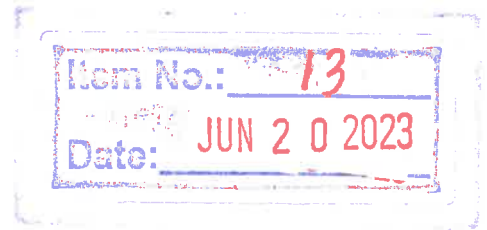


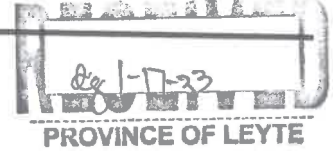


Republic of the Philippines  
Province of Leyte  
**MUNICIPALITY OF MERIDA**



**OFFICE OF THE SANGGUNIANG BAYAN** SANGGUNIANG PANLALAWIGAN

January 16, 2023



THE SANGGUNIANG PANLALAWIGAN OF LEYTE  
SP LEGISLATIVE OFFICE  
CAPITOL BUILDING  
PALO, LEYTE

DEAR HONORABLE SP MEMBERS:

I HAVE THE HONOR TO SUBMIT TO THE SANGGUNIANG PANLALAWIGAN OF LEYTE COPIES OF **RESOLUTION NO. 18-23-006 "A RESOLUTION RESPECTFULLY REQUESTING THE SANGGUNIANG PANLALAWIGAN NG LEYTE, FOR THE ISSUANCE OF A WRIT OF EXECUTION TO IMPLEMENT THE JUDGEMENT OF THE SUPREME COURT DATED DECEMBER 09, 2020 G.R. NO. 216092 (MUNICIPALITY OF ISABEL, LEYTE VS. MUNICIPALITY OF MERIDA, LEYTE) ENACTED BY THE 18<sup>TH</sup> COUNCIL OF MERIDA, LEYTE FOR REVIEW AND CONSIDERATION.**

HOPING EVERYTHING IS IN ORDER.

THANK YOU.

RESPECTFULLY,

JOSELITO T. DELOS ANGELES  
Secretary to the Sangguniang Bayan



Republic of the Philippines  
Province of Leyte  
MUNICIPALITY OF MERIDA

**SANGGUNIANG BAYAN**

**EXCERPT FROM THE MINUTES OF THE 27<sup>TH</sup> REGULAR SESSION OF THE SANGGUNIANG BAYAN (18<sup>TH</sup> COUNCIL), MERIDA, LEYTE HELD ON JANUARY 09, 2022 AT THE LEGISLATIVE BUILDING SESSION HALL.**

**- RESOLUTION NO. 18-23-006 -**

**A RESOLUTION RESPECTFULLY REQUESTING THE SANGGUNIANG PANLALAWIGAN NG LEYTE, FOR THE ISSUANCE OF A WRIT OF EXECUTION TO IMPLEMENT THE JUDGEMENT OF THE SUPREME COURT DATED DECEMBER 09, 2020 G.R. NO. 216092 (MUNICIPALITY OF ISABEL, LEYTE VS. MUNICIPALITY OF MERIDA, LEYTE).**

**WHEREAS, on December 09, 2020, a judgement was rendered by the Supreme Court in favor of the Municipality of Merida, respondent, against the Municipality of Isabel, petitioner, the dispositive portion of which reads:**

**WHEREFORE, PREMISES CONSIDERED, Municipal Resolution 2004-091 of the Municipality Isabel and Municipal Resolution No. 96-183 of the Municipality of Merida are hereby resolved as follows:**

- 1. The true and accurate boundary between the Municipalities of Merida and Isabel is the one planted along the dead Doldol creek near the Doldol tree and the highway;**
- 2. The local government of Isabel, Leyte, is hereby ordered to remove the Municipal Boundary Monument (MBM) No. 5 installed by former Mayor Cruz Centino of the Municipality of Isabel sometime in 1981 as well as Welcome Boundary Marker constructed by the Yellow Ladies Club of Isabel, Leyte sometime in 1988;**
- 3. The local government of Merida, Leyte, is hereby ordered to install another Municipal Boundary Monument along the dead Doldol creek near the Doldol tree and the highway in accordance with the laws and the Barangay Boundary and Index Maps and political boundary maps of the two (2) [sic] Municipalities.**

**SO ORDERED.**

**WHEREAS, the judgement is final and unappealable as emphasized in the Notice of the Supreme Court Special First Division, which states:**

**Sirs / Mesdames:**

**Please take notice that the Court, Special First Division, issued a Resolution dated June 15, 2022 which read as follows:**

**“G.R. No. 216092 (Municipality of Isabel, Leyte vs. Municipality of Merida, Leyte). Acting on the petitioner’s motion for reconsideration of the Decision dated December 09, 2020, and considering that the basic issues have already been passed upon and that there is no substantial argument to warrant a modification of this Court’s decision, the Court resolves to DENY reconsideration with FINALITY.**

**The Court further resolves to NOTE the respondent’s comment/opposition to the petitioner’s motion for reconsideration.**

**NO FURTHER pleadings, motions, letters or other communications shall be entertained herein.**

**Let an ENTRY of judgement in this case be issued immediately.”**

**WHEREFORE, premises considered, it is respectfully prayed that a writ of execution be issued to implement the judgement of the Supreme Court dated December 09, 2020, so that the Municipality of Merida can have actual, peaceful and complete possession of the said property;**

**NOW, WHEREFORE, ON MOTION OF Hon. Emarito A. Luzares, Chairman Committee on Rules, Regulations and Ordinances, duly seconded by MASS, BE IT;**

**RESOLVED, AS IT IS HEREBY RESOLVED TO RESPECTFULLY REQUEST THE SANGGUNIANG PANLALAWIGAN NG LEYTE, FOR THE ISSUANCE OF A WRIT OF EXECUTION TO IMPLEMENT THE JUDGEMENT OF THE SUPREME COURT DATED DECEMBER 09, 2020 G.R. NO. 216092 (MUNICIPALITY OF ISABEL, LEYTE VS. MUNICIPALITY OF MERIDA, LEYTE).**



**(CONTINUATION OF RESOLUTION NO. 18-23-006, DATED JANUARY 09, 2023 . . . . . //PAGE 02)**

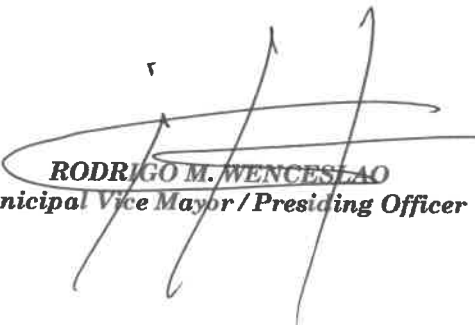
**RESOLVED FURTHER**, that copies of this Resolution be furnished to the Sangguniang Panlalawigan, Capitol Building, Palo Bypass Road, Palo, Leyte, for information and kind consideration.

**APPROVED UNANIMOUSLY.**

**I HEREBY CERTIFY** to the veracity of the foregoing Resolution.

**JOSELITO T. DELOS ANGELES**  
Secretary to the Sangguniang Bayan

**ATTESTED :**

  
**RODRIGO M. WENCESLAO**  
Municipal Vice Mayor / Presiding Officer



**ENGR. ROLANDO M. VILLASENCIO**  
**OFFICE OF THE MUNICIPAL MAYOR**

Brgy. Poblacion, Merida, Leyte 6540 ✉ [lgumerida.mayoroffice@gmail.com](mailto:lgumerida.mayoroffice@gmail.com) ☎ (053) 5579-588



## **ENDORSEMENT**

**January 6, 2023**

This is to respectfully request the Office of the Sangguniang Bayan, for the passage of a resolution requesting the Sanggunian Panlalawigan ng Leyte to include in their Order of Business the submitted Motion of the Municipality of Merida to the Office of the Sanggunian Panlalawigan last December 17, 2022 to ISSUE an Order of Execution in relation to Sanggunian Panlalawigan Resolution No. 08-327 on July 08, 2008 which is already Final and Executory.

Attached herein is the copy of the Motion of Execution of Municipality of Merida Leyte addressed to the Sanggunian Panlalawigan Office.

For your immediate action.

  
**ENGR. ROLANDO M. VILLASENCIO**  
*Municipal Mayor*



Merida . . . Town of Merry and Dashing People

Republic of the Philippines  
Province of Leyte  
Tacloban City

**OFFICE OF THE SANGGUNIANG PANLALAWIGAN**

IN RE: BOUNDARY DISPUTE  
BETWEEN THE MUNICIPALITY OF  
MERIDA (PARTICULARLY  
BARANGAY BENABAYE) AND THE  
MUNICIPALITY OF ISABEL  
(PARTICULARLY BARANGAY  
APALE) BOTH OF THE PROVINCE  
OF LEYTE

MUNICIPALITY OF MERIDA  
*Complainant,*

- versus -

MUNICIPALITY OF ISABEL,  
*Respondent.*

X-----/

Customer's Copy

Accepted After Cut-off  
THIS SERVES AS AN OFFICIAL RECEIPT  
RTN 1506281271-15901  
Serial No. 1506281271-15901  
Official Receipt No. 1506281271-15901

1497 3493 8461

CONSIGNEE:  
App. of / care of /

ONY P  
IT S.B. CA OFFICE OF THE SANGGUNIANG PANLUNGSOD  
Address: REPUBLIC OF THE PHILIPPINES, PROVINCE OF L  
EYTE  
TACLOBAN, LEYTE  
Contact No. (s): 9999999999

VAT (incl. Freight) 183.04  
NO CENTRAL/ies Fee 0.00  
VAT-Exempt 0.00

Track your padala at

REF: Resolution No. 08-327

**MOTION FOR EXECUTION**

**COMES NOW, THE UNDERSIGNED COUNSEL FOR THE MUNICIPALITY OF MERIDA, LEYTE,** to this Honorable Sangguniang Panlalawigan, most respectfully states, that:

1. In resolving the boundary dispute between the Municipalities of Merida and Isabel, this Honorable Sangguniang Panlalawigan on July 8, 2008 rendered its Decision through SP Resolution No. 08-327 which was in favor of the Municipality of Merida, the dispositive portion of which reads as follows:

“WHEREFORE, PREMISES CONSIDERED, Municipal Resolution No. 2004-091 of the Municipality of Isabel and Municipal Resolution No. 96-183 of the Municipality of Merida are hereby resolved as follows:

1. The true and accurate boundary between the Municipalities of Merida and Isabel is the one planted along its dead Doldol creen, near the doldol tree and the highway;

2. The local government of Isabel, Leyte, is hereby ordered to remove the Municipal Boundary Monument (MBM) No. 5 installed by Former Mayor Cruz Centino of the Municipality of Isabel sometime in 1981, as well as the Welcome Boundary Marker constructed by the Yellow Ladies Club of Isabel, Leyte sometime in 1988;

3. The local government of Merida, Leyte, is hereby ordered to install another Municipal Boundary Marker along the dead Doldol creek near the Doldol tree and the highway in accordance with the laws and the Barangay Boundary and Index Maps and political boundary maps of the two (2) municipalities.

SO ORDERED.

Machine copy of Sangguniang Panlalawigan Resolution No. 08-327 dated July 8, 2008 is heretoe attached and marked as Annex "A" for reference;

2. The Municipality of Isabel filed an appeal before the Regional Trial Court, Branch 12, Ormoc City and was docketed as Civil Case No. R-ORM-08-00123-CV. The Regional Trial Court, acting as an appellate court, rendered its *Decision* dated September 29, 2009 in favor of the Municipality of Isabel, the dispositive portion of which reads:

**"WHEREFORE,** premises considered, judgment is hereby rendered, in favor of appellant and against appellee, REVERSING and SETTING ASIDE the assailed Resolution of the Honorable Sangguniang Panlalawigan ng Leyte and a new one is hereby entered DECLARING that the contested tract of land with an area of 162.3603 hectares as appearing in the cadastral survey records of Cad. 661-D property belong to the Municipality of Isabel, Leyte.

Upon finality of this decision, the appellee is hereby ORDERED to immediately remove the billboard it erected during the pendency of the appeal at its expense.

SQ ORDERED.

Machine copy of the RTC *Decision* dated September 29, 2009 in Civil Case No. R-ORM-08-00123-CV is hereto attached and marked as Annex "B" for reference;

3. After the denial of its *Motion for New Trial*, the Municipality of Merida elevated the case on appeal to the Court of Appeals, Special 20<sup>th</sup> Division, Cebu City by way of a *Petition for Review* and was docketed as CA G. R. SP No. 05255. On August 20, 2014, the Court of Appeals promulgated its Judgment on the appeal, this time in favor of the Municipality of Merida, the dispositive portion of which reads as follows:

“IN THE LIGHT OF ALL THE FOREGOING, this petition is GRANTED. The Decision dated September 29, 2009 of the Regional Trial Court, Branch 12 of Ormoc City in Civil Case No. R-ORM-08-00123-CV and the Omnibus Order dated July 5, 2010 are REVERSED and SET ASIDE. Resolution No. 08-327 dated July 8, 2008 of the Sangguniang Panlalawigan of Leyte adjudicating the disputed area to the Municipality of Merida is REINSTATED. No costs.

SO ORDERED.”

Machine copy of the Court of Appeals *Judgment* dated August 20, 2014 in Civil Case No. CA G. R. SP No. 05255 is hereto attached and marked as Annex “C” for reference;

4. Aggrieved, the Municipality of Isabel elevated the case on appeal to the Supreme Court in a *Petition for Review on Certiorari* which was docketed as G. R. No. 216092. On December 9, 2020, the Supreme Court rendered its *Decision* on the *Petition*, which was still in favor of the Municipality of Merida, the dispositive portion of which reads as follows:

“IN VIEW OF THE FOREGOING PREMISES, the present petition is DENIED. The August 20, 2014 Decision and the November 17, 2014 Resolution of the Court of Appeals in CA - G. R. SP No. 05255 are hereby AFFIRMED.

SO ORDERED.”

Machine copy of the Supreme Court *Decision* dated December 9, 2020 in G. R. No. 216092 is hereto attached and marked as Annex “D” for reference;

5. The *Motion for Reconsideration* filed by the Municipality of Isabel was also DENIED in the Supreme Court in its latest *Resolution* dated June 15, 2022, machine copy of which is hereto attached and marked as Annex “E” for reference;

6. With the denial of the *Motion for Reconsideration* filed by the Municipality of Isabel, the undersigned counsel submits that the Sangguniang Panlalawigan decision on the boundary dispute under Resolution No. 08-327 is now **final and executory**.

7. The instant motion is filed in good faith and solely for the reasons stated, without intention to defy the authority of the Honorable Sangguniang Panlalawigan nor delay the proceedings of this case;

## PRAYER

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Regional Office to ISSUE an *Order of Execution* in relation to Resolution No. 08-327 which is already final and executory.

Other reliefs and remedies fair and equitable under the premises are likewise prayed for.

Respectfully submitted, December 17, 2022. Metro Cebu (for Tacloban City, Leyte), Philippines.



**REDULA SANCHEZ MONTEALEGRE  
BAUZON BRAGAT  
& DANLAG-LUIG LAW OFFICES**

*Legal Counsel for the Municipality of Merida, Leyte*  
Suites 301-304 C & F Ramirez Building II, S. B. Cabahug St.,  
Centro, Mandaue City, Cebu, 6014 Philippines  
Telefax No. (032) 238-4281

By:

**DAX MALONY P. MONTEALEGRE**

PTR No. 0485471 (01-06-22)

IBP No. 090222 (Lifetime, Cebu)

MCLE Compliance No. VI - 0016584 (03-01-19)

Attorney's Roll No. 50523 (2005)

Email: guile225@yahoo.com

Copy furnished:

**ATTY. REX J. M. A. FERNANDEZ**  
*Counsel for the Municipality of Isabel, Leyte*  
FERNANDEZ & ASSOCIATES  
Room 305 3<sup>rd</sup> Floor, K 7 J Building  
J. Lorente Street  
6000 Cebu City  
Registry Receipt No. RC 6000 114 22  
Date: Dec. 17, 2022



**COURT OF APPEALS**

20<sup>TH</sup> Division (CA – G. R. SP No. 05255)

6000 Cebu City

Registry Receipt No. RC 646 666 12822

Date: Dec. 21, 2022

**THE HONORABLE PRESIDING JUDGE**

Regional Trial Court Branch 12

Ormoc City, Leyte

Philippines

Registry Receipt No. RC 646 666 105 22

Date: Dec. 21, 2022

**NOTICE**

MA'AM:

Please be informed that the foregoing *Motion* is submitted for the consideration of the Honorable Sangguniang Panlalawigan immediately upon receipt thereof with or without further arguments. Thank you very much

  
DAX MALONY P. MONTEALEGRE

THE HONORABLE RECEIVING CLERK  
Sangguniang Panlalawigan of Leyte

MA'AM:

Greetings! Kindly submit the foregoing *Motion* for the consideration and resolution of the Honorable Sangguniang Panlalawigan immediately upon receipt hereof with or without further arguments. Thank you very much.

  
DAX MALONY P. MONTEALEGRE

**EXPLANATION ON THE MODE OF SERVICE**

Due to the distance between the offices of the undersigned counsel and the following counsels of the parties and the lack of office personnel who could effect personal service, copies of the foregoing pleading were sent through registered mail.

  
DAX MALONY P. MONTEALEGRE

Republic of the Philippines . . . )  
City of Mandaue . . . . .) S.S.

**AFFIDAVIT OF SERVICE & MAILING**

I, JANE ANTONETTE ROSARIO, of legal age, Filipino, single, and a resident of Barangay Looc, Mandaue City, Cebu, Philippines, after having been duly sworn to in accordance with law, hereby depose and state:

That, I am at present the clerk/messenger of the REDULA SANCHEZ MONTEALEGRE BAUZON BRAGAT AND DANLAG-LUIG LAW OFFICES located at Suites 301-304, C & F Ramirez Building II, S. B. Cabahug Street, Centro, Mandaue City, Cebu;

That, on DEC 21 2022, I personally mailed copies of the foregoing Motion for Execution to:

**ATTY. REX J. M. A. FERNANDEZ**  
Counsel for the Municipality of Isabel, Leyte  
FERNANDEZ & ASSOCIATES  
Room 305 3<sup>rd</sup> Floor, K 7 J Building  
J. Lorente Street  
6000 Cebu City

**COURT OF APPEALS**  
20<sup>TH</sup> Division (CA – G. R. SP No. 05255)  
6000 Cebu City

**THE HONORABLE PRESIDING JUDGE**  
Regional Trial Court Branch 12  
Ormoc City, Leyte  
Philippines

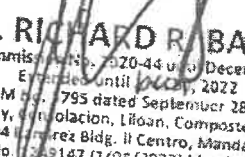
IN WITNESS WHEREOF, I hereunto set my hand this DEC 21 2022 in the City of Mandaue, Cebu, Philippines.

  
JANE ANTONETTE ROSARIO  
Affiant

**SUBSCRIBED and SWORN TO, BEFORE ME, a Notary Public for the City of Mandaue, this DEC 21 2022 at Mandaue City, Cebu, by affiant who exhibited to me his Identification Card bearing No. 011-5641847-7 issued by UMD and valid until \_\_\_\_\_ establishing his true and correct and identity.**

Witness my hand and seal on the date and place first above written.

Doc. No. 444  
Page No. 99  
Book No. XLVIII  
Series of 2022.

  
**ATTY. RICHARD R. BAUZON**  
Notarial Commission No. 2020-44 until December 31, 2021  
Expires until 2022, 2022  
per BM No. 1795 dated September 28, 2021  
Mandaue City, Division Office, Liloan, Compostela & Cordova  
Rm. 304 Ramirez Bldg. II Centro, Mandaue City  
PTR No. 249147 (1/09/2022) Mandaue City  
IBP dues CY 2022 (01/07/2022) Cebu City  
Attorney's Roll No. 47709  
MCLE Compliance No. VI-0023221, Until 04/14/2022

FILE  
SP RECORD SECTION

Republic of the Philippines  
PROVINCE OF LEYTE  
Tacloban City  
-oOo-

ANNEX "A"

9/29/08  
17-0

OFFICE OF THE SANGGUNIANG PANLALAWIGAN

EXCERPT FROM THE MINUTES OF THE 45<sup>TH</sup> REGULAR SESSION OF THE SANGGUNIANG PANLALAWIGAN OF LEYTE HELD AT THE SESSION HALL, LEGISLATIVE BLDG., CAPITOL GROUNDS, TACLOBAN CITY, ON 08 JULY 2008.

PRESENT:

- Hon. Ma. Mimietta S. Bagulaya - Vice-Governor/Presiding Officer
- Hon. Carlo P. Loreto - Floor Leader
- Hon. Rowil G. Batan - First Deputy Floor Leader
- Hon. Antonio C. Jabilles - Second Deputy Floor Leader
- Hon. Ma. Lourdes A. Go-Soco - Sangguniang Panlalawigan Member
- Hon. Evangeline L. Esperas - Sangguniang Panlalawigan Member
- Hon. Lesmes C. Lumen - Sangguniang Panlalawigan Member
- Hon. Simeon O. Ongbit, Jr. - Sangguniang Panlalawigan Member
- Hon. Rolando C. Piamonte, Sr. - Sangguniang Panlalawigan Member
- Hon. Deborah G. Bertulfo - Sangguniang Panlalawigan Member
- Hon. Florante M. Cayunda - Sangguniang Panlalawigan Member
- Hon. Brent Gerard S. Daya - SP Member/SK Fed. President
- Hon. Margarita C. Cari - SP Member/ABC Fed. President

ABSENT:

- Hon. Wilson S. Uy - SP Member/PCL President

RESOLUTION NO. 08-327

A RESOLUTION ADOPTING AND APPROVING THE UNDATED RESOLUTION OF THE SANGGUNIANG PANLALAWIGAN'S COMMITTEE ON BOUNDARY DISPUTES, ON THE BOUNDARY DISPUTE BETWEEN THE RESPECTIVE MUNICIPALITIES OF MERIDA (PARTICULARLY BARANGAY BENABAYE) AND ISABEL (PARTICULARLY BARANGAY APALE), BOTH OF THE PROVINCE OF LEYTE.

