

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Second Division

People of the Philippines,
Plaintiff,

Crim. Case No. SB-17-CRM-1148 to 1151
For: Nepotism

-versus-

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

Modesto G. Membreve, et al.
Accused.

Promulgated:
September 25, 2017

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RESOLUTION

HERRERA, JR., J.:

For resolution of the Court is an ***Entry Of Appearance With Manifestation And Joint Omnibus Motion***¹ dated June 18, 2017, filed by accused Modesto Membreve, Julius Maquiling and Olimpio Galagala, Jr. (Movants for short), through counsel, praying the Court to suspend the proceedings in these cases, quash the informations and dismiss the cases, to which prosecution, through the Office of the Special Prosecutor, filed an ***Opposition (Re: Entry of Appearance with Manifestation and Joint Omnibus Motion filed by the accused Membreve, Maquiling and Galagala Jr.)***² dated July 5, 2017.

The movants are charged in these cases with four (4) counts of the crime of ***Nepotism***, defined and penalized under ***Section 59, Chapter 7, in relation to Section 67, Chapter 9, Subtitle A, Title I, Book V of the Administrative Code of 1987***, under four (4) separate ***Informations*** all dated December 6, 2016.

In praying for the suspension of the proceedings in these cases, the movants assert that they filed with the Supreme Court, on April 14, 2017, a

¹ Record, pp. 102-138

² Id, pp. 144-157

Petition For Certiorari And Prohibition (With Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction)³ dated April 2, 2017, assailing a ***Resolution*** dated September 9, 2016 and ***Order*** dated December 2, 2016, both issued by the Office of the Ombudsman in OMB-V-C-13-0202. The ***Resolution*** dated September 9, 2016 found probable cause to indict the movants for the crime of ***Nepotism***, while the ***Order*** dated December 2, 2016 denied the movant's ***Motion for Reconsideration*** of the aforesaid ***Resolution***.

In praying the Court to dismiss the ***Informations*** in these cases, the movants claim that the Office of the Ombudsman is guilty of inordinate delay in the investigation of complaint against the movants, in violation of their constitutional right to speedy disposition of their cases under ***Section 16, Article III of the 1987 Constitution***. Because of this, the movants contend that the Office of the Ombudsman was ousted of jurisdiction to file the informations, and the Court did not acquire jurisdiction over the informations filed.

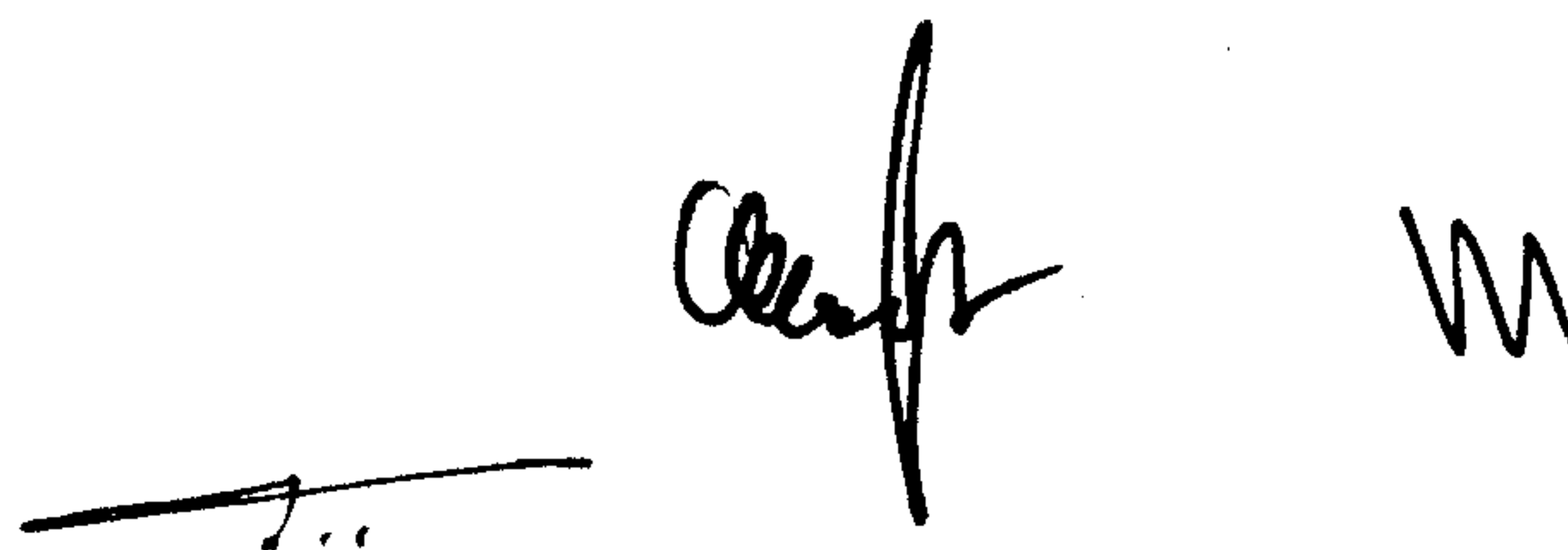
The movants thus aver:

"13. THE OFFICE OF THE OMBUDSMAN, ACTING THROUGH ITS PROSECUTOR, HAD LOST THE AUTHORITY TO FILE THE INFORMATIONS AGAINST THE ACCUSED/MOVANT IN THESE CASES. CONSEQUENTLY, THE HON. COURT ACQUIRED NO JURISDICTION OVER THE SAME INSTANT CASES.

14. The Office of the Ombudsman committed grave abuse of discretion amounting to lack of jurisdiction due to inordinate delay in the disposition of the investigation of the cases against the accused/movant. The inordinate delay of about SEVEN (7) years and SEVEN (7) months in the disposition of the investigation of the cases grossly violated their constitutional right guaranteed under Sec. 16, Art. III of the 1987 Philippine Constitution. As a consequence, the Office of the Ombudsman is ousted of its jurisdiction to file the Informations against them in these cases. Hence, the Informations filed in these cases should be quashed on the ground of lack of authority of the Ombudsman Prosecutor to file the said Informations in these cases.

15. Thereafter, the Hon. Court acquired no jurisdiction over the Informations filed in these cases for reason above-cited."⁴

³ Id, pp. 112-138
⁴ Id, p. 108

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The movants prayer for suspension of the proceedings in these cases and for quashal of the informations is devoid of merit.

To begin with, the Court is not party in the **Petition For Certiorari And Prohibition, etc.** filed by the movants with the Supreme Court on April 14, 2017 and therein docketed as G.R. No. 230530. Moreover, there is no preliminary injunction or temporary restraining order issued by the Supreme Court in connection thereto. Hence, there is no valid reason for the Court to suspend the proceeding in these cases.

Upon the other hand, the alleged inordinate delay in the investigation by the Office of the Ombudsman, which the movants invoke in their instant **Manifestation and Joint Omnibus Motion, etc.** as ground in praying the Court to quash the Informations and dismiss these cases, is also one of the principal grounds raised by the movants in their pending **Petition For Certiorari And Prohibition, etc.** before the Supreme Court docketed as G.R. No. 230530.

In said **Petition For Certiorari And Prohibition, etc.**, the movants state, *inter alia*:

“GROUNDS RELIED ON FOR THE ALLOWANCE
OF THE INSTANT PETITION

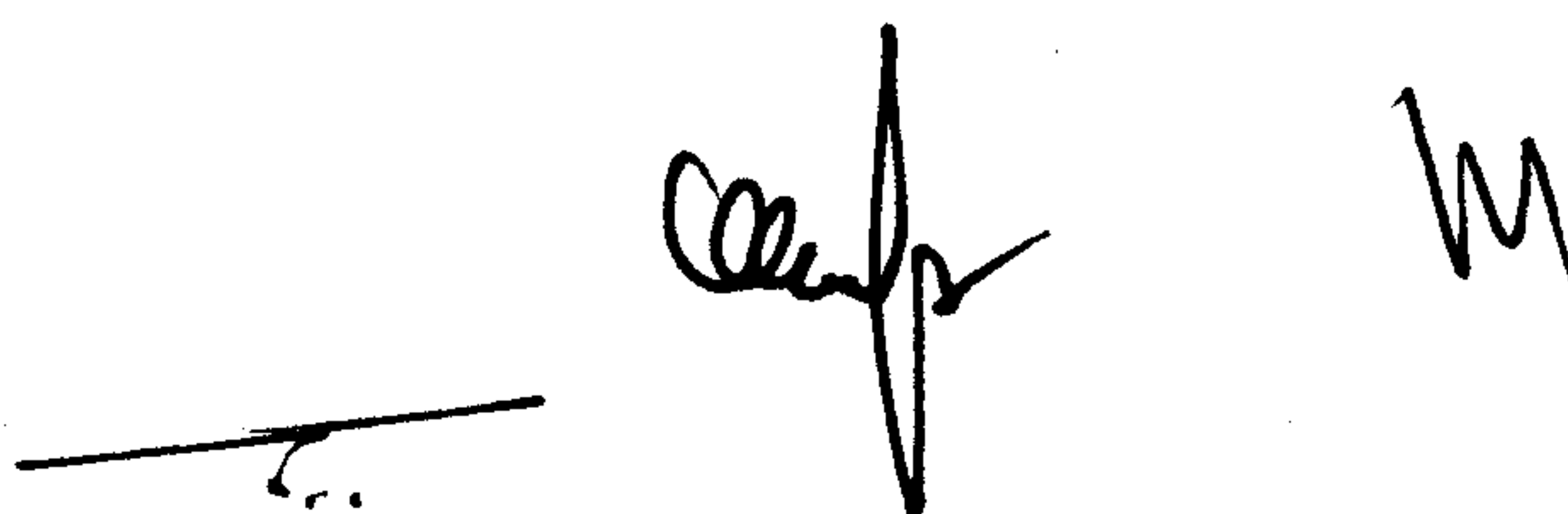
xxx.

(B)

RESPONDENT OFFICE OF THE OMBUDSMAN COMMITTED INORDINATE DELAY IN THE INVESTIGATION OF THIS CASE AGAINST THE PETITIONER IN VIOLATION OF SEC. 16 ART. III OF THE 1987 PHILIPPINE CONSTITUTION; HENCE, IT LOST JURISDICTION OVER THE CASE AND CONSEQUENTLY, ITS ASSAILED RESOLUTION FINDING PROBABLE CAUSE AGAINST PETITIONER FOR FOUR COUNTS OF NEPOTISM IS VOID.”⁵

In the reliefs sought from the Supreme Court, the movants pray that:

⁵ Id, pp. 123-124

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“WHEREFORE, it is respectfully prayed that:

XXX.

3. Thereafter and after due consideration of the instant Petition, a judgment be rendered annulling and setting aside the questioned Resolution, dated September 9, 2016, and Order dated December 2, 2016, respectively, Annexes “A” and “B”, hereof, and ordering the DISMISSAL of criminal case – OMB-V-C-13-0202 for violation of the constitutional right to speedy disposition of the case of herein Petitioner MODESTO G. MEMBREVE.”⁶

As it is, the movants are seeking from this Court, in their instant **Manifestation And Joint Omnibus Motion**, the very same relief now also being sought for by them before the Supreme Court in their pending **Petition For Certiorari And Prohibition, etc.** docketed as G.R. No. 230530. It appears that these actions of the movants and their counsel constitute forum shopping which is prohibited and considered trifling with the courts and abusive of judicial processes.

