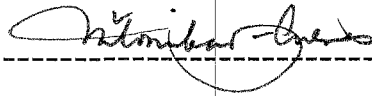


EN BANC

G.R. No. 241348 - LORETO CAÑAVERAS and OFELIA B. CAÑAVERAS, *petitioner* v. JUDGE JOCELYN P. GAMBOA-DELOS SANTOS and RODEL MARIANO, *respondents*.

Promulgated:  
July 5, 2022



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CONCURRING OPINION

LEONEN, J.:

I concur in the result of the *ponencia* of my colleague, Associate Justice Henri Jean Paul B. Inting. I submit this Opinion to further clarify my position.

The Petition<sup>1</sup> filed before this Court arose from a criminal case for falsification of public documents under Article 172, in relation to Article 171, of the Revised Penal Code, filed against Spouses Loreto Cañaveras and Ofelia B. Cañaveras (Cañaveras Spouses) before the Municipal Trial Court in Cities, San Fernando, Pampanga, presided by Judge Jocelyn P. Gamboa-Delos Santos (Judge Gamboa-Delos Santos).<sup>2</sup> The Cañaveras Spouses were represented by Atty. Vicente Dante P. Adan (Atty. Adan). Among the witnesses for the prosecution are Nenita Mariano (Nenita) and Rodel G. Mariano (Rodel).<sup>3</sup>

Based on the records, Rodel alleged that his parents, Spouses Felipe and Nenita Mariano (Mariano Spouses) owned a piece of registered land (subject lot), the title over which was transferred from the Mariano Spouses to Spouses Abel and Maria Luz Landayan and the Cañaveras Spouses. At the time of transfer, however, Rodel claimed that Felipe had already died and therefore could not have signed the Deed of Absolute Sale covering the subject property. Rodel added that the signature on the Deed of Absolute Sale is allegedly not Nenita's.<sup>4</sup>

The trial dates were scheduled, as follows:<sup>5</sup>

For the Prosecution  
April 4, 2018

For the Defense  
June 6, 2018

<sup>1</sup> *Rollo*, pp. 3–13.

<sup>2</sup> *Ponencia*, p. 2

<sup>3</sup> *Rollo*, p. 18.

<sup>4</sup> *Id.* at 52.

<sup>5</sup> *Id.* at 86–87.



May 2, 2018  
May 23, 2018

June 13, 2018  
June 20, 2018  
August 8, 2018  
August 22, 2018

The cross-examination of Nenita was scheduled on May 23, 2018, while the presentation of Rodel was scheduled on June 6, 2018.<sup>6</sup>

On May 23, 2018, Loreto manifested that their counsel, Atty. Adan, could not attend the hearing because the latter was indisposed.<sup>7</sup> The prosecution manifested that under the Revised Guidelines for Continuous Trial of Criminal Cases (Revised Guidelines), a party may only seek a postponement of hearing on the ground of physical inability of a witness to appear in court.<sup>8</sup> Thus, in a May 23, 2018 Order issued in open court, Judge Gamboa-Delos Santos construed Atty. Adan's absence "as waiver on the part of the defense to cross-examine" Nenita.<sup>9</sup>

On June 6, 2018, through a Manifestation with Motion to Lift Order Waiving the Right to Cross-Examine Nenita Mariano,<sup>10</sup> Atty. Adan moved to reconsider the May 23, 2018 Order on the ground that he experienced eye pains and discharge, as well as headache, which did not subside despite medication. Upon medical consultation on the same day, Atty. Adan found out that he has conjunctival cysts (cysts inside the eyelids), trichiasis (ingrowth or introversion of the eyelashes), and dry eye syndrome which required cyst excision.<sup>11</sup> He presented a medical certificate<sup>12</sup> issued by Dr. Allan Ashely P. Bucu (Dr. Bucu) of the Manila Doctors Hospital to support his claims.

