

...[Illegible] CLERK OF SUCH SUPERIOR COURT

**HONORABLE PRESIDING JUSTICE OF THE SUPREME COURT OF
JUSTICE EN BANC, HAND DELIVERED.**

The undersigned, TEOFANES LOPEZ AVILA, a male, a Panamanian, of legal age, personal identity card No. 3-33-986, a practicing attorney, whose office is located in Panama City, Via Israel, across from Colegio Richard Newman, next to Edificio No. 96, second chalet, where I accept personal service, respectfully come before you for and on my own behalf, and in my capacity as a an interested citizen in defense of national assets, in a PUBLIC INTEREST ACTION, for the purpose of filing, as I in fact file, an **APPEAL FOR CONSTITUTIONAL RELIEF** in the following terms:

I.- LEGAL BASIS AND TIMELINESS:

This Appeal for Constitutional Relief that I make and file for and on my own behalf, and as a citizen who is watchful and interested in the defense of national assets, is viable and lawful, wherefor I move for admission thereof based on the following:

1. Mr. WILSON CHARLES LUCOM, a foreign national residing in the Republic of Panama, now deceased, while living granted a WILL pursuant to PUBLIC DEED No. 6,646 dated June 20, 2005, before the Office of the Second Notary Public for the Notarial Circuit of Panama. In such WILL, in addition to appointing three (3) Executors, and establishing that "the remaining balance must be placed in Fundacion Wilson C. Lucom Trust Fund", provided in his testamentary will that "the principal objective of FUNDACION WILSON C. LUCOM TRUST FUND is to feed the needy children in Panama. I instruct my trustees to find an area where there are children's schools that don't have meals for their lunch, and that lack the usual needs and those provided in schools that do give lunch."

"It is my wish that the school principals form groups of volunteers with parents and others, and that they plant gardens with seeds provided by Fundacion WILSON C. LUCOM TRUST FUND."

One of the parents or any other person must provide some hectares for these gardens, at no cost. There must be many plantations to feed the children and to sell at market, in such a way there will be no need to provide seeds more than two times (2) per school, and that they themselves will continue the process of planting in these gardens and their own sale of the product for their own benefit."

2.- In the same document, the testator established a BEQUEST for his beloved wife, HILDA PIZA LUCOM, stating that "in the event my wife HILDA PIZA LUCOM survives me, I leave to my wife 50% of my joint interest-bearing account, wherever it may be. I wish for my wife to receive US\$20,000.00 per month or US\$ 240,000.00 MINIMAL ANNUAL INCOME, or more. If the joint interest-bearing account does not reach the US\$240,000.00 per year amount, the main account must be added to fill the deficit of the US\$240,000.00 per year. The minimum US\$240,000.00 per year or more that my wife is to receive, must be solely for her use while she lives, and after her death the entire bequest ends and what was given to her must be returned to FUNDACION WILSON C. LUCOM TRUST FUND as of her death. No principal account or interest-bearing accounts must go to the assets of HILDA PIZA LUCOM." ... "As of the death of my wife, the 50% and any other payment of any kind must cease and be returned to FUNDACION WILSON C. LUCOM TRUST FUND, and not to her estate. No work of art or valuable antiques, such as the grand piano, may be sold or exchanged by my wife."

3.- In spite of the fact that the testator's purpose consisted in that all assets of the estate, except for provisions with respect to the bequests, among whom was the wife, HILDA PIZA LUCOM, were to go the FUNDACION WILSON C. LUCOM TRUST FUND to "feed the needy children in Panama." As stated in such Will, he instructed his Trustees, to be understood as the referenced Foundation, "to find an area where there are children's schools that don't have meals for their lunch, and that lack the

usual needs and those provided in schools that do give lunch," the Honorable Supreme Court of Justice, in our judgment and with all due respect, incurred in an error by [top line of page is missing...] likewise omitting the appointment of the other two EXECUTORS, a situation that jeopardizes the social nature of will of the decedent and the fundamental purpose of the will.

