
# PHILIPPINE REPORTS

## VOL. 570

FEBRUARY 22, 2008 TO FEBRUARY 29, 2008

**VOLUME 570**

# REPORTS OF CASES

DETERMINED IN THE

# SUPREME COURT

OF THE

# PHILIPPINES

FROM

FEBRUARY 22, 2008 TO FEBRUARY 29, 2008

SUPREME COURT
MANILA
2013

*Prepared*
*by*

The Office of the Reporter
Supreme Court
Manila
2013


EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

MA. VIRGINIA OLIVIA VILLARUZ-DUEÑAS
COURT ATTORNEY VI & CHIEF, RECORDS DIVISION

FE CRESCENCIA QUIMSON-BABOR
COURT ATTORNEY VI

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY V

FLOYD JONATHAN LIGOT TELAN
COURT ATTORNEY V & CHIEF, EDITORIAL DIVISION

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY IV

LEUWELYN TECSON-LAT
COURT ATTORNEY IV

DIANA DIAZ-GARRA
COURT ATTORNEY IV

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY III

**SUPREME COURT OF THE PHILIPPINES**

---

HON. REYNATO S. PUNO, Chief Justice
HON. LEONARDO A. QUISUMBING, Associate Justice
HON. CONSUELO YNARES-SANTIAGO, Associate Justice
HON. ANGELINA SANDOVAL GUTIERREZ, Associate Justice
HON. ANTONIO T. CARPIO, Associate Justice
HON. MA. ALICIA AUSTRIA-MARTINEZ, Associate Justice
HON. RENATO C. CORONA, Associate Justice
HON. CONCHITA CARPIO MORALES, Associate Justice
HON. ADOLFO S. AZCUNA, Associate Justice
HON. DANTE O. TINGA, Associate Justice
HON. MINITA V. CHICO-NAZARIO, Associate Justice
HON. PRESBITERO J. VELASCO, JR., Associate Justice
HON. ANTONIO EDUARDO B. NACHURA, Associate Justice
HON. RUBEN T. REYES, Associate Justice
HON. TERESITA J. LEONARDO-DE CASTRO, Associate Justice

---

**FIRST DIVISION**

*Chairman*

Hon. Reynato S. Puno

*Members*

Hon. Angelina Sandoval-Gutierrez
Hon. Renato C. Corona
Hon. Adolfo S. Azcuna
Hon. Teresita J. Leonardo-De Castro

*Division Clerk of Court*

Atty. Enriqueta E. Vidal

**SECOND DIVISION**

*Chairman*

Hon. Leonardo A. Quisumbing

*Members*

Hon. Antonio T. Carpio
Hon. Conchita Carpio Morales
Hon. Dante O. Tinga
Hon. Presbitero J. Velasco, Jr.

*Division Clerk of Court*

Atty. Ludichi Y. Nunag

**THIRD DIVISION**

*Chairperson*

Hon. Consuelo Ynares-Santiago

*Members*

Hon. Ma. Alicia Austria-Martinez
Hon. Minita V. Chico-Nazario
Hon. Antonio Eduardo B. Nachura
Hon. Ruben T. Reyes

*Division Clerk of Court*

Atty. Lucita A. Soriano

## PHILIPPINE REPORTS
### CONTENTS

# PHILIPPINE REPORTS

Page

Page

Page

Page

# REPORT OF CASES

DETERMINED IN THE

## SUPREME COURT OF THE PHILIPPINES

---

**EN BANC**

[A.M. No. 07-4-05-CA. February 22, 2008]

**RE: REQUEST OF THELMA J. CHIONG FOR INVESTIGATION OF THE ALLEGED "JUSTICE FOR SALE" IN CA-CEBU.**

[A.M. No. 07-5-1-SC. February 22, 2008]

**RE: LETTER OF JUDGE FORTUNATO M. DE GRACIA, JR., RE CORRUPTION IN THE JUDICIARY.**

[A.M. No. 07-5-2-SC. February 22, 2008]

**RE: LETTER OF ROSENDO GERMANO, RE REQUEST TO ABOLISH COURT OF APPEALS CEBU.**

**SYLLABUS**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; STATUTES; REPUBLIC ACT 8246; SECTION 6 THEREOF DOES NOT ALLOW ANY PROVISION OF SAID LAW TO JUSTIFY THE TRANSFER OF ANY MEMBER OF THE COURT OF APPEALS WITHOUT HIS OR HER CONSENT.—** Section 6 of RA No. 8246, cited by the CA Justices as a legal basis for the xxx waiver, does not allow any provision of the said law to be used to justify the transfer of any member of the CA to any place or station without his or her consent. However, the

movement from one station to another concerned here is occasioned by the operation of the IRCA, and not by the construction of the provision of RA No. 8246. To our mind, the said provision of law guarantees that a Member of the Court of Appeals shall not be transferred without his consent from a station **where he ought to be.** The said station is determined not by RA No. 8246 but by the rule on the reorganization of Divisions contained in the IRCA. The said rule is anchored on the solitary standard supplied by R.A. No. 8246, which is seniority. The "transfer" contemplated by Section 6 of R.A. No. 8246 presupposes that a member of the CA is in the station allocated to him by the rules, the said law being silent in this regard, from which station he cannot be transferred without his consent. Paradoxically, the said provision of law is invoked to allow the CA Justices to preempt the operation of the rule on reorganization, at their discretion by executing a waiver, in the form and content provided in Section 9, Rule 1 of the IRCA, as amended.

**2. ID.; ID.; ID.; ID.; COMPLIANCE WITH THE RULE ON PLACES OF ASSIGNMENT OF THE COURT OF APPEALS JUSTICES SHOULD NOT DEPEND SOLELY ON THE PERSONAL INTEREST OR PREFERENCE OF THE JUSTICE CONCERNED.—** The assignment of Justices to the various CA Divisions has a direct bearing on the exercise of the function of adjudication of cases. The respective stations or places of assignment of the Justices serve as the basis for the assignment of cases to them in view of the system of distribution of cases among the City of Manila, Cebu City and Cagayan de Oro City stations prescribed by R.A. No. 8246. Akin to the raffle of cases, it is imperative to keep the image of an impartial and independent Judiciary, that application of the rule on the assignment of Justices be consistent, uniform, transparent and objective. Compliance with the said rule should not depend solely on the personal interest or preference of the Justice concerned nor should it be left to the latter's absolute discretion.

**3. ID.; ID.; ID.; ID.; EQUAL RIGHT OF THE JUNIOR JUSTICES TO THE FAITHFUL OBSERVANCE OF THE RULE ON REORGANIZATION, UPHELD.—** The Junior Justices have equal right to the faithful observance of the rule on reorganization, which fixes their own places of assignment or

station. The assignment of Justices to a particular station is not purely an administrative concern or a matter of formality or privilege, which the Senior Justices by their expedient act of "waiver" can choose to withhold at will from the Junior Justices who may be adversely affected by a deviation from the rule on reorganization. No vested or acquired right can arise from the act of waiver by the Senior Justices which infringes upon the rights of the Junior Justices. The "waiver" contained in the IRCA ignores or overlooks this possibility of infringement of the right of the Junior Justices to transfer to a particular station under the aforementioned rule.

## R E S O L U T I O N

**LEONARDO-DE CASTRO, *J.*:**

Before the Court are the following three separate letters alleging corruption in the Court of Appeals (CA) Cebu Station:

1. Letter of Thelma J. Chiong, requesting investigation of the alleged "Justice for Sale" in CA-Cebu;
2. Letter of Executive Judge Fortunato M. De Gracia, Jr., regarding the claims of corruption in the judiciary; and
3. Letter of Rosendo Germano, regarding request to abolish the Court of Appeals-Cebu.

A.M. No. 07-4-05-CA stemmed from the letter-request of Thelma J. Chiong, National Vice President of Crusade Against Violence, to the Chief Justice requesting investigation of the alleged "Justice for Sale" in CA-Cebu. Ms. Chiong alleged that they had received a "lot of information" about it. She cited an unspecified case where the Department of Justice (DOJ) allegedly had ordered the withdrawal of an information but CA-Cebu still issued a temporary restraining order (TRO) directing the DOJ not to withdraw the said information. She expressed concern that a "*tayo-tayo*" system, appears to have developed at present in CA-Cebu, which Ms. Chiong also accused of equating hurried justice with speedy justice. Ms. Chiong, however, did not name any particular Justices or court personnel.

In A.M. No. 07-5-1-SC, Judge Fortunato M. De Gracia, Executive Judge of Regional Trial Court (RTC) Branch 16, Cebu City, recommended the immediate investigation of the derogatory news item published in *Sun Star Cebu* on April 21, 2007 which was attributed to the alleged "revelations" of RTC Judge Meinrado Paredes of Branch 13 of the same city.

In A.M. No. 07-5-2-SC, Rosendo Germano seeks a positive action from the Chief Justice regarding the alleged erroneous dismissal by the CA-Cebu of Civil Case No. 525 pending in RTC Branch 18, Hilongos, Leyte. According to him, the case was dismissed by the CA-Cebu because "money did much of the talking" and this would be an additional reason to abolish CA-Cebu. Mr. Germano adverted to a column in the *Philippine Daily Inquirer* regarding an alleged plan of the Chief Justice to abolish the CA-Cebu and transfer it to Manila because of rampant corruption.

In three separate resolutions, the Court referred A.M. No. 07-5-1-SC,[1] A.M. No. 07-5-2-SC,[2] and A.M. No. 07-4-05-CA,[3] to then CA Presiding Justice Ruben T. Reyes[4] for his comment. In turn, the Presiding Justice required the CA Justices stationed in Cebu and Cagayan de Oro to comment on the subject administrative matters.

On July 10, 2007, then CA Presiding Justice Ruben T. Reyes submitted his comment and attached therewith the separate comments of the CA Justices in Cebu and Cagayan de Oro. We quote a portion of said comment, to wit:

"There can be no denying that for sometime, the Court of Appeals Cebu Station has been the subject of unsavory newspaper items. Said negative articles triggered critical evaluation of the present set-up. One area of concern identified is the prolonged stay of some Justices in the Station, making it possible for them to develop special affiliation with local politicians and influential people. Arguably, there is nothing

[1] Resolution dated May 3, 2007.

[2] Resolution dated May 3, 2007.

[3] Resolution dated April 10, 2007.

[4] Now Supreme Court Associate Justice.

inherently objectionable in being friendly to the local officials and influential personages, specially when a Justice is a native of the place. However, Justices ought not forget that they must not only be impartial but must strive not to appear partial or beholden to anybody.

Before the full implementation of R.A. No. 8246, the Court of Appeals had only seventeen (17) divisions all stationed in the City of Manila. With the appointment of eighteen (18) justices in 2004, pursuant to the said law, three (3) divisions, 18th to 20th, were organized in Cebu City and another three (3) divisions, 21st to 23rd, in Cagayan de Oro City.

The composition of the existing seventeen (17) divisions based in Manila remained, while the eighteen (18) justices were assigned to Cebu and Cagayan de Oro stations according to the order of seniority. However, as provided in the Internal Rules of the Court of Appeals, 'waiver' of senior members was allowed. Hence, there were instances when members of the Court who were supposed to be assigned in Cebu City or Cagayan de Oro City signed 'waivers' and remained in Manila without losing their seniority. Likewise, instances did and still occur that those who are due to move to Manila or Cebu City during a reorganization opt to stay in Cebu City and Cagayan de Oro City by signing a 'waiver'.

According to Justice Remedios S. Fernando, the situation is not in accord with the provisions of R.A. No. 8246. Said law never mentions a 'waiver'. Instead, the only guiding principle provided in determining the place of assignment is 'precedence' or seniority in accordance with the dates of appointments or the order in which the appointments were issued by the President.

The deviation in the implementation of the law can be abandoned by strictly following the provisions on assignment of Justices to the six (6) divisions of the Court stationed in Cebu and Cagayan de Oro. Otherwise, it would appear that those who signed the 'waiver' could hold on and claim a vested right to their assignment."

According to the CA Justices in Cebu — namely, Executive Justice Arsenio J. Magpale and Justices Isaias P. Dicdican, Pampio A. Abarintos, Agustin S. Dizon, Antonio L. Villamor, Priscilla Baltazar-Padilla, Francisco P. Acosta and Stephen C. Cruz — the letters and news items against them lack details and basis. They challenge the complainants to identify the alleged corrupt

Justices before the proper channels so that only the corrupt, if any, will be compelled to account for their own actions. This will also spare innocent Justices, as well as the entire Philippine Judiciary, from unjust criticisms. According to them, the abolition by the Supreme Court of the CA-Cebu Station is not possible because CA-Cebu was created by law and, as such, its abolition may be done only through legislation.

The CA Justices in CA-Cagayan de Oro submitted their comment through Executive Justice Teresita Dy-Liacco Flores on the subject matter of the letters of Ms. Chiong and Mr. Germano, as the probe requested by Judge De Gracia, Jr. should be referred to the Office of the Court Administrator. They share the view of the Justices of CA-Cebu that the abolition of CA-Cebu is not the solution. They opine that the Court's role should not only be to investigate but to encourage litigants and lawyers to come forward with their evidence and to name names. This, to them, will positively serve to reinstate the good name of the Court. Moreover, the abolition of CA-Cebu by the Supreme Court would be an encroachment by the judiciary into the realm of the legislative branch. Abolition will also transgress the spirit and letter of Republic Act 8246,[5] which is to bring justice closer to the people.

Former Presiding Justice Ruben T. Reyes sought the views and comments of the Division Chairmen and other Justices in Manila, meeting with them several times. The following options in the stationing of Justices emerged from the exchange of views and consultations:

1. First Option. The first 51 Justices shall constitute the 1st to 17th Divisions in Manila with the first 17 as chairmen, the next 17 as senior members and the last 17 as junior members. The 52nd to 69th Justices shall constitute the 18th to 20th (Cebu Station) and the 21st to 23rd Divisions (Cagayan

[5] An Act Creating Additional Divisions In The Court Of Appeals, Increasing The Number Of Court Of Appeals Justices From Fifty-One (51) To Sixty-Nine (69), Amending For The Purpose Batas Pambansa Bilang 129, As Amended, Otherwise Known As The Judiciary Reorganization Act of 1980, Appropriating Funds Therefor, And For Other Purposes.

de Oro Station) with the first six (6) as chairmen, the next six (6) as seniors and the last six (6) as juniors. Movements in case of any vacancy shall be in accordance with seniority such that the most recent appointee begins his service as junior member of the 23rd Division.

2. Second Option. The organization of the twenty-three (23) Divisions of the Court shall be in accordance with strict seniority, such that the first 23 members shall be chairmen, the next 23 shall be senior members and the last 23 shall be junior members. Movements in case of vacancy shall follow the seniority line, such that the most recent appointee begins his service as junior member of the 23rd Division.

3. Third Option. The first 51 Justices shall constitute the 1st to 17th Divisions in Manila with the first 17 as chairmen, the next 17 as seniors and the last 17 as juniors. The 18th to 20th Divisions in Cebu shall be constituted by the 52nd to the 60th Justices with the first three (3) as chairmen, the next three (3) as seniors and the last three (3) as juniors. The 21st to 23rd Divisions in Cagayan De Oro shall be constituted by the 61st to 69th Justices with the first three (3) as chairmen, next three (3) as seniors and the last three (3) as juniors. Movements in case of vacancy shall follow the seniority line such that the most recent appointee begins his service as junior member of the 23rd Division.

4. All 23 Divisions shall be in Manila with the first 17 continuing to handle cases for Luzon. The 18th to 20th shall continue to handle cases coming from the Visayas and the 21st to 23rd shall continue to handle cases coming from Mindanao, said 18th to 23rd Divisions being temporarily stationed in Manila in the interest of the service pursuant to R.A. 8246. The assignment of Justices to the Divisions shall follow the path outlined in the second option.

On July 12, 2007, the aforestated options were put to a vote. Former Presiding Justice Ruben T. Reyes, in his letter dated July 30, 2007 addressed to Chief Justice Reynato Puno, reported that of the total of 65 Justices (there being four vacancies), seventeen (17) Justices chose Option 1. Options 2 and 3 got four (4) votes each while Option 4 won the nod of fifteen (15) Justices. Ten (10) Justices picked none of the four specific

options, as they prefer the investigation first of the alleged corruption in CA-Cebu. Another ten (10) voted for the status quo, favoring the perpetuation of the waiver. Then Presiding Justice Reyes reached the following conclusion from the result of the voting of the CA Justices:

> This implies that the great majority of forty (40) are not averse to a reorganization in response to the initiatives for reforms. They differ only on the manner or mode of reorganization. But a common thread runs through them — FOLLOW STRICT SENIORITY WITHOUT WAIVERS IN ASSIGNMENT OF WORK STATION.

However, the new Presiding Justice, Conrado M. Vasquez, Jr., in his letter dated December 10, 2007 addressed to the Chief Justice, reported that in the course of the subsequent discussions of the CA Justices, they realized that the "Status Quo" option did not really lose in the *en banc* deliberation held on July 12, 2007. Although only ten (10) voted for the "Status Quo" option, there were ten (10) who also voted for the "none of the above" option which was really equivalent to "Status Quo." Thus, the CA held another *en banc* meeting to clarify the consensus, which was put to a vote anew. Aside from the first four (4) options in the first voting, the "Status Quo" was added as the fifth option. The results of the CA *en banc* second round of voting were as follows:

| | | |
|---|---|---|
| First Option | - | 0 |
| Second Option | - | 0 |
| Third Option | - | 0 |
| Fourth Option | - | 19 |
| Fifth Option | - | 34 |

The CA accordingly revised its former stand on the issue. It recommends that the "Status Quo" be maintained. The proponents of the said option believed that the evil sought to be avoided and addressed [by the reorganization of the Divisions] was no longer in existence and that proper measures had been taken and put in place.

We shall deal hereunder with the issue of the reorganization of the Divisions of the Court of Appeals which was precipitated by the general accusations of corruption in CA-Cebu. The subject matters of the respective letters of Ms. Chiong and Mr. Germano pertain to the actions taken by the trial courts in pending cases which are subject to review, not in an administrative case but in the proper judicial proceedings prescribed by the Rules of Court.

The legal feasibility of the options voted upon by the incumbent Justices of the Court of Appeals hinges on the interpretation of the provisions of Sections 3 and 6 of R.A. 8246 which are quoted hereunder:

SECTION 3. Section 10 of Batas Pambansa Blg. 129, as amended, is hereby further amended to read as follows:

> Sec. 10. Place of Holding Sessions. — The Court of Appeals shall have its permanent stations as follows: The first seventeen (17) divisions shall be stationed in the City of Manila for cases coming from the First to the Fifth Judicial Regions; the Eighteenth, Nineteenth, and Twentieth Divisions shall be in Cebu City for cases coming from the Sixth, Seventh and Eighth Judicial Regions; the Twenty-first, Twenty-second and Twenty-third Divisions shall be in Cagayan de Oro City for cases coming from the Ninth, Tenth, Eleventh, and Twelfth Judicial Regions. Whenever demanded by public interest, or whenever justified by an increase in case load, the Supreme Court, upon its own initiative or upon recommendation of the Presiding Justice of the Court of Appeals, may authorize any division of the Court to hold sessions periodically, or for such periods and at such places; as the Supreme Court may determine for the purpose of hearing and deciding cases. Trials or hearings in the Court of Appeals must be continuous and must be completed within three (3) months unless extended by the Chief Justice of the Supreme Court.

SECTION 6. Nothing in this Act shall be construed to allow the transfer, except in cases of temporary assignment, of any member of the Court of Appeals to any place or station without his or her written consent, or to undermine the security of tenure of its members as provided in the Constitution, or alter the seniority in said Court in accordance with existing laws. (Emphasis supplied)

We need not belabor the discussion on either the abolition of CA Divisions stationed in Cebu and Cagayan de Oro or the permanent transfer of the said Cebu and Cagayan de Oro Divisions to Manila (Fourth Option). The said options are out of the question in the absence of an amendatory legislation, considering the explicit language of the above-quoted provisions of law. As to the first, second and third options, we take it that the CA Justices have understood that the options as proposed shall be followed strictly and that these options will entail the movements of Justices and support staff from station to station as the reorganization of the Divisions take place from time to time by reason of vacancies in the CA, in accordance with the order of seniority and without any provision for waiver.

The Justices in CA-Cebu are of the view that the transfer of Justices from one station to another cannot be done without the consent of the Justices concerned. They cite the aforequoted provisions of RA No. 8246 as well as Section 9, Rule 1 of the 2002 Internal Rules of the Court of Appeals (IRCA) which reads:

**Sec. 9. Reorganization of Divisions –**

(a) Reorganization of Divisions shall be effected whenever a permanent vacancy occurs in the chairmanship of a Division, in which case assignment of Justices to the Divisions shall be in accordance with the order of seniority **unless a waiver is executed by the Justice concerned which waiver shall be effective until revoked by him in writing.**

The Waiver shall be as follows:

WAIVER

Except in cases of temporary assignment, I hereby GIVE/ DO NOT GIVE my consent to be transferred either as Chairman/ Senior/Junior Member to any Division in any other station.

It is understood that this will not affect my seniority in the Court of Appeals.

It is further understood that this Waiver shall be effective until revoked in writing.

Associate Justice

Date

**In the exigencies of the service, the Presiding Justice may temporarily assign any Associate Justice to any station, or defer the reorganization of the Divisions.**

The highlighted portions of the above-quoted provisions are amendments introduced to the 2002 IRCA which took effect on February 28, 2005.

The CA Justices stationed at Cagayan de Oro, through Associate Justice Teresita Dy-Liacco Flores, express their concurrence with the view of the Justices in Cebu City, for the following reasons:

If the CA were to adopt a scheme whereby the Justices would be assigned to the three Stations strictly on the basis of seniority, it will effectively deprive the Cebu and Cagayan de Oro Stations of the experience of the more senior Justices. Many of the best practices of the Court are not reduced into written rules (*e.g.*, the IRCA) but are handed down by tradition. Moreover, the junior Justices in Cagayan de Oro will have to pass by Cebu Station once they rise in their ranking. They cannot continue serving in Cagayan de Oro and wait till their time is up for Manila posting unlike what is done today. For Cagayan de Oro Justices, this means expense, trouble in relocation and disruption and delay in decision writing.

In their joint letter dated September 20, 2007 addressed to the Chief Justice, the Justices of the CA Divisions in Cebu and Cagayan de Oro further state:

> The practice of waivers is a cherished hope and joy to those who sacrifice in the meantime being assigned to stations away from their families. Despite the existence of the Court's stations, some of us had pursued our applications to be Justices, precisely because of the practice of waivers. After all, we believed that we could rely on the stability of practice and tradition, especially that of the judiciary.

Removing the waiver therefore deflates morale, while its retention serves as a continued attraction for the best and the brightest to join the Court.

The creation of the three (3) CA Divisions in each of the Cebu City and Cagayan de Oro City stations has given rise to the practice of "waiver" of transfer to another station, even if it would mean a promotion to fill up a vacancy in the Chairmanship or Senior Membership of a Division located in another CA station. The said "waiver" now forms part of the Internal Rules of the said Court, as amended.

Apparently, Section 6 of R.A. 8246 has been construed by the CA Justices to mean that the waiver of Senior Members due for transfer to another station in accordance with the rule on reorganization, which is based on seniority, is a matter of right on the part of the Senior Member concerned. More precisely, the CA Justices of Cebu and Cagayan de Oro believe that "the existence of waiver is explicitly embodied in Section 6 of RA 8246."

Section 6 of RA No. 8246, cited by the CA Justices as a legal basis for the aforesaid waiver, does not allow any provision of the said law to be used to justify the transfer of any member of the CA to any place or station without his or her consent. However, the movement from one station to another concerned here is occasioned by the operation of the IRCA, and not by the construction of the provision of RA No. 8246. To our mind, the said provision of law guarantees that a Member of the Court of Appeals shall not be transferred without his consent from a station **where he ought to be.** The said station is determined not by RA No. 8246 but by the rule on the reorganization of Divisions contained in the IRCA. The said rule is anchored on the solitary standard supplied by R.A. No. 8246, which is seniority. Pertinently, Section 3 of Batas Pambansa Blg. 129, as amended by R.A. 8246 provides:

Sec. 3. *Organization.*— There is hereby created a Court of Appeals which shall consist of a Presiding Justice and sixty-eight (68) Associate Justices who shall be appointed by the President of the

Philippines. The Presiding Justice shall be so designated in his appointment, and the Associate Justices shall have precedence according to the dates of their respective appointments, or when the appointments of two or more of them shall bear the same dates, according to the order in which their appointments were issued by the President. Any member who is reappointed to the Court after rendering service in another position in the government shall retain the precedence to which he was entitled under his original appointment and his service to the Court shall, for all intents and purposes, be considered as continuous and uninterrupted.

The "transfer" contemplated by Section 6 of R.A. No. 8246 presupposes that a member of the CA is in the station allocated to him by the rules, the said law being silent in this regard, from which station he cannot be transferred without his consent. Paradoxically, the said provision of law is invoked to allow the CA Justices to preempt the operation of the rule on reorganization, at their discretion by executing a waiver, in the form and content provided in Section 9, Rule 1 of the IRCA, as amended.

The assignment of Justices to the various CA Divisions has a direct bearing on the exercise of the function of adjudication of cases. The respective stations or places of assignment of the Justices serve as the basis for the assignment of cases to them in view of the system of distribution of cases among the City of Manila, Cebu City and Cagayan de Oro City stations prescribed by R.A. No. 8246. Akin to the raffle of cases, it is imperative to keep the image of an impartial and independent Judiciary, that application of the rule on the assignment of Justices be consistent, uniform, transparent and objective. Compliance with the said rule should not depend solely on the personal interest or preference of the Justice concerned nor should it be left to the latter's absolute discretion.

Finally, the Junior Justices have equal right to the faithful observance of the rule on reorganization, which fixes their own places of assignment or station. The assignment of Justices to a particular station is not purely an administrative concern or a matter of formality or privilege, which the Senior Justices by their expedient act of "waiver" can choose to withhold at will

from the Junior Justices who may be adversely affected by a deviation from the rule on reorganization. No vested or acquired right can arise from the act of waiver by the Senior Justices which infringes upon the rights of the Junior Justices. (Article 2254, Civil Code ). The "waiver" contained in the IRCA ignores or overlooks this possibility of infringement of the right of the Junior Justices to transfer to a particular station under the aforementioned rule.

Accordingly, we find compelling reasons to set aside the amendment to Section 9, Rule 1 of the IRCA which institutionalizes the "waiver" of the place of assignment or station of the CA Justices.

It has also been brought to this Court's attention that the Cagayan de Oro station is perennially beset by vacancies resulting from immediate movement of Justices from one station to another whenever a permanent vacancy occurs in the Chairmanship of the Division, which would call for the reorganization of the Divisions under the IRCA. We perceive the need to address the situation occasioned by the operation of the said rule on reorganization, particularly the ensuing vacancies in the Cagayan de Oro City station where the newly appointed Members of the Court of Appeals are always assigned.

**IN VIEW WHEREOF,** the Court resolves to *APPROVE* the recommendation of the Court of Appeals to maintain the STATUS QUO in the places of assignment of the incumbent Members of the said Court, provided that henceforth, no waiver of the assignment of any Member of the Court to a particular station pursuant to the Rule on Reorganization of the Divisions, which is based on seniority, shall be allowed unless approved by the Supreme Court, and provided further that no movement in the places of assignment due to the reorganization of the Divisions shall take place until an Associate Justice shall have been appointed to fill-up the vacancy in the Court membership. Section 9, Rule 1 of the Internal Rules of the Court of Appeals is hereby *AMENDED* accordingly.

**SO ORDERED.**

*Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Velasco, Jr., Nachura,* and *Reyes, JJ.,* concur.

*Chico-Nazario, J.,* on official leave.

---

**EN BANC**

[A.M. No. P-05-1999. February 22, 2008]

**ANGELES A. VELASCO,** *complainant, vs.* **ATTY. PROSPERO V. TABLIZO,** *respondent.*

**SYLLABUS**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERK OF COURT; AS *EX-OFFICIO* SHERIFF, THEY HAVE THE DUTY TO IMPLEMENT THE WRITS OF EXECUTION.—** RTC clerks of court are *ex-officio* sheriffs within their territorial jurisdiction. As *ex-officio* sheriffs, they perform certain functions, including the implementation of writs of execution. In *Bautista v. Orque, Jr.*, the Court held that *ex-officio* sheriffs have the sworn duty to enforce the writs placed in their hands. The implementation of writs of execution is *mandatory* and *ministerial*. When writs are placed in the hands of sheriffs, they must implement them promptly and strictly to the letter. As the officer charged with the implementation of writs of execution, and following the provisions of the Rules of Court, respondent should have (1) demanded from the defendants the immediate payment of the full amount stated in the writs of execution and all lawful fees, (2) received the lawful fees from the defendants and turned them over within the same day to the clerk of court of the

court that issued the writs, (3) levied on the properties of the defendants if they cannot pay all or part of the obligation, (4) demanded the defendants to vacate the property and restore its possession to the plaintiffs, and (5) made returns on the writs of execution to the court that issued them. Respondent did nothing. He refused to perform his official duty without justifiable reasons and totally ignored the provisions of the Rules of Court.

**2. ID.; ID.; ID.; ID.; ID.; THE COURT WILL NOT HESITATE TO IMPOSE THE ULTIMATE PENALTY FOR GROSS NEGLECT OF DUTY AND REFUSAL TO PERFORM OFFICIAL DUTY.—** The Court will not hesitate to impose the ultimate penalty on those who fall short of their accountabilities. The Court condemns and does not tolerate any conduct that violates the norms of public accountability and diminishes public confidence in the judicial system. Failure of sheriffs to implement writs of execution constitutes gross neglect of duty. Section 52(A)(2) and (18) of the Revised Uniform Rules on Administrative Cases in the Civil Service classify gross neglect of duty and refusal to perform official duty, respectively, as grave offenses. Gross neglect of duty is punishable by dismissal for the first offense, while refusal to perform official duty is punishable by suspension of six months and one day to one year for the first offense and by dismissal for the second offense.

## D E C I S I O N

**CARPIO, *J.*:**

### The Case

This is an administrative complaint Atty. Angeles A. Velasco (complainant) filed against Atty. Prospero V. Tablizo (respondent), Clerk of Court and *Ex-Officio* Provincial Sheriff, Regional Trial Court (RTC), Office of the Clerk of Court, Virac, Catanduanes. Complainant charged respondent with gross neglect of duty and misconduct.

**The Facts**

Complainant is the counsel of record in Civil Case Nos. 489[1] and 466.[2] On 11 May 1999, Judge Nieto T. Tresvalles (Judge Tresvalles), Municipal Trial Court, Judicial Region V, Virac, Catanduanes, rendered a Decision[3] in Civil Case No. 489 favorable to complainant's clients, the plaintiffs. On 18 May 1999, complainant filed a motion for immediate execution[4] of the Decision. On 25 May 1999, Judge Tresvalles issued a writ of execution[5] stating that the Decision had become final and executory, and commanding respondent to (1) eject the defendant from the property; (2) demand from the defendant ₱47,500 rent plus arrears and interest, ₱15,000 attorney's fees, and other costs; (3) make reports; (4) file the reports with the trial court; and (5) levy on the defendant's real properties if there were no sufficient personal properties to cover the obligation. On 5 July 1999, respondent received the writ. He refused to implement it.

On 27 January 1999, Judge Tresvalles rendered a Decision[6] in Civil Case No. 466 favorable to complainant's clients, the plaintiffs. On 11 February 1999, complainant filed a motion for immediate execution[7] of the Decision. On 24 February 1999, Judge Tresvalles issued a writ of execution[8] stating that the Decision had become final and executory, and commanding respondent to (1) eject the defendant from the property; (2) restore the possession of the property to the plaintiffs; (3) demand from the defendant an amount equivalent to the average yield

---

[1] Entitled "*Nelson Gianan as heir and representative of the Heirs of Felomina B. Gianan v. Jaime "Jimmy" Ojastro*."

[2] Entitled "*Leona Melgar, Maria Luisa Magtagnob, and Julian Magtagnob v. Antonio Arcilla*."

[3] *Rollo*, pp. 3-5.

[4] *Id.* at 6-7.

[5] *Id.* at 8-9.

[6] *Id.* at 10-16.

[7] *Id.* at 17-19.

[8] *Id.* at 20-21.

of the property or cost of rent, ₱10,000 attorney's fees plus ₱700 for every court appearance, and other costs; (4) make reports; (5) file the reports with the trial court; and (6) levy on the defendant's real properties if there were no sufficient personal properties to cover the obligation. On 26 February 1999, respondent received the writ. He refused to implement it.

On 23 February 2000 and 1 March 2000, complainant filed with the Office of the Court Administrator (OCA) and Office of the Deputy Ombudsman for Luzon, respectively, a complaint[9] against respondent. Since the acts complained of were related to respondent's functions as an officer of the court, the Office of the Deputy Ombudsman for Luzon referred the matter to the OCA.

In its 1st Indorsement[10] dated 11 May 2000, the OCA referred the complaint to respondent for comment. Respondent did not file his comment. In its 1st Tracker[11] dated 27 November 2001, the OCA directed respondent to file his comment. Respondent did not file his comment. In a Resolution[12] dated 9 April 2003, the Court required respondent to file his comment. Respondent did not file his comment. In a Resolution[13] dated 10 January 2005, the Court dispensed with the filing of the comment and referred the matter to the OCA for evaluation, report, and recommendation.

**The OCA's Report and Recommendations**

In its Memorandum[14] dated 10 March 2005, the OCA stated that respondent should be held liable for failing to implement the writs of execution. The OCA recommended that the case be re-docketed as a regular administrative matter and that respondent be fined ₱20,000.

[9] *Id*. at 1-2 and 58-59.

[10] *Id*. at 119.

[11] *Id*. at 120.

[12] *Id*. at 123-124.

[13] *Id*. at 126-127.

[14] *Id*. at 128-130.

In a Resolution[15] dated 25 April 2005, the Court re-docketed the case as a regular administrative matter and, in a Resolution[16] dated 14 June 2006, the Court required the parties to manifest if they were willing to submit the case for decision based on the records already filed. Since both parties did not file any manifestation, the Court considered them to have waived their compliance with the 14 June 2006 Resolution.

**The Court's Ruling**

The Court finds respondent liable for gross neglect of duty and refusal to perform official duty.

RTC clerks of court are *ex-officio* sheriffs within their territorial jurisdiction. As *ex-officio* sheriffs, they perform certain functions,[17] including the implementation of writs of execution.[18] In *Bautista v. Orque, Jr.*,[19] the Court held that *ex-officio* sheriffs have the sworn duty to enforce the writs placed in their hands.

Judge Tresvalles issued two writs of execution explicitly commanding respondent to (1) eject the defendants from the property; (2) restore the possession of the property to the plaintiffs; (3) demand from the defendants sums of money; (4) make reports; (5) file the reports with the trial court; and (6) levy on the defendants' real properties if there were no sufficient personal properties to cover the obligation.

The implementation of writs of execution is *mandatory*[20] and *ministerial*.[21] When writs are placed in the hands of sheriffs,

---

[15] *Id*. at 132-133.

[16] *Id*. at 134.

[17] The 2002 Revised Manual for Clerks of Court, Volume I, pp. 439-461.

[18] *Badoles-Algodon v. Zaldivar*, A.M. No. P-04-1818, 3 August 2006, 497 SCRA 446, 454-455.

[19] A.M. No. P-05-2099, 31 October 2006, 506 SCRA 309, 314.

[20] *Sibulo v. San Jose*, A.M. No. P-05-2088, 11 November 2005, 474 SCRA 464, 468.

[21] *Escobar Vda. de Lopez v. Luna*, A.M. No. P-04-1786, 13 February 2006, 482 SCRA 265, 274.

they must implement them promptly and strictly to the letter.[22] Sections 9(a) and (b), 10(c), and 14 of Rule 39 of the Rules of Court clearly provide the procedure to be followed in the execution of judgments:

SEC. 9. *Execution of judgments for money, how enforced*. —

(a) *Immediate payment on demand*. — **The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees.** The judgment obligor shall pay x x x the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amounts to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

xxx xxx xxx

(b) *Satisfaction by levy*. — **If the judgment obligor cannot pay all or part of the obligation** x x x, **the officer shall levy upon the properties of the judgment obligor** of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

[22] *Id*.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon x x x.

SEC. 10. *Execution of judgments for specific act*. —

xxx xxx xxx

(c) *Delivery or restitution of real property*. — **The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property.**

SEC. 14. *Return of writ of execution*. — **The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor.** Such writ shall continue in effect during the period within which the judgment may be enforced by motion. **The officer shall make a report to the court every thirty (30) days on the proceedings taken** thereon until the judgment is satisfied in full, or its effectivity expires. **The returns or periodic reports shall** set forth the whole of the proceedings taken, and shall **be filed with the court and copies thereof promptly furnished the parties.** (Emphasis ours)

As the officer charged with the implementation of writs of execution, and following the provisions of the Rules of Court, respondent should have (1) demanded from the defendants the immediate payment of the full amount stated in the writs of execution and all lawful fees, (2) received the lawful fees from the defendants and turned them over within the same day to

the clerk of court of the court that issued the writs, (3) levied on the properties of the defendants if they cannot pay all or part of the obligation, (4) demanded the defendants to vacate the property and restore its possession to the plaintiffs, and (5) made returns on the writs of execution to the court that issued them.

Respondent did nothing. He refused to perform his official duty without justifiable reasons and totally ignored the provisions of the Rules of Court. In his complaint[23] dated 4 February 2000, complainant stated that:

> [I]n evident bad faith and gross negligence x x x *Ex-Officio* Provincial Sheriff Atty. Prospero Tablizo failed and refused and still fails and refuses to implement and enforce the x x x [25 May 1999] Writ of Execution x x x until the present or a period of almost eight (8) months; [and]
>
> xxx xxx xxx
>
> [I]n evident bad faith and gross negligence x x x *Ex-Officio* Provincial Sheriff Prospero Tablizo failed and refused and still fails and refuses to implement and enforce the [24 February 1999] Writ of Execution x x x in Civil Case No. 466 until the present or a period of almost twelve (12) months.

And in its Report[24] dated 10 March 2005, the OCA sustained the allegations in the complaint:

> Respondent should x x x be held liable for his failure to implement the respective writs of execution in Civil Case Nos. 489 and 466. x x x It is evident that respondent failed to live up to his sworn duty to uphold and execute the law, as well as to perform his duties and responsibilities with integrity, efficiency, and fairness to all parties.

The Court has no reason to disturb the OCA's findings. Respondent was directed several times to file his comment to the complaint. He had several opportunities to answer the charges

---

[23] *Rollo*, pp. 1-2.

[24] *Id.* at 129.

against him. He never did. His silence is deemed an admission of guilt.[25]

The task of implementing writs of execution cannot be taken lightly because execution is the most important part of the suit. Execution is the fruit of the suit and the life of the law. Judgments left unexecuted because of the negligence of those charged with their execution delay the administration of justice and render the decisions inutile.[26]

The Court notes that complainant filed *two different* complaints against respondent — one dated 4 February 2000 and another dated 25 February 2000. In the 25 February 2000 sworn letter-complaint,[27] complainant charged respondent with gross neglect of duty and grave misconduct for refusing to execute the final and executory judgments in Civil Case Nos. 1571,[28] 1617,[29] and 494.[30] Complainant filed the sworn letter-complaint with the Office of the Deputy Ombudsman for Luzon. Since the acts complained of were related to respondent's functions as an officer of the court, the Office of the Deputy Ombudsman for Luzon, in its 1st Indorsement[31] dated 12 April 2000, referred the matter to the OCA. The OCA received the sworn letter-complaint on 2 May 2000. However, the OCA did not make any evaluation, report, and recommendation on it.

Aside from the instant case, respondent has two other administrative cases pending against him. In A.M. No. 98-455-P,[32]

---

[25] *Office of the Court Administrator v. Laya*, A.M. No. P-04-1924, 27 April 2007, 522 SCRA 268, 280; *Donton v. Loria*, A.M. No. P-03-1684, 10 March 2006, 484 SCRA 224, 229; *Ortiz, Jr. v. De Guzman*, A.M. No. P-03-1708, 16 February 2005, 451 SCRA 392, 399; *Office of the Court Administrator v. Bernardino*, A.M. No. P-97-1258, 31 January 2005, 450 SCRA 88, 119.

[26] *Badoles-Algodon v. Zaldivar*, *supra* note 18, at 455-456.

[27] *Rollo*, pp. 87-90.

[28] Entitled "*Felipe Baltazar, et al. v. Maria Villafuerte*."

[29] Entitled "*Gil Aquino v. Spouses Pedro and Cresencia delos Santos*."

[30] Entitled "*Florentino Avila v. Rene B. Panti and Rose P. Manlangit*."

[31] *Rollo*, p. 79.

[32] Entitled "*Leo Mendoza v. Prospero V. Tablizo*."

respondent is charged with grave misconduct for unilaterally cancelling an extra-judicial foreclosure sale, telling the complainant to charge a different interest rate from what was written in the contract, dismissing a petition for extra-judicial foreclosure sale without any justifiable reason, and for acting as counsel for the defendant. And in A.M. No. P-00-1390,[33] respondent is charged with conduct prejudicial to the best interest of the service for being arrogant, disrespectful, and rude.

The Court will not hesitate to impose the ultimate penalty on those who fall short of their accountabilities. The Court condemns and does not tolerate any conduct that violates the norms of public accountability and diminishes public confidence in the judicial system.[34] Failure of sheriffs to implement writs of execution constitutes gross neglect of duty.[35]

Section 52(A)(2) and (18) of the Revised Uniform Rules on Administrative Cases in the Civil Service[36] classify gross neglect of duty and refusal to perform official duty, respectively, as grave offenses. Gross neglect of duty is punishable by dismissal for the first offense, while refusal to perform official duty is punishable by suspension of six months and one day to one year for the first offense and by dismissal for the second offense.

Respondent compulsorily retired from the service on 4 September 2000 and the records of the Employees Welfare and Benefits Division of the OCA show that he is not entitled to retirement benefits under Republic Act No. 1616. In lieu of dismissal, the Court imposes a fine on respondent.

---

[33] Entitled "*Leandro Verceles, Jr. v. Prospero Tablizo*."

[34] *Escobar Vda. de Lopez v. Luna*, *supra* note 21, at 277-278.

[35] *Badoles-Algodon v. Zaldivar*, *supra* note 18, at 457; *Escobar Vda. de Lopez v. Luna*, *supra* at 275; *Sibulo v. San Jose*, *supra* note 20, at 471; *Teresa T. Gonzales La'O & Co., Inc. v. Sheriff Hatab*, 386 Phil. 88, 93 (2000).

[36] Promulgated by the Civil Service Commission through Resolution No. 99-1936 dated 31 August 1999 and implemented by CSC Memorandum Circular No. 19, Series of 1999.

**WHEREFORE,** the Court finds respondent retired Clerk of Court and *Ex-Officio* Provincial Sheriff Atty. Prospero V. Tablizo, Regional Trial Court, Office of the Clerk of Court, Virac, Catanduanes, *GUILTY* of *GROSS NEGLECT OF DUTY* and *REFUSAL TO PERFORM OFFICIAL DUTY*. Accordingly, the Court *FINES* him ₱40,000.

The Court *DIRECTS* the Office of the Court Administrator to investigate the charges contained in the 25 February 2000 sworn letter-complaint.

**SO ORDERED.**

*Puno, C.J., Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Nachura, Reyes,* and *Leonardo-de Castro, JJ.,* concur.

*Velasco, Jr., J.,* no part due to prior decision in OCA.

*Quisumbing, J.,* on official leave.

*Ynares-Santiago, J.,* on leave.

---

**EN BANC**

[A.M. No. RTJ-04-1884. February 22, 2008]
(Formerly OCA IPI No. 03-1806-RTJ)

**SILAS Y. CAÑADA,** *complainant, vs.* **ILDEFONSO B. SUERTE, former Presiding Judge, Regional Trial Court, Barili, Cebu City, Branch 60,** *respondent*.

**SYLLABUS**

**1. JUDICIAL ETHICS; JUDGES; ADMINISTRATIVE PROCEEDINGS; COMPLAINANT HAS THE BURDEN OF PROVING THE ALLEGATIONS IN HIS COMPLAINT**

**WITH SUBSTANTIAL EVIDENCE; APPLICATION.—** In administrative proceedings, the complainant has the burden of proving the allegations in his complaint with substantial evidence, *i.e.*, that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. If a judge should be disciplined for a grave offense, the evidence against him should be competent and derived from direct knowledge. Here, complainant failed to present concrete evidence to substantiate his charges against respondent. He did not appear before the investigating justice to prove his allegations. While it is true that he attached to his complaint two affidavits to corroborate his story, the affiants—a prospective business partner and an AFP comrade—were not disinterested witnesses whose statements could be given credence. Mere allegations will leave an administrative complaint with no leg to stand on. This is in line with the well-settled rule that an affidavit is hearsay unless the affiant is presented on the witness stand. If, indeed, complainant was interested in pursuing the case against someone he perceived to be an erring judge, he should have appeared before the investigating justice and presented his evidence and witnesses to substantiate his claim. Accordingly, the charges of grave abuse of authority, grave misconduct, grave coercion, harassment, oppression and violation of Article 215 of the RPC must be dismissed.

**2. ID.; ID.; A JUDGE'S CLAIM THAT HE NEVER OWNED CERTAIN PROPERTIES ALTHOUGH HIS STATEMENTS OF ASSETS AND LIABILITIES PROVE OTHERWISE CONSTITUTE DISHONESTY.—** In his defense, respondent claimed that he never owned a dilapidated cargo pick-up truck and could not recall if he had a Daewoo car in 1998. But his Statements of Assets and Liabilities for the years 1998 to 2001 on file in the Court prove otherwise. They show that among his personal properties were a Daewoo car acquired in 1996 and an L-200 double cab acquired in 1998.

**3. ID.; ID.; ID.; DISHONESTY, DEFINED.—** Dishonesty is defined as the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. This is a grave offense that carries the extreme penalty of dismissal from the service,

even for the first offense, with forfeiture of retirement benefits except accrued leave credits and perpetual disqualification from re-employment in government service.

**4. ID.; ID.; DISCIPLINARY PROCEEDINGS; THE COURT TREATED AN ADMINISTRATIVE CASE AS A DISCIPLINARY PROCEEDING AND DISBARRED A JUDGE FOR DISHONESTY.—** The case does not end here. Pursuant to A.M. No. 02-9-02-SC, this administrative case against respondent shall also be considered as a disciplinary proceeding against him as a member of the bar. Under this resolution dated September 17, 2002 which took effect on October 1, 2002, an administrative case against a judge of a regular court based on grounds which are also grounds for the disciplinary action against members of the Bar, shall be considered as disciplinary proceedings against such judge as a member of the Bar. Violation of the fundamental tenets of judicial conduct embodied in the new Code of Judicial Conduct for the Philippine Judiciary, the Code of Judicial Conduct and the Canons of Judicial Ethics constitutes a breach of Canons 1 and 11 of the Code of Professional Responsibility (CPR). Rule 1.01, Canon 1 of the CPR further enjoins a lawyer from engaging in unlawful, dishonest or deceitful conduct. Similarly, Rule 10.01 of Canon 10 states that a lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead or allow the court to be misled by any artifice. These rules are broad enough to cover dishonesty of a lawyer both in his professional or private capacity. In accordance with Section 27, Rule 138 of the Rules of Court, respondent may be suspended or disbarred.

**APPEARANCES OF COUNSEL**

*Coleta M. Aranas-Campanale* for complainant.

*Rentuza Law Firm* for respondent.

## R E S O L U T I O N

***PER CURIAM:***

On July 11, 2003, the Office of the Court Administrator (OCA) received the complaint[1] of Silas Y. Cañada against respondent Ildefonso B. Suerte, former presiding judge of the Regional Trial Court (RTC), Barili, Cebu City, Branch 60. Respondent was charged with grave abuse of authority, grave misconduct, grave coercion, dishonesty, harassment, oppression and violation of Article 215 of the Revised Penal Code (RPC) and the Canons of Judicial Ethics.[2]

Complainant alleged that he and respondent were neighbors in Badian, Cebu. Sometime in early 2002, respondent volunteered to act as an agent-broker to sell complainant's beach lot in Barangay Bato, Badian, Cebu. They agreed that the selling price would be ₱1,600,000 and that respondent would receive ₱600,000 as commission.

In July 2002, respondent informed complainant that he had a foreign buyer but insisted on a commission of ₱1,000,000 with the balance of ₱600,000 for the complainant. The latter, protesting, did not agree to the proposed new arrangement and refused to sign the deed of sale prepared by respondent. The latter was furious and told complainant in the Cebuano dialect:

*Silas, wa ka ba masayod nga huwes ako sa RTC, Branch 60 nga imo lang tagaan ug ₱600,000.00 sa kantidad nga halin sa yuta nga ₱1.6M? Ikaw nasayod nga ako makasugo paghikaw sa usa ka tawo sa iyang mga butang pagpasulod ngadto sa presohan ug pagpabitay sa usa ka tawo ngadto sa iyang kamatayon. Dinhi sa yuta ako ray makahimo. Kon ikaw dunay kaso unya sa akong husgado siguro gyod ikaw mabilanggo*. (Silas, do you know that I am the judge in RTC Branch 60 and you will only give me a mere ₱600,000.00 as commission for the sale of your land for ₱1.6M? You know I can deprive a man of his property, [send] him to jail and have him executed either by hanging, electrocution or [by] lethal injection).[3]

---

[1] Dated July 10, 2003.

[2] *Rollo*, pp. 1-6.

[3] *Id.* at 2-3.

Despite the fact that the sale did not proceed, respondent demanded ₱200,000 from complainant for his effort in finding a buyer. Complainant was forced to give him ₱100,000.[4] After the incident, respondent harbored ill-feelings towards complainant and his family.

Complainant further alleged that before this incident or sometime in 1998, he had refused the respondent who was trying to sell him a dilapidated cargo pick-up truck and Daewoo car. Complainant feared that respondent would use his judicial power to persecute him and seek vengeance for what he considered as complainant's infractions against him.[5]

Complainant submitted affidavits executed by Ludovico M. Diong and Ernesto Bobiges who corroborated complainant's allegations. Diong testified that he was in the house of complainant (who was a prospective business client) when he saw respondent arrive, heard his disagreement with complainant and the demand for ₱200,000. Bobiges, on the other hand, was a colleague of complainant in the Armed Forces of the Philippines (AFP). He was visiting the complainant and witnessed the incident.[6]

In his comment dated August 12, 2003, respondent maintained that complainant had never been his neighbor as he lived three kilometers away and they had not seen each other for 20 years. He denied having acted as an agent-broker for complainant or anybody else. He likewise denied offering to sell complainant a dilapidated truck or a Daewoo car since he never owned a dilapidated cargo pick-up nor could he recall if he had a Daewoo car in 1998.[7]

Respondent countered that complainant was accused of and arrested for possessing 14 packs of *shabu* and ammunition. He further contended that he issued an order for the arrest of complainant for direct contempt after the latter filed a petition

---

[4] *Id*., p. 3.

[5] *Id*.

[6] *Id*., pp. 14-17.

[7] *Id*., pp. 19-20.

for *certiorari* using as grounds the false allegations in the present complaint. At the time of the comment, complainant was detained at the Barili jail not only for direct contempt but also for illegal possession of firearms. However, respondent neither admitted nor denied the receipt of the ₱100,000. He averred that complainant was simply being vengeful and that his complaint should be dismissed for being baseless.[8]

In a resolution of this Court dated October 4, 2004, the complaint was referred to the presiding justice of the Court of Appeals for raffle among the justices of the same court.[9] It was originally raffled to Associate Justice Mariflor P. Punzalan Castillo of the Nineteenth Division and subsequently[10] to Associate Justice Apolinario D. Bruselas, Jr. of the Eighteenth Division for investigation, report and recommendation. However, no hearing was conducted because respondent manifested that he was submitting the case for decision based on the pleadings already filed.[11] Complainant did not object.

In his report dated January 20, 2006, Justice Bruselas stated:

> On 24 January 2005[,] the counsel for the respondent filed a *Manifestation* stating *inter alia* that the [complainant] filed "a manifestation that he is willing to submit this case for resolution based on the pleadings on record." No such manifestation from the [complainant] can be found in the records of the case, although no objection to the respondent's manifestation was filed as well despite service by mail thereof one year ago as of this writing.
>
> xxx xxx xxx

The Honorable Court Administrator Presbitero J. Velasco Jr.[12] in his written report and recommendation on the case stated that (t)he foregoing allegations and contentions of both parties have given rise to conflicting factual submissions which cannot be resolved on

---

[8] *Id*.

[9] *Id*., p. 60.

[10] Justice Castillo was transferred to the Seventeenth Division; *id*., p. 77.

[11] *Id*., p. 73.

[12] Now a member of this Court.

the basis of the pleadings submitted. Thus, to ascertain the veracity of the parties (sic) allegations and contentions, a more extensive and open inquiry is necessary to enable them to ventilate and substantiate their respective positions and ultimately arrive at the truth. This investigating justice cannot agree more with the esteemed court administrator. Regrettably, lost is the chance to determine once and for all the truth behind the avowals of the parties, with their respective manifestations of submitting the case for decision sans "open-court" testimonies or other evidence.

In administrative proceedings, the burden of proof that the respondent committed the act complained of rests on the complainant. He must be able to show this by substantial evidence, or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. Failing this, the complaint must be dismissed.

The inherent weakness of affidavits, even sworn statements, being as they often are self-serving, easy to concoct, and non-receptive to cross-examination (or the constitutional right of the accused to confront witnesses against him), is well-known. Generally, an affidavit is not prepared by the affiant himself. For this reason, the infirmities of affidavits as species of evidence is a matter of judicial notice. To prove his case, the [complainant] could have filed other clear, sufficient and convincing evidence to substantiate his claim. This, he failed to do. Hard as he tried, this investigating justice may not simply overlook the improbability of the [complainant], seemingly a wealthy man of affairs and a former or incumbent member of the AFP, shelling out ₱100,000.00 upon demand by a judge, who was presumably unarmed. There were at least two witnesses to the transaction who could have readily rendered succor to halt the threat and/or intimidation.

xxx xxx xxx

On the other hand, one cannot close his eyes to [respondent's] dishonesty which tended not only to impair his credibility, obstruct or impede the investigation of his case, thereby also the administration of justice, but sets at naught the salutary principles embodied in our judicial canons. In one case, dishonesty justified the imposition of the penalty of dismissal to an erring utility worker.

xxx xxx xxx

IN VIEW OF THE ABOVE-CITED REASONS, and considering that [respondent] had been dismissed from the bench previously, it

is respectfully RECOMMENDED that the respondent, at the very least, be PERPETUALLY BARRED from reappointment to government service, and the instant petition be considered closed and terminated.[13]

Justice Bruselas did not find substantial evidence to prove that respondent indeed committed the acts he was accused of but found him administratively liable for dishonesty. Consequently, he recommended that respondent be perpetually barred from reappointment to government service.

The OCA, in its memorandum dated January 10, 2007, agreed with the findings and recommendation of Justice Bruselas:

> Respondent's dishonesty referred to by the Investigating Judge pertains to [respondent's] defenses that he has never been complainant's neighbor and that he does not own a cargo pick-up or a Daewoo Sedan car. Respondent's personal records on file with the Court proved otherwise. His personal data sheet shows that he lives within the same municipality where complainant lives, thus, they may not be totally unfamiliar with one another. His statement of Assets and Liabilities, on the other hand, shows that he owned a Daewoo car and an L-200 double cab acquired in 1996 and 1998 respectively.
>
> xxx xxx xxx

Considering the foregoing and conformably to Section 11 (a), Rule 140[14] of the Revised Rules of Court, as amended, we find it appropriate to adopt the investigating Justice's recommendation.

---

[13] Report, pp. 4-9.

[14] Sec. 11. Sanctions. - A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations; *Provided, however*, That the forfeiture of all benefits shall in no case include accrued leave credits;
2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.

WHEREFORE, it is respectfully recommended that [respondent] be perpetually disqualified from being reinstated or appointed to any branch or agency of the government, including government-owned or controlled corporation.[15]

While this case was pending, respondent was dismissed from the service in *Re: Report on the Judicial Audit Conducted in the RTC, Branch 60, Barili, Cebu* promulgated in 2004.[16] The Court found him guilty of gross misconduct, gross ignorance of the law and incompetence.[17] Aside from dismissal, his retirement benefits and privileges were also forfeited with prejudice to being reinstated in any branch of government service, including government-owned and controlled agencies or corporations.[18]

In 2005 after respondent was dismissed, we resolved *Cañada v. Suerte,*[19] a different case involving the same parties. It arose from a complaint dated November 8, 2003 wherein complainant charged respondent with arbitrary detention punished under Article 124 of the RPC for having issued an order citing him with direct contempt and ordering his arrest and detention for 14 days without bail. We found respondent guilty of gross ignorance of the law and rules of procedure and imposed on him the maximum fine of ₱40,000 considering that he had earlier been dismissed from the service.

It appears that the aforequoted case is intimately connected to the present case. In his comment, respondent stated that he issued an order for the arrest of complainant for direct contempt

---

[15] Memorandum dated January 10, 2007, pp. 6-7.

[16] A.M. Nos. 04-7-373-RTC and 04-7-374-RTC, 17 December 2004, 447 SCRA 246.

[17] For violating the express directive embodied in Administrative Order No. 36-2004; for showing special interest in several cases filed before him; for dismissing a criminal case twice on the same ground and on the ground of the supposed desistance of the private complainant even without any motion to dismiss on the part of the prosecution and for rendering a decision based on fabricated transcript of stenographic notes; *id*., pp. 267-274.

[18] *Id*., p. 275.

[19] A.M. No. RTJ-04-1875, 9 November 2005, 474 SCRA 379.

because the latter filed a petition for *certiorari* and used as grounds the "false" allegations contained in his complaint. He also mentioned that complainant was detained in jail. Thus it can be surmised that the 2005 decision tackled respondent's act of causing complainant's unlawful detention while this complaint pertained to his acts prior to the detention.

The findings and evaluation of the OCA are well-taken.

In administrative proceedings, the complainant has the burden of proving the allegations in his complaint with substantial evidence, *i.e.*, that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[20] If a judge should be disciplined for a grave offense, the evidence against him should be competent and derived from direct knowledge.[21]

Here, complainant failed to present concrete evidence to substantiate his charges against respondent. He did not appear before the investigating justice to prove his allegations.[22] While it is true that he attached to his complaint two affidavits to corroborate his story, the affiants—a prospective business partner and an AFP comrade—were not disinterested witnesses whose statements could be given credence. Mere allegations will leave an administrative complaint with no leg to stand on.[23] This is in line with the well-settled rule that an affidavit is hearsay unless the affiant is presented on the witness stand.[24] If, indeed, complainant was interested in pursuing the case against someone he perceived to be an erring judge, he should have appeared

[20] *Lanuza v. Cepe*, A.M. No. P-06-2174, 25 July 2006, citing *Dulay v. Lelina*, *Jr.*, A.M. No. RTJ-99-1516, July 14, 2005, 463 SCRA 269, 274.

[21] *Urgent Appeal/Petition for Immediate Suspension & Dismissal of Judge Emilio B. Legaspi, Regional Trial Court, Iloilo City, Branch 22,* A.M. No. 01-1-15-RTC, 10 July 2003, 405 SCRA 514.

[22] *Montes v. Mallare*, A.M. No. MTJ-04-1528, 6 February 2004, 422 SCRA 309, 315.

[23] *Id*.

[24] *Imbat v. Soliven*, G.R. No. 171756, 27 March 2007, 519 SCRA 121, 129.

before the investigating justice and presented his evidence and witnesses to substantiate his claim.[25] Accordingly, the charges of grave abuse of authority, grave misconduct, grave coercion, harassment, oppression and violation of Article 215 of the RPC must be dismissed.

However, we agree with the investigating justice and OCA that respondent should be held liable for dishonesty.

In his defense, respondent claimed that he never owned a dilapidated cargo pick-up truck and could not recall if he had a Daewoo car in 1998. But his Statements of Assets and Liabilities for the years 1998 to 2001 on file in the Court prove otherwise. They show that among his personal properties were a Daewoo car acquired in 1996 and an L-200 double cab acquired in 1998.

Dishonesty is defined as the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[26] This is a grave offense that carries the extreme penalty of dismissal from the service, even for the first offense,[27] with forfeiture of retirement benefits except accrued leave credits and perpetual disqualification from re-employment in government service.[28]

---

[25] *Montes v. Mallare*, *supra* note 22, pp. 315-316.

[26] *Re: (1) Lost Checks Issued to the Late Roderick Roy P. Melliza and (2) Dropping from the Rolls of Ms. Esther T. Andres*, A.M. No. 2005-26-SC, 22 November 2006, 507 SCRA 478, 496, citing *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Sec. I & Angelita C. Esmerio, Clerk III, Off. Clerk of Court*, A.M. No. 2001-7-SC & No. 2001-8-SC, 22 July 2005, 464 SCRA 1.

[27] Rule IV, Section 52-A (1) and (6) of the Civil Service Commission (CSC) Revised Uniform Rules on Administrative Cases promulgated by the CSC through Resolution No. 99-1936 dated August 31, 1999 and implemented by CSC Memorandum Circular No. 19, series of 1999; *Concerned Employee v. Generoso*, A.M. No. 2004-33-SC, 24 August 2005, 467 SCRA 614, 624.

[28] Sections 22 (a) and 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292 (Administrative Code of 1987), as amended by CSC Memorandum Circular No. 19, s. 1999.

In fixing the penalty, we take into consideration the fact that, including this case, we would have found respondent administratively liable for the second time already after his dismissal from the service. Therefore, as with the earlier *Cañada* case, we deem it proper to impose on him the maximum fine of ₱40,000.[29]

Time and time again, we have emphasized that a judge should conduct himself at all times in a manner which will reasonably merit the respect and confidence of the people, for he is the visible representation of the law.[30] Unfortunately, respondent showed his capacity to lie and evade the truth. His dishonesty not only tended to mislead the Court but also tarnished the image of the judiciary. It will warrant the maximum penalty of dismissal, if not for the fact that he has already been dismissed from the service in another administrative case.[31]

The case does not end here. Pursuant to A.M. No. 02-9-02-SC, this administrative case against respondent shall also be considered as a disciplinary proceeding against him as a member of the bar.[32] Under this resolution dated September 17, 2002 which took effect on October 1, 2002, an administrative case against a judge of a regular court based on grounds which are

[29] Citing *Leonides v. Supnet*, A.M. No. MTJ-02-1433, 21 February 2003, 398 SCRA 38, 51.

[30] *Chan v. Agcaoili*, A.M. No. RTJ-93-1089, 27 June 1994, 233 SCRA 331, 334, citing *Ubarra v. Mapalad*, A.M. No. MTJ-91-622, 22 March 1993, 220 SCRA 224, 237.

[31] *In Re: Report on the Judicial and Financial Audit Conducted in the Municipal Trial Court in Cities, Koronadal City*; A.M. No. 02-9-233-MTCC, 27 April 2005, 457 SCRA 356, 372.

[32] Entitled *"Re: Automatic Conversion of Some Administrative Cases Against Justices of the Court of Appeals and the Sandiganbayan; Judges of Regular and Special Courts; and Court Officials Who are Lawyers as Disciplinary Proceedings Against Them Both as Such Officials and as Members of the Philippine Bar."* It provides:

"Some administrative cases against Justices of the Court of Appeals and the Sandiganbayan; judges of regular and special courts; and the court officials who are lawyers are based on grounds which are likewise grounds for the disciplinary action of members of the Bar for violation of the Lawyer's Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics,

also grounds for the disciplinary action against members of the Bar, shall be considered as disciplinary proceedings against such judge as a member of the Bar.[33]

Violation of the fundamental tenets of judicial conduct embodied in the new Code of Judicial Conduct for the Philippine Judiciary, the Code of Judicial Conduct and the Canons of Judicial Ethics constitutes a breach of Canons 1[34] and 11[35] of the Code of Professional Responsibility (CPR).[36] Rule 1.01, Canon 1 of the CPR further enjoins a lawyer from engaging in unlawful, dishonest or deceitful conduct. Similarly, Rule 10.01 of Canon 10 states that a lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead or allow the court to be misled by any artifice.[37] These rules are broad enough to cover dishonesty of a lawyer both in his professional or private capacity.[38] In accordance with Section 27, Rule 138 of the Rules of Court, respondent may be suspended or disbarred.[39]

---

or for such other forms of breaches of conduct that have been traditionally recognized as grounds for the discipline of lawyers.

In any of the foregoing instances, the administrative case shall also be considered a disciplinary action against the respondent justice, judge or court official concerned as a member of the Bar. The respondent may forthwith be required to comment on the complaint and show cause why he should not also be suspended, disbarred or otherwise disciplinarily sanctioned as a member of the Bar. Judgment in both respects may be incorporated in one decision or resolution."

[33] *Maddela v. Dallong-Galicinao*, A.C. No. 6491, 31 January 2005, 450 SCRA 19, 25.

[34] CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND FOR LEGAL PROCESSES.

[35] CANON 11 — A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.

[36] *De la Cruz v. Carretas*, A.M. No. RTJ-07-2043, 5 September 2007.

[37] This can also be found in the attorney's oath.

[38] *Gacias v. Balauitan*, A.C. No. 7280, 16 November 2006, 507 SCRA 8, 12.

[39] Section 27, Rule 138 of the Rules of Court states:

**WHEREFORE,** respondent, former judge Ildefonso B. Suerte, is hereby found *GUILTY* of dishonesty. He is ordered to pay a *FINE* in the amount of Forty Thousand Pesos (₱40,000), which shall be deducted from his accrued leave credits. In the event that his leave credits are found insufficient to answer for the fine, the respondent shall pay the amount or the balance thereof, as the case may be, to the Court within ten (10) days from the date of finality of this resolution.

Respondent is likewise *DISBARRED* for violation of Canons 1 and 11 and Rules 1.01 and 10.01 of the Code of Professional Responsibility and his name *ORDERED STRICKEN* from the Roll of Attorneys.

Let a copy of this resolution be entered into respondent's record as a member of the bar and notice of the same be served on the Integrated Bar of the Philippines and on the Office of the Court Administrator for circulation to all courts in the country.

**SO ORDERED.**

*Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes,* and *Leonardo-de Castro, JJ.,* concur.

---

SEC. 27. Disbarment and suspension of attorneys by Supreme Court, grounds therefore. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any **deceit**, malpractice or other gross misconduct in such office, grossly immoral conduct or by reason of his conviction of a crime involving moral turpitude, or for any **violation of the oath** which he is required to take before the admission to practice, or for a willful disobedience appearing as attorney for a party without authority to do so. (Emphasis supplied)

**EN BANC**

[G.R. No. 160846. February 22, 2008]

**BENJAMIN B. GERONGA,** *petitioner, vs.* **HON. EDUARDO VARELA, as City Mayor of Cadiz City,** *respondent.*

**SYLLABUS**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; CIVIL SERVICE COMMISSION (CSC); SECTION 37 (A) OF P.D. NO. 807 IN RELATION TO E.O. NO. 292, CONSTRUED; A JUDGMENT OF EXONERATION IN AN ADMINISTRATIVE CASE IS NOW APPEALABLE TO THE CSC.—** The Court has earlier held that, in an administrative case, only a decision involving the imposition of a penalty of suspension of more than 30 days, fine exceeding 30-day salary, demotion, transfer, removal or dismissal is appealable to the CSC; hence, a decision exonerating an employee cannot be appealed. Moreover, given the nature of the appealable decision, only said employee would qualify as the "party adversely affected" who is allowed to appeal; other persons, such as the appointing or disciplining authorities, cannot appeal. The present view is different. In a long line of cases, beginning with *Civil Service Commission v. Dacoycoy*, this Court has maintained that a judgment of exoneration in an administrative case is appealable, and that the CSC, as the agency mandated by the Constitution to preserve and safeguard the integrity of our civil service system, and/or the appointing authority, such as a mayor who exercises the power to discipline or remove an erring employee, qualifies as parties adversely affected by the judgment who can file an appeal.

**2. ID.; ID.; ID.; ID.; MERE RECOMMENDATION TO DISMISS IS NOT THE PROPER SUBJECT MATTER OF AN APPEAL TO THE CSC.—** Under Section 35, Rule III of the URACCS, a recommendation to dismiss is that contained in a formal investigation report issued by a hearing or investigating officer and submitted to the disciplining authority for approval. Falling under this category are the December 1, 1997 Recommendation/ Resolution in Administrative Case No. 96-04 and the December 4, 1997 Recommendation/Resolution in Administrative Case

No. 96-05 issued by Del Pilar as investigating officer. While they contain the approval of respondent as disciplining authority, both Recommendations/Resolutions merely state findings of probable cause that petitioner is guilty of the administrative charges filed against him, and recommend that he be dismissed. As we held in *Rubio v. Munar*, such recommendations are not the proper subject matter of an appeal to the CSC.

**3. ID.; ID.; ID.; ID.; KIND OF DECISION OR RESOLUTION OF DISMISSAL WHICH MAY BE APPEALED TO THE CSC.—** In contrast, a decision/resolution of dismissal is that rendered by the disciplining authority after receipt of the recommendation of the investigating/ hearing officer, and on the basis of his independent assessment of the case. Memorandum Order No. 98-V-05 is one. It was issued by respondent after receipt of the recommendations of Del Pilar. While it incorporates by reference said recommendations, Memorandum Order No. 98-V-05 goes further by categorically declaring petitioner guilty of the administrative charges and imposing upon him the penalty of dismissal. It is therefore the decision rendered by respondent as disciplining authority which may be appealed or be subject of execution, if already final.

**4. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; THE RULE THAT A PARTY WHO FAILS TO CITE SPECIFIC GROUNDS OR RAISE PARTICULAR ARGUMENTS IS DEEMED TO HAVE WAIVED THE SAME, MUST YIELD TO THE IMPERATIVES OF EQUITY.—** Unfortunately for petitioner, the CA and CSC did not anymore look into the merits of the decision in Administrative Case No. 96-04 simply because he raised no issue or argument against it. Understandably, the CA and CSC could not be faulted for doing so; they were merely adhering to a basic rule that in any proceeding, a party who fails to cite specific grounds or raise particular arguments is deemed to have waived them. Such rule, however, is not sacrosanct. It yields to the imperatives of equity, which often arise in administrative cases where at stake is the security of tenure of labor, the protection of which no less than the Constitution guarantees. Deprivation of security of tenure may be justified only for the causes specified and in the manner prescribed by law. Should there be doubt in the legality of either cause or mode of dismissal, public interest

demands the resolution of the doubt wholly on its substance, rather than solely on technical minutiae.

**5. ID.; CONSTITUTIONAL LAW; DUE PROCESS; ADMINISTRATIVE PROCEEDINGS; TWIN REQUIREMENTS OF DUE PROCESS, REITERATED.—** Two fundamental requirements of due process in administrative cases are that a person must be duly informed of the charges against him; and that he cannot be convicted of an offense or crime with which he was not charged. A deviation from these requirements renders the proceeding invalid and the judgment issued therein a lawless thing that can be struck down anytime.

**6. ID.; ID.; ID.; ID.; THERE WAS A DENIAL OF DUE PROCESS WHEN A PARTY WAS DISMISSED FOR AN ACT WHICH WAS NOT ALLEGED IN THE ADMINISTRATIVE CHARGE FILED AGAINST HIM.—** In the present case, the records of Administrative Case No. 96-04 reveal that petitioner was dismissed for an act which was not alleged in the administrative charge filed against him. Administrative Case No. 96-04 sprung from a Sworn Complaint dated March 15, 1996 filed by Rodrigo Mateo (Mateo) against petitioner for unjust vexation, gross misconduct, insubordination, conduct unbecoming a public officer and alarm and scandal, allegedly committed through the following acts: a) his refusal to comply with several orders issued by respondent and Mateo for the filing of daily time records; and b) his having challenged Mateo to a fistfight. The Subpoena which Del Pilar issued to petitioner required the latter to answer the incidents cited by Mateo in his Sworn Complaint. Even the evidence which Del Pilar summarized in his December 1, 1997 Resolution/Recommendation pertains solely to said incidents. Surprisingly, the conclusion which Del Pilar arrived at in his December 1, 1997 Resolution/ Recommendation, and which became the basis of the dismissal of petitioner, has no bearing whatsoever on the offenses with which the latter was charged under the Sworn Complaint nor to the incidents/acts described therein. Nowhere in the records of Administrative Case No. 96-04 does it appear that petitioner was charged with grave misconduct, or that he was held to answer for his alleged defamatory statements in his April 1, 1996 letter. Thus, the December 1, 1997 Resolution/Recommendation of Del Pilar dismissing petitioner on that ground, and Memorandum Order No. 98-V-05 of respondent approving said resolution/

recommendation were issued in utter contempt of the right of petitioner to due process. Both are *void ab initio* and should be treated as inexistent — it is as if no December 1, 1997 Resolution/Recommendation was issued in Administrative Case No. 96-04, and therefore, Memorandum Order No. 98-V-05 could not have approved and adopted a void resolution/ recommendation. In effect, there was nothing for petitioner to appeal from in Administrative Case No. 96-04.

**APPEARANCES OF COUNSEL**

*Edmundo G. Manlapao* for petitioner.

*Law Firm of Mirano Mirano and Mirano* for respondent.

**D E C I S I O N**

**AUSTRIA-MARTINEZ, *J.*:**

The Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by Benjamin B. Geronga (petitioner) assails that portion of the October 15, 2002 Joint Decision[1] of the Court Appeals (CA) affirming his dismissal from the service under Resolution No. 992107[2] dated September 17, 1999 and Resolution No. 000715[3] dated March 21, 2000 of the Civil Service Commission (CSC); as well as the October 1, 2003 CA Resolution[4] denying his Motion for Reconsideration.

The facts are of record.

Petitioner works as Engineer IV at the General Services Department of the local government of Cadiz City. In 1996, he was involved in two administrative cases: 1) Administrative Case

---

[1] Penned by Associate Justice (now Presiding Justice) Conrado M. Vasquez, Jr., and concurred in by Associate Justices Remedios A. Salazar-Fernando and Regalado E. Maambong; *rollo*, p. 30.

[2] *Rollo*, p. 103.

[3] *Id*. at 116.

[4] *Id*. at 44.

No. 96-04[5] for Unjust Vexation, Contempt, Insubordination, Conduct Unbecoming a Public Officer, and Alarm and Scandal; and 2) Administrative Case No. 96-05[6] for Grave Misconduct and Engaging in Partisan Political Activity. Impleaded with petitioner in Administrative Case No. 96-05 were Edwin Nuyad (Nuyad) and Nick Ambos (Ambos), also employees of the local government of Cadiz City.

The two administrative cases were referred by Cadiz City Mayor Eduardo Varela (respondent) to City Legal Officer Marcelo R. del Pilar (Del Pilar) for investigation. After investigation, Del Pilar issued in Administrative Case No. 96-04 a Resolution/Recommendation dated December 1, 1997 for the dismissal of petitioner for grave misconduct.[7] In Administrative Case No. 96-05, Del Pilar issued a separate Resolution/Recommendation dated December 4, 1997, recommending the dismissal of petitioner, Nuyad and Ambos for grave misconduct and partisan politics.[8] Respondent approved both recommendations.[9]

Consequently, on January 8, 1998, respondent issued to petitioner Memorandum Order No. 98-V-05, addressed to petitioner, to wit:

> Attached is a copy of the Resolution/Recommendation of the City Legal Officer which this office has approved *in toto* and ***considered an integral part hereof***.
>
> ***We find the recommendation as contained therein to be just and proper under the premises***.
>
> In view hereof, you are hereby meted a penalty of dismissal from the service as recommended effective January 09, 1998.
>
> For strict compliance.[10] (Emphasis supplied.)

---

[5] *Id*.

[6] *Id*. at 53.

[7] *Id*. at 70.

[8] *Id*. at 60.

[9] *Id*. at 61 and 70.

[10] *Rollo*, p. 52.

Petitioner received copy of Memorandum Order No. 98-V-05 on January 9, 1998.[11] Without assistance of counsel, petitioner filed with the CSC a Notice of Appeal, stating:

> Appellant respectfully serves notice that he is appealing his DISMISSAL FROM SERVICE by the City Mayor of Cadiz City, Negros Occidental, Eduardo G. Varela, ***contained in the latter's Memorandum Order No. 98-V-05 dated January 08, 1998.***[12] (Emphasis supplied.)

Still without assistance of counsel, petitioner, together with Nuyad and Ambos, filed a Joint Memorandum in which he discussed Administrative Case No. 96-05 only, and completely omitted reference to Administrative Case No. 96-04.[13]

Acting on the appeal, the CSC issued Resolution No. 990717 dated March 25, 1999, thus:

> WHEREFORE, the appeal of Edwin Nuyad, Nick Ambos and [petitioner] is hereby granted. Accordingly, Mayor Eduardo G. Varela is directed to reinstate Nuyad, Ambos and [petitioner] to their former positions or, if no longer available, to comparable positions.[14]

Respondent filed a Motion for Reconsideration,[15] questioning the order to reinstate Nuyad, Ambos and petitioner. Respondent pointed out that petitioner cannot be reinstated anymore because the latter failed to appeal from his dismissal in Administrative Case No. 96-04, which consequently became final and executory.

The CSC partly granted the Motion for Reconsideration of respondent in Resolution No. 992107, to wit:

> WHEREFORE, the Motion for Reconsideration of Mayor Eduardo G. Varela is partly granted.

---

[11] *Id*.

[12] *Id*.

[13] *Id*. at 72.

[14] *Id*. at 83.

[15] *Rollo*, pp. 88-89.

His prayer for the reversal of CSC Resolution No. 990717 dated March 25, 1999 is hereby denied. ***However, his request for the non-reinstatement of [petitioner] in view of the finality of the decision in Administrative Case No. 96-04, finding [petitioner] guilty of Grave Misconduct for which he was meted out the penalty of dismissal from the service is granted***.

Accordingly, CSC Resolution No. 990717 dated March 25, 1999 is hereby modified insofar as the non-reinstatement of [petitioner] is concerned. In all other matters, the said resolution stands.[16] (Emphasis supplied.)

Both petitioner and respondent filed Motions for Reconsideration[17] but the CSC denied the same in Resolution No. 000715.[18] They filed with the CA separate Petitions for Review,[19] which were later consolidated.[20]

In the October 15, 2002 Joint Decision[21] assailed herein, the CA dismissed both petitions and affirmed CSC Resolutions No. 992107 and No. 000715.

Only petitioner filed a Motion for Reconsideration[22] which the CA denied in its October 1, 2003 Resolution.[23]

Petitioner is now before this Court, seeking resolution of the following issues:

1. Whether or not the dismissal of the petitioner under Memorandum Order No. 98-V-05 constitutes a denial of his constitutional right to due process;

---

[16] *Id*. at 106.

[17] *Id*. at 108.

[18] *Id*. at 116.

[19] *Id*. at 118.

[20] *Id*. at 30.

[21] *Supra* note 1.

[22] *Rollo*, p. 143.

[23] *Supra* note 4.

2. Whether or not the petitioner was denied due process under the Resolution/Recommendation of the City Legal Officer in Adm. Case No. 96-04 as adopted *in toto* by the City Mayor;

3. Whether or not the dismissal of the petitioner became final for failure to appeal;

4. Whether or not the Civil Service Commission acted properly and within the bounds of its own rules and regulations in entertaining the motion for reconsideration of Mayor Varela from its Resolution No. 990714 dated March 25, 1999; and

5. Whether or not the Court of Appeals erred in upholding the dismissal of the petitioner.[24]

We shall first resolve the fourth issue – whether the CSC may entertain respondent's motion for reconsideration of its decision exonerating petitioner.

Petitioner points out that after ordering his exoneration under Resolution No. 990717, the CSC could no longer entertain a motion for reconsideration filed by respondent who is not even a proper party. He argues that in acting upon the motion for reconsideration of respondent and worse, in modifying Resolution No. 990717, the CSC violated Section 38, Rule III, in relation to Section 2(l), Rule I of Memorandum Circular No. 19, series of 1999 or the Uniform Rules on Administrative Cases in the Civil Service (URACCS); and the CA erred in affirming it. [25]

Petitioner is mistaken.

Sections 37 (a) and 39 of Presidential Decree (P.D.) No. 807,[26] otherwise known as The Philippine Civil Service Law, provide:

Section 37. – (a) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days salary, demotion in rank or salary or transfer, removal or dismissal from office x x x.

---

[24] *Rollo*, pp. 19-20.

[25] Petition, *id*. at 24-25.

[26] Promulgated on October 6, 1975.

Section 39. – (a) Appeals, where allowable, shall be made by the ***party adversely affected*** by the decision within fifteen days from receipt of the decision unless a petition for reconsideration is seasonably filed, which petition shall be decided within fifteen days x x x. (Emphasis supplied.)

In addition, Section 47 of Executive Order (E.O.) No. 292 (The Administrative Code of 1987)[27] reiterates that the CSC may entertain appeals only from (a) a penalty of suspension of more than thirty days; or (b) a fine in an amount exceeding thirty days' salary; or (c) demotion in rank or salary or transfer; or (d) removal or dismissal from office.

Interpreting the foregoing provisions, the Court has earlier held that, in an administrative case, only a decision involving the imposition of a penalty of suspension of more than 30 days, fine exceeding 30-day salary, demotion, transfer, removal or dismissal is appealable to the CSC; hence, a decision exonerating an employee cannot be appealed.[28] Moreover, given the nature of the appealable decision, only said employee would qualify as the "party adversely affected" who is allowed to appeal; other persons, such as the appointing or disciplining authorities, cannot appeal.[29]

Consonant with the foregoing interpretation, the CSC adopted Section 2(l), Rule I and Section 38, Rule III of the URACCS[30] in implementation of the pertinent provisions of P.D. No. 807 and E.O. No. 292,[31] to wit:

---

[27] Effective November 24, 1989.

[28] *Paredes v. Civil Service Commission*, G.R. No. 88177, December 4, 1990, 192 SCRA 84; *Mendez v. Civil Service Commission*, G.R. No. 95575, December 23, 1991, 204 SCRA 965; *Magpale v. Civil Service Commission*, G.R. No. 97381, November 5, 1992, 215 SCRA 398.

[29] *Civil Service Commission v. Dacoycoy*, 366 Phil. 86 (1999).

[30] Effective September 27, 1999.

[31] In *Abella, Jr. v. Civil Service Commission* (G.R. No. 152574, November 17, 2004, 442 SCRA 507, 522), the Court held that the CSC derives its authority to promulgate rules from both P.D. No. 807 and E.O. No. 292.

Section 2. *Coverage and Definition of Terms*. x x x (l) PARTY ADVERSELY AFFECTED refers to the respondent against whom a decision in a disciplinary case has been rendered.

xxx xxx xxx

Section 38. *Filing of Motion for Reconsideration*. - The party adversely affected by the decision may file a motion for reconsideration with the disciplining authority who rendered the same within fifteen (15) days from receipt thereof.

The present view is different. In a long line of cases,[32] beginning with *Civil Service Commission v. Dacoycoy*,[33] this Court has maintained that a judgment of exoneration in an administrative case is appealable, and that the CSC,[34] as the agency mandated by the Constitution to preserve and safeguard the integrity of our civil service system, and/or the appointing authority, such as a mayor[35] who exercises the power to discipline or remove an erring employee, qualifies as parties adversely affected by the judgment who can file an appeal. The rationale for this is explained in the concurring opinion of Associate Justice now Chief Justice Reynato S. Puno in *Civil Service Commission v. Dacoycoy*:

In truth, the doctrine barring appeal is not categorically sanctioned by the Civil Service Law. For what the law declares as "final" are decisions of heads of agencies involving suspension for not more than thirty (30) days or fine in an amount not exceeding thirty (30) days salary x x x. It is thus *non sequitur* to contend that since some decisions exonerating public officials from minor offenses can not

---

[32] *National Appellate Board of the National Police Commission v. P/Insp. John A. Mamauag*, G.R. No. 149999, August 12, 2005, 466 SCRA 624; *Dagadag v. Tongnawa*, G.R. Nos. 161166-67, February 3, 2005, 450 SCRA 437; *Civil Service Commission v. Gentallan*, G.R. No. 152833, May 9, 2005, 458 SCRA 278; *supra* note 31; *Philippine National Bank v. Garcia, Jr.*, 437 Phil. 289 (2002).

[33] *Supra* note 29.

[34] *Philippine National Bank v. Garcia, Jr.*, *supra* note 32; *Abella, Jr. v. Civil Service Commission*, *supra* note 31.

[35] *Dagadag v. Tongnawa*, *supra* note 32.

be appealed, ergo, even a decision acquitting a government official from a major offense like nepotism cannot also be appealed.[36]

Thus, through Resolution No. 021600,[37] the CSC amended the URACCS, by allowing the disciplining authority to appeal from a decision exonerating an erring employee, thus:

> Section 2. *Coverage and Definition of Terms*. – x x x (l) PARTY ADVERSELY AFFECTED refers to the respondent against whom a decision in a disciplinary case has been rendered or to the disciplining authority in an appeal from a decision exonerating the said employee.

In fine, the exoneration of petitioner under CSC Resolution No. 990717 may be subject to a motion for reconsideration by respondent who, as the appointing and disciplining authority, is a real party in interest. The CSC acted within the rubric of *Civil Service Commission v. Dacoycoy* in allowing said motion for reconsideration.

The next question then is whether the CSC was correct in granting the motion for reconsideration of respondent, and the CA, in agreeing with it.

The CA and CSC declared as final and executory the decision of respondent in Administrative Case No. 96-04, finding petitioner guilty of grave misconduct and sentencing him with a penalty of dismissal from government service, on the sole ground that the latter failed to appeal from said decision. The CSC found:

> x x x It is worthy to note that a copy of the ***Decision dated December 1, 1997*** in Administrative Case No. 96-04 issued by [respondent[ was received by [petitioner] himself on January 9, 1998. This is very apparent on the face of the Decision. Hence, upon receipt of the same, [petitioner] had the option whether or not to bring the said decision on appeal to the Commission. Considering that he failed to appeal the said Decision within the prescribed period of fifteen (15) days from receipt hereof, the same became final and executory.[38] (Emphasis supplied.)

---

[36] *Civil Service Commission v. Dacoycoy*, *supra* note 29.

[37] Published on December 29, 2002, *Today*.

[38] *Rollo*, p. 117.

The CA added that the appeal which petitioner interposed from the decision in Administrative Case No. 96-05 cannot be treated also as an appeal from the decision in Administrative Case No. 96-04 because the "Joint Memorandum before the CSC mentions only Administrative Case No. 96-05, not Administrative Case No. 96-04."[39]

The Court does not completely agree.

The CSC is under the impression that in Administrative Case No. 96-04, respondent issued a "Decision dated December 1, 1997," and that it is said decision which petitioner should have appealed. The CA shared the notion. Both are wrong. What is dated December 1, 1997 is merely the Resolution/ Recommendation issued by Del Pilar in Administrative Case No. 96-04. The formal decision of respondent is Memorandum Order No. 98-V-05 dated January 8, 1998.

There is a material difference between a mere recommendation to dismiss an employee and an administrative decision/resolution sentencing him with dismissal.

Under Section 35,[40] Rule III of the URACCS, a recommendation to dismiss is that contained in a formal investigation report issued by a hearing or investigating officer and submitted to the disciplining authority for approval. Falling under this category are the December 1, 1997 Recommendation/Resolution in Administrative Case No. 96-04 and the December 4, 1997 Recommendation/Resolution in Administrative Case No. 96-05 issued by Del Pilar as investigating officer. While they contain the approval of respondent as disciplining authority, both Recommendations/Resolutions merely state findings of probable cause that petitioner is guilty of the administrative charges filed

---

[39] *Id*. at 40-41.

[40] Section 35. *Formal Investigation Report*. - Within fifteen (15) days after the conclusion of the formal investigation, a report containing a narration of the material facts established during the investigation, the findings and the evidence supporting said findings, as well as the recommendations, shall be submitted by the Hearing Officer with the disciplining authority. The complete records of the case shall be attached to the Report of Investigation.

against him, and recommend that he be dismissed. As we held in *Rubio v. Munar*,[41] such recommendations are not the proper subject matter of an appeal to the CSC.

In contrast, a decision/resolution of dismissal is that rendered by the disciplining authority after receipt of the recommendation of the investigating/ hearing officer,[42] and on the basis of his independent assessment of the case.[43] Memorandum Order No. 98-V-05 is one. It was issued by respondent after receipt of the recommendations of Del Pilar. While it incorporates by reference said recommendations, Memorandum Order No. 98-V-05 goes further by categorically declaring petitioner guilty of the administrative charges and imposing upon him the penalty of dismissal. It is therefore the decision rendered by respondent as disciplining authority which may be appealed or be subject of execution, if already final.[44]

Furthermore, it bears emphasis that Memorandum Order No. 98-V-05 is the decision of respondent not just in Administrative Case No. 96-05 but also in Administrative Case No. 96-04. While the language employed in Memorandum Order No. 98-V-05 refers to a singular "Resolution/Recommendation" of Del Pilar, what were actually attached to the Memorandum were the December 1, 1997 Resolution/Recommendation in Administrative Case No. 96-04 and the December 4, 1997

---

[41] G.R. No. 155952, October 4, 2007.

[42] Section 36. *When Case Is Decided*. - The disciplining authority shall render his decision on the case within thirty (30) days from receipt of the Report of Investigation.

Section 37. *Finality of Decisions*. - A decision rendered by heads of agencies whereby a penalty of suspension for not more than thirty (30) days or a fine in an amount not exceeding thirty (30) days' salary is imposed, shall be final and executory. However, if the penalty imposed is suspension exceeding thirty (30) days, or fine in an amount exceeding thirty (30) days salary the same shall be final and executory after the lapse of the reglementary period for filing a motion for reconsideration or an appeal and no such pleading has been filed. (Emphasis supplied.)

[43] *Department of Health v. Composano*, G.R. No. 157684, April 27, 2005, 457 SCRA 438.

[44] *Pefianco v. Moral*, 379 Phil. 468 (2000).

Resolution in Administrative Case No. 96-05. These attachments were served on petitioner and personally received by him on January 9, 1998 at 5 o'clock in the afternoon, at exactly the same date and time he received Memorandum Order No. 98-V-05.[45]

Thus, Memorandum Order No. 98-V-05 being the decision of respondent in both Administrative Case No. 96-04 and Administrative Case No. 96-05, it is crucial to emphasize that in the Notice of Appeal which petitioner filed, he distinctly stated that what he is appealing to the CSC is his dismissal as "contained in [respondent's] Memorandum Order No. 98-V-05 dated January 08, 1998."[46] By so doing, petitioner effectively included in his appeal not just Administrative Case No. 96-05 but also Administrative Case No. 96-04. Therefore, respondent erred in concluding that Administrative Case No. 96-04 had become final and executory for failure of petitioner to appeal the same to the CSC.

Unfortunately for petitioner, the CA and CSC did not anymore look into the merits of the decision in Administrative Case No. 96-04 simply because he raised no issue or argument against it.[47] Understandably, the CA and CSC could not be faulted for doing so; they were merely adhering to a basic rule that in any proceeding, a party who fails to cite specific grounds or raise particular arguments is deemed to have waived them.[48]

Such rule, however, is not sacrosanct. It yields to the imperatives of equity, which often arise in administrative cases where at stake is the security of tenure of labor, the protection of which no less than the Constitution guarantees.[49] Deprivation of security of tenure may be justified only for the causes specified

---

[45] *Rollo*, pp. 52 and 91; CSC Resolution No. 000715, *rollo*, p. 117.

[46] *Supra* note 13.

[47] CSC Resolution No. 00715, *supra*; CA Decision, *rollo*, p. 41.

[48] *De Rama v. Court of Appeals*, 405 Phil. 531 (2001).

[49] *Municipality of Butig, Lanao del Sur v. Court of Appeals*, G.R. No. 138348, December 9, 2005, 477 SCRA 115.

and in the manner prescribed by law. Should there be doubt in the legality of either cause or mode of dismissal, public interest demands the resolution of the doubt wholly on its substance, rather than solely on technical minutiae.[50]

In *Philippine Amusement and Gaming Corporation v. Angara,*[51] the respondents-employees ***failed to appeal*** from a decision in which the CSC ordered their reinstatement but omitted to award them backwages. The Court condoned their technical lapse and granted their belated claim so as to fulfill the guarantee of monetary compensation which the law itself extends to those arbitrarily dismissed.

Also, in *Constantino-David v. Pangandaman-Gania*,[52] the respondent-employee failed to question a CSC resolution which omitted to award her backwages. ***Despite said resolution having attained finality***, the Court allowed its modification so as to entitle the respondent-employee to backwages:

> To prevent respondent from claiming back wages would leave incomplete the redress of the illegal dismissal that had been done to her and amount to endorsing the wrongful refusal of her employer or whoever was accountable to reinstate her. A too-rigid application of the pertinent provisions of the *Revised Uniform Rules on Administrative Cases in the Civil Service* as well as the *Rules of Court* will not be given premium where it would obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances in the case under consideration.[53]

So too must the Court allow petitioner redress from the decision of respondent in Administrative Case No. 96-04. While petitioner, unaided by legal counsel, may have omitted to raise specific grounds against the decision insofar as Administrative Case

---

[50] *Umbra Tomawis v. Tabao-Caudang*, G.R. No. 166547, September 12, 2007; *Rosales, Jr. v. Mijares,* G.R. No. 154095, November 17, 2004, 442 SCRA 532.

[51] G.R. No. 142937, July 25, 2006, 496 SCRA 453.

[52] 456 Phil. 273 (2003).

[53] *Constantino-David v. Pangandaman-Gania*, *supra* note 52, at 88-89.

No. 96-04 is concerned, it cannot be denied that he intended to appeal from it. The least he deserves then is a scrutiny of the legal and factual bases of his dismissal.

As it turns out, upon review, said decision, insofar as it relates to Administrative Case No. 96-04, is patently void.

Two fundamental requirements[54] of due process in administrative cases are that a person must be duly informed of the charges against him; and that he cannot be convicted of an offense or crime with which he was not charged.[55] A deviation from these requirements renders the proceeding invalid and the judgment issued therein a lawless thing that can be struck down anytime.[56]

In the present case, the records of Administrative Case No. 96-04 reveal that petitioner was dismissed for an act which was not alleged in the administrative charge filed against him.

Administrative Case No. 96-04 sprung from a Sworn Complaint[57] dated March 15, 1996 filed by Rodrigo Mateo (Mateo)

---

[54] The requirements include: 1.The right to a hearing, which includes the right to present one's case and submit evidence in support thereof; 2. The tribunal must consider the evidence presented; 3. The decision must have something to support itself; 4. The evidence must be substantial; 5. The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; 6. The tribunal or body or any of its judges must act on its or his own independent consideration of the law and facts of the controversy and not simply accept the view of a subordinate in arriving at a decision; and 7. The board or body should in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved and the reason for the decision rendered. (*Ang Tibay v. CIR*, 69 Phil. 635, 642-644 [1940]).

[55] *Civil Service Commission v. Lucas*; 361 Phil. 486 (1999). See also *Civil Service Commission v. Ledesma*, G.R. No. 154521, September 30, 2005, 471 SCRA 589.

[56] *Civil Service Commission v. Lucas*, *supra*. See also *Bernardo v. Court of Appeals*, G.R. No. 124261, May 27, 2004, 429 SCRA 285 and *Rubio, Jr. v. Paras*, G.R. No. 156047, April 12, 2005, 455 SCRA 697.

[57] *Rollo*, p. 101.

against petitioner for unjust vexation, gross misconduct, insubordination, conduct unbecoming a public officer and alarm and scandal,[58] allegedly committed through the following acts: a) his refusal to comply with several orders issued by respondent and Mateo for the filing of daily time records;[59] and b) his having challenged Mateo to a fistfight.[60] The Subpoena[61] which Del Pilar issued to petitioner required the latter to answer the incidents cited by Mateo in his Sworn Complaint. Even the evidence which Del Pilar summarized in his December 1, 1997 Resolution/Recommendation pertains solely to said incidents.[62]

Surprisingly, the conclusion which Del Pilar arrived at in his December 1, 1997 Resolution/Recommendation, and which became the basis of the dismissal of petitioner, has no bearing whatsoever on the offenses with which the latter was charged under the Sworn Complaint nor to the incidents/acts described therein. Rather, the conclusion pertains solely to the alleged defamatory statements which petitioner made in his April 1, 1996 Letter-Answer to the Sworn Complaint, thus:

> That respondent having failed and refused to file his answer in the above-entitled case, this office has to resolve the case on the basis of the evidence on records [sic].
>
> There is no doubt that the findings of the City Prosecutor's Office, Cadiz City, of probable cause for libel on the basis of the communication of April 1, 1996 by [petitioner] cannot be disturbed x x x. It appears that the defamation against complainant Mateo contained in said letter dated April 1, 1996 by [petitioner] is not considered privilege communication as found by the Cadiz City Prosecutor's Office. ***Such an act of [petitioner] in defaming complainant Mateo in a letter dated April 1, 1996 sent to this office furnishing copies of said letter to the City Mayor Eduardo G. Varela, Atty. Abelardo Gayatin, Jr., and Atty. Jessie Caberoy***

[58] Paragraph 15, Sworn Complaint, *id*. at 102.

[59] Paragraphs 4 through 11, Sworn Complaint, *id*. at 101-102.

[60] Paragraphs 12 and 13, Sworn Complaint, *id*. at 102.

[61] Records, p. 35.

[62] *Id*. at 64-66.

***of the Civil Service Commission instead of filing an answer to complaint filed against him no doubt constitute[s] Grave Misconduct which would warrant dismissal from the government service***.[63] (Emphasis supplied.)

Nowhere in the records of Administrative Case No. 96-04 does it appear that petitioner was charged with grave misconduct, or that he was held to answer for his alleged defamatory statements in his April 1, 1996 letter. Thus, the December 1, 1997 Resolution/ Recommendation of Del Pilar dismissing petitioner on that ground, and Memorandum Order No. 98-V-05 of respondent approving said resolution/ recommendation were issued in utter contempt of the right of petitioner to due process. Both are *void ab initio* and should be treated as inexistent[64] — it is as if no December 1, 1997 Resolution/Recommendation was issued in Administrative Case No. 96-04, and therefore, Memorandum Order No. 98-V-05 could not have approved and adopted a void resolution/recommendation. In effect, there was nothing for petitioner to appeal from in Administrative Case No. 96-04.

Therefore, Memorandum Order No. 98-V-05 and the December 1, 1997 Resolution/Recommendation constituted an unlawful deprivation of petitioner's security of tenure, insofar as Administrative Case No. 96-04 is concerned. The CA and CSC gravely erred in upholding them.

That said, however, the nullity of Memorandum Order No. 98-V-05 and the December 1, 1997 Resolution/ Recommendation leaves Administrative Case No. 96-04 unresolved. Although the Court may already decide said case based on the records before us, the better policy is for us to defer to the prerogative granted under Section 17,[65] Rule 3 of

---

[63] *Rollo*, pp. 69-70.

[64] *Samartino v. Raon*, 433 Phil. 173 (2002).

[65] Section 17. *Death or separation of a party who is a public officer.*– When a public officer is a party in an action in his official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the action may be continued and maintained by or against his successor if, within thirty (30) days after the successor takes office or such time as may be granted by the court, it is satisfactorily shown to the court by any party that there is a substantial

the Rules of Court, to the primary disciplining authority, the incumbent mayor of Cadiz City,[66] whether or not to pursue said administrative case.

**WHEREFORE,** the petition is *GRANTED*. The Court of Appeals Joint Decision dated October 15, 2002 and Resolution dated October 1, 2003 are *REVERSED* and *SET ASIDE* only insofar as Benjamin B. Geronga is concerned; Civil Service Commission Resolution No. 992107 dated September 17, 1999 and Resolution No. 000715 dated March 21, 2000 are *ANNULLED*. The December 1, 1997 Resolution/Recommendation of Cadiz City Legal Officer Marcelo R. del Pilar and Memorandum Order No. 98-V-05 of Cadiz City Mayor Eduardo Varela in Administrative Case No. 96-04 are also *ANNULLED*. Administrative Case No. 96-04 is *REMANDED* to the incumbent city mayor of Cadiz City for proper disposition.

No costs.

**SO ORDERED.**

*Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes,* and *Leonardo-de Castro, JJ.,* concur.

---

need for continuing or maintaining it and that the successor adopts or continues or threatens to adopt or continue the action of his predecessor. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to be heard.

[66] *Dagadag v. Tongnawa*, *supra* note 32, citing *Miranda v. Carreon*, 449 Phil. 285 (2003) and *Heirs of Nemencio Galvez v. Court of Appeals*, 325 Phil. 1028 (1996).

**THIRD DIVISION**

[G.R. No. 164815. February 22, 2008]

**SR. INSP. JERRY C. VALEROSO,** *petitioner, vs.* **THE PEOPLE OF THE PHILIPPINES,** *respondent.*

**SYLLABUS**

**1. CRIMINAL LAW; P.D. 1866 (ILLEGAL POSSESSION OF FIREARM AND AMMUNITION); ELEMENTS.—** In illegal possession of firearm and ammunition, the prosecution has the burden of proving the twin elements of (1) the existence of the subject firearm and ammunition, and (2) the fact that the accused who possessed or owned the same does not have the corresponding license for it.

**2. ID.; ID.; ID.; PRESENT IN CASE AT BAR.—** The existence of the subject firearm and its ammunition was established through the testimony of SPO2 Disuanco. Defense witness Yuson also identified the firearm. Its existence was likewise admitted by no less than petitioner himself. As for petitioner's lack of authority to possess the firearm, Deriquito testified that a verification of the Charter Arms Caliber .38 bearing Serial No. 52315 with the Firearms and Explosives Division at Camp Crame revealed that the seized pistol was not issued to petitioner. It was registered in the name of a certain Raul Palencia Salvatierra of Sampaloc, Manila. As proof, Deriquito presented a certification signed by Roque, the chief records officer of the same office. The Court on several occasions ruled that either the testimony of a representative of, or a certification from, the Philippine National Police (PNP) Firearms and Explosive Office attesting that a person is not a licensee of any firearm would suffice to prove beyond reasonable doubt the second element of possession of illegal firearms. The prosecution more than complied when it presented both.

**3. REMEDIAL LAW; EVIDENCE; HEARSAY RULE; A CERTIFICATION FROM THE FIREARMS AND EXPLOSIVES DIVISION OF THE PNP IS OUTSIDE THE SCOPE OF THE HEARSAY RULE.—** The general rule is that a witness can testify only to those facts which he knows

of his personal knowledge; that is, which are derived from his own perception. Otherwise, the testimony is objectionable for being hearsay. x x x The certification from the Firearms and Explosives Division is an exception to the hearsay rule by virtue of Rule 130, Section 44 of the Rules of Court which provides: Sec. 44. *Entries in official records*. – Entries in official records made in the performance of his official duty by a public officer of the Philippines, or by a person in the performance of a duty specifically enjoined by law, are *prima facie* evidence of the facts therein stated. It may be true that the contents of said certification are only *prima facie* evidence of the facts stated there. However, the failure of petitioner to present controverting evidence makes the presumption unrebutted. Thus, the presumption stands.

**4. ID.; ID.; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT THEREON.—** Petitioner's version of the manner and place of his arrest goes into the factual findings made by the trial court and its calibration of the credibility of witnesses. However, as aptly put by Justice Ynares-Santiago in *People v. Rivera*: x x x the manner of assigning values to declarations of witnesses on the witness stand is best and most competently performed by the trial judge who had the unmatched opportunity to observe the witnesses and assess their credibility by the various indicia available but not reflected on record. The demeanor of the person on the stand can draw the line between fact and fancy or evince if the witness is telling the truth or lying through his teeth. We have consistently ruled that when the question arises as to which of the conflicting versions of the prosecution and the defense is worthy of belief, the assessment of the trial courts are generally viewed as correct and entitled to great weight. Furthermore, in an appeal, where the culpability or innocence of the accused depends on the issue of credibility of witnesses and the veracity of their testimonies, findings of the trial court are given the highest degree of respect if not finality. The trial court found the prosecution version worthy of credence and belief. We find no compelling reason not to accept its observation on this score.

**5. ID.; ID.; OFFER OF EVIDENCE; FAILURE TO OFFER AN UNLICENSED FIREARM AS EVIDENCE IS NOT FATAL**

**PROVIDED THERE IS COMPETENT TESTIMONY AS TO ITS EXISTENCE.—** Contrary to petitioner's claim, the subject firearm and its five (5) live ammunition were offered in evidence by the prosecution. Even assuming *arguendo* that they were not offered, petitioner's stance must still fail. The existence of an unlicensed firearm may be established by testimony, even without its presentation at trial. In *People v. Orehuela*, the non-presentation of the pistol did not prevent the conviction of the accused. The doctrine was affirmed in the recent case of *People v. Malinao*. As previously stated, the existence of the subject firearm and its five (5) live ammunition were established through the testimony of SPO2 Disuanco. Yuson also identified said firearm. Petitioner even admitted its existence. We hasten to add that there may also be conviction where an unlicensed firearm is presented during trial but through inadvertence, negligence, or fortuitous event (for example, if it is lost), it is not offered in evidence, as long as there is competent testimony as to its existence.

**6. CRIMINAL LAW; P.D. 1866 (ILLEGAL POSSESSION OF FIREARMS AND AMMUNITION), AS AMENDED BY R.A. 8294; APPLIED RETROACTIVELY SINCE IT IS ADVANTAGEOUS TO THE ACCUSED.—** Although an additional fine of ₱15,000.00 is imposed by R.A. No. 8294, the same is still advantageous to the accused, considering that the imprisonment is lowered to *prision correccional* in its maximum period from *reclusion temporal* in its maximum period to *reclusion perpetua* under P.D. No. 1866. P.D. No. 1866, as amended, was the governing law at the time petitioner committed the offense on July 10, 1996. However, R.A. No. 8294 amended P.D. No. 1866 on July 6, 1997, during the pendency of the case with the trial court. The present law now states: SECTION 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition.* – The penalty of *prision correccional* in its maximum period and a fine of not less than Fifteen Thousand Pesos (P15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low-powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended

to be used in the manufacture of any firearm or ammunition: *Provided*, That no other crime was committed. As a general rule, penal laws should not have retroactive application, lest they acquire the character of an *ex post facto* law. An exception to this rule, however, is when the law is advantageous to the accused. According to Mr. Chief Justice Araullo, this is "not as a right" of the offender, "but founded on the very principles on which the right of the State to punish and the commination of the penalty are based, and regards it not as an exception based on political considerations, but as a rule founded on principles of strict justice."

**7. ID.; ID.; PENALTY FOR VIOLATION OF P.D. 1866, AS AMENDED.—** Applying the Indeterminate Sentence Law, *prision correccional* maximum which ranges from four (4) years, two (2) months and one (1) day to six (6) years, is the prescribed penalty and will form the maximum term of the indeterminate sentence. The minimum term shall be one degree lower, which is *prision correccional* in its medium period (two [2] years, four [4] months and one [1] day to four [4] years and two [2] months). Hence, the penalty imposed by the CA is correct. The penalty of four (4) years and two (2) months of *prision correccional* medium, as minimum term, to six (6) years of *prision correccional* maximum, as maximum term, is in consonance with the Court's ruling in *Gonzales v. Court of Appeals* and *Barredo v. Vinarao*.

**APPEARANCES OF COUNSEL**

*Pablito A. Carpio* for petitioner.
*The Solicitor General* for respondent.

**D E C I S I O N**

**REYES, R.T., *J.*:**

THE law looks forward, never backward. *Lex prospicit, non respicit*. A new law has a prospective, not retroactive, effect.[1] However, penal laws that favor a guilty person, who is not a

[1] New Civil Code, Art. 4.

habitual criminal, shall be given retroactive effect.[1-a] These are the rule, the exception and exception to the exception on effectivity of laws.

***Ang batas ay tumitingin sa hinaharap, hindi sa nakaraan. Gayunpaman, ang parusa ng bagong batas ay iiral kung ito ay pabor sa taong nagkasala na hindi pusakal na kriminal.***

We apply the exception rather than the rule in this petition for review on *certiorari* of the decision of the Court of Appeals (CA), affirming with modification that of the Regional Trial Court (RTC) in Quezon City, finding petitioner liable for illegal possession of a firearm.

**The Facts**

On July 10, 1996, at around 9:30 a.m., SPO2 Antonio M. Disuanco of the Criminal Investigation Division, Central Police District Command, received a dispatch order[2] from the desk officer.[3] The order directed him and three (3) other policemen to serve a warrant of arrest[4] issued by Judge Ignacio Salvador against petitioner Sr. Insp. Jerry C. Valeroso in a case for kidnapping with ransom.[5]

After a briefing, the team conducted the necessary surveillance on petitioner, checking his hideouts in Cavite, Caloocan, and Bulacan.[6] Eventually, the team proceeded to the Integrated National Police (INP) Central Station at Culiat, Quezon City, where they saw petitioner as he was about to board a tricycle.[7]

---

[1-a] Revised Penal Code, Art. 22 provides: *Retroactive effect of penal laws*. —Penal laws shall have a retroactive effect in so far as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

[2] Exhibit "D".

[3] TSN, November 6, 1996, pp. 4-5, 9.

[4] Exhibit "B".

[5] TSN, November 6, 1996, pp. 4, 7, 9.

[6] *Id*. at 11.

[7] *Id*. at 3. INP is now Philippine National Police (PNP).

SPO2 Disuanco and his team approached petitioner.[8] They put him under arrest, informed him of his constitutional rights, and bodily searched him.[9] Found tucked in his waist[10] was a Charter Arms, bearing Serial Number 52315 [11] with five (5) live ammunition.[12]

Petitioner was then brought to the police station for questioning.[13]

A verification of the subject firearm at the Firearms and Explosives Division at Camp Crame revealed that it was not issued to petitioner but to a certain Raul Palencia Salvatierra of Sampaloc, Manila.[14] Epifanio Deriquito, the records verifier, presented a certification[15] to that effect signed by Edwin C. Roque, chief records officer of the Firearms and Explosive Division.[16]

---

[8] *Id*. at 4.

[9] *Id*. at 5-6.

[10] TSN, November 6, 1996, pp. 14-15; TSN, December 11, 1996, p. 10.

[11] Exhibit "E".

[12] Exhibits "E-1" to "E-5".

[13] TSN, November 6, 1996, p. 6.

[14] TSN, December 11, 1996, p. 21.

[15] Exhibit "C".

PNPFED 12 Jul[y] 1996

C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

This is to certify that [the] Revolver, Charter Arms, Cal. 38 with serial number 52315 is registered to RAUL PALENCIA SALVATIERA of Sampaloc, Manila, acquired thru transfer f[ro]m Wilburn Irwin Lucasan *per* index card d[a]t[e]d 10 December 1990.

This certification is issued for whatever legal purpose it may serve.

FOR THE CHIEF, FED:

EDWIN C[.] ROQUE (Sgd.)
P/Sr. Inspector
Chief, Records Br[.]

[16] TSN, December 11, 1996, pp. 19-20.

Petitioner was then charged with illegal possession of firearm and ammunition under Presidential Decree (P.D.) No. 1866,[17] as amended. The Information read:

> That on or about the 10th day of July, 1996, in Quezon City, Philippines, the said accused without any authority of law, did then and there willfully, unlawfully and knowingly have in his/her possession and under his/her custody and control
>
> One (1) cal. 38 "Charter Arms" revolver bearing Serial No. 52315 with five (5) live ammo.
>
> without first having secured the necessary license/permit issued by the proper authorities.
>
> CONTRARY TO LAW.
>
> Quezon City, Philippines, July 15, 1996.
>
> (Sgd.)
> GLORIA VICTORIA C. YAP
> Assistant City Prosecutor[18]

With the assistance of his counsel *de parte*, Atty. Oscar Pagulayan, petitioner pleaded not guilty when arraigned on October 9, 1996.[19] Trial on the merits ensued.

SPO2 Disuanco and Deriquito testified for the prosecution in the manner stated above.

Upon the other hand, the defense version was supplied by the combined testimonies of petitioner Sr. Insp. Jerry C. Valeroso, SPO3 Agustin R. Timbol, Jr. and Adrian Yuson.

---

[17] Entitled "An Act Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and for Relevant Purposes." This law was issued by President Ferdinand E. Marcos on June 29, 1983. See *Zuño, Sr. v. Dizon,* A.M. No. RTJ-91-752, June 23, 1993, 223 SCRA 584, 598.

[18] *Rollo,* p. 35.

[19] *Id*. at 38.

Petitioner recounted that on July 10, 1996, he was fast asleep in the boarding house of his children located at Sagana Homes, *Barangay* New Era, Quezon City.[20] He was roused from his slumber when four (4) heavily armed men in civilian clothes bolted the room.[21] They trained their guns at him[22] and pulled him out of the room. They then tied his hands and placed him near the faucet.[23] The raiding team went back inside and searched and ransacked the room.[24] SPO2 Disuanco stood guard outside with him.[25] Moments later, an operative came out of the room and exclaimed, "*Hoy, may nakuha akong baril sa loob!*"[26]

Petitioner was told by SPO2 Disuanco that "we are authorized to shoot you because there's a shoot to kill order against you, so if you are planning do so something, do it right now."[27] He was also told that there was a standing warrant for his arrest.[28] However, he was not shown any proof when he asked for it.[29] Neither was the raiding group armed with a valid search warrant.[30]

According to petitioner, the search done in the boarding house was illegal. The gun seized from him was duly licensed and covered by necessary permits. He was, however, unable to present the documentation relative to the firearm because it was confiscated by the police. Petitioner further lamented that when he was incarcerated, he was not allowed to engage the services of a counsel. Neither was he allowed to see or talk to his family.[31]

---

[20] TSN, February 19, 1997, pp. 19-21.

[21] *Id*. at 21.

[22] *Id*.

[23] *Id*. at 22.

[24] *Id*. at 3, 6.

[25] TSN, March 17, 1997, p. 5.

[26] *Id*. at 4.

[27] *Id*. at 10.

[28] *Id*. at 11.

[29] *Id*. at 12.

[30] *Id*. at 14.

[31] *Id*. at 21-22.

Petitioner contended that the police had an axe to grind against him. While still with the Narcotics Command, he turned down a request of Col. Romulo Sales to white-wash a drug-related investigation involving friends of the said police officer. Col. Sales was likewise subject of a complaint filed with the Ombudsman by his wife. Col. Sales was later on appointed as the head of the unit that conducted the search in his boarding house.[32]

SPO3 Timbol, Jr. of the Narcotics Command testified that he issued to petitioner a Memorandum Receipt dated July 1, 1993[33] covering the subject firearm and its ammunition. This was upon the verbal instruction of Col. Angelito Moreno. SPO3 Timbol identified his signature[34] on the said receipt.[35]

Adrian Yuson, an occupant of the room adjacent to where petitioner was arrested, testified that on July 10, 1996, two (2) policemen suddenly entered his room as he was preparing for school.[36] They grabbed his shoulder and led him out.[37] During all those times, a gun was poked at him.[38] He was asked where petitioner was staying. Fearing for his life, he pointed to petitioner's room.[39]

Four (4) policemen then entered the room.[40] He witnessed how they pointed a gun at petitioner, who was clad only in his underwear.[41] He also witnessed how they forcibly brought petitioner out of his room.[42] While a policeman remained near the faucet to guard petitioner, three (3) others went back inside the room.[43]

---

[32] TSN, March 17, 1997, pp. 22-26.

[33] Exhibit "1".

[34] Exhibit "1-A".

[35] TSN, June 4, 1996, pp. 2-6.

[36] TSN, August 4, 1997, p. 7.

[37] *Id*. at 8.

[38] *Id*.

[39] *Id*. at 8-9.

[40] *Id*. at 9.

[41] *Id*. at 10.

[42] *Id*.

[43] *Id*. at 11.

They began searching the whole place. They forcibly opened his locker,[44] which yielded the subject firearm.[45]

**RTC and CA Dispositions**

On May 6, 1998, the trial court found petitioner guilty as charged, disposing as follows:

> WHEREFORE, the Court hereby finds the accused guilty beyond reasonable doubt of Violation of Section 1 of Presidential Decree No. 1866 as amended by Republic Act No. 8294 and hereby sentences him to suffer the penalty of *prision correccional* in its maximum period or from 4 years, 2 months and 1 day as minimum to 6 years as maximum and to pay the fine in the amount of Fifteen Thousand Pesos (₱15,000.00).
>
> The gun subject of this case is hereby ordered confiscated in favor of the government. Let the same be put in trust in the hands of the Chief of the PNP.
>
> SO ORDERED.[46]

Petitioner moved to reconsider[47] but his motion was denied on August 27, 1998.[48] He appealed to the CA.

On May 4, 2004, the appellate court affirmed with modification the RTC disposition. The *fallo* of the CA decision reads:

> Verily, the penalty imposed by the trial court upon the accused-appellant is modified to **4 years and 2 months as minimum up to 6 years as maximum**.
>
> WHEREFORE, with the foregoing **MODIFICATION** as to the penalty, the decision appealed from is hereby **AFFIRMED** in all other respects.
>
> SO ORDERED.[49]

---

[44] *Id*. at 12.

[45] *Id*.

[46] *Rollo,* p. 44.

[47] Exhibit "E".

[48] Exhibit "F".

[49] *Rollo,* p. 31.

His motion for reconsideration[50] having been denied through a Resolution dated August 3, 2004,[51] petitioner resorted to the present petition under Rule 45.

**Issues**

Petitioner raises the following issues for Our consideration:

I. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW IN AFFIRMING THE CONVICTION OF PETITIONER DESPITE THE ABSENCE OF PROOF BEYOND REASONABLE DOUBT.

II. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF FACT AND LAW IN SUSTAINING THE LEGALITY OF THE SEARCH AND THE VALIDITY AND ADMISSIBILITY OF THE EVIDENCE OBTAINED THEREFROM DESPITE THE OVERWHELMING PROOF THAT THE SAME IS THE FRUIT OF THE POISONOUS TREE.

III. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW IN NOT UPHOLDING THE REGULARITY AND VALIDITY SURROUNDING THE ISSUANCE OF THE MEMORANDUM RECEIPTS (*SIC*) IN FAVOR OF PETITIONER WHICH PROVES HIS INNOCENCE OF THE CRIME CHARGE (*SIC*).[52] (Underscoring supplied)

**Our Ruling**

In illegal possession of firearm and ammunition, the prosecution has the burden of proving the twin elements of (1) the existence of the subject firearm and ammunition, and (2) the fact that the accused who possessed or owned the same does not have the corresponding license for it.[53]

---

[50] Exhibit "I".

[51] Exhibit "B".

[52] *Rollo*, p. 125.

[53] *Padilla v. Court of Appeals,* G.R. No. 121917, March 12, 1997, 269 SCRA 402; *Mallari v. Court of Appeals,* G.R. No. 110569, December 19, 1996, 265 SCRA 456; *People v. Damaso,* G.R. No. 93516, August 12, 1992, 212 SCRA 547.

The prosecution was able to discharge its burden.

The existence of the subject firearm and its ammunition was established through the testimony of SPO2 Disuanco.[54] Defense witness Yuson also identified the firearm.[55] Its existence was likewise admitted by no less than petitioner himself.[56]

As for petitioner's lack of authority to possess the firearm, Deriquito testified that a verification of the Charter Arms Caliber .38 bearing Serial No. 52315 with the Firearms and Explosives Division at Camp Crame revealed that the seized pistol was not issued to petitioner. It was registered in the name of a certain Raul Palencia Salvatierra of Sampaloc, Manila.[57]As proof, Deriquito presented a certification signed by Roque, the chief records officer of the same office.[58]

The Court on several occasions ruled that either the testimony of a representative of, or a certification from, the Philippine National Police (PNP) Firearms and Explosive Office attesting that a person is not a licensee of any firearm would suffice to prove beyond reasonable doubt the second element of possession of illegal firearms.[59] The prosecution more than complied when it presented both.

***The certification is outside the scope of the hearsay rule.***

---

[54] TSN, November 6, 1996, pp. 4, 7, 9.

[55] TSN, August 4, 1997, p. 12.

[56] TSN, March 17, 1997, pp. 14-15, 19.

[57] TSN, December 11, 1996, p. 21.

[58] *Id*. at 19-20.

[59] *People v. Taan,* G.R. No. 169432, October 30, 2006, 506 SCRA 219; *Ungsod v. People,* G.R. No. 158904, December 16, 2005, 478 SCRA 282; *People v. Lazaro,* G.R. No. 112090, October 26, 1999, 317 SCRA 435, citing *Padilla v. Court of Appeals,* G.R. No. 121917, March 12, 1997, 269 SCRA 402; *Rosales v. Court of Appeals,* G.R. Nos. 106229-30, March 15, 1996, 255 SCRA 123; *People v. Orehuela,* G.R. Nos. 108780-81, April 29, 1994, 232 SCRA 82. See also *Mallari v. Court of Appeals, supra* note 53; *People v. Solayao,* G.R. No. 119220, September 20, 1996, 262 SCRA 255.

The general rule is that a witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception.[60] Otherwise, the testimony is objectionable for being hearsay.[61]

On this score, the certification from the Firearms and Explosives Division is an exception to the hearsay rule by virtue of Rule 130, Section 44 of the Rules of Court which provides:

---

[60] Rules of Court, Rule 130, Sec. 36.

[61] The United States Federal Rule of Evidence defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Cleary, E.W., *McCormick on Evidence* (1984), 3rd ed., p. 729, citing Federal Rule of Evidence 801(c). Accordingly, hearsay evidence is objected to due to the following reasons:

*Oath.* Among the earliest of the criticisms of hearsay, and one often repeated in judicial opinions down to the present, is the objection that the out-of-court declarant who made the hearsay statement commonly speaks or writes without the solemnity of the oath administered to witnesses in a court of law. The oath may be important in two aspects. As a ceremonial and religious symbol it may induce in the witness a feeling of special obligation to speak the truth, and also it may impress upon the witness the danger of criminal punishment for perjury, to which the judicial oath or an equivalent solemn affirmation would be a prerequisite condition. x x x

*Personal presence at trial.* Another objection early asserted and repeated of late is the want of opportunity, in respect to the out-of-court declarant, for observation of his demeanor, with the light that this may shed on his credibility, that would be afforded if he were a witness on the stand.

The solemnity of the occasion and possibility of public disgrace can scarcely fail to impress the witness, and falsehood no doubt becomes more difficult if the person against whom directed is present.

Moreover, personal presence eliminates the danger that in the oral reporting of an out-of-court statement that the witness reporting the statement may do so inaccurately. It seems probable that the reporting of words spoken is subject to special dangers of inaccuracy beyond the fallibility common to all reproduction from memory of matters of observation, and this seems a substantial danger in the admission of hearsay. x x x

*Cross-examination.* It would be generally agreed today that noncompliance with the third condition is the main justification for the exclusion of hearsay. This is the lack of any opportunity for the adversary to cross examine the absent declarant whose out-of-court statement is reported by the witness. x x x In perhaps his most famous remark, Wigmore described cross-examination as "beyond any doubt the greatest legal engine ever invented for the discovery of truth." (Underscoring supplied) (*Id*. at 727-728.)

Sec. 44. *Entries in official records*. – Entries in official records made in the performance of his official duty by a public officer of the Philippines, or by a person in the performance of a duty specifically enjoined by law, are *prima facie* evidence of the facts therein stated.

It may be true that the contents of said certification are only *prima facie* evidence of the facts stated there. However, the failure of petitioner to present controverting evidence makes the presumption unrebutted. Thus, the presumption stands.

Petitioner, however, raises several points which he says entitles him to no less than an acquittal.

***The assessment of credibility of witnesses lies with the trial court.***

**First,** petitioner says that the seizure of the subject firearm was invalid. The search was conducted after his arrest and after he was taken out of the room he was occupying.[62]

This contention deserves scant consideration.

Petitioner's version of the manner and place of his arrest goes into the factual findings made by the trial court and its calibration of the credibility of witnesses. However, as aptly put by Justice Ynares-Santiago in *People v. Rivera*:[63]

x x x the manner of assigning values to declarations of witnesses on the witness stand is best and most competently performed by the trial judge who had the unmatched opportunity to observe the witnesses and assess their credibility by the various *indicia* available but not reflected on record. The demeanor of the person on the stand can draw the line between fact and fancy or evince if the witness is telling the truth or lying through his teeth. We have consistently ruled that when the question arises as to which of the conflicting versions of the prosecution and the defense is worthy of belief, the assessment of the trial courts are generally viewed as correct and

[62] *Rollo,* pp. 8, 136.

[63] 433 Phil. 343 (2002), citing *People v. Sanchez,* G.R. Nos. 121039-45, January 25, 1999, 302 SCRA 21; *People v. Librando,* 390 Phil. 543 (2000); *People v. Deleverio,* G.R. Nos. 118937-38, April 24, 1998, 289 SCRA 547; *People v. Zaballero,* G.R. No. 100935, June 30, 1997, 274 SCRA 627.

entitled to great weight. Furthermore, in an appeal, where the culpability or innocence of the accused depends on the issue of credibility of witnesses and the veracity of their testimonies, findings of the trial court are given the highest degree of respect if not finality.[64] (Underscoring supplied)

The trial court found the prosecution version worthy of credence and belief. We find no compelling reason not to accept its observation on this score.

Worth noting is the fact that petitioner is a ranking police officer who not only claims to be highly decorated,[65] but have effected a number of successful arrests[66] as well. Common sense would dictate that he must necessarily be authorized to carry a gun. We thus agree with the Office of the Solicitor General that framing up petitioner would have been a very risky proposition. Had the arresting officers really intended to cause the damnation of petitioner by framing him up, they could have easily "planted" a more incriminating evidence rather than a gun. That would have made their nefarious scheme easier, assuming that there indeed was one.

***The pieces of evidence show that petitioner is not legally authorized to possess the subject firearm and its five (5) ammunition.***

**Second,** petitioner insists that he is legally authorized to possess the subject firearm and its ammunition on the basis of the Memorandum Receipt issued to him by the PNP Narcotics Command.[67]

Although petitioner is correct in his submission that public officers like policemen are accorded presumption of regularity in the performance of their official duties,[68] it is only a

[64] *People v. Rivera, id*. at 352.

[65] *Rollo,* p. 61.

[66] TSN, March 17, 1997, p. 25.

[67] *Rollo,* pp. 11-12, 138.

