Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SPOUSES ELVIN SENDING (DATU GIBO) and JOCELYN SENDING (BAE ORANGE),
Petitioners,

- versus -

KRISTOPPER[*] RAHDA CO UY, ATTY. JOCELYN PESQUERA, HENRY P. CAÑETE, JR., and HON. AMELI AMOR R. ESTRADA, Presiding Judge of the 7th Municipal Circuit Trial Court, Liloan-Compostela, Metro Cebu),
Respondents.

G.R. No. 271354

Present:

CAGUIOA, *J., Chairperson,*
INTING,
GAERLAN,
DIMAAMPAO, and
SINGH, *JJ.*

Promulgated:

FEB 19 2026

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D E C I S I O N

INTING, J.:

Before the Court is a Petition for *Mandamus*[1] under Rule 65 of the Rules of Court filed by petitioners Spouses Elvin Sending (Datu Gibo) and Jocelyn Sending (Bae Orange) (collectively, Spouses Sending), assailing

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[*] Also spelled as "Kristoffer" on some parts of the *rollo* (*see rollo*, Vol. I, pp. 122, 216, 430).

[1] *Id.* at 3–91.

the Resolution[2] dated November 29, 2023, of the 7th Municipal Circuit Trial Court, Liloan-Compostela, Metro Cebu (MCTC) in Civil Case No. 742-R.

The Antecedents

On February 21, 2014, respondent Kristoffer R. Co Uy (Co Uy) filed a *Complaint for Unlawful Detainer, Damages, Attorney's Fees and Litigation Expenses* against Spouses Sending before the MCTC, which docketed the complaint as Civil Case No. 742-R.[3]

Co Uy alleged that he is the absolute and registered owner of Lot 18-D-4, Psd-07-01-006366 situated in Barrios Yati and Jugan, Municipalities of Liloan, and Consolacion, respectively, Province of Cebu (subject property).[4] The subject property was previously owned by Sandy C. Ngoboc and was donated in favor of Co Uy on December 2, 2011. On February 16, 2012, the property was registered in Co Uy's name under Transfer Certificate of Title (TCT) No. MR-13015 (T-63866).[5]

Co Uy claimed that Spouses Sending's entry into the subject property was by mere tolerance. According to him, Spouses Sending sought permission from Co Uy's mother to use a portion of the subject property after the former were ejected by the owner of the adjoining lot. In turn, Spouses Sending offered to pay a monthly rental of PHP 7,000.00 and paid the amount of PHP 25,000.00. They also promised to vacate the subject property as soon as the owner requires its use.[6]

Co Uy further alleged that in September 2013, they notified Spouses Sending to vacate the subject property to give way to the construction of a building, but to no avail. Subsequently, Co Uy, through counsel, sent a Demand Letter dated January 7, 2014, wherein Co Uy demanded Spouses Sending to vacate the subject property within 15 days from receipt thereof. Still, Spouses Sending refused to vacate the premises.[7]

In their *Verified Answer*,[8] Spouses Sending averred that the property described in the complaint is not the same property that they are occupying, which is a lot located in Pitogo, Consolacion. They alleged that they have been occupying the lot for more than 14 years as owners thereof. They also denied

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2 *Id.* at 430–433. Penned by Presiding Judge Ameli Amor R. Estrada.
3 *Id.* at 418.
4 *Id.* at 216.
5 *Id.* at 217.
6 *Id.* at 418.
7 *Id.* at 418–419.
8 *Id.* at 219–222.

having sought permission of Co Uy's mother and offering to pay rent on the property. Likewise, Spouses Sending denied having received a demand letter to vacate from Co Uy.

The Ruling of the MCTC

In a Decision[9] dated June 15, 2016, the MCTC granted the complaint. Based on the survey report submitted by Co Uy, the subject property is uniquely situated in two different barangays, in two municipalities, namely: Liloan and Consolacion. The MCTC found that Spouses Sending's house was built within the portion of the subject property that lies in the Consolacion side. The dispositive portion of the Decision provides:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the latter, to wit:
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> a) To vacate the premises of the subject property a parcel of land (Lot 18-D-4 of the subdivision plan, Psd-07-01-006366, being a portion of lot 18-D, (LRC) Psd-276531) situated in the Barrio of Yati, and Jugan Municipalities of Liloan and Consolacion, Province of Cebu, Island of Cebu under Tax Declaration No. 60377 and covered by Transfer Certificate of Title No. MR-13015 (T-63866);
> b) To pay plaintiff the amount of [PHP] 20,000.00 as moral damages;
> c) To pay plaintiff the amount of [PHP] 50,000.00 as Attorney's fees;
> d) To pay plaintiff the amount of [PHP] 50,000.00 as litigations cost;
> e) To pay exemplary damages in the amount of [PHP] 20,000.00.
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> SO ORDERED.[10]

