*) and the Mactan-Cebu International Airport Authority (*MCIAA*). Maintaining that the titles to the property were not transferred to CAA because OCT Nos. RO-2428 and RO-2429 were reported lost or destroyed, PEZA informed the Cuizons that the deeds of sale executed in favor of CAA were nevertheless registered under Act 3344, as amended.⁷ In their 8 November 2001 reply, the Cuizons, in turn, called PEZA's attention to the fact, among other matters, that BAT was considered to have abandoned its opposition to the reconstitution of said OCTs. On the strength of the opinion issued by the Land Registration Authority (*LRA*) in Consulta No. 2887 that CAA's registration of the sale in its favor produced no legal effect, the sale of the subject parcels to the Cuizons was registered⁸ and served as basis for the issuance of TCT Nos. 42755 and 50430.⁹

In the face of PEZA's insistence on the government's ownership of Lot Nos. 4522 and 4525 as well as its refusal to heed their claim for just compensation for the use of the land, *respondents* Heirs of Cecilio and Moises Cuizon brought the matter to the attention of the Secretary of the Department of Trade and Industries (*DTI*)¹⁰ and the Office of the

³ Cuizons' 19 September 2001 Letter, id. at 76.

⁴ OCT Nos. RO-2428 and RO-2429, id. at 63-69.

⁵ Id. at 65.

⁶ TCT Nos. 42755 and 50430, id. at 73-75.

⁷ PEZA's 17 October 2001 Letter, id. at 77.

⁸ Id. at 78.

⁹ Id. at 93.

¹⁰ Respondents' 1 October 2003 Letter, id. at 83-84.

Ombudsman.¹¹ Stymied by PEZA's 10 April 2006 reply which reiterated its position, respondents eventually wrote a letter dated 20 September 2006, apprising the Office of the President of their claim. Docketed as O.P. Case No. 07-C-081,¹² respondents' letter was treated as an appeal by the Office of the President which, accordingly, directed PEZA to file its Comment.¹³ On 14 October 2008, the Office of the President rendered a decision directing PEZA to recognize respondents' rights over the subject parcels and to negotiate for the just compensation claimed by the latter.¹⁴ PEZA's motion for reconsideration of the decision was denied for lack of merit in the 9 March 2009 Resolution issued in the case.¹⁵

On 1 April 2009, the Office of the Solicitor General (*OSG*), in representation of PEZA, filed with the CA a motion for an extension of fifteen days or until 16 April 2009 within which to file a petition for review under Rule 43.¹⁶ Instead of the OSG, however, it was the lawyers from PEZA's Legal Affairs Group who, on 16 April 2009, filed the Rule 43 petition for review which was docketed before the CA as CA-G.R. SP No. 108085.¹⁷ Served with a copy thereof, respondents moved for the denial of the petition on the ground, among others, that PEZA's lawyers failed to state the material dates¹⁸ and to secure authorization from the OSG as the "principal law officer and legal defender of the government."¹⁹ Directed to do so in the CA's 2 July 2009 Resolution,²⁰ respondents filed their 4 August 2009 Comment reiterating their objections to and praying for the dismissal of the petition.²¹ In its 7 September 2009 reply, however, PEZA asserted, that as members of its Legal Affairs Group, its lawyers not only had legal authority to file the petition but were constrained to do so on account of the "different position taken by the handling OSG lawyers."²²

On 30 October 2009, the CA rendered the herein assailed decision, dismissing PEZA's petition on the ground that its lawyers had no authority to file the same absent showing that they were so authorized under the PEZA Charter, Republic Act No. 7916²³ and that they were duly deputized by the OSG. The CA ruled that, as "the statutory counsel of the government, its

¹¹ Office of the Ombudsman's 5 May 2005 and 13 March 2006 Letters, id. at 86-87; 90.

¹² Respondents' 20 September 2006 Letter, id. at 93-96.

¹³ PEZA's 24 May 2007 Comment, id. at 100-111.

¹⁴ Office of the President's 14 October 2008 Decision, id. at 36-40.

¹⁵ Office of the President's 9 March 2009 Resolution, id. at 41-42.

¹⁶ OSG's 1 April 2009 Motion for Extension of Time, id. at 2-4.