4.- However, from the moment the decedent disposed of the assets of his estate so that after his death it would be earmarked to satisfy the needs of the poor children of Panama after taking care of the legatees, said estate must necessarily be earmarked for the social objective which is to take care of the needs of the children, wherefor, inasmuch as the members of the Foundation are unknown, such property or assets of the estate earmarked by the testator for social, popular and national purposes must be understood as earmarked or to be earmarked for public use, and particularly for the poor children of Panama since upon the death of the testator such assets are not private property, but automatically and legally national assets inasmuch as, based on their purpose or destination by the testator these belong to the State and are for public use in accordance to Article 258 of the National Constitution and the Tax Code.

Therefore, the referenced assets which are, or are in danger of being illegally in the possession of individuals are considered Hidden Assets in accordance with Article 80 of the Tax Code, according to which, "National assets which are in the possession of individuals that have not been legally purchased from the State are considered Hidden Assets."

5.- Pursuant to the will of the testator and as provided in the National Constitution and the Tax Code, any citizen may report the existence of hidden assets or a specific attempt to dispose of, contrary to law or contrary to the will of the donor or testator, national assets that are earmarked for a social or national social purpose, wherefor my action as a concerned citizen for compliance with the will of the testator is legitimate, or as was the wish and request of the testator himself that "parents or any other person" must cooperate so that the will of the testator to take care of the poor children of Panama will be crystalized, a mission that, if the parties of the Foundation

are not known, it would be incumbent upon the State to perform through the Ministry of Social Development, or Labor or Social Welfare, or Agriculture, or the one who should handle such mission.

6. Our concept is that the Appeal for Constitutional Relief against an order to do or not to do has a constitutional level that authorizes use thereof by any citizen not only for the selfish or personal interest, but also due to a citizen, public and social interest, a guarantee that cannot be only earmarked for those who in a proceeding have suffered direct and personal procedural damages as shown by the fact that, legislatively, it is set forth in Title I of the Fourth Book of the Judicial Code which addresses, the "PROTECTION OF THE INTEGRITY OF THE CONSTITUTION"; that is, in the same Chapter concerning matters relating to an Objection on Unenforceability, a Consultation on Constitutionality, the Unconstitutionality and the Habeas Corpus that follows, wherefor exercise thereof cannot in any event be limited exclusively to a specific interest, inasmuch as the integrity of the Constitution is a matter that not only concerns the Honorable Court, but every citizen as well, keeping in mind that, as in this specific case, "The State will protect the physical, mental and moral health of minors and will guarantee their rights to food, health, education and safety and social benefits." (Article 56 N.C.)

Therefore, in this brief epigraph, I believe this Appeal for Relief is viable as stated.

II. PARTIES TO THIS COMPLAINT FOR THE PROTECTION OF CONSTITUTIONAL GUARANTEES:

A) **PLAINTIFF**: is the undersigned, Dr. TEOFANES LOPEZ AVILA, a practicing attorney, whose personal information appears above.

B) **DEFENDANT**: is the First Superior Court of Justice, represented by the Presiding Judge.

III. CLAIM:

I respectfully move the Honorable Justices of the Supreme Court of Justice, en banc, to admit this Appeal for Constitutional Relief, and therefore **REVOKE the Order to Do issued by the First Superior Court set forth in Official Communication No. 10-2285 dated October 14, 2010, signed by the Clerk of the**

First Superior Court, Atty. Jose Juan Karamafites on behalf of such court.

IV. FACTS WHICH ARE THE BASIS FOR THIS APPEAL FOR CONSTITUTIONAL RELIEF:

First: The First Civil Division of the Honorable Court issued a Judgment on Annulment dated August 6, 2010, modifying a judgment issued by an appeals court and ordering that Mrs. HILDA PIZA LUCOM be recognized as the Universal Heiress of the assets of decedent WILSON CHARLES LUCOM, in addition to appointing her as the sole TESTAMENTARY EXECUTOR, but ignoring the true will of the testator set forth in his WILL, formalized in Public Deed No. 6646 of June 20, 2005, which provided that the assets and all assets of the estate go into FUNDACION WILSON C. LUCOM TRUST FUND so that it will carry out the will to take care of the poor children of Panama.

