

## EN BANC

[ A.C. No. 6332, April 17, 2012 ]

**IN RE: SUPREME COURT RESOLUTION DATED 28 APRIL 2003 IN  
G.R. NOS. 145817 AND 145822**

### DECISION

#### PER CURIAM:

#### Factual Background

This administrative case originated when respondent Atty. Magdaleno M. Peña filed an Urgent Motion to Inhibit and to Resolve Respondent's Urgent Omnibus Motion dated 30 January 2003<sup>[1]</sup> (the subject Motion to Inhibit) in two consolidated petitions involving respondent that were pending before the Court.<sup>[2]</sup> This motion is directed against the then ponente of the consolidated petitions, Justice Antonio T. Carpio, and reads in part:

PRIVATE RESPONDENT MAGDALENO M. PEÑA, pro se, respectfully states:

1. Despite all the obstacles respondent has had to hurdle in his quest for justice against Urban Bank and its officials, he has remained steadfast in his belief that ultimately, he will be vindicated and the wrongdoers will get their just deserts [sic]. **What respondent is about to relate however has, with all due respect, shaken his faith in the highest Court of the land. If an anomaly as atrocious as this can happen even in the august halls of the Supreme Court, one can only wonder if there is still any hope for our justice system.**

2. Private respondent wishes to make clear that he is not making a sweeping accusation against all the members of this Honorable Court. He cannot however remain tight-lipped in the face of the overwhelming evidence that has come to his knowledge regarding the actuation of the *ponente* of this Honorable Division.

3. In the evening of 19 November 2002, private respondent received a call from the counsel for petitioners, Atty. Manuel R. Singson (through his cell phone number 09189137383) who very excitedly bragged that they had been able to secure an order from this Honorable Court suspending the redemption period and the consolidation of ownership over the Urban Bank properties sold during the execution sale. Private respondent was aghast because by them, more than two weeks had lapsed since the redemption period on the various properties had expired. At that juncture in fact, Certificates of Final Sale had already been issued to the

purchasers of the properties. The only step that had to be accomplished was the ministerial act of issuance of new titles in favor of the purchasers.

4. Private respondent composed himself and tried to recall if there was any pending incident with this Honorable Court regarding the suspension of the redemption period but he could not remember any. **In an effort to hide his discomfort, respondent teased Atty. Singson about bribing the ponente to get such an order.** Much to his surprise, Atty. Singson did not even bother to deny and in fact explained that they obviously had to exert extra effort because they could not afford to lose the properties involved (consisting mainly of almost all the units in the Urban Bank Plaza in Makati City) as it might again cause the bank (now Export Industry Bank) to close down.

5. Since private respondent himself had not received a copy of the order that Atty. Singson was talking about, he asked Atty. Singson to fax him the "advance" copy that they had received. The faxed "advance" copy that Atty. Singson provided him bore the fax number and name of Atty. Singson's law office. A copy thereof is hereto attached as Annex "A".

6. Private respondent could not believe what he read. It appeared that a supposed Motion for Clarification was filed by petitioners through Atty. Singson dated 6 August 2002, but he was never furnished a copy thereof. He asked a messenger to immediately secure a copy of the motion and thereafter confirmed that he was not furnished a copy. His supposed copy as indicated in the last page of the motion was sent to the Abello Concepcion Regala and Cruz (ACCRA) Law Offices. ACCRA, however, was never respondent's counsel and was in fact the counsel of some of the petitioners. Respondent's copy, in other words, was sent to his opponents.

7. The Motion for Clarification was thus resolved without even giving respondent an opportunity to comment on the same. In contrast, respondent's Motion for Reconsideration of the Resolution dated 19 November 2001 had been pending for almost a year and yet petitioners' motions for extension to file comment thereon [were] being granted left and right.