On motion of the Honorable Florante M. Cayunda, duly seconded by the Honorable Evangeline L. Esperas and the Honorable Carlo P. Loreto, be it

RESOLVED, as it is hereby resolved, to adopt and approve the following:

CERTIFIED PHOTO-COPY  
DATE 10/14/08  
BY MA. VILMA FARIQUEL  
RECORDS OFFICER II  
IN-CHARGE OF OFFICE  
OR # 188 4297

over

signed by  
9/29/08

**RESOLUTION**

*The Case*

For resolution before the Sangguniang Panlalawigan of the Province of Leyte is the alleged boundary dispute between the municipalities of Merida and Isabel, particularly in Barangay Benanbaye of Merida and barangay Apale of Isabel.

*The Facts*

The undisputed facts are as follows:

The Municipality of Isabel, Leyte, was created and established in 1947 upon the enactment of Republic Act 191 (An Act Creating The Municipality of Isabel, Province of Leyte) wherein eight (8) barangays namely the barrios of Quiot, Sta. Cruz, Libertad, Matlang, Tolingon, Bantique, Apale and Jonan were separated from the Municipality of Merida and forming the Municipality of Isabel.

Sometime in 1981, Mayor Cruz Centino of the Municipality of Isabel installed a concrete marker labeled as Municipal Boundary Monument (MBM) No. 5 in order to identify the boundary between the municipalities of Merida and Isabel.

Moreover, sometime in 1988, the Yellow Ladies Club of Isabel, Leyte constructed a Welcome Boundary Marker ostensibly with the authorization and sanction of the proper authorities.

over-

CERTIFIED PHOTO-COPY  
DATE 10/14/08  
BY M. Wilma Miguel  
MA. WILMA MIGUEL  
RECORDS OFFICER  
IN CHARGE OF OFFICE  
OR # 1884297

The Municipality of Merida contends that there has been no boundary dispute between the two (2) municipalities and that the boundary markers and structures constructed by the Municipality of Isabel are illegal as they were made without authority and without notice to the local officials of Merida.

The Municipality of Isabel on the other hand argues that the concrete markers it constructed were accurate.

Consequently, then Municipal Mayor Atty. Bernardino Solafia of Merida issued an Office Order dated 13 March 1990 organized a Fact Finding Committee in order to investigate and determine the exact location of the boundary markers established during the time when the Municipality of Isabel was created. Said Fact Finding Committee was composed of local officials and concerned citizens of the Municipality of Merida, headed by then Municipal Vice Mayor Hon. Silvestra Maradan. The Fact Finding Committee submitted an 8-page summary report, stating therein the sequence of events and measures taken by the Committee to accomplish their goal:

Subsequently, in a session held by the Sangguniang Bayan of the Municipality of Merida held on 6 April 1990, Municipal Resolution No. 40 (Series of 1990) and Municipal Ordinance No. 1 (Series of 1990) were approved, adopted, and enacted. Resolution No. 40 is a resolution approving and confirming the 8-page summary report submitted by the Fact Finding Committee. On the other hand, Municipal Ordinance No. 1 is an ordinance resolving the issue of the lost original municipal boundary monument by replacing it with a bigger one.

Furthermore, on 3 December 1996, the Committee of Agriculture Environment and Natural Resources of the Sangguniang Bayan of Merida,

CERTIFIED PHOTO COPY  
DATE 10/4/08  
BY MA. VILMA FASIGUEL  
RECORDS OFFICER  
IN CHARGE OF OFFICE  
OR # 1884297

headed by its Chairman, Hon. Castrence C. Isidro, submitted a Committee Report. On their efforts to look for the boundary marker separating the two (2) municipalities.

Again, in a session held by the Sangguniang Bayan of the Municipality of Merida held on 4 December 1996, Municipal Resolution No. 96-183 (a resolution seeking the assistance of the Sangguniang Panlalawigan of the Province of Leyte in resolving the boundary dispute, and to drop the claims of Isabel, Leyte over a portion of Barangay Benabaye of Merida, Leyte) was approved, adopted, and enacted.

Finally, on 5 July 1999, the Committee of Agriculture Environment and Natural Resources of the Sangguniang Bayan of Merida submitted another Committee Report stressing that Isabel's claim of a portion of Barangay Benabaye is unsubstantiated and illegitimate. Affidavits of some of the residents were also submitted, testifying as to the correct location of the boundary between Barangay Benabaye of Merida and Barangay Apale of Isabel.

For its part, the Municipality of Isabel conducted an investigation of its own. It maintains that the concrete markers it erected were accurate and legitimate. To prove its claims, the Municipality of Isabel submitted Affidavits of some of the residents testifying that the real boundary between Merida and Isabel is the brook/creek located near the poblacion of Barangay Benabaye, Merida, Leyte. Tax declarations of various properties allegedly located within the disputed area were also presented showing that real estate taxes for these properties were paid in the Municipality of Isabel. Finally, Barangay Boundary and Index Maps of Isabel Cadastre were also submitted to determine the exact location of the boundary.

CERTIFIED PHOTO-COPY  
DATE 07/14/08  
BY MA. VILMA GERMIGUEL  
RECORDS OFFICER II  
IN-CHARGE OF OFFICE  
OR # 1824297

-over-

Like the Municipality of Merida, the Municipality of Isabel similarly passed Resolution 2004-091 in a session of the Sangguniang Bayan held on 2 August 2004 which is a resolution requesting the Sangguniang Panlalawigan of the Province of Leyte to amicably settle the boundary dispute or formally try the same based on the evidences as may be presented by both sides.

*The Issue*

The issue to be resolved here is where the exact location of the boundary between the Municipalities of Merida and Isabel, both of the provinces of Leyte. Merida contends that the real boundary is the one planted along the dead Doldol creek near the Doldol tree and the highway. On the other hand, the Municipality of Isabel maintains that the boundary is the brook/creek (Benabaye River) located near the poblacion of Barangay Benabaye, Merida, Leyte where the concrete marker labeled as Municipal Boundary Monument (MBM) No. 5 is located.

*The Ruling*

At the threshold, let it be stated that the Sangguniang Panlalawigan has the primary jurisdiction to settle boundary dispute cases between two (2) municipalities within the same province.

As early as October 1, 1917, the procedure for the settlement of municipal boundary disputes was already set forth when Act No. 2711 or the Revised Administrative Code (RAC) took into effect. At that time, Section 2167 of the law provided:

CERTIFIED PHOTO-COPY  
DATE: 07/14/08  
BY: *[Signature]*  
MRS. VILMA FERNANDEZ  
RECORDS OFFICER II  
IN-CHARGE OF OFFICE  
OFFICE # 1884 297

-over-

The Regional Trial Court shall decide the appeal within one (1) year.

**SEC. 2167. Municipal boundary disputes – How settled.** – Disputes as to jurisdiction of municipal governments over places or barrios shall be decided by the provincial boards of the provinces in which such municipalities are situated, after an investigation at which the municipalities concerned shall be duly heard. From the decision of the provincial board appeal may be taken by the municipality aggrieved to the Secretary of the Interior, whose decision shall be final x x x."

Republic Act No. 7160 or the Local Government Code of 1991 was signed into law on October 10, 1991 and took effect on January 1, 1992. As the latest law governing jurisdiction over the settlement of boundary disputes, Sections 118 and 119 of the Code now mandate:

**SEC. 118. Jurisdictional Responsibility for Settlement of Boundary Dispute.** – Boundary disputes between and among local government units shall, as much as possible, be settled amicably. To this end:

x x x

(b) Boundary disputes involving two (2) or more municipalities within the same province shall be referred for settlement to the sangguniang panlalawigan concerned.

x x x

(e) In the event the *sanggunian* fails to effect an amicable settlement within sixty (60) days from the date the dispute was referred thereto, it shall issue a certification to that effect. Thereafter, the dispute shall be formally tried by the *sanggunian* concerned which shall decide the issue within sixty (60) days from the date of the certification referred to above.

**SEC. 119. Appeal.** – Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the *sanggunian* concerned to the proper Regional Trial Court having jurisdiction over the

**CERTIFIED PHOTO-COPY**

-over-

DATE: \_\_\_\_\_  
BY: M. Vilma T. Camiguel  
**MAL VILMA T. CAMIGUEL**  
Administrative Officer V  
SP-Leyte

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area in dispute. The Regional Trial Court shall decide the appeal within one (1) year from the filing thereof. Pending final resolution of the disputed area prior to the dispute shall be maintained and continued for all legal purposes.

The main point of inquiry, however, is where the exact boundary between the Municipalities of Merida and Isabel is located. This involves a question of fact which can only be resolved by assessing all the documents submitted by the two (2) contending municipalities.

The Sangguniang Panlalawigan is inclined to rule in favor of the Municipality of Merida.

First of all, the Municipality of Isabel was created only in 1947 by separating eight (8) barangays from the Municipality of Merida to form another municipality. Obviously, the Municipality of Isabel may only claim what has been delivered by law unto it.

Republic Act 191 was very specific when it separated eight (8) barangays namely the barrios of Quiot, Sta. Cruz, Libertad, Matlang, Tolingon, Bantique, Apale and Jonan to form the Municipality of Isabel. Barangay Benabaye was never mentioned in the aforementioned law. Hence, the Tax Declarations submitted by the Municipality of Isabel showing that some of the properties are located at Brgy. Benabaye, Isabel, Leyte, is of no moment. Brgy. Benabaye was never included in the list of barangays separated from the Municipality of Merida. Even the Barangay Boundary and Index Maps of Isabel Cadastre unmistakably showed that these properties are actually located at Brgy. Benabaye, Merida, Leyte.

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RECORDS OFFICER  
IN-CHARGE OF OFFICE  
OIL # 1884797

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Moreover, in the Committee Reports submitted by the Municipality of Merida, it is clear that the boundary between Merida and Isabel is the one located along the dead Doldol Creek near the Doldol tree and the highway. Although this concrete boundary marker (which was 6 x 6 inches big and marked "I" facing Merida and "M" facing Isabel) was eventually washed out during the course of time, still there are positive testimonies of witnesses to the effect that such was the case. Even the first appointed mayor of Isabel himself, Hon. Galicano Ruiz, testified that the boundary between the two (2) municipalities is the one found beside the creek leading to Doldol ("Tua daplin sa sapa paingon sa Doldol").

Nevertheless, another concrete monument was found in Sitio Doldol, Brgy. Benabaye, Merida, Leyte with marks "1947" on top and the letters "M" and "I" on both sides. This monument is planted five (5) meters from Doldol Creek and sixty (60) meters south of the big Doldol tree. Certainly, this marker is the true and accurate marker, being installed during the year 1947 when Isabel was created, as testified to by the witnesses, as compared to the Municipal Boundary Monument (MBM) No. 5 installed by Former Mayor Cruz Centino of the Municipality of Isabel sometime in 1981, much less the Welcome Boundary Marker constructed by the Yellow Ladies Club of Isabel, Leyte sometime in 1988.

Indeed, the 1987 Constitution and the New Local Government Code themselves imposed new mandatory requirements and procedures on the fixing of boundaries between municipalities. The 1987 Constitution now mandates that "no province, city, municipality or barangay may be created, divided, merged, abolished or its boundary substantially altered except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected" (Section 10, Article X of the Constitution).

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MR. VILMA E. MIGUEL  
RECORDS OFFICER II  
IN-CHARGE OF OFFICE  
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Likewise, the Local Government Code of 1991 provides, as follows: "Sec. 6. Authority to Create Local Government Units. - A local government unit may be created, divided, merged, abolished, or its boundaries substantially altered either by law enacted by Congress in the case of a province, city, municipality, or any other political subdivision, or by ordinance passed by the sangguniang panlalawigan, or sangguniang panglungsod concerned in the case of a barangay located within its territorial jurisdiction, subject to such limitations and requirements prescribed in this Code." Hence, any alteration or modification of the boundaries of the municipalities shall only be by a law to be enacted by Congress subject to the approval by a majority of the votes cast in a plebiscite in the barrios affected (Section 134, Local Government Code). Thus, under present laws, the function of the provincial board to fix the municipal boundaries are now strictly limited to the factual determination of the boundary lines between municipalities, to be specified by natural boundaries or by metes and bounds in accordance with laws creating said municipalities. (Municipality of Sogod v. Rosal; G.R. No. L-38204 September 24, 1991)

In view of the above ruling, the Sangguniang Panlalawigan of the Province of Leyte can do no less but to declare that the true and accurate boundary between the Municipalities of Merida and Isabel is the one planted along the dead Doldol creek near the Doldol tree and the highway, which was lost through the course of time. The fact that another concrete monument which was found in Sitio Doldol, Brgy. Benabaye, Merida, Leyte with marks "1947" on top and the letters "M" and "I" on both sides only disproves the contention of Isabel that the boundary between the two municipalities is the brook/creek (Benabaye River) located near the poblacion of Barangay Benabaye, Merida, Leyte where the concrete marker labeled as Municipal Boundary Monument (MBM) No. 5 is located.

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RECORDS AND INFORMATION DIVISION  
IN-CHARGE OF OFFICE  
ON# 1884297

The importance of drawing with precise strokes the territorial boundaries of a local unit of government cannot be overemphasized. The boundaries must be clear for they define the limits of the territorial jurisdiction of a local government unit. It can legitimately exercise powers of government only within the limits of its territorial jurisdiction. Beyond these limits, its acts are *ultra vires*. Needless to state, any uncertainty in the boundaries of local government units will sow costly conflicts in the exercise of governmental powers which ultimately will prejudice the people's welfare. (Mariano Jr. v. Commission on Elections, 312 Phil. 259, March 7, 1995)

**WHEREFORE, PREMISES CONSIDERED,** Municipal Resolution 2004-091 of the Municipality of Isabel and Municipal Resolution No. 96-183 of the Municipality of Merida are hereby resolved as follows:

1. The true and accurate boundary between the Municipalities of Merida and Isabel is the one planted along the dead Doldol creek near the Doldol tree and the highway;
2. The local government of Isabel, Leyte, is hereby ordered to remove the Municipal Boundary Monument (MBM) No. 5 installed by Former Mayor Cruz Centino of the Municipality of Isabel sometime in 1981 as well as Welcome Boundary Marker constructed by the Yellow Ladies Club of Isabel, Leyte sometime in 1988.
3. The local government of Merida, Leyte, is hereby ordered to install another Municipal Boundary Monument along the dead Doldol creek near the Doldol tree and the highway in accordance with the laws and the Barangay Boundary and Index Maps and political boundary maps of the two(2)

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IN CHARGE OF OFFICE  
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Page Eleven  
Res. No. 08-327  
08 July 2008

municipalities:

SO ORDERED.

SIGNED:

(Sgd.) HON. FLORANTE M. CAYUNDA  
Chairman, Committee on Boundary Dispute

Hon. Antonio C. Jabilles  
Vice-Chairman (INHIBIT)

Hon. Debora G. Bertulfo  
Member (INHIBIT)

(Sgd.) Hon. Evangeline L. Esperas  
Member

(Sgd.) Hon. Simeon O. Ongbit, Jr.  
Member

(Sgd.) Hon. Rolando C. Piamonte, Sr.  
Member

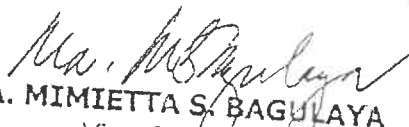
Hon. Carlo P. Loreto  
Member

APPROVED UNANIMOUSLY.

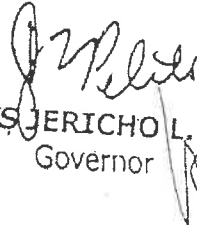
I HEREBY CERTIFY to the correctness of the foregoing resolution.

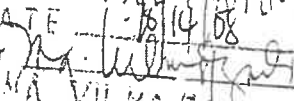
MANUELA CADANO  
Secretary  
to the Sanggunian

ATTESTED:

  
MA. MIMIETTA S. BAGULAYA  
Vice-Governor  
Presiding Officer

APPROVED:

  
CARLOS JERICO L. PETILLA  
Governor

CERTIFIED PHOTO-COPY  
DATE 7/14/08  
BY   
MA. VILMA E. MIGUEL  
RECORDS OFFICER  
IN-CHARGE OF OFFICE  
08A1884297

Oct. 12, 2009

**ANNEX "B"**

Republic of the Philippines  
Supreme Court  
Eighth Judicial Region  
**REGIONAL TRIAL COURT**  
Branch 12,  
Ormoc City  
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**MUNICIPALITY OF ISABEL, LEYTE,**  
Petitioner,

- versus -

CIVIL CASE No. R-ORM-08-00123-CV

**MUNICIPALITY OF MERIDA, LEYTE,**  
Respondent.

X ----- /

**DECISION**

"Under the maxim expressio unius est exclusio alterius, the mention of one thing implies the exclusion of another thing not mentioned. If a statute enumerates the things upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect."<sup>1</sup>

**THE CASE**

This is an appeal from the Resolution No. 08-327 dated July 8, 2008 of the Honorable Sangguniang Panlalawigan of Leyte, which ruled in favor of the respondent and against the petitioner, involving the boundary dispute between the two local government units.

In its appeal, the petitioner (actually, appellant and which will henceforth be referred to as such), rues the issuance of the said resolution which according to it, basically adopted the unnumbered resolution of the Committee on Boundary Disputes, which ruled in favor of the respondent.

In its assignment of errors allegedly committed by the Honorable Sangguniang Panlalawigan of Leyte, the appellant claims that the said Body erred in :

- "1. IN PUTTING DOWN THE LINE AS A FACT THAT SOMETIME IN 1981, THEN MAYOR CRUZ CENTINO OF THE PETITIONER PLACED/INSTALLED THE CONCRETE MARKER LABELLED AS MUNICIPAL BOUNDARY

<sup>1</sup> Tolentino versus Paqueo, G.R. No. 150606, June 7, 2007, 523 SCRA 377, 387; Commissioner of Internal Revenue vs. The Philippine American Accident Insurance Company, Inc., G.R. No. 141658, March 18, 2005, 453 SCRA 668, 688; Commissioner of Internal Revenue versus Michel J. Lhuillier Pawnshop, Inc., G. R. No. 150947, July 15, 2003, 406 SCRA 178, 186, citing Vera v. Fernandez, G.R. No. L-31364, March 30, 1979, 89 SCRA 199, 203, cited in Mun. of Nueva Era versus Mun. of Marcos, et al., G. R. # 169435, February 27, 2008

- MONUMENT (MBM) NO. 5 ALLEGEDLY IN ORDER TO IDENTIFY THE BOUNDARY BETWEEN THE PETITIONER AND RESPONDENT;
- 2. IN RULING THAT THE TRUE AND ACCURATE BOUNDARY BETWEEN THE PETITIONER AND THE RESPONDENT IS THE "ONE PLANTED ALONG THE DEAD DOLDOL CREEK NEAR THE DOLDOL TREE AND HIGHWAY;" and
- 3. IN THE APPRECIATION OF THE EVIDENCE ON RECORD THE DOCUMENTS/PAPERS SUBMITTED BY THE PETITIONER AND THE RESPONDENT IS THE BROOK/CREEK (BENABAYE RIVER) AT THE WESTERN SIDE OF THE POBLACION OF BARANGAY BENABAYE OF THE RESPONDENT."

Attached to the appeal are several documents in support thereof. These are the following:

- 1.) Municipal Resolution No. 1008-159
- 2.) Annex "A" - Municipal Resolution No. 96-183 of Merida
- 3.) Annex "B" - Municipal Resolution No. 2004-091 of Isabel
- 4.) Annex "C" & series - Letter of Joselito Delos Angeles
- 5.) Annex "D" & series - Letter of Hon. Jorge Alcantara
- 6.) Annex "E" - Resolution No. 08-327
- 7.) Annex "F" - Resolution No. 0908-146 of Isabel, Leyte
- 8.) Annex "G" - Resolution No. 08-522 of Sang. Panlalawigan of Leyte

Acting on the appeal, the Court caused the service of summonses upon the respondent, which received the same on December 4, 2008, as per Return of Service of Summons filed by the Process Server of the Court. <sup>2</sup>

Respondent, through counsel, filed its Ex parte motion for extension of time to file answer. The reason cited was the very hectic schedule of the Honorable Mayor of respondent municipality. <sup>3</sup>

Finding the reasons cited to be impressed with merit, the court favorably acted on in and gave the respondent an extension of time of thirty days within which to file their Memorandum. <sup>4</sup>

Respondent, through counsel, complied with the said directive by filing its Memorandum on February 10, 2009. In its pleadings, the respondent vigorously argued that the Honorable Sangguniang Panlalawigan of Leyte correctly ruled in its favor and against the petitioner. To support its arguments, the respondent enumerated ten (10) tax declarations, three (3) of which shows that the properties covered thereby are all located in Apale, Isabel, Leyte while the seven

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<sup>2</sup> Page 70, case record

<sup>3</sup> Page 74, case record

<sup>4</sup> Page 76, case record

(7) properties covered by their respective tax declarations are all situated in Benabaye, Merida, Leyte.<sup>5</sup>

The respondent municipality likewise cites the fact that it submitted documents numbering twenty two (22).<sup>6</sup>

In reaction to the filing of the same, the petitioners filed on February 20, 2009 its Reply<sup>7</sup> to the memorandum of the respondent. Real property tax register and photographs were attached thereto in support of the arguments raised therein.

