

FOURTH DIVISION

- versus -

Present:
MUSNGI, J., Chairperson
PAHIMNA, J.
JACINTO, J.

MAY 04 2023

Promulgated

RESOLUTION

MUSNGI, J.:

The Court resolves the *Motion to Allow Publication of Summons and Complaint Sans Annexes* dated 17 April 2023¹ filed by plaintiff Republic of the Philippines, represented by the Presidential Commission on Good Government (PCGG), through the Office of the Solicitor General (OSG).

In the said *Motion to Allow Publication of Summons and Complaint Sans Annexes* dated 17 April 2023, plaintiff moved that it be allowed to publish the Summons and Complaint *sans* Annexes to minimize the cost of publication as the initial quotation sent by Abante Tonite, the newspaper company chosen through raffle conducted by the Office of the Executive

¹ Sandiganbayan Records, Vol. 2, pp. 88-93.

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Clerk of Court for the publication of the Summons, amounted to Nine Hundred Eight Thousand Eight Hundred Twelve Pesos and 80/100 (PhP908,812.80). Plaintiff alleged that with the amount quoted for the publication, it stands to lose fifty percent (50%) of the awarded damages that it seeks to enforce in the instant Complaint, which is Two Million Pesos (PhP2,000,000.00).

RULING

The Court resolves to grant the motion.

In its *Resolution* dated 25 January 2023, the Court allowed the service of summons by publication as the records show that the service of summons upon the indicated defendants failed as they cannot be located in the given address/es or their present whereabouts are unknown. The Court thus ruled:

Accordingly, the plaintiff is hereby allowed to cause the service of summons by publication once a week for two (2) consecutive weeks in a newspaper of general circulation in the Philippines and one elected by raffle through the Office of the Clerk of Court IV. In addition, for the Executive Clerk of Court of this Division to send summons by registered mail and through special courier at the last known address of the above-mentioned defendants.

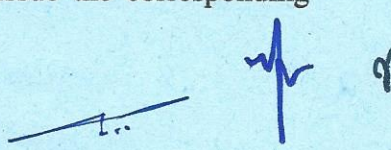
The cost of publication as well as service of summons by registered mail and through special courier shall be at the expense of the plaintiff. The above-mentioned defendants are directed to submit their respective Answers to the Complaint within sixty (60) days from the last publication of the summons or within fifteen (15) days from actual receipt thereof.

Meanwhile, the plaintiff is hereby directed to coordinate with the Office of the Executive Clerk of Court of this Division as regards the publication of the summons and to submit a Compliance within fifteen (15) days from notice.

Rule 14 of the Rules of Civil Procedure, as amended by A.M. No. 19-10-20-SC, on service of summons provides:

RULE 14 SUMMONS

Section 1. Clerk to issue summons. — Unless the complaint is on its face dismissible under Section 1, Rule 9, the court shall, within five (5) calendar days from receipt of the initiatory pleading and proof of payment of the requisite legal fees, direct the clerk of court to issue the corresponding summons to the defendants.

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Section 2. Contents. — The **summons** shall be directed to the defendant, signed by the clerk of court under seal, and contain:

- (a) The name of the court and the names of the parties to the action;
- (b) When authorized by the court upon *ex parte* motion, an authorization for the plaintiff to serve summons to the defendant;
- (c) A direction that the defendant answer within the time fixed by these Rules; and
- (d) A notice that unless the defendant so answers, plaintiff will take judgment by default and may be granted the relief applied for.

A **copy of the complaint** and order for appointment of guardian *ad litem*, if any, **shall be attached to the original and each copy of the summons.** (Emphasis supplied)

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Section 16. Service upon defendant whose identity or whereabouts are unknown. — In any action where the defendant is designated as an unknown owner, or the like, or whenever his or her whereabouts are unknown and cannot be ascertained by diligent inquiry, within ninety (90) calendar days from the commencement of the action, service may, by leave of court, be effected upon him or her by publication in a newspaper of general circulation and in such places and for such time as the court may order.

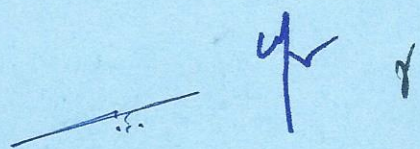
Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) calendar days after notice, within which the defendant must answer.

