

[Stamp:]
REPUBLIC OF PANAMA
OFFICE OF THE CLERK
SUPREME COURT OF JUSTICE

FIRST SUPERIOR COURT FOR THE FIRST JUDICIAL DISTRICT.

Panama, November seventeenth (17) two thousand nine (2009).

HAVING CONSIDERED:

This Superior Court, seated as a constitutional court, entertains the Appeal for Constitutional Relief filed by Richard Sam Lehman against the Fifth Civil Circuit Court Judge for the First Judicial Circuit of the Province of Panama by reason of the order to do issued in Order No. 952 dated August 29, 2008, issued within the framework of the Motion to Nullify the Taking of Office of the Executor filed by legal counsel for Hilda Antonia Piza Blondet in the Testamentary Succession Proceeding of Wilson C. Lucom (R.I.P.).

The appealed order is of the following tenor:

"Based on the foregoing, the undersigned FIFTH CIVIL CIRCUIT COURT JUDGE FOR THE FIRST JUDICIAL CIRCUIT OF PANAMA, DECREES the NULLITY of the installation of executor RICHARD SAM LEHMAN in the testamentary succession proceeding of WILSON CHARLES LUCOM (R.I.P.), and, therefore, ORDERS THE DISMISSAL of everything he would have done by virtue of said office.

Once this order has been executed, add this record to the case in chief."

[Stamp:]
REPUBLIC OF PANAMA
OFFICE OF THE CLERK
SUPREME COURT OF JUSTICE

As stipulated in the Judicial Code, this High Court, in a decision dated October 9, 2009, granted the appeal for constitutional relief and ordered the proceedings or a report on the facts object of the appeal; thus, the accused judicial officer rendered a report within the period established in the procedural rule and indicated that the file containing Order No. 952 is before this Superior Court for the appeal and that, to date, it had not been returned to his chambers. The Clerk of Court for this instance of the administration of justice verified that information and confirmed that, in fact, the Motion to Nullify the Taking of Office of the Executor is suspended before this Civil Court pursuant to an appeal for review of the facts as well as the law filed by counsel for Mr. Richard Sam Lehman.

This Court has proceeded to the necessary review of the background of the constitutional action at hand, inasmuch as the order to do hereby challenged is part of a court order and the Code of Civil Procedure has established in Article 2615 paragraph 2, as a specific requirement for its viability, "*...that all means and procedures stipulated by law have been exhausted to challenge the pertinent court order.*"

The file on the Motion to Nullify the Taking of Office of the Executor filed by Hilda Antonia Piza Blondet in the Testamentary Succession Proceeding of Wilson Charles Lucom reveals that the aforementioned Order No. 952 dated August 29, 2008, was the object of a motion to appeal, filed precisely by legal counsel for the

[Stamp:]
REPUBLIC OF PANAMA
OFFICE OF THE CLERK
SUPREME COURT OF JUSTICE

plaintiff on appeal, for purposes of obtaining a reversal thereof and, in its stead, a decision which denies the motion inasmuch as it has not been proven and was filed extemporaneously.

Now then, this procedural activity gave rise to issuance by this Superior Court of the decision dated July 15, 2009, whereby it decided to recuse itself from entertaining the appeal on Order No. 952 and ordered return of the motion to the court of origin. The appellant, within the executory period, announced an appeal for annulment on this appellate decision; therefore, this jurisdictional seat issued the decision dated August 10, 2009, whereby it denied granting the period to formalize this extraordinary appeal. This new decision gave rise to a request from the appellant for copies to file an appeal for review of factual and legal issues, which copies were placed at its disposal by the Clerk of the First Superior Court of Justice as set forth in the Judicial Code, and in fact these were picked up on August 28, 2009.

Having considered the background, this Superior Court concludes that in this case, the principal factual element required for the appeal for constitutional relief to proceed on a court order containing an order to do that is considered to have violated fundamental rights does not concur, which is that all means and procedures stipulated by law for challenging were not exhausted. As was shown, available still is the procedure established by procedural rules to Appeal Order No. 952 issued on

[Stamp:]
REPUBLIC OF PANAMA
OFFICE OF THE CLERK
SUPREME COURT OF JUSTICE

August 29, 2008; that court order is not yet final or firm, which implies there is the underlying possibility of a review of its lawfulness within the regular jurisdictional level.

The appellant affirmed the procedural viability of his complaint by stating the Supreme Court of Justice en banc, unanimously, has found that the incorrect use of an appeal for purposes of exhausting the ordinary means does not affect the procedural viability of an appeal for relief. However, as to the case at hand, one cannot ignore that in the file on the motion wherein Order No. 952 was issued, there is still no decision on the lawfulness or unlawfulness of the announced appeal for annulment which, if found to be lawful, would result in a review on appeal of the aforementioned Order No. 952.

Its inviability will be declared inasmuch as in this proceeding it has been established that the procedural presumption required to find that an appeal for constitutional relief is viable has not been satisfied, without the existence of emergency, serious and imminent circumstances which would recommend said requirement need not be fulfilled.

Based on the foregoing, the **FIRST SUPERIOR COURT FOR THE FIRST JUDICIAL DISTRICT OF PANAMA**, administering justice for and on behalf of the Republic and as vested by Law, **DECLARES UNVIABLE** the Appeal for Constitutional Relief filed by Richard Sam Lehman against the Fifth Civil Circuit Court

[Stamp:]
 REPUBLIC OF PANAMA
 OFFICE OF THE CLERK
 SUPREME COURT OF JUSTICE

Judge for the First Judicial Circuit of the Province of Panama for issuing the order to do set forth in Order No. 952 dated August 29, 2008 and, therefore, **DISMISSES** the order to suspend the said order that was adopted in the decision dated October 9, 2009.

SERVE NOTICE,

/s/ Illegible
 JUDGE MIGUEL A. ESPINO G.

/s Illegible
 JUDGE NODIER JARAMILLO

/s/ Illegible
 JUDGE NELSON H. RUIZ C.

By */s/ Illegible*
 CLERK
/s/ Illegible

FIRST SUPERIOR COURT OF JUSTICE

I HEREBY CERTIFY: That to serve notice of the foregoing decision to the interested parties, Edict No. 09-2403 has been posted in a visible place in the Clerk's Office, today November eighteen (18) 2009 at nine in the morning.

By */s/ Illegible*
 Clerk