On March 2, 2009, petitioners filed its motion<sup>8</sup> seeking the dismantling or removal of the billboard erected in Brgy. Benabaye by the national highway. Attached in support to the motion is a photograph showing the same billboard or signage.

During the hearing of the same motion held on April 7, 2009, the court granted unto the parties a period of time within which to file their respective position paper relative to the same motion. An ocular inspection of the premises was also ordered.<sup>9</sup>

In compliance therewith, respondent filed its Comments and Opposition on April 30, 2009 while the petitioner filed its Reply to the said Respondent's comments/opposition on May 19, 2009.

Per order dated June 2, 2009, the court gave the parties, through their counsels another opportunity to submit their position paper relative to this case on appeal.

On June 17, 2009 the petitioner filed a paper which it called or labelled as Addendum to Petitioner's Pleadings Relative to this Petition, further elucidating on its arguments relative to the petition it filed.

Per Order dated July 14, 2009, the court declared this case as submitted for its resolution.

Hence, this decision.

### ISSUES

The principal issue to be resolved is whether or not the Honorable Sangguniang Panlalawigan ng Leyte erred in ruling that the contested area as delineated in the Political Boundary Map claimed by the contending parties belongs to appellee Municipality of Merida.

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<sup>5</sup> Found on Page 8, Memorandum and on Page 90, case record

<sup>6</sup> Found on Page 104-168, case record

<sup>7</sup> Found on Pages 170-179, case record

<sup>8</sup> Found on Pages 180-184, case record

<sup>9</sup> Order dated April 7, 2009.



## FINDINGS OF THE COURT

The court finds for the appellant.

This appeal was filed by the appellant in accordance with, Section 119 of Republic Act Numbered 7160 otherwise known as the Local Government Code of 1991. Section 1.19 reads -

"Section 119. Appeal. - Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the Sanggunian concerned to the proper Regional Trial Court having jurisdiction over the area in dispute. The Regional Trial Court shall decide the appeal within one (1) year from the filing thereof. Pending final resolution of the disputed area prior to the dispute shall be maintained and continued for all legal purposes."

In its first assigned error, the appellant imputed error upon the Honorable Sangguniang Panlalawigan ng Leyte when it considered as a fact the claim of the appellee that the then mayor Cruz Centino installed BBM No. 5 sometime in 1981, so as to identify the boundary between Isabel and Merida. In support of its argument, the appellant stated in its memorandum, viz -

"The petitioner is quite amazed on why the Honorable Sangguniang Panlalawigan gave its imprimatur to an alleged fact proffered by its Committee on Boundary Disputes to the effect that it was then Mayor Cruz Centino of the petitioner who placed/installed the concrete marker labeled as Municipal Boundary Monument (MBM) no. 5 "in order to identify the boundary between the municipalities of Merida and Isabel."

The answer to the subject unfounded, if not baseless, factitious apposition is found in the archives of the Honorable Sangguniang Panlalawigan itself. In 1981, Cruz Centino was not the Municipal Mayor of the petitioner; he was a member of the Honorable Sangguniang Panlalawigan. At the helm of the Municipal Government of the petitioner at the time, or the Municipal Mayor thereof from 1980 to 1986, was Atty. Remegio C. Dayandayan.

More than the fact that its premise of Cruz Centino's alleged role on the installation of the concrete marker labeled as Municipal Boundary Monument (MBM) No. 5 is unforgivable, there is also a patent flaw to it. Centino could not have labeled it as "No.5." The numbering of the monument as "No. 5" came from competent authorities, who were directed to do so, purposely to establish the boundary between the municipalities of Merida and Isabel.

With regards the second assigned error, the appellant also imputes upon the Sangguniang Panlalawigan ng Leyte that it erred in ruling that the true and correct boundary between the petitioner and respondent is the one planted along the dead doldol creek near the Doldol tree and highway. In its arguments in support of this assigned error, the appellant stated in its Memorandum :

"There is no dispute that R.A. No. 191 never mentioned Barangay Benabaye as one of the barangays included, or forming part of the petitioner. But the Honorable Sangguniang Panlalawigan

missed the fact that the established boundary between Barangay Apale and Barangay Benabaye has always been the Brook/Creek (Benabaye River) at the western side of the latter barangay. Note again that at the time of the creation of the petitioner as a municipality, Barangay Benabaye was then a "sitio" of Barangay Calunangan. The evidence on this score is overwhelming, (Annexes "D" to "D-22", respectively).

The Honorable Sangguniang Panlalawigan also dismissed the probative value of the tax declarations submitted by the petitioner. Accordingly, the tax declarations showed that the properties covered thereof are located at Barangay Benabaye, Isabel, Leyte. Its assessment of the entries in the tax declarations is too constricted, as the location of the properties is indicated as "Benabaye, Apale, Isabel, Leyte. Plainly stated, the "Benabaye" as mentioned therein refers to a "Sitio" of Barangay Apale. As already put forth, the owners of the lands covered by the subject tax declarations have been paying their realty taxes to the petitioner.

In arriving at its conclusion that the boundary between the petitioner and the respondent is "the one located along the dead Doldol Creek near the Doldol tree and the highway," the Honorable Sangguniang Panlalawigan gave too much emphasis to the alleged self-serving Reports of the different Committees of the Sangguniang Bayan of the respondent. More to it, it took hook, line and sinker the respondent's claim that the "concrete boundary marker (which was 6 x 6 inches big and marked "I" facing Merida and "M" facing Isabel) was eventually washed out during the course of time x x x." The Honorable Sangguniang Panlalawigan could have simply thought of itself not only of the shallowness of the subject justification but also of its patent absurdity, in the sense that while the Municipal Boundary Monument (MBM) No. 5, which sits on or is on a living Brook/Creek (Benabaye river) and where flood of indescribable proportions usually passed through, still exists, the alleged 6 x 6 inches concrete marker, which is on the dead creek, could not be found as it was "eventually washed out during the course of time". The assertion sounds poetic but, in its entirety, downright preposterous.

The Honorable Sangguniang Panlalawigan says that the "inexistent" or "imaginary" 6 x 6 inches concrete boundary marker disproves the claim of the petitioner or should have more evidentiary value than the Municipal Boundary Monument (MBM) No. 5 which is on the Brook/Creek (Benabaye River) at the western side of the poblacion of Barangay Benabaye. This asseveration runs counter to the fundamental tenets of the rules on evidence. But then, truth to tell, there was no such 6 x 6 inches concrete boundary marker on the "dead Doldol Creek near the Doldol tree and the highway."

Corollarily, the Honorable Sangguniang Panlalawian messes the alleged testimony of the first Mayor of the petitioner, the late Galicano Ruiz. He could not be said to have made this statement, as there is no evidence on record to that effect (except that contained in the self-serving Joint Affidavit dated June 6, 1997 of

Agrifino Gica and Paciano Traverero, who were then members of the Sangguniang Bayan of the respondent), marked as Annex "C-8" hereof, thus: "Tua daplin sa sapa paingon sa Doldol" (near the creek leading towards Doldol), or if he had said that, he was referring to the Brook/Creek (Benabaye River) at the western side of the poblacion of Barangay Benabaye."

In its third and last assigned error, the appellant also imputes upon the Honorable Sangguniang Panlalawigan ng Leyte that it likewise erred in not appreciating the evidence submitted by appellant before it. To support this argument, the appellant contended in its memorandum -

"The Honorable Sangguniang Panlalawigan, when it adopted and approved the undated Resolution of its Committee on Boundary Disputes, miserably failed to dig deeper on the documents or papers submitted to it by the petitioner.

\* The petitioner had before the body not only tax declarations but also affidavits or sworn statements of responsible, credible or competent persons/former officials who have a clear and unquestionable knowledge of the boundary between the petitioner and the respondent.

The tax declarations referred to cover the properties at the western side of the Brook/Creek (Benabaye River), and where the owners have been paying their realty taxes thereof to the petitioner (Annexes "D-9" to "D-18", respectively). Corollarity, the affidavits or sworn statements referred are those of Quirimon Funda, Demetrio Rojas, Pedro Aldiano, Federico Talle, Cerilo German, Gorgonio Manosa and Corazon Tero (Annexes "D-1" to "D-7", respectively), which impeccably show that the boundary between the petitioner and the respondent is the Brook/Creek (Benabaye River) at the western Side of Barangay Benabaye.

It is well to quote, inter alia, the relevant allegations contained in the Affidavit dated October 18, 2006 of Demetrio Rojas (Annex "D-2"); Affidavit dated December 28, 2007 of Pedro Aldiano (Annex "D-3"); Affidavit, also dated December 28, 2007 of Federico Talle (Annex "D-4"); and Affidavit, likewise dated December 28, 2007 of Gorgonio Manosa (Annex "D-6"), thus:

Demetrio Rojas:

" x x x.

1. I am Eighty One (81) years old and have been a resident of Isabel, Leyte, since my birth thereat.
2. In 1948, I became a Councilor of Barrio Quiot, Isabel, Leyte, and in that year the Municipalities of Merida and Isabel, Leyte, traced their boundary.
3. I, together with the then Municipal Mayor Galicano Ruiz, Municipal Councilors Rufino

Mendola and Bonifacio Corton, was a member of the Isabel Panel, while Merida's panel had their Municipal Councilor Mering Mercadal as its head.

4. The boundary between the Municipalities of Merida and Isabel, as pinpointed or established by the two panels, is the BROOK, which is about a few meters below from the western side of the Poblacion of Benabaye, Merida, Leyte, and this had been the boundary between the two municipalities even when I became the Vice-Mayor of Isabel, Leyte, in 1964.

" x x x".

Pedro Aldiano:

1. I am eighty-seven (87) years old and have been a resident of Barangay Apale, Isabel, Leyte, since my birth x x x .
2. I have been (sic) chosen as Teniente del Barrio of Apale last 1952-1958 and later appointed as a Patrolman in the Municipality of Isabel during the term of ex-mayor Cruz Centino on (sic) the year 1958-1962.
3. Since my childhood until at present, it is of my knowledge that the boundary between Isabel and Merida was the brook/creek located near the poblacion of Barangay Benabaye, Merida, Leyte.
4. Furthermore, it was late Judge Juan Amodia informed us that the boundary between Isabel and Merida was the brook/creek when HE AND HIS COMPANION CONDUCTED AN OCULAR INSPECTION RELATIVE TO THE LAND DISPUTE OF REGALADO GERMAN VS GORGONIO LASTIMA.
5. This boundary dispute occurred in the later part of the 1980's when Merida have their Cadastral Survey because it overlap (sic) the original boundary which was set when Isabel was made into Municipality in the year 1948.

" x x x" (Underscoring Supplied).

Federico Talle:

" x x x.

1. That I have been working in the government as a highway maintenance employee "Caminero" since 1965 until I retire (sic) last 2002;
2. That I had been under the supervision of several foremen such as Mr. Wenceslao Buot of Palompon, Leyte and Mr. Clemente Baylon of Merida, Leyte.
3. That the concrete marker located along the creek/brook which is a few meters away from the western side of the Poblacion of Barangay Benabaye, Merida, Leyte, was always made reference in giving us assignment because they, our superiors, informed us that it is the boundary between Merida and Isabel.

" x x x".

Gorgonio Manosa:

" x x x.

1. I am eighty four (84) years old and have been a resident of Isabel, Leyte, since my birth thereat.

X x x

2. That my first position as a local government employee was a Patrolman under the command of our Chief of Police Margarito Sanchez (1951-1962), during the term of Mayor Galicano Ruiz.
3. Being young in the police force that time, I was always ordered by our Chief of Police to maintain peace and order during market day 'Tabo' held in the boundary of Barangay's (sic) Apale and Benabaye located along the brook/creek which is on the western side of the Poblacion of Barangay Benabaye, Merida, Leyte.
4. After serving in the Police force for several years, I became a tax collector in the municipal treasurer's office. With that I used to go to the place mentioned above for my official function as tax collector until the market day 'Tabo' continually existed at where the taxpayers resided.

" x x x".

In completely disregarding the aforementioned evidence, the Honorable Sangguniang Panlalawigan simply laid the claim of the petitioner out of existence, blatantly setting at naught the ordinary rules of evidence.

The evidentiary weight of the subject documents or papers is concededly indubitable. Backing up all of these is the Municipal Boundary Monument (MBM) No. 5 (Annex "A-20"). They showed beyond cavil of doubt that the boundary between the petitioner and the respondent is the Brook/Creek (Benabaye River) at the western side of the poblacion of Barangay Benabaye."

On the other hand, the appellee insisted on the correctness of the resolution of the Sangguniang Panlalawigan ng Leyte, claiming that it did the right thing in arriving at its resolution in its favor, for the same was properly grounded on factual and legal bases. In its Memorandum, the appellee argued:

"The Respondent-Appellee MERIDA on the other hand submitted the following:

1. A Certified true copy of Republic Act No. 191- "An Act Creating the Municipality of Isabel, Province of Leyte, (for easy reference hereto attached as Annex "1").

This clearly shows that only 8 barangays namely: QUIOT, STA. CRUZ, LIBERTAD, MATLANG, TOLINGON, BANTIGUE, APALE and JONAN were separated from Respondent-Appellee MERIDA to establish the Municipality of ISABEL, the Petitioner-Appellant in this case.

Brgy. Calunangan wherein Brgy. Benabaye, the subject area in this case, was still a part as a sitio, was not among those included to be part of Petitioner-Appellant ISABEL but remains with respondent-Appellee MERIDA, therefore, as a consequence, Brgy. Benabaye also remains with Respondent-Appellee MERIDA.

2. Office Order dated March 13, 1990 by then Mayor Atty. Bernardino M. Solaña (Annex "2").

This shows that then Mayor, Atty. Bernardino M. Solaña as early as 1990 had already ordered for the organization of the Merida-Isabel Boundary Dispute Fact Finding Committee.

3. The Fact-Finding Committee Summary Report (Annex "3").

The Fact-Finding Committee composed of sixteen (16) members found the following:

3.1 Per testimony of the first mayor of Isabel, Ex-Mayor Galicano N. Ruiz, the boundary is near the dead creek leading to the old Doldol tree which is still existing up to the present, and a six by six inch-size concrete monument was planted and that is the boundary between then Sitio Benabaye and Barrio Apale. He further stated that the concrete marker bears the engraved letter "M" facing the Municipality of Merida and "I" facing the Municipality of Isabel (pages 2-3 of the report).

3.2 During the actual boundary monument determination of the exact size hunt led by the fact finding team and vital witnesses

from Barangays Benabaye, Calunangan of Merida, Leyte and Brgy. Apale of Isabel, Leyte, they found the following:

3.2.1 Sitio Benabaye was separated from Brgy. Calunangan in 1969.

3.2.2 Benabaye was never a sitio of Brgy. Apale, nor any portion of its territory belongs at any point in time to Brgy. Apale.

3.2.3 The actual site of the Municipal Boundary Monument Search hunt was between Barangay Benabaye of Merida and Barangay Apale of Isabel particularly at the Lot owned by Felimon Estremos of Benabaye and Mrs. Felisa Urbano, the landowner on the side of Apale.

2.1.4. A Municipal Boundary Monument was installed or buried near the giant Doldol, separating Merida and Isabel. (page 4 of the Report)

3. Resolution No. 40 (Series of 1990) – A resolution Approving/Confirming the Eight-page Report Result of the Investigation of the Fact-Finding Committee in the Determination of the exact location of the Original Municipal Boundary Monument erected during the incumbency of the late Ex-Municipal Mayor Leodegario Conciliado of Merida and the First Appointed Mayor of Isabel Ex-Mayor Galicano N. Ruiz (Still living) Separating Merida (The Mother Municipality) and Isabel (the Newly Separated Municipality in 1947 (Annex "4").

4. Memorandum dated September 6, 1991 of the then Mayor, Atty. Bernardino M. Solaña to the PNP Station Commander of Merida, Leyte and to the Punong Brgy. of Benabaye, Merida, Leyte to disband any illegal assembly within the territorial jurisdiction of Brgy. Benabaye, Merida, Leyte (Annex "5").

5. Letter of Ms. Grace P. Martin dated May 6, 1992 addressed to the Municipal secretary of Merida, Leyte, Mr. Eddie A. Autida (Annex "6").

6. Letter of then Mayor Atty. Bernardino M. Solaña dated May 19, 1992 addressed to Ms. Grace P. Martin, the Adviser/Founder of the Yellow Ladies Club of Isabel, Leyte, informing the latter that what they did in putting up the Welcome Marker without the proper coordination and consultation with the Brgy. Officials of Brgy. Benabaye and the Municipal Officials of Merida, Leyte, as an illegal and immoral act (Annex "7").

7. Resolution No. 62, Series of 1996 of the Sangguniang Barangay of Brgy. Benabaye Requesting the Sangguniang Bayan of Merida, Leyte to Initiate for an Early settlement of the Municipal Boundary Dispute Between Isabel and Merida (Annex "8").

8. Committee Report dated December 3, 1996 re Boundary conflict between Barangay Apale, Isabel, Leyte and Barangay Benabaye, Merida, Leyte (Annex "9").

9. SB Resolution No. 96-183-A Resolution Seeking the Assistance of the Sangguniang Panlalawigan of Leyte to Drop the Claims of Isabel, Leyte over a Portion of Barangay Benabaye, Merida, Leyte, CAD 520-D, Module 10, from the Records of the DENR-LMS, Tacloban City (Annex "10").

10. Certification and List of Voters of Barangay Benabaye, Merida, Leyte. (Annex "11" and series).

11. List of Occupants/Voters within the portion of Barangay Benabaye subject of the claim of Isabel, Leyte as submitted by the Brgy. Chairman of Brgy. Benabaye, Merida, Leyte, Berlito L. Sanchez (Annex "12" and series).

12. List of Real Property Owners situated in Merida vs. Isabel tax map filed in the office of the Municipal Assessor of Merida, Leyte (Annex "13" and series).

13. Photographs of the original Concrete Monument found near the Doidol Tree bearing the marks "1947" on top and "M" on one side and "I" on the other side; and the MBM No. 5 claimed by the Petitioner-Appellant Isabel near the Benabaye River (Annex "14" and series).

14. Letter of Municipal Councilor Castrence C. Isidro, Barangay-in-Charge to the Honorable Barangay Captain of Brgy. Apale, Isabel, Leyte dated December 3, 1996 re its illegal construction of a waiting shed at Brgy. Benabaye, Merida, Leyte (Annex "15").

15. Affidavit of Berlito L. Sanchez, the duly elected Brgy. Chairman of Brgy. Benabaye, Merida, Leyte.

He stated that his residence is located in the area claimed by Isabel, Leyte officials. That aside from him, there are also two duly elected Barangay Kagawads, the S.K. Chairman and the Chairman of the Benabaye Water Consumer's Association, a duly registered Association with Official Address at Benabaye, Merida, Leyte and some S.K. Members and Brgy. Tanods of barangay Benabaye who are residing in the area claimed by Petitioner-Appellant ISABEL (Annex "16").

16. Affidavit of Dominador Quinte, a resident of Brgy. Benabaye, Merida, Leyte and whose house is built along the embankment of the Benabaye River, along the road and that he personally saw then Mayor Cruz Centino of Isabel, Leyte who was accompanied by some policemen and laborers who installed the concrete monument along the river bank across his house, the same monument marked as MBM No. 5, 10 in. by 10in. big (Annex "17").



17. Affidavit of Percida G. Cadiz, a resident of Brgy. Benabaye, Merida, Leyte and her house is located in the area claimed by Isabel, Leyte, and that she can personally testify that ever since she was a child the boundary between Isabel and Merida is the dead creek leading to Doldol and that there was no known conflict at the time of the then first mayor Galicano Ruiz, and that it was only after then Mayor Cruz Centino installed a monument along the Benabaye River (Annex "18").

18. Affidavit of Florencia L. Sanchez, a resident of Barangay Apale, Isabel, Leyte, and that she personally saw the concrete monument with engraved "1947" on top and letters "M" and "I" on its sides measuring 6 inches by 6 inches, and that it is located near the big Doldol Tree, and that she knows it personally as it is located only 20 meters from her house (Annex "19").

19. Barangay Boundary and Index Map of Case 20, CAD. 520-D, Module 10, Merida Cadastre (Annex "20").

20. Barangay Boundary and Index Map of Isabel Cadastre, Cad. 661-D, Case 13 (Annex "21").

21. Property Identification Map of Barangay Benabaye, Merida, Leyte (Annex "22").

The aforementioned documents and pieces of evidence were submitted to the Honorable Sangguniang Panlalawigan of the Province of Leyte, last June 23, 1997 per cover letter attached hereto as Annex "23."

In sum, the appellant Municipality of Isabel claims that the correct political boundary between Isabel and Merida is the Benabaye River, punctuated by MBM No. 5, while appellee Municipality of Merida contends that the correct boundary between the parties is the marker planted near the Old Doldol Creek near the Doldol Tree.