Aggrieved, Spouses Sending appealed the MCTC Decision to Branch 7, Regional Trial Court (RTC), Cebu City (for Branch 56, Mandaue City).[11] Spouses Sending assailed the MCTC Decision upon the following arguments: (1) the MCTC lacked jurisdiction over the case because the subject property is located in another municipality, i.e., Consolacion; (2) the survey presented by Co Uy was unreliable because Spouses Sending, who were the present occupants, did not see the actual conduct of the survey on the property; and (3) there was insufficient proof that Spouses Sending occupied the property by mere tolerance of Co Uy or his predecessors.[12]

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9 *Id.* at 136–143. Penned by Acting Presiding Judge Jocelyn G. Uy-Po.
10 *Id.* at 142–143.
11 *Id.* at 144–145.
12 *Id.* at 188–191.

The Ruling of the RTC

In the Decision[13] dated October 25, 2018, the RTC affirmed the MCTC Decision with modification as to the award of damages, viz.:

> WHEREFORE, premises considered, this Court AFFIRMS the Decision of the Municipal Circuit Trial Court of Liloan-Compostela, Cebu dated June 15, 2016 with MODIFICATION that the award of exemplary and moral damages is DELETED for lack of basis.
>
> SO ORDERED.[14]

The RTC determined that the MCTC properly exercised jurisdiction over the case because, based on the evidence on record, the subject property was situated between the boundary of Consolacion and Liloan, with the bigger portion being located at the latter. It emphasized that Spouses Sending failed to substantiate their allegation that the survey presented by Co Uy was not actually conducted. It further ruled that the fact of tolerance was sufficiently proven by the records of the barangay conciliation proceedings between the parties.[15]

Spouses Sending filed a *Motion for Reconsideration*,[16] which the RTC subsequently denied in the Resolution[17] dated February 18, 2019. Spouses Sending thus filed a Petition for Review before the CA.

Ruling of the CA

In the Decision[18] dated August 20, 2021, the CA affirmed the RTC decision, with modification as to the award of attorney's fees and litigation expenses. The *fallo* of the decision reads:

> WHEREFORE, the instant Petition is DISMISSED. The Decision dated October 25, 2018 of the Regional Trial Court of Cebu City, Branch 7, for Branch 56, Mandaue City, in Civil Case No. MAN-7815-A is hereby AFFIRMED with MODIFICATION. The award of attorney's fees and litigation expenses is deleted.
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> SO ORDERED.[19]

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13 *Id.* at 185–191. Penned by Presiding Judge James Stewart Ramon E. Himalaloan.
14 *Id.* at 191.
15 *Id.* at 189–191.
16 *Id.* at 192–200.
17 *Id.* at 201–206. Penned by Presiding Judge (Assisting Court) James Stewart Ramon E. Himalaloan.
18 *Id.* at 417–427. Penned by Associate Justice Nancy C. Rivas-Palmones and concurred in by Associate Justices Pamela Ann Abella Maxino and Lorenza R. Bordios of the Nineteenth Division, Court of Appeals, Cebu City.
19 *Id.* at 427.

The CA found that Spouses Sending occupied the subject property merely by the tolerance of the then-administrator, Loreto Co Uy—a tolerance that continued even after Co Uy became the subject property's owner. While it was alleged that Spouses Sending offered to pay rentals, it only indicated an offer on their part and does not establish a meeting of the minds to create a contract of lease.[20] Thus, the basis for Co Uy's unlawful detainer suit is the withdrawal of his tolerance on Spouses Sending's continued stay in the subject property.[21]

Further, the CA ruled that while attorney's fees may be awarded in unlawful detainer cases under specific circumstances,[22] none are present in the case.

The CA Decision became final and executory on November 11, 2021, and was recorded in the Book of Entries of Judgment.[23]

Execution Proceedings before the MCTC

Thereafter, a *Motion for Execution* was filed by Co Uy before the MCTC. Considering the finality of the CA Decision, The MCTC, in turn, issued a Resolution[24] dated June 16, 2023, directing the issuance of the Writ of Execution of the Decision dated June 15, 2016.

