

REPUBLIC OF THE PHILIPPINES
SUPREME COURT OF THE PHILIPPINES
M A N I L A

DON ESTEBAN BENITEZ TALLANO
AND DON GREGORIO MADRIGAL
ACOP FOUNDATION INC., represented
by its duly authorized President
CENON MARCOS,

Petitioner

SPECIAL CIVIL ACTION No. 171913
FOR: CERTIORARI WITH
PRAYER FOR TEMPORARY
RESTRAINING ORDER AND/OR
PRELIMINARY INJUNCTION

-versus-

MOST HONORABLE COURT OF APPEALS,
and
REPUBLIC OF THE PHILIPPINES
Respondents;

X-----X

**VERIFIED PETITION FOR CERTIORARI
WITH PRAYER FOR THE ISSUANCE OF A TEMPORARY
RESTRAINING ORDER AND/OR INJUNCTION**

COMES now the herein PETITIONER, by and through the undersigned counsel and before this MOST HONORABLE COURT, respectfully submits this verified PETITIONER FOR CERTIORARI under Rule 65 of the REVISED Rules of Court, respectfully alleging with certainty the following legal grounds, facts, jurisprudence and circumstances in support there.

**I. LEGAL PERSONALITY AND
CAPACITY OF PETITIONER**

1. Petitioner is a duly established non- stock, non-profit foundation organized; and existing under the laws of the Philippines, duly registered with the Securities and Exchange Commission (S.E.C.) with Registration Number CN 200322944 issued on October 14,

2003, as amended, certified true copy of its Article of Incorporation and its subsequent Amendment herewith attached and marked as **ANNEX ‘A’** and **ANNEX ‘B’** HEREOF;

2. PETITIONER-FOUNDATION was specifically organized and established by virtue of and upon the strength of a COURT ORDER issued by the Regional Trial Court of Pasay City Branch 111 (formerly CFI-Rizal Branch XXVIII) in LRC/CIVIL CASE No. 3957-P, entitled “Wilson Orfinada et al., vs. Republic of the Philippines, Macario Rodriguez et al.,” with the REGIONAL TRIAL COURT OF PASAY CITY, Branch No. 111 as public respondent whose DECISION in the said case is being sought to be annulled before the Most Honorable Court of Appeals allegedly pursuant to Section 9 of the Judiciary Reorganization Act of 1980 – B.P. BLG. NO. 129 which gives the Intermediate Appellate Court exclusive jurisdiction over actions for annulment of judgment of regional trial courts, the highlights/dispositive portion of said court’s Clarificatory Order are as follows;

“To pursue the objectives of the Landowners to preserve the estate for and in the interest of the Philippine farmers, poor families and their children either Christian or Muslim especially those who become victims of martial law, and to uplift economic, social and health condition of those families living under poverty line by providing employment with the use of the proceeds of the sale of the estate....”

(emphasis supplied), a certified true copy of said Court Order herewith attached and marked as **ANNEX ‘C’** hereto;

3. PETITIONER-FOUNDATION, in the mind of the court who foresaw the vast and tremendous work that has to be done as well as the tremendous value of the assets of the two deceased “dons” deemed it best to lodge the conservation, preservation and administration of the vast assets to a organized group of men of unquestionable integrity rather than continuing it in the hands of a single natural person who not only has a limited life-span but whose avowed and personal interest is simply laying a claim to his alleged share of the inheritance; a portion of the Clarificatory Decision where the Foundation is tasked to conserve and perform gigantic tasks for the millions and millions of Filipino masses who are beneficiaries of the assets of the two deceased “DONS” as above-cited;

4. PETITIONER/FOUNDATION as incident to its said purpose or purposes is tasked in its Articles of Incorporation with;

“To preserve, protect, recover, manage and administer all assets of Don Esteban Benitez Tallano and Don Gregorio Madrigal Acop, embraced in said LRC/CC No. 3957-P, pursuant to the Clarificatory Decision/Order of January 19, 1976 and November 04, 1972, and subsequent court orders, decisions and writ of execution related thereto....” (see Articles of Incorporation, ANNEX A hereof)

5. Petitioner-Foundation is herein represented in this case in filing, prosecuting and entering into any settlement by its duly authorized PRESIDENT, CENON C. MARCOS through and by virtue of a Board Resolution authorizing him to act as such as certified by the Corporate Secretary Certificate, herewith attached and marked as ANNEX “D” hereof;

6. Petitioner-Foundation can be served with notices, orders and other processes of this Most Honorable Court at # 8B San Bernardo St., San Joaquin, Pasig City, MM.