¹⁷ PEZA's 15 April 2009 Petition for Review, id. at 6-34.

¹⁸ Respondents' 28 April 2009 Urgent Ex-Parte Manifestation, id. at 145-147.

¹⁹ Respondents' 30 April 2009 Supplemental Manifestation and Ex-Parte Motion, id. at 148-149.

²⁰ CA's 2 July 2009 Resolution, id. at 170-171.

²¹ Respondents' 4 August 2009 Comment, id. at 187-198.

²² PEZA's 17 September 2009 Reply, id. at 203-219.

²³ *The Special Economic Zone Act of 1995*.

agencies and officials who are in the performance of their official functions, the OSG is the only law firm, save those for the Office of the Government Corporate Counsel, who can represent the government to the exclusion of others.” Brushing aside PEZA’s claim of a stand contrary to that taken by the OSG, the CA likewise enunciated that the OSG is “endowed with broad perspective that spans the legal interest of virtually the entire government officialdom” and “may transcend the parochial concerns of a particular client agency and instead, promote and protect the public weal.”²⁴ Aggrieved, PEZA filed a motion for reconsideration²⁵ which was duly opposed by respondents.²⁶

On 18 January 2010, the OSG filed a manifestation informing the CA that it differed with PEZA only with respect to the remedy to be taken from the 14 October 2008 decision in O.P. Case No. 07-C-081. While it was in accord with the substance of the petition, the OSG maintained that, as opposed to the Rule 43 petition for review filed by PEZA, it believed that a mere administrative clarification was appropriate since the decision rendered by the Office of the President was “not based on a prior decision/order/resolution of an administrative agency in the exercise of quasi-judicial functions.”²⁷ On 4 March 2010, the CA issued its Resolution denying PEZA’s motion for reconsideration for lack of merit,²⁸ hence, this petition.

The Issue

Dissatisfied, the OSG filed the petition at bench,²⁹ seeking the reversal of the CA’s assailed decision and resolution on the following ground:

THE HONORABLE COURT OF APPEALS ERRED WHEN IT DENIED [PEZA’S] PETITION ON THE GROUND THAT THERE WAS NO EXPRESS AUTHORITY FROM THE OFFICE OF THE SOLICITOR GENERAL ALLOWING THE PEZA DIRECTOR GENERAL OR ANY OF ITS LAWYERS TO SIGN THE PETITION OR REPRESENT PEZA BEFORE THE COURT OF APPEALS.³⁰

²⁴ CA *rollo*, CA’s 30 October 2009 Decision, pp. 221-229.

²⁵ PEZA’s 20 November 2009 Motion was for Reconsideration, *id.* at 233-239.

²⁶ Respondents’ 3 December 2009 Opposition, *id.* at 241-246.

²⁷ OSG’s 18 January 2010 Manifestation, *id.* at 260-265.

²⁸ CA’s 4 March 2010 Resolution, *id.* at 276-279.

²⁹ *Rollo*, OSG’s 23 April 2010 Petition, pp. 7-24.

³⁰ *Id.* at 15.

The Court's Ruling

We find the petition bereft of merit.

As correctly ruled by the CA, the OSG, as principal law officer and legal defender of the government,³¹ possesses the unequivocal mandate to appear for and in its behalf in legal proceedings.³² Described as an “independent and autonomous office attached to the Department of Justice” under Sec. 34, Book IV, Title III, Chapter 12, Executive Order 292,³³ the OSG, with the Solicitor General at its helm, is vested with the following powers and functions, among others, to wit:

SECTION 35. Powers and Functions.—The Office of the Solicitor General *shall* represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

X X X X

8) Deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts, and exercise supervision and control over such legal Officers with respect to such cases.” (Italics supplied)

X X X X

Unlike a practicing lawyer who can decline employment, it has been ruled that the Solicitor General cannot refuse to perform his duty to represent the government, its agencies, instrumentalities, officials and agents without a just and valid reason.³⁴ Resolving a challenge against the Solicitor General’s withdrawal of his appearance from cases involving the Philippine

³¹ *Civil Service Commission v. Asensi*, G.R. No. 160657, 30 June 2004, 433 SCRA 342, 346-347.