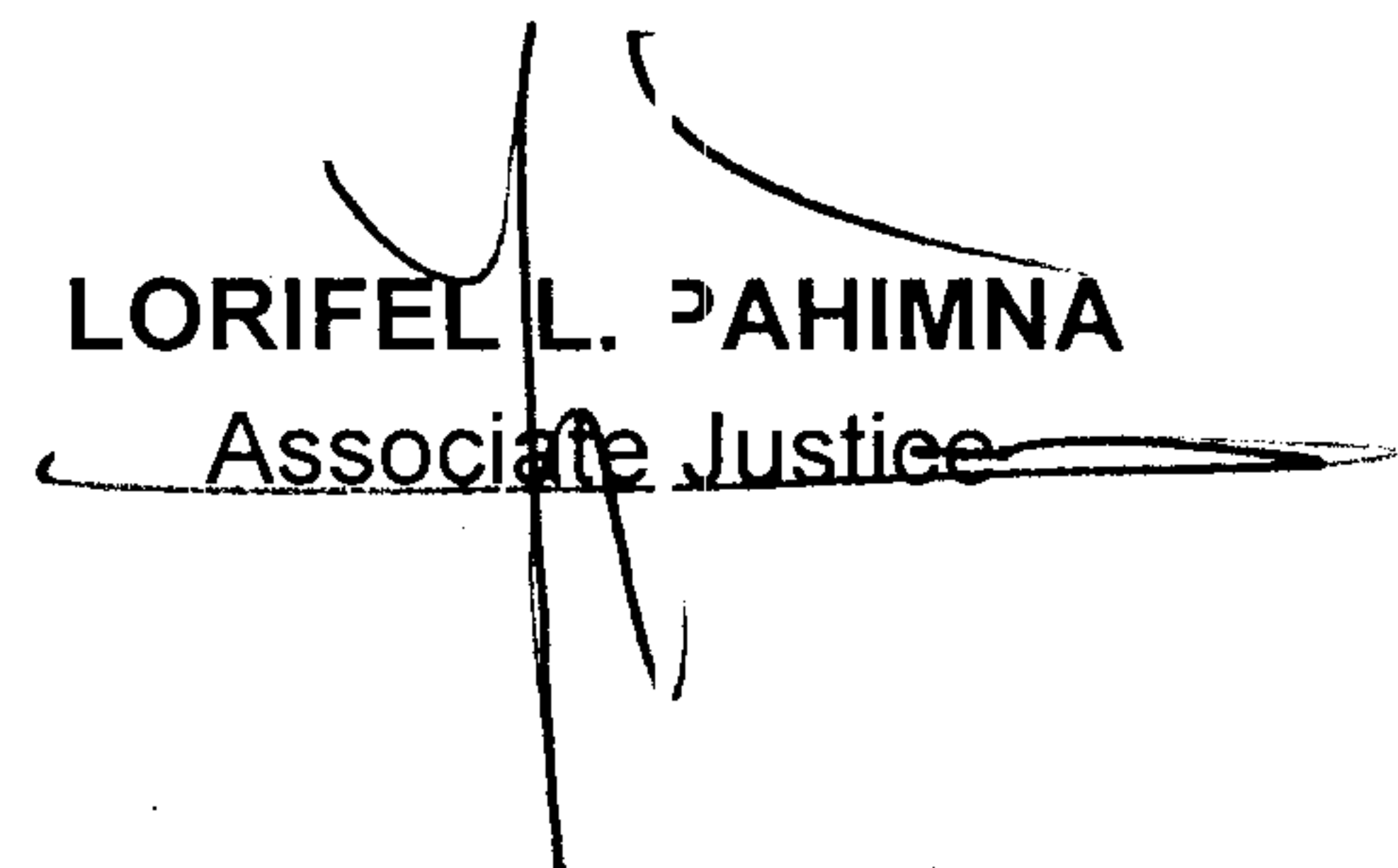
WHEREFORE, premises considered, the **Manifestation And Joint Omnibus Motion** dated June 18, 2017, filed by accused Modesto Membreve, Julius Maquiling and Olimpio Galagala, Jr. through counsel, praying for the suspension of the proceedings and for the dismissal of these cases, is hereby denied.

Accused Membreve, Maquiling and Galaga, Jr., as well as their counsel Atty. Eusebio M. Avila, are hereby ordered to explain in writing, within a non-extendible period of ten (10) days from receipt of a copy of this Resolution, why no disciplinary action should be taken against them for forum-shopping.


OSCAR C. HERRERA, JR.
Chairperson

We concur:


MICHAEL FREDERICK L. MUSNGI
Associate Justice


LORIFEL L. PAHIMNA
Associate Justice

⁶ Id, pp. 133-134