

REMEDIAL LAW

J. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES [A.M. No. 09-6-8-SC]

Scope of the Rule on Environmental Cases

These Rules shall govern the procedure in civil, criminal and special civil actions before the RTCs, MeTCs, MTCCs, MTCs, and MCTCs involving enforcement or violations of environmental and other related laws, rules and regulations. (*Sec. 2, Rule 1, A.M. No. 09-6-8-SC, The Rules of Procedure for Environmental Cases*)

NOTE: The rules remain consistent with prevailing jurisprudence regarding the doctrine of exhaustion of administrative remedies and primary jurisdiction.

These Rules apply to environmental cases arising from laws that relate to the conservation, development, preservation, protection and utilization of the environment and natural resources. These may include environmental laws and those laws that may contain provisions that relate to the environment but are not environmental laws per se (e.g. C.A. No. 141, "The Public Land Act"; R.A. No. 7160, "The Local Government Code of 1990", etc.). While this section includes a list of such applicable laws, it is not meant to be exhaustive. (*A.M. No. 09-6-8-SC, Annotation to the Rules of Procedure for Environmental Cases*)

Strategic Lawsuit Against Public Participation (SLAPP)

A legal action filed to harass, vex, exert undue pressure, or stifle any legal recourse that any person, institution, or the government has taken or may take in the enforcement of environmental laws, protection of the environment, or assertion of environmental rights shall be treated as a SLAPP and shall be governed by these Rules. (*Sec. 1, Rule 6, A.M. No. 09-6-8-SC*)

NOTE: R.A. No. 9262, which involves cases of violence against women and their children, is not

among those laws included under the scope of SLAPP. (*Mercado v. Lopena, G.R. No. 230170, 06 June 2018*)

Q: Go filed a Petition for Habeas Corpus with Custody of his children against Mercado. Go, with his parents, also filed 10 criminal cases against Mercado for libel and child abuse, among others. Meanwhile, Mercado filed a Petition for *Certiorari* and Prohibition arguing that the cases filed by private respondents against them are forms of SLAPP intended to harass, intimidate, and silence them. Mercado prayed that the Court declare the subject cases as SLAPP and for the Court to issue a TRO/Writ of Preliminary Injunction directing public respondents to desist from conducting further hearings on the subject cases and for the immediate dismissal of the same. Is Mercado correct?

A: NO. Under the Rules of Procedure for Environmental Cases, the allegation of SLAPP is set up as a defense in cases claimed to have been filed merely as harassment suit against environmental actions. The Court finds no occasion to apply the rules on SLAPP as the petition has no relation at all to "the enforcement of environmental laws, protection of the environment or assertion of environmental rights." R.A. No. 9262, which involves cases of VAWC, is not among those laws included under the scope of SLAPP. (*Mercado v. Lopena, G.R. No. 230170, 06 June 2018*)

Prohibition against TRO and Preliminary Injunction

Only the SC can issue a TRO or writ of preliminary injunction against lawful actions of government agencies that enforce environmental laws or prevent violations thereof. (*Sec. 10, Rule 2, A.M. No. 09-6-8-SC*)

NOTE: The judge shall report any action taken on a TEPO, EPO, TRO, or a preliminary injunction, including its modification and dissolution within 10 days from the action taken to the SC, through the Office of the Court Administrator. (*Sec. 11, Rule 2, A.M. No. 09-6-8-SC*)

Q: What is the difference between a TEPO and the prohibition against issuance of TRO?

| TEPO | PROHIBITION AGAINST ISSUANCE OF TRO OR PRELIMINARY INJUNCTION |
|---|--|
| It is premised on the violation of an environmental law or a threatened damage or injury to the environment by any person, even the government and its agencies | It is premised on the presumption of regularity on the government and its agencies in enforcing environmental laws and protecting the environment. |

(Annotation to the Rules of Procedure for Environmental Cases, pp. 116-117)

Environmental Protection Order

It is an order issued by the court directing or enjoining any person or government agency to perform or desist from performing an act to protect, preserve or rehabilitate the environment. (Sec. 4(d), Rule 1, A.M. No. 09-6-8-SC)