8. In view of these circumstances, private respondent filed on 10 December 2002, an Urgent Omnibus Motion (to Expunge Motion for Clarification and Recall of the 13 November 2002 Resolution). He filed a Supplement to the said motion on 20 December 2002.

9. While private respondent was waiting for petitioners to respond to his motion, he received sometime last week two documents that confirmed his worst fears. The two documents indicate that this Honorable Court has not actually granted petitioners' Motion for Clarification. They indicate that **the supposed 13 November 2002 Resolution of this Honorable Court which Atty. Singson had bragged about WAS A FALSIFIED DOCUMENT!**

10. What private respondent anonymously received were **two copies of the official Agenda of the First Division of this Honorable Court for 13 November 2002**, the date when the questioned Resolution was supposedly issued. In both copies (apparently secured from the office of two different members of the Division, one of which is the copy of the ponente himself), **it is clearly indicated that the members of the Division had agreed that petitioners' Motion for Clarification and Urgent Motion to Resolve were merely NOTED and NOT GRANTED contrary to what was stated in the 13 November 2002 Resolution.** This makes the 13 November 2002 Resolution (at least the version that was released to the parties) a falsified document because it makes it appear that **a Resolution was issued by the First Division granting petitioners' Motion for Clarification when in fact no such Resolution exists. The real Resolution arrived at by the First Division which can be gleaned from the Agenda merely NOTED said motion.** Copies of the two Agenda are hereto attached as Annexes "B" and "C."

11. At this point, private respondent could not help but conclude that this anomaly was confirmatory of what Atty. Singson was bragging to him about. The clear and undeniable fact is **the Honorable members of this Division agreed that petitioners' Motion for Clarification would only be NOTED but the ponente responsible for the 13 November 2002 Resolution misrepresented that the same was GRANTED.**

12. Respondent is not just speculating here. **He is CERTAIN that the ponente has a special interest in this case.** Recently, he also found out that the ponente made a special request to bring this case along with him when he transferred from the Third Division to the First Division. Respondent has a copy of the Resolution of this Honorable Court granting such request (hereto attached as Annex "D"). Indeed, this circumstance, considered with all the foregoing circumstance, ineluctably demonstrates that a major anomaly has occurred here.

13. In view of these, private respondent is compelled to move for the inhibition of the ponente from this case. This matter should be thoroughly investigated and respondent is now carefully considering his legal options for redress. It has taken him seven years to seek vindication of his rights against petitioners, he is not about to relent at this point. In the meantime, he can longer expect a fair and impartial resolution of this case if the ponente does not inhibit himself.

14. This Honorable Court has time and again emphasized the importance of impartiality and the appearance of impartiality on the part of judges and justices. The ponente will do well to heed such pronouncements.

15. Finally, it is has now become incumbent upon this Honorable Court to clarify its real position on the 19 November 2001 Resolution. It is most respectfully submitted that in order to obviate any further confusion on the matter, respondent's Urgent Omnibus Motion dated 09 December 2002 (as well as the Supplement dated 19 November 2002) should be

resolved and this Honorable Court should confirm that the stay order contained in the 19 November 2001 Resolution does not cover properties already sold on execution. xxx (Emphasis supplied; citations omitted.)

In support of his claims to inhibit the *ponente*, Atty. Peña attached to the subject Motion to Inhibit **two copies of the official Agenda for 13 November 2002 of the First Division of this Court**, which he claimed to have anonymously received through the mail.<sup>[3]</sup> He also attached a copy of the Court's **internal Resolution** regarding the transfer of the case from the Third Division to the First Division, upon the request of Justice Carpio, to establish the latter's alleged special interest in the case.<sup>[4]</sup>

In response, the Court issued a resolution on 17 February 2003 to require Atty. Peña and Atty. Manuel R. Singson, counsel of Urban Bank in the consolidated petitions, to appear before the Court on 03 March 2003 for an Executive Session.<sup>[5]</sup>