To arrive at its decision, the Court had to subject the contending claims of the parties to a fine-toothed judicial comb. It also had to visit the pertinent provisions of Lands Administrative Circular No. 4, Series of 1980, as amended, otherwise known as the Manual for Land Surveys in the Philippines. Under Section 540 thereof, the boundaries between municipalities are delineated by the Cadastral Survey Team, after the authorities of the adjoining municipalities have been consulted. Section 540 provides -

"Section 540. The authorities of the municipalities separated by the boundary to be surveyed shall be consulted and requested to indicate on the ground the common boundaries."

It is an undisputed fact that the Municipality of Isabel was carved out of the territory of the older Municipality of Merida, Leyte pursuant to Republic Act Numbered 191. Appellant's territory consisted of Barangay (then called Barrio) of Quiet, Santa Cruz, Libertad, Matlang, Tolingon, Bantigue, Apale and Jonan. All these barangays, prior to the enactment of the statute, belonged to the appellee. Of these Eight (8) barangays constituting the land mass territory of the

appellant, it is Barangay Apale that is embroiled in the controversy, together with Barangay Benabaye of the appellee, which adjoins the former.

It would do well therefore for the court to look into the history of Merida, Leyte.

Prior to the enactment into law of RA 191, the Municipality of Isabel did not exist. Instead, the eight barangays mentioned in the preceding paragraph were part of the land mass territory of the Municipality of Merida. Merida then, as it is now, was barely developed and is mostly a rural town. The City of Ormoc adjoins it on the Southern side, while Palompon adjoins it on its Northern side. The Camotes Sea is on its Eastern side, while several municipalities abut its Western side. The provincial road starting from the junction in Ormoc City traverses Merida and leads towards Palompon, thereafter passing through San Isidro, Calubian, and Leyte.

Right after the enactment of RA 191, the record shows that these eight barangays were segregated from the territory of Merida and formed what is now known as the Municipality of Isabel. It is one of the few areas in the country which were chosen as a site for one of the Eleven (11) Major Industrial projects undertaken during the regime of President Ferdinand E. Marcos. Its rapid industrial development started in the year 1980 when the Philippine Associated Smelting and Refining Corporation (PASAR) and Philippine Phosphate Corporation (Philphos) were established.

After the enactment into law of RA 191, the eight barangays ceased being part of Merida and became the core barangays constituting the Municipality of Isabel. Of these eight barangays, it is Barangay Apale which adjoins Barangay Benabaye, which belongs to Merida. At the time of its creation as a Municipality, Barangay Benabaye was just a sitio of Barangay Calunangan, Merida, Leyte.

During the Cadastral Survey<sup>10</sup> of the Municipality of Merida, undertaken by a private contractor under supervision of the Director of Lands, a strip of land in-between Barangays Apale and Benabaye was contested by both parties, each claiming that this strip of land belongs to them. This contested portion was reiterated during the Cadastral Survey<sup>11</sup> of Isabel, Leyte. This strip of land is defined in the Political Boundary and Index Map<sup>12</sup> of Cad 661-D found in the record. It is this strip of land that is subject of the controversy that was resolved by the Honorable Sangguniang Panlalawigan ng Leyte in favor of appellee. In arriving at its decision, the said August Body ratiocinated thus -

"Moreover, in the Committee Reports submitted by the Municipality of Merida, it is clear that the boundary between Merida and Isabel is the one located along the dead Doldol Creek near the Doldol Tree and the highway. Although the concrete boundary marker (which was 6 x 6 inches big and marked "I" facing Merida and "M" facing Isabel) was eventually washed out during the course of time, still there are positive testimonies of witnesses to the effect that such was the case. Even the first appointed mayor of

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<sup>10</sup> Known as Cad 520-D

<sup>11</sup> Known as Cad 661-D

<sup>12</sup> Annex "D-21", petition

Isabel himself, Hon. Galicano Ruiz, testified that the boundary between the two (2) municipalities is the one found beside the creek leading to Doldol ("tua daplin sa sapa paingon sa Doldol").

Nevertheless, another concrete monument was found in Sitio Doldol, Brgy. Benanaye, Merida, Leyte, with marks "1947" on top and the letters "M" and "I" on both sides. This monument is planted five (5) meters from Doldol Creek and sixty (60) meters south of the big Doldol tree. Certainly, this marker is the true and accurate marker, being installed in the year 1947 when Isabel was created, as testified to by the witnesses, as compared to the Municipal Boundary Monument (MBM) No. 5 installed by former Mayor Cruz Centino of the Municipality of Isabel sometime in 1981, much less the Welcome Boundary Marker constructed by the Yellow Ladies Club of Isabel, Leyte sometime in 1988."

A dispassionate reading of the affidavits, tax declarations and other documentary evidence, in addition to what the court observed during the ocular inspection it conducted, however disproves these findings of the Honorable Sangguniang Panlalawigan.

The law itself specifically listed the barangays removed from Merida and made to constitute the territory of Isabel. This include Barangay Apale. The inclusion of Barangay Apale necessarily included also all parcels of land comprising Barangay Apale at the time of the enactment into law of RA 191. Thus the recognized political boundary between Barangay Apale and its adjoining Barangay Calunangan (which includes Barangay Benabaye, then one of its sitio). The recognized political boundary - which correspond to its territorial boundary with the adjoining Barangay Calunangan - at the time RA 191 was enacted into law, was the Benabaye River. This fact was established through the affidavits of reliable and credible witnesses from both parties, but which were apparently not taken into consideration by the Honorable Sangguniang Panlalawigan ng Leyte.

In his affidavit, Demetrio Rojas,<sup>13</sup> 81 years old in the year 2006, stated under oath that it was in the year 1948 when the boundary between Isabel and Merida was traced by two panel of representative coming from Merida and Isabel. He further averred that -

"4. The boundary between the Municipalities of Merida and Isabel, as pinpointed or established by the two panels, is the BROOK, which is about a few meters below from the western side of the Poblacion of Benabaye, Merida, Leyte and this had been the boundary between the two municipalities even when I became the Municipal Vice Mayor of Isabel, Leyte in 1964;"

This claim about the true boundary between the two municipalities were corroborated by another, albeit older, octogenarian. In his affidavit,<sup>14</sup> Pedro Aldiano, 87 years old in the year 2007, stated under oath that since childhood, the correct boundary between Isabel and Merida was the brook/creek located near the poblacion of Barangay Benabaye, Merida, Leyte. He further averred that

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<sup>13</sup> Marked Annex "D-2", page 35, record

<sup>14</sup> Marked Annex "D-3", page 36, record

during the time when Judge Juan Amodia conducted an ocular inspection relative to the land dispute between Regalado German and Gregorio Lastima, the said Judge Amodia informed him about the said brook/creek being the boundary between Merida and Isabel. He likewise stated that -

"4. The boundary dispute occurred in the later part of 1980's when Merida have their Cadastral Survey because it overlap the original boundary which was set when Isabel was made a Municipality in the year 1948."

Still another octogenarian, Quirimon Funda, who was 87 years old at the time he executed his affidavit dated October 18, 2006,<sup>15</sup> corroborated the claim of the two elderly gentlemen, that the boundary between Isabel and Merida was the brook/creek which is located near the center of Barangay Benabaye. He further recalled that in the year 1945, when he was a classroom teacher of Apale, Isabel, the same brook was the established boundary between the two towns.

The testimonies of these very old men nearing the end of their lives - and who are not expected to lie or concoct tales, are positive averments that are deserving of respect and inspires belief. The court notes that all the three gentlemen referred to a common boundary between Merida and Isabel - the brook/creek which is located near the poblacion of Barangay Benabaye. This is the same brook/creek which was seen by the court, through the undersigned Judge during the ocular inspection. This brook/creek which lies near the curve on the highway, had flowing water running through on its way to the Camotes Sea. On one side of the bank was a concrete boundary marker. This is what the appellant claims as MBM No. 5 and which the appellee challenges as having been erected there by former Mayor Cruz Centino without its knowledge and consent. The appearance of the said monument, as noted by the court during the ocular inspection is that it was placed there many, many years ago. It appears to comply also with the monumenting standards for municipal boundary monuments, as provided for under Section 221 of the Manual for land Surveys in the Philippines.<sup>16</sup>

On the other hand, scrutinizing the affidavits of the witnesses of the appellee will show that these are hearsay evidence, if not self-serving declarations.

For instance, Percida G. Cadiz<sup>17</sup> in her affidavit, had stated that when she reached the age of 10, she started to regularly attend fiestas and market day in Barangay Apale and Tolingon. Every time she and her parents would cross the dead Doldol Creek in the land owned by Serafin Urbano, she was told by her parents that they have reached Isabel. She was then convinced that the said dead Doldol creek is the true boundary between Isabel and Merida. She also mentions about the installation by Mayor Cruz Centino of a monument along the

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<sup>15</sup> Marked Annex "D-1", page 36, record

<sup>16</sup> Section 221 - The standard concrete monuments for permanently defining position of points of survey shall be as follows :

a) For provincial, city and municipal boundaries, thirty (30) centimeters square by one (1) meter long (30x30x100cm.) Centered by a galvanized iron spike and level on top, set sixty (60) centimeters in the ground leaving a projection of forty (40) centimeters above the ground.

<sup>17</sup> Marked Annex "18", page 149, record

Benabaye River and the subsequent act by tax collectors from Isabel, Leyte demanding from them that they pay real estate taxes at Isabel, but she refused. This cannot be given credence simply because during the peculiar inspection, no Doldol Tree nor dead creek was seen by the court by the highway. Instead, what the court saw was a canal with flowing water leading to the Camotes Sea. This same canal is beside the fence of a house by the highway, which is located on the opposite side of the Highway where the Billboard erected by the appellee stands. There are no maps found on the record that would show the location of the Doldol tree or the dead Doldol creek. While there is Property Identification Map<sup>18</sup>, yet the drawings therein about the Doldol Tree appears to have been belatedly introduced, with no one presented to explain the same. This claim cannot be given credence and worth as it is clearly self-serving.

Another affidavit<sup>19</sup> executed by a witness of the appellee, in the person of 70 year old Florencia L. Sanchez claimed under oath that she has been residing in Sitio Doldol for 43 years running, and she, her husband and parents-in-law are aware of the existence of a concrete marker with engraved marks "1947" on top, with the letters "I" and "M" and the opposite sides. She avers that since her discovery of the said marker, the same has not been disturbed. These claims of her however, just like that of Mrs. Cadiz, is also self-serving. This is because anybody can just erect the marker referred to. The court also notes that nobody was ever presented by the appellee which would show a direct relation to the establishment of the same marker as the very same marker placed by representatives of Merida and Isabel when the boundary between the two towns were reaffirmed right after the separation of Apale from Merida pursuant to RA 191.

With respect to the respective tax declarations, Certifications from the Elections Officer and Municipal Assessors coming from both parties, these cannot be given weight by the court for being clearly self-serving. An examination also of these documents shows that they all refer to incidents after 1948. What the court will give much weight and considered in evidence are those which refer to the status of the contested land at the time RA 191 was enacted.

In this connection, the affidavits of the three octogenarian witnesses of appellants clearly outweigh those of the appellees. The knowledge of these three octogenarians all refer to the boundary between Merida and Isabel prior to, and during and after the enactment into law of RA 191. Their claims were bolstered by the Barangay Boundary and Index Map<sup>20</sup> prepared by Geodetic Engineer Norberto M. Villaluna, the Cadastral Survey Chief of Party-Contractor, shows the contested property lying in-between Barangay Apale and Barangay Benabaye on the lower portion; between Barangay Binog of Isabel and Barangay Cambalong of Merida on the middle portion; between Barangay Puting Bato of Isabel and Barangay San Jose of Merida on the upper portion; and between Barangay Cangag of Isabel and Barangay Calunasan of Merida. The area of this contested portion is 162.3603 hectares. This is a public document which was duly approved on December 11, 1987 by Anacorito Geolingo, Regional Director

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<sup>18</sup> Prepared by Tax Mapper Elenito C. Ignacio, Marked Annex "22" and found on Pages 159-162, record

<sup>19</sup> Marked Annex "22", page 150, record

<sup>20</sup> Marked Annex "D-21", petition

of the Lands Management Services, DENR, Region VIII, Tacloban City and which was prepared pursuant to Section 632 of the Manual for Land Surveys.<sup>21</sup>

As can be gleaned from this document, and contrary to the findings of the Honorable Sangguniang Panlalawigan ng Leyte, the boundary dispute between appellant and appellee is not limited to Barangay Apale of Isabel and Barangay Benabaye of Merida. It involves a total of Eight (8) Barangays - Four on the Isabel side and Four (4) on the Merida side. This piece of evidence of appellant shows also the following information :

- a) The Cadastral Survey of Isabel under Cad 661-D (incidentally, Cad refers to cadastral; 661 refers to the number assigned to the cadastral survey project; and D indicates that it is done by a private contractor) is a Numerical Cadastral Survey;
- b) The Cadastral Survey of Merida under Cadm 520-D is a Graphical Cadastral Survey;
- c.) The Cadastral Survey Contractor of Cad 661-D erected Municipal Boundary Monuments;
- d.) MBM No. 6 is a common municipal boundary monument, it having been adopted as Barangay Boundary Monument (BBM) No. 25 of Cadm 520-D;
- e.) MBM No. 7 of Cad 661-D is equivalent to MBM No. 5 of Cadm 520-D of Merida;
- f.) MBM No. 8 of Cad 661-D is equivalent to MBM No. 6 of Cadm 520-D;
- g.) MBM No. 3 of Cadm 520-D is equivalent to BBM No. 38 of Cad 661-D;

The following information in turn shows that starting from MBM No. 6 of Cad 661-D, then connecting it to MBM No. 7, Cad 661-D, then to MBM No. 8, Cad 661-D; then to MBM No. 3 of Cadm 520-D; then to MBM No. 4 of Cad 520-D; and then finally back to MBM 6 of Cad 661-D forms the loop that defines the area of disputed property. It appears to the Court that both Cadastral Survey Contractors complied with Section 625 of the said Manual for Land Surveys, which provides -

"Section 625 - In addition to the provisions of the preceding section, municipal boundary monuments shall be established along straight municipal and barangay boundaries at approximately one kilometer intervals except when the boundary passes through forest lands."

After considering the evidence presented by the parties, as found in the record, this Court is convinced that the Honorable Sangguniang Panlalawigan ng

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<sup>21</sup> Section 632 - In case the boundary dispute is not settled before the completion of the field work of the cadastral project, the disputed area with all the lots comprised therein shall be surveyed and treated as separate cadastral case.

Leyte erred in arriving at its conclusions of fact and law when it rendered its now appealed Decision. The quantum of proof<sup>22</sup> presented by the appellant more than satisfies the required amount of proof which shows that the contested property as indicated in Annex "D-21" properly belongs to the appellant.

Accordingly, and pursuant to Section 546<sup>23</sup> of the said Manual for Land Surveys, the following municipal boundary monuments previously erected on the ground by the Cadastral Survey team of Cad 661-D to delineate the contested portion, are hereby ordered removed upon finality of this decision. These municipal boundary monuments are as follows:

- (a) MBM No. 3; and
- (b) MBM No. 4

Finally, with respect to the motion for the removal of the Billboard erected by the appellee, the same has been rendered moot and academic in view of the foregoing disquisition. Upon the finality of this decision, the appellee is hereby ordered to immediately remove the same, at its expense.

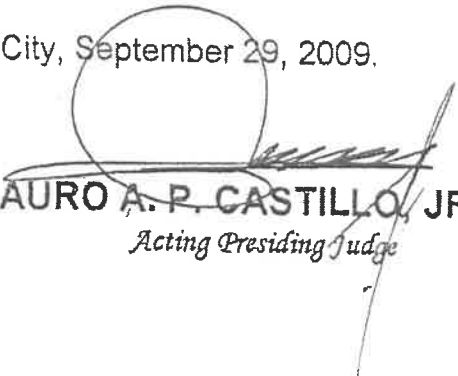
#### DISPOSITION

**WHEREFORE**, premises considered, judgment is hereby rendered, in favor of appellant and against appellee, **REVERSING** and **SETTING ASIDE** the assailed Resolution of the Honorable Sangguniang Panlalawigan ng Leyte and a new one is hereby entered, **DECLARING** that the contested tract of land with an area of 162.3603 hectares as appearing in the cadastral survey records of Cad 661-D properly belong to the Municipality of Isabel, Leyte.

Upon the finality of this decision, the appellee is hereby further **ORDERED** to immediately remove the billboard it erected during the pendency of the appeal at its expense.

**SO ORDERED.**

**IN CHAMBERS**, Hall of Justice, Ormoc City, September 29, 2009.

  
**LAURO A. P. CASTILLO, JR.**  
*Acting Presiding Judge*

*Lap/erp*

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<sup>22</sup> Section 5, Rule 133, Rules of Court provides -  
SEC. 5. Substantial evidence. — In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.(n)

<sup>23</sup> Section 546 - After the final decision of proper authorities, the adopted municipal boundaries shall be monumented with standard municipal boundary monuments as specified in Section 221 (a) and the monuments marking temporarily the disputed boundaries shall be removed.



Republic of the Philippines  
**COURT OF APPEALS**  
 Cebu City  
 000000

SEP 04 2014  
 JHANNIN C. ZANORIA

SPECIAL TWENTIETH (20TH) DIVISION

**ANNEX "I"**  
 CA-G.R. SP No. 05255

MUNICIPALITY OF ISABEL, LEYTE,  
 Petitioner - Appellee,

-versus-

**ANNEX "C"**

MUNICIPALITY OF MERIDA, LEYTE,  
 Respondent - Appellant.

X-----X

**NOTICE OF JUDGMENT**

August 20, 2014

Sir/Mesdames:

Please take notice that on August 20, 2014, a **DECISION**, copy of which is hereto attached, was issued by the **SPECIAL TWENTIETH (20TH) DIVISION** of the Court of Appeals in the above-mentioned case, the original of which is now on file in this Office.

You are hereby required to inform this Court, within FIVE (5) DAYS from receipt hereof, of the date you received this NOTICE with copy of the **DECISION**.

You are further hereby required to inform this court within FIVE (5) DAYS from notice of any change of address and/or counsel.

Very truly yours,

*[Signature]*  
**MAY FAITH L. TRUMATA-REBOTIACO**  
 Division Clerk of Court

**Copy furnished:**

HON PRESIDING JUDGE-reg w/rc  
 RTC BRANCH 12  
 Ormoc City

BRANCH CLERK OF COURT-reg w/rc  
 RTC BRANCH 12  
 Ormoc City

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-jrd  
 -rollo  
 -reporters unit



Republic of the Philippines  
**Court of Appeals**  
VISAYAS STATION  
Cebu City

**Special Twentieth (20<sup>th</sup>) Division**

MUNICIPALITY OF ISABEL,  
LEYTE,

Petitioner-Appellee,

- versus -

MUNICIPALITY OF MERIDA,  
LEYTE,

Respondent-Appellant.

C.A.-G.R. S.P. No. 05255

Members:

HERNANDO, *Chairperson*

LAGURA-YAP,

AZCARRAGA-JACOB, *JJ.*

Promulgated:

AUG 20 2014

*[Signature]*

**DECISION**

**HERNANDO, J.:**

This *Petition for Review* involves the examination of conflicting decisions of the Regional Trial Court (RTC), Branch 12 of Ormoc City and the *Sangguniang Panlalawigan of Leyte* as to which between the municipalities of Isabel (Isabel) and Merida (Merida), both in the Province of Leyte, is the true "owner" of a parcel of land consisting of 162.3603 hectares situated between these two Local Government Units (LGUs).

**The Antecedents**

Isabel was once a barangay of Merida. Sometime in 1947, the charter of Isabel, Republic Act (RA) No. 191, was passed, paving the way for its creation by separating eight barangays from Merida in order to create the Municipality of Isabel.<sup>2</sup> Merida alleged that after the enactment of the

<sup>1</sup> Designated as 3rd Member per Office Order No. 20-14-GTI dated August 5, 2014.

<sup>2</sup> Republic Act No. 191, the charter of Isabel, Leyte reads:

charter of Isabel, the municipal officials of the two municipalities agreed to install six by six inches stone monuments marked "1947" and with the initials "I" for Isabel on one side and "M" for Merida on the other side. These were installed along the dead creek leading to *Barangay Doldol*: the first, around thirty (30) meters from the road to the shoreline and the second, near a big old Doldol tree. Merida claims that the concrete monument installed 30 meters from the road to the shoreline was lost after the lapse of time but the one installed near the old Doldol tree remained.

Merida further alleged that the "loss" of the concrete monument installed near the old Doldol tree near the road confused the new officials of Isabel such that the latter installed a new and bigger monument marked as MBM No. 5 but such was placed not in its alleged original position but near the road, along the *Benabaye River*, without the prior knowledge and consent of the town officials of Merida. In addition, the *Yellow Ladies Club of Isabel* installed a concrete "welcome" monument across the road where the MBM No. 5 was installed. Also, *Barangay Apale* of Isabel constructed a waiting shed in the contested area which prompted the barangay council of *Benabaye* to seek the assistance of the *Sangguniang Bayan of Merida*.

On December 4, 1996, the *Sangguniang Bayan of Merida* passed Municipal Resolution No. 96-183 for the purpose of settling amicably its political boundary dispute with its neighboring town, Isabel. For its part, Isabel also passed Municipal Resolution No. 2004-091 dated August 2, 2004 for the same purpose. Thus, the two LGUs agreed to submit the dispute before the *Sangguniang Panlalawigan* of Leyte.

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REPUBLIC ACT NO. 191 - AN ACT CREATING THE  
MUNICIPALITY OF ISABEL, PROVINCE OF LEYTE

Section 1. The barrios of Quiot, Sta. Cruz, Libertad, Matlang, Tolingán, Bantigue, Apale and Jonan are separated from the municipality of Merida, Province of Leyte, and constituted into a new and separate municipality to be known as the municipality of Isabel, Province of Leyte, with the seat of government at the barrio of Quiot.