1. TEMPORARY ENVIRONMENTAL PROTECTION ORDER (TEPO)

Issuance of a TEPO

If it appears from the verified complaint with a prayer for the issuance of an EPO that the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of the multiple-sala court before raffle or the presiding judge of a single-sala court as the case maybe, may issue *ex parte* a TEPO effective for only 72 hours from date of the receipt of the TEPO by the party or person enjoined. (Sec. 8, Rule 2, A.M. No. 09-6-8-SC)

NOTE: Within said period, the court where the case is assigned, shall conduct a summary hearing to determine whether the TEPO may be extended until the termination of the case. The court where the

case is assigned shall periodically monitor the existence of acts that are the subject matter of the TEPO even if issued by the executive judge and may lift the same at any time as circumstances may warrant. (Sec. 8, Rule 2, A.M. No. 09-6-8-SC)

Exemption from Posting of Bond

The applicant shall be exempted from the posting of a bond for the issuance of a TEPO. (Sec. 8, Rule 2, A.M. No. 09-6-8-SC)

Dissolution of TEPO

It may be dissolved if it appears after hearing that its issuance or continuance would cause irreparable damage to the party or person enjoined while the applicant may be fully compensated for such damages as he may suffer and subject to the posting of a sufficient bond by the party or person enjoined. (Sec. 8, Rule 2, A.M. No. 09-6-8-SC)

NOTE: The grounds for motion to dissolve a TEPO shall be supported by affidavits of the party or person enjoined which the applicant may oppose, also by affidavits. (Sec. 9, Rule 2, A.M. No. 09-6-8-SC)

The court may convert a TEPO to a permanent EPO or writ of continuing mandamus?

A: In the judgment, the court may convert the TEPO to a permanent EPO or issue a writ of continuing *mandamus* directing the performance of acts which shall be effective until the judgment is fully satisfied. (Sec. 3, Rule 5, A.M. No. 09-6-8-SC)

NOTE: The court may, by itself or through the appropriate government agency, monitor the execution of the judgment and require the party concerned to submit written reports on a quarterly basis or sooner as may be necessary, detailing the progress of the execution and satisfaction of the judgment. The other party may, at its option, submit its comments or observations on the execution of the judgment. (Sec. 3, Rule 5, A.M. No. 09-6-8-SC)



REMEDIAL LAW

Issuance of TEPO in a Petition for a Writ of Continuing Mandamus

The court in which the petition for a writ of continuing *mandamus* is filed may:

1. Issue such orders to expedite the proceedings; and
2. Grant a TEPO for the preservation of the rights of the parties pending such proceedings. (*Sec. 5, Rule 8, A.M. No. 09-6-8-SC*)

2. WRIT OF CONTINUING MANDAMUS

It is a writ issued by a court in an environmental case directing any agency or instrumentality of the government or officer thereof to perform an act or series of acts decreed by final judgment which shall remain effective until judgment is fully satisfied. (*Sec. 4 (c), Rule 1, A.M. No. 09-6-8-SC*)

NOTE: The writ of continuing *mandamus* was first introduced in *MMDA v. Concerned Residents of Manila Bay* (G.R. Nos. 171947-48, 18 Dec. 2008), as a special civil action that may be availed of to compel the performance of an act specially enjoined by law. The petition should mainly involve an environmental and other related law, rule or regulation, or a right therein. A writ of continuing *mandamus* is, in essence, a command of continuing compliance with a final judgment as it "permits the court to retain jurisdiction after judgment in order to ensure the successful implementation of the reliefs mandated under the court's decision." (*Dolot v. Paje*, G.R. No. 199199, 27 Aug. 2013)

When a Writ of Continuing Mandamus may be Availed of

A person may file a verified petition for a writ of continuing *mandamus* when any of the following instances are present:

1. When the respondent either:
 - a. **Unlawfully neglects** to perform a duty specifically enjoined by law, arising from an office, trust or station, in relation to the enforcement or violation of an environmental law, rule or regulation or a right; or
 - b. **Unlawfully excludes** another from the use or enjoyment of such right; and
2. There is no other plain, speedy, and adequate remedy in the ordinary course of law. (*Sec. 1, Rule 8, A.M. No. 09-6-8-SC*)

NOTE: The verified petition should also contain a sworn certification of non-forum shopping. (*Sec. 1, Rule 8, A.M. No. 09-6-8-SC*)

Q: Hannibal, Donna, Florence and Joel, concerned residents of Laguna de Bay, filed a complaint for mandamus against the LLDA, the DENR, the DPWH, DILG, Department of Agriculture, DBM, and PNP before the RTC of Laguna alleging that the continued neglect of defendants in performing their duties has resulted in serious deterioration of the water quality of the lake and the degradation of the marine life in the lake. The plaintiffs prayed that said government agencies be ordered to clean up Laguna de Bay and restore its water quality to Class C waters as prescribed by PD No. 1152, otherwise known as the Philippine Environment Code. Defendants raise the defense that the cleanup of the lake is not a ministerial function and they cannot be compelled by *mandamus* to perform the same.

The RTC of Laguna rendered a decision declaring that it is the duty of the agencies to clean up Laguna de Bay and issued a permanent writ of *mandamus* ordering said agencies to perform their duties prescribed by law relating to the cleanup of Laguna de Bay. Is the RTC correct in issuing the writ of *mandamus*? Explain. (2016 BAR)

A: YES. In *MMDA v. Concerned Residents of Manila Bay*, (G.R. No. 171947-48, 18 Dec. 2008), it was held that the cleaning or rehabilitation of Manila Bay can be compelled by *mandamus*. The ruling in *MMDA* may be applied by analogy to the clean-up of the Laguna de Bay.

While the term issued by the RTC of Laguna is a *permanent* writ of *mandamus*, this should be considered only as a semantic error and that what the RTC really intended to issue is a writ of *continuing mandamus*. There is no such thing as a permanent writ of *mandamus* since the writ shall cease to be effective once the judgment is fully satisfied.

Q: To address the clamor for a more tangible response to climate change, Former President Gloria Macapagal-Arroyo issued A.O. No. 171 which created Presidential Task Force on Climate Change (PTFCC). This body was reorganized through E.O. No. 774 and expressed what is now referred to by the petitioners as the "Road Sharing Principle" which provides that "those who have less wheels must have more in road. For this purpose, the system shall favor non-motorized locomotion and collective transportation system (walking, bicycling, and the manpowered mini-train). Later, Congress passed the Climate Change Act. It created the Climate Change Commission which absorbed the functions of the PTFCC and became the lead policy-making body of the government which shall be tasked to coordinate, monitor, and evaluate the programs and action plans of the government relating to climate change.

Herein petitioners wrote respondents regarding their pleas for implementation of the Road Sharing Principle, demanding the reform of the road and transportation system in the whole country within 30 days from receipt of the said letter—foremost, through bifurcation of roads and the reduction of official and government fuel consumption by 50%. Claiming to have not received a response, they filed this petition. Should a Writ of *Kalikasan* and/or Continuing *Mandamus* issue in petitioners' favor?

A: NO because the Petitioners failed to establish the requisites for the issuance of the writs prayed for. A party claiming the privilege for the issuance of a writ of *kalikasan* has to show that a law, rule or regulation was violated, or would be violated. In this case, apart from repeated invocation of the

constitutional right to health and to a balanced and healthful ecology and bare allegations that their right was violated, the petitioners failed to show that public respondents are guilty of any unlawful act or omission that constitutes a violation of the petitioners' right to a balanced and healthful ecology.

Similarly, the writ of continuing *mandamus* cannot issue. First, the petitioners failed to prove direct or personal injury arising from acts attributable to the respondents to be entitled to the writ. Second, the Road Sharing Principle is precisely as it is denominated—a principle. *Mandamus* lies to compel the performance of duties that are purely ministerial in nature, not those that are discretionary, and the official can only be directed by *mandamus* to act but not to act one way or the other. The duty being enjoined in *mandamus* must be one according to the terms provided in the law itself.