The prosecution's counsels objected to Atty. Adan's motion because: (a) Atty. Adan's medical condition was not among the grounds for postponement allowed by the Revised Guidelines which also requires proof of payment the postponement fee; and (b) Atty. Adan's medical certificate was not notarized.<sup>13</sup>

In a June 6, 2018 Order, Judge Gamboa-Delos Santos denied Atty. Adan's motion for reconsideration of the May 23, 2018 Order.<sup>14</sup>

Trial then proceeded. Rodel was called to the stand but Atty. Adan objected to his presentation as witness, claiming that his Complaint-

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<sup>6</sup> Id. at 18.

<sup>7</sup> Id.

<sup>8</sup> Id. at 22.

<sup>9</sup> Id. at 18.

<sup>10</sup> Id. at 58–60.

<sup>11</sup> Id. at 59.

<sup>12</sup> Id. at 55–57.

<sup>13</sup> Id. at 15–16.

<sup>14</sup> Id. *Ponencia*, p. 3.

Affidavit<sup>15</sup> does not conform to the Judicial Affidavit Rule.<sup>16</sup> Notwithstanding Atty. Adan's contention that the Revised Guidelines is inapplicable considering the existence of a private prosecutor, Judge Gamboa-Delos Santos ruled that pursuant to the Revised Guidelines, counsels "can opt to utilize the Affidavit filed before the Office of the City Prosecutor."<sup>17</sup>

After the conclusion of Rodel's testimony, Atty. Adan sought to cross-examine Nenita because her testimony and judicial affidavit touched on the sale of the subject lot.<sup>18</sup> While the Court acknowledged Atty. Adan's medical condition during the May 23, 2018 hearing, it effectively ruled that: (1) the medical certificate should have been notarized, and (2) allowing the Cañaveras Spouses to cross-examine Nenita despite Atty. Adan's absence would violate the rules.<sup>19</sup>

It is in this context that petitioners Loreto and Ofelia Cañaveras contend that respondent Judge Jocelyn P. Gamboa-Delos Santos committed grave abuse of discretion when she construed Atty. Adan's absence as waiver on the part of petitioners to cross-examine Nenita and when she allowed the prosecution to utilize Rodel's Complaint-Affidavit and to present him as a witness despite the lack of a judicial affidavit.

Considering that what is at stake is the liberty and the right to confrontation of an accused, this Court may disregard the attending procedural lapses so that the case may be resolved on its merits and that the broader interests of justice will be better served.<sup>20</sup> Thus, I agree that direct resort to this Court may be allowed in this case.<sup>21</sup>

As pointed out by Associate Justice Inting:

The right of petitioners to cross-examine Nenita, being a basic and fundamental right, should be seen as paramount. While the State which represents the people who may have been wronged by a crime also has the right to due process, such right should not prevail over the accused's constitutional right to confront and cross-examine opposing witnesses when it is not shown that the accused applied machinations to unreasonably deny the prosecution of its ability to prove its case. To stress, "[p]aramount interests of justice should not be sacrificed for the sake of speed and efficiency."<sup>22</sup> (Citations omitted)

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<sup>15</sup> *Rollo*, p. 52.

<sup>16</sup> *Id.* at 27–28.

<sup>17</sup> *Id.* at 27.

<sup>18</sup> *Id.* at 44–45.

<sup>19</sup> *Id.* at 45–46.

<sup>20</sup> *People v. Villaber*, G.R. No. 247248, June 16, 2021, <<https://sc.judiciary.gov.ph/27542/>> [Per J. Inting, Third Division]. *See also* RULES OF COURT, Rule 1, sec. 6.

<sup>21</sup> *Ponencia*, pp. 8–9.

<sup>22</sup> *Id.* at 13–14.

The right to confront and cross-examine a witness is a fundamental requirement of criminal justice. *Kim Liong v. People*<sup>23</sup> states:

The right to confront and cross-examine witnesses is a basic, fundamental human right vested inalienably to an accused. This right ensures that courts can confidently ferret out the facts on the basis of which they can determine whether a crime occurred and the level of culpability of the accused. It is a basic requirement of criminal justice.<sup>24</sup>

This Court has explained that an accused's constitutional right to meet witnesses face to face "insures that the witness will give his testimony under oath, thus deterring lying by the threat of perjury charge; it forces the witness to submit to cross-examination, a valuable instrument in exposing falsehood and bringing out the truth; and it enables the court to observe the demeanor of the witness and assess his credibility."<sup>25</sup>