Sec. 2. The municipal mayor, vice-mayor, and councilors of the new municipality shall be appointed by the President of the Philippines to hold office until their successors are elected and qualified.

Sec. 3. The municipality herein established shall begin to exist on the date fixed in a proclamation to said effect by the President of the Philippines and upon the appointment and qualification of its officers.

Sec. 4. This Act shall take effect upon its approval.

Enacted, without Executive approval, June 22, 1947.

### The Ruling of the *Sangguniang Panlalawigan* of Leyte

On July 8, 2008, the *Sangguniang Panlalawigan* of Leyte issued Resolution No. 08-327 adjudicating that the disputed area is within the political area of Merida, thus:

**WHEREFORE, PREMISES CONSIDERED,** Municipal Resolution 2004-091 of the Municipality of Isabel and Municipal Resolution No. 96-183 of the Municipality of Merida are hereby resolved as follows:

1. The true and accurate boundary between the Municipalities of Merida and Isabel is the one planted along the dead Doldol creek near the Doldol tree and the highway;

2. The local government of Isabel, Leyte, is hereby ordered to remove the Municipal Boundary Monument (MBM) No. 5 installed by Former Mayor Cruz Centino of the Municipality of Isabel sometime in 1981 as well as the Welcome Boundary Marker constructed by the Yellow Ladies Club of Isabel, Leyte sometime in 1988.

3. The local government of Merida, Leyte, is hereby ordered to install another Municipal Boundary Monument along the dead Doldol creek near the Doldol tree and the highway in accordance with the laws and the Barangay Boundary and Index Maps and political boundary maps of the two municipalities.

**SO ORDERED.**<sup>3</sup>

### The Ruling of the RTC

Aggrieved by such pronouncements, Isabel brought the political boundary dispute on appeal<sup>4</sup> to the RTC which case was docketed as Civil

<sup>3</sup> Sangguniang Panlalawigan of Leyte Resolution No. 08-327 dated July 8, 2008; Rollo, pp. 78-87.

<sup>4</sup> Sections 118 and 119 of the Local Government Code of 1991 provide:

Section 118. *Jurisdictional Responsibility for Settlement of Boundary Dispute.* – Boundary disputes between and among local government units shall, as much as possible, be settled amicably. To this end:

Case No. R-ORM-08-00123-CV.<sup>5</sup> On September 29, 2009, the RTC, Branch 12 of Ormoc City found merit in the appeal filed by Isabel thereby reversing the findings of the *Sangguniang Panlalawigan of Leyte* by decreeing that the questioned area is not within the political boundary of Merida but rather that of Isabel, thus:

**WHEREFORE**, premises considered, judgment is hereby rendered, in favor of appellant and against appellee, **REVERSING** and **SETTING ASIDE** the assailed Resolution of the Honorable *Sangguniang Panlalawigan ng Leyte* and a new one is hereby entered, **DECLARING** that the contested tract of land with an area of 162.3603 hectares as appearing in the cadastral survey records of Cad 661-D properly belong to the Municipality of Isabel, Leyte.

Upon the finality of this decision, the appellee is further **ORDERED** to immediately remove the billboard it erected during the pendency of the appeal at its expense.

**SO ORDERED.**<sup>6</sup>

Merida filed a *Motion for New Trial*<sup>7</sup> in the hope that the RTC will reconsider its decision by taking into account the existence of the 1947 marker which it previously failed to locate and pinpoint to the trial court when it conducted an ocular inspection. However, the RTC denied its motion for new trial on the ground that the “newly discovered evidence” *i.e.* the existence of the marker with the “1947” and initials “I” and “M” is not “new” considering that Merida was able to previously submit photographs of the stone marker before the *Sangguniang Panlalawigan* of Leyte when the case was under its consideration. The RTC also opined that this specie of

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(b) Boundary disputes involving two (2) or more municipalities within the same province shall be referred for settlement to the *sangguniang panlalawigan* concerned.:

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Section 119. *Appeal.* -- Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the *sanggunian* concerned to the proper Regional Trial Court having jurisdiction over the area in dispute. The Regional Trial Court shall decide the appeal within one (1) year from the filing thereof. Pending final resolution of the disputed area prior to the dispute shall be maintained and continued for all legal purposes.

<sup>5</sup> Copy of the Petition filed by the Municipality of Isabel before the RTC of Ormoc City; Rollo, pp. 88-101.

<sup>6</sup> RTC Decision dated September 29, 2009; Rollo, pp. 37-54.

<sup>7</sup> Rollo, pp. 61-65.

evidence cannot be presented on its level because it is acting as an appellate forum. It also emphasized that its decision was not based on the non-existence of the aforesaid marker as said marker was not a material evidence but the decision was arrived at based on the quantum of evidence presented by Isabel.<sup>8</sup>

### The Grounds/Issues Raised in this Petition

Hence, the instant *Petition for Review* was filed by Merida anchored on the grounds that the court *a quo* committed:

1. A reversible error in denying the motion for new trial and setting aside Resolution No. 08-327 despite legal grounds and the fact that the original marker set in 1947 labeled as Municipal Boundary Monument (MBM) no. 5 was found by Merida after the decision was rendered;

2. A reversible error in setting aside Resolution No. 08-327 despite the fact that the *Sangguniang Panlalawigan* of Leyte was correct in ruling that the true and accurate boundary between Isabel and Merida is the one planted along the dead *Doldol* creek near the *Doldol* tree and the highway; and

3. A reversible error in relying heavily on the flawed testimonies of the alleged eyewitnesses. The *Sangguniang Panlalawigan* of Leyte was correct in its appreciation of all the pieces of evidence on record.<sup>9</sup>

On the other hand, Isabel's *Comment*<sup>10</sup> brought forth the following issues, to wit:

1. The petition is a wrong remedy or mode to question the decision dated September 29, 2009 of the Honorable Regional Trial Court;

2. The private counsel is not clothed with authority from the *Sangguniang Bayan* of petitioner Merida to represent the latter in this petition for review;

3. The Honorable Regional Trial Court did not commit any reversible error in denying petitioner Merida's motion for new trial;

<sup>8</sup> See RTC *Omnibus Order* dated July 5, 2010; Rollo, pp. 55-60.

<sup>9</sup> Grounds for the Petition, *Petition for Review*; Rollo, pp. 9-34.

<sup>10</sup> Rollo, pp. 254-271.

4. The honorable trial court's decision reversing and/or setting aside Resolution No. 08-327, Series of 2008, the *Sangguniang Panlalawigan* of Leyte, is vouched by the facts and evidence on record; and

5. The Honorable Regional Trial Court did not only rely on the testimonies of respondent Isabel's witnesses in rendering its decision reversing and/or setting aside Resolution No. 08-327, series of 2008, of the *Sangguniang Panlalawigan* of Leyte but also on the facts and evidence on record.

Merida opposed the issues presented by Isabel in a *Reply*<sup>11</sup> by asserting the following:

1. Appeal by petition for review under Rule 42 is the appropriate remedy;

2. The petition for review was verified by the municipal mayor of the petitioner, who is clothed with authority to file the petition; and

3. The true and accurate boundary between Isabel and Merida is the one planted along the dead Doldol creek near the Doldol tree and the highway.

After this case was deemed submitted via a *Resolution*<sup>12</sup> dated September 28, 2011, petitioner filed a *Motion with Leave of Court to Set Case for Oral Argumentation*,<sup>13</sup> praying that it be allowed to present evidence by oral arguments so as to prove the "correct" boundary between the two municipalities, banking on Sec. 3(a), Rule VI of the 2002 Internal Rules of the Court of Appeals (IRCA). Isabel opposed the motion to have the case set for oral arguments raising the previous issues set forth in its *Comment* and contending that there is no necessity to set the case for oral arguments since the evidence was already considered by the *Sangguniang Panlalawigan of Leyte* and by the RTC when the court *a quo* resolved the appeal.

In Our *Resolution*<sup>14</sup> dated May 21, 2013, respondent's supplication to set the case for oral arguments was denied. We also required the court *a quo*

<sup>11</sup> Rollo, pp. 240-251.

<sup>12</sup> Rollo, pp. 257-258.

<sup>13</sup> Rollo, pp. 259-263.

<sup>14</sup> Rollo, pp. 282-283.

to elevate the records of this case. In due time, the original record was duly transmitted.

### The Ruling of this Court

*We thus now consider the issues presented in this case.*

In resolving this case, the Court deems it best not to dwell on the technicalities presented by the parties but rather on the evidence presented by both. It is Our stand that this case should be decided on its merits for the very simple reason that the parties' constituents are adversely affected by this boundary dispute between the parties dealing as it does with the question of which political entity has the duty to deliver to the disputed area the basic services that each government unit is duty-bound to render to its residents.

Further, in *Mariano Jr. v. Commission on Elections*<sup>15</sup> as cited in *Municipality of Pateros v. Court of Appeals*,<sup>16</sup> the Supreme Court had the occasion to rule that:

"The importance of drawing with precise strokes the territorial boundaries of a local unit of government cannot be overemphasized. The boundaries must be clear for they define the limits of the territorial jurisdiction of a local government unit. It can legitimately exercise powers of government only within the limits of its territorial jurisdiction. Beyond these limits, its acts are *ultra vires*. Needless to state, any uncertainty in the boundaries of local government units will sow costly conflicts in the exercise of governmental powers which ultimately will prejudice the people's welfare. This is the evil sought to be avoided by the Local Government Unit in requiring that the land area of a local government unit must be spelled out in metes and bounds, with technical descriptions." (Emphasis supplied.)

However, as a preliminary matter, We resolve the issue as to whether or not the present petition is the correct remedy in assailing the court *a quo*'s judgment. A negative resolution on this results to this Court having no jurisdiction to decide this case. It is established that a judgment rendered by a court without jurisdiction is null and void and may be attacked anytime; it

<sup>15</sup> 312 Phil. 259, 267 (1995)

<sup>16</sup> G.R. No. 157714, June 16, 2009.

creates no rights and produces no effect." Further, a basic fact in law is that the choice of the proper forum is crucial as the decision of a court or tribunal without jurisdiction is a total nullity and it cannot be the source of any right nor the creator of any obligation." In fact, all acts performed pursuant to it and all claims emanating from it have no legal effect."

*Mode of review after the case has been decided on appeal by the RTC*

Isabel insists that the instant *Petition for Review* is not the correct mode of review. However, it did not advance any proper course of action that Merida, as appellant, should have undertaken.

Section 119 of the Local Government Code of 1991 provides the following:

"Sec. 119. Appeal. – Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the *sanggunian* concerned to the proper Regional Trial Court having jurisdiction over the area in dispute. The Regional Trial Court shall decide the appeal within one (1) year from the filing thereof. Pending final resolution of the disputed area prior to the dispute shall be maintained and continued for all legal purposes."

Section 119, as quoted above, is clearly silent as to how the case may be elevated to a higher court.

In so claiming that the mode of review adopted by Merida is not correct, Isabel based its reasons on the opinion of Reçaredo Barte, where the author allegedly opined that the "appellate jurisdiction" of the RTC mentioned under Rule 42 pertains to cases which exclusively come from the first level courts.<sup>20</sup>

<sup>17</sup> *Calanza v. Paper Industries Corporation of the Philippines (PICOP)*, G.R. No. 146622. April 24, 2009.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> See Isabel's *Manifestation* dated September 28, 2010; Rollo, pp.218-222.



However, a review of the laws which preceded RA 7160 reveals that prior thereto, it made mention of Rule 41 or Rule 42 with respect to the mode of review of an RTC decision that emanated from an adjudication rendered by the *Sangguniang Panlalawigan*. The case of *Municipality of Sta. Fe v. Municipality of Aritao*<sup>21</sup> is in point, thus:

As early as October 1, 1917, the procedure for the settlement of municipal boundary disputes was already set forth when Act No. 2711 or the Revised Administrative Code (RAC) took into effect. At that time, Section 2167 of the law provided:

"SEC. 2167. *Municipal boundary disputes - How settled.* - Disputes as to jurisdiction of municipal governments over places or barrios shall be decided by the provincial boards of the provinces in which such municipalities are situated after an investigation at which the municipalities concerned shall be duly heard. From the decision of the provincial board appeal may be taken by the municipality aggrieved to the Secretary of the Interior, whose decision shall be final x x x."

On June 17, 1970, Republic Act (R.A.) No. 6128 was approved amending the afore-quoted section of the RAC, Sec. 1 thereof stated:

SECTION 1. Section Two thousand one hundred sixty-seven of the Revised Administrative Code, as amended, is hereby further amended to read as follows:

"SEC. 2167. *Municipal Boundary Disputes. - How Settled.* - Disputes as to jurisdiction of municipal governments over places, or barrios shall be heard and decided by the Court of First Instance of the Province where the municipalities concerned are situated x x x: *Provided*, That after joinder of issues, the Court shall suspend proceedings and shall refer the dispute to the Provincial Board x x x concerned for the purpose of affording the parties an opportunity to reach an amicable settlement with the intervention and assistance of the said Provincial Board x x x; *Provided, further*, That in case no amicable settlement is reached within sixty days from the date the dispute was referred to the Provincial Board x x x concerned, the court proceedings shall be resumed. The case shall be decided by the said Court of First Instance within one year from resumption of the court proceedings, and appeal may be taken from the said decision within the time and in the manner

<sup>21</sup> G.R. No. 140474, September 21, 2007, 533 SCRA 586.

prescribed in Rule 41 or Rule 42, as the case may be, of the Rules of Court x x x”

Subsequently, however, with the approval of Batas Pambansa (B.P.) Blg. 337 (otherwise known as the Local Government Code of 1983) on February 10, 1983, Sec. 2167, as amended, was repealed. In particular, Sec. 79 of the Code read:

SEC. 79. *Municipal Boundary Disputes.* – Disputes as to the jurisdiction of municipal governments over areas or barangays shall be heard and decided by the sangguniang panlalawigan of the province where the municipalities concerned are situated x x x in case no settlement is reached within sixty days from the date the dispute was referred to the sangguniang panlalawigan concerned, said dispute shall be elevated to the Regional Trial Court of the province which first took cognizance of the dispute. The case shall be decided by the said court within one year from the start of proceedings and appeal may be taken from the decision within the time and in the manner prescribed by the Rules of Court.

Almost a decade passed and R.A. No. 7160 or the LGC of 1991 was signed into law on October 10, 1991 and took effect on January 1, 1992. As the latest law governing jurisdiction over the settlement of boundary disputes, Sections 118 and 119 of the Code now mandate:

SEC. 118. *Jurisdictional Responsibility for Settlement of Boundary Dispute.* – Boundary disputes between and among local government units shall, as much as possible, be settled amicably. To this end:

x x x

(b) Boundary disputes involving two (2) or more municipalities within the same province shall be referred for settlement to the sangguniang panlalawigan concerned.

x x x

(e) In the event the sanggunian fails to effect an amicable settlement within sixty (60) days from the date the dispute was referred thereto, it shall issue a certification to that effect. Thereafter, the dispute shall be formally tried by the sanggunian concerned which shall decide the issue within sixty (60) days from the date of the certification referred to above.

SEC. 119. *Appeal.* – Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the sanggunian concerned to the proper Regional Trial Court having jurisdiction over the area in dispute. The Regional Trial Court shall decide the appeal within one (1) year from the filing thereof. Pending final resolution of the disputed area prior to the dispute shall be maintained and continued for all legal purposes.

This Court agrees with petitioner's contention that the trial court had jurisdiction to take cognizance of the complaint when it was filed on October 16, 1980 since the prevailing law then was Section 2167 of the RAC, as amended by Sec. 1 of R.A. No. 6128, which granted the Court of First Instance (now RTC) the jurisdiction to hear and decide cases of municipal boundary disputes. The antecedents of the *Municipality of Sogod* case reveal that it dealt with the trial court's dismissal of cases filed for lack of jurisdiction because at the time of the institution of the civil actions, the law in force was the old provision of Sec. 2167 of the RAC, which empowered the provincial boards, not the trial courts, to hear and resolve such cases.

Consequently, We rule that the proper mode of review from the RTC which decided a case on appeal, even if it comes from the *Sangguniang Panlalawigan*, is under Rule 42 by way of a *Petition for Review*. This ruling is also anchored on the fact that Section 119 explicitly mentioned the Rules of Court in respect of availing an appeal. Moreover, Rule 42<sup>22</sup> is a *Petition for Review* to the Court of Appeals from the decision rendered by the Regional Trial Courts in the exercise of its **appellate jurisdiction**, which is not qualified as to whether such decision was rendered by the first level courts or not. Lastly, this issue was settled in the case *Municipality of Nueva Era v. Municipality of Marcos*,<sup>23</sup> where it was held that a petition for review under Rule 42 is proper in cases of appeal from the RTC judgment for cases akin to the present case at bench.

Having ruled that Merida adopted the proper mode of review, We now consider the substance of this appeal.

<sup>22</sup> Section 1 of Rule 42 of the Rules of Court states:

Section 1. - How appeal taken; time for filing. - A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals xxx. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (Emphasis supplied.)

<sup>23</sup> G.R. No. 169435, February 27, 2008.

*The ruling of the Sangguniang Panlalawigan and the RTC regarding the disputed area*

Revisiting the decision of the *Sangguniang Panlalawigan of Leyte*, among the evidence considered by it were the following:

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First of all, the Municipality of Isabel was created only in 1947 by separating eight (8) barangays from the Municipality of Merida to form another municipality. Obviously, the Municipality of Isabel may only claim what has been delivered by law unto it.

Republic Act No. 191 was very specific when it separated eight (8) barangays namely the barrios of Quiot, Sta. Cruz, Libertad, Matlang, Tolingon, Bantique, Apale and Jonan to form the Municipality of Isabel. Barangay Benabayé was never mentioned in the aforementioned law. Hence, the Tax Declarations submitted by the Municipality of Isabel showing that some of the properties are located at Barangay Benabayé, Isabel, Leyte is of no moment. Brgy. Benabayé was never included in the list of barangays separated from the Municipality of Merida. Even the Barangay Boundary and Index Maps of Isabel Cadastre unmistakably showed that these properties are actually located at Brgy. Benabayé, Merida, Leyte.

Moreover, in the Committee Reports submitted by the Municipality of Merida, it is clear that the boundary between Merida and Isabel is one located along the dead Doldol Creek near the Doldol tree and the highway. Although this concrete boundary marker, (which was 6 x 6 inches big and marked "I" facing Merida and "M" facing Isabel) was eventually washed out during the course of time, still there are positive testimonies of witnesses to the effect that such was the case. Even the first appointed mayor of Isabel himself, Hon. Galicano Ruiz, testified that the boundary between the two (2) municipalities is the one found beside the creek leading to Doldol ("Tua daplin sa sapa paingon sa Doldol").

Nevertheless, another concrete monument was found in Sitio Doldol, Brgy. Benabayé, Merida, Leyte with marks "1947" on top and letters "M" and "I" on both sides. This monument is planted five (5) meters from Doldol Creek and sixty (60) meters south of the big Doldol tree. Certainly, this marker is the true and accurate marker, being installed during the year 1947 when Isabel was created, as testified to by the witnesses, as compared to the Municipal Boundary Monument (MBM) No. 5 installed by Former Mayor Cruz Centino of the Municipality of Isabel sometime in 1981, much less the Welcome Boundary Marker constructed by the Yellow Ladies Club of Isabel, Leyte sometime in 1988.

Indeed, the 1987 Constitution and the New Local Government Code themselves imposed new mandatory requirements and procedures on the fixing of boundaries between municipalities. The 1987 Constitution now mandates that "no province, city, municipality or barangay may be created, divided, merged, abolished or its boundary substantially altered except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected" (Section 10, Article X of the Constitution).

Likewise, the Local Government Code of 1991 provides, as follows: "Sec. 6. Authority of Create Local Government Units. - A local government unit may be created, divided, merged, abolished, or its boundaries substantially altered either by law enacted by Congress in the case of a province, city, municipality, or any other political subdivision, or by ordinance passed by the sangguniang panlalawigan or sangguniang panglungsod concerned in the case of a barangay located within its territorial jurisdiction, subject to such limitations and requirements prescribed in this Code." Hence, any alteration or modification of the boundaries of the municipalities shall only be by law to be enacted by Congress subject to the approval by a majority of the votes cast in a plebiscite in the barrios affected (Section 134, Local Government Code). Thus, under present laws, the function of the provincial board to fix the municipal boundaries are now strictly limited to the factual determination of the boundary lines between municipalities, to be specified by natural boundaries or by metes and bounds in accordance with laws creating said municipalities (Municipality of Sogod v. Rosal, G.R. No. L-38204, September 24, 1991).

In view of the above ruling, the Sangguniang Panlalawigan of the Province of Leyte can do no less but to declare that the true and accurate boundary between the Municipalities of Merida and Isabel is the one planted along the dead Doldol creek near the Doldol tree and the highway, which was lost through the course of time. The fact that another concrete monument which was found in Sitio Doldol, Brgy. Benabaye, Merida, Leyte with marks "1947" on top of the letters "M" and "I" on both sides only disproves the contention of Isabel that the boundary between the two municipalities is the brook/creek (Benabaye River) located near the *poblacion* of Barangay Benabaye, Merida, Leyte where the concrete marker labeled as Municipal Boundary Monument (MBM) No. 5 is located.<sup>24</sup>

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<sup>24</sup> Decision of the Sangguniang Panlalawigan of Leyte, supra.