[68] *Gutang v. People,* 390 Phil. 805, 817-818 (2000), citing *People v. William,* G.R. No. 93712, June 15, 1992, 209 SCRA 808; *People v. Rumeral,* G.R.

presumption; it may be overthrown by evidence to the contrary. The prosecution was able to rebut the presumption when it proved that the issuance to petitioner of the Memorandum Receipt was anything but regular.

SPO3 Timbol, Jr. testified that he issued the Memorandum Receipt to petitioner based on the verbal instruction of his immediate superior, Col. Moreno.[69] However, a reading of Timbol's testimony on cross-examination[70] would reveal that there was an unusual facility by which said receipt was issued to petitioner. Its issuance utterly lacked the usual necessary bureaucratic constraints. Clearly, it was issued to petitioner under questionable circumstances.

***Failure to offer an unlicensed firearm as evidence is not fatal provided there is competent testimony as to its existence.***

**Third,** petitioner claims that the subject firearm and ammunition should have been excluded as evidence because they were not

---

No. 86320, August 5, 1991, 200 SCRA 194. See also RULES OF COURT, Rule 131, Sec. 3(m).

[69] TSN, June 4, 1997, pp. 3-6.

[70] *Id*. at 7-11.

FISCAL: I am asking you why your office likewise issued [a] Memo Receipt if he [*i.e*., Colonel Angelito Moreno] normally issue (*sic*) a firearm for [an] officer of the PNP?

A. Because our office has also authorized us to issue.

Q: And who authorized your office?

A: It is our Commanding Officer, Sir.

Q: And who authorized the Commanding Officer?

INTERPRETER:

Witness cannot answer.

Q: Where does the Commanding Officer derive his authority?

A: What I know is that the Commanding Officer is authorized to [issue] firearm that will be issued to a PNP Officer but I do not know who gave the authority to our officer.

xxx xxx xxx

formally offered by the prosecution[71] in violation of Section 34, Rule 132 of the Rules of Court.[72]

We note that petitioner contradicted himself when he argued for the validity of the Memorandum Receipt and, at the same time, for the exclusion in evidence of the subject firearm and its ammunition. Petitioner's act may result to an absurd situation where the Memorandum Receipt is declared valid, while the subject firearm and its ammunition which are supposedly covered by the Memorandum Receipt are excluded as evidence. That would have made the Memorandum Receipt useless.

---

Q: As such, do you keep inventory of such supplies?

A: Yes, Sir.

Q: Do you have the inventory of this particular gun, the original?

A: Yes, Sir.

Q: Do you have that inventory with you, that inventory of such gun, the Memo Receipt?

A: That firearm was not in my custody.

Q: But you said a while ago it is with you, which is which, do you have or do you not have the listing of such inventory?

A: None, Sir.

xxx xxx xxx

FISCAL: Mr. Witness, other than this case, were there any instances where you issued Memo Receipt as verbally directed by your alleged Commanding Officer Moreno?

A: Yes, Sir, I'm only a RSO since November 1993.

Q: Precisely, 1991 to 1993, for a period wherein you claimed you hold an office of RSO, has (*sic*) this the only time you issued?

A: Many time[s], Sir.

COURT: Let's clarify this. The Court understands to (*sic*) your previous answer that this is the first time that you have done this procedure of issuing guns to an officer. Are you changing that this is the first time and not many times?

A: That is the only first (*sic*) time, as instructed by the Commanding Officer, Your Honor. (Underscoring supplied)

[71] *Rollo,* pp. 11, 137-138.

[72] Sec. 34. *Offer of evidence*. – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

In any case, petitioner's contention has no leg to stand on.

Contrary to petitioner's claim, the subject firearm[73] and its five (5) live ammunition[74] were offered in evidence by the prosecution.[75] Even assuming *arguendo* that they were not offered, petitioner's stance must still fail. The existence of an unlicensed firearm may be established by testimony, even without its presentation at trial. In *People v. Orehuela*,[76] the non-presentation of the pistol did not prevent the conviction of the accused.

The doctrine was affirmed in the recent case of *People v. Malinao*.[77]

As previously stated, the existence of the subject firearm and its five (5) live ammunition were established through the

---

[73] Exhibit "E".

[74] Exhibits "E-1" to "E-5".

[75] TSN, February 19, 1997, p. 14.

[76] G.R. Nos. 108780-81, April 29, 1994, 232 SCRA 82, 95-96.

As Mr. Justice Feliciano held for the Court:

x x x Upon the other hand, we note also that the allegedly unlicensed murder weapon was not presented in evidence by the prosecution. What the prosecution did present to show absence of a license or permit to possess the firearm used to kill Teoberto, was a certification issued by the Bohol Regional Headquarters of the Integrated National Police, dated 20 December 1989, xxx:

xxx xxx xxx

We consider that the certification was adequate to show that the firearm used by Modesta Orehuela in killing Teoberto Cañizares was a firearm which Orehuela was not licensed to possess and to carry outside his residence on the night that Teoberto Cañizares was shot to death. That that firearm was a .38 caliber pistol was shown by the testimony and report of NBI Ballistician Bonifacio Ayag. When the above circumstances are taken together with the testimony of the eye-witness that Modesto Orehuela was in fact in possession of a firearm and used the same to kill Teoberto Cañizares, we believe that accused Orehuela was properly found guilty of aggravated or qualified illegal possession of firearm and ammunition. (Underscoring supplied)

[77] G.R. No. 128148, February 16, 2004, 423 SCRA 34. See also *People v. Taan, supra* note 59; *People v. Taguba,* 396 Phil. 366 (2000).

testimony of SPO2 Disuanco.[78] Yuson also identified said firearm.[79] Petitioner even admitted its existence.[80]

We hasten to add that there may also be conviction where an unlicensed firearm is presented during trial but through inadvertence, negligence, or fortuitous event (for example, if it is lost), it is not offered in evidence, as long as there is competent testimony as to its existence.

***Penal and civil liabilities***

Petitioner was charged with the crime of illegal possession of firearms and ammunition under the first paragraph of Section 1 of P.D. No. 1866, as amended. It provides that "[t]he penalty of *reclusion temporal* in its maximum period to *reclusion perpetua* shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any firearm, part of firearm, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition."

P.D. No. 1866, as amended, was the governing law at the time petitioner committed the offense on July 10, 1996. However, R.A. No. 8294 amended P.D. No. 1866 on July 6, 1997,[81] during the pendency of the case with the trial court. The present law now states:

SECTION 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition.* – The penalty of *prision correccional* in its maximum period and a fine of not less than Fifteen Thousand Pesos (₱15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low-powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or

[78] TSN, November 6, 1996, pp. 4, 7, 9.

[79] TSN, August 4, 1997, p. 12.

[80] TSN, March 17, 1997, pp. 14-15, 19.

[81] *People v. Lazaro, supra* note 59.

machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: *Provided*, That no other crime was committed. (Underscoring supplied)

As a general rule, penal laws should not have retroactive application, lest they acquire the character of an *ex post facto* law.[82] An exception to this rule, however, is when the law is advantageous to the accused. According to Mr. Chief Justice Araullo, this is "not as a right" of the offender, "but founded on the very principles on which the right of the State to punish and the commination of the penalty are based, and regards it not as an exception based on political considerations, but as a rule founded on principles of strict justice."[83]

Although an additional fine of ₱15,000.00 is imposed by R.A. No. 8294, the same is still advantageous to the accused, considering that the imprisonment is lowered to *prision correccional* in its maximum period[84] from *reclusion temporal*

[82] *Mejia v. Pamaran,* G.R. Nos. 56741-42, April 15, 1988, 160 SCRA 457, 472. An *ex post facto* law is one which:

1. Makes criminal an act done before the passage of the law and which was innocent when done, and punishes such an act;

2. Aggravates a crime, or makes it greater than it was, when committed;

3. Changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed;

4. Alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense;

5. Assuming to regulate civil rights and remedies only, in effect imposes penalty or deprivation of a right for something which when done was lawful; and

6. Deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty.

[83] *People v. Moran,* 44 Phil. 387, 408 (1923), citing Fiore, *Irretroactividad e Interpretacion de las Leyes*.

[84] Reyes, L.B., *The Revised Penal Code*, Book II, 2001 ed., p. 1021. *PRISION CORRECCIONAL* IN ITS MAXIMUM PERIOD. – 4 years, 2 months and 1 day to 6 years

Minimum : 4 years, 2 months and 1 day to 4 years, 9 months and 10 days

in its maximum period to *reclusion perpetua*[85] under P.D. No. 1866.

Applying the Indeterminate Sentence Law, *prision correccional* maximum which ranges from four (4) years, two (2) months and one (1) day to six (6) years, is the prescribed penalty and will form the maximum term of the indeterminate sentence. The minimum term shall be one degree lower, which is *prision correccional* in its medium period (two [2] years, four [4] months and one [1] day to four [4] years and two [2] months).[86] Hence, the penalty imposed by the CA is correct. The penalty of four (4) years and two (2) months of *prision correccional* medium, as minimum term, to six (6) years of *prision correccional* maximum, as maximum term, is in consonance with the Court's ruling in *Gonzales v. Court of Appeals*[87] and *Barredo v. Vinarao*.[88]

As to the subject firearm and its five (5) live ammunition, their proper disposition should be made under Article 45 of the

---

Medium : 4 years, 9 months and 11 days to 5 years, 4 months and 20 days

Maximum: 5 years, 4 months and 21 days to 6 years

[85] *Id.* at 1026. *RECLUSION TEMPORAL* IN ITS MAXIMUM PERIOD TO *RECLUSION PERPETUA*. – 17 years, 4 months and 1 day to *reclusion perpetua*

Minimum : 17 years, 4 months and 1 day to 18 years and 8 months

Medium : 18 years, 8 months and 1 day to 20 years

Maximum: *Reclusion perpetua*

[86] *Id*. at 1021. *PRISION CORRECCIONAL* IN ITS MEDIUM PERIOD. – 2 years, 4 months and 1 day to 4 years and 2 months

Minimum : 2 years, 4 months and 1 day to 2 years, 11 months and 10 days

Medium : 2 years, 11 months and 11 days to 3 years, 6 months and 20 days

Maximum: 3 years, 6 months 21 days to 4 years and 2 months.

[87] 343 Phil. 297 (1997).

[88] G.R. No. 168728, August 2, 2007.

Revised Penal Code[89] which provides, among others, that the proceeds and instruments or tools of the crime shall be confiscated and forfeited in favor of the government.

**WHEREFORE,** the Decision of the Court of Appeals dated May 4, 2004 is *AFFIRMED* in full.

**SO ORDERED.**

*Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario,* and *Nachura, JJ.,* concur.

---

**EN BANC**

[G.R. No. 171548. February 22, 2008]

**PHILIPPINE DEPOSIT INSURANCE CORPORATION,** *petitioner, vs*. **COMMISSION ON AUDIT,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; FINAL AND EXECUTORY; EFFECT.—** There is no dispute that the disallowance of the amounts disbursed to former Finance Secretary Roberto De Ocampo had been affirmed by this Court in an *en banc* Resolution dated 12 November 2002 in *Philippine Deposit Insurance Corporation v.*

[89] Art. 45. *Confiscation and forfeiture of the proceeds or instruments of the crime.* – Every penalty imposed for the commission of a felony shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed.

Such proceeds and instruments or tools shall be confiscated and forfeited in favor of the Government, unless they be the property of a third person not liable for the offense, but those articles which are not subject of lawful commerce shall be destroyed. (Underscoring supplied)

*Commission on Audit* and that such affirmance had already attained finality. Being a final and executory judgment, there was nothing left to be done but to execute the decision in accordance with its terms. It is a fundamental rule that when a judgment becomes final and executory it becomes immutable and unalterable, the prevailing party can have it executed as a matter of right, and the issuance of a writ of execution becomes a ministerial duty of the court. The writ of execution must conform to the judgment to be executed and adhere strictly to the very essential particulars.

**2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; UNDER COA RULES, THE FINAL ORDER OF ADJUDICATION FUNCTIONS AS THE WRIT OF EXECUTION IN AUDIT PROCEEDINGS.—** Under Rule XII of the COA Rules, execution shall issue upon a decision that finally disposes of the case. The auditor is tasked to direct the persons liable to pay or refund the amount disallowed, failing which, an auditor's order shall be issued directing the cashier, treasurer or disbursing officer to withhold the payment of any money due such persons. The final order of adjudication thus functions as the writ of execution in audit proceedings.

**3. ID.; ID.; ID.; KIND OF DECISION OR RULING WHICH MAY BE APPEALED BY THE AUDITOR TO THE DIRECTOR UNDER COA RULES; APPLICATION.—** The appeals process set forth in Rule V pertains to appeals from an order, decision or ruling rendered by the auditor. To be subject to appeal, such an order, decision or ruling must contain a disposition of a case, whether final or interlocutory. A memorandum, such as the one being questioned by PDIC in this case, which does not contain a disposition but merely informs the Commission of the condonation carried out by PDIC and refers the matter to the Commission for appropriate action, is not such an order, decision or ruling that may be appealed under Rule V.

**4. ID.; ID.; ADMINISTRATIVE AGENCY; THE AUTHORITY OF THE PDIC TO CONDONE DOES NOT INCLUDE THE POWER TO CONDONE A LIABILITY THAT ARISES FROM A VIOLATION OF LAW.—** PDIC's authority to condone under its charter is circumscribed by the phrase "to protect the interest of the Corporation." This authority does not include the power to condone a liability that arises from

a violation of law. With greater reason, the condonation of a liability that arise from a violation of no less than the Constitution, as in this case, is not encompassed by PDIC's charter. It is not in the interest of PDIC to forego audit disallowances as it is neither its mandate nor its task to perpetuate breaches of law.

**5. ID.; CONSTITUTIONAL LAW; COMMISSION ON AUDIT; POWER TO INQUIRE INTO THE PROPRIETY OF THE CONDONATION GRANTED BY PDIC, UPHELD.—** We agree with the COA's ruling that the authority of PDIC to condone applies only to ordinary receivables, penalties and surcharges and must be submitted to the Commission before it is implemented. This procedure would enable the Commission to inquire into the propriety of the condonation and to determine whether the same will not prejudice the government's interest, consistent with COA's constitutional mandate to examine, audit and settle all accounts of the government, its subdivisions, agencies and instrumentalities, including government-owned and controlled corporations.

**6. ID.; ID.; DUE PROCESS; ADMINISTRATIVE PROCEEDINGS; DENIAL, NOT A CASE OF.—** We are not inclined to put much stock to PDIC's allegations of denial of due process. Due process simply demands an opportunity to be heard and this opportunity was not denied PDIC. PDIC fully participated in the proceedings pertaining to the audit disallowance up until the same was finally upheld by this Court. It was also given sufficient opportunity to defend the validity of its exercise of its authority to condone. The fact that PDIC was heard on the issue of the validity of the condonation already suffices. Denial of due process is the total lack of opportunity to be heard. Such a situation does not obtain in this case.

**APPEARANCES OF COUNSEL**

*Office of the Government Corporate Counsel*, *Romeo M. Mendoza, Jr., Ma. Antonette Brillantes-Bolivar, Marivic C. Arriola* and *Raymond C. De Lemos* for petitioner.

*The Solicitor General* for respondent.

## D E C I S I O N

**TINGA, *J.*:**

The Philippine Deposit Insurance Corporation (PDIC) seeks succor from the Court against an alleged infringement of its right to due process on account of Decision No. 2006-005[1] of the Commission on Audit (COA or Commission) dated 19 January 2006 which denied its request to permit the condonation of an audit disallowance.

The following factual antecedents are undisputed:

The former Finance Secretary, Mr. Roberto de Ocampo, in his capacity as *ex-officio* Chairman of the Philippine Deposit Insurance Corporation (PDIC) Board for the years 1994-1996 received a total amount of ₱440,068.62 representing Business Policy Development and Enforcement Expenses (BPDEE) and Christmas gift checks. The Auditor thereat issued Notice of Disallowance No. 98-002 (94-96) dated February 17, 1997, disallowing in audit the payment of said expenses on the ground that it partook of the nature of additional compensation or remuneration in violation of the rule on multiple positions proscribed under Section 13, Article VII of the Philippine Constitution and Section 2(9), Republic Act No. 3591, as amended. PDIC sought reconsideration of the subject disallowance but the same was denied in COA Decision No. 2001-015 dated January 23, 2001 and COA Resolution No. 2002-215 dated September 24, 2002.

On appeal by the PDIC to the Supreme Court *En Banc*, the latter in its Resolutions dated November 12, 2002 and January 21, 2003, respectively, in GR No. 155317 entitled "*Philippine Deposit Insurance Corporation (PDIC) v. Commission on Audit*" affirmed with finality said COA decision and resolution. Apropos to the finality of the decision of the Supreme Court, the Final Order of Adjudication (FOA) was issued to PDIC for enforcement of the decision pursuant to Sections 1 to 4 Rule XII of the 1997 Revised Rules of Procedure and Item III.A.15 of COA Memorandum No. 2002-053 dated August 26, 2002. However, instead of complying with the Order, PDIC condoned the amount of ₱413,866.62 invoking its power to condone under Section 8, paragraph 12 of its charter.

---

[1] *Rollo*, pp. 35-40.

On December 22, 2004, the Chairman, this Commission, referred the matter to the Office of the Solicitor General (OSG) requesting assistance in the filing of appropriate action against PDIC officials for failure to comply with the FOA and the final decision of the Supreme Court on the appeal. In a letter dated January 31, 2005, the PDIC thru its counsels, seeks to have its right to appeal reinstated and sought reconsideration of the action taken in view of the fact that it did not allegedly receive any notice of disallowance of the condonation and that its management was deprived of its right to be heard as it was never provided a copy of the Resident Auditor's Memorandum dated May 14, 2004.[2]

The COA ruled that PDIC cannot feign violation of its right to due process because it fully participated in the appeals process since the time the disbursements were disallowed. It cannot validly invoke its authority under its charter to condone the disallowance because the same had already been affirmed by the Supreme Court. To allow PDIC to condone the disallowance would be tantamount to sanctioning the indirect violation of the prohibition against double compensation and the final Supreme Court decision. Thus, COA denied PDIC's request to uphold the condonation and to recall COA's letter to the Office of the Solicitor General (OSG) requesting the latter's assistance in the judicial enforcement of the disallowance.

In its Memorandum[3] dated 12 February 2007, PDIC claims that COA Decision No. 2006-005 was an arbitrary exercise of the Commission's discretion because it deprived PDIC of its right to be heard on the validity of the exercise of its right to condone a settled liability. The COA resident auditor allegedly failed to furnish it with notice of the Memorandum dated 14 May 2004 disallowing the condonation, and thereby deprived PDIC of its right to appeal from the disallowance as provided under the 1997 COA Revised Rules of Procedure (COA Rules).[4]

---

[2] *Id* at 35-36.

[3] *Id*. at 197-211.

[4] *Id*. at 191-212.

The OSG, on behalf of the Commission, asserts in its Memorandum[5] dated 20 February 2007 that PDIC's right to appeal from the Memorandum dated 14 May 2004 is already barred by *res judicata.* Inasmuch as the validity of the disallowance had already been affirmed by the Supreme Court, PDIC no longer had any recourse but to abide by the judgment. Allowing an appeal from the disallowance of the condonation would mean to delve into the validity of the disallowance of the disbursement once again. The Final Order of Adjudication dated October 7, 2003 was issued as a matter of course to execute the disallowance.

Moreover, the resident auditor was not under obligation to furnish PDIC with a copy of the Memorandum dated 14 May 2004 because the same did not contain any ruling or order but merely informed COA that PDIC condoned the disallowance and referred the matter to the Commission for appropriate action.

The Court is confronted with the question of first impression of whether the COA committed grave abuse of discretion when it disallowed the condonation of an audit disallowance.

There is no dispute that the disallowance of the amounts disbursed to former Finance Secretary Roberto De Ocampo had been affirmed by this Court in an *en banc* Resolution dated 12 November 2002 in *Philippine Deposit Insurance Corporation v. Commission on Audit* [6] and that such affirmance had already attained finality.[7] Being a final and executory judgment, there was nothing left to be done but to execute the decision in accordance with its terms.

It is a fundamental rule that when a judgment becomes final and executory it becomes immutable and unalterable, the prevailing party can have it executed as a matter of right, and the issuance of a writ of execution becomes a ministerial duty of the court. The writ of execution must conform to the judgment to be executed and adhere strictly to the very essential particulars.[8]

---

[5] *Id*. at 213-237.

[6] G.R. No. 155317.

[7] *Rollo*, p. 101; Resolution dated January 21, 2003.

[8]

Following this rule, PDIC should have reasonably expected that an order directing the payment or refund of the disallowed amount was forthcoming in accordance with the COA Rules as, in fact, a Final Order of Adjudication[9] was issued on October 7, 2003.

Under Rule XII of the COA Rules, execution shall issue upon a decision that finally disposes of the case. The auditor is tasked to direct the persons liable to pay or refund the amount disallowed, failing which, an auditor's order shall be issued directing the cashier, treasurer or disbursing officer to withhold the payment of any money due such persons.[10] The final order of adjudication thus functions as the writ of execution in audit proceedings.

Notwithstanding the final order of adjudication, PDIC, invoking Sec. 8, par. 12[11] of its charter, issued Resolution No. 2003-09-157 dated 6 April 2004, condoning the audit disallowance. The Memorandum dated 14 May 2004 of COA Supervising Auditor Virgie A. Paz came in the heels of PDIC Resolution No. 2003-09-157 and referred the condonation to COA's Legal and Administration Office for appropriate action in view of the

[9] *Rollo*, pp. 103-104.

[10] Commission on Audit Revised Rules of Procedure (1997), Rule XII.

Section 1. ***Execution of Decision.—***Execution shall issue upon a decision that finally disposes of the case. Such execution shall issue as a matter of right upon the expiration of the period to appeal therefrom if no appeal has been fully perfected.

Section 2. ***Notification of Person(s) Liable.—*** The Auditor shall issue an order directing the person(s) liable to pay/refund the amount disallowed within five (5) days from the lapse of the period to appeal.

Section 3. ***Withholding of money due.—*** In case of failure of the person(s) liable to refund the amount disallowed/charged within the period specified in the preceding section, the Auditor shall issue the Auditor's Order directing the Cashier/Treasurer/Disbursing Officer to withhold the payment of any money due such person(s).

[11] *Twelfth*—To compromise, condone or release, in whole or in part, any claim or settled liability to the Corporation, regardless of the amount involved, under such terms and conditions as may be imposed by the Board of Directors to protect the interest of the Corporation. [An Act Establishing The Philippine Deposit Insurance Corporation, Defining Its Powers And Duties And For Other Purposes]

supervising auditor's opinion that PDIC cannot condone an audit disallowance which had already been upheld by this Court.

The COA Chairman ultimately referred the matter to the OSG for the filing of the appropriate suit against responsible PDIC officials in accordance with the COA Rules.[12]

The foregoing action taken by the COA was obviously merely an execution of the Court's final decision upholding the audit disallowance. In contrast, PDIC Resolution No. 2003-09-157 appears to have been borne out of a desire to get around the execution of the Supreme Court decision upholding the audit disallowance. This is evident from the language of the resolution which mentions that the PDIC "[B]oard noted that the Supreme Court denied PDIC's petition due to technical reasons and not on the merits."[13]

Whatever may have been the reason for the dismissal of PDIC's petition, the fact remains that the decision upholding the audit disallowance had become final and executory. At the risk of sounding trite, the decision is now unalterable and immutable.[14] It is no longer subject to any revision, modification or appeal.

PDIC, however, claims that it has the right to appeal the 14 May 2004 Memorandum of the supervising auditor under the

[12] Commission on Audit Revised Rules of Procedure (1997), Section 4. ***Non-compliance with the Auditor's Order.—***In case of failure by the Cashier/Treasurer/Disbursing Officer to comply with the Auditor's Order, the Auditor shall notify the agency head concerned of the non-compliance except where the agency head himself is one of the persons held liable for the disallowance. At the same time the Auditor shall report the matter to the COA Director concerned recommending any or all of the following actions:

(a) Recommendation to the Commission Proper to cite defaulting party in contempt;

(b) Referral of the matter to the Solicitor General for the filing of appropriate civil suit;

(c) Referral to the Ombudsman for the filing of appropriate administrative or criminal action.

[13] *Rollo*, p. 102.

[14] *Honoridez v. Mahinay*, G.R. No. 153762, August 12, 2005, 416 SCRA 646, 655.

COA Rules. It proceeds to cite Rule V thereof which pertains to appeals from the auditor to the director.

The appeals process set forth in Rule V pertains to appeals from an order, decision or ruling rendered by the auditor. To be subject to appeal, such an order, decision or ruling must contain a disposition of a case, whether final or interlocutory. A memorandum, such as the one being questioned by PDIC in this case, which does not contain a disposition but merely informs the Commission of the condonation carried out by PDIC and refers the matter to the Commission for appropriate action, is not such an order, decision or ruling that may be appealed under Rule V.

More importantly, Rule V cannot, by any stretch of legal interpretation, be presumed to apply when the question pertains to an incident of execution of a final and executory judgment.

In dismissing the petition and affirming the audit disallowance, this Court effectively declared that the payment of the BPDEE to Secretary De Ocampo is prohibited as it violates the rule against double compensation. This declaration necessarily also means that condonation of the same payment in favor of the same person is likewise prohibited.

To allow an appeal, as PDIC insists, on the issue of the propriety of the condonation would also subject the propriety of the audit disallowance to review because the basis for allowing condonation would be not only that PDIC has the authority to condone in this particular instance but also that Secretary De Ocampo is entitled to receive the amounts paid to him, a question that had already been put to rest in the Court's decision.

To settle the matter once and for all, the audit disallowance is not subject to condonation following the principle that what is prohibited directly is also prohibited indirectly. The audit disallowance cannot be circumvented and legitimized by resorting to condonation. *Quando aliquid prohibitur ex directo, prohibitur et per obliquum.*

We agree with the COA's ruling that the authority of PDIC to condone applies only to ordinary receivables, penalties and

surcharges and must be submitted to the Commission before it is implemented. This procedure would enable the Commission to inquire into the propriety of the condonation and to determine whether the same will not prejudice the government's interest, consistent with COA's constitutional mandate to examine, audit and settle all accounts of the government, its subdivisions, agencies and instrumentalities, including government-owned and controlled corporations.

Furthermore, PDIC's authority to condone under its charter is circumscribed by the phrase "to protect the interest of the Corporation."[15] This authority does not include the power to condone a liability that arises from a violation of law. With greater reason, the condonation of a liability that arise from a violation of no less than the Constitution, as in this case, is not encompassed by PDIC's charter. It is not in the interest of PDIC to forego audit disallowances as it is neither its mandate nor its task to perpetuate breaches of law.

We are not inclined to put much stock to PDIC's allegations of denial of due process. Due process simply demands an opportunity to be heard and this opportunity was not denied PDIC.[16] PDIC fully participated in the proceedings pertaining to the audit disallowance up until the same was finally upheld by this Court. It was also given sufficient opportunity to defend the validity of its exercise of its authority to condone.

In its letter to the COA dated 31 January 2005,[17] PDIC raised the issue of whether it had validly exercised its authority under its charter to condone the disallowance of the BPDEE paid to Secretary De Ocampo.

The Commission resolved the issue in the negative, decreeing that an audit disallowance which had been affirmed by this Court with finality can no longer be the subject of condonation. Otherwise, the constitutional prohibition against double compensation would be violated.

---

[15] *Supra* note 11.

[16] *J.D. Legaspi Construction v. NLRC*, 439 Phil. 13, 20 (2002).

[17] *Rollo*, pp. 109-111.

The fact that PDIC was heard on the issue of the validity of the condonation already suffices. Denial of due process is the total lack of opportunity to be heard. Such a situation does not obtain in this case.

**WHEREFORE,** the petition is *DISMISSED*. No pronouncement as to costs.

**SO ORDERED.**

*Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Chico-Nazario, Velasco, Jr., Reyes,* and *Leonardo-de Castro, JJ.,* concur.

*Nachura, J.,* no part; signed pleading as Solicitor General.

---

**EN BANC**

[G.R. No. 173264. February 22, 2008]

**CIVIL SERVICE COMMISSION,** *petitioner, vs.* **NITA P. JAVIER,** *respondent.*

**SYLLABUS**

1. **POLITICAL LAW; CIVIL SERVICE; POSITION CLASSIFICATION; CHARACTERISTICS OF CAREER AND NON-CAREER POSITIONS, DISCUSSED.—** Career positions are characterized by: (1) entrance based on **merit and fitness to be determined as far as practicable by competitive examinations, or based on highly technical qualifications;** (2) **opportunity for advancement** to higher career positions; and (3) **security of tenure.** In addition, the Administrative Code, under its Book V, sub-classifies career positions according to "appointment status," divided into:

1) **permanent** – which is issued to a person who meets all the requirements for the positions to which he is being appointed, including the appropriate eligibility prescribed, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof; and 2) **temporary** – which is issued, in the absence of appropriate eligibles and when it becomes necessary in the public interest to fill a vacancy, to a person who meets all the requirements for the position to which he is being appointed except the appropriate civil service eligibility; provided, that such temporary appointment shall not exceed twelve months, and the appointee may be replaced sooner if a qualified civil service eligible becomes available. Positions that do not fall under the career service are considered non-career positions, which are characterized by: (1) **entrance on bases other than those of the usual tests of merit and fitness** utilized for the career service; and (2) **tenure which is limited to a period** specified by law, or which is **co-terminous** with that of the appointing authority or **subject to his pleasure**, or **which is limited to the duration of a particular project** for which purpose employment was made.

**2. ID.; ID.; ID.; CHARACTERISTICS OF PRIMARILY CONFIDENTIAL POSITIONS.—** A strict reading of the law reveals that primarily confidential positions fall under the non-career service. It is also clear that, unlike career positions, primarily confidential and other non-career positions do not have security of tenure. The tenure of a confidential employee is co-terminous with that of the appointing authority, or is at the latter's pleasure. However, the confidential employee may be appointed or remain in the position even beyond the compulsory retirement age of 65 years.

**3. ID.; ID.; ID; THE COURT IS NOT BOUND BY THE CLASSIFICATION OF POSITIONS IN THE CIVIL SERVICE MADE BY OTHER BRANCHES OF GOVERNMENT.—** Jurisprudence establishes that the Court is not bound by the classification of positions in the civil service made by the legislative or executive branches, or even by a constitutional body like the petitioner. The Court is expected to make its own determination as to the nature of a particular position, such as whether it is a primarily confidential position or not, without being bound by prior classifications made by other bodies. The findings of the other branches of government are

merely considered initial and not conclusive to the Court. Moreover, it is well-established that in case the findings of various agencies of government, such as the petitioner and the CA in the instant case, are in conflict, the Court must exercise its constitutional role as final arbiter of all justiciable controversies and disputes.

**4. ID.; ID.; ID.; IT IS THE JUDICIAL BRANCH WHICH HAS THE POWER TO DETERMINE WHETHER THE POSITION IS PRIMARILY CONFIDENTIAL, POLICY DETERMINING OR HIGHLY TECHNICAL.—** Presently, it is still the rule that executive and legislative identification or classification of primarily confidential, policy-determining or highly technical positions in government is no more than mere declarations, and does not foreclose judicial review, especially in the event of conflict. Far from what is merely declared by executive or legislative fiat, it is the nature of the position which finally determines whether it is primarily confidential, policy determining or highly technical, and no department in government is better qualified to make such an ultimate finding than the judicial branch. The phrase "in nature" after the phrase "policy-determining, primarily confidential, or highly technical" was deleted from the 1987 Constitution. However, the intent to lay in the courts the power to determine the nature of a position is evident in the following deliberation: MR. FOZ. Which department of government has the power or authority to determine whether a position is policy-determining or primarily confidential or highly technical? FR. BERNAS: **The initial decision is made by the legislative body or by the executive department, but the final decision is done by the court. The Supreme Court has constantly held that whether or not a position is policy-determining, primarily confidential or highly technical, it is determined not by the title but by the nature of the task that is entrusted to it.**

**5. ID.; ID.; ID.; "PRIMARILY CONFIDENTIAL IN NATURE," DEFINED AND ELUCIDATED.—** A position that is primarily confidential in nature is defined as early as 1950 in *De los Santos v. Mallare*, through the *ponencia* of Justice Pedro Tuason, to wit: x x x These positions (policy-determining, primarily confidential and highly technical positions), involve the highest degree of confidence, or are closely bound up with and dependent on other positions to which they are subordinate,

or are temporary in nature. It may truly be said that the good of the service itself demands that appointments coming under this category be terminable at the will of the officer that makes them. x x x x **Every appointment implies confidence, but much more than ordinary confidence is reposed in the occupant of a position that is primarily confidential. The latter phrase denotes not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which insures freedom of [discussion, delegation and reporting] without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state. x x x** Since the definition in *De los Santos* came out, it has guided numerous other cases. Thus, it still stands that a position is primarily confidential when by the nature of the functions of the office there exists "close intimacy" between the appointee and appointing power which insures freedom of intercourse without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state. In classifying a position as primarily confidential, its functions must not be routinary, ordinary and day to day in character. A position is not necessarily confidential though the one in office may sometimes handle confidential matters or documents. Only ordinary confidence is required for all positions in the bureaucracy. But, as held in *De los Santos,* for someone holding a primarily confidential position, more than ordinary confidence is required. x x x It is from *De los Santos* that the so-called "proximity rule" was derived. A position is considered to be primarily confidential when there is a primarily close intimacy between the appointing authority and the appointee, which ensures the highest degree of trust and unfettered communication and discussion on the most confidential of matters. This means that where the position occupied is already remote from that of the appointing authority, the element of trust between them is no longer predominant. On further interpretation in *Griño*, this was clarified to mean that a confidential nature would be limited to those positions not separated from the position of the appointing authority by an intervening public officer, or series of public officers, in the bureaucratic hierarchy. x x x In fine, *a primarily confidential position is characterized by the close proximity of the positions of the appointer and appointee as well as the high degree of trust and confidence inherent in their relationship*.

**6. ID.; ID.; ID.; POSITIONS DECLARED BY THE COURT TO BE NOT PRIMARILY CONFIDENTIAL DUE TO THEIR REMOTENESS TO THE POSITION OF THE APPOINTING AUTHORITY.—** Consequently, brought upon by their remoteness to the position of the appointing authority, the following were declared by the Court to be not primarily confidential positions: City Engineer; Assistant Secretary to the Mayor; members of the Customs Police Force or Port Patrol; Special Assistant of the Governor of the Central Bank, Export Department; Senior Executive Assistant, Clerk I and Supervising Clerk I and Stenographer in the Office of the President; Management and Audit Analyst I of the Finance Ministry Intelligence Bureau; Provincial Administrator; Internal Security Staff of the Philippine Amusement and Gaming Corporation (PAGCOR); Casino Operations Manager; and Slot Machine Attendant. All positions were declared to be not primarily confidential despite having been previously declared such either by their respective appointing authorities or the legislature.

**7. ID.; ID.; ID.; POSITIONS DECLARED TO BE PRIMARILY CONFIDENTIAL.—** The following were declared in jurisprudence to be primarily confidential positions: Chief Legal Counsel of the Philippine National Bank; Confidential Agent of the Office of the Auditor, GSIS; Secretary of the *Sangguniang Bayan*; Secretary to the City Mayor; Senior Security and Security Guard in the Office of the Vice Mayor; Secretary to the Board of a government corporation; City Legal Counsel, City Legal Officer or City Attorney; Provincial Attorney; Private Secretary; and Board Secretary II of the Philippine State College of Aeronautics.

**8. ID.; ID.; ID.; APPLYING THE PROXIMITY RULE, THE POSITION OF CORPORATE SECRETARY OF GSIS OR ANY GOCC IS PRIMARILY CONFIDENTIAL; REASONS.—** [T]he position of Corporate Secretary of GSIS, or any GOCC, for that matter, is a primarily confidential position. The position is clearly in close proximity and intimacy with the appointing power. It also calls for the highest degree of confidence between the appointer and appointee. In classifying the position of Corporate Secretary of GSIS as primarily confidential, the Court took into consideration the proximity rule together with the duties of the corporate secretary. x x x

> The nature of the duties and functions attached to the position points to its highly confidential character. The secretary reports directly to the board of directors, without an intervening officer in between them. In such an arrangement, the board expects from the secretary nothing less than the highest degree of honesty, integrity and loyalty, which is crucial to maintaining between them "freedom of intercourse without embarrassment or freedom from misgivings or betrayals of personal trust or confidential matters of state." The responsibilities of the corporate secretary are not merely clerical or routinary in nature. The work involves constant exposure to sensitive policy matters and confidential deliberations that are not always open to the public, as unscrupulous persons may use them to harm the corporation. Board members must have the highest confidence in the secretary to ensure that their honest sentiments are always and fully expressed, in the interest of the corporation. In this respect, the nature of the corporate secretary's work is akin to that of a personal secretary of a public official, a position long recognized to be primarily confidential in nature. The only distinction is that the corporate secretary is secretary to the entire board, composed of a number of persons, but who essentially act as one body, while the private secretary works for only one person. However, the degree of confidence involved is essentially the same.

**APPEARANCES OF COUNSEL**

*Office of the Legal Affairs (CSC)* for petitioner.
*Factoran and Associates Law Offices* for respondent.

## D E C I S I O N

**AUSTRIA-MARTINEZ*, J.*:**

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking to reverse the Decision[1] of the Court of Appeals (CA) dated September 29, 2005, as well as its Resolution of June 5, 2006, in CA-G.R. SP No.

[1] Penned by Justice Vicente S.E. Veloso with the concurrence of Justices Amelita G. Tolentino and Danilo B. Pine, *rollo*, pp. 33-49.

88568, which set aside the resolutions and orders of the Civil Service Commission (CSC) invalidating the appointment of respondent as Corporate Secretary of the Board of Trustees of the Government Service and Insurance System (GSIS).

The facts are undisputed.

According to her service record,[2] respondent was first employed as Private Secretary in the GSIS, a government owned and controlled corporation (GOCC), on February 23, 1960, on a "*confidential*" status. On July 1, 1962, respondent was promoted to Tabulating Equipment Operator with "*permanent*" status. The "*permanent*" status stayed with respondent throughout her career. She spent her entire career with GSIS, earning several more promotions, until on December 16, 1986, she was appointed Corporate Secretary of the Board of Trustees of the corporation.

On July 16, 2001, a month shy of her 64th birthday,[3] respondent opted for early retirement and received the corresponding monetary benefits.[4]

On April 3, 2002, GSIS President Winston F. Garcia, with the approval of the Board of Trustees, reappointed respondent as Corporate Secretary, the same position she left and retired from barely a year earlier. Respondent was 64 years old at the time of her reappointment.[5] In its Resolution, the Board of Trustees classified her appointment as "confidential in nature and the tenure of office is at the pleasure of the Board."[6]

Petitioner alleges that respondent's reappointment on confidential status was meant to illegally extend her service and circumvent the laws on compulsory retirement.[7] This is because

---

[2] *Rollo*, p. 50.

[3] *Id*. at 51.

[4] *Id*. at 15.

[5] *Supra* note 3.

[6] *Supra* note 4.

[7] *Rollo*, p. 21.

under Republic Act (R.A.) No. 8291, or the Government Service Insurance System Act of 1997, the compulsory retirement age for government employees is 65 years, thus:

> Sec. 13. x x x
>
> (b) Unless the service is extended by appropriate authorities, retirement shall be compulsory for an employee at sixty-five (65) years of age with at least fifteen (15) years of service: Provided, That if he has less than fifteen (15) years of service, he may be allowed to continue in the service in accordance with existing civil service rules and regulations.

Under the civil service regulations, those who are in primarily confidential positions may serve even beyond the age of 65 years. Rule XIII of the Revised Omnibus Rules on Appointments and Other Personnel Actions, as amended, provides that:

> Sec. 12. (a) No person who has reached the compulsory retirement age of 65 years can be appointed to any position in the government, subject only to the exception provided under sub-section (b) hereof.
>
> xxx xxx xxx
>
> b. A person who has already reached the compulsory retirement age of 65 can still be appointed to a coterminous/primarily confidential position in the government.
>
> A person appointed to a coterminous/primarily confidential position who reaches the age of 65 is considered automatically extended in the service until the expiry date of his/her appointment or until his/her services are earlier terminated.[8]

It is for these obvious reasons that respondent's appointment was characterized as "confidential" by the GSIS.

On October 10, 2002, petitioner issued Resolution No. 021314, invalidating the reappointment of respondent as Corporate Secretary, on the ground that the position is a permanent, career position and not primarily confidential.[9]

---

[8] As cited in petitioner's Memorandum, *id*. at 184-185.

[9] *Rollo*, pp. 37-39. In addition, petitioner also ruled that the position of Corporate Secretary was then being occupied by an incumbent, and therefore,

On November 2, 2002, the CSC, in a letter of even date, through its Chairperson Karina Constantino-David, informed GSIS of CSC's invalidation of respondent's appointment, stating, thus:

> Records show that Ms. Javier was formerly appointed as Corporate Secretary in a "Permanent" capacity until her retirement in July 16, 2001. The Plantilla of Positions shows that said position is a career position. However, she was re-employed as Corporate Secretary, a position now declared as confidential by the Board of Trustees pursuant to Board Resolution No. 94 dated April 3, 2002.
>
> Since the position was not declared primarily confidential by the Civil Service Commission or by any law, the appointment of Ms. Javier as Corporate Secretary is hereby invalidated.[10]

Respondent and GSIS sought to reconsider the ruling of petitioner. CSC replied that the position of Corporate Secretary is a permanent (career) position, and not primarily confidential (non-career); thus, it was wrong to appoint respondent to this position since she no longer complies with eligibility requirements for a permanent career status. More importantly, as respondent by then has reached compulsory retirement at age 65, respondent was no longer qualified for a permanent career position.[11] With the denial of respondent's plea for reconsideration, she filed a Petition for Review with the Court of Appeals.

On September 29, 2005, the CA rendered a Decision setting aside the resolution of petitioner invalidating respondent's appointment.[12] The CA ruled that in determining whether a position is primarily confidential or otherwise, the nature of its functions, duties and responsibilities must be looked into, and not just its formal classification.[13] Examining the functions, duties and

---

was not vacant. It was deemed occupied because the incumbent's earlier "shifting" to another position, that of Senior Vice President and Chief Legal Counsel, was declared void by petitioner as he was past retirement age. He was on extended service only for the post of Corporate Secretary.

[10] *Id*. at 16, 81.

[11] *Id*. at 43.

[12] *Id*. at 32-49.

[13] *Rollo*, p. 45.

responsibilities of the GSIS Corporate Secretary, the CA concluded that indeed, such a position is primarily confidential in nature.

Petitioner filed a motion for reconsideration, which was denied by the CA on June 5, 2006.

Hence, herein petition.

The petition assails the CA Decision, contending that the position of Corporate Secretary is a career position and not primarily confidential in nature.[14] Further, it adds that the power to declare whether any position in government is primarily confidential, highly technical or policy determining rests solely in petitioner by virtue of its constitutional power as the central personnel agency of the government.[15]

Respondent avers otherwise, maintaining that the position of Corporate Secretary is confidential in nature and that it is within the powers of the GSIS Board of Trustees to declare it so.[16] She argues that in determining the proper classification of a position, one should be guided by the nature of the office or position, and not by its formal designation.[17]

Thus, the Court is confronted with the following issues: whether the courts may determine the proper classification of a position in government; and whether the position of corporate secretary in a GOCC is primarily confidential in nature.

## The Court's Ruling

### The courts may determine the proper classification of a position in government.

Under Executive Order No. 292, or the Administrative Code of 1987, civil service positions are currently classified into either 1) career service and 2) non-career service positions.[18]

[14] *Id*. at 17.

[15] *Id*. at 20.

[16] *Id*. at 84.

[17] *Id*. at 88.

[18] ADMINISTRATIVE CODE, Book V, Title I, Subtitle A, Chapter 2, Sec. 6(2);

Career positions are characterized by: (1) entrance based on **merit and fitness to be determined as far as practicable by competitive examinations,** or based on **highly technical qualifications;** (2) **opportunity for advancement** to higher career positions; and (3) **security of tenure.**[19]

In addition, the Administrative Code, under its Book V, sub-classifies career positions according to "appointment status," divided into: 1) **permanent** – which is issued to a person who meets all the requirements for the positions to which he is being appointed, including the appropriate eligibility prescribed, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof; and 2) **temporary** – which is issued, in the absence of appropriate eligibles and when it becomes necessary in the public interest to fill a vacancy, to a person who meets all the requirements for the position to which he is being appointed except the appropriate civil service eligibility; provided, that such temporary appointment shall not exceed twelve months, and the appointee may be replaced sooner if a qualified civil service eligible becomes available.[20]

Positions that do not fall under the career service are considered non-career positions, which are characterized by: (1) **entrance on bases other than those of the usual tests of merit and fitness** utilized for the career service; and (2) **tenure which is**

---

Formerly, under Republic Act (R.A.) No. 2260, or the Civil Service Act of 1959, positions were classified into: 1) the competitive or classified, 2) non-competitive or unclassified, and 3) exempt services. Thereafter, R.A. No. 6040 amended R.A. No. 2260, and removed the terms "classified" and "unclassified" and grouped civil service positions into: 1) the competitive 2) non-competitive, and 3) exempt classes. (R.A. No. 2260 [1959], Sec. 3; *Favis v. Rupisan,* 123 Phil. 1047, 1050 [1966]; R.A. No. 6040 [1969], Secs. 1 and 17).

Afterwards, Presidential Decree No. 807, or the Civil Service Decree of 1975, changed the classifications further into 1) career service and 2) non-career service positions. (Presidential Decree No. 807 [1975], Sec. 4; *Cortez v. Bartolome,* G.R. No. L-46629, September 11, 1980, 100 SCRA 1, 9).

[19] ADMINISTRATIVE CODE, Book V, Title I, Subtitle A, Chapter 2, Sec. 7.

[20] ADMINISTRATIVE CODE, Book V, Title I, Subtitle A, Chapter 5, Sec. 27.

**limited to a period** specified by law, or which is **co-terminous** with that of the appointing authority or **subject to his pleasure**, or **which is limited to the duration of a particular project** for which purpose employment was made.[21]

Examples of positions in the non-career service enumerated in the Administrative Code are:

> Sec. 9. Non-Career Service. - x x x
>
> The Non-Career Service shall include:
>
> (1) Elective officials and their personal or confidential staff;
>
> (2) Secretaries and other officials of Cabinet rank who hold their positions at the pleasure of the President and their personal or confidential staff(s);
>
> (3) Chairman and members of commissions and boards with fixed terms of office and **their personal or confidential staff;**
>
> (4) Contractual personnel or those whose employment in the government is in accordance with a special contract to undertake a specific work or job, requiring special or technical skills not available in the employing agency, to be accomplished within a specific period, which in no case shall exceed one year, and performs or accomplishes the specific work or job, under his own responsibility with a minimum of direction and supervision from the hiring agency; and
>
> (5) Emergency and seasonal personnel. (Emphasis supplied)

A strict reading of the law reveals that primarily confidential positions fall under the non-career service. It is also clear that, unlike career positions, primarily confidential and other non-career positions do not have security of tenure. The tenure of a confidential employee is co-terminous with that of the appointing authority, or is at the latter's pleasure. However, the confidential employee may be appointed or remain in the position even beyond the compulsory retirement age of 65 years.[22]

---

[21] *Id*. at Sec. 9.

[22] Section 12, Rule XIII of the CSC's Revised Omnibus Rules on Appointments and Other Personnel Actions.

Stated differently, the instant petition raises the question of whether the position of corporate secretary in a GOCC, currently classified by the CSC as belonging to the permanent, career service, should be classified as primarily confidential, *i.e.*, belonging to the non-career service. The current GSIS Board holds the affirmative view, which is ardently opposed by petitioner. Petitioner maintains that it alone can classify government positions, and that the determination it made earlier, classifying the position of GOCC corporate secretary as a permanent, career position, should be maintained.

At present, there is no law enacted by the legislature that defines or sets definite criteria for determining primarily confidential positions in the civil service. Neither is there a law that gives an enumeration of positions classified as primarily confidential.

What is available is only petitioner's own classification of civil service positions, as well as jurisprudence which describe or give examples of confidential positions in government.

Thus, the corollary issue arises: should the Court be bound by a classification of a position as confidential already made by an agency or branch of government?

Jurisprudence establishes that the Court is not bound by the classification of positions in the civil service made by the legislative or executive branches, or even by a constitutional body like the petitioner.[23] The Court is expected to make its own determination as to the nature of a particular position, such as whether it is a primarily confidential position or not, without being bound by prior classifications made by other bodies.[24] The findings of the other branches of government are merely considered initial and not conclusive to the Court.[25] Moreover, it is well-established that in case the findings of various agencies of government,

[23] *Civil Service Commission v. Salas,* G.R. No. 123708, June 19, 1997, 274 SCRA 414; *Griño v. Civil Service Commission,* G.R. No. 91602, February 26, 1991, 194 SCRA 458.

[24] *Piñero v. Hechanova,* 124 Phil. 1022, 1026 (1966).

[25] *Laurel V v. Civil Service Commission,* G.R. No. 71562, October 28, 1991, 203 SCRA 195.

such as the petitioner and the CA in the instant case, are in conflict, the Court must exercise its constitutional role as final arbiter of all justiciable controversies and disputes.[26]

*Piñero v. Hechanova,*[27] interpreting R.A. No. 2260, or the Civil Service Act of 1959, emphasized how the legislature refrained from declaring which positions in the bureaucracy are primarily confidential, policy determining or highly technical in nature, and declared that such a determination is better left to the judgment of the courts. The Court, with the *ponencia* of Justice J.B.L. Reyes, expounded, thus:

> The change from the original wording of the bill (expressly declared by law x x x to be policy determining, *etc*.) to that finally approved and enacted ("or which are policy determining, *etc*. in nature") came about **because of the observations of Senator Tañada, that as originally worded the proposed bill gave Congress power to declare by fiat of law a certain position as primarily confidential or policy determining, which should not be the case.** The Senator urged that since the Constitution speaks of positions which are "primarily confidential, policy determining or highly technical in nature," **it is not within the power of Congress to declare what positions are primarily confidential or policy determining. "It is the nature alone of the position that determines whether it is policy determining or primarily confidential."** Hence, the Senator further observed, the matter should be left to the "proper implementation of the laws, depending upon the nature of the position to be filled," and if the position is "highly confidential" then the President and the Civil Service Commissioner must implement the law.
>
> **To a question of Senator Tolentino, "But in positions that involved both confidential matters and matters which are routine, x x x who is going to determine whether it is primarily confidential?" Senator Tañada replied:**
>
> **"SENATOR TAÑADA: Well, at the first instance, it is the appointing power that determines that: the nature of the position. In case of conflict then it is the Court that**

[26] *Firestone Ceramics v. Court of Appeals*, 372 Phil. 401, 424 (1999).

[27] *Supra* note 24.

**determines whether the position is primarily confidential or not.**

"I remember a case that has been decided by the Supreme Court involving the position of a district engineer in Baguio, and there precisely, the nature of the position was in issue. It was the Supreme Court that passed upon the nature of the position, and held that the President could not transfer the district engineer in Baguio against his consent."

Senator Tañada, therefore, proposed an amendment to Section 5 of the bill, deleting the words "to be" and inserting in lieu thereof the words "Positions which are by their nature" policy determining, *etc*., and deleting the last words "in nature." Subsequently, Senator Padilla presented an amendment to the Tañada amendment by adopting the very words of the Constitution, *i.e*., "those which are policy determining, primarily confidential and highly technical in nature." The Padilla amendment was adopted, and it was this last wording with which Section 5 was passed and was enacted (Senate Journal, May 10, 1959, Vol. 11, No. 32, pp. 679-681).

It is plain that, at least since the enactment of the 1959 Civil Service Act (R. A. 2260), **it is the nature of the position which finally determines whether a position is primarily confidential, policy determining or highly technical. Executive pronouncements can be no more than initial determinations that are not conclusive in case of conflict.** And it must be so, or else it would then lie within the discretion of title Chief Executive to deny to any officer, by executive fiat, the protection of Section 4, Article XII, of the Constitution.[28] (Emphasis and underscoring supplied)

This doctrine in *Piñero* was reiterated in several succeeding cases.[29]

Presently, it is still the rule that executive and legislative identification or classification of primarily confidential, policy-determining or highly technical positions in government is no

[28] *Id*. at 1027-1029.

[29] *Tria v. Sto. Tomas,* G.R. No. 85670, July 31, 1991, 199 SCRA 833; *Laurel V v. Civil Service Commission*, *supra* note 25; *Civil Service Commission v. Salas, supra* note 23; *Philippine Amusement and Gaming Corporation v. Rilloraza,* 412 Phil. 114 (2001).

more than mere declarations, and does not foreclose judicial review, especially in the event of conflict. Far from what is merely declared by executive or legislative fiat, it is the nature of the position which finally determines whether it is primarily confidential, policy determining or highly technical, and no department in government is better qualified to make such an ultimate finding than the judicial branch.

Judicial review was also extended to determinations made by petitioner. In *Griño v. Civil Service Commission,*[30] the Court held:

> The fact that the position of respondent Arandela as provincial attorney has already been classified as one under the career service and certified as permanent by the Civil Service Commission cannot conceal or alter its highly confidential nature. As in *Cadiente* where the position of the city legal officer was duly attested as permanent by the Civil Service Commission before this Court declared that the same was primarily confidential, this Court holds that the position of respondent Arandela as the provincial attorney of Iloilo is also a primarily confidential position. To rule otherwise would be tantamount to classifying two positions with the same nature and functions in two incompatible categories.[31]

The framers of the 1987 Constitution were of the same disposition. Section 2 (2) Article IX (B) of the Constitution provides that:

> Appointments in the civil service shall be made only according to merit and fitness to be determined, as far as practicable, and, except to positions which are policy-determining, primarily confidential, or highly technical, by competitive examination.

The phrase "in nature" after the phrase "policy-determining, primarily confidential, or highly technical" was deleted from the 1987 Constitution.[32] However, the intent to lay in the courts the power to determine the nature of a position is evident in the following deliberation:

---

[30] *Supra* note 23.

[31] *Id*. at 467.

[32] The phrase "in nature" was previously found in both the 1935 and 1973 Constitutions.

MR. FOZ. Which department of government has the power or authority to determine whether a position is policy-determining or primarily confidential or highly technical?

FR. BERNAS: **The initial decision is made by the legislative body or by the executive department, but the final decision is done by the court. The Supreme Court has constantly held that whether or not a position is policy-determining, primarily confidential or highly technical, it is determined not by the title but by the nature of the task that is entrusted to it.** For instance, we might have a case where a position is created requiring that the holder of that position should be a member of the Bar and the law classifies this position as highly technical. However, the Supreme Court has said before that a position which requires mere membership in the Bar is not a highly technical position. Since the term 'highly technical' means something beyond the ordinary requirements of the profession, it is always a question of fact.

MR. FOZ. Does not Commissioner Bernas agree that the general rule should be that the merit system or the competitive system should be upheld?

FR. BERNAS. I agree that that it should be the general rule; that is why we are putting this as an exception.

MR. FOZ. The declaration that certain positions are policy-determining, primarily confidential or highly technical has been the source of practices which amount to the spoils system.

FR. BERNAS. The Supreme Court has always said that, **but if the law of the administrative agency says that a position is primarily confidential when in fact it is not, we can always challenge that in court. It is not enough that the law calls it primarily confidential to make it such; it is the nature of the duties which makes a position primarily confidential.**

MR. FOZ. The effect of a declaration that a position is policy-determining, primarily confidential or highly technical — as an exception — is to take it away from the usual rules and provisions of the Civil Service Law and to place it in a class by itself so that it can avail itself of certain privileges not available to the ordinary run of government employees and officers.

FR. BERNAS. As I have already said, this classification does not do away with the requirement of merit and fitness. All it says is

> that there are certain positions which should not be determined by competitive examination.
>
> For instance, I have just mentioned a position in the Atomic Energy Commission. Shall we require a physicist to undergo a competitive examination before appointment? Or a confidential secretary or any position in policy-determining administrative bodies, for that matter? There are other ways of determining merit and fitness than competitive examination. This is not a denial of the requirement of merit and fitness.[33] (Emphasis supplied)

This explicit intent of the framers was recognized in *Civil Service Commission v. Salas*,[34] and *Philippine Amusement and Gaming Corporation v. Rilloraza,*[35] which leave no doubt that the question of whether the position of Corporate Secretary of GSIS is confidential in nature may be determined by the Court.

**The position of corporate secretary in a government owned and controlled corporation, currently classified as a permanent career position, is primarily confidential in nature.**

First, there is a need to examine how the term "primarily confidential in nature" is described in jurisprudence. According to *Salas,*[36]

> Prior to the passage of the x x x Civil Service Act of 1959 (R.A. No. 2260), there were two recognized instances when a position may be considered primarily confidential: *Firstly*, when the President, upon recommendation of the Commissioner of Civil Service, has declared the position to be primarily confidential; and, *secondly* in the absence of such declaration, when by the nature of the functions of the office there exists "close intimacy" between the appointee and appointing power which insures freedom of intercourse without embarrassment or freedom from misgivings

[33] I RECORD OF THE CONSTITUTIONAL COMMISSION: Proceedings and Debates, Vol. 1, 571-572.

[34] *Supra* note 23.

[35] *Supra* note 29.

[36] *Civil Service Commission v. Salas*, *supra* note 23.

of betrayals of personal trust or confidential matters of state.[37] (Emphasis supplied)

However, *Salas* declared that since the enactment of R.A. No. 2260 and *Piñero,*[38] it is the nature of the position which finally determines whether a position is primarily confidential or not, without regard to existing executive or legislative pronouncements either way, since the latter will not bind the courts in case of conflict.

A position that is primarily confidential in nature is defined as early as 1950 in *De los Santos v. Mallare*,[39] through the *ponencia* of Justice Pedro Tuason, to wit:

x x x These positions (policy-determining, primarily confidential and highly technical positions), involve the highest degree of confidence, or are closely bound up with and dependent on other positions to which they are subordinate, or are temporary in nature. It may truly be said that the good of the service itself demands that appointments coming under this category be terminable at the will of the officer that makes them.

xxx xxx xxx

**Every appointment implies confidence, but much more than ordinary confidence is reposed in the occupant of a position that is primarily confidential. The latter phrase denotes not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which insures freedom of [discussion, delegation and reporting] without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state. x x x**[40] (Emphasis supplied)

Since the definition in *De los Santos* came out, it has guided numerous other cases.[41] Thus, it still stands that a position is

---

[37] *Id*. at 421-422.

[38] *Piñero v. Hechanova*, *supra* note 24.

[39] 87 Phil. 289 (1950).

[40] *Id*. at 297-298.

[41] *Civil Service Commission v. Salas*, *supra* note 23; *Piñero v. Hechanova, supra* note 24; *Salazar v. Mathay, Sr.,* 165 Phil. 256 (1976); *Borres v.*

primarily confidential when by the nature of the functions of the office there exists "close intimacy" between the appointee and appointing power which insures freedom of intercourse without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state.

In classifying a position as primarily confidential, its functions must not be routinary, ordinary and day to day in character.[42] A position is not necessarily confidential though the one in office may sometimes handle confidential matters or documents.[43] Only ordinary confidence is required for all positions in the bureaucracy. But, as held in *De los Santos,*[44] for someone holding a primarily confidential position, more than ordinary confidence is required.

In *Ingles v. Mutuc,*[45] the Court, through Chief Justice Roberto Concepcion as *ponente,* stated:

> Indeed, physicians handle confidential matters. Judges, fiscals and court stenographers generally handle matters of similar nature. The Presiding and Associate Justices of the Court of Appeals sometimes investigate, by designation of the Supreme Court, administrative complaints against judges of first instance, which are confidential in nature. Officers of the Department of Justice, likewise, investigate charges against municipal judges. Assistant Solicitors in the Office of the Solicitor General often investigate malpractice charges against members of the Bar. **All of these are "confidential" matters, but such fact does not warrant the conclusion that the office or position of all government physicians and all Judges, as well as the aforementioned assistant solicitors and officers of the Department of Justice are *primarily* confidential in character**.[46] (Emphasis supplied)

---

*Court of Appeals,* G.R. No. L-36845, August 21, 1987, 153 SCRA 120; *Griño v. Civil Service Commission, supra* note 23; *Tria v. Sto. Tomas, supra* note 29.

[42] *Tria v. Sto. Tomas, supra* note 29; *Ingles v. Mutuc,* 135 Phil. 177 (1968).

[43] *Tria v. Sto. Tomas, supra* note 29.

[44] *De los Santos v. Mallare*, *supra* note 39, at 297.

[45] *Supra* note 42.

[46] *Id*. at 184.

It is from *De los Santos* that the so-called "proximity rule" was derived. A position is considered to be primarily confidential when there is a primarily close intimacy between the appointing authority and the appointee, which ensures the highest degree of trust and unfettered communication and discussion on the most confidential of matters.[47] This means that where the position occupied is already remote from that of the appointing authority, the element of trust between them is no longer predominant.[48] On further interpretation in *Griño*, this was clarified to mean that a confidential nature would be limited to those positions not separated from the position of the appointing authority by an intervening public officer, or series of public officers, in the bureaucratic hierarchy.[49]

Consequently, brought upon by their remoteness to the position of the appointing authority, the following were declared by the Court to be not primarily confidential positions: City Engineer;[50] Assistant Secretary to the Mayor;[51] members of the Customs Police Force or Port Patrol;[52] Special Assistant of the Governor of the Central Bank, Export Department;[53] Senior Executive Assistant, Clerk I and Supervising Clerk I and Stenographer in the Office of the President;[54] Management and Audit Analyst I of the Finance Ministry Intelligence Bureau;[55] Provincial Administrator;[56] Internal Security Staff of the Philippine Amusement and Gaming Corporation (PAGCOR);[57] Casino

[47] *De los Santos v. Mallare, supra* note 39, at 298.

[48] *Civil Service Commission v. Salas, supra* note 23.

[49] *Griño v. Civil Service Commission, supra* note 23, at 468.

[50] *De los Santos v. Mallare, supra* note 39, at 298.

[51] *Samson v. Court of Appeals,* 230 Phil. 59, 65 (1986).

[52] *Piñero v. Hechanova, supra* note 24, at 1029.

[53] *Corpus v. Cuaderno, Sr.,* 121 Phil. 568, 569 (1965).

[54] *Ingles v. Mutuc, supra* note 42.

[55] *Tria v. Sto. Tomas, supra* note 29.

[56] *Laurel V v. Civil Service Commission, supra* note 25.

[57] *Civil Service Commission v. Salas, supra* note 23.

Operations Manager;[58] and Slot Machine Attendant.[59] All positions were declared to be not primarily confidential despite having been previously declared such either by their respective appointing authorities or the legislature.

The following were declared in jurisprudence to be primarily confidential positions: Chief Legal Counsel of the Philippine National Bank;[60] Confidential Agent of the Office of the Auditor, GSIS;[61] Secretary of the *Sangguniang Bayan*;[62] Secretary to the City Mayor;[63] Senior Security and Security Guard in the Office of the Vice Mayor;[64] Secretary to the Board of a government corporation;[65] City Legal Counsel, City Legal Officer or City Attorney;[66] Provincial Attorney;[67] Private Secretary;[68] and Board Secretary II of the Philippine State College of Aeronautics.[69]

In fine, *a primarily confidential position is characterized by the close proximity of the positions of the appointer and appointee as well as the high degree of trust and confidence inherent in their relationship*.

---

[58] *Philippine Amusement and Gaming Corporation v. Rilloraza, supra* note 29.

[59] *Philippine Amusement and Gaming Corporation v. Angara,* G.R. No. 142937, November 15, 2005, 475 SCRA 41.

[60] *Besa v. Philippine National Bank,* 144 Phil. 282 (1970).

[61] *Salazar v. Mathay, supra* note 41.

[62] *Cortez v. Bartolome, supra* note 18.

[63] *Samson v. Court of Appeals, supra* note 51.

[64] *Borres v. Court of Appeals, supra* note 41.

[65] *Gray v. De Vera,* 138 Phil. 279 (1969).

[66] *Pacete v. Acting Chairman of Commission on Audit,* G.R. No. 39456, May 7, 1990, 185 SCRA 1; *Cadiente v. Santos,* 226 Phil. 211 (1986).

[67] *Hilario v. Civil Service Commission,* 312 Phil. 1157 (1995); *Griño v. Civil Service Commission, supra* note 23.

[68] *Ingles v. Mutuc, supra* note 42 at 177.

[69] *Gloria v. De Guzman, Jr.,* 319 Phil. 217 (1995).

Ineluctably therefore, the position of Corporate Secretary of GSIS, or any GOCC, for that matter, is a primarily confidential position. The position is clearly in close proximity and intimacy with the appointing power. It also calls for the highest degree of confidence between the appointer and appointee.

In classifying the position of Corporate Secretary of GSIS as primarily confidential, the Court took into consideration the proximity rule together with the duties of the corporate secretary, enumerated as follows:[70]

1. Performs all duties, and exercises the power, as defined and enumerated in Section 4, Title IX, P.D. No. 1146;
2. Undertakes research into past Board resolutions, policies, decisions, directives and other Board action, and relate these to present matters under Board consideration;
3. Analyzes and evaluates the impact, effects and relevance of matters under Board consideration on existing Board policies and provide the individual Board members with these information so as to guide or enlighten them in their Board decision;
4. Records, documents and reproduces in sufficient number all proceedings of Board meetings and disseminate relevant Board decisions/information to those units concerned;
5. Coordinates with all functional areas and units concerned and monitors the manner of implementation of approved Board resolutions, policies and directives;
6. Maintains a permanent, complete, systematic and secure compilation of all previous minutes of Board meetings, together with all their supporting documents;
7. Attends, testifies and produces in Court or in administrative bodies duly certified copies of Board resolutions, whenever required;
8. Undertakes the necessary physical preparations for scheduled Board meetings;
9. Pays honoraria of the members of the Board who attend Board meetings;

[70] *Rollo*, pp. 16-17, 89. Quoted from both the Petition and respondent's Comment.

10. Takes custody of the corporate seal and safeguards against unauthorized use; and

11. Performs such other functions as the Board may direct and/or require.

The nature of the duties and functions attached to the position points to its highly confidential character.[71] The secretary reports directly to the board of directors, without an intervening officer in between them.[72] In such an arrangement, the board expects from the secretary nothing less than the highest degree of honesty, integrity and loyalty, which is crucial to maintaining between them "freedom of intercourse without embarrassment or freedom from misgivings or betrayals of personal trust or confidential matters of state."[73]

The responsibilities of the corporate secretary are not merely clerical or routinary in nature. The work involves constant exposure to sensitive policy matters and confidential deliberations that are not always open to the public, as unscrupulous persons may use them to harm the corporation. Board members must have the highest confidence in the secretary to ensure that their honest sentiments are always and fully expressed, in the interest of the corporation. In this respect, the nature of the corporate secretary's work is akin to that of a personal secretary of a public official, a position long recognized to be primarily confidential in nature.[74] The only distinction is that the corporate secretary is secretary to the entire board, composed of a number of persons, but who essentially act as one body, while the private secretary works for only one person. However, the degree of confidence involved is essentially the same.

Not only do the tasks listed point to sensitive and confidential acts that the corporate secretary must perform, they also include "such other functions as the Board may direct and/or require,"

[71] *Borres v. Court of Appeals, supra* note 41, at 131.

[72] See *Griño v. Civil Service Commission, supra* note 23, at 468.

[73] *De los Santos v. Mallare, supra* note 39, at 298.

[74] *Samson v. Court of Appeals*, *supra* note 51, at 64; *Ingles v. Mutuc*, *supra* note 42, at 183.

a clear indication of a closely intimate relationship that exists between the secretary and the board. In such a highly acquainted relation, great trust and confidence between appointer and appointee is required.

The loss of such trust or confidence could easily result in the board's termination of the secretary's services and ending of his term. This is understandably justified, as the board could not be expected to function freely with a suspicious officer in its midst. It is for these same reasons that jurisprudence, as earlier cited, has consistently characterized personal or private secretaries, and board secretaries, as positions of a primarily confidential nature.[75]

The CA did not err in declaring that the position of Corporate Secretary of GSIS is primarily confidential in nature and does not belong to the career service.

The Court is aware that this decision has repercussions on the tenure of other corporate secretaries in various GOCCs. The officers likely assumed their positions on permanent career status, expecting protection for their tenure and appointments, but are now re-classified as primarily confidential appointees. Such concern is unfounded, however, since the statutes themselves do not classify the position of corporate secretary as permanent and career in nature. Moreover, there is no absolute guarantee that it will not be classified as confidential when a dispute arises. As earlier stated, the Court, by legal tradition, has the power to make a final determination as to which positions in government are primarily confidential or otherwise. In the light of the instant controversy, the Court's view is that the greater public interest is served if the position of a corporate secretary is classified as primarily confidential in nature.

Moreover, it is a basic tenet in the country's constitutional system that "public office is a public trust,"[76] and that there is no vested right in public office, nor an absolute right to hold

---

[75] *Cortez v. Bartolome*, *supra* note 18, at 8; *Samson v. Court of Appeals*, *supra* note 51, at 63; *Gray v. De Vera*, *supra* note 65, at 284; *Ingles v. Mutuc*, *supra* note 42, at 183; *Gloria v. De Guzman*, *supra* note 69 at 227.

[76] CONSTITUTION, Art. XI, Sec. 1.

office.[77] No proprietary title attaches to a public office, as public service is not a property right.[78] Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office.[79] The rule is that offices in government, except those created by the constitution, may be abolished, altered, or created anytime by statute.[80] And any issues on the classification for a position in government may be brought to and determined by the courts.[81]

**WHEREFORE,** premises considered, the Petition is *DENIED*. The Decision of the Court of Appeals dated September 29, 2005, in CA-G.R. SP No. 88568, as well as its Resolution of June 5, 2006 are hereby *AFFIRMED in toto.*

No costs.

**SO ORDERED.**

*Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Reyes,* and *Leonardo-de Castro, JJ.,* concur.

*Nachura, J.,* no part.

---

[77] *Mendenilla v. Onandia*, 115 Phil. 534, 541 (1962); *De la Llana v. Alba*, 198 Phil. 1, 86 (1982), Concurring Opinion of J. Guerrero; *Aparri v. Court of Appeals*, 212 Phil. 215, 222 (1984); *Dario v. Mison*, G.R. No. 81954, August 8, 1989, 176 SCRA 84, Dissenting Opinion of J. Melencio-Herrera; *Siete v. Santos*, G.R. No. 82421, September 26, 1990, 190 SCRA 50, 60; *In the Matter to Declare in Contempt of Court Hon. Datumanong, Secretary of DPWH*, G.R. No. 150274, August 4, 2006, 497 SCRA 626, 637; *Engaño v. Court of Appeals*, G.R. No. 156959, June 27, 2006, 493 SCRA 323, 330.

[78] *Montesclaros v. Comelec,* 433 Phil. 620, 637 (2002).

[79] *Aparri v. Court of Appeals, supra* note 77.

[80] *Mendenilla v. Onandia*, *supra* note 77, at 221-222; *De la Llana v. Alba*, *supra* note 77, at 86.

[81] See notes 23 to 26.

**EN BANC**

[G.R. No. 178325. February 22, 2008]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **DOMINADOR SORIANO, SR.,** *appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MINOR INCONSISTENCIES DO NOT AFFECT THE VERACITY OR DETRACT FROM THE CREDIBILITY OF A WITNESS' DECLARATION.—** Appellant makes issue of the fact that AAA could not remember whether her father had pulled down her panties. This inconsistency refers merely to a minor and insignificant detail which does not even pertain to the *gravamen* of the crime. The Court has repeatedly ruled that discrepancies referring only to minor details and not to the central fact of the crime do not affect the veracity or detract from the credibility of a witness' declaration, as long as these are coherent and intrinsically believable on the whole. It would be too much to expect AAA, a 13-year old girl then, to remember each and every detail of the fate she suffered under the hands of her father. The Court has recognized that even the most candid of witnesses make erroneous, confused, or inconsistent statements, especially when they are young and easily overwhelmed by the atmosphere in the courtroom. It is even expected when the victim is recounting the painful details of a humiliating experience which are difficult to recall in open court and in the presence of other people.

**2. ID.; ID.; ID.; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT THEREON.—** Well-settled is the rule that findings of facts and assessment of credibility of witnesses is a matter best left to the trial court because of its unique position of having observed the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. For this reason, the trial court's findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood, or misappreciated and which, if properly considered, would alter the result of the case. In the

case at bar, we find no such circumstance so as to disturb the findings of the trial court.

**3. ID.; ID.; AFFIDAVIT OF DESISTANCE; DISREGARDED BY THE COURT.—** The Court notes that it was AAA's mother who presented the affidavit of desistance while on the witness stand. AAA, however, refused to validate the due execution of the affidavit. Moreover, during cross examination, EEE admitted that she had personal knowledge of the act committed by her husband against her daughter and that the affidavit of desistance was executed on the condition that appellant would leave his family.

**4. CRIMINAL LAW; RAPE; THERE IS NO SUCH CRIME AS "MULTIPLE RAPE."—** We note, however, that both the trial court and the appellate court merely found the appellant guilty of "multiple rape" without specifying the number of rapes that appellant is guilty of. While this may have been irrelevant considering that appellant would have been sentenced to suffer the extreme penalty of death even if only one count of rape was proven, the same is still important since this would have bearing on appellant's civil liability. Further, there is no such crime as "multiple rape." In this case, appellant is guilty of two counts of rape qualified by the circumstances that the victim is under eighteen (18) years of age and the offender is the parent of the victim.

**5. ID; ID.; QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP, CONSIDERED.—** As the qualifying circumstances of minority and relationship were alleged and established, the death penalty imposed by the trial court and affirmed by the Court of Appeals is proper. In view, however, of the subsequent enactment on 24 June 2006 of Republic Act No. 9346, An Act Prohibiting the Imposition of Death Penalty in the Philippines, appellant must be sentenced for each count of rape to suffer the penalty of *reclusion perpetua* without eligibility for parole.

**6. ID.; ID.; AWARD OF CIVIL LIABILITY AND DAMAGES INCREASED IN VIEW OF THE FINDINGS OF TWO COUNTS OF RAPE AND THE PRESENCE OF THE QUALIFYING CIRCUMSTANCE OF MINORITY.—** With respect to the civil liability of appellant, we modify the award of civil indemnity from ₱75,000 to ₱150,000 considering that

appellant is guilty of two counts of rape. We likewise increase the award of moral damages for each count of rape from ₱50,000 to ₱75,000 in accordance with prevailing jurisprudence. Further, in view of the qualifying circumstance of minority, we award ₱25,000 as exemplary damages for each count of rape.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for appellee.
*Corpuz Taganas Caronan Law Offices* for appellant.

**R E S O L U T I O N**

**CARPIO, *J.*:**

This is an appeal from the 21 April 2006 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00419[1] which affirmed the decision of the Regional Trial Court, Branch 29, Bayombong, Nueva Vizcaya, finding appellant Dominador Soriano, Sr. guilty beyond reasonable doubt of multiple rape.

The prosecution charged appellant with raping his then 12-year old daughter AAA, in an Information[2] that reads:

That sometime between October 2000 to December 11, 2001, at Barangay San Leonardo, Municipality of Bambang, Province of Nueva Vizcaya, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, with lewd designs, by means of force, threat, intimidation and grave abuse of authority, did then and there willfully, unlawfully and feloniously have carnal knowledge of his own daughter AAA, 12 years old, against the latter's will and consent, to her own damage and prejudice.

The Information specified Article 266-A of Republic Act No. 8353, Section I, paragraphs (a) and (c) in relation to Republic Act No. 7659, as the law violated.[3]

---

[1] Penned by Justice Josefina Guevara-Salonga, concurred in by Justices Fernanda Lampas Peralta and Sesinado E. Villon.

[2] Records, p. 23.

[3] Art. 266-A. Rape; *When and How Committed. Rape is committed*

Upon arraignment, appellant pleaded not guilty.[4] Thereafter, trial ensued.

The prosecution presented AAA who narrated the harrowing ordeal she went through with her father. AAA testified that one evening in October of 2000 she was awakened from her sleep as she felt someone moving on top of her. She became aware that it was appellant, her father, sexually molesting her. She tried to push her father away but he was too strong. She then tried to reach out to her sister, BBB, who was sleeping nearby, but the latter was sleeping soundly. At that time, her mother was in Manila. Afterwards, appellant threatened to kill AAA if she would tell her mother what transpired. Appellant thereafter repeatedly raped AAA, the last incident took place on 11 December 2001. AAA further testified that her father impregnated her and she eventually gave birth to a baby boy.[5]

AAA's testimony was corroborated by her aunt, CCC. CCC testified that on 7 February 2002 she observed that AAA was sick and vomiting. CCC thus accompanied AAA to Dr. Anthony Cortez (Dr. Cortez) for a check-up as a result of which she learned that AAA was pregnant. When CCC asked AAA who fathered her child, AAA at first did not reveal who made her pregnant. AAA eventually admitted to CCC and Dr. Cortez that appellant raped her and appellant is the father of her child.[6]

The prosecution likewise presented Dr. Anthony Cortez, Municipal Health Officer of the Municipality of Bambang, Nueva Vizcaya, who conducted the medico-genital examination of AAA. According to Dr. Cortez, based on the examination he conducted

---

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

xxx xxx xxx

c) By means of fraudulent machination or grave abuse of authority;

xxx xxx xxx.

[4] Records, p. 26.

[5] TSN, 6 February 2003, pp. 2-15.

[6] TSN, 17 October 2002, pp. 4-6.

on the victim on 7 February 2002, AAA was in the second trimester of her pregnancy.[7]

For his defense, appellant merely denied the charges against him. He claimed that from Monday to Friday, with the exception of his son DDD, his children sleep at the house of their aunt CCC, because his wife works in Manila and cannot take care of them. His children only sleep at home during weekends when their mother is at home. According to Dominador, even when his children are at home, it is his son DDD and his wife who sleep on each of his side and not AAA.[8]

The defense also presented EEE, apellant's wife and victim's mother. On the witness stand, EEE presented the affidavit of desistance allegedly executed by AAA.

In its Decision[9] of 26 August 2004, the trial court found that "it was conclusively shown that accused Dominador Soriano raped his daughter AAA, several times on or before 11 December 2001, in their house in Barangay San Leonardo, Bambang, Nueva Vizcaya, which caused her pregnancy and giving birth to a baby boy." The dispositive portion of the trial court's decision reads:

> WHEREFORE, in view of the foregoing, the accused Dominador Soriano, Sr. is hereby found guilty beyond reasonable doubt of the crime charged, and is hereby sentenced to DEATH. He shall indemnify the victim AAA, Seventy Five Thousand Pesos (₱75,000.00) as civil indemnity and Fifty Thousand Pesos (₱50,000.00) as moral damages.

On appeal, appellant questioned the ruling of the trial court on the ground that there were inconsistencies in the testimony of AAA as to what transpired during the alleged first rape, in particular as to whether appellant removed her undergarments prior to the sexual act. Appellant further makes issue of the fact that the trial court disregarded the affidavit of desistance signed by his daughter.

---

[7] TSN, 12 March 2003, pp. 4-10.

[8] TSN, 7 August 2003, pp. 5-9.

[9] CA *rollo*, pp. 12-20.

In its 21 April 2006 Decision, the Court of Appeals affirmed the trial court's decision and found that the prosecution had proved beyond reasonable doubt the guilt of the accused for the crime of multiple rape. According to the appellate court, AAA's testimony was straightforward, consistent on material points, and unshaken by cross-examination and the alleged minor inconsistency in her narration of events of the first rape did not tarnish her credibility.

The Court of Appeals further ruled that the affidavit of desistance presented by appellant could not exonerate him especially since AAA refused to validate the due execution and veracity of said affidavit in open court.

Hence, this appeal.

Appellant raises the following errors:[10]

1) The trial and appellate courts failed to appreciate the inconsistencies in the statement of AAA; and

2) The trial and appellate courts failed to take into consideration the affidavit of desistance of AAA.

We find no merit in the appeal.

Appellant makes issue of the fact that AAA could not remember whether her father had pulled down her panties. This inconsistency refers merely to a minor and insignificant detail which does not even pertain to the *gravamen* of the crime. The Court has repeatedly ruled that discrepancies referring only to minor details and not to the central fact of the crime do not affect the veracity or detract from the credibility of a witness' declaration, as long as these are coherent and intrinsically believable on the whole.[11] It would be too much to expect AAA, a 13-year old girl then, to remember each and every detail of the fate she suffered under the hands of her father. The Court has recognized that even the most candid of witnesses make erroneous, confused, or inconsistent statements, especially when they are young and

[10] *Id*. at 29.

[11] *People v. Suarez, et al.*, G.R. Nos. 153573-76, 15 April 2005, 456 SCRA 333, 345.

easily overwhelmed by the atmosphere in the courtroom. It is even expected when the victim is recounting the painful details of a humiliating experience which are difficult to recall in open court and in the presence of other people.[12]

In any case, this issue goes into the credibility of AAA as a witness. Well-settled is the rule that findings of facts and assessment of credibility of witnesses is a matter best left to the trial court because of its unique position of having observed the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. For this reason, the trial court's findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood, or misappreciated and which, if properly considered, would alter the result of the case.[13] In the case at bar, we find no such circumstance so as to disturb the findings of the trial court.

As the Court of Appeals stated, AAA's testimony was straightforward, consistent on material points, and unshaken by cross-examination. Appellant has failed to come out with any plausible reason why AAA would fabricate a story of rape against him. Equally telling too is the fact that appellant's repulsive act of sexually abusing his own daughter resulted to the birth of a baby boy.

Appellant further argues that the affidavit of desistance is evidence that AAA by her own declaration was not raped by appellant.

This Court looks with disfavor on affidavits of desistance.[14] In the case of *People v. Junio*,[15] we stated:

The appellant's submission that the execution of an Affidavit of Desistance by complainant who was assisted by her mother supported the 'inherent incredibility of prosecution's evidence' is specious.

---

[12] *People v. Bernaldez*, 355 Phil. 740, 750-751 (1998).

[13] *People v. San Antonio, Jr.*, G.R. No. 176633, 5 September 2007.

[14] *People v. Alicante*, 388 Phil. 233, 258 (2000).

[15] G.R. No. 110990, 28 October 1994, 237 SCRA 826, 834 (1994).

**We have said in so many cases that retractions are generally unreliable and are looked upon with considerable disfavor by the courts. The unreliable character of this document is shown by the fact that it is quite incredible that after going through the process of having the accused-appellant arrested by the police, positively identifying him as the person who raped her, enduring the humiliation of a physical examination of her private parts, and then repeating her accusations in open court by recounting her anguish,** Maryjane would suddenly turn around and declare that [a]fter a careful deliberation over the case, (she) find(s) that the same does not merit or warrant criminal prosecution.

Thus, we have declared that at most the retraction is an afterthought which should not be given probative value. It would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness who has given it later on changed his mind for one reason or another. Such a rule will make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses. (Emphasis supplied)

The Court notes that it was AAA's mother who presented the affidavit of desistance while on the witness stand. AAA, however, refused to validate the due execution of the affidavit. Moreover, during cross examination, EEE admitted that she had personal knowledge of the act committed by her husband against her daughter and that the affidavit of desistance was executed on the condition that appellant would leave his family, thus:

CROSS-EXAMINATION

BY PROSECUTOR TIONGSON:

xxx xxx xxx

Q You are now going to forgive your husband who committed crime against your daughter, AAA?

ATTY. TAGANAS:

Objection, your Honor. The witness did not say that the husband committed the crime as insinuated by the good prosecutor.

He only said that she had hurt feelings:

PROSECUTOR TIONGSON:

Q Why do you say that you had hurt feelings against your husband?

A She (sic) is my husband.

**Q Do you have personal knowledge regarding what was your daughter complaining against your husband?**

**A I know it, sir.**

xxx xxx xxx

Q Now, when you prepared or executed an affidavit of desistance, have you discussed it thoroughly with your daughter AAA?

A Yes, sir.

Q She relented to withdraw the case against your husband?

A Yes, sir.

Q You did not coerce or intimidate in signing this withdrawal?

A No, sir. It was her voluntary act.

Q How about the other children of yours, do they conform to the affidavit of desistance?

A Yes, sir.

**Q So you are now really decided on dismissing this case in favor of your husband?**

**A Yes, sir. But I would like to see that he will not stay here anymore. He will go to another place after the dismissal.**

Q You have a condition that your husband will go away?

A That was what he told me to look for a job.

Q That was an oral argument with your husband, is it not?

A Yes, sir.

Q There is no written contract about this?

A Yes, sir.

Q With that assurance or promise of your husband, do you believe that he will go away?

A Yes, sir. I believe so.

Q In case that this Court will honor the affidavit of desistance, you want this case to be dismissed temporarily or provisionally?

A Yes, sir.[16] (Emphasis supplied)

In sum, the prosecution had established that appellant had carnal knowledge of AAA, his minor daughter, on at least two occasions, in violation of Article 266-A paragraphs (a) and (c) of the Revised Penal Code as amended by Republic Act No. 8353. The first rape incident took place sometime in October of 2000 and the second on 11 December 2001.

The Court observes that the information charged more than one offense in violation of Section 13, Rule 110 of the Revised Rules on Criminal Procedure.[17] Considering that appellant did not seasonably object to the multiple offenses in the information, the court may convict the appellant of as many as are charged and proved.[18] We note, however, that both the trial court and the appellate court merely found the appellant guilty of "multiple rape" without specifying the number of rapes that appellant is guilty of. While this may have been irrelevant considering that appellant would have been sentenced to suffer the extreme penalty of death even if only one count of rape was proven, the same is still important since this would have bearing on appellant's civil liability. Further, there is no such crime as "multiple rape."

[16] TSN, 5 February 2004, pp. 7-9.

[17] Sec. 13. *Duplicity of the offense*. – A complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses.

[18] Sec. 3, Rule 120 of the Revised Rules Rules of Criminal Procedure provides:

*Judgment for two or more offenses*. – When two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict him of as many offenses as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense.

In this case, appellant is guilty of two counts of rape qualified by the circumstances that the victim is under eighteen (18) years of age and the offender is the parent of the victim.

As the qualifying circumstances of minority and relationship were alleged and established, the death penalty imposed by the trial court and affirmed by the Court of Appeals is proper. In view, however, of the subsequent enactment on 24 June 2006 of Republic Act No. 9346, An Act Prohibiting the Imposition of Death Penalty in the Philippines, appellant must be sentenced for each count of rape to suffer the penalty of *reclusion perpetua* without eligibility for parole.

With respect to the civil liability of appellant, we modify the award of civil indemnity from ₱75,000 to ₱150,000 considering that appellant is guilty of two counts of rape. We likewise increase the award of moral damages for each count of rape from ₱50,000 to ₱75,000[19] in accordance with prevailing jurisprudence. Further, in view of the qualifying circumstance of minority, we award ₱25,000 as exemplary damages for each count of rape.[20]

**WHEREFORE,** the Decisions of the Regional Trial Court, Branch 29, Bayombong, Nueva Vizcaya in Criminal Case No. 1556 and Court of Appeals in CA-G.R. CR-H.C. No. 00419 are *AFFIRMED WITH MODIFICATION*. Appellant Dominador Soriano, Sr. is found guilty of two counts of qualified rape and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole for each count of rape, and to pay the victim, AAA, ₱150,000 as civil indemnity, ₱150,000 as moral damages, and ₱50,000 as exemplary damages.

**SO ORDERED.**

*Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes,* and *Leonardo-de Castro, JJ.,* concur.

---

[19] *People v. Bidoc,* G.R. No. 169430, 31 October 2006, 506 SCRA 481.

[20] *People v. Salome,* G.R. No. 169077, 31 August 2006, 500 SCRA 659, 676; *People v. Quiachon*, G.R. No. 170236, 31 August 2006, 500 SCRA 704, 719.

**SECOND DIVISION**

[A.M. No. 07-10-260-MTC. February 26, 2008]

**RE: ABSENCE WITHOUT OFFICIAL LEAVE (AWOL) OF MR. GREGORIO B. SADDI, Clerk of Court II, Municipal Trial Court, Sasmuan, Pampanga.**

**SYLLABUS**

**POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGE; FREQUENT UNAUTHORIZED ABSENCES IS INIMICAL TO PUBLIC SERVICE.—** We note that respondent has been reporting for work regularly as evidenced by Judge Canlas's letter dated 24 October 2007. We deem it too harsh to drop him from the rolls at this point. Nevertheless, even with the fullest measure of sympathy and patience, the Court cannot act otherwise since the exigencies of government service cannot and should never be subordinated to purely human equations. It must be stressed that frequent unauthorized absences is inimical to public service and for this, respondent must be meted the proper penalty. Noting that this is his first offense and recalling his plea for humane considerations in previous instances which we had granted, it is our view that a suspension for two (2) months would suffice as penalty.

**R E S O L U T I O N**

**TINGA, *J.*:**

This resolves the Motion for Reconsideration,[1] filed by Gregorio B. Saddi, Clerk of Court II, Municipal Trial Court (MTC) of Sasmuan, Pampanga, of our Resolution dated 13 December 2007 dropping him from the rolls effective 2 January 2007 for having been on absence without approved leave since said date.

Respondent explains that in response to the letter[2] dated 6 June 2007 of the late Pascuala Canlas, Presiding Judge of MTC

[1] *Rollo*, pp. 16-33.

[2] *Id.* at 8.

of Sasmuan, Pampanga, he submitted a letter-explanation dated 7 June 2007 together with his daily time records (bundy cards), application for leave and original medical certificate to Judge Canlas and received by the court stenographer, Albert M. David.[3] He further alleges that as early as 9 July 2007, said documents had already been submitted for appropriate action.

He avers that the telegram dated 4 July 2007 sent by the Office of the Court Administrator (OCA) requesting Judge Canlas to instruct him to submit his bundy cards from January 2007 to date as well as the letter dated 9 July 2007 requesting Judge Canlas to serve upon him a letter requiring him to explain his unauthorized absences were not communicated to him by Judge Canlas, which thus resulted in his failure to respond accordingly. He argues that this is evidenced by Judge Canlas's failure to comply with the OCA's directive to submit a confirmation or proof of service. He adds that he was not sent a separate copy of said letter because the one addressed to him was enclosed with the letter addressed to Judge Canlas. He allegedly discovered the existence of these letters only after Judge Canlas passed away in December 2007.

He narrates that he and a court stenographer, Jeffrey Mangalindan, went inside Judge Canlas's chambers to get some folders and there he saw to his surprise his bundy cards and application for leave of absence which were still not acted upon by Judge Canlas. Mangalindan executed an affidavit attesting to this fact.[4] He further claims that after submitting the documents required of him, he reported for work. He maintains that when he submitted his bundy cards for the months of October, November and December which were duly received by the Leave Division, the latter did not inform him of the non-transmittal of his bundy cards for the period of January to September 2007. He states that his bundy cards for the months of November and December 2007 as well as those of his co-employees were not transmitted on time because Judge Canlas was then on official leave as she was ill. He further claims that because he had

[3] *Id*. at 20, 27-32.

[4] *Id*. at 33.

reported for work regularly, Judge Canlas sent a letter dated 24 October 2007 to the OCA informing the latter that David would be directed to turn over to him the passbook for fiduciary funds, and at the same time requesting that her letter dated 21 May 2007 be revoked and respondent, as clerk of court, be designated as the new signatory to the fiduciary account with the Land Bank of the Philippines.[5]

He argues that the foregoing circumstances show his good faith in submitting the documents required of him and that he was deprived of a reasonable opportunity to be heard as he did not receive the OCA's communications. He pleads that this Court's Resolution dated 13 December 2007 be reconsidered and he be reinstated as he is the sole bread winner in a family of four children.

We reconsider.

Section 63, Rule XVI of the Omnibus Civil Service Rules and Regulations, as amended, provides that no prior notice is required to drop from the rolls an employee who is continuously absent without approved leave for at least thirty (30) calendar days. This Court has nevertheless given erring employees an opportunity to be heard by requiring them to explain their unauthorized absences. In view of the circumstances surrounding the receipt by respondent of the OCA's letter requiring him to show cause why he should not be disciplinarily dealt with for his unauthorized absences, we hold and so rule that the instant Motion for Reconsideration with attachments constitutes substantial compliance with the directive.

However, while respondent submitted his bundy cards and application for leave of absence for the months of January to May 2007 as required by the OCA, he nevertheless failed to proffer any explanation for his unauthorized absences during that period. He did not even specify in his applications for leave of absence if the same were for sick leave or vacation leave, except for the month of January when he applied for three days of sick leave.

[5] *Id*. at 24.

We note that respondent has been reporting for work regularly as evidenced by Judge Canlas's letter dated 24 October 2007. We deem it too harsh to drop him from the rolls at this point. Nevertheless, even with the fullest measure of sympathy and patience, the Court cannot act otherwise since the exigencies of government service cannot and should never be subordinated to purely human equations.[6]

As a Supreme Court employee, respondent is covered by the Civil Service Law. Under Section 52, Rule IV of the Uniform Rules on Administrative Cases,[7] "frequent, unauthorized absences, or tardiness in reporting for duty, loafing or frequent, unauthorized absences from duty during regular office hours" is classified as a grave offense punishable by suspension for the first offense (6 months, 1 day to one 1 year) and dismissal for the second offense. Furthermore, under Administrative Circular No. 2-99[8] –

> xxx Absenteeism and tardiness, even if such do not qualify as "habitual" or "frequent" under Civil Service Commission Memorandum Circular No. 04, Series of 1991, shall be dealt with severely, and any falsification of daily time records to cover-up for such absenteeism and/or tardiness shall constitute gross dishonesty or serious misconduct.

It must be stressed that frequent unauthorized absences is inimical to public service and for this, respondent must be meted the proper penalty. Noting that this is his first offense and recalling his plea for humane considerations in previous instances which we had granted, it is our view that a suspension for two (2) months would suffice as penalty.

Let this serve as a reminder to respondent that the conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with the heavy

---

[6] *Re: Unauthorized Absences of Karen R. Cuenca, Clerk II, Property Division-Office of the Administrative Services,* A.M. No. 2005-03-SC, 15 March 2005.

[7] Resolution No. 991936 Memorandum Circular No. 19, Series of 1999.

[8] Strict Observance of Working Hours and Disciplinary Action for Absenteeism and Tardiness.

burden of responsibility, and this Court cannot countenance any act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary.[9]

**WHEREFORE,** in view of the foregoing, the Motion for Reconsideration is *GRANTED*. Our Resolution dated 13 December 2007 is *SET ASIDE*. Let a new one be issued *SUSPENDING* from office respondent Gregorio B. Saddi for two (2) months for absenteeism. He is *STERNLY WARNED* that a repetition of the same or similar act shall be dealt with more severely.

Let a copy of this Resolution be served upon respondent at his address appearing on his 201 files pursuant to Section 63, Rule XVI of the Omnibus Civil Service Rules and Regulations, as amended.

**SO ORDERED.**

*Quisumbing (Chairperson), Carpio, Carpio Morales,* and *Velasco, Jr., JJ.,* concur.

---

**SECOND DIVISION**

[G.R. No. 130841. February 26, 2008]

**SPOUSES VIRGINIA G. GONZAGA and ALFREDO GONZAGA,** *petitioners, vs.* **COURT OF APPEALS, BIENVENIDO AGAN, and ROWENA AGAN,** *respondents.*

---

[9] *Re: Unauthorized Absences of Karen R. Cuenca*, *supra*.; *Anonymous Complaint Against Pershing T. Yared,* A.M. No. P-05-2015, 28 June 2005.

**SYLLABUS**

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT PROPER REMEDY IN CASE AT BAR.—** Petitioners, therefore, then had 15 days from their receipt on September 10, 1997 of the Resolution dated August 29, 1997, or until September 25, 1997 within which to file a petition for review under Rule 45. Instead, they filed on September 25, 1997 the instant Petition for *Certiorari* dated September 18, 1997. Clearly, the proper remedy in the instant case should have been the filing of a petition for review under Rule 45. This Court has repeatedly ruled that reviews under Rules 45 and 65 of the Rules of Court are mutually exclusive and the remedy of *certiorari* under Rule 65 cannot be made a substitute for a petitioner's failure to timely appeal under Rule 45. Thus, under Sec. 5(f) of Rule 56, a petition for *certiorari* interposed when an appeal is proper and available may be dismissed.

**2. ID.; ID.; FORCIBLE ENTRY AND DETAINER; COMPLAINANT IN FORCIBLE ENTRY CASE MUST ALLEGE AND EVENTUALLY PROVE PRIOR PHYSICAL POSSESSION; APPLICATION.—** It is quite clear from the foregoing provision that for a forcible entry suit to prosper, the person lawfully entitled to the possession of the property must allege and prove that he was deprived of such possession by means of force, intimidation, threat, strategy, or stealth. And when the law speaks of possession, the reference is to prior physical possession or possession *de facto*, as contra-distinguished from possession *de jure.* To borrow from Justice Edgardo Paras, for a complaint for forcible entry to prosper, the plaintiff must allege in his complaint that he had **prior physical possession** of the land and that the defendant unlawfully deprived him of such possession through any of the grounds provided in Rule 70, Sec. 1. Clearly then, complainants in forcible entry cases must allege and eventually prove prior physical possession. Else, their cases fail, as here. Petitioners' claim that they have prior physical possession by virtue of their absolute ownership of the subject land is untenable. Obviously, they equate possession as an attribute of ownership to the fact of actual possession. They are of course wrong, possession *de facto* and possession flowing from ownership are different legal concepts.

**3. ID.; ID.; FORCIBLE ENTRY, NOT PROPER REMEDY; IF MORE THAN ONE YEAR HAS ELAPSED FROM THE TIME POSSESSION OF THE LAND WAS ALLEGEDLY TAKEN, *ACCION PUBLICIANA* IS THE PROPER REMEDY.—** We agree with the CA and RTC that the proper remedy in the instant case is to file an *accion publiciana* case, a plenary action for recovery of possession in ordinary civil proceedings in order to determine the better and legal right to possess, independently of title. It differs from a forcible entry action in that it does not require prior physical possession in order to prosper. Additionally, considering that more than one (1) year has already elapsed from the time that possession of the subject land was allegedly taken from petitioners, and that an action for forcible entry may only be filed within one (1) year from the plaintiff's deprivation of possession of the land, an *accion publiciana* is the only remedy available to petitioners now to determine who has the better right to possession of the land.

**APPEARANCES OF COUNSEL**

*Alabastro Olaguer & Alabastro Law Offices* for petitioners.
*Lucilo B. Sarona, Jr.* for private respondent.

**D E C I S I O N**

**VELASCO, JR., *J.*:**

**The Case**

This Petition for *Certiorari* under Rule 65 seeks to reverse and set aside the Resolution dated April 10, 1997[1] of the Court of Appeals (CA) in CA-G.R. SP No. 43793, denying the petition for review of petitioners-spouses Virginia and Alfredo Gonzaga of the Decision dated December 20, 1996 of the Davao City Regional Trial Court (RTC), Branch 33; and the Resolution dated August 29, 1997[2] of the CA, denying petitioners' Motion for Reconsideration.

---

[1] *Rollo*, pp. 189-192. Penned by Associate Justice Artemio G. Tuquero and concurred in by Associate Justices Artemon D. Luna (Chairperson) and Hector L. Hofilena.

[2] *Id*. at 220-221.

**The Facts**

Petitioners are the registered owners of a residential lot covered by Transfer Certificate of Title No. T-240379,[3] with an area of 247 square meters, more or less, and located in Ecoland Subdivision, Phase IV, Matina, Davao City. Petitioners admitted that they do not reside at this property.[4]

In May 1995, petitioners decided to construct a house on the said parcel of land and engaged the services of a civil engineer to prepare the corresponding construction plan. Petitioners claimed that there was no occupant on the land when construction began in June 1995.

Sometime in June 1995, petitioners went to inspect the above lot and discovered that a shanty belonging to private respondents Bienvenido and Rowena Agan had been built on the land in question.

A demand later made on private respondents to vacate the lot in question went unheeded.[5]

Thus, on April 26, 1996, petitioners filed a Complaint dated April 18, 1996[6] against private respondents for Forcible Entry, Damages, and Attorney's Fees with Prayer for Temporary Restraining Order and Preliminary Injunction with the Municipal Trial Court in Cities (MTCC) in Davao City. The case entitled *Spouses Virginia Gonzaga and Alfredo Gonzaga v. Bienvenido Agan and Rowena Agan* was docketed as Civil Case No. 3001-E-96. As alleged by petitioners, private respondents put up the structure by stealth and strategy.

In their Answer dated June 10, 1996,[7] private respondents alleged that they are the occupants of a portion of what is known as the "Sabroso Village." They further alleged that their shanty

---

[3] *Id*. at 112.

[4] *Id*.

[5] *Id*.

[6] *Id*. at 64-77.

[7] *Id*. at 78-88.

is within the land covered by a Free Patent Application dated February 9, 1992 in the name of Ponciano Sabroso,[8] who knew of the shanty's existence for a long time and consented to their stay in the village.

**The Ruling of the MTCC**

Thereafter, the MTCC rendered a Decision dated August 26, 1996[9] in favor of petitioners, the dispositive portion of which states:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiffs, the spouses Virginia G. Gonzaga and Alfredo Gonzaga, and against the defendants Bienvenido Agan and Rowena Agan, ordering the defendants to vacate plaintiffs' property covered by TCT No. T-240379 and to remove their improvements and structures, or shanty therefrom, and further defendants are ordered to pay plaintiffs the reasonable value of the use of the land occupied by them, at ₱1,000.00 a month, from June 1995, until they vacate, and the sum of ₱10,000.00 for attorney's fees, and pay the costs.
>
> SO ORDERED.

In so ruling, the MTCC held that private respondents failed to rebut allegations that they entered petitioners' property by stealth. The MTCC found as untenable private respondents' counter-allegation that they gained entry to the land in 1983 that is allegedly covered by the Free Patent Application of Ponciano Sabroso.

**The Decision of the RTC**

Unconvinced, private respondents appealed the above MTCC ruling to the Davao City RTC docketed as Civil Case No. 24,772-96. Eventually, the RTC rendered a Decision dated December 20, 1996, the dispositive portion of which reads:

> WHEREFORE, in view of all the foregoing, the appealed decision is REVERSED and judgment is entered dismissing the complaint for lack of cause of action for forcible entry.

---

[8] *Id*. at 58 & 78.

[9] *Id*. at 145-147.

The counterclaim is likewise dismissed.

No costs.

SO ORDERED.[10]

The RTC predicated its ruling on the premise that petitioners, although claiming to be owners of the subject property, failed to prove prior actual physical possession, a necessary element in an action for ejectment. To the RTC, petitioners should have not commenced an action for forcible entry but an *accion publiciana* suit.

Thus, petitioners filed with the CA on March 4, 1997 a petition for review docketed as CA-G.R. SP No. 43793.

**The Ruling of the CA**

On April 10, 1997, the CA issued the first assailed Resolution, denying due course to petitioners' petition for review mainly on the strength of the following observations:

A perusal of the complaint would show that apart from claiming ownership of the lot in question, petitioners have not asserted prior possession thereof, much less the manner of their dispossession, which is essential in an action for forcible entry.

As correctly pointed out by respondent Court, plaintiffs' action should be one for recovery of possession or an *accion publiciana,* not for forcible entry.[11]

From this Resolution, petitioners sought reconsideration. However, the CA, in its second assailed Resolution dated August 29, 1997, denied petitioners' Motion for Reconsideration.

Hence, we have this Petition for *Certiorari*.

**The Issues**

The issues raised in the petition are set forth in the following assignment of errors:

---

[10] *Id*. at 60.

[11] *Supra* note 1, at 192.

I.

The court *a quo* committed grave abuse of discretion in failing to give due course to the petition for review filed therewith as it committed a gross mistake in appreciating the facts of the case.

II.

The court *a quo* erred in holding that petitioners' action should not be for forcible entry but for *accion publiciana*.[12]

**The Ruling of this Court**

The petition must be dismissed.

At the outset, it must be pointed out that petitioners invoked the *certiorari* jurisdiction of the Court under Rule 65 when an appeal under Rule 45 is the proper remedy and should have been filed.

Under the first paragraph of Section 1 of Rule 65, the remedy of *certiorari* may only be availed of in the absence of any other remedy in the ordinary course of law open to the petitioner. The provision states:

Section 1. *Petition for certiorari.*— When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and **there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. (Emphasis supplied.)

In the instant case, the CA had already finally disposed of the case with the issuance of the Resolution dated April 10, 1997 denying due course to petitioners' petition for review of the RTC's decision, and the Resolution dated August 29, 1997 denying petitioners' Motion for Reconsideration. Thus, the remedy of an appeal under Rule 45 was then already available to petitioners.

[12] *Rollo*, p. 15.

Sec. 1 of Rule 45 states:

> Section 1. *Filing of petition with Supreme Court.*— A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

Petitioners, therefore, then had 15 days from their receipt on September 10, 1997 of the Resolution dated August 29, 1997, or until September 25, 1997 within which to file a petition for review under Rule 45. Instead, they filed on September 25, 1997 the instant Petition for *Certiorari* dated September 18, 1997.

Clearly, the proper remedy in the instant case should have been the filing of a petition for review under Rule 45. This Court has repeatedly ruled that reviews under Rules 45 and 65 of the Rules of Court are mutually exclusive and the remedy of *certiorari* under Rule 65 cannot be made a substitute for a petitioner's failure to timely appeal under Rule 45.[13] Thus, under Sec. 5(f) of Rule 56,[14] a petition for *certiorari* interposed when an appeal is proper and available may be dismissed.

The foregoing notwithstanding, even if we overlook the procedural infirmity of the instant petition and treat it as an appeal under Rule 45, the recourse must still be dismissed.

As it were, the issues raised by petitioners revolve around the matter of possession before private respondents allegedly entered forcibly the property. Petitioners argue that, contrary to the findings of the CA and RTC, they had prior possession of the subject property. Pursuing the point, petitioners state that absolute ownership necessarily connotes possession.

---

[13] *Chua v. Santos*, G.R. No. 132467, October 18, 2004, 440 SCRA 365, 372-373.

[14] Rule 56, Sec. 5(f) states:

> Section 5. *Grounds for dismissal of appeal.*— The appeal may be dismissed *motu proprio* or on motion of the respondent on the following grounds:
>
> xxx xxx xxx
>
> (f) Error in the choice or mode of appeal.

Petitioners' posture is specious.

Sec. 1 of Rule 70 prescribes the rules when an action for forcible entry and unlawful detainer is proper, thus:

> Section 1. *Who may institute proceedings, and when.*— Subject to the provisions of the next succeeding section, **a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth**, or a lessor, vendor or vendee or other person, against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or person unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs. (Emphasis supplied.)

It is quite clear from the foregoing provision that for a forcible entry suit to prosper, the person lawfully entitled to the possession of the property must allege and prove that he was deprived of such possession by means of force, intimidation, threat, strategy, or stealth. And when the law speaks of possession, the reference is to prior physical possession or possession *de facto*, as contra-distinguished from possession *de jure.*

To borrow from Justice Edgardo Paras, for a complaint for forcible entry to prosper, the plaintiff must allege in his complaint that he had **prior physical possession** of the land and that the defendant unlawfully deprived him of such possession through any of the grounds provided in Rule 70, Sec. 1.[15]

The requirement of prior physical possession in ejectment cases was explained by this Court in *Mediran v. Villanueva*, to wit:

> Juridically speaking, possession is distinct from ownership, and from this distinction are derived legal consequences of much importance. In giving recognition to the action of forcible entry and detainer **the purpose of the law is to protect the person who**

[15] 2 RULES OF COURT ANNOTATED 163 (1st ed., 1990).

**in fact has actual possession;** and in case of controverted right, it requires the parties to preserve the *status quo* until one or the other of them sees fit to invoke the decision of a court of competent jurisdiction upon the question of ownership. It is obviously just that the person who has first acquired possession should remain in possession pending this decision; and the parties cannot be permitted meanwhile to engage in a petty warfare over the possession of the property which is the subject of dispute. To permit this would be highly dangerous to individual security and disturbing to social order. Therefore, where a person supposes himself to be the owner of a piece of property and desires to vindicate his ownership against the party actually in possession, it is incumbent upon him to institute an action to this end in a court of competent jurisdiction; and he can not be permitted, by invading the property and excluding the actual possessor, to place upon the latter the burden of instituting an action to try the property right.[16] (Emphasis supplied.)

In *Heirs of Pedro Laurora v. Sterling Technopark III*, the Court stressed the basic inquiry in forcible entry cases:

The only issue in forcible entry cases is the physical or material possession of real property—possession *de facto*, not possession *de jure*. Only prior physical possession, not title, is the issue. If ownership is raised in the pleadings, the court may pass upon such question, but only to determine the question of possession.[17]

Of the same tenor, but formulated a bit differently, is what the Court wrote in *Bejar v. Caluag*:

To make out a suit for illegal detainer or forcible entry, the complaint must contain two mandatory allegations: **(1) prior physical possession of the property by the plaintiff;** and (2) deprivation of said possession by another by means of force, intimidation, threat, strategy or stealth. This latter requirement implies that the possession of the disputed property by the intruder has been unlawful from the very start. Then, the action must be brought within one year from the date of actual entry to the property or, in cases where stealth was employed, from the date the plaintiff learned about it.[18] (Emphasis supplied.)

---

[16] 37 Phil. 752, 761 (1918).

[17] G.R. No. 146815, April 9, 2003, 401 SCRA 181, 184-185.

[18] G.R. No. 171277, February 15, 2007, 516 SCRA 84, 91.

Clearly then, complainants in forcible entry cases must allege and eventually prove prior physical possession. Else, their cases fail, as here.

Petitioners' claim that they have prior physical possession by virtue of their absolute ownership of the subject land is untenable. Obviously, they equate possession as an attribute of ownership to the fact of actual possession. They are of course wrong, possession *de facto* and possession flowing from ownership are different legal concepts.

We agree with the CA and RTC that the proper remedy in the instant case is to file an *accion publiciana* case, a plenary action for recovery of possession in ordinary civil proceedings in order to determine the better and legal right to possess, independently of title.[19] It differs from a forcible entry action in that it does not require prior physical possession in order to prosper. Additionally, considering that more than one (1) year has already elapsed from the time that possession of the subject land was allegedly taken from petitioners, and that an action for forcible entry may only be filed within one (1) year from the plaintiff's deprivation of possession of the land, an *accion publiciana* is the only remedy available to petitioners now to determine who has the better right to possession of the land.

**WHEREFORE,** we *DISMISS* the petition, and *AFFIRM* the CA's Resolutions dated April 10, 1997 and August 29, 1997 in CA-G.R. SP No. 43793.

Costs against petitioners.

**SO ORDERED.**

*Quisumbing (Chairperson), Carpio, Carpio Morales,* and *Tinga, JJ.,* concur.

[19] *Id*. at 90.

**FIRST DIVISION**

[G.R. Nos. 139594-95. February 26, 2008]

**BORROMEO BROS. ESTATE, INC.,** *petitioner, vs.* **EDGAR JOHN A. GARCIA,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NATURE.—** The filing of a special civil action for *certiorari* before the Court of Appeals limits the determination of the appellate court to whether there was an error of jurisdiction or grave abuse of discretion on the part of the cadastral court. A special civil action for *certiorari* is an independent action, raising the question of jurisdiction where the tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

**2. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS; DENIAL THEREOF, NOT A CASE OF.—** The cadastral court did not deny petitioner of its right to due process of the law. The essence of due process is found in the reasonable opportunity to be heard and submit any evidence in support of one's defense. What the law proscribes is the lack of opportunity to be heard. As long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process. The records reveal that the cadastral court furnished petitioner its Order of July 23, 1997, which reiterated its previous order of April 17, 1952 through former Judge Ignacio Debuque. More importantly, **the cadastral court heard petitioner's motion for reconsideration in open court** wherein both parties presented their respective arguments to defend their rights and the court likewise allowed the parties to file their respective memoranda prior to ruling on the motion for reconsideration. x x x Indeed, deprivation of the right to due process cannot be successfully invoked where a party was given the chance to be heard on his Motion for Reconsideration as what happened in the instant case.

**APPEARANCES OF COUNSEL**

*Fernan Mercado Cordero Dela Torre and Bael* for petitioner.
*Avito P. Cahig* and *Loreto M. Durano* for respondent.

**D E C I S I O N**

**PUNO, *C.J.*:**

Before us is a petition for review on *certiorari* which seeks the reversal of the Consolidated Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. Sp. Nos. 47049 and 48512 which affirmed the Orders[3] of the Regional Trial Court (RTC) to annotate an easement of road right of way on the title of petitioner Borromeo Bros. Estate, Inc. in favor of respondent Edgar John A. Garcia.

On August 17, 1938, Patricia Ruedas *Vda. De* Andrada (Patricia) executed, for valuable consideration, a document granting a road right of way to spouses Gil Garcia and Teresa Escaño de Garcia (Garcia couple) over Lot No. 6-H-2 described in Transfer Certificate of Title (TCT) No. 20923:

> I, PATRICIA RUEDAS *VDA. DE* ANDRADA (Filipina, of legal age, widow and with residence and postal address at No. 28 Fructuoso Ramos St., City of Cebu, Philippines), for and in consideration of the sum of TEN PESOS (10.00) to be paid in hand by the spouses GIL GARCIA and TERESA ESCAÑO DE GARCIA (Filipinos, both of legal ages (sic) and residing at Fructuoso Ramos St. (interior), City of Cebu, Philippines), do hereby grant unto said spouses Gil Garcia and Teresa Escaño de Garcia a right of way over lot number SIX-H-TWO (6-H-2), described in the Transfer Certificate of Title

[1] Penned by Associate Justice Bernardo LL. Salas and concurred in by Associate Justices Cancio C. Garcia and Candido V. Rivera, June 21, 1999; *rollo,* pp. 293-315.

[2] Penned by Associate Justice Alicia Austria-Martinez and concurred in by Associate Justices Salvador J. Valdez, Jr. and Renato C. Dacudao, August 9, 1999; *id.,* p. 275.

[3] Dated July 23, 1997 and December 15, 1997.

numbered TWENTY THOUSAND NINE HUNDRED TWENTY FIVE (20925) in the office of the Register of Deeds for the province of Cebu.[4]

On September 28, 1938, Patricia sold the property to petitioner. The Deed of Sale contained a provision that "the purchase of Lot No. 6-H-2 was subject to the right of way granted by me (Patricia Ruedas *Vda. de* Andrada) to the spouses Gil Garcia and Teresa Escaño de Garcia."

On April 17, 1952, the Garcia couple went to the Court of First Instance (CFI) of Cebu and moved for the annotation of the August 17, 1938 document executed by Patricia on TCT No. RT-3972.

On June 28, 1952, the CFI of Cebu, through Judge Ignacio Debuque, ordered:

> No opposition having been filed to the motion of the spouses Gil Garcia and Teresa Escaño, through Atty. Vicente Faelnar, dated April 17, 1952, it appearing that the Borromeo Bros. Estate, Inc. [herein petitioner], through Atty. Filiberto Leonardo, received a copy of the notice of hearing of said motion on June 24, 1952, the Register of Deeds for the City and Province of Cebu is hereby ordered to annotate on Transfer Certificate of Title No. RT-3972 the contents of the documents ratified on August 18, 1938 in said motion.
>
> SO ORDERED.

Petitioner retained ownership over Lot No. 6-H-2 whereas the estate of the late Garcia couple (Garcia Estate) was inherited by Vicente E. Garcia and Jose E. Garcia from whom respondent acquired his title in 1996.

Sometime after acquiring the Garcia Estate, respondent came across the 1952 documents that granted to the deceased Garcia couple a road right of way through petitioner's Lot No. 6-H-2. Thus, on May 19, 1997, respondent filed, before the RTC of Cebu, a cadastral court, a petition captioned ***"Engineer Edgar John A. Garcia v. The Register of Deeds of Cebu City, G.I.R.O.***

[4] Notarized by Cresencio Tomakin, Notarial Document No. 722, Page No. 68, Book IX and Series of 1938.

***Rec. No. 5988, Lot No. 6-H-2."*** The petition, in which only the Register of Deeds was impleaded, prayed that:

> WHEREFORE, premises considered, this Honorable Court is most respectfully prayed to issue an Order directing the Register of Deeds for the City of Cebu to inscribe and annotate in the TCT No. RT-3972 a road right of way indicated in the motion dated April 17, 1997 x x x after payment of the corresponding registration fees prescribed by law.

The cadastral court issued on June 6, 1997 an Order requiring the Register of Deeds "to inform this [c]ourt regarding the status of the aforementioned title, whether it has already been cancelled or not, the encumbrances/annotations therein, and in whose name it is now."[5]

In its Comment/Manifestation, the Register of Deeds informed the cadastral court that Lot No. 6-H-2 covered by TCT No. RT-3972 is registered under herein petitioner's name and that it "appears to be clean and devoid of any encumbrance/ annotations."[6]

On July 23, 1997, the cadastral court issued an Order granting the petition of respondent,[7] thus:

> Since the Borromeo Bros. Estate did not oppose the previous petition for annotation of road right of way contained in the order of Judge Ignacio Debuque, **this [c]ourt hereby grants the petition** filed by Engr. Edgar John A. Garcia, the registered owner of TCT No. 142344 covering Lot 6-H-1 and **directs the Register of Deeds of Cebu City to annotate** on TCT No. RT-3972 the contents of the document ratified on August 18, 1938 recited in paragraph 4 of the instant petition after payment of the corresponding registration fees prescribed by law. Furnish the Borromeo Bros. Estate with a copy of this order as well as Atty. Loreto M. Durano, counsel for the petitioner.

On July 25, 1997, petitioner received a copy of the Order of July 23, 1997. Petitioner entered its special appearance and

---

[5] *Rollo*, p. 71.

[6] *Id.* at 72-73.

[7] *Id*. at 74.

filed a "Motion for Reconsideration and Recall" and expressed "caution" that it was not necessarily submitting itself to the jurisdiction of the cadastral court. Petitioner contended that the Order of the Court dated July 23, 1997 violated its fundamental right to substantive and procedural due process, that the petition of respondent was for specific performance of a private agreement cognizable only by an ordinary court and not a cadastral court, and that the petition of respondent was a procedural shortcut to enforce a stale order citing Rule 39, Section 6 of the Rules of Court, the statute of limitations and prescription.[8]

On December 15, 1997, after both parties had submitted their respective arguments on the issues raised, the cadastral court denied petitioner's motion for reconsideration. The court held that firstly, there was no violation of substantial or procedural due process as the court furnished petitioner its Order of July 23, 1997, it heard petitioner's motion for reconsideration in open court, and allowed both parties to submit their respective memoranda including documentary exhibits prior to its ruling on the motion. Secondly, the promulgation of Presidential Decree No. 1529 or The Property Registration Decree of 1979 eliminated the distinction between the general jurisdiction of the RTC and its limited jurisdiction when acting as a Land Registration Court. Finally, the court ruled that the allegation of enforcement of a stale order contrary to Rule 39, Section 6 of the Rules of Court, the statute of limitations and prescription, was misplaced as the invoked rule applied only to civil actions and not to special proceedings such as a land registration case where neither laches nor the statute of limitations applies.[9]

Aggrieved, petitioner filed on December 29, 1997 a petition for *certiorari* before the Court of Appeals, docketed as CA-G.R. Sp. No. 47049. It alleged grave abuse of discretion on the part of the cadastral court for the issuance of its Orders dated July 23, 1997 and December 15, 1997.

---

[8] *Id.* at 75-79.

[9] *Id*. at 81-88.

Meanwhile, respondent filed with the cadastral court a motion for execution of its July 23, 1997 Order,[10] which was opposed by petitioner[11] and denied by the cadastral court on April 6, 1998,[12] thus:

> Should this [c]ourt enforce the questioned order now, any ruling by the Court of Appeals in the petition for *certiorari* if it is in favor of petitioner BBEI would create a situation wherein the ruling of a higher [c]ourt can no longer be implemented because the lower [c]ourt had chosen to enforce its order without waiting for the outcome of the petition for *certiorari*. This [c]ourt does not want to preempt the ruling of the Court of Appeals and therefore, this [c]ourt on the basis of the ruling of the Supreme Court aforementioned[13] and in the higher interest of justice will not enforce at this time the order dated July 23, 1997.

Respondent's April 29, 1998 motion for reconsideration[14] was denied. Thus, respondent filed before the Court of Appeals a petition for *mandamus* and *certiorari*, docketed as CA-G.R. Sp. No. 48512.

On November 18, 1998, the Court of Appeals consolidated the cases[15] and rendered its Consolidated Decision of June 21, 1999 dismissing the petition in CA-G.R. Sp. No. 47049 of herein petitioner and granting the petition in CA-G.R. Sp. No. 48512 of herein respondent.[16]

The Court of Appeals held that the evidence on record shows the existence of an easement of right of way in favor of respondent. But in dismissing the petition in CA-G.R. Sp. No. 47049, it anchored its decision on the fact that petitioner filed a special

---

[10] *Id*. at 251-256.

[11] *Id*. at 257-259.

[12] *Id*. at 260-261.

[13] *Citing Cruz v. Leabres*, G.R. No. 99846, May 22, 1995, 244 SCRA 194, *id*. at 260.

[14] *Id*. at 262-274.

[15] *Supra* note 2.

[16] *Supra* note 1.

action for *certiorari* in which the appellate court is limited only to correcting errors of jurisdiction or grave abuse of discretion.

On the other hand, in granting the petition in CA-G.R. Sp. No. 48512, the Court of Appeals emphasized that since no restraining order or writ of injunction was issued in the other petition, the period on the finality of the Order of the cadastral court was never interrupted; and that the filing of a petition for *certiorari* does not prevent the decision from attaining finality as it is an independent action which does not interrupt the course of the principal action or the running of the reglementary period involved in the proceedings.

On July 9, 1999, petitioner filed its motion for reconsideration but the appellate court denied it in its Resolution of August 9, 1999.[17] Hence, this petition for review on *certiorari* under Rule 45 of the Rules of Court for the annulment and setting aside of the June 21, 1999 Consolidated Decision as well as the August 9, 1999 Resolution of the Court of Appeals.

Petitioner alleged these errors: (1) the appellate court erred in dismissing CA-G.R. Sp. No. 47049 and not reversing the July 23, 1997 Order of the cadastral court despite (a) the nullity of the Order for the denial of petitioner's substantive and procedural right to due process and (b) the commission of abuse of discretion and action without or in excess of jurisdiction of the cadastral court when it revived a stale order, and (2) it likewise erred in granting the petition in CA-G.R. Sp. No. 48512.

We find against petitioner.

At the outset, the Court emphasizes that the proper subjects of this Rule 45 Petition are the Consolidated Decision and Resolution of the Court of Appeals and not the Orders of the cadastral court.

The appellate court was correct in striking down the petition of petitioner in CA-G.R. Sp. No. 47049 on procedural grounds. Indeed, the filing of a special civil action for *certiorari* before the Court of Appeals limits the determination of the appellate

[17] *Rollo*, p. 57.

court to whether there was an error of jurisdiction or grave abuse of discretion on the part of the cadastral court. A special civil action for *certiorari* is an independent action, raising the question of jurisdiction where the tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. The Court of Appeals found neither error of jurisdiction nor grave abuse of discretion, and dismissed the petition by stating that "[t]o Us and to say the most, aforementioned arguments are indeed typical only of either an error of procedure or an error of judgment." This Court agrees.

Moreover, even assuming that the appellate court may correctly resolve error of procedure or error of judgment in the instant case, there was none committed by the cadastral court.

The cadastral court did not deny petitioner of its right to due process of the law. The essence of due process is found in the reasonable opportunity to be heard and submit any evidence in support of one's defense. What the law proscribes is the lack of opportunity to be heard.[18] As long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process.[19]

The records reveal that the cadastral court furnished petitioner its Order of July 23, 1997, which reiterated its previous order of April 17, 1952 through former Judge Ignacio Debuque. More importantly, **the cadastral court heard petitioner's motion for reconsideration in open court** wherein both parties presented their respective arguments to defend their rights and the court

[18] *Estares v. Court of Appeals*, G.R. No. 144755, June 8, 2005, 459 SCRA 604, *citing Anama v. Court of Appeals*, G.R. No. 128609, January 29, 2004, 421 SCRA 338, 351; *Philippine Commercial International Bank v. Court of Appeals*, 454 Phil. 338 (2003); and *Kuizon v. Desierto*, G.R. Nos. 140619-24, March 9, 2001, 354 SCRA 158, 176.

[19] *Ibid., citing Anama v. Court of Appeals*, *supra;* and *Philhouse Development Corporation v. Consolidated Orix Leasing and Finance Corporation*, G.R. No. 135287, April 4, 2001, 356 SCRA 281, 286.

likewise allowed the parties to file their respective memoranda prior to ruling on the motion for reconsideration. To quote in part the court in its December 15, 1997 Order, *viz:*

> x x x x On August 8, 1997, the date set by Atty. Mercado for the hearing of his motion, the lawyers of both parties appeared including Atty. Amadeo D. Seno, Jr. and the court **allowed the parties to argue on the merits** of their respective contentions and later on directed the lawyers to put their additional arguments in writing together with additional documentary evidence and to cite the law, authorities and decisions of the Supreme Court in their respective contentions. **BBEI** (petitioner herein) **filed its memorandum with annexes and documentary exhibits.** x x x oppositor **BBEI filed its reply.**

Indeed, deprivation of the right to due process cannot be successfully invoked where a party was given the chance to be heard on his Motion for Reconsideration[20] as what happened in the instant case.

Moreover, the July 23, 1997 and December 15, 1997 Orders of the cadastral court were based on established facts on the existence of the grant of an easement of road right of way in favor of respondent, *viz:* (1) an Agreement, for a valuable consideration, dated August 15, 1936 executed by Patricia that granted a road right of way over Lot No. 6-H-2 and Lot No. 7 to the Garcia couple; (2) an Agreement, for a valuable consideration, dated August 17, 1938 executed by Patricia that granted a road right of way over Lot 6-H-2 to the Garcia couple; (3) Deed of Sale dated September 28, 1938 executed by Patricia in favor of Borromeo Bros. Estate, Inc. that contained a provision: "x x x the purchase of Lot No. 6-H-2 was subject to the right of way granted by me (Patricia Ruedas *Vda. de* Andrada) to the spouses Gil Garcia and Teresa Escano de Garcia"; (4) the Official Receipt issued by the Register of Deeds of Cebu, Commonwealth of the Philippines No. B 2582295, dated August 18, 1938, upon registration shows the annotation on the title of the Agreement on the road right of way over Lot

---

[20] *Salonga v. CA*, 336 Phil. 514 (1997); and *Paat v. CA*, 334 Phil. 146 (1997).

