

## SECOND DIVISION

[ G.R. No. 191531, March 06, 2013 ]

**REPUBLIC OF THE PHILIPPINES REPRESENTED BY PHILIPPINE  
ECONOMIC ZONE AUTHORITY, PETITIONER, VS. HEIRS OF  
CECILIO AND MOISES CUIZON, RESPONDENTS.**

### DECISION

**PEREZ, J.:**

Assailed in this petition for review filed under Rule 45 of the *Rules of Court* is the Decision<sup>[1]</sup> 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.<sup>[2]</sup>

#### *The Facts*

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.<sup>[3]</sup> 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.<sup>[4]</sup> By means of a Deed of Extrajudicial Settlement and Sale executed by the Heirs of the Spouses Tunacao on 11 June 1975,<sup>[5]</sup> 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.<sup>[6]</sup>

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.<sup>[7]</sup> 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 registered<sup>[8]</sup> and served as basis for the issuance of TCT Nos. 42755 and 50430.<sup>[9]</sup>

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)<sup>[10]</sup> and the Office of the Ombudsman.<sup>[11]</sup> 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,<sup>[12]</sup> respondents' letter was treated as an appeal by the Office of the President which, accordingly, directed PEZA to file its Comment.<sup>[13]</sup> 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.<sup>[14]</sup> PEZA's motion for reconsideration of the decision was denied for lack of merit in the 9 March 2009 Resolution issued in the case.<sup>[15]</sup>

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.<sup>[16]</sup> 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.<sup>[17]</sup> 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 dates<sup>[18]</sup> and to secure authorization from the OSG as the "principal law officer and legal defender of the government."<sup>[19]</sup> Directed to do so in the CA's 2 July 2009 Resolution,<sup>[20]</sup> respondents filed their 4 August 2009 Comment reiterating their objections to and praying for the dismissal of the petition.<sup>[21]</sup> 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."<sup>[22]</sup>

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. 7916<sup>[23]</sup> and that they were duly deputized by the OSG. The CA ruled that, as "the statutory counsel of the government, its 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."<sup>[24]</sup> Aggrieved, PEZA filed a motion for reconsideration<sup>[25]</sup> which was duly opposed by respondents.<sup>[26]</sup>

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.”<sup>[27]</sup> On 4 March 2010, the CA issued its Resolution denying PEZA’s motion for reconsideration for lack of merit,<sup>[28]</sup> hence, this petition.

### ***The Issue***

Dissatisfied, the OSG filed the petition at bench,<sup>[29]</sup> 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.**<sup>[30]</sup>

### ***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,<sup>[31]</sup> possesses the unequivocal mandate to appear for and in its behalf in legal proceedings.<sup>[32]</sup> 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,<sup>[33]</sup> 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.<sup>[34]</sup> Resolving a challenge against the Solicitor General’s withdrawal of his appearance from cases involving the Philippine Commission on Good Government (**PCGG**) in *Gonzales v. Chavez*,<sup>[35]</sup> 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.<sup>[36]</sup> 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.”<sup>[37]</sup> Finding 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.<sup>[38]</sup>

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.<sup>[39]</sup> Extended to include actions filed in the name of agencies or instrumentalities of the government,<sup>[40]</sup> 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.”<sup>[41]</sup> In *Civil Service Commission v. Asensi*,<sup>[42]</sup> 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.”<sup>[43]</sup>

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 government” which, in its perception, can run counter to its client agency’s position in certain instances.<sup>[44]</sup> The exception is traced to the following pronouncements handed down by this Court in *Orbos v. Civil Service Commission*,<sup>[45]</sup> 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.*<sup>[46]</sup>  
(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.<sup>[47]</sup> In the *Orbos* case 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