On the part of the RTC, it debunked the evidence presented by Merida and upheld the evidence of Isabel by ruling that it is more preponderant in establishing that the contested area belongs to it, viz:

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To arrive at its decision, the Court has to subject the contending claims of the parties to a fine-toothed judicial comb. It also had to visit pertinent provisions of the Land Administrative Circular No. 4, Series of 1980, as amended, otherwise known as the Manual for Land Surveys in the Philippines. Under Section 540 thereof, the boundaries between municipalities are delineated by the Cadastral Survey Team, after the authorities of the adjoining municipalities have been consulted. Section 540 provides -

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"Section 540. The authorities of the municipalities separated by the boundary, to be surveyed, shall be consulted and requested to indicate on the ground the common boundaries."

It is an undisputed fact that the Municipality of Isabel was carved out of the territory of the older Municipality of Merida, Leyte pursuant to Republic Act Numbered 191. Appellant's territory consisted of Barangay (then called Barrio) of Quiot, Santa Cruz, Libertad, Matlang, Tolingon, Bantigue, Apale and Jonan. All these barangays, prior to the enactment of the statute, belonged to the appellee. Of these eight (8) barangays constituting the land mass territory of the appellant, it is Barangay Apale that is embroiled in the controversy, together with Barangay Benabaye of the appellee, which adjoins the former.

It would do well therefor for the court to look into the history of Merida, Leyte.

Prior to the enactment into law of RA 191, the Municipality of Isabel did not exist. Instead, eight barangays mentioned in the preceding paragraph were part of the land mass territory of the Municipality of Merida. Merida then, as it is now, was barely developed and is mostly a rural town. The City of Ormoc adjoins it on the Southern side, while Palompon adjoins it on its Northern side. The Camotes Sea is on its Eastern side, while several municipalities abuts its Western side. The provincial road starting from the junction in Ormoc City traverses Merida and leads towards Palompon, thereafter passing through San Isidro, Calubian, and Leyte.

Right after the enactment of RA 191, the record shows that these eight barangays were segregated from the territory of Merida and formed what is now known as Municipality of Isabel. It is one of the few areas in the country which were chosen as a site for one of the Eleven (11) Major

Industrial projects undertaken during the regime of President Ferdinand E. Marcos. Its rapid industrial development started in the year 1980 when the Philippine Associated Smelting and Refining Corporation (PASAR) and Philippine Phosphate Corporation (Philpos) were established.

After the enactment into law of RA 191, the eight barangays ceased being part of Merida and became the core barangays constituting the Municipality of Isabel. Of these eight barangays, it is Barangay Apale which adjoins Barangay Benabaye which belongs to Merida. At the time of its creation as a Municipality, Barangay Benabaye was just a *sitio* of Barangay Calunangan, Merida, Leyte.

During the Cadastral Survey of the Municipality of Merida, undertaken by a private contractor under supervision of the Director of Lands, a strip of land in-between Barangay Apale and Benabaye was contested by both parties, each claiming that this strip of land belongs to them. This contested portion was reiterated during the Cadastral Survey of Isabel, Leyte. This strip of land is defined in the Political Boundary and Index Map of Cad 661-D found in the record. It is this strip of land that is subject of the controversy that was resolved by the Honorable *Sangguniang Panlalawigan* of Leyte in favor of appellee.

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A dispassionate reading of the affidavits, tax declarations and other documentary evidence, in addition to what the court observed during the ocular inspection it conducted, however, disproves these findings of the Honorable *Sangguniang Panlalawigan*.

The law itself specifically listed the barangay removed from Merida and made to constitute the territory of Isabel. This (sic) include Barangay Apale. The inclusion of Barangay Apale necessarily included also all parcels of land comprising Barangay Apale at the time of the enactment into law of RA 191. Thus, the recognized political boundary between Barangay Apale and its adjoining Barangay Calunangan (which includes Barangay Benabaye, then one of its *sitio*). The recognized political boundary - which corresponds to its territorial boundary with the adjoining Barangay Calunangan - at the time RA 191 was enacted into law, was the Benabaye River. This fact was established through the affidavits of reliable and credible witnesses from both parties, but which were apparently not taken into consideration by the Honorable *Sangguniang Panlalawigan* ng Leyte.

In his affidavit, Demetrio Rojas, 81 years old in the year 2006, stated under oath that it was in the year 1948 when the boundary between Isabel and Merida was traced by two panel of representative coming from Merida and Isabel. He further averred that -

1. The boundary between the Municipalities of Merida and Isabel, as pinpointed or established by the two panels, is the BROOK, which is about a few meters below from the western side of the Poblacion of Benabaye, Merida, Leyte and this had been the boundary between the two municipalities even when I became the Municipal Vice Mayor of Isabel, Leyte in 1964;"

This claim about the true boundary between the two municipalities were [sic] corroborated by another, albeit older, octogenarian. In his affidavit, Pedro Aldiano, 87 years old in the year 2007, stated under oath that since childhood, the correct boundary between Isabel and Merida was the brook/creek located near the poblacion of Barangay Benabaye, Merida, Leyte. He further averred that during the time when Judge Juan Almodia conducted an ocular inspection, relative to the land dispute between Regalado German and Gregoria Lastina, the said Judge Almodia informed him about the said brook/creek being the boundary between Merida and Isabel. He likewise stated that -

2. The boundary dispute occurred in the later part of 1980s when Merida have their Cadastral Survey because it overlap the original boundary which was set when Isabel was made a Municipality in the year 1948.

Still, another octogenarian, Quirimon Funda, who was 87 years old at the time he executed his affidavit dated October 18, 2006 corroborated the claim of the two elderly gentlemen, that the boundary between Isabel and Merida was the brook/creek which is located near the center of Barangay Benabaye. He further recalled that in the year 1945, when he was a classroom teacher of Apale, Isabel, the same brook was the established boundary between the two towns.

The testimonies of these very old men nearing the end of their lives - and who are not expected to lie or concoct tales, are positive averments that are deserving of respect and inspire belief. The court notes that all the three gentlemen referred to a common boundary between Merida and Isabel - the brook/creek which is located near the poblacion of Barangay Benabaye. This is the same brook/creek which was seen by the court, through the undersigned Judge during the ocular inspection. This brook/creek which lies near the curve on the highway, had flowing water running through on its way to the Camotes Sea. On one side of the bank was the concrete boundary marker. This is what the appellants claim as MBM No. 5 and which the appellee challenges as having been erected there by former Mayor Cruz Centino without its knowledge and consent. The appearance of the said monument, as noted by the court during the ocular inspection is that it was placed there many, many years ago. It appears to comply also with the monumenting standards for municipal



boundary monuments, as provided for under Section 221 of the Manual for Land Surveys in the Philippines.

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*Contested area is within whose territorial jurisdiction*

We now then proceed to the evidence presented by the parties that would show whether the contested area is part of the area that was ceded to Isabel when it was created as a municipality.

Primarily, it is pointed out that the Internal Revenue Allotment (IRA) of each local government unit is dependent on three components: first is the population, second is the land area and the third is based on equal sharing.<sup>25</sup> It cannot be overemphasized, therefore, that the area of an LGU is important since the IRA received by an LGU is partly dependent on its land area.

Moreover, this unsettled boundary dispute creates confusion among the residents, because some are paying their taxes to Isabel while others are paying their taxes to Merida. Although Isabel is classified as a First Class Municipality owing to its industry, it is not a sufficient justification to cede the litigated area to it. In the same manner, although Merida claims that the contested area is within its territorial jurisdiction, such cannot be accepted hook, line and sinker without the presentation of sufficient evidence that would point to no other conclusion but that the contested area is within its political boundary.

*The evidentiary weight of the tax declarations presented by Isabel*

Isabel claims that the disputed area is within its territorial jurisdiction based on the tax declarations it presented which supposedly show that the disputed realty belong to Isabel, Leyte and that the real property owners purportedly pay the taxes due thereon to the treasury of Isabel.

<sup>25</sup>Section 285, Local Government Code of 1991.

In *Sta. Lucia Realty and Development, Inc. v. Municipality of Cainta*,<sup>26</sup> it was held that while a local government unit is authorized under several laws to collect real estate tax on properties falling under its territorial jurisdiction, it is imperative to first show that these properties are unquestionably within its geographical boundaries. Even a certificate of title, while conclusive as to its ownership and location, does not preclude the filing of an action for the purpose of attacking the statements made therein, such as the filing of a case to pinpoint its exact location.

Isabel does not question that Barangay Benabaye is not included among the barangays ceded from Merida to form it. However, it claims that the boundary between Barangay Apale and Barangay Benabaye has always been the Benabaye River at the western side of the latter barangay.<sup>27</sup> To bolster its claim, tax declarations were asserted as supporting documents.<sup>28</sup>

However, if some of the tax declarations relied upon by Isabel will be scrutinized, all these mention Benabaye, Isabel, Leyte as the location of the property, in particular the following:

Tax Declaration Number	Declared Owner	Location of Property	Page Number in the RTC records
8280	Elesio Libores	Benabaye, Isabel, Leyte	44
3834	Francisco Libores	Benabaye, Isabel, Leyte	45
8281	Julia German	Benabaye, Isabel, Leyte	46
509	Recardo Anasco	Benabaye, Isabel, Leyte	49
3226	Damaso Funda	Benabaye, Isabel, Leyte	50
7356	Tereso Yamas	Benabaye, Isabel, Leyte	51

If indeed the disputed area is within Isabel, the property owners would have indicated the location of their respective properties as Barangay Apale, Isabel, Leyte and would not have mentioned Benabaye since such name is properly associated with Barangay Benabaye of Merida, Leyte and previously as Sitio Benabaye of Barangay Calunangan, Merida, Leyte. Thus, the tax declarations presented by Isabel are not sufficient in themselves to show that the questioned area is within its political boundary. Moreover, Isabel failed to present a tax declaration history showing that prior to the tax declarations it had presented as evidence, said tax

<sup>26</sup> G.R. No. 166838, June 15, 2011.

<sup>27</sup> See Petition in Civil Case No. R-OMC-08-00123-CV; RTC records, pp. 1-14; 7.

<sup>28</sup> Attached as Annexes "D-2" to "D-18" to the Petition; RTC records, pp. 41-51.

declarations, the tax payer and the area covered under such tax declarations existed since 1948 or thereabouts and is within its political boundary.

Consequently, the ceding of the litigated area to Isabel cannot be merely made through the will of some taxpayers or property owners who wish to belong to Isabel.

*On the issue that some barangay officials of Brgy. Benabaye are residents of the disputed portion*

Merida claims that the disputed area is within its territorial jurisdiction since some barangay officials of Barangay Benabaye are residing inside the portion being claimed by Isabel. To this claim, Isabel asserts that:

"2. The respondent (petitioner Merida) avers that the claim of the petitioner (respondent Isabel) covers or includes the residential houses of duly elected barangay officials of Brgy. Benabaye. This is not a concern of the petitioner. If the people of Brgy. Benabaye chose, as their officials, persons who are living within the territory of the petitioner (respondent Isabel), that does not mean that the place where they are living with should become part and parcel of the place where they are functionaries. They are, so to say, residents of the petitioner (respondent Isabel)."<sup>29</sup>

However, such statements of Isabel merely cement the claim of Merida that the litigated portion is within its territorial jurisdiction and is properly within Barangay Benabaye. Under Sec. 39 of Title II on Elective Officials of the Local Government Code:

Section 39. Qualifications. - (a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city or province or, in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect. (Emphasis supplied.)

<sup>29</sup> See paragraph 34 of the Comment; Rollo, pp. 254-277; 264.

Thus, the rule is very clear that a barangay official needs to be a resident of the place where he seeks to be elected. Here, the residents themselves of the barangay could have opposed the election of these barangay officials if they are not indeed residents of Barangay Benabaye, the barangay where they had sought to be elected as officials.

*The evidentiary weight of the stone monument as opposed to the testimonies of the old folks of Isabel and MBM No. 5.*

Merida is adamant that the disputed area is within its territorial jurisdiction. Starting at the level of the *Sangguniang Panlalawigan* of Leyte, it made mention of stone monuments with markings of "1947", to represent the year that Isabel was created and the year it was laid down on the ground; "M", to represent the side for Merida; and "I", to represent the side demarcating the line for Isabel. However, Merida alleged that these 1947 stone monuments cannot be located despite diligent efforts.

On the other hand, Isabel claims that the boundary was demarcated by MBM No. 5 and which marker was placed along the Benabaye River, which was also the natural boundary between Barangay Benabaye of Merida and Barangay Apale of Isabel. This MBM No. 5 was given great weight by the RTC, bolstered by the affidavits of septuagenarians (or older) who were knowledgeable about the "true" boundaries between said barangays. In addition, the RTC opined that MBM No. 5 appeared to have been placed many years ago and complied with monument standards for municipal boundary monuments provided under Section 221 of the Manual for Land Surveys in the Philippines.

Foremost to consider is the fact that the basis made by the RTC, that is, the Manual for Land Surveys in the Philippines, is of recent vintage. In fact, if the law creating Municipality of Isabel will be revisited, which law was passed in 1947, its territorial jurisdiction was not delineated by metes and bounds but it merely made mention of the barrios (now known as barangays) that were separated from Merida.

Moreover, the 1947 stone monument, while already mentioned by Merida, was not seen during the ocular inspection of the RTC, such that, the trial court did not give probative value to the claim of the Merida that the

true demarcating object between Barangays Apale and Benabaye is the 1947 stone monument since it was not duly seen, rendering such claims hearsay. However, it cannot be gainsaid that this 1947 stone monument exists. Pictures were submitted, including other evidence showing its existence and location, that it really exists<sup>30</sup> and that it was installed when Isabel was created. It is also clear that Isabel did not completely debunk the existence of this 1947 stone monument but merely attacked the alleged public official who installed such marker, casting doubt as to its veracity. However, as between the testimonial evidence (represented by the affidavits of some residents and public officials) of Isabel and its MBM No. 5 and the 1947 stone monument, We are inclined to give greater weight to the latter as the correct boundary between the Barangays of Apale and Benabaye. For one, the 1947 marker was installed during the creation of Isabel and second, it still exists up to this date, albeit was not seen during the ocular inspection conducted by the RTC.

It should be noted that when RA 191 created the Municipality of Isabel, it did so by mentioning the barrios which will comprise said municipality.<sup>31</sup> However, said law did not mention the exact metes and bounds to delineate its territorial jurisdiction. In this case, the *Sangguniang Panlalawigan* correctly determined by available evidence the extent of the territory that was ceded by Merida to form the Municipality of Isabel.

As previously stated, the desire of the residents in the disputed area to belong to Isabel or Merida cannot be left to their will. There are specific laws which govern the creation, abolition or delineation of the boundaries of local government units and such is subject to the criteria laid down under the Constitution which provides:

Section 10 of Article X of the Constitution states that: No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to the approval by a majority of the votes cast in a plebiscite in the political units directly affected.

<sup>30</sup> RTC rollo, pp. 259-261.

<sup>31</sup> Republic Act No. 191, *supra*.

As enunciated in *The Municipality of Sogod v. Rosal*.<sup>32</sup>

The 1987 Constitution now mandates that no province, city, municipality or barangay may be created, divided, merged, abolished or its boundary substantially altered except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected. Hence, any alteration or modification of the boundaries of the municipalities shall only be by a law to be enacted by Congress subject to the approval by a majority of the votes cast in a plebiscite in the barrios affected (Section 134, Local Government Code). Thus, under present laws, the function of the provincial board to fix the municipal boundaries are now strictly limited to the factual determination of the boundary lines between municipalities, to be specified by natural boundaries or by metes and bounds in accordance with the laws creating said municipalities.<sup>33</sup>

**IN LIGHT OF ALL THE FOREGOING**, this petition is **GRANTED**. The Decision dated September 29, 2009 of the Regional Trial Court, Branch 12 of Ormoc City in Civil Case No. R-ORM-08-00123-CV and the Omnibus Order dated July 5, 2010 are **REVERSED** and **SET ASIDE**. Resolution No. 08-327 dated July 8, 2008 of the *Sangguniang Panlalawigan* of Leyte adjudicating the disputed area to the Municipality of Merida is **REINSTATED**. No costs.

**SO ORDERED.**

ORIGINAL SIGNED  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

**WE CONCUR:**

ORIGINAL SIGNED  
**MARILYN B. LAGURA-YAP**  
*Associate Justice*

ORIGINAL SIGNED  
**MARIE CHRISTINE AZCARRAGA-JACOB**  
*Associate Justice*

<sup>32</sup> G.R. No. L-38204, September 24, 1991.

<sup>33</sup> *Ibid.*

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusion in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the court.

ORIGINAL SIGNED  
RAMON PAUL L. HERNANDO  
*Associate Justice*  
*Chairperson, Special Twentieth Division*

CERTIFIED TRUE COPY

MARY W. W. [Signature]  
CLERK

DATA PROCESSING



ANNEX "D"

Republic of the Philippines

Supreme Court

Manila

FIRST DIVISION

MUNICIPALITY OF ISABEL,  
LEYTE,

*Petitioner,*

G.R. No. 216092

Present:

- versus -

PERALTA, C.J.,  
CAGUIOA,  
CARANDANG,  
ZALAMEDA, and  
GAERLAN, JJ.

MUNICIPALITY OF MERIDA,  
LEYTE,

*Respondent.*

Promulgated:

DEC 09 2020

*with file*

X-----X

DECISION

GAERLAN, J.:

The Case

This is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court against the August 20, 2014 Decision<sup>1</sup> and the November 17, 2014 Resolution<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 05255, which reversed the Decision of the Regional Trial Court (RTC) of Ormoc City, Leyte, and reinstated Resolution No. 08-327 of the *Sangguniang Panlalawigan* of Leyte. The said resolution was an adjudication of the boundary dispute between petitioner Municipality of Isabel (Isabel) and respondent Municipality of Merida (Merida), both located in and under the jurisdiction of the Province of Leyte.

<sup>1</sup> Rollo, pp. 15-37; penned by Associate Justice Ramon Paul L. Hernando (now a Member of this Court), with Associate Justices Marilyn B. Lagura-Yap and Marie Christine Azcarraga-Jacob concurring.  
<sup>2</sup> Id. at 38-39.



### The Facts

The Municipality of Isabel was created out of eight barrios of the Municipality of Merida, pursuant to Republic Act (R.A.) No. 191, which was enacted on June 22, 1947. R.A. No. 191 reads as follows:

#### REPUBLIC ACT NO. 191

#### AN ACT CREATING THE MUNICIPALITY OF ISABEL, PROVINCE OF LEYTE

SECTION 1. The barrios of Quiot, Sta. Cruz, Libertad, Matlang, Tolingan, Bantigue, Apale and Jonan are separated from the municipality of Merida, Province of Leyte, and constituted into a new and separate municipality to be known as the municipality of Isabel, Province of Leyte, with the seat of government at the barrio of Quiot.

SECTION 2. The municipal mayor, vice-mayor, and councilors of the new municipality shall be appointed by the President of the Philippines to hold office until their successors are elected and qualified.

SECTION 3. The municipality herein established shall begin to exist on the date fixed in a proclamation to said effect by the President of the Philippines and upon the appointment and qualification of its officers.

SECTION 4. This Act shall take effect upon its approval.

In accordance with Section 3 of said law, the creation of the Municipality of Isabel was formalized by President Manuel Roxas on January 15, 1948, through Presidential Proclamation No. 49.<sup>3</sup>

At about the same time, the boundary between Isabel and Merida was delineated. To mark the boundary line, the governments of both municipalities placed stone monuments at designated areas along the line. According to Merida, these monuments had dimensions of six by six inches and had the following markings: "1947", the apparent date of their installation; "M", for Merida, placed on one side of the monuments; and "I", for Isabel, placed on the other side.<sup>4</sup> The present controversy pertains to two of these monuments which were placed along a dead creek named Doldol: one that was placed shoreward thirty meters from the highway, which was lost after the lapse of time, and another one that was placed near an ancient *doldol*<sup>5</sup> tree.<sup>6</sup> Merida claims that when the Isabel local government unit (LGU) installed new boundary monuments in 1981, the latter failed to find the monument by the old *doldol* tree, and instead placed a

<sup>3</sup> Accessed 1 September 2020 at <https://www.officialgazette.gov.ph/downloads/1948/01jan/19480108-PROC-0049-ROXAS.pdf>.

<sup>4</sup> *Rollo*, p. 16.

<sup>5</sup> More commonly known as *kapok*; scientific name *Ceiba pentandra* (L.)

<sup>6</sup> *Rollo*, p. 16.

new monument along the Benabaye River, which was marked as Municipal Boundary Monument (MBM) No. 5.<sup>7</sup> The placement of MBM No. 5 changed the boundary line and created a disputed area of 162.3603 hectares which is now claimed by both Merida and Isabel.<sup>8</sup>

The dispute was further aggravated by the erection of structures within the disputed area by entities from Isabel, such as a welcome monument installed across the highway from MBM No. 5 by the Yellow Ladies of Isabel in 1988; and a waiting shed built by *barangay* Apale, Isabel. The Isabel LGU likewise exercised jurisdiction over the disputed area by conducting highway clearing activities therein,<sup>9</sup> prompting the barangay council of the adjoining *barangay* Benabaye, Merida, to seek the assistance of the *Sangguniang Bayan* of Merida.<sup>10</sup>

Acting on the requests of *barangay* Benabaye, then Mayor Bernardino Solana organized a fact-finding committee<sup>11</sup> (the Merida boundary committee) to look for the boundary monuments that were placed when Isabel was created.<sup>12</sup> The Merida committee submitted a report of its findings to the Office of the Mayor.<sup>13</sup> On April 6, 1990, the *Sangguniang Bayan* of Merida adopted the findings of the Merida boundary committee and resolved to construct new boundary monuments in place of the lost ones.<sup>14</sup> On the other hand, Isabel conducted its own investigation and maintained that MBM No. 5 and the other monuments it installed were accurate and legitimate, based on affidavits of the area's residents, tax declarations, and cadastral maps.<sup>15</sup>

In separate resolutions,<sup>16</sup> the municipal councils of Merida and Isabel agreed to submit the boundary dispute to the *Sangguniang Panlalawigan* of Leyte.<sup>17</sup>

### ***Ruling of the Sangguniang Panlalawigan***

The *Sangguniang Panlalawigan* of Leyte unanimously adopted the findings of its Committee on Boundary Disputes and adjudicated the boundary

<sup>7</sup> Id. at 16, 45.