³² *National Power Corporation v. NLRC*, 339 Phil. 89, 100 (1997).

³³ *Administrative Code of 1987*.

³⁴ *Gumar v. Quirino State College*, G.R. No. 164196, 22 June 2007, 525 SCRA 412, 423.

Commission on Good Government (*PCGG*) in *Gonzales v. Chavez*,³⁵ the Court traced the statutory origins and transformation of the OSG and concluded that the performance of its vested functions and duties is mandatory and compellable by *mandamus*.³⁶ The Court ratiocinated that, “[s]ound management policies require that the government’s approach to legal problems and policies formulated on legal issues be harmonized and coordinated by a specific agency.”³⁷ Finding that that the Solicitor General’s withdrawal of his appearance was “beyond the scope of his authority in the management of a case,” the Court enunciated that the enjoinder of the former’s duty is not an interference with his discretion in handling the case but a directive to prevent the failure of justice.³⁸

Considering that only the Solicitor General can bring or defend actions on behalf of the Republic of the Philippines, the rule is settled that actions filed in the name of the latter not initiated by the OSG are susceptible to summary dismissal.³⁹ Extended to include actions filed in the name of agencies or instrumentalities of the government,⁴⁰ the rule admits of an exception under Section 35 (8) Chapter 12, Title III, Book IV of the Administrative Code which empowers the OSG to “deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases.”⁴¹ In *Civil Service Commission v. Asensi*,⁴² the Court clarified, however, that this exception should be strictly construed and is subject to the following conditions precedent: “First, there must be an express authorization by the Office of the Solicitor General, naming therein the legal officers who are being deputized. Second, the cases must involve the respective offices of the deputized legal officers. And finally, despite such deputization, the OSG should retain supervision and control over such legal officers with respect to the cases.”⁴³

Another exception is also recognized when the OSG takes a position different from that of the agency it is duty bound to represent. As an independent office, after all, the OSG is “not shackled by the cause of its client agency” and has, for its primordial concern, the “best interest of the

³⁵ G.R. No. 97351, 4 February 1992, 205 SCRA 816.

³⁶ Id. at 838.

³⁷ Id. at 846.

³⁸ Id. at 847.

³⁹ *Republic of the Philippines v. Court of Appeals*, G.R. No. 90482, 5 August 1991, 200 SCRA 226, 240, citing *Republic v. Partisala*, G.R. No. 61997, 15 November 1982, 118 SCRA 370, 373.

⁴⁰ *Civil Service Commission v. Asensi*, 488 Phil. 358, 373 (2004), citing *CDA v. Dolefil Agrarian Reform Beneficiaries Cooperative*, 432 Phil. 290, 306 (2002).

⁴¹ *National Power Corporation v. NLRC*, 339 Phil. 89, 100-101 (1997).

⁴² *Civil Service Commission v. Asensi*, supra, note 40.

⁴³ Id. at 373.

government” which, in its perception, can run counter to its client agency’s position in certain instances.⁴⁴ The exception is traced to the following pronouncements handed down by this Court in *Orbos v. Civil Service Commission*,⁴⁵ to wit:

In the discharge of this task, the Solicitor General must see to it that the best interest of the government is upheld within the limits set by law. When confronted with a situation where one government office takes an adverse position against another government agency, as in this case, the Solicitor General should not refrain from performing his duty as the lawyer of the government. It is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position. *In such an instance the government office adversely affected by the position taken by the Solicitor General, if it still believes in the merit of its case, may appear in its own behalf through its legal personnel or representative.*⁴⁶ (Italics supplied)

While the OSG primarily invokes the second of the above-discussed exceptions in seeking the reversal of the CA’s 30 October 2009 Decision, the record shows that it was said office which filed on 1 April 2009 a motion for extension of time within which to file a Rule 43 petition for review on behalf of PEZA. On the last day of the period of extension sought by the OSG, however, it was the lawyers from PEZA’s Legal Affairs Group who, without being deputized to do so, eventually filed the petition for review assailing the 14 October 2008 Decision in O.P. Case No. 07-C-081. Confronted with respondents’ challenge of the unexplained change of representation and prayer for dismissal of the petition, PEZA filed a 7 September 2009 reply, claiming that its lawyers had authority to represent the agency under its organizational chart. Without any elaboration, PEZA also alleged for the first time that the OSG’s non-participation in the case was attributable to the “different position taken by the handling OSG lawyers.”