In this case, there is no showing of unlawful neglect on the part of the respondents to perform any act that the law specifically enjoins as a duty - there being nothing in the executive issuances relied upon by the petitioners that specifically enjoins the bifurcation of roads to implement the Road Sharing Principle. Clearly, the determination of the means to be taken by the executive in implementing or actualizing any stated legislative or executive policy relating to the environment requires the use of discretion. (*Segovia v. Climate Change Commission*, G.R. No. 211010, 07 Mar. 2017)

Where to File the Petition

1. RTC which has territorial jurisdiction over the unlawful act or omission;
2. CA; or
3. SC (Sec. 2, Rule 8, A.M. No. 09-6-8-SC)

NOTE: The petitioner shall be exempt from the payment of docket fees. (Sec. 4, Rule 8, A.M. No. 09-6-8-SC)

Contents of a Verified Petition

1. Allegation of facts;



REMEDIAL LAW

2. Specific allegation that the petition concerns an environmental law, rule or regulation;
3. Prayer that judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied;
4. Prayer for payment of damages sustained by the plaintiff due to malicious neglect to perform legal duties; and
5. Sworn certification of non-forum shopping (*Sec. 1, Rule 8, A.M. No. 09-6-8-SC*)

Issuance of the Writ of Continuing Mandamus

If the court finds the petition to be sufficient in form and substance, it shall issue the writ and require the respondent to comment on the petition within 10 days from receipt of a copy thereof. (*Sec. 4, Rule 8, A.M. No. 09-6-78-SC*)

NOTE: The order to comment shall be served on the respondents in such manner as the court may direct, together with a copy of the petition and any annexes thereto. (*Sec. 4, Rule 8, A.M. No. 09-6-8-SC*)

Expediting Proceedings

The court in which the petition is filed may:

1. Issue such orders to expedite the proceedings; and
2. Grant a TEPO for the preservation of the rights of the parties pending such proceedings. (*Sec. 5, Rule 8, A.M. No. 09-6-8-SC*)

Nature of the Hearing

It is summary in nature. The court, after the comment is filed or the time for the filing thereof has expired, shall require the parties to submit memoranda. (*Sec. 6, Rule 8, A.M. No. 09-6-8-SC*)

Resolution of the Petition

The petition shall be resolved without delay within 60 days from the date of the submission of the petition for resolution. (*Sec. 6, Rule 8, A.M. No. 09-6-8-SC*)

Q: A law was passed declaring Mt. Karbungko as a protected area since it was a major watershed. The protected area covered a portion located in Municipality of the Province I and a portion located in the City of Z of Province II. Maingat is the leader of Samahan ng Tagapag-ingat ng Karbungko (STK), a people's organization. He learned that a portion of the mountain located in the City of Z of Province II was extremely damaged when it was bulldozed and leveled to the ground, and several trees and plants were cut down and burned by workers of World Pleasure Resorts, Inc. (WPRI) for the construction of a hotel and golf course.

Upon inquiry with the project site engineer if they had a permit for the project, Maingat was shown a copy of the Environmental Compliance Certificate (ECC) issued by the DENR-EMB, Regional Director (RD-DENR-EMB). Immediately, Maingat and STK filed a petition for the issuance of a writ of continuing mandamus against RD-DENR-EMB and WPRI with the RTC of Province I, a designated environmental court, as the RD-DENR-EMB negligently issued the ECC to WPRI.

On scrutiny of the petition, the court determined that the area where the alleged actionable neglect or omission subject of the petition took place in the City of Z of Province II, and therefore cognizable by the RTC of Province II. Thus, the court dismissed outright the petition for lack of jurisdiction.

- a. Was the court correct in *motu proprio* dismissing the petition? Assuming that the court did not dismiss the petition, the RD-DENR-EMB in his Comment moved to dismiss the petition on the ground that petitioners failed to appeal the issuance of the ECC and to exhaust administrative remedies provided in the DENR Rules and Regulations.