Second: With the referenced judgment of the Civil Division of the Honorable Court, and which doesn't even allude to the rights of the poor children of Panama, instead [addressing] the claim of the decedent's wife, there is an imminent risk that the final will of the testator will not be enforced, and the nutritional needs of the poor children will not be taken care of as was the wish of the decedent, or that such assets or funds will not come to be national assets for a social purpose and thus enforce the will of the Will, inasmuch as the same would go to swell the assets of an individual as the Universal Heiress, which is not the foundation and has not given guarantees on enforcing the will of the testator to satisfy the poor Panamanian children.

Third: Upon the Honorable Court remitting the file pursuant to Official written document No. 308-10 of October 12, 2010 to the First Superior Court, it [the 1st Superior Ct], instead of issuing a ruling on the reentry of the file, or mere compliance, the Clerk of the First Superior Court signs Official written communication No. 10-2285 dated October 14, 2010, remitting to the Fourth Civil

Circuit Court Judge for Panama, the file "containing the file of the Testamentary Succession of Wilson C. Lucom (R.I.P.) filed by RICHARD SAM LEHMAN, consisting of 863 pages."

Fourth: The First Superior Court of Justice, instead of the Clerk, should have issued an order in compliance therewith and reentry of the record prior to remitting the file by way of an Official written communication of the Clerk of such Appeals Court, inasmuch as the Court, upon nullifying the Appeals Judgment, modified what had been decided by the same First Superior Court; therefore, it was to issue the instructions received by the Civil Division to the lower Court as to the date on which the parties or the court must execute such acts or proceedings, as provided in Article 1145 of the Judicial Code.

Fifth: On the other hand, it is worth noting that the Official written communication remitting the file is addressed to the Fourth Civil Circuit Court for Panama, in spite of the fact that the court presiding over the matter is the FIFTH CIVIL CIRCUIT COURT FOR PANAMA. In addition thereto, it indicates that it is remitting the "file containing the Testamentary Succession of Wilson Charles Lucom (R.I.P.) filed by RICHARD SAM LEHMAN", when such file that contains the Succession has not been remitted to the First Superior Court because it is in the Fifth Court; therefore, remittance thereof is not in accordance with law.

Sixth: The conduct of the First Superior Court of Justice causes procedural damages to the poor children of Panama inasmuch as, given the Judgment on Annulment issued on August 6, 2010, their legitimate rights are ignored, by erroneously recognizing Mrs. HILDA PIZA LUCOM as the Universal Heiress and ignoring the right FUNDACION WILSON C. LUCOM TRUST FUND has according to the Will, which has to execute the testator's will in favor of the poor children of Panama, wherefor the speed in returning the file to the lower Court without providing an opportunity for any citizen or the State to come forth in the proceeding in the Appeals

Court to enforce his rights, thereby violates the due process stipulated in Article 32 of the National Constitution.

**CONSTITUTIONAL PROVISIONS THAT WERE VIOLATED AND
OPINION ON THE VIOLATIONS:**

1.- Article 32 of the National Constitution has been directly violated by omission.

Article 32. "No person shall be judged other than by the competent authority and in accordance with legal proceedings, or more than once for the same criminal, administrative, police or disciplinary case."

Article 32 of the National Constitution provides the constitutional principle of legal due process, which is to be observed mandatorily by all officers who judge or penalize an individual, a principle which implies the competence of the officer or authority, the prohibition for judging or penalizing a person more than once for the same criminal case [double jeopardy] and the trier's subjection to compliance with legal proceedings.