By exercising their right to confrontation, an accused may show that a prosecution witness's testimony is not sufficient to prove guilt beyond reasonable doubt.<sup>26</sup> As this Court explained in *Heirs of Villanueva v. Heirs of Mendoza*:<sup>27</sup>

However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed, in the very nature of things, cannot be transcribed upon the record[.]<sup>28</sup> (Citation omitted)

Here, petitioners stand accused of falsifying a public document under Article 172,<sup>29</sup> in relation to Article 171<sup>30</sup> of the Revised Penal Code. The

<sup>23</sup> 832 Phil. 8 (2018) [Per J. Leonen, Third Division].

<sup>24</sup> Id. at 26.

<sup>25</sup> *Go v. People*, 691 Phil. 440 (2012) [Per J. Perlas-Bernabe, Third Division]. (Citation omitted)

<sup>26</sup> J. Feria, Dissenting Opinion in *Bustos v. Lucero*, 81 Phil. 640, 646–647 (1948) [Per J. Tuason, En Banc].

<sup>27</sup> 810 Phil. 172 (2017) [J. Peralta, Second Division].

<sup>28</sup> Id. at 185.

<sup>29</sup> Article 172. Falsification by Private Individual and Use of Falsified Documents. – The penalty of prison correccional in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and

2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.

Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article, or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree.

<sup>30</sup> Article 171. Falsification by Public Officer, Employee or Notary or Ecclesiastic Minister. – The penalty of prison mayor and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

1. Counterfeiting or imitating any handwriting, signature or rubric;

imposable penalty for the crime allegedly committed involves the penalty of *prision correccional* in its medium and maximum periods,<sup>31</sup> or 2 years, 4 months, and 1 day to 6 years.<sup>32</sup>

Based on the records, it is alleged that Nenita is the owner of the subject lot transferred to petitioners, but the Mariano Spouses allegedly did not sign the Deed of Absolute Sale.<sup>33</sup> However, Nenita appears to have previously executed another transfer document involving the subject lot.<sup>34</sup> The records, however, are unclear as to the participation of Nenita and petitioners in the Deed of Absolute Sale.

Bearing in mind that the crime of falsification has no attempted or frustrated stage,<sup>35</sup> I emphasize that Nenita's cross-examination appears to be relevant, if not crucial, in determining her credibility as a witness and ultimately, the guilt of petitioners. As submitted by Atty. Adan:

Atty. Adan:

The cross-examination your Honor, is very relevant because there was a testimony that the document was not signed by the witness, that it was not her signature. But in fact your Honor, that property covered by that title is where their house is erected, and they demolished it so that they can give it to the accused in exchange for the other lot. So that is the point of our cross-examination.

....

Atty. Adan:

May we manifest, your Honor, because the testimony of, and the judicial affidavit of the other witness Nenita Mariano touches on the transaction and that is why we are asking that we be allowed to cross-examine Nenita so the story on how the transaction occurred will be clearer to

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
4. Making untruthful statements in a narration of facts;
5. Altering true dates;
6. Making any alteration or intercalation in a genuine document which changes its meaning;
7. Issuing in authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original; or
8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

The same penalty shall be imposed upon any ecclesiastical minister who shall commit any of the offenses enumerated in the preceding paragraphs of this article, with respect to any record or document of such character that its falsification may affect the civil status of persons.

<sup>31</sup> REVISED PENAL CODE, Art. 172.

<sup>32</sup> *People v. Tabanao*, 116 Phil. 474, 477 (1962) [Per. J. Labrador, En Banc].

<sup>33</sup> *Rollo*, p. 52.

<sup>34</sup> *Id.* at 37.

<sup>35</sup> *In re: Fake Decision Allegedly in G.R. No. 75242*, 491 Phil. 539, 567 (2005) [J. Callejo, Sr., En Banc].

the Court. . . . There are documents that show that these spouses, the accused have paid P1.5 million for the property. That is why we are asking the kind consideration of this Court to allow us to cross-examine Nenita Mariano because we have shown the validity for my absence, your Honor.<sup>36</sup>

Despite the manifestations made by Atty. Adan, respondent Judge Gamboa-Delos Santos remained persistent in denying his motion for reconsideration of the May 23, 2018 Order.