On July 21, 2023, Spouses Sending filed an *Opposition of the Resolution,*[25] through customary lawyer Datu Makaatol Tugas, questioning the jurisdiction of the court *a quo*. They alleged that they are members of an indigenous cultural community (ICC), as evidenced by identification

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20 *Id.* at 425.

21 *Id.*

22 *Id.* at 426. Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
(1) When exemplary damages are awarded;
(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
(3) In criminal cases of malicious prosecution against the plaintiff;
(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
(6) In actions for legal support;
(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
(9) In a separate civil action to recover civil liability arising from a crime;
(10) When at least double judicial costs are awarded;
(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.
In all cases, the attorney's fees and expenses of litigation must be reasonable.

23 *Id.* at 446.

24 *Id.* at 445–446.

25 *Id.* at 436–442.

documents issued by the Lumad KKK-Alimaong Tribal Government. Accordingly, Spouses Sending submitted, *for the first time*, that customary laws, traditions, and practices should be used to resolve the dispute, pursuant to Section 65[26] of Republic Act No. 8371 or the Indigenous Peoples Rights Act of 1997 (IPRA). Spouses Sending prayed that the execution of the MCTC Decision should be suspended pending the resolution of the issue on jurisdiction.[27]

Spouses Sending also filed an *Opposition to Notice for Vacate*[28] on July 27, 2023, wherein they reiterated their arguments in the Opposition to the MCTC Resolution dated June 16, 2023. On the other hand, Co Uy submitted a *Motion for the Issuance of a Writ of Demolition and the Issuance of an Order Directing the Resurvey of the Subject Parcel of Land* on August 3, 2023.[29]

The MCTC then issued a *Notice of Hearing*[30] dated September 15, 2023, setting the case for hearing on October 20, 2023. On October 16, 2023, Spouses Sending filed a *Motion to Settle First the Jurisdiction Before Notice for Hearing,*[31] insisting that customary laws and practices should apply in settling disputes involving members of ICCs.[32] The MCTC heard the pending motions and incidents on October 27, 2023, where the parties confirmed their respective claims.

In the now-assailed Resolution dated November 29, 2023, the MCTC ruled that it can no longer rule on the motions filed by Spouses Sending in view of the finality of the CA Decision, to which the doctrine of immutability of judgment applies.[33] Consequently, the MCTC gave Spouses Sending a period of 30 days from receipt of the resolution to voluntarily vacate and remove all the structures built on the subject property.[34] In the same resolution, the MCTC gave Co Uy the same period of 30 days from notice within which to cause the resurvey of the subject property and report to the court the survey findings.[35]

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26 Section 65. *Primacy of Customary Laws and Practices.* — When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.

27 *Rollo*, Vol. I, p. 442.

28 *Id.* at 477–480.

29 *Id.* at Vol. II, p. 861.

30 *Id.* at 562. Penned by Clerk of Court II Henry P. Cañete, Jr.

31 *Id.* at 563–567.

32 *Id.* at 567.

33 *Id.* at 791–792.

34 *Id.* at 793.

35 *Id.*

On December 14, 2023, Spouses Sending filed an *Opposition to the Resolution*,[36] praying, yet again, that the Resolution be suspended until the issue on the jurisdiction is resolved.[37] The MCTC noted the receipt of the same, without further action, on December 14, 2023.[38]

Undaunted, Spouses Sending filed the instant Petition for *Mandamus* to enjoin the execution proceedings before the MCTC. Spouses Sending specifically pray for the Court to: (1) issue a writ of preliminary injunction to defer the execution of judgment in Civil Case No. 742-R before the MCTC; (2) order Presiding Judge Hon. Ameli Amor R. Estrada (Presiding Judge Estrada) to resolve the motion to dismiss, which is the *Motion to Settle First the Jurisdiction Before Notice for Hearing* filed on October 16, 2023; (3) order prosecutors to "refrain from prosecuting cases involving members of the Indigenous Cultural Communities and strictly observe the MOA[39] between the Department of Justice and National Commission on Indigenous Peoples[40] (NCIP), series of 2005 which recognizes the preferential rights of the indigenous Cultural Communities;" and (4) reverse and set aside the Decision dated June 15, 2016 of Hon. Jocelyn Uy-Po, Acting Presiding Judge of the MCTC in Civil Case No. 742-R.[41]