No. 6-H-2 in favor of the Garcia couple; and (5) the May 2, 1953 Letter of the Borromeo Bros. Estate, Inc., through Flora D. Borromeo, to Mr. Gil Garcia expressly and categorically recognizing or confirming the establishment of a road right of way over Lot No. 6-H-2 and Lot No. 7 in favor of the Garcia couple.

Clearly, whether the July 23, 1997 Order of the cadastral court is a revival of the June 28, 1952 Order of another cadastral court is immaterial as the latter was not the sole basis for the granting of the petition for annotation of the road right of way. It merely bolstered the petition of respondent to annotate the road right of way in his favor.

In fine, the records of the instant case show that (1) there was substantial evidence to support the annotation of the easement of right of way on the title of petitioner in favor of respondent and (2) the requirements of due process were sufficiently met. No abuse of discretion was committed by the cadastral court. Consequently, the Court of Appeals is justified in dismissing the petition in CA-G.R. Sp. No. 47049.

Likewise, there being no more obstacles in the immediate execution of the Order requiring the annotation of the easement of road right of way on the title of the property of petitioner in favor of respondent, the Court affirms the Court of Appeals in granting the petition in CA-G.R. Sp. No. 48512.

**IN VIEW WHEREOF,** the petition is *DENIED*. The Consolidated Decision and Resolution of the Court of Appeals dated June 21, 1999 and August 9, 1999, respectively, in CA-G.R. Sp. No. 47049 and CA-G.R. Sp. No. 48512 are *AFFIRMED*.

**SO ORDERED.**

*Sandoval-Gutierrez, Corona, Azcuna,* and *Leonardo-de Castro, JJ.,* concur.

**SECOND DIVISION**

[G.R. No. 162894. February 26, 2008]

**RAYTHEON INTERNATIONAL, INC.,** *petitioner, vs.* **STOCKTON W. ROUZIE, JR.,** *respondent.*

**SYLLABUS**

**1. CIVIL LAW; CONFLICTS-OF-LAWS; JURISDICTION OVER A CONFLICTS-OF-LAWS PROBLEM FILED IN A PHILIPPINE COURT, DISCUSSED; APPLICATION.—** On the matter of jurisdiction over a conflicts-of-laws problem where the case is filed in a Philippine court and where the court has jurisdiction over the subject matter, the parties and the *res*, it may or can proceed to try the case even if the rules of conflict-of-laws or the convenience of the parties point to a foreign forum. This is an exercise of sovereign prerogative of the country where the case is filed. Jurisdiction over the nature and subject matter of an action is conferred by the Constitution and the law and by the material allegations in the complaint, irrespective of whether or not the plaintiff is entitled to recover all or some of the claims or reliefs sought therein. Civil Case No. 1192-BG is an action for damages arising from an alleged breach of contract. Undoubtedly, the nature of the action and the amount of damages prayed are within the jurisdiction of the RTC. As regards jurisdiction over the parties, the trial court acquired jurisdiction over herein respondent (as party plaintiff) upon the filing of the complaint. On the other hand, jurisdiction over the person of petitioner (as party defendant) was acquired by its voluntary appearance in court.

**2. ID.; ID.; CHOICE OF LAW STIPULATION IN THE CONTRACT DOES NOT PRECLUDE PHILIPPINE COURTS FROM HEARING THE CASE.—** That the subject contract included a stipulation that the same shall be governed by the laws of the State of Connecticut does not suggest that the Philippine courts, or any other foreign tribunal for that matter, are precluded from hearing the civil action.

**3. ID.; ID.; JURISDICTION AND CHOICE OF LAW, DISTINGUISHED.—** Jurisdiction and choice of law are two distinct concepts. Jurisdiction considers whether it is fair to cause a defendant to travel to this state; choice of law asks the further question whether the application of a substantive law which will determine the merits of the case is fair to both parties. The choice of law stipulation will become relevant only when the substantive issues of the instant case develop, that is, after hearing on the merits proceeds before the trial court.

**4. ID.; ID.; DOCTRINE OF *FORUM NON CONVENIENS*, DISCUSSED; DOCTRINE NOT APPLICABLE IN CASE AT BAR.—** Under the doctrine of *forum non conveniens*, a court, in conflicts-of-laws cases, may refuse impositions on its jurisdiction where it is not the most "convenient" or available forum and the parties are not precluded from seeking remedies elsewhere. Petitioner's averments of the foreign elements in the instant case are not sufficient to oust the trial court of its jurisdiction over Civil Case No. 1192-BG and the parties involved. Moreover, the propriety of dismissing a case based on the principle of *forum non conveniens* requires a factual determination; hence, it is more properly considered as a matter of defense. While it is within the discretion of the trial court to abstain from assuming jurisdiction on this ground, it should do so only after vital facts are established, to determine whether special circumstances require the court's desistance.

**APPEARANCES OF COUNSEL**

*Quisumbing Torres* for petitioner.

*Ceferino Padua Law Office* for respondent.

## D E C I S I O N

**TINGA, *J.*:**

Before this Court is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure which seeks the reversal of the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. SP No. 67001 and the dismissal of the civil case filed by respondent against petitioner with the trial court.

As culled from the records of the case, the following antecedents appear:

Sometime in 1990, Brand Marine Services, Inc. (BMSI), a corporation duly organized and existing under the laws of the State of Connecticut, United States of America, and respondent Stockton W. Rouzie, Jr., an American citizen, entered into a contract whereby BMSI hired respondent as its representative to negotiate the sale of services in several government projects in the Philippines for an agreed remuneration of 10% of the gross receipts. On 11 March 1992, respondent secured a service contract with the Republic of the Philippines on behalf of BMSI for the dredging of rivers affected by the Mt. Pinatubo eruption and mudflows.[3]

On 16 July 1994, respondent filed before the Arbitration Branch of the National Labor Relations Commission (NLRC) a suit against BMSI and Rust International, Inc. (RUST), Rodney C. Gilbert and Walter G. Browning for alleged nonpayment of commissions, illegal termination and breach of employment contract.[4] On 28 September 1995, Labor Arbiter Pablo C. Espiritu, Jr. rendered judgment ordering BMSI and RUST to

---

[1] *Rollo,* pp. 42-46. Dated 28 August 2003; penned by Associate Justice Arsenio J. Magpale and concurred in by Associate Justices Bienvenido L. Reyes, Acting Chairperson of the Special Ninth Division, and Rebecca De Guia-Salvador.

[2] *Id*. at 47. Dated 10 March 2004.

[3] *Id*. at 48-49.

[4] *Id*. at 61-62.

pay respondent's money claims.[5] Upon appeal by BMSI, the NLRC reversed the decision of the Labor Arbiter and dismissed respondent's complaint on the ground of lack of jurisdiction.[6] Respondent elevated the case to this Court but was dismissed in a Resolution dated 26 November 1997. The Resolution became final and executory on 9 November 1998.

On 8 January 1999, respondent, then a resident of La Union, instituted an action for damages before the Regional Trial Court (RTC) of Bauang, La Union. The Complaint,[7] docketed as Civil Case No. 1192-BG, named as defendants herein petitioner Raytheon International, Inc. as well as BMSI and RUST, the two corporations impleaded in the earlier labor case. The complaint essentially reiterated the allegations in the labor case that BMSI verbally employed respondent to negotiate the sale of services in government projects and that respondent was not paid the commissions due him from the Pinatubo dredging project which he secured on behalf of BMSI. The complaint also averred that BMSI and RUST as well as petitioner itself had combined and functioned as one company.

In its Answer,[8] petitioner alleged that contrary to respondent's claim, it was a foreign corporation duly licensed to do business in the Philippines and denied entering into any arrangement with respondent or paying the latter any sum of money. Petitioner also denied combining with BMSI and RUST for the purpose of assuming the alleged obligation of the said companies.[9] Petitioner also referred to the NLRC decision which disclosed that per the written agreement between respondent and BMSI and RUST, denominated as "Special Sales Representative Agreement," the rights and obligations of the parties shall be governed by the laws of the State of Connecticut.[10] Petitioner

[5] *Id*. at 63-74.

[6] *Id*. at 75-90.

[7] *Id*. at 48-54.

[8] *Id*. at 91-99.

[9] *Id*. at 94.

[10] *Id*. at 96.

sought the dismissal of the complaint on grounds of failure to state a cause of action and *forum non conveniens* and prayed for damages by way of compulsory counterclaim.[11]

On 18 May 1999, petitioner filed an Omnibus Motion for Preliminary Hearing Based on Affirmative Defenses and for Summary Judgment[12] seeking the dismissal of the complaint on grounds of *forum non conveniens* and failure to state a cause of action. Respondent opposed the same. Pending the resolution of the omnibus motion, the deposition of Walter Browning was taken before the Philippine Consulate General in Chicago.[13]

In an Order[14] dated 13 September 2000, the RTC denied petitioner's omnibus motion. The trial court held that the factual allegations in the complaint, assuming the same to be admitted, were sufficient for the trial court to render a valid judgment thereon. It also ruled that the principle of *forum non conveniens* was inapplicable because the trial court could enforce judgment on petitioner, it being a foreign corporation licensed to do business in the Philippines.[15]

Petitioner filed a Motion for Reconsideration[16] of the order, which motion was opposed by respondent.[17] In an Order dated 31 July 2001,[18] the trial court denied petitioner's motion. Thus, it filed a Rule 65 Petition[19] with the Court of Appeals praying for the issuance of a writ of *certiorari* and a writ of injunction to set aside the twin orders of the trial court dated 13 September 2000 and 31 July 2001 and to enjoin the trial court from conducting further proceedings.[20]

---

[11] *Id*. at 97-98.

[12] *Id*. at 100-111.

[13] Records, Vol. I, pp. 180-238.

[14] *Rollo*, pp. 127-131.

[15] *Id*. at 130.

[16] *Id*. at 132-149.

[17] *Id*. at 150-151.

[18] *Id*. at 162.

[19] *Id*. at 163-192.

[20] *Id*. at 191.

On 28 August 2003, the Court of Appeals rendered the assailed Decision[21] denying the petition for *certiorari* for lack of merit. It also denied petitioner's motion for reconsideration in the assailed Resolution issued on 10 March 2004.[22]

The appellate court held that although the trial court should not have confined itself to the allegations in the complaint and should have also considered evidence *aliunde* in resolving petitioner's omnibus motion, it found the evidence presented by petitioner, that is, the deposition of Walter Browning, insufficient for purposes of determining whether the complaint failed to state a cause of action. The appellate court also stated that it could not rule one way or the other on the issue of whether the corporations, including petitioner, named as defendants in the case had indeed merged together based solely on the evidence presented by respondent. Thus, it held that the issue should be threshed out during trial.[23] Moreover, the appellate court deferred to the discretion of the trial court when the latter decided not to desist from assuming jurisdiction on the ground of the inapplicability of the principle of *forum non conveniens*.

Hence, this petition raising the following issues:

WHETHER OR NOT THE COURT OF APPEALS ERRED IN REFUSING TO DISMISS THE COMPLAINT FOR FAILURE TO STATE A CAUSE OF ACTION AGAINST RAYTHEON INTERNATIONAL, INC.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN REFUSING TO DISMISS THE COMPLAINT ON THE GROUND OF *FORUM NON CONVENIENS*.[24]

Incidentally, respondent failed to file a comment despite repeated notices. The Ceferino Padua Law Office, counsel on record for respondent, manifested that the lawyer handling the case, Atty. Rogelio Karagdag, had severed relations with the law firm

[21] *Supra* note 1.

[22] *Supra* note 2.

[23] *Id*. at 44.

[24] *Id*. at 18.

even before the filing of the instant petition and that it could no longer find the whereabouts of Atty. Karagdag or of respondent despite diligent efforts. In a Resolution[25] dated 20 November 2006, the Court resolved to dispense with the filing of a comment.

The instant petition lacks merit.

Petitioner mainly asserts that the written contract between respondent and BMSI included a valid choice of law clause, that is, that the contract shall be governed by the laws of the State of Connecticut. It also mentions the presence of foreign elements in the dispute – namely, the parties and witnesses involved are American corporations and citizens and the evidence to be presented is located outside the Philippines – that renders our local courts inconvenient forums. Petitioner theorizes that the foreign elements of the dispute necessitate the immediate application of the doctrine of *forum non conveniens*.

Recently in *Hasegawa v. Kitamura*,[26] the Court outlined three consecutive phases involved in judicial resolution of conflicts-of-laws problems, namely: jurisdiction, choice of law, and recognition and enforcement of judgments. Thus, in the instances[27] where the Court held that the local judicial machinery was adequate to resolve controversies with a foreign element, the following requisites had to be proved: (1) that the Philippine Court is one to which the parties may conveniently resort; (2) that the Philippine Court is in a position to make an intelligent decision as to the law and the facts; and (3) that the Philippine Court has or is likely to have the power to enforce its decision.[28]

On the matter of jurisdiction over a conflicts-of-laws problem where the case is filed in a Philippine court and where the court

[25] *Id*. at 318.

[26] G.R. No. 149177, 23 November 2007.

[27] *Bank of America NT & SA v. Court of Appeals*, 448 Phil. 181 (2003); *Puyat v. Zabarte*, 405 Phil. 413 (2001); *Philsec Investment Corporation v. Court of Appeals*, G.R. No. 103493, 19 June 1997, 274 SCRA 102.

[28] *The Manila Hotel Corp. v. NLRC*, 397 Phil. 1, 16-17 (2000); *Communication Materials and Design, Inc. v. CA*, 329 Phil. 487, 510-511 (1996).

has jurisdiction over the subject matter, the parties and the *res*, it may or can proceed to try the case even if the rules of conflict-of-laws or the convenience of the parties point to a foreign forum. This is an exercise of sovereign prerogative of the country where the case is filed.[29]

Jurisdiction over the nature and subject matter of an action is conferred by the Constitution and the law[30] and by the material allegations in the complaint, irrespective of whether or not the plaintiff is entitled to recover all or some of the claims or reliefs sought therein.[31] Civil Case No. 1192-BG is an action for damages arising from an alleged breach of contract. Undoubtedly, the nature of the action and the amount of damages prayed are within the jurisdiction of the RTC.

As regards jurisdiction over the parties, the trial court acquired jurisdiction over herein respondent (as party plaintiff) upon the filing of the complaint. On the other hand, jurisdiction over the person of petitioner (as party defendant) was acquired by its voluntary appearance in court.[32]

That the subject contract included a stipulation that the same shall be governed by the laws of the State of Connecticut does not suggest that the Philippine courts, or any other foreign tribunal for that matter, are precluded from hearing the civil action. Jurisdiction and choice of law are two distinct concepts. Jurisdiction considers whether it is fair to cause a defendant to travel to this state; choice of law asks the further question whether the application of a substantive law which will determine the merits of the case is fair to both parties.[33] The choice of law stipulation will become relevant only when the substantive issues

---

[29] Agpalo, Ruben E. *CONFLICT OF LAWS* (Private International Law), 2004 Ed., p. 491.

[30] *Heirs of Julian Dela Cruz and Leonora Talaro v. Heirs of Alberto Cruz*, G.R. No. 162890, 22 November 2005, 475 SCRA 743, 756.

[31] *Laresma v. Abellana*, G.R. No. 140973, 11 November 2004, 442 SCRA 156, 168.

[32] See *Arcelona v. CA,* 345 Phil. 250, 267 (1997).

[33] *Hasegawa v. Kitamura, supra* note 26.

of the instant case develop, that is, after hearing on the merits proceeds before the trial court.

Under the doctrine of *forum non conveniens*, a court, in conflicts-of-laws cases, may refuse impositions on its jurisdiction where it is not the most "convenient" or available forum and the parties are not precluded from seeking remedies elsewhere.[34] Petitioner's averments of the foreign elements in the instant case are not sufficient to oust the trial court of its jurisdiction over Civil Case No. 1192-BG and the parties involved.

Moreover, the propriety of dismissing a case based on the principle of *forum non conveniens* requires a factual determination; hence, it is more properly considered as a matter of defense. While it is within the discretion of the trial court to abstain from assuming jurisdiction on this ground, it should do so only after vital facts are established, to determine whether special circumstances require the court's desistance.[35]

Finding no grave abuse of discretion on the trial court, the Court of Appeals respected its conclusion that it can assume jurisdiction over the dispute notwithstanding its foreign elements. In the same manner, the Court defers to the sound discretion of the lower courts because their findings are binding on this Court.

Petitioner also contends that the complaint in Civil Case No. 1192-BG failed to state a cause of action against petitioner. Failure to state a cause of action refers to the insufficiency of allegation in the pleading.[36] As a general rule, the elementary test for failure to state a cause of action is whether the complaint alleges facts which if true would justify the relief demanded.[37]

---

[34] *Bank of America NT & SA v. Court of Appeals*, G.R. No. 120135, 31 March 2003.

[35] *Philsec Investment Corporation v. Court of Appeals*, *supra* note 27 at 113.

[36] *Bank of America NT & SA v. Court of Appeals, supra* note 27 at 194.

[37] *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, G.R. No. 143896, 8 July 2005, 463 SCRA 64, 73.

The complaint alleged that petitioner had combined with BMSI and RUST to function as one company. Petitioner contends that the deposition of Walter Browning rebutted this allegation. On this score, the resolution of the Court of Appeals is instructive, thus:

> x x x Our examination of the deposition of Mr. Walter Browning as well as other documents produced in the hearing shows that these evidence *aliunde* are not quite sufficient for us to mete a ruling that the complaint fails to state a cause of action.
>
> Annexes "A" to "E" by themselves are not substantial, convincing and conclusive proofs that Raytheon Engineers and Constructors, Inc. (REC) assumed the warranty obligations of defendant Rust International in the Makar Port Project in General Santos City, after Rust International ceased to exist after being absorbed by REC. Other documents already submitted in evidence are likewise meager to preponderantly conclude that Raytheon International, Inc., Rust International[,] Inc. and Brand Marine Service, Inc. have combined into one company, so much so that Raytheon International, Inc., the surviving company (if at all) may be held liable for the obligation of BMSI to respondent Rouzie for unpaid commissions. Neither these documents clearly speak otherwise.[38]

As correctly pointed out by the Court of Appeals, the question of whether petitioner, BMSI and RUST merged together requires the presentation of further evidence, which only a full-blown trial on the merits can afford.

**WHEREFORE,** the instant petition for review on *certiorari* is *DENIED*. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 67001 are hereby AFFIRMED. Costs against petitioner.

**SO ORDERED.**

*Carpio (Acting Chairperson), Sandoval-Gutierrez,*[*] *Carpio Morales,* and *Velasco, Jr., JJ.,* concur.

---

[38] *Rollo,* p. 44.

[*] As replacement of Justice Leonardo A. Quisumbing who inhibited himself per Administrative Circular No. 84-2007.

**FIRST DIVISION**

[G.R. No. 164182. February 26, 2008]

**POWER HOMES UNLIMITED CORPORATION,** *petitioner, vs.* **SECURITIES AND EXCHANGE COMMISSION and NOEL MANERO,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS; ADMINISTRATIVE PROCEEDINGS; FORMAL TRIAL OR HEARING IS NOT NECESSARY.—** We hold that petitioner was not denied due process. The records reveal that public respondent SEC properly examined petitioner's business operations when it (1) called into conference three of petitioner's incorporators, (2) requested information from the incorporators regarding the nature of petitioner's business operations, (3) asked them to submit documents pertinent thereto, and (4) visited petitioner's business premises and gathered information thereat. All these were done before the CDO was issued by the public respondent SEC. Trite to state, a formal trial or hearing is not necessary to comply with the requirements of due process. Its essence is simply the opportunity to explain one's position. Public respondent SEC abundantly allowed petitioner to prove its side.

**2. COMMERCIAL LAW; R.A. NO. 8799 (THE SECURITIES REGULATION CODE); CONCEPT OF INVESTMENT CONTRACT TRACES ITS ROOTS FROM THE CASE OF *SEC V. W.J. HOWEY CO.*—** It behooves us to trace the history of the concept of an investment contract under R.A. No. 8799. Our definition of an investment contract traces its roots from the 1946 United States (US) case of ***SEC v. W.J. Howey Co.*** In this case, the US Supreme Court was confronted with the issue of whether the **Howey** transaction constituted an "investment contract" under the Securities Act's definition of "security." The US Supreme Court, recognizing that the term "investment contract" was not defined by the Act or illumined by any legislative report, held that "Congress was using a term whose meaning had been crystallized" under the state's "blue sky" laws in existence prior to the adoption of the Securities

Act. Thus, it ruled that the use of the catch-all term "investment contract" indicated a congressional intent to cover a wide range of investment transactions.

**3. ID.; ID.; ID.; HOWEY TEST DETERMINES WHETHER A TRANSACTION FALLS WITHIN THE SCOPE OF AN INVESTMENT CONTRACT.—** The Court established a test to determine whether a transaction falls within the scope of an "investment contract." Known as the **Howey Test**, it requires a transaction, contract, or scheme whereby a person (1) makes an investment of money, (2) in a common enterprise, (3) with the expectation of profits, (4) to be derived **solely** from the efforts of others. Although the proponents must establish all four elements, the US Supreme Court stressed that the **Howey Test** "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits." Needless to state, any investment contract covered by the **Howey Test** must be registered under the Securities Act, regardless of whether its issuer was engaged in fraudulent practices.

**4. ID.; ID.; R.A. NO. 8799 FOLLOWED THE FLEXIBLE CONCEPT OF INVESTMENT CONTRACT LAID DOWN IN *SEC V. TURNER*.—** After Howey came the 1973 US case of ***SEC v. Glenn W. Turner Enterprises, Inc. et al***. In this case, the 9th Circuit of the US Court of Appeals ruled that the element that profits must come "solely" from the efforts of others should not be given a strict interpretation. It held that a literal reading of the requirement "solely" would lead to unrealistic results. It reasoned out that its flexible reading is in accord with the statutory policy of affording broad protection to the public. Our R.A. No. 8799 appears to follow this flexible concept for it defines an investment contract as a contract, transaction or scheme (collectively "contract") whereby a person invests his money in a common enterprise and is **led to expect profits not solely but primarily from the efforts of others.** Thus, to be a security subject to regulation by the SEC, an investment contract in our jurisdiction must be proved to be: (1) an investment of money, (2) in a common enterprise, (3) with expectation of profits, (4) **primarily** from efforts of others.

**5. ID; ID.; WHEN BUSINESS OPERATION CONSTITUTES AN INVESTMENT CONTRACT; CASE AT BAR.—** The business

scheme of petitioner in the case at bar is essentially similar. An investor enrolls in petitioner's program by paying US$234. This entitles him to recruit two (2) investors who pay US$234 each and out of which amount he receives US$92. A minimum recruitment of four (4) investors by these two (2) recruits, who then recruit at least two (2) each, entitles the principal investor to US$184 and the pyramid goes on. We reject petitioner's claim that the payment of US$234 is for the seminars on leverage marketing and not for any product. Clearly, the trainings or seminars are merely designed to enhance petitioner's business of teaching its investors the know-how of its multi-level marketing business. An investor enrolls under the scheme of petitioner to be entitled to recruit other investors and to receive commissions from the investments of those directly recruited by him. Under the scheme, the accumulated amount received by the investor comes primarily from the efforts of his recruits. We therefore rule that the business operation or the scheme of petitioner constitutes an investment contract that is a security under R.A. No. 8799.

**6. ID.; ID.; ID.; REGISTRATION WITH SEC OF AN INVESTMENT CONTRACT BEFORE SALE OR OFFER FOR SALE OR DISTRIBUTION TO THE PUBLIC, REQUIRED.—** Thus, it must be registered with public respondent SEC before its sale or offer for sale or distribution to the public. As petitioner failed to register the same, its offering to the public was rightfully enjoined by public respondent SEC. The CDO was proper even without a finding of fraud. As an investment contract that is security under R.A. No. 8799, it must be registered with public respondent SEC, otherwise the SEC cannot protect the investing public from fraudulent securities. The strict regulation of securities is founded on the premise that the capital markets depend on the investing public's level of confidence in the system.

**APPEARANCES OF COUNSEL**

*Joaquin Adarlo* and *Caoile Law Offices* for petitioner.

*The Solicitor General* for public respondent.

## D E C I S I O N

**PUNO, *C.J.*:**

This petition for review seeks the reversal and setting aside of the July 31, 2003 Decision[1] of the Court of Appeals that affirmed the January 26, 2001 Cease and Desist Order (CDO)[2] of public respondent Securities and Exchange Commission (SEC) enjoining petitioner Power Homes Unlimited Corporation's (petitioner) officers, directors, agents, representatives and any and all persons claiming and acting under their authority, from further engaging in the sale, offer for sale or distribution of securities; and its June 18, 2004 Resolution[3] which denied petitioner's motion for reconsideration.

The facts: Petitioner is a domestic corporation duly registered with public respondent SEC on October 13, 2000 under SEC Reg. No. A200016113. Its primary purpose is:

> To engage in the transaction of promoting, acquiring, managing, leasing, obtaining options on, development, and improvement of real estate properties for subdivision and allied purposes, and in the purchase, sale and/or exchange of said subdivision and properties through network marketing.[4]

On October 27, 2000, respondent Noel Manero requested public respondent SEC to investigate petitioner's business. He claimed that he attended a seminar conducted by petitioner where the latter claimed to sell properties that were inexistent and without any broker's license.

On November 21, 2000, one Romulo E. Munsayac, Jr. inquired from public respondent SEC whether petitioner's business involves "legitimate network marketing."

---

[1] Penned by Associate Justice Eloy R. Bello, Jr., concurred in by then Presiding Justice Cancio C. Garcia and Associate Justice Mariano C. Del Castillo; *rollo*, pp. 104-112.

[2] CED Case No. 20-2486, signed by "Order of the Commission" Emilio B. Aquino, Director, Compliance and Enforcement Department; *rollo*, pp. 42-52.

[3] *Ibid.*, *id*. at 134-135.

[4] *Id.* at 107.

On the bases of the letters of respondent Manero and Munsayac, public respondent SEC held a conference on December 13, 2000 that was attended by petitioner's incorporators John Lim, Paul Nicolas and Leonito Nicolas. The attendees were requested to submit copies of petitioner's marketing scheme and list of its members with addresses.

The following day or on December 14, 2000, petitioner submitted to public respondent SEC copies of its marketing course module and letters of accreditation/authority or confirmation from Crown Asia, Fil-Estate Network and Pioneer 29 Realty Corporation.

On January 26, 2001, public respondent SEC visited the business premises of petitioner wherein it gathered documents such as certificates of accreditation to several real estate companies, list of members with web sites, sample of member mail box, webpages of two (2) members, and lists of Business Center Owners who are qualified to acquire real estate properties and materials on computer tutorials.

On the same day, after finding petitioner to be engaged in the sale or offer for sale or distribution of investment contracts, which are considered securities under Sec. 3.1 (b) of Republic Act (R.A.) No. 8799 (The Securities Regulation Code),[5] but failed to register them in violation of Sec. 8.1 of the same Act,[6] public respondent SEC issued a CDO that reads:

WHEREFORE, pursuant to the authority vested in the Commission, POWER HOMES UNLIMITED, CORP., its officers, directors, agents,

[5] Sec. 3.1. "Securities" are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character. It includes:

xxx xxx xxx

(b) Investment contracts, x x x

[6] Sec. 8.1. – Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.

representatives and any and all persons claiming and acting under their authority, are hereby ordered to immediately CEASE AND DESIST from further engaging in the sale, offer or distribution of the securities upon the receipt of this order.

In accordance with the provisions of Section 64.3 of Republic Act No. 8799, otherwise known as the Securities Regulation Code, the parties subject of this Cease and Desist Order may file a request for the lifting thereof within five (5) days from receipt.[7]

On February 5, 2001, petitioner moved for the lifting of the CDO, which public respondent SEC denied for lack of merit on February 22, 2001.

Aggrieved, petitioner went to the Court of Appeals imputing grave abuse of discretion amounting to lack or excess of jurisdiction on public respondent SEC for issuing the order. It also applied for a temporary restraining order, which the appellate court granted.

On May 23, 2001, the Court of Appeals consolidated petitioner's case with CA-G.R. [SP] No. 62890 entitled ***Prosperity.Com, Incorporated v. Securities and Exchange Commission (Compliance and Enforcement Department), Cristina T. De La Cruz, et al.***

On June 19, 2001, petitioner filed in the Court of Appeals a Motion for the Issuance of a Writ of Preliminary Injunction. On July 6, 2001, the motion was heard. On July 12, 2001, public respondent SEC filed its opposition. On July 13, 2001, the appellate court granted petitioner's motion, thus:

Considering that the Temporary Restraining Order will expire tomorrow or on July 14, 2001, and it appearing that this Court cannot resolve the petition immediately because of the issues involved which require a further study on the matter, and considering further that with the continuous implementation of the CDO by the SEC would eventually result to the sudden demise of the petitioner's business to their prejudice and an irreparable damage that may possibly arise, we hereby resolve to grant the preliminary injunction.

[7] *Rollo*, pp. 107-108.

WHEREFORE, let a writ of preliminary injunction be issued in favor of petitioner, after posting a bond in the amount of ₱500,000.00 to answer whatever damages the respondents may suffer should petitioner be adjudged not entitled to the injunctive relief herein granted.[8]

On August 8, 2001, public respondent SEC moved for reconsideration, which was not resolved by the Court of Appeals.

On July 31, 2003, the Court of Appeals issued its Consolidated Decision. The disposition pertinent to petitioner reads:[9]

WHEREFORE, x x x the petition for *certiorari* and prohibition filed by the other petitioner Powerhomes Unlimited Corporation is hereby DENIED for lack of merit and the questioned Cease and Desist Order issued by public respondent against it is accordingly AFFIRMED *IN TOTO*.

On June 18, 2004, the Court of Appeals denied petitioner's motion for reconsideration;[10] hence, this petition for review.

The issues for determination are: (1) whether public respondent SEC followed due process in the issuance of the assailed CDO; and (2) whether petitioner's business constitutes an investment contract which should be registered with public respondent SEC before its sale or offer for sale or distribution to the public.

On the first issue, Sec. 64 of R.A. No. 8799 provides:

*Sec. 64. Cease and Desist Order.* – 64.1. The Commission, after proper investigation or verification, *motu proprio* or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

---

[8] *Id.* at 84.

[9] *See* Note 1; the Court shall only discuss the petition of Power Homes Unlimited Corporation as the other petitioner did not elevate its case before the Supreme Court.

[10] *See* Note 3.

We hold that petitioner was not denied due process. The records reveal that public respondent SEC properly examined petitioner's business operations when it (1) called into conference three of petitioner's incorporators, (2) requested information from the incorporators regarding the nature of petitioner's business operations, (3) asked them to submit documents pertinent thereto, and (4) visited petitioner's business premises and gathered information thereat. All these were done before the CDO was issued by the public respondent SEC. Trite to state, a formal trial or hearing is not necessary to comply with the requirements of due process. Its essence is simply the opportunity to explain one's position. Public respondent SEC abundantly allowed petitioner to prove its side.

The second issue is whether the business of petitioner involves an investment contract that is considered security[11] and thus, must be registered prior to sale or offer for sale or distribution to the public pursuant to Section 8.1 of R.A. No. 8799, *viz*:

*Section 8. Requirement of Registration of Securities.* – 8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.

Public respondent SEC found the petitioner "as a marketing company that promotes and facilitates sales of real properties and other related products of real estate developers through effective leverage marketing." It also described the conduct of petitioner's business as follows:

The scheme of the [petitioner] corporation requires an investor to become a Business Center Owner (BCO) who must fill-up and sign its application form. The Terms and Conditions printed at the back of the application form indicate that the BCO shall mean an independent representative of Power Homes, who is enrolled in the company's referral program and who will ultimately purchase real property from any accredited real estate developers and as such he is entitled to a referral bonus/commission. Paragraph 5 of the same

[11] *See* Note 4.

indicates that there exists no employer/employee relationship between the BCO and the Power Homes Unlimited, Corp.

The BCO is required to pay US$234 as his enrollment fee. His enrollment entitles him to recruit two investors who should pay US$234 each and out of which amount he shall receive US$92. In case the two referrals/enrollees would recruit a minimum of four (4) persons each recruiting two (2) persons who become his/her own down lines, the BCO will receive a total amount of US$147.20 after deducting the amount of US$36.80 as property fund from the gross amount of US$184. After recruiting 128 persons in a period of eight (8) months for each Left and Right business groups or a total of 256 enrollees whether directly referred by the BCO or through his down lines, the BCO who receives a total amount of US$11,412.80 after deducting the amount of US$363.20 as property fund from the gross amount of US$11,776, has now an accumulated amount of US$2,700 constituting as his Property Fund placed in a Property Fund account with the Chinabank. This accumulated amount of US$2,700 is used as partial/full down payment for the real property chosen by the BCO from any of [petitioner's] accredited real estate developers.[12]

An investment contract is defined in the Amended Implementing Rules and Regulations of R.A. No. 8799 as a "contract, transaction or scheme (collectively 'contract') whereby a person invests his money in a common enterprise and is led to expect profits **primarily** from the efforts of others."[13]

It behooves us to trace the history of the concept of an investment contract under R.A. No. 8799. Our definition of an investment contract traces its roots from the 1946 United States (US) case of ***SEC v. W.J. Howey Co***.[14] In this case, the US Supreme Court was confronted with the issue of whether the **Howey** transaction constituted an "investment contract" under

[12] *Rollo,* pp. 33-34.

[13] Rule 3, 1 (G), Definition of Terms Used in the Rules and Regulations.

[14] 328 U.S. 293, 66 S.Ct. 1100, 163 A.L.R. 1043, 90 L.Ed. 1244 (1946), where investment contract was defined as "a contract, transaction or scheme whereby a person invests money in a common enterprise expecting profits to accrue solely from the efforts of the promoter or third parties."

the Securities Act's definition of "security."[15] The US Supreme Court, recognizing that the term "investment contract" was not defined by the Act or illumined by any legislative report,[16] held that "Congress was using a term whose meaning had been crystallized"[17] under the state's "blue sky" laws[18] in existence prior to the adoption of the Securities Act.[19] Thus, it ruled that the use of the catch-all term "investment contract" indicated a congressional intent to cover a wide range of investment transactions.[20] It established a test to determine whether a transaction falls within the scope of an "investment contract."[21] Known as the **Howey Test**, it requires a transaction, contract, or scheme whereby a person (1) makes an investment of money, (2) in a common enterprise, (3) with the expectation of profits, (4) to be derived **solely** from the efforts of others.[22] Although the proponents must establish all four elements, the US Supreme Court stressed that the **Howey Test** "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits."[23] Needless to state, any investment contract covered by the **Howey Test** must be registered under the Securities Act, regardless of whether its issuer was engaged in fraudulent practices.

---

[15] *Id.* at 297.

[16] *Id.* at 298.

[17] *Id.*

[18] From 1911 to 1931, forty-seven of forty-eight states enacted statutes regulating the sales of securities. One advocate of the laws purportedly asserted that "securities salesmen were so dishonest that they would attempt to sell 'building lots in the blue sky.'" Thus, the statutes came to be known as the "blue sky" laws. (Paul G. Mahoney, The Origins of the Blue Sky Laws: A Test of Competing Hypotheses, 46 J.L. & Econ. 229 [2003].)

[19] *See* Note 14.

[20] *Id.*

[21] *Id.* at 298-299.

[22] *Id.*

[23] *Id.* at 299.

After Howey came the 1973 US case of ***SEC v. Glenn W. Turner Enterprises, Inc. et al***.[24] In this case, the 9th Circuit of the US Court of Appeals ruled that the element that profits must come "solely" from the efforts of others should not be given a strict interpretation. It held that a literal reading of the requirement "solely" would lead to unrealistic results. It reasoned out that its flexible reading is in accord with the statutory policy of affording broad protection to the public. Our R.A. No. 8799 appears to follow this flexible concept for it defines an investment contract as a contract, transaction or scheme (collectively "contract") whereby a person invests his money in a common enterprise and is **led to expect profits not solely but primarily from the efforts of others.** Thus, to be a security subject to regulation by the SEC, an investment contract in our jurisdiction must be proved to be: (1) an investment of money, (2) in a common enterprise, (3) with expectation of profits, (4) **primarily** from efforts of others.

Prescinding from these premises, we affirm the ruling of the public respondent SEC and the Court of Appeals that the petitioner was engaged in the sale or distribution of an investment contract. Interestingly, the facts of ***SEC v. Turner***[25] are similar to the case at bar. In **Turner**, the SEC brought a suit to enjoin the violation of federal securities laws by a company offering to sell to the public contracts characterized as self-improvement courses. On appeal from a grant of preliminary injunction, the US Court of Appeals of the 9th Circuit held that self-improvement contracts which primarily offered the buyer the opportunity of earning commissions on the sale of contracts to others were "investment contracts" and thus were "securities" within the meaning of the federal securities laws. This is regardless of the fact that buyers, in addition to investing money needed to purchase the contract, were obliged to contribute their own efforts in finding prospects and bringing them to sales meetings. The appellate court held:

---

[24] 474 F.2d 476, Fed.Sec. L. Rep. P 93, 748.

[25] *Id*.

It is apparent from the record that what is sold is not of the usual "business motivation" type of courses. Rather, the **purchaser is really buying the possibility of deriving money from the sale of the plans** by Dare to individuals whom the purchaser has brought to Dare. The promotional aspects of the plan, such as seminars, films, and records, are aimed at interesting others in the Plans. Their value for any other purpose is, to put it mildly, minimal.

**Once an individual has purchased a Plan, he turns his efforts toward bringing others into the organization, for which he will receive a part of what they pay.** His task is to bring prospective purchasers to "Adventure Meetings."

The business scheme of petitioner in the case at bar is essentially similar. An investor enrolls in petitioner's program by paying US$234. This entitles him to recruit two (2) investors who pay US$234 each and out of which amount he receives US$92. A minimum recruitment of four (4) investors by these two (2) recruits, who then recruit at least two (2) each, entitles the principal investor to US$184 and the pyramid goes on.

We reject petitioner's claim that the payment of US$234 is for the seminars on leverage marketing and not for any product. Clearly, the trainings or seminars are merely designed to enhance petitioner's business of teaching its investors the know-how of its multi-level marketing business. An investor enrolls under the scheme of petitioner to be entitled to recruit other investors and to receive commissions from the investments of those directly recruited by him. Under the scheme, the accumulated amount received by the investor comes primarily from the efforts of his recruits.

We therefore rule that the business operation or the scheme of petitioner constitutes an investment contract that is a security under R.A. No. 8799. Thus, it must be registered with public respondent SEC before its sale or offer for sale or distribution to the public. As petitioner failed to register the same, its offering to the public was rightfully enjoined by public respondent SEC. The CDO was proper even without a finding of fraud. As an investment contract that is security under R.A. No. 8799, it must be registered with public respondent SEC, otherwise the

SEC cannot protect the investing public from fraudulent securities. The strict regulation of securities is founded on the premise that the capital markets depend on the investing public's level of confidence in the system.

**IN VIEW WHEREOF,** the petition is *DENIED*. The July 31, 2003 Decision of the Court of Appeals, affirming the January 26, 2001 Cease and Desist Order issued by public respondent Securities and Exchange Commission against petitioner Power Homes Unlimited Corporation, and its June 18, 2004 Resolution denying petitioner's Motion for Reconsideration are *AFFIRMED*. No costs.

**SO ORDERED.**

*Sandoval-Gutierrez, Corona, Azcuna,* and *Leonardo-de Castro, JJ.,* concur.

---

**FIRST DIVISION**

[G.R. No. 167554. February 26, 2008]

**ROMEO ASIS, OSCAR ASIS and EDUARDO ASIS,** *petitioners, vs.* **CONSUELO ASIS *VDA. DE* GUEVARRA,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT; INFERIOR COURTS MAY RESOLVE THE ISSUE OF OWNERSHIP BUT ONLY TO DETERMINE THE ISSUE OF POSSESSION.—** The *Chua Peng Hian* doctrine enunciated in the 1984 case should be taken in light of Section 16, Rule 70 of the 1997 Rules of Civil Procedure, which is categorical. The issue of ownership raised as a defense will not oust the

MeTC of its jurisdiction over an ejectment case, as the court can rule on the issue of ownership *provisionally* to determine who has right to possess the disputed property. x x x Moreover, petitioners' objections to the MeTC jurisdiction all rest on the supposed "exception" to the jurisdiction over ejectment cases, anchored on the proposition that "when the issue of ownership is so necessarily involved with the issue of physical possession that it cannot be determined without resolving the issue of ownership, the court loses its jurisdiction. Unfortunately for petitioners, the cases cited in support of this "exception" **were all decided prior to Batas Pambansa Blg. (B.P.) 129.** And this "exception" to the MeTC jurisdiction was removed, and the rule modified by B.P. Blg. 129, which provides that in ejectment proceedings where the question of possession cannot be resolved without deciding the issue of ownership, all inferior courts have the power to resolve the issue of ownership but only to determine the issue of possession (*Sec. 33 [2],* changing the rule in *Sec. 3 [c],* R.A. No. 5967, which was then applicable to City Courts). **Even more so after the promulgation of the 1997 Revised Rules of Civil Procedure, with its clear grant of power under Section 16, Rule 70.** It is for this reason that petitioners are unable to cite jurisprudence to support their cause after the effectivity of B.P. Blg. 129.

**2. ID.; ID.; ID.; GUIDELINES TO BE OBSERVED IN RELATION TO THE EXERCISE OF JURISDICTION OVER ISSUES OF OWNERSHIP IN EJECTMENT PROCEEDINGS; REITERATED.—** *Refugia* also laid down the following guidelines to be observed in relation to the exercise of jurisdiction over issues of ownership in ejectment proceedings: 1. The primal rule is that the principal issue must be that of possession, and that ownership is merely ancillary thereto, in which case the issue of ownership may be resolved but only for the purpose of determining the issue of possession. Thus, as earlier stated, the legal provision under consideration applies only where the inferior court believes and the preponderance of evidence shows that a resolution of the issue of possession is dependent upon the resolution of the question of ownership. 2. It must sufficiently appear from the allegations in the complaint that what the plaintiff really and primarily seeks is the restoration of possession. Consequently, where the

allegations of the complaint as well as the reliefs prayed for clearly establish a case for the recovery of ownership, and not merely one for the recovery of possession *de facto*, or where the averments plead the claim of material possession as a mere elemental attribute of such claim for ownership, or where the issue of ownership is the principal question to be resolved, the action is not one for forcible entry but one for title to real property. 3. The inferior court cannot adjudicate on the nature of ownership where the relationship of lessor and lessee has been sufficiently established in the ejectment case, unless it is sufficiently established that there has been a subsequent change in or termination of that relationship between the parties. This is because under Section 2(b), Rule 131 of the Rules of Court, the tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them. 4. The rule in forcible entry cases, but not in those for unlawful detainer, is that a party who can prove prior possession can recover such possession even against the owner himself. Regardless of the actual condition of the title to the property and whatever may be the character of his prior possession, if he has in his favor priority in time, he has the security that entitles him to remain on the property until he is lawfully ejected by a person having a better right through an *accion publiciana* or *accion reivindicatoria*. Corollarily, if prior possession may be ascertained in some other way, then the inferior court cannot dwell upon or intrude into the issue of ownership. 5. Where the question of who has prior possession hinges on the question of who the real owner of the disputed portion is, the inferior court may resolve the issue of ownership and make a declaration as to who among the contending parties is the real owner. In the same vein, where the resolution of the issue of possession hinges on a determination of the validity and interpretation of the document of title or any other contract on which the claim of possession is premised, the inferior court may likewise pass upon these issues. This is because, and it must be so understood, that any such pronouncement made affecting ownership of the disputed portion is to be regarded merely as provisional, hence, does not bar nor prejudice an action between the same parties involving title to the land. Moreover, Section 7, Rule 70 of the Rules of Court expressly provides that the judgment rendered in an action for forcible entry or unlawful detainer shall be effective with respect

to the possession only and in no wise bind the title or affect the ownership of the land or building.

**APPEARANCES OF COUNSEL**

*Cesar T. Verano* for petitioners.
*Celso O. Escobido* for respondent.

**D E C I S I O N**

**PUNO, *C.J.*:**

In an action for unlawful detainer, the municipal or metropolitan trial court has jurisdiction when the plaintiff really and primarily seeks the restoration of possession; even if there is a need to resolve the ownership of the disputed property to determine who has prior possession. As long as the issue of ownership is to be ascertained **ONLY** for the purpose of determining the issue of possession, then the court can make a declaration who among the contending parties is the real owner of the property. Any such pronouncement is to be regarded merely as provisional, and will not bar nor prejudice an action between the same parties involving title to the disputed property.[1]

The Case

Before us is a petition for review on *certiorari*, filed under Rule 45 of the Revised Rules of Court to reverse and set aside the Decision of the Court of Appeals (CA) dated November 26, 2004 issued in CA-G.R. SP No. 76187, and the Resolution dated March 18, 2005 which denied petitioners' motion for reconsideration.

The facts of the case are simple, and substantially culled from the CA's account.[2]

Respondent Consuelo Asis *Vda. De* Guevarra, claiming to be the owner of the apartment units located at 1495, 1497 and

[1] *See Sps. Refugia v. CA,* 327 Phil. 982 (1996).

[2] CA Decision dated November 26, 2004, CA-G.R. SP No. 76187. *See rollo*, pp. 40-43.

1499 7th Street, Fabie Subdivision, Paco, Manila, filed separate ejectment cases with the Metropolitan Trial Court of Manila (MeTC) against her brothers Romeo, Oscar and Eduardo, all surnamed Asis, the petitioners herein.[3] In her complaint, respondent admits that the land on which the apartment units were built are owned in common by her and her siblings, including petitioners,[4] but alleges that she alone owns the apartment units, having paid for the construction of the same, and that the name of petitioners had only been included in the title of the property at the instance and benevolence of respondent.[5] She then alleges that petitioners, as lessees of the apartment units, had been paying her for several years monthly rentals of ₱500.00, ₱1,000.00 and ₱2,000.00 respectively, for their occupation of the apartment units.[6] All of a sudden, and she states that for no justifiable reason, petitioners stopped paying rent.[7] Despite repeated demands, they failed and refused to pay.[8] When the matter could not be settled by the *Barangay Lupon,*[9] a "Certification to File Action" was issued. The cases against petitioners were then consolidated, as they involved common issues and questions of fact and law.

In their respective Answers, petitioners claim that they are co-owners not only of the lot but also of the apartment units, by virtue of inheritance, because it was their parents — the original owners of the land — who had constructed the apartment units by way of loan and mortgage of the land with the Philippine National Bank in 1964.[10] They each claimed that they have

[3] *Id*. at 52-67. She filed three ejectment cases, docketed as Civil Case Nos. 161644-CV, 161645-CV and 161646-CV.

[4] *Id*. at 52, 57 and 62.

[5] *Id*.

[6] *Id*.

[7] *Id*.

[8] *Id*.

[9] In compliance with the *Katarungang Pambarangay Law*.

[10] *Rollo*, p. 68. The record also shows that petitioner Romeo Asis alleged in his answer that respondent was no longer a co-owner or heir of the lot or

never paid any rental for the occupation of the apartment units to respondent.[11] Petitioner Eduardo added that any money he may have given to respondent was in the form of *abuloy* (alms), since respondent was their eldest sister, and a widow without children.[12] In their petition with this Court, they admit to having previously paid the exact amounts specified by respondent monthly, but averred that these were not rentals but contributions for the upkeep and maintenance of the premises.[13]

The records show that petitioners' claim of co-ownership over the apartment units is solely based on the principle of accession. They argue that since they can establish possession of the apartment units during the lifetime of their parents—who were then owners of the parcel of land and the buildings/improvements situated thereon,[14] then their inheritance as compulsory heirs must necessarily include ownership not only of the land but also of the improvements.

The MeTC ruled for respondent, finding sufficient basis for the valid ejectment of petitioners thus:

> On the issue of whether or not [respondent] could validly eject the [petitioners] from the apartment [units], the Court find[s] basis to sustain the [respondent].
>
> [Petitioners] claim that they, together with the [respondent] are co-owners not only of the lot but also of the apartment [units]. They posit this claim by their mere argument that the accessory follows

---

the apartment as of February 14, 1988, when their parents during their lifetime sold the lot in question for ₱5,000.00 to their five siblings (Oscar, Cesar, Linda, Alfred and Ramon), and then on the same date, siblings Romeo, Helen and respondent herself sold their 1/5 share to their brothers Ruben and Eduardo for ₱5,000.00, through a Deed of Sale. *Id*. at 68-69. A review of the attached deed of sale revealed, however, that the sale involved the excess share of the siblings, so as to effect a 1/5 ownership of each of the siblings over the lot. *Id*. at 123.

[11] *Id*. at 67, 72, and 79.

[12] *Id.* at 79.

[13] *Id.* at 13.

[14] *Id.* at 21.

the principal. But this issue should not be resolved by a blinded adherence to such legal principle when evidence shows otherwise.

[Respondent] never denied that the lot upon which the apartment [units were] erected is owned in common by her and her siblings. She claims ownership only on the apartment [units]. She support[s] this with the records of her real property loan with the [Social Security Systems] and the Tax Declaration which are solely in her name. [Petitioners] have nothing to refute the authenticity of the said documents other than their naked claim and stubborn insistence of co-ownership.

[Petitioners] could not also convince this Court that what they were paying to the [respondent] were not rents but contribution to the upkeep and maintenance of the premises as well as aid to the [respondent] who is their elder sister. On the face of this gratuitous allegation[s], [respondent] has presented several receipts to establish that defendants were paying rental but stopped doing so[,] prompting her to file the instant case for ejectment. [Petitioners] submitted no evidence to disprove their authenticity.[15]

The MeTC rendered judgment in favor of respondent, as follows:

Civil Case No. 161644-CV:

1. Ordering [petitioner] Romeo Asis and all person[s] claiming rights under him to vacate Apartment No. 1497 located at 7th Street, Fabie Subdivision, Paco, Manila;

2. Ordering [petitioner Romeo Asis] to pay [respondent] the sum of TEN THOUSAND PESOS (₱10,000.00) representing his rental arrearages from July 1998 up to February, 2000 and the amount of ₱500.00 a month from March, 2000 and every month thereafter until he finally vacates the premises, as reasonable compensation for the use and occupancy of the premises.

Civil Case No. 161645-CV:

1. Ordering [petitioner] Oscar Asis and all person[s] claiming rights under him to vacate Apartment No. 1495 located at 7th Street, Fabie Subdivision, Paco, Manila;

---

[15] *Id.* at 100.

2. Ordering [petitioner Oscar Asis] to pay [respondent] the sum of TWENTY TWO THOUSAND PESOS (₱22,000.00) representing his rental arrearages from May, 1998 up to February 2000 and the amount of ₱1,000.00 a month from March, 2000 and every month thereafter until he finally vacates the premises, as reasonable compensation for the use and occupancy of the premises.

Civil Case No. 161646-CV:

1. Ordering [petitioner] Eduardo Asis and all person[s] claiming rights under him to vacate Apartment No. 1499 located at 7th Street, Fabie Subdivision, Paco, Manila;

2. Ordering [petitioner Eduardo Asis] to pay [respondent] the sum of THIRTY EIGHT THOUSAND PESOS (₱38,000.00) representing his rental arrearage from August, 1998 up to February, 2000 and the amount of ₱2,000.00 a month from March, 2000 and every month thereafter until he finally vacates the premises, as reasonable compensation for the use and occupancy of the premises.

Ordering all [petitioners] to pay [respondent], jointly and severally the sum of ₱20,000.00 as and for attorney's fees and to pay the costs of suit.

[Petitioners'] counterclaim[s] are hereby dismissed.

SO ORDERED.[16]

On appeal, the Regional Trial Court (RTC)[17] reversed the Consolidated Decision of the MeTC on the ground that the latter had no jurisdiction over the case since it involved not only possession of the lot but of the rights of the parties on the building constructed thereon. Relying heavily on the case of *Chua Peng Hian v. CA*,[18] the RTC ruled:

On hindsight, and yes, what escaped the attention of the [MeTC] was the averments of the initiatory pleading, the [petitioners'] formal reaction thereto, and papers subsequent to the preliminary conference

[16] *Id.* at 100-101.

[17] Branch 17, Manila.

[18] 218 Phil. 544 (1984).

of November 16, 1999, with respect to the controversy as to the matter of exclusive dominion over the apartment units *vis-à-vis* the acknowledged co-ownership of the lot. Indeed, there was no unanimity of thought as to ownership of the lot and building thereon which thus constrained this Court to equate the *casus belli* at hand to the scenario portrayed by Mr. Justice Aquino in [*Chua Peng Hian vs. Court of Appeals*] (133 SCRA 572, 575 [1984]; cited [in] 1 Regalado, Remedial Law Compendium, 8th Revised Edition, 2002, at page 801) which may well apply herein, thusly.

> We hold that the Court of First Instance had jurisdiction over the case. Where the issues raised before the inferior court do not only involve possession of the lot but also the rights of the parties to the building constructed thereon, the Court of First Instance and not the municipal or city court has jurisdiction over the case. (citations and emphasis omitted)

Even then, and mindful of the second paragraph of Section 8, Rule 40 of the 1997 Rules of Civil Procedure, the appellate court can hardly render a categorical disposition based on the entire record in accordance with Section 7 thereof, relative to the nagging query as to the rights of the parties over the building, inasmuch as the *proviso* under Section 8 of the same Rule was conditional upon '…reception of evidence on which the judgment of the lower court was based…' peculiar to a '…a trial on the merits by the lower court…,' which circumstances are anathema to a civil suit envisioned by the 1991 Revised Rule on Summary Procedure. (citations omitted)[19]

The RTC ruling was likewise reversed and set aside by the CA,[20] and the decision of the MeTC was reinstated. The CA ruled that the *Chua Peng Hian* case relied upon by the RTC was not applicable to the case at bar, since the action there was for specific performance of the stipulations in a lease contract which was filed with the RTC, whereas the present case is for eviction of tenants through an unlawful detainer action. The CA thus explained:

---

[19] *Rollo*, pp. 106-107.

[20] In the petition for review filed by respondent, docketed as CA-G.R. SP No. 76187. *See* CA Decision dated November 26, 2004, *id*. at 40-43.

x x x However, it must be stressed that the *Chua Peng Hian* case involves the recovery of possession of a leased lot where the lessee bound himself to transfer to the lessor the building which he erected thereon. It was an action for specific performance. On the other hand, in the case at bar, [respondent] sought the eviction of her tenants from her apartment units in an action for unlawful detainer. The Supreme Court further explained in the case of *Chua Peng Hian* that, "the action was for specific performance of the stipulations of a lease contract. It was not capable of pecuniary estimation. It was within the [exclusive original jurisdiction] of the Court of First Instance." Evidently, the ruling in that case is not applicable to the case at bar.[21]

Further, the CA sustained the jurisdiction of the MeTC to rule on the issue of ownership for the purpose of determining who had the right of possession, based on the explicit grant in the 1997 Revised Rules of Civil Procedure. Thus:

> Furthermore, Section 16, Rule 70 of the Rules of Civil Procedure provides:
>
> > Sec. 16. *Resolving defense of ownership.* — When the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.

We should emphasize that the only issue involved in ejectment proceedings is who is entitled to the physical or material possession of the premises, that is, possession *de facto* and not possession *de jure.* Moreover, *Batas Pambansa Blg.* 129 provides that in ejectment proceedings where the question of possession cannot be resolved without deciding the issue of ownership, inferior courts have the power to resolve the issue of ownership but only to determine the issue of possession. This doctrine was reiterated in the case of *Aznar Brothers Realty vs. Court of Appeals,* 327 SCRA 359, where the Supreme Court held that, "In an action for ejectment, the only issue involved is possession *de facto*. However, when the issue of possession cannot be decided without resolving the issue, the court may receive evidence upon the question of title to property but solely for the purpose of determining the issue of possession."

---

[21] *Id*. at 45.

It is therefore clear from the foregoing that the [MeTC] has original and exclusive jurisdiction over the instant case. Even if [petitioners] raised the issue of ownership, the [MeTC] can still determine the validity of their claim on which they justify their right to possess. "The MeTC acts correctly if it receives evidence on ownership where the question of possession could not be resolved without deciding the issue of ownership" *Paz vs. Reyes*, 327 SCRA 605. It is now a well-settled rule that inferior courts are not divested of jurisdiction over ejectment cases just because the defendants assert ownership over the litigated property (*Cruz vs. Court of Appeals*, 309 SCRA 714).[22]

Petitioners now come before this Court arguing that a grave reversible error was committed by the CA in overturning the decision of the RTC, on the grounds that (a) *Chua Peng Hian*[23] applies to the instant case because the complaint filed by respondent at the MeTC did not make out an action of ejectment; and (b) petitioners could not be ejected because they are co-owners of the apartment units.

The petition must fail.

Petitioners cannot negate the jurisdiction of the MeTC by invoking the *Chua Peng Hian* case. As correctly pointed out by the CA, the RTC erred when it was applied to the case at bar. What was filed therein was an action for specific performance [with the then Court of First Instance], and it was the defendant there who raised the issue that the Court of First Instance had no jurisdiction, implying that the case was really an issue of possession. Thus, it was in this context that this Court held that the Court of First Instance had jurisdiction over the case, not only because the issues raised do not only involve the possession of the land, but also the rights of the parties to the building constructed thereon.

This portion of the *Chua Peng Hian* decision therefore was taken out of context by the RTC when it quoted the same to justify its ruling that the MeTC had no jurisdiction in the instant

[22] *Id.* at 45-46.

[23] *Supra* note 18.

case. Moreover, the *Chua Peng Hian* doctrine enunciated in the 1984 case should be taken in light of Section 16, Rule 70 of the 1997 Rules of Civil Procedure, which is categorical. The issue of ownership raised as a defense will not oust the MeTC of its jurisdiction over an ejectment case, as the court can rule on the issue of ownership *provisionally* to determine who has right to possess the disputed property. "*When the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession*."[24]

Moreover, petitioners' objections to the MeTC jurisdiction all rest on the supposed "exception" to the jurisdiction over ejectment cases, anchored on the proposition that "when the issue of ownership is so necessarily involved with the issue of physical possession that it cannot be determined without resolving the issue of ownership, the court loses its jurisdiction."[25]

Unfortunately for petitioners, the cases cited in support of this "exception" **were all decided prior to *Batas Pambansa Blg.* (B.P.) 129**. And this "exception" to the MeTC jurisdiction was removed, and the rule modified by B.P. Blg. 129, which provides that in ejectment proceedings where the question of possession cannot be resolved without deciding the issue of ownership, all inferior courts have the power to resolve the issue of ownership but only to determine the issue of possession (*Sec. 33 [2],* changing the rule in *Sec. 3 [c],* R.A. No. 5967, which was then applicable to City Courts).[26] **Even more so after the promulgation of the 1997 Revised Rules of Civil Procedure, with its clear grant of power under Section 16, Rule 70.** It is for this reason that petitioners are unable to cite jurisprudence to support their cause after the effectivity of B.P. Blg. 129.

---

[24] 1997 Revised Rules of Civil Procedure, Rule 70, Sec. 16.

[25] *Rollo*, p. 107.

[26] FLORENZ D. REGALADO, *I Remedial Law Compendium* 782-783 (8th revised ed. 2002).

Did the passage of these amendments mean that courts having jurisdiction over ejectment cases can never be ousted of such jurisdiction? This was explained in *Sps. Refugia v. CA*,[27] where this Court, speaking through J. Regalado, held:

> x x x [I]t is clear that prior to the effectivity of Batas Pambansa Blg. 129, the jurisdiction of inferior courts was confined to receiving evidence of ownership in order to determine only the nature and extent of possession, by reason of which such jurisdiction was lost the moment it became apparent that the issue of possession was intricately interwoven with that of ownership. The law, as revised, now provides instead that when the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession. On its face, the new Rule on Summary Procedure was extended to include within the jurisdiction of the inferior courts ejectment cases which likewise involve the issue of ownership. This does not mean, however, that blanket authority to adjudicate the issue of ownership in ejectment suits has been thus conferred on the inferior courts.
>
> At the outset, it must here be stressed that the resolution of this particular issue concerns and applies only to forcible entry and unlawful detainer cases where the issue of possession is intimately intertwined with the issue of ownership. It finds no proper application where it is otherwise, that is, where ownership is not in issue, or where the principal and main issue raised in the allegations of the complaint as well as the relief prayed for make out not a case for ejectment but one for recovery of ownership.

To ensure that the above policy would be maintained, *Refugia* also laid down the following guidelines to be observed in relation to the exercise of jurisdiction over issues of ownership in ejectment proceedings:

> 1. The primal rule is that the principal issue must be that of possession, and that ownership is merely ancillary thereto, in which case the issue of ownership may be resolved but only for the purpose of determining the issue of possession. Thus, as earlier stated, the legal provision under consideration applies only where the inferior court believes and the preponderance of evidence

[27] *Supra* note 1, at 1002.

shows that a resolution of the issue of possession is dependent upon the resolution of the question of ownership.

2. It must sufficiently appear from the allegations in the complaint that what the plaintiff really and primarily seeks is the restoration of possession. Consequently, where the allegations of the complaint as well as the reliefs prayed for clearly establish a case for the recovery of ownership, and not merely one for the recovery of possession *de facto*, or where the averments plead the claim of material possession as a mere elemental attribute of such claim for ownership, or where the issue of ownership is the principal question to be resolved, the action is not one for forcible entry but one for title to real property.

3. The inferior court cannot adjudicate on the nature of ownership where the relationship of lessor and lessee has been sufficiently established in the ejectment case, unless it is sufficiently established that there has been a subsequent change in or termination of that relationship between the parties. This is because under Section 2(b), Rule 131 of the Rules of Court, the tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them.

4. The rule in forcible entry cases, but not in those for unlawful detainer, is that a party who can prove prior possession can recover such possession even against the owner himself. Regardless of the actual condition of the title to the property and whatever may be the character of his prior possession, if he has in his favor priority in time, he has the security that entitles him to remain on the property until he is lawfully ejected by a person having a better right through an *accion publiciana* or *accion reivindicatoria*. Corollarily, if prior possession may be ascertained in some other way, then the inferior court cannot dwell upon or intrude into the issue of ownership.

5. Where the question of who has prior possession hinges on the question of who the real owner of the disputed portion is, the inferior court may resolve the issue of ownership and make a declaration as to who among the contending parties is the real owner. In the same vein, where the resolution of the issue of possession hinges on a determination of the validity and interpretation of the document of title or any other contract on which the claim of possession is premised, the inferior court may likewise pass upon

> these issues. This is because, and it must be so understood, that any such pronouncement made affecting ownership of the disputed portion is to be regarded merely as provisional, hence, does not bar nor prejudice an action between the same parties involving title to the land. Moreover, Section 7, Rule 70 of the Rules of Court expressly provides that the judgment rendered in an action for forcible entry or unlawful detainer shall be effective with respect to the possession only and in no wise bind the title or affect the ownership of the land or building.[28]

From the foregoing, it is clear that unless petitioners are able to show that the real purpose of the action for ejectment is to recover title to the property, or otherwise show that the issue of ownership is the principal question to be resolved, then the municipal or metropolitan trial court retains jurisdiction. This the petitioners failed to prove.

Finally, a careful evaluation of the records of this case also convinces us that the findings of the MeTC are in order, insofar as to the validity of the grant of eviction. Again, we stress that the decision of the MeTC finding respondent as the owner of the apartment units is merely to determine the right of possession. It will not bar any of the parties from filing a suit with the proper court to determine conclusively the title to the disputed property.

**IN VIEW WHEREOF,** the petition is *DENIED*. Accordingly, the Consolidated Decision dated March 7, 2000, rendered by the Metropolitan Trial Court of Manila, is hereby *AFFIRMED.*

**SO ORDERED.**

*Sandoval-Gutierrez, Corona, Azcuna,* and *Leonardo-de Castro, JJ.,* concur.

---

[28] *Id*. at 1004-1006.

**THIRD DIVISION**

[G.R. No. 171098. February 26, 2008]

**JUAN G. GARCIA, JR. and DOROTEO C. GAERLAN,** *petitioners, vs.* **HON. COURT OF APPEALS and GARCIA PASION DEVELOPMENT CORPORATION (GPDC), represented by RAMONA G. AYESA and MARCELO F. AYESA,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* DISMISSAL OF PETITION PROPER WHERE THERE IS FAILURE TO ATTACH DUPLICATE ORIGINALS OR CERTIFIED TRUE COPIES OF THE QUESTIONED ORDERS.—** It is true that Section 3 of Rule 46 does not require that all supporting papers and documents accompanying a petition be duplicate originals or certified true copies. However, it explicitly directs that all cases originally filed in the Court of Appeals shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution or ruling subject thereof. Similarly, under Rule 65, which covers *certiorari,* prohibition and *mandamus*, petitions need to be accompanied only by duplicate originals or certified true copies of the questioned judgment, order or resolution. Other relevant documents and pleadings attached to it may be mere machine copies thereof. In the case at bar, petitioners failed to attach duplicate originals or certified true copies of the assailed Orders of the RTC, dated 22 February 2005 and 7 April 2005. What they affixed were machine or xerox copies of the same. Plainly put, petitioners contravened the obvious rudiments of the rules.

**2. ID.; ID.; ID.; PETITION FOR; DUPLICATE ORIGINAL MUST BE SIGNED OR INITIALED BY THE PROPER AUTHORITIES; XEROX COPIES, NOT SUFFICIENT.—** It is incontrovertible that a certified true copy is not a mere xerox copy. Further, it is imperative that the duplicate original copy required by the rules must be duly signed or initialed by the authorities or the corresponding officer or representative of the issuing entity, or shall at least bear the dry seal thereof

or any other official indication of the authenticity and completeness of such copy. Petitioners' xerox copies are wanting in this respect.

**3. ID.; RULES OF COURT; CONSTRUCTION; LIBERAL INTERPRETATION AND APPLICATION OF THE RULES NOT APPLICABLE IN CASE AT BAR.—** Petitioners seek a liberal application of the procedural rules. For their failure to attach certified true copies of the assailed orders of the RTC, petitioners place the blame on the appellate court. Petitioners brazenly suggest that what the Court of Appeals should have done was to issue an Order directing them to comply with the rule on attaching certified true copies, instead of dismissing the case on its face. We do not see reason to grant liberality in the application of the rules. It must be emphasized that the liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice. Only strong considerations of equity, which are wanting in this case, will lead us to allow an exception to the procedural rule in the interest of substantial justice. To further suggest petitioners' impervious attitude towards rules, they even failed to attach certified true copies or duplicate original copies of the assailed Orders in their Motion for Reconsideration filed with the Court of Appeals. Concomitant to a liberal application of the rules of procedure should be an effort on the party invoking liberality to at least explain its failure to comply with the rules. Circular No. 3-96 is also unequivocal that it shall be the duty and responsibility of the party to verify and ensure compliance with all the requirements detailed therein. In fact, failure to do so shall result in the rejection of such annexes and the dismissal of the case.

**4. ID.; ID.; A PARTY SEEKING THE AID OF THE COURTS AND AVAILING OF THE EXTRAORDINARY REMEDY OF *CERTIORARI* SHOULD HAVE TAKEN THE DUTY AND RESPONSIBILITY TO OBSERVE THE RULES.—** Petitioners' contention that the Court of Appeals ought to have issued an Order directing them to file the certified true copies of the assailed RTC orders is hardly a plausible explanation.

They have everything within their power to ensure compliance with all the requirements laid down by the rules. As parties who wish to seek the aid of the courts and avail of the extraordinary remedy of *certiorari*, petitioners should have taken the duty and the responsibility to observe the rules.

**5. POLITICAL LAW; ADMINISTRATIVE LAW; FIDUCIARY COLLECTIONS OR MONEYS RECEIVED IN TRUST BY THE COURT CANNOT BE DEPOSITED IN THE NAME OF A PARTY.—** Petitioners' prayer that the Branch Clerk of Court be directed to open an account in the name of GPDC, with a bank designated by the RTC may not be granted. The guidelines to be observed in making deposits or withdrawals of all collections from bailbonds, rental deposits and other fiduciary collections, or moneys received in trust are enumerated in Supreme Court Circular No. 13-92. The same rule is also embodied in the 2002 Revised Manual for Clerks of Court. Pertinently, the rule is that deposits shall be made in the name of the Court. Perforce, the instant Petition is without merit.

**APPEARANCES OF COUNSEL**

*Law Office of Calanog and Associates* for J.G. Garcia, Jr.
*John Arlin Caingat* for D.O. Gaerlan.
*Medialdea Bello and Guevarra* for respondent.

**D E C I S I O N**

**CHICO-NAZARIO, *J.*:**

In this Petition for *Certiorari,* petitioners seek to set aside the Resolutions of the Court of Appeals, dated 29 June 2005[1] and 13 January 2006,[2] which dismissed their Petition in CA-G.R. SP No. 90178 for failure to comply with the requirements of Section 1, Rule 65 of the 1997 Rules of Civil Procedure.[3]

[1] *Rollo*, pp. 79-80.

[2] *Id.* at 63-65.

[3] SECTION 1. *Petition for certiorari.* – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting

From the records, it appears that petitioners are stockholders of private respondent Garcia Pasion Development Corp. (GPDC), a family corporation duly registered with the Securities and Exchange Commission (SEC). Petitioners are defendants in SP. Proc. No. 03-106410, a stockholders' derivative suit with prayer for attachment and receivership filed by GPDC, represented by Ramona G. Ayesa and Marcelo F. Ayesa, with the Regional Trial Court (RTC) of Manila, Branch 24. Furthermore, GPDC is a stockholder of Kenram Philippines, Inc. and Kenram Industrial Development, Inc. On 22 February 2005, petitioners and private respondents filed a Joint Motion[4] with the RTC, praying, thus:

WHEREFORE, plaintiff and defendants respectfully pray that the Honorable Court issue an Order as follows:

(a) Directing that all the dividends declared or to be declared in the future to plaintiff Garcia Pasion Development Corporation by Kenram Philippines, Inc. and Kenram Industrial Development, Inc., or other corporations, including those still in the custody of the latter two corporations, be delivered to the Branch Clerk of Court;

(b) Directing the Branch Clerk of Court to open an account in the name of Garcia Pasion Development Corporation [GPDC], with a bank designated by the Honorable Court, in which account shall be deposited all funds received by said Branch Clerk of Court as and by way of dividends due to GPDC; and

(c) Directing that no withdrawal shall be made from the bank account except upon motion of the parties approved by the Court.[5]

---

to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

[4] *Rollo*, pp. 66-68.

[5] *Id*. at 67.

The RTC issued an Order[6] of even date which partially granted the parties' prayer, directing that the dividends be delivered to the Office of the Clerk of Court, RTC, Manila. Hence:

> As prayed for, all the dividends declared or to be declared in the future to [private respondent] Garcia Pasion Development Corporation [GPDC], by Kenram Philippines, Inc. and Kenram Industrial Development, Inc., or other corporations, including those still in the custody of the latter two corporations, are hereby directed to be delivered not to the Branch Clerk of Court but to the Office of the Clerk of Court, Regional Trial Court, Manila.[7]

Unsatisfied, the parties filed a Joint Motion to Amend the Order dated 22 February 2005, praying that the RTC modify the same by directing that all the dividends of GPDC delivered to the Office of the Clerk of Court, RTC of Manila, be deposited in an account to be opened in the name of GPDC with a bank designated by the RTC, and that no withdrawal shall be made except upon joint motion of the parties approved by the court.[8]

Acting on the said Joint Motion, the RTC issued an Order[9] dated 7 April 2005, denying the same. It directed thus:

> x x x considering that under Section 2.1.2 of [T]he 2002 Revised Manual for Clerks of Court, particularly the provisions that "only one depository bank shall be maintained, that deposits shall be made in the name of the court and that the clerk of Court shall be the custodian of the passbook to be issued by the depository bank x x x," the joint motion is hereby denied.[10]

On 20 June 2005, petitioners filed a Petition for *Certiorari* with the Court of Appeals, which dismissed it outright for failure to attach therewith certified true copies of the assailed Orders of the RTC, dated 22 February 2005 and 7 April 2005 in

---

[6] Records, Volume III, p. 398.

[7] *Id*.

[8] *Id*. at 405.

[9] *Id*. at 424.

[10] *Id*.

contravention of Section 1, Rule 65 of the 1997 Rules of Civil Procedure.

On 15 July 2005, petitioners filed a Joint Motion for Reconsideration,[11] but it was denied. The Court of Appeals held that while the attachment of a duplicate original copy of the assailed order is sufficient compliance with the mandate of Section 1, Rule 65 of the 1997 Rules of Civil Procedure, petitioners merely appended machine copies of the assailed orders.

Hence, the instant Petition alleging that the Court of Appeals erred in dismissing the Petition for *Certiorari* on mere technicality.

Private respondent GPDC in its Comment[12] joins petitioners in their prayer that this Court give due course to the Petition.

We dismiss the Petition.

The acceptance of a petition for *certiorari*, as well as the grant of due course thereto is, in general, addressed to the sound discretion of the court.[13] It must be stressed that *certiorari,* being an extraordinary remedy,[14] the party who seeks to avail of the same must strictly observe the rules laid down by the law[15] and non-observance thereof may not be brushed aside as mere technicality.[16]

---

[11] CA *rollo*, pp. 28-33.

[12] *Rollo*, pp. 73-76.

[13] *Tan v. Bausch and Lomb, Inc.,* G.R. No. 148420, 15 December 2005, 478 SCRA 115, 120.

[14] *Manila Midtown Hotels & Land Corp. v. National Labor Relations Commission,* 351 Phil. 500, 506 (1998); *Solidum v. Court of Appeals,* G.R. No. 161647, 22 June 2006, 492 SCRA 261, 269.

[15] *Balayan v. Acorda,* G.R. No. 153537, 5 May 2006, 489 SCRA 637, 643, citing *Matagumpay Maritime Co., Inc., v. Dela Cruz*, G.R. No. 144638, 9 August 2005, 466 SCRA 130, 134; *Seastar Marine Services, Inc. v. Bulan, Jr.,* G.R. No. 142609, 25 November 2004, 444 SCRA 140, 153.

[16] *De Los Santos v. Court of Appeals,* G.R. No. 147912, 26 April 2006, 488 SCRA 351, 358; *Teoville Homeowners Association, Inc. v. Ferreira,* G.R. No. 140086, 8 June 2005, 459 SCRA 459, 472; *Sea Power Shipping Enterprises, Inc. v. Court of Appeals,* 412 Phil. 603, 611 (2001).

In the matter of the requirement that a petition for *certiorari* be accompanied by a certified true copy of the judgment, order or resolution subject thereof, Section 1, Rule 65 of the 1997 Rules of Civil Procedure, as amended, provides:

SECTION 1. *Petition for certiorari*.—

xxx xxx xxx

The petition shall be accompanied by a **certified true copy** of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

Significantly, Section 3, Rule 46 of the same Rules, provides:

SECTION 3. *Contents and filing of petition; effect of non-compliance with requirements*. —

xxx xxx xxx

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a **clearly legible duplicate original or certified true copy** of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

xxx xxx xxx

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition."

It is true that Section 3 of Rule 46 does not require that all supporting papers and documents accompanying a petition be duplicate originals or certified true copies.[17] However, it explicitly

[17] *OSM Shipping Philippines, Inc. v. National Labor Relations Commission,* 446 Phil. 793, 802-803 (2003).

directs that all cases originally filed in the Court of Appeals shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution or ruling subject thereof.[18] Similarly, under Rule 65, which covers *certiorari,* prohibition and *mandamus*, petitions need to be accompanied only by duplicate originals or certified true copies of the questioned judgment, order or resolution.[19] Other relevant documents and pleadings attached to it may be mere machine copies thereof.[20] In the case at bar, petitioners failed to attach duplicate originals or certified true copies of the assailed Orders of the RTC, dated 22 February 2005 and 7 April 2005. What they affixed were machine or xerox copies of the same. Plainly put, petitioners contravened the obvious rudiments of the rules.

In Circular No. 3-96, we made the following clarifications and supplemental rules on what is a duplicate original or certified true copy:

> 1. The "duplicate original copy" shall be understood to be that copy of the decision, judgment, resolution or order which is intended for and furnished to a party in the case or proceeding in the court or adjudicative body which rendered and issued the same. The "certified true copy" thereof shall be such other copy furnished to a party at his instance or in his behalf, duly authenticated by the authorized officers or representatives of the issuing entity as hereinbefore specified.

---

[18] Circular No. 39-98 reads, in part:

> Rule 46, Sec 3. *Contents and filing of petition; effect of non-compliance with requirements.* –
>
> xxx xxx xxx
>
> It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner and shall be **accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or subject thereof,** such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative.

[19] *Id*.

[20] *Id*.

2. The duplicate original copy must be duly signed or initialed by the authorities or the corresponding officer or representative of the issuing entity, or shall at least bear the dry seal thereof or any other official indication of the authenticity and completeness of such copy. For this purpose, all courts, offices or agencies furnishing such copies which may be used in accordance with Paragraph (3) of Revised Circular No. 1-88 shall make arrangements for and designate the personnel who shall be charged with the implementation of this requirement.

3. The certified true copy must further comply with all the regulations therefor of the issuing entity and it is the authenticated original of such certified true copy, and not a mere xerox copy thereof, which shall be utilized as an annex to the petition or other initiatory pleading.

4. Regardless of whether a duplicate original copy or a certified true copy of the adjudicatory document is annexed to the petition or initiatory pleading, the same must be exact and complete copy of the original and all the pages thereof must be clearly legible and printed on white bond or equivalent paper of good quality with the same dimensions as the original copy. Either of the aforesaid copies shall be annexed to the original copy of the petition or initiatory pleading filed in court, while plain copies thereof may be attached to the other copies of the pleading.

5. It shall be the duty and responsibility of the party using documents required by Paragraph (3) of Circular No. 1-88 to verify and ensure compliance with all the requirements thereof as detailed in the proceeding paragraphs. Failure to do so shall result in the rejection of such annexes and the dismissal of the case. Subsequent compliance shall not warrant any reconsideration unless the court is fully satisfied that the noncompliance was not in any way attributable to the party despite due diligence on his part, and that there are highly justifiable and compelling reasons for the court to make such other disposition as it may deem just and equitable.

Based on the foregoing, it is incontrovertible that a certified true copy is not a mere xerox copy. Further, it is imperative that the duplicate original copy required by the rules must be duly signed or initialed by the authorities or the corresponding officer or representative of the issuing entity, or shall at least bear the dry seal thereof or any other official indication of the

authenticity and completeness of such copy. Petitioners' xerox copies are wanting in this respect.

Petitioners seek a liberal application of the procedural rules. For their failure to attach certified true copies of the assailed orders of the RTC, petitioners place the blame on the appellate court. Petitioners brazenly suggest that what the Court of Appeals should have done was to issue an Order directing them to comply with the rule on attaching certified true copies, instead of dismissing the case on its face. We do not see reason to grant liberality in the application of the rules. It must be emphasized that the liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances.[21] While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.[22] Only strong considerations of equity, which are wanting in this case, will lead us to allow an exception to the procedural rule in the interest of substantial justice.[23] To further suggest petitioners' impervious attitude towards rules, they even failed to attach certified true copies or duplicate original copies of the assailed Orders in their Motion for Reconsideration filed with the Court of Appeals. Concomitant to a liberal application of the rules of procedure should be an effort on the party invoking liberality to at least explain its failure to comply with the rules.[24] Circular No. 3-96 is also unequivocal that it shall be the duty and responsibility of the party to verify and ensure compliance with all the requirements detailed therein. In fact, failure to do so shall result in the rejection of such annexes and the dismissal of the case.[25]

---

[21] *Garbo v. Court of Appeals,* 327 Phil. 780, 784 (1996).

[22] *Id*.

[23] *Bago v. People,* 443 Phil. 503, 506 (2003).

[24] *Prudential Guarantee and Assurance, Inc. v. Court of Appeals,* G.R. No. 146559, 13 August 2004, 436 SCRA 478, 483; *Lapid v. Judge Laurea,* 439 Phil. 887, 896 (2002).

[25] Paragraph 5 of Administrative Circular No. 3-96, states:

Petitioners' contention that the Court of Appeals ought to have issued an Order directing them to file the certified true copies of the assailed RTC orders is hardly a plausible explanation. They have everything within their power to ensure compliance with all the requirements laid down by the rules. As parties who wish to seek the aid of the courts and avail of the extraordinary remedy of *certiorari*, petitioners should have taken the duty and the responsibility to observe the rules.

At any rate, we do not find merit in the Petition. Petitioners' prayer that the Branch Clerk of Court be directed to open an account in the name of GPDC, with a bank designated by the RTC may not be granted. The guidelines to be observed in making deposits or withdrawals of all collections from bailbonds, rental deposits and other fiduciary collections, or moneys received in trust are enumerated in Supreme Court Circular No. 13-92, dated 1 March 1992, to wit:

CIRCULAR NO. 13-92

To : All Executive Judges and Clerks of Court of the Regional Trial Courts and Shari'a District Courts.

Subject: Court Fiduciary Funds

xxx xxx xxx

x x x The following procedure is, therefore, prescribed in the administration of Court Fiduciary Funds:

*"Guidelines in Making Deposits:*

"1) Deposits shall be made under a savings account. Current account can also be maintained provided that it is on automatic transfer of account from savings.

---

[5]It shall be the duty and responsibility of the party using the documents required by paragraph 3 of Circular No. 1-88 to verify and ensure compliance with all the requirements thereof as detailed in the preceding paragraphs. Failure to do so shall result in the rejection of such annexes and the dismissal of the case. Subsequent compliance shall not warrant any reconsideration unless the Court is fully satisfied that the non-compliance was not in any way attributable to the party, despite due diligence on his part, and that there are highly justifiable and compelling reasons for the Court to make such other disposition as it may deem just and equitable.

"2) **Deposits shall be made in the name of the Court.**

"3) The **Clerk of Court** shall be the custodian of the Passbook to be issued by the depository bank and shall advise the Executive Judge of the bank's name, branch and savings/ current account number.

*"Guidelines in Making Withdrawals:*

"1) Withdrawal slips shall be signed by the Executive Judge and countersigned by the Clerk of Court.

"2) In maintaining a current account, withdrawals shall be made by checks. Signatories on the checks shall likewise be the Executive Judge and the Clerk of Court.

"All collections from bailbonds, rental deposits and other fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank.[26]

The same rule is also embodied in the 2002 Revised Manual for Clerks of Court.[27] Pertinently, the rule is that deposits shall be made in the name of the Court. Perforce, the instant Petition is without merit.

**WHEREFORE,** premises considered, the instant Petition is hereby *DISMISSED*. The Resolutions of the Court of Appeals, dated 29 June 2005 and 13 January 2006 in CA-G.R. SP No. 90178, are *AFFIRMED*. No costs.

**SO ORDERED.**

*Ynares-Santiago (Chairperson), Austria-Martinez, Nachura,* and *Reyes, JJ.,* concur.

---

[26] *Judge Madrid v. Ramirez,* 324 Phil. 651, 657-658 (1996).

[27] See Volume I, Section 2.1.2.2c.1 of the 2002 Revised Manual for Clerks of Court.

**THIRD DIVISION**

[G.R. No. 171315. February 26, 2008]

**ANTONIO ARBIZO,** *petitioner, vs.* **SPS. ANTONIO SANTILLAN and ROSARIO L. SANTILLAN,** *respondents.*

**ANTONIO ARBIZO,** *petitioner, vs.* **SPS. JOHN WASSMER and LUZ MARCELO-WASSMER,** *respondents.*

**ANTONIO ARBIZO,** *petitioner, vs.* **PACITA MARCELO,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; TWO MANDATORY ALLEGATIONS FOR THE MUNICIPAL TRIAL COURT TO ACQUIRE JURISDICTION.—** In filing forcible entry cases, the law tells us that two allegations are mandatory for the municipal court to acquire jurisdiction: *first*, the plaintiff must allege prior physical possession of the property, and *second*, he must also allege that he was deprived of his possession by any of the means provided for in Section 1, Rule 70 of the Rules of Court, *i.e.*, by force, intimidation, threat, strategy or stealth.

**2. ID.; ID.; ID.; IMPORTANCE OF THE ISSUE OF POSSESSION IN EJECTMENT PROCEEDINGS, DISCUSSED.—** It is also settled that in the resolution of such a case, what is material is the determination of who is entitled to the physical possession of the property. Indeed, any of the parties who can prove prior possession *de facto* may recover such possession even from the owner himself since such cases proceed independently of any claim of ownership and the plaintiff needs merely to prove prior possession *de facto* and undue deprivation thereof. The question of possession is primordial while the issue of ownership is unessential. Verily, in ejectment cases, the word "possession" means nothing more than actual physical possession, not legal possession, in the sense contemplated in civil law. The only issue in such cases is who is entitled to

the physical or material possession of the property involved, independent of any claim of ownership set forth by any of the party-litigants. It does not even matter if the party's title to property is questionable.

**3. ID.; ID.; ID.; AN ACTION FOR FORCIBLE ENTRY IS A QUIETING PROCESS THAT IS SUMMARY IN NATURE.—** The Rule on Summary Procedure precisely provides for the submission by the parties of affidavits and position papers and enjoins courts to hold hearings only when it is necessary to do so to clarify factual matters. This procedure is in keeping with the objective of the Rule: to promote the expeditious and inexpensive determination of cases. Worthy of note is that an action for forcible entry is a quieting process that is summary in nature. It is designed to recover physical possession through speedy proceedings that are restrictive in nature, scope and time limits.

**4. ID.; ID.; ID.; WHAT CONSTITUTES DEPRIVATION OF POSSESSION BY FORCE.—** As to whether respondents were deprived of possession by force, intimidation, strategy or stealth, the acts of the petitioner in unlawfully entering the subject properties, erecting a structure thereon and excluding therefrom the prior possessor would necessarily imply the use of force. In order to constitute force, the trespasser does not have to institute a state of war.

**5. ID.; APPEALS; IN A PETITION FOR REVIEW UNDER RULE 45, IT IS THE BURDEN OF THE PARTY SEEKING REVIEW TO DISTINCTLY SET FORTH THEREIN NOT ONLY THE EXISTENCE OF QUESTIONS OF LAW BUT ALSO QUESTIONS SUBSTANTIAL ENOUGH TO MERIT CONSIDERATION.—** It must be stressed that the jurisdiction of the Supreme Court in cases brought before it from the Court of Appeals *via* Rule 45, as in this case, is limited to reviewing errors or questions of law. Where factual matters are involved, it is well-settled that a question of fact is to be determined by the evidence to support the particular contention. As found by the Court of Appeals, the evidence adduced on this score are in respondents' favor. Whether such conclusion of the Court of Appeals was supported by the evidence presented before it is also factual in nature. It is the burden of the party seeking review of a decision of the Court of Appeals or other

lower tribunals to distinctly set forth in his petition for review, not only the existence of questions of law fairly and logically arising therefrom, but also questions substantial enough to merit consideration, or show that there are special and important reasons warranting the review that he seeks. If these are not shown *prima facie* in his petition, this Court will be justified in summarily spurning the petition as lacking in merit.

**6. ID.; ID.; ID.; EXCEPTION, NOT APPLICABLE.—** There are recognized exceptions to this rule when the evidence presented during the trial may be examined and the factual matters resolved by this Court. Among these exceptional circumstances is when the findings of fact of the appellate court differ from those of the trial court. So long as the findings of the appellate court are consistent with and not palpably contrary to the evidence on record, we shall decline to make a review on the probative value of such evidence. The findings of fact of the Court of Appeals, and not those of the trial court, will be considered final and conclusive, even in this Court. In this case, we find no cogent reason to disturb the foregoing factual findings of the Court of Appeals holding respondents entitled to the possession of the subject properties.

**APPEARANCES OF COUNSEL**

*Romero Law Office* for petitioner.
*Edaño and Pangan Law Office* for respondents.

**D E C I S I O N**

**CHICO-NAZARIO, *J.*:**

For review on *certiorari* under Rule 45[1] of the 1997 Rules of Civil Procedure filed by petitioner Antonio Arbizo is the Decision[2] of the Court of Appeals dated 31 January 2006. The Court of Appeals ordered petitioner to vacate the properties

[1] Appeal by *certiorari* to the Supreme Court.

[2] Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Eliezer R. De Los Santos and Arturo G. Tayag, concurring. *Rollo,* pp. 19-32.

subject of this case. The assailed Decision reversed and set aside the Decision[3] dated 20 February 2004 of the Regional Trial Court (RTC) of Iba, Zambales, which affirmed *in toto* the Decision[4] dated 18 August 2003 of the 3rd Municipal Circuit Trial Court (MCTC) of Botolan-Cabangan, Cabangan, Zambales, in Civil Cases No. 833, No. 834, No. 835 and No. 836.

Central to this controversy is the possession of the above three adjoining parcels of land (subject properties) which are all situated in Barangay San Isidro, Cabangan, Zambales, with an area of 1,200 square meters each. The subject properties are being claimed by petitioner to be part of the property described under Tax Declaration No. 16-0032 in the name of his deceased father, Celestino Arbizo. Respondents, on the other hand, assert ownership over the same based on separate titles in their names, particularly: (a) Transfer Certificate of Title (TCT) No. T-50723 in the names of the spouses John and Luz Marie Wassmer;[5] (b) TCT No. 50722 in the name of Pacita Marcelo;[6] and (c)

---

[3] CA *rollo,* pp. 25-29.

[4] *Id.* at 14-24.

[5] **SPOUSES JOHN WASSMER and LUZ MARIE-WASSMER**

"A parcel of land (Lot 1121-A-1 of the subdivision plan, Psd-03-095551, being a portion of Lot 1121-A, Psd-030032806, L.R.C. Rec. No.), situated in San Isidro, Cabangan, Zambales. Bounded on the NE., along line 1-2 by Lot 1121-A-12 (Existing Road); on the SE., along line 2-3 by Lot 1121-A-5; on the SW., along line 3-4 by Lot 1121-A-2, all of the subdivision plan. x x x containing an area of 1,200 square meters, more or less. It is declared under Tax Declaration No. 017-0928R with an assessed value of ₱15,600,00 for the year 1999." (CA *rollo,* 7.)

[6] **PACITA MARCELO**

"A parcel of land (Lot 1121-A-2 of the subdivision plan, Psd-03-095551, being a portion of Lot 1121-A, Psd-03-032806, L.R.C. Rec. No.), situated in the Barrio of San Isidro, Municipality of Cabangan, Province of Zambales. Bounded on the SE., along line 1-2 by Lot 1121-A-1; on the SW., along line 2-3 by lot 121-A-11 (Salvage Zone); on the NW., along line 3-4 by Lot 1121-A-3; on the NE., along line 4-1 by Lot 1121-A-12 (Existing Road), all of the subdivision plan. x x x containing an area of 1,200 square meters, more or less. It is declared under Tax Declaration No. 017-0929R with an assessed value of ₱15,600,00 for the year 1999." (*Id.* at 8.)

TCT No. T-50725 in the names of the spouses Antonio and Rosario Santillan.[7]

The records show that on 27 June 2001, the respondents filed with the MCTC three separate Complaints for Ejectment against the petitioner. Finding similarity in the issues involved, the MCTC jointly heard the three Complaints under the Rules on Summary Procedure.

In their Complaints, the respondents averred that right after they purchased the subject properties in 1998, they immediately enclosed the same with a wooden perimeter fence with barbed wire. Sometime in September 2000, the petitioner, without their knowledge, much less consent, unlawfully occupied the subject properties by removing and destroying the fence they had installed, and later replacing it with his own concrete fence. Despite repeated demands to vacate the subject properties, petitioner vehemently refused to do so. Thus, respondents prayed that the petitioner be ordered to vacate the subject properties, and to pay each of them: (1) the amount of ₱1,000.00 per month from September 2000 until the subject properties are vacated, as actual damages in the form of reasonable compensation for the use and occupation thereof; (2) the amount of ₱25,000,00 as attorney's fees plus ₱800.00 per court appearance; and (3) the amount of ₱10,000.00 as moral and exemplary damages.

In response, the petitioner countered that the subject lots formed part of the 29,345-square meter property previously owned by his father, Celestino Arbizo, who occupied the same during his lifetime as early as 1921. At the time of his father's death on 11 May 1956, he left the entire property as part of his

[7] **SPS ANTONIO SANTILLAN AND ROSARIO SANTILLAN**

"A parcel of land (Lot 1121-A-4 of the subdivision plan, Psd-03-095551, being a portion of Lot 1121-A, Psd-03-032806, L.R.C. Rec. No.), situated in San Isidro, Cabangan, Zambales. Bounded on the SE., along line 1-2 by Lot 1121-A-3; on the SW., along line 2-3 by lot 1121-A-11 (Salvage Zone), both of the subdivision plan; on the NW., along line 3-4 by Lot 1121-B; Psd-03-032806; on the NE., along line 4-1 by Lot 1121-A-12 (Existing Road), of the subdivision plan. x x x containing an area of 1,200 square meters, more or less. It is declared under Tax Declaration No. 017-0931R with an assessed value of ₱15,000,00 for the year 1999." (*Id.*)

estate to his forced and compulsory heirs; namely, Maria Facelo Arbizo (the petitioner's mother), Carolina Arbizo-Noceda, Aurora Arbizo-Ecdao, Anacleto Arbizo and Ma. Agrifina Arbizo-Mendigorin (the children of Celestino Arbizo by the first and second marriages).[8] Petitioner's wife, Dominga Arbizo, bought the undivided shares of Anacleto Arbizo and Ma. Agrifina Arbizo-Mendigorin in the said property on 15 August 1976 and 16 November 1976, respectively. Since then, petitioner claimed to have been in peaceful, continuous and uninterrupted possession of the 11,230-square meter parcel of land which included the subject properties. By way of counterclaim, the petitioner prayed that the respondents be ordered to pay him the amount of ₱100,000.00 per court appearance as attorney's fees.

On 18 August 2003, on the basis of the position papers and documentary evidence adduced by the parties, the MCTC rendered a Decision dismissing the three Complaints for Ejectment filed by the respondents after finding that the petitioner had preferred possession over the subject properties. The *fallo* of the said Decision is quoted hereunder:

> WHEREFORE, in view of the preponderance of evidence submitted by the [herein petitioner], judgment is hereby rendered dismissing the complaints against him for lack of merit.[9]

In sustaining the petitioner's position, the MCTC explained at length its disposition as follows:

> From the evidence on record, it appears that the [herein respondents] obtained their respective title over the lots in the year 1998. If their and their witnesses' word were to be given credit, the [respondents] entered the land when they thereupon enclosed/fenced the same with wooden posts and barbed wire but were removed, destroyed and later replaced by the [herein petitioner] in September, 2000 with concrete fences (sic).
>
> The relocation survey report and sketch plan of the geodetic engineer meantime reveal that the disputed adjoining lots (having

[8] Except for those enumerated, the records do not state the names of the other heirs of petitioner's father, Celestino Arbizo.

[9] CA *rollo*, p. 24.

an approximate area of 1,200 square meters each) are part of the 11,230 square-meter land (sic) held and occupied by the [petitioner]. Likewise, extant in the technical report and plan are the other recorded improvements consisting of huts belonging to the [petitioner] and found standing inside his occupied property. The Court itself confirmed the existence of these improvements during the ocular inspection of the property.

Equally evident from the documents presented is the fact that the large stretch of land being occupied by the [petitioner] came from his father the late Celestino Arbizo in whose name the tax declaration for the land for the year 1985 was issued. That two (2) of the Arbizo's sibling, Anacleto Arbizo and Agrifina Arbizo-Mendigorin, conveyed and sold their respective 1/5 shares from (sic) the property to Dominga P. Arbizo [petitioner's] wife is doubtlessly established by the two (2) deeds of sale executed by the former in the year 1976. This logically explains why [petitioner] Antonio Arbizo and his wife are as seen in the engineer's documents occupying an approximate area of 11,230 square meters out of the 2.9 hectare-property (sic) tax declared in the name of Celestino Arbizo who at the time of his death appeared to have left five (5) heirs. x x x.

Moreover, the corroborated declarations of [petitioner's] witnesses (one of whom [Jesus Paredes] is 81 years old and a long-time friend of [petitioner's] father convincingly prove that [petitioner] has already been occupying the Arbizo property including the controverted [three] parcels of land much long before the [respondents] bought, registered, and fenced them in the year 1998. Proof that the [petitioner] has preferred possession is the testimony of Conrado Santos, [respondents'] own witness, to the effect that said [petitioner] was at the area and that the laborers even took their refreshment at the nearby resthouse of the Arbizo's during their fencing of [respondents'] properties. On this point, [petitioner's] possession becomes even more superior if the span of years that his father and predecessor-in-interest had held the property were to be tacked to his own possession.

Over-all, the unrefuted documentary evidence brought to light by the [petitioner] indubitably proves that his physical occupation and exercise of acts of possession antedate that of the [respondents]. Clearly, since it is [petitioner's] possession that enjoys priority of time, he is, under the law, entitled to continue possessing the lands in question. (*De Luna vs. Court of Appeals,* 212 SCRA 276).[10]

[10] *Id*. at 21-23.

Dissatisfied, the respondents then elevated the matter to the RTC. On 20 February 2004, the RTC sustained the dismissal by the MCTC of the respondents' Complaints for Ejectment, holding that the petitioner had a better right of possession over the subject properties for having been in possession of the same long before they were acquired by the respondents in 1998. The respondents then sought the reconsideration of the Decision, but the RTC denied the same for lack of merit in the Order dated 17 March 2004.[11]

Herein respondents then raised the case to the Court of Appeals. In its Decision dated 31 January 2006, it held:

> WHEREFORE, the foregoing premises considered, the instant Petition is hereby GRANTED. The Decision dated February 20, 2004 of Branch 71 of the Regional Trial Court of Iba, Zambales, affirming *in toto* the Decision dated August 18, 2003 of the 3rd Municipal Circuit Trial Court of Botolan-Cabangan, Cabangan, Zambales in Civil Case Nos. 834, 835 and 836 is hereby REVERSED and SET ASIDE. A new one is being entered ORDERING the [herein petitioner] (1) to vacate the subject lots and peacefully surrender the possession thereof to the [herein respondents]; and (2) to pay each of the [respondents] the amount of ₱1,000.00 per month from September 2000 until the possession of the subject lots shall have been completely restored to the [respondents] as reasonable compensation for the use and occupation thereof, and the amount of ₱10,000.00 as attorney's fees.[12]

To support its contrary conclusion reversing the MCTC and the RTC, the Court of Appeals declared:

> The records of the case reveal that prior to 1998, the possession of the subject lots was undoubtedly in the hands of the [herein petitioner]. To substantiate his allegation that he had prior possession of the subject lots, the [petitioner] adduced in evidence Tax Declaration No. 16-0032 which was issued in 1985, and the two (2) deeds of sale in 1976 executed in favor of his wife, Dominga Arbizo, by Anacleto Arbizo and Agrifina Arbizo-Mendigorin. In addition, the [petitioner] presented the affidavits of his witnesses, Jesus Paredes

[11] *Id*. at 33.

[12] *Rollo*, pp. 31-32.

and Rosario Corpuz, both stating therein that he remained in possession of the subject lots even up to the present time. However, We find that these pieces of evidence do not successfully debunk the claim of the [herein respondents] that they were able to wrest physical possession of the subject lots in 1998 when they installed a fence enclosing the same. Furthermore, the fact that the MCTC found [petitioner's] several huts standing on the subject lots during the ocular inspection does not necessarily establish that the [petitioner] had been in peaceful, continuous and uninterrupted possession of the subject lots. As the records disclose, the ocular inspection was conducted in 2003 which was approximately three (3) years after the unlawful intrusion by the [petitioner]. Hence, We cannot readily conclude that the huts were already there when the [respondents] took actual possession of the subject lots in 1998 as these huts could be easily constructed.

Upon the other hand, the [respondents] presented their respective certificates of title and tax declarations to prove that they had been the registered owners of the subject lots since 1998. While it is admitted that tax declarations and certificates of title evidencing their ownership over the subject lots did not squarely address the issue of prior actual possession raised in a forcible entry case (*German Management Services, Inc. vs. Court of Appeals,* 177 SCRA 495, 499 [1989]), they nevertheless bolstered the stance of the [respondents] that they took physical possession of the subject lots by virtue of such ownership. Significantly, to further corroborate their claim that they were the actual possessors of the subject property at the time of the illegal dispossession, they submitted the affidavit of Conrado Santos establishing that he and his son constructed a wooden fence enclosing the subject lots bought by the [respondents], and that of Gloria Dalisaymo confirming that this wooden fence was later destroyed and replaced with a concrete fence by the [petitioner] in September 2000. Clearly from the foregoing, they sufficiently established by preponderance of evidence that they were able to take material or physical possession of the subject lots from 1998 to September 2000. It must be stressed that the fencing of the subject lots by the [respondents] in 1998 without any objection or protest from the [petitioner] for nearly two (2) years is deemed sufficient to confer upon them actual possession thereof.[13]

Not to be stymied, petitioner is now before this Court raising the issue of whether the Decision of the Court of Appeals is

[13] *Id.* at 27-29.

supported by evidence on record and in accordance with laws and jurisprudence established by the Supreme Court.[14]

The pertinent point of inquiry is whether or not private respondents have a valid ground to evict petitioner from the subject properties.

A complaint for forcible entry may be instituted in accordance with Section 1, Rule 70 of the 1997 Rules of Court:

> SECTION 1. *Who may institute proceedings, and when.* – Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person may at any time within (1) one year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

The summary remedies of forcible entry and unlawful detainer under Section 1, Rule 70 of the 1997 Rules of Court are distinguished from each other as follows:

> In forcible entry, one is deprived of physical possession of land or building by means of force, intimidation, threat, strategy, or stealth. In unlawful detainer, one unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied. In forcible entry, the possession is illegal from the beginning and the basic inquiry centers on who has the prior possession *de facto*. In unlawful detainer, the possession was originally lawful but became unlawful by the expiration or termination of the right to possess, hence the issue of rightful possession is decisive for, in such action, the defendant is in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession.

---

[14] *Id*. at 67.

What determines the cause of action is the nature of defendant's entry into the land. If the entry is illegal, then the action which may be filed against the intruder within one year therefrom is forcible entry. If, on the other hand, the entry is legal but the possession thereafter became illegal, the case is one of unlawful detainer which must be filed within one year from the date of the last demand.[15]

It is a basic rule in civil cases that the party having the burden of proof must establish his case by a preponderance of evidence, which simply means "evidence which is of greater weight or more convincing than that which is offered in opposition to it."[16]

In filing forcible entry cases, the law tells us that two allegations are mandatory for the municipal court to acquire jurisdiction: *first*, the plaintiff must allege prior physical possession of the property, and *second*, he must also allege that he was deprived of his possession by any of the means provided for in Section 1, Rule 70 of the Rules of Court, *i.e.*, by force, intimidation, threat, strategy or stealth. It is also settled that in the resolution of such a case, what is material is the determination of who is entitled to the physical possession of the property. Indeed, any of the parties who can prove prior possession *de facto* may recover such possession even from the owner himself since such cases proceed independently of any claim of ownership and the plaintiff needs merely to prove prior possession *de facto* and undue deprivation thereof. The question of possession is primordial while the issue of ownership is unessential.[17]

Verily, in ejectment cases, the word "possession" means nothing more than actual physical possession, not legal possession, in the sense contemplated in civil law. The only issue in such cases is who is entitled to the physical or material possession of the property involved, independent of any claim of ownership

---

[15] *Arambulo v. Gungab*, G.R. No. 156581, 30 September 2005, 471 SCRA 640, 648-649.

[16] *Buduhan v. Pakurao*, G.R. No. 168237, 22 February 2006, 483 SCRA 116, 122.

[17] *Fige v. Court of Appeals*, G.R. No. 107951, 30 June 1994, 233 SCRA 586, 590.

set forth by any of the party-litigants.[18] It does not even matter if the party's title to property is questionable.[19]

The Court of Appeals, in its assailed Decision, found that (1) respondents had prior physical possession of the subject properties, and (2) they were deprived thereof by petitioner by means of force, intimidation, threat, strategy or stealth.

We agree in the conclusion of the Court of Appeals.

On the issue of who has prior possession, respondents' prior physical possession of the subject properties and deprivation thereof are clear from the allegation that they are the owners of the subject properties which petitioner forcibly entered, of which they were unlawfully turned out of possession and for which they pray to be restored in possession.

In ejectment cases, the plaintiff merely needs to prove prior *de facto* possession and undue deprivation thereof. Respondents in their complaint averred that after they purchased the lots in 1998 they immediately enclosed the same with a fence. This prior possession of respondents is buttressed by the "*Salaysay*" of their witness Conrado Santos who stated:

*SALAYSAY*

*Ako, CONRADO SANTOS, sapat ang gulang, Pilipino at naninirahan sa Cabangan, Zambales, matapos na makapanumpa ng sang-ayon sa pinag-uutos ng batas ay kusang loob na dito ay nagsasalaysay:*

*1. Kaming dalawa ng aking anak na si Edmund Santos ay inupahan nina Atty. at Mrs. Reynaldo Dantes upang magbakod sa lupang nabili ng kanilang mga kamag anak at kaibigan sa Brgy. San Isidro, Cabangan, Zambales.*

*2. Binakuran namin ang lupang nasasakupan ng apat na titulo.*

*3. Ang ginamit naming pambakod ay kawayan, boho, posteng kahoy at barbed wire.*

---

[18] *Lao v. Lao,* G.R. No. 149599, 16 May 2005, 458 SCRA 539, 546.

[19] *Pajuyo v. Court of Appeals,* G.R. No. 146364, 3 June 2004, 430 SCRA 492, 510.

*4. Nang kami'y kasalukuyang nagbabakod nakamasid si Antonio Arbizo. Sa katunayan sa Resthouse pa ni Tony Arbizo kami kumain ng aming meryenda sa tabi ng nasabing lupa.*

*5. Nang kami ay kasalukuyang nagbabakod, wala namang nagbawal o tumanggi sa aming ginagawa at maayos at mapayapa naming nabakuran ang lupang nasasakupan ng apat na titulo.*

*6. Sa katunayan nagtagal ang aming ibinakod hanggang sa ito'y sinira at pinalitan ng konkreto sa pag-uutos ni Antonio Arbizo.*[20]

Irrefragably, the above affidavit fortifies respondents' claim that they possessed the subject properties in 1998 earlier than the petitioner who came to the premises later on in the year 2000. Notably, petitioner failed to rebut the contents of the above affidavit. Thus it should be given evidentiary value. The Rule on Summary Procedure precisely provides for the submission by the parties of affidavits and position papers and enjoins courts to hold hearings only when it is necessary to do so to clarify factual matters. This procedure is in keeping with the objective of the Rule: to promote the expeditious and inexpensive determination of cases.[21] Worthy of note is that an action for forcible entry is a quieting process that is summary in nature. It is designed to recover physical possession through speedy proceedings that are restrictive in nature, scope and time limits.[22]

As to whether respondents were deprived of possession by force, intimidation, strategy or stealth, the acts of the petitioner in unlawfully entering the subject properties, erecting a structure thereon and excluding therefrom the prior possessor would necessarily imply the use of force. In order to constitute force, the trespasser does not have to institute a state of war. As expressly stated in *David v. Cordova*:[23]

---

[20] CA *rollo*, p. 65.

[21] *Montañez v. Mendoza*, 441 Phil. 47, 58-59 (2002).

[22] *Buduhan v. Pakurao, supra* note 16.

[23] G.R. No. 152992, 28 July 2005, 464 SCRA 384, 389-400; *Bañes v. Lutheran Church in the Philippines*, G.R. No. 142308, 15 November 2005, 475 SCRA 13, 34-35.

The words "by force, intimidation, threat, strategy or stealth" include every situation or condition under which one person can wrongfully enter upon real property and exclude another, who has had prior possession therefrom. If a trespasser enters upon land in open daylight, under the very eyes of the person already clothed with lawful possession, but without the consent of the latter, and there plants himself and excludes such prior possessor from the property, the action of forcible entry and detainer can unquestionably be maintained, even though no force is used by the trespasser other than such as is necessarily implied from the mere acts of planting himself on the ground and excluding the other party.

All told, after due consideration of the evidence presented by the parties in this case and the applicable jurisprudence, we hold that the Court of Appeals correctly found respondents to have a superior right of possession over the subject properties.

We emphasize that our disquisition in this case is provisional and only to the extent necessary to determine who between the parties has the better right of possession.[24] In an appropriate proceeding before the court having jurisdiction, petitioner may still have the sale of the subject property to respondents annulled, and the latter's title cancelled if petitioner's case is truly meritorious.

Additionally, it must also be remembered that the subject property is registered under the Torrens System in the names of the respondents whose title to the property is presumed legal and cannot be collaterally attacked, less so in an action for forcible entry.

In passing, it must be stressed that the jurisdiction of the Supreme Court in cases brought before it from the Court of Appeals *via* Rule 45, as in this case, is limited to reviewing errors or questions of law. Where factual matters are involved, it is well-settled that a question of fact is to be determined by the evidence to support the particular contention. As found by the Court of Appeals, the evidence adduced on this score

[24] *Umpoc v. Mercado*, G.R. No. 158166, 21 January 2005, 449 SCRA 220, 238.

supported by the evidence presented before it is also factual in nature. It is the burden of the party seeking review of a decision of the Court of Appeals or other lower tribunals to distinctly set forth in his petition for review, not only the existence of questions of law fairly and logically arising therefrom, but also questions substantial enough to merit consideration, or show that there are special and important reasons warranting the review that he seeks. If these are not shown *prima facie* in his petition, this Court will be justified in summarily spurning the petition as lacking in merit.

Admittedly, there are recognized exceptions to this rule when the evidence presented during the trial may be examined and the factual matters resolved by this Court. Among these exceptional circumstances is when the findings of fact of the appellate court differ from those of the trial court.[25]

Nonetheless, the exception is not applied unqualifiedly. In *Bank of Commerce v. Serrano*,[26] we held that this Court does not, of itself, automatically delve into the record of a case to determine the facts anew where there is disagreement between the findings of fact by the trial court and by the Court of Appeals. When the disagreement is merely on the **probative value of the evidence,** *i.e.*, which is more credible of two versions, we limit our review to only ascertaining if the findings of the Court of Appeals are supported by the records. So long as the findings of the appellate court are consistent with and not palpably contrary to the evidence on record, we shall decline to make a review on the probative value of such evidence. The findings of fact of the Court of Appeals, and not those of the trial court, will be considered final and conclusive, even in this Court. In this case, we find no cogent reason to disturb the foregoing factual findings of the Court of Appeals holding respondents entitled to the possession of the subject properties.

---

[25] *Ortega v. Valmonte*, G.R. No. 157451, 16 December 2005, 478 SCRA 247, 256.

[26] G.R. No. 151895, 16 February 2005, 451 SCRA 484, 492.

**WHEREFORE,** premises considered, the instant Petition is *DENIED* for lack of merit. The Decision of the Court of Appeals dated 31 January 2006 in CA-G.R. SP No. 86456 is *AFFIRMED*. Costs against petitioner.

**SO ORDERED.**

*Ynares-Santiago (Chairperson), Austria-Martinez, Nachura,* and *Reyes, JJ.,* concur.

---

**THIRD DIVISION**

[G.R. No. 172528. February 26, 2008]

**JANSSEN PHARMACEUTICA,** *petitioner, vs.* **BENJAMIN A. SILAYRO,** *respondent.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL OF EMPLOYEE; BURDEN OF PROOF RESTS WITH THE EMPLOYER TO SHOW JUST AND VALID CAUSE THEREFOR.—** In termination cases, the burden of proof rests with the employer to show that the dismissal is for just and valid cause. Failure to do so would necessarily mean that the dismissal was not justified and therefore was illegal. Dishonesty is a serious charge, which the employer must adequately prove, especially when it is the basis for termination.

**2. ID.; ID.; ID.; ID.; VALID CAUSE FOR DISMISSAL NOT PROVEN IN CASE AT BAR.—** In this case, petitioner had not been able to identify an act of dishonesty, misappropriation, or any illicit act, which the respondent may have committed in connection with the erroneously reported product samples. While respondent was admittedly negligent in filling out his August and September 1998 DCR, his errors alone are insufficient evidence of a dishonest purpose. Since fraud implies willfulness or wrongful intent, the innocent non-disclosure of or inadvertent errors in declaring facts by the employee to the employer will not constitute a just cause for the dismissal of the employee. In addition, the subsequent acts of respondent belie a design to misappropriate product samples. So as to escape any liability, respondent could have easily just submitted for audit only the number of product samples which he reported. Instead, respondent brought all the product samples in his custody during the audit and, afterwards, honestly admitted to his negligence. Negligence is defined as the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation. To this Court, respondent did not commit any willful violation, rather he merely failed to exercise the standard care required of a territory representative to carefully count the number of product samples delivered to him in August and September 1998.

**3. ID.; ID.; ID.; NON-OBSERVANCE OF PROCEDURAL DUE PROCESS.—** The superficial compliance with two notices and a hearing in this case cannot be considered valid where these notices were issued and the hearing made before an offense was even committed. The first notice, issued on 24 November 1998, was premature since respondent was obliged to return his accountabilities only on 25 November 1998. As respondent's preventive suspension began on 25 November 1998, he was still performing his duties as territory representative the day before, which required the use of the company car and other company equipment. During the administrative hearing on 3 December 1998, both parties clarified the confusion caused by the petitioner's premature notice and agreed that respondent would surrender his accountabilities as soon as the petitioner gave its instructions. Since petitioner's ostensible compliance with the procedural requirements of notice and hearing took place before an offense was even committed, respondent was robbed of his rights to

explain his side, to present his evidence and rebut what was presented against him, rights ensured by the proper observance of procedural due process.

**4. ID.; ID.; ID.; WHEN DISHONESTY DOES NOT CONSTITUTE A VALID CAUSE FOR DISMISSAL OF EMPLOYEE.—** In this case, the ROL test is a take-home examination intended to check a territory representative's understanding of information already contained in their Sales Career Manual, wherein the examinees are even instructed to refer to their manuals. The improper taking of this test, while it puts into question the examinee's moral character, does not result in any potential loss of property or damage to the reputation of the employer. Nor does respondent's previous performance show lack of knowledge required in his sales career. Additionally, the dishonesty practiced by the employee did not involve company property that was placed in his custody. Furthermore, the gravity of this offense is substantially diminished by the fact that petitioner itself had thought it unimportant enough to merit only a one-day suspension. The respondent's ten years of commendable performance cannot be cancelled out by a single mistake made during a difficult period of his life, a mistake that did not pose a potential danger to his employer.

**5. ID.; ID.; ID.; WHEN DISMISSAL IS HELD TO BE A CRUEL PENALTY FOR THE INFRACTIONS MADE BY THE EMPLOYEE.—** The special circumstances of this case — respondent's family crises, the duration of his employment, and the quality of his work during the previous years — must necessarily influence the penalty to be meted out to the respondent. It would be a cruel disregard of the constitutional guarantee of security of tenure to impose the penalty of dismissal, without giving due consideration to the ill fortune that may befall a normally excellent employee. Respondent's violations of petitioner's Code of Conduct, even if taken as a whole, would not fall under the just causes of termination provided under Article 282 of the Labor Code. They are mere blunders, which may be corrected. Petitioner failed to point out even a potential danger that respondent would misappropriate or improperly dispose of company property placed in his custody. It had not shown that during his employment, respondent took a willfully defiant attitude against it. It also

failed to show a pattern of negligence which would indicate that respondent is incapable of performing his responsibilities. At any other time during his employment, respondent had shown himself a commendable worker. Nonetheless, the infractions committed by the respondent, while disproportionate to a penalty of dismissal, will not be overlooked. The suspension of five months without pay, imposed by the Court of Appeals, would serve as a sufficient and just punishment for his violations of the company's Code of Conduct.

**APPEARANCES OF COUNSEL**

*Angara Abello Concepcion Regala* and *Cruz* for petitioner.
*Mae M. Gellecanao-Laserna* for respondent.

**D E C I S I O N**

**CHICO-NAZARIO, *J.*:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision,[1] dated 8 February 2006, promulgated by the Court of Appeals in CA-G.R. SP No. 81983, reversing the Decision[2] dated 7 May 2003 of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000880-99. The Court of Appeals, in its assailed Decision, adjudged the dismissal of respondent Benjamin Silayro by petitioner Jansen Pharmaceutica as illegal for being an excessive and unwarranted penalty. The appellate court determined that the suspension of the respondent for five months without salary as just penalty.

Petitioner is the division of Johnson & Johnson Philippines Inc. engaged in the sale and manufacture of pharmaceutical products. In 1989, petitioner employed respondent as Territory/ Medical Representative. During his employment, respondent received from petitioner several awards and citations for the

[1] Penned by Associate Justice Arsenio J. Magpale with Associate Justices Vicente L. Yap and Apolinario D. Bruselas, Jr. concurring; *rollo*, pp. 66-87.

[2] *Rollo,* pp. 555-575.

years 1990 to 1997, such as Territory Representative Award, Quota Buster Award, Sipag Award, Safety Driver's Award, Ring Club Award, and a Nomination as one of the Ten Outstanding Philippine Salesmen.[3] On the dark side, however, respondent was also investigated for, and in some cases found guilty of, several administrative charges.

Petitioner alleged that in 1994, respondent was found guilty of granting unauthorized premium/free goods to and unauthorized pull-outs from customers.[4] Petitioner failed to attach records to support its allegation and to explain the nature of and the circumstance surrounding these infractions. Respondent, for his part, admitted to have been guilty of granting unauthorized premium/free goods, but vehemently denied violating the rule on, or having been charged with, unauthorized pull-outs from customers.[5]

The respondent was also investigated for dishonesty in connection with the Rewards of Learning (ROL) test. The ROL test is a one-page take-home examination, with two questions to be answered by an enumeration of the standards of performance by which territory representatives are rated as well as the sales competencies expected of territory representatives.[6] It was discovered that respondent's answers were written in the handwriting of a co-employee, Joedito Gasendo. Petitioner's management then sent respondent a Memo dated 27 July 1998 requiring an explanation for the incident.[7]

Soon thereafter, petitioner sent a subsequent Memo dated 20 August 1998 to respondent requiring the latter to explain his delay in submitting process reports.[8]

---

[3] *Id*. at 735-736.

[4] *Id*. at 10.

[5] Records, p. 159.

[6] *Rollo*, p. 691.

[7] *Id*. at 692.

[8] *Id*. at 689.

On 8 September 1998, respondent submitted a written explanation to the petitioner stating that the delay in the submission of reports was caused by the deaths of his grandmother and his aunt, and the hospitalization of his mother. He also averred that he had asked his co-employee Joedito Gasendo to write his answers to the ROL test because at the time when the examination was due, he already needed to leave to see his father-in-law, who was suffering from cancer and confined in a hospital in Manila.[9]

Respondent was sent a new Memorandum dated 20 October 1998 for his delayed submission of process reports due on 14 October 1998.[10]

Respondent was issued another Memo also dated 20 October 1998 regarding the discrepancies between the number of product samples recorded in his Daily/Weekly Coverage Report (DCR) and the number of product samples found in his possession during the 14 October 1998 audit.[11] The actual number of sample products found in respondent's possession exceeded the number of sample products he reported to petitioner.

Respondent explained, through a "Response Memo" dated 24 October 1998, that he failed to count the quantity of samples when they were placed in his custody. Thus, he failed to take note of the excess samples from previous months. He, likewise, admitted to committing errors in posting the samples that he distributed to some doctors during the months of August and September 1998.[12]

On 20 November 1998, petitioner issued a Notice of Disciplinary Action finding respondent guilty of the following offenses (1) delayed submission of process reports, for which he was subjected to a one-day suspension without pay, effective

[9] *Id*. at 693.

[10] *Id*. at 696.

[11] *Id*. at 697.

[12] *Id*. at 700.

24 November 1998;[13] and (2) cheating in his ROL test, for which he was subjected again to a one-day suspension.[14]

On the same date, petitioner likewise issued a Notice of Preventive Suspension against respondent for "Dishonesty in Accomplishing Other Accountable Documents" in connection with the discrepancy between the quantities of sample products in respondent's report and the petitioner's audit for the September 1998 cycle. In addition, the Notice directed the respondent to surrender to the petitioner the car, promotional materials, and all other accountabilities on or before 25 November 1998. It was also stated therein that since this was respondent's third offense for the year, he could be dismissed under Section 9.5.5(c) of petitioner's Code of Conduct.[15]

Before 25 November 1998 or the date given by petitioner for respondent to surrender all his accountabilities, a Memorandum dated 24 November 1998 was issued to respondent for the following alleged infractions: (1) Failure to turn over company vehicles assigned after the receipt of instruction to that effect from superiors, and (2) Refusing or neglecting to obey Company management orders to perform work without justifiable reason.[16]

Respondent wrote a letter dated 26 November 1998 addressed to the petitioner explaining that he failed to surrender his accountabilities because he thought that this was tantamount to an admission that the charges against him were true and, thus, could result in his termination from the job.[17]

An administrative investigation of the respondent's case was held on 3 December 1998. Respondent was accompanied by union representative Lyndon Lim. The parties discussed matters concerning the discrepancy in respondent's report and petitioner's audit on the number of product samples in respondent's custody

[13] *Id*. at 702.

[14] *Id*. at 707.

[15] *Id*. at 703.

[16] *Id*. at 704.

[17] Records, p. 44.

in September 1998. They were also able to clarify among themselves respondent's failure to return his accountabilities and, as a consequence, respondent promised to surrender the same. They further agreed that another administrative hearing will be set, but no further hearings were held.[18]

In line with his promise to surrender his accountabilities, respondent wrote a letter, dated 9 December 1998, asking his superiors where he should return his accountabilities.[19] Union representative Dominic Regoro also made requests, on behalf of respondent, for instructions, to whom petitioner's District Supervisor Raymond Bernardo replied *via* electronic mail on 16 December 1998. According to Bernardo, he was still in the process of making arrangements with Ruben Cauton, petitioner's National Sales Manager, in connection with the return of respondent's accountabilities.[20] Respondent maintained that he did not receive any instructions from petitioner.

In a letter dated 28 December 1998, petitioner terminated the services of respondent.[21] Petitioner found respondent guilty of dishonesty in accomplishing the report on the number of product samples in his possession and failing to return the company vehicle and his other accountabilities in violation of Sections 9.2.9 and 9.2.4 of the Code of Conduct.[22] Petitioner also found respondent to be a habitual offender whose previous offenses included: (1) Granting unauthorized premium/free goods to customer in 1994; (2) Unauthorized pull-out of stocks from customer in 1994; (3) Delay in submission of reports despite

[18] *Rollo*, pp. 706-707.

[19] *Id*. at 708.

[20] Records, p. 165.

[21] *Rollo*, pp. 375-376.

[22] Section 9.2.9 of the Code of Conduct reads:

Failure to turn over company vehicle assigned after receipt of instructions to that effect.

Section 9.2.4 of the Code of Conduct reads:

Refusing or neglecting to obey Company management orders to perform work without justifiable reason.

oral admonition and written reprimand in 1998; and (4) Dishonesty in accomplishing other accountable documents or instruments (in connection with the ROL test) in 1998.

Even after respondent's termination from employment, there was still contact between petitioner and respondent regarding the latter's accountabilities still in his possession. Sometime in early 1999, in a telephone conversation, respondent informed petitioner that he will return his accountabilities only upon demand from the proper governmental agency.[23] A demand letter dated 3 February 1999 was sent to respondent by petitioner ordering the return of the company car, promotional materials, samples, a slide projector, product manuals, product monographs, and training binders.[24]

On 14 January 1999, respondent filed a Complaint[25] against petitioner and its officers, Rafael Besa, Rueben Cauton, Victor Lapid, and Raymond Bernardo before the Sub-Regional Arbitration Branch of the NLRC in Iloilo City for (a) Unfair Labor Practice; (b) Illegal Dismissal; (c) Reimbursement of operating and representation expenses under expense reports for October and November 1998; (d) Nonpayment of salary, bonuses and other earned benefits for December 1998 like rice allocation, free goods allocation, *etc*.; and (e) Damages and attorney's fees.

In a Decision dated 31 August 1999, the Labor Arbiter ruled that respondent committed infractions which breached company rules, and which were sufficient grounds for dismissal. However, the Labor Arbiter found the penalty of dismissal to be too harsh considering the respondent's circumstances and ordered his reinstatement without payment of back wages.[26] The dispositive portion of the Decision states that:

---

[23] The date when this telephone call took place is not clear. In the letter dated 3 February 1999, written by petitioner to respondent, it is alleged that this telephone call took place on 1 February 1999, while in the (pleading with date) it took place sometime in January 1999.

[24] *Rollo*, p. 711.

[25] Records, pp. 1-2.

[26] *Rollo*, pp. 264-265.

WHEREFORE, premises considered, judgment is rendered ordering respondents (sic) firm to reinstate complainant to his former or equivalent position without backwages.

All other claims are hereby dismissed.[27]

On appeal, the NLRC modified the Decision of the Labor Arbiter by declaring that reinstatement was improper where respondent was dismissed for just and authorized causes.[28] In a Decision dated 7 May 2003, it pronounced that:

WHEREFORE, premises considered, complainant's appeal is hereby **DISMISSED.** The decision of the Labor Arbiter is hereby **AFFIRMED** with **MODIFICATION** deleting the award of reinstatement.[29]

Respondent filed a Petition for *Certiorari* under Rule 65 of the Rules of Court before the Court of Appeals. In reversing the Decision of the NLRC, the appellate court pronounced that the causes were insufficient for the dismissal of respondent since respondent's acts were not motivated by dishonesty, but were caused by mere inadvertence. Thus, it concluded that the offenses committed by respondent merited only a penalty of suspension for five months without pay. The appellate court also noted that petitioner committed some lapses in its compliance with procedural due process. It further took into account the successive deaths and sickness in respondent's family.[30] The dispositive part of the decision reads:

WHEREFORE, premises considered, the petition is **GRANTED.** Thus, the Decision and Resolution respectively dated 7 May 2003 and 14 October 2003 are hereby **SET ASIDE.** Accordingly, Judgment is hereby rendered:

a) Declaring petitioner's dismissal to be illegal;

---

[27] *Id*. at 266.

[28] *Id*. at 216-217.

[29] *Id* at 575.