Article 32 of the National Constitution has been directly violated, by omission, by the First Superior Court of Justice inasmuch as the proceeding and the will of the legislator in those events when a process that has been received from the higher court must be remitted, either due to an appeal or annulment, or consultation, and where a proceeding has been ordered or decided, what is correct is to issue, before remitting the file, a Ruling of Mere Compliance or an Order remitting the file to later issue the Official Written Communication pertaining to the remittal. Furthermore, the file is incorrectly being remitted to the Fourth Civil Circuit Court of Panama when such file, which does not contain the testamentary succession, must be remitted to the Fifth Circuit Court of Panama, which is where the Testamentary Succession proceeding is being processed. I repeat the fact that according to the Official written communication, what is remitted is the Succession proceeding in

spite of the fact that the truth is that what is remitted is only the smaller file containing the proceeding of the appointment of the Executors, which was the object of the Appeal and subsequently the Appeal for Annulment, wherefor what is stated in the official written communication does not reflect the truth.

EVIDENCE: Attached hereto are:

- 1.- A photocopy of Official written communication No. 10-2285 dated October 14, 2010, signed by Atty. Jose Juan Karamafites, Clerk of the First Superior Court. I request a certified copy, at my expense.
- 2.- A certified copy of Public Deed No. 6646 dated June 20, 2005, granted by the Second Notary Public for the Circuit of Panama, which recorded the Will granted by Mr. WILSON CHARLES LUCOM and which reflects the Will of the testator to benefit the Poor Children of Panama.
- 3.- A copy of the Judgment on Annulment dated August 10, 2010, issued by the Civil Division of the Supreme Court of Justice.
- 4.- A certified copy of Public Deed No. 11191 dated October 20, 2005, issued by the Second Notary Public for the Circuit of Panama, which contains codicils added to the Will.
- 5.- A certified copy of Public Deed No. 11131 dated February 3, 2006, issued by the Second Notary Public for the Circuit of Panama, which contains codicils to the will that was granted.

SPECIAL MOTION: Inasmuch as time is of the essence, and inasmuch as I was not able to obtain a certified copy of the challenged act, that is, Official written communication No. 10-2285 dated October 14, 2010, signed by Jose Juan Karamafites, Clerk of the First Superior Court, I respectfully move the Court where the file is kept that is mentioned in the referenced written communication be ordered to remit a certified copy thereof, to be added to the file of the Appeal.

PREVIOUS AND SPECIAL MOTION: Inasmuch as time is of the essence, and given the social and national nature thereof, I respectfully move the Honorable Justices, based on Articles 2615, 2629 and 2621 of the Judicial Code, TO ORDER the First Superior Court of Justice or the Court where the file is held that is related

to the challenged Official written communication, to immediately Stay the effect of such Official written communication, as well as the process, and therefore, to remit to the Court the same File that was the basis for the Judgment of the Court's Civil Division.

LAWS: Article 54 of the National Constitution; Articles 2615, 2616, 2617, 2619, 2620, 2621 of the Judicial Code.

Panama, on the date it is filed.

/s/ Illegible

DR. TEOFANES LOPEZ AVILA

**[ILLEGIBLE] OF PANAMA
THE JUDICIARY
SUPREME COURT OF JUSTICE – EN BANC**

Admits this APPEAL FOR CONSTITUTIONAL RELIEF filed by Attorney TEOFANES LOPEZ AVILA on the order to do set forth in Official written communication No. 10-2285 dated October 14, 2010, issued by the Clerk of the First Superior Court for the First Judicial District of Panama.

Therefore, the defendant authority, the First Superior Court of the First Judicial District of Panama is asked to remit the proceeding to this High Court, if it exists, or in absence thereof, a report regarding the facts object of this action within the period of two (2) hours following notice of this court order. Likewise, the complained of act is stayed in accordance with provisions in Article 2615 Article 1 of the Judicial Code.

Serve Notice,

/s/ Illegible
JUSTICE WINSTON SPADAFORA FRANCO

/s/ Illegible
Dr. CARLOS H. CUESTAS G.
Clerk of the Court