A: NO. The court was not correct in *motu proprio* dismissing the petition for lack of jurisdiction. In a case involving similar facts, the Supreme Court held that the requirement that the petition be filed in the

area where the actionable neglect or omission took place relates to venue and not to subject-matter jurisdiction. Since what is involved is improper venue and not subject-matter jurisdiction, it was wrong for the court to dismiss outright the petition since venue may be waived. (*Dolot v. Paje, G.R. No. 199199, 27 Aug. 2013*)

b. Should the court dismiss the petition?

A: NO. The court should not dismiss the petition. The Supreme Court has held that in environmental cases, the defense of failure to exhaust administrative remedies by appealing the ECC issuance would apply only if the defect in the issuance of the ECC does not have any causal relation to the environmental damage. Here the issuance of the ECC has a direct causal relation to the environmental damage since it permitted the bulldozing of a portion of the mountain and the cutting down and burning of several trees and plants. (*Paje v. Casiño, G.R. 207257, 03 Feb. 2015*)

Judgment

If granted:

1. The court shall require the respondent to perform an act or series of acts until judgment is fully satisfied and to grant such other reliefs

as may be warranted resulting from the wrongful or illegal acts of the respondent;

2. The court shall require the respondent to submit periodic reports detailing the progress and execution of the judgment;
3. The court may by itself or through a commissioner or appropriate government agency, evaluate and monitor compliance (*Sec. 7, Rule 8, A.M. No. 09-6-8-SC*); and
4. Periodic reports submitted by respondent detailing compliance with the judgment shall be contained in partial returns of the writ. (*Sec. 8, Rule 8, A.M. No. 09-6-8-SC*)

NOTE: The petitioner may submit its comments or observations on the execution of the judgment. (*Sec. 7, Rule 8, A.M. No. 09-6-8-SC*)

Final Return of the Writ

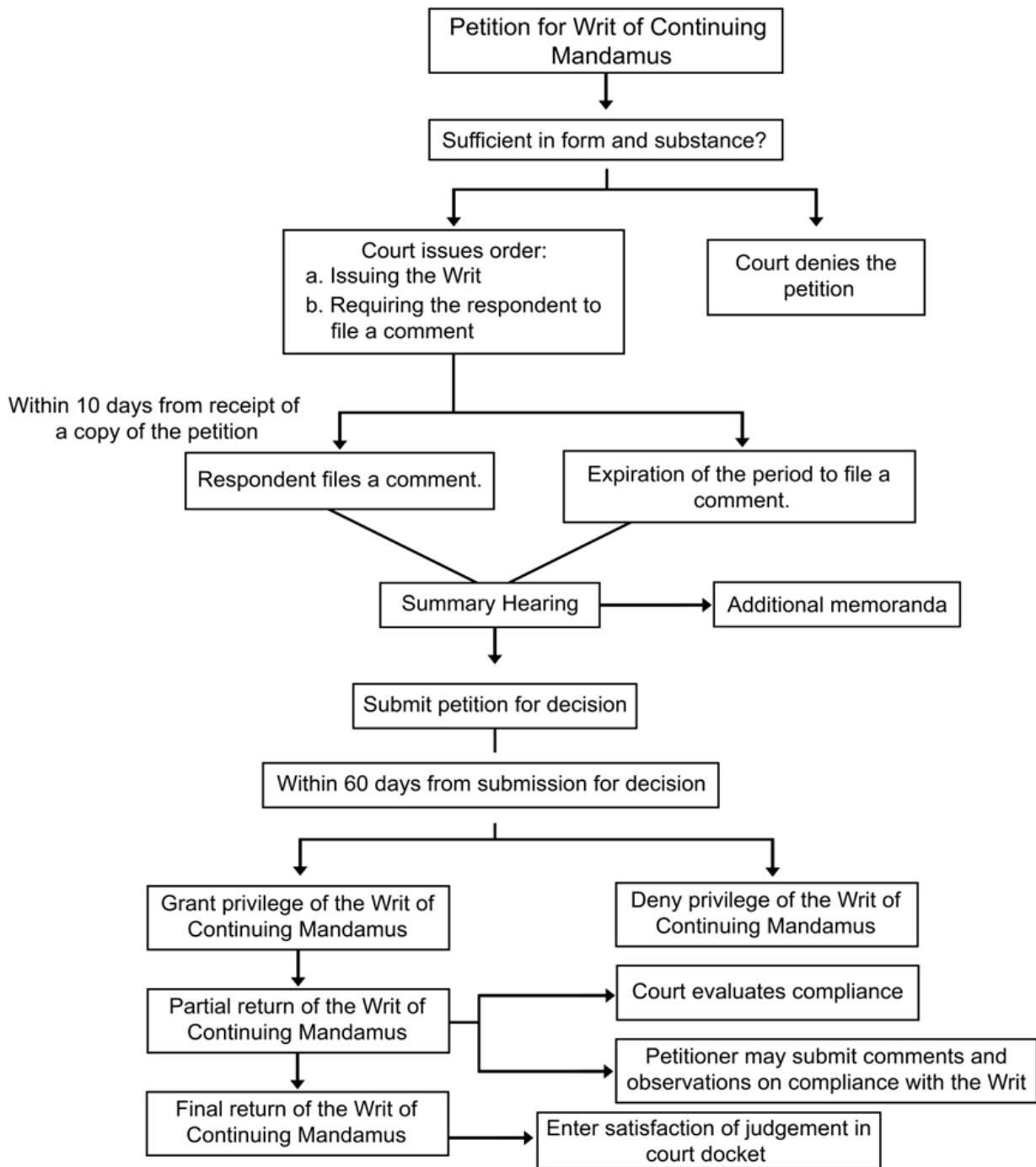
Upon full satisfaction of judgment, a final return of the writ shall be made by the respondent. (*Sec. 8, Rule 8, A.M. No. 09-6-8-SC*)