[30] *Id*. at 78-85.

b) Reinstating petitioner to the same or equivalent position without loss of seniority rights and other privileges;

c) Ordering the payment of backwages (inclusive of allowances and other benefits or their monetary equivalent), computed from the time compensation was withheld up to the time of actual reinstatement; Provided that, from such computed amount of backwages, a deduction of five (5) months' (sic) salary be made to serve as penalty; and

d) If reinstatement is no longer feasible, ordering the payment of separation pay comprising of one month salary per year of service computed from date of employment up to finality of this decision, in addition to the award of backwages.

Let the records of this case be remanded to the Labor Ariter *a quo* for the proper computation of the foregoing.[31]

Hence, this Petition, wherein the following issues were raised:

I

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN REVERSING THE UNIFORM FACTUAL FINDINGS OF THE NLRC AND THE LABOR ARBITER.

II

WHETHER OR NOT RESPONDENT'S DISMISSAL FOR HIS FAILURE TO TRUTHFULLY ACCOMPLISH REPORTS, DELIBERATE AND REPEATED FAILURE TO SUBMIT REQUIRED REPORTS AND HIS DELIBERATE DISREGARD OF HIS SUPERIOR'S ORDER TO SURRENDER HIS ACCOUNTABILITIES TANTAMOUNT TO DISHONESTY, GROSS AND HABITUAL NEGLECT OF DUTY, WILLFUL DISOBEDIENCE OF COMPANY POLICY, AND BREACH OF TRUST AND CONFIDENCE REPOSED IN HIM BY THE COMPANY UNDER THE PROVISIONS OF THE LABOR CODE WAS LEGAL, VALID AND CARRIED OUT WITH DUE PROCESS.

III

WHETHER OR NOT THE TOTALITY OF INFRACTIONS COMMITTED BY RESPONDENT FURTHER MERITED HIS TERMINATION FROM THE COMPANY'S EMPLOY.

[31] *Id*. at 85-86.

IV

WHETHER OR NOT THE RESPONDENT HAS ANY BASIS FOR CLAIMING AN AWARD OF REINSTATEMENT AND BACKWAGES.[32]

This petition is without merit.

The main question in this case is whether or not sufficient grounds existed for the dismissal of the respondent. To constitute a valid dismissal from employment, two requisites must concur: (1) the dismissal must be for any of the causes provided in Article 282 of the Labor Code; and, (2) the employee must be given an opportunity to be heard and to defend himself.[33]

In this case, the Court must re-examine the factual findings of the Court of Appeals, as well as the contrary findings of the NLRC and Labor Arbiter. While it is a recognized principle that this Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced during trial, this rule allows for exceptions.[34] One of these exceptions covers instances when the findings of fact of the trial court, or in this

---

[32] *Id*. at 1276-1277.

[33] *Molato v. National Labor Relations Commission*, 334 Phil. 39, 41-42 (1997).

[34] The following have been recognized as exceptions to the rule that the findings of facts of the Court of Appeals are conclusive and binding: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of facts are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (*Pilipinas Shell Petroleum Corporation v. Gobonseng, Jr.*, G.R. No. 163562, 21 July 2006, 496 SCRA 305, 316.)

case of the quasi-judicial agencies concerned, are conflicting or contradictory with those of the Court of Appeals.[35]

In the termination letter dated 28 December 1998, respondent was dismissed on the ground that he committed the following offenses: (1) dishonesty in accomplishing the report on the number of product samples in his possession; and (2) his failure to return the company vehicle and other accountabilities in violation of Sections 9.2.9 and 9.2.4 of the Code of Conduct. In addition to these offenses, petitioner took into account that the petitioner committed the following infractions in the past: (1) granting unauthorized premium/free goods in 1994; (2) unauthorized pull-outs from customers in 1995; (3) cheating during the ROL exam in 1998; and (4) three infractions of delayed process reports in 1998.

Initially, the Court must determine whether the respondent violated the Code of Conduct with his dishonesty in accomplishing his report on product samples and/or failure to return the company vehicle and other such accountabilities. The records of this case negate a finding of such culpability on the part of the respondent.

Petitioner failed to present evidence that respondent was guilty of dishonesty in accomplishing the DCR, wherein he was supposed to indicate the number of product samples in his possession for August and September 1998. Petitioner merely relied on the fact that the number of product samples the respondent reported was incorrect, and the number of product samples later found in his possession exceeded that which he reported. Respondent admitted that when the product samples had arrived, he failed to check if the number of product samples indicated in the DCR corresponded to the number actually delivered and that he made mistakes in posting the product samples distributed during the period in question.

In termination cases, the burden of proof rests with the employer to show that the dismissal is for just and valid cause. Failure to do so would necessarily mean that the dismissal was not

[35] *Litonjua v. Fernandez*, G.R. No. 148116, 14 April 2004, 427 SCRA 478, 489.

justified and therefore was illegal.[36] Dishonesty is a serious charge, which the employer must adequately prove, especially when it is the basis for termination.

In this case, petitioner had not been able to identify an act of dishonesty, misappropriation, or any illicit act, which the respondent may have committed in connection with the erroneously reported product samples. While respondent was admittedly negligent in filling out his August and September 1998 DCR, his errors alone are insufficient evidence of a dishonest purpose. Since fraud implies willfulness or wrongful intent, the innocent non-disclosure of or inadvertent errors in declaring facts by the employee to the employer will not constitute a just cause for the dismissal of the employee.[37] In addition, the subsequent acts of respondent belie a design to misappropriate product samples. So as to escape any liability, respondent could have easily just submitted for audit only the number of product samples which he reported. Instead, respondent brought all the product samples in his custody during the audit and, afterwards, honestly admitted to his negligence. Negligence is defined as the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation.[38] To this Court, respondent did not commit any willful violation, rather he merely failed to exercise the standard care required of a territory representative to carefully count the number of product samples delivered to him in August and September 1998.

In the Memorandum dated 20 November 1998, petitioner ordered respondent to return the company vehicle and all other accountabilities by **25 November 1998**. Petitioner issued its first notice on **24 November 1998**, even before respondent was obligated to return his accountabilities. Hence, respondent could not yet have committed any offense when petitioner issued the first notice. Confused by petitioner's arbitrary action, respondent did not return his accountabilities, but immediately

[36] *National Labor Relations Commission v. Salgarino*, G.R. No. 164376, 31 July 2006, 497 SCRA 361, 383.

[37] Department of Labor Manual, Section 434301(3).

[38] Black's *Law Dictionary*, 8th ed, 1999.

explained in a letter dated 26 November 1998 his reasons for failing to return his accountabilities on 25 November 1998 as previously ordered by the petitioner.

During the company hearing held on 3 December 1998, respondent offered to return his accountabilities in accordance with the instructions to be given by the petitioner. In a letter dated 9 December 1998 addressed to the petitioner, respondent reiterated his request for instructions on the return of his accountabilities. There is no showing that petitioner replied to respondent's letter. The letter written by petitioner's District Supervisor Raymond Bernardo to union representative Dominic Regoro sent through electronic mail on 16 December 1998 still provided no definite instructions to the respondent for the return of his accountabilities. This is the last communication between the parties on the matter until petitioner wrongfully dismissed the respondent on 28 December 1998 for deliberately refusing to surrender his accountabilities, among other grounds. The petitioner does not refer in its pleadings to any instance after the company hearing was held and before the respondent was dismissed wherein it had finally instructed the respondent as to how he may turn over his accountabilities. Per petitioner's pleadings, belated demands for the surrender of respondent's accountabilities were made in January and February 1999, **after** respondent had already been dismissed. Clearly, the charge against respondent of insubordination to the petitioner's instructions for the surrender of his accountabilities was unfounded since the respondent was still waiting for said instructions when he was dismissed.

Moreover, petitioner failed to observe procedural due process in connection with the aforementioned charge. Section 2(d) of Rule 1 of The Implementing Rules of Book VI states that:

> For termination of employment based on just causes as defined in Article 282 of the Labor Code:
>
> (i) A written notice served on the employee specifying the ground or grounds for termination, and **giving said employee reasonable opportunity within which to explain his side**.

(ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given **opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him**.

(iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. (Emphases supplied.)

From the aforecited provision, it is implicit that these requirements afford the employee an opportunity to explain his side, respond to the charge, present his or her evidence and rebut the evidence presented against him or her.

The superficial compliance with two notices and a hearing in this case cannot be considered valid where these notices were issued and the hearing made before an offense was even committed. The first notice, issued on 24 November 1998, was premature since respondent was obliged to return his accountabilities only on 25 November 1998. As respondent's preventive suspension began on 25 November 1998, he was still performing his duties as territory representative the day before, which required the use of the company car and other company equipment. During the administrative hearing on 3 December 1998, both parties clarified the confusion caused by the petitioner's premature notice and agreed that respondent would surrender his accountabilities as soon as the petitioner gave its instructions. Since petitioner's ostensible compliance with the procedural requirements of notice and hearing took place before an offense was even committed, respondent was robbed of his rights to explain his side, to present his evidence and rebut what was presented against him, rights ensured by the proper observance of procedural due process.

Of all the past offenses that were attributed to the respondent, he contests having committed the infraction involving the unauthorized pull-outs from customers, allegedly made in 1994. Again, the records show that petitioner did not provide any proof to support said charge. It must be emphasized at this

point that the *onus probandi* to prove the lawfulness of the dismissal rests with the employer,[39] and in light of petitioner's failure to discharge the same, the alleged offense cannot be given any credence by this Court. As for the three remaining violations, it is unquestioned that respondent had committed and had already been punished for them.

While a penalty may no longer be imposed on offenses for which respondent has already been punished, these offenses, among other offenses, may still be used as justification for an employee's dismissal. Hence, this Court must now take into consideration all the offenses that respondent committed during his employment and decide whether these infractions, taken together, constitute a valid cause for dismissal.

Undoubtedly, respondent was negligent in reporting the number of product samples in his custody for August and September 1998. He also committed three other offenses in the past. First, he was found guilty of and penalized for granting unauthorized free goods in 1994. Secondly, he incurred delays in submitting his process reports for August, September and October 1998, for which charge he was punished with one-day suspension. Lastly, he cheated in an ROL test in July 1998 for which he was punished with another one-day suspension.

Respondent's offense of granting unauthorized free goods was vaguely discussed. Petitioner did not offer any evidence in this connection; it was given credence only because of respondent's admission of the same. What acts constituted this offense and the circumstances surrounding it were not explained. However, the records show that in the same year it was committed, in 1994, petitioner still gave respondent two awards: membership to the Wild Boar Society and the Five-Year Service Award.[40] Absent any explanation which would give this offense substantial weight and importance, it can only be presumed that petitioner did not consider the offense as sufficiently momentous to disqualify respondent from receiving an award

---

[39] *National Labor Relations Commission v. Salgarino*, *supra* note 36.

[40] Records, p. 7.

or to even just issue the respondent a warning that a subsequent offense would result in the termination of his employment.

The rest of the infractions imputed to the respondent were committed during the time he was undergoing serious family problems. His inability to comply with the deadlines for his process reports and his lack of care in accounting for the product samples in his custody are understandably the result of his preoccupation with very serious problems. Added to the pressure brought about by the numerous charges he found himself facing, his errors and negligence should be viewed in a more compassionate light.

Petitioner's inability to keep up with his deadlines and his carelessness with his report on product samples during a difficult time in his life are in no way comparable to the transgressions in the cases cited by petitioner involving other territory representatives – *Chua v. National Labor Relations Commission*[41] and *Gustilo v. Wyeth Philippines*.[42] In the *Chua* case, it was not a mere case of delay in the submission of reports and the occasional mistakes in the DCR, but an established pattern of inattention in the submission and accomplishing of his reports. The employee therein did not even submit some of the DCRs, while other DCRs were belatedly submitted in batches covering two to three months. Doctors' call cards lacked either the corresponding dates or the signatures of the doctors concerned. In the *Gustillo* case, the employee falsified his application form, a gasoline receipt, a report of his trade outlet calls, and misused his leaves. Evidently, the employee in this case misappropriated company resources by making claims for falsified expenses and making personal calls in lieu of trade outlet calls. In this case, respondent had not defrauded the petitioner of its property.

The gravest charge that the respondent faced was cheating in his ROL test. Although he avers that he formulated the answers himself and that he merely allowed his co-employee Joedito Gasendo to write down his answers for him, this Court finds

[41] G.R. No. 146780, 11 March 2005, 453 SCRA 244.

[42] G.R. No. 149629, 10 January 2005.

this excuse to be very flimsy. The ROL test consists of one page and two straightforward questions, which can be answered by more or less ten sentences. Respondent could have spared the few minutes it would take to write the examination. If he had lacked the time due to a family emergency, a request for an extension would have been the more reasonable and honest alternative.

Despite the disapproving stance taken by this Court against dishonesty, there have been instances when this Court found the ultimate penalty of dismissal excessive, even for cases which bear the stigma of deceit.

In *Philippine Long Distance Telephone Company v. National Labor Relations Commission*,[43] an employee intervened in the anomalous connection of four telephone lines. It was, likewise, established in *Manila Electric Company v. National Labor Relations Commission*,[44] that the employee was involved in the illegal installation of a power line. In both cases, the violations were clearly prejudicial to the economic activity of his employer. Finally, in *National Labor Relations Commission v. Salgarino*,[45] a school teacher tampered with the grades of her students, an act which was prejudicial to the school's reputation. Notably, the Court stopped short of dismissing these employees for offenses more serious than the present case.

In this case, the ROL test is a take-home examination intended to check a territory representative's understanding of information already contained in their Sales Career Manual, wherein the examinees are even instructed to refer to their manuals. The improper taking of this test, while it puts into question the examinee's moral character, does not result in any potential loss of property or damage to the reputation of the employer. Nor does respondent's previous performance show lack of knowledge required in his sales career. Additionally, the dishonesty practiced by the employee did not involve company property

[43] 362 Phil. 352 (1999).

[44] G.R. No. 78763, 12 July 1989, 175 SCRA 277.

[45] *Supra* note 36 at 361.

that was placed in his custody. Furthermore, the gravity of this offense is substantially diminished by the fact that petitioner itself had thought it unimportant enough to merit only a one-day suspension. The respondent's ten years of commendable performance cannot be cancelled out by a single mistake made during a difficult period of his life, a mistake that did not pose a potential danger to his employer.

The special circumstances of this case — respondent's family crises, the duration of his employment, and the quality of his work during the previous years — must necessarily influence the penalty to be meted out to the respondent. It would be a cruel disregard of the constitutional guarantee of security of tenure to impose the penalty of dismissal, without giving due consideration to the ill fortune that may befall a normally excellent employee.

In *National Labor Relations Commission v. Salgarino*,[46] special consideration was given to the fact that the respondent therein had been in the employ of the petitioners therein for 10 years and that she was a recipient of numerous academic excellence awards and recognized by her students and some of her peers in the profession as a competent teacher. The Court, in other cases, has repeatedly ruled that in determining the penalty to be imposed on an erring employee, his or her length of service must be taken into account.[47] In *Brew Master International, Inc. v. National Federation of Labor Unions*,[48] the emotional, psychological, spiritual and physical stress and strain undergone by the employee during a family crisis were regarded as special circumstances which precluded his dismissal from service, despite his prolonged absence from work. The Court explains the circumspection it exercises when faced with the imposition of the extremely severe penalty of dismissal thus:

---

[46] *Id*.

[47] *De Guzman v. National Labor Relations Commission*, 371 Phil. 192 (1999); *Philippine Long Distance Telephone Company v. National Labor Relations Commission*, *supra* note 43 at 360.

[48] 337 Phil. 728, 735-736 (1997).

The employer's prerogative to discipline its employee must be exercised without abuse of discretion. Its implementation should be tempered with compassion and understanding. While an employer has the inherent right to discipline its employees, we have always held that this right must always be exercised humanely, and the penalty it must impose should be commensurate to the offense involved and to the degree of its infraction. The employer should bear in mind that, in the exercise of such right, what is at stake is not the employee's position but her livelihood as well. The law regards the workers with compassion. Even where a worker has committed an infraction, a penalty less punitive may suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. This is not only the law's concern for workingman. There is, in addition, his or her family to consider. Unemployment brings untold hardships and sorrows upon those dependent on the wage-earner.[49]

Respondent's violations of petitioner's Code of Conduct, even if taken as a whole, would not fall under the just causes of termination provided under Article 282 of the Labor Code.[50] They are mere blunders, which may be corrected. Petitioner failed to point out even a potential danger that respondent would misappropriate or improperly dispose of company property placed in his custody. It had not shown that during his employment, respondent took a willfully defiant attitude against it. It also

---

[49] *De Guzman v. National Labor Relations Commission*, *supra* note 47 at 205.

[50] Article 282. *Termination by employer*.—

An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

failed to show a pattern of negligence which would indicate that respondent is incapable of performing his responsibilities. At any other time during his employment, respondent had shown himself a commendable worker.

Nonetheless, the infractions committed by the respondent, while disproportionate to a penalty of dismissal, will not be overlooked. The suspension of five months without pay, imposed by the Court of Appeals, would serve as a sufficient and just punishment for his violations of the company's Code of Conduct.

**IN VIEW OF THE FOREGOING,** the instant Petition is *DISMISSED* and the assailed Decision of the Court of Appeals in CA-G.R. SP No. 81983, promulgated on 8 February 2006, is *AFFIRMED*. Costs against the petitioner.

**SO ORDERED.**

*Ynares-Santiago (Chairperson), Austria-Martinez, Nachura,* and *Reyes, JJ.,* concur.

---

**THIRD DIVISION**

[G.R. No. 173908. February 26, 2008]

**ELEANOR C. MAGALANG,** *petitioner, vs.* **COURT OF APPEALS (Former Fourth Division), NATIONAL LABOR RELATIONS COMMISSION (3rd Division) and SUYEN CORPORATION,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; VARIOUS DIVISIONS OF THE COURT OF APPEALS ARE, IN A SENSE, COORDINATE COURTS.—** The various

divisions of the CA are, in a sense, coordinate courts, and, pursuant to the policy of judicial stability, a division of the appellate court should not interfere with the decision of the other divisions of the court, otherwise confusion will ensue and may seriously hinder the administration of justice.

**2. ID.; ID.; ID.; APPELLATE COURT HAS NO POWER TO REVIEW A JUDGMENT OF A COURT THAT HAS LOST JURISDICTION OVER A CASE WHEREIN A DECISION HAS BECOME FINAL AND EXECUTORY.—** Established is the rule that when a decision becomes final and executory, the court loses jurisdiction over the case and not even an appellate court will have the power to review the said judgment. Otherwise, there will be no end to litigation and will set to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality. We have further stressed in prior cases that just as the losing party has the privilege to file an appeal within the prescribed period, so does the winner have the correlative right to enjoy the finality of the decision.

**APPEARANCES OF COUNSEL**

*Filio* and *Filio* for petitioner.
*Apolinario N. Lomabao* for private respondent.

**D E C I S I O N**

**NACHURA, *J.*:**

Before the Court is a petition for review on *certiorari* under Rule 45 assailing the March 31, 2004 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 79408 and the August 1, 2006 Resolution[2] denying the motion for reconsideration thereof.

---

[1] Penned by Associate Justice Elvi John S. Asuncion (dismissed), with Associate Justices Godardo A. Jacinto and Lucas P. Bersamin, concurring; *rollo*, pp. 35-40.

[2] *Id.* at 42-43.

The facts are undisputed. On September 16, 1998, petitioner, an Account Executive of Suyen Corporation, received an Infraction Report[3] from the management of the company asking her to explain why she should not be disciplinarily dealt with after declaring a false point of origin, the Pasay Head Office, when actually she came directly from her residence to the designated place of sales operation.[4] In response, petitioner wrote the personnel manager: (1) that she regularly went through the said route because it entailed cheaper transportation cost for the company; (2) that she had been doing this since her employment in March 1997 with the consent of her manager; and (3) that she was never questioned before.[5]

On October 17, 1998, petitioner was dismissed from employment on account of acts constituting gross dishonesty thru falsification of the company request form for the reimbursement of transportation allowance.[6] Protesting her termination, petitioner filed a Complaint for unfair labor practice and illegal dismissal with the National Labor Relations Commission (NLRC). The case was docketed as NLRC-NCR Case No. 00-11-09065-98.[7] In her pleadings, she argued, among others, that she was dismissed not because of the alleged infraction but due to her active participation, as the acting president of the union, in the negotiation of the Collective Bargaining Agreement.[8]

On January 11, 2001, the Labor Arbiter (LA) dismissed the complaint for lack of merit.[9] On appeal, the NLRC, in its September 5, 2002 Decision[10] in NLRC NCR CA No. 028962-01, ruled in petitioner's favor and declared that she was illegally

---

[3] *Id*. at 44.

[4] *Id*. at 36.

[5] *Id*. at 45.

[6] *Id*. at 46.

[7] *Id*. at 47-50.

[8] *Id*. at 54.

[9] *Id*. at 91-100.

[10] *Id*. at 112-119.

dismissed. Finding, however, that she was not entirely faultless (as she in fact proceeded to the place of assignment from her residence), the labor tribunal refused to award backwages.[11]

Both parties filed their respective Motions for Reconsideration.[12] On October 28, 2002, the NLRC denied petitioner's motion,[13] prompting her to file a petition for *certiorari* with the CA. This was docketed as CA-G.R. SP No. **75185**.[14] On July 28, 2003, the NLRC also denied respondent's motion.[15] Respondent then filed a petition for *certiorari* with the CA docketed as CA-G.R. SP No. **79408** [the subject of this case].

**On February 27, 2004, the Ninth Division of the appellate court, in CA-G.R. SP No. 75185, affirmed the September 5, 2002 Decision[16] of the NLRC with the modification that respondent was to pay petitioner full backwages from the time of illegal dismissal up to her actual reinstatement.**[17] This decision attained finality when the parties did not interpose

---

[11] The dispositive portion of the NLRC decision reads:

WHEREFORE, premises considered, the Appeal is hereby GRANTED. Accordingly, the Decision is SUSTAINED subject to the modification that Respondent-Appellees (sic) Suyen Corporation is DIRECTED to reinstate Complainant-Appellant Eleanor C. Magalang to her former position without loss of seniority rights and privileges but without any backwages whatsoever; and to pay her salaries from October 1 to 15, 1998 and thirteenth (13th) month pay for 1998, computed as follows:

1) Salaries from October 1-15
Monthly Salary ₱8,987.18/12 ---------- ₱4,493.59

2) 13th Month Pay for 1998
₱8,987.118 x 9.5 ---------- ₱7,114.85
Total ---------- ₱11,608.44

SO ORDERED. (*Id*. at 118-119.)

[12] *Id*. at 120-140.

[13] *Id*. at 141-143.

[14] *Id*. at 150.

[15] *Id*. at 145-147.

[16] *Supra* note 10.

[17] *Rollo*, pp. 150-155.

any appeal. An Entry of Judgment was then issued on April 2, 2004.[18]

In the meantime, on March 15, 2004, the Fourth Division of the CA, in CA-G.R. SP No. 79408, issued a Resolution denying the motion for the consolidation of the two *certiorari* petitions in view of the aforesaid promulgation of the decision in CA-G.R. SP No. 75185.[19]

**The appellate court (4th Division), in CA-G.R. SP No. 79408, consequently, rendered the assailed March 31, 2004 Decision**[20] **affirming *in toto* the September 5, 2002 Decision**[21] **of the NLRC.** In the likewise challenged August 1, 2006 Resolution,[22] the CA denied the motions for reconsideration of both parties.

Meanwhile, on January 12, 2005, the NLRC issued a Writ of Execution[23] of petitioner's monetary award, including the backwages granted by the CA in the aforesaid February 27, 2004 Decision in CA-G.R. SP No. 75185. On motion to quash by the respondent, the NLRC, on January 25, 2005, held in abeyance the implementation of the writ.[24]

Petitioner subsequently filed the instant petition for review on *certiorari* questioning the CA's issuances in CA-G.R. SP No. **79408** on the following grounds:

I.

PUBLIC RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF DISCRETION (SIC) IN REFUSING TO APPLY THE SERRANO DOCTRINE (*RUBEN SERRANO vs. NLRC*, 323 SCRA 45) AND BUSTAMANTE DOCTRINE (*BUSTAMANTE vs. NLRC*, 265 SCRA

[18] *Id*. at 17.

[19] *Id*. at 160.

[20] *Supra* note 1.

[21] *Supra* note 10.

[22] *Supra* note 2.

[23] *Rollo*, pp. 179-182.

[24] *Id*. at 193-196.

6 [1996]) RESPECTIVELY, IN THE INSTANT CASE, AS DECREED BY THE NINTH DIVISION OF THE COURT OF APPEALS IN CA-G.R. SP NO. 75187 FILED BY PETITIONER.

II.

PUBLIC RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AWARDING ONLY SEPARATION PAY TO PETITIONER AS ALTERNATIVE TO REINSTATEMENT AND WITHOUT BACKWAGES.[25]

The Court grants the petition.

We note at the outset that the Ninth Division of the appellate court, in **CA-G.R. SP No. 75185**, already affirmed the **September 5, 2002 Decision** of the NLRC that petitioner was illegally dismissed but modified the ruling and awarded backwages to the petitioner. Later, the Fourth Division of the CA, in **CA-G.R. SP No. 79408**, rendered another decision inconsistent with the earlier ruling of its coordinate division. The Fourth Division merely affirmed the NLRC **September 5, 2002 Decision**, and did not award backwages to the petitioner.

This conflict in the decisions of the different divisions of the appellate court would have been avoided had the two *certiorari* petitions been consolidated or had the Fourth Division, when apprised of the earlier ruling, remained consistent with the Ninth Division's pronouncements. The various divisions of the CA are, in a sense, coordinate courts, and, pursuant to the policy of judicial stability, a division of the appellate court should not interfere with the decision of the other divisions of the court, otherwise confusion will ensue and may seriously hinder the administration of justice.[26]

The Court notes further that no appeal was interposed to challenge the CA's decision in **CA-G.R. SP No. 75185**. The

[25] *Id.* at 20-21.

[26] *Villaflores v. RAM System Services, Inc.*, G.R. No. 166136, August 18, 2006, 499 SCRA 353, 364; *Javier v. Court of Appeals*, 467 Phil. 404, 430 (2004).

said decision declaring petitioner as illegally dismissed and entitled to backwages, therefore, already attained **finality**. Established is the rule that when a decision becomes final and executory, the court loses jurisdiction over the case and not even an appellate court will have the power to review the said judgment. Otherwise, there will be no end to litigation and will set to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.[27] We have further stressed in prior cases that just as the losing party has the privilege to file an appeal within the prescribed period, so does the winner have the correlative right to enjoy the finality of the decision.[28]

**WHEREFORE,** premises considered, the petition for review on *certiorari* is *GRANTED*. The March 31, 2004 Decision and the August 1, 2006 Resolution of the appellate court in CA-G.R. SP No. 79408 are *AFFIRMED* with the *MODIFICATION* that private respondent Suyen Corporation is *ORDERED* to pay petitioner Eleanor C. Magalang full backwages from the time of her illegal dismissal up to actual reinstatement, in order to make it consistent with the decision in CA-G.R. SP No. 75185 which had already attained finality.

**SO ORDERED.**

*Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario,* and *Reyes, JJ.,* concur.

---

[27] *Macawiag v. Balindong*, G.R. No. 159210, September 20, 2006, 502 SCRA 454, 466.

[28] *Silliman University v. Nanila Fontelo-Paalan*, G.R. No. 170948, June 26, 2007, 525 SCRA 759.

**SECOND DIVISION**

[G.R. No. 175381. February 26, 2008]

**JAMES SVENDSEN,** *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

**SYLLABUS**

**1. CRIMINAL LAW; BOUNCING CHECKS LAW (B.P. BLG. 22), REQUISITES FOR A VALID CONVICTION.—** For petitioner to be validly convicted of the crime under B.P. Blg. 22, the following requisites must thus concur: (1) the making, drawing and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.

**2. ID.; ID.; ID.; FOR THE SECOND ELEMENT TO VALIDLY EXIST, THERE MUST BE PROOF OF RECEIPT OF WRITTEN NOTICE OF DISHONOR OR DEMAND LETTERS.—** In *Rico v. People of the Philippines* (440 Phil. 540 [2002]), this Court held: x x x [I]f x x x notice of non-payment by the drawee bank is not sent to the maker or drawer of the bum check, or if there is no proof as to when such notice was received by the drawer, then the presumption of knowledge as provided in Section 2 of B.P. 22 cannot arise, since there would simply be *no way of reckoning the crucial five-day period.* x x x In recent cases, we had the occasion to emphasize that not only must there be a written notice of dishonor or demand letters actually received by the drawer of a dishonored check, but there must also be ***proof of receipt*** thereof that is properly authenticated, and not mere registered receipt and/or return receipt. Thus, as held in *Domagsang vs. Court of Appeals,* while Section 2 of B.P. 22 indeed does not state that the notice of dishonor be in writing, this must be taken in conjunction with Section 3 of the law, *i.e.,* "that where there are no sufficient funds in or credit with such drawee bank,

such fact *shall always be explicitly stated in the notice of dishonor or refusal.*" A mere oral notice or demand to pay would appear to be insufficient for conviction under the law. In our view, both the spirit and letter of the Bouncing Checks Law require for the act to be punished thereunder not only that the accused issued a check that is dishonored, but also that the accused has *actually been notified in writing of the fact of dishonor*. This is consistent with the rule that penal statutes must be construed strictly against the state and liberally in favor of the accused. x x x In fine, the failure of the prosecution to prove the existence and receipt by petitioner of the requisite written notice of dishonor and that he was given at least five banking days within which to settle his account constitutes sufficient ground for his acquittal.

**3. ID.; ID.; ID.; THE EVIDENCE FOR THE PROSECUTION FAILED TO PROVE THE SECOND ELEMENT; CASE AT BAR.—** The evidence for the prosecution failed to prove the second element. While the registry receipt, which is said to cover the letter-notice of dishonor and of demand sent to petitioner, was presented, there is no proof that he or a duly authorized agent received the same. Receipts for registered letters including return receipts do not themselves prove receipt; they must be properly authenticated to serve as proof of receipt of the letters. Thus, in *Ting v. Court of Appeals* (398 Phil. 481 [2000]), this Court observed: x x x All that we have on record is an illegible signature on the registry receipt as evidence that someone received the letter. As to whether this signature is that of one of the petitioners or of their authorized agent remains a mystery. From the registry receipt alone, it is possible that petitioners or their authorized agent did receive the demand letter. Possibilities, however, cannot replace proof beyond reasonable doubt.

**4. ID.; PERSONAL INJURY OF THE VICTIM IS SOUGHT TO BE COMPENSATED THROUGH INDEMNITY.—** Petitioner is civilly liable, however. For in a criminal case, the social injury is sought to be repaired through the imposition of the corresponding penalty, whereas with respect to the personal injury of the victim, it is sought to be compensated through indemnity, which is civil in nature.

**5. COMMERCIAL LAW; USURY LAW; CENTRAL BANK CIRCULAR NO. 905, WHICH LIFTED THE CEILING ON**

**INTEREST RATES, DOES NOT GRANT LENDERS *CARTE BLANCHE* TO RAISE INTEREST RATES TO LEVELS WHICH WILL EITHER ENSLAVE THEIR BORROWERS OR LEAD TO A HEMORRHAGING OF THEIR ASSETS.—** While the Usury Law ceiling on interest rates was lifted by Central Bank Circular No. 905, nothing therein grants lenders *carte blanche* to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets. Stipulations authorizing such interest are *contra bonos mores,* if not against the law. They are, under Article 1409 of the New Civil Code, inexistent and void from the beginning.

**6. ID.; ID.; ID.; REDUCTION OF THE INTEREST RATE TO 12% PER ANNUM AND THE CIVIL INDEMNITY TO ₱16,000 AS OF THE DATE OF THE CHECK.—** The interest rate of 10% per month agreed upon by the parties in this case being clearly excessive, iniquitous and unconscionable cannot thus be sustained. In *Macalalag v. People* (G.R. No. 145871, January 31, 2006, 481 SCRA 226), *Diño v. Jardines* (G.R. No. 164358, December 20, 2006, 511 SCRA 400), and in *Cuaton v. Salud* (G.R. No. 158382, January 27, 2004, 421 SCRA 278), this Court, finding the 10% per month interest rate to be unconscionable, reduced it to 12% *per annum.* And in other cases where the interest rates stipulated were even less than that involved herein, the Court equitably reduced them. This Court deems it fair and reasonable then, consistent with existing jurisprudence, to adjust the civil indemnity to ₱16,000.00, the equivalent of petitioner's unpaid interest on the ₱200,000 loan at 12% percent *per annum* as of February 2, 1999, the date of the check, plus 12% *per annum* interest to be computed from April 29, 1999, the date of judicial demand (date of the filing of the Information) up to the finality of this judgment. After the judgment becomes final and executory until the obligation is satisfied, the total amount due shall bear interest at 12% *per annum.*

**7. ID.; PROMISSORY NOTE; PROMISSORY NOTE WITH STIPULATED 10% INTEREST PER MONTH SIGNIFICANT IN DETERMINING CIVIL LIABILITY OF PETITIONER.—** Respecting petitioner's claim that since the promissory note incorporating the stipulated 10% interest per month was not presented, there is no written proof thereof, hence, his obligation to pay the same must be void, the same fails. As reflected above, Cristina admitted such stipulation. In any event, the presentation

of the promissory note may be dispensed with in a prosecution for violation of B.P. Blg. 22 as the purpose for the issuance of such check is irrelevant in the determination of the accused's criminal liability. It is for the purpose of determining his civil liability that the document bears significance. Notably, however, Section 24 of the Negotiable Instruments Law provides that "Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value." It was incumbent then on petitioner to prove that the check was not for a valuable consideration. This he failed to discharge.

**APPEARANCES OF COUNSEL**

*Florosco P. Fronda* for petitioner.
*The Solicitor General* for respondent.

**D E C I S I O N**

**CARPIO MORALES, *J.*:**

Assailed via Petition for Review on *Certiorari* is the Court of Appeals Decision[1] of November 16, 2006 denying petitioner's appeal from the December 22, 2005 Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 14 which affirmed the December 17, 2003 Judgment[3] of the Metropolitan Trial Court (MeTC) of Manila, Branch 5, finding James Svendsen (petitioner) guilty of violation of *Batas Pambansa Blg*. (B.P. Blg.) 22 or the Bouncing Checks Law.

In October 1997, Cristina Reyes (Cristina) extended a loan to petitioner in the amount of ₱200,000, to bear interest at 10% a month. After petitioner had partially paid his obligation,

[1] *Rollo,* pp. 108-116. Penned by Associate Justice Estela Perlas-Bernabe and concurred in by Associate Justices Renato Dacudao and Rosmari Carandang.

[2] *Id*. at 45-50. Penned by Judge Cesar M. Solis.

[3] *Id*. at 21-30. Penned by Acting Presiding Judge Ma. Theresa Dolores Gomez-Estoesta.

he failed to settle the balance thereof which had reached ₱380,000 inclusive of interest.[4]

Cristina thus filed a collection suit against petitioner, which was eventually settled when petitioner paid her ₱200,000[5] and issued in her favor an International Exchange Bank check postdated February 2, 1999 (the check) in the amount of ₱160,000 representing interest.[6] The check was co-signed by one Wilhelm Bolton.

When the check was presented for payment on February 9, 1999, it was dishonored for having been Drawn Against Insufficient Funds (DAIF).[7]

Cristina, through counsel, thus sent a letter to petitioner by registered mail informing him that the check was dishonored by the drawee bank, and demanding that he make it good within five (5) days from receipt thereof.[8]

No settlement having been made by petitioner, Cristina filed a complaint dated March 1, 1999 against him and his co-signatory to the check, Bolton, for violation of B.P. Blg. 22 before the City Prosecutor's Office of Manila. No counter-affidavit was submitted by petitioner and his co-respondent. An Information dated April 13, 1999 for violation of B.P. Blg. No. 22 was thus filed on April 29, 1999 before the MeTC of Manila against the two, the accusatory portion of which reads:

> That sometime in December 1998 the said accused did then and there willfully, unlawfully, and feloniously and jointly make or draw and issue to CRISTINA C. REYES to apply on account or for value INTERNATIONAL EXCHANGE BANK check No. 0000009118 dated February 2, 1999 payable to CRISTINA REYES in the amount of ₱160,000.00 said accused well knowing that at the time of issue she/he/they did not have sufficient funds and/or credit with the drawee bank for payment of such check in full upon its presentment, which check after having been deposited in the City of Manila, Philippines,

[4] *Id*. at 109.

[5] *Ibid*.

[6] TSN, October 11, 1999, p. 23.

[7] *Rollo,* p. 109.

[8] *Id*. at 109-110.

and upon being presented for payment within ninety (90) days from the date thereof was subsequently dishonored by the drawee bank for INSUFFICIENCY OF FUNDS and despite receipt of notice of such dishonor, said accused failed to pay said CRISTINA C. REYES the amount of the check or to make arrangement for full payment of the same within five (5) banking days after receiving said notice.

CONTRARY TO LAW.[9]

Bolton having remained at large, the trial court never acquired jurisdiction over his person.[10]

By Judgment of December 17, 2003, Branch 5 of the Manila MeTC found petitioner guilty as charged, disposing as follows:

WHEREFORE, this Court finds accused James Robert Svendson [*sic*] **GUILTY** beyond reasonable doubt of a violation of Batas Pambansa Blg. 22 (Bouncing Checks Law) and imposes upon him to pay a fine of **ONE HUNDRED SIXTY THOUSAND PESOS (₱160,000.00),** with subsidiary imprisonment in case of insolvency.

Accused is also made liable to pay private complainant Cristina C. Reyes civil indemnity in the total amount of **ONE HUNDRED SIXTY THOUSAND PESOS (₱160,000.00)** representing his civil obligation covered by subject check.

Meantime, considering that other accused Wilhelm Bolton remains at large, let a warrant of arrest against him **ISSUE**. Pending his apprehension, let the case against him be sent to the **ARCHIVES**. (Emphasis in the original; underscoring supplied)

As priorly stated, the RTC affirmed the MeTC judgment and the Court of Appeals denied petitioner's appeal.

Hence, the present petition for review.

Petitioner argues that the appellate court erred in finding that the first element of violation of B.P. Blg. 22 — the making, drawing, and issuance of any check "to apply on account or for value" — was present, as the obligation to pay interest is void, the same not being in writing and the 10% monthly interest is

[9] MeTC records, p. 2.

[10] *Rollo*, pp. 110-111.

unconscionable; in holding him civilly liable in the amount of ₱160,000 to private complainant, notwithstanding the invalidity of the interest stipulation; and in violating his right to due process when it convicted him, notwithstanding the absence of proof of receipt by him of a written notice of dishonor.

The petition is impressed with merit.

Section 1 of B.P. Blg. 22 or the Bouncing Checks Law reads:

> SECTION 1. *Checks without sufficient funds*. – Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand pesos, or both such fine and imprisonment at the discretion of the court.
>
> The same penalty shall be imposed upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank. Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act.

For petitioner to be validly convicted of the crime under B.P. Blg. 22, the following requisites must thus concur: (1) the making, drawing and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or

credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[11]

Petitioner admits having issued the postdated check to Cristina. The check, however, was dishonored when deposited for payment in Banco de Oro due to DAIF. Hence, the first and the third elements obtain in the case.

As for the second element, Section 2 of B.P. Blg. 22 provides that

> [t]he making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.

In *Rico v. People of the Philippines,*[12] this Court held:

> x x x [I]f x x x notice of non-payment by the drawee bank is not sent to the maker or drawer of the bum check, or if there is no proof as to when such notice was received by the drawer, then the presumption of knowledge as provided in Section 2 of B.P. 22 cannot arise, since there would simply be *no way of reckoning the crucial five-day period*.
>
> x x x In recent cases, we had the occasion to emphasize that not only must there be a written notice of dishonor or demand letters actually received by the drawer of a dishonored check, but there must also be ***proof of receipt*** thereof that is properly authenticated, and not mere registered receipt and/or return receipt.
>
> Thus, as held in *Domagsang vs. Court of Appeals*, while Section 2 of B.P. 22 indeed does not state that the notice of dishonor be in writing, this must be taken in conjunction with Section 3 of the law, *i.e.*, "that where there are no sufficient funds in or credit with such drawee bank, such fact *shall always be explicitly stated in the notice of dishonor or refusal."* A mere oral notice or demand to pay would

[11] *Arceo, Jr. v. People,* G.R. No. 142641, July 17, 2006, 495 SCRA 204, 211; *Josef v. People*, G.R. No. 146424, November 18, 2005, 475 SCRA 417, 420; *Domagsang v. Court of Appeals*, 400 Phil. 847, 853 (2000); *Lim v. People*, 394 Phil. 844, 851-852 (2000).

[12] 440 Phil. 540 (2002).

appear to be insufficient for conviction under the law. In our view, both the spirit and letter of the Bouncing Checks Law require for the act to be punished thereunder not only that the accused issued a check that is dishonored, but also that the accused has *actually been notified in writing* of the fact of dishonor. This is consistent with the rule that penal statutes must be construed strictly against the state and liberally in favor of the accused. x x x

In fine, the failure of the prosecution to prove the existence and receipt by petitioner of the requisite written notice of dishonor and that he was given at least five banking days within which to settle his account constitutes sufficient ground for his acquittal.[13] (Italics in the original; emphasis and underscoring supplied)

The evidence for the prosecution failed to prove the second element. While the registry receipt,[14] which is said to cover the letter-notice of dishonor and of demand sent to petitioner, was presented, there is no proof that he or a duly authorized agent received the same. Receipts for registered letters including return receipts do not themselves prove receipt; they must be properly authenticated to serve as proof of receipt of the letters.[15] Thus in *Ting v. Court of Appeals*,[16] this Court observed:

x x x All that we have on record is an illegible signature on the registry receipt as evidence that someone received the letter. As to whether this signature is that of one of the petitioners or of their authorized agent remains a mystery. From the registry receipt alone, it is possible that petitioners or their authorized agent did receive the demand letter. Possibilities, however, cannot replace proof beyond reasonable doubt.[17]

For failure then to prove all the elements of violation of B.P. Blg. 22, petitioner's acquittal is in order.

Petitioner is civilly liable, however. For in a criminal case, the social injury is sought to be repaired through the imposition of the corresponding penalty, whereas with respect to the personal

---

[13] *Id*. at 554-555.

[14] MeTC records, p. 49.

[15] *Supra* note 12 at 540-555.

[16] 398 Phil. 481 (2000).

[17] *Id*. at 494.

injury of the victim, it is sought to be compensated through indemnity, which is civil in nature.[18]

The decision of the MeTC, which was affirmed on appeal by the RTC and the appellate court, ordering petitioner "to pay private complainant Cristina C. Reyes civil indemnity in the total amount of ONE HUNDRED SIXTY THOUSAND PESOS (₱160,000) representing his civil obligation covered by subject check," deserves circumspect examination, however, given that the obligation of petitioner to pay 10% interest per month on the loan is unconscionable and against public policy.

The ₱160,000 check petitioner issued to Cristina admittedly represented unpaid interest. By Cristina's information, the interest was computed at a fixed rate of 10% per month.[19]

While the Usury Law ceiling on interest rates was lifted by Central Bank Circular No. 905, nothing therein grants lenders *carte blanche* to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets.[20] Stipulations authorizing such interest are *contra bonos mores,* if not against the law. They are, under Article 1409[21] of the New Civil Code, inexistent and void from the beginning.[22]

---

[18] *1 Reyes, THE REVISED PENAL CODE*, 15th ed., 2001, p. 875; *vide* also *Ramos v. Gonong,* 164 Phil. 557, 563 (1976).

[19] TSN, October 11, 1999, p. 20.

[20] *Solangon v. Salazar*, 412 Phil. 816, 822 (2001); *Ruiz v. Court of Appeals*, G.R. No. 146942, April 22, 2002, 401 SCRA 410, 421.

[21] ART. 1409. The following contracts are inexistent and void from the beginning:

(1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;
(2) Those which are absolutely simulated or fictitious;
(3) Those whose cause or object did not exist at the time of the transaction;
(4) Those whose object is outside the commerce of men;
(5) Those which contemplate an impossible service;
(6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;
(7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

[22] *Cuaton v. Salud,* 465 Phil. 999, 1005 (2004).

The interest rate of 10% per month agreed upon by the parties in this case being clearly excessive, iniquitous and unconscionable cannot thus be sustained. In *Macalalag v. People*,[23] *Diño v. Jardines*,[24] and in *Cuaton v. Salud*,[25] this Court, finding the 10% per month interest rate to be unconscionable, reduced it to 12% *per annum*. And in other cases[26] where the interest rates stipulated were even less than that involved herein, the Court equitably reduced them.

This Court deems it fair and reasonable then, consistent with existing jurisprudence, to adjust the civil indemnity to ₱16,000, the equivalent of petitioner's unpaid interest on the ₱200,000 loan at 12% percent *per annum* as of February 2, 1999, the date of the check, plus 12% *per annum* interest to be computed from April 29, 1999, the date of judicial demand (date of the filing of the Information) up to the finality of this judgment. After the judgment becomes final and executory until the obligation is satisfied, the total amount due shall bear interest at 12% *per annum*.[27]

Respecting petitioner's claim that since the promissory note incorporating the stipulated 10% interest per month was not presented, there is no written proof thereof, hence, his obligation to pay the same must be void, the same fails. As reflected above, Cristina admitted such stipulation.

---

[23] G.R. No. 164358, December 20, 2006, 511 SCRA 400.

[24] G.R. No. 145871, January 31, 2006, 481 SCRA 226.

[25] G.R. No. 158382, January 27, 2004, 421 SCRA 278.

[26] In *Arrofo v. Quiño* (G.R. No. 145794, January 26, 2005, 449 SCRA 284), this Court reduced the 7% interest per month to 18% *per annum*. In *Medel v. Court of Appeals* (359 Phil. 820 [1998]), the interest stipulated at 5.5% per month was found unconscionable and was reduced to 12% *per annum*. In *Ruiz v. Court of Appeals* (G.R. No. 146942, April 22, 2003, 401 SCRA 410), the interest rate of 3% per month was reduced to 1% per month. In *Solangon v. Salazar* (412 Phil. 816, [2001]), the stipulated interest rate of 6% per month was reduced to 12% *per annum*.

[27] *Cuaton v. Salud,* 465 Phil. 999, 1006-1007 (2004) citing *Eastern Shipping Lines, Inc. v. Court of Appeals,* G.R. No. 97412, July 13, 1994, 234 SCRA 78, 95-97.

In any event, the presentation of the promissory note may be dispensed with in a prosecution for violation of B.P. Blg. 22 as the purpose for the issuance of such check is irrelevant in the determination of the accused's criminal liability. It is for the purpose of determining his civil liability that the document bears significance. Notably, however, Section 24 of the Negotiable Instruments Law provides that "Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value." It was incumbent then on petitioner to prove that the check was not for a valuable consideration. This he failed to discharge.

**WHEREFORE,** the Court of Appeals Decision of November 16, 2006 is *REVERSED and SET ASIDE*.

Petitioner, James Svendsen, is acquitted of the crime charged for failure of the prosecution to prove his guilt beyond reasonable doubt.

He is, however, ordered to pay private complainant, Cristina C. Reyes, the amount of SIXTEEN THOUSAND PESOS (₱16,000) representing civil indemnity, plus 12% interest *per annum* computed from April 29, 1999 up to the finality of this judgment. After the judgment becomes final and executory until the obligation is satisfied, the total amount due shall earn interest at 12% *per annum*.

**SO ORDERED.**

*Quisumbing (Chairperson), Carpio, Tinga,* and *Velasco, Jr., JJ.,* concur.

**THIRD DIVISION**

[G.R. No. 176385. February 26, 2008]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **EMELIO TOLENTINO *y* ESTRELLA and JESUS TRINIDAD *y* MARAVILLA,** *accused-appellants.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; LAW OF THE CASE; ANY ATTEMPT TO PASS UPON A FINAL RULING CONSTITUTES A CRASS CONTRAVENTION OF ELEMENTARY RULES OF PROCECURE.—** It must be pointed out that the issue on the validity of the trial court's order dated 17 May 2000 was elevated by appellants to this Court *via* petition for *certiorari*. This Court in a Resolution dated 2 December 2000, dismissed the said petition, and upheld the trial court's ruling that appellants are barred from presenting their evidence for failure to seek leave of court prior to the filing of the demurrer to evidence which was denied by the lower court. Since the issue of whether or not appellants may be allowed to adduce evidence despite their failure to file a prior leave of court had already been finally put to rest, the same has attained finality and constitutes the law of the case. Any attempt to pass upon anew this final ruling constitutes a crass contravention of elementary rules of procedure. Law of the case has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is already irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. Indeed, courts must adhere thereto because public policy, judicial orderliness and economy require such stability in the final judgments of courts or tribunals of competent jurisdiction.

**2. ID.; CRIMINAL PROCEDURE; FILING OF DEMURRER TO EVIDENCE WITHOUT LEAVE OF COURT; UNQUALIFIED WAIVER OF THE RIGHT TO PRESENT EVIDENCE FOR THE ACCUSED.—** The filing of a demurrer

to evidence without leave of court is an unqualified waiver of the right to present evidence for the accused. The rationale for this rule is that when the accused moves for dismissal on the ground of insufficiency of evidence of the prosecution evidence, he does so in the belief that said evidence is insufficient to convict and, therefore, any need for him to present any evidence is negated. An accused cannot be allowed to wager on the outcome of judicial proceedings by espousing inconsistent viewpoints whenever dictated by convenience. The purpose behind the rule is also to avoid the dilatory practice of filing motions for dismissal as a demurrer to the evidence and, after denial thereof, the defense would then claim the right to present its evidence. Thus, when the trial court disallowed the appellants to present evidence on their behalf, it properly applied Section 15, Rule 119 of the 1985 Rules of Criminal Procedure. Not even the gravity of the penalty for a particular offense can change this rule. As stressed by this Court: The filing of the demurrer to evidence without leave of court and its subsequent denial results in the submission of the case for judgment on the basis of the evidence on record. **Considering that the governing rules on demurrer to evidence is a fundamental component of criminal procedure, respondent judge had the obligation to observe the same**, **regardless of the gravity of the offense charged**. It is not for him to grant concessions to the accused who failed to obtain prior leave of court. The rule is clear that upon the denial of the demurrer to evidence in this case, the accused, who failed to ask for leave of court, shall waive the right to present evidence in his behalf.

**3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL JUDGE IS IN BEST POSITION TO DISCRIMINATE BETWEEN TRUTH AND FALSEHOOD.—** Well-entrenched is the rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimony in light of the declarant's demeanor and conduct as he is in the best position to discriminate between truth and falsehood. Thus, appellate courts will not disturb the credence, or lack of it, accorded by the trial court to the testimonies of witnesses, unless it be manifestly shown that the latter court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.

**4. ID.; ID.; ID.; EYEWITNESS TESTIMONY JIBED WITH THE PHYSICAL EVIDENCE, THUS TENDING TO DISPEL ANY DOUBT THAT THE WITNESS COULD HAVE CONCOCTED THE WHOLE STORY.—** The foregoing testimony can only be told by a person who had really witnessed the incident and had been subjected to personal violence from the perpetrators, hence, such testimony is entitled to full faith and credit. Furthermore, Bea's testimony jibed with the physical evidence. The nature of the wound of the deceased was affirmed by the medical experts to be a result of a gunshot wound. The location of the wounds found on Josita Novelo's face as described by witness Bea was consistent with the documentary evidence, *i.e.*, photographs, autopsy result and the physical examination of the corpse of the victim. All these tend to dispel any doubt that witness Bea would have concocted the whole story. The prosecution successfully established beyond reasonable doubt that the appellants and their cohorts killed Josita Novelo.

**5. CRIMINAL LAW; FRUSTRATED CRIME; CRIME NOT CONSUMMATED BY REASON OF THE INTERVENTION OF CAUSES INDEPENDENT OF THE WILL OF THE OFFENDER.—** A crime is frustrated when the offender has performed all the acts of execution which should result in the consummation of the crime. The offender has passed the subjective phase in the commission of the crime. Subjectively, the crime is complete. Nothing interrupted the offender while passing through the subjective phase. He did all that is necessary to consummate the crime. However, the crime was not consummated by reason of the intervention of causes independent of the will of the offender. In homicide cases, the offender is said to have performed all the acts of execution if the wound inflicted on the victim is mortal and could cause the death of the victim without medical intervention or attendance.

**6. ID.; ID.; ID.; CASE AT BAR.—** In the instant case, the prosecution established that Antonio Bea sustained four stab wounds inflicted by Emelio Tolentino which caused damage to the victim's abdomen resulting in massive blood loss. The victim was hospitalized for two months because of these injuries. In fact, at the trial, the victim showed the scars in his abdomen. All these tend to show the seriousness of the wounds suffered

by the victim and which would have caused his death had it not been for the timely medical intervention.

**7. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FINDINGS OF FACTS BY TRIAL COURT; GENERALLY CONCLUSIVE AND BINDING UPON THE SUPREME COURT WHEN AFFIRMED BY THE APPELLATE COURT.—** Worth stressing is that the Court of Appeals affirmed the findings of the RTC. The settled rule is that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court. We find no cogent reason to veer away from their findings.

**8. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; MINOR INCONSISTENCIES; INCONSISTENCIES IN TESTIMONY OF A WITNESS ENHANCE TRUTHFULNESS FOR THESE ERASE SUSPICION OF A REHEARSED TESTIMONY.—** These inconsistencies are very trivial and insignificant. Minor inconsistencies do not warrant rejection of the entire testimony nor the reversal of judgment. Accuracy in accounts had never been applied as a standard to which the credibility of witnesses are tested since it is undeniable that human memory is fickle and prone to the stresses of emotions and the passage of time. Witness Bea's inconsistencies rather enhance truthfulness for it erases suspicion of a rehearsed testimony.

**9. CRIMINAL LAW AGGRAVATING CIRCUMSTANCES; TREACHERY; WHAT IS DECISIVE IS THAT THE EXECUTION OF THE ATTACK MADE IT POSSIBLE FOR THE VICTIM TO DEFEND HIMSELF/HERSELF OR TO RETALIATE.—** The essence of treachery is a deliberate and sudden attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape. Frontal attack can be treacherous when it is sudden and unexpected and the victim is unarmed. What is decisive is that the execution of the attack made it impossible for the victim to defend himself/herself or to retaliate.

**10. ID.; ID.; DWELLING; MAY BE APPRECIATED WHEN THE CRIME IS COMMITTED IN THE DWELLING OF THE OFFENDED PARTY AND THE LATTER HAS NOT GIVEN ANY PROVOCATION.—** Also affirmed is the ruling of the RTC appreciating the presence of the generic aggravating circumstance of dwelling in Criminal Case No. 98-0258.

Evidence shows that Josita Novelo was killed in her own house. When the crime is committed in the dwelling of the offended party and the latter has not given provocation, dwelling may be appreciated as an aggravating circumstance. Here, the crime was committed inside the house of the deceased victim. Dwelling is considered aggravating primarily because of the sanctity of privacy the law accords to human abode. He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere.

**11. REMEDIAL LAW; CRIMINAL PROCEDURE; AGGRAVATING CIRCUMSTANCES, PROSECUTION OF OFFENSES; MUST BE ALLEGED IN THE INFORMATION, OTHERWISE, EVEN IF PROVEN, SAME SHALL NOT BE CONSIDERED BY THE COURT.—** Dwelling, however, cannot be appreciated in Criminal Case No. 98-0260 considering that the same was not alleged in the information. Under Section 9, Rule 10 of the Revised Rules of Court, aggravating circumstances must be alleged in the information and proved otherwise; even if proved but not alleged in the information, the same shall not be considered by the Court in the imposition of the proper penalty on the accused.

**12. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; NIGHTTIME; CONSIDERED ONLY WHEN IT IS SOUGHT TO PREVENT THE ACCUSED FROM BEING RECOGNIZED OR TO ENSURE THEIR ESCAPE.—** The aggravating circumstance of nighttime in both cases was improperly appreciated by the RTC. Nighttime is considered an aggravating circumstance only when it is sought to prevent the accused from being recognized or to ensure their escape. There must be proof that this was intentionally sought to ensure the commission of the crime and that the perpetrators took advantage of it. Although the crime was committed at nighttime, there is no evidence that the appellants and their companions took advantage of nighttime or that nighttime facilitated the commission of the crime.

**13. CRIMINAL LAW; PENALTIES; DEATH PENALTY IMPOSITION PROHIBITED BY R.A. NO. 9346 (AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES).—** In view, however, of the passage of Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," which was

signed into law on 24 June 2006, the imposition of the death penalty has been prohibited. Thus, the penalty imposed upon appellants in Criminal Case No. 98-0258 should be reduced to *reclusion perpetua*, without eligibility of parole under the Indeterminate Sentence Law.

**14. ID.; DAMAGES; WHAT MAY BE RECOVERABLE WHEN DEATH OCCURS DUE TO A CRIME.—** As to damages, when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.

**15. ID.; ID.; CIVIL INDEMNITY; MANDATORY AND GRANTED TO THE HEIRS OF THE VICTIM WITHOUT NEED OF PROOF OTHER THAN THE COMMISSION OF THE CRIME.—** The RTC awarded ₱75,000.00 in favor of the heirs of Josita Novelo as civil indemnity. The Court of Appeals reduced the award of civil indemnity to ₱50,000.00. Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. Based on current jurisprudence, the RTC award of civil indemnity *ex delicto* of ₱75,000.00 in favor of the heirs of Josita Novelo is in order.

**16. ID.; ID.; MORAL DAMAGES; MAY BE AWARDED IN VIEW OF VIOLENT DEATH OF THE VICTIM.—** The RTC also correctly awarded moral damages in the amount of ₱50,000.00 in view of the violent death of the victim. This does not require allegation and proof of the emotional suffering of the heirs.

**17. ID.; ID.; EXEMPLARY DAMAGES; MAY BE IMPOSED WHEN THE CRIME WAS COMMITTED WITH ONE OR MORE AGGRAVATING CIRCUMSTANCES.—** Article 2230 of the Civil Code states that exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances, as in this case. To deter future similar transgressions, the Court finds that an award of ₱25,000.00 for exemplary damages is proper.

**18. ID.; PENALTIES; FRUSTRATED MURDER; ONE DEGREE LOWER THAN *RECLUSION PERPETUA* TO DEATH; CASE AT BAR.—** Under Article 61, paragraph 2 of the Revised Penal Code, the penalty of frustrated murder is one degree lower

than *reclusion perpetua* to death, which is *reclusion temporal. Reclusion temporal* has a range of 12 years and 1 day to 20 years. Applying the Indeterminate Sentence Law, the maximum of the indeterminate penalty should be taken from *reclusion temporal*, the penalty for the crime taking into account any modifying circumstances in the commission of the crime. The minimum of the indeterminate penalty shall be taken from the full range of *prision mayor* which is one degree lower than *reclusion temporal.* Since there is no modifying circumstance in the commission of the frustrated murder, an indeterminate prison term of eight (8) years and 1 day of *prision mayor* as minimum, to fourteen (14) years, 8 months and 1 day of *reclusion temporal* as maximum may be considered reasonable for the frustrated murder under the facts of this case.

**19. ID.; DAMAGES; CIVIL INDEMNITY; CASE AT BAR.—** As to the award of actual damages, the prosecution failed to present any receipt to substantiate Antonio Bea's hospitalization expenses. Nonetheless, in light of the fact that Antonio was actually hospitalized and operated upon, this Court deems it prudent to award ₱20,000.00 as temperate damages since it cannot be denied that he suffered pecuniary loss. The award of civil indemnity in the amount of ₱30,000.00 is in order. Moreover, Antonio is also entitled to moral damages which this Court hereby awards in the amount of ₱40,000.00. Although there was no testimony on the moral damages that he sustained, the medical certificate issued by the hospital indicated that Antonio Bea sustained serious stab injuries inflicted by appellants. It is sufficient basis to award moral damages as ordinary human experience and common sense dictate that such wounds inflicted on Antonio Bea would naturally cause physical suffering, fright, serious anxiety, moral shock, and similar injury. Finally, the award in the amount of ₱25,000.00 as exemplary damages is also in order considering that the crime was attended by the qualifying circumstance of treachery. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱25,000.00 as exemplary damages is justified under Article 2230 of the New Civil Code. This kind of damage is intended to serve as deterrent to serious wrong-doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for plaintiff-appellee.
*Public Attorney's Office* for accused-appellants.

**D E C I S I O N**

**CHICO-NAZARIO, *J.*:**

For review is the Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 00880 which affirmed the Decision[2] of the Regional Trial Court (RTC) of Labo, Camarines Norte, Branch 64, finding appellants Emelio E. Tolentino and Jesus M. Trinidad, guilty of the crime of Murder and two counts of Frustrated Murder.

On 13 February 1998, three separate informations of Murder and two counts of Frustrated Murder were filed before the RTC against appellants, together with accused Jimmy Trinidad and Arnel Trinidad. The murder case was docketed as Criminal Case No. 98-0258 while the two frustrated murder cases were docketed as Criminal Cases No. 98-0260 and No. 98-0270. The accusatory portions of the Informations read:

**Criminal Case No. 98-0258**
For: Murder

That on or about 11:10 o'clock in the evening, more or less, on the 29th day of August, 1997, at Purok 7, Barangay San Vicente, Santa Elena, Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully, and feloniously, with intent to kill, conspiring, confederating, and helping each other to attain a common purpose, with treachery, evident premeditation and abuse of superior strength, while armed with firearms, assault, attack, and use personal violence upon one JOSITA FERNANDEZ-NOVELO, by then and there shooting the said victim on her face causing upon the latter serious and mortal wounds which were the direct and proximate cause of

[1] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Edgardo F. Sundiam and Celia C. Librea-Leagogo, concurring. *Rollo*, pp. 2-18.

[2] Penned by Judge Franco T. Falcon. CA *rollo*, pp. 15-29.

the death of the victim to the damage and prejudice of the heirs of said victim.

That the commission of the offense is attended by aggravating circumstance of nighttime purposely sought to facilitate the same and dwelling.

**Criminal Case No. 98-0260**
For: Frustrated Murder

That on or about 11:10 in the evening of the 29th day of August, 1997, at Purok 7, Barangay San Vicente, Santa Elena, Camarines Norte, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, conspiring, confederating, and mutually helping each other to attain a common purpose, did then and there, willfully, unlawfully, and feloniously, with intent to kill, while armed with firearms and knife, and with treachery, evident premeditation and abuse of superior strength, attack, assault, and use personal violence upon one ANTONIO BEA, by then and there, poking a firearm at said private offended party, tying his hands with a rope and thereafter, stabbing said victim on different parts of his body, thus causing upon the latter serious and mortal wounds capable of causing death, hence, performing all the acts of execution which could have produced the crime of murder as a consequence, but nonetheless, did not produce it by reason of causes independent of their (accused) will, that is, by the timely and able medical assistance rendered to said victim which prevented his death, to the damage and prejudice of herein private complainant.

**Criminal Case No. 98-0270**
For: Frustrated Murder

That on or about 11:10 o'clock in the evening of August 29, 1997 at the fishpond at Purok 7, Barangay San Vicente, municipality of Santa Elena, province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another with intent to kill with treachery and evident premeditation and while armed with long firearms and 12 gauge shot gun, did, then and there willfully, unlawfully and feloniously attack, assault, kick and strike one ANTONIO NOVELO with a shotgun, hitting him on the different parts of his body and then shot one said Antonio Novelo but missed, which ordinarily would cause the death of Antonio Novelo thus

performing all the acts of execution which should have produced the crime of Murder as a consequence, but nonetheless, did not produce it by reason of causes independent of their will, that is, by the timely and able medical assistance rendered to said Antonio Novelo, which prevented his death, to his damage and prejudice.[3]

During the arraignment on 13 July 1998, appellants, with the assistance of counsel *de parte*, entered their respective pleas of not guilty.[4] Accused Jimmy and Arnel Trinidad remained at large. Thereafter, a joint trial on the merits of the three criminal cases ensued.

The prosecution presented the following witnesses and their respective testimonies: (1) Antonio Bea testified as an eyewitness on the killing of Josita Novelo and narrated his own near death experience; (2) Ricardo Basila testified that he saw the accused escorting Antonio Bea whose hands were tied and disclosed that he was also subjected to violent acts of the accused. He claimed that he later heard a gunshot coming from Josita Novelo's house; (3) Wilfredo Llarena, a Barangay Captain, testified that several persons went to his house carrying an injured Antonio Bea and they proceeded to the hospital. He later reported the incident to the police officers; (4) Antonio Novelo testified that the accused went to the house of Josita Novelo and attempted to kill him; (5) Dr. Noli Bayani, the rural health physician of Sta. Elena, Camarines Norte, conducted a post-mortem examination of the body of Josita Novelo; (6) Belen Avellera testified on the existence of the medical records of Antonio Bea; (7) SPO2 Nelson Ricierra testified that Wilfredo Llarena reported to him the stabbing and the killing incidents and that he was a member of the team who made a follow-up investigation of the report; (8) Rogelio Novelo testified that Jesus Trinidad used to be his partner in operating a fishpond and that their partnership turned sour as Jesus Trinidad harvested the yields of the fishpond without his consent; (9) Dr. Rolando C. Victoria, a Medico-Legal Officer of the NBI, Manila, conducted an autopsy of the body of Josita Novelo.

[3] *Rollo,* pp. 2-3.

[4] Records, p. 56.

As documentary evidence, the prosecution offered the following: Exhibit "A" — a photograph of the bloody body of Josita Novelo; Exhibit "A-1" — the "x" mark on the face of Josita Novelo; Exhibit "B" – a photograph showing the victim prostrate on the ground; Exhibits "C" and "D" — photographs of the house where the incident of killing took place; Exhibit "E" — the medical certificate of Antonio Bea; Exhibit "F" — the affidavit of Antonio Bea; Exhibit "G" - the affidavit of Ricardo Basila; Exhibit "H" — the affidavit of Antonio Novelo; Exhibit "I" — the medical certificate of Antonio Novelo; Exhibit "J" — the death certificate of Josita Novelo showing the result of the *post-mortem* examination; and Exhibit "K" — the NBI autopsy report.

The collective evidence adduced by the prosecution shows that sometime in January 1997, Rogelio Novelo, the surviving spouse of the deceased-victim Josita Novelo, and appellant Jesus Trinidad agreed to manage and operate a rented fishpond located at Barangay San Vicente, Santa Elena, Camarines Norte. Sometime in April of the same year, when the fishpond was yielding its first harvest, Rogelio Novelo and his wife Josita brought the produce to Manila to be sold, while appellant Jesus Trinidad was left to manage the fishpond. Upon the couple's return, they discovered that all the fish and crabs in the fishpond had already been harvested and disposed of. Believing that appellant Trinidad was responsible for the pilferage, Josita demanded from him either the return of the couple's investment or be allowed to buy appellant Trinidad's share in the partnership. Appellant chose the latter and was paid by the couple the amount of ₱9,700.00 as his share in the partnership. After their partnership with appellant Trinidad was terminated, the couple proceeded to replenish the fishpond with crab seedlings. When the crabs were ready for harvest, appellant Jesus Trinidad with appellant Emelio Tolentino, Jimmy and Arnel Trinidad, without the permission from the couple, harvested the crabs for their own benefit. The couple confronted appellants and their cohorts, but the former's protestation was merely ignored by the latter. The couple filed a complaint before the *barangay* which was then set for hearing on 30 August 1997. A few days before the

scheduled hearing, Rogelio Novelo took a trip to Manila, leaving his wife Josita to manage the fishpond.

On 29 August 1997, at around 10:30 p.m., Antonio Bea, one of the complainants and the caretaker of the couple's fishpond, was inside his house located at Purok 7, Tinagong Dagat, Barangay San Vicente, Santa Elena, Camarines Norte.[5] He heard someone calling his name from outside his house. Carrying a flashlight, Bea went outside and focused his flashlight towards the direction of the fishpond watergate ("*prensa*").[6] Suddenly, someone whom he recognized to be appellant Emelio Tolentino grabbed his hand and pulled him out of the house.[7] There he saw appellant Jesus Trinidad, Jimmy Trinidad and Arnel Trinidad. Jesus Trinidad kicked Bea on the right side of his hip, and tied a rope around his hands behind his back. Then appellant Emelio Tolentino pulled him by the rope towards the house of a certain Ricardo Basila.[8] Upon reaching the house of Ricardo Basila, Arnel Trinidad called out the former. Ricardo Basila, with a flashlight in his hand, went out of his house and focused the flashlight at the faces of the four perpetrators. Irritated by what Ricardo Basila did, Emelio Tolentino, Jesus and Arnel Trinidad took turns in kicking Ricardo Basila and ordered the latter to get inside his house.[9] While inside his house, Ricardo Basila noticed that Emelio Tolentino was carrying a weapon.[10]

The assailants, together with Antonio Bea, proceeded to the house of the spouses Novelo situated alongside the fishpond which was more or less 100 meters from Basila's house.[11] When they arrived at the Novelo house, Jesus Trinidad called Josita Novelo to get out of the house.[12] Josita Novelo went out of the

---

[5] TSN , 10 August 1998, pp. 527-528.

[6] *Id*.

[7] *Id*. at 532.

[8] *Id*. at 536-537.

[9] *Id*. at 546.

[10] TSN, 8 September 1998, p. 325.

[11] TSN, 10 August 1998, p. 547.

[12] *Id*.

house holding a light.[13] Jesus Trinidad quickly grabbed Josita Novelo by her mouth and the two of them went inside the house together with Emelio Tolentino, Jesus Trinidad and Antonio Bea. From inside the house, Emelio Tolentino and Jesus Trinidad took Antonio Bea to another door leading outside and chanced upon Antonio Novelo, Rogelio Novelo's brother.[14] Immediately, Jesus Trinidad and Emelio Tolentino kicked Antonio Novelo causing the latter to fall right into the fishpond and disappear from sight.[15] Antonio Bea was then tied to the door from the waist down with Emelio Tolentino guarding him.[16] In that position, Antonio Bea saw Josita Novelo being mauled by Jesus Trinidad and Arnel Trinidad. All of a sudden, Jesus Trinidad shot Josita Novelo on the left cheek with a gun.[17] Immediately after, Emelio Tolentino entered the house and slashed the face of Josita with a jungle bolo.[18] The three assailants untied the binding on Antonio Bea's feet while leaving the ropes tied behind his back.[19] They left Novelo's house proceeding towards the fishpond watergate which was about three meters from the house. Emelio Tolentino led the way, followed by Bea, with Jesus and Arnel Trinidad taking the rear. Without warning, Emelio Tolentino stabbed Antonio Bea four times in the stomach with the former's jungle bolo. Antonio Bea fell into the fishpond.

The assailants left the victim and boarded a boat which was operated by Jimmy Trinidad. Injured and bleeding, Antonio Bea managed to untie his hands and swim across the river to ask for help. He received help from the people of Purok 7 and was brought to the house of the Barangay Captain Wilfredo Llarena in a hammock.[20] The *barangay* captain then brought

---

[13] *Id*. at 549.

[14] *Id*. at 550.

[15] *Id*. at 551.

[16] *Id*. at 54.

[17] *Id*. at 56.

[18] *Id*. at 57.

[19] *Id*. at 73.

[20] TSN, 22 September 1998, p. 378.

the victim to a hospital. From the hospital, Barangay Captain Wilfredo Llarena, along with some members of the police, went to the house of spouses Novelo and came upon the dead body of Josita Novelo.[21]

Dr. Noli Bayani, the Rural Health Physician of Sta. Elena, Camarines Norte, conducted an autopsy of the body and found that the cause of Josita Novelo's death was "*[h]ypovolemic shock secondary to gunshot wounds and lacerated wound.*"[22] Dr. Rolando C. Victoria, a Medico-Legal Officer of the National Bureau of Investigation, who also conducted an autopsy on the body of the deceased, testified that the shotgun wound at the left side of the face of the victim caused her death.[23]

The medical certificate of Antonio Bea shows that the four stab wounds inflicted on him caused damage to his intestines.[24]

On 19 October 1999, the prosecution rested its case and made a formal offer of evidence.[25]

On 13 April 2000, appellants through counsel filed a Demurrer to Evidence, without leave of court.[26] In an order[27] dated 17 May 2000, the RTC denied the demurrer and submitted the case for decision pursuant to Section 15, Rule 119 of the 1985 Rules on Criminal Procedure.[28] On 31 May 2000, appellants filed a motion for reconsideration, praying that the order denying their Demurrer to Evidence be recalled and that they be allowed to present evidence. The RTC denied the said motion. Unfazed, appellants

---

[21] *Id*. at 13.

[22] TSN, 10 November 1998, p. 20.

[23] TSN, 24 August 1999, p. 28.

[24] *Rollo,* p. 16.

[25] *Id*. at 6.

[26] Records, pp. 199-202.

[27] *Id*. at 204-205.

[28] SEC. 15. *Demurrer to evidence*. – After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.

filed a petition for *certiorari* before this Court. This Court denied the petition in a Resolution dated 2 December 2002, which became final and executory on 5 February 2003. As a result, the case was submitted for decision without any evidence proffered by the defense.

On 30 November 2004, the RTC rendered a decision finding appellants guilty of the crimes charged in Criminal Case No. 98-0258 and Criminal Case No. 98-0260 for murder and frustrated murder, respectively. The decretal portion of the RTC decision reads:

CRIM. CASE NO. 98-0258
For: MURDER

WHEREFORE, finding accused EMELIO TOLENTINO *y* ESTRELLA and JESUS TRINIDAD *y* MARAVILLA guilty beyond reasonable doubt of the crime of Murder, they are hereby sentenced to suffer the supreme penalty of DEATH. They are also ordered to pay the heirs of the victim, Josita Novelo, the amount of ₱75,000.00 by way of civil indemnity, ₱50,000.00 as moral damages and another ₱50,000.00 as exemplary damages.

CRIM. CASE NO. 98-0260
For: FRUSTRATED MURDER

WHEREFORE, finding accused EMELIO TOLENTINO *y* ESTRELLA and JESUS TRINIDAD *y* MARAVILLA guilty beyond reasonable doubt of the crime of Frustrated Murder, they are hereby sentenced to suffer the penalty of *RECLUSION PERPETUA*. They are also ordered to pay their victim, Antonio Bea the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages.[29]

The trial court, however, acquitted appellants of the crime of frustrated murder allegedly committed against Antonio Novelo in Criminal Case No. 98-0270.

---

If the Court denies the motion for dismissal, the accused may adduce evidence in his defense. **When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.**

[29] *Id*. at 806-807.

On 10 December 2004, appellants filed a Motion For New Trial on the ground that "errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial."[30] Appellants argued that in the interest of justice and equity, they should be given the opportunity to testify in their favor considering that they are meted out by the RTC the supreme penalty of death.

In an Order[31] dated 15 December 2004, the RTC denied appellants' motion for new trial ratiocinating that the error of appellants' counsel during the trial does not amount to error of law or irregularity which constitutes a valid ground for the granting of a motion for new trial. It appears that appellants no longer questioned the denial of their motion for new trial.

The trial court ordered the transmittal of the entire records of the case to this Court. Thereafter, this Court ordered the referral of the case to the Court of Appeals conformably with the ruling in the case of *People v. Mateo*.[32]

The Court of Appeals, on 8 November 2006, promulgated its Decision affirming the judgment of the trial court convicting the appellants, with modifications on the award of civil liabilities, thus:

WHEREFORE, the decision dated November 23, 2004 of the Regional Trial Court, Branch 64, of Labo, Camarines Norte finding accused-appellants Emelio Tolentino *y* Estrella and Jesus Trinidad *y* Maravilla GUILTY beyond reasonable doubt of the crime of murder in Criminal Case No. 98-0258, and frustrated murder in Criminal Case No. 98-0260 is hereby AFFIRMED with the following modifications, to wit:

(1) In Criminal Case No. 98-0258, accused–appellants are hereby sentenced each to suffer the penalty of *reclusion perpetua* and in addition, to pay the heirs of the victim Josita Fernandez

---

[30] *Id.* at 819-823.

[31] *Id.* at 825.

[32] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

Novelo the amount of ₱50,000 as civil indemnity for her death; ₱50,000 as moral damages and ₱25,000 representing exemplary damages.

(2) In Criminal Case No. 98-0260, accused-appellants are hereby sentenced each to suffer the penalty of imprisonment ranging from 8 years of *prision mayor* (minimum), as minimum, to 14 years and 8 months of *reclusion temporal* (minimum) as maximum. Moreover, they are ordered to pay the victim Antonio Bea the amount of ₱25,000 as temperate damages; ₱30,000 as moral damages, ₱30,000 as civil indemnity and ₱25,000 as exemplary damages.[33]

Hence, the instant case.

In their brief, the appellants assign the following errors:

I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED.

II

THE COURT *A QUO* GRAVELY ERRED IN NOT ALLOWING THE ACCUSED-APPELLANTS TO PRESENT DEFENSE EVIDENCE AFTER THE DENIAL OF THE DEMURRER TO EVIDENCE CONSIDERING THE POSSIBILITY OF THE IMPOSITION OF THE DEATH PENALTY.

III

GRANTING *ARGUENDO* THAT THE ACCUSED-APPELLANTS WERE GUILTY OF INFLICTING INJURY ON ANTONIO BEA, THE COURT *A QUO* ERRED IN FINDING THEM GUILTY OF THE CRIME OF FRUSTRATED MURDER ALTHOUGH THE PROSECUTION FAILED TO PROVE THAT BEA'S WOUNDS WERE MORTAL.[34]

Before proceeding to the first and third assignment of errors, the Court deems it proper to first deal with the second assignment.

[33] *Rollo,* p. 17.

[34] CA *rollo,* pp. 47-48.

Appellants, as earlier mentioned, urge this Court to revisit the issue as to the propriety of the trial court's Order dated 17 May 2000 denying the Demurrer to Evidence and preventing them from presenting evidence due to their failure to seek leave of court prior to the filing of the demurrer to evidence.

It must be pointed out that the issue on the validity of the trial court's order dated 17 May 2000 was elevated by appellants to this Court *via* petition for *certiorari*. This Court in a Resolution dated 2 December 2000, dismissed the said petition, and upheld the trial court's ruling that appellants are barred from presenting their evidence for failure to seek leave of court prior to the filing of the demurrer to evidence which was denied by the lower court. Since the issue of whether or not appellants may be allowed to adduce evidence despite their failure to file a prior leave of court had already been finally put to rest, the same has attained finality and constitutes the law of the case. Any attempt to pass upon anew this final ruling constitutes a crass contravention of elementary rules of procedure.

Law of the case has been defined as the opinion delivered on a former appeal.[35] More specifically, it means that whatever is already irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.[36] Indeed, courts must adhere thereto because public policy, judicial orderliness and economy require such stability in the final judgments of courts or tribunals of competent jurisdiction.[37]

Besides, under Section 15, Rule 119 of the 1985 Rules of Criminal Procedure, it is stated that when an accused files a demurrer to evidence without leave of court and the same is denied, he waives his right to present evidence and submits the

---

[35] *Private Enterprise Corp. v. Magada*, G.R. No. 149489, 30 June 2006, 494 SCRA 167, 180.

[36] *Id*.

[37] *Id*.

case for judgment on the basis of the evidence of the prosecution, thus:

> SEC. 15. *Demurrer to evidence*. – After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.
>
> If the Court denies the motion for dismissal, the accused may adduce evidence in his defense. **When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.**

The filing of a demurrer to evidence without leave of court is an unqualified waiver of the right to present evidence for the accused.[38] The rationale for this rule is that when the accused moves for dismissal on the ground of insufficiency of evidence of the prosecution evidence, he does so in the belief that said evidence is insufficient to convict and, therefore, any need for him to present any evidence is negated.[39] An accused cannot be allowed to wager on the outcome of judicial proceedings by espousing inconsistent viewpoints whenever dictated by convenience.[40] The purpose behind the rule is also to avoid the dilatory practice of filing motions for dismissal as a demurrer to the evidence and, after denial thereof, the defense would then claim the right to present its evidence.[41] Thus, when the trial court disallowed the appellants to present evidence on their behalf, it properly applied Section 15, Rule 119 of the 1985 Rules of Criminal Procedure. Not even the gravity of the penalty for a particular offense can change this rule. As stressed by this Court:

---

[38] *People v. Sayaboc*, 464 Phil. 824, 844 (2004).

[39] *Id*.

[40] *Id*.

[41] *Id*.

The filing of the demurrer to evidence without leave of court and its subsequent denial results in the submission of the case for judgment on the basis of the evidence on record. **Considering that the governing rules on demurrer to evidence is a fundamental component of criminal procedure, respondent judge had the obligation to observe the same, regardless of the gravity of the offense charged.** It is not for him to grant concessions to the accused who failed to obtain prior leave of court. The rule is clear that upon the denial of the demurrer to evidence in this case, the accused, who failed to ask for leave of court, shall waive the right to present evidence in his behalf.[42]

Going back to the first issue, appellants take exception with the trial court's assessment of the evidence before it and in giving weight and credence to the testimony of the prosecution witnesses. Appellants maintain that considering the lateness of the hour when the incident took place, and the fact that it was dark, witness Antonio Bea could not have seen clearly the faces of his attackers and that of the deceased Josita Novelo. Antonio Bea, according to appellants, is incompetent to testify on matters relating to what was done to the late Josita Novelo because he was tied from the waist down to the door outside the house, thus, he could not have seen what had happened inside the house where the deceased was brutally attacked.

Well-entrenched is the rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimony in light of the declarant's demeanor, conduct and position to discriminate between truth and falsehood.[43] Thus, appellate courts will not disturb the credence, or lack of it, accorded by the trial court to the testimonies of witnesses, unless it be manifestly shown that the latter court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.[44]

---

[42] *Osumo v. Serrano,* 429 Phil. 626, 632 (2002).

[43] *People v. Matito,* 468 Phil. 14, 24 (2004).

[44] *People v. Piedad,* 441 Phil. 818, 838-839 (2002).

In the instant case, prosecution witness Antonio Bea steadfastly pointed to appellants and their companions as the malefactors. Such identification was detailed as follows:

Q: Mr. Witness, do you know a certain Jesus Trinidad *y* Maravilla?

A: Yes, sir.

xxx xxx xxx

Q: A certain Emelio Tolentino *y* Estrella, do you know a person with such name?

A: Yes, sir.

xxx xxx xxx

Q: These persons that I made mention to you since when have you known them?

A: For almost ten (10) years.

Q: And because of that length of time you could not possibly [be] mistaken as to their identity?

A: Yes, sir.

xxx xxx xxx

Q: On August 29, 1997 at about 10:30 or 11:00 in the evening thereof, do you recall of any unusual incident that happened?

A: Yes, sir.

Q: Will you please tell us what is that incident that you recalled?

A: There was somebody that called me, sir.

xxx xxx xxx

Q: When you heard somebody called you on that occasion, what did you do?

A: I flash[ed] a light to the *Prensa,* sir.

xxx xxx xxx

Q: x x x [W]hat happened next?

A: Somebody hold (sic) my hand sir.

Q: Did you recognize who held your hand?

A: Yes, sir.

Q: Who?

A: Emelio Tolentino.

xxx xxx xxx

Q: Mr. Witness, what happened next after Emelio Tolentino held your hand?

A: He pulled me outside, sir.

Q: And what happened next after you were pulled outside your house?

A: I am (sic) telling him I have no fault.

xxx xxx xxx

Q: *Nang oras na iyon sino pa ang nakita mo kung mayroon man*?

A: Jesus Trinidad, sir.

Q: Who else if any?

A: Arnel Trinidad, sir.

Q: What happened after you told them you have (sic) no fault?

A: He kicked me, sir.

Q: Who kicked you in particular?

A: Jesus Trinidad, sir.[45]

Cross-examination:

Q: Who was the person who held you?

A: Emelio Tolentino, sir.

Q: How did you recognize him to be Emelio Tolentino?

A: When I focused the light, I saw them because of the light, wearing bonnet and their faces were exposed to the light.

Q: You said "them", how many were they?

[45] TSN, 10 August 1998, pp. 22-31.

A: Jesus Trinidad, Emelio Tolentino and Arnel Trinidad, sir.[46]

The identification of witness Antonio Bea of the perpetrators of the crimes evinces factual truth of what really occurred on that fateful night. He could not have been mistaken as to the identity of the appellants since, at that time, he has known them personally for ten (10) years already. Their faces were illuminated by the flashlight when witness Antonio Bea focused the same in their direction. Also, Bea's identification of the assailants was corroborated by Ricardo Basila and Antonio Novelo who testified that they likewise suffered violent acts from the malefactors during the incident.

Although Antonio Bea was tied at the door outside the house of Josita Novelo, he declared with clarity the circumstances leading to the killing of Josita and his near-death experience, *viz*:

Q: x x x Mr. Witness, where were you when you said you went out of the house let's go back to the situation wherein you entered the house of Josita Novelo in one door and then you exited on the other and there you said the other two, Jesus Trinidad and Emelio Tolentino saw Antonio Novelo, where you at that time?

A: I was with them sir, because they are holding the other end of the rope.

Q: And what did they do to you afterwards?

A: They tied me at the door, sir.

Q: That door where you exited?

A: Yes, sir.

xxx xxx xxx

Q: From the place you were tied did you see Josita Novelo?

A: Yes, sir.

Q: And while you were tied on that occasion what happened to Josita Novelo?

[46] TSN, 8 September 1998, p. 14.

A: They are asking Josita Novelo where was it placed?

Q: Do you know what were they asking?

xxx xxx xxx

Q: Did you hear the reply of Josita Novelo, if any?

A: I cannot hear the reply of Josita Novelo because they are mauling her or "*binubugbog nila*."

Q: Who in particular was mauling Josita Novelo?

A: Jesus Trinidad and Arnel Trinidad, sir.

Q: What about Emelio Tolentino, what was he doing?

A: He is outside guarding me, sir.

Q: What happened after Josita Novelo was mauled by these two you mentioned?

A: Suddenly, Jesus Trinidad shot Josita Novelo.

Q: Did you see where Josita Novelo was hit?

A: Yes, sir.

Q: Where was she hit, if you have seen?

A: On the left cheek which exited at the back of her head.

Q: After they have shot Josita Novelo, what did they do next?

A: They get (sic) out, sir.

xxx xxx xxx

Q: What about Emelio Tolentino, what did he do if any?

A: Emelio Tolentino entered the house and then slashed the face of Josita Novelo.

Court: *Anong ginamit*? *Nakita mo*?

A: Jungle bolo.

Q: *Saan*? *Sa kanan o kaliwa*?

A: *Sa kaliwa, po.*

xxx xxx xxx

Q: Now, Mr. Witness, you said that after Josita Novelo was shot by Jesus Trinidad, and Emelio Tolentino went inside the house and put an X mark on the face of that dead woman, what happened next?

A: They untied me, sir.

Q: And what did they do after untying you?

A: They passed through the prensa and stabbed me, sir.

Q: Mr. witness, you said you were untied is it (sic) not?

A: Yes, sir, *sa paa lang*.

xxx xxx xxx

Q: So in other words from the time you were untied you walked towards that '*prensa*' for about three (3) meters?

A: Yes, sir.

Q: When you walked, who was ahead of you, if any?

A: Emelio Tolentino, sir.

Q: Were your hands still tied?

A: Yes, sir.

Q: What about Tolentino who was ahead of you what was he doing?

Q: He has a jungle bolo sir, and stabbed me.

xxx xxx xxx

Q: How many times were you stabbed on that occasion?

A: Four times, sir.[47]

The foregoing testimony can only be told by a person who had really witnessed the incident and had been subjected to personal violence from the perpetrators, hence, such testimony is entitled to full faith and credit. Furthermore, Bea's testimony jibed with the physical evidence. The nature of the wound of the deceased was affirmed by the medical experts to be a result of a gunshot wound. The location of the wounds found on

[47] TSN, 10 August 1998, pp. 51-76.

Josita Novelo's face as described by witness Bea was consistent with the documentary evidence, *i.e.*, photographs, autopsy result and the physical examination of the corpse of the victim. All these tend to dispel any doubt that witness Bea would have concocted the whole story. The prosecution successfully established beyond reasonable doubt that the appellants and their cohorts killed Josita Novelo.

Anent the third issue, appellants argue that in the stabbing of Antonio Bea, they should have been liable only for attempted murder and not frustrated murder since the prosecution failed to prove, due to its failure to present the attending physician, that the injury suffered by the victim was fatal.

A crime is frustrated when the offender has performed all the acts of execution which should result in the consummation of the crime.[48] The offender has passed the subjective phase in the commission of the crime.[49] Subjectively, the crime is complete.[50] Nothing interrupted the offender while passing through the subjective phase. He did all that is necessary to consummate the crime. However, the crime was not consummated by reason of the intervention of causes independent of the will of the offender.[51] In homicide cases, the offender is said to have performed all the acts of execution if the wound inflicted on the victim is mortal and could cause the death of the victim without medical intervention or attendance.[52]

In the instant case, the prosecution established that Antonio Bea sustained four stab wounds inflicted by Emelio Tolentino which caused damage to the victim's abdomen resulting in massive blood loss. The victim was hospitalized for two months because of these injuries.[53] In fact, at the trial, the victim showed the

---

[48] *Martinez v. Court of Appeals*, G.R. No. 168827, 13 April 2007, 521 SCRA 176, 195.

[49] *Id*.

[50] *Id*.

[51] *Id*.

[52] *Id*.

[53] *Rollo*, p. 16.

scars in his abdomen. All these tend to show the seriousness of the wounds suffered by the victim and which would have caused his death had it not been for the timely medical intervention.

The trial court, in assessing the testimonial evidence of the prosecution, made this appropriate observation:

> In the instant cases, the corroborative testimonies of prosecution witnesses, Antonio Bea, Ricardo Basila and Antonio Novelo, positively identifying the accused as the perpetrators of the crime satisfactorily persuade the Court. x x x.
>
> xxx xxx xxx
>
> Witness Antonio Bea testified that accused Jesus Trinidad and Emelio Tolentino are known to him for almost ten (10) years xxx.
>
> Likewise, witness Antonio Novelo, on cross-examination, testified that he recognized the accused because their voices are very familiar to him being neighbors and he had known the accused for a long time.
>
> xxx xxx xxx
>
> The identification of an accused through his voice is acceptable, particulary if the witness knows the accused personally.
>
> The sound of the voice of a person is an acceptable means of identification where it is established that the witness and the accused knew each other personally and closely for a number of years.[54]

Worth stressing is that the Court of Appeals affirmed the findings of the RTC. The settled rule is that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court.[55] We find no cogent reason to veer away from their findings.

In an effort to exculpate themselves from the charges, appellants identified inconsistent statements of witness Bea such as the latter's declaration that he was a friend of Jesus Trinidad which is contradictory to his earlier testimony that he got mad at Jesus Trinidad four months prior to the incident. They also make an

---

[54] Records, pp. 803-804.

[55] *People v. Castillo*, G.R. No. 118912, 28 May 2004, 430 SCRA 40, 50.

issue of the statement of Bea during the cross-examination wherein he made mention that a gun was poked at him, which declaration is missing in the direct examination.

These inconsistencies are very trivial and insignificant. Minor inconsistencies do not warrant rejection of the entire testimony nor the reversal of judgment.[56] Accuracy in accounts had never been applied as a standard to which the credibility of witnesses are tested since it is undeniable that human memory is fickle and prone to the stresses of emotions and the passage of time.[57] Witness Bea's inconsistencies rather enhance truthfulness for it erases suspicion of a rehearsed testimony.

The RTC convicted the appellants of murder in Criminal Case No. 98-0258 for the killing of Josita Novelo and frustrated murder for the assault of Antonio Bea in Criminal Case No. 98-0260 by appreciating the qualifying circumstance of treachery and generic aggravating circumstances of nighttime and dwelling.

The RTC is correct in appreciating the qualifying circumstance of treachery in the killing of Josita Novelo and in the stabbing of Antonio Bea.

The essence of treachery is a deliberate and sudden attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape.[58] Frontal attack can be treacherous when it is sudden and unexpected and the victim is unarmed.[59] What is decisive is that the execution of the attack made it impossible for the victim to defend himself/herself or to retaliate.[60]

In the killing of Josita Novelo, the victim was at her home when someone called her. When the victim went outside, suddenly Jesus Trinidad held her. Thereafter, Jesus Trinidad and Arnel Trinidad mauled Josita Novelo. Without warning, Jesus Trinidad

---

[56] *People v. Molina*, 370 Phil. 546, 554-555 (1999).

[57] *Id*.

[58] *People v. Belaro*, 367 Phil. 90, 107 (1999).

[59] *Id*.

[60] *People v. Pidoy*, 453 Phil. 221, 230 (2003).

shot the helpless victim on the cheek. Said attack was so sudden and unexpected that the victim had not been given the opportunity to defend herself or repel the aggression. She was unarmed when she was attacked. Indeed, all these circumstances indicate that the assault on the victim was treacherous.

The stabbing of Antonio Bea was also attended with treachery. While Bea, whose hands were tied behind his back, and the assailants were walking along the dike, Emelio Tolentino unexpectedly stabbed the victim four times. The victim could not put up a defense as the attack was swift and he was not in the position to repel the same since his hands were tied.

Also affirmed is the ruling of the RTC appreciating the presence of the generic aggravating circumstance of dwelling in Criminal Case No. 98-0258. Evidence shows that Josita Novelo was killed in her own house. When the crime is committed in the dwelling of the offended party and the latter has not given provocation, dwelling may be appreciated as an aggravating circumstance.[61] Here, the crime was committed inside the house of the deceased victim. Dwelling is considered aggravating primarily because of the sanctity of privacy the law accords to human abode.[62] He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere.[63]

Dwelling, however, cannot be appreciated in Criminal Case No. 98-0260 considering that the same was not alleged in the information. Under Section 9, Rule 10 of the Revised Rules of Court, aggravating circumstances must be alleged in the information and proved otherwise; even if proved but not alleged in the information, the same shall not be considered by the Court in the imposition of the proper penalty on the accused.[64]

The aggravating circumstance of nighttime in both cases was improperly appreciated by the RTC. Nighttime is considered

---

[61] *People v. Prades*, 355 Phil. 150, 168 (1998).

[62] *People v. Paraiso*, 377 Phil. 445, 464 (1999).

[63] *Id*.

[64] *People v. Casitas, Jr.*, 445 Phil. 407, 427 (2003).

an aggravating circumstance only when it is sought to prevent the accused from being recognized or to ensure their escape. There must be proof that this was intentionally sought to ensure the commission of the crime and that the perpetrators took advantage of it. Although the crime was committed at nighttime, there is no evidence that the appellants and their companions took advantage of nighttime or that nighttime facilitated the commission of the crime.

Proceeding now to the appropriate penalty, in Criminal Case No. 98-0258, it must be borne in mind that the prosecution successfully established the presence of the qualifying circumstance of treachery in the killing of Josita Novelo. With this, the crime committed by the appellants is murder in accordance with Article 248. With the aggravating circumstance of dwelling and no mitigating circumstance, the penalty imposed should be in its maximum, which is death.[65]

In view, however, of the passage of Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," which was signed into law on 24 June 2006, the imposition of the death penalty has been prohibited.[66] Thus, the penalty imposed upon appellants in Criminal Case No. 98-0258 should be reduced to *reclusion perpetua*, without eligibility of parole under the Indeterminate Sentence Law.[67]

As to damages, when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[68]

The RTC awarded ₱75,000.00 in favor of the heirs of Josita Novelo as civil indemnity. The Court of Appeals reduced the award of civil indemnity to ₱50,000.00. Civil indemnity is

[65] *People v. Paraiso, supra* note 62 at 465.

[66] *People v. Salome*, G.R. No. 169077, 31 August 2006, 500 SCRA 659, 676.

[67] *Id*.

[68] *People v. Tubongbanua*, G.R. No. 171271, 31 August 2006, 500 SCRA 727, 742.

mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. Based on current jurisprudence, the RTC award of civil indemnity *ex delicto* of ₱75,000.00 in favor of the heirs of Josita Novelo is in order.[69]

The RTC also correctly awarded moral damages in the amount of ₱50,000.00 in view of the violent death of the victim. This does not require allegation and proof of the emotional suffering of the heirs.[70] Article 2230 of the Civil Code states that exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances, as in this case.[71] To deter future similar transgressions, the Court finds that an award of ₱25,000.00 for exemplary damages is proper.

In Criminal Case No. 98-060, the RTC imposed upon the appellants the penalty of *reclusion perpetua* for the crime of frustrated murder. The Court of Appeals modified the penalty to 8 years of *prision mayor* as minimum to 14 years and 8 months of *reclusion temporal* as maximum.

Under Article 61, paragraph 2 of the Revised Penal Code, the penalty of frustrated murder is one degree lower than *reclusion perpetua* to death, which is *reclusion temporal*.[72] *Reclusion temporal* has a range of 12 years and 1 day to 20 years. Applying the Indeterminate Sentence Law, the maximum of the indeterminate penalty should be taken from *reclusion temporal*, the penalty for the crime taking into account any modifying circumstances in the commission of the crime.[73] The minimum of the indeterminate penalty shall be taken from the full range of *prision mayor* which is one degree lower than *reclusion temporal*. Since there is no modifying circumstance in the commission of the frustrated murder, an indeterminate prison

---

[69] *People v. Buban*, G.R. No. 170471, 11 May 2007, 523 SCRA 118, 134.

[70] *People v. Caraig*, G.R. No. 116224-27, 28 March 2003, 400 SCRA 67, 83.

[71] *People v. Buban, supra* note 69 at 134.

[72] *Martinez v. Court of Appeals, supra* note 48.

[73] *Id*.

term of eight (8) years and 1 day of *prision mayor* as minimum, to fourteen (14) years, 8 months and 1 day of *reclusion temporal* as maximum[74] may be considered reasonable for the frustrated murder under the facts of this case.

As to the award of actual damages, the prosecution failed to present any receipt to substantiate Antonio Bea's hospitalization expenses. Nonetheless, in light of the fact that Antonio was actually hospitalized and operated upon, this Court deems it prudent to award ₱20,000.00 as temperate damages since it cannot be denied that he suffered pecuniary loss. The award of civil indemnity in the amount of ₱30,000.00 is in order.[75] Moreover, Antonio is also entitled to moral damages which this Court hereby awards in the amount of ₱40,000.00. Although there was no testimony on the moral damages that he sustained, the medical certificate issued by the hospital indicated that Antonio Bea sustained serious stab injuries inflicted by appellants. It is sufficient basis to award moral damages as ordinary human experience and common sense dictate that such wounds inflicted on Antonio Bea would naturally cause physical suffering, fright, serious anxiety, moral shock, and similar injury.[76] Finally, the award in the amount of ₱25,000.00 as exemplary damages is also in order considering that the crime was attended by the qualifying circumstance of treachery. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱25,000.00 as exemplary damages is justified under Article 2230 of the New Civil Code.[77] This kind of damage is intended to serve as deterrent to serious wrong-doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.[78]

**WHEREFORE,** the Decision of the Court of Appeals dated 08 November 2006 in CA-G.R. CR-HC No. 00880 finding

---

[74] *Id*.

[75] *People v. Castillo*, 426 Phil. 752, 768-769 (2002).

[76] *People v. Ibañez*, 455 Phil. 133, 167-168 (2003).

[77] *Id*.

[78] *Id*.

appellants guilty of the crime of murder and sentencing them to suffer the penalty of *reclusion perpetua* in Criminal Case No. 98-0258, is hereby *AFFIRMED* with the modifications:

(1) In Criminal Case No. 98-0258, appellants are ordered to pay jointly and severally the heirs of the victim Josita Novelo the amount of ₱75,000.00 as civil indemnity, the amount of ₱50,000.00 as moral damages and ₱25,000.00 representing exemplary damages.

(2) In Criminal Case No. 98-0260, for the crime of Frustrated Murder, appellants are sentenced to suffer an indeterminate penalty from 6 years and 1 day of *prision mayor* as minimum, to 14 years, 8 months and 1 day of *reclusion temporal* as maximum. In addition, appellants are ordered to pay jointly and severally the victim Antonio Bea the amount of ₱40,000.00 as moral damages, ₱30,000.00 as civil indemnity, ₱20,000.00 as temperate damages and ₱25,000.00 as exemplary damages.

**SO ORDERED.**

*Ynares-Santiago (Chairperson), Austria-Martinez, Nachura,* and *Reyes, JJ.,* concur.

---

**THIRD DIVISION**

[G.R. No. 177572. February 26, 2008]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **JUANITO DELA CRUZ *y* RIVERA,** *accused-appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE ACCUSED IN A RAPE CASE MAY BE CONVICTED ON THE BASIS OF THE VICTIM'S LONE**

**AND UNCORROBORATED TESTIMONY.—** Rape is committed when the accused has carnal knowledge of the victim by force or intimidation and without consent. In determining the guilt or innocence of the accused in cases of rape, the victim's testimony is crucial in view of the intrinsic nature of the crime in which only two persons are normally involved. The accused may be convicted on the basis of the victim's lone and uncorroborated testimony provided it is clear, positive, convincing, and consistent with human nature.

**2. ID.; ID.; ID.; RAPE VICTIM POSITIVELY AND CATEGORICALLY IDENTIFIED THE APPELLANT AS THE ONE WHO RAVISHED HER.—** We have painstakingly reviewed the records and found that appellant had carnal knowledge of AAA through force and intimidation on the dates stated in the informations. In her court testimony, AAA positively and categorically identified the appellant as the one who ravished her, *viz*: x x x Q. Do you recall of an unusual incident that happened on July 24, 1998 at your house? A. Yes, mam. Q. What was that unusual incident? A. At 1:00 in the early morning my father "*ginapangan niya ako*." Q. What do you mean "*ginapangan ka*?" A. He raped me, mam. Q. How did your father rape you? A. He inserted his penis inside my vagina. x x x Q. Was that the first time that your father raped you? A. No. mam. Q. When was the first time? A. On **March 8, 1995**, mam. Q. Why do you recall March 8, 1995 as the first time that your father raped you? A. That time I was at my work and I went home because my brother is (sic) celebrating his birthday. Q. When did that rape that happened on March 8, 1995? A. In our house, mam. x x x Q. What about **in the year 1996,** was there an unusual incident that happened between you and your father? A. Yes, mam, there is. Q. Can you recall on what month? A. I cannot remember, mam. Q. But the same incident happened in 1996? Yes, mam. Q. If you can recall, how many times did he rape you in the year 1996? A. Six (6) times, mam. x x x Q. But, how many times have you been raped in 1997? A. Many times, your Honor. Q. You cannot count it? A. No, your Honor. x x x.

**3. ID.; ID.; ID.; IT IS AGAINST HUMAN NATURE FOR A YOUNG GIRL TO FABRICATE A STORY THAT WOULD EXPOSE HERSELF TO A LIFETIME OF SHAME, WHICH CHARGE COULD MEAN DEATH OR LIFETIME IMPRISONMENT**

**OF HER OWN FATHER.—** It is a well-settled doctrine that the testimony of a youthful rape victim is given full weight and credence considering that when a girl says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. It is against human nature for a young girl to fabricate a story that would expose herself as well as her family to a lifetime of shame, especially when her charge could mean the death or lifetime imprisonment of her own father.

**4. ID.; APPEALS;FINDINGS OF FACTS OF TRIAL COURT WHEN AFFIRMED BY APPELLATE COURT, GENERALLY BINDING UPON THE COURT.—** The rule is that the findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court.

**5. ID.; ID.; CREDIBILITY OF WITNESSES; MINOR INCONSISTENCIES EVEN BOLSTER CREDIBILITY OF RAPE VICTIM.—** The supposed contradictions cited by appellant refer to minor details and are evidently beyond the essential fact of the commission of rape because they do not pertain to the actual sexual assault itself — that very moment when appellant was forcing himself on AAA. Besides, these minor inconsistencies even bolster the credibility of AAA as one could hardly doubt that her testimony was contrived.

**6. ID.; ID.; ID.; SWORN STATEMENTS TAKEN *EX PARTE* GENERALLY CONSIDERED INFERIOR TO TESTIMONY GIVEN IN OPEN COURT.—** We have steadfastly ruled that the alleged inconsistencies between the testimony of a witness in open court and his sworn statement are not fatal defects to justify a reversal of judgment of conviction. Such discrepancies do not necessarily discredit the witness since *ex-parte* affidavits are almost always incomplete. Sworn statements taken *ex-parte* are generally considered to be inferior to the testimony given in open court.

**7. CRIMINAL LAW; RAPE; CAN BE COMMITTED INSIDE A HOUSE WHERE THERE ARE OTHER OCCUPANTS, AND**

**EVEN IN THE SAME ROOM WHERE OTHERS ARE SLEEPING.—** Lust is no respecter of time and place. Thus, we held that rape can be committed inside a house where there are occupants, and even in the same room where other members of the family are also sleeping. It is not impossible, nor incredible, for AAA's siblings to be in deep slumber and not to be awakened while appellant was raping her.

**8. ID.; ID; DATE OR TIME WHEN RAPE OCCURRED IS NOT A MATERIAL INGREDIENT OF THE CRIME AS THE GRAVAMEN OF RAPE IS CARNAL KNOWLEDGE OF A WOMAN THROUGH FORCE AND INTIMIDATION.—** Failure to specify the exact dates or time when the rapes occurred does not *ipso facto* make the information defective on its face. The reason is obvious. The date or time of the commission of rape is not a material ingredient of the said crime because the *gravamen* of rape is carnal knowledge of a woman through force and intimidation. As such, the date or time need not be stated with absolute accuracy. It is sufficient that the complaint or information states that the crime has been committed at any time as near as possible to the date of its actual commission. In several cases, we sustained complaints and informations in prosecutions for rape which merely alleged the month and year of its commission. Hence, the allegations in the informations regarding Criminal Cases No. 1150**32**-H and 1150**33**-H which state that rapes were committed "during the period January to December 1996" and "during the period January to December 1997" are sufficient to affirm the conviction of appellant.

**9. ID.; ID.; FAILURE OF RAPE VICTIM TO IMMEDIATELY REPORT THE RAPE, NOT AN INDICATION OF A FABRICATED CHARGE.—** We have ruled that the failure of the rape victim to immediately report the rape is not necessarily an indication of a fabricated charge. It is not uncommon for young girls like AAA to conceal for some time the assault on their virtues because of the rapist's threat on their lives, more so when the rapist is living with her as in this case. AAA testified that appellant threatened to kill her and the other family members should she report what he had done to her. AAA's delay in reporting the sexual violations is therefore understandable and cannot undermine her credibility.

**10. REMEDIAL LAW; EVIDENCE; DOCUMENTARY EVIDENCE; ADMISSIBILITY; WEIGHT GIVEN TO**

**APPELLANT'S ADMISSION OF LETTER SINCE IT WAS GIVEN VOLUNTARILY AND SPONTANEOUSLY.—** Appellant's letter written on a Malboro cigarette wrapper asking AAA's forgiveness is admissible in evidence against him. AAA testified that after the instant case was filed in RTC, BBB visited appellant once in jail. During the said visit, appellant handed to BBB a letter written on a Marlboro cigarette wrapper and thereafter instructed BBB to give the said letter to her. BBB gave her the said letter and told her "*pinaabot ng tatay mo*." In the said letter, appellant asked her to forgive him for what he did to her as he was only drunk at that time. She knows that the letter was written by appellant because she is familiar with his handwriting and signature. AAA positively identified the letter itself during her direct examination and this was formally offered as documentary evidence for the prosecution. More importantly, appellant himself readily admitted that the letter is the same letter he wrote for AAA. He also confirmed that the handwriting therein is his. Although later, he would deny the same on the basis that he does not use the Marlboro cigarette brand, but only Winston cigarette brand, we still give more weight to his admission of the said letter since it was given voluntarily and spontaneously. His subsequent denial is not only based on flimsy grounds but also an obvious attempt to cover-up his earlier damaging testimony.

**11. ID.; ID.; ID.; ID.; ID.; MAY BE RECEIVED IN EVIDENCE AS AN IMPLIED ADMISSION OF GUILT.—** As to the contents of the letter, verily, no one would ask for forgiveness unless he has committed a wrong and a plea for forgiveness may be considered analogous to an attempt to compromise, which offer of compromise by the appellant may be received in evidence as an implied admission of guilt pursuant to Section 27, Rule 130 of the Revised Rules on Evidence.

**12. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES OF MINORITY OF VICTIM AND LATTER'S RELATIONSHIP WITH OFFENDER MUST BE ALLEGED AND PROVEN.—** Republic Act No. 7659 is the law applicable for the rapes committed in March 1995 and on several occasions during the period of January to December 1996, as respectively alleged in Criminal Cases No. 1150**31**-H and 1150**32**-H. The said law states that the death penalty shall be imposed if the rape victim is a minor and the offender is a parent. The qualifying

circumstances of minority of the victim and the latter's relationship with the offender must be **alleged** and **proven** to warrant the imposition of death penalty.

**13. ID.; MINORITY OF RAPE VICTIMS; INDEPENDENT EVIDENCE OF MINORITY MUST BE SUBMITTED BY PROSECUTION.—** In *People v. Tabanggay* (390 Phil. 67,92 [2000]), a case almost identical herein, we held as **insufficient** evidence of minority the bare testimony of the two rape victims, who were sisters, that they were 13 and 14 years of age, respectively, when their father raped them. We emphasized therein that there must be independent evidence proving the age of the victims other than their own testimonies and the absence of denial by the accused. The victim's original or duly certified birth certificate, or baptismal certificate, or school records would suffice as competent evidence of their age. The prosecution presented a photocopy of one of the victim's birth certificate but we gave no probative value to it because it was neither duly certified nor formally offered in evidence. In conclusion, we ruled therein that the prosecution failed to prove the minority of the rape victims.

**14. ID.; ID.; ID.; ID.; CASE AT BAR.—** Applying the foregoing jurisprudence to the case at bar, the bare testimony of AAA as to her age is not sufficient proof that she was a minor when appellant raped her on the given dates. There must be independent evidence showing her minority other than her bare testimony and the absence of denial by the appellant. The independent proof may consist of her original or duly certified birth certificate, or her baptismal certificate or school records. A photocopy of AAA's birth certificate is included in the records of the present case. Nevertheless, the same was neither properly identified nor formally offered in evidence. Hence, no probative value can be given to it. Aside from the said birth certificate, no other documentary evidence was adduced to prove the age of AAA.

**15. ID.; ID.; ID.; ID.; LACK OF DENIAL ON PART OF THE ACCUSED AS REGARDS AGE OF RAPE VICTIM DOES NOT EXCUSE THE PROSECUTION FROM DISCHARGING ITS BURDEN OF PROVING MINORITY OF RAPE VICTIM.—** With respect to appellant's failure to object on the aforesaid testimony of AAA, we decreed in *People v. Pruna* (439 Phil. 440, 471 [2002]), that the failure of the

accused to object to the testimonial evidence regarding the rape victim's age shall not be taken against him. In *People v. Tipay* (385 Phil. 689 [2000]), and *People v. Pecayo, Sr*. (401 Phil. 689 [2000], we also pronounced that the lack of denial on the part of accused as regards the rape victim's age does not excuse the prosecution from discharging its burden of proving the minority of the rape victim. As the qualifying circumstance of minority alters the nature of the crime of rape and increases the penalty thereof, it must be proved with equal certainty and clearness as the crime itself.

**16. CRIMINAL LAW; RAPE; DAMAGES; EXEMPLARY DAMAGES; AWARDED TO DETER OTHER FATHERS WITH PERVERSE TENDENCIES OR ABERRANT SEXUAL BEHAVIORS FROM SEXUALLY ABUSING THEIR OWN DAUGTHERS.—** [A]ppellant should also pay AAA exemplary damages in the amount of ₱25,000.00 in order to deter other fathers with perverse tendencies or aberrant sexual behaviors from sexually abusing their own daughters.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for plaintiff-appellee.
*Public Attorney's Office* for accused-appellant.

**D E C I S I O N**

**CHICO-NAZARIO, *J.*:**

*Of the so-called heinous crimes, none perhaps more deeply provokes feelings of outrage, detestation, and disgust than incestuous rape. It is indeed difficult to find a more perverted form of sexual aberration than this bestial felony. It is undeserving of society's compassion or tolerance.*[1]

We are called here to review the Decision rendered by the Court of Appeals in CA-G.R. CR-HC No. 02407 dated 26 October 2006,[2] affirming with modification the Decision of the Manila Regional Trial Court (RTC), Branch 163, in Criminal Cases

[1] *People v. Baculi*, 316 Phil. 916, 917 (1995).

[2] Penned by Associate Justice Jose Catral Mendoza with Associate Justices Elvi John S. Asuncion and Sesinando E. Villon, concurring; *rollo*, pp. 3-19.

No. 1150**31**-H, No. 1150**32**-H, No. 1150**33**-H, and No. 1150**34**-H dated 21 February 2000,[3] convicting the accused-appellant Juanito R. dela Cruz of raping his own daughter, AAA,[4] with the use of force and intimidation.

The records bear the following facts:

On 9 November 1998, four separate informations[5] were filed with the RTC against appellant for rape, allegedly committed as follows:

CRIMINAL CASE NO. 1150**31**-H

That sometime in **March 1995**, in XXX, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, with lewd designs and by taking advantage of his moral ascendancy over his own daughter, AAA, then sixteen (16) years old and by means of force, threat and intimidation, did, then and there, willfully, unlawfully, and feloniously lie and have sexual intercourse with AAA, against her will.

CRIMINAL CASE NO. 1150**32**-H

That during the period **January to December 1996**, in XXX, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, with lewd designs and by taking advantage of his moral ascendancy over his own daughter, AAA, then seventeen (17) years old and by means of force, threat and intimidation did, then and there, willfully, unlawfully, and feloniously lie and have sexual intercourse with AAA, against her will.

CRIMINAL CASE NO. 1150**33**-H

That during the period **January to December 1997**, in XXX, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, with lewd designs and by taking advantage of

---

[3] Penned by Judge Librado S. Correa; CA *rollo*, pp. 16-25.

[4] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victims, together with the real names of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy. (*People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 421-426).

[5] CA *rollo*, pp. 4-11.

his moral ascendancy over his own daughter, AAA, and by means of force, threat and intimidation did, then and there, willfully, unlawfully, and feloniously lie and have sexual intercourse with AAA, against her will.

CRIMINAL CASE NO. 1150**34**-H

That on or about **July 24, 1998**, in XXX, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, with lewd designs and by taking advantage of his moral ascendancy over his own daughter, AAA, and by means of force, threat and intimidation did, then and there, willfully, unlawfully, and feloniously lie and have sexual intercourse with AAA, against her will.

Subsequently, these cases were consolidated for joint trial. When arraigned on 21 April 1999, appellant, with the assistance of counsel *de oficio*, pleaded "Not Guilty" to each of the charges.[6] Thereafter, trial on the merits ensued.

The prosecution presented as witnesses AAA and Dr. Armie Soreto-Umil (Dr. Umil). Their testimonies are as follows:

AAA testified that appellant is her father and BBB is her mother; that appellant and BBB are married; that she is the fourth child in a brood of five children born to appellant and BBB; and that she resided with her family at XXX.[7]

On **8 March 1995**, AAA went home from work to celebrate with her family the birthday of her younger brother, CCC. Later that evening, she slept inside the house, while appellant had a drinking session with some friends outside the house. BBB was then peddling several merchandise at the Quirino Memorial Hospital (QMH). Subsequently, appellant entered the house and lay down beside her. Appellant fondled her breast and vagina. She resisted but to no avail because appellant punched her in the stomach and slapped her face. Appellant then placed himself on top of her and inserted his penis into her vagina. Thereafter, DDD, her elder brother, entered the house and saw appellant on top of her. Afraid of appellant, DDD ignored the

[6] Records, p. 41.

[7] TSN, 18 May 1999, pp. 3-6.

two. The following day, DDD told AAA that he saw the incident and that he will report it to appellant's sister, EEE. AAA did not inform BBB of the incident because of her fear that appellant would make good his threat to kill her and the rest of the family members.[8]

Again, in **1996**, appellant, with the use of force, threat and intimidation, raped AAA six times on several occasions inside the house. BBB was selling goods at the QMH during the commission of these rapes.[9]

Likewise, in **1997**, appellant, by applying the same physical harm, threat and intimidation, sexually assaulted her several times inside the house. BBB was also out of the house when these bestial acts transpired.[10]

On **24 July 1998**, at about 1:00 in the morning, AAA and her siblings were sleeping inside a nipa hut owned by her family and located in front of their house, while appellant was drinking liquor with a certain Rey and Benito Casaljay outside the house. After the drinking session, Rey and Benito left appellant. Appellant then entered the nipa hut, woke her up, and started to make sexual advances on her. She tried to resist appellant's onslaught but failed because appellant punched her in the stomach. Appellant went on top of her and inserted his penis into her vagina. After satisfying his lust, appellant warned her not to tell anyone of the incident or he would kill her and the rest of the family members.[11]

Upon being informed by EEE of the incidents, BBB, on 30 July 1998, accompanied AAA to the National Bureau of Investigation (NBI) office at Taft Avenue, Manila, and reported the heinous acts of appellant. AAA also executed a *Sinumpaang Salaysay* regarding the incidents. Thereupon, appellant was arrested and charged with rape.[12]

---

[8] *Id*. at 5-7.

[9] *Id*. at 7-8.

[10] *Id*. at 8-9.

[11] *Id*. at 4-5.

[12] *Id*. at 12.

Dr. Umil narrated that she conducted a genital examination on AAA upon the request of NBI Supervising Agent Rosalina Espina-Chiong. Her findings as stated in her medico-legal report are: (1) no evident sign of any extra-genital physical injuries noted on the body of the subject at the time of the examination; and (2) hymen, intact, but distensible, and its orifice wide (2.5 cm. in diameter) as to allow complete penetration by an average-sized adult Filipino male organ in full erection without producing hymenal injury.[13]

The prosecution also adduced documentary evidence to buttress the foregoing testimonies of prosecution witnesses, to wit: (1) *Sinumpaang Salaysay* of AAA;[14] (2) Medico-Legal Report regarding AAA signed and issued by Dr. Umali;[15] and (3) a letter written by appellant in a Marlboro cigarette wrapper addressed to AAA asking her forgiveness.[16]

For its part, the defense proffered the lone testimony of appellant to refute the foregoing accusations.

Appellant divulged that AAA is his daughter and BBB is his wife; that he did not rape AAA on 8 March 1995; that a birthday celebration for one of his children, CCC, was held at their house on 8 March 1995 which was attended by several friends; that he did not rape AAA in 1996, 1997, and on 24 July 1998; that BBB, AAA and his other children resided with him in their house at XXX from 8 March 1995 to 24 July 1998; that he had a drinking spree with Rey and Benito at nighttime during the said periods; and that he wrote a letter to AAA but denied that it was the same one presented by the prosecution.[17]

The defense also offered as its sole documentary evidence the Medico-Legal Report issued and signed by Dr. Umil.

---

[13] TSN, 11 May 1999, pp. 3-10.

[14] Records, pp. 85-86.

[15] *Id*. at 87.

[16] *Id*. at 84.

[17] TSN, 11 August 1999, pp. 2-21.

After trial, the RTC rendered a Decision finding appellant guilty of rape as alleged in the four informations. In Criminal Cases No. 1150**31**-H and No. 1150**32**-H, the Court imposed on appellant the penalty of death. In Criminal Cases No. 1150**33**-H and No. 1150**34**-H, appellant was sentenced to *reclusion perpetua*. The dispositive portion of the decision reads:

WHEREFORE, this Court finds accused Juanito dela Cruz *y* Rivera, as follows:

1. In Criminal Case No. 1150**31**-H, GUILTY as principal of the offense of qualified rape penalized under then Article 335 of the Revised Penal Code, as amended by R.A. 7659, and sentences him to suffer the supreme penalty of DEATH. Accused is further ordered to pay the offended person, AAA, the amount of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity plus Fifty Thousand Pesos (₱50,000.00) as moral damages.

2. In Criminal Case No. 1150**32**-H, GUILTY as principal of the offense of qualified rape penalized under Article 335 of the Revised Penal Code, as amended by R.A. 7659, and sentences him to suffer the supreme penalty of DEATH. Accused is further ordered to pay AAA the amount of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity plus Fifty Thousand Pesos (₱50,000.00) as moral damages.

3. In Criminal Case No. 1150**33**-H, GUILTY as principal of the offense of simple rape penalized under Article 335 of the Revised Penal Code, as amended by R.A. 7659 [Now Art. 266-A and Art. 266-B under R.A. 8353], and sentences him to suffer the penalty of *reclusion perpetua*. Accused is further ordered to pay AAA the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity plus the amount of Fifty Thousand Pesos (₱50,000.00) as moral damages.

4. In Criminal Case No. 1150**34**-H, GUILTY as principal of the offense of simple rape penalized under Article 266-B of the Revised Penal Code, as amended, and sentences him to suffer the penalty of *reclusion perpetua*. Accused is further ordered to pay AAA the sum of Fifty Thousand Pesos (₱50,000.00) as civil indemnity and the amount of Fifty Thousand Pesos (₱50,000.00) as moral damages.[18]

[18] CA *rollo*, p. 25.

In view of the death penalty it imposed on appellant in Criminal Cases No. 1150**31**-H and 1150**32**-H, the RTC forwarded the records of the cases to us for automatic review. However, pursuant to our ruling in *People v. Mateo*,[19] we remanded the cases to the Court of Appeals for disposition. On 26 October 2006, the appellate court promulgated its Decision affirming with modifications the RTC decision. It held that appellant is liable only for simple rape and not qualified rape in Criminal Cases No. 1150**31**-H and No. 1150**32**-H because the qualifying circumstance of AAA's minority was not duly proven by the prosecution. Thus:

> WHEREFORE, the February 12, 2000 Joint Decision, as far as Criminal Case No. 1150**33**-H and Criminal Case No. 1150**34**-H are concerned, is hereby AFFIRMED.
>
> In Criminal Case No. 1150**31**-H and Criminal Case No. 1150**32**-H, finding the accused guilty beyond reasonable doubt of two acts of simple rape, the Court hereby sentences him to suffer the penalty of *Reclusion Perpetua*, to pay civil indemnity in the amount of ₱50,000.00, and to pay moral damages in the amount of ₱50,000.00 in each case.[20]

In his Brief, appellant assigns the following errors:

> I.
>
> THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE UNBELIEVABLE AND UNCORROBORATED TESTIMONY OF COMPLAINANT AAA;
>
> II.
>
> THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT JUANITO DELA CRUZ OF FOUR (4) COUNTS OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[21]

---

[19] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[20] *Rollo,* p. 18.

[21] CA *rollo*, p. 37.

Rape is committed when the accused has carnal knowledge of the victim by force or intimidation and without consent.[22]

In determining the guilt or innocence of the accused in cases of rape, the victim's testimony is crucial in view of the intrinsic nature of the crime in which only two persons are normally involved. The accused may be convicted on the basis of the victim's lone and uncorroborated testimony provided it is clear, positive, convincing, and consistent with human nature.[23]

We have painstakingly reviewed the records and found that appellant had carnal knowledge of AAA through force and intimidation on the dates stated in the informations. In her court testimony, AAA positively and categorically identified the appellant as the one who ravished her, *viz*:

Q. Now, on **July 24, 1998** at about 1:00 in the morning, do you remember where [you were]?

A. Yes, mam.

Q. Where were you then?

A. I was in our house, mam.

Q. Where is your house located?

A. At XXX.

Q. Do you recall of an unusual incident that happened on July 24, 1998 at your house?

A. Yes, mam.

Q. What was that unusual incident?

A. At 1:00 in the early morning my father "*ginapangan niya ako*."

Q. What do you mean "*ginapangan ka*?"

A. He raped me, mam.

---

[22] *People v. Durano*, G.R. No. 175316, 28 March 2007, 519 SCRA 466, 477.

[23] *People v. Gregorio, Jr.*, G.R No. 174474, 25 May 2007, 523 SCRA 216, 229; *People v. Padilla*, G.R. No. 142899, 31 March 2004, 426 SCRA 648, 655.

Q. How did your father rape you?

A. He inserted his penis inside my vagina.

Q. When he inserted his penis into your vagina, what did you do?

A. I was not able to do anything because he already hurt me.

Q. What do you mean he hurt you?

A. I was struggling and he boxed me on my stomach.

Q. And, after that raped (sic) incident, what happened?

A. I was shocked, mam.

Q. Was that the first time that your father raped you?

A. No, mam.

Q. When was the first time?

A. On **March 8, 1995**, mam.

Q Why do you recall March 8, 1995 as the first time that your father raped you?

A That time I was at my work and I went home because my brother is (sic) celebrating his birthday.

Q When (sic) did that rape that happened on March 8, 1995?

A In our house, mam.

xxx xxx xxx

Q Now, on March 8, 1995 when your father raped you, what did you do, if any?

A I cannot do anything, mam, because he get (sic) what he wants.

COURT:

Q When you were raped on March 8, 1995, what did you do when you were being raped?

A I was struggling away from him but he harmed me.

FISCAL:

Q How did your father hurt you?

A He boxed me on my stomach.

Q And, after that raped (sic) incident, what happened?

A I keep silent, mam.

Q Did you not try to tell your mother about that incident?

A No, mam.

Q Why did you not tell your mother?

A I was afraid, mam.

Q Why?

A Because he was threatening to kill my family.

xxx xxx xxx

Q. What about **in the year 1996**, was there an unusual incident that happened between you and your father?

A. Yes, mam, there is.

Q. Can you recall on what month?

A. I cannot remember, mam.

Q. But the same incident happened in 1996?

A. Yes, mam.

Q. If you can recall, how many times did he rape you in the year 1996?

A. Six (6) times, mam.

xxx xxx xxx

Q. Was that six (6) times done on one occasion?

A. No, mam.

Q. So, there were several rapes?

A. Yes, mam.

Q. And, where did these six (6) rapes that happened in 1996 took place?

A. In our house also, mam.

Q. Also in XXX?

A. Yes, mam.

xxx xxx xxx

Q. What about **in 1997**, do you recall of an unusual incident that happened between you and your father?

A. Yes, mam.

Q. What was that unusual incident?

A. About the rape, mam.

Q. When was that if you can recall?

A. I cannot remember, mam, what I remember was only the last raped (sic).

COURT:

Q. But, how many times have you been raped in 1997?

A. Many times, your Honor.

Q. You cannot count it?

A. No, your Honor.

xxx xxx xxx

Q. Now, madam witness, in the first occasion that you were raped by your father, did he tell you anything before raping you?

A. None, sir.

Q. In other words, you would like to tell the court that he does not say anything he just raped you without saying anything?