<sup>8</sup> Id. at 13.

<sup>9</sup> Id. at 198.

<sup>10</sup> Id. Resolution No. 62, s. 1996 of Barangay Benabaye, Merida, Leyte.

<sup>11</sup> Id. at 184. The committee was headed by then Vice Mayor Silvestra M. Maradan, and was made up mostly of municipal officials and officials of Barangay Benabaye.

<sup>12</sup> Id. at 42.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id. at 43.

<sup>16</sup> Id. at 43-44. Resolution No. 96-183 of the Sangguniang Bayan of Merida, passed on December 4, 1996, Id. 202; and Resolution No. 2004-091 of the Sangguniang Bayan of Isabel, passed on August 2, 2004.

<sup>17</sup> Id. at 43.

dispute in favor of Merida. The dispositive portion of its resolution<sup>18</sup> reads as follows:

• WHEREFORE, PREMISES CONSIDERED, Municipal Resolution 2004-091 of the Municipality of Isabel and Municipal Resolution No. 96-183 of the Municipality of Merida are hereby resolved as follows:

1. The true and accurate boundary between the Municipalities of Merida and Isabel is the one planted along the dead Doldol creek near the Doldol tree and the highway;

• 2. The local government of Isabel, Leyte is hereby ordered to remove the Municipal Boundary Monument (MBM) No. 5 installed by former Mayor Cruz Centino of the Municipality of Isabel sometime in 1981 as well as Welcome Boundary Marker constructed by the Yellow Ladies Club of Isabel, Leyte sometime in 1988.

3. The local government of Merida, Leyte, is hereby ordered to install another Municipal Boundary Monument along the dead Doldol creek near the Doldol tree and the highway in accordance with the laws and the Barangay Boundary and Index Maps and political boundary maps of the two(2) [sic] municipalities.

SO ORDERED.<sup>19</sup>

The *Sangguniang Panlalawigan* explained that the specific enumeration in R.A. No. 191 of the eight barrios which comprise Isabel does not include *barangay* Benabay, which is a part of Merida. Consequently, the provincial board refused to consider the tax declarations presented by Isabel which list the location of some properties within the disputed area as being within "Benabay, Isabel, Leyte".<sup>20</sup> Furthermore, even the *barangay* boundary and index maps of the Isabel Cadastre show that the said properties are actually located in Benabay, Merida.<sup>21</sup>

The Leyte provincial board also gave more credence to Merida's assertion that the true boundary is demarcated by the monument placed shoreward along the highway and the dead Doldol Creek, as this was supported not only by the committee reports submitted by Merida but also by positive testimonies of witnesses, including Isabel's first mayor, Galicano Ruiz, and by the monument located near the ancient *doldol* tree along Doldol Creek.<sup>22</sup>

<sup>18</sup> Id. at 50; signed by Board Members Florante M. Cayunda (Chairperson of the Committee on Boundary Disputes), Evangeline L. Esperas, Simeon O. Ongbit, Jr., and Rolando C. Piamonte, Sr. Board Members Antonio C. Jabilles (Vice-Chairperson) and Debora G. Bertulfo inhibited, while Board Member Carlo P. Loreto did not sign. The Resolution was attested by Vice-Governor Ma. Mimieta S. Bagulaya and approved by Governor Carlos Jericho L. Petilla.

<sup>19</sup> Id. at 49-50.

<sup>20</sup> Id. at 46.

<sup>21</sup> Id.

<sup>22</sup> Id. at 47.

Dissatisfied, Isabel appealed from the resolution of the *Sangguniang Panlalawigan*, pursuant to Section 119 of the Local Government Code.<sup>23</sup>

### Ruling of the RTC

In a Decision dated September 29, 2009,<sup>24</sup> the trial court ruled in favor of Isabel and reversed the *Sangguniang Panlalawigan* Resolution, viz.:

WHEREFORE, premises considered, judgment is hereby rendered, in favor of appellant and against appellee, REVERSING and SETTING ASIDE the assailed Resolution of the Honorable Sangguniang Panlalawigan ng Leyte and a new one is hereby entered, DECLARING that the contested tract of land of 162.3603 hectares as appearing in the cadastral survey records of Cad 661-D properly belong to the Municipality of Isabel, Leyte.

Upon the finality of this decision, the appellee is hereby further ordered to immediately remove the billboard it erected during the pendency of the appeal at its expense.

SO ORDERED.<sup>25</sup>

In so ruling, the RTC held that the true boundary between *barangay* Apale, Isabel, and *barangay* Benabaye, Merida, is the Benabaye River. The trial court gave more weight to the testimonies of three witnesses presented by Isabel who all testified that the true boundary between Apale and Benabaye was the "brook/creek located near the poblacion of *barangay* Benabaye".<sup>26</sup> According to the trial court, the witnesses presented by Isabel were "very old men nearing the end of their lives x x x who are not expected to lie or concoct tales".<sup>27</sup> Moreover, the presiding judge himself conducted an ocular inspection of Benabaye River and was able to see MBM No. 5 which was installed by the Isabel LGU, which to him appeared to have been installed "many, many years ago" and was compliant with the standards set by the Manual for Land Surveys in the Philippines.<sup>28</sup> The testimonies of Isabel's witnesses were likewise corroborated by the *Barangay* Boundary and Index Map which was duly approved on December 11, 1987, by the Regional Director of the Land Management Service of the Department of Environment and Natural Resources. On the contrary, the trial court concluded that the statements of Merida's witnesses were either hearsay or self-serving. Likewise, the trial court did not consider the tax declarations submitted by both parties because the tax declarations all referred to

<sup>23</sup> Id. at 48.

<sup>24</sup> Id. at 51-68; penned by Acting Presiding Judge Lauro A.P. Castillo, Jr.

<sup>25</sup> Id. at 68.

<sup>26</sup> Id. at 64.

<sup>27</sup> Id. at 65.

<sup>28</sup> Id.

incidents after 1948, and were therefore not determinative of conditions obtaining during the creation of Isabel.<sup>29</sup>

Merida filed a motion for new trial dated October 27, 2009,<sup>30</sup> on the ground that the trial court failed to consider the existence of the 1947 monument near the ancient *doldol* tree. Merida argues that the monument could not have been inspected by the trial court because the same was unearthed only after the trial court had rendered its decision. Merida likewise offered sworn statements of the persons who located and unearthed the said monument,<sup>31</sup> along with photographs thereof.<sup>32</sup>

The RTC denied Merida's motion for new trial in an Omnibus Order dated July 5, 2010.<sup>33</sup> According to the trial court, the recent unearthing of the monument near the ancient *doldol* tree did not place such monument under the ambit of newly discovered evidence, since photographs of the monument already formed part of the evidence considered by the *Sangguniang Panlalawigan* and the trial court.<sup>34</sup> The trial court also stated that the remedy of new trial was not available because it was trying the case under its appellate jurisdiction, and thus it may only remand the case to the *Sangguniang Panlalawigan*.<sup>35</sup>

### Ruling of the CA

On appeal by Merida, the CA reversed the RTC Decision and reinstated the *Sangguniang Panlalawigan* Resolution. On the issue of the proper mode of review, the CA held that Merida correctly availed of an appeal *via* Rule 42, which covers appeals from decisions of the RTCs in the exercise of their appellate jurisdiction.

The CA gave little probative value to the tax declarations of properties within the disputed area, on the following grounds: (1) an LGU must first prove territorial jurisdiction in order to collect realty taxes from a certain property; and (2) Isabel failed to submit a tax declaration history to show that it has exercised taxation powers over the area since its establishment in 1948. The appellate court likewise examined the tax declarations submitted by Isabel, some of which indicate the location of the properties as "Benabaye, Isabel, Leyte".<sup>36</sup> The Court ratiocinated that if these properties were actually under Isabel's jurisdiction, the tax declarations should have indicated Apale as the location of the properties

<sup>29</sup> Id. at 65-66

<sup>30</sup> Id. at 118-128.

<sup>31</sup> Id. at 123.

<sup>32</sup> Id. at 124-126, 216-218, 220.

<sup>33</sup> Id. at 112-117.

<sup>34</sup> Id. at 114.

<sup>35</sup> Id. at 115-116.

<sup>36</sup> Id. at 32, CA Decision.

instead of Benabaye, since Isabel claims the disputed area as part of Apale, and Benabaye is undisputedly located in and associated with Merida.<sup>37</sup>

The CA likewise agreed with the assertion that the disputed area is within the territory of Merida because some elective *barangay* officials of its constituent *barangay* Benabaye reside within the disputed area, as the Local Government Code requires elective *barangay* officials to be residents and registered voters of the LGU where they intend to serve as such.<sup>38</sup>

In order to determine the true and accurate boundary marker, the CA weighed the evidentiary support for Merida's Doldol Creek monuments as against Isabel's MBM No. 5, *viz.*:

Merida is adamant that the disputed area is within its territorial jurisdiction. Starting at the level of the *Sangguniang Panlalawigan* of Leyte, it made mention of stone monuments with markings of "1947", to represent the year that Isabel was created and the year it was laid down on the ground; "M", to represent the side for Merida; and "I", to represent the side demarcating the line for Isabel. However, Merida alleged that these 1947 stone monuments cannot be located despite diligent efforts.

On the other hand, Isabel claims that the boundary was demarcated by MBM No. 5 and which marker was placed along the Benabaye River, which was also the natural boundary between Barangay Benabaye of Merida and Barangay Apale of Isabel. This MBM No. 5 was given great weight by the RTC, bolstered by the affidavits of septuagenarians (or older) who were knowledgeable about the "true" boundaries between said barangays. In addition, the RTC opined that MBM No. 5 appeared to have been placed many years ago and complied with monument standards for municipal boundary monuments provided under Section 221 of the Manual for Land Surveys in the Philippines.

Foremost to consider is the fact that the basis made, by the RTC, that is, the Manual for Land Surveys in the Philippines, is of recent vintage. In fact, if the law creating Municipality of Isabel will be revisited, which law was passed in 1947, its territorial jurisdiction was not delineated by metes and bounds but it merely made mention of the barrios (now known as barangays) that were separated from Merida.

Moreover, the 1947 stone monument, while already mentioned by Merida, was not seen during the ocular inspection of the RTC, such that, the trial court did not give probative value to the claim of the [*sic*] Merida that the true demarcating object between Barangays Apale and Benabaye is the 1947 stone monument since it was not duly seen, rendering such claims hearsay. However, it cannot be gainsaid that this 1947 stone monument exists. Pictures were submitted, including other evidence showing its existence and location, that it really exists and that it was installed when Isabel was created. It is also

<sup>37</sup> Id. at 32-33.

<sup>38</sup> Id. at 33.

clear that Isabel did not completely debunk the existence of this 1947 stone monument but merely attacked the alleged public official who installed such marker, casting doubt as to its veracity. However, as between the testimonial evidence (represented by the affidavits of some residents and public officials) of Isabel and its MBM No. 5 and the 1947 stone monument, We are inclined to give greater weight to the latter as the correct boundary between the Barangays of Apale and Benabaye. For one, the 1947 marker was installed during the creation of Isabel and second, it still exists up to this date, albeit was not seen during the ocular inspection conducted by the RTC.

It should be noted that when RA 191 created the Municipality of Isabel, it did so by mentioning the barrios which will comprise said municipality. However, said law did not mention the exact metes and bounds to delineate its territorial jurisdiction. In this case, the *Sangguniang Panlalawigan* correctly determined by available evidence the extent of the territory that was ceded by Merida to form the Municipality of Isabel.<sup>39</sup>

The CA concluded by reiterating that the substantial alteration of LGU boundaries cannot be left to the will of the residents alone, for Article X, Section 10 of the Constitution lays down the requisites thereof; and consequently, in adjudicating boundary disputes, the function of tribunals has become limited to making a factual determination of the actual boundary lines between LGUs, in accordance with the applicable municipal charters.<sup>40</sup>

### The Issue

Isabel moved for reconsideration, which the CA denied in the assailed November 17, 2014 resolution; hence this petition, which raises the sole issue of whether or not the CA erred in reinstating the *Sangguniang Panlalawigan* resolution in favor of Merida.<sup>41</sup> Isabel argues that: 1) the existence of the monument near the ancient *doldol* tree, upon which the CA decision hinged, was never proven, as it was never inspected by the courts; and 2) the preponderance of evidence shows that the disputed portion is actually part of *barangay* Apale, since the true boundary is demarcated by MBM No. 5.<sup>42</sup>

### The Court's Ruling

The petition lacks merit. The appellate court did not err in reinstating the adjudication of the boundary dispute by the *Sangguniang Panlalawigan* of Leyte.

<sup>39</sup> Id. at 34-35. Citations omitted.

<sup>40</sup> Id. at 35-36, citing *Municipality of Sogod v. Judge Rosal*, 278 Phil. 642 (1991).

<sup>41</sup> Id. at 7-8. Petition for Review.

<sup>42</sup> Id. at 8-9.

## I.

The Constitution regulates *inter alia* the creation, division, merger, and abolition of LGUs, as well as the demarcation of boundaries thereamong. Article X, Section 10 of the basic law requires that substantial alterations in LGU boundaries should be made "*in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.*" In the case of municipalities, the criteria are set forth in Sections 6, 10, and 441 of the Local Government Code:

Section 6. *Authority to Create Local Government Units.* - A local government unit may be created, divided, merged, abolished, or its boundaries substantially altered either by law enacted by Congress in the case of a province, city, municipality, or any other political subdivision, or by ordinance passed by the sangguniang panlalawigan or sangguniang panlungsod concerned in the case of a barangay located within its territorial jurisdiction, subject to such limitations and requirements prescribed in this Code.

Section 10. *Plebiscite Requirement.* - No creation, division, merger, abolition, or substantial alteration of boundaries of local government units shall take effect unless approved by a majority of the votes cast in a plebiscite called for the purpose in the political unit or units directly affected. Said plebiscite shall be conducted by the Commission on Elections (COMELEC) within one hundred twenty (120) days from the date of effectivity of the law or ordinance effecting such action, unless said law or ordinance fixes another date.

Section 441. *Manner of Creation.* - A municipality may be created, divided, merged, abolished, or its boundary substantially altered only by an Act of Congress and subject to the approval by a majority of the votes cast in a plebiscite to be conducted by the COMELEC in the local government unit or units directly affected. Except as may otherwise be provided in the said Act, the plebiscite shall be held within one hundred twenty (120) days from the date of its effectivity.

Consequently, this Court held in the *Municipality of Sogod v. Judge Rosal*<sup>43</sup> that:

The 1987 Constitution now mandates that no province, city, municipality or barangay may be created, divided, merged, abolished or its boundary substantially altered except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected. Hence, any alteration or modification of the boundaries of the municipalities shall only be by a law to be enacted by Congress subject to the approval by a majority of the votes cast in a plebiscite in the barrios affected (Section 134, Local Government Code). Thus, under present laws, the function of the provincial board to fix the municipal boundaries are [sic] now strictly limited to the factual determination of the boundary lines between municipalities, to be specified by natural

<sup>43</sup> Supra note 40.



- boundaries or by metes and bounds in accordance with the laws creating said municipalities.<sup>44</sup> (Citations omitted)

Hence, under present laws, the function<sup>45</sup> of tribunals<sup>46</sup> in the adjudication of LGU boundary disputes is limited to the factual determination of the correct boundary line in accordance with the statutes creating the LGUs involved.<sup>47</sup> As applied to the case at bar, such task ultimately involves the determination of the monuments which mark the true and accurate boundary between Merida and Isabel, in accordance with the charters of both municipalities.<sup>48</sup>

## II.

Precision in the delineation of local government unit boundaries is of immense importance because these boundaries determine the spatial extent of the powers of local government units. A local government unit can legitimately exercise governmental powers only within its territorial jurisdiction. Outside these geographical bounds, the acts of local government units are *ultra vires*.<sup>49</sup> Likewise, it has been observed that

[t]he inhabitants residing within [the territorial] area [of a LGU] are invested with certain municipal liberties, rights and privileges. They are also impressed with certain duties and obligations. x x x

It is thus obvious that every municipal corporation must have its boundaries fixed, definite and certain as to precise location, in order that they

<sup>44</sup> Id. at 650-651.

<sup>45</sup> In default of an amicable settlement between the disputing LGUs, when the *sanggunian* is required to formally try the case and render a decision, Rule III, Article 17 of the Implementing Rules and Regulations of the Local Government Code. See also *Municipality of Sta. Fe v. Municipality of Aritao*, 560 Phil. 57 (2007).

<sup>46</sup> Original jurisdiction over LGU boundary disputes is vested in the proper *sanggunian*, in accordance with Section 118 of the Local Government Code; while appellate jurisdiction is vested in the Regional Trial Courts, subject to review on appeal by the Court of Appeals. See 1 Dante B. Gatmaytan, *Local Government Law and Jurisprudence* 581-587; *Municipality of Bakun, Benguet v. Municipality of Sugpon, Ilocos Sur*, G.R. No. 224335, March 2, 2020; *Municipality of Pateros v. Court of Appeals*, 607 Phil. 104 (2009); *Municipality of Nueva Era, Ilocos Norte v. Municipality of Marcos, Ilocos Norte*, 570 Phil. 395 (2008); *Municipality of Sta. Fe v. Municipality of Aritao*, supra.

<sup>47</sup> In accordance with this precisely-defined function, Rule III, Article 17(c) of the Implementing Rules and Regulations of the Local Government Code requires that a petition for resolution of a boundary dispute include the following evidentiary attachments: (1) Duly authenticated copy of the law or statute creating the LGU or any other document showing proof of creation of the LGU; (2) Provincial, city, municipal, or barangay map, as the case may be, duly certified by the LMB; (3) Technical description of the boundaries of the LGUs concerned; (4) Written certification of the provincial, city, or municipal assessor, as the case may be, as to territorial jurisdiction over the disputed area according to records in custody; (5) Written declarations or sworn statements of the people residing in the disputed area; and (6) Such other documents or information as may be required by the *sanggunian* hearing the dispute.

<sup>48</sup> It must be noted that Merida was created during the Spanish administration of the Philippines (see ABOUT MERIDA LEYTE, Municipal Profile, <http://www.merida.gov.ph/site/about>. Accessed 5 September 2020), and has been recognized as a municipality of Leyte as early as 1903, without reference to any statute creating the municipality. See Act No. 954 (An Act Reducing the Forty-Nine Municipalities of the Province of Leyte to Thirty-Three [enacted October 22, 1903]), Section 1, Nos. 6 & 7.

<sup>49</sup> *Municipality of Pateros v. Court of Appeals*, supra note 46, citing *Mariano, Jr. v. Commission on Elections*, 312 Phil. 259, 267 (1995).

may be identified, and that all may know the exact scope or section of territory or geographical division embraced within the corporate limits, and over which the local corporation has jurisdiction.<sup>50</sup>

To aid the duly designated tribunals in the task of boundary dispute resolution, the Implementing Rules and Regulations of the Local Government Code require the submission *inter alia* of the following: a duly authenticated copy of the law or statute creating the LGU or any other document showing proof of creation of the LGU; a provincial, city, municipal, or *barangay* map, as the case may be, duly certified by the Lands Management Bureau; technical description of the boundaries of the LGUs concerned; written certification of the provincial, city, or municipal assessor, as the case may be, as to territorial jurisdiction over the disputed area according to records in custody; and written declarations or sworn statements of the people residing in the disputed area.<sup>51</sup>

In *Barangay Sangalang v. Barangay Maguihan*,<sup>52</sup> this Court held that in the absence of any other evidence, cadastral maps duly approved by the Director of Lands prevail over tax declarations and provincial assessor's certifications stating that the disputed area is under a particular LGU's jurisdiction.<sup>53</sup>

In *Municipality of Nueva Era, Ilocos Norte v. Municipality of Marcos, Ilocos Norte, et al.*,<sup>54</sup> this Court used the municipal charters as lodestars in the resolution of the boundary dispute. Marcos was created from seven barrios of the Municipality of Dingras, which were all enumerated in the former's municipal charter. However, the same charter, in defining the new municipality's boundaries, gave the "Ilocos Norte-Mt. Province boundary" (later the Ilocos Norte-Apayao boundary) as its eastern boundary. Consequently, Marcos laid claim to a certain area along the Ilocos Norte-Apayao boundary. This prompted Nueva Era, which also borders Apayao, to claim that Marcos encroached on its territorial jurisdiction. In resolving the conflict between the enumeration of the constituent barrios and the enumeration of the boundary lines in the charter of Marcos, this Court made the following pronouncements:

No part of Nueva Era's territory was taken for the creation of Marcos under R.A. No. 3753.