In *Sahagun v. Court of Appeals, et al.*² the Supreme Court explained that the service of summons by publication is required “merely to satisfy the constitutional requirement of due process,” thus:

x x x In both instances, summons by publication is allowed and the rationale for that is explained in said case thus:

Passing at once to the requisite that the defendant shall have an opportunity to be heard, we observe that in a foreclosure case, some notification of the proceedings to the non-resident owner, prescribing the time within which appearance must be made, is everywhere recognized as essential. To answer this necessity the statutes generally provide for publication, and usually in addition thereto, for the mailing of notice to the defendant, if his residence is known. Though commonly called constructive, or substituted service, such notification does not constitute a service of process in any true sense. It is merely a means provided by law whereby the owner may be

² G.R. No. 78328, 03 June 1991.



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admonished that his property is the subject of judicial proceedings and that it is incumbent upon him to take such steps as he sees fit to protect it.

The High Court explained the concept of due process in *Secretary of Justice v. Lantion, et al.*,³ to wit:

Due process is comprised of two components – substantive due process which requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty, or property, and procedural due process which consists of the two basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal (*Cruz*, Constitutional Law, 1993 Ed., pp. 102-106).

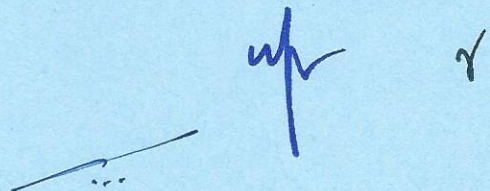
True to the mandate of the due process clause, the basic rights of notice and hearing pervade not only in criminal and civil proceedings, but in administrative proceedings as well. Non-observance of these rights will invalidate the proceedings. **Individuals are entitled to be notified of any pending case affecting their interests, and upon notice, they may claim the right to appear therein and present their side and to refute the position of the opposing parties** (*Cruz*, Phil. Administrative Law, 1996 ed., p. 64). (Emphasis supplied)

A scrutiny of the foregoing rules and jurisprudence shows that the service of summons and complaint by publication, even without the annexes, satisfies the requirements of due process as the defendants indicated therein are being “notified of any pending case affecting their interests, and upon notice, they may claim the right to appear therein and present their side and to refute the position of the opposing parties.”

Be that as it may, the Court notes that the plaintiff should satisfy the requirements under Section 22 of Rule 14, Rules of Civil Procedure, which states that:

Section 21. *Proof of service.* — The proof of service of a summons shall be made in writing by the server and shall set forth the manner, place, and date of service; shall specify any papers which have been served with the process and the name of the person who received the same; and shall be sworn to when made by a person other than a sheriff or his or her deputy.

If summons was served by electronic mail, a printout of said e-mail, with a copy of the summons as served, and the affidavit of the person mailing, shall constitute as proof of service.

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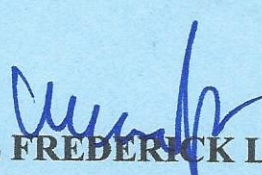
³ G.R. No. 139465, 18 January 2000.

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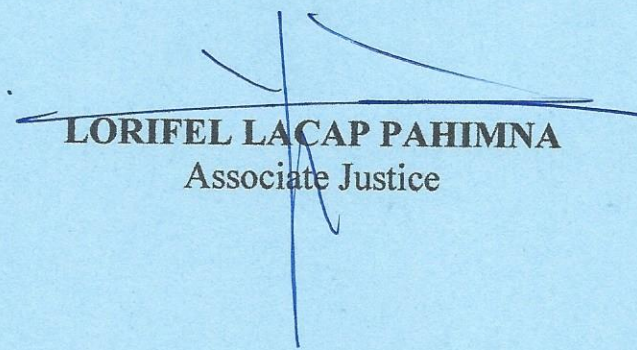
WHEREFORE, in light of the foregoing, the Court resolves to **GRANT** the *Motion to Allow Publication of Summons and Complaint Sans Annexes* dated 17 April 2023 filed by plaintiff Republic of the Philippines, represented by the Presidential Commission on Good Government, through the Office of the Solicitor General.

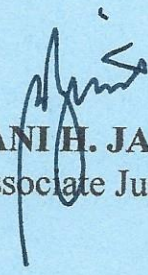
SO ORDERED.

Quezon City, Philippines.


MICHAEL FREDERICK L. MUSNGI
Associate Justice
Chairperson

WE CONCUR:


LORIFEL LACAP PAHIMNA
Associate Justice


BAYANI H. JACINTO
Associate Justice