

FIRST DIVISION

[G.R. No. 159410, January 28, 2008]

**NIXON T. KUA, Petitioner, vs. ROBERT DEAN S. BARBERS,
Respondent.**

DECISION

AZCUNA, J.:

Assailed in this petition for review on *certiorari* under Rule 45 of the Revised Rules of Court are the May 30, 2003 Decision^[1] and August 7, 2003 Resolution^[2] of the Court of Appeals in CA-G.R. SP No. 74136, which dismissed the *quo warranto* petition filed against respondent for assuming the office of the General Manager of Philippine Tourism Authority (PTA).

The facts are uncontested.

On November 7, 2000, petitioner Nixon T. Kua, who was then one of the three non-*ex officio* part-time members of the PTA Board of Directors, was appointed as PTA General Manager by former President Joseph Ejercito Estrada. The text of his appointment read:

Office of the President
of the Philippines
Malacañang

7 November 2000

Sir:

Pursuant to the provisions of existing laws, you are hereby appointed GENERAL MANAGER, PHILIPPINE TOURISM AUTHORITY vice Angelito T. Banayo.

By virtue hereof, you may qualify and enter upon the performance of the duties of the office, furnishing this Office and the Civil Service Commission with copies of your Oath of Office.

(Sgd) Joseph Ejercito Estrada

MR. NIXON KUA
Thru: The Office of the General Manager
Philippine Tourism Authority
City of Manila^[3]

On the same day, petitioner took his oath of office before Associate Justice Teodoro P. Regino of the Court of Appeals.^[4] For ceremonial purposes, he again took his oath on December 12, 2000 before the President at Malacañang.

Two years after petitioner's appointment, on November 12, 2002, President Gloria Macapagal-Arroyo appointed respondent Robert Dean S. Barbers as General Manager/Chief Executive Officer of the PTA. Stated in the letter of appointment, which was transmitted by the Executive Secretary to the Department of Tourism (DOT) Secretary,^[5] are as follows:

Office of the President
of the Philippines
Malacañang

November 12, 2002

Sir:

Pursuant to the provisions of existing laws, you are hereby appointed **GENERAL MANAGER/CHIEF EXECUTIVE OFFICER, PHILIPPINE TOURISM AUTHORITY (PTA), DEPARTMENT OF TOURISM (DOT)**, for a term of six (6) years expiring on October 3, 2008, vice Nixon T. Kua.

By virtue hereof, you may qualify and enter upon the performance of the duties of the office, furnishing this Office and the Civil Service Commission with copies of your oath of office.

(Sgd) Gloria Macapagal-Arroyo

Hon. ROBERT DEAN S. BARBERS

Thru: The Secretary
Department of Tourism
DOT Building, T.F. Valencia Circle
Ermita, Manila^[6]

Thereafter, respondent took his oath of office and assumed the position.

Contending that his position as PTA General Manager has been usurped and unlawfully assumed by respondent, petitioner filed a Petition for *Quo Warranto* with Damages and Prayer for a Temporary Restraining Order and a Writ of Preliminary Mandatory and Prohibitory Injunction before the Court of Appeals on December 2, 2002.^[7]

Petitioner alleged that Section 23-A of Presidential Decree (P.D.) No. 564 (otherwise known as the Revised Charter of the Philippine Tourism Authority), as added by Sec. 2 of P.D. No. 1400, provides that the PTA General Manager "*shall serve for a term of six (6) years unless sooner removed for cause.*"^[8] Hence, there was no vacancy in the said office at the time of respondent's appointment since his term has not yet expired; he has not resigned or accepted any incompatible office and that neither

has he abandoned the position nor been removed therefrom for a cause. Petitioner argued that the term of office of the PTA General Manager is fixed and should not be equated with a situation where the law contemplates a regular rotation or cycle in the membership like in the appointment and filling of vacancy of the three non-ex officio part-time members of the PTA Board of Directors, which is governed by Sections 15 and 16 of P.D. No. 564.^[9] He contended that these sections must be interpreted separately and distinctly from Sec. 23-A of the same law. This is as it should be since, according to him, it is well-established in this jurisdiction that a newly appointed or elected public officer will only be made to serve the unexpired portion of the term when it is so expressly provided; the clear intent of the creating power is that the entire board of an agency should not go out of office at once but that different groups should retire at regularly recurring intervals (citing *Republic v. Imperial*^[10]); and the beginning or end of the fixed term has been provided (citing *Boynton v. Heart*^[11]). Petitioner, thus, prayed that judgment be rendered:

1. **OUSTING AND EXCLUDING** respondent Robert Dean S. Barbers from the position of PTA General Manager which he unlawfully holds, restoring petitioner to the possession thereof, and issuing a final injunction against said respondent under Section 9, Rule 58, perpetually restraining respondent from usurping the position of PTA General Manager;
2. **DECLARING** that petitioner Nixon T. Kua is the one lawfully entitled to hold the aforesaid position; and
3. **ORDERING** respondent to pay petitioner the following damages:
(1) Actual damages in the amount of One Thousand Three Hundred Fifty Eight Pesos (P1,358.00) per day from the time petitioner was unlawfully deprived of his office until he has reassumed the same;
(2) Moral damages in the amount of Five Hundred Thousand Pesos (P500,000.00), and (3) Attorney's fees and litigation expenses in the amount of P500,000.00.^[12]

On the other hand, respondent countered that he was validly appointed as PTA General Manager since the position was legally vacant at the time of his appointment. He averred that the term of office of petitioner had already expired at the time, the latter being merely appointed for the duration of the unexpired portion of the term of his predecessor. In support thereof, respondent stated that while Sec. 23-A of P.D. No. 564 clearly specifies the duration of the term of office of the PTA General Manager it is silent as to the date of the term's commencement and termination; hence, it is understood to start from the date of the first appointment and end after the expiration of the period. Following this argument, he claimed that the term of the persons subsequently appointed to the office of the PTA General Manager is to be reckoned from the date when P.D. No. 1400 took effect, which was on October 3, 1978, since P.D. No. 564 does not contain any provision regarding its duration, thus:

1 st Term	3 October 1978 - 2 October 1984
2 nd Term	3 October 1984 - 2 October 1990

3 rd Term	3 October 1990 - 2 October 1996
4 th Term	3 October 1996 - 2 October 2002
5 th Term	3 October 2002 - 2 October 2008

As petitioner was appointed on November 7, 2000, respondent asserted that it falls within the 4th term, which filled the unexpired term of the 4th term that ended on October 2, 2002. Moreover, respondent alleged that the wording of petitioner's appointment – that is, "*vice* Angelito T. Banayo" – contradicts the theory that the latter's appointment was for a complete term of six years. As "*vice*" means "*in lieu of*," "*instead of*," and "*in place of*" in legal parlance, he asserted that petitioner's tenure as PTA General Manager was only to complete the remaining two years of the 4th term which was left vacant by his predecessor.

On May 30, 2003, the Court of Appeals promulgated its Decision,^[13] the decretal portion of which states:

WHEREFORE, for want of any leg in law to stand on, the instant petition for *quo warranto* is DISMISSED. No pronouncement as to costs.

SO ORDERED.^[14]

In finding for respondent, the Court of Appeals reasoned:

Under P.D. No. 1400, taken in relation to P.D. No. 564, the terms of office of the general manager and the part-time members were uniformly fixed at six (6) years but following the initial staggered set-up, their terms have been made rotational in the sense that they were not to end at the same time, and while the appointments of the three (3) part-time board members have been mandated to be made at an interval of two (2) years, the appointment of the general manager has been designated to coincide with one of the three (3) part-time members, particularly the one whose initial term was four (4) years. To elucidate, the terms of office of the first set of board members, exclusive of the *ex officio* chairman, who were appointed in 1974 were to expire in this order:

Indefinite	- General Manager
1980	- 1 st part-time member (initial 6-year term)
1978	- 2 nd part-time member (initial 4-year term)
1976	- 3 rd part-time member (initial 2-year term)

But after **1978**, with the term of the general manager having been

pruned down to six (6) years from that same year, the expiration of his fixed term was to be factored in along with that of the second set of part-time members, all of whom by then already had uniform six (6)-year terms, in this way:

- Indefinite - General Manager
- 1986 - 1st part-time member
- 1984 - General Manager and 2nd
 part-
 time member
- 1982 - 3rd part-time member

Every two (2) years thereafter, new appointments were to be made, with the general manager being appointed together with a part-time member (the second part-time member); hence, for the third, fourth and fifth sets of appointees, the sequence of the expiration of their respective terms would be as follows:

- (a) Third set:
- General Manager
 - 1992 - 1st part-time member
 - 1990 - General Manager and 2nd
 part-
 time member
 - 1988 - 3rd part-time member

(b) Fourth set:

- 1998 - 1st part-time member
- 1996 - General Manager and 2nd
 part-
 time member
- 1994 - 3rd part-time member

(c) Fifth set:

- 2004 -