A. First, he was not able to say anything but after he raped me he said something.

Q. And, what did he tell you?

A. She (sic) told me not to report the incident because she (sic) will kill my family.

Q. Is that all what your father told you?

A. Yes, your Honor.

xxx xxx xxx

Q. You did not tell (sic) your father why he is doing it to you?

A. I told him but he did not listen to me.

xxx xxx xxx

Q. You said that you were punched in the stomach by your father prior to the sexual attacked (sic) on you on July 24, 1998, isn't it? Other than being punched at the stomach, what else did he do, if any?

A. *Sinasampal po*.

Q. How did you describe the pain when you were hit at the stomach?

A. I lost consciousness, sir.

Q. So, it was very strong, is that correct?

A. Yes, sir.

Q. And, he did it with the clench[ed] fist, is that correct?

A. Yes, sir.

Q. And, how many times did he club you?

A. Two (2) times, sir.[24]

It is a well-settled doctrine that the testimony of a youthful rape victim is given full weight and credence considering that when a girl says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.[25] It is against human nature for a young girl to fabricate a story that would expose herself as well as her family to a lifetime of shame, especially when her charge could mean the death or lifetime imprisonment of her own father.[26]

---

[24] TSN, 18 May 1999, pp. 4-24.

[25] *People v. Guillermo,* G.R. No. 173787, 23 April 2007, 521 SCRA 597, 608-609.

[26] *People v. Astrologo,* G.R. No. 169873, 8 June 2007, 524 SCRA 477, 486-487.

Further, the testimony of Dr. Umil corroborated the testimony of AAA on relevant and substantial points.[27]

The testimonies of AAA and Dr. Umil are in harmony with the documentary evidence submitted by the prosecution. The RTC and the Court of Appeals found their testimonies to be "credible, true and sufficiently reliable." Both courts also found no ill motive on their part to testify against appellant.[28]

The rule is that the findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court.[29]

Appellant, however, alleges in his first assigned error several inconsistencies in the testimony of AAA, to wit: (1) AAA testified that she was with her five siblings inside the house when she was raped by appellant on 8 March 1995, while in her subsequent testimony she stated that only DDD was present when she was raped by appellant on the said date; (2) AAA told the court that she was with her five siblings inside the house when she was raped by appellant on 24 July 1998, while in her later testimony she narrated that her siblings were out of the house when she was raped by appellant on the said date; and (3) AAA disclosed that during the rape on 24 July 1998 she saw Rey and Benito outside the house staring at appellant who was then on top of her, while in her other testimony she recounted that she merely learned from EEE that Rey and Benito saw appellant on top of her on the same date.[30]

---

[27] TSN, 11 May 1999, pp. 3-10, 87.

[28] Records, pp. 114-116; CA *rollo*, pp. 13-14.

[29] *People v. Santiago*, G.R. No. 175326, 28 November 2007, pp. 15-16.

[30] CA *rollo*, pp. 43-54.

The credibility of a rape victim is not impaired by some inconsistencies in her testimony.[31] Such inconsistencies are inconsequential when they refer to minor details that have nothing to do with the essential fact of the commission of the crime – carnal knowledge through force and intimidation.[32]

The supposed contradictions cited by appellant refer to minor details and are evidently beyond the essential fact of the commission of rape because they do not pertain to the actual sexual assault itself – that very moment when appellant was forcing himself on AAA. Besides, these minor inconsistencies even bolster the credibility of AAA as one could hardly doubt that her testimony was contrived.[33]

Appellant further claims that AAA's testimony does not jibe with her *Sinumpaang Salaysay* and with the testimony of Dr. Umil as shown by the following: (1) In her *Sinumpaang Salaysay,* AAA stated that she was raped by appellant on 8 March 1995 and on 24 July 1998, while in her court testimony she revealed that she was raped by appellant six times in 1996 and several times in 1997; and (2) AAA divulged that appellant punched her in the stomach and slapped her during the incidents but Dr. Umil testified that no contusions, abrasions or other physical injuries were found on AAA's body during the latter's physical examination.[34]

We have steadfastly ruled that the alleged inconsistencies between the testimony of a witness in open court and his sworn statement are not fatal defects to justify a reversal of judgment of conviction. Such discrepancies do not necessarily discredit the witness since *ex-parte* affidavits are almost always incomplete. Sworn statements taken *ex-parte* are generally considered to be inferior to the testimony given in open court.[35]

---

[31] *People v. Butron*, 338 Phil. 856, 866 (1997).

[32] *People v. Biong*, 450 Phil. 432, 445 (2003).

[33] *People v. Pangilinan*, G.R. No. 171020, 14 March 2007, 518 SCRA 358, 385-386.

[34] *People v. Astrologo, supra* note 26.

[35] *People v. Santiago, supra* note 29 at 384-385; *People v. Beltran, Jr.*, G.R. No. 168051, 27 September 2006, 503 SCRA 715, 729, citing *People v. Layno*, 332 Phil. 612, 625 (1996).

The fact that Dr. Umil found no contusions or abrasions on AAA's body during the latter's physical examination does not render improbable the occurrence of rape because settled is the doctrine that absence of external signs or physical injuries does not negate the commission of rape.[36]

Anent the second assignment of error, appellant argues that it is improbable for appellant to rape AAA in the presence of the latter's siblings; that the informations in Criminal Cases No. 1150**32**-H and 1150**33**-H which allege that the rapes were committed "during the period January to December 1996," and "during the period January to December 1997," respectively, are defective because it does not specifically state the exact dates of the commission of rapes; that AAA is not a credible witness because she did not immediately inform BBB nor the police authorities of the incidents; that the failure of AAA to immediately report the incidents implies that no rapes were committed and that the sexual contacts between him and AAA were voluntary and consensual; that AAA's testimony that she reported the 8 March 1995 incident to EEE is unbelievable because if such was true then the instant case would have been filed earlier and the subsequent rapes could have been avoided; that he never admitted having written the letter on a Marlboro cigarette wrapper to AAA and thus the said letter cannot be used as evidence against him because its due execution and authenticity was not proven; and that the qualifying circumstance of minority of AAA during the incidents was not proven because the latter's birth certificate was not presented in court.[37]

Lust is no respecter of time and place. Thus, we held that rape can be committed inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping.[38] It is not impossible, nor incredible,

---

[36] *People v. Boromeo*, G.R. No. 150501, 3 June 2004, 430 SCRA 533, 546.

[37] *People v. Astrologo, supra* note 26.

[38] *People v. Santiago, supra* note 29 at 382-383.

for AAA's siblings to be in deep slumber and not to be awakened while appellant was raping her.[39]

Failure to specify the exact dates or time when the rapes occurred does not *ipso facto* make the information defective on its face. The reason is obvious. The date or time of the commission of rape is not a material ingredient of the said crime because the *gravamen* of rape is carnal knowledge of a woman through force and intimidation. As such, the date or time need not be stated with absolute accuracy. It is sufficient that the complaint or information states that the crime has been committed at any time as near as possible to the date of its actual commission.[40]

In several cases, we sustained complaints and informations in prosecutions for rape which merely alleged the month and year of its commission.[41] Hence, the allegations in the informations regarding Criminal Cases No. 1150**32**-H and 1150**33**-H which state that rapes were committed "during the period January to December 1996" and "during the period January to December 1997" are sufficient to affirm the conviction of appellant.

We have ruled that the failure of the rape victim to immediately report the rape is not necessarily an indication of a fabricated charge.[42] It is not uncommon for young girls like AAA to conceal for some time the assault on their virtues because of the rapist's threat on their lives, more so when the rapist is living with her as in this case.[43] AAA testified that appellant threatened to kill her and the other family members should she report what he

---

[39] *People v. Mangitngit*, G.R. No. 171270, 20 September 2006, 502 SCRA 560, 576.

[40] *People v. Ibañez*, G.R. No. 174656, 11 May 2007, 523 SCRA 136, 142-143.

[41] *Id*.; *People v. William Ching*, G.R. No. 177150, 22 November 2007, p. 11; *People v. Macabata*, 460 Phil. 409, 421 (2003), citing *People v. Aspuria*, 440 Phil. 41, 45-46 (2002); *People v. Abellano*, 440 Phil. 288, 291 (2002); *People v. Morfi*, 435 Phil. 166, 170 (2002).

[42] *People v. Gregorio, Jr., supra* note 23 at 229.

[43] *Id*.

had done to her. AAA's delay in reporting the sexual violations is therefore understandable and cannot undermine her credibility.

Appellant's letter written on a Marlboro cigarette wrapper asking AAA's forgiveness is admissible in evidence against him. AAA testified that after the instant case was filed in the RTC, BBB visited appellant once in jail. During the said visit, appellant handed to BBB a letter written on a Marlboro cigarette wrapper and thereafter instructed BBB to give the said letter to her. BBB gave her the said letter and told her *"pinaabot ng tatay mo.*" In the said letter, appellant asked her to forgive him for what he did to her as he was only drunk at that time. She knows that the letter was written by appellant because she is familiar with his handwriting and signature.[44] AAA positively identified the letter itself during her direct examination and this was formally offered as documentary evidence for the prosecution.[45]

More importantly, appellant himself readily admitted that the letter is the same letter he wrote for AAA.[46] He also confirmed that the handwriting therein is his.[47] Although later, he would deny the same on the basis that he does not use the Marlboro cigarette brand, but only Winston cigarette brand,[48] we still give more weight to his admission of the said letter since it was given voluntarily and spontaneously. His subsequent denial is not only based on flimsy grounds but also an obvious attempt to cover-up his earlier damaging testimony. As to the contents of the letter, verily, no one would ask for forgiveness unless he has committed a wrong and a plea for forgiveness may be considered analogous to an attempt to compromise, which offer of compromise by the appellant may be received in evidence as an implied admission of guilt pursuant to Section 27, Rule 130 of the Revised Rules on Evidence.[49]

---

[44] TSN, 18 May 1999, pp. 9-11.

[45] *Id*. at 10-11.

[46] TSN, 11 August 1999, pp. 17-18.

[47] *Id*.

[48] *Id*. at 18

[49] *People v. Yparraguire*, 390 Phil. 366, 378 (2000).

We agree, however, with appellant's contention, as affirmed by the Office of the Solicitor General and the Court of Appeals, that the RTC erred in appreciating the qualifying circumstance of minority of AAA and in imposing the maximum penalty of death in Criminal Cases No. 1150**31**-H and 1150**32**-H.

Republic Act No. 7659 is the law applicable for the rapes committed in March 1995 and on several occasions during the period of January to December 1996, as respectively alleged in Criminal Cases No. 1150**31**-H and 1150**32**-H. The said law states that the death penalty shall be imposed if the rape victim is a minor and the offender is a parent. The qualifying circumstances of minority of the victim and the latter's relationship with the offender must be **alleged** and **proven** to warrant the imposition of death penalty.[50]

The informations specifically alleged that AAA was a minor when she was raped by appellant. Nonetheless, the prosecution failed to prove such allegation with sufficient evidence.

AAA solely testified that she was fifteen years old when appellant raped her on March 1995, and sixteen years old when appellant defiled her again six times during the period of January to December 1996.[51] Appellant neither denied nor objected to the said testimony of AAA.

In *People v. Tabanggay*,[52] a case almost identical herein, we held as **insufficient** evidence of minority the bare testimony of the two rape victims, who were sisters, that they were 13 and 14 years of age, respectively, when their father raped them. We emphasized therein that there must be independent evidence proving the age of the victims other than their own testimonies and the absence of denial by the accused. The victims' original or duly certified birth certificate, or baptismal certificate, or school records would suffice as competent evidence of their age. The prosecution presented a photocopy of one of the victim's

[50] *People v. William Ching*, *supra* note 41 at 12.

[51] TSN, 18 May 1999, p. 15.

[52] 390 Phil. 67, 92 (2000).

birth certificate but we gave no probative value to it because it was neither duly certified nor formally offered in evidence. In conclusion, we ruled therein that the prosecution failed to prove the minority of the rape victims.

Applying the foregoing jurisprudence to the case at bar, the bare testimony of AAA as to her age is not sufficient proof that she was a minor when appellant raped her on the given dates. There must be independent evidence showing her minority other than her bare testimony and the absence of denial by the appellant. The independent proof may consist of her original or duly certified birth certificate, or her baptismal certificate or school records.

A photocopy of AAA's birth certificate is included in the records of the present case.[53] Nevertheless, the same was neither properly identified nor formally offered in evidence. Hence, no probative value can be given to it. Aside from the said birth certificate, no other documentary evidence was adduced to prove the age of AAA.

With respect to appellant's failure to object on the aforesaid testimony of AAA, we decreed in *People v. Pruna*,[54] that the failure of the accused to object to the testimonial evidence regarding the rape victim's age shall not be taken against him. In *People v. Tipay*[55] and *People v. Pecayo, Sr.,*[56] we also pronounced that the lack of denial on the part of accused as regards the rape victim's age does not excuse the prosecution from discharging its burden of proving the minority of the rape victim. As the qualifying circumstance of minority alters the nature of the crime of rape and increases the penalty thereof, it must be proved with equal certainty and clearness as the crime itself.[57]

---

[53] Records, p. 15.

[54] 439 Phil. 440, 471 (2002).

[55] 385 Phil. 689 (2000).

[56] 401 Phil. 239 (2000).

[57] *People v. Alipar*, 407 Phil. 81, 97 (2001).

Since the qualifying circumstance of AAA's minority was not duly proven by the prosecution, appellant should be held liable only for simple rape in Criminal Cases No. 1150**31**-H and 1150**32**-H.[58] Consequently, the penalty therein should be reduced to *reclusion perpetua* pursuant to Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659.[59]

Finally, we concur with the disposition of the Court of Appeals that appellant should pay AAA civil indemnity in the amount of ₱50,000.00 and moral damages in the amount of ₱50,000.00 pursuant to prevailing jurisprudence.[60] However, aside from these damages, appellant should also pay AAA exemplary damages in the amount of ₱25,000.00 in order to deter other fathers with perverse tendencies or aberrant sexual behaviors from sexually abusing their own daughters.[61]

**WHEREFORE,** after due deliberation, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 02407 dated 26 October 2006 is hereby AFFIRMED with the *MODIFICATION* that appellant is also ordered to pay AAA exemplary damages in the amount of ₱25,000.00 for each of the four cases.

**SO ORDERED.**

*Ynares-Santiago (Chairperson), Austria-Martinez, Nachura,* and *Reyes, JJ.,* concur.

---

[58] *People v. Layugan*, G.R. Nos. 130498-98, 28 April 2004, 428 SCRA 98, 116.

[59] *Id*.

[60] *People v. Astrologo*, *supra* note 26 at 490-491.

[61] *Id*.

**SECOND DIVISION**

[G.R. No. 179189. February 26, 2008]

**THE PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **REYNALDO RESUMA *y* AGRAVANTE** *alias* **"GEROM,"** *appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; RESTS PRIMARILY WITH TRIAL COURT AS IT HAS THE UNIQUE POSITION OF OBSERVING THE WITNESS' DEPORTMENT ON THE STAND WHILE TESTIFYING.—** Settled is the rule that the determination of the competence and credibility of a witness rests primarily with the trial court, because it has the unique position of observing the witness' deportment on the stand while testifying. Absent any substantial reason to justify the reversal of the assessments and conclusions of the trial court, the reviewing court is generally bound by the former's findings.

**2. ID.; ID.; ID.; ONCE FOUND CREDIBLE, THE LONE TESTIMONY OF A RAPE VICTIM IS SUFFICIENT TO SUSTAIN CONVICTION.—** Any review of a rape case begins with the settled reality that accusing a person of this crime can be done with facility. Thus, the testimony of the complainant must always be scrutinized with great caution. It may not be easy for her to prove the commission of rape; yet it is even more difficult for the accused, though innocent, to disprove his guilt. This principle must be viewed in relation to that which holds that the evidence for the prosecution must stand or fall on its own merits; it cannot draw strength from the weakness of the evidence for the defense. When a rape victim's testimony, however, is straightforward, unflawed by any material or significant inconsistency, then it deserves full faith and credit and cannot be discarded. Once found credible, her lone testimony is sufficient to sustain a conviction.

**3. ID.; ID.; ID.; ID.; CASE AT BAR.—** Applying the principles to the instant case, we find AAA's narration of her harrowing experience trustworthy and convincing. AAA was seven (7)

years old when her sufferings began. It is ludicrous to believe that a child of such tender years would concoct such grave accusations against her stepfather if the same were not true. Even more, it is preposterous to imagine that a child of her age would already have such intimate knowledge of the sexual acts as she described in her testimony with such clarity and coherence, unless the same were borne of personal experience. We have no reason to believe that AAA was motivated by any other reason than to seek justice and vindication for the wrong done her. To be sure, a young girl's revelation that she has been raped, coupled with her voluntary submission to medical examination and her willingness to undergo public trial where she could be compelled to give out the details of an assault to her dignity, cannot be so easily dismissed as mere concoction.

**4. ID.; ID.; ID.; DELAY IN MAKING A CRIMINAL ACCUSATION DOES NOT IMPAIR THE CREDIBILITY OF A WITNESS IF SATISFACTORILY EXPLAINED; CASE AT BAR.—** The purported delay in the filing of the charges against appellant does not infirm the credibility of AAA nor can it be taken against her. We have ruled that delay in making a criminal accusation does not impair the credibility of a witness if such delay is satisfactorily explained. In this case, the following realities justified the delay in filing the cases against appellant: (a) Appellant was AAA's foster father and at that time, the common-law husband of her mother. He thus exercised moral ascendancy over her; (b) AAA was merely seven (7) years old when her ordeal began. A child of such tender years cannot be expected to know how to go about filing a complaint against her abuser; and (c) As AAA's complaints were ignored, if not disbelieved, by CCC, the child was left without recourse until her father discovered her plight. No malice can be convincingly ascribed against BBB in the delay incurred in the filing of the complaints. The allegations of frame-up are too weak to merit consideration.

**5. ID.; ID.; EXPERT WITNESS; TESTIMONY OF DR. GARRIDO CORROBORATE THE ALLEGATIONS OF RAPE.—** What is more, the medical certificate and testimony of Dr. Garrido corroborate the allegations of rape. Dr. Garrido found a "healed laceration ½ cm. each with coranculae formation at 9 and 7 o'clock positions." His examination of AAA likewise yielded the conclusion that she had a ruptured hymen and had lost her physical virginity.

**6. ID.; ID.; ALIBI; TO PROSPER, APPELLANT MUST BE ABLE TO SHOW THE PHYSICAL IMPOSSIBILITY OF HIS BEING AT THE SCENE OF THE CRIME AT THE TIME IT WAS COMMITTED; CASE AT BAR.—** [I]n order for alibi to prosper, appellant must be able to show the physical impossibility of his being at the scene of the crime at the time it was committed. This, appellant failed to discharge. Moreover, his alibi is wanting in material corroboration. Appellant avers that he could not have raped AAA on 8 December 1994 as AAA was at the school whereas he was at the house of his friend, Angelo Cuachon. However, apart from failing to present Angelo Cuachon to substantiate his alibi, appellant himself testified that the latter's house was but 50 to 100 meters from his home and AAA's school was just in Barangay Dancalan proper. Anent the allegation of rape in August 1995, appellant proffered two (2) defenses: (1) he was at his grandfather's farm for a week in August 1995 to help the latter harvest corn; and (2) on 9 August 1995, he was at Iligan's house repairing umbrellas from morning until afternoon. Again, aside from appellant's failure to present any material corroborative witness, he admitted that his grandfather's house was only five (5) kilometers away from his home and which distance can be covered in ten (10) minutes by bus. Likewise, Iligan's testimony is too inadequate to overcome the categorical declarations of AAA. In both cases, appellant did not demonstrate the physical impossibility of his having committed the offenses as charged.

**7. ID.; CRIMINAL PROCEDURE; SPECIAL QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP; MUST BE ALLEGED IN THE INFORMATION FOR CONSIDERATION IN IMPOSITION OF THE PENALTY; CASE AT BAR.—** We uphold the Court of Appeals in affirming appellant's contention that it was erroneous for the RTC to impose the death penalty on him. For failure of the prosecution to properly allege in the information the qualifying circumstance that the victim is under eighteen (18) years of age and that the offender is a common-law-spouse of the parent of the victim, the special qualifying circumstances of minority and relationship could not be taken into consideration and appellant could only be found guilty of simple rape which is punishable by *reclusion perpetua*. These qualifying circumstances, even if proved at the trial and specifically alleged in AAA's sworn affidavit, cannot

be considered because they were not specifically alleged in the information. Section 8, Rule 110 of the 2000 Revised Rules of Criminal Procedure requires that the Information specify the qualifying circumstances attending the commission of the crime for them to be considered in the imposition of penalty. This requirement is beneficial to an accused and may, therefore, be given retroactive effect.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for appellee.
*Public Attorney's Office* for appellant.

**D E C I S I O N**

**TINGA, *J.*:**

For review is the Decision[1] of the Court of Appeals affirming with modification the Decision[2] dated 18 February 2002 of the Regional Trial Court (RTC),[3] Branch 61, of Kabankalan City, Negros Occidental, finding appellant Reynaldo Resuma *y* Agravante *alias* "Gerom" guilty beyond reasonable doubt of two (2) counts of rape and sentencing him to suffer the penalty of *reclusion perpetua*.

In separate Informations[4] dated 5 December 1995 and 23 January 1996 filed by Provincial Prosecutor Reinaldo M. Nolido, appellant was charged with two (2) counts of rape, thus:

*Criminal Case No. 96-1619*

That on or about the 8th day of December, [*sic*] 1994, in the Municipality of Ilog, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named

---

[1] *Rollo*, pp. 5-20. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Executive Justice Arsenio J. Magpale and Associate Justice Antonio L. Villamor.

[2] CA *rollo*, pp. 20-31.

[3] Presided by Assisting Judge Edgardo L. Delos Santos.

[4] CA *rollo*, pp. 11-14.

accused, by means of force, violence and intimidation, did then and there, wilfully [*sic*], unlawfully and feloniously have carnal knowledge with [*sic*] the above-named offended party against her will.

CONTRARY TO LAW.

*Criminal Case No. 96-1644*

That sometime in August, [*sic*] 1995, in the Municipality of Ilog, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there, wilfully [*sic*], unlawfully and feloniously have carnal knowledge with [*sic*] the above-named offended party against her will.

CONTRARY TO LAW.

When arraigned, appellant pleaded not guilty. Joint trial on the merits ensued with the prosecution establishing the following facts:

AAA[5] is the younger of two (2) children[6] born to parents BBB[7] and CCC.[8] In 1990, BBB and CCC separated[9] and sometime later, CCC met appellant and began cohabiting with him. CCC and appellant had three (3) children together, although one (1) child died in infancy. CCC and appellant, with all four (4) children, resided in one house in Barangay Dancalan, Ilog, Negros Occidental. On different dates,[10] including 8 December 1994 and sometime in August 1995, appellant raped AAA.

---

[5] The real name of the victim is withheld per R.A. No. 7610 and R.A. No. 9262. See *People v. Cabalquinto,* G.R. No. 167693, 19 September 2006.

[6] It is not clear if AAA is the legitimate child of her parents. In his testimony, BBB maintained that he and CCC were not legally married (TSN, 15 September 1998, p. 4). On the other hand, CCC claimed that she and BBB were married (TSN, 24 May 1999, pp. 20, 34).

[7] The real name of the victim's father is withheld to protect him and the victim's privacy, also pursuant to R.A. No. 7610 and R.A. No. 9262.

[8] The real name of the victim's mother is likewise withheld to protect her and the victim's privacy, also pursuant to R.A. No. 7610 and R.A. No. 9262.

[9] TSN, 24 May 1999, p. 38.

[10] AAA testified that appellant also raped her on 7 December 1994, 1 and 2 January 1995 and 14 February 1995. However, when she was brought by

The rape subject of the first charge occurred at around nine o'clock in the morning of 8 December 1994. AAA was home washing the dishes and babysitting her two-year old half-brother. Appellant was likewise home, repairing an umbrella. CCC had left the house earlier with AAA's half-sister to attend a baptism and other fiesta activities. AAA's older sister, DDD,[11] had gone to a distant deep well to do laundry.

Per AAA's testimony, when she finished doing the dishes, she went inside the bedroom and shortly thereafter, appellant followed her. Appellant removed AAA's underwear and made her lie on her stomach on the floor. He then undressed himself, squatted on the floor, pulled AAA's legs and laid them on his thighs. Appellant repeatedly inserted his penis into her vagina, and AAA felt pain in her private parts. AAA also felt wetness inside her vagina after appellant had finished his dastardly act. AAA was crying when DDD later returned to the house. When asked, she told her older sister that appellant had again raped her. DDD allegedly reported the incident to their mother CCC, but the latter purportedly simply told them not to disclose the matter to anyone.[12]

The second rape complained of occurred sometime in August 1995 when AAA was again left in their home alone with appellant and her toddler half-brother. In the bedroom, appellant undressed AAA and ordered her to lie on her stomach on the floor. He then had carnal knowledge of her in the same manner as he did on 8 December 1994. AAA told DDD of what happened the following day.[13]

To corroborate AAA's narration, the prosecution presented DDD who testified that in the morning of 8 December 1994, she was washing clothes at a water pump located at a distance

---

her father BBB to the police station, she had forgotten to report the incidents on those dates (TSN, 1 September 1998, pp. 13, 15).

[11] The real name of the victim's older sister is withheld to protect her and the victim's privacy, also pursuant to R.A. No. 7610 and R.A. No. 9262.

[12] TSN, 1 September 1998, pp. 5-10.

[13] *Id*. at 11-13.

from her house. When she returned home at around nine o'clock or ten o'clock that morning, DDD saw AAA weak and crying. When she asked her sister what happened to her, AAA allegedly said that appellant raped her. Later, DDD confided the matter to their mother CCC, who advised her not to tell anyone of the incident to avoid trouble.[14]

Witness Dr. Ricardo Garrido, a medical practitioner, testified that he conducted the physical examination of AAA on 9 October 1995. He affirmed the findings and conclusions on his medico-legal examination report and opined that the lacerations found in AAA's vagina were caused by the penetration of a human penis.[15]

The sister of BBB, EEE,[16] took the stand as a prosecution witness. According to her, in June 1995, she visited her nieces upon the request of BBB for her to check on the condition of his daughters as he was then based in Manila for work, and in that visit she learned from CCC that appellant had raped AAA.[17]

BBB himself testified that he received a letter from EEE on 20 August 1995, telling him that his children were being maltreated. Thus, on 9 October 1995, he went to see his children. BBB recounted that his daughter AAA told him that appellant had raped her. This prompted him to immediately take her to the police station to file charges against appellant and then to the doctor for physical examination.[18]

The defense presented appellant himself, CCC and appellant's aunt, Maria Elisa Agravante Iligan (Iligan). With denial and alibi as his defenses, appellant testified that he could not have raped nor maltreated AAA as he loved her and DDD as his own. Claiming frame-up, appellant testified that BBB caused

---

[14] TSN, 25 August 1998, pp. 27-32.

[15] TSN, 18 August 1998, pp. 3-6.

[16] The real name of the victim's aunt is likewise withheld to protect her and the victim's privacy, also pursuant to R.A. No. 7610 and R.A. No. 9262.

[17] TSN, 25 August 1998, pp. 7, 10, 12.

[18] TSN, 15 September 1998, pp. 6-7.

the filing of the complaints against him to enable BBB to get custody over AAA and DDD.[19]

According to appellant on the stand, on the day in question, 8 December 1994, their *barangay* celebrated its fiesta. He spent the day at the house of his friend Angelo Cuachon, while AAA and DDD were in school. CCC, together with her children AAA and DDD, purportedly left their home at 7:30 that morning while he left shortly thereafter or at about 8:00 a.m.[20]

He likewise claimed that in the month of August 1995, he stayed at his grandfather's farm for one (1) week harvesting corn. Apart from this, he spent his days roaming from house to house in Guilungan, Cauayan, Bocana, Ilog, Sonedco and other towns offering his services as an umbrella repairman. On occasions, he had lunch at Iligan's house where he did some umbrella repairs.[21] This was corroborated by Iligan on the witness stand. Routinely, appellant visited Iligan's house around six (6) times monthly.[22]

In her testimony, CCC sided with appellant. She denied AAA's claim that she reported to her the rape incident of 8 December 1994. She asserted that appellant did not sexually abuse AAA. Claiming that she did not have knowledge of the purported rape until EEE told her about it, she could not believe the charges against appellant to be true as she was home with the children all the time and did not see appellant committing any maltreatment or sexual abuse against her children.[23]

The trial court found appellant guilty of qualified rape on both charges. Thus, appellant was sentenced to suffer the death penalty for each count and to indemnify the victim in the amount of ₱75,000.00 by way of civil indemnity and ₱50,000.00 as moral damages in each case.[24]

---

[19] TSN, 29 September 1998, p. 10.

[20] *Id*. at 6-7.

[21] *Id*. at 8-10.

[22] TSN, 24 May 1999, pp. 8-9.

[23] *Id*. at 20-21, 23, 26, 58-59.

[24] *Supra* note 2 at 31.

Conformably with this Court's decision in *People v. Mateo*,[25] appellant's appeal by way of automatic review was transferred to the Court of Appeals. Finding no sufficient basis to disturb the findings and conclusions of the trial court, the appellate court, on 30 November 2006, rendered its decision affirming appellant's conviction but modifying the penalty and damages imposed. The dispositive portion of the decision reads:

> WHEREFORE, the appealed judgment of the court *a quo* is **AFFIRMED,** with the **MODIFICATION** that accused-appellant Reynaldo Resuma is hereby sentenced to suffer the penalty of ***reclusion perpetua*** and to pay the amounts of ₱50,000.00 as civil liability, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages for each count of rape.[26]
>
> Costs *de oficio*.
>
> SO ORDERED.

Finding that the Informations did not allege the two qualifying circumstances of minority and relationship, the appellate court ruled that appellant was charged only with simple rape. Observing appellant's right to be informed of the charges against him and right to due process, the appellate court reduced the penalty imposed upon appellant to *reclusion perpetua*.

Now, the case is with the Court again.

Before the Court, appellant has not filed a supplemental brief, relying instead on the same brief originally filed with this Court and later presented to the Court of Appeals after the remand of the case. The assignment of errors in appellant's brief reads[27]—

> I
>
> THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITING [*sic*] THE ACCUSED-APPELLANT ON THE GROUND THAT HIS GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.

---

[25] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[26] *Supra* note 1 at 19.

[27] *Supra* note 2 at 60-72.

II

ASSUMING *ARGUENDO* THAT THE ACCUSED-APPELLANT IS GUILTY, THE TRIAL COURT GRAVELY ERRED IN IMPOSING UPON HIM THE CAPITAL PUNISHMENT OF DEATH DESPITE THE FACT THAT THE QUALIFYING CIRCUMSTANCES OF RELATIONSHIP AND MINORITY WERE NOT ALLEGED IN THE INFORMATION.

Any review of a rape case begins with the settled reality that accusing a person of this crime can be done with facility. Thus, the testimony of the complainant must always be scrutinized with great caution. It may not be easy for her to prove the commission of rape; yet it is even more difficult for the accused, though innocent, to disprove his guilt. This principle must be viewed in relation to that which holds that the evidence for the prosecution must stand or fall on its own merits; it cannot draw strength from the weakness of the evidence for the defense.[28] When a rape victim's testimony, however, is straightforward, unflawed by any material or significant inconsistency, then it deserves full faith and credit and cannot be discarded. Once found credible, her lone testimony is sufficient to sustain a conviction.[29]

After judicious and painstaking study of the arguments of the parties and of the records *a quo*, we reach the inescapable conclusion that the prosecution has effectively established its case and appellant's contentions thus deserve scant consideration.

Settled is the rule that the determination of the competence and credibility of a witness rests primarily with the trial court,[30] because it has the unique position of observing the witness' deportment on the stand while testifying. Absent any substantial reason to justify the reversal of the assessments and conclusions

---

[28] *People v. Miranda*, G.R. No. 169078, 10 March 2006, 484 SCRA 555, 561; citing *People v. Fernandez*, 434 Phil. 435, 444-445.

[29] *People v. Penaso*, 383 Phil. 200, 208 (2000) citing *People v. Caratay*, 316 SCRA 251. See also *People v. Babera*, 388 Phil. 44, 53 (2000), citing *People v. Gapasan*, 243 SCRA 53 and *People v. Bulaybulay*, 248 SCRA 601.

[30] *People v. Biong*, 450 Phil. 432, 445 (2003), citing *People v. Tadeo*, G.R. Nos. 128884-85, 3 December 2001, 371 SCRA 303.

of the trial court, the reviewing court is generally bound by the former's findings.[31]

In scrutinizing such credibility, jurisprudence has established the following doctrinal guidelines: (1) the reviewing court will not disturb the findings of the lower court unless there is a showing that it had overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that could affect the result of the case; (2) the findings of the trial court pertaining to the credibility of witnesses are entitled to great respect and even finality as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testified in clear, positive and convincing manner and remained consistent on cross-examination is a credible witness.[32]

Applying the principles to the instant case, we find AAA's narration of her harrowing experience trustworthy and convincing. AAA was seven (7) years old when her sufferings began. It is ludicrous to believe that a child of such tender years would concoct such grave accusations against her stepfather if the same were not true. Even more, it is preposterous to imagine that a child of her age would already have such intimate knowledge of the sexual acts as she described in her testimony with such clarity and coherence, unless the same were borne of personal experience.[33]

We have no reason to believe that AAA was motivated by any other reason than to seek justice and vindication for the wrong done her. To be sure, a young girl's revelation that she has been raped, coupled with her voluntary submission to medical examination and her willingness to undergo public trial where she could be compelled to give out the details of an assault to her dignity, cannot be so easily dismissed as mere concoction.[34]

---

[31] *Id*., citing *People v. Glabo*, G.R. No. 129248, 7 December 2001, 371 SCRA 567.

[32] *People v. Penaso*, 383 Phil. 200, 202 (2000); See also *People v. Corral*, *supra*; *People v. Antonio*, 447 Phil. 731, 738-739 (2003); *People v. Pascua*, 462 Phil. 245, 251-252 (2003).

[33] TSN, 1 September 1998, pp. 6-A–8, 12-13.

[34] *People v. Antonio*, 447 Phil. 731, 741-742 (2003).

Likewise, appellant's imputation that BBB's desire to gain custody over his children was the impelling motive behind the filing of these cases is too trite and feeble to merit consideration. As the Court of Appeals aptly pointed out, "[N]o mother, or father in this case, would stoop so low as to subject his daughter to [the] hardships and shame concomitant to a rape prosecution just to assuage his own feelings."[35] Indeed, no parent in his right mind would subject his child to the humiliation, disgrace and trauma attendant to a prosecution for rape, if the motivation were not solely the desire to incarcerate the person responsible for his child's defilement.[36]

The purported delay in the filing of the charges against appellant does not infirm the credibility of AAA nor can it be taken against her.[37] We have ruled that delay in making a criminal accusation does not impair the credibility of a witness if such delay is satisfactorily explained.[38] In this case, the following realities justified the delay in filing the cases against appellant: (a) Appellant was AAA's foster father and at that time, the common-law husband of her mother. He thus exercised moral ascendancy over her;[39] (b) AAA was merely seven (7) years old when her ordeal began. A child of such tender years cannot be expected to know how to go about filing a complaint against her abuser; and (c) As AAA's complaints were ignored, if not disbelieved, by CCC, the child was left without recourse until her father discovered her plight. No malice can be convincingly ascribed against BBB in the delay incurred in the filing of the complaints. The allegations of frame-up are too weak to merit consideration.

---

[35] *Supra* note 1 at 13, citing *People v. Gecomo*, 254 SCRA 82 (1996).

[36] See *People v. Terrible*, 440 Phil. 602, 616 (2002), citing *People v. Silvano*, 309 SCRA 362 (1999).

[37] *People v. Sanchez*, 426 Phil. 19, 34 (2002), citing *People v. Montefalcon*, 364 Phil. 647 (1999). See also *People v. Baring, Jr.*, 425 Phil. 559, 570 (2002).

[38] *People v. Francisco*, 448 Phil. 805, 816 (2003), citing *People v. Tanail*, 323 SCRA 667 [2000]; *People v. Narido*, 316 SCRA 131 (1999).

[39] *People v. Sanchez*, 426 Phil. 19 (2002).

What is more, the medical certificate and testimony of Dr. Garrido corroborate the allegations of rape. Dr. Garrido found a "healed laceration ½ cm. each with coranculae formulation at 9 and 7 o'clock positions."[40] His examination of AAA likewise yielded the conclusion that she had a ruptured hymen and had lost her physical virginity.[41]

Upon the other hand, appellant's plain denial of any wrongdoing cannot prevail. And so cannot his alibi. For, in order for alibi to prosper, appellant must be able to show the physical impossibility of his being at the scene of the crime at the time it was committed.[42] This, appellant failed to discharge. Moreover, his alibi is wanting in material corroboration.[43]

Appellant avers that he could not have raped AAA on 8 December 1994 as AAA was at the school whereas he was at the house of his friend, Angelo Cuachon. However, apart from failing to present Angelo Cuachon to substantiate his alibi, appellant himself testified that the latter's house was but 50 to 100 meters from his home and AAA's school was just in Barangay Dancalan proper.[44] Anent the allegation of rape in August 1995, appellant proffered two (2) defenses: (1) he was at his grandfather's farm for a week in August 1995 to help the latter harvest corn; and (2) on 9 August 1995, he was at Iligan's house repairing umbrellas from morning until afternoon. Again, aside from appellant's failure to present any material corroborative witness, he admitted that his grandfather's house was only five (5) kilometers away from his home and which distance can be covered in ten (10) minutes by bus.[45] Likewise, Iligan's testimony is too inadequate to overcome the categorical declarations of AAA.

---

[40] See Medico-Legal Examination Report, Exhibit "D".

[41] *Id*.

[42] *People v. Balbarona*, 428 SCRA 127, 143, citing *People v. Baltazar*, 343 SCRA 250 (2000).

[43] See *People v. Cachapero*, G.R. No. 153008, 20 May 2004, 428 SCRA 744, 757, citing *People v. Mayor Sanchez*, 361 Phil. 692, 25 January 1999; *People v. Realin*, 361 Phil. 422, 440, 21 January 1999.

[44] TSN, 29 September 1998, pp. 21, 23.

[45] *Id*. at 29.

In both cases, appellant did not demonstrate the physical impossibility of his having committed the offenses as charged. More importantly, the defense of alibi which is inherently weak becomes even weaker in the face of AAA's unqualified and positive identification of appellant as the author of the repulsive crimes against her.[46] We quote the observations of the court *a quo*:

> [T]he Court does not believe accused's testimony that some schools were holding classes although it was the fiesta of their barangay, Dancalan. Human experience tells us that schools do not hold classes during fiestas. The testimony of [AAA] that she was left at home to watch the second child of the accused by [BBB] is more believable because as testified to by [BBB], her second child by the accused was only two (2) years old in 1995, while [AAA] was only eight years old (May 24, 1999 Hearing, page 45, TSN). In other words, it would be unnatural to have a two-year-old child to be (sic) left alone as insinuated by herein accused. The Court also cannot give credence to accused's testimony that he could not have raped [AAA] on December 8, 1994 because he was in the house of his friend Angelo Cuachon. He admitted that his friend's house is near to (sic) his (accused's) house. Accused did not even bother to present Angelo Cuachon to corroborate accused's testimony of alibi. At any rate, the proximity of accused's house and that of his friend will not render it physically impossible nor difficult for the accused to perpetrate the crime imputed to him.
>
> Likewise, the Court cannot sustain the defense of alibi simply because in the month of August 1995, [accused] was either harvesting corn in the land owned by his grandfather located at Kilometer 114 or he was in Guiljungan, Cauayan, Negros Occidental roaming around to repair umbrellas of customers. The defense failed to prove that the land where he was harvesting corn is far from his house, the scene where the alleged rape was committed. The Court can likewise take judicial notice of the distance from Dancalan, Ilog to Guiljungan, Cauayan and travel time which is merely twenty (20) minutes by bus. It was not physically impossible for the accused to be present at the crime scene or at the vicinity thereof. Accused also failed to present his grandfather Bonifacio Caldito to corroborate his

[46] See *People v. Gonzales*, G.R. No. 141599, 29 June 2004, 433 SCRA 102, 116, citing *People v. Dacara*, G.R. No. 135822, 25 October 2001, 368 SCRA 278.

testimony. Although accused's defense of alibi that he was in Guiljungan, Cauayan repairing umbrellas was corroborated by his aunt, Maria Elisa Agravante Iligan, the same is still extremely weak.[47]

We uphold the Court of Appeals in affirming appellant's contention that it was erroneous for the RTC to impose the death penalty on him. For failure of the prosecution to properly allege in the information the qualifying circumstance that the victim is under eighteen (18) years of age and that the offender is a common-law-spouse of the parent of the victim, the special qualifying circumstances of minority and relationship could not be taken into consideration and appellant could only be found guilty of simple rape which is punishable by *reclusion perpetua*.[48] These qualifying circumstances, even if proved at the trial and specifically alleged in AAA's sworn affidavit, cannot be considered because they were not specifically alleged in the information. Section 8, Rule 110 of the 2000 Revised Rules of Criminal Procedure requires that the information specify the qualifying circumstances attending the commission of the crime for them to be considered in the imposition of penalty. This requirement is beneficial to an accused and may, therefore, be given retroactive effect.[49]

Thus, we sustain the finding of guilt of appellant on both counts and affirm the Court of Appeals in imposing the penalty of *reclusion perpetua*. We likewise affirm the award of damages in the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages for each count of rape.[50]

**WHEREFORE,** the Decision of the Court of Appeals in CA-G.R. CR–H.C. No. 00081 is AFFIRMED. Appellant

---

[47] *Supra* note 1 at 26-27.

[48] *People v. Blancaflor*, 464 Phil. 824 (2004).

[49] *People v. Sayaboc*, 464 Phil. 824, 844 (2004), citing *People v. Salalima*, 415 Phil. 414 (2001); *People v. Moreno*, G.R. No. 140033, 25 January 2002, 374 SCRA 667, 680; *People v. Mactal*, 449 Phil. 653, 663 (2003). See also *People v. Hernandez*, G.R. No. 139697, 15 June 2004, 432 SCRA 104, 122.

[50] See *People v. Almendral*, G.R. No. 126025, 6 July 2004, 433 SCRA 440, 454.

REYNALDO RESUMA *y* AGRAVANTE *alias* "GEROM" is found guilty of simple rape and sentenced, in each of the criminal cases subject of this review, to suffer the penalty of *reclusion perpetua* and to pay the victim AAA (to be identified through the Informations in this case) the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.

Costs *de oficio.*

**SO ORDERED.**

*Quisumbing (Chairperson), Carpio, Carpio Morales,* and *Velasco, Jr., JJ.,* concur.

---

**EN BANC**

[A.M. No. 07-3-13-SC. February 27, 2008]

## IN RE: COMPLIANCE OF IBP CHAPTERS WITH ADM. ORDER NO. 16-2007, LETTER-COMPLIANCE OF ATTY. RAMON EDISON C. BATACAN

**SYLLABUS**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; SUPREME COURT; SUPERVISION OVER THE BAR; INTEGRATED BAR OF THE PHILIPPINES; ROTATION RULE.—** Section 47, Article VII of the By-Laws of the IBP, as amended, provides: Sec. 47. *National Officers*. — **The Integrated Bar of the Philippines shall have a President and Executive Vice President to be chosen by the Board of Governors from among nine (9) regional governors, as much as practicable, on a rotation basis.** The governors shall be *ex officio* Vice President for their respective regions. There shall also be a Secretary and Treasurer of the Board of Governors

to be appointed by the President with the consent of the Board. (As amended pursuant to Bar Matter 491). The Executive Vice President shall automatically become President for the next succeeding term. The Presidency shall rotate among the nine Regions.

**2. ID.; ID.; ID.; ID.; ID.; ID.; RESTORED FORMER SYSTEM OF ELECTION OF IBP PRESIDENT AND EXECUTIVE VICE PRESIDENT AND AUTOMATIC SUCCESSION BY EVP TO PRESIDENCY.—** It is a product of Bar Matter No. 491 dated October 6, 1989, *In the Matter of the Inquiry into the 1989 Elections of the Integrated Bar of the Philippines*, where the Court, seeing the need to protect the non-political character of the IBP and to reduce, if not completely eliminate, the expensive electioneering practices of those who vie for the top IBP posts, ordered the repeal of Bar Matter No. 287, dated July 8, 1985, which provided for the direct election by the House of Delegates of the IBP President, EVP, as well as officers of the said House. Bar Matter No. 491 restored the former system of having the IBP President and Executive Vice-President elected by the Board of Governors from among themselves as well as the right of automatic succession by the Executive Vice-President to the presidency upon the expiration of their two-year term. It amended Sections 37 (Composition of the Board) and 39 (Nomination and Election of the Governors), both of Article VI of the IBP By-Laws.

**3. ID.; ID.; ID.; ID.; ID.; ID.; ELECTION OF ATTY. SANTIAGO AS EVP DID NOT RESULT IN ANY MEANINGFUL REPRESENTATION OF THE SOUTHERN LUZON REGION WHICH WOULD SATISFY THE SPIRIT OF THE ROTATION RULE.—** On June 13, 2005, Atty. Santiago of Southern Luzon was elected as EVP. On June 20, 2005, seven days after her election, she tendered her resignation, which resignation was approved by the IBP in a Resolution dated June 25, 2005. On the same day, Atty. Salazar of the IBP Bicol Region was elected as EVP, replacing Atty. Santiago. Based on these circumstances, one can readily see that the election of Atty. Santiago as EVP did not result in any meaningful representation of the Southern Luzon Region which would satisfy the spirit of the rotation rule. The proximity of the dates, from the time that she was elected to the time she tendered her resignation (seven days) and the time the same was accepted by the IBP (five days) shows that there was no sufficient opportunity for

her to discharge the duties of an EVP. Significantly, records do not show that Atty. Santiago took her oath of office.

**4. ID.; ID.; ID.; ID.; ID.; ATTY. LEONARDO DE VERA CLEARLY EXERCISED FUNCTIONS OF AN EVP.—** There is no merit to Atty. Batacan's claim that in view of the removal of Atty. Leonardo de Vera, IBP Eastern Mindanao Region was denied meaningful participation. In *Velez*, the Court held that "the rotation rule had been completed despite the non-assumption by Atty. De Vera to the IBP Presidency." Atty. De Vera's removal from the position of EVP took place on the twenty-third month of his term for 2003 to 2005. Only a month short of completing his term, it is clear that he had effectively exercised the functions of an EVP as representative of the IBP Eastern Mindanao Region.

**5. ID.; ID.; ID.; ID.; ID.; ID.; THE IBP BOARD OF GOVERNORS ACTED CORRECTLY IN APPLYING THE ROTATION RULE WITH FLEXIBILITY.—** Moreover, the Court held in *Velez* that Section 47 of the IBP Rules uses the phrase "as much as practicable" to clearly indicate that the rotation rule is not a rigid and inflexible rule as to bar exceptions in compelling and exceptional circumstances. The Court agrees with Atty. Vinluan that the instant case is an exception to the rotation rule. Atty. Batacan himself narrated that in the election on April 25, 2007, which was the first meeting of the IBP Board of Governors for 2007 to 2009, he objected to the nomination of Atty. Vinluan as EVP citing the rotation rule. Despite his objections, the Board of Governors proceeded with the election of its EVP, pursuant to Section 47, Article VII of the IBP By-Laws and Atty. Vinluan emerged as the winner. The Board acted correctly in not upholding the objections of Atty. Batacan. It applied the rotation rule with flexibility, an act that is valid, concommitant with the tenor of Section 47 which qualifies the application of the rotation rule with the phrase "as much as practicable."

## R E S O L U T I O N

**AUSTRIA-MARTINEZ, *J.*:**

Before the Court is the Letter of Atty. Ramon Edison C. Batacan, (Atty. Batacan), Integrated Bar of the Philippines (IBP)

Governor for Eastern Mindanao Region, dated April 27, 2007, claiming that the election of Atty. Rogelio Vinluan (Atty. Vinluan), IBP Governor for Southern Luzon, as Executive Vice-President (EVP) for the term 2007 to 2009, is null and void on the ground that it violated the "rotation rule."[1]

Atty. Batacan asserts that under the "rotation rule," embodied in Section 47, Article VII of the IBP By-Laws, all IBP regions must take turns in having a representative as EVP, who shall automatically succeed to the IBP Presidency. He posits that since Atty. Pura Angelica Y. Santiago (Atty. Santiago) of IBP Southern Luzon was validly elected as EVP on June 13, 2005, said region is disqualified from fielding another candidate for EVP until all the regions have taken turns in holding the position. Considering that Atty. Vinluan comes from IBP Southern Luzon and the other regions have not yet taken their turn in fielding an EVP, Atty. Vinluan's election as EVP on April 25, 2007 is null and void as it contravened the rotation rule.[2]

Atty. Batacan further argues: The fact that Atty. Santiago was never able to assume the presidency of the IBP is immaterial in the application of the rotation rule following the Court's pronouncement in *Velez v. De Vera*[3] that "the rotation rule had been completed despite the non-assumption of Atty. De Vera to the IBP Presidency." Voluntary renunciation of the office will not change the fact that Atty. Santiago was validly elected to the position which commenced the new rotation representing the Southern Luzon Region. To hold otherwise would defeat the very purpose of the rotation rule as any duly elected EVP would just conveniently resign before his term ends thus qualifying his region again in the same round of rotation. Since he (Atty. Batacan), as Governor of the Eastern Mindanao Region, was the remaining candidate who was qualified and was voted upon to the position, he is rightfully entitled to assume the EVP position. In any event, equity dictates that he, the Governor of the Eastern

[1] *Rollo*, p. 135.

[2] *Id*. at 139-140.

[3] A.C. No. 6697, Bar Matter No. 1227, A.M. No. 05-5-15-SC, July 25, 2006, 496 SCRA 345.

Mindanao Region, be allowed to effectively act as EVP since the said region was denied meaningful participation in the rotation rule when Atty. De Vera of Eastern Mindanao was removed as EVP in 2005.[4]

In its Comment, the IBP National Office through its Deputy General Counsel Atty. Rodolfo G. Urbiztondo, stated that the election of Atty. Vinluan representing Southern Luzon is a violation of the rotation rule since the election of Atty. Santiago of Southern Luzon began a new cycle of rotation and it is only after the rotation is completed that a Governor from the Southern Luzon Region can be elected again.[5]

In his Comment, Atty. Vinluan avers that his election as EVP on April 25, 2007 is valid for the following reasons: Atty. Santiago never took her oath of office; she never assumed the position of EVP; she did not function as EVP at any time; neither did she have the chance to serve out her term as evidenced by the fact that 12 days after her election, Atty. Jose Vicente B. Salazar of the IBP Bicol Region was elected EVP and eventually assumed the IBP Presidency beginning 2005. As stated in Atty. Batacan's letter, Atty. Santiago voluntarily relinquished the EVP Position through a letter addressed to the IBP Board. Then IBP President Atty. Jose Anselmo I. Cadiz stated in the June 25, 2005 IBP Board of Governors Meeting that Atty. Santiago's letter is clear that she is foregoing her assumption of the EVP position. Atty. Santiago herself made clear that "considering that she has not taken her oath, she thinks that the more appropriate term to use is to forego her assumption of the position." Thus, the election of Atty. Santiago cannot be considered as one turn within the meaning of the "rotation rule."

Atty. Vinluan further maintains that the election of Atty. Santiago did not trigger the beginning of a new rotation cycle and that it was only with the term of Atty. Salazar of IBP Bicol Region, who was elected after Atty. Santiago, and who eventually served out his term for 2005 to 2007, as EVP that the new cycle began. Atty. Vinluan argues that Atty. Batacan's invocation

[4] *Rollo*, pp. 140-141.

[5] *Id*. at 226-227.

of the Court's statement in *Velez* "that the rotation rule had been completed despite the non-assumption by Atty. De Vera to the IBP Presidency" is misplaced since Atty. De Vera had in fact served as EVP for the term 2003 to 2005, while the same cannot be said in the case of Atty. Santiago. IBP Southern Luzon has not been represented yet in the new rotation cycle for EVPs.

Atty. Vinluan further asserts that he was elected pursuant to Section 47 of the IBP By-Laws where he obtained the majority of votes cast thereat. He also cites the Court's pronouncement in *Velez* that Section 47 of the IBP Rules uses the phrase "as much as practicable" to indicate that the rotation rule is not a rigid and inflexible rule as to bar exceptions in compelling and exceptional circumstances, such as this case. Finally, Atty. Vinluan claims that Atty. Batacan contradicted himself when he said that equity dictates that the Governor of the Eastern Mindanao Region be allowed to act as EVP since the region was denied meaningful participation in the rotation rule when Atty. De Vera was removed as EVP; while in the instant case, Atty. Batacan seeks to deny IBP Southern Luzon of meaningful participation.

Section 47, Article VII of the By-Laws of the IBP, as amended, provides:

> Sec. 47. *National Officers*. - **The Integrated Bar of the Philippines shall have a President and Executive Vice President to be chosen by the Board of Governors from among nine (9) regional governors, as much as practicable, on a rotation basis.** The governors shall be *ex officio* Vice President for their respective regions. There shall also be a Secretary and Treasurer of the Board of Governors to be appointed by the President with the consent of the Board. (As amended pursuant to Bar Matter 491).
>
> The Executive Vice President shall automatically become President for the next succeeding term. The Presidency shall rotate among the nine Regions. [Emphasis and underscoring supplied]

It is a product of Bar Matter No. 491[6] dated October 6, 1989, *In the Matter of the Inquiry into the 1989 Elections of the Integrated Bar of the Philippines*, where the Court, seeing the

[6] *In the Matter of the Inquiry into the 1989 Elections of the Integrated Bar of the Philippines,* Bar Matter No. 491, October 6, 1989, 178 SCRA 398, 419.

need to protect the non-political character of the IBP and to reduce, if not completely eliminate, the expensive electioneering practices of those who vie for the top IBP posts, ordered the repeal of Bar Matter No. 287, dated July 8, 1985, which provided for the direct election by the House of Delegates of the IBP President, EVP, as well as officers of the said House.

Bar Matter No. 491 restored the former system of having the IBP President and Executive Vice-President elected by the Board of Governors from among themselves as well as the right of automatic succession by the Executive Vice-President to the presidency upon the expiration of their two-year term. It amended Sections 37 (Composition of the Board)[7] and 39 (Nomination and Election of the Governors), both of Article VI of the IBP By-Laws.[8]

As the Court explained in *Garcia v. De Vera*:[9]

> The changes adopted by the Court simplified the election process and thus made it less controversial. The grounds for disqualification were reduced, if not totally eradicated, for the pool from which the Delegates may choose their nominees is diminished as the rotation process operates.
>
> The simplification of the process was in line with this Court's vision of an Integrated Bar which is non-political and effective in the discharge of its role in elevating the standards of the legal profession, improving the administration of justice and contributing to the growth and progress of the Philippine society.[10]

---

[7] Sec. 37. Composition of the Board. — The Integrated Bar of the Philippines shall be governed by a Board of Governors consisting of nine (9) Governors from the (9) regions as delineated in Section 3 of the Integration Rule, on the representation basis of one (1) Governor for each region to be elected by the members of the House of Delegates from the region only. The position of Governor shall be rotated among the different Chapters in the Region.

[8] Sec. 39. Nomination and election of the Governors. At least one (1) month before the national convention the delegates from each region shall elect the governor for their region, the choice of which shall as much as possible be rotated among the chapters in the region.

[9] *In Re: Petition to Disqualify Atty. Leonard De Vera, on Legal and Moral Grounds, From being Elected IBP Governor for Eastern Mindanao in the May 31, IBP Elections,* A.C. No. 6052, December 11, 2003, 418 SCRA 27.

[10] *Id*. at 44-45.

Based on the foregoing, one can see that the Court introduced the rotation rule in order to give all the regions and chapters their respective turns, each for a term of two years, in having a representative in the top positions, with the aim of restoring the non-political character of the IBP and reducing the temptation of electioneering for the said posts.

The principal question is whether the election on June 13, 2005 of Atty. Santiago of IBP Southern Luzon for the term 2005 to 2007 as EVP constitutes one turn under the rotation rule; corollarily, whether Atty. Vinluan who comes from the same IBP region is barred from being elected as EVP for the term 2007 to 2009.

The Court's answer is in the negative.

On June 13, 2005, Atty. Santiago of Southern Luzon was elected as EVP.[11] On June 20, 2005, seven days after her election, she tendered her resignation, which resignation was approved by the IBP in a Resolution dated June 25, 2005.[12] On the same day, Atty. Salazar of the IBP Bicol Region was elected as EVP, replacing Atty. Santiago.[13]

Based on these circumstances, one can readily see that the election of Atty. Santiago as EVP did not result in any meaningful representation of the Southern Luzon Region which would satisfy the spirit of the rotation rule. The proximity of the dates, from the time that she was elected to the time she tendered her resignation (seven days) and the time the same was accepted by the IBP (five days) shows that there was no sufficient opportunity for her to discharge the duties of an EVP. Significantly, records do not show that Atty. Santiago took her oath of office.

There is no merit to Atty. Batacan's claim that in view of the removal of Atty. Leonardo de Vera, IBP Eastern Mindanao Region was denied meaningful participation.

---

[11] *Rollo*, pp. 136, 223.

[12] *Rollo*, p. 224.

[13] *Id.* at 224.

In *Velez*, the Court held that "the rotation rule had been completed despite the non-assumption by Atty. De Vera to the IBP Presidency."[14] Atty. De Vera's removal from the position of EVP took place on the twenty-third month of his term for 2003 to 2005.[15] Only a month short of completing his term, it is clear that he had effectively exercised the functions of an EVP as representative of the IBP Eastern Mindanao Region.

Moreover, the Court held in *Velez* that Section 47 of the IBP Rules uses the phrase "as much as practicable" to clearly indicate that the rotation rule is not a rigid and inflexible rule as to bar exceptions in compelling and exceptional circumstances.[16]

The Court agrees with Atty. Vinluan that the instant case is an exception to the rotation rule.

Atty. Batacan himself narrated that in the election on April 25, 2007, which was the first meeting of the IBP Board of Governors for 2007 to 2009, he objected to the nomination of Atty. Vinluan as EVP citing the rotation rule. Despite his objections, the Board of Governors proceeded with the election of its EVP, pursuant to Section 47, Article VII of the IBP By-Laws and Atty. Vinluan emerged as the winner.

The Board acted correctly in not upholding the objections of Atty. Batacan. It applied the rotation rule with flexibility, an act that is valid, concommitant with the tenor of Section 47 which qualifies the application of the rotation rule with the phrase "as much as practicable."

There being no grave abuse of discretion or gross error in the conduct of said election, the Court must uphold the election of Atty. Vinluan as EVP for the term 2007 to 2009.

As the Court held in *Velez*:

While it is true that the Supreme Court has been granted an extensive power of supervision over the IBP, it is axiomatic that such power should be exercised prudently. **The power of supervision**

[14] *Velez v. De Vera*, *supra* note 3 at 398.

[15] *Id*. at 399.

[16] *Id*.

**of the Supreme Court over the IBP should not preclude the IBP from exercising its reasonable discretion especially in the administration of its internal affairs governed by the provisions of its By-Laws. The IBP By-Laws were precisely drafted and promulgated so as to define the powers and functions of the IBP and its officers, establish its organizational structure, and govern relations and transactions among its officers and members. With these By-Laws in place, the Supreme Court could be assured that the IBP shall be able to carry on its day-to-day affairs, without the Court's interference.**

**It should be noted that the general charge of the affairs and activities of the IBP has been vested in the Board of Governors. The members of the Board are elective and representative of each of the nine regions of the IBP as delineated in its By-Laws. The Board acts as a collegiate body and decides in accordance with the will of the majority.** The foregoing rules serve to negate the possibility of the IBP Board acting on the basis of personal interest or malice of its individual members. **Hence, the actions and resolutions of the IBP Board deserve to be accorded the disputable presumption of validity, which shall continue, until and unless it is overcome by substantial evidence and actually declared invalid by the Supreme Court.** In the absence of any allegation and substantial proof that the IBP Board has acted without or in excess of its authority or with grave abuse of discretion, we shall not be persuaded to overturn and set aside the Board's action or resolution.[17] [Emphasis supplied]

**WHEREFORE,** the Court hereby *RESOLVES* to *AFFIRM* the election of Atty. Rogelio A. Vinluan on April 25, 2007, by the Board of Governors of the Integrated Bar of the Philippines, as its Executive Vice-President for the term 2007-2009.

**SO ORDERED.**

*Puno, C.J., Sandoval-Gutierrez, Carpio, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes,* and *Leonardo-de Castro, JJ.,* concur.

*Quisumbing, J.,* on official leave.

*Ynares-Santiago, J.,* on leave.

---

[17] *Velez v. De Vera*, *supra* note 3, at 392-393.

**FIRST DIVISION**

[A.M. No. P-07-2405. February 27, 2008]
(Formerly OCA I.P.I. No. 05-2342-P)

**JUDGE FLORENTINO L. LABIS, JR.,** *complainant, vs.* **GENARO ESTAÑOL, Process Server, Municipal Trial Court in Cities (MTCC), Himamaylan, Negros Occidental,** *respondent.*

**SYLLABUS**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; PUBLIC OFFICERS; COURT PERSONNEL; PROCESS SERVER; DUTY.—** A process server's primary duty is to serve court notices. This requires utmost responsibility on his part by ensuring that all notices assigned to him are duly served on the parties. The significance of the duties of a process server was enunciated in *Musni v. Morales* (373 Phil. 703 [1999]). It is through the process server that defendants learn of the action brought against them by the complainant. More important, it is also through the service of summons by the process server that the trial court acquires jurisdiction over the defendant. It is therefore important that summonses, other writs and court processes be served expeditiously.

**2. ID.; ID.; ID.; ID.; ID.; RESPONDENT COULD NOT AFFORD TO BE CARELESS AND IMPRUDENT IN DISCHARGING HIS DUTIES.—** Respondent's explanation as to why he failed to serve the trial court's issuances was lame and inexcusable. The records indicate that he twice failed to serve the trial court's orders and summons on the defendants (in the petition for indirect contempt and in the ejectment case.) Though he insisted that his failure to serve the court's issuances in the latter case was justified, he, however, also admitted that he failed to promptly attach the return of service to the records.

**3. ID.; ID.; ID.; ID.; NEGLECT OF DUTY PRESENT IN CASE AT BAR.—** Considering the grave responsibilities imposed on him, respondent could not afford to be careless and imprudent in discharging his duties. Neither neglect nor delay should be allowed to stall the expeditious disposition of cases. Neglect

of duty is defined as the failure to give proper attention to a task expected of an employee because of carelessness or indifference.

**4. ID.; ID.; ID.; ID.; EVERY EMPLOYEE OF THE JUDICIARY PLAYS AN IMPORTANT ROLE IN THE DISPENSATION OF JUSTICE.—** Every employee of the judiciary plays an important role in the dispensation of justice. It is the mandate of each and every employee to show a high degree of professionalism in the performance of his duties and to reinforce the Court's commitment to efficiency and integrity. Respondent should be reminded that a court employee's conduct is reflective of the Court's role as a staunch guardian of justice.

**5. ID.; ID.; ID.; ID.; A PENALTY IN THE AMOUNT OF ₱5,000 MAY BE IMPOSED FOR SIMPLE NEGLECT OF DUTY.—** Under Section 23, Rule XIV of the Omnibus Civil Service Rules and Regulations, (simple) neglect of duty is punishable by suspension of one month and one day to six months for the first offense. Under Sec. 19, Rule XIV of the same Rules, the penalty of fine (instead of suspension) may also be imposed in the alternative. Following the Court's ruling in several cases involving (simple) neglect of duty, we find the penalty of fine in the amount of ₱5,000 just and reasonable.

## R E S O L U T I O N

**CORONA, *J.*:**

In a letter-complaint,[1] complainant Judge Florentino L. Labis, Jr. (presiding judge of the Municipal Trial Court in Cities, Himamaylan, Negros Occidental) charged respondent Genaro Estañol with dereliction of duty.

According to the complainant, a petition for indirect contempt was filed in his *sala* on August 12, 2005. He issued an order setting the case for hearing on September 5, 2005 and directed respondent, the court's process server, to serve the order and summons on the defendant. On the date of the hearing, the complainant learned that respondent failed to make a return of

[1] *Rollo*, pp. 1-3.

service. There was no way of knowing whether the defendant was furnished with the court orders. The hearing was reset to another date and respondent was required to explain his omission.

In his explanation, respondent claimed that he lost the court order and summons while he was serving other court processes. He apologized to the court but the complainant considered his explanation unsatisfactory and warned him against repeating the infraction.

On September 28, 2005, the complainant issued summons in an ejectment case and directed respondent to serve it and a copy of the complaint on the defendant. An order setting the hearing on October 19, 2005 was also issued. However, the hearing had to be postponed because respondent again failed to attach the return of service.

The Office of the Court Administrator (OCA) required respondent to submit his comment on the complaint.[2]

In his comment,[3] respondent explained that he failed to serve the summons and order in the ejectment case because the defendant had already vacated the disputed premises and could no longer be located. According to him, this fact was reflected in the return of service but he failed to promptly attach it to the records due to oversight.

In a memorandum,[4] the OCA found respondent guilty of dereliction of duty. According to the OCA:

> Respondent admitted that he failed to promptly make a return of the service of court processes and summons [in] two cases pending before the court. His explanations for such failure are unjustifiable. It must be noted that respondent had previously been warned by complainant to be more circumspect in the discharge of his functions. Despite the previous warning, respondent had been negligent in the discharge of his duties.[5]

[2] *Id*., p. 22.

[3] *Id*., p. 26.

[4] Dated October 8, 2007. *Id*., pp. 32-35.

[5] *Id*., p. 33.

The OCA recommended that respondent be fined ₱5,000 and sternly warned that a repetition of the same or similar act would be dealt with more severely.

We agree with the OCA that respondent was guilty of (simple) neglect or dereliction of duty.

A process server's primary duty is to serve court notices. This requires utmost responsibility on his part by ensuring that all notices assigned to him are duly served on the parties.[6] The significance of the duties of a process server was enunciated in *Musni v. Morales*:[7]

> It is through the process server that defendants learn of the action brought against them by the complainant. More important, it is also through the service of summons by the process server that the trial court acquires jurisdiction over the defendant. It is therefore important that summonses, other writs and court processes be served expeditiously.

Respondent's explanation as to why he failed to serve the trial court's issuances was lame and inexcusable. The records indicate that he twice failed to serve the trial court's orders and summons on the defendants (in the petition for indirect contempt and in the ejectment case.) Though he insisted that his failure to serve the court's issuances in the latter case was justified, he, however, also admitted that he failed to promptly attach the return of service to the records.

Considering the grave responsibilities imposed on him, respondent could not afford to be careless and imprudent in discharging his duties. Neither neglect nor delay should be allowed to stall the expeditious disposition of cases.

Every employee of the judiciary plays an important role in the dispensation of justice.[8] It is the mandate of each and every employee to show a high degree of professionalism in the performance of his duties and to reinforce the Court's commitment

---

[6] *Rodrigo-Ebron v. Adolfo*, A.M. No. P-06-2231, April 27, 2007.

[7] 373 Phil. 703 (1999).

[8] *Vilar v. Angeles*, A.M. No. P-06-2276, February 5, 2007.

to efficiency and integrity. Respondent should be reminded that a court employee's conduct is reflective of the Court's role as a staunch guardian of justice.

Neglect of duty is defined as the failure to give proper attention to a task expected of an employee because of carelessness or indifference.[9]

Under Section 23, Rule XIV of the Omnibus Civil Service Rules and Regulations, (simple) neglect of duty is punishable by suspension of one month and one day to six months for the first offense. Under Sec. 19, Rule XIV of the same Rules, the penalty of fine (instead of suspension) may also be imposed in the alternative.[10] Following the Court's ruling in several cases involving (simple) neglect of duty,[11] we find the penalty of fine in the amount of ₱5,000 just and reasonable.

**WHEREFORE,** respondent Genaro Estañol is found guilty of (simple) neglect of duty and is hereby *FINED* ₱5,000. He is likewise *STERNLY WARNED* that a repetition of the same or similar act shall be dealt with more severely.

**SO ORDERED.**

*Puno, C.J. (Chairperson), Sandoval-Gutierrez, Azcuna,* and *Leonardo-de Castro, JJ.,* concur.

---

[9] *Tiu v. Dela Cruz*, A.M. No. P-06-2288, June 15, 2007.

[10] See also *Patawaran v. Nepomuceno*, A.M. No. P-02-1655, February 6, 2007.

[11] *Id*. See also *Balanag, Jr. v. Osita,* 437 Phil. 452 (2002); *Casano v. Magat,* 425 Phil. 356 (2002)*; Tiongco v. Molina,* 416 Phil. 676 (2001); *Beso v. Daguman,* 380 Phil. 544 (2000).

**FIRST DIVISION**

[G.R. No. 153587. February 27, 2008]

**GLORIA SONDAYON,** *petitioner, vs.* **P.J. LHUILLIER, INC. and RICARDO DIAGO,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE COURT WILL ONLY RESOLVE ISSUES OF LAW UNDER RULE 45.—** The Court will only resolve issues of law in this proceeding under Rule 45. Accordingly, the existence or non-existence of an employer-employee relationship between respondent company and the security guard is a factual issue on which the Court defers to the findings of the C.A. So, also, on the issue of the voluntariness of the agreement on the valuation of the thing pledged, the Court is not wont to disturb the finding of the appellate court.

**2. ID.; ID.; ID.; CONSIDERING THAT THE MATTER OF THE INSURANCE OF THE ARTICLE PLEDGED WAS TAKEN UP DURING THE TRIAL, PETITIONER CORRECTLY RAISED IT IN HER BRIEF IN THE COURT OF APPEALS.—** The records show that the matter of the insurance of the article pledged was taken up during the trial with no objection by respondents (Petition, p. 17, citing the testimony of Mr. Anthony Erenea, Area Manager of respondent company, on September 8, 1999): Q: Now, you said, Mr. Witness, you said that there were items lost? A: Yes, sir. Q: As a result of the robbery? A: Yes, sir. Q: Were those jewelry insured? A: At the time we were self-insured, sir. Q: I mean an independent Insurance Company accredited by the Insurance Commission? A: At that time, sir I have no knowledge of any insurance sir. Hence, petitioner correctly raised it in her brief in the CA.

**3. COMMERCIAL LAW; INSURANCE LAW; "PAWNSHOP REGULATION ACT [P.D. NO. 114]; RESPONDENT PAWNSHOP'S FAILURE TO INSURE THE WATCH OF PETITIONER IS A CONTRIBUTORY CAUSE TO PETITIONER'S LOSS.—** However, on the issue of the legal effect of the failure of respondents to insure the article

pledged against burglary, the Court finds a reversible error in the appealed decision. Said the CA: Equally barren of merit is the Appellant's claim that the Appellee should bear the loss of the watch because of the failure of the Appellee to insure the watch by an insurance company accredited by the Insurance Commission, as required by Section 17 of the Rules and Regulations Implementing Presidential Decree No. 114 [Pawnshop Regulation Act], quoted, *infra:* "Sec. 17. *Insurance of office building and pawns.* — The place of business of a pawnshop and the pawns pledged to it must be insured against fire, and against burglary as well for the latter, by an insurance company accredited by the Insurance Commission." Even if We assume, for the nonce, that, indeed, the Appellee failed to comply with the aforequoted "Rule & Regulation," nevertheless, the Appellant was burdened to prove the causal connection between the violation, by the Appellee, of the aforequoted "Rule/ Regulation" and the heist-homicide committed by the security guard x x x. The Appellant failed to discharge her burden. Indeed, the Appellant failed to allege, in her "Complaint," the causal connection of the loss of the watch and the violation by the Appellee, of the aforequoted "Rule/Regulation." x x x As to the causal connection between respondent company's violation of the legal obligation to insure the articles pledged and the heist-homicide committed by the security guard, the answer is simple: had respondent company insured the articles pledged against burglary, petitioner would have been compensated for the loss from the burglary. Respondent company's failure to insure the article is, therefore, a contributory cause of petitioner's loss.

**4. ID.; ID.; VALUATION; REPLACEMENT VALUE; CASE AT BAR.—** Considering, however, that petitioner agreed to a valuation of ₱15,000 for the article pledged in case of a loss, the replacement value for failure to insure is likewise limited to ₱15,000.

**5. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR.—** Nevertheless, this court, taking into account all the circumstances of this case, deems it fair and just to award exemplary damages against respondent company for its failure to comply with the rule and regulation requiring it to insure the articles pledged against fire and burglary, in the amount of Twenty Five Thousand (₱25,000) Pesos.

**APPEARANCES OF COUNSEL**

*Gutierrez Sundiam Villanueva* and *Doronila* for petitioner.
*Jose Angelito Bulao* for respondents.

**D E C I S I O N**

**AZCUNA, *J.*:**

This is a petition for review on *certiorari*[1] seeking the nullification of the Decision rendered by the Court of Appeals (CA) on December 21, 2001, and its Resolution denying reconsideration, dated May 14, 2002, in CA-G.R. CV No. 67514, entitled "*Gloria Sondayon v. P.J. Lhuillier, Inc. and Ricardo Diago*."

The facts are:[2]

Respondent P.J. Lhuillier, Inc. is a domestic corporation that owns and operates pawnshops under the business name "La Cebuana Pawnshop." Respondent Ricardo Diago acts as manager in one of its pawnshops located at Maywood, President Avenue, B.F. Homes Subdivision, Parañaque, Metro Manila.

Respondent company contracted the services of the Sultan Security Agency. The security agency assigned Guimad Mantung to guard the La Cebuana Pawnshop in Maywood.

On June 6, 1996, petitioner Gloria Sondayon, a store manager of Shekinah Jewelry & Boutique, secured a loan from La Cebuana and pledged her Patek Philippe solid gold watch worth ₱250,000. The watch was given to her as part of her commission by the owner of the shop where she works. She had pawned the watch to La Cebuana a few times in the past and, each time, she was able to redeem it.

On August 10, 1996, Guimad Mantung, employing force and violence, robbed La Cebuana, resulting in the deaths of respondent company's appraiser and vault custodian.

---

[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 34-35.

An information for Robbery with Homicide was filed against Mantung before the Regional Trial Court (RTC) of Parañaque, docketed as Criminal Case No. 96-761. The information alleged that Mantung divested the pawnshop of ₱62,000 in cash and several pieces of jewelry amounting to ₱5,300,000.

On December 10, 1996, respondent company received a letter from petitioner's counsel demanding for the gold watch that she had pawned. Respondent company, however, failed to comply with the demand letter because the watch was among the articles of jewelry stolen by Mantung.

Petitioner filed a complaint with the RTC of Parañaque[3] for recovery of possession of personal property with prayer for preliminary attachment against respondent company and its Maywood branch manager, Ricardo Diago.

In their Answer, respondents averred that petitioner had no cause of action against them because the incident was beyond their control.

On August 18, 1997, the RTC,[4] stating that the loss of the thing pledged was due to a fortuitous event, rendered a Decision dismissing petitioner's complaint as well as respondents' counterclaim. The pertinent portions of the Decision read:

> Culled from the testimonies of all the witnesses presented as well as the pieces of documentary evidence offered, this Court, after a thorough and careful evaluation and deliberation thereof is of the honest and firm belief that plaintiff failed to establish a sufficient cause of action against defendant as to warrant the recovery of the pledged Patek Philippe Solid Gold Watch which was allegedly concealed, removed or disposed of by the latter defendants as the facts and evidence proved otherwise as said watch was lost on account of a robbery with double homicide that happened on August 10, 1996 perpetrated by one Guimad Mantung, the security guard of defendant employed by Sultan Security Agency as found out by the Court (Exh. "7"); thus, defendants were not negligent … in the safekeeping of the watch of plaintiff.

[3] Docketed as Civil Case No. 97-047.

[4] Branch 258, RTC-Parañaque City.

. . . . . .

Not only that. The … pledge bears the terms and conditions which the parties should adhere being the law between them pursuant to Art. 1159 of the New Civil Code.

Paragraph 13 of Exhibits "A" and "B" specifically provides:

> The pawnee shall not be liable for the loss or damage of the article pawned due to fortuitous events or *force majeure* such as fire, robbery, theft, hold-ups and other similar acts. When the loss is due to the fault and/or negligence of the pawnee, the amount of its liability, if any, shall be limited to the appraised value appearing on the face hereof.

Said provision . . . is not violative of law, customs, public policy or tradition, hence, has the force of law between the plaintiff and defendants, and the incident that happened which led to the loss of the thing pledged cannot be considered as negligence but more of a fortuitous event which the defendants could not have foreseen or which though foreseen, was inevitable. This finds support in Art. 1174 of the Civil Code . . .

The defendants, therefore, are not bound to return the thing pledged nor the Court to fix its value xxx There was no unjustifiable refusal on the part of the defendants to return the thing pledged because, as testified by plaintiff herself, she has pawned the watch at least five (5) times to defendant corporation . . .[5]

Appeal was taken to the CA.

On December 21, 2001, the CA rendered a Decision affirming the ruling of the trial court.[6] Petitioner's motion for reconsideration was denied in the Resolution dated May 14, 2002.[7]

Petitioner contends that the CA erred:

1) in considering the loss of the thing pledged a fortuitous event although the robbery was caused by respondents' own employees;

---

[5] *Rollo*, pp. 65-67.

[6] *Id.* at 40.

[7] *Id.* at 69.

2) in disregarding the legal principle that existing laws, rules and regulations in relation to the operation and regulation of pawnshops are part and parcel of the contract of pledge between petitioner and respondents;

3) in affirming the ruling of the trial court that paragraph 13 of Exhibits "A" and "B" binds the parties and the courts as to the limitation on the value of the thing pledged; and

4) in affirming the ruling of the trial court that paragraph 13 of Exhibits "A" and "B" is not violative of laws, customs, public policy or tradition when it is clearly a contract of adhesion.

Petitioner argues that respondents have not shown that the incident constitutes a fortuitous event; that the security guard was an employee of respondent corporation regardless of the existence of a contract of employment because the latter had supervision and control over the former; that respondents were negligent because they did not insure the articles of jewelry including petitioner's watch against fire and burglary as required under the Pawnshop Regulation Act; that the provision in the pawnshop ticket limiting the value of the thing pledged is not binding on petitioner and the courts because the appraised value was very low and was not reached voluntarily by the parties but was merely imposed on the former; and that paragraph 13 of the pawnshop ticket limiting the liability of respondents to the appraised value is a contract of adhesion, and thus, should be declared void.

The Court will only resolve issues of law in this proceeding under Rule 45.

Accordingly, the existence or non-existence of an employer-employee relationship between respondent company and the security guard is a factual issue on which the Court defers to the findings of the CA. So, also, on the issue of the voluntariness of the agreement on the valuation of the thing pledged, the Court is not wont to disturb the finding of the appellate court.

However, on the issue of the legal effect of the failure of respondents to insure the article pledged against burglary, the Court finds a reversible error in the appealed decision.

Said the CA:

> Equally barren of merit is the Appellant's claim that the Appellee should bear the loss of the watch because of the failure of the Appellee to insure the watch by an insurance company accredited by the Insurance Commission, as required by Section 17 of the Rules and Regulations Implementing Presidential Decree No. 114, quoted, *infra*:
>
> > "Sec. 17. *Insurance of office building and pawns*. – The place of business of a pawnshop and the pawns pledged to it must be insured against fire, and against burglary as well for the latter, by an insurance company accredited by the Insurance Commission." (*idem supra*)
>
> Even if We assume, for the nonce, that, indeed, the Appellee failed to comply with the aforequoted "Rule & Regulation," nevertheless, the Appellant was burdened to prove the causal connection between the violation, by the Appellee, of the aforequoted "Rule/Regulation" and the heist-homicide committed by the security guard:
>
> > "First of all, it has not been shown how the alleged negligence of the Cimarron driver contributed to the collision between the vehicles. Indeed, petitioner has the burden of showing a causal connection between the injury received and the violation of the Land Transportation and Traffic Code. He must show that the violation of the statute was the proximate or legal cause of the injury or that it substantially contributed thereto. Negligence, consisting in whole or in part, of violation of law, like any other negligence, is without legal consequence unless it is a contributing cause of the injury. Petitioner says that 'driving an overloaded vehicle with only one functioning headlight during nighttime certainly increases the risk of accident,' that because the Cimarron had only one headlight, there was 'decreased visibility,' and that the fact that the vehicle was overloaded and its front seat overcrowded 'decreased [its] maneuverability.' However, mere allegations such as these are no sufficient to discharge its burden of proving clearly that such alleged negligence was the contributing cause of injury."

(*Sanitary Steam Laundry, Inc. versus Court of Appeals*, *et al*., 300 SCRA 20, at pages 27-28, *supra*)

The Appellant failed to discharge her burden. Indeed, the Appellant failed to allege, in her "Complaint," the causal connection of the loss of the watch and the violation by the Appellee, of the aforequoted "Rule/Regulation."

Additionally, the appellant never invoked the aforequoted "Rule/Regulation" as anchor for her claim for damages against the Appellee. It was only, in the present recourse, in her "Brief," when the appellant invoked the aforequoted "Rule/Regulation." The Appellant is, thus, estopped from so doing. As our Supreme Court declared:

"The issue of minority was first raised only on petitioners' Motion for Reconsideration of the Court of Appeals' Decision; thus, it is as if it was never duly raised in that court at all.' Hence, this Court cannot now, for the first time on appeal, entertain this issue, for to do so would plainly violate the basic rule of fair play, justice and due process. We take this opportunity to reiterate and emphasize the well-settled rule that '(a)n issue raised for the first time on appeal and not raised timely in the proceedings in the lower court is barred by estoppel. Questions raised on appeal must be within the issues framed by the parties and, consequently, issues not raised in the trial court cannot be raised for the first time on appeal." (*Rolando Sanchez, et al. versus Court of Appeals*, *et al.*, 279 SCRA 647, at pages 678-679, *supra*)

The records show that the matter of the insurance of the article pledged was taken up during the trial with no objection by respondents (Petition, p. 17, citing the testimony of Mr. Anthony Erenea, Area Manager of respondent company, on September 8, 1999):

Q: Now, you said, Mr. Witness, you said that there were items lost?

A: Yes, sir.

Q: As a result of the robbery?

A: Yes, sir.

Q: Were those jewelry insured?

A: At the time we were self-insured, sir.

Q: I mean an independent Insurance Company accredited by the Insurance Commission?

A: At that time, sir I have no knowledge of any insurance sir.

Hence, petitioner correctly raised it in her brief in the CA.

As to the causal connection between respondent company's violation of the legal obligation to insure the articles pledged and the heist-homicide committed by the security guard, the answer is simple: had respondent company insured the articles pledged against burglary, petitioner would have been compensated for the loss from the burglary. Respondent company's failure to insure the article is, therefore, a contributory cause to petitioner's loss.

Considering, however, that petitioner agreed to a valuation of ₱15,000 for the article pledged in case of a loss, the replacement value for failure to insure is likewise limited to ₱15,000.

Nevertheless, this Court, taking into account all the circumstances of this case, deems it fair and just to award exemplary damages against respondent company for its failure to comply with the rule and regulation requiring it to insure the articles pledged against fire and burglary, in the amount of Twenty Five Thousand (₱25,000) Pesos.

This Decision is without prejudice to appropriate proceedings to recover any excess value of the article pledged from amounts that may be or have been awarded payable by third parties answerable for the loss arising from the robbery.

**WHEREFORE,** the petition is *partly GRANTED* and the Decision and Resolution of the Court of Appeals dated December 21, 2001 and May 14, 2002 in CA-G.R. CV No. 67514 are *MODIFIED* in that respondent company is ordered to pay petitioner the sum of Fifteen Thousand (₱15,000) Pesos representing the agreed value of the watch pledged and Twenty Five Thousand (₱25,000) Pesos as, and by way of, exemplary damages.

No costs.

**SO ORDERED.**

*Puno, C.J. (Chairperson), Sandoval-Gutierrez, Corona,* and *Leonardo-de Castro, JJ.,* concur.

---

**FIRST DIVISION**

[G.R. No. 153835. February 27, 2008]

**GMA NETWORK, INC.,** *petitioner, vs.* **VIVA TELEVISION CORPORATION,** *respondent.*

**SYLLABUS**

**REMEDIAL LAW; EVIDENCE; EXPERT WITNESSES; COURT CANNOT AT THIS STAGE POSIT EXCLUSIVITY IN THE ABSENCE OF EXPERT WITNESSES ATTESTING TO THE PRACTICE IN THE INDUSTRY.—** The resolution of the controversy depends on the exclusivity of the right to broadcast given under the contracts involved. Petitioner contends that "by its very nature" a broadcast right is exclusive. It argues, thus: x x x To be sure, the character of exclusivity is the main consideration behind contracts for the development or airing of a program. In the television industry, the competition is to have an exclusive contract to air a specific program and this exclusive character need not even be expressly stated in the contract. It is written into the contract by the nature of the contract itself and by tradition. This alleged exclusivity is admittedly not expressly provided in GMA's contract. In fact, GMA was given only 52 episodes whereas there were 130 episodes, which would seem to indicate that the intent was to open the show to another player. In any case, the Court cannot at this stage posit exclusivity in the absence of evidence thereon such as expert witnesses attesting to the practice in the industry and other relevant factors such as technical reasons.

**APPEARANCES OF COUNSEL**

*Belo Gozon Elma Parel Asuncion* and *Lucila* for petitioner.
*Romulo Mabanta Buenaventura Sayoc* and *De Los Angeles* for respondent.

**D E C I S I O N**

**AZCUNA, *J.*:**

This is a petition for review on *certiorari*[1] seeking the nullification of the Decision rendered by the Court of Appeals (CA) on May 29, 2002 in CA-G.R. SP No. 67981, entitled "*Viva Television Corporation vs. Hon. Vivencio S. Baclig, et al.*"

Petitioner claims that this involves a conflict on broadcast rights to "The Weakest Link," a gameshow of British origin.

The CA allegedly recognized the contract of petitioner GMA Network, Inc. (GMA) dated June 14, 2001 to air and produce "The Weakest Link." It also recognized the later contract of respondent Viva Television Corporation (VIVA), perfected on July 17, 2001, to air the same gameshow. The CA then concluded that since the GMA contract covers only 52 episodes while the VIVA contract covers 130 episodes, the GMA contract had become stale and GMA's request for an injunction was rendered moot and academic when VIVA showed its 55th episode. Furthermore, the CA ruled that VIVA was not aware of the prior and existing contract of GMA when it signed its July 17, 2001 contract with the same format owners.

Petitioner contends that the CA ruling is not in accord with law and jurisprudence; that the two contracts cannot co-exist; and that by its very nature a broadcast contract is exclusive. Thus, the CA, petitioner argues, should have enforced its prior and exclusive rights to the airing of "The Weakest Link."

Furthermore, petitioner questions the CA Decision for contradicting the findings of fact of the trial court. It alleges

[1] Under Rule 45 of the Rules of Court.

that its contract has not become mooted after VIVA aired its 55th episode, thus:

> Neither is there any legal and factual basis for the Court of Appeals to hold that GMA contract become mooted when Viva had aired its 55th episode. To begin with, Viva was able to air because of the unfortunate TRO issued by the Court of Appeals for 6o days restraining the implementation of the writ of preliminary injunction issued by the trial court enjoining Viva from airing "The Weakest Link." And more importantly, the meat and bone of the contract is the format of "The Weakest Link." The number of the episodes is but the consequence of the format. And a format is different from the episode as there can be several episodes using one format. Further, an episode differs in style and presentation, timing, and frequency. GMA may adopt a style of presentation different from that used by Viva.
>
> It likewise spawns reversible for the Court of Appeals to hold that Viva was not aware of the prior and existing contract of GMA when it (Viva) entered into its July 17, 2001 contract with the format owners because the findings of fact of the trial court, both testimonial and documentary, luminously show that Viva was fully aware of the GMA contract when it signed its contract. Jurisprudence teaches that the factual findings of the trial court in cases of applications for issuance of preliminary injunction are well-nigh conclusive (*Lopez v. Court of Appeals*, G.R. No. 110929, 322 SCRA 686, January 20, 2000). Even so, the contrariety of the factual findings between the trial court and the Court of Appeals on the matter deserve the review of the Court of Appeals' decision by this Honorable Court (*Sering v. Court of Appeals*, G.R. No. 137815, November 29, 2001).[2]

Respondent VIVA, on the other hand, counters that what the CA decided is not the merits of the controversy between GMA and VIVA over broadcast rights to "The Weakest Link," but only the right of GMA to a preliminary injunction to stop VIVA from further airing the gameshow:

> As the record shows, what the Court of Appeals had decided upon in its assailed Decision was the issue of whether or not the writ of preliminary injunction that was issued by the Trial Court against VIVA in Civil Case No. Q-01-45049 is valid. The said writ enjoined VIVA from further airing TWL over IBC Channel 13. The Court of

[2] *Rollo*, pp. 4-5.

Appeals Decision in effect upheld the contention of VIVA that the aforesaid writ of preliminary injunction was improperly issued for the simple reason that petitioner had failed to establish the essential requisites for a valid issuance of such a writ, namely, (1) that it has a valid cause of action against VIVA (Section 3 and 4, Rule 58, 1997 Rules of Civil Procedure) and (2) that it will suffer irreparable damage if further airing TWL by VIVA is not enjoined. (*Del Rosario vs. C.A.,* 255 SCRA 152; *Union Bank vs. C.A.*, 311 SCRA 759).[3]

The real issue being controverted is whether or not GMA can stop VIVA from airing episodes 56 through 130 of "The Weakest Link," given that its contract covers only 52 episodes.

The resolution of the controversy depends on the exclusivity of the right to broadcast given under the contracts involved.

Petitioner contends that "by its very nature" a broadcast right is exclusive. It argues, thus:

> It bears to stress that the airing of "The Weakest Link" is **exclusive** in character, meaning, that since the contract to produce and air was **first** made and entered into with GMA by the owners ECM Asia and ECM Europe, **GMA has the prior and exclusive right to air "The Weakest Link."**
>
> Certainly, Viva cannot air "The Weakest Link" by virtue of its July 17, 2001 contract while GMA is airing the same program by virtue of its June 24, 2001 contract. In other words, in recognizing the two contracts, the Court of Appeals **cannot** hold each contract as simultaneously enforceable. This is absurd in fact and in law: in **fact,** because "The Weakest Link" cannot be aired in Viva while it is being aired in GMA or vice versa; in **law,** because no two contracts on the **same** object and subject matter can be enforced at the same time.
>
> To be sure, the character of exclusivity is the main consideration behind contracts for the development or airing of a program. In the television industry, the competition is to have an exclusive contract to air a specific program and this exclusive character need not even be expressly stated in the contract. It is written into the contract by the nature of the contract itself and by tradition.[4]

---

[3] *Id.* at 279-280.

[4] *Id.* at 33-34.

This alleged exclusivity is admittedly not expressly provided in GMA's contract. In fact, GMA was given only 52 episodes whereas there were 130 episodes, which would seem to indicate that the intent was to open the show to another player.

In any case, the Court cannot at this stage posit exclusivity in the absence of evidence thereon such as expert witnesses attesting to the practice in the industry and other relevant factors such as technical reasons.

This is all the more so in light of the fact that petitioner's contract was verbal and no written memorandum of its terms was presented.

For this reason, the Court is constrained to sustain the CA's ruling that petitioner has failed to establish its right to a writ of preliminary injunction.

**WHEREFORE,** the petition is *DENIED*.

No costs.

**SO ORDERED.**

*Puno, C.J. (Chairperson), Sandoval-Gutierrez, Corona,* and *Leonardo-de Castro, JJ.,* concur.

---

**FIRST DIVISION**

[G.R. No. 163285. February 27, 2008]

**DEPARTMENT OF AGRARIAN REFORM, rep. by REGIONAL DIRECTOR NASER M. MUSALI,** *petitioner, vs.* **HON. HAKIM S. ABDULWAHID, Presiding Judge, Regional Trial Court, Br. XII of Zamboanga City, and YUPANGCO COTTON MILLS, INC.,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; DETERMINED BY MATERIAL ALLEGATIONS OF COMPLAINT AND CHARACTER OF RELIEF PRAYED FOR, IRRESPECTIVE OF WHETHER THE PETITIONER OR COMPLAINANT IS ENTITLED TO RELIEF.—** It is the rule that the jurisdiction of a tribunal, including a quasi-judicial office or government agency, over the nature and subject matter of a petition or complaint is determined by the material allegations therein and the character of the relief prayed for, irrespective of whether the petitioner or complainant is entitled to any or all of such reliefs. It is also settled that jurisdiction should be determined by considering not only the status or relationship of the parties but also the nature of the issues or questions that is the subject of the controversy. Thus, if the issues between the parties are intertwined with the resolution of an issue within the exclusive jurisdiction of the DARAB, such dispute must be addressed and resolved by the DARAB.

**2. ID.; ID.; ID.; ID.; CASE AT BAR.—** In the case at bar, the complaint filed by Yupangco seems at first blush to be within the jurisdiction of the RTC, as it has been denominated as **"Recovery of Ownership and Possession, Violations of R.A. Nos. 6657 and 3844[,] as amended, Cancellation of Title, Reconveyance and [D]amages with Prayer for the Issuance of Preliminary Mandatory Injunction and/or Temporary Restraining Order."** But as correctly pointed out by the DAR, the allegations of the complaint actually impugn the CARP coverage of the landholding involved and its redistribution to farmer beneficiaries, and seek to effect a reversion thereof to the original owner, Yupangco. x x x Yupangco also alleged in its complaint that other acts were committed **"with the purpose of land speculation, for business or industrial purpose, for immediate sale thereof for business profits and not for planting, care and tending of the coconut plantation, which would defeat the purposes and policies of the Agrarian Reform Laws and [breached] the conditions of the questioned award of the land, rendering the acquisition by or distribution to [BYARBAI] as the tenant-tillers of the land null and void, and thus reverting back the ownership and possession thereof to [Yupangco]."** These allegations clearly show that Yupangco sought the recovery

of the subject property by disputing its inclusion in the CARP, and imputing errors in the enforcement of the law pertaining to the agrarian reform. The primal issues raised in the complaint, *viz.:* protest against the CARP coverage, alleged breach of conditions of the DAR award under the CARP by the farmer beneficiaries resulting to forfeiture of their right as such; nonpayment of rentals by the farmers to the petitioner under R.A. No. 3844 (Agricultural Land Reform Code), gravitate on the alleged manner the implementation of the CARP under R.A. No. 6657 was carried out.

**3. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM PROGRAM; MATTERS RELATING TO TRANSFER OF OWNERSHIP FROM LANDLORD TO AGRARIAN BENEFICIARIES FALL WITHIN PRIMARY AND EXCLUSIVE ORIGINAL JURISDICTION OF THE DARAB.—** Under Section 50 of R.A. No. 6657, **"all matters involving the implementation of agrarian reform"** are within the DAR's primary, exclusive and original jurisdiction, and at the first instance, only the DARAB—as the DAR'S quasi-judicial body, can "determine and adjudicate all agrarian disputes, cases, controversies, and matters or incidents involving the implementation of the Comprehensive Agrarian Reform Program under R.A. No. 6657, E.O. Nos. 229, 228 and 129-A, R.A. No. 3844 as amended by R.A. 6389, P.D. No. 27 and other agrarian laws and their implementing rules and regulations. Ultimately, the complaint in the petition at bar seeks for the RTC to cancel Certificates of Land Ownership Awards (CLOAs) issued to the beneficiaries and the Transfer Certificates of Title (TCTs) issued pursuant thereto. These are reliefs which the RTC cannot grant, since the complaint essentially prays for the annulment of the coverage of the disputed property within the CARP, which is but an incident involving the implementation of the CARP. These are matters relating to terms and conditions of transfer of ownership from landlord to agrarian reform beneficiaries over which DARAB has primary and exclusive original jurisdiction, pursuant to Section 1(f), Rule II, DARAB New Rules of Procedure.

**APPEARANCES OF COUNSEL**

*Office of the Legal Affairs (DAR)* for petitioner.
*Tupaz* and *Tupaz Law Office* for private respondent.

## D E C I S I O N

**PUNO, *C.J.*:**

The Department of Agrarian Reform Adjudication Board (DARAB) is vested with primary and exclusive jurisdiction to determine and adjudicate agrarian reform matters, including all matters involving the implementation of the agrarian reform program. Thus, when a case is merely an incident involving the implementation of the Comprehensive Agrarian Reform Program (CARP), then jurisdiction remains with the DARAB, and not with the regular courts.

This is a petition for review by *certiorari* under Rule 45 of the 1997 Rules of Court of a Decision dated November 21, 2003, and the Resolution dated April 21, 2004, both of the Court of Appeals (CA) in C.A.-G.R. SP No. 69699, entitled *"Department of Agrarian Reform (DAR) vs. Hon. Hakim S. Abdulwahid, as RTC Judge & Yupangco Cotton Mills, Inc.,"* on pure question of law. Particularly, the issue concerns the jurisdiction of the trial court below over the complaint in Civil Case No. 5113 *vis-à-vis* the original, primary and exclusive jurisdiction of the Department of Agrarian Reform (DAR) and the DARAB over agrarian disputes and/or agrarian reform implementation as provided for under Section 50 of Republic Act (R.A.) No. 6657.

On December 28, 2000, Yupangco Cotton Mills, Inc. (Yupangco) filed a complaint for **"Recovery of Ownership and Possession, Violations of R.A. Nos. 6657 and 3844[,] as amended, Cancellation of Title, Reconveyance and [D]amages with Prayer for the Issuance of Preliminary Mandatory Injunction and/or Temporary Restraining Order"** against Buenavista Yupangco Agrarian Reform Beneficiaries Association, Inc. (BYARBAI), the DAR and the Land Bank of the Philippines. The case was docketed as Civil Case No. 5113 and raffled to the Regional Trial Court (RTC), Branch 12 of Zamboanga City.[1]

[1] Respondent's Complaint, CA *rollo*, pp. 11-26.

On January 26, 2001, the DAR filed a Motion to Dismiss on the following grounds: (a) Yupangco's causes of action were not within the jurisdiction of the RTC, (b) forum shopping, and (c) *litis pendentia*.[2]

On November 6, 2001, the RTC denied the Motion to Dismiss, ruling that Yupangco's action was within the jurisdiction of the RTC pursuant to Section 19, Chapter II of **Batas Pambansa Blg. 129**.[3] DAR and BYARBAI filed a motion for reconsideration,[4] which was denied for lack of merit.[5]

On March 20, 2002, DAR filed a special civil action for *certiorari* under Rule 65 of the 1997 Rules of Court with the CA, alleging that the trial court acted with grave abuse of discretion amounting to lack of jurisdiction when DAR's motion to dismiss was denied.[6]

The appellate court sustained the RTC, finding that the action falls within the jurisdiction of the regular courts and not the DARAB because Yupangco primarily sought the recovery and possession of the subject parcel of land.

Hence the petition at bar. In its lone assignment of error, petitioner submits that the CA erred "when it upheld the jurisdiction of the [RTC] purely on the ground that [Yupangco] primarily seeks the recovery of ownership and possession of subject parcel of land, jurisdiction over which is lodged with regional trial courts, not the DARAB."[7]

We grant the petition.

It is the rule that the jurisdiction of a tribunal, including a quasi-judicial office or government agency, over the nature and

---

[2] Petitioner's Motion to Dismiss, *id*. at 27-32.

[3] RTC Order, *id.* at 33-34. Parenthetically, the RTC mistakenly referred to the complaint as a cause of action. The two are not the same.

[4] Dated November 19, 2001, *id.* at 35-39.

[5] Dated February 8, 2002, *id.* at 40-41.

[6] DAR's Petition with the CA, *id.* at 1-10.

[7] *Rollo*, p. 13.

subject matter of a petition or complaint is determined by the material allegations therein and the character of the relief prayed for, irrespective of whether the petitioner or complainant is entitled to any or all of such reliefs.[8] It is also settled that jurisdiction should be determined by considering not only the status or relationship of the parties but also the nature of the issues or questions that is the subject of the controversy.[9] Thus, if the issues between the parties are intertwined with the resolution of an issue within the exclusive jurisdiction of the DARAB, such dispute must be addressed and resolved by the DARAB.[10]

In the case at bar, the complaint filed by Yupangco seems at first blush to be within the jurisdiction of the RTC, as it has been denominated as **"Recovery of Ownership and Possession, Violations of R.A. Nos. 6657 and 3844[,] as amended, Cancellation of Title, Reconveyance and [D]amages with Prayer for the Issuance of Preliminary Mandatory Injunction and/or Temporary Restraining Order."**[11] But as correctly pointed out by the DAR, the allegations of the complaint actually impugn the CARP coverage of the landholding involved and its redistribution to farmer beneficiaries, and seek to effect a reversion thereof to the original owner, Yupangco.[12] Thus, the complaint filed by Yupangco alleged, *inter alia*, the following:

(a) [Yupangco] was the registered owner of certain parcels of land[13] primarily devoted to coconut plantation, under the administration and supervision of plaintiff corporation with several employees and other persons hired as laborers;[14]

---

[8] *Heirs of Julian dela Cruz v. Heirs of Alberto Cruz*, G.R. No. 162890, Nov. 22, 2005, 475 SCRA 743.

[9] *Id*. citing *Vesagas v. Court of Appeals,* G.R. No. 142924, 5 December 2001, 371 SCRA 508. See *Viray v. Court of Appeals,* G.R. No. 92481, November 9, 1990, 191 SCRA 308.

[10] *Monsanto v. Zerna*, G.R. No. 142501, 7 December 2001, 371 SCRA 664.

[11] *Supra* note 1.

[12] *Rollo*, p. 15.

[13] Par. 3, Respondent's Complaint, CA *rollo*, p. 12.

[14] Par. 4, *id*.

(b) Sometime in 1993, the DAR placed the subject parcels of land under the Comprehensive Agrarian Reform Program of the government pursuant to the provisions of Republic Act No. 6657, and four (4) Transfer Certificate Titles over the subject land were subsequently issued in favor of BYARBAI;[15]

(c) [Yupangco] vehemently objected to the coverage of the subject parcels of land by the DAR and the valuation made by LBP, by filing protest and objection with DAR and LBP;[16]

(d) DAR, through the DAR Regional Director, Zamboanga City, issued the four questioned Transfer Certificates of Title (or Certificates of Land Ownership Awards—CLOAs) to BYARBAI pursuant to R.A. No. 6657, without LBP paying [Yupangco] the just compensation of the subject parcels of land which valuation was then being contested before the DAR Adjudication Board;[17]

(e) Majority of the members of BYARBAI are not employees nor hired workers of [Yupangco], hence, [Yupangco] alleged that they should not have been given preference nor be entitled as allocatees in the subject parcels of land;[18]

(f) Soon after the CLOAs were issued to BYARBAI, the latter took possession of the subject parcels of land to the prejudice and damage of [Yupangco];[19]

(g) BYARBAI's real motive in having the land distributed to them (pending resolution of all protests with the DAR and the contested valuation made by the LBP) was to convert the land into rice production resulting in the destruction of coffee plantations and other crops, including the cutting of several hundreds of coconut trees. This conversion was illegal and in gross violation of Republic Act No. 6657 and Republic Act No. 3844, as amended, and other existing laws and Administrative Issuances.[20]

---

[15] Par. 5, *id*.

[16] Par. 6, *id*.

[17] Par. 7, *id*.

[18] Par. 8, *id*.

[19] Par. 8, *id*.

[20] Par. 9 & 15, *id*.

Yupangco also alleged in its complaint that other acts were committed **"with the purpose of land speculation, for business or industrial purpose, for immediate sale thereof for business profits and not for planting, care and tending of the coconut plantation, which would defeat the purposes and policies of the Agrarian Reform Laws and [breached] the conditions of the questioned award of the land, rendering the acquisition by or distribution to [BYARBAI] as the tenant-tillers of the land null and void, and thus reverting back the ownership and possession thereof to [Yupangco]."**[21]

These allegations clearly show that Yupangco sought the recovery of the subject property by disputing its inclusion in the CARP, and imputing errors in the enforcement of the law pertaining to the agrarian reform. The primal issues raised in the complaint, *viz.*: protest against the CARP coverage, alleged breach of conditions of the DAR award under the CARP by the farmer beneficiaries resulting to forfeiture of their right as such; nonpayment of rentals by the farmers to the petitioner under R.A. No. 3844 (Agricultural Land Reform Code), gravitate on the alleged manner the implementation of the CARP under R.A. No. 6657 was carried out.

Under Section 50 of R.A. No. 6657, **"all matters involving the implementation of agrarian reform"** are within the DAR's primary, exclusive and original jurisdiction, and at the first instance, only the DARAB—as the DAR's quasi-judicial body, can "determine and adjudicate all agrarian disputes, cases, controversies, and matters or incidents involving the implementation of the Comprehensive Agrarian Reform Program under R.A. No. 6657, E.O. Nos. 229, 228 and 129-A, R.A. No. 3844 as amended by R.A. 6389, P.D. No. 27 and other agrarian laws and their implementing rules and regulations."[22]

Ultimately, the complaint in the petition at bar seeks for the RTC to cancel Certificates of Land Ownership Awards (CLOAs) issued to the beneficiaries and the Transfer Certificates of Title

---

[21] Par. 11 & 15, *id*.

[22] *Centeno v. Centeno,* G.R. No. 140825, Oct. 13, 2000, 343 SCRA 153.

(TCTs) issued pursuant thereto. These are reliefs which the RTC cannot grant, since the complaint essentially prays for the annulment of the coverage of the disputed property within the CARP, which is but an incident involving the implementation of the CARP. These are matters relating to terms and conditions of transfer of ownership from landlord to agrarian reform beneficiaries over which DARAB has primary and exclusive original jurisdiction, pursuant to Section 1(f), Rule II, DARAB New Rules of Procedure.

The ruling in ***Social Security System (SSS) v. Department of Agrarian Reform***[23] is apropos. In this case, the former landowner, the SSS, made a similar attempt to circumvent the jurisdiction of the DARAB by filing a complaint for recovery of possession with the RTC of San Mateo, Rizal. When the RTC dismissed the complaint for lack of jurisdiction, the SSS came to this court for recourse. We ruled:

> Irrefragably, the titles sought to be annulled by the SSS, namely, TCTs No. 1259 No. 1260 and No. 1261 originated from the CLOAs issued by the DAR in pursuance of, and in accordance with, the provisions of Rep. Act No. 6657, the Comprehensive Agrarian Reform Program.
>
> Specifically, the SSS in its Complaint implored the trial court "to restrain the DAR from implementing Rep. Act No. 6657 and the defendants, farmers-beneficiaries from occupying/tilling, cultivating/ disposing the properties."

Section 1, Rule II, 2002 DARAB Rules of Procedure provides that:

> Section 1. Primary And Exclusive Original and Appellate Jurisdiction. — The board shall have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Republic Act No. 6657, Executive Order Nos. 228, 229, and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and

[23] G.R. No. 139254, March 18, 2005, 453 SCRA 659.

> regulations. Specifically, such jurisdiction shall include but not be limited to cases involving the following:
>
> a) The rights and obligations of persons, whether natural or juridical engaged in the management, cultivation and use of all agricultural lands covered by the CARP and other agrarian laws.
>
> xxx xxx xxx
>
> Specifically, such jurisdiction shall extend over but not limited to the following:
>
> xxx xxx xxx
>
> f) Cases involving the issuance of Certificate of Land Transfer (CLT), Certificate of landownership Award (CLOA) and Emancipation Patent (EP) and the administrative correction thereof;

Thus, taking its bearings from the above provision, *Centeno v. Centeno* explicitly and compellingly validated the jurisdiction of the DARAB over cases involving issuance of CLOAs, and went on further:

> xxx under Section 50 of R.A. No. 6657 (the Comprehensive Agrarian Reform Law of 1988), the DAR is vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have the exclusive jurisdiction over all matters involving the implementation of the agrarian reform program. The rule is that the DARAB has jurisdiction to try and decide any agrarian dispute or any incident involving the implementation of the Comprehensive Agrarian Reform Program.

Section 1, Rule II of the Revised Rules of Procedure of the DARAB provides:

> Section 1. Primary, Original and Appellate Jurisdiction. — The Agrarian Reform Adjudication Board shall have primary jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes, cases, controversies, and matters or incidents involving the implementation of the Comprehensive Agrarian Reform Program under Republic Act No. 6657, Executive Orders Nos. 229, 228 and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389,

> Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations.

In the relatively recent case of *Rivera v. Del Rosario*, this Court cited Section 1, Rule II, 2002 DARAB Rules of Procedure and reiterated that:

> The DARAB has exclusive original jurisdiction over cases involving the rights and obligations of persons engaged in the management, cultivation and use of all agricultural lands covered by the Comprehensive Agrarian Reform Law.

Again in *David v. Rivera*, this Court pointed out that the jurisdiction over agrarian reform matters is now expressly vested in the DAR through the DARAB.

> Indeed, Section 50 of R.A. No. 6657 confers on the Department of Agrarian Reform (DAR) quasi-judicial powers to adjudicate agrarian reform matters. In the process of reorganizing the DAR, Executive Order No. 129-A created the DARAB to assume the powers and functions with respect to the adjudication of agrarian reform cases. Section 1, Rule II of the DARAB Rules of Procedure enumerates the cases falling within the primary and exclusive jurisdiction of the DARAB.

In an earlier ruling rendered in the case of *Vda. de Tangub v. Court of Appeals*, reiterated in *Morta, Sr. v. Occidental* and *Heirs of the late Herman Rey Santos v. Court of Appeals*, this Court decreed:

> Section 1 of Executive Order No. 229 sets out the scope of the Comprehensive Agrarian Reform Program (CARP); it states that the program —
>
> "xxx shall cover, regardless of tenurial arrangement and commodity produce, all public and private agricultural land as provided in Proclamation No. 131 dated July 22, 1987, including whenever applicable in accordance with law, other lands of the public domain suitable to agriculture."
>
> Section 17 thereof
>
> 1) vested the Department of Agrarian Reform with "quasi-judicial powers to determine and adjudicate agrarian reform

matters," and

2) granted it "jurisdiction over all matters involving implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the DENR and the Department of Agriculture (DA), as well as 'powers to punish for contempt and to issue subpoena, subpoena *duces tecum* and writs to enforce its orders or decisions.'"

In *Nuesa v. Court of Appeals* the Court, in addition to re-echoing the jurisdiction of the DARAB, puts emphasis on the extent of the coverage of the term "agrarian dispute," thus:

As held by this Court in *Centeno v. Centeno* [343 SCRA 153], "the DAR is vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have the exclusive jurisdiction over all matters involving the implementation of the agrarian reform program." The DARAB has primary, original and appellate jurisdiction "to determine and adjudicate all agrarian disputes, cases, controversies, and matters or incidents involving the implementation of the Comprehensive Agrarian Reform Program under R.A. No. 6657, E.O. Nos. 229, 228 and 129-A, R.A. No. 3844 as amended by R.A. No. 6389, P.D. No. 27 and other agrarian laws and their implementing rules and regulations."

Under Section 3(d) of R.A. No. 6657 (CARP Law), "agrarian dispute" is defined to include "(d) . . . any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise over lands devoted to agriculture, including disputes concerning farmworkers associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements. It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee." (citations and underscoring omitted)[24]

[24] *Id*.

**IN VIEW WHEREOF,** the petition is *GRANTED*. The assailed Decision of the Court of Appeals, dated November 21, 2003, and the Resolution dated April 21, 2004, in C.A.-G.R. SP No. 69699, entitled *Department of Agrarian Reform (DAR) vs. Hon. Hakim S. Abdulwahid, as RTC Judge & Yupangco Cotton Mills, Inc.*, are *REVERSED*. Civil Case No. 5113, entitled *Yupangco Cotton Mills, Inc. v. Buenavista Yupangco Agrarian Reform Beneficiaries Association, Inc. (BYARBAI), et al.*, is *DISMISSED*.

**SO ORDERED.**

*Sandoval-Gutierrez, Corona, Azcuna,* and *Leonardo-de Castro, JJ.,* concur.

---

**FIRST DIVISION**

[G.R. No. 167278. February 27, 2008]

**ATTY. GIL A. VALERA, CPA-LCB, Deputy Commissioner, Revenue Collection Monitoring Group, Bureau of Customs,** *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, rep. by Hon. ORLANDO C. CASIMIRO, Deputy Ombudsman for the Military and Other Law Enforcement Offices (MOLEO), in his capacity as Acting Ombudsman; PNP-CIDG, rep. by Director General Eduardo S. Matillano (public complainant); ATTY. ADOLFO CASARENO (private complainant); Hon. CESAR V. PURISIMA, Secretary of Finance, Department of Finance; Hon. ALBERTO D. LINA, Commissioner of Customs, Bureau of Customs; Hon. ROBERTO D. GEOTINA, Deputy Commissioner for Internal Administration Group, Bureau of Customs; and HONORABLE COURT OF APPEALS (Fourth Division),** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; MISCONDUCT; GRAVE IF IT INVOLVES ANY OF ADDITIONAL ELEMENTS OF CORRUPTION, WILLFUL INTENT TO VIOLATE THE LAW OR DISREGARD OF ESTABLISHED RULES.—** Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or disregard of established rules, which must be proved by substantial evidence.

**2. REMEDIAL LAW; EVIDENCE; QUANTUM OF PROOF IN ADMINISTRATIVE PROCEEDINGS; ADMINISTRATIVE PROCEEDING NEEDS ONLY RELEVANT SUBSTANTIAL EVIDENCE FOR A FINDING OF GUILT.—** At the onset, the Court would like to point out that in an administrative proceeding, the quantum of proof required for a finding of guilt is only substantial evidence, that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. We reiterate the well-settled rule that, when supported by substantial evidence and absent any clear showing of abuse, arbitrariness or capriciousness, findings of fact of administrative agencies, especially when affirmed by the Court of Appeals, are binding and conclusive upon this Court. After a thorough examination of the evidence on record, we find no reason to depart from this rule.

**3. ID.; ID.; ID.; ID.; CASE AT BAR.—** With respect to the second and third charges against the petitioner, the 4th Division of the Court of Appeals agreed with the findings of the OMB-MOLEO. The petitioner utterly failed to show that the factual findings of the respondent, affirmed by the appellate court, were attended with arbitrariness or abuse. The Matillano letter-complaint as well as its supporting affidavits made clear allegations under oath that petitioner recommended his brother-in-law, Ariel Manongdo, for employment with Cactus Cargoes Systems, Inc. (CCSI), a customs brokerage firm which necessarily deals on a regular basis with petitioner's office. Further, the Matillano letter-complaint also categorically asserted that petitioner

traveled to Hongkong without obtaining the proper clearance. These allegations under oath constitute substantial evidence required in administrative proceedings.

**4. ID.; ID.; ID.; SUPREME COURT CANNOT WEIGH ONCE MORE EVIDENCE SUBMITTED NOT ONLY BEFORE THE OFFICE OF THE OMBUDSMAN BUT ALSO BEFORE THE COURT OF APPEALS.—** On the other hand, petitioner did not deny that Ariel Manongdo is his brother-in-law or that CCSI has regular transactions with his office. Neither did he deny that he failed to comply with the requirement of presidential authority to travel abroad. It is thus unfortunate that instead of demonstrating that he is innocent of the charges, the petitioner instead resorted to unavailing technicalities to disprove the allegations. The Supreme Court cannot weigh once more the evidence submitted not only before the Office of the Ombudsman but also before the Court of Appeals. All told, we are convinced that there is substantial evidence to hold petitioner liable for the second and third charges against him.

**5. CRIMINAL LAW; R.A. NO. 3019; SECTION 4 THEREOF INCLUDES BROTHER-IN-LAW WITHIN THE DEFINITION OF FAMILY UNDER SECTION 3(D).—** This otherwise perfect logic would result in irrationality if we follow the contention of petitioner that the definition of "family" under R.A. No. 6713 should also apply to R.A. No. 3019. It makes no rhyme nor reason to suppose that public officials and employees are prohibited from having their children under eighteen years accept employment in a private enterprise having pending official business before their office, and yet are allowed to have their children over eighteen years, which is the employable age, to do so. What petitioner fails to mention is that R.A. No. 6713 itself prohibits the act of public officials and employees during their incumbency to recommend **any person** to any position in a private enterprise which has a regular or pending official transaction with their office. Certainly, the definition of the word "family" under said law would unduly limit and render meaningless Section 3(d) of R.A. No. 3019 if applied to the latter. In fact, family relation is defined under Section 4 of R.A. No. 3019 which, according to the said section, "shall include the spouse or relatives by consanguinity or affinity in the third civil degree." Thus, we need not look beyond the provisions of R.A. No. 3019 to hold that a brother-in-law

falls within the definition of family under Section 3(d) thereof.

**6. REMEDIAL LAW; CIVIL PROCEDURE; TEMPORARY RESTRAINING ORDER; WOULD NOT HAVE THE EFFECT OF DIVESTING A PUBLIC OFFICER OF THE PUBLIC CHARACTER OF HIS OFFICE.—** We agree with the appellate court that petitioner suffered no gap in his public service while the temporary restraining order was in effect. The nature of a temporary restraining order which would have the effect of preventing a public officer from discharging his office is provisional until a preliminary injunction is issued by the court hearing the case. Because of its temporary character, it would not have the effect of divesting such officer of the public character of his office.

**7. ID.; ID.; ID.; ID.; ONCE C.A.-G.R. SP NO. 69855 (*ROSQUETA VS. HON. JUDGE JUAN NABONG*) WAS DECIDED IN FAVOR OF PETITIONER, THE EFFECTIVITY OF HIS APPOINTMENT RETROACTED TO THE ORIGINAL DATE THUS, IT WAS INCUMBENT UPON HIM TO FOLLOW TRAVEL GUIDELINES.—** It cannot be denied that once CA-G.R. SP No. 69855 was decided and petitioner was allowed to re-assume his office, the effectivitiy of his appointment retroacted to the original date of his appointment. He certainly remained as a public officer during such period and it was incumbent upon him, especially since he was continuously asserting his right to the office, to comply with the guidelines on the application to travel abroad for private purposes of public officials.

**8. CIVIL LAW; STATUTORY CONSTRUCTION; BASIC IS THE MAXIM THAT A STATUTE MUST BE CONSTRUED AS A WHOLE; CASE AT BAR.—** Basic is the maxim in statutory construction that a statute must be read or construed as a whole or in its entirety. All parts, provisions, or sections, must be read, considered or construed together, and each must be considered with respect to all others, and in harmony with the whole. A reading of the provisions cited by the petitioner will show that there is really no conflict between them. Section 2401 covers the matter of the institution and filing of civil and criminal actions by customs officers, which is subject to the approval of the Commissioner if filed for the recovery of duties or the enforcement of any fine, penalty or forfeiture

under the Code. It does not cover the compromise of such civil or criminal actions, while Section 2316 is the provision that deals with such a situation. In fact, the latter is categorical in providing an encompassing scope for the strict conditions for any compromise. Its coverage includes "**any case arising under this code or other laws or part of laws enforced by the Bureau of Customs involving the imposition of fines, surcharges and forfeitures unless otherwise specified by law**." Doubtless, civil cases for collection of customs taxes and duties, including the one in the case at bar, would fall under this coverage.

**9. TAXATION; TAX CREDIT SCAMS; TASK FORCE DESIGNATED TO INVESTIGATE TAX CREDIT SCAMS; FAVORABLE RECOMMENDATION FOR APPROVAL BY THE SPECIAL TASK FORCE AND THE APPROVAL BY THE PRESIDENT ARE BOTH REQUIRED.—** E.O. No. 156, as amended by E.O. No. 38, is clear in its requirement that **in cases involving tax credit scams the favorable recommendation for approval by the Special Task Force and the approval by the President of the Republic are both required**. The approval by the Chairmen of the Special Task Force is still subject to approval of the President. Prior presidential approval is the highest form of check and balance within the Executive branch of government and cannot be satisfied by mere failure of the President to reverse or reprobate the acts of subordinates. To sanction otherwise would be to ask the Court to reward passivity and render nugatory the fundamental safeguard required under the law.

**10. ID.; TAXES; LIFEBLOOD OF THE GOVERNMENT; NOT FOR ANY GOVERNMENT OFFICIAL TO DEEM IT WITHIN HIS COMPLETE CONTROL TO LET PRECIOUS BLOOD FLOW TO THE PRIVATE SPHERE WHERE IT WOULD HAVE BEEN RIGHTFULLY AND LAWFULLY COLLECTED BY THE PUBLIC THROUGH THE GOVERNMENT.—** The Court notes that in Civil Case No. 01-102504, SAMC defrauded the government of the amount of ₱37,195,859.00 in unpaid duties and taxes with the use of fraudulent tax credit certificates that were directly and originally procured by its officials on the basis of inexistent supporting documents. The legal interest, surcharges, litigation expenses and damages of this principal amount totaled a staggering

₱14,762,467.70, which petitioner effectively waived through his entering into a compromise agreement with SAMC. We find lamentable the utter disregard of the legal requirements for entering into a compromise displayed by petitioner which is further aggravated by the fact that there were already sufficient properties of SAMC that were attached in the said case to satisfy not only the principal amount owed but also the penalties, surcharges and interests. No amount of reasoning can infuse an empty plea to justify this bloodletting. Fundamental it is in law that taxes being the lifeblood of the government, such must be continuously replenished and carefully preserved—and no public official should maintain a standard lower than utmost diligence in keeping our revenue system flowing. It is not for any government official to deem it within his complete control to let precious blood flow to the private sphere where it would have been rightfully and lawfully collected by the public through the government.

**11. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; OFFICIALS AND EMPLOYEES OF THE BUREAU OF CUSTOMS SHOULD SERVE AS PRIMARY ROLE MODELS IN THE FAITHFUL OBSERVANCE OF THE CONSTITUTIONAL CANON THAT PUBLIC OFFICE IS A PUBLIC TRUST.—** Persons appointed to the revenue collection agencies of the government, like petitioner, ought to live up to the strictest standards of honesty and integrity in the public service and must at all times be above suspicion. Because of the nature of their office, the officials and employees of the Bureau of Customs should serve as the primary role models in the faithful observance of the constitutional canon that public office is a public trust. Petitioner, being a Deputy Commissioner of the Revenue Collection Monitoring Group, should know that his actuations reflect adversely on the integrity and efficiency of his office and erode the faith and confidence of our people in its daily administration. We find that the totality of petitioner's acts constitutes flagrant disregard of established rules constitutive of grave misconduct.

## D E C I S I O N

**PUNO, *C.J.*:**

Public office is a public trust.[1] Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, and act with patriotism and justice, and lead modest lives.[2] With the numerous ills and negative perception surrounding the revenue collection agencies of the government, this mandate of our fundamental law becomes all the more relevant to the present petition. Petitioner, a Deputy Commissioner of the Bureau of Customs, seeks to reverse and set aside the Decision[3] rendered by the Court of Appeals which affirmed the Decision[4] of the Office of the Deputy Ombudsman for the Military and other Law Enforcement Offices (OMB-MOLEO) finding him guilty of grave misconduct, and decreeing his dismissal from the service with all the accessory penalties appertaining thereto.

The records show that petitioner Gil A. Valera was appointed by President Gloria Macapagal Arroyo as Deputy Commissioner of Customs in charge of the Revenue Collection Monitoring Group on July 13, 2001. He took his oath of office on August 3, 2001, and assumed his post on August 7 of the same year.

On December 21, 2001, he filed in the Regional Trial Court (RTC) of Manila, for and on behalf of the Bureau of Customs, a collection case with prayer for the issuance of a writ of preliminary attachment for the collection of ₱37,195,859.00 in unpaid duties and taxes against Steel Asia Manufacturing Corporation (SAMC), which utilized fraudulent tax credit certificates in the payment of its duties. The case, docketed as

---

[1] CONST., Art. XI, § 1.

[2] CONST., Art. XI, § 1.

[3] *Rollo,* pp. 63-79; penned by Justice Jose C. Reyes, Jr., concurred in by Justices Delilah Vidallon-Magtolis and Perlita J. Tria Tirona, dated February 28, 2005.

[4] *Id*. at 281-289, dated August 30, 2004.

Civil Case No. 01-102504, was raffled off to Branch 39 of the RTC of Manila.

On January 16, 2002, a writ of preliminary attachment was issued against SAMC in the aforementioned case. The writ was duly implemented and the raw materials, finished products and plant equipment of SAMC were subsequently attached. Petitioner and SAMC entered into a compromise agreement wherein the latter offered to pay on a staggered basis through thirty (30) monthly equal installments the ₱37,195,859.00 duties and taxes sought to be collected in the civil case.

On August 20, 2003, the Director of the Criminal Investigation and Detention Group of the Philippine National Police, Eduardo Matillano, filed a letter-complaint against petitioner with the Ombudsman, which reads:

> Investigation conducted disclosed that Atty. Gil A. Valera was appointed as Deputy Commissioner, Bureau of Customs by the President on July 13, 2001, took his oath on August 03, 2001 and assumed his post on August 07, 2001.
>
> On January 30, 2002, while in the performance of his official functions, Atty. Gil A. Valera had compromised the case against the Steel Asia Manufacturing Corporation in Civil Case No. 01-102504 before Branch 39, RTC Manila without proper authority from the Commissioner of the Bureau of Customs in violation of Section 2316 TCCP (Authority of the Commission to make Compromise) and without the approval of the President, in violation of Executive Order No. 156 and Executive Order No. 38. Such illegal acts of Atty. Gil A. Valera indeed caused undue injury to the government by having deprived the government of its right to collect the **legal interest, surcharges, litigation expenses** and **damages** and gave the Steel Asia unwarranted benefits in the total uncollected amount of **FOURTEEN MILLION SEVEN HUNDRED SIXTY TWO THOUSAND FOUR HUNDRED SIXTY SEVEN PESOS AND SEVENTY CENTAVOS** (₱14,762,467.70), which is violative of Sections 3(e) and (g) respectively of RA 3019.
>
> Further investigation disclosed that Atty. Gil A. Valera while being a Bureau of Customs official directly and indirectly had financial or pecuniary interest in the CACTUS CARGOES SYSTEMS a brokerage whose line of business or transaction, in connection with

which, he intervenes or takes part in his official capacity by way of causing the employment of his brother-in-law, Ariel Manongdo, thus, violating 3(h) of RA 3019 and RA 6713 and Section 4, RA 3019 as against Ariel Manongdo.