Petitioners' Arguments

In the main, Spouses Sending aver that the following provisions under the IPRA warrant the dismissal of the subject ejectment suit, as customary laws and practices should govern in resolving disputes involving ICCs or Indigenous Peoples (IP):

> Section 13. Self-Governance. — The State recognizes the inherent right of ICCs/IPs to self-governance and self-determination and respects the integrity of their values, practices and institutions. Consequently, the State shall guarantee the right of ICCs/IPs to freely pursue their economic, social and cultural development.
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> Section 15. Justice System, Conflict Resolution Institutions, and Peace Building Processes. — The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights.

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36 *Id.* at 794–838.
37 *Id.* at 837.
38 *Id.* at 851.
39 *Id.* at 853–854, *see* Memorandum of Agreement.
40 *Id.*, *see* National Commission on Indigenous Peoples.
41 *Rollo*, Vol. I, p. 85.

> Section 63. Applicable Laws. — Customary laws, traditions and practices of the ICCs/IPs of the land where the conflict arises shall be applied first with respect to property rights, claims and ownerships, hereditary succession and settlement of land disputes. Any doubt or ambiguity in the application and interpretation of laws shall be resolved in favor of the ICCs/IPs.
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> Section 65. Primacy of Customary Laws and Practices. — When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.

Spouses Sending submit that the *Higaonon* Tribe and the *Dadantulan* Tribal Court, not the MCTC, have jurisdiction over the controversy between the parties. They argue that the MCTC has a ministerial duty to recognize the jurisdiction of the foregoing tribes and the primacy of the ICC's customary laws to disputes involving indigenous peoples.[42]

Respondents' Arguments

In his Comment,[43] Co Uy avers that the decision of the CA has become final and executory. He alleges that Spouses Sending are not members of any ICC and that there are no ICCs residing in the Municipality of Liloan, Province of Cebu. He, thus, submits that "the move of the petitioners using the mantle of the Indigenous Peoples is a way to circumvent the Rule of Law."[44]

Co Uy further argues that granting without admitting that Spouses Sending are indeed members of ICCs, the subject property was originally registered on June 16, 1926, prior to the effectivity of the IPRA; hence, the property rights existing and vested upon its current owner, shall be respected.[45]

Finally, Co Uy points out that Spouses Sending are represented by Datu Makaatol Tugas, a non-member of the Philippine Bar, and is therefore not entitled to practice law.[46]

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42 *Id.* at 69–70.
43 *Rollo*, Vol. II, pp. 869–877.
44 *Id.* at 871.
45 *Id.* at 873.
46 *Id.* at 874.

The Issue

The issue before the Court is whether a Writ of *Mandamus* may issue (1) to compel respondent judge to resolve the *Motion to Settle First the Jurisdiction Before Notice for Hearing*; and (2) to reverse and set aside the Decision dated June 15, 2016 in Civil Case No. 742-R.

The Ruling of the Court

The Petition for *Mandamus* is dismissed.

At the outset, the Court emphasizes that while it exercises original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto* and *habeas corpus*,[47] such jurisdiction is shared concurrently with the RTC and the CA pursuant to Sections 9(1)[48] and 21(1)[49] of Batas Pambansa Blg. No. 129, otherwise known as the Judiciary Reorganization Act of 1980. By reason of this shared jurisdiction, the immediate and direct recourse to the Court is frowned upon following the doctrine of hierarchy of courts.

The principle of the hierarchy of courts dictates that direct recourse to the Supreme Court is not proper as the Court is a *court of last resort* and must remain to be so for it to satisfactorily perform its constitutional functions. This ensures that the Court can devote its time and attention to matters within its exclusive jurisdiction and prevent the overcrowding of its docket.[50] The doctrine guides litigants on the proper forum of their appeals as well as the venue for the issuance of extraordinary writs. Notwithstanding the concurrent original jurisdiction of the RTC, the CA, and the Court over

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47 CONST., art. VIII, sec. 5(1).

48 SECTION 9. Jurisdiction. — The Intermediate Appellate Court shall exercise:
(1) Original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction;
(2) Exclusive original jurisdiction over actions for annulment of judgments of Regional Trial Courts; and
(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders, or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards, or commissions, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

49 SECTION 21. Original Jurisdiction in Other Cases. — Regional Trial Courts shall exercise original jurisdiction:
(1) In the issuance of writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction which may be enforced in any part of their respective regions; and
(2) In actions affecting ambassadors and other public ministers and consuls.