NOTE: If the court finds that judgment has been fully implemented, the satisfaction of judgment shall be entered in the court docket. (*Sec. 8, Rule 8, A.M. No. 09-6-8-SC*)



REMEDIAL LAW

Procedure for a Writ of Continuing Mandamus



3. WRIT OF KALIKASAN

It is an extraordinary remedy which may be issued depending on the magnitude of environmental damage. The environmental damage must be of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces. (*Sec. 1, Rule 7, A.M. No. 09-6-8-SC, Rules of Procedure for Environmental Cases*)

Court which has Jurisdiction

The verified petition should be filed with the SC or with the CA. (*Sec. 3, Rule 7, A.M. No. 09-6-8-SC*)

Magnitude of Environmental Damage

It must involve environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces. (*Sec. 1, Rule 7, A.M. No. 09-6-8-SC*)

Persons who may file a Petition for a Writ of Kalikasan

1. Natural or juridical person;
2. Entity authorized by law; or
3. People's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency. (*Sec. 1, Rule 7, A.M. No. 09-6-8-SC*)

NOTE: The petition must be on behalf of persons whose constitutional right to a balanced and healthful ecology is violated or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces. (*Sec. 1, Rule 7, A.M. No. 09-6-8-SC*)

Persons against whom a Petition for a Writ of Kalikasan is Filed

1. The government, as represented by a public official or employee; or

2. A private individual or entity. (*Sec. 1, Rule 7, A.M. No. 09-6-8-SC*)

Requisites for the issuance of a Writ of Kalikasan

1. There is an actual or threatened violation of the constitutional right to a balanced and healthful ecology;
2. The actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and
3. The actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces. (*Segovia v. The Climate Change Commission, G.R. No. 211010, 07 Mar. 2017; LNL Archipelago Minerals Inc. v. Agham Party List, G.R. No. 209165, 12 April 2016*)

Contents of a Verified Petition

1. Personal circumstances of the petitioner;
2. Name and personal circumstances of the respondent or if the name and personal circumstances are unknown and uncertain, the respondent may be described by an assumed appellation;
3. The environment law, rule or regulation violated or threatened to be violated;
4. The act or omission complained of;
5. The environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces;
6. All relevant and material evidence consisting of affidavit of witnesses, documentary evidence, scientific or other expert studies, and if possible, object evidence;
7. Should be accompanied by certification against forum shopping; and
8. The reliefs prayed for which may include a prayer for the issuance of a TEPO. (*Sec. 2, Rule 7, A.M. No. 09-6-8-SC*)

NOTE: A verified petition is jurisdictional.