Finally, investigation also disclosed that on April 21, 2002 Atty. Gil A. Valera traveled to Hongkong with his family without proper authority from the office of the President in violation of Executive Order No. 298 (foreign travel of government personnel) dated May 19, 1995, thus, he committed an administrative offense of Grave Misconduct.[5]

The administrative aspect of the complaint was docketed as OMB-C-A-03-0379-J. On November 12, 2003, then Ombudsman Simeon V. Marcelo issued a Memorandum[6] to Special Prosecutor Dennis M. Villa-Ignacio, inhibiting himself from the cases against the petitioner, and directing the latter to act in his stead and place. Acting pursuant to this authority, Special Prosecutor Villa-Ignacio made the finding that by entering into the compromise agreement, petitioner may have made concessions that may be deemed highly prejudicial to the government, *i.e*., waiver of the legal interest and the penalty charges imposed by law, as well as the virtual exoneration of SAMC of its fraudulent act of using spurious tax credit certificates. He issued an Order[7] placing petitioner on preventive suspension for six (6) months without pay pending administrative investigation on the matter.

On March 19, 2004, the petitioner filed his motion for reconsideration of the preventive suspension order. Upon the lapse of the period[8] within which the Special Prosecutor, as acting Ombudsman, should have resolved the motion for reconsideration, petitioner filed a Petition for *Certiorari* and

[5] *Id*. at 151-152, dated July 28, 2003.

[6] *Id*. at 217.

[7] *Id.* at 218-224.

[8] a. "within three (3) days from filing" – Section 27(2), R.A. No. 6770, otherwise known as "The Ombudsman Act of 1989," and/or

b. "within five (5) days from receipt thereof" – Section 8, Rule III, Administrative Order No. 07 [April 10, 1990], otherwise known as the RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN.

Prohibition before the Court of Appeals on March 29, 2004, docketed as CA-G.R. SP No. 83091 and raffled off to the Special First Division.

On June 14, 2004, Special Prosecutor Villa-Ignacio inhibited himself from the cases of herein petitioner in view of a complaint filed by the latter against him. OMB-C-A-03-0379-J was next assigned to the OMB-MOLEO, represented by respondent Orlando C. Casimiro.

On June 25, 2004, the Special First Division of the Court of Appeals rendered a Decision[9] setting aside the preventive suspension order of Special Prosecutor Villa-Ignacio and directing him to desist from taking any further action in OMB-C-A-03-0379-J. In so ruling, the appellate court held mainly that Special Prosecutor Villa-Ignacio was not authorized by law to sign and issue preventive suspension orders.

The OMB-MOLEO perfected an appeal from this decision on July 16, 2004. The appeal, docketed as G.R. No. 164250, was raffled off to the Second Division of this Court, and was eventually elevated *motu proprio* to the Court *En Banc.*

In the meantime, the adjudication of OMB-C-A-03-0379-J continued and the respondent Deputy Ombudsman issued a Decision[10] finding the petitioner administratively liable for grave misconduct and decreeing his dismissal from the service, with all the accessory penalties appertaining thereto. It was found that petitioner committed grave misconduct based on the following charges:

> (i) compromising the case against SAMC in Civil Case No. 01-102504 before Branch 39, RTC Manila, without proper authority from the Commissioner of the Bureau of Customs in violation of Section 2316[11] of the Tariff and Customs Code, and

[9] *Rollo*, pp. 225-253.

[10] *Supra* note 4.

[11] Section 2316 of the Tariff and Customs Code provides:

Section 2316. *Authority of Commissioner to Make Compromise*.—Subject to the approval of the Secretary of Finance, the Commissioner of Customs

without the approval of the President in violation of Section 4(d) of Executive Order (E.O.) No. 156 as amended by E.O. No. 38;[12]

(ii) causing the employment of his brother-in-law with the Cactus Cargoes Systems, Inc. whose principal business involves transactions with the Bureau of Customs in violation of Section 3(d) of Republic Act (R.A.) No. 3019;[13] and

(iii) traveling to Hongkong without conforming with the guidelines on the application to travel abroad for private purposes of public officials.[14]

---

may compromise any case arising under this Code or other laws or part of laws enforced by the Bureau of Customs involving the imposition of fines, surcharges and forfeitures unless otherwise specified by law.

[12] Section 4(d) of Executive Order No. 156 dated October 7, 1999, entitled "CREATING A SPECIAL TASK FORCE TO REVIEW, INVESTIGATE, AND GATHER EVIDENCE NECESSARY TO SUCCESSFULLY PROSECUTE IRREGULARITIES COMMITTED AT THE BUREAU OF INTERNAL REVENUE, BUREAU OF CUSTOMS AND OTHER GOVERNMENT OFFICES OR AGENCIES UNDER OR ATTACHED TO THE DEPARTMENT OF FINANCE," as amended by Executive Order No. 38, provides:

> SEC. 4. Powers, Duties and Functions. The Task Force shall have the following powers, duties and functions:
>
> xxx xxx xxx
>
> d) To recommend the settlement of cases for approval of the President, subject to appropriate rules on the settlement of claims by the government;

[13] Section 3(d) of R.A. No. 3019, entitled "ANTI-GRAFT AND CORRUPT PRACTICES ACT," enacted on August 17, 1960, provides:

> SEC. 3. Corrupt practices of public officers.—In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> xxx xxx xxx
>
> (d) Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination.

[14] A Memorandum dated May 11, 1999, in accordance with Executive Order No. 39, dated August 6, 1986, and Malacañang Memorandum Circular

The petitioner questioned this decision before the Court of Appeals, via a petition for review, and the case was raffled off to the 4th Division and docketed as CA G.R. SP. No. 86281.

The 4th Division of the Court of Appeals refrained from ruling on the first charge against the petitioner in deference to this Court in G.R. No. 164250. It however found enough evidence to substantiate the second and third charges and issued and promulgated its assailed decision affirming the decision of respondent Deputy Ombudsman finding petitioner guilty of grave misconduct. It held as follows:

After careful consideration of the matter, this Court finds it more prudent to defer from deciding the matters raised in connection with the first ground raised by petitioner in deference to the Supreme Court which is now tackling the very same issues. Respondents themselves argued that:

> "Needless to state, the Office of the Ombudsman lost no time in bringing the foregoing matters to the attention of the Honorable Supreme Court in a petition for review (G.R.

---

No. 18, dated October 27, 1992, was issued by Deputy Commissioner Julita S. Manahan providing Guidelines on Application for Travel Abroad for Private Purposes, which states:

3. Request shall be submitted at least ten (10) days prior to the expected date of departure supported by the following documentary requirements:

k. Letter request for travel abroad.
l. Indorsement from Legal Service Chief/District Collector.
m. Clearance from Legal Service.
n. Application for Leave.
o. Affidavit of support from sponsor who will shoulder such travel.
p. Last year income tax return and assets & liabilities of sponsor.
q. Affidavit of official or employee if he/she will shoulder expenses.
r. Last year income tax return and assets & liabilities of official or employee if he/she will shoulder expenses.
s. Affidavit stating that the travel will not exceed ten (10) days. No request for extension shall be entertained unless it is extremely necessary.
t. Request shall be approved on a case to case basis dependent on the justification submitted.

4. No application for travel abroad shall be approved unless all the documents required are submitted. Failure on the part of the official or employee to report back on duty after the expiration of the authorize travel abroad shall be considered AWOL.

> No. 164250). Since then, the Supreme Court has *motu proprio* elevated the case from the Second Division to the Court *En Banc*, apparently because of the serious nature of the issues raised against the honorable Special First Division." (*Rollo*, p. 292)

It should also be considered that a ruling of the Supreme Court on the applicability of Section 2316 of the TCC is determinative of the existence of a basis to the charges made against petitioner.

Coming now to the second ground raised, petitioner asserted that the respondents erred in finding him liable for the employment of his brother-in-law Ariel N. Manongdo with CCSI, claiming that there is no evidence that he had any participation in the employment of said brother-in-law, to wit:

> "But, nothing is contained in the decision under review, particularly under the heading 'evidence for the complainant,' which shows that petitioner did anything or performed any act or participated in any way, directly or indirectly, in the employment of his brother-in-law, Ariel N. Manongdo, with CCSI. Simply put, the finding of fact is also a conclusion of law with no fact or iota of evidence to support the discussion and conclusion in the decision under review." (*Rollo*, p. 48)

Respondents countered that petitioner not only used his "official ascendancy" (*Rollo*, p. 348) to cause the employment of his brother-in-law with CCSI, but they further claimed that the joint-affidavit (*Rollo*, pp. 88-93) of the elements of the Criminal Investigation Detection Group (CIDG) showed that petitioner was a co-owner of CCSI as shown by the fact that he invited his close friends and relatives to the blessing of the brokerage firm. The relevant portion of said joint-affidavit stated that:

> "12. Further, during the conduct of our surveillance on the lifestyle of Atty. Valera, we received information that he has sent text messages to his close friends and relatives for the blessing of his brokerage. The text of the message is as follows" '*ON WED, INVITE KO KAYO SA BLESSING NG BROKERAGE KO. ROOM 604, GLC Bldg., TM KALAW cor MABINI 6 TO 8 PM*.'
>
> 13. Atty. Gil A. Valera's visitors were mostly his classmates from Ramon Magsaysay Cubao High School. He gave our asset his professional card (Annex '35');

> 14. Our investigation disclosed that the GLC Bldg. is owned by a certain Mr. GERARDO L. CONTRERAS. According to Ms. JENNIE ESGUERRA, the building administrator, party on the 6th Floor was the inauguration of the CACTUS CARGOES SYSTEMS represented by its Marketing Coordinator, Mr. ARIEL MONONGDO (sic). Our information was that Monongdo is the brother-in-law of Atty. Valera. Attached are the SEC Registration of Cactus Cargo Inc., (Annex '36') and the Contract of Lease signed by Mr. Ariel Monongdo the Marketing Manager of Cactus with the building administrator (Annex '37')." (*Rollo*, pp. 91-92)

Respondents also asserted that CCSI is a customs brokerage firm which necessarily deals on a regular basis with petitioner's office, more particularly:

> "The Code of Conduct and Ethical Standards (R.A. No. 6713), under Section 7, subpar. (b)(3) thereof, is very specific in criminalizing the act of '(r)ecommend(ing) any person to any position in a private enterprise which has a regular or pending official transaction with their office.' On the other hand, Section 3 (d) of the Anti Graft and Corrupt Practices Act (sic) (R.A. No. 3019) punishes as criminal offense a public officer's act of '(a)ccepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination.' (*Rollo*, pp. 349-350)

Parenthetically, petitioner also argued that this charge was also held by the Special First Division to be "too trivial". However, the Court considers that statement to have been made in relation to the question of whether or not the deputy ombudsman had the power to order petitioner's preventive suspension. That is, that statement should not be read to be a disposition of the question on the merits.

Now, to dispose of the matter, it should be noted that the findings of the respondent Deputy Ombudsman regarding the second charge was based on two (2) grounds: first, the alleged act of using petitioner's influence to obtain employment for his brother-in-law and, second, the mere fact of employment of his brother-in-law in a company which has regular business with petitioner's office.

While the evidence regarding the alleged use of influence by the petitioner to cause the employment of his brother-in-law may be a

little tenuous, the Court finds basis to the second ground. The Court notes that petitioner did not deny that CCSI has regular transactions with his office. Neither did he deny that Ariel Monongdo is his brother-in-law. Under Section 3(d) of R.A. No. 3019, as amended, mere acceptance by a member of his family of employment with a private enterprise which has pending official business with the official involved is considered a corrupt practice. It is clear, therefore, that mere acceptance by Ariel Manongdo, a family member, of the employment with CCSI rendered petitioner liable under the law. The Court, therefore, agrees with respondent Deputy Ombudsman when he held that:

> "Moreover, the Anti-Graft and Corrupt Practices Act (R.A. 3019) prohibits the public officer's act of accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination. Ariel N. Manongdo, as brother-in-law of respondent Valera falls squarely within the definition of family under Section 4 of the same law." (*Rollo*, p. 70)

Coming now to the matter of his travel to Hongkong which is the subject matter of the third objection raised by petitioner, he first argued that his constitutional right to be informed of the charges against him had been violated. He asserted that while the Matillano Complaint charged him with violating E.O. No. 278, the questioned Decision was based on E.O. No. 39.

The Court does not agree with this assertion. It should be remembered that the present case is an administrative case while Section 14 of Art. 3 of the 1987 Constitution refers strictly to criminal prosecution. Said Constitutional provision reads:

> "SECTION 14. (1) No person shall be held to answer for a criminal offense without due process of law. (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence

of the accused provided that he has been duly notified and his failure to appear is unjustifiable."

It is well-settled that in an administrative case, due process is served when the respondent was given an opportunity to be heard (*Utto v. Comelec,* 375 SCRA 523 [2002]). In the instant case, petitioner cannot deny that he was given all the opportunity to present his side of the story. Thus, the Court agrees with respondents when they argued:

> "It is, thus, unfortunate that instead of demonstrating that he either complied with the requirement of presidential authority to travel that petitioner, as a lawyer, presumably knows to have existed (sic), or that he was legitimately exempted therefrom, petitioner instead resorted to the unavailing technicality that the complaint did not properly identify by the correct number [the] EO in point. Petitioner invokes the right to be informed of charges against an accused which, needless to state, has specific application to criminal charges. Needlessly, however, even in criminal cases, what matters is not the title of the law violated but rather the allegations of acts constituting a crime. In his case, the allegation in the complaint was simply that petitioner did not comply with the requirement for presidential authority to travel abroad. It certainly fully informed him of his infraction. After the issue was joined on such factual allegation, identifying and enforcing the applicable law by the public respondent simply followed as part and parcel of its quasi-judicial function." (*Rollo*, p. 35)

Turning now to his defense that his foreign travel should not be taken against him because at the time he made the travel with his family, he was a private citizen because he was prevented by a temporary restraining order issued by this Court in CA-G.R. SP No. 69855 (in the case entitled *Rosqueta versus Hon. Judge Juan Nabong*) from assuming office and from dispossessing then Deputy Commissioner Rosqueta of the position of Deputy Commissioner.

The Court cannot subscribe to this argument. Under the theory proposed by petitioner, there was in effect an *interegnum* as to his government service during the effectivity of the TRO. But it cannot be denied that once CA-G.R. SP No. 69855 was decided and petitioner was allowed to assume his position, the effectivity of his appointment retroacted to the original date of appointment. While the temporary

restraining order was in effect, he nevertheless continued to assert on his right to the office. The Court also notes that petitioner did not even present any evidence to show that he had dissociated himself from the office at the time in question. As pointed out by the respondents' Comment:

> "For that matter, petitioner cannot claim that he suffered a gap in his public service during the period covered by the so-called TRO. He certainly was not dissociated from office during such period. He continued to be a public officer, notwithstanding, such that the application on him of the presidential authority to travel can not be deemed to have been then suspended." (*Rollo*, p. 356)

xxx xxx xxx

In fine, while the Court refrained from tackling the first charge against petitioner, the Court finds that as to the second and third charges, respondent Deputy Ombudsman did not err in finding petitioner guilty of grave misconduct.[15]

On September 30, 2005, without going into the issue of petitioner's guilt, the Court *En Banc* rendered a decision in G.R. No. 164250 ruling that the power to place a public officer or employee under preventive suspension pending an investigation is lodged only with the Ombudsman or the Deputy Ombudsmen and affirmed the nullification and setting aside by the appellate court of the preventive suspension order of the Special Prosecutor.

Petitioner now comes before us praying that he be absolved of the charges against him and that the decision of the 4th Division of the Court of Appeals which effectively affirmed the decision of the OMB-MOLEO be annulled and set aside.

We shall now put a finis to this controversy that has raged bitterly for the past several months and shun further delay so as to ensure that this case would really attain finality and resolve whether petitioner is guilty of grave misconduct in connection with administrative case OMB-C-A-03-0379-J.

First, we discuss the definition of grave misconduct as established by jurisprudence:

---

[15] *Id*. at 71-78.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.[16] The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or disregard of established rules, which must be proved by substantial evidence.[17]

At the onset, the Court would like to point out that in an administrative proceeding, the quantum of proof required for a finding of guilt is only substantial evidence, that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[18] We reiterate the well-settled rule that, when supported by substantial evidence and absent any clear showing of abuse, arbitrariness or capriciousness, findings of fact of administrative agencies, especially when affirmed by the Court of Appeals, are binding and conclusive upon this Court.[19] After a thorough examination of the evidence on record, we find no reason to depart from this rule.

With respect to the second and third charges against the petitioner, the 4th Division of the Court of Appeals agreed with the findings of the OMB-MOLEO. The petitioner utterly failed to show that the factual findings of the respondent, affirmed by the appellate court, were attended with arbitrariness or abuse. The Matillano letter-complaint as well as its supporting affidavits made clear allegations under oath that petitioner recommended his brother-in-law, Ariel Manongdo, for employment with Cactus Cargoes Systems, Inc. (CCSI), a customs brokerage firm which necessarily deals on a regular basis with petitioner's office. Further, the Matillano letter-complaint also categorically asserted that petitioner traveled to Hongkong without obtaining the proper

---

[16] *Bureau of Internal Revenue v. Organo*, G.R. No. 149549, February 26, 2004, 424 SCRA 16.

[17] *Civil Service Commission v. Juliana Ledesma*, G.R. No. 154521, September 30, 2005, 471 SCRA 589.

[18] *Avancena v. Liwanag,* 454 Phil. 20, 25 (2003).

[19] *King v. Megaworld Properties and Holdings, Inc.*, G.R. No. 162895, August 16, 2006, 499 SCRA 101.

clearance. These allegations under oath constitute substantial evidence required in administrative proceedings.

On the other hand, petitioner did not deny that Ariel Manongdo is his brother-in-law or that CCSI has regular transactions with his office. Neither did he deny that he failed to comply with the requirement of presidential authority to travel abroad. It is thus unfortunate that instead of demonstrating that he is innocent of the charges, the petitioner instead resorted to unavailing technicalities to disprove the allegations. The Supreme Court cannot weigh once more the evidence submitted not only before the Office of the Ombudsman but also before the Court of Appeals. All told, we are convinced that there is substantial evidence to hold petitioner liable for the second and third charges against him.

Be that as it may, petitioner raises some legal issues regarding these charges which we shall settle.

Anent the second charge, petitioner contends that under Section 3(d) of R.A. No. 3019,[20] a brother-in-law is not included within the scope of the word "family" and therefore, he cannot be found liable under the said law. In arguing so, petitioner refers to the definition of the word "family" found under Section 3(g) of R.A. No. 6713, which states:

> SEC. 3. Definition of Terms. — **As used in this Act**, the term:
>
> xxx xxx xxx
>
> (g) "Family of public officials or employees" means their spouses and unmarried children under eighteen (18) years of age.

This contention deserves scant consideration.

Section 3 of R.A. No. 6713 is unequivocal in that its definition of terms is limited to **as used in the Act**. Under R.A. No. 6713, the term "family" was used **only once** under Section 4, par. (h),[21]

---

[20] *Supra* note 13.

[21] Section 4, par. (h) of R.A. No. 6713, provides:

SEC. 4. *Norms of Conduct of Public Officials and Employees*.—xxx

which implores public officials and employees and their families to observe "simple living." The restrictive definition accorded to the word "family" under the law is logical since children of public officials and employees who are above eighteen and already emancipated by law and freed from parental authority should not be bound by this standard where their emancipation may lead them to an otherwise private lifestyle or one which is not beholden to the public trust.

This otherwise perfect logic would result in irrationality if we follow the contention of petitioner that the definition of "family" under R.A. No. 6713 should also apply to R.A. No. 3019. It makes no rhyme nor reason to suppose that public officials and employees are prohibited from having their children under eighteen years accept employment in a private enterprise having pending official business before their office, and yet are allowed to have their children over eighteen years, which is the employable age, to do so.

What petitioner fails to mention is that R.A. No. 6713 itself prohibits the act of public officials and employees during their incumbency to recommend **any person** to any position in a private enterprise which has a regular or pending official transaction with their office.[22] Certainly, the definition of the word "family" under said law would unduly limit and render meaningless Section 3(d) of R.A. No. 3019 if applied to the latter. In fact, family relation is defined under Section 4 of R.A. No. 3019[23] which, according to the said section, "shall

(h) Simple living. — Public officials and employees and their families shall lead modest lives appropriate to their positions and income. They shall not indulge in extravagant or ostentatious display of wealth in any form.

[22] Section 7, par. (b)(3) of R.A. No. 6713.

[23] Section 4 of R.A. No. 3019 provides:

SEC. 4. Prohibition on private individuals. — (a) It shall be unlawful for any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift or material or pecuniary advantage from any other person having some business, transaction, application, request or contract with the government, in which such public official has to intervene. **Family relation shall include the spouse**

include the spouse or relatives by consanguinity or affinity in the third civil degree." Thus, we need not look beyond the provisions of R.A. No. 3019 to hold that a brother-in-law falls within the definition of family under Section 3(d) thereof.

Proceeding now to the legal issue with respect to the third charge, it is advanced by petitioner that a public official reverts to his *quo ante* status as a private citizen upon being subjected to a temporary restraining order directing him to refrain from holding his office. Hence, he need not comply with the requirements for traveling abroad during said period.

We are not persuaded.

We agree with the appellate court that petitioner suffered no gap in his public service while the temporary restraining order was in effect. The nature of a temporary restraining order which would have the effect of preventing a public officer from discharging his office is provisional until a preliminary injunction is issued by the court hearing the case. Because of its temporary character, it would not have the effect of divesting such officer of the public character of his office.

It cannot be denied that once CA-G.R. SP No. 69855 was decided and petitioner was allowed to re-assume his office, the effectivity of his appointment retroacted to the original date of his appointment. He certainly remained as a public officer during such period and it was incumbent upon him, especially since he was continuously asserting his right to the office, to comply with the guidelines on the application to travel abroad for private purposes[24] of public officials.

We now come to the pivotal first charge facing petitioner that was left unresolved by the Court of Appeals in deference to this Court – that of compromising the case against SAMC without prior authorization from the Commissioner of Customs

---

**or relatives by consanguinity or affinity in the third civil degree.** The word "close personal relation" shall include close personal friendship, social and fraternal connections, and professional employment all giving rise to intimacy which assures free access to such public officer.

[24] *Supra* note 14.

in violation of Section 2316[25] of the Tariff and Customs Code, and without prior approval of the President as required by Section 4(d)[26] of E.O. No. 156 as amended by E.O. No. 38.

Prefatorily, we emphasize that violations or disregard of regulations governing the collection of government funds are administratively sanctionable. Intended to raise revenue for government operations, these regulations must be followed strictly.

On the first provision of the special law alleged to have been violated by petitioner, Title VI Book II of the Tariff and Customs Code entitled "ADMINISTRATIVE AND JUDICIAL PROCEEDINGS" is divided as follows:

1. Part 1 – Search, Seizure and Arrest,
2. Part 2 – Administrative Proceedings,
3. Part 3 – Judicial Proceedings,
4. Part 4 – Surcharges, Fines and Forfeitures,
5. Part 5 – Disposition of Property in Customs Custody, and
6. Part 7 – Fees and Charges. (Note: No Part 6)

According to petitioner, Sections 2301 up to 2316 are provisions found under Part 2 and pertain to administrative proceedings, while Sections 2401 and 2402 are provisions found under Part 3 and pertain to judicial proceedings. Section 2316 provides:

---

[25] *Supra* note 12.

[26] Section 4(d) of Executive Order No. 156 dated October 7, 1999, entitled "CREATING A SPECIAL TASK FORCE TO REVIEW, INVESTIGATE, AND GATHER EVIDENCE NECESSARY TO SUCCESSFULLY PROSECUTE IRREGULARITIES COMMITTED AT THE BUREAU OF INTERNAL REVENUE, BUREAU OF CUSTOMS AND OTHER GOVERNMENT OFFICES OR AGENCIES UNDER OR ATTACHED TO THE DEPARTMENT OF FINANCE," as amended by Executive Order No. 38, provides:

Section 4. *Powers, Duties and Functions*. The Task Force shall have the following powers, duties and functions:

xxx xxx xxx

d) To recommend the settlement of cases for approval of the President, subject to appropriate rules on the settlement of claims by the government;

Section 2316. *Authority of Commissioner to Make Compromise*.— Subject to the approval of the Secretary of Finance, **the Commissioner of Customs** may compromise any case arising under this Code or other laws or part of laws enforced by the Bureau of Customs involving the imposition of fines, surcharges and forfeitures unless otherwise specified by law.

While Section 2401 as amended, which was made by petitioner as basis for his entering into the compromise agreement, provides:

Section 2401. *Supervision and Control over Criminal and Civil Proceedings*.—Civil and criminal actions and proceedings instituted in behalf of the government under the authority of this Code or other law enforced by the Bureau shall be brought in the name of the government of the Philippines and **shall be conducted by customs officers** but no civil or criminal action for the recovery of duties or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.

Thus, for petitioner, since the case wherein the compromise agreement was entered into was already pending before a regular court, the requirement of prior authority of the Commissioner of Customs to enter into a compromise is not necessary.

This contention must fail.

Basic is the maxim in statutory construction that a statute must be read or construed as a whole or in its entirety. All parts, provisions, or sections, must be read, considered or construed together, and each must be considered with respect to all others, and in harmony with the whole.[27]

A reading of the provisions cited by the petitioner will show that there is really no conflict between them. Section 2401 covers the matter of the institution and filing of civil and criminal actions by customs officers, which is subject to the approval of the Commissioner if filed for the recovery of duties or the enforcement of any fine, penalty or forfeiture under the Code. It does not cover the compromise of such civil or criminal actions, while Section 2316 is the provision that deals with such a situation. In fact, the latter is categorical in providing an encompassing

[27] *St. Martin, etc. v. Iberville Parish, etc.,* 212 La. 886.

scope for the strict conditions for any compromise. Its coverage includes "**any case arising under this code or other laws or part of laws enforced by the Bureau of Customs involving the imposition of fines, surcharges and forfeitures unless otherwise specified by law**." Doubtless, civil cases for collection of customs taxes and duties, including the one in the case at bar, would fall under this coverage.

To be sure, the adoption of petitioner's interpretation of these provisions would result in absurdity that could not have been intended by Congress. Following his logic, the Commissioner of Customs has to actively participate and seek the approval of the Secretary of Finance in compromising administrative collection cases; whereas, customs officers without even seeking authority from the Commissioner or approval from the Secretary of Finance can proceed to bargain off much larger collection cases in courts. Clearly, the Court cannot countenance the abuse and corruption engendered by this misreading of the law.

Petitioner next claims that there was no violation of Section 4(d)[28] of E.O. No. 156 as amended by E.O. No. 38, when he entered into the compromise agreement without the express approval of the President.

E.O. No. 156, as amended by E.O. No. 38, created a Special Task Force to investigate and prosecute the irregularities relative to the "tax credit scam" committed at the center of the Department of Finance and to recover and collect revenues lost by the government through the "scam." Section 4(d) thereof provides:

Section 4. *Powers, Duties and Functions*. The Task Force shall have the following powers, duties and functions:

xxx xxx xxx

d) To recommend the settlement of cases for approval of the President, subject to appropriate rules on the settlement of claims by the government;

---

[28] *Supra* note 26.

In the case at bar, and during the time relevant to this case,[29] specifically on May 10, 2002, the then Chairman of the Task Force, Department of Finance Undersecretary Cornelio Gison, reported to the then Department of Finance Secretary Jose Isidro Camacho the successful collection by petitioner of ₱37,195,859.00 in the SAMC case. On October 3, 2002, in his Memorandum,[30] Department of Finance Undersecretary Innocencio P. Ferrer, Jr., who succeeded Undersecretary Gison, also congratulated petitioner for his accomplishment in the said case.

Petitioner invokes the principle of qualified political agency wherein these acts of the Special Task Force Chairmen – who both approved the compromise agreement and lauded him for his accomplishment in the recovery efforts against the original grantees and buyers of fraudulently secured tax credit certificates – should be considered as approval by the President herself, especially since she did not disapprove of nor reprobate their acts.

This argument is likewise unavailing.

E.O. No. 156, as amended by E.O. No. 38, is clear in its requirement that **in cases involving tax credit scams the favorable recommendation for approval by the Special Task Force and the approval by the President of the Republic are both required**. The approval by the Chairmen of the Special Task Force is still subject to approval of the President. Prior presidential approval is the highest form of check and balance within the Executive branch of government and cannot be satisfied by mere failure of the President to reverse or reprobate the acts of subordinates. To sanction otherwise would be to ask the Court to reward passivity and render nugatory the fundamental safeguard required under the law.

The Court notes that in Civil Case No. 01-102504, SAMC defrauded the government of the amount of ₱37,195,859.00 in

---

[29] Section 5 of E.O. No. 156, as amended by E.O. No. 38, provides:

SECTION 5. Section 6 of the same issuance shall read as follows:

Section 5. Term. The Task Force shall exist for another two years to expire on October 7, 2003, unless extended by the Office of the President.

[30] *Supra* note 6.

unpaid duties and taxes with the use of fraudulent tax credit certificates that were directly and originally procured by its officials on the basis of inexistent supporting documents. The legal interest, surcharges, litigation expenses and damages of this principal amount totaled a staggering ₱14,762,467.70, which petitioner effectively waived through his entering into a compromise agreement with SAMC. We find lamentable the utter disregard of the legal requirements for entering into a compromise displayed by petitioner which is further aggravated by the fact that there were already sufficient properties of SAMC that were attached in the said case to satisfy not only the principal amount owed but also the penalties, surcharges and interests.

No amount of reasoning can infuse an empty plea to justify this bloodletting. Fundamental it is in law that taxes being the lifeblood of the government,[31] such must be continuously replenished and carefully preserved—and no public official should maintain a standard lower than utmost diligence in keeping our revenue system flowing. It is not for any government official to deem it within his complete control to let precious blood flow to the private sphere where it would have been rightfully and lawfully collected by the public through the government.

Persons appointed to the revenue collection agencies of the government, like petitioner, ought to live up to the strictest standards of honesty and integrity in the public service and must at all times be above suspicion. Because of the nature of their office, the officials and employees of the Bureau of Customs should serve as the primary role models in the faithful observance of the constitutional canon that public office is a public trust. Petitioner, being a Deputy Commissioner of the Revenue Collection Monitoring Group, should know that his actuations reflect adversely on the integrity and efficiency of his office and erode the faith and confidence of our people in its daily administration. We find that the totality of petitioner's acts constitutes flagrant disregard of established rules constitutive of grave misconduct.

---

[31] *Cebu Portland Cement v. Court of Tax Appeals,* G.R. No. L-29059, December 15, 1987, 156 SCRA 535.

One final note. It appears that petitioner is no longer a Deputy Commissioner of Customs.[32] This fact, however, does not render this petition moot and academic. As held in *Gallo v. Cordero*:

> . . . [T]he jurisdiction that was ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. For what remedy would the people have against a judge or any other public official who resorts to wrongful and illegal conduct during his last days in office? xxx If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.[33]

**WHEREFORE,** premises considered, the petition is *DENIED*. The assailed Decision dated February 28, 2005 of the Court of Appeals in CA G.R. SP. No. 86281 is hereby *AFFIRMED*.

**SO ORDERED.**

*Sandoval-Gutierrez, Corona, Azcuna,* and *Leonardo-de Castro, JJ.,* concur.

---

[32] *Rollo* of G.R. No. 164250, p. 579.

[33] 315 Phil. 210 (1995), citing *Zarate v. Judge Romanillos,* 312 Phil. 693 (1995), which cited *Perez v. Abiera*, 159-A Phil. 580, 581 (1975).

**EN BANC**

[G.R. No. 169435. February 27, 2008]

**MUNICIPALITY OF NUEVA ERA, ILOCOS NORTE, represented by its Municipal Mayor, CAROLINE ARZADON-GARVIDA,** *petitioner, vs.* **MUNICIPALITY OF MARCOS, ILOCOS NORTE, represented by its Municipal Mayor, SALVADOR PILLOS, and the HONORABLE COURT OF APPEALS,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; RULE 42 (REMEDY OF APPEAL VIA PETITION FOR REVIEW TO THE COURT OF APPEALS IN CASES DECIDED BY THE RTC IN THE EXERCISE OF ITS APPELLATE JURISDICTION); EXPLAINED.—** True, appeal is a purely statutory right and it cannot be exercised unless it is expressly granted by law. Nevertheless, the CA can pass upon the petition for review precisely because the law allows it. Batas Pambansa (B.P.) Blg. 129 or the Judiciary Reorganization Act of 1980, as amended by R.A. No. 7902, vests in the CA the appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, among others. B.P. Blg. 129 has been further supplemented by the 1997 Rules of Civil Procedure, as amended, which provides for the remedy of appeal via petition for review under Rule 42 to the CA in cases decided by the RTC in the exercise of its appellate jurisdiction. Thus, the CA need not treat the appeal via petition for review filed by Marcos as a petition for *certiorari* to be able to pass upon the same. B.P. Blg. 129, as amended, which is supplemented by Rule 42 of the Rules of Civil Procedure, gives the CA the authority to entertain appeals of such judgments and final orders rendered by the RTC in the exercise of its appellate jurisdiction.

**2. POLITICAL LAW; CONSTITUTIONAL LAW; PROVISIONS OF FUNDAMENTAL LAW GIVEN PROSPECTIVE APPLICATION ONLY UNLESS LEGISLATIVE INTENT FOR ITS RETROACTIVE APPLICATION IS SO**

**PROVIDED; CASE AT BAR.—** Section 10, Article X of the 1987 Constitution provides that: No province, city, municipality, or *barangay* may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected. At the time Marcos was created, a plebiscite was not required by law to create a local government unit. Hence, Marcos was validly created without conducting a plebiscite. As a matter of fact, no plebiscite was conducted in Dingras, where it was derived. *Lex prospicit, non respicit.* The law looks forward, not backward. It is the basic norm that provisions of the fundamental law should be given prospective application only, unless legislative intent for its retroactive application is so provided. Moreover, by deciding this case, We are not creating Marcos but merely interpreting the law that created it. Its creation was already a *fait accompli.* Therefore, there is no reason for Us to further require a plebiscite. As pointed out by Justice Isagani Cruz, to wit: Finally, it should be observed that the provisions of the Constitution should be given only a prospective application unless the contrary is clearly intended. Were the rule otherwise, rights already acquired or vested might be unduly disturbed or withdrawn even in the absence of an unmistakable intention to place them within the scope of the Constitution.

**3. STATUTORY-CONSTRUCTION; INTERPRETATION OF STATUTES; WHERE THE TERMS ARE EXPRESSLY LIMITED TO CERTAIN MATTERS, IT MAY NOT BY INTERPRETATION OR CONSTRUCTION BE EXTENDED TO OTHER MATTERS; CASE AT BAR.—** Only the barrios (now *barangays*) of Dingras from which Marcos obtained its territory are named in R.A. No. 3753. To wit: SECTION 1. The barrios of Capariaan, Biding, Escoda, Culao, Alabaan, Ragas and Agunit in the Municipality of Dingras, Province of Ilocos Norte, are hereby separated from the said municipality and constituted into a new and separate municipality to be known as the Municipality of Marcos, with the following boundaries: Since only the *barangays* of Dingras are enumerated as Marcos' source of territory, Nueva Era's territory is, therefore, excluded. Under the maxim *expressio unius est exclusio alterius,* the mention of one thing implies the exclusion of another thing not mentioned.

If a statute enumerates the things upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect. This rule, as a guide to probable legislative intent, is based upon the rules of logic and natural workings of the human mind. Had the legislature intended other *barangays* from Nueva Era to become part of Marcos, it could have easily done so by clear and concise language. Where the terms are expressly limited to certain matters, it may not by interpretation or construction be extended to other matters. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.

**4. ID.; ID.; A PERSON, OBJECT OR THING OMITTED FROM AN ENUMERATION MUST BE HELD TO HAVE BEEN OMITTED INTENTIONALLY.—** Moreover, since the *barangays* of Nueva Era were not mentioned in the enumeration of *barangays* out of which the territory of Marcos shall be set, their omission must be held to have been done intentionally. This conclusion finds support in the rule of *casus omissus pro omisso habendus est*, which states that a person, object or thing omitted from an enumeration must be held to have been omitted intentionally.

**5. ID.; ID.; IN CASE OF AMBIGUITY IN STATUTES, RESORT MAY BE MADE TO THE EXPLANATORY NOTE TO CLARIFY AMBIGUITY.—** Furthermore, this conclusion on the intention of the legislature is bolstered by the explanatory note of the bill which paved the way for the creation of Marcos. Said explanatory note mentioned only Dingras as the mother municipality of Marcos. Where there is ambiguity in a statute, as in this case, courts may resort to the explanatory note to clarify the ambiguity and ascertain the purpose and intent of the statute.

**6. POLITICAL LAW; POLITICAL SUBDIVISIONS; BOUNDARIES; AS THE DESCRIPTION OF THE EASTERN BOUNDARY OF MARCOS UNDER R.A. NO. 3753 IS AMBIGUOUS, SAME MUST BE INTERPRETED IN THE LIGHT OF LEGISLATIVE INTENT.—** The boundaries of Marcos under R.A. No. 3753 read: On the Northwest, by the barrios Biding-Rangay boundary going down to the barrios Capariaan-Gabon boundary consisting of foot path and feeder

road; on the Northeast, by the Burnay River which is the common boundary of barrios Agunit and Naglayaan; on the East, by the Ilocos Norte-Mt. Province boundary; on the South, by the Padsan River which is at the same time the boundary between the municipalities of Banna and Dingras; on the West and Southwest, by the boundary between the municipalities of Batac and Dingras. Marcos contends that since it is "bounded on the East, by the Ilocos Norte-Mt. Province boundary," a portion of Nueva Era formed part of its territory because, according to it, Nueva Era is between the Marcos and Ilocos Norte-Mt. Province boundary. Marcos posits that in order for its eastern side to reach the Ilocos Norte-Mt. Province boundary, it will necessarily traverse the middle portion of Nueva Era. Marcos further claims that it is entitled not only to the middle portion of Nueva Era but also to its northern portion which, as a consequence, was isolated from the major part of Nueva Era. Considering that the description of the eastern boundary of Marcos under R.A. No. 3753 is ambiguous, the same must be interpreted in light of the legislative intent.

**7. ID.; ID.; ID.; COURT UPHOLDS THE LEGISLATIVE INTENT TO CREATE MARCOS OUT OF THE TERRITORY OF DINGRAS ONLY.—** Only Dingras is specifically named by law as source territory of Marcos. Hence, the said description of boundaries of Marcos is descriptive only of the listed *barangays* of Dingras as a compact and contiguous territory. Statutes are to be construed in the light of the purposes to be achieved and the evils sought to be remedied. Thus, in construing a statute, the reason for its enactment should be kept in mind and the statute should be construed with reference to the intended scope and purpose. The court may consider the spirit and reason of the statute, where a literal meaning would lead to absurdity, contradiction, injustice, or would defeat the clear purpose of the lawmakers. Considering that the description of the eastern boundary of Marcos under R.A. No. 3753 is ambiguous, the same must be interpreted in light of the legislative intent.

**APPEARANCES OF COUNSEL**

*Damasen Law Office* for petitioner.
*Respicio & Respicio Law Office* for respondents.

## D E C I S I O N

**REYES, R.T., *J.*:**

AS the law creating a municipality fixes its boundaries, settlement of boundary disputes between municipalities is facilitated by carrying into effect the law that created them.

Any alteration of boundaries that is not in accordance with the law creating a municipality is not the carrying into effect of that law but its amendment, which only the Congress can do.[1]

For Our review on *certiorari* is the Decision[2] of the Court of Appeals (CA) reversing to a certain extent that[3] of the Regional Trial Court (RTC), Branch 12, Laoag City, Ilocos Norte, in a case that originated from the Sangguniang Panlalawigan (SP) of Ilocos Norte about the boundary dispute between the Municipalities of Marcos and Nueva Era in Ilocos Norte.

The CA declared that Marcos is entitled to have its eastern boundary extended up "to the boundary line between the province of Ilocos Norte and Kalinga-Apayao."[4] By this extension of Marcos' eastern boundary, the CA allocated to Marcos a portion of Nueva Era's territory.

### The Facts

The Municipality of Nueva Era was created from the settlements of Bugayong, Cabittaoran, Garnaden, Padpadon, Padsan, Paorpatoc, Tibangran, and Uguis which were previously organized as *rancherias,* each of which was under the independent control of a chief. Governor General Francis Burton Harrison, acting

---

[1] *Municipality of Jimenez v. Baz,* 333 Phil. 1, 18 (1996).

[2] *Rollo,* pp. 31-46. Dated June 6, 2005 in CA-G.R. SP No. 64147, entitled "*Municipality of Marcos, Ilocos Norte v. Municipality of Nueva Era, Ilocos Norte.*" Penned by Associate Justice Salvador J. Valdez, Jr., with Associate Justices Mariano C. Del Castillo and Magdangal M. de Leon, concurring.

[3] *Id*. at 123-129; records, pp. 437-443. Dated March 19, 2001 in Sp. Civil Action No. 12073. Penned by Judge Perla B. Querubin.

[4] *Id*. at 45-46.

on a resolution passed by the provincial government of Ilocos Norte, united these *rancherias* and created the township of Nueva Era by virtue of Executive Order (E.O.) No. 66[5] dated September 30, 1916.

The Municipality of Marcos, on the other hand, was created on June 22, 1963 pursuant to Republic Act (R.A.) No. 3753 entitled "An Act Creating the Municipality of Marcos in the Province of Ilocos Norte." Section 1 of R.A. No. 3753 provides:

> SECTION 1. The barrios of Capariaan, Biding, Escoda, Culao, Alabaan, Ragas and Agunit in the Municipality of Dingras, Province of Ilocos Norte, are hereby separated from the said municipality and constituted into a new and separate municipality to be known as the Municipality of Marcos, with the following boundaries:
>
> On the Northwest, by the barrios Biding-Rangay boundary going down to the barrios Capariaan-Gabon boundary consisting of foot path and feeder road; on the Northeast, by the Burnay River which is the common boundary of barrios Agunit and Naglayaan; on the East, by the Ilocos Norte-Mt. Province boundary; on the South, by the Padsan River which is at the same time the boundary between the municipalities of Banna and Dingras; on the West and Southwest, by the boundary between the municipalities of Batac and Dingras.
>
> The Municipality of Marcos shall have its seat of government in the barrio of Biding.

Based on the first paragraph of the said Section 1 of R.A. No. 3753, it is clear that Marcos shall be derived from the listed *barangays* of Dingras, namely: Capariaan, Biding, Escoda, Culao, Alabaan, Ragas and Agunit. The Municipality of Nueva Era or any of its *barangays* was not mentioned. Hence, if based

---

[5] E.O. No. 66 signed by Governor-General Francis Burton Harrison reads: Upon the recommendation of the Honorable Secretary of the Interior and the Provincial Board of Ilocos Norte, and pursuant to the provisions of Section twenty-three hundred and ninety-one of the Administrative Code, the settlements of Bugayong, Cabittaoran, Garnaden, Padpadon, Padsan, Paor-patoc, Tibangran, and Uguis in the Province of Ilocos Norte, are hereby consolidated and organized in to a township to be known as the township of Nueva Era. The seat of the township government of the township of Nueva Era shall be at the settlement of Bugayong.

only on said paragraph, it is clear that Nueva Era may not be considered as a source of territory of Marcos.

There is no issue insofar as the first paragraph is concerned which named only Dingras as the mother municipality of Marcos. The problem, however, lies in the description of Marcos' boundaries as stated in the second paragraph, particularly in the phrase: "on the East, by the Ilocos Norte-Mt. Province boundary."

It must be noted that the term "Mt. Province" stated in the above phrase refers to the present adjoining provinces of Benguet, Mountain Province, Ifugao, Kalinga and Apayao, which were then a single province.

Mt. Province was divided into the four provinces of Benguet, Mountain Province, Ifugao, and Kalinga-Apayao by virtue of R.A. No. 4695 which was enacted on June 18, 1966. On February 14, 1995, the province of Kalinga-Apayao, which comprises the sub-provinces of Kalinga and Apayao, was further converted into the regular provinces of Kalinga and Apayao pursuant to R.A. No. 7878.

The part of then Mt. Province which was at the east of Marcos is now the province of Apayao. Hence, the eastern boundary referred to by the second paragraph of Section 1 of R.A. No. 3753 is the present Ilocos Norte-Apayao boundary.

On the basis of the said phrase, which described Marcos' eastern boundary, Marcos claimed that the middle portion of Nueva Era, which adjoins its eastern side, formed part of its territory. Its reasoning was founded upon the fact that Nueva Era was between Marcos and the Ilocos Norte-Apayao boundary such that if Marcos was to be bounded on the east by the Ilocos Norte-Apayao boundary, part of Nueva Era would consequently be obtained by it.[6]

Marcos did not claim any part of Nueva Era as its own territory until after almost 30 years,[7] or only on March 8, 1993, when

[6] *Rollo,* pp. 256-258.

[7] *Id*. at 32.

its Sangguniang Bayan passed Resolution No. 93-015.[8] Said resolution was entitled: "Resolution Claiming an Area which is an Original Part of Nueva Era, But Now Separated Due to the Creation of Marcos Town in the Province of Ilocos Norte."

Marcos submitted its claim to the SP of Ilocos Norte for its consideration and approval. The SP, on the other hand, required Marcos to submit its position paper.[9]

In its position paper, Marcos alleged that since its northeastern and eastern boundaries under R.A. No. 3753 were the Burnay River and the Ilocos Norte-Mountain Province boundary, respectively, its eastern boundary should not be limited to the former Dingras-Nueva Era boundary, which was coterminous and aligned with the eastern boundary of Dingras. According to Marcos, its eastern boundary should extend further to the east or up to the Ilocos-Norte-Mt. Province boundary pursuant to the description of its eastern boundary under R.A. No. 3753.[10]

In view of its claim over the middle portion of Nueva Era, Marcos posited that Nueva Era was cut into two parts. And since the law required that the land area of a municipality must be compact and contiguous, Nueva Era's northern isolated portion could no longer be considered as its territory but that of Marcos'. Thus, Marcos claimed that it was entitled not only to the middle portion[11] of Nueva Era but also to Nueva Era's isolated northern portion. These areas claimed by Marcos were within *Barangay* Sto. Niño, Nueva Era.

Nueva Era reacted to the claim of Marcos through its Resolution No. 1, Series of 1993. It alleged that since time immemorial, its entire land area was an ancestral domain of the "*tinguians*," an indigenous cultural community. It argued to the effect that since the land being claimed by Marcos must be protected for the *tinguians*, it must be preserved as part of Nueva Era.[12]

[8] *Id.*; records, pp. 2-3.

[9] *Id.*

[10] *Id.* at 33.

[11] *Id.* at 33-34.

[12] Records, p. 13; *id.*

According to Nueva Era, Marcos was created out of the territory of Dingras only. And since R.A. No. 3753 specifically mentioned seven (7) barrios of Dingras to become Marcos, the area which should comprise Marcos should not go beyond the territory of said barrios.[13]

From the time Marcos was created in 1963, its eastern boundary had been considered to be aligned and coterminous with the eastern boundary of the adjacent municipality of Dingras. However, based on a re-survey in 1992, supposedly done to conform to the second paragraph of Section 1 of R.A. No. 3753, an area of 15,400 hectares of Nueva Era was alleged to form part of Marcos.[14] This was the area of *Barangay* Sto. Niño, Nueva Era that Marcos claimed in its position paper.

On March 29, 2000, the SP of Ilocos Norte ruled in favor of Nueva Era. The *fallo* of its decision[15] reads:

> WHEREFORE, in view of all the foregoing, this Body has no alternative but to dismiss, as it hereby DISMISSES said petition for lack of merit. The disputed area consisting of 15,400 hectares, more or less, is hereby declared as part and portion of the territorial jurisdiction of respondent Nueva Era.[16]

R.A. No. 3753 expressly named the *barangays* that would comprise Marcos, but none of Nueva Era's *barangays* were mentioned. The SP thus construed, applying the rule of *expressio unius est exclusio alterius*, that no part of Nueva Era was included by R.A. No. 3753 in creating Marcos.[17]

The SP ratiocinated that if Marcos was to be bounded by Mt. Province, it would encroach upon a portion, not only of Nueva Era but also of Abra. Thus:

> x x x Even granting, for the sake of argument, that the eastern boundary of Marcos is indeed Mountain Province, Marcos will then

[13] *Id*. at 14-15.

[14] *Rollo,* pp. 35-36.

[15] Records, pp. 341-344.

[16] *Id*. at 344.

[17] *Id*. at 342-344.

be claiming a portion of Abra because the province, specifically Barangay Sto. Niño, Nueva Era, is actually bounded on the East by the Province of Abra. Abra is situated between and separates the Provinces of Ilocos Norte and Mountain Province.

This is precisely what this body would like to avoid. Statutes should be construed in the light of the object to be achieved and the evil or mischief to be suppressed, and they should be given such construction as will advance the object, suppress the mischief and secure the benefits intended.[18] (Citations omitted)

The SP further explained:

Invariably, it is not the letter, but the spirit of the law and the intent of the legislature that is important. When the interpretation of the statute according to the exact and literal import of its words would lead to absurdity, it should be construed according to the spirit and reason, disregarding if necessary the letters of the law. It is believed that congress did not intend to have this absurd situation to be created when it created the Municipality of Marcos. This body, by the mandate given to it by the RA 7160 otherwise known Local Government Code, so believes that respondent Nueva Era or any portion thereof has been excluded from the ambit of RA 3753. Under the principle of "*espressio (sic) unios (sic) est exclusio alterius*," by expressly naming the *barangays* that will comprise the town of Marcos, those not mentioned are deemed excluded. In Republic Act 4354, where Section 2 thereof enumerated the barrios comprising the City of Davao excluding the petitioner Barrio Central as part of the said City, the court held that there arose a *prima facie* conclusion that the said law abolished Barrio Central as part of Davao City.

Historically, the hinterlands of Nueva Era have been known to be the home of our brothers and sisters belonging to peculiar groups of non-(C)hristian inhabitants with their own rich customs and traditions and this body takes judicial notice that the inhabitants of Nueva Era have proudly claimed to be a part of this rich culture. With this common ancestral heritage which unfortunately is absent with Marcos, let it not be disturbed.[19] (Emphasis ours and citations omitted)

---

[18] *Id*. at 343.

[19] *Id*. at 343-344.

**RTC Decision**

On appeal by Marcos, the RTC affirmed the decision of the SP in its decision[20] of March 19, 2001. The dispositive part of the RTC decision reads:

> WHEREFORE, the instant appeal is hereby DISMISSED. The questioned decision of the Sangguniang Panlalawigan of Ilocos Norte is hereby AFFIRMED.
>
> No costs.
>
> SO ORDERED.[21]

The RTC reasoned out in this wise:

> The position of the Municipality of Marcos is that the provision of R.A. 3753 as regards its boundary on the East which is the "Ilocos Norte-Mt. Province" should prevail.
>
> On the other hand, the Municipality of Nueva Era posits the theory that only the barrios of the Municipality of Dingras as stated in R.A. 3753 should be included in the territorial jurisdiction of the Municipality of Marcos. The Sangguniang Panlalawigan agreed with the position of Nueva Era.
>
> xxx xxx xxx
>
> An examination of the Congressional Records during the deliberations of the R.A. 3753 (House Bill No. 3721) shows the Explanatory Note of Congressman Simeon M. Valdez, 2nd District, Ilocos Norte, to wit:
>
> EXPLANATORY NOTE
>
> This bill seeks to create in the Province of Ilocos Norte a new municipality to be known as the Municipality of Marcos, to be comprised by the present barrios of Capariaan, Biding Escoda, Culao, Alabaan, Ragas and Agunit, all in the Municipality of Dingras of the same province. The seat of government will be in the sitio of San Magro in the present barrio of Ragas.
>
> xxx xxx xxx

---

[20] *Id*. at 437-443; *rollo,* pp. 123-129.

[21] *Id*. at 443.

On the other hand, the Municipality of Dingras will not be adversely affected too much because its finances will still be sound and stable. Its capacity to comply with its obligations, especially to its employees and personnel, will not be diminished nor its operations paralyzed. On the contrary, economic development in both the mother and the proposed municipalities will be accelerated.

In view of the foregoing, approval of this bill is earnestly requested.

(Sgd.) SIMEON M. VALDEZ
Congressman, 2nd District
Ilocos Norte[22]

Parenthetically, the legislative intent was for the creation of the Municipality of Marcos, Ilocos Norte from the barrios (*barangays*) of the Municipality of Dingras, Ilocos Norte only. Hence, the Municipality of Marcos cannot add any area beyond the territorial jurisdiction of the Municipality of Dingras, Ilocos Norte. This conclusion might have been different only if the area being claimed by the Municipality of Marcos is within the territorial jurisdiction of the Municipality of Dingras and not the Municipality of Nueva Era. In such case, the two conflicting provisions may be harmonized by including such area within the territorial jurisdiction of the Municipality of Dingras as within the territorial jurisdiction of the Municipality of Marcos.[23] (Emphasis ours)

## CA Disposition

Still determined to have a more extensive eastern boundary, Marcos filed a petition for review[24] of the RTC decision before the CA. The issues raised by Marcos before the CA were:

1. Whether or not the site of Hercules Minerals and Oil, Inc. which is within a Government Forest Reservation in Barangay Sto. Niño, formerly of Nueva Era, is a part of the newly created Municipality of Marcos, Ilocos Norte.

2. Whether or not the portion of Barangay Sto. Niño on the East which is separated from Nueva Era as a result of the full

[22] *Rollo,* p. 128; *id*. at 442. Congressional Record, Proceedings and Debates (1963), Vol. II, Part I, p. 1474.

[23] *Id*. at 127-129.

[24] CA *rollo,* pp. 2-12.

implementation of the boundaries of the new Municipality of Marcos belongs also to Marcos or to Nueva Era.[25]

The twin issues involved two portions of Nueva Era, *viz.*: (1) middle portion, where Hercules Minerals and Oil, Inc. is located; and (2) northern portion of Nueva Era, which, according to Marcos, was isolated from Nueva Era in view of the integration to Marcos of said middle portion.

Marcos prayed before the CA that the above two portions of Nueva Era be declared as part of its own territory. It alleged that it was entitled to the middle portion of Nueva Era in view of the description of Marcos' eastern boundary under R.A. No. 3753. Marcos likewise contended that it was entitled to the northern portion of Nueva Era which was allegedly isolated from Nueva Era when Marcos was created. It posited that such isolation of territory was contrary to law because the law required that a municipality must have a compact and contiguous territory.[26]

In a Decision[27] dated June 6, 2005, the CA partly reversed the RTC decision with the following disposition:

WHEREFORE, we **partially GRANT** the petition treated as one for *certiorari*. The **Decisions of both the Sangguniang Panlalawigan and Regional Trial Court of Ilocos Norte** are **REVERSED** and **SET ASIDE** insofar as they made the eastern boundary of the municipality of Marcos co-terminous with the eastern boundary of Dingras town, and another is rendered extending the said boundary of Marcos to the boundary line between the province of Ilocos Norte and Kalinga-Apayao, **but the same Decisions** are **AFFIRMED** with respect to the denial of the claim of Marcos to the detached northern portion of barangay Sto. Niño which should, as it is hereby ordered to, remain with the municipality of Nueva Era. No costs.

SO ORDERED.[28]

---

[25] *Id*. at 5-6.

[26] *Id*. at 9.

[27] *Rollo,* pp. 31-46.

[28] *Id*. at 45-46.

In concluding that the eastern boundary of Marcos was the boundary line between Ilocos Norte and Kalinga-Apayao, the CA gave the following explanation:

Clearly then, both the SP and the RTC erred when they ruled that the eastern boundary of Marcos is only coterminous with the eastern boundary of the adjacent municipality of Dingras and refused to extend it up to the boundary line between the provinces of Ilocos Norte and Mountain Province (Kalinga-Apayao). R.A. No. 3753, the law creating Marcos, is very explicit and leaves no room for equivocation that the boundaries of Marcos town are:

> "On the Northwest by the barrios Biding-Rangay boundary going down to the barrios Capariaan-Gabon boundary consisting of foot path and feeder road; on the Northeast, by the Burnay River which is the common boundary of barrios Agunit and Naglayaan; **on the East, by the Ilocos Norte-Mt. Province boundary**; on the South by the Padsan River, which is at the same time the boundary between the municipalities of Banna and Dingras; on the West and Southwest by the boundary between the municipalities of Batac and Dingras."

To stop short at the eastern boundary of Dingras as the eastern boundary also of Marcos and refusing to go farther to the boundary line between Ilocos Norte and Mountain Province (Kalinga-Apayao) is tantamount to amending the law which Congress alone can do. Both the SP and RTC have no competence to undo a valid act of Congress.

It is not correct to say that Congress did not intend to take away any part of Nueva Era and merge it with Marcos for it is chargeable with conclusive knowledge that when it provided that the eastern boundary of Marcos is the boundary line between Ilocos Norte and Mountain Province, (by the time of both the SB and RTC Decision was already Kalinga-Apayao), it would be cutting through a portion of Nueva Era. As the law is written so must it be applied. *Dura lex sed lex*![29]

The CA likewise held that the province of Abra was not located between Marcos and Kalinga-Apayao; and that Marcos would not encroach upon a portion of Abra for it to be bounded by Kalinga-Apayao, to wit:

[29] *Id.* at 41-42.

Nueva Era's contention that to lay out the eastern jurisdiction of Marcos to the boundary line between Ilocos Norte and Mountain Province (Kalinga-Apayao) would mean annexing part of the municipality of Itnig, province of Abra to Marcos as Abra is between Ilocos Norte and Mountain Province is geographically erroneous. From Nueva Era's own map of Region 1, which also depicts the locations of Kalinga-Apayao, Abra, Mountain Province, Benguet and Nueva Vizcaya after the partition of the old Mountain Province into the provinces of Kalinga-Apayao, Ifugao, Mountain Province and Benguet, the province of Abra is situated far to the south of Kalinga-Apayao and is between the latter and the present Mountain Province, which is farther south of Abra. Abra is part of the eastern boundary of Ilocos Sur while Kalinga-Apayao is the eastern boundary of Ilocos Norte. Hence, in no way will the eastern boundary of the municipality of Marcos encroach upon a portion of Abra.[30]

However, Marcos' claim over the alleged isolated northern portion of Nueva Era was denied. The CA ruled:

Going now to the other area involved, *i.e.*, the portion of Sto. Niño that is separated from its mother town Nueva Era and now lies east of the municipalities of Solsona and Dingras and north of Marcos, it bears stressing that it is not included within the area of Marcos as defined by law. But since it is already detached from Sto. Niño, Marcos is laying **claim** to it to be integrated into its territory by the SP because it is contiguous to a portion of said municipality.

We hold that the SP has no jurisdiction or authority to act on the claim, for it will necessarily substantially alter the north eastern and southern boundaries of Marcos from that defined by law and unduly enlarge its area. Only Congress can do that. True, the SP may substantially alter the boundary of a *barangay* within its jurisdiction. But this means the alteration of the boundary of a *barangay* in relation to another *barangay* within the **same municipality** for as long as that will not result in any change in the boundary of that municipality. The area in dispute therefore remains to be a part of Sto. Niño, a *barangay* of Nueva Era although separated by the newly created Marcos town pursuant to Section 7(c) of the 1991 Local Government Code which states:

SEC. 7. *Creation and Conversion*. – As a general rule, the creation of a local government unit or its conversion from

[30] *Id*. at 42-43.

one level to another shall be based on verifiable indicators of viability and projected capacity to provide services, to wit:

xxx xxx xxx

(c) *Land Area*. – It must be contiguous, unless it comprises two or more islands or **is separated by a local government unit independent of the others**; properly identified by metes and bounds with technical descriptions; and sufficient to provide for such basic services and facilities to meet the requirements of its populace.[31]

The CA also expressed the view that Marcos adopted the wrong mode of appeal in bringing the case to it. The case, according to the CA, was appealable only to the RTC. Nonetheless, despite its pronouncement that the case was dismissible, the CA took cognizance of the same by treating it as one for *certiorari*, to wit:

A final word. At the outset, we agonized over the dilemma of choosing between dismissing outright the petition at bar or entertaining it. This is for the simple reason that a petition for review is a mode of appeal and is not appropriate as the Local Government Code provides for the remedy of appeal in boundary disputes only to the Regional Trial Court but not any further appeal to this Court. Appeal is a purely statutory right. It cannot be exercised unless it is expressly granted by law. This is too basic to require the citation of supporting authority.

xxx xxx xxx

By the same token, since the Local Government Code does not explicitly grant the right of further appeal from decisions of the RTCs in boundary disputes between or among local government units, Marcos town cannot exercise that right from the adverse decision of the RTC of Ilocos Norte. Nonetheless, because of the transcendental legal and jurisdictional issues involved, we solved our inceptive dilemma by treating the petition at bar as a special civil action for *certiorari*.[32]

Nueva Era was not pleased with the decision of the CA. Hence, this petition for review on *certiorari* under Rule 45.

---

[31] *Id*. at 43-44.

[32] *Id*. at 44-45.

**Issues**

Nueva Era now raises the following issues:

a) Whether or not, the Court of Appeals has jurisdiction on the Petition for Review on Appeal, since Sec. 119 of the Local Government Code, which provides that "An appeal to the Decision of the Sangguniang Panlalawigan is exclusively vested to the Regional Trial Court, without further Appeal to the Court of Appeals";

b) Whether or not, the Court of Appeals gravely abused its discretion, in treating the Petition for Review On Appeal, filed under Rule 45, Revised Rules of Court, as a Petition for *Certiorari*, under Rule 65 of the Revised Rules of Court;

c) Whether or not, the Court of Appeals erred in its appreciation of facts, in declaring that MARCOS East is not coterminous with the Eastern boundary of its mother town-Dingras. That it has no factual and legal basis to extend MARCOS territory beyond Brgys. Agunit (Ferdinand) and Culao (Elizabeth) of Marcos, and to go further East, by traversing and disintegrating Brgy. Sto. Niño, and drawing parallel lines from Sto. Niño, there lies Abra, not Mt. Province or Kalinga-Apayao.[33]

Basically, there are two (2) issues to resolve here: (1) whether or not the mode of appeal adopted by Marcos in bringing the case to the CA is proper; and (2) whether or not the eastern boundary of Marcos extends over and covers a portion of Nueva Era.

**Our Ruling**

***Marcos correctly appealed the RTC judgment via petition for review under Rule 42.***

Under Section 118(b) of the Local Government Code, "(b)oundary disputes involving two (2) or more municipalities within the same province shall be referred for settlement to the sangguniang panlalawigan concerned." The dispute shall be

[33] *Id*. at 9.

formally tried by the said *sanggunian* in case the disputing municipalities fail to effect an amicable settlement.[34]

The SP of Ilocos validly took cognizance of the dispute between the parties. The appeal of the SP judgment to the RTC was likewise properly filed by Marcos before the RTC. The problem, however, lies in whether the RTC judgment may still be further appealed to the CA.

The CA pronounced that the RTC decision on the boundary dispute was not appealable to it. It ruled that no further appeal of the RTC decision may be made pursuant to Section 119 of the Local Government Code[35] which provides:

> SECTION 119. *Appeal*. – Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the *sanggunian* concerned to the proper Regional Trial Court having jurisdiction over the area in dispute. The Regional Trial Court shall decide the appeal within one (1) year from the filing thereof. Pending final resolution of the disputed area prior to the dispute shall be maintained and continued for all legal purposes.

The CA concluded that since only the RTC was mentioned as appellate court, the case may no longer be further appealed to it. The CA stated that "(a)ppeal is a purely statutory right. It cannot be exercised unless it is expressly granted by law. This is too basic to require the citation of supporting authority."[36]

The CA, however, justified its taking cognizance of the case by declaring that: "because of the transcendental legal and jurisdictional issues involved, we solved our inceptive dilemma by treating the petition at bar as a special civil action for *certiorari*."[37]

The CA erred in declaring that only the RTC has appellate jurisdiction over the judgment of the SP.

---

[34] Local Government Code (1991), Sec. 118(e).

[35] Republic Act No. 7160 (1991).

[36] *Rollo,* p. 44.

[37] *Id*. at 45.

True, appeal is a purely statutory right and it cannot be exercised unless it is expressly granted by law. Nevertheless, the CA can pass upon the petition for review precisely because the law allows it.

Batas Pambansa (B.P.) Blg. 129 or the Judiciary Reorganization Act of 1980, as amended by R.A. No. 7902,[38] vests in the CA the appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, among others.[39] B.P. Blg. 129 has been further supplemented by the 1997 Rules of Civil Procedure, as amended, which provides for the remedy of appeal via petition for review under Rule 42 to the CA in cases decided by the RTC in the exercise of its appellate jurisdiction.

Thus, the CA need not treat the appeal via petition for review filed by Marcos as a petition for *certiorari* to be able to pass upon the same. B.P. Blg. 129, as amended, which is supplemented by Rule 42 of the Rules of Civil Procedure, gives the CA the authority to entertain appeals of such judgments and final orders rendered by the RTC in the exercise of its appellate jurisdiction.

***At the time of creation of Marcos, approval in a plebiscite of the creation of a local government unit is not required.***

Section 10, Article X of the 1987 Constitution provides that:

> No province, city, municipality, or *barangay* may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.[40]

[38] Effective March 18, 1995, entitled "An Act Expanding the Jurisdiction of the Court of Appeals, Amending for the Purpose Section Nine of Batas Pambansa Blg. 129, As Amended, Known As the Judiciary Reorganization Act of 1980."

[39] *Keswani v. Republic,* G.R. No. 153986, June 8, 2007, 524 SCRA 145, 150.

[40] A similar provision is likewise provided in Section 3, Article XI of the 1973 Constitution, thus:

The purpose of the above constitutional provision was acknowledged by the Court through Justice Reynato S. Puno in *Miranda v. Aguirre*,[41] where it was held that:

> The 1987 Constitution, more than any of our previous Constitutions, gave more reality to the sovereignty of our people for it was borne out of the people power in the 1986 EDSA revolution. Its Section 10, Article X addressed the undesirable practice in the past whereby local government units were created, abolished, merged or divided on the basis of the vagaries of politics and not of the welfare of the people. Thus, the consent of the people of the local government unit directly affected was required to serve as a checking mechanism to any exercise of legislative power creating, dividing, abolishing, merging or altering the boundaries of local government units. It is one instance where the people in their sovereign capacity decide on a matter that affects them – direct democracy of the people as opposed to democracy thru people's representatives. This plebiscite requirement is also in accord with the philosophy of the Constitution granting more autonomy to local government units.[42]

Nueva Era contends that the constitutional and statutory[43] plebiscite requirement for the creation of a local government unit is applicable to this case. It posits that the claim of Marcos

---

SECTION 3. No province, city, municipality, or barrio may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code, and subject to the approval by a majority of the votes cast in a plebiscite in the unit or units affected.

[41] 373 Phil. 386 (1999).

[42] *Miranda v. Aguirre, id*. at 400.

[43] The constitutional requirement of a plebiscite is incorporated in the Local Government Code of 1991, particularly in Section 10, Chapter II, Title I of its Book I, to wit:

SECTION 10. Plebiscite Requirement. – No creation, division, merger, abolition, or substantial alteration of boundaries of local government units shall take effect unless approved by a majority of the votes cast in a plebiscite called for the purpose in the political unit or units directly affected. Said plebiscite shall be conducted by the Commission on Elections (COMELEC) within one hundred twenty (120) days from the date of effectivity of the law or ordinance effecting such action, unless said law or ordinance fixes another date.

to its territory should be denied due to lack of the required plebiscite.

We agree with Nueva Era's contention that Marcos' claim over parts of its territory is not tenable. However, the reason is not the lack of the required plebiscite under the 1987 and 1973 constitutions and the Local Government Code of 1991 but other reasons as will be discussed below.

At the time Marcos was created, a plebiscite was not required by law to create a local government unit. Hence, Marcos was validly created without conducting a plebiscite. As a matter of fact, no plebiscite was conducted in Dingras, where it was derived.

*Lex prospicit, non respicit*. The law looks forward, not backward.[44] It is the basic norm that provisions of the fundamental law should be given prospective application only, unless legislative intent for its retroactive application is so provided.[45]

In the comparable case of *Ceniza v. Commission on Elections*[46] involving the City of Mandaue, the Court has this to say:

> Petitioners assail the charter of the City of Mandaue as unconstitutional for not having been ratified by the residents of the city in a plebiscite. This contention is untenable. The Constitutional requirement that the creation, division, merger, abolition, or alteration of the boundary of a province, city, municipality, or barrio should be subject to the approval by the majority of the votes cast in a plebiscite in the governmental unit or units affected is a new requirement that came into being only with the 1973 Constitution. It is prospective in character and therefore cannot affect the creation of the City of Mandaue which came into existence on June 21, 1969.[47] (Citations omitted and underlining supplied).

---

[44] *Grego v. Commission on Elections*, G.R. No. 125955, June 19, 1997, 274 SCRA 481, 493.

[45] *Union Carbide Labor Union v. Union Carbide Philippines, Inc.,* G.R. No. L-41314, November 13, 1992, 215 SCRA 554, 558.

[46] G.R. No. 52304, January 28, 1980, 95 SCRA 763.

[47] *Ceniza v. Commission on Elections, id*. at 774.

Moreover, by deciding this case, We are not creating Marcos but merely interpreting the law that created it. Its creation was already a *fait accompli*. Therefore, there is no reason for Us to further require a plebiscite.

As pointed out by Justice Isagani Cruz, to wit:

> Finally, it should be observed that the provisions of the Constitution should be given only a prospective application unless the contrary is clearly intended. Were the rule otherwise, rights already acquired or vested might be unduly disturbed or withdrawn even in the absence of an unmistakable intention to place them within the scope of the Constitution.[48]

***No part of Nueva Era's territory was taken for the creation of Marcos under R.A. No. 3753.***

Only the barrios (now *barangays*) of Dingras from which Marcos obtained its territory are named in R.A. No. 3753. To wit:

> SECTION 1. The barrios of Capariaan, Biding, Escoda, Culao, Alabaan, Ragas and Agunit in the Municipality of Dingras, Province of Ilocos Norte, are hereby separated from the said municipality and constituted into a new and separate municipality to be known as the Municipality of Marcos, with the following boundaries:

Since only the *barangays* of Dingras are enumerated as Marcos' source of territory, Nueva Era's territory is, therefore, excluded.

Under the maxim *expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of another thing not mentioned. If a statute enumerates the things upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect.[49] This rule, as a

[48] Cruz, I.A., *Constitutional Law*, 1998 ed., p. 10.

[49] *Tolentino v. Paqueo,* G.R. No. 150606, June 7, 2007, 523 SCRA 377, 387; *Commissioner of Internal Revenue v. The Philippine American Accident Insurance Company, Inc.,* G.R. No. 141658, March 18, 2005, 453 SCRA 668, 688; *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.,* G.R. No. 150947, July 15, 2003, 406 SCRA 178, 186, citing *Vera v. Fernandez,* G.R. No. L-31364, March 30, 1979, 89 SCRA 199, 203.

guide to probable legislative intent, is based upon the rules of logic and natural workings of the human mind.[50]

Had the legislature intended other *barangays* from Nueva Era to become part of Marcos, it could have easily done so by clear and concise language. Where the terms are expressly limited to certain matters, it may not by interpretation or construction be extended to other matters.[51] The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.[52]

Moreover, since the *barangays* of Nueva Era were not mentioned in the enumeration of *barangays* out of which the territory of Marcos shall be set, their omission must be held to have been done intentionally. This conclusion finds support in the rule of *casus omissus pro omisso habendus est,* which states that a person, object or thing omitted from an enumeration must be held to have been omitted intentionally.[53]

Furthermore, this conclusion on the intention of the legislature is bolstered by the explanatory note of the bill which paved the way for the creation of Marcos. Said explanatory note mentioned only Dingras as the mother municipality of Marcos.

---

[50] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc., supra*, citing *Republic v. Estenzo,* G.R. No. L-35376, September 11, 1980, 99 SCRA 651, 656.

[51] *Integrated Bar of the Philippines v. Zamora,* 392 Phil. 618, 642 (2000), citing *Sarmiento III v. Mison,* G.R. No. 79974, December 17, 1987, 156 SCRA 549.

[52] *Romualdez v. Marcelo,* G.R. Nos. 165510-33, July 28, 2006, 497 SCRA 89, 108; *Canet v. Decena,* 465 Phil. 325, 333 (2004); *Centeno v. Villalon-Pornillos,* G.R. No. 113092, September 1, 1994, 236 SCRA 197, 203; *Commissioner of Customs v. Court of Tax Appeals,* G.R. Nos. 48886-88, July 21, 1993, 224 SCRA 665, 670, citing Agpalo, *Statutory Construction*, 2nd ed., 1990, pp. 160-161.

[53] *La Bugal-B'laan Tribal Association, Inc. v. Ramos,* 465 Phil. 860, 932 (2004); *Chua v. Civil Service Commission,* G.R. No. 88979, February 7, 1992, 206 SCRA 65, 76, citing *People v. Manantan,* 115 Phil. 657, 664 (1962).

Where there is ambiguity in a statute, as in this case, courts may resort to the explanatory note to clarify the ambiguity and ascertain the purpose and intent of the statute.[54]

Despite the omission of Nueva Era as a mother territory in the law creating Marcos, the latter still contends that said law included Nueva Era. It alleges that based on the description of its boundaries, a portion of Nueva Era is within its territory.

The boundaries of Marcos under R.A. No. 3753 read:

> On the Northwest, by the barrios Biding-Rangay boundary going down to the barrios Capariaan-Gabon boundary consisting of foot path and feeder road; on the Northeast, by the Burnay River which is the common boundary of barrios Agunit and Naglayaan; on the East, by the Ilocos Norte-Mt. Province boundary; on the South, by the Padsan River which is at the same time the boundary between the municipalities of Banna and Dingras; on the West and Southwest, by the boundary between the municipalities of Batac and Dingras.

Marcos contends that since it is "bounded on the East, by the Ilocos Norte-Mt. Province boundary," a portion of Nueva Era formed part of its territory because, according to it, Nueva Era is between the Marcos and Ilocos Norte-Mt. Province boundary. Marcos posits that in order for its eastern side to reach the Ilocos Norte-Mt. Province boundary, it will necessarily traverse the middle portion of Nueva Era.

Marcos further claims that it is entitled not only to the middle portion of Nueva Era but also to its northern portion which, as a consequence, was isolated from the major part of Nueva Era.

We cannot accept the contentions of Marcos.

Only Dingras is specifically named by law as source territory of Marcos. Hence, the said description of boundaries of Marcos is descriptive only of the listed *barangays* of Dingras as a compact and contiguous territory.

Considering that the description of the eastern boundary of Marcos under R.A. No. 3753 is ambiguous, the same must be interpreted in light of the legislative intent.

---

[54] Agpalo, *Statutory Construction*, 3rd ed., 1995, p. 73.

The law must be given a reasonable interpretation, to preclude absurdity in its application.[55] We thus uphold the legislative intent to create Marcos out of the territory of Dingras only.

Courts must give effect to the general legislative intent that can be discovered from or is unraveled by the four corners of the statute, and in order to discover said intent, the whole statute, and not only a particular provision thereof, should be considered.[56] Every section, provision or clause of the statute must be expounded by reference to each other in order to arrive at the effect contemplated by the legislature. The intention of the legislator must be ascertained from the whole text of the law, and every part of the act is to be taken into view.[57]

It is axiomatic that laws should be given a reasonable interpretation, not one which defeats the very purpose for which they were passed. This Court has in many cases involving the construction of statutes always cautioned against narrowly interpreting a statute as to defeat the purpose of the legislature and stressed that it is of the essence of judicial duty to construe statutes so as to avoid such a deplorable result (of injustice or absurdity) and that therefore "a literal interpretation is to be rejected if it would be unjust or lead to absurd results."[58]

Statutes are to be construed in the light of the purposes to be achieved and the evils sought to be remedied. Thus, in construing a statute, the reason for its enactment should be kept in mind and the statute should be construed with reference to the intended scope and purpose. The court may consider the spirit and reason of the statute, where a literal meaning would lead to absurdity,

---

[55] *Brent School, Inc. v. Zamora,* G.R. No. L-48494, February 5, 1990, 181 SCRA 702, 715.

[56] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,* G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73, 93, citing *Commissioner of Internal Revenue v. TMX Sales, Inc.,* G.R. No. 83736, January 15, 1992, 205 SCRA 184, 188.

[57] *Commissioner of Internal Revenue v. TMX Sales, Inc., supra*.

[58] *Soriano v. Offshore Shipping and Manning Corporation,* G.R. No. 78409, September 14, 1989, 177 SCRA 513, 519, citing *Bello v. Court of Appeals,* G.R. No. L-38161, March 29, 1974, 56 SCRA 509.

contradiction, injustice, or would defeat the clear purpose of the lawmakers.[59]

**WHEREFORE,** the petition is *GRANTED*. The Decision of the Court of Appeals is partly *REVERSED*. The Decision of the Regional Trial Court in Ilocos Norte is *REINSTATED*.

**SO ORDERED.**

*Puno, C.J., Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura,* and *Leonardo-de Castro, JJ.,* concur.

*Quisumbing, J.,* on official leave per Special Order No. 485 dated February 14, 2008..

*Ynares-Santiago, J.,* on leave per Special Order No. 486 dated February 15, 2008.

---

**FIRST DIVISION**

[G.R. No. 169918. February 27, 2008]

**ROMULO J. MAROHOMSALIC,** *petitioner, vs.* **REYNALDO D. COLE,** *respondent.*[*]

---

[59] *In re: Request of Justice Bernardo P. Pardo for Adjustment of His Longevity Pay,* A.M. No. 02-1-12-SC, March 14, 2007, 518 SCRA 263, 267; *Ursua v. Court of Appeals,* G.R. No. 112170, April 10, 1996, 256 SCRA 147, 152.

[*] The Court of Appeals was originally impleaded as respondent. Pursuant however to Section 4, Rule 45 of the Rules of Court, it was excluded as a party-respondent in this case.

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; GENERAL RULE IS PERSONAL SERVICE OF PLEADINGS; WRITTEN EXPLANATION REQUIRED WHEN PERSONAL SERVICE NOT RESORTED TO; CASE AT BAR.—** Marohomsalic, through counsel, assumed that the CA would understand that, because of the distance between Manila and South Cotabato, the petition could not be filed personally. The CA, however, was correct in holding that under Section 11, Rule 13 of the Rules of Court, personal service of petitions and other pleadings is the general rule while resort to the other modes of service and filing is the exception. When recourse is made to the exception, a *written explanation* of why the service and the filing are not done personally becomes *indispensable.* If no explanation is offered to justify resorting to the other modes (*i.e.,* the exception), the discretionary power of the court to expunge the pleading comes into play.

**2. ID.; ID.; ID.; VERIFICATION; CONSTRUED; CASE AT BAR.—** Verification is the assurance that the allegations of the petition have been made in good faith, or are true and correct and not merely speculative. Marohomsalic has apparently missed the import of the foregoing rule. We reiterate: whether the verification should be based on the pleader's personal belief or on authentic records, or both, depends largely on the nature of the allegations. It is not a matter of simple preference. Otherwise, the rationale of the rule will be trivialized and its resoluteness diminished. The CA correctly ruled that the requirement was not merely technical for it served a purpose that was relevant to the nature of the action. In an appeal by petition for review under Rule 43 of the Rules of Court, the petition may be resolved on the basis of the pleadings before the appellate court without the necessity of elevating the records from the quasi-judicial officer, tribunal or body where the case began. This is in contrast with an appeal by writ of error under Rule 41 according to which the appellate court may not act on the appeal until after the elevation of the records from the lower court. It was important therefore for petitioner to have stated in his verification that (1) his allegations in the petition were true and correct of his personal knowledge and (2) if the petition relied on documents and records attached to the

petition, that his allegations were based on records whose authenticity he warranted.

**3. ID.; ID.; RELAXATION OF PROCEDURAL RULES NEVER INTENDED TO BE A LICENSE FOR ERRING LITIGANTS TO VIOLATE RULES WITH IMPUNITY.—** The CA found that only the March 24, 2004 order of the Office of the Ombudsman was an original copy. The copy of the February 23, 2004 decision of the Ombudsman was a machine copy. Furthermore, of the ten other documents attached to the petition, none was certified as a true and authentic copy. The only conclusion we can make is that Marohomsalic's verification was not based either on personal knowledge or on authentic records. While procedural rules may be relaxed in the interest of justice, it is well-settled that these are tools designed to facilitate the adjudication of cases. The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity. Liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances. While litigation is not a game of technicalities, every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.

**4. POLITICAL LAW; PUBLIC OFFICERS; MISCONDUCT; GRAVE IF CHARACTERIZED BY ELEMENTS OF CORRUPTION.—** One of the grounds for an administrative complaint cognizable by the Ombudsman is an act or omission contrary to law or regulations like grave misconduct. It is characterized by the elements of corruption, clear intent to violate the law or flagrant disregard of an established rule. Corruption as an element of grave misconduct includes the act of an official who unlawfully or wrongfully uses his station or character to procure some benefit for himself, contrary to the rights of others.

**5. ID.; ID.; ID.; ID.; CASE AT BAR.—** The Ombudsman found that Marohomsalic directly requested and received money from Cole in connection with a transaction in which he was involved in his official capacity. It concluded that Marohomsalic's act constituted grave misconduct. An analysis of the assailed decision of the Ombudsman-Mindanao shows that there was substantial evidence to sustain such finding.

**6. ID.; OMBUDSMAN; HAS POWER TO DIRECTLY IMPOSE ADMINISTRATIVE PENALTIES ON ERRING PUBLIC OFFICIALS AND EMPLOYEES.—** In *Ombudsman v. CA and Magbanua*, G.R. No. 168079, 17 July 2007, the extent of the Ombudsman's disciplinary administrative authority was explained: [The] provisions in Republic Act No. 6770 taken together reveal the manifest intent of the lawmakers to bestow on the Office of the Ombudsman full administrative disciplinary authority. These provisions cover the entire gamut of administrative adjudication which entails the authority to, *inter alia,* receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and necessarily, impose the said penalty. xxx The legislative history of Republic Act No. 6770 thus bears out the conclusion that the Office of the Ombudsman was intended to possess full administrative disciplinary authority, including the power to impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault. The lawmakers envisioned the Office of the Ombudsman to be "an activist watchman," not merely a passive one. xxx Clearly, the Ombudsman has the power to directly impose administrative penalties on erring public officials and employees like Marohomsalic.

**7. ID.; ID.; ADMINISTRATIVE ORDER NO. 07, SERIES OF 1990, AS AMENDED, EXPLAINED.—** The Office of the Ombudsman has only one set of rules of procedure and that is Administrative Order No. 07, series of 1990, as amended. There have of course been various amendments made thereto but it has remained, to date, the **only** set of rules of procedure governing cases filed in the Ombudsman. Hence, the phrase "as amended" is correctly appended to Administrative Order No. 7 every time it is invoked. Administrative Order No. 17 is just one example of these amendments.

**8. ID.; ID.; ID.; PETITIONER'S CASE IS NOT SUBJECT TO CRIMINAL LAWS AND PROCEDURE.—** Marohomsalic likewise maintains that the "old rules" must apply to his case, in accordance with the principle that criminal laws favorable

to the accused must be liberally construed in his favor. We disagree. Since the subject of this petition is an administrative complaint, not criminal complaint, this case is not subject to criminal laws and procedure, or principles applicable only thereto. More importantly, he must not be allowed to hide behind the cloak of liberal construction favoring the accused, if at all this principle finds application in this case. To permit him to do so will be a mockery of public trust and accountability.

**APPEARANCES OF COUNSEL**

*Phinney C. Araquil* for petitioner.

**D E C I S I O N**

**CORONA, *J.*:**

This is a petition for review under Rule 45 of the Rules of Court assailing the decision[1] of the Court of Appeals (CA) dated July 22, 2005 in CA-G.R. SP No. 86911 entitled *Romulo J. Marohomsalic v. Reynaldo D. Cole, Office of the Ombudsman and Sylvia Hazel T. Bismonte-Beltran.*

The facts follow.

Petitioner Romulo J. Marohomsalic was employed as Special Land Investigator I of the Provincial Environment and Natural Resources Office of the Department of Environment and Natural Resources (PENRO-DENR) in Koronadal City.

Respondent Reynaldo D. Cole[2] had a pending land dispute case in the PENRO-DENR in Koronadal City. Sometime in February 2001, he went to said office to inquire on the status of his case. He met Marohomsalic and asked him for assistance as he was not from Koronadal but from General Santos City.

The allegations of fact diverge at this point. Marohomsalic, on one hand, asserted that on March 8, 2001, Cole gave him

[1] Penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Edgardo A. Camello and Rodrigo F. Lim, Jr. of the Former twenty-Third Division of the Court of Appeals.

[2] Complainant in Case No. OMB-M-A-03-340-J. *Rollo*, p. 57.

cash purportedly to cover the expenses for photocopying the documents needed in the case. On the other hand, Cole claimed (and the Ombudsman affirmed) that Marohomsalic demanded ₱15,000 to secure the reversal of the PENRO-DENR decision against him (Cole). Cole sought the assistance of the National Bureau of Investigation to entrap Marohomsalic. On March 8, 2001, Marohomsalic was caught *in flagrante delicto* receiving bribe money of ₱2,700 from Cole.

An administrative complaint[3] for grave misconduct was filed against Marohomsalic in the Office of the Ombudsman-Mindanao. After evaluating the respective allegations of the parties, the Ombudsman found Marohomsalic guilty and dismissed him from the service.[4] An order dated April 28, 2004 for the immediate implementation of Marohomsalic's dismissal was issued.[5]

Marohomsalic appealed to the CA by way of a petition for review under Rule 43 of the Rules of Court. This was dismissed on grounds of procedural infirmities. He then filed this petition for review on *certiorari* with a prayer for the issuance of a temporary restraining order (TRO). On March 15, 2006, we issued a TRO stopping his dismissal during the pendency of this petition.

Marohomsalic raises two basic issues. First, he asserts that the CA acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed his petition for review on technical grounds. Second, he claims that his right to due process was violated by both the Ombudsman and the CA.

The petition must be denied.

**THERE WAS NO GRAVE ABUSE OF DISCRETION ON THE PART OF THE CA**

Marohomsalic considers as grave abuse of discretion the CA's dismissal of his petition on technical grounds, namely, the absence

[3] A criminal complaint was likewise filed against Marohomsalic. *Id*., p. 20.

[4] Decision dated February 23, 2004. *Id*., pp. 57-61.

[5] *Id*., p. 77.

of a written explanation as to why his petition was filed via registered mail instead of personally, and improper verification.[6] He argues that the CA acted with such grave abuse of discretion because, by dismissing his petition, the Ombudsman's authority to dismiss him and the Ombudsman's finding of grave misconduct on his part were upheld.

Marohomsalic, however, did not substantiate his claim. Allegations of grave abuse of discretion must be proved. A decision is not deemed tainted with grave abuse of discretion simply because the party affected disagrees with it.

Grave abuse of discretion is a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction. It must be shown that the discretion was exercised arbitrarily or despotically.[7] In *Solidum v. Hernandez*,[8] we held:

> A tribunal, board or officer is said to have acted with grave abuse of discretion when it exercised its power in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion or a virtual refusal to perform the duty enjoined or to act in contemplation of law.

Based on the foregoing, the CA did not act with grave abuse of discretion when it dismissed Marohomsalic's petition. Its action was predicated on legal, albeit "technical," grounds.

Marohomsalic, through counsel, assumed that the CA would understand that, because of the distance between Manila and South Cotabato, the petition could not be filed personally.[9] The CA, however, was correct in holding that under Section 11, Rule 13 of the Rules of Court, personal service of petitions and

---

[6] Another ground for dismissing the petition was the failure of Marohomsalic's counsel to pay his IBP dues. Upon Marohomsalic's motion for reconsideration, the CA sustained its dismissal on the first and second grounds. The compliance by Marohomsalic's counsel with his IBP dues was noted by the CA. *Rollo*, p. 47.

[7] *Torreda v. Toshiba Information Equipment (Phils.), Inc. and Cristobal*, G.R. No. 165960, 8 February 2007.

[8] 117 Phil. 340 (1963).

[9] *Rollo*, p. 47.

other pleadings is the general rule while resort to the other modes of service and filing is the exception.[10] When recourse is made to the exception, a *written explanation* of why the service and the filing are not done personally becomes *indispensable*. If no explanation is offered to justify resorting to the other modes (*i.e.*, the exception), the discretionary power of the court to expunge the pleading comes into play.[11]

Regarding the improper verification, Marohomsalic avers that the allegations in his pleading were based on authentic records. He argues that such was substantial compliance with the rule on verification. There was no further need for him to state in the verification that the allegations were also based on his personal knowledge. To require him to do so would be contrary to law.

Section 4, Rule 7 of the Rules of Court provides:

> Sec. 4. Verification. – xxx
>
> A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.
>
> A pleading required to be verified xxx or lacks a proper verification, shall be treated as an unsigned pleading.

Verification is the assurance that the allegations of the petition have been made in good faith, or are true and correct and not merely speculative.[12] Marohomsalic has apparently missed the import of the foregoing rule. *Hun Hyung Park v. Eung Won Choi*[13] is instructive on this point:

---

[10] *Solar Team Entertainment, Inc. v. Bautista Ricafort*, *et al*., G.R. No. 132007, 5 August 1998, 293 SCRA 667. In this case, we have stated that strictest compliance with Section 11 of Rule 13 is mandated one month from promulgation of this decision, *Id*., p. 670.

[11] *United Pulp and Paper Co., Inc. v. United Pulp and Paper Chapter-Federation of Free Workers*, G.R. No. 141117, 25 March 2004, 426 SCRA 334. *Zulueta v. Asia Brewery,* G.R. No. 138137, 8 March 2001, 354 SCRA 100, 109.

[12] *Go v. CA, Lim and Lim*, G.R. No. 163745, 24 August 2007.

[13] G.R. No. 165496, 12 February 2007.

A reading of [the above-quoted] Section 4 of Rule 7 indicates that a pleading may be verified under either of the two given modes or under both. **The veracity of the allegations in a pleading may be affirmed based on either one's own personal knowledge or on authentic records, or both, as warranted.** The use of the preposition "or" connotes that either source qualifies as a sufficient basis for verification and, needless to state, the concurrence of both sources is more than sufficient. Bearing both a disjunctive and conjunctive sense, this parallel legal signification avoids a construction that will exclude the combination of the alternatives or bar the efficacy of any one of the alternatives standing alone.

Contrary to petitioner's position, **the range of permutation is not left to the pleader's liking, but is dependent on the surrounding nature of the allegations which may warrant that a verification be based either purely on personal knowledge, or entirely on authentic records, or on both sources.**

As pointed [out by respondent], "authentic records" as a basis for verification bear significance in petitions wherein the greater portions of the allegations are based on the records of the proceedings in the court of origin and/or the court *a quo*, and not solely on the personal knowledge of the petitioner. xxx (emphasis supplied)

We reiterate: whether the verification should be based on the pleader's personal belief or on authentic records, or both, depends largely on the nature of the allegations. It is not a matter of simple preference. Otherwise, the rationale of the rule will be trivialized and its resoluteness diminished.[14]

The CA correctly ruled that the requirement was not merely technical for it served a purpose that was relevant to the nature of the action. In an appeal by petition for review under Rule 43 of the Rules of Court, the petition may be resolved on the basis of the pleadings before the appellate court without the necessity of elevating the records from the quasi-judicial officer, tribunal or body where the case began. This is in contrast with an appeal by writ of error under Rule 41 according to which the appellate court may not act on the appeal until after the elevation of the records from the lower court.

[14] *Id*.

It was important therefore for petitioner to have stated in his verification that (1) his allegations in the petition were true and correct of his personal knowledge and (2) if the petition relied on documents and records attached to the petition, that his allegations were based on records whose authenticity he warranted.[15]

But granting *arguendo* that Marohomsalic's contention was correct, his petition must nevertheless still fail. The CA found that only the March 24, 2004 order of the Office of the Ombudsman was an original copy. The copy of the February 23, 2004 decision of the Ombudsman was a machine copy. Furthermore, of the ten other documents attached to the petition, none was certified as a true and authentic copy. The only conclusion we can make is that Marohomsalic's verification was not based either on personal knowledge or on authentic records.

While procedural rules may be relaxed in the interest of justice, it is well-settled that these are tools designed to facilitate the adjudication of cases. The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity. Liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances. While litigation is not a game of technicalities, every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.[16]

**THE OMBUDSMAN HAS THE POWER TO ORDER THE DISMISSAL OF A PUBLIC OFFICER**

The jurisdiction of the Ombudsman over disciplinary cases against government employees is vested by no less than Section 12, Article XI of the Constitution.[17] Part of such

[15] *Rollo*, p. 48.

[16] *Hun Hyung Park v. Eung Won Choi*, *supra* note 13.

[17] *Office of the Ombudsman v. Estandarte and CA*, G.R. No. 168670, 13 April 2007.

disciplinary authority in administrative cases is the power to investigate and prosecute, in accordance with the requirements laid down by law. One such requirement is that substantial evidence must always support any finding.[18]

One of the grounds for an administrative complaint cognizable by the Ombudsman is an act or omission contrary to law or regulations like grave misconduct. It is characterized by the elements of corruption, clear intent to violate the law or flagrant disregard of an established rule. Corruption as an element of grave misconduct includes the act of an official who unlawfully or wrongfully uses his station or character to procure some benefit for himself, contrary to the rights of others.[19]

The Ombudsman found that Marohomsalic directly requested and received money from Cole in connection with a transaction in which he was involved in his official capacity. It concluded that Marohomsalic's act constituted grave misconduct. An analysis of the assailed decision[20] of the Ombudsman-Mindanao shows that there was substantial evidence to sustain such finding.

Without a showing of grave abuse of discretion, there is nothing more left to be done but to uphold the findings of fact of the Ombudsman.

The Supreme Court is not a trier of facts, especially in a petition for review under Rule 45. In *Brito v. Office of the Deputy Ombudsman for Luzon, et al.*, we said that:[21]

> Except in cases when there is grave abuse of discretion [in the exercise of its discretion], which is absent in [this] case, we have adopted a policy of non-interference in the exercise of the Ombudsman's constitutionally mandated powers on this matter. This rule is based not only upon respect for the investigatory and prosecutory powers

[18] *Ang Tibay, et al. v. CIR and National Labor Union, Inc.*, 69 Phil. 642 (1940).

[19] *Salazar v. Barriga*, A.M. No. P-05-2016, 19 April 2007. *Civil Service Commission v. Belagan*, G.R. No. 132164, 19 October 2004, 440 SCRA 578.

[20] *Supra* note 6.

[21] G.R. Nos. 167335 & 167337, 10 July 2007.

granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, xxx.

Corollary to the Ombudsman's disciplinary authority is his authority to dismiss. This matter has long been settled. RA 6770,[22] which provides for the functional and structural organization of the Office of the Ombudsman, was passed by Congress to deliberately endow the Ombudsman with the power to prosecute offenses committed by public officers and employees to make him a more active and effective agent of the people in ensuring accountability in public office. Moreover, Congress granted the Ombudsman broad powers to implement his own actions.[23]

In *Ombudsman v. CA and Magbanua*,[24] the extent of the Ombudsman's disciplinary administrative authority was explained:

> [The] provisions in Republic Act No. 6770 taken together reveal the manifest intent of the lawmakers to bestow on the Office of the Ombudsman full administrative disciplinary authority. These provisions cover the entire gamut of administrative adjudication which entails the authority to, *inter alia*, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and necessarily, impose the said penalty.
>
> xxx xxx xxx
>
> The legislative history of Republic Act No. 6770 thus bears out the conclusion that the Office of the Ombudsman was intended to possess full administrative disciplinary authority, including the power to impose the penalty of removal, suspension, demotion, fine, censure,

---

[22] Ombudsman Act of 1989.

[23] *Estarija v. Ranada*, G.R. No. 159314, 26 June 2006, 492 SCRA 652.

[24] G.R. No. 168079, 17 July 2007, *Office of the Ombudsman v. Court of Appeals*, G.R. No. 167844, 22 November 2006, 507 SCRA 610.

or prosecution of a public officer or employee found to be at fault. The lawmakers envisioned the Office of the Ombudsman to be "an activist watchman," not merely a passive one. xxx

Clearly, the Ombudsman has the power to directly impose administrative penalties on erring public officials and employees like Marohomsalic.

**THERE WAS NO DENIAL OF DUE PROCESS**

Marohomsalic avers that his right to due process of law was violated by the Ombudsman when his case was set neither for preliminary investigation nor for preliminary conference. He further alleges that he should have been investigated under the "old rules of procedure" of the Office of the Ombudsman, not under the "new rules," because he committed the alleged offense when the "old rules" were still in effect.

Marohomsalic is confused. The Office of the Ombudsman has only one set of rules of procedure and that is Administrative Order No. 07, series of 1990, as amended.[25] There have of course been various amendments made thereto but it has remained, to date, the **only** set of rules of procedure governing cases filed in the Ombudsman. Hence, the phrase "as amended" is correctly appended to Administrative Order No. 7 every time it is invoked. Administrative Order No. 17[26] is just one example of these amendments.

Semantics aside, Marohomsalic's contention that his case should have been prosecuted under Administrative Order No. 7, s. 1990, as amended, without the amendments introduced

[25] Otherwise referred to as Rules of Procedure of the Office of the Ombudsman.

[26] Dated September 15, 2003. Administrative Order No. 7 as amended by Administrative Order No. 17, now allows the investigating officer to issue an order directing the parties to file, within ten days from receipt of the Order, their respective verified position papers which shall contain only matters provided in these rules and on the basis of which, along with attachments, the Hearing Officer may consider the case submitted for decision.

by Administrative Order No. 17, is erroneous. Section 4 of Administrative Order No. 7, as amended by Administrative Order No. 17, provides:

> [The rules] shall govern all cases brought after they take effect *and to further proceedings in cases then pending, except to the extent that their application would not be feasible or would cause injustice to any party*. (emphasis supplied)

Marohomsalic failed to prove how an application of the rules as amended would not be feasible under the circumstances or how it would cause injustice to him.

Marohomsalic likewise maintains that the "old rules" must apply to his case, in accordance with the principle that criminal laws favorable to the accused must be liberally construed in his favor. We disagree. Since the subject of this petition is an administrative complaint, not a criminal complaint, this case is not subject to criminal laws and procedure, or principles applicable only thereto. More importantly, he must not be allowed to hide behind the cloak of liberal construction favoring the accused, if at all this principle finds application in this case. To permit him to do so will be a mockery of public trust and accountability.

**WHEREFORE,** the petition is hereby *DENIED*. The temporary restraining order we issued on March 15, 2006 is *LIFTED*.

Costs against petitioner.

**SO ORDERED.**

*Puno, C.J. (Chairperson), Sandoval-Gutierrez, Azcuna,* and *Leonardo-de Castro, JJ.,* concur.

**FIRST DIVISION**

[G.R. No. 172990. February 27, 2008]

**DOLMAR REAL ESTATE DEVELOPMENT CORPORATION, MARIANO K. TAN, SR., MARIANO JOHN L. TAN, JR. and PHILIP L. TAN,** *petitioners, vs.* **COURT OF APPEALS, FIFTH DIVISION, REGIONAL TRIAL COURT, BRANCH 211, MANDALUYONG CITY, and SPOUSES PHILIP & NANCY YOUNG,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; WRIT OF PRELIMINARY INJUNCTION; *STATUS QUO*; LAST ACTUAL PEACEABLE UNCONTESTED STATUS WHICH PRECEDED THE CONTROVERSY.—** The sole object of a writ of preliminary injunction, whether prohibitory or mandatory, is to preserve the *status quo* and prevent further injury on the applicant until the merits of the main case can be heard. The *status quo* is the last actual peaceable uncontested status which preceded the controversy. The injunctive writ may only be resorted to by a litigant for the preservation and protection of his rights or interests during the pendency of the principal action. The grant or denial of an application for a writ of preliminary injunction rests upon the sound discretion of the issuing court.

**2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; REQUIREMENT AS A VALID GROUND FOR GRANT OR DENIAL OF INJUNCTIVE WRIT.—** For grave abuse of discretion to exist as a valid ground for the nullification of the grant or denial of the injunctive writ, as contemplated by Rule 65 of the 1997 Rules of Civil Procedure, as amended, there must be **capricious and whimsical exercise of judgment** as is equivalent to lack or excess of jurisdiction, or where the power is exercised in an **arbitrary manner by reason of passion, prejudice or personal hostility**, and it must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law.

**3. ID.; ID.; ID.; NO DEFINITE RULE ON HOW A RESOLUTION DENYING AN APPLICATION FOR A TRO OR A WRIT OF PRELIMINARY INJUNCTION IS FRAMED.—** We find nothing capricious, whimsical or arbitrary in the Court of Appeals' challenged Resolution denying petitioners' application for a writ of preliminary injunction. We are not impressed by petitioners' contention that it is too simplistic or insufficient as it does not contain a full discussion of its findings and the applicable rule or law in support of its conclusion. It bears stressing that there is no definite or stringent rule on how a Resolution denying an application for a TRO or a writ of preliminary injunction is framed. The manner the Resolution was written did not diminish the legal significance of the denial so decreed by the appellate court. What is clear from the challenged Resolution is that the Court of Appeals stated **the proper basis** for its ruling.

**4. ID.; ID.; ID.; EXERCISE OF SOUND JUDICIAL DISCRETION BY THE TRIAL COURT IN INJUNCTIVE MATTERS MUST NOT BE INTERFERED WITH.—** Indeed, we cannot disturb the sound discretion exercised by the Court of Appeals sustaining the trial court's *status quo ante* Order, unless there is a patent abuse of discretion, which is not present here. As this Court stated in *Land Bank of the Philippines v. Continental Watchman Agency, Incorporated* (420 SCRA 624): Significantly, the rule is well-entrenched that the issuance of the writ of preliminary injunction rests upon the sound discretion of the trial court. It bears reiterating that Section 4 of Rule 58 gives generous latitude to the trial courts in this regard for the reason that conflicting claims in an application for a provisional writ more often than not involve a factual determination which is not the function of the appellate courts. Hence, the exercise of sound judicial discretion by the trial court in injunctive matters must not be interfered with except when there is manifest abuse, which is wanting in the present case.

**APPEARANCES OF COUNSEL**

*Castillo Laman Tan Pantaleon & San Jose* for petitioners.

*De Castro & Cagampang Law Offices* for private respondents.

## D E C I S I O N

**SANDOVAL-GUTIERREZ, *J.*:**

Before us is a petition for *certiorari* (with an application for a temporary restraining order [TRO] and a writ of preliminary injunction)[1] assailing the Resolution dated January 25, 2006[2] and Resolution dated April 24, 2006[3] of the Court of Appeals (Fifth Division) in CA-G.R. SP No. 91869.

On June 1, 2005, spouses Philip and Nancy Young, respondents, filed with the Regional Trial Court, Branch 211, Mandaluyong City a complaint for specific performance and damages against Dolmar Real Estate Development Corporation, Mariano K. Tan, Sr., Mariano John L. Tan, Jr., and Philip L. Tan, petitioners, docketed as SEC Case No. MC05-093. The complaint also prayed that a TRO and a preliminary injunction be issued ordering petitioners to: (a) cease and desist from further violating the provisions of the Memorandum of Agreement (MOA) dated March 4, 2003 and the Shareholders' Agreement dated May 16, 2003 executed by the parties; (b) comply with their obligations and duties stipulated in the said agreements by restoring to respondents-spouses Young their authority to manage the corporation; (c) abide by the quorum and consensus rules established in the said agreements governing the exercise of corporate acts and powers; and (d) desist from holding the meeting of the Board of Directors of the corporation scheduled on June 3, 2005.

On June 2, 2005, the trial court issued a 72-hour restraining Order preventing the holding of the Board of Directors' meeting on June 3, 2005.[4]

---

[1] Filed under Rule 65 of the 1997 Rules of Civil Procedure, as amended.

[2] Penned by Associate Justice Mario L. Guariña III, and concurred in by Associate Justice Roberto A. Barrios (deceased) and Associate Justice Santiago Javier Ranada (retired); *rollo*, pp. 48-49.

[3] *Id.,* p. 50.

[4] Petition, *id.*, p. 22.

On June 17, 2005, after a summary hearing, the trial court issued the TRO prayed for by respondents-spouses Young and set the hearing on the prayer for a writ of preliminary injunction on June 21, 2005. The trial court likewise approved the bond in the amount of ₱100,000.00 posted by said respondents.[5]

On October 14, 2005, the trial court issued an Order[6] directing *inter alia* that: (1) the *status quo ante*, meaning the situation of the contending parties prior to December 13, 2004, must be maintained; (2) there is a need to observe the four-director quorum and consensus rules; (3) it is necessary to observe the rule on counter-signature by spouses Young on the checks issued by Festive Foods International, Inc. and in banking transactions of the corporation; and (4) the parties shall mutually comply with their respective duties and responsibilities under the MOA and Shareholders' Agreement.[7] The dispositive portion of the Order reads:

> FOREGOING CONSIDERED and in the interest of justice and equity, the court hereby declares a *status quo ante* and the temporary restraining order bond shall remain in full force for the purpose stated therein.
>
> The Sheriff of this Court is hereby designated to enforce compliance thereof.
>
> SO ORDERED.

Petitioners then filed with the Court of Appeals a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, as amended, assailing the *status quo ante* Order for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

On November 15, 2005, the appellate court issued a Resolution[8] dismissing the petition for being "fatally defective" as it does

---

[5] Respondents' Memorandum, *id.*, p. 744.

[6] *Id.*, p. 745.

[7] Petition, *id.*, p. 23.

[8] Respondents' Memorandum, *id.,* pp. 735-736.

not contain the certification of non-forum shopping; its verification merely refers to an answer with counterclaim and not to the petition itself; and the material portions of the record referred to in the petition are not attached to the said petition.

However, upon petitioners' filing of a Motion for Reconsideration with Motion to Admit Attached Amended Petition (with an application for a TRO and a writ of preliminary injunction) dated November 21, 2005,[9] the appellate court, in its Resolution dated December 7, 2005,[10] granted the motion and reinstated the case.

On January 25, 2006, the Court of Appeals issued a Resolution denying petitioners' application for a writ of preliminary injunction, thus:

> This is a petition x x x to nullify the Order of the RTC x x x which declared a *status quo* among the parties to mutually observe and comply with their respective duties under their MOA and Shareholders' Agreement during the pendency of the case before it. The case is one for specific performance filed by the private respondents to compel the petitioners to comply with their obligations under the said agreements. Dolmar has filed an application for preliminary injunction with us to enjoin the respondents from implementing the Order of October 14, 2005. In effect, it would like to disturb what the lower court has found to be the *status quo ante*. A comment was filed stating in essence that a writ of preliminary injunction may be resorted to only when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard compensation.
>
> The lower court's assailed Order of October 14, 2005 has the effect of allowing the company to be run in accordance with the existing agreements of the parties during the pendency of the case below. **We find no compelling reason to interfere with the prevailing state of affairs as ordered by the trial court. None of the grounds mentioned in Section 3 of Rule 58 for the issuance of a preliminary injunction exists. The application is denied.**
>
> SO ORDERED. (Underscoring supplied)

[9] *Id.*, pp. 812-861.

[10] *Id.*, pp. 862-864.

Petitioners filed a motion for reconsideration but it was denied for lack of merit in a Resolution dated April 24, 2006.

Hence, the instant petition.

Petitioners contend that the Court of Appeals, in issuing the assailed Resolutions, acted with grave abuse of discretion amounting to lack or excess of jurisdiction. They bewail the appellate court's **simplistic manner** of resolving their application for a TRO or a writ of preliminary injunction by "**simply stating** that the respondent appellate court 'found no compelling reason to interfere with the prevailing state of affairs as ordered by the trial court. None of the grounds mentioned in Section 3 of Rule 58 for the issuance of a preliminary injunction exists.' On the other hand, the Resolution denying their motion for reconsideration **simply stated** that the said motion lacked merit."[11]

In their comment, respondents countered that the petition be denied for lack of merit.

The petition must fail.

The sole object of a writ of preliminary injunction, whether prohibitory or mandatory, is to preserve the *status quo* and prevent further injury on the applicant until the merits of the main case can be heard. The *status quo* is the last actual peaceable uncontested status which preceded the controversy. The injunctive writ may only be resorted to by a litigant for the preservation and protection of his rights or interests during the pendency of the principal action. The grant or denial of an application for a writ of preliminary injunction rests upon the sound discretion of the issuing court.[12]

For grave abuse of discretion to exist as a valid ground for the nullification of the grant or denial of the injunctive writ, as contemplated by Rule 65 of the 1997 Rules of Civil Procedure, as amended, there must be **capricious and whimsical exercise**

---

[11] Petition, *id.*, p. 25.

[12] *United Coconut Planters Bank v. United Alloy Philippines Corporation*, G.R. No. 152238, January 28, 2005, 449 SCRA 473, citing *Capitol Medical Center v. Court of Appeals*, 178 SCRA 493 (1989).

**of judgment** as is equivalent to lack or excess of jurisdiction, or where the power is exercised in an **arbitrary manner by reason of passion, prejudice or personal hostility**, and it must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law.[13]

Here, the appellate court upheld the trial court's exercise of sound discretion in issuing the *status quo ante* Order because it found "no compelling reason to interfere with the prevailing state of affairs as ordered by the trial court." It further ruled that petitioners failed to establish the existence of any of the grounds mentioned in Section 3 of Rule 58 to justify the issuance of the injunctive writ, namely, that they have a clear and unmistakable right to be entitled to the relief demanded, and that the acts sought to be enjoined would probably work injustice to them during the pendency of the case.

We find nothing capricious, whimsical or arbitrary in the Court of Appeals' challenged Resolution denying petitioners' application for a writ of preliminary injunction. We are not impressed by petitioners' contention that it is too simplistic or insufficient as it does not contain a full discussion of its findings and the applicable rule or law in support of its conclusion. It bears stressing that there is no definite or stringent rule on how a Resolution denying an application for a TRO or a writ of preliminary injunction is framed. The manner the Resolution was written did not diminish the legal significance of the denial so decreed by the appellate court. What is clear from the challenged Resolution is that the Court of Appeals stated **the proper basis** for its ruling.

In *United Coconut Planters Bank v. United Alloy Philippines Corporation*,[14] we held:

An order granting a preliminary injunction, whether mandatory or prohibitory, is interlocutory and unappealable. However, it may

---

[13] *Land Bank of the Philippines v. Court of Appeals*, G.R. No. 129368, August 25, 2003, 409 SCRA 455, citing *De Baron v. Court of Appeals*, 368 SCRA 407 (2001).

[14] *Supra,* footnote 12.

be challenged by a petition for *certiorari* under Rule 65 of the Rules of Court. **Being preliminary, such an order need not strictly follow Section 5 of Rule 51 requiring that "every decision of final resolution of the Court in appealed cases shall clearly and distinctly state the findings of fact and conclusions of law on which it is based x x x."**

xxx xxx xxx

x x x, **the Resolution issued below was merely interlocutory, not a final resolution or decision disposing of the case. It was based on a *preliminary* determination of the *status quo* and petitioner's entitlement to the Writ**.

x x x. After a hearing on an application for a writ of preliminary injunction, the findings of fact and the opinions of a court have an interlocutory nature, and vital facts that may not have been presented during the trial. **Thus, the Rules as regards the form of decisions are not applicable to that of resolutions disposing of application for an injunctive writ**.

Note that even this Court issues *status quo* or temporary restraining orders without narrating at length the complete facts and applicable laws required by the Rules on the issuance of decisions and final orders. x x x. (Underscoring supplied)

Indeed, we cannot disturb the sound discretion exercised by the Court of Appeals sustaining the trial court's *status quo ante* Order, unless there is a patent abuse of discretion, which is not present here. As this Court stated in *Land Bank of the Philippines v. Continental Watchman Agency, Incorporated*:[15]

Significantly, the rule is well-entrenched that the issuance of the writ of preliminary injunction rests upon the sound discretion of the trial court. It bears reiterating that Section 4 of Rule 58 gives generous latitude to the trial courts in this regard for the reason that conflicting claims in an application for a provisional writ more often that not involve a factual determination which is not the function of the appellate courts. Hence, the exercise of sound judicial discretion by the trial court in injunctive matters must not be interfered with except when there is manifest abuse, which is wanting in the present case.

---

[15] G.R. No. 136114, January 22, 2004, 420 SCRA 624.

In fine, the Court of Appeals, in issuing the assailed Resolutions, did not act with grave abuse of discretion.

**WHEREFORE,** we *DISMISS* the instant petition for lack of merit. Costs against petitioners.

**SO ORDERED.**

*Puno, C.J. (Chairperson), Corona, Azcuna,* and *Leonardo-de Castro, JJ.,* concur.

---

**FIRST DIVISION**

[G.R. No. 173294. February 27, 2008]

**RENNE ENRIQUE BIER,** *petitioner, vs.* **MA. LOURDES A. BIER and THE REPUBLIC OF THE PHILIPPINES,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; IN PETITIONS FOR NULLITY OF MARRIAGE BASED ON PSYCHOLOGICAL INCAPACITY, GRAVITY, ROOT CAUSE, INCURABILITY AND FACT THAT IT EXISTED PRIOR TO OR AT THE TIME OF CELEBRATION OF MARRIAGE MUST ALWAYS BE PROVED.—** The trial court apparently overlooked the fact that this Court has been consistent in holding that if a petition for nullity based on psychological incapacity is to be given due course, its gravity, root cause, incurability and the fact that it existed prior to or at the time of celebration of the marriage must always be proved. As early as *Santos v. CA* (310 Phil. 22, 39), we already held that: **[P]sychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability.** The incapacity must be grave or serious such that the party would be incapable of

carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved. xxx **This psychologic condition must exist at the time the marriage is celebrated**. xxx These must be strictly complied with as the granting of a petition for nullity of marriage based on psychological incapacity must be confined only to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. This is specially so since the Family Code does not define psychological incapacity. The determination thereof is left solely to the discretion of the courts and must be made on a case-to-case basis.

**2. ID.; ID.; ID.; ALTHOUGH NO REQUIREMENT THAT A PARTY TO BE DECLARED PSYCHOLOGICALLY INCAPACITATED SHOULD BE PERSONALLY EXAMINED, PERSON ALLEGING THE DISORDER MUST ADDUCE INDEPENDENT EVIDENCE TO PROVE SAME.—** The evidence for petitioner consisted of his own testimony and that of his brother, Roderico Bier. He also presented as evidence a psychological report written by Dr. Nedy Tayag, a clinical psychologist, who also testified on the matters contained therein. Dr. Tayag's report, which found respondent to be suffering from psychological incapacity, particularly a narcissistic personality disorder, relied *only* on the information fed by petitioner. This was admitted by petitioner in his petition for review on *certiorari* and memorandum filed in this Court. In both instances, petitioner reasoned out that the personal examination of respondent was impossible as her whereabouts were unknown despite diligent efforts on his part to find her. Consequently, Dr. Tayag's report was really hearsay evidence since she had no personal knowledge of the alleged facts she was testifying on. Her testimony should have thus been dismissed for being unscientific and unreliable. xxx Although there is no requirement that a party to be declared psychologically incapacitated should be personally examined by a physician or a psychologist (as a condition *sine qua non*), there is nevertheless still a need to prove the psychological

incapacity through *independent evidence* adduced by the person alleging said disorder.

**APPEARANCES OF COUNSEL**

*Ferrer* and *Associates Law Office* for petitioner.
*The Solicitor General* for public respondent.

**D E C I S I O N**

**CORONA, *J.*:**

This petition for review on *certiorari*[1] seeks to set aside the March 20, 2006 decision[2] and July 3, 2006 resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 66952.

Petitioner Renne Enrique E. Bier met respondent Ma. Lourdes A. Bier through his sister. Their courtship, which blossomed as a result of the exchange of long distance calls between them, lasted six months. Back then, petitioner observed respondent to be a very sweet and thoughtful person. This, he said, made him fall in love with her.

On July 26, 1992, six months after their first meeting, they were married at the UST Santissimo Rosario Parish Church. Everything went well for the first three years of their marriage. Respondent was everything petitioner could hope for in a wife — sweet, loving and caring. She also took good care of the house. As petitioner was based in Saudi Arabia as an electronics technician at Saudia Airlines, the parties decided to maintain two residences, one in the Philippines and another in Saudi Arabia. They took turns shuttling between the two countries just so they could spend time together.

---

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Renato C. Dacudao (retired) and Lucas P. Bersamin of the Ninth Division of the Court of Appeals. *Rollo*, pp. 17-38.

[3] *Id*., pp. 39-40.

The couple started experiencing marital problems after three years of marriage. According to petitioner, respondent ceased to be the person he knew and married. She started becoming aloof towards him and began to spend more time with her friends than with him, refusing even to have sexual relations with him for no apparent reason. She became an alcoholic and a chain-smoker. She also started neglecting her husband's needs and the upkeep of their home, and became an absentee wife. After being gone from their home for days on end, she would return without bothering to account for her absence. As a result, they frequently quarreled. Finally, on April 10, 1997, respondent suddenly left for the United States. Petitioner has not heard from her since.

On April 1, 1998, petitioner instituted in the Regional Trial Court (RTC) of Quezon City, Branch 89, a petition for the declaration of nullity of marriage on the ground that respondent was psychologically incapacitated to fulfill her essential marital obligations to petitioner. It was docketed as Civil Case No. Q-98-33993.

Per sheriff's return, summons was served through substituted service as personal service proved futile. Respondent, however, did not file an answer.

Thereafter, the RTC ordered Assistant City Prosecutor Edgardo T. Paragua to investigate if there was collusion between the parties and to intervene for the State to see to it that evidence was not fabricated. Assistant City Prosecutor Paragua manifested that, since both parties failed to appear before him, he was unable to make a ruling on the issue of collusion and determine if the evidence was fabricated.

After petitioner filed his pre-trial brief, Prosecutor Paragua filed a second manifestation stating that petitioner had appeared before him and that, after investigation, he was convinced that there was no collusion between the parties and that the evidence was not fabricated.

At pre-trial, only petitioner appeared. As respondent failed to attend the same, the RTC declared her to have waived the

pre-trial. Thereafter, trial on the merits ensued. Again, respondent did not take part in the proceedings.

Petitioner filed a written offer of exhibits which was admitted by the trial court.

The Office of the Solicitor General (OSG) filed a certification and manifested its disfavor towards declaring the marriage null and void. It argued that no persuasive evidence was presented warranting the grant of the petition, specially since petitioner failed to comply with the guidelines laid down in *Republic v. CA and Molina*[4] *(Molina)*.

After trial, the trial court rendered judgment[5] granting the petition:

> WHEREFORE, premises considered, judgment is hereby rendered declaring as VOID, based upon the respondent's psychological incapacity, the marriage contracted on July 26, 1992 between Renne Enrique E. Bier and Ma. Lourdes A. Bier. As such, their property relations shall be governed by the rules on co-ownership pursuant to Article 147 of the Family Code. Henceforth, their property relations shall be governed by the regime of complete separation of property.
>
> Let a copy of this decision be furnished the Civil Registrar General, National Census and Statistics Office and the Local Civil Registrar of Manila, ordering them to attach a copy of this Decision to the Marriage Contract of herein petitioner and respondent on file with respective office.
>
> With costs against the respondent.
>
> SO ORDERED.

Respondent Republic of the Philippines, through the OSG, appealed the decision of the RTC to the CA, docketed as CA-G.R. CV No. 66952. The CA held that petitioner failed to comply with the guidelines laid down in *Molina* as the root cause of respondent's psychological incapacity was not medically or clinically identified. Worse, the same was not even alleged in

[4] 335 Phil 664 (1997).

[5] *Rollo*, p. 47.

the petition filed in the court *a quo*. As such, it granted the appeal and reversed the decision of the trial court. The dispositive portion of the assailed decision[6] read:

> WHEREFORE, premises considered, the appeal is **GRANTED**. The Decision dated 06 March 2000 of the Regional Trial Court of Quezon City, Branch 89 in Civil Case No. Q-98-33993, which declared as void the marriage between appellee and respondent, is **REVERSED and SET ASIDE.** The marriage of Renne Enrique E. Bier and respondent Ma. Lourdes A. Bier remains **valid and subsisting**. No costs.
>
> SO ORDERED.

Petitioner moved for reconsideration of the CA decision. The same was denied. Hence, this recourse.

Petitioner contends that the guidelines enunciated in Molina, specifically its directive that the root cause of the psychological incapacity must be identified as a psychological illness and its incapacitating nature fully explained, and that it must be proven to be existing at the inception of the marriage, need not be strictly complied with as *Molina* itself stated the guidelines were merely "handed down for the guidance of the bench and bar" and were not meant to be a checklist of requirements in deciding cases involving psychological incapacity. Furthermore, even assuming *arguendo* that the *Molina* doctrine should be applied, the RTC erred in ruling that he failed to comply therewith.

The petition must fail.

Preliminarily, we must pass upon petitioner's argument that the finding of the trial court on the existence or non-existence of psychological incapacity is final and binding on us absent any showing that its factual findings and evaluation of the evidence were clearly and manifestly erroneous.[7] Petitioner's position is of course the general rule. In the instant case, however, it is the exception to the general rule which must be applied; the court *a quo* clearly erred in granting the petition. It stated in the body of its decision that:

---

[6] *Id*., p. 36.

[7] *Tuason v. CA*, 326 Phil 169, 182 (1996).

**While this Court agrees with the observation of the Office of the Solicitor General that the juridical antecedence of the psychological disorder and its root cause were not established, the same will not serve as a hindrance for the Court to declare that respondent is indeed suffering from a psychological incapacity.** The failure of the Psychological Report to identify the root cause of respondent's psychological incapacity is not a fatal flaw that will prevent the Court from declaring a marriage a nullity based on psychological incapacity. (Emphasis supplied)

The trial court apparently overlooked the fact that this Court has been consistent in holding that if a petition for nullity based on psychological incapacity is to be given due course, its gravity, root cause, incurability and the fact that it existed prior to or at the time of celebration of the marriage must always be proved.[8] As early as *Santos v. CA, et al.,*[9] we already held that:

**[P]sychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability.** The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.

xxx **This psychologic condition must exist at the time the marriage is celebrated.** xxx (Emphasis supplied)

These must be strictly complied with as the granting of a petition for nullity of marriage based on psychological incapacity must be confined only to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability

[8] *Navarro, Jr. v. Cecilio-Navarro,* G.R. No. 162049, 13 April 2007, 521 SCRA 121, 127-128; *Republic v. Tanyag-San Jose*, G.R. No. 168328, 28 February 2007, 517 SCRA 123, 133; *Republic v. Iyoy*, G.R. No. 152577, 21 September 2005, 470 SCRA 508, 526; *Carating-Siayngco v. Siayngco*, G.R. No. 158896, 27 October 2004, 441 SCRA 422, 433 and 438; *Dedel v. CA*, 466 Phil 226, 232-233 (2004); *Choa v. Choa*, G.R. No. 143376, 26 November 2002, 392 SCRA 641, 650-651; *Hernandez v. CA*, 377 Phil 919 (1999); *Republic v. CA and Molina*, *supra* note 4; and *Santos v. CA*, 310 Phil 22, 39 (1995).

[9] *Santos v. CA*, *supra*.

to give meaning and significance to the marriage.[10] This is specially so since the Family Code does not define psychological incapacity. The determination thereof is left solely to the discretion of the courts and must be made on a case-to-case basis.[11]

Also, even if *Molina* was never meant to be a checklist of the requirements in deciding cases involving Article 36 (psychological incapacity) of the Family Code, a showing of the gravity, juridical antecedence and incurability of the party's psychological incapacity and its existence at the inception of the marriage cannot be dispensed with. In *Marcos v. Marcos (Marcos)*,[12] a case cited by petitioner to support his argument that the totality of evidence presented was enough to prove the existence of respondent's psychological incapacity, this Court reiterated that:

> **The [*Molina*] guidelines incorporate the three basic requirements earlier mandated by the Court in *Santos v. Court of Appeals:* "psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability.** The foregoing guidelines do not require that a physician examine the person to be declared psychologically incapacitated. In fact, the root cause may be "medically or *clinically* identified." What is important is the presence of evidence that can adequately establish the party's *psychological* condition. For indeed, if the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to.
>
> xxx xxx xxx

---

[10] *Perez-Ferraris v. Ferraris,* G.R. No. 162368, 17 July 2006, 495 SCRA 396, 401, citing *Santos v. CA*, *supra*, at 40.

[11] During the Congressional Hearing before the Senate Committee on Women and Family Relations on February 3, 1988, Justice Eduardo Caguioa stated that:

> [a] code should not have so many definitions, because a definition straight-jackets the concept and, therefore, many cases that should go under it are excluded by the definition. That's why we leave it up to the court to determine the meaning of psychological incapacity.

[12] G.R. No. 136490, 19 October 2000, 343 SCRA 755, 764.

[t]he totality of his acts does not lead to a conclusion of psychological incapacity on his part. **There is absolutely no showing that his "defects" were already present at the inception of the marriage or that they are incurable.** (Emphasis supplied)

Furthermore, the 2005 case of *Republic v. Iyoy*[13] held that even if *Marcos* (2000) relaxed the rules such that the personal examination of the party alleged to be psychologically incapacitated by a psychiatrist or psychologist is no longer mandatory for the declaration of nullity of the marriage under Article 36 of the Family Code, the totality of evidence must still prove the gravity, juridical antecedence and incurability of the alleged psychological incapacity. Failure in this regard will spell the failure of the petition.

From the foregoing, one can conclude that petitioner's insistence that *Marcos* effectively overturned the need to present evidence on the aforesaid requirements has no merit. Thus, unless the law itself or the Court provides otherwise, these requirements must be established before a petition for nullity of the marriage based on psychological incapacity can be granted.

We hold that the trial court's decision to declare the parties' marriage void *ab initio* by reason of respondent's psychological incapacity was clearly and manifestly erroneous as it overlooked the need to show the gravity, root cause and incurability of respondent's psychological incapacity and that it was already present at the inception of the marriage.

Be that as it may, the main question that begs to be answered in the instant case is whether the totality of the evidence presented was enough to establish that respondent was psychologically incapacitated to perform her essential marital obligations. We rule in the negative.

Petitioner had the burden of proving the nullity of his marriage with respondent.[14] He failed to discharge it.

---

[13] *Supra* note 8, at 526.