50 *Spouses Cañaveras v. Gamboa-Delos Santos*, 924 Phil. 778, 809 (2022).

the latter, litigants must, as a rule, file their petitions with the lower courts and failure to do so will be sufficient for the dismissal of the case.[51]

The present Petition for M*andamus* arises from the issuance of the assailed resolution by Presiding Judge Estrada of the MCTC in Civil Case No. 742-R. While direct recourse to the Court may be allowed in exceptional or compelling instances,[52] none have been sufficiently established here.

To be sure, the rule is that "[a]ny party seeking a liberal application of the rules is required to present strong and compelling reasons to warrant the suspension of the rules."[53] Because the relaxation of procedural rules cannot be done without any valid reason to support it,[54] the plea for exceptional treatment must, at the very least, be accompanied by an explanation as to why a liberal construction of the rules is warranted.[55]

In the case, Spouses Sending did not allege, much less substantiate, exceptional circumstances that could warrant the Court's relaxation of the doctrine of hierarchy of courts. They simply filed the Petition for *Mandamus* directly with the Court without providing any compelling or justifying reason therefor. Their failure to observe the doctrine of hierarchy of courts—which requires litigants to first seek relief from appropriate lower courts—warrants the dismissal of the petition.

Even if the Court were to set aside the petitioners' failure to abide by the doctrine of hierarchy of courts, the Petition for *Mandamus* would nonetheless fail, as it is not the proper remedy under the circumstances of the case.

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51 *Malingin v. Sandagan*, 887 Phil. 922, 929 (2020), *citing Gios-Samar, Inc. v. Department of Transportation and Communications*, 849 Phil. 120, 131 (2019).

52 The Court in *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 331–335 (2015), summarized these circumstances in this wise:
(1) when there are genuine issues of constitutionality that must be addressed at the most immediate time;
(2) when the issues involved are of transcendental importance;
(3) cases of first impression;
(4) the constitutional issues raised are better decided by the Court;
(5) exigency in certain situations;
(6) the filed petition reviews the act of a constitutional organ;
(7) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; [and]
(8) the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."

53 *Agravante v. Commission on Elections*, 945 Phil. 520, 528–529 (2023).

54 *Id.* at 528.

55 *Lokin, Jr. v. Commission on Elections*, 689 Phil. 200, 209 (2012).

As stated in Section 3, Rule 65 of the Rules of Court, a petition for *mandamus* is an appropriate remedy when any tribunal, corporation, board, officer or person: (1) unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station; or (2) unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled. The petitioner must show that there was "no other plain, speedy and adequate remedy in the ordinary course of law" that they could have availed of.

Case law further teaches that *mandamus* lies "only to compel an officer to perform a *ministerial* duty."[56] There must be the concurrence of the petitioners' clear legal right and a corresponding ministerial duty imposed by law upon respondents which they failed to perform.[57] To be ministerial, the duty must be clear and definite, arising under conditions admitted or proved to exist and imposed by law, and must not involve the exercise of official discretion nor judgment.[58]

Upon review of the case, the Court finds that Spouses Sending failed to establish all the foregoing requirements for the issuance of a writ of *mandamus*.

First, Spouses Sending failed to demonstrate a clear legal right that was allegedly violated by respondents. A perusal of the Petition reveals that Spouses Sending primarily relied on Section 65 of the IPRA in arguing against the jurisdiction of the regular courts. The reliefs they seek is anchored on the alleged lack of jurisdiction of the MCTC over the unlawful detainer case.

Section 65 of the IPRA states that in disputes involving ICCs and/or IPs, customary laws and practices shall be applied. While the law uses the word "shall," indicating a mandatory tone, it must be read in conjunction with Section 66, which provides for the jurisdiction of the NCIP, viz.:

> SECTION 66. *Jurisdiction of the NCIP.* — The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs: Provided, however, That no such dispute shall be brought to the NCIP unless the *parties have exhausted all remedies provided under their customary laws*. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP. (emphasis supplied)

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56 *San Juan v. Castro*, 565 Phil. 810 (2007).

57 *Malingin v. Sandagan*, *supra* note 51, at 930.

58 *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*, 595 Phil. 305, 306 (2008); *San Juan v. Castro*, *supra* at 817–818.

In *Unduran v. Aberasturi*,[59] the Court clarified that the NCIP does not have jurisdiction over disputes arising between or among parties who do not belong to the same ICC/IP, i.e., parties belonging to different ICC/IP, or where one of the parties is a non-ICC/IP. In such cases, the jurisdiction lies with the *regular courts of justice*, not the NCIP, to wit:

> A careful review of Section 66 shows that the NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs *only when they arise between or among parties belonging to the same ICC/IP*. This can be gathered from the qualifying provision that "no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP."
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> The qualifying provision requires two conditions before such disputes may be brought before the NCIP, namely: (1) exhaustion of remedies under customary laws of the parties, and (2) compliance with condition precedent through the said certification by the Council of Elders/Leaders. This is in recognition of the rights of ICCs/IPs to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities, as may be compatible with the national legal system and with internationally recognized human rights.
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> Section 3 (f) of the IPRA, defines customary laws as a body of written and/or unwritten rules, usages, customs and practices traditionally and continually recognized, accepted and observed by respective ICCs/IPs. From this restrictive definition, it can be gleaned that it is only when both parties to a case belong to the same ICC/IP that the abovesaid two conditions can be complied with. If the parties to a case belong to different ICCs/IPs which are recognized to have their own separate and distinct customary laws and Council of Elders/Leaders, they will fail to meet the abovesaid two conditions. *The same holds true if one of such parties was a non-ICC/IP member who is neither bound by customary laws as contemplated by the IPRA nor governed by such council.* Indeed, it would be violative of the principles of fair play and due process for those parties who do not belong to the same ICC/IP to be subjected to its customary laws and Council of Elders/Leaders.
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> Therefore, pursuant to Section 66 of the IPRA, the NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP. *When such claims and disputes arise between or among parties who do not belong to the same ICC/IP*, i.e., *parties belonging to different ICC/IPs or where one of the parties is a non-ICC/IP, the case shall fall under the jurisdiction of the proper Courts of Justice, instead of the NCIP*. In this case, while most of the petitioners belong to Talaandig Tribe, respondents do not belong to the same ICC/IP. Thus, even if the real issue involves a dispute over land which appear to be located within the ancestral domain of the

[59] 771 Phil. 536 (2015).

> Talaandig Tribe, it is not the NCIP but the RTC which shall have the power to hear, try and decide this case.[60] (emphasis supplied)

This is precisely the case in the present controversy. While herein petitioners Spouses Sending claim membership in the KKK-Alimaong Sugbo-anon Tribe, nothing in the records show that Co Uy is also a member of the same tribe. Applying the doctrine in *Unduran,* subjecting a non-member to the customary laws of an ICC/IP violates the fundamental principles of fair play and due process. Accordingly, jurisdiction properly lies with the regular courts. This holds true even assuming, *arguendo*, that the subject property is an ancestral land,[61] a fact that, in any event, has not been conclusively established in this case.

Therefore, no clear legal right of Spouses Sending, as alleged members of an ICC/IP, was violated by the execution of the decision in the unlawful detainer case filed before the MCTC. The first requirement for the issuance of a writ of *mandamus* is clearly lacking.

Second, there is no ministerial duty on the part of respondents which they neglected to perform. In contrast to a discretionary act, a ministerial act is one in which an officer or tribunal performs under a given state of facts, in a prescribed manner, and in obedience to a mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of an act done.[62]

To recall, Spouses Sending pray that the public respondent judge be compelled to (1) "resolve the motion to dismiss and settle disputes involving Indigenous Peoples pursuant to [Sections 65 and Section 70 of Republic Act No.] 8371, UNDRIP, ILO 169 to avoid irreparable damage;"[63] and (2) reverse the Decision dated June 15, 2016 "considering that identified areas claimed by Datu Bontito Leon Kilat covered by Hacienda de Mandaue and United Nation of the Visayas Ancestral Domain Island Number (ADIN) 0002 including Visayas Ancestral Domain Island Number (ADIN) 0001 to Mactan Island."[64] They also seek to enjoin prosecutors, while not impleaded as respondents thereto, from prosecuting cases involving members of ICCs/IPs.[65]

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60 *Id.* at 568-569.
61 *Galang v. Wallis*, 855 Phil. 876, 883 (2019).
62 *I-Popefrancis v. Department of Budget and Management*, G.R. No. 206689, August 24, 2016 [Notice].
63 *Rollo*, Vol. I, p. 85.
64 *Id.*
65 *Id.*

Undeniably, the foregoing matters pertain to judicial adjudication and prosecutorial discretion, which are not ministerial functions. The resolution of motions, interpretation of laws, and determination of jurisdiction are inherently discretionary, requiring the respondents to act in accordance with their own judgments and consciences uncontrolled by anyone. Overall, when the law requires and grants public officers the right to decide on how they shall perform their duty, then they are vested with discretionary functions,[66] as in the case of the public respondent judge.

At most, *mandamus* "is available to compel action, *when refused*, on matters involving discretion, but *not* to direct the exercise of judgment or discretion one way or the other."[67] That is, a writ of *mandamus* may issue to direct a lower court judge to resolve a pending motion, which he or she *refused* to do, but it cannot be utilized to compel the judge on *how* to rule on the motion.[68] In the former, a writ of *mandamus* is proper because the judge is being directed to perform a duty specifically enjoined by law, i.e., to dispose of court business promptly and to resolve pending incidents and motions;[69] in the latter, the writ is improper because the resolution of a motion in favor of or against the movant involves the exercise of judicial discretion.

As applied to the case, a writ of *mandamus* could, at most, serve only to compel the resolution of the *Motion to Settle First the Jurisdiction Before Notice for Hearing*. The writ cannot extend to an order directing the public respondent judge to grant the motion in favor of Spouses Sending, to set aside its Decision dated June 15, 2016, and to dismiss the subject unlawful detainer suit.

Besides, in cases where *mandamus* lies to compel a judge to resolve a pending incident or motion, it must first be established that the magistrate *refused* to perform such duty. If the motion had already been resolved against the movant, then *mandamus* is not available. Instead, the proper remedy of the aggrieved party is to file a petition for *certiorari*, as explained in *Hipos, Sr. v. Bay*,[70] to wit:

> There is indeed an exception to the rule that matters involving judgment and discretion are beyond the reach of a writ of *mandamus, for such writ may be issued to compel action in those matters, when refused. However,* ***mandamus is never available to direct the exercise of judgment or discretion in a particular way or the retraction or reversal of an action already taken in the exercise of either***. In other words, while a judge

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66 *Villanueva, Jr. v. Sugar Regulatory Administration*, 961 Phil. 230, 257–258 (2024).

67 *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*, *supra* note 58, at 326.

68 *Hipos, Sr. v. Bay*, 600 Phil. 720, 728 (2009).

69 *Gonzales v. Bantolo*, 522 Phil. 262, 266 (2006).

70 600 Phil. 720 (2009).

> refusing to act on a Motion to Withdraw Informations ***can*** be compelled by *mandamus* to act on the same, he ***cannot*** be compelled to act in a certain way, i.e., to grant or deny such Motion. In the case at bar, Judge Bay did not refuse to act on the Motion to Withdraw Informations; he had already acted on it by denying the same. Accordingly, *mandamus* is not available anymore. If petitioners believed that Judge Bay committed grave abuse of discretion in the issuance of such Order denying the Motion to Withdraw Informations, the proper remedy of petitioners should have been to file a Petition for *Certiorari* against the assailed Order of Judge Bay.[71] (Emphasis and underscoring in the Original)

Relevantly, in the assailed Resolution dated November 29, 2023, the public respondent judge resolved the *Motion to Settle First the Jurisdiction Before Notice for Hearing* against Spouses Sending. The Resolution categorically recognized that Spouses Sending filed the foregoing motion,[72] but the public respondent judge determined that it cannot be entertained in view of the CA Decision, which had already become final and immutable. Following *Hipos, Sr.*, the present petition must be dismissed outright, as the remedy of *mandamus* is not available.

Even if the Court exceptionally considers the Petition for *Mandamus* as a petition for *certiorari,* it must still be dismissed for lack of merit. To iterate, Spouses Sending abjectly failed to establish that the NCIP has jurisdiction over the dispute between the parties. Even in the *Motion to Settle First the Jurisdiction Before Notice for Hearing*, Spouses Sending simply claimed to be members of the Lumad KKK-Alimaong Tribal Government but did not demonstrate that Co Uy belongs to the same tribe. Hence, the MCTC did not act with grave abuse of discretion in proceeding with the execution of the final judgment in Civil Case No. 742-R.

The Court is aware that a void decision rendered by a tribunal without jurisdiction presents an exception to the rule on the finality of judgments. Still, it is equally well-established that "[e]xceptions to the immutability of final judgment are allowed only under the most extraordinary of circumstances."[73] A judgment that has attained finality cannot be recklessly set aside, especially when the parties had been given the full opportunity to be heard and the decision was rendered after a careful consideration of the evidence.[74] Otherwise stated, a final judgment may be set aside only if the grounds therefor are clearly established. It is authorized only "when necessary to accomplish the ends of justice, but not when its object is to set at naught a final judgment and make a mockery of the administration of justice."[75]

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71 *Id.* at 728–729.
72 *Rollo*, Vol. II, p. 790.
73 *Samson v. Spouses Gabor*, 739 Phil. 429, 449 (2014).
74 *Id.* at 445.
75 *Rosensons, Inc. v. Jimenez*, 160-A Phil. 683, 689 (1975).

In the case, Spouses Sending's conduct demonstrates that their invocation of the NCIP's authority is a mere subterfuge designed to evade the execution of the final judgment against them. Verily, in the proceedings before the MCTC, they never raised their purported status as members of an ICC until the execution proceedings. Even during the barangay conciliation that was held prior to the filing of Co Uy's complaint, Spouses Sending did not claim to be indigenous peoples.[76] Spouses Sending's unexplained silence, despite the numerous opportunities when they could have earlier asserted their supposed status as indigenous peoples and thus impugn the MCTC's jurisdiction over the controversy, may be taken as evidence against them.[77] The fact that they submitted not only to the jurisdiction of the regular courts but also to the authority of the *Lupong Tagapamayapa* of Barangay Yati, Liloan, without immediately invoking the applicability of the customary laws of the relevant ICC, betrays the dubiousness of their alleged status as indigenous peoples.

Moreover, case law instructs that membership in an ICC must be substantiated with facts constitutive of the ICC's "customs, political structures, institutions, decision making processes, and such other indicators of indigenous persons nature distinct and native to them."[78] A bare allegation of status as indigenous peoples or membership in a tribe will not suffice.[79]

Here, Spouses Sending merely alleged that they are members of the Lumad KKK-Alimaong Higaonon Tribe without substantiating the same. There is nothing in the Petition for *Mandamus* or in their submissions before the MCTC in which the spouses explained their purported ICC's customs, political structures, institutions, decision making processes, or any other *indicia* of the genuineness of their claimed status as indigenous peoples.

Even more, the records show that the NCIP had issued an Advisory[80] dated August 8, 2019, in which it notified the public that the *Lumad KKK-Alimaong Higaonon* Tribe is "***NOT*** one of the indigenous cultural communities duly validated and recognized by the NCIP." Given the situation, Spouses Sending's alleged membership in the *Lumad KKK-Alimaong Higaonon* Tribe is doubtful at best. As such, it cannot serve as basis to set aside the final judgment in Civil Case No. 742-R.

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76 *Rollo*, Vol. I, p. 250.

77 *See* Section 32, Rule 130 of the Rules of Court, viz :
SEC. 32. *Admission by silence.* – An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.

78 *Lim v. Gamosa*, 774 Phil. 31, 71 (2015).

79 *Id.* at 69.

80 *Rollo*, Vol. II, p. 883.

All told, the present petition must be dismissed for being a wrong remedy. In the absence of a clear legal right on the part of petitioners and a corresponding ministerial duty imposed by law upon respondents that has been neglected or refused, the issuance of a writ of *mandamus* is unwarranted. Even if the Court exceptionally considers the petition as one for *certiorari,* it must still be dismissed because Spouses Sending failed to demonstrate that there are valid grounds to set aside the final judgment in Civil Case No. 742-R.

ACCORDINGLY, the Petition for *Mandamus* is **DISMISSED**. The Resolution dated November 29, 2023 of the 7th Municipal Circuit Trial Court of Liloan-Compostela, Metro Cebu, in Civil Case No. 742-R, is **AFFIRMED**. Petitioners Spouses Elvin Sending (Datu Gibo) and Jocelyn Sending (Bae Orange) are **ORDERED** to vacate the subject property and voluntarily remove all improvements built thereon within 30 days from receipt of this Decision.

SO ORDERED.

HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:

See Concurring Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest 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.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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.

ALEXANDER G. GESMUNDO
Chief Justice