Only the barrios (now *barangays*) of Dingras from which Marcos obtained its territory are named in R.A. No. 3753. To wit:

SECTION 1. The barrios of Capariaan, Biding, Escoda, Cúlao, Alabaan, Ragas and Agunit in the Municipality of Dingras, Province of

<sup>50</sup> 1 Eugene McQuillin, A Treatise on the Law of Municipal Corporations 585-586 (1911).  
<sup>51</sup> Supra note 47.  
<sup>52</sup> 623 Phil. 711 (2009).  
<sup>53</sup> Id. at 723.  
<sup>54</sup> Supra note 46.

Ilocos Norte, are hereby separated from the said municipality and constituted into a new and separate municipality to be known as the Municipality of Marcos, with the following boundaries:

Since only the *barangays* of Dingras are enumerated as Marcos' source of territory, Nueva Era's territory is, therefore, excluded.

Under the maxim *expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of another thing not mentioned. If a statute enumerates the things upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect. This rule, as a guide to probable legislative intent, is based upon the rules of logic and natural workings of the human mind.

Had the legislature intended other *barangays* from Nueva Era to become part of Marcos, it could have easily done so by clear and concise language. Where the terms are expressly limited to certain matters, it may not by interpretation or construction be extended to other matters. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.

Moreover, since the *barangays* of Nueva Era were not mentioned in the enumeration of *barangays* out of which the territory of Marcos shall be set, their omission must be held to have been done intentionally. This conclusion finds support in the rule of *casus omissus pro omissis habendus est*, which states that a person, object or thing omitted from an enumeration must be held to have been omitted intentionally.

Furthermore, this conclusion on the intention of the legislature is bolstered by the explanatory note of the bill which paved the way for the creation of Marcos. Said explanatory note mentioned only Dingras as the mother municipality of Marcos.

Where there is ambiguity in a statute, as in this case, courts may resort to the explanatory note to clarify the ambiguity and ascertain the purpose and intent of the statute.

Despite the omission of Nueva Era as a mother territory in the law creating Marcos, the latter still contends that said law included Nueva Era. It alleges that based on the description of its boundaries, a portion of Nueva Era is within its territory.

The boundaries of Marcos under R.A. No. 3753 read:

On the Northwest, by the barrios Biding-Rangay boundary going down to the barrios Capariaan-Gabon boundary consisting of foot path and feeder road; on the Northeast, by the Burnay River which is the common boundary of barrios Agunit and Naglayaan; on the East, by the Ilocos Norte-Mt. Province boundary; on the South, by the Padsan River which is at the same time the boundary between the municipalities of Banna and Dingras; on the West and Southwest, by the boundary between the municipalities of Batac and Dingras.

Marcos contends that since it is "bounded on the East, by the Ilocos Norte-Mt. Province boundary," a portion of Nueva Era formed part of its territory because, according to it, Nueva Era is between the Marcos and Ilocos Norte-Mt. Province boundary. Marcos posits that in order for its eastern side to reach the Ilocos Norte-Mt. Province boundary, it will necessarily traverse the middle portion of Nueva Era.

Marcos further claims that it is entitled not only to the middle portion of Nueva Era but also to its northern portion which, as a consequence, was isolated from the major part of Nueva Era.

We cannot accept the contentions of Marcos.

Only Dingras is specifically named by law as source territory of Marcos. Hence, the said description of boundaries of Marcos is descriptive only of the listed *barangays* of Dingras as a compact and contiguous territory.

Considering that the description of the eastern boundary of Marcos under R.A. No. 3753 is ambiguous, the same must be interpreted in light of the legislative intent.

The law must be given a reasonable interpretation, to preclude absurdity in its application. We thus uphold the legislative intent to create Marcos out of the territory of Dingras only.<sup>55</sup> (Citations omitted)

The earlier case of *Municipality of Jimenez v. Hon. Baz, Jr.*,<sup>56</sup> likewise upheld the primacy of the municipal charter in the resolution of boundary disputes, viz.:

As held in *Pelaez v. Auditor General*, the power of provincial boards to settle boundary disputes is "of an administrative nature - involving as it does, the adoption of means and ways to carry into effect the law creating said municipalities." It is a power "to fix common boundary, in order to avoid or settle conflicts of jurisdiction between adjoining municipalities." It is thus limited to implementing the law creating a municipality. It is obvious that any alteration of boundaries that is not in accordance with the law creating a municipality is not the carrying into effect of that law but its amendment. If, therefore, Resolution No. 77 of the Provincial Board of Misamis Occidental is contrary to the technical description of the territory of Sinacaban, it cannot be used by Jimenez as basis for opposing the claim of Sinacaban.<sup>57</sup>

The foregoing jurisprudence clearly illustrates that in boundary dispute adjudication, tribunals must weigh and interpret the evidence presented in a manner which gives full effect to, and is most consistent with, the statute or statutes creating the LGUs involved in the dispute.

<sup>55</sup> *Municipality of Nueva Era, Ilocos Norte v. Municipality of Marcos, Ilocos Norte*, supra note 46 at 416-419.  
<sup>56</sup> 333 Phil. 1 (1996).

<sup>57</sup> Id. at 18-19.

## III.

Upon a thorough consideration of the parties' arguments and evidence, viewed in the light of the foregoing laws and jurisprudence, this Court is convinced that the adjudication of the Leyte provincial board is more congruent and consistent with the territorial delimitation set forth in R.A. No. 191. The true and accurate boundary line between Isabel and Merida is the line demarcated by the old shoreward monument and the monument along the old Doldol Creek near the ancient *doldol* tree.

American authorities on municipal corporation law have stated that in the determination of LGU boundaries, "due weight should be given to the contemporaneous interpretation of the courts and other lawful authorities and by the population at large residing therein."<sup>58</sup> Maps published by authority of law may [also] be referred to as evidence."<sup>59</sup>

In the case at bar, the Merida boundary committee was able to obtain statements from Isabel's first municipal mayor, Galicano N. Ruiz, as interspersed with the committee's parenthetical comments, *viz.*:

- Question from the [fact-finding] Team Leader:

Nia kami dinhi sa pagconsulta kanimo Mayor bahin sa tino-od nga otlanan kon boundary between Merida and Isabel. Diin ba gayod Mayor ang dapit?

- Answer of Ex-Mayor Galicano N. Ruiz:

Tua sa daplin sa sapa (dead creek) paingon sa *doldol* (leading to the old, wild and giant *doldol*, which is still existing up to the present, about two kilometers from said boundary monument. Ang mga saksi sa paglubong sa monument (sixth-inch size concrete boundary marker) sila anhing consejal Menong Mercadal sa Merida ug si Consejal Abraham sa Matlang, Isabel pulos mga sakop kani-adto sa Consejo Municipal sa Merida nga gipangolohan ni anhing mayor Leodegario Conciliado (incumbency-first Municipal Mayor of Merida after World War II).

Nahisakop sa otlanan sa sitio Benabaye og Barrio Apale.

- Vice Mayor (Team Leader):

Pero Mayor dili na sitio and [sic] Benabaye nga karon osa ka Barangay sakop sa Merida.

- Mr. Gaudioso G. Tangpuz, MGOO/LGO-V, DLC, Merida:

Paminawi lang ninyo ang pulong niya (meaning the Ex-Mayor and Founding Patriarch of Isabel, Galicano N. Ruiz). Nagsulti siya og Barrio Apale or sitio Benabaye, please record (hinting to the ABC President Paciano A. Traverro). At this point the Ex-Mayor was hinting that a certain portion belonged

<sup>58</sup> 1 McQuillin, *Municipal Corporations*, supra note 50 at 589.

<sup>59</sup> *Id.*

to Barrio Apale). I-record lang ang iyang mga pulong (Og dinhe gitolonan ang ABC President Paciano A. Traverro (osa ke miembro sa advance consultation team) ug papel sa team leader aron sa pagsulat, labinga bahin sa tinood nga location site sa concrete Municipal Boundary Marker gilubong kani-adto ubos sa mando kon ka-oyonan sa kadagko-an opisyal sa Merida og Isabel, diin ang Ex-Mayor Galicano N. Ruiz osa sa mga saksi.

Diha sa nahisulat sa on the spot/consultative diagram nga gihimo mismo atubangan sa Ex-Mayor og consultation team based on the verbal testimony of the Ex-Mayor Galicano N. Ruiz:

“From Isabel going to Merida, there is the first creek of sitio Benabaye, on the right side of the road across the creek at the side of sitio Benabaye, the four sided six-inch concrete monument was erected with an engraved letter “M” facing the municipality of Merida and “I” facing the side of the municipality of Isabel, about 30 meters, more or less, from the road bordering the shoreline Mangroves, on the lot now owned by Ex-Barrio Lieutenant of Barrio Apale Serafin Urbano”.

x x x x

- Question from SB Floor Leader Agripino G. Gica:

Puede ba imo kami to-oran didto sa lugar diin nahimutang ang tinuod nga boundary marker? Kon mahimo, ubanan ka namo sa pagtultol sa maong dapit.

- Answer of Ex-Mayor Galicano N. Ruiz

Dili kana mahimo nako, gawas pa angay ko pasabton una si Loloy (incumbent Mayor Priscilo B. Martin of Isabel) og dili ako mahimo nga “mag-trier” sa akong lungsod. Butang kana sa lungsod og ako osa ka opisyal kaniadto sa Isabel. Hain mayo kon moadto kita kang Loloy karon. What I say might not be binding to them (the local officials of Isabel). Dugang tubag sa Vice Mayor Silvestra M. Maradan ug SB Floor leader Agripino G. Gica:

- Dili pa karon dayon, diha na kon masusisi namo ang boundary, sumala sa imong pulong. Ikaw ang among tuyo, agig courtesy call og consultation bahin sa pakisusi sa tino-od nga boundary sa Merida ug Isabel, kamo ikaw ang first appointed Mayor of Isabel when it was separated from Merida in 1948.<sup>60</sup>

As weighed against the statements of residents and municipal employees who lived in the disputed area contemporaneously with the establishment of Isabel which were given credence by the trial court, the testimony of Mayor Ruiz must be given greater weight. Not only was he able to state the location and the circumstances of the installation of the *doldol* monument, his official position as the first mayor of Isabel and manifest apprehension in binding the incumbent officials of Isabel to his statement bolsters the accuracy and reliability of his testimony. Furthermore, Isabel offered no credible rebuttal of Mayor Ruiz’s testimony. As regards the maps submitted in evidence, suffice it to state that both

<sup>60</sup> Rollo, pp. 185-186.

the *Sangguniang Panlalawigan* and the RTC cited them in their respective decisions, casting doubt as to their persuasiveness and weight in evidence.

As regards the relative accuracy and genuineness of Isabel's MBM No. 5 as opposed to the *doldol* monument and the lost shoreward monument along Doldol Creek, the CA correctly disregarded Isabel's MBM No. 5 for being based on surveying regulations which are not contemporaneous with the foundation of Isabel. Chapter V, Sections 349, 350, and 355 of the 1947 Manual of Instructions for the Survey of the Public Lands issued by the United States Bureau of Lands, which was released only two (2) months<sup>61</sup> after the enactment of R.A. No. 191, provide:

349. The terms "corner" and "monument" are used largely in the same sense, though a distinction should be noted to clarify the subject matter of this chapter. The term "corner" is employed to denote a point determined by the surveying process, whereas the "monument" is the physical structure erected for the purpose of marking the corner point upon the earth's surface.

. x x x x

The "monuments" of the public land surveys range from the deposit of some durable memorial, a marked wooden stake or post, a marked tablet set in solid rock or in a concrete block, a marked tree, a rock in place marked with a cross (X) at the exact point of the corner, and other special types of markers, some of which are more substantial; any of these are termed "monuments". The several classes of accessories such as bearing trees, bearing objects, mounds of stone, and pits dug in the sod or soil, are aids in the finding and identification, and afford evidence for the perpetuation of the corner position.

The restoration of a lost or obliterated corner has to do with the replacing of a monument that has disappeared so far as this relates to physical evidence, or other means of identification short of a remeasurement of the lines that were surveyed in the establishment of this and the nearest existent corners of that survey in the two or four directions. If there should be acceptable collateral evidence by which the original position may be accurately located, the monument may be regarded as obliterated, but not lost; the point is then referred to as an obliterated corner.

x x x x

350. The rules for the restoration of lost corners are not to be applied until after the development of all evidence, both original and collateral, that may be found acceptable, though the methods of proportionate measurement will aid materially in the recovery of the evidence, and will indicate what the resulting locations may be as based upon the known control.

*An existent corner is one whose position can be identified by verifying the evidence of the monument, or its accessories, by reference to the description*

<sup>61</sup> The Manual was released on August 5, 1947. Bureau of Land Management, Manual of Instructions for the Survey of the Public Lands of the United States III (1947). Accessed 5 September 2020 at [https://www.blm.gov/az/surveys/Library/1947-Manual\\_searchable.pdf](https://www.blm.gov/az/surveys/Library/1947-Manual_searchable.pdf).

that is contained in the field notes, or where the point can be located by an acceptable supplemental survey record, some physical evidence, or testimony.

Even though its physical existence may have entirely disappeared, a corner will not be regarded as lost if its position can be recovered through the testimony of one or more witnesses who have a dependable knowledge of the original location.

x x x x

355. An obliterated corner is one at whose point there are no remaining traces of the monument, or its accessories, but whose location has been perpetuated or the point for which may be recovered beyond reasonable doubt by the acts and testimony of the interested landowners, competent surveyors, other qualified local authorities, or witnesses, or by some acceptable record evidence.

A position that depends upon the use of collateral evidence can be accepted only as duly supported, generally through proper relation to known corners, and agreement with the field notes regarding distances to natural objects, stream crossings, line trees, and off-line tree blazes, etc., or unquestionable testimony.

A corner will not be considered as lost if its position can be recovered satisfactorily by means of the testimony and acts of witnesses having positive knowledge of the precise location of the original monument. The expert testimony of surveyors who may have identified the original monument prior to its destruction and thereupon recorded new accessories or connections, etc., is by far the most reliable, though landowners are able to furnish valuable testimony.

x x x x<sup>62</sup>

Applying the foregoing guidelines to the case at bar, it becomes clear that the corner marked by the *doldol* monument cannot be considered lost. During the interregnum when the monument cannot be found, the corner it marks can still be considered extant, as Merida was able to proffer sufficient evidence for its location and eventual recovery. At the very least it can only be considered an obliterated corner; but, in fact, Merida was able to find the lost monument, as evidenced by the photographic and testimonial evidence it submitted to support its motion for new trial.<sup>63</sup> These pieces of evidence, taken together with Mayor Ruiz's testimony as to its location and installation, and Isabel's failure to adduce evidence to the contrary<sup>64</sup> sufficiently establish the existence of the *doldol* monument.

Regarding Isabel's claim that the disputed area is actually sitio Benabayay of its *barangay* Apale, per the tax declarations and testimonies of its residents, it

<sup>62</sup> Id. at 282-285. Italics in the original.

<sup>63</sup> Joint Affidavit of Berlito L. Sanchez and Venerando L. Gumba, *rollo*, p. 123; Labelled photographs, id. at 124-126, 216-218, 220.

<sup>64</sup> As found by the CA. Id. at 35.



has been established that *barangay* Benabaye was formerly a *sitio* of *barangay* Calunangan, Merida.<sup>65</sup> If the disputed area was indeed a mere *sitio* of Apale as claimed by Isabel, this should have been indicated in the tax declarations from the area. However, as found by the CA, some of the tax declarations submitted by Isabel merely state the location of the properties as “Benabaye, Isabel, Leyte”, presumably to the effect that Benabaye is a *barangay* of Isabel, when in fact Benabaye is a *barangay* which was *carved out of another barangay* that is indisputably part of Merida.

Furthermore, as correctly pointed out by the CA, the fact that some of *barangay* Benabaye’s elective officials<sup>66</sup> reside in the disputed area bolsters Merida’s claim thereto, for the Local Government Code<sup>67</sup> requires *barangay* elective officials to be residents and registered voters of the *barangays* they wish to serve in. Indeed, if the disputed area were part of Apale, Isabel, these persons should have run for elected office there, and not in Benabaye; likewise, if these persons had run for office in Benabaye, the legitimate residents of that *barangay* could have contested the qualification of these persons to serve as elected officials of Benabaye.

At any rate, both Isabel and Merida agree that the disputed area belongs to a locality known to its inhabitants as Benabaye, regardless of whether it is a *sitio* or a *barangay*.<sup>68</sup> As discussed earlier, the evidence adduced by both parties preponderantly demonstrates that the locality of Benabaye is a part of Merida; and R.A. No. 191 does not include Benabaye in the enumeration of the *barangays* that make up Isabel. There is no indication whatsoever in the records that the locality of Benabaye was divided between Isabel and Merida. Hence, following the ruling in *Municipality of Nueva Era*, this Court must construe R.A. No. 191 to mean that the legislature deliberately excluded Benabaye and, consequently, the disputed area, from the territorial jurisdiction of the Municipality of Isabel. Consequently, the boundary line which more accurately reflects this intention of the legislature is that which is marked by the lost shoreward monument and the monument near the ancient *doldol* tree, both installed along the old Doldol Creek in 1947.

**IN VIEW OF THE FOREGOING PREMISES**, the present petition is **DENIED**. The August 20, 2014 Decision and the November 17, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 05255 are hereby **AFFIRMED**.

<sup>65</sup> RTC Decision, *id.* at 63; Petition of Isabel with the RTC, *id.* at 150.

<sup>66</sup> According to Merida, the residential houses of the Punong *Barangay*, two (2) *kagawads*, the *Sangguniang Kabataang* Chairperson, and some *barangay tanods* of *Barangay* Benabaye were located in the disputed area. *Id.* at 74.

<sup>67</sup> REPUBLIC ACT NO. 7160, Section 39.


<sup>68</sup> Petition of Isabel with the RTC, *rollo*, p. 149; Comment to the Petition for Review on *Certiorari* of Merida, *jd.* at 75.

**'SO ORDERED.**

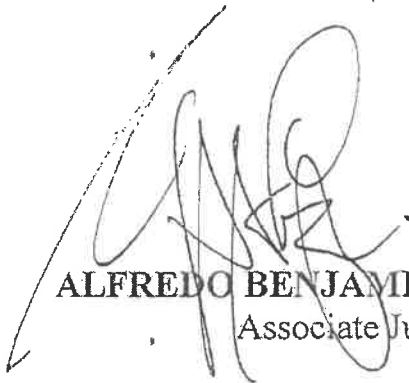


**SAMUEL H. GAERLAN**  
Associate Justice

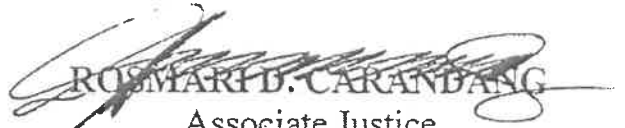
WE CONCUR:



**DIOSDADO M. PERALTA**  
Chief Justice



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



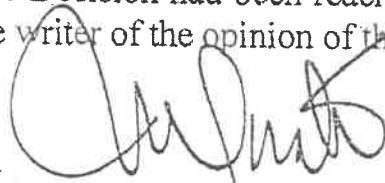
**ROSMARI D. CARANDANG**  
Associate Justice



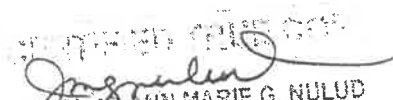
**RODIL V. ZALAMEDA**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



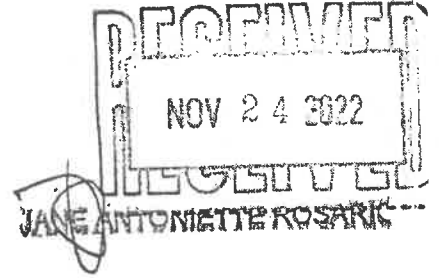
**DIOSDADO M. PERALTA**  
Chief Justice

  
ANN MARIE G. NULUD  
COURT ATTORNEY VI  
DCC-FIRST DIVISION



Republic of the Philippines  
 Supreme Court  
 Manila

ANNEX **E**



SPECIAL FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Special First Division, issued a Resolution dated June 15, 2022 which reads as follows:*

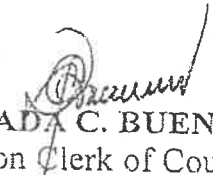
*“GR. No. 216092 (Municipality of Isabel, Leyte vs. Municipality of Merida, Leyte).- Acting on the petitioner’s motion for reconsideration of the Decision dated December 9, 2020, and considering that the basic issues have already been passed upon and that there is no substantial argument to warrant a modification of this Court’s decision, the Court resolves to DENY reconsideration with FINALITY.*

The Court further resolves to *NOTE* the respondent’s comment/opposition to the petitioner’s motion for reconsideration.

*NO FURTHER* pleadings, motions, letters or other communications shall be entertained herein.

Let an *ENTRY* of judgment in this case be issued immediately.”

By authority of the Court:

  
 LIBRADA C. BUENA  
 Division Clerk of Court

by:

MARIA TERESA B. SIBULO  
 Deputy Division Clerk of Court

13-A

Court of Appeals  
 6000 Cebu City  
 (CA-G.R. SP No. 05255)

OCT 10 2022

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The Presiding Judge  
 Regional Trial Court, Br. 12  
 Ormoc City 6514 Leyte  
 (Civil Case No. R-ORM-08-00123-CV)

Sangguniang Panlalawigan  
 Tacloban City 6500 Leyte  
 (Resolution No. 08-327)

Judgment Division (x)  
 Supreme Court