[14] *Antonio v. Reyes*, G.R. No. 155800, 10 March 2006, 484 SCRA 353, 376, citing *Republic v. CA*, *supra* note 4, at 676.

The evidence for petitioner consisted of his own testimony and that of his brother, Roderico Bier. He also presented as evidence a psychological report written by Dr. Nedy Tayag, a clinical psychologist, who also testified on the matters contained therein.

Dr. Tayag's report, which found respondent to be suffering from psychological incapacity, particularly a narcissistic personality disorder, relied *only* on the information fed by petitioner. This was admitted by petitioner in his petition for review on *certiorari* and memorandum filed in this Court. In both instances, petitioner reasoned out that the personal examination of respondent was impossible as her whereabouts were unknown despite diligent efforts on his part to find her. Consequently, Dr. Tayag's report was really hearsay evidence since she had no personal knowledge of the alleged facts she was testifying on. Her testimony should have thus been dismissed for being unscientific and unreliable.[15]

Furthermore, as already stated, the report also failed to identify the root cause of respondent's narcissistic personality disorder and to prove that it existed at the inception of the marriage. It merely concluded that:

> This extremely egocentric attitude manifest a person suffering Narcissistic Personality Disorder that is considered to be severe, incurable and deeply rooted with her functioning. Thus, making herself psychologically incapacitated so as to comply with the essential marital functions.

Although there is no requirement that a party to be declared psychologically incapacitated should be personally examined by a physician or a psychologist (as a condition *sine qua non*), there is nevertheless still a need to prove the psychological incapacity through *independent evidence* adduced by the person alleging said disorder.[16]

In the case at bar, petitioner was able to establish that respondent was remiss in her duties as a wife and had become

---

[15] *Republic v. Tanyag-San Jose*, *supra* note 8, at 133, citing *Choa v. Choa*, *supra* note 8, at 655.

[16] *Republic v. Tanyag-San Jose*, *supra*.

a happy-go-lucky woman who failed to attend to her husband's needs and who eventually abandoned him. However, the totality of her acts, as testified to by petitioner and his brother, was not tantamount to a psychological incapacity, as petitioner would have us believe. Habitual alcoholism, chain-smoking, failure or refusal to meet one's duties and responsibilities as a married person and eventual abandonment of a spouse do not suffice to nullify a marriage on the basis of *psychological incapacity,* if not shown to be due to some psychological (as opposed to physical) illness.[17]

The undeniable fact is that the marriage, according to petitioner's own evidence, was off to a good start. According to him, respondent used to be a sweet, loving and caring wife who took good care of him and their home. She even willingly consented to the difficult living arrangement of taking turns in going back and forth between the Philippines and Saudi Arabia just so they could be together. Perhaps it was this unusual arrangement which took a heavy toll on their relationship. They barely saw and spent time with each other. Respondent could have gotten used to petitioner's absence. And although absence can indeed make the heart grow fonder, the opposite can just as well be true: out of sight, out of mind. The couple drifted apart and respondent obviously fell out of love with petitioner.

Nevertheless, we agree with the CA that the change in respondent's feelings towards petitioner could hardly be described as a psychological illness. It was not enough that respondent, the party adverted to as psychologically incapacitated to comply with her marital obligations, had difficulty or was unwilling to perform the same. Proof of a natal or supervening disabling factor, an adverse integral element in respondent's personality structure that effectively incapacitated her from complying with her essential marital obligations,[18] had to be shown. This petitioner failed to do. Consequently, we are unconvinced that respondent's condition was rooted in some incapacitating or debilitating disorder.

---

[17] *Id*., p. 135, citing *Republic v. CA*, *supra* note 4, at 674.

[18] *Navarro, Jr. v. Cecilio-Navarro*, *supra* note 8, at 129-130.

Even if we assume the correctness of petitioner's contention that the *Molina* guidelines are not set in stone, there is still no reason to disavow the same as the facts and circumstances in this case do not warrant a deviation therefrom.

**WHEREFORE,** the petition is hereby *DENIED*. The March 20, 2006 decision and July 3, 2006 resolution of the Court of Appeals in CA-G.R. CV No. 66952 are *AFFIRMED*.

No pronouncement as to costs.

**SO ORDERED.**

*Puno, C.J. (Chairperson), Sandoval-Gutierrez, Azcuna,* and *Leonardo-de Castro, JJ.,* concur.

---

**EN BANC**

[G.R. No. 175325. February 27, 2008]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **CONCHITO AGUSTIN,** *appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN RAPE CASES, IF THE TESTIMONY OF THE VICTIM PASSES THE TEST OF CREDIBILITY, THE ACCUSED MAY BE SOLELY CONVICTED ON THAT BASIS; CASE AT BAR.—** Passing on the testimony of AAA respecting the July 7, 2001 incident, the trial court observed: In the cases at bench, **the testimony of private complainant [AAA] [as regards] to the two (2) counts of rape was subjected by the Court to the minutest of scrutiny.** As to her testimony regarding the July 7, 2001 sexual assault, the Court finds no reason to disbelieve [AAA] when she claims that she was forcibly deflowered by the herein accused in the

second floor of the latter's house at Mungo, Tuao, Cagayan. There appears no plausible reason for the young victim to falsely charge the accused who is her uncle-in-law, with rape. Thus, in the absence of any showing of an illicit motive to falsely impute so grievous a crime as qualified rape against the herein accused, the testimony of the young victim is entitled to full credence. . . for no young and decent Filipina would publicly admit that she was ravished unless that is the truth because her natural instinct is to protect her honor.

**2. ID.; ID.; ALIBI; AN ACCUSED MUST ESTABLISH WITH CLEAR AND CONVINCING EVIDENCE THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO HAVE BEEN AT THE SCENE OF THE CRIME AT THE TIME OF ITS COMMISSION; CASE AT BAR.—** To successfully invoke alibi, however, an accused must establish with clear and convincing evidence not only that he was somewhere else when the crime was committed but also that it was physically impossible for him to have been at the scene of the crime at the time of its commission. In appellant's case, it was easy for him to go back from the farm to his house on July 7, 2001 since the distance between the two is only one and a half kilometers and, by his claim, he even rode on a "*culiglig*," a motorized farm equipment which had become the common means of transportation in rural areas, thus shortening his travel time. As the trial court held: . . . The defense of alibi of the accused falls flat on its face after he admits that the farm which he claims to have supervised its planting to rice is barely a kilometer [*sic*] from his house. Well-established is the rule that for alibi to prosper, it is not enough for the accused to prove that he was elsewhere when the crime was committed — he must also prove that it would have been physically impossible for him to have been at the scene of the crime at the time of its commission . . . The defense of alibi put up by the accused as regards the July 7, 2001 rape obviously cannot be given much credit by this Court.

**3. CRIMINAL LAW; RAPE; LUST IS NO RESPECTER OF TIME AND PLACE.—** As for appellant's argument that the act complained of on July 19, 2001 could not have been committed due to the presence of other people, the same must fail. The Court has repeatedly held that lust is no respecter of time and place. Thus, the nearby presence of relatives of the victim,

the cramped condition and the presence of other people in the room, or the high risk of being caught, have been held insufficient and ineffective to deter the commission of rape.

**4. CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES; RELATIONSHIP OF RAPE VICTIM TO APPELLANT; NOT PROVEN IN CASE AT BAR.—** While the Court affirms appellant's conviction for two counts of rape, the evidence points to only **simple**, not qualified rape. Under Article 266-B of the Revised Penal Code, rape is qualified when the victim is under 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim, in which case the death penalty should be imposed. As the above-quoted informations show, the special qualifying circumstances of minority of AAA and her relationship-(uncle) to appellant were alleged. While AAA's minority was proven beyond reasonable doubt, her relationship to appellant was not. *Apropos* is the pronouncement in the recent case of *People v. Mangubat* (529 SCRA 377): In the prosecution of criminal cases, especially those involving the penalty of death, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which an accused is charged must be established. Qualifying circumstances or special qualifying circumstances must be proved with equal certainty and clearness as the crime itself, otherwise, there can be no conviction of the crime in its qualified form. As a special qualifying circumstance raising the penalty for rape to death, the minority of the victim and her relationship to the offender must be alleged in the criminal complaint or information and **proved conclusively and indubitably as the crime itself**.

**5. ID.; ID.; ID.; ID.; RELATIONSHIP CANNOT BE ESTABLISHED BY MERE TESTIMONY OR EVEN BY ACCUSED'S VERY OWN ADMISSION OF SUCH RELATIONSHIP; CASE AT BAR.—** This Court emphasized in *People v. Balbarona* (428 SCRA 127, 145), that the relationship of the accused to the victim cannot be established by mere testimony or even by the accused's very own admission of such relationship. In the present case, the prosecution merely presented the testimony of BBB—mother of AAA to establish the relationship between appellant and AAA.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for appellee.
*Public Attorney's Office* for appellant.

**D E C I S I O N**

**CARPIO MORALES, *J.*:**

Conchito Agustin[1] (appellant) was convicted for two counts of qualified rape on complaint of AAA, then a minor, by Branch 11 of the Regional Trial Court of Tuao, Cagayan.

The accusatory portion of each of the informations against appellant follows:

In Criminal Case No. 961-T:

That on or about July 7, 2001, in the Municipality of Tuao, Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused CONCHITO AGUSTIN [*y*] Villanueva[,] **uncle within the third civil degree** of the offended party [AAA], **a minor** 11 years old, thus have moral ascendancy over the complainant, with lewd design and by the use of force, did then and there, willfully and feloniously have sexual intercourse with the offended party, [AAA] a minor under 18 years of age against her will.

Contrary to law.[2] (Emphasis and underscoring supplied)

In Criminal Case No. 962-T:

That on or about July 19, 2001, in the Municipality of Tuao, Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused CONCHITO AGUSTIN *y* VILLANUEVA, **uncle within the 3rd degree** of the offended party [AAA], **a minor** 12 years old, thus have moral ascendancy over the complainant, with lewd design and by the use of force, did then and there, willfully and feloniously have sexual intercourse with the offended party, [AAA] a minor under 18 years of age against her will.

---

[1] Also known as Monchito.

[2] Records, Vol. 1, p. 24.

Contrary to law.[3] (Emphasis and underscoring supplied)

AAA, born on July 10, 1989,[4] is the daughter of BBB, said to be a sister of CCC who is appellant's wife.

Appellant lives in a barangay of Tuao, Cagayan where AAA and her parents also live.

From the version of the prosecution, the following facts are gathered:

In the morning of July 7, 2001, AAA, then three days shy of 12 years, was cleaning the second floor of appellant's house on his request. While she was applying wax on the floor, appellant suddenly pushed her to the floor and started removing her short pants. She resisted by boxing appellant's chest and pushing him away, and summoned for help by shouting "*arayatendak*" which, in Ilocano, means "help me."[5]

Appellant just the same went on top of AAA, pinned her legs with his knees and held her hands. He then removed his short pants and underwear and inserted his penis into AAA's vagina. As appellant heard his daughter calling for him and ascending the stairs to the second floor, appellant immediately withdrew his penis and threatened AAA not to tell her parents about the incident.[6]

In the evening of July 19, 2001, while AAA and her mother BBB were at appellant's house, his wife CCC-sister of BBB having just arrived from Hongkong where she was working,[7] AAA felt the need to urinate. She thereupon went outside, about 30 meters away from the house. Appellant suddenly appeared, forcibly grabbed her and carried her to a nearby house then under construction where he laid her down on some sacks of rice, put his legs on top of hers, and removed her short pants and underwear. Despite AAA's vigorous resistance and shouts for help, appellant

[3] Records, Vol. 2, p. 2.

[4] Exhibit "A", records, Vol. 1, p. 40.

[5] TSN, April 22, 2003, pp. 6-8.

[6] *Id*. at 6-9.

[7] *Id*. at 9.

succeeded in inserting his penis into her vagina. She later felt a liquid substance secreting from appellant's penis. Again appellant threatened her[8] against divulging the incident to anyone.

After appellant left, AAA dressed up. On her way out of the unfinished house, she was seen by her aunt CCC who was prompted to summon her and bring her to one of the rooms of her and appellant's house and ask her why she was at the unfinished house. It was then that AAA revealed what appellant had done to her.[9] As AAA's mother BBB overheard AAA and CCC talking, she joined them at which AAA again related what appellant had done to her and his threats against revealing the same.[10]

The result of the medico-legal examination conducted on AAA the following day, July 20, 2001, revealed that her hymen had *"positive superficial healed laceration at 4'o'clock* [*sic*]*, 6 o'clock and 9 o'clock positions."*[11]

Denying the accusation, appellant gave the following version at the witness stand:

In the early morning of July 7, 2001, he went to his farm at Battung, Tuao, Cagayan, more than one and a half kilometers away from his house, to supervise the planting of rice and stayed there up to about noontime. He then fetched his daughter and headed for and arrived home at around 12:45 p.m.[12]

On July 19, 2001, as the relatives of his wife who had just arrived from Hongkong were going to their house, he helped prepare food from 5:00 p.m. until 8:00 p.m. when the relatives started arriving. He, together with the guests, thereupon had supper, punctuated with drinks with his brothers-in-law. At past 9:00 p.m., AAA and company went home. It was thus impossible for him to have raped AAA at the unfinished house.[13]

---

[8] *Id*. at 9-11.

[9] *Id*. at 11-12; 32-34.

[10] *Id*. at 11-12.

[11] Exhibit "B-1", Medico Legal Certificate, records, Vol. 1, p. 4

[12] TSN, March 24, 2004, pp. 3-4.

[13] *Id*. at 5-6.

By Judgment of September 14, 2004,[14] the trial court convicted appellant, as charged, and imposed upon him the death penalty in both cases. Thus it disposed:

> WHEREFORE, the Court finds that the evidence on record established beyond reasonable doubt the guilt of the accused Conchito (Monchito) Agustin for two (2) counts of rape committed on [AAA], a minor, eleven years of age or twelve years of age, defined and penalized under Article 266-B of the Revised Penal Code, as amended by Republic Acts No. 7659 and 8353, and hereby sentences the said accused Cochito [*sic*] (Monchito) [*sic*] Agustin:
>
> 1. In Criminal Case No. 961-T, to suffer the supreme penalty of death by lethal injection;
>
> 2. In Criminal Case No. 962-T, to suffer the same penalty of death by lethal injection;
>
> 3. In each of the aforesaid cases, to pay the victim civil indemnity of ₱75,000.00 each or ₱150,000 plus moral damages of ₱25,000.00 each count or a total of ₱50,000.00 for moral damages.[15] (Underscoring supplied)

Before the Court of Appeals,[16] appellant raised as lone error of the trial court his conviction despite failure of the prosecution to establish his guilt beyond reasonable doubt.[17]

The appellate court held that even if appellant were at the farm on July 7, 2001 when the first rape occurred, it was not physically impossible for him to have raped the victim at his house, it being barely one and a half kilometers away; and even if there were many people in his house on July 19, 2001, it was not physically impossible for him to have committed rape at the nearby unfinished house.

---

[14] Records, Vol. 1, pp. 128-132.

[15] *Id*. at 132.

[16] The Court of Appeals erred in stating that the cases were before it on automatic review pursuant to *People v. Mateo*, G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[17] CA *rollo*, p. 34.

By Decision of June 13, 2006, the appellate court affirmed that of the trial court.[18]

In the meantime or on June 24, 2006, President Gloria Macapagal-Arroyo signed into law Republic Act (R.A.) No. 9346, "AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES."

The Court, acting on appellant's Notice of Appeal,[19] required the parties by Resolution of March 13 , 2007,[20] to simultaneously submit supplemental briefs within 30 days from notice, if they so desired. Both parties filed their respective Manifestations[21] that they were no longer filing any supplemental brief.

The conviction of appellant must be upheld.

In rape cases, if the testimony of the victim passes the test of credibility, the accused may be convicted solely on that basis.[22]

Passing on the testimony of AAA respecting the July 7, 2001 incident, the trial court observed:

> In the cases at bench, **the testimony of private complainant [AAA] [as regards] to the two (2) counts of rape was subjected by the Court to the minutest of scrutiny**. As to her testimony regarding the July 7, 2001 sexual assault, the Court finds no reason to disbelieve [AAA] when she claims that she was forcibly deflowered by the herein accused in the second floor of the latter's house at Mungo, Tuao, Cagayan. There appears no plausible reason for the young victim to falsely charge the accused who is her uncle-in-law, with rape. Thus, in the absence of any showing of an illicit motive

[18] *Id*. at 83-104. Penned by Justice Lucenito N. Tagle with the concurrence of Justice Marina L. Buzon and Regalado E. Maambong.

[19] *Id*. at 107-108.

[20] *Rollo*, p. 24.

[21] *Id*. at 25-31.

[22] *People v. Ceballos, Jr.,* G.R. No. 169642, September 14, 2007, 533 SCRA 493, 508; *People v. Fernandez,* G.R. No. 172118, April 24, 2007, 522 SCRA 189; *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 448; *People v. Guambor,* 465 Phil. 671, 678 (2004).

to falsely impute so grievous a crime as qualified rape against the herein accused, the testimony of the young victim is entitled to full credence… for no young and decent Filipina would publicly admit that she was ravished unless that is the truth because her natural instinct is to protect her honor. x x x[23] (Citations omitted; emphasis and underscoring supplied)

On appellant's claim that AAA's mother merely concocted the rape charges to avoid payment of a loan, the trial court discredited the same in this wise:

…[T]he Court is hard put to believe that a mother of a young innocent girl such as the 12-year old [AAA] would expose her daughter to the shame of having her private parts examined and, thereafter, to undergo the rigors of a public trial where, more often than not, the victim is subjected to humiliating and rigorous cross-examination by the defense counsel. x x x[24]

Appellant has maintained his alibi. To successfully invoke alibi, however, an accused must establish with clear and convincing evidence not only that he was somewhere else when the crime was committed but also that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[25]

In appellant's case, it was easy for him to go back from the farm to his house on July 7, 2001 since the distance between the two is only one and a half kilometers and, by his claim, he even rode on a "*culiglig,*" a motorized farm equipment which had become the common means of transportation in rural areas, thus shortening his travel time. As the trial court held:

…The defense of alibi of the accused falls flat on its face after he admits that the farm which he claims to have supervised its planting

---

[23] Records, Vol. 1, pp. 130-131.

[24] *Id*. at 131.

[25] *People v. Jalbuena,* G.R. No. 171163, July 4, 2007, 526 SCRA 500, 512; *People v. Espinosa*, G.R. No. 138742, June 15, 2004, 432 SCRA 86, 100; *People v. Orilla*, G.R. Nos. 148939-40, February 13, 2004, 422 SCRA 620, 633; *People v. Obrique*, 465 Phil. 221, 243 (2004).

to rice is barely a kilometer [*sic*][26] from his house. Well-established is the rule that for alibi to prosper, it is not enough for the accused to prove that he was elsewhere when the crime was committed – he must also prove that it would have been physically impossible for him to have been at the scene of the crime at the time of its commission … The defense of alibi put up by the accused as regards the July 7, 2001 rape obviously cannot be given much credit by this Court.[27] (Underscoring supplied)

As for appellant's argument that the act complained of on July 19, 2001 could not have been committed due to the presence of other people, the same must fail. The Court has repeatedly held that lust is no respecter of time and place. Thus, the nearby presence of relatives of the victim,[28] the cramped condition and the presence of other people in the room, or the high risk of being caught, have been held insufficient and ineffective to deter the commission of rape.[29]

While the Court affirms appellant's conviction for two counts of rape, the evidence points to only **simple**, not qualified rape.

Under Article 266-B of the Revised Penal Code, rape is qualified when the victim is under 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim, in which case the death penalty should be imposed.

As the above-quoted informations show, the special qualifying circumstances of minority of AAA and her relationship-(uncle) to appellant were alleged. While AAA's minority was proven beyond reasonable doubt, her relationship to appellant was not.

---

[26] *Vide* TSN, March 24, 2004, p. 4, which records that appellant informed that his house is one and a half kilometers away from his farm.

[27] Records, Vol. 1, p. 131.

[28] *Supra* note 22 at 509; *People v. Mayao*, G.R. No. 170636, April 27, 2007, 522 SCRA 748, 757; *People v. Barcena*, G.R. No. 168737, February 16, 2006, 482 SCRA 543, 555.

[29] *Ibid*.; *People v. Pangilinan,* G.R. No. 171020, March 14, 2007, 518 SCRA 358, 386.

*Apropos* is the pronouncement in the recent case of *People v. Mangubat*:[30]

> In the prosecution of criminal cases, especially those involving the penalty of death, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which an accused is charged must be established. Qualifying circumstances or special qualifying circumstances must be proved with equal certainty and clearness as the crime itself, otherwise, there can be no conviction of the crime in its qualified form.
>
> As a special qualifying circumstance raising the penalty for rape to death, the minority of the victim and her relationship to the offender must be alleged in the criminal complaint or information and **proved conclusively and indubitably as the crime itself**.[31] (Emphasis and underscoring supplied)

This Court emphasized in *People v. Balbarona*[32] that the relationship of the accused to the victim cannot be established by mere testimony or even by the accused's very own admission of such relationship. In the present case, the prosecution merely presented the testimony of BBB—mother of AAA to establish the relationship between appellant and AAA.

Appellant is thus liable for two counts of **simple** rape which call for the imposition of *reclusion perpetua* in each count, the same penalty which would have been imposable even if he were guilty of qualified rape, in light of the passage in the interim of R.A. No. 9346. The civil indemnity must likewise be modified, to be reduced from ₱75,000 to ₱50,000 for each count. As to the award of moral damages, the same is increased to ₱50,000 in each count, consistent with prevailing jurisprudence which pegs the amount to ₱50,000 for cases of simple rape.[33]

---

[30] G.R. No. 172068, August 7, 2007, 529 SCRA 377.

[31] *Id*. at 395-396.

[32] G.R. No. 146854, April 28, 2004, 428 SCRA 127, 145.

[33] *People v. San Antonio, Jr.,* G.R. No. 176633, September 5, 2007, 532 SCRA 411; *People v. Mayao, supra* note 28; *People v. Dadulla*, G.R. No. 175946, March 23, 2007, 519 SCRA 48; *People v. Arnaiz,* G.R. No. 171447, November 29, 2006, 508 SCRA 630; *People v. Bang-ayan,* G.R. No. 172870, September 22, 2006, 502 SCRA 658.

**WHEREFORE,** the assailed June 13, 2006 Decision of the Court of Appeals is *AFFIRMED* with *MODIFICATION*. Appellant, Conchito Agustin, is found guilty of two counts of Simple Rape and is sentenced to suffer in each the penalty of *reclusion perpetua*. The award for civil indemnity is reduced to ₱50,000 in each count and the award for moral damages is increased from ₱25,000 to ₱50,000 in each count.

**SO ORDERED.**

*Puno, C.J., Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes,* and *Leonardo-de, Castro, JJ.,* concur.

*Quisumbing, J.,* on official leave per Special Order No. 485 dated February 14, 2008.

*Ynares-Santiago, J.,* on leave.

---

**EN BANC**

[G.R. No. 176409. February 27, 2008]

**OFFICE OF THE OMBUDSMAN,** *petitioner, vs.* **ROLANDO S. MIEDES, SR.,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; COURT HAS FULL MEASURE OF DISCRETION IN PERMITTTING OR DISALLOWING INTERVENTION.—** Under the rules on intervention, the allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court. Discretion is a faculty of a court or an official by which he may decide a question either way, and still be right. The permissive tenor of the rules shows an intention to

give to the court the full measure of discretion in permitting or disallowing the intervention. The discretion of the court, once exercised, cannot be reviewed by *certiorari* or controlled by *mandamus* save in instances where such discretion has been so exercised in an arbitrary or capricious manner.

**2. ID.; ID.; ID.; ID.; EXCEPTIONS TO THE RULE.—** As a general rule, intervention is legally possible only "before or during a trial"; hence, a motion for intervention filed after trial — and, *a fortiori,* when the case has already been submitted, when judgment has been rendered, or worse, when judgment is already final and executory — should be denied. The rule, however, is not without exceptions. In *Director of Lands v. Court of Appeals* (93 SCRA 238), intervention was allowed even when the petition for review of the assailed judgment was already submitted for decision in the Supreme Court. In *Tahanan Development Corporation v. Court of Appeals* (203 Phil. 652), the Court allowed intervention almost at the end of the proceedings. In *Mago v. Court of Appeals,* 363 Phil. 527, the Court granted intervention despite the fact that the case had become final and executory, thus: [The] facts should have convinced the trial court and the Court of Appeals that a less stringent application of the Rules of Court was the more prudent recourse. Indeed, the exercise of discretion has often been characterized as odious; but where the necessity exists for its exercise, a judge is bound not to shirk from the responsibility devolving in him. For it is in relaxing the rules that we ultimately serve the ends of equity and justice based not on folly grounds but on substance and merit. Recently, in *Pinlac v. Court of Appeals* (457 Phil. 527), the Court, finding merit in the claim of the intervenor, allowed intervention even after it had rendered its decision and the resolution denying the motion for reconsideration.

**3. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; GRAVE MISCONDUCT; CORRUPTION AS ELEMENT CONSISTS IN THE ACT OF THE OFFICIAL WHO UNLAWFULLY AND WRONGFULLY USES HIS STATION OR CHARACTER TO PROCURE SOME BENEFIT FOR HIMSELF OR FOR ANOTHER PERSON; CASE AT BAR.—** In Grave Misconduct, as distinguished from Simple Misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rules, must be manifest and established by substantial evidence. Grave

Misconduct necessarily includes the lesser offense of Simple Misconduct. Thus, a person charged with Grave Misconduct may be held liable for Simple Misconduct if the misconduct does not involve any of the elements to qualify the misconduct as grave. The CA correctly found no reason to depart from the findings of the petitioner that respondent and his companions are guilty of Simple Misconduct. The elements particular to Grave Misconduct were not adequately proven in the present case. Corruption, as an element of Grave Misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. There is no clear and convincing evidence in the present case to show that the purchase and acquisition of the 19 cellular phone units had been made for personal or selfish ends. Nor is there evidence that respondent and his companions acted in a capricious, whimsical and arbitrary manner with conscious and deliberate intent to do an injustice to others.

**4. ID.; ID.; ID.; ID.; THE ABSENCE OF CORRUPT MOTIVE CAN BE CONSIDERED ONLY ONCE IN DOWNGRADING OFFENSE FROM GRAVE MISCONDUCT TO SIMPLE MISCONDUCT AND CANNOT BE APPLIED AGAIN TO FURTHER DOWNGRADE PENALTY; CASE AT BAR.—** The CA evidently erred in considering once again the absence of corrupt or wrongful motive as a mitigating circumstance in the imposition of the proper penalty for Simple Misconduct on respondent. The absence of corrupt or wrongful motive was already considered in downgrading the offense from grave misconduct to simple misconduct. Thus, in the imposition of the proper penalty for simple misconduct, good faith can no longer be considered as a mitigating circumstance that would warrant the application of paragraph (a), Section 54 of the Uniform Rules and Administrative Cases in the Civil Service, to wit: Section 54. *Manner of imposition*. When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below: **a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present. b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.** c. The maximum

of the penalty shall be imposed where only aggravating and no mitigating circumstances are present. d. Where aggravating and mitigating circumstances are present, paragraph (a) shall be applied where there are more mitigating circumstances present; paragraph (b) shall be applied when the circumstances equally offset each other; and paragraph (c) shall be applied when there are more aggravating circumstances. Section 52(B)(2), Rule IV of the same Rules classifies simple misconduct as a less grave offense punishable with a corresponding penalty of suspension for one month and one day to six months for the first offense. Considering that no mitigating or aggravating circumstance can be appreciated in favor of the respondent, paragraph (b), Section 54, applies. Thus, the medium penalty of three months as imposed by petitioner is the appropriate penalty.

**APPEARANCES OF COUNSEL**

*Office of the Legal Affairs (Ombudsman)* for petitioner.
*Batacan Montero & Vicencio Law Firm* for respondent.

**D E C I S I O N**

**AUSTRIA-MARTINEZ, *J.*:**

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals (CA) dated March 30, 2005 in CA-G.R. SP No. 86643 and the Resolution[2] dated January 17, 2007 which denied petitioner's Omnibus Motion for Intervention and Partial Reconsideration.

The facts are undisputed:

Marlou L. Billacura filed before the Office of the Ombudsman-Mindanao (OMB-MIN) a complaint and request for investigation

[1] Penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Teresita Dy-Liacco Flores and Myrna Dimaranan Vidal, *rollo*, p. 36.

[2] *Id*. at 42.

on the propriety of the purchase and acquisition by the Municipal Government of Carmen, Davao del Norte of 19 cellular phone units amounting to ₱104,500.00.[3] OMB-MIN referred the complaint to the Provincial Auditor's Office of the Commission on Audit for necessary audit/investigation.[4]

The Provincial Auditor found that the acquisition of the cellular phones was made without a public bidding; that the purchase was made through an authorized distributor and not directly through a manufacturer or an exclusive distributor. Hence, he filed before OMB-MIN a complaint against the members of the Bids and Awards Committee (BAC) of the Municipal Government of Carmen, Davao del Norte, namely: Municipal Accountant Rolando S. Miedes, Sr. (respondent), Municipal Treasurer Cristeta M. Oducayen (Oducayen) and Municipal Budget Officer Sarah Jane L. Alcuzar[5] (Alcuzar) for violations of Section 3(e) of Republic Act No. 3019; Presidential Decree No. 1445; Civil Service Commission Memorandum Circular No. 19, Series of 1999, Abuse of Authority and Acts Prejudicial to the Best Interest of the Service.

In their Answer, respondents Oducayen and Alcuzar assert the regularity and propriety of the transactions.[6]

On October 21, 2002, the OMB-MIN issued a Joint Resolution[7] dismissing the criminal case against the three BAC members.

On January 6, 2003, the Ombudsman (petitioner) approved the said Joint Resolution only with respect to the dismissal of the criminal complaints. However, as to the administrative case, petitioner found substantial evidence on record proving that

---

[3] *Rollo*, p. 46.

[4] *Id*.

[5] Spelled as "Acuzar" in the Joint Resolution of the Ombudsman-Mindanao, *id*. at 45.

[6] *Id*. at 48.

[7] *Id*. at 45.

the offense of Simple Misconduct was committed by the BAC members and imposed upon them the penalty of three-month suspension without pay.[8]

Dissatisfied, respondent filed a Petition for Review[9] before the CA.

In a Decision[10] dated March 30, 2005, the CA affirmed the findings of the OMB-MIN, but reduced the imposable penalty from three-month to one-month suspension, holding that respondent's act was not motivated by any corrupt or wrongful motive.

Petitioner filed an Omnibus Motion for Intervention and Partial Reconsideration dated April 25, 2005, insisting that it correctly imposed the medium-term penalty of suspension for three months for Simple Misconduct as the circumstance of lack of showing of corrupt or wrongful motive had been taken into consideration in the downgrading of the offense from Grave Misconduct to Simple Misconduct.

In a Resolution[11] dated January 17, 2007, the CA denied petitioner's Omnibus Motion for Intervention and Partial Reconsideration.

Hence, the present petition anchored on the following grounds:

1. WITH DUE RESPECT, THE APPELLATE COURT *A QUO* ERRED WHEN IT MODIFIED THE PENALTY IMPOSED UPON PRIVATE RESPONDENT MIEDES FOR SIMPLE MISCONDUCT FROM THREE (3) MONTHS TO ONE (1) MONTH SUSPENSION PREDICATED SOLELY ON THE GROUND THAT THERE IS AN ABSENCE OF CORRUPT MOTIVE ON THE PART OF THE PRIVATE RESPONDENT.

---

[8] *Rollo,* p. 53.

[9] Entitled "*Rolando S. Miedes, Sr. v. Commission on Audit, Region XI, Davao City*."

[10] *Supra* note 1.

[11] *Supra* note 2.

2. FINDINGS OF FACT OF AN ADMINISTRATIVE AGENCY ARE GENERALLY ACCORDED NOT ONLY RESPECT BUT AT TIMES FINALITY.[12]

Petitioner argues that if there was a finding of corrupt motive, the infraction would have been Grave Misconduct punishable by dismissal from service; that the absence of a positive finding of corrupt motive diluted the offense to Simple Misconduct; that since its beneficial effects on respondent have already been used up to exhaustion, this so-called absence of corrupt motive cannot work further to mitigate the appropriate penalty; that a mitigating circumstance is susceptible to only one application.

In his Comment,[13] respondent submits that the penalty for Simple Misconduct of one month and one day to six months is susceptible of division into minimum, medium and maximum penalties; that the law is clear that if there is a mitigating circumstance and there is no aggravating circumstance, the mitigating circumstance is appreciated properly for the imposition of the proper penalty of minimum; and that to rule that a mitigating circumstance of lack of corrupt motive on the part of the respondent serves only to downgrade the offense and stop there and not to serve also as a mitigating circumstance for the imposition of the proper penalty for the offense, after an express finding that it is indeed a mitigating circumstance, must not be countenanced.

In its Reply, petitioner maintains that the mitigating circumstance of absence or lack of corrupt motive was correctly applied in downgrading the offense from grave misconduct to simple misconduct; and that it cannot be used for the second time as a mitigating circumstance in the determination of the proper penalty to be imposed; otherwise, respondent would be benefiting from the application of the same element twice.

After considering respondent's comment and petitioner's reply, the Court gives due course to the petition and considers the

[12] *Rollo*, pp. 18-19.

[13] *Id*. at 74.

case ready for decision without need of memoranda from the parties.

The Court finds it necessary, before delving on the propriety of the modification of the penalty, to discuss the propriety of the motion for intervention filed by petitioner after the CA rendered its decision.

Under the rules on intervention, the allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court.[14] Discretion is a faculty of a court or an official by which he may decide a question either way, and still be right.[15] The permissive tenor of the rules shows an intention to give to the court the full measure of discretion in permitting or disallowing the intervention. The discretion of the court, once exercised, cannot be reviewed by *certiorari* or controlled by *mandamus* save in instances where such discretion has been so exercised in an arbitrary or capricious manner.[16]

**In denying the motion for intervention of petitioner, the CA acted arbitrarily**.

As a general rule, intervention is legally possible only "before or during a trial"; hence, a motion for intervention filed after trial — and, *a fortiori*, when the case has already been submitted, when judgment has been rendered, or worse, when judgment is already final and executory — should be denied.[17] The rule, however, is not without exceptions.

---

[14] *Galicia v. Manliquez Vda. de Mindo,* G.R. No. 155785, April 13, 2007, 521 SCRA 85, 92; *Foster-Gallego v. Galang,* G.R. No. 130228, July 27, 2004, 435 SCRA 275, 288.

[15] *Heirs of Geronimo Restrivera v. De Guzman,* G.R. No. 146540, July 14, 2004, 434 SCRA 456, 463; *San Miguel Corporation v. Sandiganbayan*, 394 Phil. 608, 651 (2000).

[16] *Foster-Gallego v. Galang, supra* note 14; *Big Country Ranch Corp. v. Court of Appeals*, G.R. No. 102927, October 12, 1993, 227 SCRA 161, 165.

[17] *Looyuko v. Court of Appeals,* 413 Phil. 445, 460-461 (2001); *Oliva v. Court of Appeals*, G.R. No. 76737, October 27, 1988, 166 SCRA 632, 636.

In *Director of Lands v. Court of Appeals*,[18] intervention was allowed even when the petition for review of the assailed judgment was already submitted for decision in the Supreme Court. In *Tahanan Development Corporation v. Court of Appeals*,[19] the Court allowed intervention almost at the end of the proceedings. In *Mago v. Court of Appeals*,[20] the Court granted intervention despite the fact that the case had become final and executory, thus:

> [The] facts should have convinced the trial court and the Court of Appeals that a less stringent application of the Rules of Court was the more prudent recourse. Indeed, the exercise of discretion has often been characterized as odious; but where the necessity exists for its exercise, a judge is bound not to shirk from the responsibility devolving in him. For it is in relaxing the rules that we ultimately serve the ends of equity and justice based not on folly grounds but on substance and merit.[21]

Recently, in *Pinlac v. Court of Appeals,*[22] the Court, finding merit the claim of the intervenor, allowed intervention even after it had rendered its decision and the resolution denying the motion for reconsideration.

In the present case, the motion to intervene was filed after the CA had rendered judgment but before finality thereof. However, the modification of the penalty is patently erroneous. It behooved the CA to grant the motion to intervene due to the merit of petitioner's claim that the CA erred in modifying the penalty.

Misconduct is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."[23]

---

[18] G.R. No. L-45168, September 25, 1979, 93 SCRA 238.

[19] 203 Phil. 652 (1982).

[20] 363 Phil. 225 (1999).

[21] *Id*. at 238.

[22] 457 Phil. 527 (2003).

[23] *Estarija v. Ranada,* G.R. No. 159314, June 26, 2006, 492 SCRA 652, 663; *Bureau of Internal Revenue v. Organo*, G.R. No. 149549, February 26, 2004, 424 SCRA 9, 16.

In Grave Misconduct, as distinguished from Simple Misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rules, must be manifest[24] and established by substantial evidence. Grave Misconduct necessarily includes the lesser offense of Simple Misconduct.[25] Thus, a person charged with Grave Misconduct may be held liable for Simple Misconduct if the misconduct does not involve any of the elements to qualify the misconduct as grave.[26]

The CA correctly found no reason to depart from the findings of the petitioner that respondent and his companions are guilty of Simple Misconduct. The elements particular to Grave Misconduct were not adequately proven in the present case. Corruption, as an element of Grave Misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.[27] There is no clear and convincing evidence in the present case to show that the purchase and acquisition of the 19 cellular phone units had been made for personal or selfish ends. Nor is there evidence that respondent and his companions acted in a capricious, whimsical and arbitrary manner with conscious and deliberate intent to do an injustice to others.

Nonetheless, as aptly found by the CA, respondent and his companions should have exercised all the necessary prudence to ensure that the proper procedure was complied with in the purchase of the 19 cellular phone units because the Municipal

[24] *Villanueva v. Court of Appeals,* G.R. No. 167726, July 20, 2006, 495 SCRA 824, 834-835; *Civil Service Commission v. Lucas*, 361 Phil. 486, 490-491 (1999).

[25] *Santos v. Rosalan*, G.R. No. 155749, February 8, 2007, 515 SCRA 97, 104; *Civil Service Commission v. Ledesma*, G.R. No. 154521, September 30, 2005, 471 SCRA 589, 603.

[26] *Santos v. Rosalan, supra* note 25; *Civil Service Commission v. Ledesma*, *supra* note 25.

[27] *Salazar v. Barriga,* A.M. No. P-05-2016, April 19, 2007, 521 SCRA 449, 453-454; *Vertudes v. Buenaflor,* G.R. No. 153166, December 16, 2005, 478 SCRA 210, 234; *Civil Service Commission v. Belagan*, G.R. No. 132164, October 19, 2004, 440 SCRA 578, 599-600.

Government of Carmen, Davao del Norte was deprived of means of securing the most advantageous price by the purchase of the 19 cellular phone units through an authorized distributor and not directly through a manufacturer or an exclusive distributor. Thus, respondent is liable for Simple Misconduct.

**Absence of corrupt or wrongful motive, as an element of Simple Misconduct, cannot be applied again to investigate further the penalty for the same offense.**

The CA evidently erred in considering once again the absence of corrupt or wrongful motive as a mitigating circumstance in the imposition of the proper penalty for Simple Misconduct on respondent. The absence of corrupt or wrongful motive was already considered in downgrading the offense from grave misconduct to simple misconduct. Thus, in the imposition of the proper penalty for simple misconduct, good faith can no longer be considered as a mitigating circumstance that would warrant the application of paragraph (a), Section 54 of the Uniform Rules on Administrative Cases in the Civil Service,[28] to wit:

> Section 54. *Manner of imposition*. When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:
>
> **a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.**
>
> **b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.**
>
> c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.
>
> d. Where aggravating and mitigating circumstances are present, paragraph (a) shall be applied where there are more mitigating circumstances present; paragraph (b) shall be applied when the circumstances equally offset each other; and paragraph (c) shall be applied when there are more aggravating circumstances. (Emphasis supplied)

[28] Civil Service Commission Resolution No. 991936, August 31, 1999.

Section 52(B)(2), Rule IV of the same Rules classifies simple misconduct as a less grave offense punishable with a corresponding penalty of suspension for one month and one day to six months for the first offense. Considering that no mitigating or aggravating circumstance can be appreciated in favor of the respondent, paragraph (b), Section 54, applies. Thus, the medium penalty of three months as imposed by petitioner is the appropriate penalty.

**WHEREFORE,** the petition is *PARTLY GRANTED*. The Resolution dated January 17, 2007 issued by the Court of Appeals in CA-G.R. SP No. 86643 is *REVERSED* and *SET ASIDE*. Petitioner's Omnibus Motion for Intervention and Partial Reconsideration is *GRANTED*. The Decision dated March 30, 2005 of the Court of Appeals is *AFFIRMED* insofar as it finds respondent GUILTY of SIMPLE MISCONDUCT with MODIFICATION that respondent is meted the penalty of SUSPENSION for THREE (3) MONTHS as imposed by petitioner in its Joint Resolution dated January 6, 2003.

**SO ORDERED.**

*Puno, C.J., Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes,* and *Leonardo-de Castro, JJ.,* concur.

*Quisumbing, J.,* on official leave.

**SECOND DIVISION**

[A.M. No. MTJ-08-1697. February 29, 2008]
(Formerly OCA-I.P.I. No. 05-1784-MTJ)

**ESTANISLAO V. ALVIOLA,** *complainant, vs.* **JUDGE HENRY B. AVELINO, MCTC, Pontevedra-Panay, Capiz,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; PRE-TRIAL ORDER TO BE ISSUED TEN DAYS AFTER TERMINATION OF PRE-TRIAL; CASE AT BAR.—** Paragraph 8, Title I (A) of A.M. No. 03-1-09-SC entitled "*Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures*" states that: 8. The judge shall issue the required Pre-Trial Order within ten (10) days after the termination of the pre-trial. Said Order shall bind the parties, limit the trial to matters not disposed of and control the course of the action during the trial x x x Evidently, respondent judge violated the above-quoted provision by issuing the pre-trial order only on 2 January 2005 or more than four (4) months after the termination of the pre-trial conference.

**2. ID.; ID.; RULES ON SUMMARY PROCEDURE; REASON FOR ADOPTION.—** It should likewise be underscored that since the civil case is an unlawful detainer case falling within the ambit of the Rules on Summary Procedure, respondent judge should have handled the same with promptness and haste. The reason for the adoption of the Rules on Summary Procedure is precisely to prevent undue delays in the disposition of cases. It is therefore not encouraging when, as in the case at bar, it is the judge himself who occasions the delay sought to be prevented by the rule. By no means is the aim of speedy disposition of cases served by respondent judge's inaction.

**3. ID.; DISCIPLINE OF JUDGES; UNDUE DELAY IN RENDERING PRE-TRIAL ORDER; CLASSIFIED AS LESS SERIOUS CHARGE.—** Section 9 (1), Rule 140, as amended, of the Revised Rules of Court provides that undue delay in

rendering an order is classified as a less serious charge punishable by suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

**R E S O L U T I O N**

**TINGA, *J.*:**

This is an administrative complaint against respondent Judge Henry B. Avelino of the 2nd Municipal Circuit Trial Court of Pontevedra-Panay, Pontevedra, Capiz for gross neglect of duty relative to a civil case for unlawful detainer and damages, docketed as Civil Case No. 405 and entitled *"Spouses Estanislao V. Alviola and Carmen L. Alviola v. Spouses Dullano and Theresa Suplido."*

In a Complaint[1] dated 5 October 2005, complainant alleged that the complaint in the civil case was filed on 24 September 2002. After the defendants filed their answer on 10 October 2002, the case was set for pre-trial conference on 19 November 2002. Following several postponements, the pre-trial conference was actually conducted and terminated on 26 August 2004. More than a year after the termination of the pre-trial conference, respondent judge had not issued a pre-trial order. Complainant had already filed before the sala of respondent judge a manifestation regarding this matter but respondent Judge still failed to issue the required pre-trial order.[2]

In a Manifestation[3] dated 6 March 2006, complainant informed the Court that on 9 February 2006, he had received a copy of defendants' motion for correction of the pre-trial order dated 6 February 2006. Complainant likewise manifested that respondent judge had granted the same[4] and issued an Amended Pre-trial

[1] *Rollo*, pp. 1-2.

[2] *Id*. at 61.

[3] *Id*. at 30-33.

[4] *Id*. at 55. In an Order dated 7 February 2006.

Order[5] dated 2 January 2006 without the notice required by Section 4, Rule 15 of the 1997 Rules of Civil Procedure and without giving complainant the opportunity to file his comment thereon. As such, on 22 February 2006, complainant moved[6] for respondent judge to reconsider his order granting defendants' motion for correction of pre-trial order.[7]

In his Comment[8] dated 5 December 2005, respondent judge maintained that pre-trial conferences were set on 19 November 2002 and 2 January 2003 but both were postponed at the instance of both parties for purposes of settlement. Further settings were likewise postponed as defendants' counsel had moved for the suspension of the proceedings of the civil case in deference to another civil case pending before the Regional Trial Court of Roxas City, Capiz for annulment/cancellation of title of the same property involved. After respondent judge had resolved the motion, the continuation of the pre-trial conference was scheduled and the parties agreed to have it on 30 July 2004. Finally, the parties had their exhibits marked on 26 August 2004. Thereafter, the parties were given sufficient time to settle the case pursuant to A.M. No. 03-1-09-SC (Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-trial and Use of Deposition-Discovery Measures) which became effective on 16 August 2004.[9]

Respondent Judge admitted that the delay in the issuance of the pre-trial order was due to the fact that he had opted to concentrate on the disposal of other cases required to be terminated before 30 December 2005 pursuant to A.M. No. 05-8-26-SC. Respondent judge, thus, argued that he cannot be held liable for gross neglect of duty due to his efforts to

[5] *Id*. at 56-58.

[6] *Id*. at 59-60. Motion for Reconsideration dated 22 February 2006.

[7] *Id*. at 31-32.

[8] *Id*. at 28-29.

[9] *Id*. at 29.

unclog the court's docket of pending cases as borne out by the record.[10]

In a Report[11] dated 25 April 2006, the Office of the Court Administrator (OCA) found respondent judge guilty of violating Paragraph 8, Title I (A) of A.M. No. 03-1-09-SC. The said provision requires judges to issue the required pre-trial order within ten (10) days after the termination of the pre-trial conference. Clearly, respondent judge violated the provision by issuing the Pre-Trial Order more than ten days after the termination of the Pre-Trial Conference on 26 August 2004.

Accordingly, the OCA recommended that the matter be formally docketed as an administrative complaint. In addition, the OCA recommended that respondent judge be suspended from office without salary and other benefits for two (2) months.[12]

In a Resolution[13] dated 21 June 2006, the Court noted the OCA's report and directed the parties to manifest their willingness to submit the case for resolution on the basis of the pleadings filed. Complainant, in his Manifestation[14] dated 30 August 2005, informed the Court of his willingness to submit the case for resolution on the basis of the pleadings/records already filed and submitted. Respondent judge likewise manifested the same willingness in his Manifestation dated 23 March 2007.[15]

The recommendation is well-taken.

Paragraph 8, Title I (A) of A.M. No. 03-1-09-SC entitled "*Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures"* states that:

---

[10] *Id*.

[11] *Id*. at 61-64.

[12] *Id*. at 64.

[13] *Id*. at 65.

[14] *Id*. at 66.

[15] *Id*. at 78-79.

8. The judge shall issue the required Pre-Trial Order within ten (10) days after the termination of the pre-trial. Said Order shall bind the parties, limit the trial to matters not disposed of and control the course of the action during the trial x x x

Evidently, respondent judge violated the above-quoted provision by issuing the pre-trial order only on 2 January 2005[16] or more than four (4) months after the termination of the pre-trial conference. It should likewise be underscored that since the civil case is an unlawful detainer case falling within the ambit of the Rules on Summary Procedure, respondent judge should have handled the same with promptness and haste.[17] The reason for the adoption of the Rules on Summary Procedure is precisely to prevent undue delays in the disposition of cases. It is therefore not encouraging when, as in the case at bar, it is the judge himself who occasions the delay sought to be prevented by the rule. By no means is the aim of speedy disposition of cases served by respondent judge's inaction.[18]

Section 9 (1),[19] Rule 140, as amended, of the Revised Rules of Court provides that undue delay in rendering an order is classified as a less serious charge punishable by suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[20]

For the record, respondent judge was fined ₱20,000.00 in A.M. No. MTJ-05-1583, entitled *Arcenas v. Avelino*[21] for gross inefficiency. In addition, respondent Judge was fined ₱20,000.00 in A.M. No. MTJ-05-1606, *Office of the Court Administrator*

[16] *Id*. at 52 and 82-84. The defendants' motion for correction of pre-trial order states that it was issued on 2 January 2005.

[17] *Bunyi v. Hon. Caraos*, 394 Phil. 211, 217 (2000).

[18] *Cuevas v. Balderian*, 389 Phil. 580, 583 (2000).

[19] As amended by A.M. No. 01-8-10-SC, which took effect on 01 October 2001.

[20] RULES OF COURT, Rule 140, Sec. 11(b), as amended.

[21] A.M. No. MTJ-05-1583, 11 March 2005, 453 SCRA 202.

*v. Avelino,*[22] likewise for gross inefficiency. As such, the Court agrees with the OCA that a sterner penalty is in order.

**WHEREFORE,** respondent Judge Henry B. Avelino of the 2nd Municipial Circuit Trial Court of Pontevedra-Panay, Pontevedra, Capiz is liable for undue delay in rendering a pre-trial order and is hereby *SUSPENDED* from office without salary and other benefits for a period of TWO (2) MONTHS effective immediately upon service of this Resolution. He is *STERNLY WARNED* that a repetition of the same or similar act shall be dealt with more severely.

**SO ORDERED.**

*Carpio (Acting Chairperson), Carpio Morales, Azcuna,*[*] and *Velasco, Jr., JJ.,* concur.

---

**SECOND DIVISION**

[A.M. No. RTJ-08-2107. February 29, 2008]
(A.M. OCA I.P.I. No. 04-2019-RTJ)

**HANJIN HEAVY INDUSTRIES AND CONSTRUCTION CO., LTD., represented by Atty. Mario Aguinaldo,** *complainant, vs.* **JUDGE ROGELIO M. PIZARRO and SHERIFF IV NERI G. LOY, both of the Regional Trial Court, Quezon City, Branch 222,** *respondents.*

**SYLLABUS**

**REMEDIAL LAW; EVIDENCE; URGENT MOTION FOR PRODUCTION AND INSPECTION OF DOCUMENT; CONSTRUED; CASE AT BAR.—** On January 26, 2007, Hanjin

[22] MTJ No. 05-1606, 9 December 2005, 477 SCRA 9.

[*] As replacement of Justice Leonardo A. Quisumbing who is on official leave per Administrative Circular No. 84-2007.

filed an Urgent Motion for Production and Inspection of Document, the subject of the present Resolution. It prays for the issuance of an order for the NBI to conduct a thorough investigation of the case and determine the genuineness and authenticity of the purported signature of respondent judge appearing on the March 17, 2007 Order. It likewise prays for the issuance of an order directing RCBC to produce and to surrender to the NBI the above-mentioned Order dated March 17, 2004, and the NBI to conduct its investigation thereon. Acting on Hanjin's present Urgent Motion, the NBI is ordered to determine the genuineness and authenticity of the purported signature of respondent judge appearing on his March 17, 2004 Order, for the purpose of which it is directed to, *inter alia,* secure from the RCBC the duplicate original of respondent judge's Order of March 17, 2004 alleged to have been admitted by RCBC to be in its possession.

**APPEARANCES OF COUNSEL**

*M. A. Aguinaldo and Associates* for complainant.

**R E S O L U T I O N**

**CARPIO MORALES, *J.*:**

For consideration is herein complainant Hanjin Heavy Industries and Construction Co., Ltd. (Hanjin)'s "Urgent Motion for Production and Inspection of Document."

A statement of the case is in order, there having been previous incidents that occurred in the interim.

Civil Case No. Q-02-47707, "*First United Construction Corporation, et al. v. Hanjin Heavy Industries & Construction Co. Ltd., et al.*," was dismissed by respondent Judge Rogelio Pizarro of Branch 222 of the Quezon City Regional Trial Court by Order of August 6, 2003.

The therein plaintiffs First United Construction Corp., *et al*., filed a Motion for Reconsideration of the order of dismissal which respondent judge granted by Order of October 22, 2003. The case was thus reinstated to the court docket. In the same Order, respondent judge ordered as follows:

Meantime, Notices of Garnishment and Writ of Attachment both dated September 20, 2002 are RESTORED. The Counterbond dated October 4, 2003 (posted by [the defendant] Hanjin Heavy Industries and Construction Co., Ltd.) is RECALLED.[1]

It appears that on the basis of an **Order of March 17, 2004** purportedly issued by respondent judge, a Notice of Garnishment of the deposit of the therein defendant Hanjin with the Rizal Commercial Banking Corporation (RCBC) in the amount ₱1,344,408.83 was issued and implemented; and that the said amount was in fact withdrawn.

Hanjin, through counsel, by letter of April 19, 2004 addressed to respondent judge, complained that there was no basis for any Notice of Garnishment as the Writ of Preliminary Attachment dated September 20, 2002 had been lifted and set aside by his Order of October 17, 2002; the March 17, 2004 Order (of Garnishment) "was issued not . . . pursuant to any Motion as [Hanjin had] not received any"; the case had already been dismissed by Order of August 6, 2003; and the Order dated October 22, 2003 granting the therein plaintiffs' Motion for Reconsideration and reinstating the case to the court's docket is void as said motion was signed by one Atty. Ruben Almadro who, as of the date of the motion, had been suspended from the practice of law.

Hanjin likewise complained that the October 22, 2003 Order reinstating Civil Case No. Q-02-47707 to the court docket could not restore the Notices of Garnishment and Writ of Preliminary Attachment dated September 20, 2002 because their restoration had not been prayed for in the therein plaintiffs' Motion for Reconsideration which said order granted.

A copy of Hanjin's letter to respondent judge was furnished then Chief Justice Hilario G. Davide, Jr., by transmittal letter of April 19, 2004 which was received on April 22, 2004. In the transmittal letter, Hanjin's counsel requested the immediate suspension of respondent judge "[t]o avoid tampering of the records of the case and due to the seriousness of the charges."

[1] *Rollo*, p. 28.

Hanjin later complained against respondent judge and respondent Sheriff IV Nery G. Loy in a letter of May 31, 2004[2] addressed to then Court Administrator Presbitero J. Velasco, Jr., now Associate Justice of this Court. Justice Velasco gathered that the complaint was for Knowingly Rendering Unjust Judgment and Grave Abuse of Authority, against respondent judge and respondent sheriff, respectively.

In his Comment of July 6, 2004[3] to the letter-complaint, respondent judge claimed that the March 17, 2004 Order is "fake and [his] alleged signature appearing therein is a forgery."

The case was thus, by Resolution of January 10, 2005,[4] referred by this Court to the National Bureau of Investigation (NBI) for investigation, report and recommendation.

By Resolution of March 22, 2006, this Court noted the Memorandum of February 22, 2006 of the Office of the Court Administrator (OCA) relative to the report submitted by the NBI and resolved, as recommended by the OCA, as follows:

(a) to ***DISMISS*** the case against respondents Judge Rogelio Pizarro and Sheriff Neri Loy for insufficiency of evidence; and

(b) to ***REFER*** the administrative investigation of [the plaintiff's counsel] Atty. Ruben Almadro to the Office of the Bar Confidant for report and recommendation within thirty (30) days from receipt of records of this case and let the Office of the Bar Confidant be ***FURNISHED*** with a copy of the record of this case.[5]

Hanjin filed a Motion for Reconsideration of this Court's March 22, 2006 Resolution which was referred back to the OCA for evaluation.

On May 5, 2006, Hanjin filed a Motion (to Direct the NBI to Inquire Further and Conduct a Thorough Investigation Re:

[2] *Id*. at 1-2.

[3] *Id*. at 50-51.

[4] *Id*. at 65.

[5] *Id*. at 336.

Pizarro Case) in light of "RCBC's admission that the duplicate original of the questioned Order of 17 March 2004 is in its possession as stated in the pre-trial Order[6] dated 21 March 2006 [signed by Judge Reinato Quilala] in Civil Case No. 04-864 entitled '*Hanjin Heavy Industries & Construction Co., Ltd. vs. Rizal Commercial Banking Corp.*'" Hanjin contended that the NBI could insist that the said duplicate original of the questioned March 17, 2004 Order be surrendered for purposes of examination and comparison with the specimen signatures of respondent judge.

By Resolution of November 13, 2006,[7] this Court, acting on Hanjin's Motion for Reconsideration, resolved as follows:

a. to ***GRANT*** complainant's motion to direct the NBI to inquire further and conduct a thorough investigation of the case to properly assess and determine if the respondent's (judge) signature appearing on the questioned order is indeed forged or his true signature; and to require the NBI to ***CONDUCT*** the said investigation and to ***SUBMIT*** a report thereon within thirty (30) days from notice hereof; and

b. to ***HOLD IN ABEYANCE*** the resolution of the complainant's motion for reconsideration of the resolution of March 22, 2006 pending submission of the NBI report and recommendation on the matter.

The records show that the NBI received a copy of this resolution. There is no showing, however, that the NBI has complied with it.

On January 26, 2007, Hanjin filed an Urgent Motion for Production and Inspection of Document,[8] the subject of the

---

[6] PRE-TRIAL ORDER

xxx xxx xxx

STIPULATION OF FACTS

1. That the defendant have a duplicate original copy of the order dated March 17, 2004 issued by Judge Rogelio Pizarro of Quezon City, RTC, Branch 222.

xxx xxx xxx

[7] *Rollo,* p. 391.

[8] *Id*. at 393-395.

present Resolution. It prays for the issuance of an order for the NBI to conduct a thorough investigation of the case and determine the genuineness and authenticity of the purported signature of respondent judge appearing on the March 17, 2004 Order. It likewise prays for the issuance of an order directing RCBC to produce and to surrender to the NBI the above-mentioned Order dated March 17, 2004, and the NBI to conduct its investigation thereon.

Acting on Hanjin's present Urgent Motion, the NBI is ordered to determine the genuineness and authenticity of the purported signature of respondent judge appearing on his March 17, 2004 Order, for the purpose of which it is directed to, *inter alia*, secure from the RCBC the duplicate original of respondent judge's Order of March 17, 2004 alleged to have been admitted by RCBC to be in its possession.

**SO ORDERED.**

*Carpio (Acting Chairperson), Tinga,* and *Velasco, Jr., JJ.,* concur.

*Quisumbing J. (Chairperson),* on official leave per Special Order No. 485 dated February 14, 2008.

---

**SECOND DIVISION**

[G.R. No. 130623. February 29, 2008]

**LOREA DE UGALDE,** *petitioner, vs.* **JON DE YSASI,** *respondent.*

**SYLLABUS**

**1. CIVIL LAW; FAMILY RELATIONS; MARRIAGE; APPLICABLE PROPERTY REGIME IS CONJUGAL PARTNERSHIP OF**

**GAINS.—** Petitioner and respondent were married on 15 February 1951. The applicable law at the time of their marriage was Republic Act No. 386, otherwise known as the Civil Code of the Philippines (Civil Code) which took effect on 30 August 1950. Pursuant to Article 119 of the Civil Code, the property regime of petitioner and respondent was conjugal partnership of gains, thus: Art. 119. The future spouses may in the marriage settlements agree upon absolute or relative community of property, or upon complete separation of property, or upon any other regime. In the absence of marriage settlements, or when the same are void, the system of relative community or conjugal partnership of gains as established in this Code, shall govern the property relations between husband and wife.

**2. ID.; ID.; ID.; CONJUGAL PARTNERSHIP OF GAINS, DEFINED.—** Article 142 of the Civil Code defines conjugal partnership of gains, as follows: Art. 142. By means of the conjugal partnership of gains the husband and wife place in a common fund the fruits of their separate property and the income from their work or industry, and divide equally, upon the dissolution of the marriage or of the partnership, the net gains or benefits obtained indiscriminately by either spouse during the marriage.

**3. ID.; ID.; ID.; FOUR INSTANCES WHERE CONJUGAL PARTNERSHIP OF GAINS IS TERMINATED.—** Under Article 175 of the Civil Code, the judicial separation of property results in the termination of the conjugal partnership of gains: Art. 175. The conjugal partnership of gains terminates: (1) Upon the death of either spouse; (2) When there is a decree of legal separation; (3) When the marriage is annulled; (4) **In case of judicial separation of property under Article 191**.

**4. REMEDIAL LAW; CIVIL PROCEDURE; COMPROMISE AGREEMENT; FINAL WHEN APPROVED BY THE COURT; CONJUGAL PARTNERSHIP OF GAINS TERMINATED IN CASE AT BAR.—** The Amicable Settlement had become final as between petitioner and respondent when it was approved by the CFI on 6 June 1961. The CFI's approval of the Compromise Agreement on 6 June 1961 resulted in the dissolution of the conjugal partnership of gains between petitioner and respondent on even date. The finality of the 6 June 1961 Order in Civil Case No. 4791 approving

the parties' separation of property resulted in the termination of the conjugal partnership of gains in accordance with Article 175 of the Family Code. Hence, when the trial court decided Special Proceedings No. 3330, the conjugal partnership between petitioner and respondent was already dissolved.

**5. ID.; ID.; ID.; JUDGMENT UPON COMPROMISE AGREEMENT HAS ALL THE FORCE AND EFFECT OF ANY OTHER JUDGMENT.—** Petitioner alleges that the CFI had no authority to approve the Compromise Agreement because the case was for custody, and the creditors were not given notice by the parties, as also required under Article 191 of the Civil Code. Petitioner cannot repudiate the Compromise Agreement on this ground. A judgment upon a compromise agreement has all the force and effect of any other judgment, and conclusive only upon parties thereto and their privies, and not binding on third persons who are not parties to it.

**APPEARANCES OF COUNSEL**

*Santiago Cruz* and *Sarte Law Offices* for petitioner.
*Dinglasan Law Office* for respondent.

**D E C I S I O N**

**CARPIO, *J.*:**

**The Case**

Before the Court is a petition for review[1] assailing the 21 November 1996 Decision[2] and 2 September 1997 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 41121.

**The Antecedent Facts**

On 15 February 1951, Lorea de Ugalde (petitioner) and Jon de Ysasi (respondent) got married before Municipal Judge Remigio

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 40-52. Penned by Associate Justice Fidel P. Purisima with Associate Justices Angelina Sandoval-Gutierrez and Conrado M. Vasquez, Jr., concurring.

[3] *Id*. at 54.

Peña of Hinigaran, Negros Occidental. On 1 March 1951,[4] Rev. Msgr. Flaviano Arriola solemnized their church wedding at the San Sebastian Cathedral in Bacolod City. Petitioner and respondent did not execute any ante-nuptial agreement. They had a son named Jon de Ysasi III.

Petitioner and respondent separated sometime in April 1957.[5] On 26 May 1964, respondent allegedly contracted another marriage with Victoria Eleanor Smith (Smith) before Judge Lucio M. Tanco of Pasay City. Petitioner further alleged that respondent and Smith had been acquiring and disposing of real and personal properties to her prejudice as the lawful wife. Petitioner alleged that she had been defrauded of rental income, profits, and fruits of their conjugal properties.

On 12 December 1984, petitioner filed a petition for dissolution of the conjugal partnership of gains against respondent before the Regional Trial Court of Negros Occidental, Bacolod City, Branch 48 (trial court). The case was docketed as Special Proceedings No. 3330. In particular, petitioner asked for her conjugal share in respondent's inheritance as per the settlement of the estate of respondent's parents, Juan Ysasi[6] and Maria Aldecoa de Ysasi, who died on 17 November 1975 and 25 February 1979, respectively.[7] Petitioner also prayed for a monthly support of ₱5,000 to be deducted from her share in the conjugal partnership; the appointment of a receiver during the pendency of the litigation; the annulment of all contracts, agreements, and documents signed and ratified by respondent with third persons without her consent; and payment of appearance and attorney's fees.

Respondent countered that on 2 June 1961, he and petitioner entered into an agreement which provided, among others, that

---

[4] Not 1 March 1954 as stated in the Decision of the Court of Appeals. See Certificate of Marriage, records, p. 145.

[5] De Ugalde alleged that de Ysasi drove her out of their home. On the other hand, de Ysasi alleged that de Ugalde left their home.

[6] Also referred to as Juan Isasi.

[7] Records, pp. 154-160.

their conjugal partnership of gains shall be deemed dissolved as of 15 April 1957. Pursuant to the agreement, they submitted an Amicable Settlement in Civil Case No. 4791[8] then pending before the Court of First Instance of Negros Occidental (CFI). The Amicable Settlement stipulates:

> 2. That the petitioner shall pay the respondent the sum of THIRTY THOUSAND PESOS (₱30,000.00) in full satisfaction of and/or consideration for and to cover any and all money and/or property claims she has or may have against the petitioner in the future, including but not limited to pensions, allowances, alimony, support, share in the conjugal property (if any), inheritance, *etc*.;
>
> 3. That for and in consideration of the foregoing premises and the payment of THIRTY THOUSAND pesos (₱30,000.00), the receipt of which sum is hereby acknowledged and confessed by and to the entire satisfaction of the respondent, she hereby completely and absolutely transfer, convey, assign, set over, waive, remise, release and forever quitclaim, unto petitioner, his successors and administrators, any and all rights, claims and interests which the respondent has or may hereafter have against the petitioner arising, directly or indirectly, from the fact that the petitioner and respondent were married on March 1, 1951, including but not limited to any and all money and/or property claims mentioned in the paragraph immediately preceding;
>
> 4. That, except with reference to the custody of the boy, the parties herein hereby waive any and all rights to question the validity and effectivity of the provisions of this amicable settlement, as well as the right to raise these matters on appeal[.][9]

In its Order[10] dated 6 June 1961, the CFI approved the Amicable Settlement.

Respondent further alleged that petitioner already obtained a divorce from him before the Supreme Court of Mexico. Petitioner then contracted a second marriage with Richard Galoway (Galoway). After Galoway's death, petitioner contracted a third marriage with Frank Scholey. Respondent moved for the dismissal

[8] Action for custody of then minor Jon de Ysasi III and for support.

[9] Records, pp. 235-236.

[10] *Id*. at 237-239.

of the petition for dissolution of the conjugal partnership of gains on the grounds of estoppel, laches, and *res judicata*.

In his Supplemental Affirmative Defense, respondent alleged that the marriage between him and petitioner was void because it was executed without the benefit of a marriage license.

**The Ruling of the Trial Court**

On 22 November 1991, the trial court[11] rendered judgment as follows:

> WHEREFORE, after collating the evidence, the evidence for the respondent is preponderant to prove his affirmative and special defenses that the petition does not state a sufficient cause of action. On these bases and under the doctrine of *res judicata*, the petition is hereby DISMISSED. Without pronouncements as to costs and attorney's fees.
>
> SO ORDERED.[12]

The trial court ruled that the existence of a conjugal partnership of gains is predicated on a valid marriage. Considering that the marriage between petitioner and respondent was solemnized without a marriage license, the marriage was null and void, and no community of property was formed between them. The trial court further ruled that assuming that the marriage was valid, the action was barred by *res judicata*. The trial court noted that petitioner and respondent entered into an amicable settlement in Civil Case No. 4791. The amicable settlement was approved by the CFI and petitioner may no longer repudiate it. Finally, the trial court ruled that there was no proof to show that during their union, petitioner and respondent acquired properties.

Petitioner appealed from the trial court's Decision before the Court of Appeals.

**The Ruling of the Court of Appeals**

On 21 November 1996, the Court of Appeals affirmed the trial court's Decision.

---

[11] CA *rollo*, pp. 93-101. Through Judge Romeo J. Hibionada.

[12] *Id*. at 101.

The Court of Appeals ruled that the absence of a marriage license is fatal and made the marriage between petitioner and respondent a complete nullity. Hence, the trial court did not err in finding that there was no conjugal partnership of gains between petitioner and respondent. The Court of Appeals further ruled that the compromise agreement is a valid contract between the parties. Since the compromise agreement was entered into freely, voluntarily, and with the full understanding of its consequences, it is conclusive and binding on the parties. The Court of Appeals also ruled that the action was barred by laches since it was filed by petitioner 23 years from the time the CFI approved the additional amicable settlement in Civil Case No. 4791. The Court of Appeals sustained the trial court's ruling that respondent's right over the estate of his deceased parents was only inchoate and there was no evidence that petitioner and respondent acquired any property that could be considered conjugal.

Petitioner filed a motion for reconsideration. In its 2 September 1997 Resolution, the Court of Appeals denied the motion for lack of merit.

Hence, the petition before this Court, raising the following assignment of errors:

> The lower court erred in ruling that since the marriage of the plaintiff and respondent was void due to the absence of a marriage license, no conjugal partnership arose from their union.
>
> The lower court erred in ruling that the amicable settlement in Civil Case No. 4791 bars all claims by the plaintiff under the principle of *res judicata*.
>
> The lower court erred in ruling that respondent's right to [the] estate of his deceased parents was merely inchoate, thus, no property devolved to respondent and no conjugal partnership was formed.
>
> The lower court erred in ruling that the appellant's petition did not sufficiently state a cause of action.[13]

[13] *Rollo*, p. 133.

## The Issue

The issue in this case is whether the Court of Appeals committed a reversible error in affirming the trial court's Decision which dismissed the action for dissolution of conjugal partnership of gains.

## The Ruling of this Court

The petition is without merit.

### *Validity of Petitioner and Respondent's Marriage is the Subject of a Different Court Proceeding*

Special Proceedings No. 3330 is an action for Dissolution of Conjugal Partnership of Gains. In its 22 November 1991 Decision, the trial court ruled that the existence of conjugal partnership of gains is predicated on a valid marriage. The trial court then proceeded to rule on the validity of petitioner and respondent's marriage. The trial court ruled that it was shown by competent evidence that petitioner and respondent failed to obtain a marriage license. Hence, the marriage between petitioner and respondent was null and void, and no community of property was formed between them.

The trial court exceeded its jurisdiction in ruling on the validity of petitioner and respondent's marriage, which was only raised by respondent as a defense to the action for dissolution of the conjugal partnership of gains. The validity of petitioner and respondent's marriage was the subject of another action, Civil Case No. 430 for Judicial Declaration of Absolute Nullity of Marriage before the Regional Trial Court of Himamaylan, Negros Occidental, Branch 55. In a Decision[14] dated 31 May 1995, Civil Case No. 430 was resolved, as follows:

> In this jurisdiction it is required, except in certain cases, that the marriage license must first be secured by the parties and shown to the judge before the latter can competently solemnize the marriage. In this present case, none was ever secured. Failure to comply with the formal and essential requirements of the law renders the marriage

[14] *Id*. at 89-94. Penned by Executive Judge Jose Y. Aguirre, Jr.

void *ab initio*. Since void marriage can be assailed anytime as the action on assailing it does not prescribe, the plaintiff is well within his right to seek judicial relief.

WHEREFORE, premises considered[,] judgment is hereby rendered declaring the marriage between JON A. DE YSASI and LOREA DE UGALDE as NULL and VOID *AB INITIO*. The Local Civil Registrar for the Municipality of Hinigaran is hereby directed to cancel the entry of marriage between JON A. DE YSASI and LOREA DE UGALDE from the Marriage register and to render the same of no force and effect.

Lastly, furnish copy of this decision the National Census and Statistics Office, Manila, to make the necessary cancellation of the entry of marriage between the plaintiff and the defendant.

SO ORDERED.[15]

No appeal or motion for reconsideration of the 31 May 1995 Decision in Civil Case No. 430 has been filed by any of the parties, and a Certification of finality was issued on 20 November 1995. Thus, the marriage between petitioner and respondent was already judicially annulled as of 20 November 1995. The trial court had no jurisdiction to annul again in Special Proceedings No. 3330 the marriage of petitioner and respondent.

***Conjugal Partnership of Gains Dissolved in Civil Case No. 4791***

The finality of the 6 June 1961 CFI Order in Civil Case No. 4791 resulted in the dissolution of the petitioner and respondent's conjugal partnership of gains.

Petitioner and respondent were married on 15 February 1951. The applicable law at the time of their marriage was Republic Act No. 386, otherwise known as the Civil Code of the Philippines (Civil Code) which took effect on 30 August 1950.[16] Pursuant to Article 119 of the Civil Code, the property regime of petitioner and respondent was conjugal partnership of gains, thus:

---

[15] *Id*. at 94.

[16] See *Lara, et al. v. Del Rosario, Jr.*, 94 Phil. 778 (1954).

Art. 119. The future spouses may in the marriage settlements agree upon absolute or relative community of property, or upon complete separation of property, or upon any other regime. In the absence of marriage settlements, or when the same are void, the system of relative community or conjugal partnership of gains as established in this Code, shall govern the property relations between husband and wife.

Article 142 of the Civil Code defines conjugal partnership of gains, as follows:

Art. 142. By means of the conjugal partnership of gains the husband and wife place in a common fund the fruits of their separate property and the income from their work or industry, and divide equally, upon the dissolution of the marriage or of the partnership, the net gains or benefits obtained indiscriminately by either spouse during the marriage.

Under Article 175 of the Civil Code, the judicial separation of property results in the termination of the conjugal partnership of gains:

Art. 175. The conjugal partnership of gains terminates:

(1) Upon the death of either spouse;

(2) When there is a decree of legal separation;

(3) When the marriage is annulled;

(4) **In case of judicial separation of property under Article 191.** (Emphasis supplied)

The finality of the 6 June 1961 Order in Civil Case No. 4791 approving the parties' separation of property resulted in the termination of the conjugal partnership of gains in accordance with Article 175 of the Family Code. Hence, when the trial court decided Special Proceedings No. 3330, the conjugal partnership between petitioner and respondent was already dissolved.

Petitioner alleges that the CFI had no authority to approve the Compromise Agreement because the case was for custody, and the creditors were not given notice by the parties, as also

required under Article 191 of the Civil Code. Petitioner cannot repudiate the Compromise Agreement on this ground. A judgment upon a compromise agreement has all the force and effect of any other judgment, and conclusive only upon parties thereto and their privies, and not binding on third persons who are not parties to it.[17]

The Amicable Settlement had become final as between petitioner and respondent when it was approved by the CFI on 6 June 1961. The CFI's approval of the Compromise Agreement on 6 June 1961 resulted in the dissolution of the conjugal partnership of gains between petitioner and respondent on even date.

**WHEREFORE,** we *DENY* the petition. We *AFFIRM* the result of the 21 November 1996 Decision and of the 2 September 1997 Resolution of the Court of Appeals in CA-G.R. CV No. 41121.

**SO ORDERED.**

*Carpio Morales, Azcuna,*[*] *Tinga,* and *Velasco, Jr., JJ.,* concur.

---

[17] See *Philippine Journalists, Inc. v. NLRC*, G.R. No. 166421, 5 September 2006, 501 SCRA 75.

[*] As replacement of Justice Leonardo A. Quisumbing who is on official leave per Administrative Circular No. 84-2007.

**SECOND DIVISION**

[G.R. No. 146408. February 29, 2008]

**PHILIPPINE AIRLINES, INC.,** *petitioner, vs.* **ENRIQUE LIGAN, EMELITO SOCO, ALLAN PANQUE, JOLITO OLIVEROS, RICHARD GONCER, NONILON PILAPIL, AQUILINO YBANEZ, BERNABE SANDOVAL, RUEL GONCER, VIRGILIO P. CAMPOS, JR., ARTHUR M. CAPIN, RAMEL BERNARDES, LORENZO BUTANAS, BENSON CARESUSA, JEFFREY LLENOS, ROQUE PILAPIL, ANTONIO M. PAREJA, CLEMENTE R. LUMAYNO, NELSON TAMPUS, ROLANDO TUNACAO, CHERRIE ALEGRES, BENEDICTO AUXTERO, EDUARDO MAGDADARAUG, NELSON M. DULCE, and ALLAN BENTUZAL,** *respondents.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; LABOR-ONLY CONTRACTING; INDICIUM OF LABOR-ONLY CONTRACTING.—** More significantly, however, is that respondents worked alongside petitioner's regular employees who were performing identical work. As *San Miguel Corporation v. Aballa* (461 SCRA 392), and *Dole Philippines, Inc. v. Esteva, et al.* (509 SCRA 332), teach, such is an indicium of labor-only contracting.

**2. ID.; ID.; ID.; ELEMENTS; ONLY ONE REQUIRED.—** For labor-only contracting to exist, Section 5 of D.O. No. 18-02 which requires *any* of two elements to be present is, for convenience, re-quoted: (i) The contractor or subcontractor does not have **substantial capital or investment** which relates to the job, work or service to be performed **and** the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are **directly related to the main business of the principal, OR** (ii) The contractor does not exercise the **right to control** over the performance of the work of the contractual employee. Even if only one of the two elements is present then, there is labor-only contracting.

**3. ID.; ID.; ID.; ID.; CONTROL TEST ELEMENT.—** The control test element under the immediately-quoted paragraph (ii), which was not present in the old Implementing Rules (Department Order No. 10, Series of 1997), echoes the prevailing jurisprudential trend elevating such element as a primary determinant of employer-employee relationship in job contracting agreements. One who claims to be an independent contractor has to prove that he contracted to do the work according to his own methods and without being subject to the employer's control except only as to the results.

**4. ID.; ID.; ID.; ID.; ID.; CASE AT BAR.—** While petitioner claimed that it was Synergy's supervisors who actually supervised respondents, it failed to present evidence thereon. It did not even identify who were the Synergy supervisors assigned at the workplace. Petitioner in fact admitted that it fixes the work schedule of respondents as their work was dependent on the frequency of plane arrivals. And as the NLRC found, petitioner's managers and supervisors approved respondents' weekly work assignments and respondents and other regular PAL employees were all referred to as "station attendants" of the cargo operation and airfreight services of petitioner.

**5. ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP; TOTALITY OF THE FACTS AND SURROUNDING CIRCUMSTANCES OF CASE, DETERMINATIVE OF RELATIONSHIP.—** Respondents having performed tasks which are usually necessary and desirable in the air transportation business of petitioner, they should be deemed its regular employees and Synergy as a labor-only contractor. The express provision in the Agreement that Synergy was an independent contractor and there would be "no employer-employee relationship between [Synergy] and/or its employees on one hand, and [petitioner] on the other hand" is not legally binding and conclusive as contractual provisions are not valid determinants of the existence of such relationship. For it is the **totality of the facts and surrounding circumstances of the case** which is determinative of the parties' relationship.

**6. ID.; ID.; TERMINATION OF EMPLOYMENT; DISMISSAL; ABANDONMENT; ELEMENTS; PETITIONER FAILED TO PROVE ABANDONMENT IN CASE AT BAR.—** Respecting the dismissal on November 15, 1992 of Auxtero, a regular

employee of petitioner who had been working as utility man/ helper since November 1988, it is not legally justified for want of just or authorized cause therefor and for non-compliance with procedural due process. Petitioner's claim that he abandoned his work does not persuade. The elements of abandonment being (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship manifested by some overt acts, the *onus probandi* lies with petitioner which, however, failed to discharge the same.

**7. ID.; ID.; ID.; ILLEGAL DISMISSAL; SEPARATION PAY IN LIEU OF REINSTATEMENT.—** Auxtero, having been declared to be a regular employee of petitioner, and found to be illegally dismissed from employment, should be entitled to salary differential from the time he rendered one year of service until his dismissal, reinstatement plus backwages until the finality of this decision. In view, however, of the long period of time that had elapsed since his dismissal on November 15, 1992, it would be appropriate to award separation pay of one (1) month salary for each year of service, in lieu of reinstatement.

**8. ID.; ID.; ID.; REGULARIZATION OF RESPONDENTS AS EMPLOYEES OF PETITIONER; IMPOSSIBILITY OF COMPLIANCE BY PETITIONER, NOT PROVEN.—** Petitioner claims, however, that it has become impossible for it to comply with the orders of the NLRC and the Court of Appeals, for during the pendency of this case, it was forced to reduce its personnel due to heavy losses caused by economic crisis and the pilots' strike of June 5, 1998. Hence, there are no available positions where respondents could be placed. And petitioner informs that "the employment contracts of all if not most of the respondents . . . were terminated by Synergy effective **30 June 1998** when petitioner terminated its contract with Synergy." Other than its bare allegations, petitioner presented nothing to substantiate its impossibility of compliance. In fact, petitioner waived this defense by failing to raise it in its Memorandum filed on June 14, 1999 before the Court of Appeals. Further, the notice of termination in 1998 was in disregard of a subsisting temporary restraining order to preserve the status quo, issued by this Court in 1996 before it referred the case to the Court of Appeals in January 1999. So as to thwart the attempt to subvert the implementation

of the assailed decision, respondents are deemed to be continuously employed by petitioner, for purposes of computing the wages and benefits due respondents.

**9. ID.; ID.; ID.; SECURITY OF TENURE; DISMISSAL PROPER ONLY WITH OBSERVANCE OF PROCEDURAL DUE PROCESS AND BASED ON JUST CAUSE.—** Finally, it must be stressed that respondents, having been declared to be regular employees of petitioner, Synergy being a mere agent of the latter, had acquired security of tenure. As such, they could only be dismissed by petitioner, the real employer, on the basis of just or authorized cause, and with observance of procedural due process.

**APPEARANCES OF COUNSEL**

*Bienvenido T. Jamoralin* for petitioner.
*Manuel P. Legaspi* for private respondents.

**D E C I S I O N**

**CARPIO MORALES, *J.*:**

Petitioner Philippine Airlines as Owner, and Synergy Services Corporation (Synergy) as Contractor, entered into an Agreement[1] on July 15, 1991 whereby Synergy undertook to "provide loading, unloading, delivery of baggage and cargo and other related services to and from [petitioner]'s aircraft at the Mactan Station."[2]

The Agreement specified the following "Scope of Services" of Contractor Synergy:

1.2 CONTRACTOR shall furnish all the necessary capital, workers, loading, unloading and delivery materials, facilities, supplies, equipment and tools for the satisfactory performance and execution of the following services (the Work):

a. Loading and unloading of baggage and cargo to and from the aircraft;

[1] NLRC records, Vol. I, pp. 168-177.

[2] *Rollo*, p. 136.

b. Delivering of baggage from the ramp to the baggage claim area;

c. Picking up of baggage from the baggage sorting area to the designated parked aircraft;

d. Delivering of cargo unloaded from the flight to cargo terminal;

e. Other related jobs (but not janitorial functions) as may be required and necessary;

CONTRACTOR shall perform and execute the aforementioned Work at the following areas located at Mactan Station, to wit:

a. Ramp Area

b. Baggage Claim Area

c. Cargo Terminal Area, and

d. Baggage Sorting Area[3] (Underscoring supplied)

And it expressly provided that Synergy was "an independent contractor and . . . that there w[ould] be no employer-employee relationship between CONTRACTOR and/or its employees on the one hand, and OWNER, on the other."[4]

On the duration of the Agreement, Section 10 thereof provided:

10.1 Should at any time OWNER find the services herein undertaken by CONTRACTOR to be unsatisfactory, it shall notify CONTRACTOR who shall have fifteen (15) days from such notice within which to improve the services. If CONTRACTOR fails to improve the services under this Agreement according to OWNER'S specifications and standards, OWNER shall have the right to terminate this Agreement immediately and without advance notice.

10.2 Should CONTRACTOR fail to improve the services within the period stated above or should CONTRACTOR breach the terms of this Agreement and fail or refuse to perform the Work in such a manner as will be consistent with the

[3] *Id*. at 136-137.

[4] *Id*. at 138.

> achievement of the result therein contracted for or in any other way fail to comply strictly with any terms of this Agreement, OWNER at its option, shall have the right to terminate this Agreement and to make other arrangements for having said Work performed and pursuant thereto shall retain so much of the money held on the Agreement as is necessary to cover the OWNER's costs and damages, without prejudice to the right of OWNER to seek resort to the bond furnished by CONTRACTOR should the money in OWNER's possession be insufficient.
>
> xxx xxx xxx (Underscoring supplied)

Except for respondent Benedicto Auxtero (Auxtero), the rest of the respondents, who appear to have been assigned by Synergy to petitioner following the execution of the July 15, 1991 Agreement, filed on March 3, 1992 complaints before the NLRC Regional Office VII at Cebu City against petitioner, Synergy and their respective officials for underpayment, non-payment of premium pay for holidays, premium pay for rest days, service incentive leave pay, 13th month pay and allowances, and for regularization of employment status with petitioner, they claiming to be "performing duties for the benefit of [petitioner] since their job is directly connected with [its] business x x x."[5]

Respondent Auxtero had initially filed a complaint against petitioner and Synergy and their respective officials for regularization of his employment status. Later alleging that he was, without valid ground, verbally dismissed, he filed a complaint against petitioner and Synergy and their respective officials for illegal dismissal and reinstatement with full backwages.[6]

The complaints of respondents were consolidated.

By Decision[7] of August 29, 1994, Labor Arbiter Dominador Almirante found Synergy an independent contractor and dismissed respondents' complaint for regularization against petitioner, but granted their money claims. The *fallo* of the decision reads:

---

[5] *Id*. at 8; NLRC records, Vol. 1, p. 104.

[6] *Ibid*.; *vide* also NLRC records, Vol. 1, p. 151.

[7] *Rollo*, pp. 302-316.

WHEREFORE, foregoing premises considered, judgment is hereby rendered as follows:

(1) Ordering respondents PAL and Synergy jointly and severally to pay all the complainants herein their 13th month pay and service incentive leave benefits;

xxx xxx xxx

(3) Ordering respondent Synergy to pay complainant Benedicto Auxtero a financial assistance in the amount of ₱5,000.00.

The awards hereinabove enumerated in the aggregate total amount of THREE HUNDRED TWENTY-TWO THOUSAND THREE HUNDRED FIFTY NINE PESOS AND EIGHTY SEVEN CENTAVOS (₱322,359.87) are computed in detail by our Fiscal Examiner which computation is hereto attached to form part of this decision.

The rest of the claims are hereby ordered dismissed for lack of merit.[8] (Underscoring supplied)

On appeal by respondents, the NLRC, Fourth Division, Cebu City, vacated and set aside the decision of the Labor Arbiter by Decision[9] of January 5, 1996, the *fallo* of which reads:

WHEREFORE, the Decision of the Labor Arbiter Dominador A. Almirante, dated August 29, 1994, is hereby VACATED and SET ASIDE and judgment is hereby rendered:

1. Declaring respondent Synergy Services Corporation to be a 'labor-only' contractor;

2. Ordering respondent **Philippine Airlines** to accept, as its regular employees, *all the complainants,* . . . and to give each of them the salaries, allowances and other employment benefits and privileges of a regular employee under the Collective Bargaining Agreement subsisting during the period of their employment;

xxx xxx xxx

4. Declaring the dismissal of complainant **Benedicto Auxtero to be illegal and ordering his reinstatement** as helper

[8] *Id*. at 315-316.

[9] *Id*. at 226-237.

or utility man with respondent **Philippine Airlines**, with full backwages, allowances and other benefits and privileges from the time of his dismissal up to his actual reinstatement; and

5. Dismissing the appeal of respondent Synergy Services Corporation, for lack of merit.[10] (Emphasis and underscoring supplied)

Only petitioner assailed the NLRC decision via petition for *certiorari* before this Court.

By Resolution[11] of January 25, 1999, this Court referred the case to the Court of Appeals for appropriate action and disposition, conformably with *St. Martin Funeral Homes v. National Labor Relations Commission* which was promulgated on September 16, 1998.

The appellate court, by Decision of September 29, 2000, affirmed the Decision of the NLRC.[12] Petitioner's motion for reconsideration having been denied by Resolution of December 21, 2000,[13] the present petition was filed, faulting the appellate court

I.

. . . IN UPHOLDING THE NATIONAL LABOR RELATIONS COMMISSION DECISION WHICH IMPOSED THE RELATIONSHIP OF EMPLOYER-EMPLOYEE BETWEEN PETITIONER AND THE RESPONDENTS HEREIN.

II.

. . . IN AFFIRMING THE RULING OF THE NATIONAL LABOR RELATIONS COMMISSION ORDERING THE REINSTATEMENT OF RESPONDENT AUXTERO DESPITE THE ABSENCE [OF] ANY

[10] *Id*. at 236-237.

[11] CA *rollo*, p. 179.

[12] *Rollo*, pp. 7-17. Penned by Associate Justice B.A. Adefuin-De la Cruz and concurred in by then Presiding Justice Salome Montoya and Associate Justice Renato Dacudao.

[13] *Id*. at 29.

FACTUAL FINDING IN THE DECISION THAT PETITIONER ILLEGALLY TERMINATED HIS EMPLOYMENT.

III.

. . . [IN ANY EVENT IN] COMMITT[ING] A PATENT AND GRAVE ERROR IN UPHOLDING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION WHICH COMPELLED THE PETITIONER TO EMPLOY THE RESPONDENTS AS REGULAR EMPLOYEES DESPITE THE FACT THAT THEIR SERVICES ARE IN EXCESS OF PETITIONER COMPANY'S OPERATIONAL REQUIREMENTS.[14] (Underscoring supplied)

Petitioner argues that the law does not prohibit an employer from engaging an independent contractor, like Synergy, which has substantial capital in carrying on an independent business of contracting, to perform specific jobs.

Petitioner further argues that its contracting out to Synergy various services like janitorial, aircraft cleaning, baggage-handling, *etc*., which are directly related to its business, does not make respondents its employees.

Petitioner furthermore argues that none of the four (4) elements of an employer-employee relationship between petitioner and respondents, *viz*: selection and engagement of an employee, payment of wages, power of dismissal, and the power to control employee's conduct, is present in the case.[15]

Finally, petitioner avers that reinstatement of respondents had been rendered impossible because it had reduced its personnel due to heavy losses as it had in fact terminated its service agreement with Synergy effective June 30, 1998[16] as a cost-saving measure.

The decision of the case hinges on a determination of whether Synergy is a mere job-only contractor or a legitimate contractor. If Synergy is found to be a mere job-only contractor, respondents

[14] *Id*. at 42-43.

[15] *Id*. at 47-49.

[16] *Id*. at 52.

could be considered as regular employees of petitioner as Synergy would then be a mere agent of petitioner in which case respondents would be entitled to all the benefits granted to petitioner's regular employees; otherwise, if Synergy is found to be a legitimate contractor, respondents' claims against petitioner must fail as they would then be considered employees of Synergy.

The statutory basis of legitimate contracting or subcontracting is provided in Article 106 of the Labor Code which reads:

ART. 106. *CONTRACTOR OR SUBCONTRACTOR*. — Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under the Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is "**labor-only**" contracting where the person supplying workers to an employer **does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others**, AND **the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer**. In such cases, **the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him**. (Emphasis, capitalization and underscoring supplied)

Legitimate contracting and labor-only contracting are defined in Department Order (D.O.) No. 18-02, Series of 2002 (Rules Implementing Articles 106 to 109 of the Labor Code, as amended) as follows:

Section 3. *Trilateral relationship in contracting arrangements.* In **legitimate contracting**, there exists a trilateral relationship under which there is a contract for a specific job, work or service between the principal and the contractor or subcontractor, and a contract of employment between the contractor or subcontractor and its workers. Hence, there are three parties involved in these arrangements, the principal which decides to farm out a job or service to a contractor or subcontractor, the contractor or subcontractor which has the capacity to independently undertake the performance of the job, work or service, and the contractual workers engaged by the contractor or subcontractor to accomplish the job, work or service. (Emphasis and underscoring supplied)

Section 5. *Prohibition against labor-only contracting*. **Labor-only contracting** is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and **any** of the following elements are [*sic*] present:

(i) The contractor or subcontractor **does not have substantial capital or investment** which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are **directly related to the main business of the principal**; OR

(ii) The contractor **does not exercise the right to control over the performance of the work** of the contractual employee. (Emphasis, underscoring and capitalization supplied)

"Substantial capital or investment" and the "right to control" are defined in the same Section 5 of the Department Order as follows:

"**Substantial capital** or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly

used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.

The "**right to control**" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end. (Emphasis and underscoring supplied)

From the records of the case, it is gathered that the work performed by almost all of the respondents – loading and unloading of baggage and cargo of passengers – is directly related to the main business of petitioner. And the equipment used by respondents as station loaders, such as trailers and conveyors, are owned by petitioner.[17]

Petitioner asserts, however, that mere compliance with substantial capital requirement suffices for Synergy to be considered a legitimate contractor, citing *Neri v. National Labor Relations Commission*.[18] Petitioner's reliance on said case is misplaced.

In *Neri,* the Labor Arbiter and the NLRC both determined that Building Care Corporation had a capital stock of ₱1 million fully subscribed and paid for.[19] The corporation's status as independent contractor had in fact been previously confirmed in an earlier case[20] by this Court which found it to be serving, among others, a university, an international bank, a big local bank, a hospital center, government agencies, *etc*."

In stark contrast to the case at bar, while petitioner steadfastly asserted before the Labor Arbiter and the NLRC that Synergy has a substantial capital to engage in legitimate contracting, it failed to present evidence thereon. As the NLRC held:

---

[17] *Id*. at 184.

[18] G.R. Nos. 97008-09, July 23, 1993, 224 SCRA 717.

[19] *Id*. at 720.

[20] Citing *Associated Labor Unions-TUCP v. National Labor Relations Commission,* G.R. No. 101784, October 21, 1991, Third Division, Minute Resolution.

The decision of the Labor Arbiter merely mentioned on page 5 of his decision that respondent SYNERGY has substantial capital, but there is no showing in the records as to how much is that capital. Neither had respondents shown that SYNERGY has such substantial capital. x x x[21] (Underscoring supplied)

It was only after the appellate court rendered its challenged Decision of September 29, 2002 when petitioner, in its Motion for Reconsideration of the decision, sought to prove, for the first time, Synergy's substantial capitalization by attaching photocopies of Synergy's financial statements, *e.g.*, balance sheets, statements of income and retained earnings, marked as "Annexes 'A' - 'A-4.'"[22]

More significantly, however, is that respondents worked alongside petitioner's regular employees who were performing identical work.[23] As *San Miguel Corporation v. Aballa*[24] and *Dole Philippines, Inc. v. Esteva, et al.*[25] teach, such is an indicium of labor-only contracting.

For labor-only contracting to exist, Section 5 of D.O. No. 18-02 which requires *any* of two elements to be present is, for convenience, re-quoted:

---

[21] *Rollo*, p. 285.

[22] *Vide* Petitioner's Motion for Reconsideration of CA Decision of September 29, 2000, *id*. at 425-450.

[23] *Id*. at 348-349; *vide* NLRC records, Vol. 1, pp. 105 and 223; Position Papers for Petitioner, NLRC records, Vol. 1, pp. 83-92 and pp. 156-167; Affidavit of Benedicto A. Auxtero, NLRC records, Vol. 1, p. 185; Memorandum for petitioner, NLRC records, Vol. 1, pp. 206-216.

[24] G.R. No. 149011, June 28, 2005, 461 SCRA 392, 425. This Court held:

> xxx xxx xxx
>
> More. Private respondents had been working in the aqua processing plant inside the SMC compound alongside regular SMC shrimp processing workers performing identical jobs under the same SMC supervisors. This circumstance is another indicium of the existence of a labor-only contractorship.
>
> xxx xxx xxx (Underscoring supplied)

[25] G.R. No. 161115, November 30, 2006, 509 SCRA 332.

(i) The contractor or subcontractor does not have **substantial capital or investment** which relates to the job, work or service to be performed **and** the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are **directly related to the main business of the principal**, **OR**

(ii) The contractor does not exercise the **right to control** over the performance of the work of the contractual employee. (Emphasis and CAPITALIZATION supplied)

Even if only one of the two elements is present then, there is labor-only contracting.

The control test element under the immediately-quoted paragraph (ii), which was not present in the old Implementing Rules (Department Order No. 10, Series of 1997),[26] echoes the prevailing jurisprudential trend[27] elevating such element as a primary determinant of employer-employee relationship in job contracting agreements.

One who claims to be an independent contractor has to prove that he contracted to do the work according to his own methods

[26] Section 4(f) of Rule VIII-A of the Implementing Rules of Book III, as added by Department Order No. 10, Series of 1997, merely provides:

(f) "Labor-only contracting" prohibited under this Rule is an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, **and the following elements are present:**

(i) The contractor or subcontractor does not have substantial capital or investment to actually perform the job, work or service under its own account and responsibility; and

(ii) The employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal.

[27] *Vide Neri v. National Labor Relations Commission, supra* note 18; *Aurora Land Projects Corp. v. National Labor Relations Commission*, 334 Phil. 44, 48 (1997); *Escario v. National Labor Relations Commission*, G.R. No. 124055, June 8, 2000, 333 SCRA 257; *Vinoya v. National Labor Relations Commission*, G.R. No. 126586, February 2, 2000, 324 SCRA 469; *National Power Corporation v. Court of Appeals,* G.R. No. 119121, August 14, 1998, 294 SCRA 209.

and without being subject to the employer's control except only as to the results.[28]

While petitioner claimed that it was Synergy's supervisors who actually supervised respondents, it failed to present evidence thereon. It did not even identify who were the Synergy supervisors assigned at the workplace.

Even the parties' Agreement does not lend support to petitioner's claim, thus:

> Section 6. Qualified and Experienced Worker: Owner's Right to Dismiss Workers.
>
> CONTRACTOR shall employ capable and experienced workers and foremen to carry out the loading, unloading and delivery Work as well as provide all equipment, loading, unloading and delivery equipment, materials, supplies and tools necessary for the performance of the Work. CONTRACTOR shall upon OWNER'S request furnish the latter with information regarding the qualifications of the former's workers, to prove their capability and experience. **Contractor shall require all its workers, employees, suppliers and visitors to comply with OWNER'S rules, regulations, procedures and directives relative to the safety and security of OWNER'S premises, properties and operations**. **For this purpose, CONTRACTOR shall furnish its employees and workers identification cards to be countersigned by OWNER and uniforms to be approved by OWNER. OWNER may require CONTRACTOR to dismiss immediately and prohibit entry into OWNER'S premises of any person employed therein by CONTRACTOR who in OWNER'S opinion is incompetent or misconducts himself or does not comply with OWNER'S reasonable instructions** and requests regarding security, safety and other matters and such person shall not again be employed to perform the services hereunder without OWNER'S permission.[29] (Underscoring partly in the original and partly supplied; emphasis supplied)

---

[28] *Acevedo v. Advanstar Company, Inc.,* G.R. No. 157656, November 11, 2005, 474 SCRA 656, 668 citing *New Golden City Builders and Development Corporation v. Court of Appeals,* 463 Phil. 821 (2003); *San Miguel Corporation v. Aballa*, *supra* note 24 at 421.

[29] *Rollo,* p. 170.

Petitioner in fact admitted that it fixes the work schedule of respondents as their work was dependent on the frequency of plane arrivals.[30] And as the NLRC found, petitioner's managers and supervisors approved respondents' weekly work assignments and respondents and other regular PAL employees were all referred to as "station attendants" of the cargo operation and airfreight services of petitioner.[31]

Respondents having performed tasks which are usually necessary and desirable in the air transportation business of petitioner, they should be deemed its regular employees and Synergy as a labor-only contractor.[32]

The express provision in the Agreement that Synergy was an independent contractor and there would be "no employer-employee relationship between [Synergy] and/or its employees on one hand, and [petitioner] on the other hand" is not legally binding and conclusive as contractual provisions are not valid determinants of the existence of such relationship. For it is the **totality of the facts and surrounding circumstances of the case**[33] which is determinative of the parties' relationship.

Respecting the dismissal on November 15, 1992[34] of Auxtero, a regular employee of petitioner who had been working as utility man/helper since November 1988, it is not legally justified for want of just or authorized cause therefor and for non-compliance with procedural due process. Petitioner's claim that he abandoned his work does not persuade.[35] The elements of abandonment

[30] NLRC records, Vol. 1, p. 6.

[31] *Id*. at 477.

[32] *Aboitiz Haulers, Inc. v. Dimapatoi*, G.R. No. 148619, September 19, 2006, 502 SCRA 271, 287 citing *Guinnux Interiors, Inc. v. National Labor Relations Commission*, 339 Phil. 75, 78-79 (1997); *Manila Water Company Inc. v. Peña*, G.R. No. 158255, July 8, 2004, 434 SCRA 53, 60-61.

[33] *San Miguel Corporation v. Aballa, supra* note 24 at 422-423 (citation omitted).

[34] NLRC records, Vol. 1, p. 185.

[35] *Floren Hotel v. National Labor Relations Commission*, G.R. No. 155264, May 6, 2005, 458 SCRA 128, 144; *Masagana Concrete Products v. NLRC*, 372 Phil. 459 (1999).

being (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship manifested by some overt acts,[36] the *onus probandi* lies with petitioner which, however, failed to discharge the same.

Auxtero, having been declared to be a regular employee of petitioner, and found to be illegally dismissed from employment, should be entitled to salary differential[37] from the time he rendered one year of service until his dismissal, reinstatement plus backwages until the finality of this decision.[38] In view, however, of the long period of time[39] that had elapsed since his dismissal on November 15, 1992, it would be appropriate to award separation pay of one (1) month salary for each year of service, in lieu of reinstatement.[40]

As regards the remaining respondents, the Court affirms the ruling of both the NLRC and the appellate court, ordering petitioner to accept them as its regular employees and to give each of

---

[36] *Northwest Tourism Corp. v. Court of Appeals, Former Special Third Division*, G.R. No. 150591, June 27, 2005, 461 SCRA 298, 309; *ACD Investigation Security Agency, Inc. v. Daquera,* G.R. No. 147473, March 30, 2004, 426 SCRA 494; *Premier Development Bank v. NLRC,* 354 Phil. 851 (1998).

[37] *Vide Cinderella Marketing Corporation v. NLRC*, 353 Phil. 284 (1998); *ABS-CBN Broadcasting Corporation v. Nazareno*, G.R. No. 164156, September 2006, 503 SCRA 204; *Kimberly-Clark (Phils.), Inc., v. Secretary of Labor*, G.R. No. 156668, November 23, 2007 for jurisprudence on regularization differential.

[38] *Star Paper Corporation v. Espiritu*, G.R. No. 154006, November 2, 2006, 506 SCRA 556, 568; *Tan v. Lagrama*, G.R. No. 151228, August 15, 2002, 387 SCRA 393, 406; *Prudential Bank and Trust Co. v. Reyes*, G.R. No. 141093, February 20, 2001, 352 SCRA 316, 332.

[39] *Gold City Integrated Port Service, Inc. v. National Labor Relations Commission,* G.R. No. 103560, July 6, 1995, 245 SCRA 627, 641; *Panday v. National Labor Relations Commission*, G.R. No. 67664, May 20, 1992, 209 SCRA 122.

[40] *Northwest Tourism Corp. v. Court of Appeals, Former Special Third Division*, G.R. No. 150591, June 27, 2005, 461 SCRA 298, 311; *F.F. Marine Corporation v. National Labor Relations Commission, Second Division,* G.R. No. 152039, April 8, 2005, 455 SCRA 154, 174.

them the salaries, allowances and other employment benefits and privileges of a regular employee under the pertinent Collective Bargaining Agreement.

Petitioner claims, however, that it has become impossible for it to comply with the orders of the NLRC and the Court of Appeals, for during the pendency of this case, it was forced to reduce its personnel due to heavy losses caused by economic crisis and the pilots' strike of June 5, 1998.[41] Hence, there are no available positions where respondents could be placed.

And petitioner informs that "the employment contracts of all if not most of the respondents . . . were terminated by Synergy effective **30 June 1998** when petitioner terminated its contract with Synergy."[42]

Other than its bare allegations, petitioner presented nothing to substantiate its impossibility of compliance. In fact, petitioner waived this defense by failing to raise it in its Memorandum filed on June 14, 1999 before the Court of Appeals.[43] Further, the notice of termination in 1998 was in disregard of a subsisting temporary restraining order[44] to preserve the status quo, issued by this Court in 1996 before it referred the case to the Court of Appeals in January 1999. So as to thwart the attempt to subvert the implementation of the assailed decision, respondents are deemed to be continuously employed by petitioner, for purposes of computing the wages and benefits due respondents.

Finally, it must be stressed that respondents, having been declared to be regular employees of petitioner, Synergy being a mere agent of the latter, had acquired security of tenure. As such, they could only be dismissed by petitioner, the real employer, on the basis of just or authorized cause, and with observance of procedural due process.

---

[41] *Rollo*, p. 53.

[42] *Id*. at 54; *vide* Annexes "B" - "B-12" inclusive, pp. 453-465.

[43] *Vide rollo*, pp. 382-396.

[44] *Rollo*, pp. 327-341

**WHEREFORE,** the Court of Appeals Decision of September 29, 2000 is *AFFIRMED* with MODIFICATION.

Petitioner PHILIPPINE AIRLINES, INC. is ORDERED to:

(a) accept respondents ENRIQUE LIGAN, EMELITO SOCO, ALLAN PANQUE, JOLITO OLIVEROS, RICHARD GONCER, NONILON PILAPIL, AQUILINO YBANEZ, BERNABE SANDOVAL, RUEL GONCER, VIRGILIO P. CAMPOS, JR., ARTHUR M. CAPIN, RAMEL BERNARDES, LORENZO BUTANAS, BENSON CARESUSA, JEFFREY LLENOS, ROQUE PILAPIL, ANTONIO M. PAREJA, CLEMENTE R. LUMAYNO, NELSON TAMPUS, ROLANDO TUNACAO, CHERRIE ALEGRES, EDUARDO MAGDADARAUG, NELSON M. DULCE and ALLAN BENTUZAL as its regular employees in their same or substantially equivalent positions, and pay the **wages and benefits due** them as regular employees plus **salary differential** corresponding to the difference between the wages and benefits given them and those granted to petitioner's other regular employees of the same rank; and

(b) pay respondent BENEDICTO AUXTERO **salary differential; backwages** from the time of his dismissal until the finality of this decision; and **separation pay**, in lieu of reinstatement, equivalent to one (1) month pay for every year of service until the finality of this decision.

There being no data from which this Court may determine the monetary liabilities of petitioner, the case is REMANDED to the Labor Arbiter solely for that purpose.

**SO ORDERED.**

*Carpio (Acting Chairperson), Azcuna, Tinga,* and *Velasco, Jr., JJ,* concur.

*Quisumbing (Chairperson),* On official leave per Special Order No. 485 dated February 14, 2008.

**SECOND DIVISION**

[G.R. No. 149553. February 29, 2008]

**NICOLAS LAYNESA and SANTOS LAYNESA,** *petitioners, vs.* **PAQUITO and PACITA UY,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; HOW DETERMINED.—** Jurisdiction is determined by the statute in force at the time of the commencement of the action. Likewise settled is the rule that jurisdiction over the subject matter is determined by the allegations of the complaint. DARAB Case No. V-RC-028 was filed by the tenants of an agricultural land for threatened ejectment and its redemption from respondents. It cannot be questioned that the averments of the DARAB case clearly pertain to an agrarian reform matter and involve the implementation of the agrarian reform laws. Such being the case, the complaint falls within the jurisdiction of the DARAB under Sec. 50 of RA 6657 on the quasi-judicial powers of the DAR.

**2. ID.; ID.; ID.; PRIMARY JURISDICTION OF DEPARTMENT OF AGRARIAN REFORM (DAR).—** It bears stressing that the DAR has **primary jurisdiction** to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of the agrarian reform except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR). Primary jurisdiction means in case of seeming conflict between the jurisdictions of the DAR and regular courts, preference is vested with the DAR because of its expertise and experience in agrarian reform matters. Sec. 50 is also explicit that except for the DA and DENR, all agrarian reform matters are within the exclusive original jurisdiction of the DAR.

**3. ID.; ID.; ID.; ID.; LOCAL GOVERNMENT CODE DID NOT REPEAL QUASI-JUDICIAL POWERS OF DAR.—** Sec. 20(e) of RA 7160 is unequivocal that nothing in said section shall be construed "as repealing, amending or modifying in any manner the provisions of [RA] 6657." As such, Sec. 50 of RA 6657

on quasi-judicial powers of the DAR has not been repealed by RA 7160. In view of the foregoing reasons, we rule that the DARAB retains jurisdiction over disputes arising from agrarian reform matters even though the landowner or respondent interposes the defense of reclassification of the subject lot from agricultural to non-agricultural use.

**4. POLITICAL LAW; LOCAL GOVERNMENTS; POWER TO RECLASSIFY AGRICULTURAL LAND; STRINGENT REQUIREMENTS IN SECTION 30 OF THE LOCAL GOVERNMENT CODE MUST BE STRICTLY COMPLIED WITH.—** On the issue of whether there has been a valid reclassification of the subject lot to industrial land, we rule that respondents failed to adduce substantial evidence to buttress their assertion that all the conditions and requirements set by RA 7160 and MC 54 have been satisfied. Respondent Pacita only procured a MAO certification that the property was not prime agricultural property. The MARO certified that the land was not covered by the OLT under PD 27. These two certifications will not suffice for the following reasons: (1) Sec. 20 of RA 7160 requires submission of the recommendation or certification from the DA that the land ceases to be economically feasible or sound for agricultural purposes. In this case, the MAO certification attests only that the lot is no longer "prime agricultural property." (2) Sec. 20 requires a certification from the DAR that the land has not yet been distributed to beneficiaries under RA 6657 which took effect on June 15, 1988 nor covered by a notice of coverage. In the case at bar, the MARO certification which pertains only to PD 27 does not suffice. (3) Respondents have not shown any compliance with Sec. 2 of MC 54 on the additional requirements and procedures for reclassification such as the Housing and Land Use Regulatory Board's report and recommendation, the requisite public hearings, and the DA's report and recommendation. Based on the foregoing reasons, respondents have failed to satisfy the requirements prescribed in Sec. 20 of RA 7160 and MC 54 and, hence, relief must be granted to petitioners. Landowners must understand that while RA 7160, the Local Government Code, granted local government units the power to reclassify agricultural land, the stringent requirements set forth in Sec. 30 of said Code must be strictly complied with. Such adherence to the legal prescriptions is found wanting in the case at bar.

**5. CIVIL LAW; DAMAGES; *DAMNUM ABSQUE INJURIA*.—** In *Saba v. Court of Appeals* (*189 SCRA 50*), we ruled that the exercise of one's rights does not make him liable for damages, thus: "One who exercises his rights does no injury. *Qui jure suo utitur nullum damnum facit.* If damage results from a person's exercising his legal rights, it is *damnum absque injuria*.

**6. ID.; ID.; ID.; CASE AT BAR.—** Contrary to this finding of the trial court, respondents did not act in bad faith or in a wanton, fraudulent, or malevolent manner; consequently, petitioners are not entitled to an award for damages. Respondents' dumping of earth filling materials on the subject land was but a lawful exercise of their rights as owners of the land. It must be remembered that respondents attempted to have the land reclassified through the Municipal Government of San Juan, Pili, Camarines Sur by virtue of Municipal Council Resolution No. 67 which embodied Ordinance No. 28. Given the disputable presumption that official duty was regularly performed, respondents were justified to presume that the reclassification of the land was lawful. It was also natural for respondents to conclude that such reclassification resulted in the dispossession of petitioners as tenants, there being no tenants of industrial land. Thus, respondents, at the time, could lawfully exercise their proprietary rights over the land, including the dumping of earth filling materials thereon. Moreover, the pendency of the case before the RTC, absent a preliminary injunction or TRO against respondents, would not preclude respondents from exercising their rights. Although this reclassification has now been declared to be ineffectual, for failing to comply with the provisions of RA 7160, respondents cannot be made liable for damages. Respondents' exercise of acts of ownership over the land, at a time that the reclassification had not yet been declared as invalid and ineffectual, is a lawful exercise of their rights. And even though this may have prejudiced or injured petitioners, respondents cannot be made liable for it. As stated, respondents cannot be penalized for a lawful act.

**APPEARANCES OF COUNSEL**

*Rogelio N. Tormes* for petitioners.

*Botor Hidalgo Botor* and *Associates* for respondents.

## D E C I S I O N

**VELASCO, JR., *J.*:**

In 1938, Robert Morley was the owner of a four (4)-hectare parcel of land in Barrio Tagbong, Pili, Camarines Sur. Petitioner Santos Laynesa was his tenant over two and a half (2 ½) hectares of the land. In 1947, Morley sold the 4 has. to Sixto Cuba, Sr. He maintained Santos as the tenant over the 2 ½-hectare portion while instituting petitioner Nicolas Laynesa, son of Santos, as his tenant over the remainder of the property. On May 20, 1974, Original Certificate of Title No. 1660 on the property was issued to Cuba, Sr.[1]

On October 25, 1979, Cuba, Sr. died intestate, survived by his children, Sixto Cuba, Jr., Carmelita Cuba Sunga, and Bienvenido Cuba. Santos and Nicolas continued as tenants, and delivered the owner's share of the produce to Cuba, Jr. and Bienvenido.[2]

On January 13, 1993, Cuba, Jr. executed a Deed of Absolute Sale of Unregistered Land, transferring the property to respondent Pacita Uy, married to respondent Paquito Uy, in consideration of PhP 80,000. Cuba, Jr. was named owner of the land. Notably, the Deed was not registered with the Register of Deeds. Later, Cuba, Jr. executed a Deed of Assignment or Transfer of Rights of the undelivered owner's share of the produce in favor of Pacita.

On July 13, 1993, Pacita demanded that the Laynesas vacate the land. She claimed that she had purchased the land. The Laynesas asked for proof of Pacita's acquisition, but she could not produce any.

Subsequently, Pacita returned and again demanded that the Laynesas vacate the property, this time exhibiting the Deed of Absolute Sale of Unregistrered Land signed by Cuba, Jr. Consequently, the Laynesas filed on October 13, 1993 a petition against Pacita with the Department of Agrarian Reform

[1] *Rollo*, p. 87.

[2] *Id*. at 88.

Adjudication Board (DARAB), docketed as DARAB Case No. 730 for Legal Redemption entitled *Santos Laynesa, et al. v. Paquito Uy*. The Laynesas primarily sought that they be allowed to redeem the land from Pacita.[3]

Thereafter, on November 25, 1993, Pacita filed a complaint docketed as DARAB Case No. 745 entitled *Pacita Uy v. Santos Laynesa, et al. for Collection of Rentals and Ejectment* against the Laynesas with the DARAB.

Cuba, Jr. died intestate on December 23, 1993.[4]

On February 10, 1994, the Laynesas deposited PhP 80,000 in the form of a Cashier's Check with the Clerk of Court of the DARAB by way of consignation of the redemption price of the property.

Meanwhile, the heirs of Bienvenido filed a petition with the Camarines Sur Regional Trial Court (RTC) for the judicial declaration of presumptive death of their father who had been missing since 1984.[5]

Afterwards, on June 20, 1994, the heirs of Bienvenido, with Reynoso and Carmelita Sunga, filed a Complaint docketed as Civil Case No. P-1963 *for Annulment of Sale of Real Estate* against the spouses Uy with the Camarines Sur RTC. They prayed that the court declare the Deed of Absolute Sale of Unregistered Land executed by Cuba, Jr. in favor of the spouses Uy as null and void, and the property returned to Cuba, Sr.'s intestate estate. The DARAB dismissed the complaint without prejudice to the two cases filed before it by the parties.[6]

Subsequently, the parties in Civil Case No. P-1963 amicably settled their dispute. In a Compromise Agreement approved by the RTC, the parties agreed to divide the property into two portions. Two hectares of rice lands would be transferred to

---

[3] *Id*. at 88-89.

[4] *Id*.

[5] *Id*. at 90.

[6] *Id*. at 90-91.

the spouses Uy, and the remaining portion to Cuba, Sr.'s heirs. Thereafter, the Register of Deeds issued Transfer Certificate of Title (TCT) No. 23276 over a portion of the property with an area of 20,000 square meters in the names of the spouses Uy.

Meanwhile, Pacita obtained a certification from the Municipal Agricultural Office (MAO) that the property was not prime agricultural property, and from the Municipal Agrarian Reform Office (MARO) that TCT No. 23276 was not covered by Operation Land Transfer (OLT) or by Presidential Decree No. (PD) 27. The certifications were sought so the land could be reclassified as industrial land.

On May 29, 1995, the Municipal Council of Tagbong, Pili, Camarines Sur approved Resolution No. 67, which embodied Ordinance No. 28 and reclassified the land from agricultural to industrial.

On July 17, 1995, the Laynesas filed a Complaint dated July 13, 1995, docketed as DARAB Case No. V-RC-028 and entitled *Nicolas Laynesa, et al. v. Paquito Uy, et al. for Threatened Ejectment and Redemption with a Prayer for the issuance of Writ of Preliminary Injunction* with the DARAB. In the Complaint, the Laynesas sought to redeem the property covered by TCT No. 23276 for PhP 40,000.

In their Answer dated August 15, 1995, the spouses Uy alleged that the Laynesas had no cause of action against them, and even assuming that the Laynesas had, the action was already barred by estoppel and laches, the complaint was already moot and academic, and the DARAB had no jurisdiction since the land had already been reclassified as industrial land.

On January 12, 1996, DARAB Provincial Adjudicator Isabel E. Florin issued a Decision, the dispositive portion of which states:

WHEREFORE, the foregoing considered, judgment is hereby rendered

1. Granting the petition for redemption by the plaintiffs herein of the two-hectare Riceland now titled in the name of Pacita E.

Uy with TCT No. T-23276, for Nicolas Laynesa, his .5 hectare tillage and for Santos Laynesa, his 1.5 hectares tillage in the consolidated amount of ₱60,000.00;

2. Ordering the conveyance of subject lots to herein plaintiffs as above-stated;

3. Ordering defendants to pay plaintiffs temperate damages of ₱15,000.00; exemplary damages of ₱20,000.00; Attorney's fees of ₱12,000.00; and appearance fees of ₱2,400.00.

4. Declaring the injunction permanent, unless the appropriate Order allowing conversion is thereby presented.

SO ORDERED.[7]

Thereafter, the spouses Uy filed a Motion for Reconsideration. In an Order dated February 27, 1996,[8] the DARAB affirmed the Decision of the adjudicator, but with the modification to set aside the award of damages.

The spouses Uy appealed to the Court of Appeals (CA).

**The CA ruled DARAB without jurisdiction**

On May 16, 2001, the CA issued a Decision in CA-G.R. SP No. 59454, reversing the Decision of the DARAB. The dispositive portion of the CA Decision reads:

IN THE LIGHT OF ALL THE FOREGOING, the Decision of the DARAB, Annex "A" of the Petition and its Resolution, Annex "B" of the Petition are set aside and reversed. The Complaint of the Respondents and the counterclaims of the Petitioners are DISMISSED.

SO ORDERED.[9]

According to the CA, the evidence on record shows that when the Laynesas filed their action with the DARAB, the property

[7] *Id*. at 65-66.

[8] *Id*. at 67-69.

[9] *Id*. at 87-103. Penned by Associate Justice Romeo J. Callejo, Sr. (Chairperson, now a retired member of this Court) and concurred in by Associate Justices Renato C. Dacudao and Perlita Tria-Tirona.

was no longer agricultural but had been reclassified. Thus, the DARAB had no jurisdiction.

Hence, we have this Petition for Review on *Certiorari* under Rule 45.

**The Issues**

[T]he Honorable Court of Appeals (Fourteenth Division), seriously erred and/or committed grave error in:

A. Holding that at the time of the filing of the Complaint (V-RC-028-CS-Branch 1) the land subject matter of the case ceases to be agricultural by virtue of the reclassification made by Municipal Ordinance No. 28 of Pili, Camarines Sur, so that the DARAB has no jurisdiction over the dispute involving said land and that the Decision of the DARAB is null and void.

B. Holding that the reclassification alone of an agricultural land by a Municipal Ordinance from agricultural to any other uses without the necessary conversion Order from the DAR is enough to divest the DAR of jurisdiction to hear and determine any agrarian disputes involving the land.[10]

The pivotal issue in this case is whether the reclassification of a lot by a municipal ordinance, without the Department of Agrarian Reform's (DAR's) approval, suffices to oust the jurisdiction of the DARAB over a petition for legal redemption filed by the tenants.

**There are strict requirements for the valid reclassification of land by a local government unit**

The resolution of this case is not that simple.

There is no question that petitioners-Laynesas are the tenants of the previous owner of the land. As such, disputes pertaining to the land tenancy were within the jurisdiction of the DAR. However, respondents-spouses Uy posit that after the issuance of Municipal Council Resolution No. 67, reclassifying the land

[10] *Id*. at 9.

on May 29, 1995, the land ceased to be agricultural and is therefore beyond the jurisdiction of the DARAB.

Previously, under Republic Act No. (RA) 3844, all agrarian disputes fell within the exclusive jurisdiction of the Court of Agrarian Relations. Later, the jurisdiction over such disputes went to the RTCs.[11] When RA 6657, otherwise known as the *Comprehensive Agrarian Reform Law*, took effect on June 15, 1988, the adjudication of agrarian reform disputes was placed under the jurisdiction of the DAR, thus:

> Section 50. *Quasi-Judicial Powers of the DAR*.—The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).
>
> xxx xxx xxx
>
> Notwithstanding an appeal to the Court of Appeals, the decision of the DAR shall be immediately executory.

However, Section 56 of RA 6657 vested original and exclusive jurisdiction over controversies involving the determination of just compensation and prosecution of all criminal offenses arising from violations of RA 6657 to RTCs designated as Special Agrarian Courts.

From the cited legal provisions, it cannot be disputed that the DAR, through the DARAB, shall exercise quasi-judicial functions and has exclusive original jurisdiction over all disputes involving the enforcement and implementation of all agrarian reform laws.

Sec. 4 of RA 6657 tells us which lands are covered by the Comprehensive Agrarian Reform Program, thus:

> Section 4. *Scope*.—The Comprehensive Agrarian Reform Law of 1988 shall cover; regardless of tenurial arrangement and commodity produced, **all public and private agricultural lands as provided in Proclamation No. 131 and Executive Order No. 229, including**

[11] R.P. Barte, *LAW ON AGRARIAN REFORM* 24.

**other lands of the public domain suitable for agriculture**. (Emphasis supplied.)

However, in 1991, RA 7160 or the Local Government Code was passed into law, granting local government units the power to reclassify land. Being a later law, RA 7160 shall govern in case of conflict between it and RA 6657, as to the issue of reclassification. Title I, Chapter 2, Sec. 20 of RA 7160 states:

SEC. 20. *Reclassification of Lands.*—(a) A city or municipality may, through an ordinance passed by the sanggunian after conducting public hearings for the purpose, authorize the reclassification of agricultural lands and provide for the manner of their utilization or disposition in the following cases: (1) when the land ceases to be economically feasible and sound for agricultural purposes as determined by the Department of Agriculture or (2) where the land shall have substantially greater economic value for residential, commercial, or industrial purposes, as determined by the sanggunian concerned: Provided, That such reclassification shall be limited to the following percentage of the total agricultural land area at the time of the passage of the ordinance:

(1) For highly urbanized and independent component cities, fifteen percent (15%);

(2) For component cities and first to third class municipalities, ten percent (10%); and

(3) For fourth to sixth class municipalities, five percent (5%): Provided, further, That agricultural lands distributed to agrarian reform beneficiaries pursuant to [RA 6657], otherwise known as *"The Comprehensive Agrarian Reform Law,"* shall not be affected by the said reclassification and the conversion of such lands into other purposes shall be governed by Section 65 of said Act.

(b) The President may, when public interest so requires and upon recommendation of the National Economic and Development Authority, authorize a city or municipality to reclassify lands in excess of the limits set in the next preceding paragraph.

(c) The local government units shall, in conformity with existing laws, continue to prepare their respective comprehensive land use plans enacted through zoning ordinances which shall be the primary

and dominant bases for the future use of land resources: Provided, That the requirements for food production, human settlements, and industrial expansion shall be taken into consideration in the preparation of such plans.

(d) Where approval by a national agency is required for reclassification, such approval shall not be unreasonably withheld. Failure to act on a proper and complete application for reclassification within three (3) months from receipt of the same shall be deemed as approval thereof.

(e) Nothing in this Section shall be construed as repealing, amending, or modifying in any manner the provisions of [RA] 6657.

Pursuant to RA 7160, then President Fidel Ramos issued Memorandum Circular No. (MC) 54 on June 8, 1993, providing the guidelines in the implementation of the above Sec. 20 of the Local Government Code, as follows:

SECTION 1. *Scope and Limitations*.—(a) Cities and municipalities with comprehensive land use plans reviewed and approved in accordance with EO 72 (1993), may authorize the reclassification of agricultural lands into non-agricultural uses and provide for the manner of their utilization or disposition, subject to the limitations and other conditions prescribed in this Order.

(b) Agricultural lands may be reclassified in the following cases:

(1) when the land ceases to be economically feasible and sound for agricultural purposes as determined by the Department of Agriculture (DA), in accordance with the standards and guidelines prescribed for the purpose; or (2) where the land shall have substantially greater economic value for residential, commercial, or industrial purposes as determined by the sanggunian concerned, the city/municipality concerned should notify the DA, HLRB, DTI, DOT and other concerned agencies on the proposed reclassification of agricultural lands furnishing them copies of the report of the local development council including the draft ordinance on the matter for their comments, proposals and recommendations within seven (7) days upon receipt.

(c) However, such reclassification shall be limited to a maximum of the percentage of the total agricultural land of a city or municipality at the time of the passage of the ordinance as follows:

(1) For highly urbanized and independent component cities, fifteen percent (15%);

(2) For component cities and first to third class municipalities, ten percent (10%); and

(3) For fourth to sixth class municipalities, five percent (5%).

(d) In addition, the following types of agricultural lands shall not be covered by the said reclassification:

(1) Agricultural lands distributed to agrarian reform beneficiaries subject to Section 65 of RA 6557;

(2) Agricultural lands already issued a notice of coverage or voluntarily offered for coverage under CARP.

(3) Agricultural lands identified under AO 20, s. of 1992, as non-negotiable for conversion as follows:

(i) All irrigated lands where water is available to support rice and other crop production;

(ii) All irrigated lands where water is not available for rice and other crop production but within areas programmed for irrigation facility rehabilitation by DA and National Irrigation Administration (NIA); and

(iii) All irrigable lands already covered by irrigation projects with form funding commitments at the time of the application for land conversion or reclassification.

(e) The President may, when public interest so requires and upon recommendation of the National Economic Development Authority (NEDA), authorize a city or municipality to reclassify lands in excess of the limits set in paragraph (d) hereof. For this purpose, NEDA is hereby directed to issue the implementing guidelines governing the authority of cities and municipalities to reclassify lands in excess of the limits prescribed herein.