Given the lack of authorization from the OSG and the absence of a specific provision in PEZA’s Charter authorizing the agency’s representation by lawyers from its Legal Affairs Group, we find that the CA cannot be faulted for rejecting PEZA’s bare assertion of the contrary stand supposedly taken by the handling OSG lawyers. Even in cases of disagreement with its client agency, it cannot be over-emphasized that it is still incumbent upon the OSG to present to the Court the position that will legally uphold the best interests of the Government.⁴⁷ In the *Orbos* case

⁴⁴ *COMELEC v. Judge Quijano-Padilla*, 438 Phil. 72, 87 (2002).

⁴⁵ G.R. No. 92561, 12 September 1990, 189 SCRA 459, 466.

⁴⁶ *Id.*

⁴⁷ *Rubio, Jr. v. Hon. Sto. Tomas*, 262 Phil. 625, 634 (1990).

which the OSG now cites as justification for PEZA's filing of its own petition before the CA, the Court significantly stated that it "appreciates the participation of the Solicitor General in many proceedings and his continued fealty to his assigned task. He should not therefore desist from appearing before this Court even in those cases he finds his opinion inconsistent with the Government or any of its agents he is expected to represent. The Court must be advised of his position just as well."

After signifying its intention to file a Rule 43 petition for review with its filing of a motion for extension of time to file the same, however, the OSG did not advise the CA of its alleged difference in opinion with PEZA. It was only after the CA had rendered the herein assailed 30 October 2009 decision and with PEZA's motion for reconsideration therefrom already pending that, on 18 January 2010, the OSG filed its manifestation to the effect that it actually agreed with the substance of the petition filed by PEZA's lawyers. The OSG belatedly clarified that it was of the belief that a Rule 43 petition for review was not the proper remedy from the 14 October 2008 decision in O.P. Case No. 07-C-081. On the theory that said decision was not "based on a prior decision/order/resolution of an administrative agency in the exercise of quasi-judicial functions," the OSG maintained that a mere administrative clarification was, instead, proper under the circumstances.

Considering that a petition for review under Rule 43 is the prescribed mode for appeal from a decision rendered by the Office of the President, the OSG's stand is, to say the least, incomprehensible. Aside from the fact that respondents' 20 September 2006 letter was clearly treated by said office as an appeal, the record shows that PEZA actively participated in the proceedings conducted in connection therewith by complying with the directive to file its comment and by filing its motion for reconsideration of the 14 October 2008 Decision rendered in the case. While it may be true that PEZA was not exercising a quasi-judicial function in rejecting the Cuizon's offer to sell the subject lots and claim of just compensation, it cannot be gainsaid that the Office of the President was exercising a quasi-judicial function when it rendered its decision. Having initially filed a motion for extension of time within which to file a Rule 43 petition on behalf of PEZA, the least that the OSG could have done was to immediately inform the CA of its supposed change of position for the same to be properly considered by the Court.

In arguing that its filing of the aforesaid manifestation on 18 January 2010 effectively cured the PEZA lawyers' lack of authorization, the OSG clearly espouses a procedural shortcut egregiously contrary to the Court's pronouncement in the *Asensi* case. Granted that the case before the CA

involved PEZA, deputation of its lawyers not only requires express authorization from the OSG but also its *retention of* supervision and control over the lawyer deputized. In *Republic v. Hon. Aniano Desierto*,⁴⁸ this Court admittedly gave due course to the petition filed by the PCGG despite the initial lack of participation by the OSG, on the ground that the latter's subsequent signature as co-counsel in the Consolidated Reply filed in the case effectively cured the defect of authorization. Without belaboring the fact that the OSG's manifestation in this case was filed after the CA already dismissed PEZA's petition, said ruling cannot, however, detract us from the principle that exceptions made to the OSG's mandate should be strictly construed.