The reason for the required appearance of the two lawyers in the Executive Session is explained in the Court's Resolution dated 03 March 2003.<sup>[6]</sup> It states:

The executive session started at 10:20 a.m. Chief Justice Hilario G. Davide, Jr. formally opened **the executive session and then requested Associate Justice Jose C. Vitug to act as chair. Justice Vitug stated that the executive session was called because the Court is perturbed by some statements made by respondent Atty. Magdaleno Peña involving strictly confidential matters which are purely internal to the Court and which the latter cites as grounds in his "Urgent Motion to Inhibit and to Resolve Respondent's Urgent Omnibus Motion."**

Respondent/movant Atty. Magdaleno Peña and counsel for petitioner Atty. Manuel R. Singson attended the session.

**The matters under inquiry were how respondent was able to obtain copies of the documents he used as annexes in his motion to inhibit, and whether the annexes are authentic.**

The court also clarified that these matters were to be taken as entirely different and apart from the merits of the main case.

Justice Vitug called the attention of respondent to the three (3) annexes attached to the motion to inhibit, Annexes "B", "C" and "D," **questioned how the latter was able to secure copies of such documents which are confidential to the Court** and for the sole use of the Office of the Clerk of Court, First Division and the Justices concerned.

Annex "B" is alleged to be a photocopy of the supplemental agenda of the First Division for November 13, 2002 (pages 61-62), with an entry in handwriting reading "10 AC" on the left side and what appear to be marginal notes on the right side of both pages. Annex "C" is alleged to be a photocopy of the same supplemental agenda of the First Division for

November 13, 2002, with marginal notes on the right side of pages 61-62. Annex "D" appears to be a photocopy of the resolution dated September 4, 2002 of the Third Division transferring the instant case to the First Division (an internal resolution).

Atty. Peña was made to understand that all his statements taken during this executive session were deemed under oath. Atty. Peña acceded thereto.

Atty. Peña was asked whether he knows any personnel of the Court who could possibly be the source. Atty. Peña replied in the negative and added that he obtained those documents contained in the annexes through ordinary mail addressed at his residence in Pulupandan, Negros Occidental, sometime in the second or third week of January 2003; but failed to give the exact date of his receipt. He said Annexes "B" and "C" were contained in one envelope while Annex "D" was mailed in a separate envelope. He did not bring the envelopes but promised the Court he would do his best to locate them. On questions by the Chief Justice, Atty. Peña admitted that the envelopes may no longer be found. He was unable to respond to the observation of the Chief Justice that the Court would be in no position to know whether the envelopes he would later produce would be the same envelopes he allegedly received. Atty. Peña further admitted that his office did not stamp "Received" on the envelopes and the contents thereof; neither did he have them recorded in a log book.

When asked by the Chief Justice why he relied on those annexes as grounds for his motion to inhibit when the same were coursed only through ordinary mail under unusual circumstances and that respondent did not even bother to take note of the postal marks nor record the same in a log book, **Atty. Peña answered that he was 100% certain that those documents are authentic and he assumed that they came from Manila because the Supreme Court is in Manila.**

At this juncture, Atty. Peña was reminded that since he assured the authenticity of Annexes "B", "C" and "D", he should be willing to accept all the consequences if it turns out that there are no such copies in the Supreme Court or if said annexes turn out to be forged. **Atty. Peña manifested that he was willing to accept the consequences.**

When further asked by the Court whether he had seen the original that made him conclude that those photocopies are authentic, he replied in the negative, but **he believed that they are official documents of the Court inasmuch as he also received a copy of another resolution issued by the Court when the same was faxed to him by Atty. Singson, counsel for petitioner.**

Atty. Peña expressed his disappointment upon receiving the resolution because he was not even furnished with a copy of petitioner's motion for clarification, which was resolved. He found out that his copy was addressed to Abello Concepcion Regala and Cruz Law Offices, which was never respondent's counsel and was in fact the counsel of some of the