II. LEGAL PERSONALITY AND CAPACITY OF THE RESPONDENTS

7. Respondent MOST HONORABLE COURT OF APPEALS holds office at the Court of Appeals Compound, Orosa St., Ermita, Manila where it can be served with summons, orders, notices, and other processes of this MOST HONORABLE COURT while Respondent-REPUBLIC OF THE PHILIPPINES together with its government instrumentalities is the interested party-litigant and may be served with summons, notices, orders, and other legal processes of this MOST HONORABLE COURT at their officially designated LEGAL COUNSEL which is the Office of the Solicitor General with address at OSG Bldg., 134 Amorsolo St., Legazpi Village, Makati City, MM.

III. ANTECEDENT FACTS

8. That sometime 1997, the Office of the Solicitor General for and in behalf of the Republic of the Philippines filed with Most Honorable COURT OF APPEALS a Petition seeking the annulment of the judgment in LRC/CIVIL CASE No. 3957-P entitled “Wilson Orfinada et al., versus Republic of the Philippines, Macario Rodriguez et al., “rendered by the Regional Trial Court of Pasay City, Branch No. 111 then presided by the then HONORABLE ERNESTO A . REYES, the instant case was docketed under CA-G.R. SP NO. 70014, making the above-stated Regional Trial Court the respondent together with the winning parties thereto, namely the original intervenors therein namely: DON ESTEBAN BENITEZ TALLANO and DON GREGORIO MADRIGAL ACOP, copy of the said PETITION herewith attached and marked as ANNEX “E” hereof;

9. The alleged ground for the filing is the existence of an alleged actual fraud which basically is a claim **that the OSG has not participated in the lower court’s proceedings** except from 1997 onwards – a matter that was concocted just so to provide a “legal ground” when in truth and in fact, as early as 1960, Solicitor General HONORABLE FELIX MAKASIAR and Asst. Solicitor General TADIAR had been religiously and competently representing the Republic of the Philippines and its involved instrumentalities and whose participation eventually led to a COMPROMISE AGREEMENT that served as the basis in the issuance of the DECISION WITH COMPROMISE AGREEMENT by the said Regional Trial Court of Pasay City BRANCH 111, copy of said Decision with Compromise Agreement herewith attached and marked as ANNEX “F” hereof;

10. Sad to say in spite of many well-grounded pleadings questionings the jurisdiction of the Most Honorable COURT OF APPEALS on the basis of ESTOPPEL, RES

JUDICATA, or LACK OF ACTUAL FRAUD, the said High Court at first issued a Temporary Restraining Order which eventually became a PRELIMINARY INJUNCTION enjoining the usage of certain judicially reconstituted case documents and a general stoppage of proceedings in the lower court, copy of said Injunctive Order herewith attached and marked as ANNEX “G” hereof;

IV. PRE-TRIAL – PRESENT STATUS OF CASE

11. The present status of this instant case-C.A. – G.R. SP No. 70014 – pending with the Most Honorable COURT OF APPEALS is immediately after the submission of PRE-TRIAL BRIEFS of the parties when the herein PETITIONER filed for leave of court to intervene in said case through its MOTION TO INTERVENE on April 26, 2005, copy of said Motion to Intervene herewith attached and marked as ANNEX “H” hereof; the highlights of the legal and factual grounds relied thereon are herein briefly stated, thus:

“That the herein Foundation has been established and organized solely pursuant to the Court Order of Regional Trial Court BRANCH 111 and its registered purposes as can be gleaned from its Articles of Incorporation are likewise strictly pursuant to the said Court’s Orders.”

12. Obviously, the FOUNDATION therefore has a legal and vital INTEREST and seriously CONCERNED in the outcome of the annulment of judgment pending before the Most Honorable COURT OF APPEALS, totally separate and distinct from the individual personality of the judicially appointed administrator.