REMEDIAL LAW

Exemption from Payment of Docket Fees

The petitioner is exempt from payment of docket fees. (*Sec. 4, Rule 7, A.M. No. 09-6-8-SC*)

The exemption encourages public participation of availing the remedy. (*A.M. No. 09-6-8-SC, Annotation to the Rules of Procedure for Environmental Cases*)

Issuance of the Writ of Kalikasan

Within 3 days from the date of filing of the petition, if the petition is sufficient in form and substance, the court shall give an order:

- a. Issuing the writ; and
- b. Requiring the respondent to file a verified return as provided in Sec. 8 of Rule 7. (*Sec. 5, Rule 7, A.M. No. 09-6-8-SC*)

Return

Within a non-extendible period of 10 days after service of the writ, the respondent shall file a verified return which shall contain all defenses of the respondent. (*Sec. 8, Rule 7, A.M. No. 09-6-8-SC*)

NOTE: All defenses not raised in the return shall be deemed waived. (*Sec. 8, Rule 7, A.M. No. 09-6-8-SC*)

Failure to file a Verified Return

Failure to file a return shall make the court to proceed to hear the petition *ex parte*. (*Sec. 10, Rule 7, A.M. No. 09-6-8-SC*)

Contempt

After hearing, the court may punish the respondent who refuses or unduly delays the filing of a return or who makes a false return or any person who disobeys or resists a lawful process or order of the court for indirect contempt under Rule 71 of the Rules of Court. (*Sec. 13, Rule 7, A.M. No. 09-6-8-SC*)

Preliminary Conference

After receipt of the return, the court may call for a preliminary conference; the hearing including the

preliminary conference shall not extend beyond 60 days and shall be given the same priority as petitions for the writs of *habeas corpus*, *amparo* and *habeas data*. (*Sec. 11, Rule 7, A.M. No. 09-6-8-SC*)

NOTE: After hearing, the court shall issue an order submitting the case for decision and may require the filing of memoranda. (*Sec. 14, Rule 7, A.M. No. 09-6-8-SC*)

Reliefs that may be granted under the Writ

1. Directing respondent to permanently cease and desist from committing acts or neglecting the performance of a duty in violation of environmental laws resulting in environmental destruction and damage;
2. Directing respondent to protect, preserve, rehabilitate or restore the environment;
3. Directing respondent to monitor strict compliance with the decision and orders of the court;
4. Directing respondent to make periodic reports on the execution of the final judgment; and
5. Such other reliefs which relate to the right of the people to a balanced and healthful ecology or to the protection, preservation, rehabilitation or restoration of the environment, except the award of damages to individual petitioners. (*Sec. 15, Rule 7, A.M. No. 09-6-8-SC*)

Judgment

Within 60 days from the time the petition is submitted for decision, the court shall render judgment granting or denying the privilege of the writ of *kalikasan*.

Appeal

Within 15 days from the date of notice of the adverse judgment or denial of motion for reconsideration, any party may appeal to the SC under Rule 45. This is an exception to Rule 45 since

it may raise question of facts on appeal under Rule 45. (*Sec. 16, Rule 7, A.M. No. 09-6-8-SC*)

Institution of Separate Actions

The filing of the petition for the writ of *kalikasan* shall not preclude the filing of separate civil, criminal or administrative actions. (*Sec. 17, Rule 7, A.M. No. 09-6-8-SC*)