SECTION 2. *Requirements and Procedures for Reclassification*.— (a) The city or municipal development council (CDC/MDC) shall recommend to the sangguniang panlungsod or sangguniang bayan, as the case may be, the reclassification of agricultural lands within its jurisdiction based on the requirements of local development.

(b) **Prior** to the enactment of an ordinance reclassifying agricultural lands as provided under Sec. 1 hereof, the sanggunian concerned must first secure the following certificates [from] the concerned national government agencies (NGAs):

(1) A certification from DA indicating –

(i) the total area of existing agricultural lands in the LGU concerned;

(ii) that which lands are not classified as non-negotiable for conversion or reclassification under AO 20 (1992); and

(iii) that the land ceases to be economically feasible and sound for agricultural purposes in the case of Sec. 1 (b-1).

(2) A certification from DAR indicating that such lands are not distributed or not covered by a notice of coverage or not voluntarily offered for coverage under CARP.

(c) The HLRB shall serve as the coordinating agency for the issuance of the certificates as required under the preceding paragraph. All applications for reclassification shall, therefore, be submitted by the concerned LGUs to the HLRB, upon receipt of such application, the HLRB shall conduct initial review to determine if:

(1) the city or municipality concerned has an existing comprehensive land use plan reviewed and approved in accordance with EO 72 (1993); and

(2) the proposed reclassification complies with the limitations prescribed in SECTION 1 (d) hereof.

Upon determination that the above conditions have been satisfied, the HLRB shall then consult with the concerned agencies on the required certifications. The HLRB shall inform the concerned agencies, city or municipality of the result of their review and consultation. If the land being reclassified is in excess of the limit, the application shall be submitted to NEDA.

Failure of the HLRB and the NGAs to act on a proper and complete application within three months from receipt of the same shall be deemed as approved thereof.

(d) Reclassification of agricultural lands may be authorized through an ordinance enacted by the sangguniang panlungsod or sangguniang bayan, as the case may be, after conducting public hearings for the purpose. Such ordinance shall be enacted and approved in accordance with Articles 107 and 108 of the IRR of the LGC.

(e) Provisions of Sec. 1 (b-2) hereof to the contrary notwithstanding, the sanggunian concerned shall seek the advice of DA prior to the enactment of an ordinance reclassifying agricultural lands. If the DA has failed to act on such request within thirty (30) days from receipt thereof, the same shall be deemed to have been complied with.

Should the land subject to reclassification is found to be still economically feasible for agriculture, the DA shall recommend to the LGU concerned alternative areas for development purposes.

**(f) Upon issuance of the certifications enumerated in Section 2 (b) hereof, the sanggunian concerned may now enact an ordinance authorizing the reclassification of agricultural lands and providing for the manner of their utilization or disposition. Such ordinance shall likewise update the comprehensive land use plans of the LGU concerned.** (Emphasis supplied.)

It is because of the authority granted to a city or municipality by Sec. 20 of RA 7160 coupled with the implementing guidelines laid down in MC 54 dated June 8, 1993 that the CA was convinced to rule that the disputed lot is no longer agricultural but industrial land and, hence, the DARAB does not have or has lost jurisdiction over the subject matter of DARAB Case No. V-RC-028.

This position is incorrect.

Despite the reclassification of an agricultural land to non-agricultural land by a local government unit under Sec. 20 of RA 7160, the DARAB still retains jurisdiction over a complaint filed by a tenant of the land in question for threatened ejectment and redemption for the following reasons:

(1) Jurisdiction is determined by the statute in force at the time of the commencement of the action.[12] Likewise settled is the rule that jurisdiction over the subject matter is determined

[12] *Lee v. Presiding Judge, MTC of Legaspi City, Br. I*, No. 68789, November 10, 1986, 145 SCRA 408, 415.

by the allegations of the complaint.[13] DARAB Case No. V-RC-028 was filed by the tenants of an agricultural land for threatened ejectment and its redemption from respondents. It cannot be questioned that the averments of the DARAB case clearly pertain to an agrarian reform matter and involve the implementation of the agrarian reform laws. Such being the case, the complaint falls within the jurisdiction of the DARAB under Sec. 50 of RA 6657 on the quasi-judicial powers of the DAR. It bears stressing that the DAR has **primary jurisdiction** to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of the agrarian reform except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR). Primary jurisdiction means in case of seeming conflict between the jurisdictions of the DAR and regular courts, preference is vested with the DAR because of its expertise and experience in agrarian reform matters. Sec. 50 is also explicit that except for the DA and DENR, all agrarian reform matters are within the exclusive original jurisdiction of the DAR.

(2) Sec. 20(e) of RA 7160 is unequivocal that nothing in said section shall be construed "as repealing, amending or modifying in any manner the provisions of [RA] 6657." As such, Sec. 50 of RA 6657 on quasi-judicial powers of the DAR has not been repealed by RA 7160.

In view of the foregoing reasons, we rule that the DARAB retains jurisdiction over disputes arising from agrarian reform matters even though the landowner or respondent interposes the defense of reclassification of the subject lot from agricultural to non-agricultural use.

On the issue of whether there has been a valid reclassification of the subject lot to industrial land, we rule that respondents failed to adduce substantial evidence to buttress their assertion that all the conditions and requirements set by RA 7160 and MC 54 have been satisfied.

[13] *Ganadin v. Ramos*, No. L-23547, September 11, 1980, 99 SCRA 613, 621.

Respondent Pacita only procured a MAO certification that the property was not prime agricultural property. The MARO certified that the land was not covered by the OLT under PD 27. These two certifications will not suffice for the following reasons:

(1) Sec. 20 of RA 7160 requires submission of the recommendation or certification from the DA that the land ceases to be economically feasible or sound for agricultural purposes. In this case, the MAO certification attests only that the lot is no longer "prime agricultural property."

(2) Sec. 20 requires a certification from the DAR that the land has not yet been distributed to beneficiaries under RA 6657 which took effect on June 15, 1988 nor covered by a notice of coverage. In the case at bar, the MARO certification which pertains only to PD 27 does not suffice.

(3) Respondents have not shown any compliance with Sec. 2 of MC 54 on the additional requirements and procedures for reclassification such as the Housing and Land Use Regulatory Board's report and recommendation, the requisite public hearings, and the DA's report and recommendation.

Based on the foregoing reasons, respondents have failed to satisfy the requirements prescribed in Sec. 20 of RA 7160 and MC 54 and, hence, relief must be granted to petitioners.

Landowners must understand that while RA 7160, the Local Government Code, granted local government units the power to reclassify agricultural land, the stringent requirements set forth in Sec. 30 of said Code must be strictly complied with. Such adherence to the legal prescriptions is found wanting in the case at bar.

Be that as it may, the DARAB erred in awarding damages to petitioners.

In *Saba v. Court of Appeals*, we ruled that the exercise of one's rights does not make him liable for damages, thus: "One who exercises his rights does no injury. *Qui jure suo utitur*

*nullum damnum facit.* If damage results from a person's exercising his legal rights, it is *damnum absque injuria*."[14]

This principle was further explained by this Court in the case of *Custodio v. Court of Appeals*, to wit:

> However, the mere fact that the plaintiff suffered losses does not give rise to a right to recover damages. To warrant the recovery of damages, there must be both a right of action for a legal wrong inflicted by the defendant, and damage resulting to the plaintiff therefrom. Wrong without damage, or damage without wrong, does not constitute a cause of action, since damages are merely part of the remedy allowed for the injury caused by a breach or wrong.
>
> There is a material distinction between damages and injury. Injury is the illegal invasion of a legal right; damage is the loss, hurt, or harm which results from the injury; and damages are the recompense or compensation awarded for the damage suffered. Thus, there can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty. These situations are often called *damnum absque injuria.* In order that a plaintiff may maintain an action for the injuries of which he complains, he must establish that such injuries resulted from a breach of duty which the defendant owed to the plaintiff — a concurrence of injury to the plaintiff and legal responsibility by the person causing it. The underlying basis for the award of tort damages is the premise that an individual was injured in contemplation of law. Thus, there must first be the breach of some duty and the imposition of liability for that breach before damages may be awarded; it is not sufficient to state that there should be tort liability merely because the plaintiff suffered some pain and suffering.
>
> Many accidents occur and many injuries are inflicted by acts or omissions which cause damage or loss to another but which violate no legal duty to such other person, and consequently create no cause of action in his favor. In such cases, the consequences must be borne by the injured person alone. The law affords no remedy for damages resulting from an act which does not amount to a legal injury or wrong.
>
> In other words, in order that the law will give redress for an act causing damage, that act must be not only hurtful, but wrongful. There must be *damnum et injuria.* If, as may happen in many cases, a person

[14] G.R. No. 77950, August 24, 1990, 189 SCRA 50, 55; citations omitted.

sustains actual damage, that is, harm or loss to his person or property, without sustaining any legal injury, that is, an act or omission which the law does not deem an injury, the damage is regarded as *damnum absque injuria.*[15]

Thus, in *Government Service Insurance System v. Labung-Deang*[16] and *Premiere Development Bank v. Court of Appeals*,[17] this Court ruled that temperate damages will only be awarded by virtue of the wrongful act of a party.

Whereas in *Cathay Pacific Airways, Ltd. v. Vasquez*, we ruled that exemplary damages may only be awarded if the act of the offender is attended by bad faith or done in wanton, fraudulent, or malevolent manner.[18]

In the instant case, the RTC awarded damages to petitioners on the ground that respondents dumped earthfill materials during the pendency of the case. It must be pointed out that the RTC did not issue a preliminary injunction or temporary restraining order (TRO) against respondents.

Contrary to this finding of the trial court, respondents did not act in bad faith or in a wanton, fraudulent, or malevolent manner; consequently, petitioners are not entitled to an award for damages. Respondents' dumping of earth filling materials on the subject land was but a lawful exercise of their rights as owners of the land. It must be remembered that respondents attempted to have the land reclassified through the Municipal Government of San Juan, Pili, Camarines Sur by virtue of Municipal Council Resolution No. 67 which embodied Ordinance No. 28. Given the disputable presumption that official duty was regularly performed,[19] respondents were justified to presume that the reclassification of the land was lawful. It was also natural for respondents to conclude that such reclassification resulted in the dispossession of petitioners as tenants, there being no

[15] G.R. No. 116100, February 9, 1996, 253 SCRA 483, 489-491.

[16] G.R. No. 135644, September 17, 2001, 365 SCRA 341, 350.

[17] G.R. No. 159352, April 14, 2004, 427 SCRA 686, 700.

[18] G.R. No. 150843, March 14, 2003, 399 SCRA 207, 223.

[19] RULES OF COURT, RULE 131, Sec. 3(m).

tenants of industrial land. Thus, respondents, at the time, could lawfully exercise their proprietary rights over the land, including the dumping of earth filling materials thereon. Moreover, the pendency of the case before the RTC, absent a preliminary injunction or TRO against respondents, would not preclude respondents from exercising their rights. Although this reclassification has now been declared to be ineffectual, for failing to comply with the provisions of RA 7160, respondents cannot be made liable for damages. Respondents' exercise of acts of ownership over the land, at a time that the reclassification had not yet been declared as invalid and ineffectual, is a lawful exercise of their rights. And even though this may have prejudiced or injured petitioners, respondents cannot be made liable for it. As stated, respondents cannot be penalized for a lawful act.

Similarly, the instant case does not fall under any of the grounds set forth in Article 2208 of the Civil Code to justify the award for attorney's fees and expenses of litigation. Thus, there are also no grounds for the DARAB's grant of attorney's fees and appearance fees in favor of petitioners.

Therefore, the RTC's award for exemplary and temperate damages, as well as attorney's and appearance fees, must be deleted.

**WHEREFORE,** the petition is *GRANTED*. The May 16, 2001 CA Decision in CA-G.R. SP No. 59454 is *REVERSED* and *SET ASIDE*. The February 27, 1996 DARAB Order and January 12, 1996 Decision of DARAB Provincial Adjudicator Florin in DARAB Case No. V-RC-028 are *AFFIRMED* with the *MODIFICATION* that the award for temperate and exemplary damages and attorney's and appearance fees is *DELETED*.

No costs.

**SO ORDERED.**

*Carpio ( Acting Chairperson), Carpio Morales, Azcuna,* and *Tinga, JJ., concur.*

*Quisumbing, J. (Chairperson),* on official leave.

**THIRD DIVISION**

[G.R. No. 154503. February 29, 2008]

**UNIWIDE SALES WAREHOUSE CLUB and VIVIAN M. APDUHAN,** *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION and AMALIA P. KAWADA,** *respondents.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL; CONSTRUCTIVE DISMISSAL; DEFINED.—** Case law defines constructive dismissal as a cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. It is an act amounting to dismissal but made to appear as if it were not. In fact, the employee who is constructively dismissed may be allowed to keep on coming to work. Constructive dismissal is therefore a *dismissal in disguise.* The law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer.

**2. ID.; ID.; ID.; PRIVATE RESPONDENT'S BARE ALLEGATIONS OF CONSTRUCTIVE DISMISSAL, WHEN UNCORROBORATED BY THE EVIDENCE ON RECORD CANNOT BE GIVEN CREDENCE.—** In the present case, private respondent claims that from the months of February to June 1998, she had been subjected to constant harassment, ridicule and inhumane treatment by Apduhan, with the hope that the latter can get the private respondent to resign. The harassment allegedly came in the form of successive memoranda which private respondent would receive almost every week, enumerating a litany of offenses and maligning her reputation and spreading rumors among the employees that private respondent shall be dismissed soon. The last straw of the imputed

harassment was the July 31, 1998 incident wherein private respondent's life was put in danger when she lost consciousness due to hypertension as a result of Apduhan's alleged hostility and shouting. The Court finds that private respondent's allegation of harassment is a specious statement which contains nothing but empty imputation of a fact that could hardly be given any evidentiary weight by this Court. Private respondent's bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence.

**3. ID.; ID.; MANAGEMENT'S PREROGATIVE TO DISCIPLINE ITS EMPLOYEES; SUCCESSIVE MEMORANDA TO PRIVATE RESPONDENT MANIFESTED PETITIONERS' COMPLIANCE WITH DUE PROCESS.—** The sending of several memoranda addressed to a managerial or supervisory employee concerning various violations of company rules and regulations, committed on different occasions, are not unusual. The alleged February to June 1998 series of memoranda given by petitioners to private respondent asking the latter to explain the alleged irregular acts should not be construed as a form of harassment but merely an exercise of management's prerogative to discipline its employees. The right to impose disciplinary sanctions upon an employee for just and valid cause, as well as the authority to determine the existence of said cause in accordance with the norms of due process, pertains in the first place to the employer. Precisely, petitioners gave private respondent successive memoranda so as to give the latter an opportunity to controvert the charges against her. Clearly, the memoranda are not forms of harassment, but petitioners' compliance with the requirements of due process.

**4. REMEDIAL LAW; EVIDENCE; SUBSTANTIAL EVIDENCE; RULE THAT THE QUANTUM OF EVIDENCE REQUIRED TO ESTABLISH A FACT IN QUASI-JUDICIAL BODIES IS SUBSTANTIAL EVIDENCE.—** The July 31, 1998 confrontation where Apduhan allegedly shouted at private respondent which caused the latter's hypertension to recur and eventually caused her to collapse cannot by itself support a finding of constructive dismissal by the NLRC and the CA. x x x Moreover, the finding of the NLRC that Apduhan knew for a fact that the certification presented by private respondent referred to the latter and not to another person is a mere conjecture. x x x Self-serving and unsubstantiated declarations

are insufficient to establish a case before quasi-judicial bodies. Well-entrenched is the rule that the quantum of evidence required to establish a fact in quasi-judicial bodies is substantial evidence. Substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might opine otherwise.

**5. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL; ABANDONMENT OF WORK; TWO ELEMENTS MUST CONCUR.—** On petitioners' claim of abandonment by private respondent, well-settled is the rule that to constitute abandonment of work, two elements must concur: (1) the employee must have failed to report for work or must have been absent without valid or justifiable reason, and (2) there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act. The employer has the burden of proof to show the employee's deliberate and unjustified refusal to resume his employment without any intention of returning. Mere absence is not sufficient. There must be an unequivocal intent on the part of the employee to discontinue his employment.

**6. ID.; ID.; ID.; COURT WILL NOT MAKE A DRASTIC CONCLUSION THAT PRIVATE RESPONDENT CHOSE TO ABANDON HER WORK ON THE BASIS OF HER MISTAKEN BELIEF THAT SHE HAD BEEN CONSTRUCTIVELY DISMISSED BY PETITIONER UNIWIDE.—** Private respondent's failure to report for work despite the August 8, 1998 letter sent by Apduhan to private respondent advising the latter to report for work is not sufficient to constitute abandonment. It is a settled rule that failure to report for work after a notice to return to work has been served does not necessarily constitute abandonment. Private respondent mistakenly believed that the successive memoranda sent to her from March 1998 to June 1998 constituted discrimination, insensibility or disdain which was tantamount to constructive dismissal. Thus, private respondent filed a case for constructive dismissal against petitioners and consequently stopped reporting for work. The Court finds that petitioners were not able to establish that private respondent deliberately refused to continue her employment without justifiable reason. To repeat, the Court

will not make a drastic conclusion that private respondent chose to abandon her work on the basis of her mistaken belief that she had been constructively dismissed by Uniwide.

**7. ID.; ID.; DISMISSAL; DISMISSAL OF MANAGERIAL EMPLOYEE; MERE EXISTENCE OF A BASIS FOR BELIEVING THAT SUCH EMPLOYEE HAS BREACHED THE TRUST OF HIS EMPLOYER WOULD SUFFICE FOR HIS DISMISSAL.—** Private respondent occupies a managerial position. As a managerial employee, mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. In *Caoile v. National Labor Relations Commission* (359 Phil. 399, 405), the Court distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the loss of trust and confidence is concerned. The Court held: Thus, with respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But, as regards a **managerial employee, mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of trust and confidence demanded by his position.**

**8. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS; ADMINISTRATIVE PROCEEDINGS; ESSENCE OF DUE PROCESS IS SIMPLY FAIR AND REASONABLE OPPORTUNITY TO EXPLAIN ONE'S SIDE.—** The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, a fair and reasonable opportunity to explain one's side. It is not denial of the right to be heard but denial of the opportunity to be heard that constitutes violation of due process of law. In the instant case, private respondent was again notified of the August 12, 1998 hearing through a letter dated August 8, 1998 which was received by private respondent herself. Clearly, private respondent was given

an opportunity to be heard. However, private respondent chose not to attend the scheduled hearing because of her mistaken belief that she had already been constructively dismissed.

**APPEARANCES OF COUNSEL**

*Dela Rosa & Nograles* for petitioners.
*Dotado-Viliran Law Office* for private respondent.

**D E C I S I O N**

**AUSTRIA-MARTINEZ, *J.*:**

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by Uniwide Sales Warehouse Club (Uniwide) and Vivian M. Apduhan (Apduhan) seeking to annul the Decision[1] dated November 23, 2001 and the Resolution[2] dated July 23, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 64581.

The facts of the case:

Amalia P. Kawada (private respondent) started her employment with Uniwide sometime in 1981 as a saleslady. Over the years, private respondent worked herself within Uniwide's corporate ladder until she attained the rank of Full Assistant Store Manager with a monthly compensation of ₱13,000.00 in 1995.

As a Full Assistant Store Manager, private respondent's primary function was to manage and oversee the operation of the Fashion and Personal Care, GSR Toys, and Home Furnishing Departments of Uniwide, to ensure its continuous profitability as well as to see to it that the established company policies and procedures were properly complied with and implemented in her departments.[3]

Sometime in 1998, Uniwide received reports from the other employees regarding some problems in the departments managed

[1] Penned by Justice Eugenio S. Labitoria and concurred in by Justices Teodoro P. Regino and Rebecca De Guia-Salvador; *rollo,* pp. 39-46.

[2] *Id*. at 48.

[3] *Rollo*, p. 15.

by the private respondent.[4] Thus, on March 15, 1998, Uniwide, through Store Manager Apduhan, issued a Memorandum addressed to the private respondent summarizing the various reported incidents signifying unsatisfactory performance on the latter's part which include the commingling of good and damaged items, sale of a voluminous quantity of damaged toys and ready-to-wear items at unreasonable prices, and failure to submit inventory reports. Uniwide asked private respondent for concrete plans on how she can effectively perform her job.[5] In a letter[6] dated March 23, 1998, private respondent answered all the allegations contained in the March 15, 1998 Memorandum.

Unsatisfied, Apduhan sent another Memorandum[7] dated March 30, 1998 to private respondent where Apduhan claimed that the answers given by the private respondent in her March 23, 1998 letter were all hypothetical and did not answer directly the allegations attributed to her.[8] Apduhan elaborated the incidents contained in the March 15, 1998 Memorandum.

On June 30, 1998, Apduhan sent another Memorandum[9] seeking from the private respondent an explanation regarding the incidents reported by Uniwide employees and security personnel for alleged irregularities committed by the private respondent such as allowing the entry of unauthorized persons inside a restricted area during non-office hours, falsification of or inducing another employee to falsify personnel or company records, sleeping and allowing a non-employee to sleep inside the private office, unauthorized search and bringing out of company records, purchase of damaged home furnishing items without the approval from superior, taking advantage of buying damaged items in large quantity, alteration of approval slips for the purchase

[4] *Id*. at 16.

[5] *Id*. at 59-60.

[6] *Id*. at 61-64.

[7] *Id*. at 65-71.

[8] *Rollo*.

[9] *Id*. at 72.

of damaged items and abandonment of work.[10] In a letter[11] dated July 9, 1998, private respondent answered the allegations made against her.

On July 27, 1998, private respondent sought medical help from the company physician, Dr. Marivelle C. Zambrano (Dr. Zambrano), due to complaints of dizziness.[12] Finding private respondent to be suffering from hypertension, Dr. Zambrano advised her to take five days sick leave.[13]

On July 30, 1998, private respondent was able to obtain from Dr. Zambrano a certificate of fitness to work,[14] which she presented to Apduhan the following day.[15] It turned out that Dr. Zambrano inadvertently wrote "Menia," the surname of the company nurse, in the medical certificate instead of private respondent's surname.[16] Thereafter, private respondent claims that Apduhan shouted at her and prevented her from resuming work because she was not the person referred to in the medical certificate.[17] After private respondent left Apduhan's office, a certain Evelyn Maigue, Apduhan's assistant, approached the private respondent to get the certification so that it may be photocopied. When she refused to give the certification, private respondent claims that Apduhan once again shouted at her which caused her hypertension to recur and eventually caused her to collapse. Private respondent's head hit the edge of the table before she fell down on the ground for which she suffered contusions at the back of her head, as evidenced by the medical certificate[18] issued by Dr. George K. C. Cheu of the Chinese General Hospital & Medical Center.[19]

---

[10] *Id*.

[11] *Id*. at 74-77.

[12] *Id*. at 40.

[13] *Id*.

[14] *Id*. at 106

[15] *Id*. at 41.

[16] *Id*.

[17] *Rollo*.

[18] *Id*.

[19] *Id*. at 446.

On August 1, 1998, private respondent reported the confrontation between her and Apduhan to the Central Police District.[20] Likewise, private respondent was able to obtain from Dr. Zambrano the corrected certification[21] together with the clarification that the name "Amalia Menia" written on the July 30, 1998 certification referred to Amalia Kawada.[22]

Thereafter, counsel for private respondent sent a letter[23] dated August 1, 1998 to Apduhan stating that the latter's alleged continued harassment and vexation against private respondent created a hostile work environment which had become life threatening, and that they had no alternative but to bring the matter to the proper forum.[24]

On August 2, 1998, Apduhan issued a Memorandum,[25] received on the same day by Edgardo Kawada, the husband of private respondent, advising the latter of a hearing scheduled on August 12, 1998 to be held at the Uniwide Office in Quirino Highway, and warning her that failure to appear shall constitute as waiver and the case shall be submitted for decision based on available papers and evidence.[26]

On August 3, 1998, private respondent filed a case for illegal dismissal before the Labor Arbiter (LA).[27]

Counsel for private respondent sent a letter[28] dated August 8, 1998 to Apduhan claiming that the August 2, 1998 Memorandum was a mere afterthought, in an attempt to justify private respondent's dismissal; and that on August 3, 1998, private respondent had already filed charges against Uniwide and Apduhan (petitioners).

[20] *Id*. at 107.

[21] *Id*. at 449.

[22] *Id*.

[23] *Id*. at 109-110.

[24] *Id*.

[25] *Id*. at 111.

[26] *Rollo*.

[27] *Id*. at 42.

[28] *Id*. at 112-113.

On August 8, 1998, Apduhan sent a letter addressed to private respondent, which the latter received on even date, advising private respondent to report for work, as she had been absent since August 1, 1998; and warning her that upon her failure to do so, she shall be considered to have abandoned her job.[29]

On September 1, 1998, Apduhan issued a Memorandum[30] stating that since private respondent was unable to attend the scheduled August 12, 1998 hearing, the case was evaluated on the basis of the evidence on record; and enumerating the pieces of evidence of the irregularities and violations of company rules committed by private respondent, the latter's defenses and the corresponding findings by Uniwide. Portions of the Memorandum read:

***VIOLATIONS*:**

1. *Allowing entry of Unauthorized person inside a Restricted Area during non-office hours (night-time)*

xxx xxx xxx

FINDINGS:

Towards these evidence, Ms. A. Kawada only raised questions as to the propriety of the entries on the logbook, but the offense itself was not even denied categorically by the employee concerned. Hence, the fact remains that the employee concerned indeed allowed the entries of Mr. Ed Kawada on different occasions. The Security personnel when asked why they did not report those incidents immediately, answered: They hesitated to report them because they were afraid as the employee concerned is a manager, whom they thought knows better then (sic) them.

*Violation – No. 9 Type C, Code of Discipline*

2. *Falsification of or Inducing another employee to falsify personnel or company records.*

xxx xxx xxx

---

[29] *Id*. at 78.

[30] *Id*. at 80.

FINDINGS:

In her answer, Ms. A. Kawada again only questioned the propriety of the entries on the logbook, but there were clear indications that the violation was indeed committed as shown by the abovestated pieces of evidence.

The testimonies by the witnesses' are very explicit of what really transpired, specifically security guard Dennis Venancio, who just performs his duty of reporting any unusual incident that occurred within his jurisdiction. The fact that they failed to report it at an earlier time, in (sic) understandable, since they were hesitant, that the manager might get back at them, or simply because of their respect for Ms. A. Kawada, as a Manager.

*Violation – No. 8 Type F, Code of Discipline*

3. *Sleeping during overnight work last August 17, 1997.*

xxx xxx xxx

FINDINGS:

Based on the records and reports submitted, there is no doubt that the concerned employee committed such an offense. The witnesses stated their testimonies only in accordance with what they have seen and witnessed during those stated periods.

*Violation – No. 7 Type D, Code of Discipline*

4. *Unauthorized Search, Bringing Out and taking of Company Records, March 18, 1998 and March 20, 1998.*

xxx xxx xxx

FINDINGS:

It is established that 15 approval slips were taken by the employee concerned, however, only 11 approval slips were surrendered or returned.

*Violation – No. 1 Type F, Code of Discipline*

5. *Purchases of Dented or Sub-standard items of Home Furnishing without approval from authorized Supervisor, February 3, 1998.*

xxx xxx xxx

FINDINGS:

Towards this accusation subject employee countered that she only asked Ms. Melanie Laag why she was not able to sign said approval slip but not for the purpose of letting her sign it. By this, it only means that indeed the said approval slip does not contain the necessary approval prior to the purchase. This could be related to the other charge against the subject employee on unauthorized search and bringing out of company records, for based on the circumstances there was such a search conducted to look for and retrieve approval slips of subject employee, as there are really approval slips of subject employee which does not bear the necessary approval. The search must have been probably made to cover up and/or suppress such evidence against her.

6. *Altering Approval slips dated January 17, 1998.*

   a) #1 original quantity – 7 pieces changed to 2 pieces – amount was altered from PhP14.00 to PhP10.00.

   b) #2 erasures on the number of quantity whether 15, 5 or 7 pieces.

xxx xxx xxx

FINDINGS:

Towards this accusation Ms. A. Kawada submitted no plausible explanation, indicating that said employee concerned might have really committed the acts complained of.

Violation of Company Rules on the proper procedure in selling of dented merchandise.

7. *Making Reservations of Dented Items – January to February 1998.*

xxx xxx xxx

FINDINGS:

There was no direct explanation submitted by Ms. A. Kawada on this. Thus, it becomes clear that Ms. Kawada had violated the company rule on No Reservation.

8. *Conduct unbecoming of a manager in cornering and/or bringing large quantity of damaged items (toys, furniture, RTW, appliances and Home Furnishing items), causing*

*demoralization among the store crew and tainting management's image to its personnel.*

xxx xxx xxx

FINDINGS:

The report that were submitted by the witnesses proved that Ms. Kawada made those purchases of dented or sub-standard items that were under her assigned area, without regard for the rest of the employees who wanted to buy also, thus, using and taking advantage of her position, to the detriment of the other employees and painting a bad image of the company's managers.

9. *Abandonment of work or absence for five (5) consecutive days without prior notice from any authorized company officer or higher authority.*

FINDINGS:

Despite notice for subject employee to report to work or else be considered as having abandoned her job, it appears that subject employee continuously failed to report for work without any explanation.

*Violation – No. 2, Sec. A*

Based on all the foregoing it seems clear and convincing, that you have indeed committed the violations imputed on you. The aforementioned violations per se deserves termination as a penalty, not to mention that they also constitute willful breach of the trust reposed on you as a manager. **Thus, we have no other alternative but to terminate your service with the Company, effective September 1, 1998, on the grounds of violations of Company Rules, Abandonment of Work and loss of trust and confidence**.

You are hereby directed to surrender all other documents and papers pertaining to your job, which you may have acquired and have come into your possession as a result of your employment with the company.

Please be guided. thank you.[31] (Emphasis supplied)

[31] *Rollo*, pp. 80-87.

On March 9, 1999 the LA[32] dismissed the complaint for lack of merit.[33] Private respondent appealed the LA's decision to the National Labor Relations Commission (NLRC).

In its Decision[34] dated December 27, 2000, the NLRC ruled in favor of private respondent, reversing the LA, to wit:

> WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE. Complainant is declared constructively dismissed by respondents. Respondents Uniwide Sales Warehouse Club and Vivian Apduhan are jointly and severally ordered to pay complainant the following sums:
>
> | | | |
> |---|---|---|
> | Separation Pay:<br>November 1981 – July 3, 1998<br>₱13,000.00 x 16.8 yrs. | = | ₱218,400.00 |
> | Backwages:<br>July 31, 1998-up to the present | | |
> | Moral Damages | = | ₱100,000.00 |
> | Exemplary Damages | | ₱100,000.00 |
>
> Attorney's fees computed at ten percent (10%) of the total award.
>
> SO ORDERED.[35]

According to the NLRC, private respondent was subjected to inhuman and anti-social treatment oppressive to labor. Private respondent received successive memoranda from Apduhan accusing the former of different infractions, some of which offenses complainant was informed of only a year after the alleged commission. Further, Apduhan's ill will and motive to edge private respondent out of her employ was displayed by Apduhan's stubborn refusal to allow private respondent to continue her work on the flimsy excuse that the medical certificate did not bear her correct surname, while Apduhan knew for a fact

---

[32] Labor Arbiter Donato G. Quinto, Jr.

[33] *Rollo*, pp. 143-179.

[34] *Id*. at 491-504.

[35] *Rollo*, p. 503.

that the same could not have referred to another person but to private respondent.[36]

Also, the NLRC observed that private respondent was not afforded due process by petitioners because the former was not given an opportunity to a fair hearing in that the investigation was conducted after private respondent had been constructively dismissed; and that there was no point for private respondent to still attend the investigation set on August 12, 1998 after her constructive dismissal on July 31, 1998 and after she had already filed her complaint.

Feeling aggrieved, petitioners appealed the NLRC Decision to the CA. In the assailed Decision[37] dated November 23, 2001, the CA affirmed *in toto* the NLRC Decision.

Hence, the present petition.[38]

The sole issue raised before the Court is:

> WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN SUSTAINING THE NLRC'S FINDING THAT PRIVATE RESPONDENT WAS CONSTRUCTIVELY DISMISSED.[39]

It is a well-settled rule that the jurisdiction of the Supreme Court in petitions for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing errors of law, not of fact.[40] The Court is not a trier of facts. In the exercise of its power of review, the findings of fact of the CA are conclusive and binding and consequently, it is not the Court's function to analyze or weigh evidence all over again.[41]

---

[36] *Id*. at 221-232.

[37] *Rollo*, pp. 39-46.

[38] *Id*. at 12

[39] *Id.* at 20.

[40] *Lorenzo v. People,* G.R. No. 152335, December 19, 2005, 478 SCRA 462, 469; *Ilao-Quianay v. Mapile,* G.R. No. 154087, October 25, 2005, 474 SCRA 246, 253.

[41] *Go v. Court of Appeals,* G.R. No. 158922, May 28, 2004, 430 SCRA 358, 364, *citing Gabriel v. Spouses Mabanta,* 447 Phil. 717, 725 (2003).

The foregoing rule, however, is not absolute. The Court, in *Dusit Hotel Nikko v. National Union of Workers in Hotel, Restaurant and Allied Industries (NUWHRAIN),*[42] held that the factual findings of the NLRC as affirmed by the CA, are accorded high respect and finality unless the factual findings and conclusions of the LA clash with those of the NLRC and the CA in which case the Court will have to review the records and the arguments of the parties to resolve the factual issues and render substantial justice to the parties.[43]

The present case is clouded by conflict of factual perceptions. Consequently, the Court is constrained to review the factual findings of the CA which contravene the findings of facts of the LA.

**The Court's Ruling**

The petition is meritorious. After a thorough examination of the conflicting positions of the parties, the Court finds the records bereft of evidence to substantiate the conclusions of the NLRC and the CA that private respondent was constructively dismissed from employment.

Case law defines constructive dismissal as a cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee.[44]

The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to

[42] *Dusit Hotel Nikko v. National Union of Workers in Hotel, Restaurant and Allied Industries (NUWHRAIN)-Dusit Hotel Nikko Chapter,* G.R. No. 160391, August 9, 2005, 466 SCRA 374.

[43] *Id*. at 387-388.

[44] *Chiang Kai Shek College v. Court of Appeals,* G.R. No. 152988, August 24, 2004, 437 SCRA 171, 177; *Globe Telecom, Inc. v. Florendo-Flores,* 438 Phil. 757, 766 (2002); *Blue Dairy Corporation v. National Labor Relations Commission,* 373 Phil. 179, 186 (1999).

give up his position under the circumstances.[45] It is an act amounting to dismissal but made to appear as if it were not. In fact, the employee who is constructively dismissed may be allowed to keep on coming to work. Constructive dismissal is therefore a *dismissal in disguise.* The law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer.[46]

In the present case, private respondent claims that from the months of February to June 1998, she had been subjected to constant harassment, ridicule and inhumane treatment by Apduhan, with the hope that the latter can get the private respondent to resign.[47] The harassment allegedly came in the form of successive memoranda which private respondent would receive almost every week, enumerating a litany of offenses and maligning her reputation and spreading rumors among the employees that private respondent shall be dismissed soon.[48] The last straw of the imputed harassment was the July 31, 1998 incident wherein private respondent's life was put in danger when she lost consciousness due to hypertension as a result of Apduhan's alleged hostility and shouting.[49]

The Court finds that private respondent's allegation of harassment is a specious statement which contains nothing but empty imputation of a fact that could hardly be given any evidentiary weight by this Court.[50] Private respondent's bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence.[51]

---

[45] *Aguilar v. Burger Machine Holdings Corporation,* G.R. No. 172062, October 30, 2006, 506 SCRA 266, 273.

[46] *Id*.

[47] *Rollo,* p. 672.

[48] *Id*.

[49] *Id*. at 675.

[50] *Portuguez v. GSIS Family Bank (Comsavings Bank),* G.R. No. 169570, March 2, 2007, 517 SCRA 309, 323.

[51] *Go v. Court of Appeals, supra* note 41, at 366.

The sending of several memoranda addressed to a managerial or supervisory employee concerning various violations of company rules and regulations, committed on different occasions, are not unusual. The alleged February to June 1998 series of memoranda given by petitioners to private respondent asking the latter to explain the alleged irregular acts should not be construed as a form of harassment but merely an exercise of management's prerogative to discipline its employees.

The right to impose disciplinary sanctions upon an employee for just and valid cause, as well as the authority to determine the existence of said cause in accordance with the norms of due process, pertains in the first place to the employer.[52] Precisely, petitioners gave private respondent successive memoranda so as to give the latter an opportunity to controvert the charges against her. Clearly, the memoranda are not forms of harassment, but petitioners' compliance with the requirements of due process.

The July 31, 1998 confrontation where Apduhan allegedly shouted at private respondent which caused the latter's hypertension to recur and eventually caused her to collapse cannot by itself support a finding of constructive dismissal by the NLRC and the CA. Even if true, the act of Apduhan in shouting at private respondent was an isolated outburst on the part of Apduhan that did not show a clear discrimination or insensibility that would render the working condition of private respondent unbearable.

Moreover, the finding of the NLRC that Apduhan knew for a fact that the certification presented by private respondent referred to the latter and not to another person is a mere conjecture. There is no evidence to sustain the same. This Court has consistently held that litigations cannot be properly resolved by suppositions, deductions, or even presumptions, with no basis in evidence, for the truth must have to be determined by the hard rules of admissibility and proof.[53]

---

[52] *Foster Parents Plan International/Bicol v. Demetriou,* G.R. No. 74077, July 7, 1986, 142 SCRA 505, 509.

[53] *Lagon v. Hooven Comalco Industries, Inc.,* 402 Phil. 404, 421-422 (2001).

Self-serving and unsubstantiated declarations are insufficient to establish a case before quasi-judicial bodies. Well-entrenched is the rule that the quantum of evidence required to establish a fact in quasi-judicial bodies is substantial evidence. Substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might opine otherwise.[54]

On petitioners' claim of abandonment by private respondent, well-settled is the rule that to constitute abandonment of work, two elements must concur: (1) the employee must have failed to report for work or must have been absent without valid or justifiable reason, and (2) there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act. The employer has the burden of proof to show the employee's deliberate and unjustified refusal to resume his employment without any intention of returning. Mere absence is not sufficient. There must be an unequivocal intent on the part of the employee to discontinue his employment.[55]

Private respondent's failure to report for work despite the August 8, 1998 letter sent by Apduhan to private respondent advising the latter to report for work is not sufficient to constitute abandonment. It is a settled rule that failure to report for work after a notice to return to work has been served does not necessarily constitute abandonment.[56]

Private respondent mistakenly believed that the successive memoranda sent to her from March 1998 to June 1998 constituted discrimination, insensibility or disdain which was tantamount to constructive dismissal. Thus, private respondent filed a case

---

[54] *Portuguez v. GSIS Family Bank (Comsavings Bank, supra* note 50, at 323, citing *Vertudes v. Buenaflor,* G.R. No. 153166, December 16, 2005, 478 SCRA 210, 230.

[55] *Northwest Tourism Corp. v. Court of Appeals, Former Special Third Division,* G.R. No. 150591, June 27, 2005, 461 SCRA 298, 309-310.

[56] *Philippine Industrial Security Agency Corporation v. Dapiton,* 377 Phil. 951, 960 (1999).

for constructive dismissal against petitioners and consequently stopped reporting for work.

In the case of *Lemery Savings & Loan Bank v. National Labor Relations Commission,*[57] the Court held:

> It is true that the Constitution has placed a high regard for the welfare of the labor sector. However, social and compassionate justice does not contemplate a situation whereby the management stands to suffer for certain misconceptions created in the mind of an employee. x x x
>
> Nevertheless, the **mistaken belief on the part of the employee should not lead to a drastic conclusion that he has chosen to abandon his work.** x x x We cannot readily infer abandonment even if, sometime during the pendency of this case, he refused to heed the warning given him by petitioner Dimailig while believing that he was dismissed through no fault of his.[58] (Emphasis supplied)

The Court finds that petitioners were not able to establish that private respondent deliberately refused to continue her employment without justifiable reason. To repeat, the Court will not make a drastic conclusion that private respondent chose to abandon her work on the basis of her mistaken belief that she had been constructively dismissed by Uniwide.

Nonetheless, the Court agrees with the findings of the LA that the termination of private respondent was grounded on the existence of just cause under Article 282 (c) of the Labor Code[59] or willful breach by the employee of the trust reposed on him by his employer or a duly authorized representative.[60]

---

[57] G.R. No. 96439, January 27, 1992, 205 SCRA 492.

[58] *Id.* at 499.

[59] Article 282 of the Labor Code provides:

> "**Art. 292. Termination by employer.** – An employer may terminate an employment for any of the following causes:
>
> xxx xxx xxx
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative. x x x"

[60] *Rollo,* p. 172.

Private respondent occupies a managerial position. As a managerial employee, mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal.[61]

In *Caoile v. National Labor Relations Commission,*[62] the Court distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the loss of trust and confidence is concerned. The Court held:

> Thus, with respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient.[63] But, as regards a **managerial employee, mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal.** Hence, in the case of **managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of trust and confidence demanded by his position.**[64] (Emphasis supplied).

In order to give private respondent an opportunity to explain the several violations of company rules she allegedly committed, private respondent was given several memoranda, to which she initially responded. Also, to give private respondent an opportunity to be heard, defend herself, confront the witnesses against her as well as to present her own evidence, Apduhan scheduled a hearing on August 12, 1998, notice of which was sent on August

---

[61] *Caoile v. National Labor Relations Commission,* 359 Phil. 399, 405 (1998).

[62] *Id*.

[63] *Id.* at 406, citing *Manila Midtown Commercial Corporation v. Nuwhrain (Ramada Chapter),* G.R. No. 57268, March 25, 1988, 159 SCRA 212.

[64] *Id.* at 406, citing *Sajonas v. National Labor Relations Commission,* G.R. No. L-49286, March 15, 1990, 183 SCRA 182; *Reyes v. Minister of Labor,* G.R. No. L-48705, February 9, 1989, 170 SCRA 134.

2, 1998 and duly received by private respondent's husband on the same day.[65] This fact alone would have indicated to private respondent that there was no intention on the part of petitioners to effect her constructive dismissal. However, private respondent opted to file the complaint for illegal dismissal the next day; and not to attend the scheduled hearing on August 12, 1998. Thus, petitioners were justified to decide the case on the basis of the records at hand.[66]

The irregularities and offenses committed by private respondent, corroborated by the various pieces of evidence supporting such charges, *i.e.* records, reports and testimonies of Uniwide employees,[67] in the mind of the Court, constitute substantial evidence that private respondent is in fact responsible for the alleged charges.

To disprove the charges against her, private respondent presented a letter [68] dated July 29, 1998 from a former Uniwide employee, Luisa Astrologo (Astrologo), stating that the latter was urged by her manager, a certain Ralph Galang, to testify against private respondent for improper behavior concerning the "dented product for which private respondent is abusing her power of reserving and picking the best product she can afford to dispatch."[69] The letter, however, does not state that the charges Astrologo imputed to private respondent were false. The letter merely states that Astrologo "does not see anything wrong about the matter."[70] Moreover, in her Memorandum,[71] filed with the Court, private respondent merely cited inconsistencies in the reports regarding the charges imputed to her without denying the said allegations.

---

[65] *Rollo,* p. 79.

[66] *Id*. at 80.

[67] *Id*. at 329-356.

[68] *Rollo*, p. 505.

[69] *Id*.

[70] *Id*.

[71] *Id*. at 670.

It is true that private respondent had risen from the ranks, from being a saleslady in 1981 to a Full Assistant Store Manager in 1995. She worked for Uniwide for almost 17 years with a clean bill of record. However, these facts are not sufficient to overcome the findings of petitioners that the private respondent is guilty of the charges imputed to her.

Finally, the NLRC and the CA erred in finding that private respondent was denied due process. Private respondent claims that she lost the opportunity to be heard when she was constructively dismissed on July 31, 1998,[72] and that it was only after she filed a complaint for illegal dismissal with the NLRC on **August 3, 1998** that petitioners notified the private respondent of the investigation which will be conducted on August 12, 1998 concerning her alleged offenses. The Memorandum dated **August 2, 1998**[73] completely demolishes such claims. It shows on its face that private respondent received the Memorandum on August 2, 1998, a day before she filed the complaint for illegal dismissal against petitioners; and that private respondent was notified that the hearing was scheduled on August 12, 1998 and explicitly warned her that her failure to appear thereat shall mean a waiver to be heard, and the case shall then be submitted for decision based on available papers and evidence.

In reality, private respondent, as found earlier was not terminated on July 31, 1998. There was no constructive dismissal. Again, the successive memoranda presented by private respondent and the alleged July 31, 1998 shouting incident are not sufficient to establish her claim of harassment.

However, as to the September 1, 1998 Memorandum where the private complainant was dismissed for loss of trust and confidence, the Court finds the notice of the scheduled August 12, 1998 hearing sufficient compliance with the due process requirement.

The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, a fair and

[72] *Id*. at 697.

[73] *Id*. at 111.

reasonable opportunity to explain one's side.[74] It is not the denial of the right to be heard but denial of the opportunity to be heard that constitutes violation of due process of law.[75] In the instant case, private respondent was again notified of the August 12, 1998 hearing through a letter [76] dated August 8, 1998 which was received by private respondent herself. [77] Clearly, private respondent was given an opportunity to be heard. However, private respondent chose not to attend the scheduled hearing because of her mistaken belief that she had already been constructively dismissed.

At this point, the Court agrees with and adopts the findings of the LA in his Decision:[78]

> We cannot, with due respect, subscribe to complainant's [herein private respondent] position for it simply lacks evidence and that all that there is to it is seemingly a general allegation. We examined the record and as we have done it we find no acts or incidents constituting complainant's alleged "constructive dismissal." On the contrary, what is generally existing thereat is that complainant was dismissed by the respondents [Uniwide and Apduhan] for an array of violations consisting of, but not limited to the following: allowing entry of unauthorized personnel inside a company restricted area; falsification of or inducing another employee to falsify personnel or company records; sleeping during overnight work; unauthorized search and bringing out of company records; unauthorized purchase of damaged items; alteration of approval slips for the purchase of damaged items; unduly reserving and buying of damaged items; and abandonment of work.
>
> **In fact, as it even appears the "constructive dismissal" allegedly committed on complainant looks simply an excuse to avoid and/or evade the investigation and consequences of the violations imputed against her while employed and/or acting**

---

[74] *Eastern Overseas Employment Center, Inc. v. Bea,* G.R. No. 143023, November 29, 2005, 476 SCRA 384, 392, citing *NFD International Manning Agents v. National Labor Relations Commission,* 348 Phil. 264 (1998).

[75] *Id*.

[76] *Rollo,* p. 78.

[77] *Id*.

[78] *Id*. at 143-179.

**as respondent's assistant store manager.** As shown on an earlier setting on the investigation of her case, she filed a sick leave, thus causing the hearing/investigation to be rescheduled. Again, upon rescheduling, complainant despite notice failed to appear or did not appear, this time coming up with the excuse that she had been already "constructively dismissed." This evasive attitude of her more than enough supports the impression that complainant could be guilty or is guilty of the charges against her and believes that she might not be able to defend herself. This is even bolstered by the information that complainant called on several of the witnesses against her, simply to influence them and their testimonies. x x x Thus, viewed the foregoing finding, we opined that complainant could not have been "constructively dismissed."[79] (Emphasis supplied)

It should be remembered that the Philippine Constitution, while inexorably committed towards the protection of the working class from exploitation and unfair treatment, nevertheless mandates the policy of social justice so as to strike a balance between an avowed predilection for labor, on the one hand, and the maintenance of legal rights of capital, the proverbial hen that lays the golden egg, on the other. Indeed, we should not be unmindful of the legal norm that justice is in every case for the deserving, to be dispensed with in light of established facts, the applicable law, and existing jurisprudence.[80]

**WHEREFORE,** the instant petition is *GRANTED.* The Decision dated November 23, 2001 and Resolution dated July 23, 2002 of the Court of Appeals in CA-G.R. SP No. 64581 together with the Decision dated December 27, 2000 of the National Labor Relations Commission are *REVERSED and SET ASIDE.* The complaint of private respondent Amalia P. Kawada is *DISMISSED.*

**SO ORDERED.**

*Ynares-Santiago (Chairperson), Chico-Nazario, Nachura,* and *Reyes, JJ.,* concur.

---

[79] *Rollo*, pp. 150-151.

[80] *Portuguez v. GSIS Family Bank (Comsavings Bank) supra* note 50, at 326-327, citing *Cebu Metal Corporation v. Salilling,* G.R. No. 154463, September 5, 2006, 501 SCRA 61.

**SECOND DIVISION**

[G.R. No. 163744. February 29, 2008]

**METROPOLITAN BANK AND TRUST CO.,** *petitioner, vs.* **NICHOLSON PASCUAL a.k.a. NELSON PASCUAL,** *respondent.*

**SYLLABUS**

**1. CIVIL LAW; FAMILY RELATIONS; MARRIAGE; ARTICLE 160 (CONJUGAL OWNERSHIP; ARTICLE DOES NOT REQUIRE PROOF THAT THE PROPERTY WAS ACQUIRED WITH FUNDS OF THE PARTNERSHIP.—** *First*, while Metrobank is correct in saying that Art. 160 of the Civil Code, not Art. 116 of the Family Code, is the applicable legal provision since the property was acquired prior to the enactment of the Family Code, it errs in its theory that, before conjugal ownership could be legally presumed, there must be a showing that the property was acquired during marriage **using conjugal funds**. Contrary to Metrobank's submission, the Court did not, in *Manongsong* (404 SCRA 683), add the matter of the use of conjugal funds as an essential requirement for the presumption of conjugal ownership to arise. Nicholson is correct in pointing out that only proof of acquisition during the marriage is needed to raise the presumption that the property is conjugal. Indeed, if proof on the use of conjugal funds is still required as a necessary condition before the presumption can arise, then the legal presumption set forth in the law would veritably be a superfluity. As we stressed in *Castro v. Miat* (397 SCRA 271, 280): Petitioners also overlook Article 160 of the New Civil Code. It provides that "all property of the marriage is presumed to be conjugal partnership, unless it be prove[n] that it pertains exclusively to the husband or to the wife." This article **does not require proof that the property was acquired with funds of the partnership**. The presumption applies even when the manner in which the property was acquired does not appear.

**2. ID.; ID.; ID.; ID.; *FRANCISCO* AND *JOSON* TEACH THAT PROOF OF ACQUISITION DURING THE MARITAL COVERTURE IS A CONDITION *SINE QUA NON* FOR THE**

**OPERATION OF THE PRESUMPTION IN FAVOR OF CONJUGAL OWNERSHIP.—** *Second, Franciso* (299 SCRA 188) and *Jocson* (170 SCRA 333) do not reinforce Metrobank's theory. Metrobank would thrust on the Court, invoking the two cases, the argument that the registration of the property in the name of "Florencia Nevalga, married to Nelson Pascual" operates to describe only the marital status of the title holder, but not as proof that the property was acquired during the existence of the marriage. Metrobank is wrong. As Nicholson aptly points out, if proof obtains on the acquisition of the property during the existence of the marriage, then the presumption of conjugal ownership applies. The correct lesson of *Francisco* and *Jocson* is that proof of acquisition during the marital coverture is a condition *sine qua non* for the operation of the presumption in favor of conjugal ownership. When there is no showing as to when the property was acquired by the spouse, the fact that a title is in the name of the spouse is an indication that the property belongs exclusively to said spouse.

**3. ID.; ID.; ID.; ID.; DISSOLUTION; CHARACTER OF PROPERTIES ACQUIRED BEFORE DECLARATION OF NULLITY OF MARRIAGE CONTINUES TO SUBSIST AS CONJUGAL PROPERTIES.—** While the declared nullity of marriage of Nicholson and Florencia severed their marital bond and dissolved the conjugal partnership, the character of the properties acquired before such declaration continues to subsist as conjugal properties until and after the liquidation and partition of the partnership. This conclusion holds true whether we apply Art. 129 of the Family Code on liquidation of the conjugal partnership's assets and liabilities which is generally prospective in application, or Section 7, Chapter 4, Title IV, Book I (Arts. 179 to 185) of the Civil Code on the subject, Conjugal Partnership of Gains. For, the relevant provisions of both Codes first require the liquidation of the conjugal properties before a regime of separation of property reigns.

**4. ID.; ID.; ID.; ID.; ID.; ID.; PENDING ITS LIQUIDATION, THE CONJUGAL PARTNERSHIP OF GAINS IS CONVERTED INTO AN IMPLIED ORDINARY CO-OWNERSHIP.—** In *Dael v. Intermediate Appellate Court* (171 SCRA 524, 532-533), we ruled that pending its liquidation following its dissolution, the conjugal partnership of gains is converted into an implied ordinary co-ownership among the

surviving spouse and the other heirs of the deceased. In this pre-liquidation scenario, Art. 493 of the Civil Code shall govern the property relationship between the former spouses, where: Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. **But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.**

**5. ID.; ID.; ID.; ID.; ID.; ID.; ID.; CASE AT BAR.—** In the case at bar, Florencia constituted the mortgage on the disputed lot on April 30, 1997, or a little less than two years after the dissolution of the conjugal partnership on July 31, 1995, but before the liquidation of the partnership. Be that as it may, what governed the property relations of the former spouses when the mortgage was given is the aforequoted Art. 493. Under it, Florencia has the right to mortgage or even sell her one-half (½) undivided interest in the disputed property even without the consent of Nicholson. However, the rights of Metrobank, as mortgagee, are limited only to the ½ undivided portion that Florencia owned. Accordingly, the mortgage contract insofar as it covered the remaining ½ undivided portion of the lot is null and void, Nicholson not having consented to the mortgage of his undivided half.

**6. ID.; SPECIAL CONTRACTS; REAL ESTATE MORTGAGE; PETITIONER METROBANK'S RIGHT IS CONFINED ONLY TO THE ONE HALF (½) UNDIVIDED PORTION PERTAINING IN OWNERSHIP TO FLORENCIA (FORMER WIFE OF PRIVATE RESPONDENT NICHOLSON).—** Upon the foregoing perspective, Metrobank's right, as mortgagee and as the successful bidder at the auction of the lot, is confined only to the ½ undivided portion thereof heretofore pertaining in ownership to Florencia. The other undivided half belongs to Nicholson. As owner *pro indiviso* of a portion of the lot in question, Metrobank may ask for the partition of the lot and its property rights "shall be limited to the portion which may be allotted to [the bank] in the division upon the termination of the co-ownership." This disposition is in line with the well-established principle that the binding

force of a contract must be recognized as far as it is legally possible to do so—*quando res non valet ut ago, valeat quantum valere potest.*

**7. ID.; ID.; ID.; MORTGAGEE; A BANK THAT FAILED TO EXERCISE GREATER CARE AND OBSERVE DUE DILIGENCE – THAN PRIVATE INDIVIDUALS – CANNOT BE ACCORDED THE STATUS OF A *BONA FIDE* MORTGAGEE.—** In view of our resolution on the validity of the auction of the lot in favor of Metrobank, there is hardly a need to discuss at length whether or not Metrobank was a mortgagee in good faith. Suffice it to state for the nonce that where the mortgagee is a banking institution, the general rule that a purchaser or mortgagee of the land need not look beyond the four corners of the title is inapplicable. Unlike private individuals, it behooves banks to exercise greater care and due diligence before entering into a mortgage contract. The ascertainment of the status or condition of the property offered as security and the validity of the mortgagor's title must be standard and indispensable part of the bank's operation. A bank that failed to observe due diligence cannot be accorded the status of a *bona fide* mortgagee, as here.

**APPEARANCES OF COUNSEL**

*Perez Calima Law Offices* for petitioner.
*Cortina Buted Law Offices* for respondent.

**D E C I S I O N**

**VELASCO, JR., *J.*:**

Respondent Nicholson Pascual and Florencia Nevalga were married on January 19, 1985. During the union, Florencia bought from spouses Clarito and Belen Sering a 250-square meter lot with a three-door apartment standing thereon located in Makati City. Subsequently, Transfer Certificate of Title (TCT) No. S-101473/T-510 covering the purchased lot was canceled and, in lieu thereof, TCT No. 156283[1] of the Registry of Deeds of Makati City was issued in the name of Florencia, "married to Nelson Pascual" a.k.a. Nicholson Pascual.

[1] *Rollo*, pp. 111-112.

In 1994, Florencia filed a suit for the declaration of nullity of marriage under Article 36 of the Family Code, docketed as Civil Case No. Q-95-23533. After trial, the Regional Trial Court (RTC), Branch 94 in Quezon City rendered, on July 31, 1995, a Decision,[2] declaring the marriage of Nicholson and Florencia null and void on the ground of psychological incapacity on the part of Nicholson. In the same decision, the RTC, *inter alia*, ordered the dissolution and liquidation of the ex-spouses' conjugal partnership of gains. Subsequent events saw the couple going their separate ways without liquidating their conjugal partnership.

On April 30, 1997, Florencia, together with spouses Norberto and Elvira Oliveros, obtained a PhP 58 million loan from petitioner Metropolitan Bank and Trust Co. (Metrobank). To secure the obligation, Florencia and the spouses Oliveros executed several real estate mortgages (REMs) on their properties, including one involving the lot covered by TCT No. 156283. Among the documents Florencia submitted to procure the loan were a copy of TCT No. 156283, a photocopy of the marriage-nullifying RTC decision, and a document denominated as "Waiver" that Nicholson purportedly executed on April 9, 1995. The waiver, made in favor of Florencia, covered the conjugal properties of the ex-spouses listed therein, but did not incidentally include the lot in question.

Due to the failure of Florencia and the spouses Oliveros to pay their loan obligation when it fell due, Metrobank, on November 29, 1999, initiated foreclosure proceedings under Act No. 3135, as amended, before the Office of the Notary Public of Makati City. Subsequently, Metrobank caused the publication of the notice of sale on three issues of *Remate*.[3] At the auction sale on January 21, 2000, Metrobank emerged as the highest bidder.

Getting wind of the foreclosure proceedings, Nicholson filed on June 28, 2000, before the RTC in Makati City, a Complaint to declare the nullity of the mortgage of the disputed property,

[2] *Id.* at 115-116.

[3] *Id.* at 144, Affidavit of Publication executed by Angeline E. Corro, Vice-President of Advertising of *Remate*.

docketed as Civil Case No. 00-789 and eventually raffled to Branch 65 of the court. In it, Nicholson alleged that the property, which is still conjugal property, was mortgaged without his consent.

Metrobank, in its *Answer with Counterclaim and Cross-Claim*,[4] alleged that the disputed lot, being registered in Florencia's name, was paraphernal. Metrobank also asserted having approved the mortgage in good faith.

Florencia did not file an answer within the reglementary period and, hence, was subsequently declared in default.

**The RTC Declared the REM Invalid**

After trial on the merits, the RTC in Makati City rendered, on September 24, 2001, judgment finding for Nicholson. The *fallo* reads:

> PREMISES CONSIDERED, the Court renders judgment declaring the real estate mortgage on the property covered by [TCT] No. 156283 of the Registry of Deeds for the City of Makati as well as all proceedings thereon null and void.
>
> The Court further orders defendants [Metrobank and Florencia] jointly and severally to pay plaintiff [Nicholson]:
>
> 1. PhP100,000.00 by way of moral damages;
>
> 2. PhP75,000.00 by way of attorney's fees; and
>
> 3. The costs.
>
> SO ORDERED.[5]

Even as it declared the invalidity of the mortgage, the trial court found the said lot to be conjugal, the same having been acquired during the existence of the marriage of Nicholson and Florencia. In so ruling, the RTC invoked Art. 116 of the Family Code, providing that "all property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal unless the contrary is proved." To the trial court,

[4] *Id*. at 76-83, dated August 7, 2000.

[5] *Id*. at 86.

Metrobank had not overcome the presumptive conjugal nature of the lot. And being conjugal, the RTC concluded that the disputed property may not be validly encumbered by Florencia without Nicholson's consent.

The RTC also found the deed of waiver Florencia submitted to Metrobank to be fatally defective. For let alone the fact that Nicholson denied executing the same and that the signature of the notarizing officer was a forgery, the waiver document was allegedly executed on April 9, 1995 or a little over three months before the issuance of the RTC decision declaring the nullity of marriage between Nicholson and Florencia.

The trial court also declared Metrobank as a mortgagee in bad faith on account of negligence, stating the observation that certain data appeared in the supporting contract documents, which, if properly scrutinized, would have put the bank on guard against approving the mortgage. Among the data referred to was the date of execution of the deed of waiver.

The RTC dismissed Metrobank's counterclaim and cross-claim against the ex-spouses.

Metrobank's motion for reconsideration was denied. Undeterred, Metrobank appealed to the Court of Appeals (CA), the appeal docketed as CA-G.R. CV No. 74874.

**The CA Affirmed with Modification the RTC's Decision**

On January 28, 2004, the CA rendered a Decision affirmatory of that of the RTC, except for the award therein of moral damages and attorney's fees which the CA ordered deleted. The dispositive portion of the CA's Decision reads:

> WHEREFORE, premises considered, the appealed decision is hereby AFFIRMED WITH MODIFICATION with respect to the award of moral damages and attorney's fees which is hereby DELETED.
>
> SO ORDERED.[6]

[6] *Id*. at 53. Penned by Associate Justice Rodrigo V. Cosico and concurred in by Associate Justices Mariano C. Del Castillo and Rosalinda Asuncion-Vicente.

Like the RTC earlier held, the CA ruled that Metrobank failed to overthrow the presumption established in Art. 116 of the Family Code. And also decreed as going against Metrobank was Florencia's failure to comply with the prescriptions of the succeeding Art. 124 of the Code on the disposition of conjugal partnership property. Art. 124 states:

> Art. 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy x x x.
>
> In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

As to the deletion of the award of moral damages and attorney's fees, the CA, in gist, held that Metrobank did not enter into the mortgage contract out of ill-will or for some fraudulent purpose, moral obliquity, or like dishonest considerations as to justify damages.

Metrobank moved but was denied reconsideration by the CA.

Thus, Metrobank filed this Petition for Review on *Certiorari* under Rule 45, raising the following issues for consideration:

a. Whether or not the [CA] erred in declaring subject property as conjugal by applying Article 116 of the Family Code.

b. Whether or not the [CA] erred in not holding that the declaration of nullity of marriage between the respondent Nicholson Pascual and Florencia Nevalga *ipso facto* dissolved the regime of community of property of the spouses.

c. Whether or not the [CA] erred in ruling that the petitioner is an innocent purchaser for value.[7]

**Our Ruling**

A modification of the CA's Decision is in order.

**The Disputed Property is Conjugal**

It is Metrobank's threshold posture that Art. 160 of the Civil Code providing that "[a]ll property of the marriage is presumed to belong to the conjugal partnership, unless it be prove[n] that it pertains exclusively to the husband or to the wife," applies. To Metrobank, Art. 116 of the Family Code could not be of governing application inasmuch as Nicholson and Florencia contracted marriage before the effectivity of the Family Code on August 3, 1988. Citing *Manongsong v. Estimo*,[8] Metrobank asserts that the presumption of conjugal ownership under Art. 160 of the Civil Code applies when there is proof that the property was acquired during the marriage. Metrobank adds, however, that for the presumption of conjugal ownership to operate, evidence must be adduced to prove that not only was the property acquired during the marriage but that conjugal funds were used for the acquisition, a burden Nicholson allegedly failed to discharge.

To bolster its thesis on the paraphernal nature of the disputed property, Metrobank cites *Francisco v. Court of Appeals*[9] and *Jocson v. Court of Appeals*,[10] among other cases, where this Court held that a property registered in the name of a certain person with a description of being married is no proof that the property was acquired during the spouses' marriage.

On the other hand, Nicholson, banking on *De Leon v. Rehabilitation Finance Corporation*[11] and *Wong v. IAC*,[12]

[7] *Id*. at 194.

[8] G.R. No. 136773, June 25, 2003, 404 SCRA 683.

[9] G.R. No. 102330, November 25, 1998, 299 SCRA 188.

[10] G.R. No. 55322, February 16, 1989, 170 SCRA 333.

[11] No. L-24571, December 18, 1970, 36 SCRA 289.

[12] G.R. No. 70082, August 19, 1991, 200 SCRA 792.

contends that Metrobank failed to overcome the legal presumption that the disputed property is conjugal. He asserts that Metrobank's arguments on the matter of presumption are misleading as only one postulate needs to be shown for the presumption in favor of conjugal ownership to arise, that is, the fact of acquisition during marriage. Nicholson dismisses, as inapplicable, *Francisco* and *Jocson*, noting that they are relevant only when there is no indication as to the exact date of acquisition of the property alleged to be conjugal.

As a final point, Nicholson invites attention to the fact that Metrobank had virtually recognized the conjugal nature of the property in at least three instances. The first was when the bank lumped him with Florencia in Civil Case No. 00-789 as co-mortgagors and when they were referred to as "spouses" in the petition for extrajudicial foreclosure of mortgage. Then came the published notice of foreclosure sale where Nicholson was again designated as co-mortgagor. And third, in its demand-letter[13] to vacate the disputed lot, Metrobank addressed Nicholson and Florencia as "spouses," albeit the finality of the decree of nullity of marriage between them had long set in.

We find for Nicholson.

*First*, while Metrobank is correct in saying that Art. 160 of the Civil Code, not Art. 116 of the Family Code, is the applicable legal provision since the property was acquired prior to the enactment of the Family Code, it errs in its theory that, before conjugal ownership could be legally presumed, there must be a showing that the property was acquired during marriage **using conjugal funds**. Contrary to Metrobank's submission, the Court did not, in *Manongsong*,[14] add the matter of the use of conjugal funds as an essential requirement for the presumption of conjugal ownership to arise. Nicholson is correct in pointing out that only proof of acquisition during the marriage is needed to raise the presumption that the property is conjugal. Indeed, if proof on the use of conjugal funds is still required as a necessary

[13] *Rollo*, p. 145.

[14] *Supra* note 8.

condition before the presumption can arise, then the legal presumption set forth in the law would veritably be a superfluity. As we stressed in *Castro v. Miat*:

> Petitioners also overlook Article 160 of the New Civil Code. It provides that "all property of the marriage is presumed to be conjugal partnership, unless it be prove[n] that it pertains exclusively to the husband or to the wife." This article **does not require proof that the property was acquired with funds of the partnership.** The presumption applies even when the manner in which the property was acquired does not appear.[15] (Emphasis supplied.)

*Second*, *Francisco* and *Jocson* do not reinforce Metrobank's theory. Metrobank would thrust on the Court, invoking the two cases, the argument that the registration of the property in the name of "Florencia Nevalga, married to Nelson Pascual" operates to describe only the marital status of the title holder, but not as proof that the property was acquired during the existence of the marriage.

Metrobank is wrong. As Nicholson aptly points out, if proof obtains on the acquisition of the property during the existence of the marriage, then the presumption of conjugal ownership applies. The correct lesson of *Francisco* and *Jocson* is that proof of acquisition during the marital coverture is a condition *sine qua non* for the operation of the presumption in favor of conjugal ownership. When there is no showing as to when the property was acquired by the spouse, the fact that a title is in the name of the spouse is an indication that the property belongs exclusively to said spouse.[16]

The Court, to be sure, has taken stock of Nicholson's arguments regarding Metrobank having implicitly acknowledged, thus being in virtual estoppel to question, the conjugal ownership of the disputed lot, the bank having named the former in the foreclosure proceedings below as either the spouse of Florencia or her co-

---

[15] G.R. No. 143297, February 11, 2003, 397 SCRA 271, 280.

[16] 1 Paras, *CIVIL CODE OF THE PHILIPPINES ANNOTATED* 551 (15th ed.); citing *Ong v. Court of Appeals*, G.R. No. 63025, November 29, 1991, 204 SCRA 297.

mortgagor. It is felt, however, that there is no compelling reason to delve into the matter of estoppel, the same having been raised only for the first time in this petition. Besides, however Nicholson was designated below does not really change, one way or another, the classification of the lot in question.

**Termination of Conjugal Property Regime does not *ipso facto* End the Nature of Conjugal Ownership**

Metrobank next maintains that, contrary to the CA's holding, Art. 129 of the Family Code is inapplicable. Art. 129 in part reads:

> Art. 129. Upon the dissolution of the conjugal partnership regime, the following procedure shall apply:
>
> xxx xxx xxx
>
> (7) The net remainder of the conjugal partnership properties shall constitute the profits, which shall be divided equally between husband and wife, unless a different proportion or division was agreed upon in the marriage settlements or unless there has been a voluntary waiver or forfeiture of such share as provided in this Code.

Apropos the aforequoted provision, Metrobank asserts that the waiver executed by Nicholson, effected as it were before the dissolution of the conjugal property regime, vested on Florencia full ownership of all the properties acquired during the marriage.

Nicholson counters that the mere declaration of nullity of marriage, without more, does not automatically result in a regime of complete separation when it is shown that there was no liquidation of the conjugal assets.

We again find for Nicholson.

While the declared nullity of marriage of Nicholson and Florencia severed their marital bond and dissolved the conjugal partnership, the character of the properties acquired before such declaration continues to subsist as conjugal properties until and after the liquidation and partition of the partnership. This conclusion holds true whether we apply Art. 129 of the Family Code on liquidation of the conjugal partnership's assets and liabilities which is generally

prospective in application, or Section 7, Chapter 4, Title IV, Book I (Arts. 179 to 185) of the Civil Code on the subject, Conjugal Partnership of Gains. For, the relevant provisions of both Codes first require the liquidation of the conjugal properties before a regime of separation of property reigns.

In *Dael v. Intermediate Appellate Court*, we ruled that pending its liquidation following its dissolution, the conjugal partnership of gains is converted into an implied ordinary co-ownership among the surviving spouse and the other heirs of the deceased.[17]

In this pre-liquidation scenario, Art. 493 of the Civil Code shall govern the property relationship between the former spouses, where:

> Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. **But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership**. (Emphasis supplied.)

In the case at bar, Florencia constituted the mortgage on the disputed lot on April 30, 1997, or a little less than two years after the dissolution of the conjugal partnership on July 31, 1995, but before the liquidation of the partnership. Be that as it may, what governed the property relations of the former spouses when the mortgage was given is the aforequoted Art. 493. Under it, Florencia has the right to mortgage or even sell her one-half (½) undivided interest in the disputed property even without the consent of Nicholson. However, the rights of Metrobank, as mortgagee, are limited only to the ½ undivided portion that Florencia owned. Accordingly, the mortgage contract insofar as it covered the remaining ½ undivided portion of the lot is null and void, Nicholson not having consented to the mortgage of his undivided half.

The conclusion would have, however, been different if Nicholson indeed duly waived his share in the conjugal partnership.

---

[17] G.R. No. 68873, March 31, 1989, 171 SCRA 524, 532-533.

But, as found by the courts *a quo*, the April 9, 1995 deed of waiver allegedly executed by Nicholson three months prior to the dissolution of the marriage and the conjugal partnership of gains on July 31, 1995 bore his forged signature, not to mention that of the notarizing officer. A spurious deed of waiver does not transfer any right at all, albeit it may become the root of a valid title in the hands of an innocent buyer for value.

Upon the foregoing perspective, Metrobank's right, as mortgagee and as the successful bidder at the auction of the lot, is confined only to the ½ undivided portion thereof heretofore pertaining in ownership to Florencia. The other undivided half belongs to Nicholson. As owner *pro indiviso* of a portion of the lot in question, Metrobank may ask for the partition of the lot and its property rights "shall be limited to the portion which may be allotted to [the bank] in the division upon the termination of the co-ownership."[18] This disposition is in line with the well-established principle that the binding force of a contract must be recognized as far as it is legally possible to do so—*quando res non valet ut ago, valeat quantum valere potest*.[19]

In view of our resolution on the validity of the auction of the lot in favor of Metrobank, there is hardly a need to discuss at length whether or not Metrobank was a mortgagee in good faith. Suffice it to state for the nonce that where the mortgagee is a banking institution, the general rule that a purchaser or mortgagee of the land need not look beyond the four corners of the title is inapplicable.[20] Unlike private individuals, it behooves banks to exercise greater care and due diligence before entering into a mortgage contract. The ascertainment of the status or condition of the property offered as security and the validity of the mortgagor's title must be standard and indispensable part of

[18] CIVIL CODE, Art. 493.

[19] When a thing is of no effect as I do it, it shall have effect as far as [or in whatever way] it can; cited in *Aromin v. Floresca*, G.R. No. 160994, July 27, 2006, 496 SCRA 785, 815.

[20] *Uy v. Court of Appeals*, G.R. No. 109197, June 21, 2001, 359 SCRA 262, 270.

the bank's operation.[21] A bank that failed to observe due diligence cannot be accorded the status of a *bona fide* mortgagee,[22] as here.

But as found by the CA, however, Metrobank's failure to comply with the due diligence requirement was not the result of a dishonest purpose, some moral obliquity or breach of a known duty for some interest or ill-will that partakes of fraud that would justify damages.

**WHEREFORE,** the petition is *PARTLY GRANTED*. The appealed Decision of the CA dated January 28, 2004, upholding with modification the Decision of the RTC, Branch 65 in Makati City, in Civil Case No. 00-789, is *AFFIRMED* with the *MODIFICATION* that the REM over the lot covered by TCT No. 156283 of the Registry of Deeds of Makati City is hereby declared valid only insofar as the *pro indiviso* share of Florencia thereon is concerned.

As modified, the Decision of the RTC shall read:

**PREMISES CONSIDERED,** the real estate mortgage on the property covered by TCT No. 156283 of the Registry of Deeds of Makati City and all proceedings thereon are *NULL* and *VOID* with respect to the undivided ½ portion of the disputed property owned by Nicholson, but *VALID* with respect to the other undivided ½ portion belonging to Florencia.

The claims of Nicholson for moral damages and attorney's fees are *DENIED* for lack of merit.

No pronouncement as to costs.

**SO ORDERED.**

*Carpio (Acting Chairperson), Azcuna,*[*] *Carpio Morales,* and *Tinga, JJ.,* concur.

*Quisumbing, J. (Chairperson),* on official leave.

---

[21] *Cruz v. Bancom Finance Corporation*, G.R. No. 147788, March 19, 2002, 379 SCRA 490, 505.

[22] *Rural Bank of Compostela v. Court of Appeals*, G.R. No. 122801, April 8, 1997, 271 SCRA 76, 88-89.

[*] Additional member as per Special Order No. 485 dated February 14, 2008.

**SECOND DIVISION**

[G.R. No. 166301. February 29, 2008]

**ST. MICHAEL SCHOOL OF CAVITE, INC. and SPOUSES CRISANTO S. CLAVERIA and GLORIA M. CLAVERIA,** *petitioners, vs.* **MASAITO DEVELOPMENT CORPORATION and REXLON REALTY GROUP, INC.,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; VERIFICATION; RULE RELAXED ON BASIS OF JUSTIFIABLE CIRCUMSTANCES AND SUBSTANTIAL COMPLIANCE; CASE AT BAR.—** We have held that the requirement regarding verification of a pleading is intended to assure that the pleading's allegations are accurate, filed in good faith, and not the product of the imagination or a matter of speculation. While courts and litigants alike are directed to abide strictly by the procedural rules, we have relaxed these rules on the basis of justifiable circumstances and substantial compliance. Although petitioners did not file their amended pleadings to include the special power of attorney or board resolution authorizing Gloria M. Claveria to represent her co-petitioners, they, however, attached to their Urgent Motion for Reconsideration the special power of attorney; authorization signed by Crisanto S. Claveria for Gloria M. Claveria to make, sign, and execute all documents pertaining to the case; and the Board Resolution authorizing Gloria M. Claveria to represent the corporation. The submission of authorization, special power of attorney and certification issued by the corporate secretary is considered substantial compliance of the requirements under Rule 7, Sec. 4 of the Revised Rules of Court. We thus hold that petitioners were able to substantially comply with the requirements under the Rules of Court.

**2. ID.; ID.; CAUSE OF ACTION; SUFFICIENCY AND NOT THE VERACITY, OF THE MATERIAL ALLEGATIONS IN A COMPLAINT IS WHAT IS DETERMINATIVE IN A DISMISSAL FOR FAILURE TO STATE A CAUSE OF ACTION.—** We held in *Dabuco v. Court of Appeals* (379 Phil. 939, 949), that what is determinative in a dismissal for

failure to state a cause of action is the sufficiency, not the veracity, of the material allegations. These allegations, hypothetically speaking, must aver ultimate facts that constitute plaintiff's cause of action which may entitle plaintiff to an advantageous decision as a matter of law.

**3. ID.; ID.; ID.; ID.; THREE ELEMENTS PRESENT FOR A COMPLAINT TO STATE A CAUSE OF ACTION; AS APPLIED TO AN EASEMENT CASE; REQUIREMENTS.—** Three elements must be present for a complaint to state a cause of action: (1) the legal right of the plaintiff, (2) the correlative obligation of the defendant, and (3) the act or omission of the defendant violating said legal right. For a complaint to state a cause of action in an easement case, more specifically, Art. 649 of the Civil Code has laid down the following requirements: (1) the dominant estate is surrounded by other immovables and has no adequate outlet to a public highway; (2) there is payment of proper indemnity; and (3) the isolation is not due to the acts of the proprietor of the dominant estate.

**4. ID.; ID.; ID.; ID.; ID.; CASE AT BAR.—** Annex "A" of the Complaint which is the location plan of Citihomes clearly shows that the school's only access to the public highway is Lot 4, Block 7 that abuts the major "access road" of Citihomes which in turn is connected to the public highway. The photographs (Annex "A-1" and Annex "A-2" of the Complaint) showing the school building and adjoining areas easily reveal that it is bounded by other immovable properties, which explains why it only has one entry and exit point. Without the right-of-way on Lot 4, Block 7 of Citihomes, the school has no adequate access to a public highway. Annex "A", as well as Annexes "A-1" and "A-2" of the Complaint, supports petitioners' averments as these show that the school has a lone entry and exit point which is the right-of-way in front of the school. The reference to a major access road, therefore, must be understood in the context of all allegations of fact contained in the Complaint. Petitioners' cause of action is not solely found in the paragraphs referred to. The annexes cited likewise form part of the material allegations of the Complaint. **Pars. 11 and 21-A of the Complaint and Annexes "A", "A-1" and "A-2" read together, the averments of the Complaint amply show a sufficient cause of action as prescribed by Art. 649 of the Code.**

**5. ID.; ID.; MOTION TO DISMISS; SETTLED THAT A MOTION TO DISMISS HYPOTHETICALLY ADMITS THE TRUTH OF THE FACTS ALLEGED IN THE COMPLAINT; CASE AT BAR.—** It is settled that a motion to dismiss hypothetically admits the truth of the facts alleged in the complaint. Such being the case, the RTC erred when it apparently considered matters not embodied in the Complaint. The Complaint, contrary to the lower court's Order, does not aver that the properties of petitioners-spouses are bounded by public roads. The location plan and photographs of the subject lot and the school building appended to the Complaint, without doubt, demonstrate that the lot and school building are enclosed, not by public roads, but by other lots in the subdivision. The Court has previously held that it is not for the trial court to inquire into the truth or falsity of a complaint's allegations before a hearing on its merits. In ordering the dismissal, it is apparent that the trial court relied on matters not encompassed by the Complaint. This is proscribed by the rules and jurisprudence. The dismissal of the Complaint has thus no leg to stand on.

**6. ID.; ID.; REAL PARTY-IN-INTEREST; UNDER ARTICLE 649 OF THE CIVIL CODE, WHO IS ENTITLED TO DEMAND A RIGHT OF WAY; CASE AT BAR.—** It will suffice under Art. 649 of the Civil Code that "any person who by virtue of a real right may cultivate or use any immovable which is surrounded by the other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way." Clearly, the school is a real party-in-interest since it has established a right to use the passageway for the benefit of its students. More importantly, the records reveal that petitioners-spouses are the owners of the lot where the school is located and they are the incorporators, trustees, and officers of St. Michael. They are also authorized to represent the corporation in the complaint and subsequent actions. Thus, petitioners are real parties-in-interest and we rule that the dismissal of the complaint is patently erroneous and bereft of any legal basis. Petitioners must be allowed to pursue their case before the trial court.

**APPEARANCES OF COUNSEL**

*Cavite Law Office* for petitioners.
*Saulog and De Leon Law Office* for Masaito Dev't. Corp.

## D E C I S I O N

**VELASCO, JR., *J.*:**

The core issue in this petition for review under Rule 45 is what constitutes a sufficient cause of action for a complaint for easement of right-of-way. Petitioners assail the August 13, 2004 Resolution[1] of the Court of Appeals (CA) in CA-G.R. SP No. 85558, dismissing their petition for defective verification and certification of non-forum shopping, and the November 23, 2004 CA Resolution[2] rejecting their plea for reconsideration. In effect, the dismissal of petitioners' complaint in Civil Case No. BCV-2001-60 before the Bacoor, Cavite Regional Trial Court (RTC), Branch 19 was upheld by the CA.

Petitioner St. Michael School of Cavite, Inc. (St. Michael) is a duly registered non-stock corporation[3] owned by petitioners-spouses Crisanto S. Claveria and Gloria M. Claveria. It is represented by petitioner Gloria M. Claveria. Respondents Masaito Development Corporation (Masaito) and Rexlon Realty Group, Inc. (Rexlon) are domestic corporations that own, operate, and manage Citihomes Molino IV, Bacoor, Cavite (Citihomes). St. Michael is located outside the northern perimeter fence of Citihomes. Its passageway occupies a portion of the 61-square meter lot described as Lot 4, Block 7, Phase 1 of Citihomes. The gate to the school is located at the subdivision's northern perimeter fence and is the only entrance and exit for the entire school population.

On July 28, 1998, Rexlon informed petitioners that the value of the Citihomes lots when fully developed was PhP 3,872 per square meter as appraised by the Home Insurance and Guarantee Corporation.[4] In a letter dated January 29, 2001, Masaito advised

---

[1] *Rollo,* pp. 46-47. Penned by Associate Justice Mariano C. Del Castillo and concurred in by Associate Justices Edgardo P. Cruz and Magdangal M. De Leon.

[2] *Id*. at 44-45.

[3] *Id*. at 174.

[4] *Id*. at 112.

petitioners to purchase Lots 1-9, Block 7, Phase 1, fronting the school at PhP 3,579,000.[5] On April 6, 2001, Masaito sent another offer to sell Lot 4, Block 7 of the subdivision with the right-of-way through the private roads/drainage facilities of Citihomes at the price of PhP 2 Million. Petitioners refused both proposals, reasoning that the school did not need the entire area mentioned in the first proposal. St. Michael also said that the second offer was grossly overpriced.

Petitioners, with four other homeowners, filed a complaint against respondents before the Bacoor, Cavite RTC, Branch 19 entitled *St. Michael School of Cavite, Inc., Spouses Crisanto S. Claveria and Gloria M. Claveria, Pancho R. Navo, Vivencio B. Asuncion, Isaurito S. Hernandez and Elias Namit v. Masaito Development Corporation and Rexlon Realty Group, Inc.* for easement of right-of-way with damages under Article 649 of the Civil Code and preliminary injunction and/or temporary restraining order (TRO).

The trial court issued a TRO on June 5, 2001[6] for 72 hours which was extended to June 24, 2001 through the June 13, 2001[7] Order enjoining respondents from blocking the passageway and school gate of St. Michael. On July 17, 2001, respondents filed a motion to dismiss on the ground that petitioners failed to state a cause of action against them.

On July 29, 2002, the RTC issued an order,[8] dismissing for lack of cause of action the complaint as to Pancho R. Navo, Vivencio Asuncion, Isaurito S. Hernandez, and Elias Namit, as plaintiffs *a quo*, and denying petitioners' application for issuance of a writ of preliminary injunction.

On October 9, 2002, respondents filed a motion for partial reconsideration of the July 29, 2002 RTC Order, on the grounds that (1) St. Michael was not a real party-in-interest; and (2) petitioners-spouses failed to state a cause of action.

[5] *Id*. at 113.

[6] *Id*. at 85-86.

[7] *Id*. at 87-88.

[8] *Id*. at 142-145.

On September 25, 2003, the trial court granted respondents' partial motion for reconsideration and likewise dismissed the complaint of St. Michael and spouses Claverias for failure to state a cause of action.[9] Petitioners filed an omnibus motion/ motion for reconsideration on December 18, 2003, reiterating their defenses, which the RTC denied on May 5, 2004 for lack of merit.[10]

Petitioners filed before the CA a petition for *certiorari* with prayer for issuance of a TRO and/or writ of preliminary injunction under Rule 65, seeking to annul and set aside the May 5, 2004 RTC Order. The CA dismissed the petition. In its August 13, 2004 Resolution, the CA held that the petition for *certiorari* was dismissible for the following infirmities:

> 1. The verification and certification of non-forum shopping [did] not fully comply with [Section 4, Rule 7] of the Rules of Court, because it failed to give the assurance that the allegations of the petition are true and correct based on authentic records.
>
> 2) [S]aid verification and certification was signed by petitioner Gloria M. Claveria in behalf of her co-petitioners without the accompanying special power of attorney or board resolution authorizing her to sign the same x x x; and
>
> 3) Counsel for petitioners failed to indicate his Roll of Attorney's Number x x x.[11]

On September 6, 2004, petitioners filed an Urgent Motion for Reconsideration,[12] which the CA denied.[13] Hence, we have this petition that raises the following issues:

(a)

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN ITS INTERPRETATION AND APPLICATION OF SECTION 4,

[9] *Id*. at 67.

[10] *Id*. at 66.

[11] *Id*. at 46.

[12] *Id*. at 161-165.

[13] *Id*. at 44-45.

RULE 7 OF THE 1997 RULES OF CIVIL PROCEDURE WHICH, ACCORDING TO ITS INTERPRETATION, REQUIRES PETITIONERS TO STILL SUBMIT AN AMENDED VERIFICATION STATING THEREIN THAT THE ALLEGATIONS OF THE PETITION ARE TRUE AND CORRECT NOT ONLY OF THEIR PERSONAL KNOWLEDGE BUT ALSO BASED ON AUTHENTIC RECORDS DESPITE CLEAR COMPLIANCE BY PETITIONERS OF THE SAID PROCEDURAL REQUIREMENT THROUGH THE SUBMISSION OF THE THREE (3) DOCUMENTS ATTACHED TO THEIR URGENT MOTION FOR RECONSIDERATION DATED SEPTEMBER 6, 2004.

(b)

THE HONORABLE COURT OF APPEALS ERRED IN ITS FINDINGS THAT THE COURT *A QUO* DID NOT COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION; THAT THE PETITION IS PATENTLY WITHOUT MERIT; AND THE QUESTIONS RAISED THEREIN ARE TOO [UNSUBSTANTIAL] TO REQUIRE CONSIDERATION, THE SAID FINDINGS BEING MERE CONCLUSIONS OF LAW UNSUPPORTED BY ANY STATEMENT OR FINDINGS OF FACT AND CONTRADICTED BY THE PERTINENT PLEADINGS AND MOTIONS OF THE CASE WHICH, IF PROPERLY CONSIDERED, WILL JUSTIFY A DIFFERENT CONCLUSION AND DEMONSTRATE THAT PETITIONERS ARE NOT ONLY REAL PARTIES-IN-INTEREST BUT HAVE VALID CAUSES OF ACTION AGAINST RESPONDENTS.[14]

In sum, the twin issues for our consideration are: (1) Did the CA err in dismissing the petition and ruling that Section 4, Rule 7 of the 1997 Rules of Civil Procedure still requires petitioners to submit an amended verification that the allegations in the petition are true and correct not only from their personal knowledge but also based on authentic records, even if they had already submitted three other documents attached to their September 6, 2004 motion for reconsideration?; and (2) Did the CA err in finding that the trial court did not commit grave abuse of discretion when it ruled that the petition has no merit, that the questions raised were unsubstantial, and that the findings

[14] *Id*. at 24-25.

were conclusions of law unsupported by facts and contradicted by the records?

On the first issue, petitioners aver that Gloria M. Claveria is expressly authorized by her co-petitioners to represent them in filing the petition for *certiorari* with the CA, evidenced by her Affidavit,[15] a Special Power of Attorney, and Secretary's Certificate. They claim that there was no need for them to submit an Amended Verification as the three aforementioned documents satisfied the requirement.

In its November 23, 2004 Resolution, the CA stated:

> Considering that petitioners did not cure the first deficiency mentioned in Our August 13, 2004 Resolution dismissing the petition by submitting an amended verification and stating therein that the allegations in the petition **are true and correct not only of their personal knowledge but also based on authentic records**, the Court is constrained to deny their Motion for Reconsideration of said Resolution (emphasis supplied.)

The CA erred.

Petitioners correctly point out that paragraph 3 of Sec. 4, Rule 7 of the Rules of Court uses the conjunction "or" not "and":

> A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge **or** based on authentic records x x x. A pleading required to be verified which contains a verification based on "information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

Moreover, petitioners, in their September 6, 2004 Urgent Motion for Reconsideration, attached the following:

(1) Affidavit executed by petitioner Gloria M. Claveria, stating:

> 1. That I am one of the petitioners in **C.A.- G.R. SP [No.] 85558 for *Certiorari* with Preliminary Injunction and Temporary**

[15] *Id*. at 26.

**Restraining Order** pending before the Special Tenth Division of the Court of Appeals;

2. That I hereby certify that I am duly authorized by my husband Crisanto S. Claveria and the St. Michael School of Cavite, Inc. who are my co-petitioners in the said case, to sign for all petitioners, to file said petition and represent them in the proceedings;

3. That I further certify that I am one of the Incorporators, a Trustee the incumbent Treasurer and the Directress of the Saint Michael School of Cavite, Inc.;

4. That I am also the registered owner together with my husband Crisanto S. Claveria, of the two (2) parcels of land upon which the said school stands and is a direct party in interest in the case;

5. That I am the Founder of the said school, managed, supervised and oversaw its operation from its opening up to the present and I have received, read and understood all the documents annexed to the said petition;

6. That I also participated in the collation and completion of all the documents attached as Annexes to the Petition for *Certiorari* filed before the Honorable Court of Appeals and which were ALL previously submitted to the Regional Trial Court, Branch 19 of Bacoor, Cavite and verified the truth and correctness of the contents of the Petition from the records and files in my possession. Thus, I attest to the truth and correctness of the allegations of the said Petition of my own personal knowledge and based on authentic documents.[16]

(2) Special Power of Attorney[17] executed by petitioner Crisanto S. Claveria, authorizing his spouse, Gloria M. Claveria, to represent him in the petition for *certiorari* with the CA, make, sign, execute for and in his behalf all documents necessary to the case; appear in court; and enter into a compromise agreement or alternative mode of dispute settlement; and

(3) Secretary's Certificate[18] signed by Sanett M. Claveria, Corporate Secretary of St. Michael, attesting that Mrs. Gloria

[16] *Id*. at 167.

[17] *Id*. at 168.

[18] *Id*. at 69.

M. Claveria is authorized to represent St. Michael as approved in a special meeting of the board of directors dated September 1, 2004.

We have held that the requirement regarding verification of a pleading is intended to assure that the pleading's allegations are accurate, filed in good faith, and not the product of the imagination or a matter of speculation.[19] While courts and litigants alike are directed to abide strictly by the procedural rules,[20] we have relaxed these rules on the basis of justifiable circumstances and substantial compliance.[21]

Although petitioners did not file their amended pleading to include the special power of attorney or board resolution authorizing Gloria M. Claveria to represent her co-petitioners, they, however, attached to their Urgent Motion for Reconsideration the special power of attorney; authorization signed by Crisanto S. Claveria for Gloria M. Claveria to make, sign, and execute all documents pertaining to the case; and the Board Resolution authorizing Gloria M. Claveria to represent the corporation. The submission of authorization, special power of attorney and certification issued by the corporate secretary is considered substantial compliance of the requirements under Rule 7, Sec. 4 of the Revised Rules of Court. We thus hold that petitioners were able to substantially comply with the requirements under the Rules of Court.

On the second issue. In its July 29, 2002 Order, the RTC resolved respondents' Motion to Dismiss by holding that plaintiffs Pancho Navo, Vivencio Asuncion, Isaurito Hernandez, and Elias Namit, as parents of some of the students in petitioners' school, have no cause of action to file the complaint for right-of-way. It ruled that the claimant in such an action must be the owner

[19] *Valdecantos v. People*, G.R. No. 148852, September 27, 2006, 503 SCRA 474, 481-482.

[20] *Rural Bankers Association of the Philippines v. Tangal-Salvaña*, G.R. No. 175020, October 4, 2007, 534 SCRA 721.

[21] *Valdecantos*, *supra* at 482.

of a dominant estate and as such, the parents were not real parties-in-interest.

In its September 25, 2003 Order, the RTC resolved respondents' Motion for Reconsideration by ruling that St. Michael is not a registered owner of any property that is the subject matter of the easement case, hence not a real party-in-interest. It thus dismissed the case because petitioners failed to state a cause of action against respondents.

Petitioners claim that the lower court's orders are baseless. They argue that concrete evidence is necessary for a reliable judgment on the merits.

Respondents, on the other hand, contend that the initiatory pleading does not aver the first two basic requisites for the establishment of a legal easement of right-of-way: (1) that the dominant property is surrounded by estates of others and (2) there is no adequate outlet to a public highway. The rest of the co-plaintiffs, they point out, did not even allege if they are co-owners or possessors of any real right over the estate of the petitioners-spouses which is a requisite for the right to demand the establishment of a legal easement of right-of-way over a servient estate.

We held in *Dabuco v. Court of Appeals* that what is determinative in a dismissal for failure to state a cause of action is the sufficiency, not the veracity, of the material allegations.[22] These allegations, hypothetically speaking, must aver ultimate facts that constitute plaintiff's cause of action which may entitle plaintiff to an advantageous decision as a matter of law.[23]

An examination of petitioners' Complaint is necessary to determine if the lower court's orders were in accordance with the law. Petitioners' "allegations in support of plaintiffs' demand for an easement of right-of-way" read:

10. That the students, their parents, school teachers and school staff **who reside within Citihomes** (nearly 50% of the school population) including the four (4) plaintiffs namely Pancho R. Navo,

[22] 379 Phil. 939, 949 (2000).

[23] *Suyom, et al. v. Hon. Judge Collantes, et al.*, 161 Phil. 667 (1976).

Vivencio B. Asuncion, Isaurito S. Hernandez and Elias Namit who are parents of certain school children of St. Michael School of Cavite have incontrovertibly the full right of passage as well as the free right to use the roads, lanes and pathways of **Citihomes** including those leading to and from the school;

11. That, for the last five (5) years, apart from the major access road shown in the Subdivision Plan, Annex "A," the land area actually used by the school population to and from the school, inclusive of the passageway and the school gate is only a **portion** of a SIXTY-ONE (61) SQUARE METERS LOT described as Lot 4, Block 7 of **Citihomes** owned and/or operated and managed by defendants;

12. That the school has only one (1) gate which serves as both entry and exit points for the entire school population which defendants threaten to fence off and to close;

13. That, other than the right of way fronting the school and shown in the Subdivision plan, Annex "A," there are no other developed nor practical entry and exit points at the rear and at the two sides of the school site readily and immediately accessible for use by the school population as right of way and/or entrance to and exit from the school especially by those who reside within **Citihomes** including the four (4) plaintiffs/parents abovementioned which constitute almost 50% of the total school population;

xxx xxx xxx

15. That through an appraisal report/letter dated **October 16, 1997** and **July 28, 1998** respectively, [plaintiffs] were advised by defendant Rexlon Realty Group, Inc. that the appraisal value of lots at **Citihomes** when fully developed is ₱3,872.00 per square meter x x x;

16. That through a **letter dated June 16, 1998**, defendant Rexlon Realty Group, Inc. approved the use of the 61 square meters property described as Lot 4, Block 7 of **Citihomes** as a right of way for plaintiff St. Michael School of Cavite x x x;

17. That, however, under a letter dated **January 29, 2001**, [plaintiffs] were advised by defendant Masaito Development Corporation that instead of the **sixty-one (61) square meter** property, Lot 4, Block 7, plaintiffs should instead purchase Lot 1-9, Block 7, phase I, of **Citihomes** with a total lot area of one thousand and seventy-four (1,074) square meters at a total contract price of ₱3,759,000.00 which lots are all fronting the school x x x;

18. That, despite Annexes "D" and "D-1" of the complaint, on **April 6, 2001,** [plaintiffs] again received a new proposal from defendant Masaito Development Corporation proposing that plaintiff should pay the sum of ₱2,000.000.00 for the puchase of the sixty-one (61) square meters property, Lot 4, Block 7, Phase I, of **Citihomes**, plus the right to pass through the private roads/drainage facilities of said school x x x;

19. That plaintiffs do not need the entire 1,074 lot area covered by Lot 1-9, Block 7, Phase I, **Citihomes** which exceeds the requirements for the school's right of way; while plaintiffs find unacceptable defendant Masaito Development Corporation's proposal for plaintiffs to pay the sum of ₱2,000,000.00 for the sixty-one (61) square meter property, Lot 4, Block 7 of Phase I, **Citihomes** which amount is clearly unconscionable, excessive, unreasonable and unjust;

20. That plaintiffs and the school population only require a **portion** of the sixty-one (61) square meters property Lot 4, Block 7 of Phase I, **Citihomes** for **their permanent right of way** and accept the price of ₱3,872.00 per square meter as reasonable as quoted in the Home Insurance and Guaranty Corporation's appraisal report/ letter, x x x;

21. That in support of plaintiffs' application for the [above-described] right of way plaintiffs further state:

21-A. That the St. Michael School of Cavite is surrounded by immovable properties belonging to other persons including **Citihomes** owned and/or operated and managed by herein defendants such that plaintiffs and the school population have at present no immediate and adequate outlet to a public highway other than the major Access Road and the sixty-one (61) square meters lot of **Citihomes** described in the Subdivision Plan, x x x;

21-B. That plaintiffs are willing and able to pay the proper indemnity to defendants pursuant to the provisions of the Civil Code;

21-C That the isolation of plaintiffs' property is not due to plaintiffs' own acts but was caused by the expansion of the land area owned by **Citihomes** and the rapid increase in the number of homeowners which now has reached more than a thousand residents[.][24]

[24] *Rollo*, pp. 78-80.

Three elements must be present for a complaint to state a cause of action: (1) the legal right of the plaintiff, (2) the correlative obligation of the defendant, and (3) the act or omission of the defendant violating said legal right.[25] For a complaint to state a cause of action in an easement case, more specifically, Art. 649 of the Civil Code has laid down the following requirements: (1) the dominant estate is surrounded by other immovables and has no adequate outlet to a public highway; (2) there is payment of proper indemnity; and (3) the isolation is not due to the acts of the proprietor of the dominant estate.

We rule that the Complaint satisfies these three elements and thus sufficiently alleges a cause of action. The Complaint, *first*, asserts that petitioners have a right to an easement of right-of-way that cuts across respondents' property; *second*, it refers to respondents' correlative obligation not to fence off and close the single gate which is used as the only entry and exit points of the school population; and *third*, it refers to respondents' expansion and excessive terms and conditions, constituting the acts violating petitioners' right. We thus hold that the Complaint's material allegations are enough to entitle petitioners to a favorable judgment if these are assumed to be true.

The four corners of the initiatory pleading do not reveal any averment that the properties in question are bounded by public roads and there is an adequate access to a public highway. On the contrary, par. 13 of the Complaint alleges that "other than the right of way fronting the school and shown in the Subdivision Plan, Annex 'A,'[26] there are no other developed nor practical entry and exit points at the rear and at the two (2) sides of the school site readily and immediately accessible for use by the school population x x x."[27]

---

[25] *Sta. Clara Homeowners' Association v. Sps. Gaston*, 425 Phil. 221 (2002).

[26] Records, p. 12.

[27] *Id*. at 78.

Pars. 11 and 21-A of the Complaint as aforequoted confusingly refer both to a major "access road" and the sixty-one (61) square meter lot (Lot 4, Block 7 of Citihomes) as an immediate and adequate outlet to the public highway. The paragraphs are not equivocal about petitioner school's lack of an adequate outlet to a public highway and give the impression that such road is an adequate outlet to a public highway.

A complete examination of the Complaint, however, unmistakably shows petitioners' sufficient cause of action. To be more precise, Annexes "A", "A-1", and "A-2" plainly demonstrate that the requisites for a legal easement of right-of-way under Art. 649 of the Code have been met.

Annex "A" of the Complaint which is the location plan of Citihomes clearly shows that the school's only access to the public highway is Lot 4, Block 7 that abuts the major "access road" of Citihomes which in turn is connected to the public highway. The photographs (Annexes "A-1"[28] and Annex "A-2"[29] of the Complaint) showing the school building and adjoining areas easily reveal that it is bounded by other immovable properties, which explains why it only has one entry and exit point. Without the right-of-way on Lot 4, Block 7 of Citihomes, the school has no adequate access to a public highway. Annex "A", as well as Annexes "A-1" and "A-2" of the Complaint, supports petitioners' averments as these show that the school has a lone entry and exit point which is the right-of-way in front of the school. The reference to a major access road, therefore, must be understood in the context of all the allegations of fact contained in the Complaint. Petitioners' cause of action is not solely found in the paragraphs referred to. The annexes cited likewise form part of the material allegations of the Complaint. **Pars. 11 and 21-A of the Complaint and Annexes "A", "A-1", and "A-2" read together, the averments of the Complaint amply show a sufficient cause of action as prescribed by Art. 649 of the Code**.

[28] *Id*.

[29] *Id*.

However, in the September 25, 2003 Order dismissing the case, the RTC made the following findings:

> Finding the Motion for Partial Reconsideration filed by the defendants to be well taken, it appearing that indeed the properties (the alleged dominant estates) of plaintiffs Sps. Crisanto S. Claveria and Gloria M. Claveria are bounded by public roads, hence, they have adequate outlet to a public highway. Likewise, insofar as plaintiff St. Michael School of Cavite, Inc., it is not a real party in interest considering that it is not the registered owner of any property subject matter of the instant case.[30]

It is settled that a motion to dismiss hypothetically admits the truth of the facts alleged in the complaint.[31] Such being the case, the RTC erred when it apparently considered matters not embodied in the Complaint. The Complaint, contrary to the lower court's Order, does not aver that the properties of petitioners-spouses are bounded by public roads. The location plan and photographs of the subject lot and the school building appended to the Complaint, without doubt, demonstrate that the lot and school building are enclosed, not by public roads, but by other lots in the subdivision.

The Court has previously held that it is not for the trial court to inquire into the truth or falsity of a complaint's allegations before a hearing on its merits.[32] In ordering the dismissal, it is apparent that the trial court relied on matters not encompassed by the Complaint. This is proscribed by the rules and jurisprudence. The dismissal of the Complaint has thus no leg to stand on.

In the same matter, the trial court erred when it ruled that the school, not being the registered owner of the subject lot, is not a real party-in-interest.

It will suffice under Art. 649 of the Civil Code that "any person who by virtue of a real right may cultivate or use any

---

[30] *Rollo*, p. 67.

[31] *Vergel De Dios v. Bristol Laboratories Phils., Inc.*, 154 Phil. 311 (1974).

[32] *Galeon v. Galeon, et al.*, 151 Phil. 565 (1973); citing *Garcon v. Redemptorist Fathers*, 123 Phil. 1192 (1966).

immovable which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way." Clearly, the school is a real party-in-interest since it has established a right to use the passageway for the benefit of its students. More importantly, the records reveal that petitioners-spouses are the owners of the lot where the school is located and they are the incorporators, trustees, and officers of St. Michael.[33] They are also authorized to represent the corporation in the complaint and subsequent actions. Thus, petitioners are real parties-in-interest and we rule that the dismissal of the complaint is patently erroneous and bereft of any legal basis. Petitioners must be allowed to pursue their case before the trial court.

**WHEREFORE,** the petition is *GRANTED*. The assailed August 13, 2004 and November 23, 2004 CA Resolutions in CA-G.R. SP No. 85558 and the July 29, 2002 and September 25, 2003 Orders of the Bacoor, Cavite RTC, Branch 19 are *REVERSED* and *SET ASIDE*. The RTC is directed to reinstate petitioners' complaint and conduct further proceedings in Civil Case No. BCV-2001-60.

**SO ORDERED.**

*Carpio, (Acting Chairperson), Carpio Morales, Azcuna,*[*] and *Tinga, JJ.,* concur.

*Quisumbing, J. (Chairperson),* on official leave.

---

[33] *Rollo*, pp. 26-27.

[*] Additional member as per Special Order No. 485 dated February 14, 2008.

**SECOND DIVISION**

[G.R. No. 175687. February 29, 2008]

**MATERRCO, INC.,** *petitioner, vs.* **FIRST LANDLINK ASIA DEVELOPMENT CORPORATION,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; LEGAL FEES; 1994 AMENDMENT (ADMINISTRATIVE CIRCULAR NO. 11-94) *VIS-À-VIS* 1990 AMENDMENT; A BROAD INTERPRETATION OF SECTION 8(b) (4) OF THE 1994 AMENDMENT IS CALLED FOR TO COVER LEGAL FEES FOR APPEALS AND MARRIAGE CEREMONIES.—** The Court finds, however, that a broad interpretation of Section 8(b)(4) so as to cover ejectment cases, among others, is called for both to avoid an absurd consequence and to conform more closely to the intention behind the 1994 amendments. If Section 8(a)(5) of Rule 141 before its amendment no longer applied as of 1994 on account of its omission in A.C. No. 11-94, then the inevitable conclusion is that Section 8(a)(6) of the same Rule before amendment fixing the fee for **appeals** from the MeTC and MTC, and 8(b) fixing the fee for **marriage ceremonies**, both of which provisions were similarly omitted in A.C. No. 11-94, are also no longer applicable. And if Section 8(b)(4) of the A.C. is interpreted narrowly so as to apply only to special proceedings, the result is that there would no longer be legal fees for appeals and marriage ceremonies after the issuance of said A.C. in 1994. The Court could not have intended to introduce such a wide lacuna in the Rules on legal fees, where there was none before, when it amended the same via the A.C. in 1994. To avoid this absurd consequence, Section 8(b)(4) of the A.C. must be interpreted as a catch-all provision covering **all** proceedings which prescribed specific fees before its issuance.

**2. ID.; ID.; ID.; ID.; R.A. NO. 7691 (EXPANDED JURISDICTION OF THE LOWER COURTS); NOTHING IN THE AMENDMENTS INTRODUCED BY R.A. NO. 7691 COULD HAVE PROMPTED THE COURT TO MODIFY THE FEES FOR EJECTMENT CASES, MUCH LESS TO DRASTICALLY**

**ALTER THEM.—** As stated in A.C. No. 11-94, the amendments introduced therein were "IN VIEW OF THE EXPANDED JURISDICTION OF THE LOWER COURTS UNDER REPUBLIC ACT NO. 7691." R.A. No 7691, it bears recalling, amended B.P. No. 129 by expanding the jurisdiction of lower courts in certain respects. What is significant in the context of this case, however, is that there is nothing in the amendments introduced by R.A. No. 7691 that could have prompted the Court to modify the fees for ejectment cases, much less to drastically alter them. The provision of Section 33(2) of B.P. No. 129, which covers ejectment cases, remains as it was before amendments were introduced in R.A. No. 7691. It is reasonable to infer then that the Court in 1994 did not intend to introduce any major change in the fees for ejectment cases. Hence, given that the old fee for ejectment cases was ₱100, applying the ₱150 fee in Section 8(b)(4) of the A.M. would conform more closely to the limited scope of the 1994 amendments compared to applying the graduated fees of up to ₱850 under Section 8(a).

**APPEARANCES OF COUNSEL**

*Arturo S. Santos* and *Sycip Salazar Hernandez and Gatmaitan* for petitioner.

*Estelito P. Mendoza* and *Michael N. So* for respondent.

**R E S O L U T I O N**

**CARPIO MORALES, *J.*:**

Petitioner, MATERRCO, Inc., via Motion for Reconsideration dated January 4, 2008, prays for a reconsideration of this Court's Decision of November 28, 2007.

After a thorough examination of the arguments proffered by petitioner-movant, the Court finds that none merits a reversal of the Decision.

Be that as it may, a considered discussion of the points raised in the motion, specifically with regard to the applicable filing fees as of 1996, is in order.

In the Decision, the Court stated that the filing fee then prevailing for ejectment cases was fixed at ₱150 by this Court's Administrative Circular No. 11-94[1] (A.C. No. 11-94) issued on June 28, 1994 **amending Rule 141, Section 8**. As amended, Section 8 of Rule 141 reads:

*"Sec. 8. CLERKS of Metropolitan and Municipal Trial Courts*

(a) For each **civil action or proceeding**, where the value of the subject matter involved, or the amount of the demand, inclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs is:

1. Not more than ₱20,000.00 .....₱120.00
2. More than ₱20,000.00 but not more than ₱100,000.00 .....400.00
3. More than ₱100,000.00 but not more than ₱200,000.00 .....850.00

In a real action, the assessed value of the property or if not declared for taxation purposes, the assessed value of the adjacent lots, or if there is none, the estimated value thereof shall be alleged by the claimant and shall be the basis in computing the fees.

(b) For initiating proceedings for the allowance of wills, granting of letters of administration and settlement of estates of small value, where the value of the estate is:

1. Not more than ₱20,000.00 .....200.00
2. More than ₱20,000.00 but not more than ₱100,000.00 .....1,100.00
3. More than ₱100,000.00 but not more than ₱200,000.00 .....1,550.00

xxx xxx xxx

[1] AMENDMENTS TO SECTION 7 (a) and (d) AND SECTION 8 (a) and (b), RULE 141, RULES OF COURT, AS LAST AMENDED ON SEPTEMBER 4, 1990, AND EFFECTIVE NOVEMBER 2, 1990, IN VIEW OF THE EXPANDED JURISDICTION OF THE LOWER COURTS UNDER REPUBLIC ACT NO. 7691.

4. **For each proceeding other than the allowance of wills (probate), granting of letter of administration, settlement of estates of small value, one hundred and fifty (150.00) pesos."** (Emphasis and underscoring supplied)

Petitioner argues that the applicable fee for ejectment cases pursuant to the above-quoted amended provision should not be computed on the basis of Section 8(b)(4) but on the graduated fees under Section 8(a). Petitioner rules out the applicability of Section 8(b)(4) to ejectment cases based on its interpretation thereof as covering only special proceedings.

The Court finds, however, that a broad interpretation of Section 8(b)(4) so as to cover ejectment cases, among others, is called for both to avoid an absurd consequence and to conform more closely to the intention behind the 1994 amendments.

Prior to its amendment by A.C. No. 11-94, Rule 141, Section 8 read as follows:

SEC. 8. *Judges of Metropolitan and Municipal Trial Courts.–*

(a) For each civil action or proceeding where the value of the subject matter involved or the amount of the demand, exclusive of interest, and costs, is:

1. Less than ₱5,000 ……..……. ₱80.00
2. ₱5,000 or more but less than ₱10,000 ……..….100.00
3. ₱10,000 or more but not exceeding ₱20,000 ……. 120.00
4. For each proceeding including allowance of will, probate, settlement of estate of small value, one hundred and fifty (₱150.00) pesos;
5. **For forcible entry and illegal detainer cases, one hundred (₱100.00) pesos;**
6. **For appeals in all actions or proceedings, including forcible entry and detainer cases, taken from the Metropolitan and Municipal Trial Court, one hundred fifty (₱150.00) pesos;**

**(b) For the performance of marriage ceremony, including issuance of certificate of marriage, fifty (₱50.00) pesos;**

xxx xxx xxx[2] (Emphasis and underscoring supplied)

If Section 8(a)(5) of the immediately quoted Rule 141 before its amendment no longer applied as of 1994 on account of its omission in A.C. No. 11-94, then the inevitable conclusion is that Sections 8(a)(6) of the same Rule before amendment fixing the fee for **appeals** from the MeTC and MTC, and 8(b) fixing the fee for **marriage ceremonies**, both of which provisions were similarly omitted in A.C. No. 11-94, are also no longer applicable. And if Section 8(b)(4) of the A.C. is interpreted narrowly so as to apply only to special proceedings, the result is that there would no longer be legal fees for appeals and marriage ceremonies after the issuance of said A.C. in 1994.

The Court could not have intended to introduce such a wide lacuna in the Rules on legal fees, where there was none before, when it amended the same via the A.C. in 1994. To avoid this absurd consequence, Section 8(b)(4) of the A.C. must be interpreted as a catch-all provision covering **all** proceedings which prescribed specific fees before its issuance.

The reasonableness of such interpretation becomes more pronounced when note is taken of the fact that it was not the intention of A.C. No. 11-94 to drastically alter the fees for ejectment cases, if indeed it intended to alter them at all.

As stated in A.C. No. 11-94, the amendments introduced therein were "IN VIEW OF THE EXPANDED JURISDICTION OF THE LOWER COURTS UNDER REPUBLIC ACT NO. 7691."

R.A. No 7691,[3] it bears recalling, amended B.P. No. 129[4] by expanding the jurisdiction of lower courts in certain respects.

---

[2] Resolution of the Court *En Banc* Re: Proposed Amendments to Rule 141 on Legal Fees, dated September 4, 1990.

[3] "AN ACT EXPANDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS, AMENDING FOR THE PURPOSE BATAS PAMBANSA, BLG. 129, OTHERWISE KNOWN AS THE 'JUDICIARY REORGANIZATION ACT OF 1980'," approved on March 25, 1994.

[4] "AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," effective August 14, 1981.

What is significant in the context of this case, however, is that there is nothing in the amendments introduced by R.A. No. 7691 that could have prompted the Court to modify the fees for ejectment cases, much less to drastically alter them.[5] The provision of Section 33(2) of B.P. No. 129, which covers ejectment cases, remains as it was before amendments were introduced in R.A. No. 7691.[6]

---

[5] With regard to the jurisdiction of the MeTC, MTC, and MCTC in civil cases, R.A. No. 7691 amended Section 33 of B.P. No. 129 to read as follows:

"Sec. 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases.* — Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

> "(1) Exclusive original jurisdiction over **civil actions and probate proceedings**, testate and intestate, including the grant of provisional remedies in proper cases, where the value of the personal property, estate, or amount of the demand does not exceed One hundred thousand pesos (₱100,000.00) or, in Metro Manila where such personal property, estate, or amount of the demand does not exceed Two hundred thousand pesos (₱200,000.00), exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs, the amount of which must be specifically alleged: *Provided*, That interest, damages of whatever kind, attorney's fees, litigation expenses, and costs shall be included in the determination of the filing fees: x x x
>
> "(2) Exclusive original jurisdiction over cases of **forcible entry and unlawful detainer**: Provided, That when, in such cases, the defendant raises the questions of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession; and
>
> "(3) Exclusive original jurisdiction in all **civil actions which involve title to, or possession of, real property**, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: *Provided,* That in cases of land not declared for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots." (Emphasis and underscoring supplied)

[6] B.P. No. 129, Section 33(2) previously read in its entirety as follows:

"(2) Exclusive original jurisdiction over cases of forcible entry and unlawful detainer: Provided, That when, in such cases, the defendant raises the

It is reasonable to infer then that the Court in 1994 did not intend to introduce any major change in the fees for ejectment cases. Hence, given that the old fee for ejectment cases was ₱100, applying the ₱150 fee in Section 8(b)(4) of the A.M. would conform more closely to the limited scope of the 1994 amendments compared to applying the graduated fees of up to ₱850 under Section 8(a).

But even if the ₱150 fee under Section 8(b)(4) were not applicable, what would apply is not the ₱850 fee under Section 8(a) but the old fee of ₱100, in which case respondent would still have complied with the required legal fee.

**WHEREFORE,** the Motion for Reconsideration is *DENIED*.

**SO ORDERED.**

*Carpio* (Acting Chairperson)*, Azuna,*[*] *Tinga,* and *Velasco, Jr., JJ.,* concur.

*Quisumbing, J. (Chairperson),* on official leave per Special Order No. 485 dated February 14, 2008.

---

question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession."

[*] Additional member pursuant to Special Order No. 485 dated February 14, 2008.

**SECOND DIVISION**

[G.R. No. 179104. February 29, 2008]

**ANASTACIO TUBALLA HEIRS, namely: JULIANA TUBALLA, AGUSTIN TUBALLA, and HERMAN TUBALLA,** *petitioners, vs.* **RAUL CABRERA, *ET AL.*,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; FINAL JUDGMENTS; MAY NO LONGER BE MODIFIED.—** A decision that has acquired finality becomes immutable and unalterable. A final judgment may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law; and whether it be made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that the judgments/resolutions of a court or quasi-judicial body must reach a point of finality set by the law, rules, and regulations. The noble purpose is to write finis to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but it extends to all bodies upon which judicial powers had been conferred.

**2. ID.; ID.; ID.; ID.; EXCEPTIONS.—** The only exceptions to the rule that final judgments may no longer be modified in any respect are (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) void judgments.

**3. ID.; ID.; ID.; ID.; ID.; CASE AT BAR.—** Under OCT No. FV-16880, the technical description of the land refers to Lot No. 5697, Pls-659-D and not Lot No. 6597. The RTC committed a typographical error in its Decision when it ordered Cabrera

Enterprises to vacate Lot No. 6597, Pls-659-D and turn over the possession of the same to Tuballa. And, in accordance with the first exception to modification of final judgment mentioned earlier, this Court hereby modifies the clerical error in the Decision of the RTC.

**APPEARANCES OF COUNSEL**

*Leo B. Diocos* for petitioners.
*Lionel J. Tayco* for respondents.

**R E S O L U T I O N**

**VELASCO, JR., *J.*:**

This is a Petition for Review on *Certiorari* under Rule 45 which seeks to correct the Order dated January 3, 2006 of the Regional Trial Court (RTC), Branch 36 in Dumaguete City, Negros Oriental, and to direct its Judge to correct the transposition of the digits 6 and 5 in both the dispositive portions of the Court of Appeals (CA) Decision dated October 25, 2002 and the RTC Decision dated September 30, 1994 to conform to Lot No. **5697** as described in the Complaint and the evidence, that is, the Original Certificate of Title (OCT) No. FV-16880.

On June 21, 1991, Anastacio Tuballa filed a Complaint against Cabrera Enterprises, Incorporated (Cabrera Enterprises), for Recovery of Possession of a parcel of sugar land. Tuballa is the registered owner of Lot No. 5697 with an area of 11.0337 hectares located in Bondo, Siaton, Negros Oriental, covered by Free Patent No. 544264 granted on September 28, 1973 and by OCT No. FV-16880 dated October 11, 1974. Tuballa and his predecessors-in-interest had been in possession and occupation of the land since time immemorial. It was Tuballa who invested time, resources, and effort to convert the public land into private ownership.

Sometime in 1982, the men employed by Cabrera Enterprises intruded into the subject land without Tuballa's consent. The laborers of Cabrera Enterprises did not heed Tuballa's protestation

and admonition, prompting him to make several attempts to accost the manager of Cabrera Enterprises but to no avail, as the manager either was always out of office or refused to meet Tuballa.

On September 30, 1994, the RTC rendered a Decision,[1] the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered:
>
> 1. Ordering the defendant corporation, Cabrera Enterprises Incorporated to vacate Lot No. 6597, Pls-659-D and turn over the possession of the same to the plaintiff Anastacio Tuballa;
>
> 2. Condemning defendants to pay unto plaintiff damages in the amount of ₱100,000.00 and attorney's fees in the sum of ₱10,000.00;
>
> 3. Sentencing defendants to pay the costs of [these] proceedings.
>
> SO ORDERED.

Aggrieved, Cabrera Enterprises, represented by its Manager, Agnes Cabrera, and by Raul Cabrera and Carmen Cabrera, interposed its timely appeal before the CA. On October 25, 2002, the appellate court rendered its Decision,[2] the decretal portion of which reads:

> UPON THE VIEW WE TAKE OF THIS CASE, THUS, the judgment appealed from must be, as it hereby is, AFFIRMED, subject to the caveat that the awards for actual damages in the amount of ₱100,000.00, and attorney's fees in the sum of ₱10,000.00 are DELETED. Without costs.
>
> SO ORDERED.

The CA issued on March 7, 2003 an Entry of Judgment,[3] stating that its Decision dated October 25, 2002 has become final and executory on March 7, 2003.

---

[1] Penned by Judge Saturnino Ll. Villegas.

[2] Penned by Associate Justice Renato C. Dacudao and concurred in by Associate Justices Eugenio S. Labitoria (Chairperson) and Mario L. Guariña III.

[3] *Rollo*, p. 36.

Subsequently, Tuballa filed a Manifestation before the RTC, pointing out that there was a typographical error in the dispositive portion of the RTC Decision, which indicated Lot No. 6597 instead of Lot No. 5697, and that the CA affirmed the RTC Decision.

On January 3, 2006, the RTC issued an Order,[4] disposing Tuballa's manifestation, as follows:

> After a careful study and evaluation on the pleadings at hand, the Court believes that the very issue confronting the Court is whether or not it has the power or authority to correct or clarify the error in the Decision sought to be executed. As can be gleaned on the records, the decision sought to be executed is not the decision of this Court but rather of the Court of Appeals. Hence, any correction or clarification of the decision of the Court of Appeals must be addressed to the said court.
>
> In view of the foregoing, this Court is of the opinion and so holds that it has no power and authority to correct or clarify the error of the said Decision.
>
> SO ORDERED.

Tuballa was thus compelled to file a Petition for *Certiorari* and *Mandamus* under Rule 65 before the CA, which, on September 25, 2006, dismissed the same due to a number of procedural omissions and deficiencies. On July 16, 2007, the appellate court denied Tuballa's motion for reconsideration.

Hence, the instant petition filed by the children and heirs of Tuballa.

A decision that has acquired finality becomes immutable and unalterable. A final judgment may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law; and whether it be made by the court that rendered it or by the highest court in the land.[5]

---

[4] Penned by Judge Cesar Manuel Cadiz, Jr.

[5] *Collantes v. Court of Appeals*, G.R. No. 169604, March 6, 2007, 517 SCRA 561, 562; citing *Ramos v. Ramos*, 447 Phil. 114, 119 (2003).

The orderly administration of justice requires that the judgments/resolutions of a court or quasi-judicial body must reach a point of finality set by the law, rules, and regulations. The noble purpose is to write finis to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down.[6] Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but it extends to all bodies upon which judicial powers had been conferred.[7]

The only exceptions to the rule that final judgments may no longer be modified in any respect are (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) void judgments.[8]

Under OCT No. FV-16880,[9] the technical description of the land refers to Lot No. **5697**, Pls-659-D and not Lot No. 6597. The RTC committed a typographical error in its Decision when it ordered Cabrera Enterprises to vacate Lot No. 6597, Pls-659-D and turn over the possession of the same to Tuballa. And, in accordance with the first exception to modification of final judgment mentioned earlier, this Court hereby modifies the clerical error in the Decision of the RTC.

**WHEREFORE,** the Decision dated September 30, 1994 of the RTC is hereby *MODIFIED* by changing Lot No. 6597 to Lot No. **5697** in the first paragraph thereof, the *fallo* of which shall now read:

---

[6] *Peña v. Government Service Insurance System (GSIS)*, G.R. No. 159520, September 19, 2006, 502 SCRA 383, 404; citing *Fortich v. Corona*, 352 Phil. 461, 486 (1998).

[7] *Id*. at 404-405; citing *San Luis v. Court of Appeals*, G.R. No. 80160, June 26, 1989, 174 SCRA 258, 271.

[8] *Ramos*, *supra* note 5.

[9] *Rollo*, p. 43, Exhibit "M."

WHEREFORE, judgment is hereby rendered:

1. Ordering the defendant corporation, Cabrera Enterprises Incorporated to vacate Lot No. **56**97, Pls-659-D and turn over the possession of the same to the plaintiff Anastacio Tuballa;

2. xxx xxx xxx;

3. Sentencing defendants to pay the costs of [these] proceedings.

**SO ORDERED.**

*Carpio (Acting Chairperson), Carpio Morales, Azcuna,*[*] and *Tinga, JJ.,* concur.

*Quisumbing, J. (Chairperson),* on official leave.

---

[*] Additional member as per Special Order No. 485 dated February 14, 2008.

# INDEX

# INDEX

**PRELIMINARY INJUNCTION**

*Status quo* — Defined as the last actual peaceable uncontested status which preceded the controversy. (Dolmar Real Estate Dev't. Corp. *vs.* CA, G.R. No. 172990, Feb. 27, 2008) p. 434

*Temporary restraining order or a writ of preliminary injunction* — There is no definite rule on how the resolution denying the application is framed. (Dolmar Real Estate Dev't. Corp. *vs.* CA, G.R. No. 172990, Feb. 27, 2008) p. 434

*Writ of preliminary injunction* — The matter of issuance of a writ of preliminary injunction is addressed to the sound judicial discretion of the trial court, and generally, its action shall not be disturbed on appeal. (Dolmar Real Estate Dev't. Corp. *vs.* CA, G.R. No. 172990, Feb. 27, 2008) p. 434

— The sole object of a writ of preliminary injunction, whether prohibitory or mandatory, is to preserve the *status quo* and prevent further injury on the applicant until the merits of the main case can be heard. *(Id.)*

**PRE-TRIAL**

*Pre-trial order* — Shall be issued ten days after the termination of the pre-trial. (Alviola *vs*. Judge Avelino, A.M. No. MTJ-08-1697, Feb. 29, 2008) p. 476

**PROCEDURAL RULES**

*Interpretation* — Relaxation of procedural rules is never intended to be a license for erring litigants to violate the rules with impunity. (Marohomsalic *vs*. Cole, G.R. No. 169918, Feb. 27, 2008) p. 420

**PSYCHOLOGICAL INCAPACITY**

*Characteristics* — If a petition for nullity of marriage based on psychological incapacity is to be given due course, its gravity, root cause, incurability and the fact that it existed prior to or at the time of celebration of the marriage must always be proved. (Bier *vs*. Bier, G.R. No. 173294, Feb. 27, 2008) p. 442

# CITATION

Page

## I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page



**II. FOREIGN CASES**



**REFERENCES**

**I. LOCAL AUTHORITIES**

**A. CONSTITUTION**



**B. STATUTES**

Page

Page

Page

Page

Page



## C. OTHERS

Page

### D. BOOKS
(Local)



## II. FOREIGN AUTHORITIES

### A. STATUTES



### B. BOOKS