13. Additional, paragraphs 4, 5 and 6 of the Motion to Intervene provide:

“4. That the herein Intervenor-Foundation has a vested and substantial interest both in the real estate and pecuniary values herein subject matter of this instant case and that the same would be seriously and gravely affected and prejudiced by whatever outcome this case may result to whether in favor the Petitioner Republic of the Philippines or that of the individual respondents;”

“5 That to avoid the proliferation of and multiplicity of suits, the herein Intervenor-Foundation in view of and in consideration of the above-cited premises, is a necessary party to this case, and without its being privy hereto, the instant case may only result to an incomplete and indeterminate outcome that would be inviting more suits and greater expense on the part of all the parties concerned;”

“6 That this instant case has just been initially began and the admission of Intervenor-Foundation as a party hereto would best serve the interest of

justice and fair play without in any way impairing any substantive or procedural rights of any of the herein parties;”

V. DENIAL OF MOTION TO INTERVENE AND SUBSEQUENT MOTION FOR RECONSIDERATION

14. That on January 6, 2006, the Most Honorable COURT OF APPEALS denied Petitioner-Foundation’s MOTION TO INTERVENE on the finding that the same is without merit, apparently on the sole ground that an opposition filed by respondent TALLANO-ACOP ESTATE argues that the “INTEREST, IF ANY OF THE Foundation can be protected by Julian M. Tallano,” among other matters, copy of said RESOLUTION is herewith attached and marked as **ANNEX “I”** hereof;

15. Check if the alleged “TALLANO-ACOP ESTATE” who opposed the MOVANT-FOUNDATION’S Motion to Intervene has FURNISHED OR SERVED a copy of its alleged opposition to the Movant-Foundation (from the subsequently obtained copy of said opposition, the oppositor alleged “TALLANO-ACOP ESTATE,” OBVIOUSLY did not furnished said copy to Movant), thus, totally denying and negating an opportunity for the Movant to comment or reply on said opposition, a fundamental procedural flaw or defect that amounts to violation of substantive procedural due process.

16. Moreover, the same Most Honorable Court of Appeals also failed to examine the records of this case before it which would have revealed quite clearly that there is NO PARTY LITIGANT in this case by the title or name of “TALLANO-ACOP ESTATE.”

17. Thus, the Most Honorable COURT OF APPEALS gravely erred and committed grave abuse of discretion in denying the MOVANT-FOUNDATION’S Motion to Intervene.

18. NONETHELESS, in compliance with the Revised Rules of Court, Movant-Foundation filed its MOTION FOR RECONSIDERATION on February 6, 2005, copy of which is herewith attached and marked as **ANNEX “J,”** pointing the following:

- a. That Julian M. Tallano has shown at several occasions his inability, gross negligence or incompetence to preserve, protect, conserve and manage the vast estates and pecuniary assets of DON ESTEBAN BENITEZ TALLANO and DON GREGORIO MADRIGAL ACOP, citing therein specific instances where he has demonstrated his gross negligence and indicating therein with documentary proof the ACTIONS in these regards taken by the Movant-Foundation;
- b. Pointing out the procedural lapse above-cited wherein a certain ATTY. PUNO has misled the Most Honorable COURT OF APPEALS, among other matters;

PETITION FOR CERTIORARI

I, CENON C. MARCOS, of legal age, Filipino, married and with address at #8-B San Bernardo Street, San Joaquin, Pasig City, after having been sworn to according to law, do hereby depose and state:

1. That I am acting as the duly authorized officer of the DON ESTEBAN BENITEZ TALLANO AND DON GREGORIO MADRIGAL ACOP FOUNDATION, INC. to represent it in filing and in prosecuting this case through a Board of Trustees Resolution, copy herewith attached;
2. That I have caused the preparation of the said Verified Petition and know of my own knowledge and based on available documents that all the allegations therein are true and correct;
3. That I have not commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different division thereof, or any other tribunal or agency; and if there is such other action or proceeding, I shall state the status of the same, and if I should thereof learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, I undertake to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

IN WITNESS THEREOF, I have hereunto affixed my signature this 30th day of March, 2006 at Pasig City, Metro Manila, Philippines.

(Sgd) CENON C. MARCOS
Petitioner

SUBSCRIBED AND SWORN to before me this 30th day of March 2006 at Mandaluyong City, Cenon C. Marcos exhibiting to me his Community Tax Certificate No. CC1200508116238 issued at Pasig City on January 5, 2006.

MY HAND AND SEAL

(Sgd) ATTY. VIRGILIO A. GARINGO
NOTARY PUBLIC
PTR No.03396877 MARCH 17, 2005
445165 MANDALUYONG CITY
Until December 31,2006

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**COPY FURNISHED BY PERSONAL SERVICE
(see ATTACHED AFFIDAVIT OF SERVICE)**

1. The HONORABLE CLERK OF COURT
COURT OF APPEALS
CA Compound, Orosa St., Ermita, Manila
(ATTN: ATTY. CERVANTES,
Special Former Second Division)

2. The HONORABLE SOLICITOR GENERAL
134 Amorsolo St., Legaszi Village
Makati City
(ATTN. HON. SOLICITOR LARAGAN)