To Our mind, the fact that OSG now finds itself in the queer position of defending a mode of appeal it priorly claimed to be improper in the premises only serves to emphasize the importance of strict adherence to its statutory mandate and compliance with the requirements for exceptions thereto. By and of itself, even the OSG's very act of filing of the petition at bench is, in fact, a telling commentary on the PEZA lawyers' lack of authority to represent said agency. Owing to the mandatory character of the exercise of its functions, it stands to reason that the OSG cannot arbitrarily abdicate the same in the course of proceedings involving a client-agency and only insist on the performance thereof in the event that the handling of the case by the lawyers of the client agency results in an adverse decision. As with the allowance of the OSG's withdrawal from a case without justifiable reason, for such an action to remain unchallenged could well signal the laying down of the novel and unprecedented doctrine that the representation by the Solicitor General of the Government enunciated by law is, after all, not mandatory but merely directory.⁴⁹

At any rate, it bears pointing out that the dismissal of PEZA's petition was specifically characterized by the CA to be without prejudice. Contrasted from a dismissal with prejudice which disallows and bars the filing of a complaint or initiatory pleading,⁵⁰ a dismissal without prejudice - while by no means any less final⁵¹ - plainly indicates that the re-filing of the petition is not barred.⁵² While it is true that the petition for review under Rule 43 is required to be filed "within fifteen (15) days from notice of the award, judgment, final order or resolution x x x or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance

⁴⁸ 438 Phil. 201 (2002).

⁴⁹ *Gonzales v. Chavez*, supra, note 35.

⁵⁰ *Strongworld Construction Corporation v. Hon. N.C. Perello*, 528 Phil. 1080, 1093 (2006).

⁵¹ *Olympia International, Inc. v. Court of Appeals*, 259 Phil. 841, 849 (1989).


⁵² *Air Ads, Incorporated v. Tagum Agricultural Development Corporation (TADECO)*, G.R. No. 160736, 23 March 2011, 646 SCRA 184, 195.

with the governing law of the court or agency *a quo*,”⁵³ we find that the OSG, in the interest of substantial justice, may be granted a fresh period of fifteen (15) days within which to re-file the petition before the CA. In the exercise of its equity jurisdiction, this Court may, after all, relax the stringent application of the technical rules where, as here, strong considerations of substantial justice are manifest.⁵⁴ We find this *pro hac vice* pronouncement necessary if only to emphasize the fact that the OSG’s performance of its functions is mandatory.

In fine, the Solicitor General is the government officer mandated to “represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.”⁵⁵ Absent showing of authority under the PEZA Charter and or proper deputation from the OSG, we find that the petition for review filed by the lawyers from PEZA’s Legal Affairs Group was correctly dismissed, albeit without prejudice, by the CA. The fact that the OSG and PEZA differed with respect to the choice of remedy to be pursued in the premises neither automatically excused the former’s non-involvement in the case nor authorize the latter to pursue the same on its own. Even if it differs with its client-agency anent the substance of case or the procedure to be taken with respect thereto, the OSG is nevertheless duty bound to present its position to the Court as an officer thereof and in compliance with its ineluctable mandate.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit. The OSG is given a fresh period of fifteen (15) days from notice within which to file its petition before the CA.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

⁵³ Section 4, Rule 43.

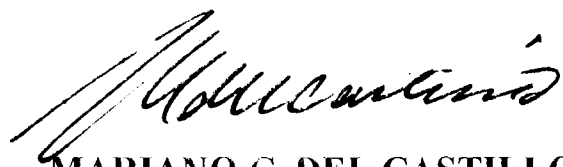
⁵⁴ *Serrano v. Court of Appeals*, 223 Phil. 391, 396 (1985).


⁵⁵ Section 35 (1), Book IV, Title III, Chapter 12, Administrative Code of 1987.

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice

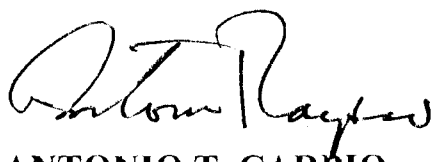

ARTURO D. BRION
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


ESTELA M. BERLAS-BERNABE
Associate Justice

ATTESTATION

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


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice