

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Second Division

REMIGIUS D. MAYLED,
Petitioner-Accused,

Crim. Case No. SB-17-SCA-0002 & 0003

For: Petition for Certiorari under Rule 65
of the Revised Rules of Procedures
in relation to R.A. 10660 or the
Sandiganbayan Law

-versus-

Present:
Herrera, Jr., J. *Chairperson*
Musngi, J. &
Pahimna, J.

PEOPLE OF THE PHILIPPINES,
Hon. BILL LUGO YBARLEY in his
Capacity as Presiding Judge, of
RTC Branch 38, Alabel, Sarangani,
et al.,

Respondents.

Promulgated:

August 2, 2017

X-----X

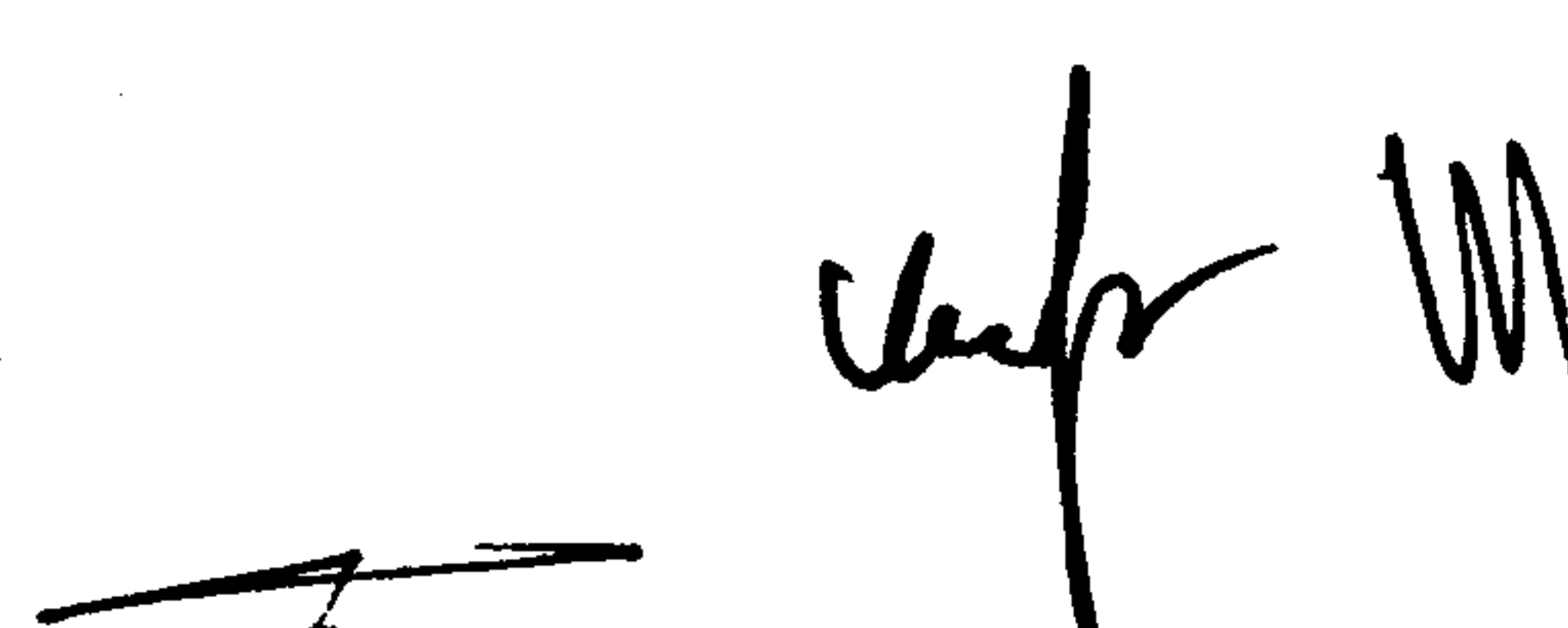
RESOLUTION

HERRERA, JR., J:

Before the Court is a ***Motion For The Issuance Of Preliminary Mandatory Injunction***¹ dated July 13, 2017, filed by petitioner Remigius D. Mayled (Mayled for short), through counsel, praying the Court to issue a preliminary mandatory injunction ordering the Regional Trial Court (RTC), Branch 38, Alabel, Sarangani Province, presided by respondent Judge Bill Lugo Ybarley, to hold in abeyance the proceedings in Criminal Cases Nos. 01-98 and 02-98 pending resolution by the Court of petitioner Mayled's ***Petition for Certiorari Under Rule 65 of the Rules of Court***.² In said ***Petition, etc.***, petitioner Mayled is assailing the ***Order*** dated September 21, 2016, denying his ***Motion To Dismiss*** Criminal Cases Nos. 01-98 and 02-98, and the ***Order*** dated February 24, 2017, denying the ***Motion For Reconsideration*** of the ***Order*** dated September 21, 2016. Both orders were issued by respondent Judge Ybarley.