While counsel's illness is not among the grounds for postponement under the Revised Guidelines, this Court has already recognized it as a valid ground.

In *McEntee v. Manotok*,<sup>37</sup> plaintiff's counsel failed to appear in a hearing for a case for recovery of possession of a parcel of land. Instead, plaintiff's counsel filed a motion for continuance on the ground of illness. The trial court denied the motion and then allowed the defendant to present her evidence *ex parte*. Plaintiff's counsel then moved to have the assailed order reconsidered but this was denied. This Court ruled that counsel's illness constituted an accident that had prevented plaintiff's counsel to appear on the day set for trial. Consequently, this Court not only set aside the assailed order and the proceedings in the trial court, but also remanded the case to the trial court for further proceedings.

Similarly, in *Crisologo v. Dural*,<sup>38</sup> during one of the hearings in a case for reconveyance and damages, plaintiffs' counsel failed to appear due to influenza. One of the plaintiffs relayed this in open court and sought the postponement of the hearing. Upon the objection of respondent, the trial court issued an order denying the motion for postponement and dismissing the complaint. Plaintiffs then moved for reconsideration of the trial court's order and presented medical certificates attesting to the claim of illness of plaintiffs' counsel. This Court En Banc reversed and set aside the assailed order, explaining that:

A delay in the adjudication of the case occasioned by a reasonably justified continuance of the hearing, to afford a party (here the plaintiffs) the opportunity to present his evidence would not materially prejudice the defendant. On the contrary, one more postponement in the instant case, would be in consonance with fair play and justice[.]<sup>39</sup> (Citation omitted)

<sup>36</sup> *Rollo*, pp. 25, 44-45.

<sup>37</sup> *McEntee v. Manotoc*, 113 Phil. 249 (1961) [Per J. Labrador, En Banc].

<sup>38</sup> 122 Phil 184 (1965) [Per J. Paredes, En Banc].

<sup>39</sup> *Id.* at 188.

While the foregoing cases involve civil cases, I submit that the rationale behind allowing continuance of a hearing on the ground of illness on the part a party's counsel should likewise apply in criminal cases. After all, a criminal case involves the liberty of an accused, as opposed to cases involving mere property rights. Undoubtedly, the ends of justice will be better served by granting such continuance.

In this regard, I submit that respondent Judge Gamboa-Delos Santos's reliance on the second sentence of Section 10(b) of the Judicial Affidavit Rule is misplaced.

The cited provision provides that “[c]ounsel who fails to appear without *valid cause* despite notice shall be deemed to have waived [their] client's right to confront by cross-examination the witnesses there present.”

As stated above, in *McEntee* and *Crisologo*, this Court has already deemed illness as a valid cause that prevents a counsel from appearing at a hearing, for which this Court has allowed a continuance. Thus, a counsel who fails to appear due to illness despite notice cannot be deemed to have waived their client's right to confront a witness.

Time and again, this Court has chastised judges against conducting proceedings that place “more emphasis on procedural niceties to the sacrifice of substantial justice.”<sup>40</sup> That said, I agree that the June 6, 2018 Order<sup>41</sup> must be set aside.

Additionally, our laws and jurisprudence do not require that a medical certificate be notarized before it be given weight, nor that it states that the infirm be advised to rest before their absence is excused. In fact, in *Union Motor Corporation v. National Labor Relations Commission*,<sup>42</sup> this Court categorically stated:

We reject the petitioner's contention that the medical certificates adduced in evidence by the respondent to prove (a) his illness, the nature and the duration of the procedures performed by the dentist on him; and (b) the period during which he was incapacitated to work are inadmissible in evidence and barren of probative weight simply because they were not notarized, and the medical certificate dated September 23, 1997 was not written on paper bearing the dentist's letterhead. Neither do we agree with the petitioner's argument that even assuming that the respondent was ill and had been advised by his dentist to rest, the same does not appear on the medical certificate dated September 23, 1997; hence, it behooved the respondent to report for work on September 23, 1997.