Q: The officers of “Ang Kapaligiran ay Alagaan, Inc.” engaged your services to file an action against ABC Mining Corporation which is engaged in mining operations in Sta. Cruz, Marinduque. ABC used highly toxic chemicals in extracting gold. ABC’s toxic mine tailings were accidentally released from its storage dams and were discharged into the rivers of said town. The mine tailings found their way to Calanca Bay and allegedly to the waters of nearby Romblon and Quezon. The damage to the crops and loss of earnings were estimated at P1 Billion. Damage to the environment is estimated at P1 Billion. As lawyer for the organization, you are requested to explain the advantages derived from a petition for writ of kalikasan before the Supreme Court over a complaint for damages before the RTC of Marinduque or vice-versa. What action will you recommend? Explain. (2016 Bar)

A: I will recommend the filing of a Petition for the issuance of a Writ of *Kalikasan*. The following are the advantages of such a petition over a civil complaint for damages. Firstly, there will be no issue regarding the legal standing or legal capacity of the Ang Kapaligiran ay Alagaan Inc.” (AKAI) to file the action. *Sec. 1, Rule 7 of the Rules of Procedure for Environmental Cases* (RPEC) provides that the writ of Kalikasan is available to a people's organization, non-governmental organization, or any public interest group. On the other hand, the legal capacity of AKAI to file an action for damages in behalf of its members may be questioned since a corporation has a personality separate from that of its members. Secondly, the petitioner in a petition for writ of kalikasan is exempt from the payment of docket fees unlike in a civil complaint for damages. Thirdly in a petition for writ of kalikasan, the petitioners may

avail of the precautionary principle in environmental cases which provides that when human activities may lead to threats of serious and irreversible damage to the environment that is scientifically plausible but uncertain, action shall be taken to avoid or diminish that threat. In effect, the precautionary principle shifts the burden of evidence of harm away from those likely to suffer harm and onto those desiring to change the *status quo*. In a civil complaint for damages, the burden of proof to show damages is on the plaintiff. Finally, the judgment is a writ of kalikasan case is immediately executory unlike in a civil complaint for damages. The advantage of the civil complaint for damages is that the court may award damages to the Petitioners for the injury suffered which is not the case in a petition for writ of kalikasan. At any rate a person who avails of the Writ of Kalikasan may also file a separate suit for the recovery of damages.

Writ of *Kalikasan* vs. Writ of Continuing Mandamus (2019 BAR)

| WRIT OF KALIKASAN | CONTINUING MANDAMUS |
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| Subject Matter | |
| An unlawful act or omission of a public official or employee, or private individual or, entity, of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces. (<i>Sec. 1, Rule 7</i>) | Unlawful neglect in the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation, or a right therein. The unlawful exclusion of another from the use or enjoyment of such right and both instances, there is no other plain, speedy and adequate remedy in |

REMEDIAL LAW

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| | the ordinary course of law. (<i>Sec. 1, Rule 8</i>) |
| <i>Who may file</i> | |
| One who is personally aggrieved. (<i>Sec. 1, Rule 7</i>) | One who is personally aggrieved by the unlawful act or omission. (<i>Sec. 1, Rule 8</i>) |
| <i>Respondent</i> | |
| Public or private entity or individual. (<i>Sec. 1, Rule 7</i>) | Government and its officers. (<i>ibid.</i>) (<i>Sec. 1, Rule 8</i>) |
| <i>Exemption from Docket Fees</i> | |
| Exempted. (<i>Sec. 4, Rule 7</i>) | Exempted. (<i>Sec. 3, Rule 8</i>) |
| <i>Venue</i> | |
| SC and CA. (<i>Sec. 3, Rule 7</i>) | SC, CA and RTC that has jurisdiction over the territory where the actionable neglect or omission occurred. (<i>Sec. 2, Rule 8</i>) |
| <i>Discovery Measures</i> | |
| Ocular inspection order. Production order. (<i>Sec. 12, Rule 7</i>) | None. |
| <i>Damages for Personal Injury</i> | |
| None; the party must institute a separate action for the recovery of damages. (<i>Sec. 15, Rule 7</i>) | Allow damages for malicious neglect of the performance of the legal duty of the respondent. (<i>Sec. 1, Rule 8</i>) |