¹ Record, pp. 134-141

² Id, pp. 1-74



The Court rules that the ***Motion, etc.*** of petitioner Mayled must necessarily be denied.

To begin with, petitioner Mayled is actually praying for the issuance of a preliminary prohibitory injunction, or simply preliminary injunction, not a preliminary mandatory injunction. The first is an order requiring a party or court to refrain from performing a particular act or acts, like holding in abeyance the proceedings in the case. The second is an order that commands performance of a particular act or acts.³ But whether prohibitory or mandatory, the rule is that no preliminary injunction shall be granted without hearing and prior notice to the party or persons sought to be enjoined.⁴

Here, petitioner Mayled's ***Motion, etc.*** does not contain any notice of hearing. He did not specify therein the time and date of hearing which is incumbent upon him to set, and submit proof of service of a copy of the motion with notice of such date and time of hearing, as required in ***Sections 4, 5 and 6 of the Rules of Court***, which respectively read:

"Sec. 4. Hearing of motion. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

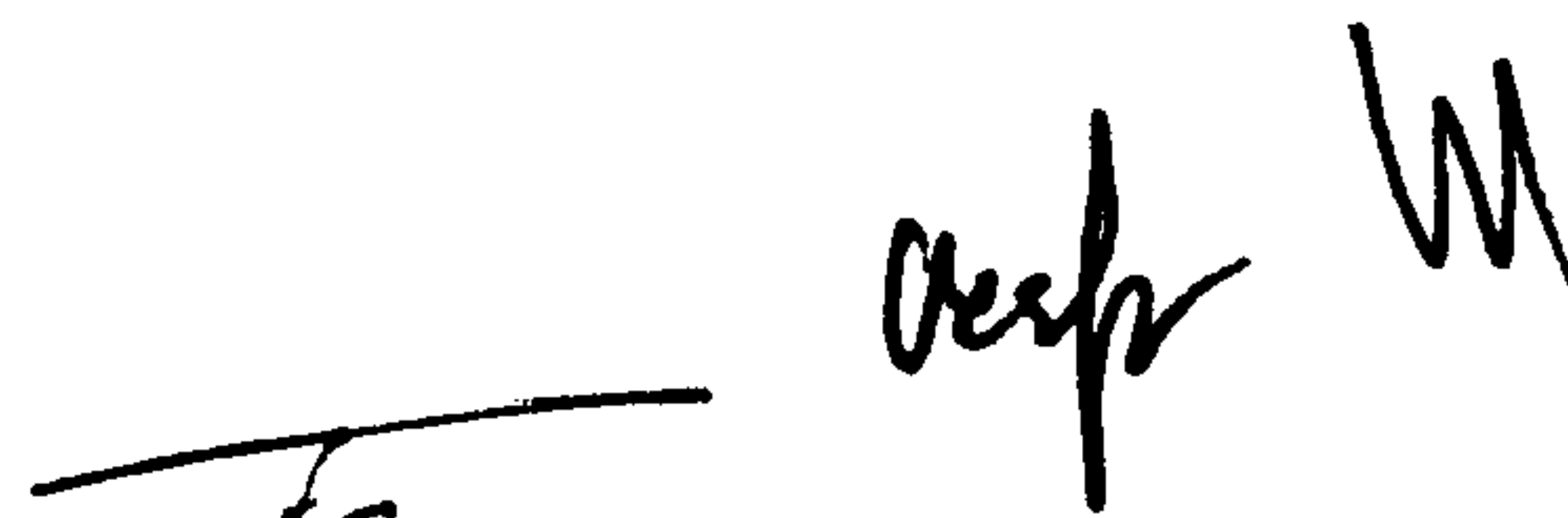
Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice."

"Sec. 5. Notice of hearing. — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion."

"Sec. 6. Proof of service necessary. — No written motion set for hearing shall be acted upon by the court without proof of service thereof."

³ Section 1, Rule 58, Rules of Court

⁴ Section 5, Rule 58, Rules of Court

Handwritten signature and initials, possibly "Deep" and "WM", with a horizontal line underneath.

It is settled that without a notice of hearing, a motion should be considered a mere scrap of paper that does not merit the attention and consideration of the court.⁵

WHEREFORE, premises considered, the ***Motion For Issuance Of Preliminary Mandatory Injunction*** dated July 13, 2017, filed by petitioner Remigius D. Mayled, through counsel, is hereby denied.

SO ORDERED.


OSCAR C. HERRERA, JR.
Chairperson

We concur:


MICHAEL FREDERICK L. MUSNGI
Associate Justice


LORIFEL L. PAHIMNA
Associate Justice

⁵ Bank of P.I. v. Far East Molasses, 198 SCRA 689, Fajardo v. CA, 354 SCRA 736; Gutierrez v. Cabrera, 452 SCRA 521