<sup>40</sup> *Sarmiento v. Juan*, 205 Phil. 335, 341–342 (1983) [Per J. Vasquez, First Division].

<sup>41</sup> *Rollo*, pp. 15–16.

<sup>42</sup> 487 Phil. 197 (2004) [Per J. Callejo, Sr., Second Division].

.....

After full scrutiny and judicious evaluation of the records of this case, We find the appeal to be meritorious. Regrettably, the Labor Arbiter a quo clearly failed to appreciate complainant's pieces of evidence. *Nowhere in our jurisprudence requires that all medical certificates be notarized to be accepted as a valid evidence.* In this case, there is [neither] difficulty nor an obstacle to claim that the medical certificates presented by complainant are genuine and authentic. Indeed, the physician and the dentist who examined the complainant, aside from their respective letterheads, had written their respective license numbers below their names and signatures. These facts have not been impugned nor rebutted by respondent-appellee throughout the proceedings of his case. Common sense dictates that an ordinary worker does not need to have these medical certificates to be notarized for proper presentation to his company to prove his ailment; hence, the Labor Arbiter a quo, in cognizance with the liberality and the appreciation on the rules on evidence, must not negate the acceptance of these medical certificates as valid pieces of evidence.

We believe, as we ought to hold, that the medical certificates can prove clearly and convincingly the complainant's allegation that he consulted a physician because of tooth inflammation on September 23, 1997 and a dentist who later advised him to rest and, thus, clinically extended his tooth extraction due to severe pain and inflammation.<sup>43</sup> (Emphasis supplied)

Here, as in *Union Motor*, the ophthalmologist who examined Atty. Adan, Dr. Bucu, issued three medical certificates using his official letterhead and indicated his license number below his name and signature. These medical certificates prove Atty. Adan's illness and the nature and duration of the procedures performed on him. Notarization, or the lack thereof, does not affect: (a) the admissibility of these medical certificates in evidence, and (b) their probative weight.

Based on the records, as in *Crisologo*, a delay in the proceedings, that is, the cross-examination of Nenita, occasioned by a reasonably justified continuance of the hearing such as the ailment of the defense counsel to afford accused the opportunity to confront a prosecution's witness would not materially prejudice the State. Indeed, the trial court could even afford the cancellation of the hearings scheduled on May 2, 2018 and June 13, 2018 for reasons not attributable to Atty. Adan or the accused.<sup>44</sup>

Indeed, the hearing on May 2, 2018 was cancelled because of the Mandatory Continuing Legal Education while the hearing on June 13, 2018 was cancelled because the public prosecutor was on leave.<sup>45</sup>

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<sup>43</sup> Id. at 206–208.

<sup>44</sup> *Rollo*, pp. 88–89.

<sup>45</sup> Id. at 89.



In light of the foregoing, the absence of Atty. Adan due to his ailment should not have been construed as a waiver to cross-examine one of the prosecution's witnesses and the trial court should have granted continuance. Thus, I agree with the *ponencia* to set aside the June 6, 2018 Order and allow the conduct of cross-examination of Nenita.

I also agree with the *ponencia* that respondent Judge Gamboa-Delos Santos did not act with grave abuse of discretion in allowing the prosecution to use Rodel's Complaint-Affidavit and present him as a witness. Under the Revised Guidelines, the prosecutor has the option to utilize duly subscribed written statements given to law enforcement officers or the affidavits submitted before the investigating prosecutor instead of a judicial affidavit.

On the constitutionality of the second paragraph of Section 10(b) of the Judicial Affidavit Rule, I humbly submit that petitioners did not present a genuine issue as the constitutional question is not the *lis mota* of the case, thus improper for this Court to resolve.

It is settled that this Court's power of judicial review cannot be loosely invoked.<sup>46</sup> Litigants must establish that the requisites of judicial inquiry are present, including that the issue on constitutionality is essential to the disposition of the case or its *lis mota*.<sup>47</sup>

In *Ang Partido ng mga Pilipinong Marino, Inc. (ANGKLA) v. Commission on Elections*,<sup>48</sup> this Court explained:

*Lis mota* is a Latin term meaning the cause or motivation of a legal action or lawsuit. The literal translation is "litigation moved." Under the rubric of *lis mota*, in the context of judicial review, *the Court will not pass upon a question of unconstitutionality, although properly presented, if the case can be disposed of on some other ground, such as the application of the statute or the general law. The petitioner must be able to show that the case cannot be legally resolved unless the constitutional question raised is determined.*<sup>49</sup> (Emphasis supplied, citations omitted)

The basic principle in constitutional adjudication enjoins this Court from passing upon a constitutional question if the case can be disposed of on some other ground.<sup>50</sup>

<sup>46</sup> *National Federation of Hog Farmers, Inc. v. Board of Investments*, G.R. No. 205835, June 23, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66343>> [Per J. Leonen, En Banc].

<sup>47</sup> Id.

<sup>48</sup> G.R. No. 246816, September 15, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66558>> [Per J. Lazaro-Javier, En Banc]. See also *Venus Commercial Company, Inc. v. Department of Health*, G.R. No. 240764, November 18, 2021, <<https://sc.judiciary.gov.ph/27044>> [Per J. Lazaro-Javier, First Division].

<sup>49</sup> Id.

<sup>50</sup> *General v. Urro*, 662 Phil. 132, 144 (2011) [Per J. Brion, En Banc].

Here, petitioners made it appear that respondent Judge Gamboa-Delos Santos used the second paragraph of Section 10(b) of the Judicial Affidavit Rule as legal basis in support of her ruling which construed Atty. Adan's absence as waiver of the defense's right to cross-examine Nenita. It is under this consideration that petitioners question the constitutionality of the assailed rule.

However, the records do not show that respondent Judge Gamboa-Delos Santos used the second paragraph of Section 10(b) of the Judicial Affidavit Rule as legal basis in issuing the June 6, 2018 Order. Respondent Judge Gamboa-Delos Santos even categorically stated this in her Comment as follows:

Petitioner maintained that second sentence of Section 10(b) of the Judicial Affidavit Rule is in effect taking away from an accused, a personal right guaranteed by the Constitution, that is, his/her right to cross-examine witnesses against him/her at the trial. Rights guaranteed under the constitution cannot be stripped away by mere procedural rule.

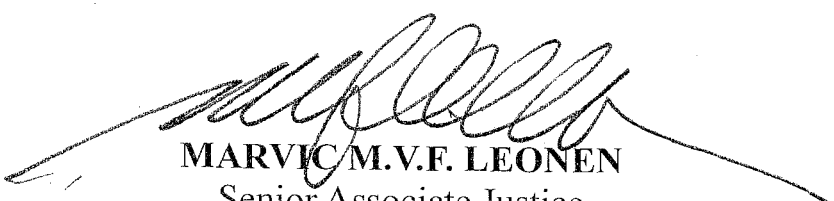
The undersigned public respondent, in the assailed Order dated June 6, 2018, as well as, the Order dated May 23, 2018 (where it was considered as waived the right of the defense to cross-examine witness Nenita Mariano), did not cite the second sentence of Section 10(b) of the Judicial Affidavit Rule as basis in resolving the incident therein pending.<sup>51</sup>

Moreover, even the *ponencia* has pointed out that:

Notably, it is only before the Court that petitioners assail the constitutionality of the second sentence of Section 10(b) of the Judicial Affidavit Rule.<sup>52</sup>


Considering that the June 6, 2018 Order sought to be set aside has no connection at all with the second paragraph of Section 10(b) of the Judicial Affidavit Rule, I submit that the constitutional issue presented by petitioners is not a genuine one that merits this Court's attention.

**ACCORDINGLY**, I vote to **PARTLY GRANT** the Petition.



**MARVIC M.V.F. LEONEN**  
Senior Associate Justice

**CERTIFIED TRUE COPY**



**MARIA LUISA M. SANTILLA**  
Deputy Clerk of Court and  
Executive Officer  
OCC-En Banc, Supreme Court

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<sup>51</sup> *Rollo*, p. 73

<sup>52</sup> *Ponencia*, p. 9.